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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Decision delivered on: 31.08.2022*

\+ **FAO (COMM) 183/2021 & CM No.41176/2021**

CHIEF ELECTORAL OFFICER AND ANR ..... Appellants
Through: Mr Dhananjaya Mishra, Mr Navneet Dogra and Mr Ayan Rai, Advs.

versus

MAHALAXMI LIGHT HOUSE ..... Respondent
Through: Ms Nidhi Jaswal and Mr Amogh Bansal, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MS. JUSTICE TARA VITASTA GANJU
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

CM No.41176/2021

1. This is an application filed on behalf of the appellants seeking condonation of delay in re-filing the appeal.

1.1. The delay involved is 39 days.

2. The prayer in the application wrongly refers to Section 34 of the Arbitration and Conciliation Act, 1996 [in short, "1996 Act"], whereas, it ought to have adverted to Section 37 of the 1996 Act.

2.1. This is an obvious typographical error. Therefore, it need not detain us.

3. Thus, for the reasons given in the application, the delay is condoned.

4. The application is, accordingly, disposed of.

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5. This appeal is directed against the judgment dated 01.02.2021, passed by the learned Additional District Judge-02, Saket Courts, New Delhi [hereafter "ADJ"]

6. *Via* the impugned judgment, the learned ADJ allowed the petition filed by the respondent under Section 34 of the Arbitration and Conciliation Act, 1996 [hereafter referred to as "1996 Act"]. Resultantly, the arbitral award dated 07.01.2017 was set aside.

6.1. The award and the impugned judgment are confined to only one aspect of the matter, which is: whether there was accord and satisfaction concerning the bills raised by the respondent?

6.2. The respondent's plea in the Section 34 petition before the Learned ADJ was that the amount claimed was scaled down as duress and coercion had been employed.

7. The record shows that the respondent had raised two (2) bills, concerning tentage, lighting and electrical items supplied by it to the appellants, for the purpose of conducting the Delhi assembly elections which, we are told, were held on 25.11.1998.

7.1 The cumulative value of the subject bills was Rs.60,51,457/-. We are informed that these bills were processed and sanctioned by the Finance Department of the appellants. At that point, it appears that no objection was raised.

7.2. It is thereafter that the bills were scrutinized by the Accounts Department of the appellants, when several objections were raised. The principal objection was that the bills were inflated.

8. It is thereafter that the appellant no.1 *via* communication dated

20.03.2001 wrote to the respondent that a cheque amounting to Rs.32,16,756/- was ready and that it could be collected from its office.

8.1. Furthermore, the respondent was requested to furnish a certificate which would indicate that it had received full and final payment and that no amount was due against the subject bills.

8.2. Since much argument has been advanced on behalf of the respondent as regards the said communication, the same being brief, is extracted hereafter:

> *"I am directed to state that a cheque amounting to Rs. 32,16,756 (Rs. Thirty Two lakhs sixteen thousands seven hundred fifty six only) in respect of hiring of tentage, furniture and electrical items for conduct of Assemble Elections- 1998 in the N.C.T of Delhi, may be collected from this office.* ***You are further, requested to submit a certificate indicating therein that we have received full and final payment and nothing is due against the bills of Assemble Elections-1998****."*
>
> [Emphasis is ours]

9. The record shows that on that very date i.e., 20.03.2001, Rs.32,16,756/- was paid to the respondent and, as "requested" by the appellants, a certificate was furnished. The contents of the certificate dated 20.03.2001 are extracted hereafter:

> *"****We have received full & final payment in respect of hiring of tentage, furniture and electrical items for conduct of Assembly Election-1998 in the NCT of Delhi for amount of Rs. 32,16,756/-*** *(Rupees Thirty Two Lacs Sixteen Thousand Seven Hundred Fifty Six Only) vide Cheque No. 497062 dated 14.03.2001 of State Bank of India old Sectt., Delhi Certificate is* ***submitted as directed****."*
>
> [Emphasis is ours]

10. After nearly three (3) months, *vide* letter dated 12.06.2001, the respondent wrote to the appellant no.1, protesting, with regard to the deductions made against the subject bills.

10.1. *Via* the letter, the proprietor of the respondent, attempted to explain the delay by broadly adverting to the fact that he was out of Delhi and mentally disturbed.

10.2. Furthermore, the respondent also alluded to the fact that he had accepted the reduced amount i.e., Rs.32,16,756/-, as he had to defray outstanding loans undertaken by him.

