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Arb.OP(Com.Div)No.283 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

Arb.OP(Com.Div)No.283 of 2023

and

A.No.3198 of 2023

M/s.Chemfab Alkalies Limited,
Having its registered office at
TEAM House, GST Road,
Vandalur,
Chennai-600 048
Represented by its Company Secretary

...Petitioner

Vs.

M/s.Shanti Enterprises Electricals Pvt Ltd.,
Rep. by B.Ramachandran,
Vice President (Operation),
Registered office at
No.37, Josier Street,
Nungambakkam, Chennai-600 034.

....Respondent

Prayer:- This Arbitration Original Petition has been filed under Section 34(2) of the Arbitration and Conciliation Act, 1996 to set aside the award of the Sole Arbitrator in Arbitration A.C.P.No.(SEE/CAL 1) 1/2021 dated 05.02.2023.



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For Petitioner : Mr.M.Thivakkaran
for M/s.A.S.Kailasam

For Respondent : Mr.P.Giridharan
and Mr.C.Thiagarajan

ORDER

This Arbitration Original Petition has been filed under Section 34(2) of the Arbitration and Conciliation Act, 1996 to set aside the award of the Sole Arbitrator in Arbitration A.C.P.No.(SEE/CAL 1) 1/2021 dated 05.02.2023.

2. The brief facts of the case is that the respondent/claimant is engaged in the business of supply, installation, testing and commissioning of electrical installations covering all aspects of electrification. The petitioner placed two orders with the respondent on 23.06.2018, namely a Purchase Order ref.WO.No.CCAL-OPVC/18-19/003, dated 23.06.2018, for supply of electrical equipment/items for their proposed PVC pipe manufacturing unit; and Work Order No.WO NO.CCAL/18-19/005, dated 23.06.2018, for erection of electrical equipment. The contract between the petitioner and the respondent is for a total value of Rs.2,64,26,736/- and



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the time for completion of both the Purchase Order and Work Order was scheduled for 3 months from the date of order viz., 23.06.2018. The recitals/clauses in the contract between the petitioner and the respondent also stipulate for payment terms and liquidated damages in case of delay. However, due to poor planning and lackadaisical approach of the respondent, the supply and erection was not completed on time, despite the respondent being well aware that the time was the essence of the contract. Therefore, a sum of Rs.27,44,714/- was deducted towards Liquidated Damages as per the terms and conditions of the Purchase Order and Work Order for delay beyond agreed period. The inordinate delay in the completion of the work caused loss and damage to the petitioner and since there was a Liquidated Damages clause, the same was invoked. Assailing the said deduction of amount, the respondent took recourse to the arbitration proceedings. Totally five issues were framed by the learned Arbitrator and subsequently both the parties adduced their oral evidence. The arbitral Tribunal had proceeded to decide the case on available documentary and oral evidence. The learned Arbitrator has passed an Award dated 05.02.2023 in favour of the respondent. Challenging the said award, the petitioner has filed the present Arbitration Original Petition.



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3. The learned counsel for the petitioner assails the award passed by the learned Arbitrator dated 05.02.2023 on the following two grounds:

- (i) The award passed by the learned Arbitrator is beyond the scope of the agreement entered into between the parties.
- (ii) The award is liable to be set-aside on the ground of patent illegality invoking Section 34(2A) of the Arbitration and Conciliation Act (in short, 'the Act').

4. Further, the learned counsel for the petitioner referred to para 15 of the award, which reads as follows:

“(15) From an overall assessment of oral and documentary evidence, emails exchanged and oral evidence of parties, namely Cw-1 and Rw-1, the Arbitral Tribunal comes to a conclusion that the claimant alone cannot be solely held responsible for the delay in completion of the contracted work. At the same time the Claimant cannot be wholly absolved. Both the parties have contributed towards the delays. Therefore, in order to balance equities, considering the admitted fact that the claimant was permitted to complete the entire contracted work to the satisfaction of the Respondent, it would be just and proper to hold that the Claimant would be entitled to claim the sum of Rs.27,44,714/- withheld by the Respondent towards alleged liquidated damages. Infact, the amount withheld has also not been satisfactorily shown to be the actual amount calculated as per the clause relating to liquidated damages for incomplete work alone. Even the consultant engaged by the Respondent, M/s.Jayam Consultant has not certified any amount to be forfeited towards liquidated damages.”



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5. By referring to the above observation made in the award, the learned counsel for the petitioner would submit that the learned Arbitrator applied the principle of equity and awarded the compensation, which is not permissible in terms of Section 28(2) of the Act. Further, he would submit that, the Exs.B9 and B12 were not considered by the learned Arbitrator. Hence, he would submit that the present award is liable to be set aside on the aspect of the patent illegality.

6. Per contra, Mr.P.Giridharan & Mr.C.Thiagarajan, learned counsel for the respondent would submit that the petitioner deducted a sum of Rs.27,44,714/- towards Liquidated Damages. The respondent filed a claim before the learned Arbitrator and after thorough consideration of the documents filed by both the parties, the learned Arbitrator came to the conclusion that the delay is arbitrable, and thereafter arrived at a conclusion that the petitioner is liable to pay a sum of Rs.27,44,714/- to the respondent, which was withheld without any basis. Therefore, he would contend that based on the documents only, the present award came to be passed. Hence, there is no illegality in the award. Further, he submitted that



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the arbitral Tribunal has not arrived at the said figure based on the equities, but based on the claim made by the claimant, the present award has been passed and further the said amount was exactly deducted as per the Terms and Conditions of the Purchase Order and Work Order dated 23.06.2018 for delay beyond the agreed period.

7. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent and perused the materials available on record.

8. In the present case, the learned counsel for the petitioner submitted that the present award is liable to be set-aside on the two grounds mentioned above.

9. With regard to the submission of the learned counsel for the petitioner that the award passed is beyond the scope of agreed terms and conditions of both the Purchase Order and Work Order dated 23.06.2018, this Court is not in a position to accept the same. The learned Arbitrator has considered all the evidence and arrived at the categorical conclusion that the delay is on the part of both the parties. Under these circumstances,



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the learned Arbitrator has awarded a sum of Rs.27,44,714/-, which was the amount deducted by the petitioner from the invoices raised by the respondent. It is not that the learned Arbitrator passed an award based on the equity, without any basis. Considering the fact that the respondent has completed the work to the satisfaction of the petitioner and the delay is attributable to both sides, the learned Arbitrator directed the payment of the aforesaid amount. In view of the above, this Court does not find anything wrong in the award as contended by the petitioner stating that the award is beyond the scope of the agreed terms and conditions between the parties.

10. As far as the patent illegality is concerned, the learned counsel for the petitioner submitted that Exs.B9 and B12 were not considered. A perusal of para no.15 of the award shows that all the oral and documentary evidence were considered by the learned Arbitrator. The said para no.15 further categorically states that the delay is attributable to both sides. On the basis of the overall analysis of the documents and submissions, the learned Arbitrator passed an award dated 05.02.2023, directing the petitioner to pay a sum of Rs.27,44,714/- within a period of two months from the date of receipt of a copy of the award. This Court does not find



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any merit in the submissions made by the learned counsel for the petitioner and, hence, the award passed by the learned Arbitrator stands confirmed.

11. In the result, the Arbitration Original Petition is dismissed. No costs. Consequently, the connected Application is closed.

24.07.2024

Index: Yes/No

Web: Yes/No

Speaking/Non Speaking

Neutral Citation: Yes/No

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KRISHNAN RAMASAMY.J

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