



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 15th February, 2024

% *Pronounced on: 8th May, 2024*

+ **O.M.P. (COMM) 414/2019**

ESCORTS LTD.

Having registered Office at 15/5,
Mathura Road, Faridabad-1210003,
Haryana, India,
Through its Authorised Representative,
Mr. Gopal Prasad,
S/o Shri Raj Kumar Sharma

..... Petitioner

Through: Mr. Yashraj Singh Deora, Mr. Priyesh
Mohan Srivastava, Mr. Abhishek
Singh & Ms. Sonal Chopra,
Advocates

versus

1. **BENGAL TRACTORS**

G.T. Road, Memari-713146,
District Burdwan,
West Bengal,
Through its partners i.e., Respondent Nos. 2 & 3

..... Respondent No. 1

2. **MR. ASIM KUMAR MONDAL**

Managing Partner of M/s Bengal Tractors,
S/o Late Shri Panchkari Mondal,
R/o Village & P.O. Gantar,
PS Memari, District Burdwan,
West Bengal

..... Respondent No. 2

3. **MR. RATNESHWAR GHOSH**

Partner of M/s Bengal Tractors,
S/o Shri Hridoi Ranjan Ghosh,



R/o Village & P.O. Nabagram,
PS Jamalpur, District Burdwan,
West Bengal

..... Respondent No. 3

Through: Mr. Joydeep Mazumdar & Mr. P. Sil,
Advocates for R-3

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

I.A. 13879/2019 (u/S 151 of CPC, 1908)

1. By way of present application, the applicant/petitioner seeks condonation of 22 days' delay in re-filing the present petition.
2. For the reasons and grounds stated in the present application, the application is allowed, the delay of 22 days in re-filing the present petition is hereby condoned.
3. The application is disposed of accordingly.

O.M.P. (COMM) 414/2019

4. The present Petition under Section 34 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as the "Act, 1996"*) has been filed on behalf of the petitioner seeking to partially set aside/modify the impugned Award dated 04.05.2019 to the extent that the respondents may be held jointly and severally liable to pay to the petitioner Rs. 56,25,816/- along with interest @ 18% per annum from 05.03.2005 onwards till the date of actual payment.
5. **Briefly stated** that the petitioner, which is a leading manufacturer of



agricultural tractors, spare parts and accessories, entered into a *Dealer Sales Agreement* dated 01.06.1995 with the respondent No. 1-Firm through respondent Nos. 2 and 3, its partners and was appointed it as the Authorised Dealer for the sale of the tractors, spare parts, accessories, etc. The *Dealer Sales Agreement* was renewed *vide* Letters dated 31.05.1999, 01.04.2002 and 01.04.2005.

6. In the renewed Agreement, *Clause 34* of the *Dealer Sales Agreement* was modified and the parties agreed to refer their disputes to the arbitration with the sole Arbitrator to be appointed by the petitioner, herein.

7. The respondents issued a cheque towards the outstanding liability but the same was dishonoured, for which a Complaint under *Section 138* of the *Negotiable Instrument Act, 1881* was filed.

8. It is submitted that the amount of Rs. 64,55,000/- was outstanding as on 03.01.2005, for which a Legal Notice dated 07.02.2005 was issued to the respondents.

9. The parties thereafter, arrived at an amicable settlement and they entered into an *MoU/Settlement dated 05.03.2005*, wherein the respondents agreed to pay a sum of Rs. 58,54,667/- towards full and final settlement of all the outstanding dues.

10. Part payment by way of two Demand Drafts bearing No. 129082 and 62328 dated 02.03.2005 and 09.10.2004 in the sum of Rs. 4,40,000/- and Rs. 62,328/- respectively, was made by the respondents and a total sum of Rs. 9,74,184/- got credited to the petitioner's account. However, the respondents again defaulted in making payment of the amount as settled in *MoU/Settlement Agreement* dated 05.03.2005. Thus, the arbitration proceedings were initiated and the Arbitrator *vide* Award dated 01.11.2011,



awarded a sum of Rs. 66,00,000/- along with interest @ 12% per annum w.e.f. 05.03.2005 till the date of Award.

