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

Date of Decision: 16th December, 2021

+ **FAO (COMM) 202/2021 & CM APPL. 45506-08/2021**

BHASIN INFOTECH AND INFRASTRUCTURE PVT LTD

..... Appellant

Through: Mr. Ravi Krishan Chandna, Mr.
Naushad A.Khan, Mr. Mani
Moorjani and Mr. Mudit
Ruhella, Advs.

versus

CONQUERENT CONTROL SYSTEM PVT LTD.

..... Respondent

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. The present appeal has been filed challenging the Order dated 31.08.2021 passed by the learned District Judge (Commercial Court-03), Patiala House Courts, New Delhi in OMP Number 23/2019 dismissing the petition filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'), which in turn had challenged the Arbitral Award dated 30.10.2018 passed by the learned Sole Arbitrator.

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2. The respondent carries on the business of supplying electrical control panel and distribution board. The respondent approached the Haryana Micro and Small Enterprises Facilitation Council (hereinafter referred to as 'HMSEFC') at Chandigarh, Haryana under the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as 'MSME Act') alleging that various work orders were placed by the appellant on the respondent and part payment there-against was received. The respondent alleged that there were outstanding dues from the appellant. Thereafter, the parties were referred to arbitration by the Chairman of the HMSEFC cum Director of Industries & Commerce, Haryana.

3. The learned Arbitrator, vide Award dated 30.10.2018, directed the appellant to pay an amount of Rs.45,88,689/- (Rupees Forty Five Lakh Eighty Eight Thousand Six Hundred Eighty Nine) towards the balance price of goods and interest thereon at the rate provided under Section 16 of the MSME Act, 2006 from 07.11.2017 till the date of payment. The learned Arbitrator also awarded cost of Rs.20,000/- in favour of the respondent.

4. The appellant challenged the said Award before the learned District Judge (Commercial Court-03), who dismissed the same vide the Impugned order dated 31.08.2021.

5. The learned counsel for the appellant submits that the learned District Judge has failed to appreciate that the impugned Award was passed by the learned Sole Arbitrator in favour of the respondent though the respondent had chosen not to lead any evidence in support of its claim. He submits that the appellant was never granted an

opportunity to cross-examine the witness of the respondent, who had merely produced the documents before the learned Arbitrator. He further submits that the learned District Judge and the learned Arbitrator have also failed to appreciate that the invoices raised by the respondent, on the basis of which claims had been made before the learned Arbitrator, were highly inflated. The goods supplied by the respondent were also sub-standard.

6. We have considered the submissions made by the learned counsel for the appellant, however, find no merit in the same.

7. As has been observed by the learned District Judge in the Impugned order dated 31.08.2021, the claim of the respondent was based on the documentary evidence being Exhibit C-I to Exhibit C-XXII, which were admitted in evidence by the appellant without any objection from the appellant regarding their admissibility or mode of proof. The appellant did not make any request to cross-examine the Authorized Representative of the respondent who tendered the said documents. Thereafter, the respondent tendered further documents and its evidence was closed. Even on the said date, the appellant neither requested for any cross-examination of respondent's witness nor raised any objection to the documents being tendered and exhibited. After the closure of the respondent's evidence, the petitioner-appellant tendered affidavit of its witness, who was cross-examined by the respondent. At this stage also, the appellant did not make any request for cross-examination of the respondent's Authorized Representative.

8. The learned District Judge has also placed reliance on Sections 19(1) and 19(2) of the Act, which provide that the Arbitral Tribunal shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872; and that the parties are free to agree on the procedure to be followed by the Arbitral Tribunal in conducting its proceedings. Sub-section (3) of Section 19 of the Act states that on failure of an agreement between the parties on the procedure, the Arbitral Tribunal may conduct the proceedings in the manner it considers appropriate. Sub-section (4) of Section 19 of the Act further provides that such power shall include the power to determine the admissibility, relevance, materiality, and weight of any evidence.

9. In view of the above, no infirmity can be found in the Arbitral Award on the ground that the appellant was not afforded a formal opportunity to cross-examine the witness of the respondent.

10. As far as claim that the invoices were inflated or the quality of the goods supplied was sub-standard, the learned Arbitrator as also the learned District Judge has observed that barring making such bald statement, the appellant has not pointed out any irregularity or flaw in the outstanding amount towards the invoices and the interest thereon. The appellant had also issued the C Forms, Exhibit C-XVI to Exhibit C-XIX, against the invoices raised by the respondent. The appellant had also not filed any details to show how the material supplied by the respondent was faulty or defective. In any case, the learned Arbitrator is the final authority for drawing the inference from the evidence led before him. The Court in its exercise of powers under Section 34 of the Act does not sit in appeal over such inference. The same principle

equally applies to the Court exercising its powers under Section 37 of the Act. In fact, the power of the Court under Section 37 of the Act is even more restricted as the Court is only to ascertain that in the exercise of powers by the Court under Section 34 of the Act, it has not exceeded the scope of the provision of the Act. Where the Award has been confirmed by the Court under Section 34 of the Act, the Court in the exercise of its power under Section 37 of the Act should be even more restrained [*MMTC Limited v. Vedanta Limited*, (2019) 4 SCC 163]. We have also not been shown how the above inference could in any manner be called perverse.

11. In view of the above, we find no merit in the present appeal. The appeal along with pending applications stand disposed of. There shall be no order as to costs.

NAVIN CHAWLA, J

MANMOHAN, J

DECEMBER 16, 2021/sd/U