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Arb.O.P (Com.Div.) No.31 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2023

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.31 of 2022

M/s.Oriental Veneer Products Ltd.,
having registered Office at
No.36, Mohamadi Lakada Bazar,
M.S.Road, Mumbai-7.

... Petitioner

Vs.

1. Union of India,
represented by its General Manager,
Integral Coach Factory,
Chennai.
2. The Chief Material Manager,
Integral Coach Factory,
Chennai.

... Respondents

Arbitration Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the arbitral award dated 26.07.2021, passed by Mr.K.V.Babu, sole Arbitrator, in the arbitration proceedings between the petitioner and the respondents arising out of O.P.No.123 of 2019, on the file of the Court for being against the public policy of India and patently illegal, therefore, liable to be set aside under section 34 (2) (b) (ii) and 34 (2A) of the Act and to pass orders for costs incurred by the petitioner, in filing the present petition.



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For Petitioner : Mr.K.Ashok Kumar

For Respondents: Mr.M.Vijay Anand
Additional Standing Counsel

ORDER

This Arbitration Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called as “the Act”) to set aside the arbitral award, dated 26.07.2021, passed by Mr.K.V.Babu, sole Arbitrator, arising out of O.P.No.123 of 2019.

2. The only issue involved in the present Original Petition is that, for the delay in supply of the material, Learned Arbitrator imposed costs towards general damages, which resulted in cancellation of orders.

3. The learned counsel appearing for petitioner would contend that the the petitioner is a Contractor, doing contract work of supplying materials, and the petitioner has been awarded with the tender work by the respondents. As per the terms and conditions of the contract, if there is any delay in supply of the material by the petitioner, respondents are entitled to



seek costs towards liquidated damages and not under general damages,

whereas, the learned Arbitrator has passed orders, as if, the respondents are entitled for general damages as well. In support of his contention, the learned counsel referred to Clause 7.0, which talks about the Failure and Termination of the Contractor as follows: _

"0702. Failure and Termination:- If the Contractor falls to deliver the stores or any Installment thereof within the period fixed for such delivery in the contract or as extended or at any time repudiates the contract before the expiry of such period the Purchaser may without prejudice to his other rights:-

Recover from the Contractor as agreed liquidated damages and not by way of penalty a sum equivalent to 2 per cent of the price of any stores (including elements of taxes, duties, freight, etc.) which the Contractor has failed to deliver within the period fixed for delivery in the contract or as extended for each month or part of a month during which the delivery of such stores may be in arrears where delivery thereof is accepted after expiry of the aforesaid period, or

Cancel the contract or a portion thereof and if so desired purchase or authorize the purchase of the stores not so delivered or others of a similar description (where stores exactly complying with particulars are not in the opinion of the Purchaser, which shall be final, readily procurable), at the risk and cost of the Contractor. It shall, however, be in the discretion of the purchaser to collect or not, the security deposit from the



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firm/firms on whom the contract is placed at the risk and expense of the defaulted firm."

3.1 By referring to clause (a), the learned counsel would contend that, there is no provision under the contract for levying costs under the general damages, and even assuming, there is any delay in supply of the material, the respondents are entitled to make recovery only under liquidated damages. Learned counsel would contend that, in the present case, the respondents have made deduction under the category of general damages to a sum of Rs.17,23,007/- from the earlier bills, that too, without quantifying the liquidated damages, which they are not entitled to so. Therefore, the learned counsel would contend that Arbitral Tribunal award suffers from patent illegality and liable to be set aside.

4. On the other hand, learned counsel for the respondents would contend that, in general, the respondents would collect the security deposit at 10% since the petitioner is a regular supplier of various products, the respondents have not collected any amount, if they collect 10% amount,



they would quantify 10% against the delay in delivery. Since the Arbitral Tribunal has come to the conclusion that there was delay in supply of the materials, which resulted in termination of the contract, deduction made by the respondents under the head of general damages is sustainable. Therefore, it is submitted that since the damage levied is only for non supply of the material despite two extensions of the period granted, prayed this Court to confirm the award as there is no illegality in the award.

5. Heard the learned counsel for the petitioner and respondents and perused the award passed by the Arbitral Tribunal.

5.1. Thus, it is seen from the impugned award that, the Arbitral Tribunal has awarded costs towards general damages as claimed by the respondents citing the reasons that there was delay on the part of the petitioner/claimant in supply of the materials, which resulted in termination of the contract, therefore, the respondents are entitled for general damages. As rightly contended by the learned counsel for the petitioner, the Arbitral Tribunal has failed to consider the aspect that, by virtue of the contract,



whether for the delay in supply of the material by the petitioner, the respondents are entitled to make recovery under general damages or liquidated damages, and also the aspect that, in the event of delay in supply of material, both the parties have to be compensated as per the terms and conditions. The terms and conditions of the contract is very clear that in the event of delay in supply of the materials by the petitioner, the respondents are entitled for liquidated damages.

5.2 Admittedly, no claim for liquidated damages has been made in the present case, and without ascertaining the liquidated damages, deduction of bill amount of Rs.17,23,007/- under the category of general damages, which the respondents are not entitled as per the terms of the contract, is not in accordance with law. The Arbitral Tribunal, without considering all these aspects, mechanically, passed award holding that the respondents are entitled to make recovery under general damages. Hence, this Court is of the considered view that Arbitral Tribunal has committed patent illegality while passing the award.



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6. In the result, this Arbitration Original Petition is allowed and the

impugned Award dated 26.07.2021 passed by the learned Arbitrator is set aside.

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Speaking/Non-speaking order

Index : Yes / No

Neutral Citation: Yes / No

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KRISHNAN RAMASAMY.J.,
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