11. However, this Award dated 01.11.2011 was challenged by way of Objection under Section 34 of the Act, 1996 *vide* O.M.P.(COMM) 105/2017 filed by Mr. Asim Kumar Mondal (respondent no.2) and this Court *vide* Order dated 29.10.2018 allowed the petition and the matter was remanded back for fresh arbitration.

12. The Ld. Sole Arbitrator initiated the *second round of arbitration* but the respondent Nos. 1 and 3 failed to appear. The matter was contested only by the respondent No. 2. The parties were granted liberty to adduce the fresh evidence and accordingly, Mr. Gopal Prasad, Authorised Representative, was examined by the petitioner. The respondent No. 2 Sh. Asim Kumar Mondal, appeared as RW1 and tendered his evidence. The sole Arbitrator passed the impugned Award dated 04.05.2019, wherein the claim of the petitioner was partly allowed to the extent of Rs. 48,80,493/- but *pendente lite* and future interest was denied.

13. The *impugned Award dated 04.05.2019* has been challenged by way of present Petition on the ground that it suffers from patent illegality as it is against the express terms of the *MoU/Settlement Agreement* dated 05.03.2005 agreed between the parties. The sole Arbitrator has incorrectly computed the principal amount of Rs. 48,80,493/- by subtracting Rs. 9,74,184/- from the amount of Rs. 58,54,677/-.

14. It is submitted that the Arbitrator has failed to appreciate the admitted liability of the respondents was Rs. 66,00,000/- but the petitioner had agreed to accept a sum of Rs. 58,54,677/- only in full and final settlement of its entire dues along with interest @ 12% per annum. Clause 6 of the



MoU/Settlement Agreement dated 05.03.2005 which provided for interest, has been ignored and overlooked by the sole Arbitrator which amounts to patent illegality.

15. Furthermore, the observations of the Arbitrator that awarding interest @ 12% on the outstanding amount would be a harsh punishment on the respondents and that the *Dealer Sales Agreement* dated 01.06.1995 did not contain any interest clause, are contrary to the terms expressly agreed by the parties. The petitioner has submitted that the reasoning of the Arbitrator is patently incorrect since Clause 14(d) of the *Dealer Sales Agreement* provided for interest @ 1.5% *per mensem* or 18% per annum for delayed payment.

16. The Arbitrator by denying the *pendente lite* and future interest, has committed error for which the Award is liable to be set aside.

17. Reliance has also been placed by the petitioner in the decision of *Bhai Jaspal Singh vs. CCT*, (2011) 1 SCC 39.

18. It is also contended that the Award is contrary to basic notions of morality and justice inasmuch as the money has been enjoyed by the respondents by further sale of the goods provided by the petitioner at least since 2005, but has deprived the petitioner of its legitimate dues.

19. It is, therefore, submitted that the impugned Award suffers from patent illegality and is liable to be set aside.

20. **Submissions heard.**

21. Essentially, the Award has been challenged on the ground that the Arbitrator has denied the *pendente lite* and future interest despite an express Agreement *inter se* the parties and it, therefore, suffers from patent illegality.



22. It is not in dispute that the cheques that were issued by the respondents got dishonoured and the complaint under *Section 138 of the Negotiable Instrument Act, 1881* was filed on 03.01.2005 and an amount of Rs. 66,00,000/- was found to be outstanding against the respondents. The parties entered thereto into a final Settlement dated 05.03.2005, wherein while accepting that the total outstanding amount of Rs. 66,00,000/-, the parties agreed for payment of Rs. 58,54,677/- (54,00,000/- towards principal and Rs. 4,54,677/- towards interest @ 12% per annum) as the settlement amount. It was further contemplated in the settlement itself that in case the respondents defaulted in payment of the agreed amount of Rs. 58,54,677/-, they would be liable to pay the sum of Rs. 66,00,000/- which was, in fact, the amount outstanding against the respondents.

23. The respondents failed to honour the *Settlement Agreement* dated 05.03.2005 resulting in the first round of arbitration which was set aside and remanded back to the second round of arbitration proceedings.

