

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

ARBITRATION PETITION NO. 1149 OF 2014

Toughalt India	...Petitioner
vs	
Hindustan Petroleum Corporation Ltd.	...Respondent

Mr.Shardul Singh with Anjal N. Amin I/b. B. Amin & Co. for Petitioner.
Mr.Minoo Siodia with Ashiya Shaikh for Respondent.

CORAM : S.C.GUPTE, J.

DATE : 14 FEBRUARY 2019

P.C. :

Heard learned Counsel for the parties.

2 This arbitration petition challenges an award passed by a sole arbitrator in a dispute between the parties arising out of a contract for fabrication and supply of drums to the Respondent corporation.

3 The Petitioner herein is engaged in fabrication/manufacture of asphalt drums. The Respondent, vide a purchase order dated 29 April 2010 and related change orders, placed an order for manufacture and supply of drums of agreed specifications on payment of fabrication charges. The Petitioner manufactured and supplied these drums. The Respondent made deductions of various amounts aggregating to Rs.55,62,716/- from out of the fabrication charges payable to the Petitioner. The Petitioner raised disputes and claims relating to these deductions. These disputes were referred to the sole arbitrator. Before the arbitrator, the Petitioner made two claims. Claim No.1 was in respect of deductions made towards the

alleged deficiency in painting of asphalt drums in the sum of Rs.33,57,308/-, whereas claim no.2 was in respect of deductions made towards non-furnishing of free issue materials bank guarantee in the sum of Rs.15,66,787/-. The arbitrator rejected claim no.1 and awarded claim no.2 with interest. The Petitioner challenges rejection of claim no.1.

4 The impugned award indicates, so far as rejection of claim no.1 is concerned, that there is hardly any reason discussed in the award for rejecting the claim. All that the learned arbitrator has said in his award concerning this claim is that the deduction was made “strictly in line with the provisions of the relevant purchase order and the claimant has not shown any convincing argument to the contrary”. The arbitrator has also held that third party inspections carried out by the Respondent at site for concluding on deficiency of painting of asphalt drums were also “strictly in line with the purchase order, and the argument submitted by the claimant against the same does not sustain”. These are no reasons. When a party alleges breach of contract on the part of a counter party and claims damages, the court cannot simply say that there was no breach of contract and hence, no damages and claim that to be a reason of the award. The arbitrator is expected to deal with submissions of the parties and state his reasons why the acts complained of were in accordance with the contractual stipulations and not contrary to them.

5 Want of reasons, thus, in this case is a direct breach of the provisions of Sections 28 and 31 of the Arbitration and Conciliation Act, 1996 ('Act'). This breach clearly indicates a patent illegality on the face of the award and even otherwise, discloses contravention of public policy

within the meaning of Section 34 of the Act. Hence, the award to the extent it rejects claim No.1, cannot be sustained.

6 Learned Counsel for the Respondent submits that the Petitioner has accepted the award and encashed the cheque payment made by the Respondent to it in pursuance of the award. Learned Counsel relies on a decision of a learned Single Judge of this court in the case of **M/s.Associated Constructions vs. Hindustan Petroleum Corporation Ltd.**¹ in support of his contention that having accepted the award and payment made thereunder, the Petitioner should not be allowed to prosecute his arbitration petition. There is no substance in the submission. The award is clearly severable. It awards claim no.2, which concerned deduction made by the Respondent towards non-furnishing of free issue materials bank guarantee, whereas the arbitrator rejects claim no.1, which concerned deductions made towards deficiency in painting of asphalt drums. The Petitioner accepts the award so far as claim no.2 is concerned, but challenges it so far as it concerns claim no.1, which is severable from claim no.2. There is nothing in law to suggest that a party cannot challenge an award after accepting the other severable portions of the award. The judgment of this court in **Associated Constructions** does not support the Petitioner. In the first place, the suggested proposition of law is not really the ratio of the judgment. The judgment deals with the particular petition on merits. The learned Judge did not find the findings of the arbitrator as arbitrary or perverse or shocking to the conscience of the court and proceeded on the basis that the arbitrator being ultimate master of quantity and quality of evidence while drawing the arbitral award, want of

1 **Arbitration Petition No.240/2016 decided on 19.7.2016**

sufficiency of evidence as would appeal to a trained legal mind cannot be made the basis of a challenge. In passing and as an additional ground, the learned Single Judge referred to the fact of the Petitioner having accepted the cheque issued by the Respondent in pursuance of the award. What was awarded to the Petitioner was only a part of the claim of compensation. That part could never have been separated from the balance part rejected by the arbitrator. In that sense, even the facts of that case are clearly distinguishable from the facts of the present case where the two claims are clearly severable and it is open to the Petitioner to accept the award on one claim and contest it on the other.

7 Accordingly, the petition succeeds. The impugned award dated 19 March 2014 (read with correction award dated 11 May 2014) is set aside to the extent it rejects claim no.1 of the Petitioner.

8 The arbitration petition, accordingly, is disposed of. No order as to costs.

(S.C. GUPTE, J.)