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

ARBITRATION PETITION NO.1853 OF 2015

Union of India	...Petitioner
V/s.	
M/s.Star Track Fasteners Pvt. Ltd.	...Respondent

Mr.T.J. Pandian for the Petitioner.

Ms.Nikita Behl i/b AAK Legal for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 7TH JULY, 2016.

P.C. :-

1. By this petition filed under section 34 of the Arbitration & Conciliation Act, 1996 (for short "the Arbitration Act"), the petitioner has impugned the arbitral award dated 21st August, 2015 made by the learned arbitrator, allowing part of the claims made by the respondent with interest and directing the petitioner to withdraw the letter addressed by the petitioner to the other Zonal Railways to deduct a sum of Rs.12,44,800/- from the other bills of the respondent and to advice other Zonal Railways to release any amount withheld / recovered on account of the said letter.

2. The respondent was awarded a contract on 28th June, 2010 for manufacturing and supplying of 15.00 lacs numbers of

GRSP 6mm thick to the petitioner with the delivery schedule. It was the case of the petitioner that the respondent however supplied only part of the quantity out of the total quantity required to be supplied by the respondent to the petitioner. It was the case of the petitioner before the learned arbitrator that there was no delay in making payment by the petitioner to the respondent in respect of the supply effected by the respondent to the petitioner. It was also the case of the respondent that remaining quantity could not be supplied by the respondent to the petitioner due to various reasons not attributable to the respondent.

3. On 23rd December, 2012, the petitioner terminated the contract and imposed 10% liquidated damages and also forfeited the security deposit of Rs.10.00 lacs in the form of bank guarantee. The petitioner recovered the said amount of Rs.10.00 lacs towards the liquidated damages from the pending bills payable to the respondent by the petitioner for supplies already effected.

4. Dispute arose between the parties, The matter was referred to arbitration. Pursuant to the liberty granted by the learned arbitrator, the respondent filed its statement of claims and made three claims i.e. for refund of the bank guarantee amount of Rs.10.00 lacs, for refund of Rs.10.00 lacs recovered from the price variation bills, damages in the sum of Rs.20.00 lacs and interest on all the aforesaid

three amounts. The respondent also prayed for direction against the petitioner to withdraw the letter addressed by the petitioner to the other Zonal Railways to deduct an amount of Rs.12,44,800/- from the other bills of the respondent. No counter claim was filed by the petitioner before the learned arbitrator.

5. The learned arbitrator rendered an award on 21st August, 2015, directing the petitioner to refund an amount of Rs.10.00 lacs which was deducted by the petitioner from the price variation bills of the respondent, towards liquidated damages and rejected other two claims for damages. The learned arbitrator directed the petitioner to pay interest at the rate of 18% p.a. for *pendente lite* period and from the date of award till payment. Interest at the rate of 18% is awarded considering the provisions of MSME Act which provided for interest at the rate of 24.75% since the respondent was a small scale industry.

6. Mr.Pandian, learned counsel appearing for the petitioner submits that though the respondent had not supplied the entire quantity of material agreed to be supplied to the petitioner under the contract awarded, the learned arbitrator has directed the petitioner to refund the amount of Rs.10.00 lacs which were recovered by the petitioner towards the liquidated damages from the price variation bills of the respondent. He submits that there was a provision in the contract for recovery of liquidated damages in the event of the

respondent not supplying the entire quantity of material. He submits that the action on the part of the petitioner to recover the said amount towards liquidated damages was in accordance with the provisions of contract. He submits that the learned arbitrator could not have allowed the said claim on the ground that the provision for risk-purchase of the material in case of default in supply was deleted and thus only entitlement of the petitioner was to recover security deposit from the respondent. He submits that the claim for security deposit and for liquidated damages being separate claims and the petitioner thus could recover both the amounts under the provisions of contract.

7. Insofar as the award of interest allowed by the learned arbitrator for *pendente lite* period is concerned, learned counsel placed reliance on clause 18.2 of the Special Conditions of Contract and would submit that even if there was any delay in making payment of the amount to the respondent, the petitioner could not have claimed any interest by way of compensation.

8. Learned counsel appearing for the respondent on the other hand invited my attention to various findings rendered by the learned arbitrator and would submit that this Court cannot interfere with such findings of fact which are not perverse. She submits that the respondent could not supply the balance material due to the circumstances beyond the control of the respondent. She submits

that the petitioner admittedly had committed delay in making payment of material supplied already effected by the respondent to the petitioner. She submits that the petitioner already having forfeited security deposit made by the respondent, could not have recovered any amount towards liquidated damages. She submits that in any event, since the petitioner had not proved losses alleged to have been suffered, if any, by the petitioner, the petitioner could not have recovered the amount towards liquidated damages.

9. It is submitted that the learned arbitrator has rightly recorded a finding of delay on the part of the petitioner in making payment to the respondent. Insofar as the claim for interest during the *pendente lite* awarded by the learned arbitrator is concerned, it is submitted by the learned counsel that the learned arbitrator has rightly awarded interest for the *pendente lite* period and also from the date of award. She submits that the petitioner had illegally recovered the amount of Rs.10.00 lacs from the price variation bills towards liquidated damages which was not proved by the petitioner. She submits that the petitioner had not made any claim for compensation under clause 18.2 but had claimed interest on the illegally recovered amount by the petitioner.

10. A perusal of the record indicates that there is no dispute that the petitioner had committed delay in making payment of

supplies effected by the respondent to the petitioner. The respondent also could not supply the balance material due to the circumstances beyond the control of the respondent. It is not in dispute that the petitioner had already recovered a sum of Rs.10.00 lacs by encashing a bank guarantee which was given by the respondent in lieu of security deposit on the ground of non-supply of the balance material by the respondent to the petitioner. The learned arbitrator has rejected the claim of the respondent insofar as the refund of security deposit is concerned. The respondent has not challenged that part of the award by filing a separate petition.

11. Insofar as recovery of liquidated damages is concerned, a perusal of the record clearly indicates that it was not the case of the petitioner before the learned arbitrator that the amount of Rs.10.00 lacs which was recovered by the petitioner was reasonable pre-estimated agreed compensation between the parties. In my view, the petitioner was not only required to raise such plea but also was required to prove that due to non-supply of the balance quantity of the material, the petitioner had suffered any loss. Admittedly, the petitioner neither pleaded that the said amount of Rs.10.00 lacs was pre-estimated agreed reasonable compensation, nor has proved actual loss suffered by the petitioner. In my view, the learned arbitrator was thus right in allowing the said claim of Rs.10.00 lacs

deducted from the price variation bills of the respondent.

12. Insofar as the submission of the learned counsel for the petitioner that the learned arbitrator could not have awarded interest during the *pendente lite* period on the ground that clause 18.2 of the Special Conditions of Contract provided that the contractor will have no claim for any compensation if the payment is delayed for any reasons whatsoever is concerned, there is no dispute that the respondent herein had made a claim for interest due to illegal deduction of the amount from the price variation bills of the respondent. The learned arbitrator in my view, was thus right in allowing the claim for interest during *pendente lite* period. The claim of interest will not be covered by the said clause 18.2 as canvassed by the learned counsel for the petitioner.

13. In my view, the findings rendered by the learned arbitrator are rendered after considering all the submissions made and based on the documents relied upon by both the parties. The findings rendered by the learned arbitrator are not perverse and thus cannot be interfered with by this Court under section 34 of the Arbitration Act. The petition is devoid of merits and is accordingly dismissed. No order as to costs.

(R.D. DHANUKA, J.)