

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL APPEAL NO.108 OF 2018
IN
ARBITRATION PETITION NO.118 OF 2017

M/s.Everest Industries Limited.

...Appellant

Versus

ANJ Buildcon Pvt. Ltd.

...Respondent

Mr.Naresh Ratnani i/b. Ashwin Ankhad & Associates, for the Appellants.

Mr.R.V.Pai with Ms.Neety Thakkar, Mr.Akshay Pai, Ms.Shruti Anurag i/b.
M.M.Legal Associates, for the Respondent.

**CORAM: NARESH H.PATIL AND
G.S.KULKARNI, JJ**

DATED: 13th July, 2018

P.C.:

1. Heard the learned Counsel for the parties. This appeal under Section 37 of the Arbitration and Conciliation Act,1996 (for short 'the Act') challenges the order dated 24 August 2017 passed by the learned Single Judge whereby the appellant's petition under Section 34 of the Act impugning the award passed by the arbitral tribunal, is admitted in regard

to one of the claims of Rs.67.21 lakhs payable by the appellant to the respondent as penalty/compensation levied upon the respondent by an Indian Institute of Technology. The learned Single Judge, however, has rejected the petition in regard to three claims namely a claim of Rs.1.64 lakhs towards octroi, a claim of Rs.12.40 lakhs towards freight and a claim of Rs.15.48 towards damages.

2. The learned Counsel for the respondent has fairly agreed that the impugned order passed by the learned Single Judge in so far as it relates to the award of the claim for damages of Rs.15.48 lakhs, by the learned arbitral tribunal, be set aside. It is accordingly set aside. All the contentions of the parties in regard to the said claim as allowed by the learned arbitral tribunal, shall now be the subject matter of adjudication in the pending Section 34 petition.

3. In regard to the claim of Rs.1.64 lakhs towards octroi and the claim of Rs.12.40 lakhs towards freight, we are not persuaded to accept the submissions as urged on behalf of the learned Counsel for the appellant. This for the reason that a perusal of the award clearly indicate that in regard to the claim of octroi, the appellant had not produced any

document to demonstrate that in fact an amount of Rs.1,64,655/- was paid and thus such the claim was held to be not maintainable. The observations in the award in that regard are clearly found in paragraph 31 of the award read thus:-

“.... Admittedly the Respondent has not provided any of the originals but has only produced certain receipts by way of the Respondent's documents which are produced on record. The Respondent has produced 22 octroi payment receipts at Exhibit D-10 and 37 freight receipts at Exhibit D-11. A perusal of the octroi payment receipts evidence that certain payments have been admittedly paid during the relevant period. However, their Xeroxes can at least show the amounts so paid by the Respondents. As far as the freight receipts are concerned from the perusal of the Xerox copies it is difficult to infer as how much amounts have been paid and to what extent. The Claimant admits that with respect to the octroi an aggregate sum of Rs.10,96,792/- (Rupees Ten Lakh Ninety Six Thousand Seven Hundred Ninety Two only) has been paid and that no documents have been produced by the Respondent to the Claimant evidencing the differential amount of Rs.1,64,655/- (Rupees One Lakh Sixty Four Thousand Six Hundred Fifty Five only). The defence witness has admitted in question 78 to non payment of Rs.1,64,655/- (Rupees One lakh Sixty Four Thousand Six Hundred Fifty Five only) which means that the Respondent has to be directed to pay the Claimant of Rs.1,64,655/- (Rupees one Lakh Sixty Four Thousand Six Hundred Fifty Five only). I therefore, hold that the Respondent be directed to pay to the Claimant a Rs.1,64,655/- (Rupees One Lakh Sixty Four Thousand Six Hundred Fifty Five only) towards the octroi payments.... ..”

This issue was thus completely factual and was adjudicated on the material on record. The learned Single Judge has appropriately considered the material leading to the above finding as recorded in the award, to reject the contention as urged on behalf of the appellant in

regard to the claim for octroi.

4. As regards the claim of Rs.12.40 lakhs toward freight, the appellant had failed to produce any material/financial statement to substantiate the fact that the payment of freight of Rs.12.45 lakhs was made and thus, the learned arbitral tribunal considering the evidence on record has come to a conclusion that the claim is required to be allowed.

5. In regard to both the above claims of octroi and freight, it lies in the realm of factual controversy and the findings are recorded based on the evidence. We are, therefore, not inclined to sustain the challenge as raised on behalf of the appellant in assailing that part of the order passed by the learned Single Judge. We accordingly dismiss the appeal in regard to the challenge to the impugned order in regard to the two claims of octroi and freight.

6. The appeal is accordingly partly allowed in the aforesaid terms. No order as to costs.

(G.S.KULKARNI, J.)

(NARESH H. PATIL, J.)