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Unexplained delay in rendering of an Arbitral Award is a ground to set it aside.

DG Central Reserve Police Force v. Fibroplast Marine Pvt. Ltd

Case No.	O.M.P. (COMM) 511/2019
Date	04 May 2022
Court	High Court of Delhi
Coram	Hon'ble Mr. Justice Vibhu Bakhru

1. FACTUAL MATRIX AND PROCEDURAL HISTORY:

- 1.1 In the present matter, Director General Central Reserve Police Force had filed a Petition under Section 34 of the Arbitration and Conciliation Act, 1996 (“Act”) impugning the arbitral award dated 31.05.2019 rendered by the Arbitral Tribunal comprising of a Sole Arbitrator.
- 1.2 Director General Central Reserve Police Force (“Petitioner”) had floated a tender for the supply of 288 numbers of Boat Assault Universal Type (“BAUT”) and 288 numbers of 50 HP Out Board Motor (“OBM”). Pursuant to which Fibroplast Marine Pvt Ltd (“Respondent”) submitted the bid and were declared the lowest bidder. Consequently both parties entered into a contract for the supply of the same at a cost of Rs 16,87,79,520.
- 1.3 Disputes arose between the parties and the Respondent invoked the arbitration agreement. The Respondent filed for appointment of arbitrator under section 11 of the Act and thereafter a sole arbitrator was appointed by the Delhi High Court. The arbitration was conducted under the aegis of the Delhi International Arbitration Centre (“DIAC”).
- 1.4 The Arbitral Tribunal, subsequent to considering the rival contentions held that the Petitioner was in breach of the Agreement between the Parties and thus the Respondent was entitled to damages. Accordingly, the Arbitral Tribunal passed an award of Rs. 18,32,22,680/- in favour of the Respondent along with costs quantified at Rs. 8,00,000/-, in addition to award with respect to pre-reference and *pendente-lite* interest at the rate of 18% per annum.
- 1.5 The award was passed in the favour of Respondent and thus, the Petitioner has filed an application under Section 34 of the Act against the award passed by the tribunal before the Delhi High Court.

2. ISSUE:

- 2.1 Whether the impugned order of the arbitral tribunal was valid or not?

3. CONTENTIONS OF THE PETITIONER:

- 3.1 The counsel appearing for the Petitioner submitted that there was an inordinate delay in rendering the impugned award and the same was rendered almost eighteen months after the conclusion of the hearing. The delay was also contrary to the rules of DIAC which prescribes that arbitration proceedings has to be completed in six months.
- 3.2 Further, the Arbitral Tribunal awarded an amount of Rs. 18,32,22,680/- , whereas the total consideration payable for 288 BAUTs was agreed at Rs. 16,87,79,520/- which exceeds the total consideration between the parties.
- 3.3 He also submitted the Arbitral Tribunal accepted Gross Profit Margin by 37.47% and awarded a sum of Rs. 4,66,62,518/- on account of loss of profit, which was exorbitant in his view. It was further submitted that award of Rs. 4,53,31,048/- towards inventory and Rs. 76,49,775/- towards storage charges were also excessive and without sufficient material. Lastly, the interest at the rate of 18% per annum was also submitted to be exorbitant.

4. CONTENTIONS OF THE RESPONDENT:

- 4.1 The counsel appearing for the Respondent submitted that the delay in rendering the award was on account of delay on the part of the Petitioner in furnishing the written

- submissions after the hearing was concluded. He further stated that the impugned award was based on sufficient material.
- 4.2 He stated that the loss of profit awarded to the Respondent was based on the report of the Surveyor appointed by the Respondent. He countered the submissions that the award against cost of inventory was without evidence. He stated that the auditor had furnished a Certificate certifying the value at Rs. 4,53,31,048/-.
- 4.3 Lastly, he submitted that the rate of interest is at the discretion of the Arbitral Tribunal and the Respondent had placed on record the Auditor's Certificate certifying the interest charged by the Respondent's bank on working capital loan during the period 2011 to 2014 and the same has not been denied.

