

Campos Brothers Farms vs Matru Bhumi Supply Chain Pvt Ltd & Ors on 3 October, 2023

Author: Yashwant Varma

Bench: Yashwant Varma, Dharmesh Sharma

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IN THE HIGH COURT OF DELHI AT NEW DELHI
EFA(OS) (COMM) 10/2019
CAMPOS BROTHERS FARMS

Through:

versus

MATRU BHUMI SUPPLY CHAIN PVT LTD & ORS.

..... Respon

Through: Mr. Amit Agrawal, Ms. Reaa
Mehta, Advs. for 2
Mr. Jayant Mehta, Sr. Adv.
with Mr. Sulabh Rewari, Adv
for R-1 & R-3 to R-9

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% 03.10.2023

1. Mr. Jayant Mehta, learned senior counsel appearing for respondent nos. 1 and 3 to 9 draws our attention to the fact that the judgment which forms subject matter of challenge in the instant appeal was noticed and approved by the Supreme Court in Vijay Karia and Others vs. Prysmian Cavi E Sistemi SRL and Others [(2020) 11 SCC 1]. Mr. Mehta, learned senior counsel drew our attention to the following passages from the said decision: -

"80. In Campos Bros. Farms v. Matru Bhumi Supply Chain (P) Ltd., the Delhi High Court had to consider the enforcement of a foreign award. The arbitrator in the aforesaid case did not give any finding on maintainability of the arbitration proceedings, which was argued before her. In this fact circumstance, the Delhi High Court held: (SCC OnLine Del paras 55-56, 76 & 81) This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 07/10/2023 at 20:59:17 "55. In any case, Respondents 1 and 2 had also

made submissions on merit before the arbitrator. Though the learned counsel for the petitioner submitted that the same were rightly excluded from consideration by the arbitrator as the arbitrator had never sought for the same, the award does not reflect any such reason given by the arbitrator for excluding them from consideration. The arbitrator does not record a finding that she has intentionally ignored such submissions as they were filed belatedly or beyond what was permitted. In fact, as noted above, as per the arbitrator no submission was filed by the respondents by 13-6-2016, which is factually incorrect.

56. In exercise of powers under Section 48 of the Act, this Court cannot consider the submissions made by Respondents 1 and 2 in their e-mail dated 13-6-2016 on merit as if it is a Court of Original Jurisdiction and find out whether such submission of Respondents 1 and 2 had any merit or not. Once it is found that the arbitrator has ignored the submissions of a party in totality, whatever be the merit of the submissions, in my opinion, such award cannot be enforced being in violation of the Principles of Natural Justice and contrary to the public policy of India as stated in sub-section 2(b) read with Explanation 1(iii) of Section 48 of the Act.

* * *

76. It may be correct that the arbitrator, upon considering evidence led before it by the parties, comes to a conclusion that in the given facts the transaction, though under different Contracts, is one or that the corporate veil deserves to be lifted, however, for arriving at such a finding the arbitrator has to give reasons for the same. This Court, in exercise of its power under Sections 48 and 49 of the Act, cannot supplant such reasons by considering the claims and defence of the parties on merit. Whether the request of Respondent 1 to the petitioner to make shipments in the name of Respondent 2 under Contracts that had been executed between the petitioner and Respondent 1, would entitle the petitioner to file a consolidated statement of claim against Respondents 1 and 2 or not, was an issue to be determined by the arbitrator and reasons for such determination were to be given in the award. From a reading of the award it seems that the arbitrator was neither alive to the issue whether such claims against different contracts can be consolidated as one, nor was she alive to the fact that joint and several liability cannot be fastened on Respondents 1 and 2 without lifting the corporate veil and giving reasons for the same. The award in question clearly qualifies as a non-speaking award.

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81. In any case, as noted above, if the arbitrator had considered this issue giving reasons therefore, this Court may not have the power under Section 48 of the Act to test the validity of such reasons, however, the present is the case where the arbitrator has not only not given any reasons for her conclusion but in fact, the award indicates that the arbitrator is not even alive to such an issue."

Thus, the ground on which the award was not enforced for failure to consider a material issue relating to maintainability of the arbitral proceedings was pigeon-holed not under Section 48(1)(b), but under the "public policy of India"

ground, stating that such a thing would violate the most basic notion of justice.

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83. Having said this, however, if a foreign award fails to determine a material issue which goes to the root of the matter or fails to decide a claim or counterclaim in its entirety, the award may shock the conscience of the Court and may not be enforced, as was done by the Delhi High Court in Campos on the ground of violation of the public policy of India, in that it would then offend a most basic notion of justice in this country. It must always be remembered that poor reasoning, by which a material issue or claim is rejected, can never fall in this class of cases. Also, issues that the Tribunal considered essential and has addressed must be given their due weight - it often happens that the Tribunal considers a particular issue as essential and answers it, which by implication would mean that the other issue or issues raised have been implicitly rejected. For example, two parties may both allege that the other is in breach. A finding that one party is in breach, without expressly stating that the other party is not in breach, would amount to a decision on both a claim and a counterclaim, as to which party is in breach. Similarly, after hearing the parties, a certain sum may be awarded as damages and an issue as to interest may not be answered at all. This again may, on the facts of a given case, amount to an implied rejection of the claim for interest. The important point to be considered is that the foreign award must be read as a whole, fairly, and without nit-picking. If read as a whole, the said award has addressed the basic issues raised by the parties and has, in substance, decided the claims and counterclaims of the parties, enforcement must follow."

2. The aforesaid objection, however, is questioned by learned counsel appearing for the appellant who contends that as would be manifest from the aforesaid extracts of the decision in Vijay Karia, all This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 07/10/2023 at 20:59:18 that the Supreme Court appears to have considered were the observations and conclusions which appeared in paragraphs 55,56,76 and 81 of the impugned judgment. It is further contended that the

appellant was neither a party in Vijay Karia nor did it have an occasion to assail the correctness of the judgment which stands impugned in the instant appeal before the Supreme Court.

3. However, and in light of the nature of the objection which stood raised, learned counsel for the appellant submitted that the ends of justice would warrant the appellant being accorded the liberty to move for appropriate clarifications from the Supreme Court that the appellant would be entitled to assail the validity of the impugned judgment on all grounds that are taken in the instant appeal.

4. Acceding to the request as made, let the appeal be called again on 11.01.2024.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

OCTOBER 03, 2023 Sp/neha This is a digitally signed order.

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