IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION No. 672 OF 2018

Rushi Cottex Pvt. Ltd. **...Petitioner**
Vs.
Basil Commodities Pvt. Ltd. **...Respondent**

Mr. Simil Purohit i/b. Purohit & Co. for Petitioner
Mr. Sarosh Bharucha a/w. Mr. Priyank Kapadia a/w. Ms. Akshita Bhargava a/w. Ms. Rukshin Guiara.

CORAM : S.C. GUPTE, J.

DATE : SEPTEMBER 19, 2019

P.C.:

1. Heard Learned counsel for the parties.

2. This arbitration petition challenges an appellate award passed by the Tribunal of Cotton Association of India.

3. On 8th January, 2014, a purchase order was placed by the Respondent on the Petitioner, who was the Claimant before the Arbitral Tribunal, for purchase of 1000 bales of cotton. The delivery period was said to be between 15th March, 2014 to 15th April, 2014; other terms and conditions were as per the rules of Cotton Association of India. This was followed by another purchase order of 10th January, 2014 for purchase of 1500 bales of cotton. Its conditions including the delivery period were as per the first purchase order. Both purchase orders required the Petitioner to sign them and return signed copies to the Respondent within 24 hours. It is an admitted position that this was not done by the Petitioner. On 17th January, 2014, the Respondent closed the contract as per the rules of Cotton Association of India. The relevant rules provide for closing out of

the contract, termed as “settlement of contract”, that is to say, a kind of repudiation of contract, inter alia, on the part of the buyer where the seller is likely to fail to effect the delivery of contracted cotton in time and such failure is likely to result in a greater financial loss to the buyer. This settlement or, in other words, repudiation of contract, was not accepted by the Petitioner. The Petitioner, for its part, communicated its readiness instead to deliver the goods in accordance with the delivery schedule. Since this offer was not accepted by the Respondent, the Petitioner closed the contract by way of settlement and raised a claim of invoice back, which represents the difference between the value of the goods as of the date of the contract and the value of the goods as of the date of the settlement. Since this settlement was not accepted and the differential value was not paid by the Respondent, the Petitioner carried the matter in arbitration before the Arbitral Tribunal of Cotton Association of India. The rules of the Association provide for a two-tier arbitration. The Tribunal, at the first instance, allowed the Petitioner's claim. On the Respondent's appeal from that award, the Appellate Tribunal, however, allowed the appeal and rejected the Petitioner's claim. This order of the Appellate Tribunal is the subject matter of the present arbitration petition.

4. Before the Appellate Tribunal, there were two main issues raised for the consideration of the Tribunal by the parties. The first issue concerned the jurisdiction of the Tribunal to adjudicate the claim in arbitral proceedings, whereas the second issue concerned the merits of the claim, that is to say, the entitlement of the Petitioner herein to invoice back the cotton bales in question on the basis of rates prevailing as on 15th April, 2014 and make claim against the Respondent herein on that basis. The issue of jurisdiction arose, since it was the Respondent's case that there was no concluded contract between the parties. This was on

the footing that the Petitioner had neither signed the purchase order nor returned a signed copy to the Respondent within 24 hours, or at all, as required by the contract. On merits it was, the Respondent's case that even assuming that there was a concluded contract between the parties, the Respondent was within its rights to repudiate the same or go for a settlement of the contract, as a result of a genuine apprehension on its part that the Petitioner was likely to fail to effect the delivery in time and such failure was likely to result in a greater financial loss to the Respondent. It was the case of the Respondent that since it was entitled to close the contract as a result of this genuine apprehension and it actually proceeded to do so on 17th January, 2014, there was no question of the contract being in subsistence thereafter, giving rise to any entitlement on the part of the Petitioner to settle the contract or raise a claim of invoice back. That is how the second issue before the Arbitral Tribunal arose.

5. The Arbitral Tribunal held against the Respondent on the first issue. It essentially held that it was clear from the record of the proceedings that both purchase orders were treated by the parties as concluded contracts; both purchase orders specified that they were subject to the rules of Cotton Association of India. The Tribunal held that though the purchase orders were not returned as duly signed by the Petitioner herein to the Respondent within 24 hours, it was evident from the record that both the parties had actually acted upon the purchase orders.

6. On the second issue, however, the Arbitral Tribunal held in favour of the Respondent. The Tribunal was of the view that the conduct of the Petitioner in not providing signed contract to the Respondent herein in time and by bringing an element of a third party interest in the matter of

delivery at the last moment about which the Respondent did not have prior knowledge, coupled with the rising cotton market, did give rise to a genuine fear in the mind of the Respondent of a likelihood of non-delivery, resulting into greater financial loss at a later stage. Taking the totality of the circumstances into consideration, the Tribunal of the view that the Respondent was justified in closing out the said purchase contracts in consonance with the provisions contained in Bye-law 69(b) of the Bye-laws of Cotton Association of India.

7. The Arbitrators' view on the second issue, which concerns the merits of the controversy, is certainly a possible view of the material placed before them by the parties. The Respondent had produced evidence before the Arbitrators through its witness that on the day when the contract was closed out by it, before it proceeded to do so, there was a communication between the representatives of the parties; the Petitioner's representative had told the Respondent's representative, who was himself a witness before the Tribunal, that a third party was involved in the transaction and that there was no direct sale by the Respondent. This was also fortified by what happened after the Respondent issued their email of 17th January, 2014 closing out the transaction. There was an endorsement on the printout of that email by the Petitioner in the following words: “the seller party at our side is not ready to settle”. There was, thus, material before the Arbitrator that there was a third party in the contract transaction and its performance did hinge on the volition of this third party. The arbitrators were of the considered view that these circumstances legitimately gave rise to genuine doubts in the mind of the Respondent that delivery might not be effected and there would be a greater financial loss to the Respondent at a future date. The Arbitrators, thus, were of a considered view that the case came within Bye-law 69(b) of the Bye-laws of Cotton Association of

India, entitling the Respondent to close out the transaction in a manner permissible under the Bye-laws.

8. Learned counsel for the Petitioner submits that a bare statement of the Respondent's witness should not have been accepted. He submits that there was no other concrete evidence. This Court, while considering a challenge under Section 34 of the Arbitration and Conciliation Act, 1996, is not expected to scrutinize the evidence for itself and see whether the Arbitrator's view is in consonance with its view of the evidence. What this Court considers instead is whether the Arbitrator's view on the subject is a possible view at all, that is to say, a view supported by some evidence, and not a view which is based on no evidence or which is either impossible or which no fair or judiciously minded person would take of the material. As noted above, the Arbitrators' view is a possible view, which is supported by the material on record including the terms of the contract between the parties. As particularly noticed above, Bye-laws 69(b) governed the relationship between the parties and there being a genuine apprehension of delivery not taking place at the appointed time resulting into likelihood of a greater financial loss to the buyer at a future date, the buyer was entitled to close out the contract, or in other words, seek its repudiation.

9. There is, accordingly, no merit in the challenge. The arbitration petition is dismissed.

[S.C. GUPTE, J.]