

In the High Court of Judicature at Madras

Reserved on : 16.9.2025	Delivered on: 22.9.2025
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Arbitration O.P.(Com.Div.)No.443 of 2023
& A.No.4839 of 2023

R.Murugaswamy, Proprietor,
M/s.Shri Amman Knits,
S.F.No.236, Chetti Thottam,
Vegamedu Angeripalayam
Post, Tirupur-641602.

...Petitioner

Vs

MGH Logistics Limited, having
Office at B-403, 4th Floor,
Satellite Gazebo Mahakali
Caves Road, Chakala,
Andheri (East) Mumbai.
400069.

...Respondent

PETITION under Section 34(2)(a)(i) and (b) of the Arbitration and Conciliation Act to set aside the Arbitral Award dated 20.3.2023 bearing Arbitration Case No.3 of 2022 passed by learned sole Arbitrator Mr.Sharath Chandran, Advocate at Chennai in its entirety and to direct the respondent to pay the costs.

For Petitioner : Mr.Sricharan Rangarajan, SC for
Mr.P.Vetrivel &
Mr.N.Srivatsav

For Respondent : Mr.M.Ashwin Kumar

ORDER

This is a petition filed under Section 34(2)(a)(i) and (b) of the Arbitration and Conciliation Act, 1996 (for short, the Arbitration Act) against the arbitral award dated 20.3.2023 in Arbitration Case No.3 of 2022 passed by the sole Arbitrator.

2. Heard both.

3. The case of the petitioner is as follows :

(i) The petitioner is a manufacturer of garments based at Tirupur. They were involved in the business of exporting garments to a Russian company namely M/s.Allisons Garments Production LLC (for brevity, M/s.Allisons), based at Moscow. The respondent was appointed as a freight forwarder by M/s.Allisons through their sister concern - one M/s.Sela SPB. From February 2018, the respondent started providing transportation services for the consignment.

(ii) M/s.Allisons would place the order to the petitioner as per their requirements and the petitioner would raise invoices for that particular order. After the petitioner raises the invoices against M/s.Allisons, the respondent would approach the shipping lines and get the Sea-Way Bill of Lading, which is also called Master Bill of Lading, whereby the respondent would be mentioned as the consignor and M/s.Allisons would be mentioned as the consignee.

(iii) The petitioner has no privity to the Sea-Way Bill of Lading entered into between the respondent and the shipping line. The respondent would issue a multimodal transportation document (MTD), which is, in shipping business parlance, called as House Bill of Lading as per the provisions of the Multimodal Transportation of Goods Act, 1993 (hereinafter called the Act), in which, the petitioner would be referred to as the consignor and the respondent would be referred to as the consignee.

(iv) The petitioner would send the copy of the MTD to M/s.Allisons after receipt of the invoice amount. The final consignment would be delivered to M/s.Allisons by the respondent only after M/s.Allisons produces a copy of the MTD to the respondent.

(v) In the early 2019, M/s.Allisons placed two orders to the petitioner. Pursuant to that, the petitioner issued two invoices namely SAK040 dated 25.1.2019 and SAK044 01.3.2019 respectively. Thereafter, the respondent obtained the Sea-Way Bill of Lading from the shipping line and issued two MTDS dated 08.2.2019 and 09.3.2019 respectively to the petitioner.

(vi) When the above two consignments were in transit, the petitioner sent an e-mail dated 04.4.2019 to the respondent to stop delivery of consignments to M/s.Allisons since there was a dispute regarding payment between the petitioner and the respondent. However, prior to stop delivery instructions given by the petitioner, the consignment pertaining to invoice No.SAK040 was delivered on 04.4.2019 to M/s.Allisons without the production of the MTD by M/s.Allisons at the destination port namely Bronka, Russia.

(vii) As a consequence, on 05.11.2019, the petitioner lodged a criminal complaint against the Director of the respondent, the Branch Manager of the respondent at Tuticorin and two others in this regard and it was investigated in Crime No.17 of 2019 by the Inspector of Police, Central Crime Branch, Tirupur City. Ultimately, the criminal proceedings came to be quashed by this Court in CrI.O.P.Nos.30986

and 16314 of 2020 on the file by this Court vide common order dated 16.8.2022.

