

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO. 127 OF 2024
IN
ARBITRATION PETITION NO. 46 OF 2017**

M/S. Surya construction)
(Through its POA Shri. Akhilesh J. Singh))
Having office at Surya House,)
Plot Nos. CM- 23, 101, 102, 103,)
194, N.H 18GIDC, Vapi- 396 195)
Dist. Valsad, Gujarat) ...Appellant/
Original Claimant

Versus

Steel Authority of India Ltd.)
Through its Asst. General Manager)
(M-WH) & Ware House Manager,)
Kalamboli Warehouse,)
Navi Mumbai, dist:Raigad) Respondent

Mr. Abhijeet A. Desai a/w Ms. Mohini Rehpade a/w
Mr. Digvijay Kachare a/w Mr. Ajit M. Savagave, for the
Appellant.
Mr. Sarosh Bharucha a/w Mr. Anant Upadhyay a/w
Ms. Payal Upadhyay i/b ANP Chambers, for the
Respondent.

**CORAM : ALOK ARADHE, CJ &
M. S. KARNIK, J.**

DATE : 9th APRIL, 2025

JUDGMENT (PER M. S. KARNIK, J.) :-

1. This appeal filed under Section 37 of Arbitration

Conciliation Act, 1996 (for short “the Act”) arises from order dated 10th July, 2017 passed by the learned Single Judge in an arbitration petition filed under Section 34 of the 1996 Act.

2. The learned Judge by the impugned order did not find any merit in the arbitration petition. The arbitration petition was against the Award dated 19th June, 2016 passed by the Arbitral Tribunal to the extent that the Arbitral Tribunal rejected the claim of the appellant as more particularly set out in Exhibit A-1 to the Petition. The claims that were rejected by the Arbitral Tribunal were under two heads. The first head was for claim of less supply (calculated at 80% of Estimated Quantity in 33 months) for an amount of Rs.80,88,015/-. In the alternative, a claim was made for reimbursement / recovery of unrecovered expenses / costs in the amount of Rs.99,04,779/-.

3. It is apposite to set out the facts in brief. The appellant / original claimant is a proprietary firm engaged

in the business of Civil Construction. The respondent, steel authority of India Ltd., is a Government of India undertaking engaged in the production, distribution and marketing of steel throughout India.

4. On 12th November, 2007, the respondent published a Notice for operating a Consignment Agency Yard at Silvassa, Dadra and Nagar Haveli. The appellant was the Sole Bidder, for bids by the respondent which were held in September, 2007 and subsequently on 12th November 2007.

5. The respondent called the appellant for negotiation to Mumbai where a meeting took place between the representatives of both the parties. The officers of the respondent informed the appellant that, the estimated quantity had been mentioned in the tender document since they were opening a yard for the first time at Silvassa and expected fluctuation in the market. However respondent assured the appellant that they are expecting good business. It was on this assurance of respondent the

appellant felt the need to have infrastructure sufficient to handle the estimated quantity, considering 20% fluctuation in the estimated quantity. The parties agreed to the rate of Rs.550 per metric ton.

6. The respondent issued letter of intent on 30th January 2001 with rate based on estimated quantity of 10,800 metric ton to be handover per year. Respondent issued work order on 3rd November, 2008 and parties signed the agreement on the same day and the appellant was appointed as the Consignment Agent for a period of 2 and half years.

7. The appellant made huge investment of Rs.29,96,170/- up to 2nd May, 2008 (or 3rd November, 2008) and availed of cash credit facility from State bank of Indore. The appellant also incurred monthly expenses of Rs.3,00,145/- to employ staff. Due to supply of stock being much below the quantity that had been assured during the negotiation, the appellant repeatedly approached the officers of the respondent regarding the

same but did not receive any response.

8. According to the appellant, the supply of the estimated quantity of 10,800 MTs/year was mandatory precondition of establishment of the infrastructure involving huge finance. The respondent is liable to indemnify the appellant against any losses and bound to reimburse costs incurred bona fide under the contract. It is submitted that assuming 20% to be reasonable variation in supply, the respondent ought to have routed 8,640 MTs/year and thus respondent is liable to pay a sum quantified at Rs.80,88,015/- with interest.

9. The respondent had asked the appellant to arrange infrastructure to handle 10,800 MTs/year while respondent could deliver only 10,216 MTs i.e. 65% less quantity during the entire contract period of 33 months. That the appellant was only paid Rs.52,71,081/- as against the expected amount (after considering 20% fluctuation) of Rs.1,33,59,016/- for entire period of contract.

