

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2017

CORAM

THE HONOURABLE MR. **JUSTICE M.M.SUNDRESH**

Original Petition No.316 of 2011

1.M/s.Teena Labs Ltd.,
a Company incorporated under the
Companies Act, 1956 having its
registered office at
Flat Nos.105 and 106,
Sree Rama Towers, Kukatpally,
Hyderabad – 500 072 rep. By its
Managing Director

2.K.Anjaiah,
Managing Director,
M/s.Teena Labs Ltd.,
H.No.15-21-22, Balaji Nagar,
Kukatpally, Hyderabad – 500 072
Andhra Pradesh.

.. Petitioners

Vs.

1.Orchid Chemicals and Pharmaceuticals
Ltd., a Company incorporated under
the Companies Act, 1956, having
registered office at Orchid Towers,
313, Valluvarkottam High Road,
Nungambakkam, Chennai – 34
rep. By its Managing Director

2.Justice T.Somasundaram (Retd.),
R/o. New No.1 (Old No.1686),
15th Street, Anna Nagar West,
Chennai – 40.

.. Respondents

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 05.04.2010 sofar it is against the petitioner.

(amended as per order dated 22.10.2013 in A.No.4307 of 2013)

For Petitioner : Mr.S.Bhuvaneswaran
For Respondents : Mr.S.S.Swaminathan
for M/s.S.Uma Maheswari for R1

ORDER

The first respondent/claimant is a pharmaceutical company engaged in the manufacture and sale of various pharmaceutical products. On 04.02.2006, a job work agreement was entered into between the first respondent and the first petitioner herein. Accordingly, it was decided to manufacture sterile active pharmaceutical ingredients as per the specification. The raw materials and other confidential information were to be provided by the first respondent to the first petitioner from time to time. As the first petitioner was unable to start the work immediately and upon request, the first respondent vide letter dated 23.02.2006 sanctioned a sum of Rs.20 lakhs initially. The amount was extended subsequently to a total sum of Rs.67,25,000/-. The first petitioner executed three promissory notes for the aforesaid amount.

2.The work did not go through as agreed upon. The agreement was extended thereafter for period of one year on the very same terms. The quality of the products manufactured by the first petitioner was not to the satisfaction of the first respondent. After some deliberation, the first respondent terminated the agreement. Thereafter, the arbitration clause was invoked. The first respondent made a claim, which is inclusive of a sum of Rs.67,25,000/-. A counter claim was also raised by the petitioners. The learned Arbitrator has framed the following issues:

1.Whether the claimant is entitled to claim the sum of Rs.67,25,000/- towards advance paid and whether the said claim is outside the purview of the contract between parties?

2.Whether the claimant has incurred a loss of Rs.1,50,00,000/- due to reprocessing of materials and is entitled to recover the same from the respondents?

3.Whether the claimant is entitled to the sum of Rs.5,00,673/- towards the value of their products sold by the respondents and whether the said claim is outside the purview of the contract?

4.Whether the claimant supplied the raw material to the 1st respondent as per the contract?

5.Whether the termination of the contract by the

claimant is valid?

6. Whether the respondents suffered loss due to the termination of the contract, and if so whether the respondents are entitled to damages and if entitled, to what extent?

7. Whether the respondents are liable to pay damages to claimant? If so to what extent?

8. Whether the 1st respondent is entitled to an award for a sum of Rs.8,47,60,000/- against the claimant?

9. Whether the respondents are entitled to claim damages towards the investment made by them in their factory for job work?

10. Is not the claimant entitled to claim back the amount funded to the respondents at their request for improving their infrastructure?

11. Is not the claimant entitled to claim from the respondents the loss suffered by them towards the low quality finished goods supplied by the 1st respondent?

12. Whether the promissory note executed by the 1st respondent and personal guarantee given by the 2nd respondent are within the purview of the contract, if so for what purpose the respondents executed them?

13. Whether the claimant is entitled for the claim made by them?

14. Whether the claimant/respondents are entitled to interest? If so on what sum, at what rate and for which period?

15. Whether the claimant/respondents are entitled to costs?

16. To what reliefs are the parties entitled?

3. After affording sufficient opportunities to the parties, a detailed award was passed by the learned Arbitrator. Accordingly, the learned Arbitrator while disapproving the termination order passed on the ground of want of sufficient notice before and after passing, nonetheless went on to consider the other issues including the counter claim made by the first petitioner and awarded a sum of Rs.30,31,586/- by fixing the liability jointly and severally on the petitioners along with interest at 6% per annum. Challenging the same, the present original petition has been filed.

