

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**ARBA No. 61 of 2019**

Mak Engineering Industries Limited, A Company Incorporated Under The Provisions of The Companies Act, 1956, Having Its Registered Office At 8/1A, Middleton Row, 3rd Floor, Kolkata-700071

---- Appellant**Versus**

1. South East Central Railway Through The General Manager, South East Central Railway, Bilaspur 495004
2. Chief Administrative Officer (Con), South East Central Railway, Campus, Bilaspur 495004 Chhattisgarh
3. Deputy Chief Engineer/Con/T And S, South East Central Railway, Railway Campus, Bilaspur 495004, Chhattisgarh

---- Respondents

For Appellant	:	Mr. Prafull N. Bharat with Mr. Ali Asgar, Advocates
For Respondents	:	Mr. Abhishek Sinha along with Mr. Vaibhav Maheshwari, Advocates

Hon'ble Shri Justice P. Sam Koshy**Order on Board****20.12.2019**

1. The present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (in short, hereinafter referred as 'the Act, 1996') has been preferred against the order of the District Judge, Bilaspur rejecting the application under Section 9 in Case No. M.J.C. Civil /285/2019.
2. The facts in brief relevant for the consideration of the present appeal is that, the appellant is a company incorporated under the Companies Act, 1956 and is into the business of manufacturing and supply of railway track items including Elastic Rail Clips (E.R.C.).

3. In the year 2018, an e-tender was floated by the Respondent No. 1 for manufacturing and supply of Elastic Rail Clips MK-III and the supply was to be made at the Depot at Bilaspur and Chhindwara. The appellant participated in the said e-tender and was selected for supply of the Elastic Rail Clips. The acceptance of offer was issued on 24.11.2018 and the order was to supply 7,11,918 numbers of Elastic Rail Clips, subsequently a purchase order was issued by the Respondent No. 1 on 28.12.2018 for supply of aforesaid quantity of clips and the supply period was up till 30.06.2019. It is said that the appellants vide correspondence dated 14.01.2019 had asked the Respondent No. 1 to depute the concerned officer for inspection of the raw materials as was required under the directives and guidelines framed by the Rail Designs and Safety Organization. As per the directives and guidelines since the product to be supplied by the appellant was a safety equipment. It was required that the raw materials used to be procured from the manufacturer, approved by the Rail Designs and Safety Organizations and only on the inspection report and approval given by the Inspecting authority, could the appellants have got the order for manufacturing the Elastic Rail Clips?
4. It is said on 22.01.2019 an official from the Respondent No. 1, namely Ramnaresh went for inspection, however, without giving any inspection, the officer went back nor was any inspection note prepared in the presence of the officers of the appellant-establishment. Subsequently, it is said that the respondents issued a letter dated 22.03.2019 alleging that on inspection of the raw-

materials certain deficiencies were found and the appellants were called upon to offer raw-materials with proper authentic documentation and identification marks with which the inspection could be completed. It is alleged that no such inspection report as such was furnished by the respondent-establishment. This correspondence of the respondents was refuted by the appellants vide their letter dated 09.04.2019, highlighting the fact that though the officer had come but he had not inspected and that the alleged report dated 22.03.2019 is a baseless document. In spite of a refusal letter given by the appellant, there was no response from the respondent side and in due course of time, the validity of the contract itself got expired. Subsequently, on 10.08.2019, the respondents again issued a letter and called upon the appellants to submit application for extension of delivery period and which shall be considered on its own merits. To the said letter also, the appellants responded that the validity of the contract has since expired on account of the inaction on the part of the respondents during the validity period and the appellants further made a conditional offer to supply the materials. If the respondents are agreeable to extend the delivery period on the original terms and to nominate a third party Independent Inspecting Agency to conduct the inspection, to this letter also the respondents did not respond. The respondents vide their impugned letter dated 31.08.2019 passed an order alleging that since the appellants failed to discharge their contractual obligations, the contract had been terminated with imposition of 10 percent liquidated damage and the appellants were called upon to deposit a sum of Rs. 48,72,367/-

immediately, thereafter the appellants wrote a letter to the respondents to invoke arbitration clause and the appellants thereafter nominated a sole arbitrator and requested the respondents to concur for the same. Meanwhile, the appellants in view of the notice dated 31.08.2019 demanding an amount of Rs. 48,72,367/- the appellants filed an application before the learned District Judge at Bilaspur under Section 9 of the Act, 1996. Initially, the learned District Judge granted an interim protection on 05.10.2019 and directed the parties to maintain status-quo in the matter. However, subsequently after hearing both the sides, the learned District Judge rejected the application under Section 9 and vacated the interim protection also granted on 05.10.2019. It is this order, which is under challenge in the present appeal.

5. The contention of the learned counsel for the appellant is that, the entire action on the part of the respondents is arbitrary, vindictive and with malafides. According to the counsel for the appellant in spite of the fact that, the appellants having collected the raw-materials and had called upon the respondents for inspecting the raw-materials as per the guidelines but the respondents failed to do so. According to the counsel for the appellants, though an officer was sent for inspection on 22.01.2019 but there was no physical inspection done on the said date neither was any inspection note prepared and he simply left the premises without any inspection note or any sort of a report being prepared or jointly signed by the parties. According to the counsel for the appellants, the malafides on the part of the respondents is that on inspection, the

respondents found that the raw-materials collected by the appellant was from a company by the name of M/s Surya Alloys Industries Limited, with whom the respondents have some contractual dispute and, therefore, the respondents have malafidely not approved the raw materials of the appellants.

