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

ARBITRATION PETITION NO.1563 OF 2014

Shreeyam Power & Steel Industries Ltd. … Petitioner
Versus
Al Jazeera Steel Products Company SAOG. … Respondent

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Mr. Rahul Narichania, Senior Advocate a/w Mr. Devesh Juvekar and Ms. Pooja Vasandani I/b Rajani Associates for the Petitioner.
None for the Respondent.

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CORAM : S.C. GUPTE, J.

DATE : 12 MARCH 2019

P. C. :

. Heard learned Counsel for the Petitioner. None for the Respondent to show cause.

2 The Petition challenges an award passed by a sole arbitrator in a reference arising out of a contract for supply of goods. The goods were 2000 metric tonnes of prime alloys steel billets of specific chemical composition and physical specifications. These goods were to be supplied in four shipments by the Petitioner to the Respondent. It was the case of the Respondent, who was the original claimant before the arbitral forum, that the goods were of defective quality and were rejected by the Respondent and accordingly, the Respondent was entitled to refund of the amount paid to the Petitioner under the letter of credit issued for payment of goods sold and delivered.

3 The main controversy thus concerns the quality of the goods. The goods upon their approval at the port of discharge were inspected by a reputed international surveyor in the presence of the Respondent's representative. The agency prepared a detailed report. The facts stated in the report were deposed to by the Respondent's representative, who was present during the inspection and who affirmed the findings of the surveyors. Based *inter alia* on this evidence, the arbitrator accepted the Respondent's case of defective goods and accordingly passed an award in favour of the Respondent, declaring that the goods supplied were not of contract specifications and were defective and the Respondent was within its rights to reject the entire consignment. The award directed the Petitioner herein to refund the money received by them towards the consignment within six weeks from the date of receipt of the award. The Respondent was also awarded costs of the arbitration quantified at Rs.20,00,000/-.

4 Learned Counsel for the Petitioner submits that there were four shipments in all; whereas there was no dispute that the first and the second shipments were inspected and a dispute of quality in respect thereof was raised by the Respondent consignee, the third and fourth shipments were not inspected, but were simply rejected on the basis of the first two shipments. Learned Counsel submits that the inspection pertained to only 74 billets out of a total of 4500 billets supplied and that accordingly, on the basis of defects found in a small percentage of the consignments, all consignments could not have been rejected. Learned Counsel also submits that there was a finding of excess rhomboidity in the impugned award as an instance of physical defect. Learned Counsel submits that the product

specifications do not require any particular degree of rhomboidity.

5 The arbitrator, in the impugned award, duly considered the aspect of inspection of only a portion of goods from out of the consignments. The learned arbitrator considered the rival cases of the parties in this behalf as also the applicable contractual stipulations, particularly, Article 11(2) of the subject contract for sale of goods. The learned arbitrator observed that the buyer could lodge a claim supported by inspection report from an internationally recognized inspection agency agreed to by both parties. Article 11(2) gave the right to supplier to depute a technical person, whose findings could then be made the basis of settling the controversy. The learned arbitrator observed that it was an admitted position that on 10 September 2008, one M.R. Patira, President of the supplier, one Rajiv Goel, Vice President marketing and one Ved Prakash General Manager of the supplier had visited the plant of the claimant and inspected the billets. The claimant had averred that the team had admitted that the billets contained physical defects such as cracks and high rhomboidity. It was averred by the claimant that the parties thereupon decided in favour of a joint inspection to be undertaken and the billets to be analyzed by an independent recognized laboratory in Dubai on 13 September 2008. It was averred that on 13 September 2008, only Rajiv Goel was available in Dubai and he informed the claimant that the other members of the team had returned to India. The claimant had averred that Rajiv Goel took up a stand that he was not authorised to accept or act upon quality claims under the contract or to sign any minutes of meeting and would take up the matter with Patira and Ved Prakash, who alone were authorized to sign the minutes. The claimant had also averred that Rajiv Goel was entrusted with one set of

