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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.317 OF 2015

J.K. Transformers & Switchgears & Anr.	...Petitioners
V/s.	
Columbia Petro-Chem Pvt. Ltd.	...Respondent

Mr.Sahil Mahajan for the Petitioners.

Mr.Ghyanshyam Upadhay with Ms.Priyanka Jangid i/b Law Juris for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 30TH JUNE, 2015.

P.C. :-

1. By this petition filed under section 34 of the Arbitration & Conciliation Act, 1996 (for short "the Arbitration Act"), the petitioners have impugned the arbitral award dated 24th July, 2013 passed by the learned arbitrator allowing part of the claims made by the respondent. The petitioners were the original respondents in the arbitral proceedings, whereas the respondent was the original claimant. The respondent had supplied transformer oil to the petitioners and had issued an invoice dated 12th June, 2012 for an amount of Rs.14,61,681/-. It was the case of the respondent that the petitioners however, failed to pay the entire amount to the respondent. The dispute was referred to arbitration. The claim of the respondent was

resisted by the petitioners by filing the written statement.

2. On 24th July, 2013, the learned arbitrator made an award, directing the petitioners to pay an amount of Rs.8,49,221/- towards the principal outstanding, a sum of Rs.2,06,318/- towards interest and a sum of Rs.20,000/- towards the arbitration costs. This award is impugned by the petitioners on various grounds.

3. Learned counsel for the petitioners submits that the letter dated 16th January, 2013, which was addressed by the petitioners to the learned advocate representing the respondent to the effect that the payment of Rs.8,49,221/- shall be paid to the respondent by the petitioners as early as possible was without verifying the accounts of the respondent in the books of the petitioners and thus no reliance could be placed on the said letter. It is submitted that the petitioners were liable to pay only a sum of Rs.1,09,221/- to the respondent as per their statement of account, which the petitioners were ready and willing to pay to the respondent.

4. The next submission of learned counsel for the petitioners is that insofar as the letter dated 10th June, 2011, addressed by the respondent to the petitioners that the petitioners would be responsible to the respondent for the payment of M/s.Kashmir Steel Engineering Works is concerned, he submits that the petitioners had at most guaranteed the payment, if any, due and payable by the said

M/s.Kashmir Steel Engineering Works to the respondent and merely based on the said letter, the respondent could not have appropriated the amounts paid by the petitioners to the respondent payable by the said M/s.Kashmir Steel Engineering Works.

5. The next submission of learned counsel for the petitioners is that the learned arbitrator could not have awarded interest at the rate of 3% per month.

6. A perusal of the record indicates that the petitioners have not disputed the invoice issued by the respondent and also that the respondent had sold and supplied the goods of the amounts reflected in the invoice issued by the respondent. The defence raised before the learned arbitrator by the petitioners was that the letter addressed by the petitioners on 16th January, 2013 whereby the petitioners had admitted the liability of Rs.8,49,221/- was based on the presumption that the said sum was due and payable by the petitioners according to the books of account of the petitioners and the same was incorrect.

7. Insofar as the submission of learned counsel for the petitioners is concerned, a perusal of the said letter clearly indicates that the petitioners had addressed the said letter to the learned advocate representing the respondent stating that the petitioners had agreed to pay the said sum of Rs.8,49,221/- to the respondent as early as possible and had further informed that the petitioners were

going through financial crisis and were hopeful that the same would be within the control by 10th April, 2013. The petitioners requested to bear with them and to give some time to repay the pending payments. It is not in dispute that the petitioners have not withdrawn the said letter dated 16th January, 2013 subsequently on the basis of different stand taken by the petitioners. The learned arbitrator has considered the said letter in the impugned award and has rendered a finding that the petitioners had admitted their liability to the respondent and has disbelieved the story of the petitioners.

8. Insofar as the letter of the petitioners dated 10th June, 2011 is concerned, a perusal of the said letter clearly indicates that the petitioners had placed order on behalf of the said M/s.Kashmir Steel Engineering Works upon the respondent and had categorically mentioned that the petitioners would be responsible for the payment of the said party. Since on the basis of the said letter dated 10th June, 2011, the respondent supplied the material to the said M/s.Kashmir Steel Engineering Works as ordered by the petitioners, the respondent, in my view, has rightly adjusted the said payment made by the petitioners against the said dues of the said M/s.Kashmir Steel Engineering Works. The learned arbitrator has interpreted the said letter and has rendered a finding of fact, which in my view, is not perverse and thus no interference is warranted under section 34 of

the Arbitration Act.

9. Insofar as the submission of learned counsel for the petitioners that the learned arbitrator has allowed interest at the rate of 3% per month is concerned, the learned arbitrator has placed reliance on the contract entered into between the parties and has rightly allowed the interest at the contractual rate.

10. There is thus no infirmity in the award made by the learned arbitrator. The petition is devoid of merits and is accordingly dismissed. No order as to costs.

(R.D. DHANUKA, J.)