



C.M.A.(MD)No.834 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.09.2022

DELIVERED ON : 10.10.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

C.M.A.(MD)No.834 of 2011

M/s.Vicnivaas Agency,
Represented by its Partner,
T.P.S.Ponkumaran

.. Appellant/Petitioner

Vs.

1.M/s.MMTC Limited,
through its General Manager,
Having its Office at Chennai House,
7 Esplanade,
Chennai- 600 018.

2.Mr.Justice P.N.Nag (Rtd.),
The Sole Arbitrator,
Door No.A 64 Sector-39,
Noida-201 303, Uttar Pradesh.

.. Respondents/Respondents



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PRAYER: Civil Miscellaneous Appeal filed under Section 37 of the Arbitration and Conciliation Act, against the judgment and decree, dated 04.08.2010 made in A.O.P.No.127 of 2006, on the file of the Principal District Judge, Thoothukudi.

For Appellant : Mr.N.Dilip Kumar

For Respondent No.1 : Mr.V.Meenakshi Sundaram

JUDGMENT

J.NISHA BANU, J.

and

N.ANAND VENKATESH, J.

This appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (herein after referred to as the “Act”) against the order passed by the learned Principal District Judge, Thoothukudi in A.O.P.No.127 of 2006, dated 04.08.2010, under Section 34 of the Act, dismissing the petition filed by the appellant challenging the Award passed by the Arbitrator on 16.03.2006.



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2. The brief facts of the case are that the appellant was appointed as the Handling Agent for the 1st respondent Company for export of wheat from Thoothukudi Port through an Agreement dated 01.12.2000. Under the agreement, the appellant was appointed to work as Cargo Handling Agent for the 1st respondent as per the terms and conditions of the Agreement. The further case of the appellant is that under the Agreement, the appellant was expected to receive wheat on behalf of the 1st respondent from FCI godown at Thoothukudi and transport it by trucks to Thoothukudi Port which involves loading the goods into vessels at the specified loading rates. According to the appellant, it is the duty and responsibility of the 1st respondent to supply goods as well as to arrange for vessels.

3. In the course of fulfilling the terms of Contract, the appellant had to hire godowns for storage of goods and according to the appellant, the activity of providing for storage godowns to store goods was not contemplated under the Agreement and it did not fall within the scope of the work agreed under the Agreement. However, the appellant took it as an



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additional work and hired godowns on behalf of the 1st respondent. Initially, when the appellant raised bills for such storage rental charges during February/March, 2001, the 1st respondent paid for it. However, subsequently, the 1st respondent declined to pay such storage rental charges.

4. The further case of the appellant is that the appellant entered into a similar Contract with the 1st respondent Company's branch at Bangalore on an identical Agreement and the entire storage charges/godown rent was paid to the appellant. In view of the same, the appellant was insisting for the payment of the storage rental charges from the respondent and the respondent refused to pay the same. This resulted in a dispute.

5. The appellant therefore invoked the arbitration clause provided under the Agreement. The arbitration was conducted by the 2nd respondent and through an Award dated 16.03.2006, dismissed the claim. Aggrieved by the same, the appellant filed a petition in A.O.P.No.127 of 2006 under Section 34 of the Act before the District Court. When the petition was



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pending, the appellant filed I.A.No.206 of 2007 under Section 34 (4) of the Act, seeking for remitting the Award back to the Arbitrator so as to eliminate the grounds for setting aside the Award. The District Court by an order dated 03.02.2008, allowed the application and remitted the matter back to the Arbitrator for fresh consideration and fixed a time limit for the completion of the proceedings and till then, kept the Award already passed in abeyance.

6. Aggrieved by the above order, a Civil Revision Petition came to be filed before this Court in C.R.P.(PD)(MD)No.806 of 2008. This Court allowed the Civil Revision Petition to a limited extent, modifying the order of the District Court to the following effect:

(a) The Arbitration O.P.No.127 of 2006 shall stand adjourned for a period of 3 months with effect from the date of receipt of a copy of this order.

(b) It is now open to the Arbitrator (second respondent) either to resume the proceedings or to take such other action,



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as in his considered opinion would eliminate the grounds raised for setting aside the award. Since the discretion is entirely left to the second respondent, it is open to him to form an opinion as to whether such an exercise would be undertaken by him at all and if so, the extent to which and the manner in which the exercise would be undertaken by him. In case, the Arbitrator chooses to resume the proceedings, he shall issue notice to both parties, fix a date for hearing and proceed further.