24. It is not in dispute that in the first arbitration proceedings, a sum of Rs. 66,00,000/- was awarded to the petitioner but the first Award was set aside and remanded back for fresh arbitration proceedings. In the second round of arbitration proceedings pertaining to *MoU/Settlement Agreement* dated 05.03.2005, the Arbitrator observed as under: -

“23. It also needs to find out as to what amount has been shown to be pending against the respondents. In claimant’s affidavit Ex.CW1/1, it is indicated that there was an outstanding of Rs. 66,00,000/- and Respondent had agreed to pay Rs. 58,54,677/- in full and final settlement of the entire pending claim. Obviously, the respondents failed to honour this settlement – despite notices issued to all. Amount of Rs. 66,00,000/- consist of Rs. 54,00,000/- being principal amount +



Rs. 4,54,677/- interest amount and then further interest making a total of Rs. 66,00,000/-. Finding that interest amount over and above Rs. 54,00,000/-, as per the claimant, now comes to Rs. 16,00,000/-. I feel this is quite escalatory and hence, total payable amount can be fairly fixed at Rs. 58,54,677/- as was settled vide MoU too, minus the admitted credited amount after the dt. of the MoU which is Rs. 9,74,184/-. This makes the due and payable amount of Rs. 58,54,677/- minus Rs. 9,74,184/- = Rs. 48,80,493/-.

24. The settlement, arrived at vide agreement dated 5.3.2005, in the eventuality of the respondents failing to pay the settled amount as per the agreed schedule entitles the claimant to interest @ rate of 12% p.m. – which amount if calculated and added in the payable amount, shall mean a harsh punishment to the respondents – specifically seen in the light of the fact that initial Dealers sale agreement dated 1.6.1995 is silent about any interest clause, and so, having regard to the above situation, I want to stay lenient at this stage and am not intending to burden the respondents with any interest penalty, but, in case of non-payment of the entire award amount-now to be awarded, I shall certainly invoke imposing of interest as would be thought just and proper.”

25. The Arbitrator has given the specific reasons as to why he has accepted the amount of Rs. 58,54,677/- as the settlement amount which included Rs. 4,54,677/- as the interest calculated @ 12% per annum and accordingly held that the petitioner is entitled to Rs. 48,80,493/- after adjustment of Rs. 9,74,184/- which was admittedly paid by the respondents in the interim. The Arbitrator has also granted interest @ 12% per annum from the date of Award till the realisation of the amount.

26. The Arbitrator has, therefore, given his reasons for not awarding the *pendente lite* interest while along the claim of the petitioner. It is the discretion of the Arbitrator to provide the interest.



27. The **scope of Section 34** of the Act, 1996 is limited and it is confined to contravention of '*the fundamental policy of Indian law*', '*the interest of India*', '*Justice or morality*' or '*Patent Illegality*'.

28. It was explained in *McDermott International Inc. vs. Burn Standard Co. Ltd.* (2006) 11 SCC 181, interpretation of a contract is a matter for the arbitrator to determine, even if it gives rise to determination of a question of law. Once, thus, it is held that the arbitrator had the jurisdiction, no further question shall be raised and the court will not exercise its jurisdiction unless it is found that there exists any bar on the face of the award. A reference may also be made to *Pure Helium India (P) Ltd. vs. Oil and Natural Gas Commission* (2003) 8 SCC 593 and *D.D. Sharma vs. Union of India* (2004) 5 SCC 325. Therefore, the construction of the contract agreement is within the jurisdiction of the arbitrators.

29. Similarly, in *Rashtriya Ispat Nigam Ltd. vs. Dewan Chand Ram Saran*, (2012) 5 SCC 306, the Apex Court held that if the view taken by the arbitrator was clearly a possible if not a plausible one then it is not possible to say that the arbitrator had travelled outside his jurisdiction, or that the view taken by him was against the terms of contract.

30. Once the reasons have been given and the Arbitrator has in his wisdom denied the *pendente lite* interest, the same is not open for review in a Petition under Section 34 of the Act, 1996.

Conclusion:

31. In view of above, the Ld. Sole Arbitrator has given substantive reasons while interpreting the contract to come to a reasoned conclusion, as



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recorded above. The impugned Award does not suffer from any *patent illegality*, there is no merit in the present petition which is hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 08, 2024
S.Sharma