IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 3575 of 2024
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2024
In R/FIRST APPEAL NO. 3575 of 2024

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M/S KONNECTING INDIA & ORS.

Versus

THE KALUPUR COMMERCIAL CO OP. BANK LTD. & ANR.

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Appearance:
MR LALIT M PATEL(2239) for the Appellant(s) No. 1,2,3,4

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CORAM: **HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 16/10/2024

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE PRANAV TRIVEDI)

1. The present First Appeal is preferred under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act' for short) assailing the judgment and order dated 10.7.2024 passed by Judge, Court No. 7, City Civil Court, Ahmedabad (hereinafter referred to as 'the learned Court' for short) in Commercial Civil Misc. Application No.175 of 2022.

2. The facts leading to the filing of the present First Appeal are that the appellant No.1 is a registered

Partnership Firm whereas appellant Nos. 2 to 4 are the guarantors. It is the case of the appellants that the appellant No.1 Firm had approached the respondent No.1 Bank (hereinafter referred to as 'the respondent' for short) to avail EFC cum FBP/FBD under LC facilities to the tune of Rs.750.00 lakhs. For the same, appellant Nos. 2 to 4 stood as guarantors. The respondent, after duly considering the application made by the appellants, granted the facility on 31.3.2016. The appellants executed the requisite documents for the facility, which was subsequently renewed on 27.2.2017 as well as on 21.3.2018. For the facility availed by the appellants, the stock for export was hypothecated as primary security and two other different properties were mortgaged as collateral security.

3. Pursuant to the facilities availed by the appellants and provided by the respondent, the transaction was carried on smoothly for certain time. However, certain irregularities in payment was done on behalf of the appellants which has culminated into the account of the

appellant being classified as a Non-performing Asset on 19.11.2018. Due to non-payment of dues by the appellant as well as classification of the account of the appellant as Non-performing Asset, the respondent issued a legal notice on 29.11.2018, calling upon the appellants to pay the full payment of overdue amount within a stipulated time failing which appropriate legal action would be initiated.

4. Pursuant to the notice, the appellants did not make any repayment and, therefore, the respondent was constrained to appoint Shri V.C. Trivedi as the Sole Arbitrator on 24.12.2018. The appointment of the Arbitrator was done under the provisions of Section 84 of the Multi State Co-operative Societies Act (hereinafter referred to as 'the Multi State Act') as the respondent is a Multi State Cooperative Society. It may be noted that by availing facility, the appellants as well as respondent had agreed for statutory arbitration. Therefore, pursuant to the provisions of Section 84 of the Multi State Act, the appointment of Shri V.C. Trivedi (Retired IAS Officer)

cannot be disputed. A notice dated 24.12.2018 was issued by the Sole Arbitrator directing the appellant to appear before him. However, on receipt of the notice of the Arbitration Suit, the appellants appeared before the Sole Arbitrator and represented their case. During the pendency of the proceedings, learned Sole Arbitrator Shri V.C. Trivedi passed away. Therefore, Shri J.H. Champavat, a Judicial officer has been appointed as new Sole Arbitrator. The arbitration proceedings further continued. The appellants took part in the proceedings. After hearing both the parties, learned Sole Arbitrator was pleased to pass an award dated 1.6.2022 accepting the claims of the respondents- original claimants.

5. Being aggrieved and dissatisfied by the award dated 1.6.2022, the appellants preferred Commercial Civil Misc. Application No. 175 of 2022 before the learned Court under Section 34 of the Act. The learned Court after hearing contention raised by both the parties was pleased to dismiss the application preferred by the appellants on 10.7.2024, which is now assailed in the present First

Appeal.

