IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION APPEAL NO. 89 OF 2024

M/S. Accurate Facilities India ...Appellant

Versus

M/S. Simple Engineering Solutions ...Respondent

WITH
INTERIM APPLICATION NO. 13865 OF 2024
WITH
INTERIM APPLICATION NO. 12822 OF 2024
IN
ARBITRATION APPEAL NO. 89 OF 2024

Mr. Ranjit A. Thorat, Senior Advocate, *a/w Pratibha D. Shelake, Rahul Rote, for the Appellant.*

Ms. Shamamah Kazi, *a/w Sagar Pujari, for Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : JULY 11, 2025

Oral Judgement:

Context and Factual Background:

1. This is a Petition filed under Section 37 of the Arbitration and Conciliation Act, 1996 ("***the Act***") impugning an order dated August 3, 2024 passed by the District Judge, Thane ("***Impugned Judgement***") upholding an arbitral award dated March 28, 2018 ("***Arbitral Award***")

passed by the MSME Facilitation Council, Konkan ("***MSME Council***") under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 ("***MSMED Act***").

2. Both the parties to the proceedings are proprietorship concerns. They appear to have once had close relations, and have fallen apart. The Petitioner, Accurate Facilities India ("***Accurate***") is aggrieved by the direction to pay the Respondent, Simple Engineering Solutions ("***Simple***"), the sum awarded i.e. Rs. ~9.33 lakhs pursuant to an alleged under-payment to the extent of Rs. ~4.53 lakhs on two tax invoices, coupled with interest under Section 18 of the MSMED Act, which until the time of the claim, is said to have amounted to Rs. 4.8 lakhs.

3. The disputes relate to two tax invoices dated January 2, 2013 and February 2, 2013 in the sum of Rs.12,82,500/- and Rs.7,69,500/- respectively, aggregating to Rs.20.52 lakhs, raised by Simple on Accurate. The grievance of Accurate is that both these invoices are false and fraudulent since they relate to supplies for which monies had been paid in advance to Simple even before an order was placed by Accurate. Based on the order from Accurate and payments that preceded the order, Simple is said to have placed an order on a Chinese manufacturer for supply of "suspended platforms". Therefore, it is claimed by

Accurate, that there is no question of there having been an under-payment on these invoices. On this premise, Accurate would contend, the Arbitral Award ought to have been quashed and set aside by the Learned District Court. The Learned Arbitral Tribunal did not even deal with this factual facet of the matter, and it is therefore liable to be set aside as being perverse.

Analysis and Findings:

4. Having heard Mr. Ranjit Thorat, Learned Senior Counsel on behalf of Accurate and Ms. Shamamah Kazi, Learned Counsel on behalf of Simple, and on perusal of the record with their assistance, I am unable to find fault with the Impugned Judgement and the Arbitral Award.

5. It is the specific case of Accurate that payments were first made to Simple; thereafter orders for the suspended platforms were placed with Simple; which in turn placed orders with the Chinese manufacturer; and therefore nothing is payable for the suspended platforms. Accurate raised a counter-claim in the sum of Rs.39.84 lakhs before the Learned Arbitral Tribunal, which has been rejected.

6. Against this backdrop, the specific contentions of Accurate as seen from the pleadings in the proceedings must be examined. Mr. Thorat's primary contention is that there had in fact been an initial *proforma* invoice from Accurate dated September 5, 2011 in respect of which Simple has issued multiple receipts dated September 10, 2011, December 15, 2011, February 6, 2012 and February 24, 2012. These receipts are annexed to the record and have been perused. It is pointed out that each of these receipts specifically makes a reference to the *proforma* invoice dated September 5, 2011. The total receipts aggregate to Rs. ~20.65 lakhs, which, it is pointed out, is the amount payable towards the suspended platforms, for which the disputes have been raised.

7. It is noteworthy that the claim on behalf of Simple was that the invoices for the suspended platforms were to the tune of Rs. ~20.52 lakhs, of which Simple admits to have received two payments one of Rs. ~12.82 lakh and another for Rs. ~3.16 lakhs, thereby resulting in the alleged shortfall of Rs. ~4.53 lakhs. Mr. Thorat would submit that since the aggregate of the four receipts referred to above is in the sum of Rs. ~20.65 lakhs, it should be held that the tax invoices relate to the amount of Rs. ~20.52 lakhs that had already been paid by Accurate to Simple.