(c) The Arbitrator is requested to communicate his decision, within a period of 3 months to the Principal District Court, Tuticorin as well as to the parties, to enable the Court below to proceed further with Arbitration O.P.No. 127 of 2006, if necessary.

(d) It is made clear that the finding recorded both by the District Court and by this Court that there exist grounds for setting aside the award, is only a prima facie finding and not a conclusive finding. Therefore the Arbitrator and the District Court (while resuming the proceedings in the main O.P) shall consider the matter, uninfluenced by any finding recorded here or in the District Court.



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7. Pursuant to the above order, the Arbitrator heard the parties to the limited extent of remand made by this Court and by an additional Award dated 24.04.2009, re-affirmed the earlier Award dated 16.03.2006 and dismissed the claim made by the appellant.

8. The matter was again taken up by the District Court and after hearing the arguments of both the sides, the impugned order dated 04.08.2010 was passed, dismissing the petition filed under Section 34 of the Act. Aggrieved by the same, the present appeal has been filed before this Court.

9. The learned counsel for the appellant mainly focused his arguments on the terms of Agreement and submitted that the activity of providing storage godowns to store goods was not even contemplated under the Agreement and the appellant had undertaken it as an additional work. To substantiate the same, the learned counsel brought to the notice of this



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Court Clauses 2, 6 and 16 of the Agreement read with the Annexure to the Agreement. The learned counsel further submitted that for the additional work undertaken by the appellant, the 1st respondent Company is bound to pay the entire storage charges/godown rent and Section 70 of the Indian Contract Act will be applicable, which clearly embodies within itself the equitable principle of restitution and prevention of unjust enrichment. The learned counsel further submitted that when the other branches of the 1st respondent Company had paid the entire storage charges/godown rent, there was no reason for the 1st respondent Company to deny their liability. The learned counsel also placed reliance upon the Fax Message dated 06.02.2001 of the General Manager of MMTC, New Delhi to add strength to his argument.

10. Insofar as the Award passed by the 2nd respondent, the learned counsel contended that the Arbitrator after having held that the claim for rental charges is outside the scope of the Agreement, ought to have invoked Section 70 of the Contract Act and ordered for compensation of the



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appellant for the rental/storage charges. However, the Arbitrator had wrongly interpreted Section 70 of the Contract Act and confined it to the Principle of Quantum Meruit.

11. The learned counsel for the appellant while dealing with the findings of the District Court, contended that the learned District Judge failed to appreciate the fact that there was a perverse finding by the Arbitrator and hence it fell within the parameters under Section 34 of the Act for interfering with the Award. Therefore, according to the learned counsel for the appellant, the order passed by the District Judge warrants the interference of this Court and that the appellant is entitled for the relief sought for.

12. The learned counsel for the appellant in order to substantiate his submissions relied upon the following judgments:

(a) *State of West Bengal vs. M/s.B.K. Mondal and Sons* reported in *AIR 1962 SC 779*.



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- (b) *V.R.Subramanyam vs. B.Thayappa and others* reported in *AIR 966 SC 1034.*
- (c) *State of Uttarpradesh vs. Chandra Gupta & Co* reported in *AIR 977 All 28.*
- (d) *Food Corporation of India and Others vs. Vikas Majdoor Kamdar Sahkari Mandli Limited* reported in *2007 13 SCC 544.*
- (e) *Venkatesh Construction Company vs. Karnataka Vidyuth Karkhane Limited* reported in *2016 4 SCC 119.*
- (f) *Mahanagar Telephone Nigam Limited vs. Tata Communication Limited* reported in *2019 5 SCC 341.*
- (g) *Oil & Natural Gas Corporation Limited vs. Saw Pipes Limited* reported in *2003 5 SCC 705.*
- (h) *Delhi Development Authority vs. R.S.Sharma and Company, New Delhi* reported in *2008 13 SCC 80.*
- (i) *ONGC Limited vs Garware Shipping Corporation Limited* reported in *2007 13 SCC 434.*



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13. Per contra, the learned counsel for the 1st respondent Company submitted that Clause 2 read with Clause 6 makes it abundantly clear that the entire responsibility of handling, protection, loss / damages, transit shed and temporary storage of goods before loading the goods into the vessel at the port, is the sole responsibility of the Handling Agent and that is the reason why when the rates were fixed, each item was taken into consideration and the total rate was fixed as per the Annexure. In view of the same, appellant does not have any right to claim for the storage charges or the godown rent. This issue has been sufficiently dealt with by the Arbitrator and since, the claim made by the appellant was covered well within the Agreement, it was held that the rental charges claimed by the appellant is outside the scope of the Agreement. Such a factual finding rendered by the Arbitrator cannot be interfered in a petition filed under Section 34 of the Act and the District Judge rightly dismissed the petition.