10. The appellant earned a profit of 15% on the total amount paid to the appellant during the contract period i.e. Rs.56,40,741/-. Consequently, the respondent is liable to compensate the appellant an amount of Rs.99,04,779/- for the cost together with interest @ 13% p.a. till payment.

11. It is the case of the appellant that the rate of Rs.550/MT was agreed to be the rate for the first year and the same was subject to escalation thereafter. That, the respondent finally resolved the escalation rate and paid extra amount of Rs.1,29,666/- as the balance on 31st January, 2012. The appellant claims interest on the delayed payment queue the escalation rate at 13% interest p.a.

12. Appellant took the initiative by introducing various clients to the respondent with a view to generate supply and recoup losses. Despite this there was no increase in supply by the respondents. Appellant states that, the respondent also proceeded to deal directly with the

clients introduced by the appellant and those clients introduced by the appellant consumed at least 2000 MTs of steel during relevant period. Hence respondent acted in a manner detrimental to interest of the appellant.

13. The appellant sent a legal notice to the respondent on 5th April, 2011 not to extend the said contract period due to inability of the respondent to explore the market. However, respondent pointed out that it had the right to extend the contract and threatened to invoke the bank guarantee and extended the contract for further period of 3 months. However, while extending the contract, the respondent assured it would increase the quantity of dispatch. However, again there was no improvement in the supply to appellant and due to which the appellant suffered loss of Rs.5,22,284/-.

14. During the end of extended period, the respondent claimed that an amount of Rs.4,99,385/- was due and payable by the appellant due to shortage in clearance during the contract period but there was no shortage that

had been reported by the respondent during the contract period. Hence, the appellant is also claiming a sum of Rs.4,99,385/- together with the interest @ 13% p.a. from 1st September, 2011 till the date of payment.

15. Appellant further states that through an RTI they got to know that the respondent had directly dealt with the third party / retailer and had supplied 5133.17 MT of steel, thereby causing a loss of profit Rs.4,23,486/- i.e. at the rate of 550/MT.

16. The contract between the parties had been concluded on 1st August, 2011. The appellant issued a notice through his advocate on 12th December, 2011 claiming the amount of Rs.1,27,35,362.42. The respondent disputed the amount claimed by the appellant through their advocates vide letter dated 14th February, 2012.

17. The dispute was referred to the arbitration. The statement of claim was duly filed. The Sole Arbitrator

made impugned award dated 19th September, 2016 rejecting the claim. The arbitration petition filed under Section 34 of the Act is dismissed. Hence, this Appeal.

18. Mr. Desai, learned counsel for the appellant submitted that the learned Single Judge as well as the arbitrator had committed manifest error in assigning a very narrow interpretation to clause 3.5 and clause 5.12 of the agreement in question as the said clauses are nothing but negative cognates drawn at the instance of the respondent Authority having higher bargaining powers. According to him, the said clauses are nothing but defeating the entire nature and scope of the contract in question and were completely misconceived. It is submitted that clauses 3.5 and 2.12 are completely against Public Policy and therefore voidable. Mr. Desai was at pains to point out that on the representation made by the respondent assuring minimum supply, the appellant made huge investment. The appellant had to face losses because the respondent failed to honour the commitment of minimum supply of 10,800 metric tons of

steel per year. It is submitted that the learned Single Judge erred in holding that the agreement nowhere says that the respondent is under obligation to supply minimum quantity of 10,800 MT steel. It is further submitted that the entire infrastructure was set up by the appellant which was used by the respondent without fulfilling its obligations. Learned counsel submitted that it is the appellant who had referred some customers to the respondent and even though the infrastructure set up was used by the respondent, the benefit was not passed to the appellant. He further submitted that the relevant clauses of the contract are not properly interpreted which has caused immense prejudice to the appellant. It is further submitted that the award made and the order passed by the learned Single Judge is contrary to the evidence on record.

19. Mr. Desai, relied upon the decision of the Supreme Court in MAHANAGAR TELEPHONE NIGAM LIMITED VS. CANARA BANK AND OTHERS¹ and THE UNION OF INDIA

¹ (2020) 12 SCC 767

VS. M/S. D. N. REVRI AND CO. AND OTHERS² in support of his submissions.

20. Learned counsel for the respondent on the other hand argued in support of the findings of the arbitral tribunal and the learned Single Judge.