10.3. In sum, the respondent conveyed to appellant no.1 that he was forced to furnish a receipt, reflecting that he had received full and final payment and that the payment of the aforementioned amount was dependant on such a receipt being executed in favour of the appellant no. 1.

10.4. In addition thereto, the respondent also averred that bills amounting to Rs.1,00,00,000/- concerning parliamentary elections had been held up by the appellants and that he had heard nothing with regard to the same.

11. The appellant no.1, immediately, responded to the respondent's letter dated 12.06.2001 *via* letter dated 19.06.2001. Since the response of the appellants was brief, for the sake of convenience, the same is extracted hereafter:

> *"Sir,*
>
> *With reference to your letter No. Nil dated 12.06.2001 on the subject cited above, I am directed to inform you that your claim for Rs.60,51,457/- was examined and the genuine and correct claim of Rs.32,16,756/- was allowed by the competent authority. As regards payment of Lok Sabha Elections-1999, the matter is being looked into by the concerned Returning Officer/Jt.*

CEO of the District concerned. You may take up this matter with him, if you feel it necessary.

Yours faithfully,
(J.K. SHARMA)
DY. CHIEF ELECTORAL OFFICER (STAT.)"

12. The respondent, once again, went silent for nearly three (3) months and *via* letter dated 10.09.2001, wrote back to the appellant no.1 seeking to query them as to why the amount claimed, as indicated in the subject bills had been scaled down.

12.1. The respondent also put appellant no.1. to notice that if it did not receive a reply within one week, it would take recourse to legal proceedings and claim the remaining amount with interest.

13. It is in these circumstances that the disputants agitated their claims before the Arbitrator.

13.1. The Arbitrator, after having examined the matter, concluded that there was accord and satisfaction. The Arbitrator's conclusion was based on his appreciation of the evidence placed before him.

13.2. Therefore, the claim made by the respondent with regard to the amount that had been deducted and the purported interest that had accrued, was rejected by the learned Arbitrator.

14. As noted right at the beginning, the learned ADJ reversed the conclusion reached by the learned Arbitrator.

15. Mr Dhananjaya Mishra, who appears on behalf of the appellants, says that the learned ADJ has exceeded his jurisdiction. There was no issue raised before him that concerned aspects involving public policy.

15.1 It is also Mr Mishra's contention that there was no patent illegality as

alleged or at all in the award and therefore, the learned ADJ could not have reversed the conclusion arrived at by the learned Arbitrator, *albeit*, after appreciating the evidence on record.

16. As against this, Ms Nidhi Jaswal, who appears on behalf of the respondent, submits that the view of the learned ADJ needs to be sustained.

16.1 It is Ms Jaswal's contention that the appellants had not cleared the respondent's bills raised with regard to the parliamentary elections that took place in 1999. Ms Jaswal submitted that the amounts due *qua* the said bills were in the range of Rs.1,00,00,000/-.

16.2. Ms Jaswal's contention, thus, is that the financial burden that the respondent faced was not only discernible from the fact that previous bills had not been liquidated, but also in the assertion made by the respondent, both before the appellant no.1 as well as the learned Arbitrator that there were outstanding loans that had to be defrayed.

16.3. In a nutshell, it is Ms Jaswal's contention that the circumstances in the matter pointed to duress and coercion.

17. Having heard the learned counsel for the parties and perused the record, what has emerged is as follows:

(i) The respondent had raised, as indicated above, two bills having a cumulative value of Rs.60,51,457/-.

(ii) These bills pertained to the Delhi assembly elections which were held on 25.11.1998.

(iii) These bills were scaled down by the appellants to Rs.32,16,756/-.

(iv) Appellant no.1 informed the respondent about the scaling down of the bills *via* letter dated 20.03.2001.

(v) The respondent was paid money on that very date i.e., 20.03.2001,

against a certificate which indicated that full and final payment against the abovementioned Delhi assembly elections had been received by the respondent.

(vi) The protest, with regard to the factum of the reduced amount having been accepted by the respondent, was raised by the respondent after nearly three (3) months i.e., on 12.06.2001.

(vii) Appellant no. 1, immediately, upon receipt of this communication responded *via* a return communication dated 19.06.2001, in which, it was *inter alia*, indicated that the claim was examined and thereafter the correct amount, as approved for payment by the competent authority, was paid to the respondent.

(viii) Thereafter, there was, once again, a hiatus of nearly three (3) months. The respondent rebutted the stand taken by the appellants *via* communication dated 10.09.2001. *Via* this communication, the respondent sought reasons for reduction in the amount.