4. Learned counsel appearing for the petitioners would contend that having held that termination order was not sustainable in the eye of law, the learned Arbitrator has exceeded his jurisdiction. The learned Arbitrator ought to have directed the parties to work out the issues raised by reviving the agreement entered into between them. Even on fact, the learned Arbitrator has committed a mistake. It is the case of the petitioners that the amount of Rs.67,25,000/- was already adjusted after giving credit to the running bills. Therefore, the award

requires interference.

5.Learned counsel appearing for the first respondent/claimant would submit that the learned Arbitrator passed the award by taking into consideration the materials available on record. Though the first respondent/claimant made several claims including the amount of Rs.67,25,000/- paid towards advance only a sum of Rs.30,31,586/- was awarded. This was done after rejecting the claim made under other heads and after giving credit to the counter claim made. The learned Arbitrator has considered each and every head while passing the award. Therefore, it is not the case which comes under Section 34 of the Arbitration and Conciliation Act, 1996 and hence no interference is required.

6.It is no doubt true that the learned Arbitrator was pleased to hold that the termination of job work agreement was not in accordance with Clause 36 of the agreement. However, that is one of the issues framed by the learned Arbitrator. It has to be borne in mind that the claim is not with respect to the validity of the termination of the agreement alone. It is the first respondent, being the claimant, pursuant to the said order, who has raised other claims. Not only that, even the petitioners have made counter claims. Therefore, merely because the termination order was found to be not correct in accordance with law, the power of the learned Arbitrator to go into

other issues has not been taken away. To put it differently, the parties wanted the learned Arbitrator to go into other issues. Therefore, on that context, this Court does not find any substance in the submission made by the learned counsel for the petitioners. The learned Arbitrator in fact has given a specific finding on this issue, which, in the considered opinion of this Court, is not bordering on perversity.

7.Learned counsel appearing for the petitioners would submit that a sum of Rs.5,00,673/- awarded by the learned Arbitrator would not come within the purview of arbitration agreement. This Court is unable to accept the said contention. The learned Arbitrator took into consideration the scope of the arbitration agreement. The words "or any other matter" was taken into consideration" after the dispute has arisen pursuant to the job work agreement inter se parties. Such a narrow interpretation of the award defeat the very object of the arbitration along with the agreement. Thus the finding of the learned Arbitrator in the considered view of this Court cannot be considered to be perverse. Hence the contention made in this regard is also rejected.

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8.Learned counsel appearing for the petitioners made one more submission. It is submitted by him that the award cannot be passed against both the petitioners jointly and severally. Even this contention could not be countenanced, as rightly held by the learned Arbitrator under Clause 9 of the job work agreement, the first petitioner was represented by the second petitioner. The second petitioner has also

agreed to furnish bank guarantee. The second petitioner also executed personal guarantee agreement. The personal guarantee agreement also contains arbitration clause. Therefore, the award of the learned Arbitrator, fixing the liability on both the petitioners, cannot be found fault with.

9. On the claims made by the respective parties, the learned Arbitrator took substantial pains in going into them in detail. The learned Arbitrator has given a specific finding that not the entire amount of Rs.67,25,000/- that was adjusted after giving credit to the running bills. In fact, the learned Arbitrator has given credit to some of the counter claims. The admission made by the first petitioner with respect to two items of products from the claimant in Ex.A12 was taken into consideration. A factual finding has been given on the conduct of the petitioners in not giving any reply on the very many issues raised by the first respondent. It was accordingly held that the claimant did supply sufficient raw materials to meet the requirements of the production from month to month. The claims made by the petitioners were found to be stale having been made belatedly. The learned Arbitrator has taken note of Ex.A30, which is the statement giving details of payment made by the first respondent to the first petitioner. Accordingly, a sum of Rs.1,29,58,964/- was made. In fact this payment was also admitted by the petitioners. Ex.A30 also clearly shows that advance made under three promissory notes was not

adjusted as against the running bills. The petitioners have also not produced any document to substantiate the same. The learned Arbitrator took into consideration the total conversion charges at Rs.97,42,997/-, which is otherwise due to the first petitioner as per Exs.B67 to B90 and a sum of Rs.6,85,054/- awarded to the first petitioner by way of damages for the wrongful termination of job work agreement by the first respondent and accordingly fixed the balance amount payable as Rs.25,30,913/- and added with the cost of two items of products for sum of Rs.5,00,673/- and thus came to the conclusion that the first respondent is entitled for a sum of Rs.30,31,586/-.

10.In the abovesaid finding based upon facts, this Court does not find any error warranting interference. Suffice it to state that there is no case under Section 34 of the Arbitration and Conciliation Act, 1996, so as to enable this Court to interfere with the well merited award passed by the learned Arbitrator. Accordingly, the Original Petition stands dismissed. No costs.

09.10.2017

Index:Yes/No

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M.M.SUNDRESH,J.

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