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Delhi High Court refuses to interfere with an Arbitral Award on the ground of nature of inference drawn from evidence

Megha Enterprises & Ors. vs. M/s. Haldiram Snacks Pvt. Ltd.

Case No.	**O.M.P. (COMM) 79/2021**
Date	**15 April, 2021**
Court	**Delhi High Court**
Coram	**Hon'ble Mr. Justice Vibhu Bakhru**

1. FACTS & PROCEDURAL HISTORY:

A. The Transaction

1.1 Megha Enterprises (**"Petitioner"**) is a partnership firm, *inter-alia,* engaged in the business of trading Crude Palm Oil (edible grade). The Petitioner entered into two agreements dated 02.02.2013 and 25.02.2013 with M/s. Coral Products Pvt. Ltd. (**"Coral"**) for the sale and purchase of Crude Palm Oil on a High Seas Sale Basis. Coral agreed to sell Crude Palm Oil to the Petitioner on the basis of the agreed terms and conditions and accordingly raised two invoices dated 02.02.2013 and 25.02.2013 for amounts of Rs. 6,85,02,000/- and Rs. 12,18,75,000/- respectively. Thus, an aggregate sum of Rs. 19,03,77,000/- became due and payable by the Petitioner to Coral.

B. The Merger and Scheme of Amalgamation

1.2 Notably, Coral merged with M/s. Haldiram Snacks Pvt. Ltd. (**"Respondent"**), in terms of a Scheme of Amalgamation under Section 391-394 of the Companies Act, 1956.[1] Accordingly, the assets of Coral stood vested with the Respondent and included the amount receivable from the Petitioner.

C. The Cause of Action

1.3 As per the Respondent, the Petitioner took delivery of the Crude Palm Oil at the port of delivery, Kakinada, however, the amount of Rs. 19,03,77,000/- remained outstanding and payable by the Petitioner. Due to the failure of the Petitioner to pay the afore-stated amount, the Respondent vide notice dated 18.05.2016 addressed to the Petitioner, invoked the Arbitration Clause under the High Sea Sales Agreement (**"Agreement"**).

1.4 As per the notice dated 18.05.2016, the Respondent had sought the consent of the Petitioner to appoint a Sole Arbitrator and had even provided the names of three former judges of the Hon'ble Delhi High Court (**"High Court"**). The Respondent had also claimed an amount of Rs. 19.03,77,000/- along with interest at the rate of 18% per annum. The Petitioner reverted to the notice on 03.06.2016, denying both the liability of the amount claimed and appointment of an Arbitrator.

D. Proceedings for Appointment of an Arbitrator before the High Court

1.5 As the Petitioner denied the consent for the appointment of the Arbitrator, the Respondent approached the High Court under Section 11(6) of the Arbitration and Conciliation Act, 1996 (**"1996 Act"**) seeking appointment of an Arbitrator.[2]

1.6 The afore-stated petition was allowed by the High Court and vide order dated 18.04.2017, the High Court referred the parties to the Delhi International

[1] Company Petition No. 66/2014.

[2] Haldiram Snacks Pvt. Ltd. v. Megha Enterprises & Anr., ARB.P. 421/2016.

Arbitration Centre (**"DIAC"**) with the direction to DIAC to appoint an Arbitrator in accordance with the 1996 Act and the DIAC Rules.

E. Proceedings before the Ld. Sole Arbitrator

1.7 The Respondent herein (Claimant before the Ld. Sole Arbitrator) filed its Statement of Claim on 05.06.2017 claiming (i) Rs. 19.03,77,000/- as the outstanding amount; (ii) interest at the rate of 18% per annum from the date the amount became due till the date of filing of the Statement of Claim quantified at Rs. 14,56,38,405/-; (iii) *Pendente Lite* and future interest at the rate of 18% per annum from the date of filing of the claim and till the payment of the award; and (iv) costs of litigation.

1.8 The Petitioner herein (Respondent before the Ld. Sole Arbitrator) filed its Statement of Defence and contented that the claims were barred by limitation. *Firstly*, the Petitioner contented that the Arbitration Clause was invoked on 18.05.2016 that was beyond a period of three years from the date on which the amounts became payable under the Agreement. Whereas, the payments were to be made within ten days of the date of invoices and the period of three years 12.02.2016 and 07.03.2016. *Secondly*, the Petitioners argued that, they had further supplied the Crude Palm Oil to M/s. Good Health Agro Tech (P) Ltd. and M/s. Nikhil Refineries (P) Ltd., and the Respondent had attempted to fudge its balance sheets and show profits under its brand name. *Lastly*, the Petitioners argued that, the Respondent had received the consideration from the afore-stated entities and had not given credit for the said amounts to the Petitioner.

