

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8969 OF 2022

M/s. Rahul Engineering Company

...Petitioner

Versus

Howden Solyent (India) Pvt. Ltd.

...Respondent

...

Ms Jaymala Ostwal with Ms Komal M. Gosavi i/b. M/s. JJ Associates
for the Petitioner.

Ms Shristi Shetty for the Respondent i/b. M/s. M.V. Kini and Co. for the
Respondent.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 15th DECEMBER, 2022.

P. C. :-

1. Rule. Rule is made returnable forthwith. With consent, the petition is heard finally.

2. The challenge in this petition is to the order dated 06/05/2022 whereby the learned Arbitrator rejected the application filed by the Petitioner under Section 30(2) of the Arbitration and Conciliation Act, 1996.

3. The records indicate that the arbitral proceedings are pending before the sole Arbitrator since the year 2019. The Petitioner

claims that on 10/09/2019 parties mutually settled the dispute. On 21/03/2022 the Petitioner filed an application before the Arbitrator under Section 30(2) of the Arbitration Act stating that in view of the settlement arrived between the parties the claim raised by Respondent stands settled and hence the arbitration proceedings need to be disposed of by an award in terms of settlement dated 10/09/2019.

4. The Respondent contested the said application. The Respondent did not dispute that the parties had arrived at an agreement outside the arbitration proceedings. Nevertheless, claimed that the Petitioner had not discharged its liability under the said agreement. It was further stated that the Petitioner had failed to make payment of “settlement amount” contemplated under the said agreement and that the said settlement has failed. Hence, Respondent did not consent for termination of arbitration proceedings.

5. The learned Arbitrator has observed that parties had not executed the said agreement before the Arbitrator and had entered into the said agreement independently outside the arbitration proceedings. It was held that the Respondent -Claimant has disputed mutual settlement. The learned Arbitrator has observed that Section

30(2) of the Arbitration Act can be put in operation only when the parties settle the dispute. Since there was no consensus between the parties, proceedings cannot be terminated. Being aggrieved by this order the Petitioner has invoked the writ jurisdiction of this Court.

6. Heard Ms Jaymala Ostwal, learned counsel for the Petitioner and Ms Shristi Shetty, learned counsel for the Respondent. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

7. Section 30(2) of the Arbitration Act stipulates that if during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. It is manifest from the aforesaid statutory provision that the arbitral award on agreed terms can be drawn only when the parties are able to resolve the dispute between them by mutual agreement. It is only when the Arbitrator is satisfied that the settlement is acceptable to the parties he can proceed to draw an arbitral award under Section 30(2) of the Arbitration Act.

8. In the instant case, the Respondent -Claimant has raised the issue of non payment of 'settlement amount' contemplated under the said agreement. It is stated that the settlement between the parties has failed and therefore there was no question of termination of the present arbitration proceedings. In such circumstances, the Arbitrator was not competent to record the settlement in the form of arbitral award in agreed terms and terminate the proceedings.

9. It is also to be noted that Section 5 of the Arbitration Act, which begins with a non-obstante clause provides that in matters governed by Part I, no judicial authority shall intervene except where so provided in this Part. The object of Section 5 is to ensure that judicial intervention is minimum. In a case of ***S.B.P and Co. V/s. Patel Engineering Ltd. and Anr. (2005) 8 SCC 618*** the Constitution Bench of Supreme Court has observed that the party aggrieved by any order of arbitral tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. It is further held that the object of minimizing judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 of the Constitution of India or under Article 226 of the Constitution of

India against every order made by the arbitral tribunal. It is further observed that once the matter reaches the arbitral tribunal or the sole arbitrator, the High Court would not interfere with orders passed by the arbitrator or the arbitral tribunal during the course of the arbitration proceedings and the parties could approach the court only in terms of Section 37 of the Act or in terms of Section 34 of the Act.

10. In view of the above, no reasons to interfere in the impugned order. The petition stands dismissed. Rule is discharged.

(SMT. ANUJA PRABHUDESSAI, J.)

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