IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.1172 OF 2016

Hyderabad Chemicals Limited known as
Hyderabad Chemical Pvt. Ltd. ....Petitioner
vs
M/s. Maharashtra Esters And Ketones Pvt. Ltd. ...Respondent
.....
Ms. Sumi Soman, i/b. Ms. Suvarna Joshi, for the Petitioner.

Mr. Akshay Bobade, i/b. Mr. Bharat Punekar, for the Respondent.
......
CORAM : S.C. GUPTE, J.

DATED: 6 MARCH 2019

P.C.:

. Heard learned Counsel for the parties. This arbitration petition challenges an award passed by an arbitral tribunal in a reference arising out of a job work contract.

2. The purchase order placed by the Petitioner herein on the Respondent for job work indicates that the Petitioner was to supply about 48,000 kgs of a chemical known as remax 1 to the Respondent, who was expected to distill the same and supply it back to the Petitioner on job work basis, accounting for a total of 90% output, with process loss of 2% and leftover material of 8% to be treated as F.O. and for which a debit note would be raised by the Petitioner on the Respondent at the rate of 75% of the prevailing F.O. cost. The Respondent was to be paid a price of Rs.5.50 per kg of distilled remax.

3. It is not in dispute that in response to this purchase order, a total quantity of 47,935 kgs of remax 1 was supplied for job work by the Petitioner to the Respondent. It is also not in dispute that out of this quantity, distilled remax of only 36,755 kgs was actually received back from the Respondent to the Petitioner, amounting to approximately 75% of the stipulated output. Considering the process loss of 2% of 47,935 kgs and F.O. at the rate of 8% of the same quantity, respectively, working out to about 958 kgs and 3,835 kgs, a balance quantity of 6,386 kgs was claimed as due to be returned by the Respondent to the Petitioner. The dispute between the parties pertains to this quantity. According to the Respondent, there was water content of about 1,200 kgs in the quantity of remax 1 supplied by the Petitioner to the Respondent and, as a result, the Petitioner was bound to return only 5,187 kgs.

4. The Petitioner's case before the arbitral tribunal was that for this balance quantity of 6386 kgs at the price of Rs.55/-, a sum of Rs.4,09,914.93 was due and payable by the Respondent to the Petitioner. In addition to this amount, debit note for F.O. balance of 8%, i.e. 3,835 kgs, at the rate of about Rs.29/- (which was 75% of the prevailing F. O. cost) totalling about Rs.1,33,288/- was due and payable by the Respondent to the Petitioner. The Petitioner's claim, thus, amounted to Rs.5,43,202.93. It was, on the other hand, the Respondent's case that the balance quantity, namely, F.O., at the rate of 8%, i.e. 3,835 kgs, and the balance quantity of 5,187 kgs, was to be charged at the rate of 75% of the F.O. cost. It was the Respondent's case that the F.O. cost was Rs.34,460/- per metric ton, that is to say, Rs.34.46 per kg of F.O. cost

and 75% of such cost worked out to 25.84 per kg. Thus, it was the case of the Respondent that for a total quantity of 9022 kgs (3,835+5,187) the Respondent was liable to pay Rs.2,33,128/-. It was submitted that the total job work bill amount was Rs.3,23,050/- and after deduction of the material not returned, i.e. Rs.2,33,128/-, net payable amount by the Petitioner to the Respondent worked out to Rs.89,992/-. The Respondent went to the arbitral forum as a claimant for this amount. The Petitioner, on the other hand, set up its dues referred to above as a defence to the Respondent's claim.

5. On these facts, the arbitral tribunal had to decide, firstly, the total quantity that was liable to be returned and not returned by the Respondent to the Petitioner and the rate to be applied to such quantity so as to deduct the cost of material not returned. The only findings and reasons of the arbitral tribunal reflected in the award are the following :

> (1) Material was supplied in the month of June, 2011.
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> (2) The Petitioner already deducted the amount of Rs.2,33,128/- against cost of material not returned to the Respondent.
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> (3) The Respondent did not raise any objection on distillation process done by the Petitioner.

6. None of these findings or reasonings decides either of the two questions, which were specifically raised before the arbitrator on the pleadings of the parties. Nobody disputes that the material was supplied in the month of June 2011; or that the Respondent's case before the arbitral forum was that credit had to be given to the Petitioner herein for

an amount of Rs.2,33,128/-, towards cost of material not returned; or that the Petitioner did not have any objection to the distillation process carried out by the Respondent. That, however, does not reflect on the quantity of distilled remax, which was to be returned and not actually returned by the Respondent to the Petitioner and the rate to be applied to such quantity for working out credit due to the Petitioner towards material not returned. These were, as noted above, the real questions before the arbitral forum and none of them has been decided by the arbitral forum. The award having been decided by considering non-germane and irrelevant material and disregarding the relevant and germane issues and material bearing on them, can be described as an impossible view or a view, which no fair or judiciously minded person would take. Such award would also shock the conscience of the Court.

7. The arbitration petition is, in the premises, allowed by setting aside the impugned award dated 27 May 2016.

(S.C. GUPTE, J.)