18. The learned Arbitrator, in this backdrop, examined the stand of the respondent taken before him that the certificate submitted by him, concerning receipt of full and final payment, was an outcome of duress and coercion. The relevant parts of the award, which relate to this aspect of the matter, are set forth hereafter:

> *"Let me now re-examine the letter of the Respondent dated March 20, 2001 and the Receipt issued by the Claimant on the same day in the light of the aforesaid observations of the Supreme Court. It appears as follows :*
>
> *1. The Department did not even ask for, what to talk of insisting upon "obtaining of undated receipt-in-advance".*
>
> *2. The Department did not take the stand that*

such a receipt would be "a condition precedent for releasing over the admitted dues".

3. The payment was released on the same very day.

4. The Department had merely "requested" the Claimant to "submit a certificate" and there is no evidence that any such separate certificate was issued.

5. What has been recorded by Shri Pahuja on June 15, 2001 also belies any coercion/fraud or undue influence.

I feel that for what has been discussed by me above, the judgment relied upon by the Claimant instead of helping him rather cuts at the very stand taken by it.

I will be unfair to the learned Counsel for the Claimant by not mentioning that he had also relied upon a judgment of the Delhi High Court in Wishwa Mittar Bajaj & Sons v. U.O.I. FAO (OS) No. 222/2009. It too related to a "no claim certificate" and the submission made before the Court was that the certificate was issued under undue influence. But then, in the matter before me there is no such certificate. In any case in the matter the contractor had made an endorsement on the bills that the payment was "received in protest". There is no such endorsement in the case before me. Rather, as noticed above, the protest in the case was made days after the receipt of payment. Of course, in the Statement of Claim it is alleged that the petitioner "tried to reason it out with the office of the Respondent and as to the absurdly of the entire reasoning by which an amount of Rs. 28,34,701/- was intended to be illegally retained but as he had borrowed heavily from the market, therefore, "under undue pressure, coercion and the impending threat of mounting liabilities and under protest" he received the amount so offered, the receipt issued is conspicuously silent about it. Rather it does not support this assertion. What prevented him from writing all this in the receipt itself? Even the letter of June 12, 2001 gives no such narration. In any case, why this inordinate delay in lodging the protest? In his letter of June 12, 2001 he says he was out of Delhi. May be he was, though there is no proof, but then what prevented him from protesting while he was in and out of Delhi? In any case, he makes no mention of it in

his affidavit. He further states in the said letter that he was mentally disturbed. There is no reference to it either in his affidavit or in his oral evidence. Significantly, in the said letter there is also no reference, not even obliquely, that on March 20, he had lodged a protest on that he had pointed out the "absurdity" of the stand of the Respondent.

True, the Petitioner in his letter of June 12, 2001 speaks of the "impending threat of mounting liabilities" but barring this bald assertion what is the evidence in support? I find none. I have already reproduced the question put to him in his cross-examination and the reply given. Even that reply does not speak of "mounting liabilities". What do we get out of all this? As I look at it, the bills/ invoices were scrutinized by the Accounts Officer of the Respondent and it was found that they did not represent the correct position and were inflated. True, they had passed the scrutiny of the Returning Officer but then the Accounts Officer did have objections and found that the Claimant was actually entitled only to Rs. 32,16,756/- and on that basis that letter of June 19, 2001 was issued to the claimant. In this connection the Report of the Accounts Officer Shri Pahuja needs to be referred to again. It is a contemporaneous document and is of significance. I have already reproduced the relevant portion. It shows that the Claimant met the Accounts Officer Shri Pahuja and was informed about the entire position. A bare perusal of the documents referred to above would go to show the following:

(i) The claimant was informed personally about the amount found payable to him and when so informed he did not lodge any protest.

(ii) He received payment on March 20, 2001 without any protest.

Coming back to the letter of June 12, 2001 the Claimant comes up for the first time with two reasons for accepting the payment. First be had to repay the loans raised from the Bankers and second he was "forced to give the full and final payment receipt". Now, there is no cogent evidence to show that he had taken loan from the Bankers. Barring the solitary bald assertion of having been forced to give full and final payment receipt and that too after days of Sphinx-like silence, there is no evidence in support. Rather

what has been noted above falsifies this assertion.