6. We have heard Mr. Lalit Patel, learned advocate for the appellants. The learned advocate for the appellants would submit that the appointment of the Sole Arbitrator was an unilateral appointment. The provisions, as envisaged under Section 21 of the Arbitration and Conciliation Act, 1996 (in short as 'the Act, 1996') were not followed and there was a complete breach of Section 12 of the Act, 1996. It was contended that the respondent lodged the arbitration claim without serving a notice inviting the appellants in the matter of appointment of arbitrator and thereby acted in contraventions of the mandatory provisions of Section 21 of the Act, 1996. The preliminary objections taken by the appellant in this regard have been mechanically rejected in the final award. It was further submitted that the learned Arbitrator has overlooked the fact that the mandatory provision under Section 12 of the Act, 1996 has been violated. The learned Sole Arbitrator was acting as an Arbitrator for the bank for so many years and, therefore,

there was a serious doubt as to the independence, and also the impartiality of the Arbitrator more so as no disclosure has been made under Section 12 of the Act, 1996. Placing reliance upon the decision of the Apex Court in the case of ***Perkins Eastman Architects DPC v. HSCC Ltd***., ***reported in AIR 2020 SC 59,*** it was argued by the learned advocate for the appellants that unilateral appointment was supposed to vitiate the arbitration proceedings.

7. Having heard the learned advocate for the appellants and perused the material on record, we may note that the first and foremost objection taken by the learned counsel for the appellants is with regard to the breach of Section 21 of the Act. The basic foundation in the contention made by the appellant is fallacious, inasmuch as, the arbitration proceedings under consideration is not a commercial arbitration, but a statutory arbitration. The Arbitrator is appointed pursuant to the provisions of Section 84(5) of the Multi State Co-operative Societies Act. The appointment of the

Arbitrator is made by the State Government on behalf of the Central Government. The argument canvassed by the learned counsel for the appellants about the applicability of provisions of Section 21, in a statutory arbitration, is absolutely meritless.

8. Further, it is not in dispute that in the loan agreement, the appellants have agreed for appointment of an Arbitrator and referring to any dispute to arbitration under the provisions of Multi State Co-operatives Act. It is also not in dispute that the appellant is a defaulter and he has taken the facilities as per the loan agreement which specifically refers to the dispute being conducted by an Arbitrator appointed under Section 84(5) of the Multi State Co-operatives Act. The judgment of ***Perkins Eastman Architects DPC v. HSCC Ltd (Supra)*** as relied by the appellant cannot be applied in the above noted facts and circumstances of the case.

9. Section 2(4) of the Arbitration Act, 1996, which

supports statutory arbitration replacing statute in place of agreement is reproduced as under:

> ***Section 2(4):*** *This Part except sub-section (1) of section 40, sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder.*

Further, the arguments on the independence and impartiality of the statutory arbitrator solely on the ground that he is doing the cases of the bank for a long time is liable to rejected being wholly misconceived.

The arbitrator is a Judicial officer and has been appointed in accordance with the statute. No exception can be taken to his independence at all.

10. On the challenge to the merits of the Award, we may

note the decision of the Apex Court in ***UHL Power Company Limited vs. State of Himachal Pradesh*** reported in ***[(2022) 4 SCC 116],*** wherein the Apex Court has held that the jurisdiction conferred on the Courts under Section 34 of the Arbitration Act is fairly narrower, when it comes to the scope of exercise of powers under Section 37 of the Arbitration Act. Noticing its earlier decision in ***MMTC Ltd. vs. Vedanta Ltd.,*** reported in ***[(2019) 4 SCC 163]***, it was noticed that the reasons for vesting such a limited jurisdiction on the Courts in exercise of powers under Section 34 of the Act, 1996, have been explained therein in para '11' as under :-

> *"11. As far as Section 34 is concerned, the position is well- settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2) (b) (ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the*

"fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract."

28. By referring to various decisions of the Apex Court, it was noticed from para Nos. '18' to '21'in UHL Power Company Limited (supra) that it has been held time and again by the Apex Court that if there are two plausible interpretations of the terms and conditions of the contract, then no fault can be found, if the Arbitrator proceeds to accept one interpretation as against the others. The construction of the terms of contract is primarily is for an Arbitrator to decide unless the Arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do. It was further noted that when the Court is applying " 'public policy test' to the arbitration award, it does not act as a court of appeal and consequentially, errors on facts cannot be corrected". A possible view by the learned Arbitrator on facts has necessarily to pass muster as the Arbitrator is the ultimate master of the quality and quantity of evidence to be relied upon when he delivers his arbitral award. Thus, the award based on little evidence or on

evidence which does not measure up in quantity to a trained legal, would not be held to be involved on this score.

