

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.973 OF 2018**

Bharat Petroleum Corporation Ltd.Petitioner

V/s.

ARSS Biofuel Private LimitedRespondent

Mr. Maneesh M. Dixit for petitioner/applicant.

Mr. Vivek Salunke for respondent.

CORAM : K.R.SHRIRAM, J.

DATED : 8th MARCH 2021

P.C. :

1 This is a petition impugning an Award dated 7th May 2018 by which the Sole Arbitrator, who was appointed by petitioner herein, directed petitioner to pay a sum of Rs.21,60,000/- together with interest thereon at 10% p.a. from the date the amount was deducted from the bills of respondent until payment/realisation.

2 The petition has been waiting for its turn to be listed for admission. It came to be listed today because petitioner has moved for ad-interim relief in view of the execution application taken out by respondent. I felt, even for me to consider whether any ad-interim relief has to be granted, I should consider whether the petition itself is maintainable. According to Mr. Dixit, the Award is unreasonable, is very cryptic and is unsustainable. I have perused the Award with the assistance of Mr. Dixit.

Gauri Gackwad

This order has been modified by speaking to the minutes of the order dated 16th March 2021.

3 Respondent is in the business of Denatured Anhydrous Ethanol (Ethanol) and submitted its bid against the notice inviting tender released by petitioner for supply of Ethanol for the period December 2015 to November 2016. An agreement was also entered into between petitioner and respondent on 20th November 2015.

4 Respondent supplied Ethanol and raised invoices for Rs.2,27,27,425/- out of which respondent was paid Rs.2,05,67,425/-. The balance amount of Rs.21,60,000/- has not been paid, which was the subject matter of the reference before the Arbitrator. Even in the petition, it is petitioner's case that respondent has supplied Ethanol worth of Rs.2,27,27,425/- but petitioner paid Rs.21,60,000/- less only to recover against the default by respondent under a 2011 agreement. Therefore, petitioner admit that the entire amount of Rs.2,27,27,425/- was payable to respondent but they are entitled to claim set off. The learned Arbitrator, after considering the submissions of the parties, has observed that petitioner had initiated arbitration process to recover the disputed amount under the 2011 agreement but no further steps were taken by petitioner to prosecute the arbitration proceedings effectively. That arbitration proceeding probably came to an end without seeing light of the day. Therefore, the Arbitrator has rightly come to the conclusion that the amount of Rs.21,60,000/- was wrongfully deducted and is payable to respondent.

Gauri Gachwad

This order has been modified by speaking to the minutes of the order dated 16th March 2021.

5 If petitioner in its wisdom decides to rekindle the original arbitration proceedings, which it had commenced under the 2011 agreement, it may do so and if it succeeds, can recover the amount from respondent.

6 In my view, I cannot find any fault in the conclusions arrived at by the learned Arbitrator.

7 Petition dismissed with cost in the sum of Rs.50,000/- which is also payable alongwith the amounts mentioned in the Award.

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(K.R. SHRIRAM, J.)

Gauri Gaekwad

This order has been modified by speaking to the minutes of the order dated 16th March 2021.