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14. On a plea of demurrer, the learned counsel for the 1st respondent submitted that even though Section 70 of the Contract Act will not have any application to the facts of the present case, for the sake of claiming compensation under Section 70 of the Contract Act, the appellant ought to have pleaded and proved that the appellant had done something lawfully for the 1st respondent or delivered something to the 1st respondent and while doing the same, he must not have intended to have acted gratuitously and the 1st respondent must have enjoyed a benefit out of the same. Only if all these ingredients are pleaded and proved, the appellant will be entitled for the benefit of Section 70 of the Contract Act. This burden has not been discharged by the appellant and hence, the Arbitrator was perfectly right in not awarding any compensation as claimed by the appellant. The learned counsel further submitted that the District Court rightly did not interfere with the Award passed by the Arbitrator considering the scope of Section 34 of the Act and hence, there is no ground to interfere with the order passed by the District Judge in this Appeal and the same is liable to be dismissed by this Court.



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15. The learned counsel for the 1st respondent in order to substantiate his submissions, relied upon the following judgments:

(a) *Project Director, National Highways No.45 E and 220 National Highways Authority of India vs. M.Hakeem and another* reported in *2021 9 SCC 1*

(b) *Welspun Specialty Solutions Limited vs. Oil and Natural Gas Corporation Limited* reported in *2022 2 SCC 382*

16. This Court has carefully considered the submissions made on either side and also the materials available on record.

17. At the outset, this Court must keep in mind the scope of an appeal under Section 37 of the Act and thereafter, deal with the submissions made on either side. It will be more beneficial to take note of two recent judgments of the Apex Court in this regard.



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18. The Apex Court in ***UHL Power Company Limited vs. State of Himachal Pradesh*** reported in ***2022 4 SCC 116*** has held as follows:

16. As it is, the jurisdiction conferred on Courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an Appellate Court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed. In MMTC Limited v. Vedanta Limited 7, the reasons for vesting such a limited jurisdiction on the High Court in exercise of powers under Section 34 of the Arbitration Act has been explained in the following words:

“11. As far as Section 34 is concerned, the position is well- settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b) (ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of



this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the (2019) 4 SCC 163 CIVIL APPEAL NO. 10341 OF 2011 fundamental policy of Indian law would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] reasonableness. Furthermore, patent illegality itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.”

17. A similar view, as stated above, has been taken by this Court in K. Sugumar v. Hindustan Petroleum Corporation Ltd.⁸, where it has been observed as follows:



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“2. The contours of the power of the Court under Section 34 of the Act are too well established to require any reiteration. Even a bare reading of Section 34 of the Act indicates the highly constricted power of the civil court to interfere with an arbitral award. The reason for this is obvious. When parties have chosen to avail an alternate mechanism for dispute resolution, they must be left to reconcile themselves to the wisdom of the decision of the arbitrator and the role of the court should be restricted to the bare minimum. Interference will be justified only in cases of commission of misconduct by the arbitrator which can find manifestation in different forms including exercise of legal perversity by the arbitrator.”

18. It has also been held time and again by this Court that if there are two plausible interpretations of the terms and conditions of the contract, then no fault can be found, if the learned Arbitrator proceeds to accept one interpretation as against the other. In Dyna Technologies (P) Ltd. V. Crompton



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Greaves Ltd. 9, the limitations on the Court while exercising powers under Section 34 of the Arbitration Act has been highlighted thus:

“24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of (2020) 12 SCC 539 (2019) 20 SCC 1 CIVIL APPEAL NO. 10341 OF 2011 alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the



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arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.”