21. Before we proceed to consider the submissions of learned counsel, it would be profitable to refer to decision of this Court in URBAN INFRASTRUCTURE REAL ESTATE FUND VS. NEELKANTH REALTY PRIVATE LIMITED AND OTHERS³ as regards the scope of Section 34 and 37 of 1996 Act. The relevant observations read thus:-

“SCOPE OF SECTION 34 OF THE 1996 ACT

15. The scope and ambit of Section 34 is well delineated by decisions of Supreme Court. In *SSANGYONG ENGINEERING & CONSTRUCTION CO. LTD. VS. NATIONAL HIGHWAYS AUTHORITY OF INDIA (NHAI) (SUPRA)*, while dealing with powers of the Court deciding the application under Section 34 of the 1996 Act, the Supreme Court took note of the amendments brought about to Section 34 of the Act by Amendment Act 2015 and explained the ratio of the decision of the Supreme Court in *ONGC VS. WESTERN GECO INTERNATIONAL LTD.*⁴, and laid down the following principles which are mentioned in para

2 (1976) SCC 147

3 COMA NO. 37 of 2020 dated 2nd April, 2025

4 (2014) 9 SCC 263

34 to 41 of the judgment which are extracted for the facility of reference:

“(i) The interference by the court with an award on the ground that arbitrator has not adopted a judicial approach would tantamount to interference with merits of the award which cannot be permitted, post amendment of Section 34 of the Act.

(ii) The ground for interference insofar as it concerns ‘interests of India’ has been deleted, therefore, it is no longer permissible to interfere with the award on the said ground.

(iii) Similarly, the ground for interference in the award on the basis that the same is in conflict with justice and morality, has to be understood as conflict with ‘most basic notions of morality or justice.

(iv) The expression ‘public policy of India’ is now restricted to mean that a domestic award is contrary to fundamental policy of Indian law and the ground for interference that such an award is against basic notions of justice or morality is done away with.

(v) The exercise of re-appreciation of evidence, which the appellate court can undertake is not permitted on the ground of patent illegality in the award.

(vi) Mere contravention of substantive law of India by itself is no longer a ground available to set aside an arbitral award.

(vii) The change made in Section 28(3) by the Amendment Act follows that construction of terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in a manner that no fair minded or

reasonable person would, in short that arbitrators' view is not even a possible view to take. If the arbitrator wanders outside the contract and deals with the matter not allotted to him he commits an error of jurisdiction and this ground of challenge is covered under Section 34(2-A) of the Act.

(viii) A decision of the arbitral tribunal, which is perverse is though no longer a ground of challenge under public policy of India', would certainly amount to a patent illegality appearing on the face of the award.

(ix) Thus a finding recorded by an arbitrator which is based on no evidence at all or an award which invokes vital evidence in arriving at its decision would be perverse and is liable to be set aside on the ground of patent illegality."

(F) SCOPE OF SECTION 37 OF THE 1996 ACT:

16. An appeal is a continuation of an original proceeding. It is equally well settled in law that in absence of any statutory provision to the contrary, the power of appellate Court is co-terminus with the power of a subordinate court. [See : *JUTE CORPN. OF INDIA LTD. VS. CIT*⁵]. Thus, an appellate Court exercising the power under Section 37 of the 1996 Act would interfere only if a ground under Section 34 of the Act is made out. [See : *STATE OF CHHATISGARH AND ANOTHER VS. SAL UDYOG PRIVATE LIMITED*⁶].

SCOPE AND AMBIT OF PHRASE 'PUBLIC POLICY OF INDIA'

17. In *ONGC LTD. VS. SAW PIPES*⁷, the Supreme Court dealt with the scope and ambit of expression 'public policy of India'. It was held that if award is contrary to 'fundamental policy of Indian law', or interest of justice or morality or patently illegal, the same would be contrary to 'public policy of India'. A three Judge Bench of Supreme Court in *ONGC VS. WESTERN GECO INTERNATIONAL LTD. (SUPRA)* however, noted

5 1991 Supp 2 SCC 744

6 (2020) 21 SCC OnLine 1027

7 (2003) 5 SCC 705

that the expression 'fundamental policy of Indian law' was not elaborated upon in *ONGC LTD. VS. SAW PIPES (SUPRA)*. It was held that the expression 'fundamental policy of Indian law' would include three distinct and fundamental juristic principles which must be understood as part and parcel of Indian law, which are as under:

- (i) In every determination, a Court or other authority that affects rights of a citizen or leads to any civil consequences the Court or authority is bound to adopt a judicial approach. The duty to adopt such an approach arises from the very nature of power exercised by the court and authority.
- (ii) The Court or a quasi-judicial authority, while determining the rights and obligation of the parties must follow principles of natural justice.
- (iii) A decision which is perverse or so irrational that no reasonable person would have arrived at the same will not be sustained in a court of law.