billets for analysis by an independent third party organization, but that nobody responded on the part of the supplier. On the other hand, it was case of the Petitioner that the Respondent's CEO, one Dr. Bhaskar Datta, had refused to meet them and the Petitioner's representatives were made to wait for 4 to 5 hours, after which Dr. Datta met them only for a few minutes and insisted that they take back the material and refund the money. In the light of these rival cases set up by the parties, the arbitrator examined oral and documentary evidence led by the parties. After thorough analysis of both oral and documentary evidence including *inter se* communications between the parties, the learned arbitrator noted that the contemporaneous record showed that the claimant had repeatedly set out what had transpired during the inspection and subsequent visits of the parties and how even the supplier's own representatives had found the goods supplied to be defective. The arbitrator noted that the correspondence was not only in respect of the first consignment, but also in respect of subsequent consignments which were cleared by the consignee. The consignee's representative, Dr. Bhaskar Datta, had deposed that he himself had recommended that the entire consignment of billets supplied by the Petitioner should be inspected by a reputed external agency. The arbitrator noted that inspection, thus, as required by the contract, would not have been just of the first batch but also of the subsequent batches. The learned arbitrator observed that there was no response on the part of the supplier to suggest that the goods were in order. The arbitrator observed that there was no explanation why no recognized international inspection agency was allowed to inspect the goods; there was no explanation why the supplier did not depute any technical person to inspect the goods. The arbitrator noted that the claimant had pointed out repeatedly that the goods were required to be inspected in the presence of both sides and the supplier had not denied this or the correctness of the claimant's stand on such joint inspection. The arbitrator noticed that there was complete silence on the part of the supplier in response to all suggestions of the consignee. The arbitrator, thus, observed that the contemporaneous correspondence and the conduct of the Petitioner at the relevant time, left no doubt that on their visit, the Petitioner's own team had found the goods to be defective and thus returned to India; by doing so, they avoided inspection by an internationally recognized agency in the presence of both parties, which had been bilaterally agreed to. The arbitrator observed that the only reason for such conduct and for the supplier to not depute any technical person, could be that the supplier had found the goods supplied to be defective and did not want a report to that effect from an internationally recognized agency or from a technical person. Thus, after analysis of the evidence of the parties placed before him, the arbitrator came to a conclusion that the goods supplied were not as per the contract specifications and the claimant was entitled to reject the same. The arbitrator held that the claimant had asked for inspection by an internationally recognized agency, but that the supplier did not permit such inspection and that, accordingly, the supplier was bound to take back the defective goods and refund the price collected by it for the same. These are all possible conclusions. There is nothing shocking or impossible about any of these views. These cannot be termed as views which no fair or judiciously minded person would take or views which would shock the conscience of the court. The views, thus, must pass muster in a challenge under Section 34 of the Act.

6 Learned Counsel for the Petitioner submits the arbitrator had not rejected the inspection report submitted by the Petitioner on the ground that the author of the report was a third party, who had not deposed to its correctness. Learned Counsel submits that, on the other hand, the inspection report of SGS, relied upon by the claimant, was taken on record and considered by the learned arbitrator, though likewise the author of the report was not examined before the arbitrator. It is pertinent to note in this behalf that the inspection conducted by SGS was in the presence of the Respondent's own technical person who had personally deposed before the arbitral tribunal about the defects in the goods supplied by the Petitioner jointly noticed by him along with the inspection agency's personnel. Each individual observation of the inspection agency in its report is supported by the deposition of the Respondent's witness. The report, thus, consists of facts observed at site and these were independently deposed to by the Respondent's witness, who was part of the inspection team, and who had personally noticed the defects which were reported in the inspection report. No infirmity, in the premises, can be found with the arbitrator's acceptance of either the testimony of the witness or the inspection report itself. This is clearly permissible and can be termed as a possible view. Strict rules of evidence do not apply to an arbitration reference; so long as the material itself is relevant and germane and the view taken by the arbitrator of the material is a possible view of it, the view can be sustained and there is nothing for the challenge court to interfere. No infirmity, thus, can be found either with the approach of the learned arbitrator or the conclusions arrived at by him on the basis of such approach.

7 Learned Counsel for the Petitioner finally submits that the contract in the present case required the Respondent consignee to make a claim for quality discrepancy within 45 days after the arrival of the products at the port of discharge, while for quantity discrepancy, a claim would have to be filed within 15 days after the vessel completed its discharge; the seller reserved his right of deputing a technical person within 30 days of receipt of such information. Learned Counsel submits that the quality discrepancy claim was made after 45 days of arrival of the products. Though the contract in the present case provides for this timeline, it does not provide for any consequences of non-adherence to it, or, in particular, for breach of its mandate. Anyway such a provision could always be treated as a directory provision. Learned arbitrator in fact appears to have done so, without having expressly stated so. In any event, the arbitrator has observed in his award that despite the consignee having made a claim of quality discrepancy, no technical personnel was deputed by the seller as required by Article 11(2) of the contract. Secondly, and in any event, even if there were consequences provided in the contract for not making a claim for quality discrepancy within 45 days, such a stipulation would have been void under clause (b) of Section 28. No contract, under clause (b), is valid, if it provides that as a result of non-compliance with a stipulation of time in it, the claim either gets waived or the supplier gets any discharge from liability. There is, accordingly, no merit even in this submission.

8 Accordingly, there is no merit in the arbitration petition. The petition is dismissed.

(S.C. GUPTE, J.)