19. In Parsa Kente Collieries Limited v. Rajasthan Rajya Vidyut Utpadan Nigam Limited¹⁰, advertng to the previous decisions of this Court in McDermott International Inc. v. Burn Standard Co. Ltd. And Others ¹¹ and Rashtriya Ispat Nigam Ltd. V. Dewan Chand Ram Saran¹², wherein it has been observed that an Arbitral Tribunal must decide in accordance with the terms of the contract, but if a term of the contract has been construed in a reasonable manner, then the award ought not to be set aside on this ground, it has been held thus:

“9.1 ..It is further observed and held that construction of the terms of a contract is primarily for an Arbitrator to decide unless the Arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do. It is further observed by this Court in the aforesaid



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decision in paragraph 33 that when a court is applying the public policy test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the Arbitrator on facts has necessarily to pass muster as the Arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. It is further observed that thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score.

9.2 Similar is the view taken by this Court in NHAI v. ITD Cementation (India) Ltd. (2015) 14 SCC 21, para 25 and SAIL v. Gupta Brother Steel Tubes Ltd

20. In Dyna Technologies (P) Ltd. (supra), the view taken above has been reiterated in the following words:

“25. Moreover, umpteen number of judgments of this Court have categorically held that the courts



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should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act.

21. An identical line of reasoning has been adopted in South East Asia Marine Engg. & Constructions Ltd.[SEAMAC Limited] V. Oil India Ltd. and it has been held as follows:

“12. It is a settled position that a court can set aside the award only on the grounds as provided in the Arbitration Act as interpreted by the courts. Recently, this Court in Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd. [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1 : 2019 SCC OnLine SC 1656] laid down the scope of such interference. This Court observed as follows : (SCC pp. 11-12, para 24)

24. There is no dispute that Section 34 of



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the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.

13. It is also settled law that where two views are possible, the Court cannot interfere in the plausible



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view taken by the arbitrator supported by reasoning. This Court in Dyna Technologies [Dyna (2020) 5 SCC 164 CIVIL APPEAL NO. 10341 OF 2011 Technologies (P) Ltd. V. Crompton Greaves Ltd., (2019) 20 SCC 1 : 2019 SCC OnLine SC 1656] observed as under : (SCC p.12, para 25)

25. Moreover, umpteen number of judgments of this Court have categorically held that the Court should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The Courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act. [emphasis supplied]

19. The Apex Court in ***Haryana Tourism Limited vs. Kandhari Beverages Limited*** reported in **2022 3 SCC 237** has held as follows:



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“9. As per settled position of law laid down by this Court in a catena of decisions, an award can be set aside only if the award is against the public policy of India. The award can be set aside under Sections 34/37 of the Arbitration Act, if the award is found to be contrary to: (a) fundamental policy of Indian law; or (b) the interest of India; or (c) justice or morality; or (d) if it is patently illegal. None of the aforesaid exceptions shall be applicable to the facts of the case on hand. The High Court has entered into the merits of the claim and has decided the appeal under Section 37 of the Arbitration Act as if the High Court was deciding the appeal against the judgment and decree passed by the learned trial court. Thus, the High Court has exercised the jurisdiction not vested in it under Section 37 of the Arbitration Act. The impugned judgment and order passed by the High Court is hence not sustainable.”

20. The extent of judicial scrutiny under Section 34 of the Act is limited and the scope of interference is narrow. Under Section 37 of the



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Act, the extent of judicial scrutiny and scope of interference is further narrowed down. To put it lightly, Section 34 of the Act acts as a pigeon hole where only a sparrow can enter and when it comes to Section 37 of the Act, probably only an ant can enter. For even ants would not rush in where sparrows fear to tread.

21. An appeal under Section 37 is more or less akin to a second appeal, the first appeal being to the Court by way of objections under Section 34 of the Act. Where there are concurrent findings of facts and law, the Appellate Court would be very cautious and reluctant to interfere into the findings returned in the Award by the Arbitral Tribunal and confirmed by the Court under Section 34 of the Act. This Court must keep in mind the caution expressed by the Apex Court in ***Mc Dermott International Inc., vs. Burn Standard Co. Ltd., and Others*** reported in ***2006 11 SCC 181***, wherein it has been held that the supervisory role of the Court in arbitration proceedings has been kept at a minimum level and this is because the parties to the Agreement make a conscious decision to exclude the Courts'



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jurisdiction by opting for arbitration as the parties prefer the expediency and finality offered by it.