(viii) In the meantime, as regards the consignment pertaining to invoice No.SAK044, as a natural process, it had reached the trans-shipment port at Hamburg, Germany. In addition, M/s.Allisons sent an e-mail dated 08.4.2019 to the petitioner stating that the respondent agreed to return the consignment pertaining to invoice No.SAK044. The respondent also sent an e-mail dated 09.4.2019 to the shipping line to hold the container at the Port of Hamburg, Germany. In spite of it, the consignment pertaining to invoice No.SAK044 arrived at Bronka, Russia on 03.6.2019.

(ix) Thereafter, the petitioner requested the respondent to provide re-export services for the consignment covered in invoice No.SAK044 and also furnished an indemnity bond to the respondent on 08.6.2019 for both the consignments. On receipt of the same, on 14.6.2019, the respondent sent an e-mail to the petitioner stating that the return of goods from Russia should be treated as a re-export and further requested two new House Bill of Landing from Russia to custom clear the re-export. In the subsequent e-mails dated 18.6.2019, 20.6.2019, 01.7.2019 and 26.9.2019, the respondent categorically

mentioned that they had no legal obligation to bring back the consignment to India and that the petitioner could appoint a new forwarder to deal with the goods.

(x) After a delay of nearly five months, the respondent sent an e-mail dated 07.10.2019 informing that the container was loaded on vessel and that it was expected to arrive at Tuticorin Port on 09.11.2019. Further, by another e-mail dated 22.11.2019, the respondent also informed that the consignment was moved to Malta Port from Colombo due to non payment of storage, detention and re-export charges by the petitioner to the shipping line. Thus, there was a delay of 5 to 6 months in the re-export of the consignment.

(xi) Finally, on 24.4.2020, the consignment reached the Port of Tuticorin. Since the petitioner refused to pay the re-export charges, the respondent issued a notice dated 26.3.2021 to the petitioner under Section 11 of the Arbitration Act for appointment of an arbitrator in line with Clause 25 of the Standard Conditions governing the MTD/ House Bill of Lading in accordance with the Act to agitate the petitioner's refusal to pay the re-export charges for the consignment covered in invoice No.SAK044. On receipt of the said notice, the petitioner sent a reply dated 26.8.2021.

(xii) Thereafter, the respondent approached this Court and filed Arbitration O.P.(Com.Div.) No.314 of 2021, in which, an order dated 03.2.2022 came to be passed by appointing a sole Arbitrator to decide the dispute between the parties. Pursuant to that, the respondent filed a claim statement before the sole Arbitrator in Arbitration Case No.3 of 2022.

(xiii) Initially, the petitioner fled an application in I.A.No.1 of 2022 in Arbitration Case No.3 of 2022 before the sole Arbitrator under Section 16 of the Arbitration Act questioning the arbitrability of the dispute. However, that application was rejected by order dated 08.8.2022. Thereafter, the petitioner filed the statement of defence and the statement of admission/denial with regard to the documents filed by the respondent.

(xiv) After framing of issues and marking of documents and upon hearing both sides, the sole Arbitrator passed the impugned award dated 20.3.2023 wherein the petitioner has been directed to pay sum of Rs.25,48,617.37 Ps to the respondent together with interest at the rate of 12% per annum from 26.3.2021 till 27.3.2023. This award is put to challenge in the above petition.

4. The learned Senior Counsel appearing on behalf of the petitioner made the following submissions :

(a) There is non existence of arbitration agreement since the arbitration agreement relied upon by the respondent is present in the MTD dated 09.3.2019 pertaining to the consignment in invoice No. SAK044, which was issued only for the export of goods to Russia from India whereas as per Clause 2 of the Standard Conditions of the MTD read with Section 2(k) of the Act, the provisions of the MTD will apply only when there was carriage of goods by at least two different modes of transport.

(b) In the case in hand, the services of the respondent were engaged for the transportation of goods from the port of loading at Tuticorin to the port of discharge at Bronka, Russia and the carriage of goods was only by sea. Therefore, the condition that at least two modes of transport were required has not been fulfilled. In other words, the transaction is bereft of any element of multi modality. As a consequence, the document in question can only be treated as a straight bill of lading and the MTD will not apply. Therefore, the arbitration clause namely Clause 25 of the Standard Conditions governing the MTD/ House Bill of Lading cannot be invoked.

(c) The dispute in question is not covered under the MTD since the alleged violation did not arise out of the terms of the Bill of Lading. There was no arbitration agreement in the contract for the return of goods since it was an independent agreement, which would be evident from the petitioner's request for the re-export through e-mail dated 08.6.2019 and the response e-mail dated 14.6.2019. These communications formed the basis for the subsequent contract to bring back the consignment in invoice No.SAK044 to India, which did not contain an arbitration clause. Therefore, the sole Arbitrator ought not to have entered the reference and the award passed suffers from patent illegality and is contrary to the Public Policy.

