

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 503 OF 2015

M/s.Gem Synthetic & Polymer (India) Petitioner

VERSUS

M/s.Mahindra Rosin and Turpentine Pvt. Ltd. Respondent

Mr.S.K.Shinde, a/w. Mr.S.R.Ganoo, i/b. Mr.Rajesh Ravindran for the Petitioner.

Mr.S.C.Naidu, i/b. Mr.Yogesh Dandekar for Respondent No.1.

CORAM : R.D. DHANUKA, J.

DATED : 1st JULY, 2015

P.C.

By this petition filed under section 34 of the Arbitration and Conciliation Act, 1996, the petitioner seeks to impugn the arbitral award dated 17th September, 2014 directing the petitioner to pay a sum of Rs. 31,36,973/- with interest thereon and also cost of arbitration quantified at Rs.7,50,000/- and rejecting the counter claim preferred by the petitioner.

2. Mr.Shinde, learned counsel appearing for the petitioner submits that the counter claim preferred by the petitioner before the learned arbitrator was a claim for set off and not a counter claim. It is submitted that the petitioner had denied the liability of the petitioner insofar as claim of the respondent against the petitioner is concerned. He submits that in the written statement the petitioner has disputed such amount claimed by the respondent in the statement of claim while claiming set off and it would not amount to admission of liability on the part of the petitioner. He submits that the said computation has to be read with the averments

made by the petitioner in the written statement in which the petitioner has categorically denied the liability of the petitioner against the respondent insofar as claim made by the respondent is concerned.

3. Mr.Shinde, learned counsel appearing for the petitioner submits that unless there was a clear admission of liability on the part of the petitioner, the learned arbitrator could not have rendered such finding.

4. Mr.Naidu, learned counsel appearing for the respondent on the other hand submits that the stand taken by the petitioner in the written statement is contrary to the admission of the liability in the correspondence which are referred by the learned arbitrator in the impugned award and thus the so called claim made by the petitioner before the learned arbitrator was not in the nature of the counter claim, but was in the nature of the set off. He submits that the petitioner had admitted their liability against the respondent in the correspondence which have been interpreted by the learned arbitrator and a finding of fact is rendered. He submits that no interference is permissible with such finding of fact under section 34 of the Arbitration and Conciliation Act, 1996.

5. In my view, the petitioner could not have taken a different stand in the written statement contrary to the letters addressed by the petitioner themselves to the respondent. The learned arbitrator has rendered a finding on plain reading of the contents of the letter addressed by the petitioner. In my view there is no merit in the submission of the learned counsel for the petitioner.

6. A perusal of the award and the perusal of the letters more particularly the letters referred in the impugned award clearly indicates that the petitioner had

admitted its liability against the respondent and had expressed their financial crises in the letters. A perusal of the written statement further makes it clear that the petitioner had taken different stand which was contrary to the admission of the liability of the petitioner reflecting in the letters addressed by the petitioner to the respondent.

7. The learned arbitrator has referred to these letters in detail in the impugned award and has rendered a finding of fact. The learned arbitrator in my view has rightly come to the conclusion that the alleged counter claim preferred by the petitioner was in the legal sense not a counter claim but was a claim for set off. In my view the interpretation of the learned arbitrator of the correspondence exchanged between the parties is a possible interpretation and cannot be substituted by another interpretation of this court. The learned arbitrator has rendered a finding of fact which is not perverse and thus cannot be interfered with.

8. Petition is devoid of merits and is accordingly dismissed. No order as to costs.

[R.D. DHANUKA, J.]