22. The relevant clauses in the Cargo Handling Agreement and the Annexure are extracted hereunder:

2.DUTIES & RESPONSIBILITIES OF THE HANDLING AGENT

2.1 The HANDLING AGENT shall make arrangements to receive/take delivery of Goods on behalf of MMTC from nominated Godowns of FCI and co-ordinate all activities after receipt of delivery order including identification of stocks with inspection agencies/buyers representative. The Handling Agent will ensure only identified approved goods are transported and loaded,

2.2 The HANDLING AGENT shall arrange transportation of goods from FCI's Depots nominated by MMTC after weighment. The weighment shall be recorded for each truck by the HANDLING AGENT and the proof shall be provided to MMTC as and when demanded: MMTC shall have the right to



nominate its Officials/or their representative to supervise the operations.

2.3 The HANDLING AGENT shall be solely responsible for the safety of Goods and shall not move or transport the Goods from one place to another without instructions in writing, from MMTC. The HANDLING AGENT shall accept full responsibility for any act of theft, criminal misappropriation and breach of trust in respect of MMTC's goods entrusted to the HANDLING AGENT by any such event. The HANDLING AGENT shall be fully responsible and indemnify MMTC for any loss or damage to the Goods, claims of whatsoever nature because of improper storage and handling of stocks, on behalf of MMTC. The HANDLING AGENT shall compensate MMTC for any loss/damage to stock while Goods are under the HANDLING AGENT's custody. The compensation for loss/damage shall be payable to MMTC at market value of the stock as ascertained by MMTC.

2.4 The HANDLING AGENT shall not hypothecate or mortgage or create any lien/charge whatsoever on the Goods received by them on behalf of MMTC. The HANDLING AGENT shall also have no right to withhold the delivery of the



Goods in any circumstances for whatever reason irrespective of nay of their party claim also. HANDLING AGENT shall fully indemnify and shall keep MMTC fully indemnified against any claim loss/damages whatsoever that may be incurred or made by any parties on MMTC.

2.5 It shall be the responsibility of the HANDLING AGENT to make all arrangements like procuring adequate labour and other necessary equipments required for lifting the stock from the FCI depots

2.6 The HANDLING AGENT shall be responsible for proper handling, for taking all precautions and security arrangements against loss or damage to the Goods. The HANDLING AGENT shall accept full responsibility for any act of theft, criminal mis-appropriation or breach of trust in respect of MMTC's Goods entrusted to the HANDLING AGENT. For non-delivery or short delivery of the consignments, MMTC shall reserve the right to impose penalty at the rates to be determined by it from time to time in addition to recovering the cost of the material. Such determination of penalty by MMTC shall be final and binding on the HANDLING AGENT.



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2.7 It shall be the sole responsibility of the HANDLING AGENT to protect the consignment from damages during transportation, stocking and loading into the ship. The HANDLING AGENT shall maintain a proper account of quantity loaded from each FCI Depot.

2.8 At the time of shipment, the HANDLING AGENT shall arrange transportation of Goods from FCI Depot after pre-inspection survey and weighment to port/wharf for effecting shipments.

2.9 The HANDLING AGENT shall arrange sufficient labour/trucks, etc., at their own cost for loading of Goods into rake/ship in time.

2.10 The HANDLING AGENT shall make all arrangements to bring back the Goods rejected by surveyor to MMTC's godown for temporary storage/without any charges.

2.11 The HANDLING AGENT shall arrange for temporary storage of Goods (in godown at port before loading into the vessel, if need be



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2.12 The HANDLING AGENT shall arrange for inspection of vessels' hatches/holds by the surveyor and undertake fumigation prior to loading of vessel. They shall also obtain certificates to this effect to the satisfaction of MMTC

2.13 The HANDLING AGENT shall take-up stevedoring in case of FOB/C&F shipment at their cost.

2.14 The handling agent has to ensure loading rate of 3500 MT PWWD.

2.15 In case of shipment of Goods in bulk, the HANDLING AGENT shall be responsible/liable for retrieving all empty bags, counting, bundling the same and storing it, in the godown hired by MMTC before the same is disposed off by MMTC. MMTC shall dispose of the bags immediately on compilation of shipments or may ask Handling Agents to quote rate for purchase of gunny bags by them or call for tenders, Full details of the bags shall be kept by the HANDLING AGENT shipment wise. Any shortage will be to the account of HANDLING AGENT and MMTC shall have the right to recover such amount from the bills payable to the HANDLING



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AGENT.

