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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.1820 OF 2015

Giriraj Industries & Anr.

..Petitioners.

V/s.

M/s. Columbia Petro Chem Pvt. Ltd. & Ors.

..Respondents.

Mr.Tejas Deshpande with Mr.Ashish Verma i/b. Raju Gupta for the
Petitioners.

Mr.V.R.Tripathi for Respondent No.1.

CORAM : N.M.Jamdar, J.

DATED : 4 January, 2017

ORAL ORDER

By this petition under section 34 of the Arbitration and Conciliation Act, 1996, the Petitioners has sought to assail the Award of the sole Arbitrator dated 23 September, 2015 whereby the Petitioners have been directed to pay an amount aggregating to Rs.1,28,36,818/-.

2. It is the case of Respondent No.1 that Respondent No.1 had offered to supply new insulating oil (transformer oil) to the Petitioners, a Partnership Firm. Upon supply of the transformer oil,

Respondent No.1 raised invoices for the goods which were delivered. However, the Petitioners failed to make payment in respect of the goods and as per the arbitration clause contained in the offer letter, Respondent No.1 invoked the arbitration clause and a sole Arbitrator was appointed. The Petitioners appeared in the arbitration proceedings and filed its reply. Various contentions were raised regarding the quality of goods and that because of the inferior quality of goods, the Petitioners had suffered loss of business as well as in the goodwill. An objection to the jurisdiction of the Arbitrator was also taken. The learned Arbitrator overruled the objection as to jurisdiction holding that in the offer letter, a specific clause in respect of the arbitration was provided which was categorically accepted by the Petitioners. On merits of the claim of the Respondent, the Arbitrator held that the Petitioners never made any grievance regarding the quality of the goods, which the Petitioners were obliged to make within a stipulated period. The learned Arbitrator held that the fact that the goods were received and was not paid for, was established and proceeded to pass the Award.

3. Heard the learned counsel for the parties. The learned counsel for the Petitioners firstly submitted that the Arbitrator did not grant sufficient opportunity to the Petitioners and there was a breach of principles of natural justice. It was contended that the credit of the amount of Rs.36,00,000/- though referred in the Award, was not given at the time of passing the Award. The offer

letter which contained the arbitration clause was not the one which has been accepted by the Petitioners, and lastly that Respondent No.1 submitted the accounts subsequent to the closure of the proceedings, and the Award was given after ten months.

4. As regards the argument in respect of the jurisdiction of the Arbitrator is concerned, the learned counsel for Respondent No.1 has drawn my attention to the purchase order, which contains a specific clause in respect of an arbitration proceedings and the offer letter specifically calls upon the Petitioners to give acceptance to all the clauses. While submitting the purchase order, the Petitioners has specifically accepted the same. As regards the contention of the Petitioners that this was not the offer letter referred to by the Petitioners, I have gone through the reply filed by the Petitioners. This specific factual assertion, in the manner in which it is argued today, is not taken in the reply. Therefore, no fault can be found with the view taken by the Arbitrator that the Petitioners had accepted the arbitration clause.

5. As far as the arguments on merits of the Award are concerned, there is no written document placed on record taking exception to the quality of the goods and there is a specific factual finding to that effect by the Arbitrator. There is absolutely no error in this finding.

6. In respect of the argument that credit of the amount of Rs.36,00,000/- has not been given, pursuant to the order passed by this Court on 10 June, 2016, Respondent No.1 has filed its additional affidavit. In the affidavit, it is stated that an amount of Rs.46,05,052/- had been paid to Respondent No.1 by electronic money transfer on the dates stipulated. It is the contention of Respondent No.1 that these amounts have been paid in respect of some other transactions between the parties while it is the contention of the learned counsel for the Petitioners that these amounts have been paid towards the running account, which has not been given credit by the Arbitrator. I have considered these submissions. The fact that there was a long standing business relationship between the parties is not disputed, therefore, the possibility of some other transactions between the parties is not an impossibility. In that context, when the Petitioners made substantial payment there is no reference as towards what purpose the amount is paid. Any prudent businessman would make a specific reference as to for what purpose the amount is being paid. In the reply filed before the Arbitrator, neither any statement made that this amount has been paid towards the running account or towards a particular transaction. If such a specific assertion had been made that these amounts were paid towards running account or towards a particular transaction, giving details of the transaction, Respondent No.1 would have given an explanation before the Arbitrator. Therefore, for the payments made in respect of some other transaction, without disclosing the specific

details, the Petitioners are attempting to reduce the liability which has been imposed by the impugned Award. The Petitioners have also not been able to state that the amount of Rs.36,00,000/- has been paid over and above the amount which has already been paid and the Respondents have received double payment thereof. In view of lack of such details and without a specific assertion in the reply before the Arbitrator, a factual inquiry cannot be undertaken in the limited jurisdiction under section 34 of the Arbitration and Conciliation Act, 1996.

7. As far as the grievance regarding not following the principles of natural justice is concerned, it is without merit. The present case revolves around the correspondence between the parties. This is simplicitor dispute of goods received and amounts not paid. The learned counsel for Respondent No.1 rightly pointed, out by referring to the record, that adequate opportunity was given to the Petitioners. The Petitioners filed the pleadings as well as written arguments, an Advocate who argued the case. No grievance, therefore, can be made by the Petitioners for lack of adequate opportunity. As regards contentions that the accounts were subsequently submitted, nothing has been shown as to how that would alter the claim that has been granted by the impugned Award. In the circumstances, no case is made out under section 34 of the Act. The petition is rejected.

(N.M.Jamdar, J.)