IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 552 OF 2019
IN
COMMERCIAL ARBITRATION PETITION NO. 1445 OF 2019

Shri Balaji Sugars & Chemicals Pvt. Ltd. ... Applicant

<u>In the matter between:</u>
Shri Balaji Sugars & Chemicals Pvt. Ltd. ... Petitioner
vs.
Tamhankar Patil & Associates ... Respondent

WITH
COMMERCIAL ARBITRATION PETITION NO. 1445 OF 2019
WITH
INTERIM APPLICATION (LODGING) NO. 24385 OF 2022
IN
COMMERCIAL ARBITRATION PETITION (LODGING) NO. 24382 OF 2022

Mr. Zubin Behramkamdin a/w. Ms. Poorva Garg and Mr. Simon Mascarenhas, i/by. Mulla & Mulla and Craigie Blunt & Caroe for applicant/petitioner.

Mr. Sangramsingh Bhonsle a/w. Ms. S. Jain and Mr. Shrey Shah, i/by. Vidhii Partners for respondent.

CORAM : MANISH PITALE, J
DATE : 11th NOVEMBER, 2022

P.C. :

. Heard learned counsel for the parties.

2. Learned counsel appearing for the applicant/petitioner has pressed for the prayer for grant of interim stay of the impugned award. It is pointed out that on 30th September, 2022, when this application was listed for hearing, this Court had directed that the respondent shall not press for execution of

the impugned order till the next date of listing.

3. Learned counsel appearing for the applicant submits that grounds of challenge raised in the accompanying petition sufficiently indicate gross errors committed by the learned arbitrator by partially allowing the claims. It is pointed out that by order dated 27th January, 2022, application filed under Section 34(4) of the Arbitration and Conciliation Act, 1996, was disposed of by remanding the matter back to the learned arbitrator while keeping this petition pending, so as to enable the learned arbitrator to eliminate the ground for setting aside the award.

4. It is submitted that pursuant thereto, the learned arbitrator concentrated on claim No.8 pertaining to loss of profit, which in itself was an error. Evidence led by the parties was discussed, but a fundamental aspect of the matter was ignored, which was that after the term of the contract ended on 31st December, 2013, whether the respondent could at all claim any relief towards loss of profit. It is submitted that this aspect was not properly appreciated, which goes to the root of the matter. The petitioner also asserts other grounds of challenge to demonstrate that relief granted on the other aspects of the matter are also unsustainable.

5. Learned counsel for the respondent stated that there was no question of unconditional stay to the award. The impugned award was a money decree. On the specific aspect of claim No.8 and the fact that the contract came to end on 31st December, 2013, the learned counsel submitted that in the earlier award dated 6th August, 2019, there was a detailed discussion on the aforesaid aspect of the matter, indicating that delay in execution of the project was due to the petitioner itself and that therefore, it could not be said

that the claim pertaining to loss of profit could not be considered by the learned arbitrator at all. It was submitted that even if interim stay is to be granted, appropriate conditions ought to be imposed.

6. This Court has perused the material on record, award dated 6th August, 2019 and subsequent award dated 5th May, 2022 passed by the learned arbitrator in pursuance of the order dated 27th February, 2020.

7. The material on record shows that in the award dated 5th May, 2022, the learned arbitrator gave sufficient opportunity to the petitioner to adduce evidence pertaining to loss of profit. After discussing the evidence and material on record, the learned arbitrator, in fact, found that the respondent had indeed proved loss of profit beyond Rs.1.49 crores, but the claim could be granted limited to the amount claimed by the respondent, in absence of amendment of statement of claim.

8. On the aspect as to whether claim for loss of profit could at all be considered by the learned arbitrator, there is indeed discussion in the award, indicating the reasons given by the learned arbitrator for considering claim No.8 pertaining to loss of profit raised by the respondent.

9. This Court is of the opinion that as on today, on the face of it, the petitioner has not demonstrated that the learned arbitrator has committed gross errors by partially allowing the claims, justifying unconditional stay to the impugned award.

10. In view of the above, the present application can only be partly allowed by imposing appropriate conditions.

11. Accordingly, the application is disposed of as follows:

a) There shall be stay to the impugned award, subject to the petitioner depositing an amount of Rs.2.5 crores with the Prothonotary and Senior Master of this Court within six weeks from today.

b) During the pendency of the accompanying petition, the said deposit amount shall be invested by the Prothonotary and Senior Master in a nationalized bank as per the standard practice.

c) It is made clear that if the petitioner fails to deposit the aforesaid amount in the stipulated period of time, the order passed today shall stand recalled and this application shall stand dismissed, without reference to Court.

12. List Commercial Arbitration Petition No.1445/2019 for further consideration for hearing on 9th January, 2023.

(MANISH PITALE, J)

Priya Kambli