2.16 The HANDLING AGENT shall prepare and file with concerned authorities all documents like shipping bills, GR Forms, invoices, obtain customs clearance, arrange pre-shipment survey, sampling/weightment, etc., and obtain clean B/L upon shipment. Any charges/expenses in this regard are to be borne entirely by the HANDLING AGENT. Any amendment/changes required in the documents shall be carried out by the HANDLING AGENT. HANDLING AGENT shall be held fully responsible for any loss to MMTC on account of discrepancy in documents. HANDLING AGENT is required to rectify any such discrepancy immediately and inform MMTC accordingly.

2.17 The HANDLING AGENT shall obtain all shipping documents strictly in terms of L/C and shall be responsible for timely despatch of same to MMTC's designated office(s)

6.RATES

6.1 The Rates payable by MMTC to the HANDLING AGENT under various heads shall be consolidated amount of Rs. 327.25 per Mt. details of work to be covered are listed in the



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enclosed Annexure-1 and the consolidated rate will be constant and will not be prone to escalation or de-escalation irrespective of the fact whether item of work becomes necessary or otherwise for the efficient performance of the work assigned to the Handling Agent. All statutory levies like all cessess, wharfage, dues, etc., shall be borne by MMTC.

6.2 The HANDLING AGENT shall bear charges for opening of bags and bulking of goods on the wharf/vessel in the even of FOB/C&F bulk shipment.

6.3 The HANDLING AGENT shall bear all the expenses including labour charges for refilling the bags with sound Goods recovered from spillage and shifting of same to warehouse wharf/port The HANDLING AGENT shall maintain a separate record for such retrieved Goods.

6.4 The HANDLING AGENT shall be responsible to provide the facility of transit shed at their cost and expense

6.5 In case of demurrage and/or extra wharlage due to non-achievement of the guaranteed rate of loading, the same shall be to the account of the HANDLING AGENT.



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6.6 All pre-shipment/shipment inspection charges shall be payable by MMTC.

6.7. All losses including demurrage, detention arising out of the delay in rake unloading/vessel loading would be to the account of the HANDLING AGENT.

6.8 The consolidated rates agreed with the Handling Agent shall be in force during the pendency of the agreement. There shall be no escalation or de-escalation of the consolidated rates agreed for whatsoever reason.

6.9 MMTC shall provide all requisite documents in time to comply and fulfill all statutory formalities.

ANNEXURE

<i>S.No.</i>	<i>Activity</i>	<i>Cost/MT</i>
<i>1</i>	<i>Loading of SGS pre-inspected and approved cargo at FCI warehouse.</i>	<i>Rs.11/-</i>



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S.No.	Activity	Cost/MT
2	<i>Organising labour at FCI warehouse at Tuticorin town and at port warehouse of FCI as the case may be.</i>	<i>Rs.21/-</i>
3	<i>Slinging of the bags at FCI godown.</i>	<i>Rs.6/-</i>
4	<i>Weighrment at FCI/Independent Weighbridge.</i>	<i>Rs.5/-</i>
5	<i>Transportation to port wherever necessary.</i>	<i>Rs.51/-</i>
6	<i>Entry clearance of trucks into port and outward clearance of unloaded trucks</i>	<i>Rs.2/-</i>
7	<i>Unloading from trucks</i>	<i>Rs.41/-</i>
8	<i>Organising private labour to clean and bag at wharf.</i>	<i>Rs.9/-</i>
9	<i>De-slinging and de-bagging at wharf</i>	<i>Rs.3/-</i>
10	<i>Cleaning of the wheat at wharf.</i>	<i>Rs.3/-</i>
11	<i>Bagging of cleaned wheat.</i>	<i>Rs.4/-</i>
12	<i>Slinging of the bagged wheat</i>	<i>Rs.3/-</i>
13	<i>Onboard labour levies if any.</i>	<i>Rs.30/-</i>
14	<i>Shore labour levy if any</i>	<i>Rs.25/-</i>
15	<i>Shore handling expenses.</i>	<i>Rs.26/-</i>
16	<i>Organising private labour to un-sling, cut open, dump and trim the cargo inside the hatches.</i>	<i>Rs.11/-</i>
17	<i>Collect sweepings</i>	<i>Rs.3/-</i>
18	<i>Clean sweepings, bag sweepings, sling them and load on to hatch to reduce wastage</i>	<i>Rs.4/-</i>



