IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 338 OF 2017
ALONGWITH
NOTICE OF MOTION (SUIT) LODGING NO. 544 OF 2017
IN
ARBITRATION PETITION NO. 338 OF 2017

M/s.Loha Ispaat Ltd. ….. Petitioner

VERSUS

Surendra Gupta ….. Respondent

Mr.Abhijit Desai for the Petitioner.

Mr.Somnath Vora for the Respondent.

CORAM : R.D. DHANUKA, J.

DATE : 11th JANUARY, 2018

P.C.

By this petition filed under section 34 of the Arbitration and Conciliation Act, 1996, the petitioner has impugned the arbitral award dated 27th February, 2017 thereby allowing the part of the claim made by the respondent.

2. The petitioner herein was the original respondent before the learned arbitrator whereas the respondent was the original claimant. It was the case of the respondent that the respondent had sold, supplied and delivered various consignments of CR/HR sheet/coils and plates which were duly received by the petitioner without any objection as regards the rate, quality and quantity of the good sold and supplied to them.

3. It was the case of the respondent that the petitioner has made various payments from time to time during the period between 1st March, 2010 and 2nd August, 2010 and did not pay the balance amount about Rs.30,06,811/-. The respondent thereafter issued various notices of demand and also statutory notice dated 10th March,2013. The respondent thereafter filed company petition (515 of 2013) against the petitioner which came to be admitted on 9th June, 2014. The petitioner herein deposited a sum of Rs.30 lacs in the said company petition.

4. The matter was thereafter referred to the arbitration. The respondent filed statement of claims which was opposed by the petitioner. Both the parties led oral as well as documentary evidence before the learned arbitrator.

5. The learned arbitrator rendered an award and allowed the claim of Rs.30,06,811/- with interest thereon and permitted the respondent to withdraw the amount of Rs.30 lacs deposited by the petitioner along with accrued interest in the office of the Prothonotary and Senior Master of this Court and directed the petitioner to pay the balance amount.

6. Mr.Desai, learned counsel appearing for the petitioner invited my attention to some portion of the oral evidence led by both the parties and also relevant invoices based on which the respondent had made claims before the learned arbitrator. It is submitted that none of the invoices produced by the respondent would indicate any material details of the alleged order and supply. It is submitted by the learned

counsel that the correspondence referred to and relied upon before the learned arbitrator were all fabricated. He submits that the rubber stamp of the petitioner was also fabricated. He submits that the entire award is based on the alleged confirmation of the tin number on one of the documents produced before the learned arbitrator. The entire award is based on no evidence and is in ignorance of the fact that all the documents relied upon by the respondent were fabricated. Learned counsel for the respondent placed reliance on various findings rendered by the learned arbitrator.

7. I have perused the documents relied upon by the learned counsel for the petitioner in detail and also the oral evidence and the findings recorded by the learned arbitrator.

8. The petitioner has not disputed that during the period between 1st September,2010 and 16th November,2010, the petitioner had made various part payments to the respondent. The petitioner had deposited a sum of Rs.30 lacs in the winding up petition filed by the respondent against the petitioner.

9. Both the parties have led oral as well as the documentary evidence before the learned arbitrator. The learned arbitrator in the impugned award has considered the oral as well as the documentary evidence led by both the parties and has rendered a finding of fact. The respondent herein had produced the stock register before the learned arbitrator which was prepared by his accountant in the software tally. The witness deposed that he had made entry of the invoices.

There was an automatic entry in the stock register. The learned arbitrator has rendered a finding that the delivery of the goods was evident by various documents produced by the respondent.

10. The learned arbitrator after considering the oral and documentary evidence has also rejected the contention of the petitioner that various documents on which the respondent has placed reliance were fabricated.

11. In paragraph 6.22 of the impugned award, the learned arbitrator has rendered a finding that despite repeated opportunities granted to the petitioner, the petitioner did not produce the VAT audit report leading the respondent herein to obtain the relevant documents under RTI Act. The witness examined by the petitioner in his cross examination has stated that there was income tax raid in their office and accounts and documents were seized by the income tax officers. The panchanama produced by the witness of the petitioner however disclosed that the income tax raid was at the residence of the directors. The learned arbitrator thus rightly rendered a finding that the petitioner did not produce any other invoices in support of its stand taken before the learned arbitrator.

12. The learned arbitrator also held that the ledger account produced by the petitioner was in direct conflict with the VAT return filed by the petitioner.

13. In paragraph 6.25 the learned arbitrator has rendered a finding

that the witness produced by the petitioner was not in a position to explain the stamps put on various documents which according to the petitioner were admitted. Learned arbitrator had also considered the fact that the petitioner had though filed VAT returns, the petitioner had deliberately not produced those documents.

14. In my view, various findings of fact rendered by the learned arbitrator are after considering oral and documentary evidence led by both the parties. Such finding of fact being not perverse, cannot be interfered with by this court under section 34 of the Arbitration and Conciliation Act, 1996. The petition is devoid of merits and is accordingly dismissed with cost quantified at Rs.25,000/- which shall be paid by the petitioner to the respondent within two weeks from today.

15. In view of the dismissal of the arbitration petition, notice of motion does not survive and is accordingly dismissed.

[R.D. DHANUKA, J.]