

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 604 OF 2017

ALONGWITH
NOTICE OF MOTION NO. 1570 OF 2017
IN
ARBITRATION PETITION NO. 604 OF 2017

Detco Textiles Pvt. Ltd.

..... Applicant

IN THE MATTER BETWEEN

Detco Textiles Pvt. Ltd.

..... Petitioner

VERSUS

M/s.Jakhariya Polycott

..... Respondent

Ms.Atika Vaz, i/b. M/s.Shardul Amarchand Mangaldas for the Applicant/Petitioner.

Mr.S.K.Jain, a/w. Ms.Achala Hatode, i/b. M/s.S.K.Jain & Associates for the Respondent.

CORAM : R.D. DHANUKA, J.

DATE : 25th JUNE, 2019

P.C.

By this petition filed under section 34 of the Arbitration and Conciliation Act, 1996 the petitioner has impugned the award dated 26th June, 2017 passed by the arbitral tribunal allowing the claim made by the respondent and directing the petitioner to pay a sum of Rs. 7,69,689/- with interest at the rate of 18% per annum from the date of invoices till 30th November,2015 and also cost of Rs.8,000/-.

2. The impugned award is challenged on the ground that there did

not exist any arbitration agreement between the parties. Though the petitioners were delivered goods for the purpose of processing, since there was no arbitration agreement in view of the respondent not having served any invoices upon the petitioner, the dispute could not be referred to the arbitration under the bye-laws of the Bharat Merchants Chamber.

3. A perusal of the award indicates that the arbitral tribunal has rejected the application filed by the petitioner under section 16 of the Arbitration and Conciliation Act, 1996 by rendering a finding of fact that all the invoices were duly served upon the petitioner. Learned counsel for the petitioner does not dispute that the goods were received by the petitioner from the respondent for the purpose of processing and in respect of the said goods, the petitioner had filed the claim with the insurance company. It is the case of the respondent that the copies of the invoice were once again served to the petitioner to enable the petitioner to make the claim to the insurance company. Learned counsel for the respondent produces a copy of such invoices for perusal of this court which clearly indicates that in the written invoice, it is clearly mentioned that in case of any dispute arises regarding the transaction, the matter shall have to be referred to the arbitration of Bharat Merchants Chamber Mumbai under their arbitration rules. A sample copy of such invoice is annexed by the respondent to the affidavit in reply to this court.

4. After passing of the order rejecting the application filed by the petitioner under section 16 of the Arbitration and Conciliation Act,

1996 by the arbitral tribunal on 26th October, 2016, the petitioner admittedly refused to participate before the arbitral tribunal though notices of the meetings were served. In these circumstances, the arbitral tribunal considered the facts available on record and has rendered an award directing to the petitioner to pay a sum of Rs. 7,69,689/- with interest at the rate of 18% per annum from the date of invoices and cost of Rs.8,000/-.

5. In my view, the arbitral tribunal has rightly rejected the issue of jurisdiction raised by the petitioner. The petitioner has not disputed the factum of receipt of the goods from the respondent for the purpose of processing. Learned counsel for the petitioner does not dispute that even in past there were several such transactions between the petitioner and the respondent and based on similar invoices containing arbitration clause. I am thus not inclined to accept the submission made by the learned counsel for the petitioner that no invoices containing arbitration clause were served upon the petitioner. The findings rendered by the arbitral tribunal being not perverse, cannot be interfered with by this court in this petition filed under section 34 of the Arbitration and Conciliation Act, 1996. Arbitration petition is devoid of merits and is accordingly dismissed. There shall be no order as to costs.

6. In view of the dismissal of the arbitration petition, notice of motion does not survive and is accordingly dismissed.

[R.D. DHANUKA, J.]