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S.No.	Activity	Cost/MT
19	<i>Organise tally clerks on board and at shore.</i>	<i>Rs.5/-</i>
20	<i>Organise and co-ordinate Phythosanitary Inspection and certification</i>	<i>Rs.3/-</i>
21	<i>Organise fumigation and certification.</i>	<i>Rs.10/-</i>
22	<i>Organise berthing of vessel with guaranteed immediate berthing. Any loss of time due to delayed berthing to the account of CFA</i>	
23	<i>Responsibility to organise additional shore gears to achieve the desired loading rate of 3500 MTS</i>	<i>Rs.5/-</i>
24	<i>All miscellaneous expenses to the account of CFA to achieve minimum guaranteed load rate of 1500 MTS</i>	<i>Rs.5/-</i>
25	<i>Lime washing and washing of batches or damage as required by Master of Vessel.</i>	<i>Rs.15/-</i>
	TOTAL	Rs.301/-
	Service Charge	Rs.25/-
	Service Tax at actuals ie.5%	Rs.1.25/-
	Wastage 0.5% of value of cargo	Rs.25/-



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23. According to the learned counsel for the appellant, the storage of goods before the same is loaded into the vessel, is outside the scope of the agreement. Hence, when the appellant undertook to handle the storage of the goods, it is an additional work done by the appellant to the benefit of the 1st respondent Company and hence, the appellant must be properly compensated. Since, the storage is beyond the scope of the Agreement, the provisions of Contract Act will apply as provided under Clause 16 of the Agreement and by virtue of the same, Section 70 of the Contract Act will come into operation and the appellant is entitled for restitution of the storage charges borne by the appellant.

24. While dealing with the above issue, the Arbitrator has held that the consolidated rate as fixed under the Annexure will not be subject to any escalation and considering the Clauses in the Agreement, there is no scope for the claimant to make any new claim under any head for whatsoever reason. This finding was rendered by the Arbitrator by taking into consideration Clause 2 and Clause 6 of the Agreement. On carefully going



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through the same, the appellant has been given the absolute responsibility to take delivery of the goods from the nominated godowns of FCI, arrange for the transportation of the goods after weighment, ensure the safety of the goods and accept full responsibility in respect of the goods and indemnify the 1st respondent for any loss or damages to the goods, to protect the consignment from damages during transportation, stocking and loading into the ship at the port, to arrange for the temporary storage of the goods in godown at port before loading into the vessel and to make all arrangements to bring back the goods rejected by the Surveyor to the godown belonging to MMTC. In short, the appellant has been saddled with the responsibility right from unloading from the FCI godown till the loading of the goods at the Thoothukudi port. The issue of storage of the goods, for whatever period, falls well within this process. The appellant claims that it is an additional work beyond the scope of the contract and hence is entitled for reimbursement of storage charges. Whereas, the 1st respondent claims that the payment of storage charges is beyond the scope of the Agreement and it is the responsibility of the appellant and consequently, the appellant is not



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entitled to be compensated towards storage charges/godown rent.

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25. The Arbitrator while dealing with this issue has held that the storage in godown before the goods are loaded in the port, is the responsibility of the appellant and it cannot be called as an additional work as claimed by the appellant. The Arbitrator has also taken into consideration Clause 6 which deals with the rates fixed and payable by the 1st respondent. This Clause makes it clear that there shall be no escalation of the consolidated rates agreed for whatsoever reason. The Arbitrator also took into consideration, the Annexure to the Agreement which provides for item wise rates fixed.

26. According to the learned counsel for the appellant, the Arbitrator has wrongly interpreted Clause 2.11 of the Agreement which provided for temporary storage of goods in godown at port and whereas, the Arbitrator gave a finding as if the storage of goods in godown extended even beyond the port. In the considered view of this Court, the finding rendered by the



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Arbitrator was based on the overall understanding of Clauses 2, 6 and the Annexure to the Agreement. The Handling Agent was expected to arrange for temporary storage of goods and provide the facility for transit shed at their cost and expense. The appellant has interpreted the same as if the transit shed is a temporary arrangement which cannot go beyond 30 days. Whereas, the 1st respondent has interpreted it to the effect that the transit shed is an intermediary process between unloading the goods from FCI godown and loading the same in the port and there is no time period fixed under the Agreement. Therefore, it was contended that the interpretation given by the appellant that whatever period exceeded thirty days will not be covered under the Agreement, is beyond the scope of the Agreement and such an interpretation has been made to suit the convenience of the appellant.

