IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

O.P.No.246 of 2019 &
A.No.2384 of 2019

M/s.Goodwill Comtrades Pvt. Ltd.,
A Company incorporated under the Companies Act,
No.9, 2nd Floor, Masha Allah Building,
Bheema Sena Garden Street, Mylapore,
Chennai – 600 004 Represented by its
Head – Legal Mr.M.Sheik Sadique .. Petitioner

Vs.

Mr.Vigrahala Ramesh .. Respondent

PRAYER: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 04.12.2018 and received by the petitioner on 10.12.2018 in MCX/ARB/4944A/18 on the file of the sole Arbitrator of the MCX, Chennai.

For Petitioners : Mr.Gupta

For Respondent : K.Moorthy

ORDER

This petition has been filed challenging the Award of the Arbitrator dated 04.12.2018.

2. Originally, grievance has been made by the respondent herein on the ground that he had requested pay out of Rs.1,70,000/- at 1.30 p.m. on 19.07.2018 with the member, namely the petitioner herein. However, pay out was not given by the member on the same day. On 20.07.2018, the opening balance is Rs.39,064/-. Thereafter, he made a pay in of Rs.20,000/- and his balance is shown as Rs.59,064/-. It is his case that he placed an Order for 7 lots of Zinc Mega at Rs.178.20/- and the same was squared off at Rs.177.66. When the MTM loss was Rs.21,000/-, it is alleged that the member has squared 35%, but as per norms they have to square off the position to 70 to 80%. Hence, the claimant preferred the claim for Rs.1,78,500/-, comprising MTM loss of Rs.21,000/- debited to his account and loss of Rs.1,57,500/- (Rs.182.50 – Rs.178.00 + 4.5x500x7 = Rs.1,57,500/-).

3. The petitioner denied the claim and stated that the square off was not done as per norms and his claim for Rs.1,78,500/- has to be allowed.

4. The case was heard by IGRC and the claimant denied the allegations of the respondent and stated that market was volatile and it was not justifiable to assume profits based on fluctuating prices and the client is well aware of the same. Hence, IGRC heard the complainant and identified the admitted claim of Rs.1,78,500/-. As against which, the petitioner filed a claim before the Arbitrator. The respondent herein did not file any counter before the Arbitrator. The Arbitrator has found that the actual loss payable to the respondent is only Rs.21,000/- and in fact rejected the claim of Rs.1,57,500/- taking note of price of Zinc Mega at Rs.182.50, which was the price at some point of time during the trading on 20.07.2018 (Rs.182.50-Rs.178.00 = 4.50 x 5000x7=Rs.1,57,500/-). However, the Arbitrator granted a sum of Rs.60,375/- towards value of opportunity loss suffered by the respondent. As against which, the present petition has been filed.

5. The learned counsel appearing for the petitioner contended that the IGRC without any conciliation and materials, has identified the claim of the respondent. Whereas, the Arbitrator having factually found that the actual loss is only 21,000/- has granted opportunity loss to the tune of Rs.60,375/- without any evidence and to Award such an amount, there must be evidence as to the loss sustained by the respondent. Without any pleadings and evidence, awarding such an amount by the Arbitrator is certainly against the fundamental policy of

India. It is his further contention that the Circular of National Stock Exchange cannot be applied to the commodity exchange to conduct IGRC. Further, opportunity loss is also remote damage which is prohibited under section 73 of the Indian Contract Act.

6. There is no representation for the respondent despite his name printed in the cause list.

7. With regard to the submission of the petitioner that as per the circular of National Stock Exchange, IGRC has been empowered in the stock exchange to look into the admissibility of the claims in addition to conciliation process. Apart from this, no other materials whatsoever has been filed. Admittedly, stock exchange and commodity exchange, are under the control of National Stock Exchange of India. Whether or not circular exists to commodity exchange cannot be gone into merely on the basis of a circular, without deep probe into that aspect. Therefore, in the absence any other materials placed before this Court, the plea raised by the petitioner at this stage is left open to be decided in some other matter.

8. With regard to the merits of the case, admittedly, the respondent has filed his grievance before the IGRC. The Order of IGRC did not indicate as to whether conciliation happened between the parties which resulted in failure and thereafter, the amount has been identified. There are no particulars whatsoever in the order of IGRC.

9. Be that as it may. The petitioner has challenged the Order of IGRC Tribunal before the Arbitrator. The respondent has not filed any counter or any statement of claim before the Arbitrator. The learned Arbitrator has factually found that due to squaring off Zinc Mega, MTM loss of Rs.21,000/- has been debited to the respondent account on 20.07.2018, i.e., the date on which the alleged loss sustained by the respondent. Having factually found that only Rs.21,000/- loss has been sustained by the respondent, the Arbitrator has awarded Rs.21,000/- to the respondent. The Arbitrator has passed an Award for another Rs.60,375/- towards opportunity loss without any pleadings and evidence in this regard. The opportunity loss is akin to remote damages and for claiming any damages, the party who has sustained loss has to prove the nature of damages and loss sustained by him. Without any evidence or pleadings in this regard, awarding damages towards opportunity loss which is akin to remote damages, is not sustainable in the eye of law.

10. In this regard, it is relevant to refer Section 73 of the Indian Contract Act. Section 73 of the Contract Act makes it very clear that compensation not to be given for any remote and indirect loss or damage sustained by reason of the breach. When the law prohibits any such damage to remote and indirect loss, the finding of the Arbitrator allowing such claim, in my view, is certainly in violation of the fundamental policy of India and it falls within the ambit of Section 34 of the Arbitration and Conciliation Act. Hence, awarding Rs.60,375/- towards opportunity loss alone is liable to be set aside.

11. Accordingly, this Original Petition is partly allowed and awarding of Rs.60,375/- towards opportunity loss alone is set aside and the Award in respect of all other aspects, allowing the claim for a sum of Rs.21,000/- is confirmed. The petitioner is entitled for reimbursement of the amount after deducting the Award amount from the Stock Exchange. It is also made clear that the amount of Rs.1,78,7000/- is already with Stock Exchange and till the amount is realised, the question of waiving interest does not arise. No cost.

30.08.2019

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Index : Yes/ No
Internet : Yes
Speaking/Non-speaking Order

N.SATHISH KUMAR, J.

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