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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

O.S.A. (CAD) No.72 of 2021

M/s.India Pistons Limited
Represented by its Managing Director,
Hazur Gardens, Sembium,
Chennai - 600 011.

... Appellant/Petitioner

Vs.

M/s.Rhenus Contract Logistics Ltd
(Earlier known as Rhenus Prolog Logistics Limited)
Represented by its Senior Manager A.Kamal Nath,
No.C8, Laxmi Towers,
Bandra Kurla Complex,
Mumbai - 400 051.

...Respondent/ Respondent

Prayer: Appeal filed under Section 13(1) of the Commercial Courts Act read with Order XXXVI Rule 1 of the Original Side Rules against the order dated 24.06.2021 passed in O.P.No.925 of 2019 on the file of the Original Side of this Court.

Prayer in O.P.No.925 of 2019 : To set aside the award dated.28.09.2018.

For the Appellant : Mr.Krishna Srinivasan
for M/s.S.Ramasubramaniam
and Associates

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

Reasons, which are the lifeblood of any process of assessment, may be found in a solitary sentence in cases;



whereas no shred of reasoning may be discovered in ten pages of literature delivered upon the conclusion of the assessment. The perceived lack of reasons in the judgment and order impugned is complained of herein.

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2. The principal plank of attack in this appeal under Section 37 of the Arbitration and Conciliation Act, 1996 against an order dismissing a challenge to an arbitral award is that the entire matter was considered in the following solitary paragraph to dispel the wide gamut of challenge that had been launched by the appellant:

"12. Admittedly, in this case, the invoices have been raised from the very inception and payments to the tune of more than Rs. one crore also paid by the respondent and no dispute has been raised by the respondent/applicant at the initial stage. Only the reply notice was sent indicating that there was less packing. Though certain email correspondences were filed to show as if they raised such dispute earlier to the reply notice. The above aspects have been appreciated by the learned arbitrator and arrived at a conclusion. It is to be noted that except some correspondences, the nature of packing done by the respondent has not been established. If the petitioner contention that the required number of packing has not been done, even on the produced pistons is true, the exact number of packings omitted to be done by the respondent had to be proved by the applicant, which has not been done so. Therefore, merely on the basis of the correspondences which has been filed later, it cannot be said that arbitrator has totally ignored all the relevant documents. Therefore, merely because some other view is also possible by appreciating the entire evidence, the award cannot be interfered on that ground alone. The learned arbitrator has considered the entire aspects and discussed all the matters and awarded certain amount to the claimant and awarded counter claim also. Hence, this Court do not find any ground to interfere the well reasoned award passed by the arbitral tribunal."

3. To appreciate the contentions put forth on behalf of the appellant, particularly in the context of the cart and horse and chicken and egg allegories, this order must begin from the beginning, though the end may already have been indicated.

4. The petitioning employer entered into a contract with the respondent supplier for obtaining pistons and piston rings. The



solitary clause from the agreement dated June 28, 2013 that is relevant for the present purpose is clause 13. Such clause records the payment terms and envisages a minimum amount of supply for the contractor to be entitled to the usual rate; or else, the contractor would be paid on the actual rate of supply. One of the sub-clauses also obliged the employer to settle the bills by payment within 30 days of the date of receipt thereof.

5. As to the minimum quantity that ought to be supplied, the following part of the clause is relevant:

"13. ...

A. ...

B. ...

a. The above charges are based on a minimum commitment of 90% of average production volume (as given above). In other words, even if the production volume is below 2,45,700 units in case of pistons and 12,60,000 units in case of piston rings, India Pistons shall be liable to pay for the said minimum quantities. The aforesaid minimum billing commitment shall become 273000 pistons and 1400000 rings per month with effect from 01/04/2014.

In case where Indian Pistons have produced certain quantities of Pistons / Rings and Rhenus is unable to pack the full quantity produced, then the payment to Rhenus will be on the basis of packed quantities only and the minimum payment criteria will not apply. ..."

6. Upon the contractor initiating the arbitral reference on the ground that it remained unpaid for the price of goods sold and delivered, the primary ground of defence urged by the appellant herein was that the contractor did not meet its supply commitment and neglected the repeated reminders and notices that were issued in such regard. To demonstrate that the ground of defence was squarely carried by the appellant to the reference, parts of the notes on argument submitted before the arbitral tribunal have been placed. The relevant parts refer to several notices issued by the appellant to the respondent to the effect that the minimum committed quantum of supply had not been met.

7. To boot, the appellant refers to the issues framed by the arbitral tribunal in the impugned award of September 28, 2018. Paragraph 6 of the award refers the issues, the very first of them being as follows:

"1. Whether the Claimant/Respondent have performed their contractual obligations as per the agreement dated 28.06.2013 entered into between themselves?"