27. The Arbitrator has come to a conclusion that there were deliberations between the parties before the rates were fixed and that is the reason why Clauses 2.15, 6.1 and 6.8 were incorporated in the Agreement



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and hence, there is no scope for the appellant to claim compensation beyond what has been fixed under the Agreement. The Arbitrator has given a finding to the effect that the claim made by the appellant goes beyond the scope of the Agreement. This finding cannot be read in isolation and it must be read along with the other reasonings given by the Arbitrator. The Arbitrator has found that whatever charges are claimed by the appellant falls within the Agreement and therefore, any extra charges claimed by the appellant, goes beyond the scope of the Agreement. The learned counsel for the appellant was not right in interpreting the same as if the storage charges fell beyond the scope of the Agreement and hence, Section 70 of the Contract Act will apply and consequently, the appellant will be entitled for restitution of the storage charges.

28. Even after the matter was remitted back to the file of the Arbitrator, the learned Arbitrator took into consideration the communication made through Fax, dated 06.02.2001 by the Manager of the 1st respondent Company and the claim made by the appellant to the effect



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that the storage charges were reimbursed by the other branches of the 1st respondent Company. The Arbitrator rendered a finding that the Manager of the 1st respondent Company cannot alter the terms of the Agreement by expressing his personal view. It was further held that there is no justification on the part of the appellant to claim for storage charges for the godown beyond thirty days and such a claim is beyond the terms of the Agreement and hence, the Arbitrator cannot grant compensation beyond the terms of the Agreement. The Arbitrator has further held that the alleged payment made from 08.02.2001 to 04.04.2001 for a sum of Rs.3,35,360/- as godown charges, was not made to the appellant, but it was paid as a special arrangement for hiring the godown space to PSTS Heavy Equipment and Sri Krishna Trading Corporation Limited and such temporary arrangements cannot be inconsistent with the express terms of the contract which does not provide for a separate rent for the storage in godown and it only provides for the consolidated rates payable to the appellant. The Arbitrator has also gone in detail on the alleged fraud which was raised by the appellant and held that there was no fraud committed by the 1st respondent



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Company. This finding of the Arbitrator has been upheld by the District Court under Section 34 of the Act.

29. In the considered view of this Court, while exercising the jurisdiction under Section 37 of the Act, this Court is only expected to see if the finding rendered by the Arbitrator and as confirmed by the District Judge under Section 34 of the Act, is a possible and plausible interpretation of the terms of Agreement. This Court holds that the terms of the contract has been construed in a reasonable manner and the Award passes muster. Just because an alternative view on facts and interpretation of contract exists, that can never be a ground for interfering with an Award. This Court cannot deal with this appeal like a regular appeal and the above judgments make it very clear that this Court will be exceeding its jurisdiction, if the Award is interfered by questioning the interpretation given to the relevant Clauses of the Agreement and which are also backed by sound reasons.



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30. In view of the above findings, there is no need for this Court to go into the other issue pertaining to the applicability of Section 70 of the Contract Act. This issue will arise for consideration only if this Court holds that the appellant has done extra work / additional work which is not founded in the Agreement. Hence, the interpretation given to Section 70 of the Contract Act *qua* the Principle of Quantum Meruit by the Arbitrator, does not require a finding in this appeal. Accordingly, this Court is not dealing with the arguments made on either side on this issue.

31. In the result, this Court does not find any ground to interfere with the Award passed by the Arbitrator and as confirmed by the District Court under Section 34 of the Act and accordingly, this Appeal stands dismissed. Considering the facts and circumstances of the case, there will be no order as to costs.

[J.N.B., J.] [N.A.V., J.]
10.10.2022

Index : Yes/No
Internet : Yes/No
ssr/PJL



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To
The Principal District Judge,
Thoothukudi.



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J.NISHA BANU,J.

and

N.ANAND VENKATESH, J.

PJL

**Pre-delivery Judgment made in
C.M.A.(MD)No.834 of 2011**

10.10.2022