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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.629 OF 2014

The Maharashtra State Co-operative
Cotton Growers Marketing Federation Ltd. ....Petitioner
vs
Vijaya Cotton And Fibre Co. And 2 Ors. ...Respondents
.....

Mr. B.N. Poojari, for the Petitioner.

Mr. Simil Purohit, a/w. Mr. Faran Khan, i/b. Purohit & Co., for the Respondents.

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CORAM : S.C. GUPTE, J.

DATED: 5 DECEMBER, 2018

P.C.:.

. Heard learned Counsel for the parties. This arbitration petition challenges an appellate award passed by the Board of Directors of Cotton Association of India in a dispute between the parties arising out of an agreement for supply of cotton.

2. For the particular cotton season, namely, 1993-94, Respondent No.1 herein had purchased a total quantity of 65,500 bales of cotton in a single deed from the Petitioner herein. The delivery period was distributed over four months between 1 January 1994 to 30 April 1994. The purchase was completed by 30 April 1994. The invoices for some of the purchases, however, were issued by the Petitioner after 1

May 1994. Respondent No.1, however, had submitted all the requisite forms concerning the purchases, including applicable N-14 Forms, for the purchases made prior to 30 April 1994. The dispute between the parties arose as a result of introduction of an amendment to Maharashtra Sales Tax Act, 1959 on and from 1 May 1994. By this amendment, the liability to pay tax was shifted on the first purchaser instead of the last. It is the Petitioner's case that the sales tax benefit for the particular inter-state transaction was denied to it by the department as a result of some anomaly in the registration number given in N-14 Forms. It is the Respondents' case that this anomaly was later corrected and corrected Forms N-14 were submitted to the Petitioner. Since the liability post 1 May 1994 fell on the Petitioner as the first purchaser, the Petitioner withheld amounts given by the Respondents towards advance for the particular purchases. These amounts were purportedly withheld to cover the liability of the Petitioner to pay sales tax. The lower arbitral tribunal comprising of three arbitrators, formed under Bye-law No.38 of the Bye-laws of Cotton Association of India, to which the parties had admittedly subjected themselves, held in favour of the Respondents. The arbitral tribunal held that the claim of the Petitioner herein to compensate its liability, if any, to pay sales tax did not arise under the terms of contract between the parties; under the terms and conditions, the buyer was not liable to bear any sales tax liability of the seller. Thus, the seller had no right to retain or withhold any amount towards any purported sales tax liability. The tribunal held that the issues pertaining to the alleged liability of the Respondents for payment of sales tax were still pending before the concerned sales tax authority for final adjudication. The tribunal held that if, for any reason, the Respondents were finally liable to pay sales tax in respect of the sales as alleged by the Petitioner, the latter could recover the same from the former in accordance with law, but before such final adjudication, the Petitioner was not entitled to wrongfully withhold amounts due to the Respondents and appropriate the same towards any alleged liability of the Respondents merely because it is possible to do so since refundable amounts of the Respondents were lying with it.

3. The arbitral tribunal, in the premises, ordered the Petitioner to pay the sums withheld, namely, sums of Rs.9,73,052.93, payable to Respondent No.1 and Rs.18,54,685.00 payable to Respondent No.2 and Rs.87,486.00 payable to Respondent No.3 herein along with interest and costs. The matter was carried by the Petitioner herein before the appellate tribunal constituted under the relevant Rules and Bye-laws of Cotton Association of India. The appellate tribunal, by its impugned award, confirmed the award of the first tribunal. The appellate tribunal noted that the Petitioner herein could claim sales tax liability from the Respondents after final adjudication of the same in accordance with law; the matter being still pending for final adjudication, in order to protect the interest of the Petitioner for sales tax liability pending assessment, the payments due to the Respondents could be released against execution of a bank guarantee of an equal amount. The board, accordingly, varied the original award of the arbitral tribunal by providing for payment of the amount ordered by the tribunal against execution of a suitable bank guarantee in equal sum pending final adjudication of sales tax liability arising out of cotton sale transactions between the parties.

4. The award has been challenged by the Petitioner on various grounds. The grounds basically concern the interpretation of the terms of the contract and the liability arising under the Sales Tax Act. None of the grounds indicates any available challenge under Section 34 of the Arbitration and Conciliation Act, 1996. Interpretation of terms of contract is essentially for the arbitrator to do. Any decision of the arbitral tribunal in this behalf, so long as the same contains a possible view of the contract, is not amenable to challenge under Section 34 of the Act. So also, erroneous application of law, by itself, is no ground to challenge an arbitral award. Besides, the Petitioner is fully protected in case it is saddled with any actual liability in the pending assessment before the sales tax authorities; the amounts, directed to be refunded by the Petitioner to the Respondents, are now secured by the appellate tribunal by requiring the Respondents to furnish a suitable bank guarantee. Admittedly, as of now, there is no adjudicated liability on account of sales tax so far as the particular transactions are concerned. Such anomaly, as was originally reflected in N-14 Forms, has now been admittedly rectified and, on that basis, there is a fair chance that no liability of sales tax may be foisted on the parties for the particular transactions. In any event, if at all, there is any liability to be discharged and the tab to be picked up by the Petitioner as the first purchaser under the amended law as of 1 May 1994, it is fully secured to the extent of such liability by means of an appropriate bank guarantee of a scheduled bank. There is, in the premises, no ground made out for setting aside the impugned award.

5. The arbitration petition is, in the premises, dismissed. No order as to costs.

6. There is, however, one genuine difficulty. The appellate tribunal, whilst ordering the amount refundable by the Petitioner to be secured by a bank guarantee pending adjudication of sales tax liability, did not fix any time limit. Obviously, the order, which is said to be pending adjudication of liability by the sales tax authorities, cannot lead to an open ended situation; the bank guarantee cannot be kept alive for an indefinite period of time. Learned Counsel for the Petitioner states that his client shall press for expeditious hearing of the matter of adjudication before the sales tax authorities and seek an early disposal. The statement is accepted. It is expected that the sales tax authorities will expeditiously dispose of the proceedings at the request of the Petitioner.

(S.C. GUPTE, J.)