IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
[COMMERCIAL DIVISION]

COMMERCIAL ARBITRATION PETITION NO.473 OF 2018

Moorgate Industries DMCC
(Earlier known as Stemcor MESA DMCC) .. Petitioner
Vs.
Taurian Iron and Steel Co. Pvt. Ltd.
Through the Official Liquidator, Mumbai .. Respondent

Mr. Vikramaditya Deshmukh, with Ms. Krusha Maheshwari, Ms. Shreni Shetty and Ms. Swati Chandan, i/by ANB Legal, for the Petitioner.
Mr. Satish S. Raut for the Respondent.
Mr. Satish Raut, Official Liquidator for the Respondent, is present.

CORAM : A. K. MENON, J.
DATE : 28TH OCTOBER, 2021.

P.C. :

1. By this petition, under Sections 47 and 48 of the Arbitration and Conciliation Act, 1996, the petitioner seeks to enforce a foreign award, which was passed against the respondent under the rules of the London Court of International Arbitration (LCIA) by a Sole Arbitrator,. After filing of the petition, it came to the knowledge of the petitioner that the respondent had been ordered to be wound-up and accordingly, the petitioner filed a Chamber Summons seeking to implead the Official Liquidator. The amendment was allowed and the Liquidator has since been brought on record. The Liquidator has since then filed an affidavit-in-reply and I have therefore proceeded to hear the parties.

2. It is the case of the petitioner that the petitioner was a seller of "Oaky Creek Hard Coking Coal" under a sales contract for delivery at CFR FO Paradip Port and/or Haldia Port. The contract for sale was entered into at the instance of the respondent-company and is described as "the Stemcor Sales Contract". The respondent is said to have paid about USD 8,67,300 to the petitioner in terms of the sales contract, being 10% of the value of the goods. The goods have since been shipped and delivered and the petitioner issued a commercial invoice for USD 10,407,600. The petitioner since received various remittances towards the invoice amount, leaving the balance of USD 3,744,000. The arbitration clause was then invoked and this resulted in an Award.

3. Mr. Deshmukh, learned counsel for the petitioner submitted that the award was in accordance with the law applicable to the sales contract. The LCIA had nominated a Sole Arbitrator, who has since heard the parties and made an award on merits. He submitted that the respondent was given an opportunity of presenting its case. It did file its statement of defence and was heard on merits. He further submitted that the petition now seeks enforcement and the petitioner is entitled to execute the award against the respondent by attaching movable and immovable properties and also seeking garnishee order against the third-party. Interim prayers are sought for disclosure of assets, furnishing security and alike. However, in my view, in

view of the order of the liquidation, these prayers cannot be granted and the petitioner has not made any efforts to seek such reliefs.

4. The Liquidator has in his reply sought to oppose the petition by stating that the company has been ordered to be wound-up. The petitioner has not produced original or certified or authenticated copy of the arbitration agreement, which is a prerequisite under Section 47(1) of the Arbitration and Conciliation Act, 1996. Even an authenticated copy of the arbitration agreement has not been produced and therefore on account of failure to comply with Section 47, the award is not enforceable. Furthermore, it is contended that the Arbitrator has not quantified the amount in Indian Rupees and for this reason also, the award is not enforceable. Lastly, it is contended by the Liquidator and submitted by the counsel that if any claim is to be pursued against the company in liquidation, the claim may be filed in a prescribed Form No.66. There are several claims filed against the respondent-company and at present, there is only USD 6,61,647 available with the respondent-company.

5. Faced with these objections, Mr. Deshmukh undertook to file the certified and notarised copy of the Arbitration Agreement dated 6th May 2012 and certified true copy of the Award passed by the LCIA dated 13th August 2016. This has accordingly been done by filing a compilation of documents dated 20th October 2021. I have therefore proceeded to consider the award for enforceability.

6. The award is passed by a Sole Arbitrator appointed by LCIA court, which records the fact that the parties were represented by a counsel, who agreed on a time-table for conduct of proceedings. The claim having been filed, the respondent filed its statement of defence. The respondent objected to jurisdiction of the Sole Arbitrator but did not make any counter-claim. The respondent however desired that oral hearing be granted. The Sales Contract was governed by the Laws of England and Wales. The award records that the respondent objected to jurisdiction of the Sole Arbitrator, which was essentially based on the argument that the Sales Contract was eclipsed and/or substituted by the respondent accepting an invoice raised by the claimant.

7. The invoice did not make reference to any arbitration clause and therefore there was no arbitration agreement between the parties resulting in the arbitrator having no jurisdiction. This aspect has been considered by the Arbitrator and the tribunal has recorded that the respondent has not disputed the tribunal's power to rule on its own jurisdiction in accordance with the LCIA Rules. The Sales Contract was an admitted document and the argument that the invoices superseded the sales contract did not find favour of the tribunal, which found that there was no evidence whatsoever of any novation. The claim was found to be a straightforward debt claim and while dealing with the defence of the respondent, the tribunal found that the respondent did not deny that the goods were delivered and that a sum of USD 3,744,000 remained outstanding.

8. An issue was raised relating to stamp-duty payable under the Bombay Stamp Act, 1958. The respondent also raised the issue of limitation. The tribunal has decided that under the English Limitation Act, 1980, the claimant had six years, i.e. until September, 2018, to make the claim whereas the claimant has commenced the arbitration in February, 2016. Furthermore, it was found that on the aspect of stamp-duty, the liability, if at all, was that of the respondent and not the claimant to pay such stamp-duty to the authorities in India and the respondent's failure to pay the stamp-duty would be a breach of the sales contract. Interest has been awarded @ 6% p.a. of the claim. Costs have also been so awarded. The award is thus seem to be specific and straightforward, which clearly holds the respondent liable and that nothing has been shown to me to merit it vulnerable and hold that it is not enforceable.

9. What this court is now required to consider is whether the foreign award is enforceable and in that process, we consider whether the award is violative of public policy of India; whether the respondent was unable to present its case or whether the award has failed to determine a material issue, as contemplated under Section 48(1)(b) and 48(2)(b) of the Arbitration and Conciliation Act, 1996. The Liquidator is represented pursuant to notice issued but despite that, in my view, there is nothing to indicate that the respondent was unable to present its case or that the Arbitrator has failed to decide a material issue or even otherwise whether the enforcement would be

contrary to the public policy of India. I am also not able to find any element which would reveal any ground for declining enforcement of the award and in view thereof, I am inclined to allow the petition. Accordingly, I pass the following order :-

(i) Petition is made absolute in terms of prayer clause (a), excluding the bracketed and underlined portion, which is reproduced below :-

> "(a). This this Hon'ble Court be pleased to pass an order declaring that the Arbitration Award dated 13th August 2016 are enforceable as a decree of this Hon'ble Court against Respondent [<u>by directing the Respondent to forthwith make payments, to the Petitioner, of the sums set out in the Arbitration Award</u>]."

(ii) In view of the respondent being in liquidation, none of the other prayers in the petition would survive. All other prayers in the petition are rejected.

(iii) The petitioner is at liberty to file a claim before the Liquidator within a period of four months from today. If there is any delay that has already occasioned, such delay is condoned.

(iv) Petition is disposed in the above terms. No costs.

(A.K. MENON, J.)