It was further held that the expression 'fundamental policy of law' cannot be put in the straight jacket of a definition.

18. The Parliament, after the aforesaid decision of the Supreme Court, amended Section 34 of the 1996 Act by Amendment Act of 2015 w.e.f. 23rd October 2015 and incorporated the clarification to ensure that the phrase 'fundamental policy of Indian law' is narrowly construed so as not to entail a review on merits of a dispute."

22. Keeping these principles in mind, we have examined the impugned order of the learned Single Judge as well as the award of the Arbitral Tribunal in light of the submissions made by learned counsel.

23. Clauses 3.5 and 5.12 of the tender document on which much emphasis is placed by learned counsel for the appellant reads thus:

“3.5:- To enable the tenderer to assess the quantum of work, the estimated quantities expected to be delivered during the first year of operation is indicated below:

Steel: 10,800 MT

Pig Iron: NIL

Note: The above quantities are only indicative for enabling the tenderer to assess the probable/expected quantum to be handled. The company doesn't guarantee any minimum quantity of handling during the entire period of contract.

5.12: No. guarantee whatsoever is given as to any definite tonnage, which would be entrusted the Consignment Agent for transportation, handling and storage at any given period of time during the entire tenure of contract.”

24. The main contention which we have to deal with is whether there is any binding obligation on the respondent to supply 10,800 MT of steel per year as is the case of the appellant. The bare reading of clause 3.5 makes it amply clear that the quantity of 10,800 MT of steel is only indicative for enabling the tenderer to assess the probable / expected quantum to be handled. The respondent did not guarantee any minimum quantity of

handling during the entire period of contract. Moreover, clause 5.12 clearly states that no guarantee whatsoever is given as to any definite tonnage, which would be entrusted to the Consignment Agent for transportation, handling and storage at any given period of time during the entire tenure of the contract.

25. We find that the appellant knowing fully well the terms and conditions of the tender proceeded to set up the infrastructure. We cannot find any term in the tender document compelling us to form an opinion that there was any binding obligation on the respondent to supply minimum quantity of 10,800 MT of steel per year.

26. Having gone through the impugned order, we are satisfied that there is no reason for us to take a view different from the one taken by the learned Single Judge and the Arbitral Tribunal having regard to the scope of this Appeal under Section 37 of the Act. The argument of learned counsel for the appellant that the appellant had a lessor bargaining power as he was in a weaker position

while entering into the contract is without merit. The terms of the agreement clearly stipulated that the appellant was free to store materials of any other person over and above the supply from the respondent. There was no embargo on the rates, which the appellant was to quote to the third parties. The scope of the appeal under Section 37 of the Act of 1996 challenging the decision of the learned Single Judge is well settled. We are satisfied with the order of the learned Single Judge and the award of Arbitral Tribunal as the same are well considered based on the materials on record.

27. In the decision relied upon by Mr. Desai in MAHANAGAR TELEPHONE NIGAM LIMITED VS. CANARA BANK AND OTHERS (SUPRA), we fail to comprehend as to how any of the principles laid down by Their Lordships is breached in the facts of the present case so to find favour with the arguments advanced by learned counsel for the appellant.

28. The next decision relied upon by Mr. Desai is in THE UNION OF INDIA VS. M/S. D. N. REVRI AND CO. AND

OTHERS (Supra). Their Lordships in paragraph No. 7 observed 'that it must be remembered that a contract is a commercial document between the parties and it must be interpreted in such a manner as to give efficacy to the contract rather than to invalidate it. It would not be right while interpreting a contract, entered into between two lay parties, to apply strict rules of construction which are ordinarily applicable to a conveyance and other formal documents. The meaning of such a contract must be gathered by adopting a common sense approach and it must not be allowed to be thwarted by a narrow, pedantic and legalistic interpretation.'

29. In the present case, the appellant cannot be said to be a lay person as rightly observed by the learned Single Judge. In fact on a reading of the entire contract as a whole, the finding by the learned Single Judge as well as the Arbitral Tribunal that the same does not support the appellant's case is correct. There is absolutely no scope for interference with the findings of the learned Single Judge and the

Arbitral Tribunal.

30. The Appeal is dismissed. No costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)