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

ARBITRATION PETITION NO.413 OF 2017

Union of India Through Controller of Stores	...Petitioner
vs	
Union Roadways Corporation	...Respondent

.....
Mr. T.J. Pandian, for the Petitioner.

Mr. G.R. Agrawal, for the Respondent.

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CORAM : S.C. GUPTE, J.

DATED: 15 OCTOBER, 2018

P.C. :

. Heard learned Counsel for the parties. This arbitration petition challenges an award passed by a sole arbitrator in favour of the Respondent. The claim in the reference was in respect of withholding of the Respondent's transport bills. The disputes between the parties arise out of a transport contract entered into between them for a consignment imported by the Petitioner from Spain for machinery to be erected at Dankuni, Kolkata, for the Indian Railways.

2. The Petitioner's cargo consisting of 14 packages containing parts of CNC heavy duty portal milling machine arrived at the Port of Nhava Sheva. The packages were to be transported from Nhava Sheva to Dankuni Kolkata. For this transportation, a contract was entered into between the Petitioner and the Respondent. Under this contract, the Respondent supplied 8 heavy duty vehicles for lifting these 14 packages. The packages were delivered at Dankuni, Kolkata. One particular vehicle,

however, met with an accident on the way, resulting in some damage to the machinery. The machinery was fully insured against any damage in the course of transportation. The Petitioner applied to the insurer for indemnifying it for the loss suffered. The insurance company, it appears, withheld a sum of Rs.46,07,204/- as a 25% deduction on account of the “NON-STANDARD SETTLEMENT” due to transit being made without the original container and the goods being kept in overhung condition beyond the normal length of the lorry. Since there was a deduction by the insurance company, the Petitioner correspondingly deducted a certain sum from the bills payable to the Respondent (original claimant before the arbitral forum). There is some dispute between the parties as to the extent of such deduction. Whereas it is claimed by the Respondent that its lawful claim to the extent of Rs.37,14,767/- was withheld by the Petitioner, it is the case of the Petitioner that the amount withheld from the Respondent was only Rs.31,22,217/-. Be that as it may, since this is merely a factual dispute, the award of the learned arbitrator cannot be faulted on that ground. The main ground of challenge is that the arbitrator has misconstrued the contract between the parties, including the indemnity agreement executed by the Respondent in favour of the Petitioner. Learned Counsel submits that the accident occurred due to a fault or privity on the part of the Respondent and that whatever may be the stand of the insurance company in that behalf, under the indemnity bond executed by the Respondent, the latter was bound to make good the loss suffered by the Petitioner.

3. Interpretation of contract is a mixed issue of law and facts. The Arbitrator is the final arbiter so far as such interpretation is

concerned, and unless the Arbitrator takes an impossible view or a view, which shocks the conscience of the Court and appears to be a view, which no fair or judiciously minded person may take on the basis of the material placed before him, the award cannot be faulted within the parameters of the challenges available under Section 34 of the Arbitration and Conciliation Act, 1996 ("Act"). In the present case, the Arbitrator has taken a view based on the cause of the accident in the light of the stand taken by the insurer whilst denying 25% of the Petitioner's claim. There is material on record in support of the Arbitrator's conclusion that the loss was caused not due to any fault or privity on the part of the Respondent but due to re-packaging of the goods whilst transporting them from Nhava Sheva to Dankuni in Kolkata and loading them in an overhung condition beyond the normal length of the lorry. It is not in dispute that loading of the consignments into trucks and unloading them at their final destination were both to be arranged by the Petitioner; It was the railway/clearing agency, which was to be responsible for such loading and unloading. Since the loss has been treated by the learned Arbitrator, and legitimately so, having regard to the material placed before him, as due to the particular manner, in which the consignment was loaded onto the truck, and which matter was within the purview of the Petitioner, the impugned award exhibits a possible view of the material placed before the learned Arbitrator. It is something which a fair and judiciously minded person could always have arrived at. It is supported by some evidence on record. There is nothing in the award, which can be viewed as a patent illegality on the face of the award within the meaning of Sub-section (2A) of Section 34 of the Act. No award can be set aside merely on the ground of an erroneous

application of law or by re-appreciation of evidence.

4. In the premises, there is no merit in the challenge to the impugned award. The arbitration petition is dismissed. The parties shall bear their own costs of the petition.

(S.C. GUPTE, J.)