

Mmtc Ltd vs Gian Gupta on 26 February, 2020

Author: Prateek Jalan

Bench: Prateek Jalan

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ O.M.P. (COMM) 344/2016
MMTC LTD

Through: Mr.Ravi Gupta, Mr.Akhil Sachar,
Ms.Sunanda Tulayan, Mr.Japneet
Singh Chhabra & Mr.Sachin Jain,
Advocates with Mr.Sachin Singh,
Sr.Manager (Law)

..... Petitioner

versus

GIAN GUPTA

Through: Mr.Ajay Kohli & Ms.Astha Garg,
Advocates

..... Respondent

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN
ORDER

% 26.02.2020

1. The challenge in the present petition, under Section 34 of the Arbitration & Conciliation Act, 1996 [hereinafter, "the Act"], is to an award dated 20.12.2013, passed by a three member Arbitral Tribunal. The disputes between the parties in the present proceedings arise out of a contract dated 17.11.1995, by which the petitioner-MMTC Ltd., awarded a tender to the respondent for supply of rice.

2. The principal argument of Mr Ravi Gupta, learned Senior Counsel for the petitioner, is that the award is vitiated by inordinate delay in its pronouncement.

3. The relevant facts are not in dispute. Hearing was concluded before the Arbitral Tribunal on 08.12.2010, and the award was reserved. Written submissions were to be filed by 10.01.2011. By a communication dated 23.09.2011, the parties were directed to appear before the Arbitral Tribunal for clarifications on 03.10.2011. On 03.10.2011, proceedings were adjourned to 15.10.2011. No hearing for clarification was held at any time thereafter, and the impugned award was made by the Arbitral Tribunal on 20.12.2013.

4. In these circumstances, there is a lapse of approximately three years between the date the award was reserved and the making of the award. The scheduled clarificatory hearing was also never held.

5. In a case between the same parties, involving substantially similar facts (although the period of delay in that case was approximately six years), this Court allowed the petition of the petitioner herein and set aside the award. In the judgment dated 06.01.2020 in O.M.P.(COMM) 355/2016 [MMTC Ltd. vs. Gian Gupta], upon a consideration of the prior judgments of this Court, the following conclusions were recorded:

"XXXX XXXX XXXX

16. Having considered the aforesaid judgments, I am firmly of the view that the impugned award in the present case is unsustainable. The Division Bench decision in *BWL Ltd.*¹ (supra) supports MMTC's position that inordinate delay per se vitiates an award. The reasoning elaborated in *Harji Engineering*² (supra) has been expressly approved by the Division Bench. As the judgment of the learned Single Judge in *BWL Ltd.* which was under challenge before the Division Bench (judgment dated 04.07.2012 in OMP 771 and 772/2010) relied upon the decision in *Peak Chemicals*³, it is evident that the Division Bench was cognizant of the view taken in that judgment. Further, both *Peak Chemicals* (paragraph 29) and *Niko Resources*⁴ (paragraph 48) acknowledge that the question of whether an award is vitiated by delay would depend upon the facts and *BWL Limited vs. Union of India* 2012 SCC OnLine Del 5873 [FAO(OS) 398/2012, decided on 26.11.2012].

Harji Engineering Works Pvt. Ltd. vs. BHEL (2008) 153 DLT 489.

Peak Chemical Corporation Inc. Vs. National Aluminium Co. Ltd. (2012) 188 DLT 680.

Union of India vs. Niko Resources Ltd. and Ors. (2012) 191 DLT 668.

circumstances of each case. In the present case, there is little explanation for the delay of six years. The grounds cited in the last two paragraphs of the majority award (extracted above) do not justify the delay. The award was ultimately published on the stamp paper purchased 11 months prior and could have been pronounced much earlier.

17. I am also drawn to this conclusion on the fact of this case by reason of the infructuous clarificatory hearing. If the Tribunal had scheduled hearings for clarification, it must be assumed that there was some issue on which it required further hearing. The fact that the award was pronounced without clarifications in fact being obtained leaves a doubt in the mind about the procedure adopted. The inevitable conclusion is that the award was pronounced without hearings being conducted to the satisfaction of the Tribunal itself. The Act, in Section 18 vests considerable discretion to the Tribunal in determining its own procedure but subject to each party being given "a full opportunity to present his case". If the Tribunal called for clarifications but ultimately pronounced the award without giving an opportunity to parties to clarify, the requirements of Section 18 cannot be said to have been fulfilled. As in *Harji Engineering* (paragraph 21), I am of the view that such an award is contrary to the principles of fair play and justice.

XXXX XXXX XXXX"

6. The operative order in that case was as follows:

"XXXX XXXX XXXX

19. O.M.P.(COMM)355/2016 is therefore allowed, and the impugned award dated 20.12.2013 is set aside. Following paragraph 15 of BWL Ltd., the proceedings will be conducted before a new Arbitral Tribunal with reference to the existing pleadings and evidence. The parties are directed to nominate one arbitrator each within four weeks from the date of this judgment, and the arbitrators so appointed will appoint the third arbitrator in terms of Section 11 of the Act. The newly constituted Tribunal will hear arguments on the existing pleadings and evidence, and pronounce the award preferably within six months of its constitution.

XXXX XXXX XXXX"

7. Mr. Ravi Gupta and Mr. Ajay Kohli, learned counsel for the respondent, submit that the present petition may also be disposed of with a similar order.

8. In view of the aforesaid, the present petition is allowed, and the impugned award dated 20.12.2013 is set aside. In terms of paragraph 15 of the order of the Division Bench in of BWL Limited vs. Union of India 2012 SCC OnLine Del 5873 [FAO(OS) 398/2012, decided on 26.11.2012], proceedings will be conducted before a new Arbitral Tribunal with reference to the existing pleadings and evidence. The parties are directed to nominate one arbitrator each within four weeks from the date of this judgment, and the arbitrators so appointed will appoint the third arbitrator in terms of Section 11 of the Act. The newly constituted Arbitral Tribunal will hear arguments on the existing pleadings and evidence, and pronounce the award preferably within six months of its constitution.

9. Upon the constitution of the Arbitral Tribunal, learned counsel for the petitioner herein will inform the Registry and the Registry will hand over the arbitral record to him, to be placed before the newly constituted Arbitral Tribunal.

10. The petition is disposed of in these terms.

PRATEEK JALAN, J FEBRUARY 26, 2020 „hkaur /s