5. JUDGEMENT OF THE DELHI HIGH COURT:

- 5.1 The court found that there indeed was inordinate delay in rendering the award. The hearing spanned for more than 2 years and the award was rendered almost 2 years. Consequently, delay in rendering of an award will debilitate the purpose of resorting to arbitration for expeditious adjudication of the disputes.
- 5.2 One of the principal reasons for ensuring that the arbitral award is rendered within a reasonable period of time is to ensure that the efficacy of oral submissions not lost. A large time gap between hearing of the oral submissions and rendering the decision would, in effect, debilitate the purpose of resorting to arbitration for expeditious adjudication of the disputes. No person can be expected to remember the same after a long period of time.
- 5.3 The parties have submitted the disputes under the DIAC and had agreed that the award would be rendered within the stipulated period. However, the fact that the parties had participated in the arbitration proceedings even after the expiry of the period of one year clearly indicates that there was consensus between the parties for extending the time for the Arbitral Tribunal to make an award. Nonetheless, the award was required to be made within a reasonable period. It is difficult to accept that a period of almost one and a half years is reasonable in the given facts and circumstances of this case.
- 5.4 The court also upheld the Tribunal's view in finding the Petitioner to be in breach of the agreement as the negotiations held between the parties for reducing the quantity never fructified and the agreement was not amended.
- 5.5 However, the Court reiterated that an arbitral award cannot be set aside solely on the ground that there was delay in its pronouncement as held in *Union of India v. Niko Resources¹*, *Alfa Laval (India) Ltd. v. J.K. Papers Limited and Ors.²* and *Oil India Ltd. v. Essar Oil³*. In the present case, the court held that that inordinate, and unexplained delay in rendering the award makes it amenable to challenge under Section 34(2)(b)(ii) of the Act – that is, being in conflict with the public policy of India.
- 5.6 The Court also referred to the judgment of *Peak Chemical Corporation Inc. v. National Aluminium Co. Ltd⁴* in variance with *Harji Engineering Works Pvt. Ltd. v. Bharat Heavy Electricals Ltd. & Anr.⁵* and held that the award which defeats justice would be in

¹ 191 (2012) DLT 668.

² 2008 SCC OnLine Del 1080.

³ O.M.P. (COMM) 511/2019.

⁴ 2012 SCC OnLine Del 759.

⁵ 2008 SCC OnLine Del 1080.

conflict with the public policy of India. However, it is not necessary to further examine whether there is any conflict in between the two decisions. This is because, in the present case the delay in making the award is not the sole reason for setting aside the award. The delay is also compiled with the Arbitral Tribunal overlooking vital aspects of the dispute as is discussed hereafter.

- 5.7 In the present circumstances, this Court was of the view that inordinate, and unexplained delay in rendering the award makes it amenable to challenge under Section 34(2)(b)(ii) of the Act – that is, being in conflict with the public policy of India.
- 5.8 With respect to the quantification of award, the court held that award passed in the favour of the Respondent cannot be sustained as there is no basis for entering an award of damages on account of blocking of any funds considering that the Arbitral Tribunal has also awarded interests from the date on which the awarded amounts became due and payable. The Arbitral Tribunal's award of ₹8 crores as damages fails both on account of proximity and measure. The causes of damages are remote and there is no substance in quantifying the said damages. The said award is vitiated by patent illegality. Award of damages arbitrarily and without any basis also falls foul of the public policy of India.
- 5.9 The court also observed that the tribunal has not indicated any calculation in support of the assertion that the profit margin based on the audited accounts for the years would be higher. Further, the court observed that cost of entire inventory by overlooking its salvage value and not directing its transfer to the Petitioner, is manifestly erroneous.
- 5.10 The impugned order was therefore set aside and the Petition was allowed.

6. PSL OPINION:

- 6.1 In the present case, the court has emphasized on the fact that if there is an inordinate and unexplained delay in rendering an award it is against the public policy of India and thus liable to be set aside under Section 34 of the Act. The court has highlighted the importance of settling the disputes in an expedient manner which is the cornerstone of arbitration.