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

ARBITRATION PETITION NO.573 OF 2019
WITH
NOTICE OF MOTION NO.1500 OF 2019

Ecostruck Infra Pvt. Ltd.	...Petitioner
V/s.	
Schindler India Pvt. Ltd.	...Respondent

Mr.Hrushik Narvekar with Ms.Shaheda Madraswala i/b M/s.Vashi & Vashi for the Petitioner.

Mr.Rajmani Varma with Ms.Shivani Shukla i/b M/s.Navdeep Vora & Associates for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 29TH AUGUST, 2019.

P.C. :-

1. By this petition filed under section 34 of the Arbitration & Conciliation Act, 1996, the petitioner has impugned the arbitral award dated 18th December, 2018 allowing the claim made by the respondent (original claimant) before the arbitral tribunal.

2. There is no dispute that the parties had entered into a contract on 25th July, 2014 for supply of two elevators by the respondent to the petitioner on the terms and conditions recorded therein. As per the terms and conditions of the agreement, 10% payment was payable by the petitioner to the respondent in advance. 80% payment was required to be made by post dated cheques at the time of start of manufacturing and 10% at the end of installation

of the elevators at the premises of the petitioner.

3. On or about 29th October, 2014, the respondent carried out inspection at the site of the petitioner. The site was ready for pull (start of manufacturing). The petitioner was asked to make payment by the respondent. The said letter dated 29th October, 2014 further states that the petitioner shall make an arrangement for store room for material at ground floor only near lift start with lock and key and the lifts will be handed over by the respondent to the petitioners by 31st January, 2015. That material was thereafter supplied to the petitioner by the respondent which were required for the purpose of manufacturing the elevators. The respondent issued an invoice upon the petitioner for a sum of Rs.12,48,000/- for the material supplied to the petitioner by the respondent.

4. Since the petitioner did not make payment under the said invoice, the respondent issued a legal notice on 12th September, 2016. There was no response to the legal notice. The respondent thereafter issued a notice on 20th July, 2017 invoking arbitration agreement. There was no response to the said notice also.

5. The respondent filed a statement of claim before the learned arbitrator appointed by the petitioner. The claim was resisted by the petitioner. On 18th December, 2018, the learned arbitrator made an award directing the petitioner to pay various amounts.

6. Learned counsel appearing for the petitioner submits that under the terms and conditions of the agreement the respondent was liable to supply the material for installation of the elevators only if the petitioner would make 80% payment. He submits that though the petitioner had not made 80% payment to the respondent towards supply of material, the respondent at its own risk had supplied the material. The petitioner was thus not liable to make any such payment.

7. The fact remains that the respondent had supplied the material and has recorded the same by a letter dated 29th October, 2014 after visiting the site. The respondent had also requested the petitioner to make arrangement for a storage room on the ground floor with key and lock. The letter is acknowledged by the petitioner. No objection was ever raised by the petitioner while accepting the delivery of the said material at the site. The petitioner also never made any attempt to re-deliver those goods to the respondent. There was no response to the notice of demand raised by the respondent nor any reply to the notice invoking arbitration agreement.

8. Learned arbitrator has interpreted the terms of the contract and has considered the correspondence exchanged between the parties and has rendered findings of fact. It is also held by the learned arbitrator that the petitioner having accepted the delivery of the material without raising any objection, could not have refused to make payment under the terms and conditions of the contract. The

findings rendered by the learned arbitrator being not perverse, cannot be interfered with by this Court under section 34 of of the Arbitration Act. The arbitration petition is devoid of merit and is accordingly dismissed. There shall be no order as to costs.

9. In view of dismissal of the arbitration petition, Notice of Motion No.1500 of 2019 does not survive and is accordingly disposed of.

(R.D. DHANUKA, J.)