

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***ORDINARY ORIGINAL CIVIL JURISDICTION*****ARBITRATION PETITION NO. 756 OF 2019****Amar Autotech Private Limited****..... Petitioner****VERSUS****Greenway Grameen Infra Private Limited****..... Respondent**

Mr.Shariq Nachan, a/w. Mr.Smit Hitesh Shah for the Petitioner.

Mr.Navin Kumar a/w. Mr.Shadaab Anwar, Mr.Ashok Dubey,
Ms.Apurva Arhatia, i/b. M/s.SAVJ Law Solutions for the Respondent.**CORAM : R.D. DHANUKA, J.****DATE : 1st OCTOBER, 2019****P.C.**

By this petition filed under section 34 of the Arbitration and Conciliation Act, 1996, the petitioner has impugned the arbitral award directing the petitioner (original respondent) to pay Rs.39,04,688.79 with interest at the rate of 12% and also a cost of Rs.4 lacs.

2. Learned counsel appearing for the petitioner submits that the so called conciliation statement which has been considered by the learned arbitrator in the impugned award while allowing the claim of Rs.39,04,688.79 was disputed by the petitioner in the written statement filed before the learned arbitrator. He submits that the learned arbitrator has considered the said reconciliation statement as proved while allowing the said claim and has rendered a perverse finding.

3. It is submitted by the learned counsel that the learned arbitrator has mixed up the issue of advance of Rs. 15 lacs paid by the petitioner

which was not liable to be refunded to the respondent by the petitioner under the terms of the contract.

4. Learned counsel for the respondent on the other hand submits that the learned arbitrator has not allowed the said claim of Rs.39,04,688.79 on the ground of unilaterally prepared reconciliation statement but the contents of the said statement have been proved by the witness examined by the respondent. He invited my attention to the findings rendered by the learned arbitrator in the impugned order which are at page 46 and 47 of the impugned award while dealing with this claim and submits that the finding of fact rendered by the learned arbitrator being not perverse, cannot be interfered with by this court in this petition filed under section 34 of the Arbitration and Conciliation Act, 1996.

5. learned counsel for the respondent placed reliance on the judgment of Supreme Court in case of ***Navodaya Mass Entertainment Limited vs. J.M.Combines, (2015) 5 SCC 698*** and would submit that the findings of fact cannot be interfered with by this court. This court cannot re-appreciate the evidence on record already considered by the learned arbitrator.

6. Learned counsel for the petitioner in rejoinder seeks to place reliance on the judgment of the Supreme Court in case of ***Ssangyong Engineering & Constructions Ltd. vs. National Highways Authority of India Ltd., 2019 SCC OnLine SC 677*** and in case of ***Associate Builders vs. Delhi Development Authority, (2015) 3 SCC 49*** and would submit that the findings being rendered by the learned arbitrator being perverse, this court has ample powers under section 34 of the

Arbitration and Conciliation Act, 1996.

7. A perusal of the record indicates that though the petitioner had disputed the reconciliation statement annexed to the statement of claim by the respondent in support of the said claim of Rs.39,04,688.79 as against the original claim of Rs.59,04,688.89, the respondent had examined the witness to prove the said re-conciliation statement with the supporting documents. In paragraph 47(a), the learned arbitrator after considering the evidence led by the respondent, has rendered a finding that the testimony of the witness examined by the respondent clearly shows that an amount of Rs.39,04,688.79 was payable by the petitioner to the respondent. The testimony of the said witness on that aspect was not challenged and could not be shattered in cross examination. The learned arbitrator has also rendered a finding that insofar as the evidence of the petitioner led before the learned arbitrator is concerned, the said evidence is excluded from the consideration in view of the fact that the witness of the petitioner did not remain present for the purpose of cross examination.

8. These finding of fact in my view are based upon the appreciation of the evidence led by the respondent's witness and not being perverse, cannot be interfered with by this court in this petition filed under section 34 of the Arbitration and Conciliation Act, 1996.

9. The principles of law laid down by the Supreme Court in case of *Navodaya Mass Entertainment Limited* (supra) and in case of *P.R.Shah, Shares and Stock Brokers Private Limited* (supra) would support the case of the respondent.

10. Insofar as judgments relied upon by the learned counsel for the petitioner in support of the case that since the findings rendered by the learned arbitrator being perverse, has to be interfered with by this court is concerned, in my view, since the findings rendered by the learned arbitrator are not perverse, the judgments relied upon by the learned counsel for the petitioner would not assist the case of the petitioner.

11. Though learned counsel for the petitioner urged before this court that part of the award is contrary to the terms of the contract, I do not find any substance in this submission of the learned counsel on perusing the terms of the contract and the award.

12. Petition is devoid of merits and is accordingly dismissed. No order as to costs.

[R.D.DHANUKA, J.]