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

ARBITRATION PETITION NO. 1695 OF 2015

M/s.Malu Sleepers (Maharashtra) Pvt.Ltd. …Petitioner
vs
The Union of India & Anr. ...Respondents

Mr.Gaurav Mehta with Lalan Gupta, Niket Jani and Shivangi Agarwal I/b. Dhruva Liladhar & Co. for Petitioner.
None for Respondents.

CORAM : S.C.GUPTE, J.

DATE : 5 FEBRUARY 2019

P.C. :

Heard learned Counsel for the Petitioner. The Respondent Union is absent. On the last occasion, i.e. on 16 January 2019, none had appeared for the Respondent and the matter was stood over as a last chance. Since none appears even today, the petition is heard *ex parte.*

2 The main grievance of the Petitioner in the present petition is that its claim for award of interest under the Interest on Delayed Payments to the Small Scale and Ancillary Industrial Undertakings Act, 1993 has been rejected by the arbitral tribunal practically without stating any reason, or at least any statable reason. The contract was for supply of pre-stressed concrete sleepers, also known as 'concrete turnout sleepers'. The contract was awarded by the Respondent Railways to the Petitioner sometime in 1994. The original purchase order was for 2000 sleepers. This quantity was subsequently amended to 1500 sleepers. Even the original price stipulated in the purchase order of Rs.90,092/- was reduced to Rs.83,940/-. A formal contract was thereafter executed between the parties on 11 September 1998. The Petitioner claims to have supplied sleepers to the Railways under this contract. The contract had a price variation clause. The Petitioner raised escalation bills under this clause. For assessing costs for considering price variation, the contract allowed the Respondent Railways to make what was termed as "book examination" under clause 17 of the contract. The Railways appeared to have actually invoked this clause and carried out book examination and made a report. The report showed actual costs incurred by the Petitioner of a far too higher amount than the price of sleepers provided in the contract. The Railways finally offered reasonable costs of production in the sum of Rs.1,24,169.53 per sleeper. The Railways proposed to pay this sum, if the Petitioner was prepared to accept the same in full and final settlement of its claim. The Petitioner agreed to do so and accordingly, the amount was paid. Subsequently, the Petitioner invoked the arbitration agreement forming part of the contract. One of the main claims of the Petitioner under this arbitration reference was for interest. It was submitted that the Petitioner was a small scale industrial undertaking within the meaning of Clause (e) of Section 2 of Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 ('Act'). It was submitted that under Section 4 of the Act any buyer of a small scale industry was liable to pay interest on delayed payment to the latter at a rate which was 5 percentage points above the floor rate for comparable lending. The small scale industry registration certificate of the Petitioner was produced and the Act was cited before the arbitral tribunal. The tribunal appears to have rejected the claim for interest only on the ground that the contract was not awarded under the provisions of the Act and therefore, its provisions could not be invoked for claiming any interest from the Respondent. The Act does not anyway require it as a condition for applicability of its provisions (including the provision of Section 4 for interest) that the supplier, i.e. small scale industrial undertaking holding registration certificate issued by the Director of Industries of any State or Union Territory, should have been awarded contract under the Act. There is no provision in the Act for entering into any contract. The Act defines the terms “buyer”, “supplier” and “small scale industrial undertaking”. It then provides for the liability of a buyer to make payment for supply of goods to any supplier, who is a small scale industrial undertaking. Section 4, which is pivotal to the controversy to the present case, provides for liability of a buyer to pay interest to the supplier on the amount due to the latter and not paid in accordance with Section 3 at the rate of 5 percentage points above the floor rate for comparable lending. The explanation to Section 4 defines the expression 'floor rate for comparable lending'. Section 4 is a non *obstante* provision and has an overriding effect over any agreement between the buyer and the supplier or any law for the time being in force. To the same effect is the provision of Section 10 of the Act. The impugned award notes that certificate of registration of the Petitioner as a small scale undertaking was produced before the tribunal. Despite the Petitioner producing such certificate and citing the provisions of the Act in support of its claim for interest, the arbitrator appears to have rejected the claim without regard to the Petitioner's status as a small scale industry and applicable provisions, and on a totally irrelevant ground. The arbitrator also held that the terms and conditions of the contract in the present case did not contain any stipulation about payment of interest. Even this ground is wholly untenable, since, as noted above, Section 4 of the Act makes provision for the buyer's liability to pay interest notwithstanding anything contained in any agreement. Considering the provisions of the Act, the arbitrator's view expressed in the award and on which alone the claim was rejected, clearly appears to be an impossible view or a view which no fair or judiciously minded person was expected to take. The impugned award, thus, deserves to be set aside as contrary to public policy of India in accordance with law stated by the Supreme Court in the case of **Associate Builders vs. Delhi Development Authority**[1]**.**

3 Other claims of the Petitioner concern damages due to loss of business on account of rejection of the original purchase order and due to the Respondent's failure to award work order for supply of additional quantity as promised to the Petitioner and statutory interest payable thereon. So far as these claims are concerned, there is hardly any material before the court to justify the case of damages. Apart from the fact that the original purchase order of 2000 concrete turnout sleepers was given a go-by by the parties by entering into a formal contract of a subsequent date, there was absolutely no material placed before the arbitral forum on the measure of reasonable loss or damages as a result of any purported breach. So also, on the promised quantity of additional supplies, there was hardly any material placed before the arbitrator. Besides, additional promised quantity, if any, would not come within the existing contract, of which the arbitration clause forms part. There would in that case be no jurisdiction within the arbitrator to allow any claim in respect thereof. The arbitrator's award on these points, thus, does not merit any interference.

4 In the premises, the impugned award is set aside to the extent

1 **(2015) 3 SCC 49**

it relates to rejection of the Petitioner's claim No.1.

5 The arbitration petition, accordingly, is disposed of.

(S.C. GUPTE, J.)