1.9 The Ld. Sole Arbitrator after having gone through the contentions, firstly, decided that it has territorial jurisdiction to decide the claims. As the Arbitration Clause stipulated that the arbitration would be subject to the jurisdiction of courts at Hyderabad or Delhi, either one jurisdiction will be the place of arbitration. Moreover, the Ld. Sole Arbitrator categorically observed that the two agreements in question had been engrossed on stamp paper purchased in Delhi.

1.10 The Ld. Sole Arbitrator after evaluating the materials and evidences on record, rejected the contentions of the Petitioner and rendered an award in favour of the Respondent. Being aggrieved by the award, the Petitioner filed an application for setting aside the award under Section 34 of the 1996 Act before the High Court.

2. CONTENTIONS OF THE PETITIONER BEFORE THE DELHI HIGH COURT:

2.1 The Petitioner argued that the claims were barred by limitation and the conclusion of the Arbitral Tribunal was patently illegal. On the point of limitation, the Petitioner placed reliance on the fact that the Arbitration Clause was invoked only after a period of three years from the date of expiry. The said period had expired on 12.02.2013 and 07.03.2013 respectively. Hence,

the Arbitral Tribunal had erred in observing that there existed an acknowledgment of debt.

2.2 Additionally, on the point of acknowledgement of debt, the Petitioner submitted that, the Arbitral Tribunal had accepted the contention of the Respondent that one Mr. Avneesh Agarwal of Coral had received a letter dated 31.05.2013, acknowledging the liability of the outstanding amount, however, since the same was not signed, and thus, it could not be admissible under Section 18 of the Limitation Act, 1963 (**"Limitation Act"**). It was argued that, the said letter did not bear any signature except for a scribble for an individual that was never employed by the Petitioner.

2.3 The Petitioner then argued that, the Arbitral Tribunal had erred in accepting that the letter dated 31.05.2013 had been sent by electronic mode despite an absence of evidence to that effect. The letter could not have been relied upon by the Arbitral Tribunal as the necessary affidavit stipulated by Section 65B of the Indian Evidence Act, 1872 (**"Evidence Act"**) was not attached to the same.

2.4 Lastly, the Petitioner submitted that, an email dated 04.06.2013 that forwarded the balance confirmation letter dated 31.05.2013 was forwarded by one Mr. Mohan Maganti of M/s. KGF Cottons Pvt. Ltd., to Mr. Avneesh Agarwal. According to the Petitioner, the same could not be construed to extend the period of limitation since it was not sent by the Petitioner. Moreover, it was not even sent by any of the constituents of the Petitioner and could not be considered as an acknowledgement of debt on behalf of the Petitioner.

3. CONTENTIONS OF THE RESPONDENT BEFORE THE HIGH COURT:

3.1 The Respondent argued that, the Arbitral Tribunal had carefully examined the evidence on record and concluded that the Petitioner had acknowledged the debt against the two invoices. This careful examination by the Arbitral Tribunal included the email dated 04.06.2013 as well as the letter dated 31.05.2013.

3.2 The Respondent submitted that the Arbitral Tribunal had also considered the question; whether the acknowledgment dated 31.05.2013 was required to be signed. On this point, the Arbitral Tribunal followed the decision of the Hon'ble Karnataka High Court in the case of *Sudarshan Cargo Pvt. Ltd.*[3], wherein the Court had held that emails can be construed and read as due acknowledgment of debt and would meet the parameters of Section 18 of the Limitation Act.

4. ISSUES:

4.1 Whether or not the Arbitral Tribunal had erred in evaluating the evidence led in the case that caused the award to be patently illegal?

4.2 Whether or not the Arbitral Tribunal had misapplied Section 18 of the Limitation Act?

[3] Sudarshan Cargo Pvt. Ltd. v. Techvac Engineering Pvt. Ltd., 2013 SCC Online Kar 5063.

5. JUDGMENT OF THE HON'BLE HIGH COURT

A. The court cannot interfere with the arbitral award on the ground of nature of inference drawn by the Arbitral Tribunal from the evidence on record

5.1 At the outset, the High Court rejected the argument that the Arbitral Tribunal had grossly erred in accepting the evidence without an affidavit under Section 65B of the Evidence Act. The High Court noted two reasons for the same; *firstly*, as per Section 1 of the Evidence Act, the same does not apply to proceedings before the arbitrator. *Secondly*, no such objection was taken by the Petitioner at the appropriate stage i.e., before the Arbitral Tribunal.

