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

ARBITRATION PETITION NO.713 OF 2017

Vivid Attire	...Petitioner
V/s.	
Shree Vishot Creation	...Respondent

Mr.Ramesh Jain for the Petitioner.

Ms.Sneha V. Agrawal I/b Mr.Lalit V. Jain for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 18TH JUNE, 2019.

P.C. :-

1. By this petition filed under section 34 of the Arbitration & Conciliation Act, 1996, the petitioner has impugned the arbitral award dated 10th July, 2017 passed by the Arbitral Tribunal appointed by Bharat Merchants' Chamber directing the petitioner to pay a sum of Rs.13,67,865/- and also a sum of Rs.12,000/- towards the costs within 15 days from the date of receipt of the award and to make further payment of interest at the rate of 1.5% p.m. in the sum of Rs.13,67,865/- till 30th November, 2015 i.e. till the date of making payment.

2. Mr.Jain, learned counsel appearing for the petitioner (original respondent in the arbitral proceedings) submits that the

petitioner had made the entire payment to the respondent however, the respondent credited the amount paid by the petitioner to the sister concern of the respondent and raised frivolous demand upon the petitioner in the said demand.

3. The next submission of the learned counsel for the petitioner is that though in paragraph 2 of the impugned award, the Arbitral Tribunal has awarded the interest at the rate of 1.5% p.m. after credit of 15 days from the date of payment, in paragraph 4 of the impugned arbitral award has the Arbitral Tribunal computed the interest at the rate of 2% p.m. In support of this submission, learned counsel invited my attention to the calculation of interest at page 27 of the arbitration petition which indicates that interest was claimed by the respondent at the rate of 2% p.m. He submits that though the learned arbitrator reduced the claim for interest from 2% p.m. to 1.5% p.m., has actually granted interest at the rate of 2% p.m.

4. Learned counsel for the respondent could not dispute that though the learned arbitrator had directed the petitioner to pay interest at the rate of 1.5% p.m., has actually awarded at the rate of 2% p.m. in paragraph 4 of the impugned award. She also could not dispute that the amount arrived at in paragraph 4 was on the basis of the interest at the rate of 2% p.m. mentioned in paragraph 6.

5. Insofar as the submissions made by the learned counsel

for the petitioner that the payment made by the petitioner to the respondent was in respect of two invoices payable to the sister concern of the respondent is concerned, the petitioner did not make any payment in respect of several invoices payable to the respondent. It was mutual understanding between the parties permitting the respondent to adjust the payments made by the petitioner towards the dues of the sister concern against the petitioner. Insofar as the award of interest is concerned, the learned counsel states that part of the award for interest at the rate of 2% p.m. may be modified by allowing interest at 1.5% p.m.

6. A perusal of the award indicates that the Arbitral Tribunal had rendered a finding that the petitioner in the meeting held on 23rd April, 2016 had made a statement before the Arbitral Tribunal that it suffered losses and thus was unable to pay to the respondent (original claimant) on time. The petitioner had also submitted before the Arbitral Tribunal that some of their documents had been lost and misplaced. The petitioner had also expressed its difficulty to pay interest on the outstanding amount. The respondent had already informed the petitioner vide letter dated 30th April, 2016 that the claims disputed by the petitioner were received by the sister concern - M/s.T.N.S. Clothing & Co. towards the outstanding dues in the past and appropriated to them in favour of the sister concern. The Arbitral

Tribunal has rendered a finding to this effect in paragraph 1 of the impugned award. In my view, the finding of fact rendered by the Arbitral Tribunal being not perverse, cannot be interfered with by this Court under section 34 of the Arbitration & Conciliation Act, 1996.

7. Insofar as the award of interest by the Arbitral Tribunal is concerned, a perusal of paragraph 2 of the impugned award indicates that the Arbitral Tribunal had directed the petitioner to pay interest at the rate of 1.5% p.m. after giving credit of 15 days from the date of payment. However, in paragraph 4 of the impugned award, the Arbitral Tribunal, computed the interest at the rate of 2% p.m. This part of the award in paragraph 4 is inconsistent with paragraph 2 of the impugned award. Be that as it may, learned counsel for the respondent has agreed that this part of award be modified and the interest may be reduced to 1.5% p.m. I am inclined to modify that part of the award. I therefore, pass the following order :-

a). The impugned award is modified to the extent of rate of interest payable by the petitioner on the principal amount of Rs.7,93,103/- at 1.5% p.m. from the date of invoice till 30th November, 2015. Since the petitioner has not paid an amount of Rs.7,93,103/-, interest at the rate of 1.5% p.m. from the date of invoice till 30th November, 2015, the petitioner would be liable to pay

interest at the rate of 1.5% p.m. on the said amount of Rs.7,93,103/- till the date of making payment. It is made clear that this Court has only reduced the rate of interest from 2% p.m. to 1.5% p.m.

- b). Rest of the impugned award is upheld.
- c). The arbitration petition is partly allowed.
- d). There shall be no order as to costs.

(R.D. DHANUKA, J.)