8. The discussion on such aspect begins at paragraph 17 of the award. The agreement between the parties is referred to in detail before the focus shifts to clause 13 thereof. The entirety of the clause is quoted in the award and the rival contentions are recorded and discussed from page 155 of the first volume of the appeal papers. According to the arbitral tribunal, the various grounds cited by the appellant herein for not releasing the payment in terms of the bills raised by the contractor may not have been indicated in the pre-reference correspondence exchanged between the parties. The tribunal found that "all the deficiencies that (have) been pointed out by the Respondent (appellant herein) was not set out by the Respondent in its reply notice dated 28.3.2015 ..., except stating that the Claimant has not achieved the target as per the contract ...". The business end of the discussion is found at page 157 of the first volume of the appeal papers.

9. The arbitral tribunal referred to the invoices submitted by the contractor for the months of July, 2013 to November, 2013 and November, 2014 to October, 2014 and noticed that the appellant herein had not made any payment and had also chosen not to reply thereto. The tribunal then referred to the obligation as recorded in the agreement - of making payment within 30 days of the receipt of the bills - and observed that it was only after the issuance of a notice on March 13, 2015 that the appellant "sent a sum of Rs.2,00,000/- and thereafter, in the reply notice ... admitted that only a sum of Rs.3,78,335.02 is due by it."

10. The following observation of the tribunal on such aspect of the matter is significant:

"Thus, it can be safely concluded that the Respondent violated the terms of contract by not settling the claim within 30 days from the date of receipt of the bills submitted by the Claimant, as contemplated under sub-clause (d) of Clause 13(B) of the agreement under Ex.C1. Except this violation, both the parties have not established and proved any other violation of the terms and conditions of the contract at the initial stage of issuing notice and reply notice thereafter."
(Emphasis supplied)

11. The appellant refers to the fundamental tenets of evidence as recognised in Sections 101 and 102 of the Evidence Act, 1872. It is inarguable that though the Act would not apply in terms, but the fundamental rules of evidence need to be applied by an arbitrator. Thus, according to the appellant, the



claimant in the reference failed to discharge the burden that it was obliged to, for the claimant to be entitled to the primary relief. The challenge here is that despite such ground being squarely taken in course of the arbitral reference and the parsimonious manner in which the tribunal dealt with such aspect, the award has to be seen to be patently absurd, manifestly arbitrary in rendering the finding that it did on such count and otherwise palpably erroneous that has resulted in grave miscarriage of justice.

12. It must be recognised, at this stage, that the arbitrator is the ultimate judge of both the quality and the quantity of the evidence that he would be guided by. There is no doubt that the appellant herein urged before the arbitrator that the contractor had failed to meet its supply obligations in terms of the contract. There is equally no dispute that there may have been several letters issued by the appellant to the contractor in such regard and, indeed, some of them have been noticed in the relevant discussion in the award itself. However, what is of importance is that despite such assertion, the appellant herein could not demonstrate how and in what manner the contractor had failed to meet its supply commitment in terms of the relevant contract. The part of the relevant clause has been extracted and it refers to numbers. For the appellant herein to have succeeded in convincing the arbitral tribunal that the contractor did not meet its supply obligations, it was incumbent on the appellant to demonstrate and prove the same by referring to numbers, both as to the quantum supplied and the quantum expected of it in terms of the contract. What is evident is the barebody assertion by the appellant, both in course of its correspondence and in its written submission, that the contractor had failed to make the requisite supply without any attempt to assert the manner in which the contractor fell short.

13. In the context of the material carried before the arbitral tribunal, it was possible for the arbitrator to conclude that no "other violation" of the contract had been established in course of the reference except the violation on the part of the appellant herein to make the payment in terms of sub-clause (d) of clause 13(B) of the agreement between the parties.

14. In such circumstances, the solitary paragraph expended by the arbitration court in appreciating the purport of the award in the backdrop of the challenge thereto fashioned by the appellant herein was apposite and appropriate. The arbitration court found that the matter had been considered and received the attention of the arbitral tribunal and due reasons had been



furnished in such regard. The arbitration court also referred to the salutary principle in this jurisdiction that if a set of facts permits two possible views to be taken thereon, that one of the views appears to be more plausible to the court would not entitle the court to supplant its view over the arbitrator's within the narrow ambit of authority available under Section 34 of the Act.

15. Notwithstanding the extremely eloquent manner in which the award and the order impugned have been challenged herein, there appears to be hardly any merit in the appellant's case for the appeal to receive any more attention than given to it in course of this judgment and order. The best arguable case of the appellant does not meet the exalted tests demanded of a party challenging an arbitral award.

16. O.S.A. (CAD) No.72 of 2021 is dismissed. C.M.P.No.14133 of 2021 is closed.

There will, however, be no order as to costs.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

bbr

To:

The Sub Assistant Registrar,
Original Side,
High Court of Madras.

+1CC to Mr.S.Ramasubramaniam, Advocate, Sr.No.44736

O.S.A. (CAD) No.72 of 2021

SVI (CO)
K.RK. (04.10.2021)