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

**ARBITRATION PETITION NO.240 OF 2017
WITH
NOTICE OF MOTION (L.) NO.2375 OF 2018**

M/s.Kartarchand And Sons & Ors.	..Petitioners
Vs.	
Union of India & Anr.	..Respondents

Mr.N.B. Sawant for Petitioners.
Ms.Martina Sapkal i/b. M/s.Arun Sapkal & Co. for Respondent No.1.

CORAM : G.S. KULKARNI, J.

DATE : 4th MARCH, 2019

P.C.:

Heard learned Counsel for the petitioners and learned Counsel for the respondents.

2. Challenge in this petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, “the ACA”) is to the award dated 6 September 2016 passed by the arbitral tribunal. The respondents awarded to the petitioners a tender for construction of Max-I Building at Erandawane, Pune. An agreement between the parties was entered into. The work was awarded with a contract value of Rs.63,25,036.90 with stipulated date of commencement and completion as 6.10.1983 and 5.4.1985 respectively. The work was finally completed by the

petitioners on 31 January 1987. The final bill was also passed by the respondent No.1 on 12 May 1989.

3. On 3 December 1987 the petitioners invoked arbitration on the ground that disputes and differences have arisen between the parties in regard to the payments to be received by the petitioners from the respondents under the said contract. There is a prior history of litigation. Earlier an arbitral tribunal was appointed to enter reference. In the meantime, the proprietor of petitioner No.1 expired on 30 October 1993. The legal heirs of the petitioner No.1 instituted probate proceeding in the year 1995. There was change of arbitrators and there was ultimately an award passed by an arbitrator Mr.S.S. Goyal on 29 September 1997. The probate was obtained on 22 December 2003 under the order passed by this Court. There were proceedings initiated against the said award in this Court. This Court in writ petition No.1006 and 1024 of 2007 passed an order dated 11 July 2007 and directed the arbitrator to decide the reference afresh after hearing all the parties. Accordingly, the parties were heard by the learned sole arbitrator and the impugned award was delivered.

4. Learned Counsel for the petitioners has pointed out that in all about 36 claims were made on different counts and only two claims

namely at serial No.16 was partly allowed and claim at serial No.17 was allowed. The details of the claims are as under:-

“Claim No.16: Claim on account of refund of conditional rebate 0.25% for monthly payment said to be wrongly recovered from RA bills. (Claim amount Rs.17709)

Findings: Found partly justified.

The perusal of conditional rebate by the contractor indicates that the rebate is for regular monthly RA bills prepared and paid to them by the Respondent department.

Respondent submitted that bills are to be prepared and submitted by the Claimants as per Clause 7 of the agreement which was never done by the Claimant. During the 11th hearing on 12.4.13 the Respondent accepted that the Claimant never submitted the bill. In view of the conditional rebate of the contract the rebate of 0.25% should not be applicable for the bills where monthly payment was not done. The RA bill details have been submitted by the Respondents vide their letter dated 11.9.13. From perusal of the RA bill details, it is observed that 1st, 2nd, 4th, 5th, 11th, 15th, 20th, 26th, 29th and 30th RA bills were not paid on monthly basis. Therefore for the work done amount of Rs.21,26,343/- paid in these running bill, does not qualify for rebate and the deduction of rebate of 0.25% i.e. Rs.5316/- is not justified.

Award: I therefore, award an amount of Rs.5316/- in favour of Claimant.

Claim No.17: Claim on account of refund of conditional rebate 0.25% recovered without making the final bill payment within 7 months from the date of completion by the department. (Claim amount Rs.17,709/-)

Findings: Found justified.