Keeping in view what has been noticed above, let me refer judgments on the point. The first which needs to be referred to is M/s Goyal MG Gases Ltd Vs M/s Double Dot Finance Ltd. It is a Division Bench Judgment of Delhi High Court dated May 18, 2009 in FAO (OS) No. 210/2005. It was an appeal from the order of a learned Single Judge. The question related to a receipt issued in full and final settlement of the claim. The learned Single Judge relying upon a Judgment of the Privy Council had held that 'coercion' or 'duress' required for vitiating "free consent" has to be of the category under which the person under "duress" is left with no other option but to give consent and is unable to take an independent decision, which is in his interest. It was further held that the plea of coercion, undue influence or duress to challenge the "accord and satisfaction" cannot be accepted merely upon word of mouth. The Division Bench found those observations and finding as "perfectly justified" (paragraph-4). Significantly, in that case protest was lodged after only ten days of the receipt and this was held to be a factor against the Claimant. The ultimate finding was that the dispute stood finally settled when the receipt was issued and that it could not have been arbitrated upon. The view so taken finds support from Union of India & Ors Vs Hari Singh, a Judgment of the Supreme Court (Civil Appeal No. 7970 of 2010 decided on September 10, 2010); National Insurance Company Ltd Vs Boghara Polyfab Pvt Ltd. (2009) 1 SCC 267 and Union of India V. Kishori Lal Gupta & Bro's. AIR 1959 SC 1362. The position in law being as noticed above, I think it is not open to the Claimant now to cry wolf and ask for relief…."

19. As against this, the learned ADJ while upsetting the view taken by the learned Arbitrator has summed up her reasoning in one paragraph, which is set forth hereafter :

"18. The main point for consideration in this petition is that whether the full and final payment was received by the petitioner under undue influence, duress and hardship. The petitioner has placed on record the letter of banks showing his financial liabilities and has also pleaded that he has not made the payments

to the labours and persons who supplied materials to him for the contract/ work in question."

20. A perusal of the learned ADJ's order shows that it is founded two planks. First, that the respondent's banker had issued a letter which supposedly demonstrated that the respondent was burdened with financial liabilities. Second, the respondent had averred that payments to workers and persons, who had supplied him material for executing the subject contract, had not been made.

20.1. Although, there were several contentions advanced before the learned ADJ, none of them find a reference in the reasoning furnished by the learned ADJ. The learned ADJ also appears to have ignored the findings returned by the learned Arbitrator.

20.2. The learned ADJ seems to have been persuaded to accept the view taken by this Court in the judgment dated 04.04.2018, passed in OMP (COMM) No.139/2018, titled ***Union of India v. Rama Paper Mills Ltd.***, *albeit*, without discussing as to how the ratio of the aforementioned judgment was applicable to the facts arising in the instant case. The conclusion arrived at by the learned ADJ that the two situations were *para materia*, and therefore, the view of the learned Arbitrator deserved to be reversed, is clearly erroneous

21. We may also note that the letter of the bank on which reliance has been placed by the learned ADJ is dated 24.11.2016. Since the impugned judgment is pivoted on this letter, we intend to extract the same:

"Dear Sir,
Subject : Status of our overdraft loan account of MahaLakshmi Light House No.0347256050478.

As per your letter dated 24.11.2016, ***the subject a/c was an overdraft loan a/c. The a/c opened on 15.03.1999 and the a/c was operational till 30.06.2011****.* ***The a/c is still in open st****.*

This letter is issued on specific request of the party, without any risk and responsibility on p bank and its officials.

Thanking you

Yours faithfully

Senior Manager"

[Emphasis is ours]

21.1. A careful perusal of the letter shows that the concerned bank has indicated that the account in issue was an overdraft loan account which was opened on 15.03.1999 and that it was operational till 30.06.2011.

21.2. The letter also seems to suggest that the account had not turned dormant. This letter was, obviously, issued at the behest of the respondent.

22. We have asked Ms Jaswal, whether this letter formed part of the arbitral record. Ms Jaswal has informed us that the said letter was produced before the learned Arbitrator.

23. We have also asked Ms Jaswal, as to whether the account statement was produced before the learned Arbitrator. Ms Jaswal says that the account statement was not produced.

24. There is, therefore, no way that the learned Arbitrator could know as to what was the balance in the account. The learned Arbitrator could not fathom as to whether there was a debit balance or a credit balance in the aforementioned account.

24.1. Therefore, it was next to impossible for the learned Arbitrator to conclude that on the given date, i.e., 20.03.2001, the respondent was in

financial difficulty.

