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Bombay High Court upholds the validity of an arbitral award passed in a consolidated arbitral proceeding.

The Bombay High Court (“**Bombay HC**”) in *BST Textile Mills Private Limited v. Cotton Corporation of India Limited*¹ *inter alia* held that an arbitral award passed in a consolidated arbitral proceeding concerning disputes arising out of different contracts cannot be set aside under Section 34 of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) on grounds of being opposed to the fundamental policy of India. It was also held that an arbitral award passed in such consolidated arbitral proceedings cannot be set aside on grounds that the arbitrator lacked jurisdiction to consolidate disputes arising out of different contracts and / or for lack of prior consent of the parties for such consolidation of disputes.

Brief Facts

BST Textile Mills Private Limited (“**Petitioner**”) had entered into 9 (nine) different contracts for purchase of 26,449 (twenty six thousand four hundred forty nine) cotton bales from 3 (three) different branches of Cotton Corporation of India Limited (“**Respondent**”). These 9 (nine) contracts *inter alia* contained identical arbitration clauses. Disputes arose between the parties whereby the Respondent invoked the arbitration clauses in all 9 (nine) contracts *inter alia* contending that the Petitioner breached the terms under each contract by taking lesser quantities of cotton bales than the agreed upon quantities in terms of the 9 (nine) contracts. Accordingly, in terms of the analogous arbitration clauses contained in the 9 (nine) contracts, a sole arbitrator was appointed for adjudication of disputes.

The Respondent (original claimant) filed a single statement of claim before the sole arbitrator in relation to the disputes arising out of the 9 (nine) contracts on grounds that the terms and conditions under the 9 (nine) contracts were identical with only the facts and figures under each contract being different. The Petitioner objected to consolidation of claims by the Respondent. Despite its objection, the Petitioner filed its consolidated statement of defense and a consolidated counterclaim in respect of each of the 9 (nine) contracts. The sole arbitrator passed the arbitral award in favour of the Respondent directing the Petitioner to pay the claim amount and dismissed the counterclaim of the Petitioner (“**Impugned Award**”).

Aggrieved by the Impugned Award, the Petitioner preferred the present petition to set aside the same under Section 34 of the Arbitration Act *inter alia* on ground that distinct disputes arising from separate and independent contracts could not have been consolidated without the consent of the Petitioner. It was *inter alia* submitted that the sole arbitrator had erroneously exercised its jurisdiction in consolidating independent and distinct disputes arising out of 9 (nine) different contracts and incorrectly held that no prejudice was caused to the Petitioner by consolidation of such disputes.

¹ 2023 SCC OnLine Bom 318

In response, the Respondent contended that though it had filed a consolidated statement of claim, details of each claim arising out of each separate contract were specifically set out and the Petitioner understood the different claims raised under each separate contract. Further, it was contended by the Respondent that the relief sought by the Petitioner of setting aside the Impugned Award under Section 34 of the Arbitration Act entailed reappreciation of evidence by the Bombay HC which could not be allowed as held by the Supreme Court in *Ssangyoong Engg and Construction Co. Ltd. v. NHAI*².

Issue

Whether the Impugned Award was liable to be set aside on ground that the disputes arising out of different contracts could not have been consolidated by the arbitrator?

Analysis and findings

After considering the submissions of the parties, the Bombay HC *inter alia* made the following observations:

1. The scope of interference by courts contemplated under Section 34 of the Arbitration Act has been narrowed down post amendment of the Arbitration Act in 2015. Any interference by courts in arbitral awards is limited to the specific grounds set out in Section 34 of the Arbitration Act and the courts cannot interfere with an arbitral award in ordinary course.
2. The 9 (nine) contracts contained identical arbitration clauses, were executed between the same parties and the disputes forming the subject matter of the arbitral proceedings between the parties stemmed from the same cause of action.
3. Relying on *P R Shah, Shares and stockbrokers (P) Ltd. v. BHH Securities (P) Ltd.*³, the Bombay HC reiterated that a single consolidated arbitration could be undertaken to avoid multiplicity of proceedings and possibility of conflicting decisions in respect of the same claim(s).
4. There was no jurisdictional error on part of the sole arbitrator in consolidating the arbitral proceedings relating to disputes arising out of the 9 (nine) contracts given that specific claims pertaining to each of the 9 (nine) contracts were distinctly mentioned in the statement of claim, evidence was specifically led in respect of each of the 9 (nine) contracts and the Petitioner had ample opportunity to lead its evidence and/or conduct its cross-examination.
5. The Bombay HC cannot go into the quality or quantity of evidence or even the interpretation of the terms of the contract, which is within the domain of the sole arbitrator, in exercise of its jurisdiction under Section 34 of the Arbitration Act as the same would amount to reappreciation of evidence and merits of the dispute between the parties.

In light of the foregoing, the Bombay HC dismissed the Petition *inter alia* holding that no grounds to set aside the Impugned Award were made out by the Petitioner in terms of the amended Section 34 of the Arbitration Act.

JSA Comment

The present judgment of the Bombay HC may be referred to in the future to avoid multiplicity of proceedings where disputes arise out of identical contracts and identical arbitration agreements therein. However, while allowing consolidation of disputes in an arbitration proceeding, the present judgment does not delineate the criteria or grounds based on which disputes amenable to arbitration could be allowed to be consolidated and placed for adjudication before one single arbitral tribunal. In our view, limited court interference under Section 34 of the Arbitration Act in

² 2019 15 SCC 131

³ 2012 1 SCC 594

arbitration proceedings involving consolidation of disputes could have been ensured by way of this judgment if the Bombay HC had laid down the contours for allowing such consolidation of disputes.

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This Prism has been prepared by:



Farhad Sorabjee
Partner



Pratik Pawar
Partner



Ananya Verma
Associate



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