8. It is also seen that the first three receipts were of actual payments directly from Accurate to Simple aggregating to Rs. 5.65 lakh whereas the last receipt of Rs.15 lakh is said to have been received from Bassein Catholic Co-operative Bank ("***Bank***"). The acknowledgment of receipt from the Bank and a receipt formally issued by Simple, both refer to a *proforma* invoice of September 5, 2011, and form part of the record.

9. There are a few other facts that would be relevant in addition to these receipts relied upon by Accurate. It is seen from the record that a specific order had been placed on February 19, 2012 by Accurate on Simple and that order refers to eight sets of suspended platforms being ordered. This order of February 19, 2012 makes no reference to *proforma* invoice of September 5, 2011. A *proforma* invoice dated March 4, 2012 raised by the Chinese manufacturer on Simple also indicates eight sets being ordered by Simple on the Chinese manufacturer. The Chinese *proforma* invoice conforms to the order placed by Accurate on Simple on February 19, 2012. Pursuant to this order being placed, incidentally for a sum of Rs.18.24 lakhs at the then prevailing exchange rate, a "Commercial Invoice" appears to have been raised by the Chinese manufacturer on April 18, 2012. It is seen from a delivery challan that these goods were received on May 19, 2012 and

thereafter there is no transaction between the parties. The tax invoices in question (which Accurate claims to have been pre-paid and Simple claims are been part-paid) were raised by Simple on January 2, 2013 and February 2, 2013. Since this is a good eight months after the delivery, these invoices are said to be false and fraudulent and not backed by actual transactions between the parties.

10. Having noticed that both the Arbitral Award and the Impugned Order are brief, bordering on the cryptic, I examined the pleadings of the parties before the District Court to see if the submissions made in this Court correspond with the submissions made in the proceedings conducted hitherto. Surprisingly, throughout the pleadings before the District Court, there is no allusion or reference whatsoever to a proforma invoice dated September 5, 2011. In fact the pleadings of Accurate throughout the appellate proceedings before the District Court make a no reference at all to a *proforma* invoice of September 5, 2011.

11. The receipts referred to above indeed refer to such invoices. Had those receipts pertaining to the proforma invoice dated September 5, 2011 actually been the receipts for the order for eight sets of suspended platforms placed on the Chinese manufacturer, it would have

found mention in the appellate proceedings. In my opinion, what Accurate is attempting to do is to create a reasonable doubt about the decisions appealed against. That is a criminal law standard of proof. However, in these civil proceedings, the standard of proof required to be adopted is the standard of preponderance of probabilities. Considering that there had been two rounds of opportunity to deal with the matter (both before the MSME Council as well as before the District Judge), it stands to reason that if this narration of facts and the flow of events commencing on September 5, 2011 are the events underlying the tax invoices raised, the *proforma* invoice would have found mention in the pleadings of the Section 34 proceedings.

12. Consequently, while there may be some confusion that may have been created by reference to the proforma invoice of September 5, 2011 in four receipts which aggregate to somewhat similar amount as contended by Simple, there are gaps in this theory.

13. The aggregate amounts of the two tax invoices add up to Rs. 20.52 lakh. The receipts alluding to the September 5, 2011 *proforma* invoice add up to Rs.20.65 lakhs. I cannot overlook the fact that the parties appear to have been actively in commercial engagement with each other and the parties may have had multiple transactions between

them, which led to running accounts between them. However, it would not be possible while sitting in a jurisdiction under Section 37 of the Act, after two rounds of assessments of the evidence, with two rounds of opportunities to Accurate to table all these facets, this *proforma* invoice of September 5, 2011 do not find mention in any of the proceedings so far. This apart, the *proforma* invoice of September 5, 2011 is for ***four*** sets of “two-men power winch cradle” while the order dated February 19, 2012 from Accurate covers ***eight*** sets of “suspended platforms with suspension model”.