29. The requirement is that the Arbitral Tribunal must decide in accordance with the terms of the contract, but if the test is that arbitral tribunal must decide in accordance with the terms of the contract, but if term of the contract is construed in reasonable manner within the award ought not to be set aside on the ground of unreasonableness only. It was further noticed in paragraph Nos. 20 and 21 as under :-

"20. In Dyna Technologies (P) Ltd. (supra), the view taken above has been reiterated in the following words:

"25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

21. An identical line of reasoning has been adopted in South East Asia Marine Engg. & Constructions Ltd. [SEAMAC Limited] V. Oil India Ltd. and it has been held as follows:

"12. It is a settled position that a court can set aside the award only on the grounds as provided in the Arbitration Act as interpreted by the courts. Recently, this Court in Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd. [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1 : 2019 SCC OnLine SC 1656] laid down the scope of such interference. This Court observed as follows : (SCC pp. 11-12, para 24)

24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated."

13. It is also settled law that where two views are possible, the Court cannot interfere in the plausible view

taken by the arbitrator supported by reasoning. This Court in Dyna Technologies (2019) 20 SCC 1 : 2019 observed as under :

"25. Moreover, umpteen number of judgments of this Court have categorically held that the Court should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The Courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act." [emphasis supplied]"

11. In *MMTC Ltd. (supra)*, the Apex Court on the scope of interference with an order made under Section 34, as per section 37, has held that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. The relevant para 14 in *MMTC Ltd. (supra)* be noted :-

"As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the Court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the Court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral

award has been confirmed by the Court under Section 34 and by the Court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."

12. In ***Project Director, National Highways No. 45E and 220 National Highways Authority of India vs. M. Hakeem and Another*** reported in ***[(2021) 9 SCC 1]***, the Apex Court while considering the question of scope of the powers of the Courts under Section 34 of the Act, 1996 to set aside the award of the Arbitrator including the power to modify such award, considered its earlier decision in *MMTC (supra)* to record that it is settled that the Section 34 proceedings does not contain any challenge on the merits of the award. It was held that Section 34 of the Arbitration Act, 1996 in the vary from of being in the nature of appellate provisions, it provides only for setting aside of the awards on limited grounds, as contained in Sub-sections (2) and (3) of Section 34. The recourse to the Court against the arbitral award may be made only by application for setting aside such award in accordance with Sub-sections (2) and (3). It was observed

that Section 34 of the Act, 1996 is modelled on the UNCITRAL Model Law on International Commercial Arbitration, 1985, under which no power to modify the award is given to the Court hearing a challenge to an award. Statutory scheme under Section 34 of the Act, 1996 is in keeping with the UNCITRAL Model Law and legislative policy of minimal judicial interference in arbitral awards. Referring to the decision of the Apex Court in ***McDermott International Inc. vs. Burn Standard Co. Ltd.*** reported in ***[(2006) 11 SCC 181]***, it was noticed that 1996 Act makes provisions for supervisory role of the Courts in the review of the arbitral award only to ensure fairness. Interference of the Courts is envisaged in few circumstances only, like in case of fraud or bias of the Arbitrator, violation of principles of natural justice etc.. The Courts cannot correct the terms of the Arbitrator. It can only quash the awards leaving the parties to begin with the arbitration again, if it so desires. The scheme of the provisions, namely Sections 34 and 37 of the Act, 1996, thus, aims at keeping supervising role of

the Courts at minimum level and this can be justified, as the parties to the agreement make a conscious decision to exclude the Court's jurisdiction by opting for arbitration as they prefer expeditious and finality over by it. It was, thus, held that there can be no doubt that given the law laid down by the Apex Court, Section 34 of the 1996 Act cannot be held to include within it a power to modify the award.

13. In view of the same, the First Appeal is devoid of merits and liable to be dismissed.

Consequently, the Civil Application also stands disposed of.

(SUNITA AGARWAL, CJ)

(PRANAV TRIVEDI,J)

SAJ GEORGE