

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

ARBITRATION PETITION NO. 1 OF 2017

Radheya Machining Limited

...Petitioner

Versus

Kennametal India Limited

...Respondent

Mr. Abhijit Joshi, for the Petitioner.

Mr. Hemant Sethi, i/b Hemant Sethi & Co., for the Respondent.

CORAM : N.M. JAMDAR, J.

DATE : 30 January 2017

ORAL ORDER :

1. By this Petition under Section 34 of the Arbitration and Conciliation Act, 1996, the Petitioner, who was the Respondent in the Arbitration proceedings held between the parties, has challenged an Award of the Sole Arbitrator dated 24 June 2016. By the impugned Award, the learned Arbitrator has directed the Petitioner to pay an amount of Rs. 28,97,869/- along with interest and the costs as determined, totaling around to Rs. 46,98,323/-.

2. The Petitioner had placed a Purchase Order for

supply of tools for the connecting rod project which the Petitioner was entrusted with. These goods were supplied to the Petitioner. Dispute arose between the parties in respect of the non payment of dues by the Petitioner to the Respondent. Company Petition No. 565 of 2013 was filed by the Respondent against the Petitioner seeking winding up of the Petitioner. In this Petition, Company Application No. 466 of 2014 was taken up, in which the learned Company Judge by an order dated 29 September 2014 referred the dispute between the parties to the Sole Arbitrator. The Petitioner deposited an amount of Rs. 28,97,869/- in the registry of this Court, subject to the outcome of the Arbitration. The proceedings were held before the learned Arbitrator. The Petitioner filed Reply and also made a Counter Claim against the Respondent for an amount of Rs. 87,31,404/-, with interest. The learned Arbitrator after holding that the Petitioner had not made any grievance regarding the quality and quantity of goods and had admitted the liability, in the correspondence. Considering these facts, the learned Arbitrator allowed the claim of the Respondent and dismissed the Counter Claim of the Petitioner. Thereafter, the present Arbitration Petition has been filed.

3. The learned Counsel for the Petitioner submitted that the learned Arbitrator has not considered various e-mails, which were sent by the Petitioners, which were brought on record by the Petitioner, suppressed by the Respondent from the

Arbitrator. The learned Counsel referred to the e-mails whereby the Petitioner stated to have made grievance of the quality of the goods. The learned Counsel for the Respondent on the other hand, has drawn my attention to the Purchase Orders and the terms stipulated therein.

4. Though they appear to be some e-mails sent by the Petitioner in which grievance seems to have been made by the Petitioner, nothing is placed on record that the goods which were received by the Petitioner were offered to be returned. The clause 2 of the Purchase Order stipulates the contingency of rejection of the goods received which would be at the cost of the Petitioner. Therefore, though there appears to have been some routine feedback regarding the quality of goods and replacement, etc., the step is not taken to return of the goods as contemplated under the Purchase Order. Therefore, the contention of the Respondent that the goods were consumed by the Petitioner, has rightly been upheld by the learned Arbitrator. The learned Arbitrator has also taken note of the two Balance-Sheets of the Petitioner wherein the amount is shown as due to the Respondent. The learned Counsel for the Respondent has also pointed out the Auditor's Report wherein it is remanded that there are no contingent debts. If the liability of the Respondent was disputed, as sought to be contended now, such stand would have reflected in the Balance-Sheets showing it as contingent liability. Apart from this position in the e-mail dated

16 October 2012, referred to by the learned Arbitrator, the Petitioner has unequivocally committed that amount of Rs. 5,00,000/- per week will be paid and the dues will be returned. Based on this material and the statements made in the cross-examination, the learned Arbitrator has accepted the case of the Respondent that the liability of the Petitioner stands proved. The evidence which has been considered by the learned Arbitrator cannot be stated to be non germane and this finding of fact cannot be interfered with.

5. The learned Counsel for the Petitioner submitted that even though Counter Claim was made, the same has been rejected without there being discussion and only on the ground that since the claim of the Respondent is accepted the Counter Claim will have to be dismissed. He submitted that there cannot be a dismissal of the Counter Claim without considering the merits thereof. Though this argument is available as a proposition of law, it cannot be straightaway applied to every case without analyzing the facts of each case. If the Counter Claim and the defence of the claim are based on the same foundation and the learned Arbitrator decides the basic issue, then the Arbitrator may find it superfluous to give same reasons for dismissal of the Counter Claim. It would only be a formality of reproducing the same reasons again. In the present case, the Respondent had claimed the price of the goods that way supplied. It was a defence of the Petitioner that the Petitioner

was not liable to pay since the goods were defective and because of supply of defective goods and that too not on time, the Petitioner suffered losses. No correspondence is adversed matter such monetary claim has been made against the Respondent. Therefore, stand that the goods were defective and not being supplied on time was the foundation of defence as well as claim of losses caused the Petitioner. If the case of the Petitioner on the first ground was accepted, then the case of quantification of losses to the Petitioner would arise. But once foundation of the case was not accepted, no further discussion was necessary. Therefore, the submission made by the learned Counsel for the Petitioner cannot be accepted.

6. Keeping in mind, the limited scope available to the Court under Section 34 of the Arbitration and Conciliation Act, the Arbitration Petition cannot be entertained and is accordingly rejected.

7. As far as the amount which is deposited in the registry of this Court pursuant to the order passed by the learned Company Judge, if no contrary orders are passed within a period of eight weeks from today, the Respondent will be permitted to withdraw the amount so deposited with accrued interest, if any.

[N.M. JAMDAR, J.]