14. It is also noteworthy that the payment of Rs.15 lakhs by the Bank to Simple, for which a receipt was issued on February 24, 2012 constitutes a disbursement of a loan availed of by Accurate from the said Bank. However, what is interesting is that the loan taken by Accurate from the Bank, is guaranteed by Simple. If the disbursement of the loan was meant to the full discharge of payments owed by Accurate to Simple, it would stand to reason that Simple, being the the recipient of the disbursement would not issue a guarantee to the Bank for the repayment of the loan. The parties appear to have accommodated one another and these transactions do not fit the theory now propounded by Accurate.

15. What transactions the parties had with each other is something for the parties to have shown to both the forums below. I am unable to accept them at this stage. In my opinion, it would constitute conducting a trial at the round of a second review under Section 37 of the Act.

16. It is also seen that when the relationship between the parties got sour, Simple threatened to withdraw the guarantee given to the Bank for Accurate's loan disbursed to Simple. This attempt was rebuffed by the Bank stating that it would not be open to a guarantor to simply walk away from the guarantee. At a same time, Simple has abused Accurate's credit standing in confrontational correspondence to the Bank. It is evident that Simple appears to have attempted to bring Accurate into disrepute, which has also been repelled by the Bank stating that Accurate is well functioning, its credit quality is good, and that the loan is not a non-performing asset. What is noteworthy is that Simple's guarantee would remain with the Bank and in the event of default by Accurate, Simple would have to pay on the said guarantee. Therefore, in these circumstances, the tranche of Rs.15 lakhs received by way of disbursement by the Bank pursuant to a loan taken by

Accurate, does not lend itself to a full and final payment in discharge of an obligation owed by Accurate to Simple, as is canvassed by Accurate.

17. Perhaps there are other underlying transactions between the parties that they believed ought not to be agitated in fuller detail in both the rounds of litigation below. However, there being no reference to the proforma invoice of September 5, 2011 in the order placed by Accurate on Simple on February 19, 2013; the *proforma* invoice of the Chinese manufacturer; and in the invoices raised by that manufacturer on Simple, I am not convinced that a case for interference has been made out. That the payment of Rs. 15 lakh to Simple by the Bank is backed by a guarantee from Simple to repay the Bank's loan to Accurate also undermines any inference that a full payment of the amounts covered for the purchase of suspended platforms has already been paid by Accurate.

18. The Learned Arbitral Tribunal is the master of the evidence and had given opportunities to parties to present all the requisite evidence. The evidence of the receipts has been seen by the Learned Arbitral Tribunal (but there is no reference in the pleadings in the Section 34 Petition to the *proforma* invoice of September 5, 2011). It has

returned a finding that the two sets of transactions in 2011-12 and 2012-13 are distinct and separate.

19. Nothing has been shown even in these proceedings to demonstrate the distinct and separate elements in each of the two alleged transactions. The version that there are no two sets of transactions and that they are all one, does not inspire confidence. Consequently, at this stage, I am unable to interfere with such a finding by the Arbitral Tribunal. Indeed, the Impugned Order is rather terse and simply outlines the grounds on which a Section 34 Court may interfere, without analysing the facts in any great detail.

20. However, rather than dispose of this appeal by way of a remand, considering that this is a first appeal, I thought it would be better, also noting that both parties seem to be proprietorships and small businesses that have already invested significant resources in this litigation, I set out to examine all that the Section 34 Court could have examined. That is the basis of the findings returned above. On that basis, I find that the theory of payments having been made in advance for these very imports does not inspire confidence.

21. In these circumstances, the Arbitral Award and the Impugned Judgement do not contain anything untoward for it to be set

aside. The Petition is ***finally disposed of*** making no intervention at this stage. In view of the disposal of this Petition, any other Interim Applications pending thereon, stand disposed of accordingly.

22. Learned Counsel for the Petitioner seeks a stay on this judgement. Instead of granting a stay on this judgement, since the amount of 75% that is required to be deposited under Section 19 of the MSMED Act has already been deposited with the Registry of the District Court, Thane, the release of the same pursuant to this judgement, is deferred for a period of six weeks from the date of upload of this order on the Court's website.

23. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]