5.2 Since the scope of examination under Section 34 is extremely limited, the High Court took note that it cannot undertake the exercise of re-appreciation of evidence on the ground of patent illegality. In rejecting the arguments assailed by the Petitioner, the High Court categorically observed as follows:

> *"30. In the present case, no case has been made out by the petitioner that the arbitral award is contrary to the Fundamental Policy of India. The arbitral award cannot by any stretch be considered to be opposed to justice or morality. The dispute in the present case relates to a simple transaction of sale and purchase of goods. All that the Arbitral Tribunal has done is, after having found that the petitioners had not paid for the goods purchased by them, awarded that the said consideration be paid with interest. It is trite that a delay in filing a claim only bars the remedy, it does not extinguish any debt. Viewed in this perspective, the Arbitral Tribunal has after evaluating the material, rejected Megha's contention that Haldiram be denied its remedy to seek what it claimed to be legitimately due to it. Obviously, there is no question of such an approach offending any sense of morality as is embodied in the expression 'public policy' as used in Section 34(2)(6) of the A&C Act."*

5.3 The High Court then relied upon the case of *Associate Builders*[4], and observed that the evaluation of the evidence by the Arbitral Tribunal may be erroneous, and the High Court may take a different view, however, that is not the scope of examination under Section 34 of the 1996 Act. Notably, the High Court observed that the court cannot interfere with the award merely on the ground that it does not concur with the inference drawn by the Arbitral Tribunal from the evidence led by the parties.

5.4 Lastly, the High Court whilst placing reliance on the case of *Ssangyong Engineering*[5], rejected the argument assailed by the Petitioner and refused to interfere with the award on the ground of erroneous conclusion on the evidence led by the parties.

B. Application of Section 18 of the Limitation Act vis-à-vis Merits of the Case

[4] Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49.
[5] Ssangyong Engineering and Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131.

5.5 The extracts of the arbitral award as reproduced by the High Court make it evidently clear that the Petitioner herein had acknowledged the outstanding amount that was due and payable to the Respondent vide email dated 04.06.2013 as well as the letter dated 31.05.2013. The same was confirmed by the witness on behalf of the Respondent affirming the written acknowledgment and the email. Thus, the High Court observed that the Arbitral Tribunal had concluded that the correspondence was sent on behalf of one of the employees of the group company and on behalf of the Petitioner.

5.6 Notably, the High Court categorically observed that, the Petitioner did not produce its books of accounts to dispute the evidence on record. Therefore, the afore-stated acknowledgment of debt by the Petitioner had led the Arbitral Tribunal to rely upon electronic communications that constitute such acknowledgement.

5.7 By relying upon the case of *Sudarshan Cargo Pvt. Ltd.*[6], the High Court affirmed that such a view is plausible and does not warrant any interference under Section 34 of the 1996 Act. The point of non-interference was further strengthened by relying upon the observations made in the case of *Ssangyong Engineering*[7], that reads as follows:

> *"Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality."*

5.8 Therefore, the High Court affirmed the view taken by the Arbitral Tribunal that given the leap of technology, the acknowledgement made even in the electronic form and since it fulfils the parameters of Section 18 of the Limitation Act, would suffice as a valid and legal acknowledgement of debt due. The High Court did not find any infirmity with the view taken by the Arbitral Tribunal on this issue.

6. CONCLUSION:

6.1 The High Court affirmed the arbitral award that was passed in favour of the Respondent and dismissed the Section 34 application since the Petitioner was unable to assail any ground or advance any argument that could be accepted by the High Court.

6.2 The High Court while dismissing the Section 34 application rejected the arguments of the Petitioner and did not find any reason to interfere with the award on the ground that, the Arbitral Tribunal had erred in drawing inference from the evidence on record.

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[6] *Supra* note 3.

[7] *Supra* note 5.

7. PSL OPINION/ANALYSIS:

7.1 The decision of the High Court goes a long way in affirming multiple facets of not just arbitration law but allied laws as well. First and foremost, the High Court has continued its pro-arbitration stance by not interfering with the award on the ground where there may be disagreements over drawing inferences from the evidence on record. This upholds the observations made in the case of *Ssangyong Engineering*[8], and that the ground of patent illegality cannot bring in its ambit interference made by the court on account of inference drawn by the arbitral tribunal.

7.2 Secondly, the High Court whilst upholding the view of the Arbitral Tribunal on the point of acknowledgement of debt in an electronic form, has taken a positive step forward in appreciating the technological advancements and applying the contours of Section 18 of the Limitation Act to even electronic communications.

[8] *Id.*