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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ O.M.P. 321/2015

Date of Decision : 5th April, 2019

BHANDARI FOILS AND TUBES ..... Petitioner
Through: Mr.Abhishek Sharma, Mr.N.M.Sharma, Ms.Prachi Gupta, Advs.

versus

MAWANA SUGARS LIMITED ..... Respondent
Through: Ms.Divya Bhalla, Mr.Aathira Pillai, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner challenging the Arbitral Award dated 05.02.2015 passed by the Sole Arbitrator adjudicating the disputes that have arisen between the parties in relation to the Purchase Order dated 02.03.2006 placed by the respondent on the petitioner for supply of 1,55,079 KG of Stainless Steel Welded Tubes (hereinafter referred to as 'SS Tubes').

2. The Arbitrator by the Impugned Award has rejected the claim of the petitioner that the said Purchase Order was not a concluded and binding contract between the parties. The Arbitrator has further held that the petitioner was in breach of the contract and that the alleged

sudden increase in prices of the raw material that is, Hot Rolled / Cold Rolled coils, did not make the contract impossible to be performed by the petitioner and the petitioner could not have avoided performance of the contract on this ground. There is no challenge by the petitioner to these findings of the Arbitrator.

3. As recorded by this Court in its order dated 22.05.2015, the limited challenge of the petitioner is to the award of damages in favour of the respondent as also to the award of interest thereon.

4. The counsel for the petitioner submits that in terms of the Purchase Order, the petitioner was to supply SS Tubes to the respondent @Rs.131/- per KG. Due to sudden increase in prices of the raw material, the petitioner by its e-mail dated 24.05.2006 informed the respondent that though the impact of such increase in prices of raw material along with tax and duties would be Rs.39/- per kg, the petitioner seeks increase in prices of SS Tubes by only Rs.36/- per kg. Counsel for the petitioner submits, that while the respondent did not accept the offer made by the petitioner, it claims to have placed a Purchase Order on M/s Jyoti Divya Fabricators Pvt. Ltd. on 01.06.2006 @ Rs.172/- per kg that is, at an increased rate of Rs.41/- per kg on the price stipulated in the Purchase Order. Counsel for the petitioner submits that there was no proof of purchase of SS Tubes from M/s Jyoti Divya Fabricators Pvt. Ltd. and therefore, award of damages in favour of the respondent cannot be sustained. Without prejudice, he submits that damages could have been awarded only at the differential rate of Rs.36/- per kg as the petitioner had offered to

make supplies with the said increased rate but the respondent refused to accept the same.

5. I have considered the submissions made by the counsel for the petitioner, however, find no merit in the same.

6. The Arbitrator in the Impugned Award, has held that the Purchase Order was a binding contract between the parties. Clause 1 of Annexure-IV to the Purchase Order gives the 'Commercial Terms and Conditions' and specified the rate of Rs.131/- per kg to be firm and subject to no escalation due to any reason whatsoever. The Arbitrator further records that the petitioner, in spite of this stipulation claimed an increase of Rs.23.25 per kg from the respondent vide its letter dated 03.05.2006. The petitioner again vide its e-mail dated 24.05.2006 sought increase in the rate by Rs.36/- per kg. The respondent, however, vide its letter dated 31.05.2006 refused to increase the rate. The petitioner at this stage, by its legal notice dated 12.06.2006, went ahead and denied the very existence of a concluded contract between the parties. Therefore, the petitioner repudiated the contract completely. The petitioner, therefore, cannot seek any benefit of its offer made vide email dated 24.05.2006. It is important to note here that the petitioner by its earlier email dated 03.05.2006 had sought increase in rate by Rs.23.25/- per kg. Therefore, the petitioner was also seeking revision of rate upwards on each occasion.

7. As far as the market rate of the SS Tubes is concerned, the Arbitrator relied upon the Purchase Order placed by the respondent on M/s Jyoti Divya Fabrication Pvt. Ltd. to conclude that the price of

such tube had increased to Rs.172/- per kg entitling the respondent to claim damages at the said rate. The Arbitrator holds that the Purchase Order placed on M/s Jyoti Divya Fabricators Pvt. Ltd. has been duly proved by the respondent.

8. The above being a finding of fact recorded by the Arbitrator on basis of the evidence led before her by the parties, and the same not being found to be in any manner unreasonable or perverse, it would not be open for this Court to interfere with the same.

9. The next challenge of the petitioner is to the award of interest @ 18% per annum. The counsel for the petitioner submits that the rate of interest awarded in favour of the respondent is exorbitant.

10. I do not find any merit in the contention of counsel for the petitioner. The Arbitrator has recorded the reason for awarding such rate of interest and has held that as the transaction between the parties was commercial in nature, the respondent was entitled to interest @ 18% per annum.

11. The award of rate of interest is at the discretion of the Arbitrator. The Arbitrator having exercised such discretion by giving reasons therefor, which reasons cannot be said to be unreasonable or perverse, especially keeping in view provisions of Section 31(7) (b) of the Act as it stood before the amendment by way of the Arbitration and Conciliation (Amendment) Act, 2015, deserves no interference.

12. I may only highlight here that even during the course of hearing, the counsel for the respondent had fairly offered to reduce the

rate of interest provided the petitioner undertakes to make the payment as directed in the Award. However, the petitioner refused such offer.

13. In view of the above, I find no merit in the present petition. The same is dismissed with cost of Rs.25,000/- to be paid by the petitioner to the respondent.

NAVIN CHAWLA, J

APRIL 05, 2019
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