6. It was the further contention of the appellants that since the respondents District Judge had already granted an interim protection on 05.10.2019, the District Judge ought to have affirmed the said order and should not have rejected the same by vacating earlier granted interim order. According to the counsel for the appellant, the equity also lies with the appellants and the ingredients for grant of injunction was also available, yet the learned District Judge has erroneously appreciated the contentions put forth by the respondents and have vacated the ex-parte order and have rejected the application under Section 9. The counsel for the appellant relied upon (2006) 1 SCC 540, (2004) 3 SCC 155, (2018) ILR Chhattisgarh 520 and for all these reasons quash Annexure A-14 dated 28.11.2019 also grant stay of the effect and operation of the order Annexure A-8 dated 31.08.2019.
7. Opposing the appeal, the counsel for the respondent/Department submits that considering the order passed by the learned District Judge, which by itself is a well reasoned and a speaking order, there is hardly any scope left for this Court to interfere. According to the learned counsel for the Railway Department, the order in itself is self-explanatory, so far as the grounds, reasons and justifications for the learned District Judge to reach to the said conclusion and

therefore also the impugned order does not call in for any interference by this Court.

8. The learned counsel for the Railway Department further submits that even on merits, if we look into the documents enclosed along with the appeal as filed by the petitioner, itself would show that the Department was justified for firstly canceling the contract and secondly for claiming liquidated damages on account of the petitioner not fulfilling their contractual obligations. The petitioner failed to make any supply against the purchase order of a safety equipment required by the Railway Department i.e. Elastic Rail Clips (MK-III). According to the counsel for the respondents, as per the purchase order itself, the raw materials required for manufacturing of the Elastic Rail Clips (ERC) were required to be first inspected by the Railway Department and these raw materials so procured by the petitioner must be from RDSO approved source only. It was also the requirement in the purchase order that the product should have identification mark. According to the Department, there was other lacuna also, so far as the raw materials, which was inspected, in as much as the product also could not be cross checked with the test certificate as the test certificate also was not submitted by the petitioner/firm. It was further submitted by the counsel for the Department that in fact the petitioner has never issued any intimation, so far as the source from where the raw material was purchased. According to the Department, inspite of ample opportunity being granted, the respondent authorities failed to fulfill the contractual obligations.

The purchase order in the instant case was issued on 28.12.2018 with the delivery period of six months from the date of issuance of purchase order and inspite of the repeated requests and an opportunity being granted, the appellant failed to deliver any Elastic Rail Clips (MK-III) as agreed by the appellant to the purchaser-respondent.

9. It was further the contention of the respondent /Department that the product for which the purchase order was issued, was a safety equipment and therefore there could not have been any compromise made so far as the procedure prescribed for purchase of such safety equipment is concerned.
10. The counsel for the Department relied upon the judgments in the case of **“Orissa Manganese and Minerals Limited v. Synergy Ispat Private Limited” 2014(16) SCC 654**, **“A.C. Muthiah v. Board of Control for Cricket in India & Another” 2011(6) SCC 617**, and **“M/s. McNally Bharat Engineering Co. Ltd. and another v. Steel Authority of India, Chhattisgarh” ILR 2017 Chhattisgarh 1605**.
11. Having considered the arguments put forth on either side and on perusal of record from the documents enclosed with the appeal, some of the facts, which are undisputed is that the respondents had floated an e-Tender for manufacture and supply of Elastic Rail Clips (MK-III). The appellant was selected for the supply of the said product. The offer of acceptance was issued on 24.11.2018, purchase order was issued on 28.12.2018 and the supply period was 6 months.

12. As per the terms of the agreement, since the product was a safety equipment it was required that the raw material to be used for the manufacture of the product has to be first got inspected by the Railway Department. The raw material should also have to be purchased from RDSO approved source. It was also the requirement that the raw material must have product identification on the product and the same should also have a test certificate submitted by the appellant-firm, with which the product identification could be cross-checked.
13. From the perusal of record, it also appears that an officer from the Railway Department had gone for inspection of the raw materials and he found that there was no product identification reflected on the product, nor was the source from where these products were procured made known to the Department. Later on though the appellant states that it was purchased from one M/s. Surya @ Industries Limited, but the fact still remained that the product did not have the product identification, neither did the appellant provide or made available the test certificate, nor were the invoice copies provided to him.
14. Taking into consideration all these facts, if the learned District Judge has using his discretionary powers rejected the application for grant of interim relief, the same cannot under any circumstances be held to be either bad in law or contrary to the agreement entered into between the parties, nor can the same be held to be in any manner baseless or without application of mind.

15. For the aforesaid reasons, this Court also finds it difficult to interfere with the impugned order passed by the learned District Judge. The appeal therefore, being bereft of merit, deserves to be and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

Ved