Above work was completed on 31.1.87 and therefore final bill was to be done by 31.8.87 whereas actual payment made on 12.5.89. Claimant has cited letters dated 29.10.87 (C-83), 20.7.88 (C-92), 14.11.87 (C-86), 2.12.87 (C-87) vide which he has requested for early finalization of bill and stated that repairing in the basement water proofing treatment will be completed soon (C-86). Respondent's document (Exhibit R-80) which is a letter dated 10.8.87 of the Respondent to the Claimant intimated that 31st final bill of the work is under scrutiny and asked the claimant to sign the bill in token of acceptance in full and final settlement or otherwise. Vide letter dated 10.11.87 (R-83), Respondent while conveying to the Claimant that bill will be finalized soon, requested the Claimant to arrange for arresting the leakage to the basement in the building as the same has not

been completed by the Claimant despite written request and personal discussion with the Claimant for more than 6 to 8 months.

The letter of Claimant and Respondent indicate that final bill was ready by Aug 1987. However, matter of repairing and arresting leakage in basement was one of the issues.

As per letter dated 10.8.83 of the Claimant forming part of the Agreement, rebate of 0.25% on quoted rates for payment of final bills within 7 months of completion of work paid to them by the department for all undisputed items allowed and it was to be deducted from the amount in the final bill only.

Respondent has denied the claim and stated that he was willing to prepare and pay the final bill but the same was delayed due to disputes made by the Claimant.

In view of Agreement conditions, recovery of rebate amount in the running bills and non-finalization of bill for undisputed items is not justified. Actual claim made by the Claimant for refund is Rs.17380.29.

Award: I therefore, award an amount of Rs. 17380/- in favour of Claimant.”

5. Learned Counsel for the petitioners in assailing the impugned award would contend that the 34 remaining claims as made by the petitioners are erroneously rejected by the arbitral tribunal. He submits that the findings as rendered by the learned arbitrator for rejecting the claims are not supported by record. In support of his contention, learned Counsel for the petitioners placed reliance on the grounds mentioned in the petition. He submits that this petition needs to be admitted and the impugned award in regard to the rejection of other claims as made by the petitioners before the arbitral tribunal is required to be set aside.

6. On the other hand, learned Counsel for the respondents has supported the impugned award. She has placed reliance on the affidavit in reply as filed on behalf of the respondents. She contends that no case is made out to interfere in the petition under Section 34 of the ACA. It is submitted that the arbitral tribunal after appropriately considering all the claims as made by the petitioners and the reasons which are supported by evidence on record, has reached to a correct conclusion that these claims are not justified and could not be granted. Learned Counsel for the respondents has drawn my attention to each of the findings as rendered by the arbitral tribunal in regard to the said claims.

7. Having heard learned Counsel for the parties and having perused the impugned award and the documents as placed on record, I am not persuaded to accept the submissions as urged on behalf of the petitioners. At the outset, it needs to be noted that perusal of the grounds as set out in the petition to challenge the arbitral award itself would not make out any case, for interference in the arbitral award, rejecting the petitioners' claims and to hold that the findings of the arbitral tribunal are perverse. Perusal of the grounds also indicates that these are general grounds and cannot be related to the specific findings as rendered by the arbitral tribunal qua each of the petitioners claims. Learned Counsel for the petitioners is also not in a position to justify as

to how the findings as rendered by the arbitral tribunal are perverse and deserve interference of a nature that the arbitral award be set aside.

8. The arbitral tribunal has rendered the findings on each and every claim. The findings appear to be supported by the facts of the case and evidence on record.

9. The only contention as urged on behalf of the petitioners is that the petitioners would be seeking some information under the Rights to Information Act which would justify that the impugned award is perverse and illegal. This submission certainly cannot be accepted. Learned Counsel for the petitioners is unable to point out why the findings against each of the claim which are not granted would require interference by this Court.

10. The scope of the present proceedings under Section 34 of the ACA is limited. The petitioners have not made out any case for this Court to come to a prima-facie conclusion that the petition deserves to be admitted. I see no reason to interfere with the impugned order. The arbitration petition is devoid of any merits. It is accordingly rejected. No costs.

11. In view of the dismissal of the petition, notice of motion would also not survive. It is accordingly disposed of.

[G.S. KULKARNI, J.]