25. Thus, for the learned ADJ to overturn the award based on the stand of the respondent that it was in financial difficulty without having examined the material on record, was, in our view, a leap of faith which was not founded on robust evidentiary material.

26. The other reason given by the learned ADJ that payments had to be made by the respondent to workers and other persons who had assisted him in executing the subject contract, was also pivoted on the mere assertion of the respondent.

27. It is well established that the learned Arbitrator is a master of both, the quality and quantity of the evidence. The appreciation of evidence by the learned Arbitrator cannot be interfered with by the Court while exercising powers under Section 34 of the 1996 Act.

27.1. It is only in a case where there is no evidence or a case where relevant and pertinent evidentiary material has not been considered, that the Court can, under Section 34 of the 1996 Act, interfere with the conclusions reached by the learned Arbitrator.

27.2. Mr Mishra's contention that there was no patent illegality or that no issue concerning public policy was raised by the respondent, is a contention that merits acceptance.

28. At this stage, we may also indicate that the learned ADJ's reliance on the judgement rendered by the learned Single Judge of this Court in ***Rama Paper Mills***, was flawed.

28.1. This was the case where the respondent i.e., Rama Paper Mills Ltd. was called upon to submit two (2) no-claim certificates. The first no-claim certificate was dated 22.10.2014 while the second no-claim certificate was

dated 30.12.2014.

28.2. As found by the learned Single Judge, the first no-claim certificate was furnished when a huge amount i.e., Rs.1,31,58,471/- was due and payable by Rama Paper Mills Ltd. to the petitioner therein i.e., the Union of India (UOI).

28.3. The second no-claim certificate was furnished by Rama Paper Mills Ltd. when the UOI was holding on to the bank guarantee worth Rs.1.50 crores.

28.4. It is in these circumstances that, both the Arbitral Tribunal as well as the learned Single Judge in the said case concluded that there was no accord and satisfaction.

28.5. The facts in the instant case are quite to the contrary.

28.6. As a matter of fact, in this very judgment, the learned Single Judge, to our minds, correctly, observed that in Section 34 proceedings, the Court cannot reappreciate the conclusions reached by the learned Arbitrator. [See paragraphs 13, 16 and 17]

28.7. We are told by Ms Jaswal that this judgement has been sustained by a Division Bench of this Court.

28.8. As indicated above, the ratio of this judgment has been wrongly applied by the learned ADJ in reversing the view taken by the learned Arbitrator in the instant matter.

29. Ms Jaswal's contention that a careful perusal of the certificate dated 20.03.2001 would show that it was "submitted as directed". According to us, this by itself, will not carry the matter further as the certificate which was submitted would have to be seen in the backdrop of various circumstances which arose in the instant case.

29.1. As indicated above, the respondent waited for nearly three (3) months to lodge a protest with regard to the certificate submitted evidencing the receipt of full and final payment.

29.2. When the appellant no.1 responded to the same, the respondent took another three (3) months to rebut the stand of appellant no. 1. This is reflected in the letters referred to hereinabove i.e., letters dated 19.06.2001 and 10.09.2001.

29.3. Therefore, this contention of Ms Jaswal does not impress us.

30. Ms Jaswal further contends that the matter be remanded to the learned ADJ for fresh consideration, also does not find favour with us, for the reason that having examined the award, we are of the view that no purpose will be served, as the material placed before the learned Arbitrator has been examined by him and the he has come to a definitive view in the matter.

31. An apprehension that there was erroneous appreciation of the evidence by the learned Arbitrator, by itself, will not call for interference under Section 34 of the 1996 Act. The appreciation of evidence, whether right or wrong, is completely within the domain of the learned Arbitrator.

31.1. This position has been affirmed in the judgement of the Supreme Court, titled ***McDermott International v Burn Standard Co. Ltd.*** (2006) 11 SCC 181, which was cited with approval in ***Dakhshin Haryana Bijli Vitran Nigam Limited v Navigant Technologies Ltd.*** (2021) 7 SCC 657. The relevant extract from the judgement in ***McDermott*** is set forth hereafter:

> *"52. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness.* ***Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot***

> ***correct errors of the arbitrators***. *It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it."*
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> [Emphasis is ours]

32. Thus, having regard to the aforesaid, we are of the opinion that the learned ADJ committed an egregious error in interfering with the award.

33. The impugned judgment is, accordingly, set aside.

34. The parties are, however, left to bear their respective costs in the matter.

35. Consequently, the pending application shall stand closed.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

AUGUST 31, 2022/aj