(d) The petitioner had filed an application in I.A.No.1 of 2022 before the sole Arbitrator under Section 16 of the Arbitration Act questioning the arbitrability of the dispute and the same was rejected by the sole Arbitrator vide order dated 08.8.2022. The petitioner had to wait for passing of the final award to challenge the decision taken by the sole Arbitrator with respect to the said preliminary objection also.

(e) The sole Arbitrator merely went by the technicalities by importing the procedure under the Civil Procedure Code (CPC) whereas Section 19(1) of the Arbitration Act liberates the Arbitral Tribunal from

the rigors of the provisions contained in the CPC and the Indian Evidence Act. Hence, this issue ought to have been considered on the admitted facts. To substantiate this submission, the learned Senior Counsel relied upon the correspondence trail marked as Ex.R.14 series.

(f) The award passed by the sole Arbitrator is liable to be set aside under Section 34(2)(a)(ii) of the Arbitration Act since there is no valid arbitration agreement between the parties for a dispute that had arisen on the basis of the return of goods, which was an independent contract and there was no incorporation of the arbitration clause from the MTD into the fresh contract.

(g) The sole Arbitrator went wrong in passing the award by sourcing the jurisdiction from an arbitration clause, which is not applicable to the dispute. Therefore, the arbitral award is also in conflict with the Public Policy of India and is liable to be set aside under Section 34(2)(b)(ii) read with Explanation 1(ii) of the Arbitration Act. The award also suffers from patent illegality since it has been decided beyond the terms of the contract and the award is liable to be set aside under Section 34(2A) of the Arbitration Act.

(h) In order to substantiate the above submissions, the learned Senior Counsel appearing on behalf of the petitioner relied upon the following decisions :

(i) of the Hon'ble Apex Court in the case of **Carevel Shipping Services Private Limited Vs. Premier Sea Foods Exim Private Limited [reported in 2019 (11) SCC 461];**

(ii) of a learned Single Judge of this Court in **Well Trans Logistics India Pvt. Ltd., Rep. By the Assistant Manager/Authorised signatory Sh.Ravish Chand Srivastava Vs. S.U.Sirajdeen [Arbitration O.P.(Com.Div.) No.321 of 2023 dated 30.8.2023];**

(iii) of a learned Single Judge of the Bombay High Court in the case of **Assobhai Bhanji and Sons Vs. Great Circle Shipping Private Limited [reported in 2017 SCC OnLine Bombay 7366];**

(iv) of the Hon'ble Apex Court in the case of ***Young Achievers Vs. IMS Learning Resources Private Limited [reported in 2013 (10) SCC 535]***;

(v) of the Hon'ble Apex Court in the case of ***NBCC (India) Limited Vs. Zillion Infraprojects Private Limited [2024 (7) SCC 174]***; and

(vi) of the First Bench of this Court in the case of ***S.U.Sirajdeen Vs. Well Trans Logistics India Pvt. Ltd. rep.by the Assistant Manager/ Authorised Signatory Sh.Ravish Chand Srivastava [O.S.A.(CAD) No.150 of 2024 dated 27.1.2025]***.

5. Per contra, the learned counsel appearing for the respondent submitted as follows :

(a) The parties are governed by Clause 25 of the Standard Conditions governing the MTD dated 09.3.2019, which states that any dispute or difference between the parties will be settled or shall be

settled through arbitration. The contract of carriage between the petitioner and the respondent was terminated only at Tuticorin and not at Russia, since it was the petitioner, which instructed the respondent to bring back the goods in the same sealed container. Therefore, the cargo was loaded on board back to Tuticorin.

(b) The modes of transport involved in the present case are through trailer by road transportation from the container freight station (CFS), through boat and by sea in a vessel from Tuticorin Port to Russia and back to Tuticorin Port and then back to the CFS by road. Therefore, the movement is muldi-modal and the terms of the MTD will apply to the present dispute.

(c) On a demurrer, the issue as to whether the present contract involved single modal transport or a multi-modal transport, is a question of fact and this was not even pleaded by the petitioner before the sole Arbitrator and it cannot be raised for the first time in the petition filed under Section 34 of the Arbitration Act. Had this issue been raised before the sole Arbitrator, the respondent would have had the opportunity to defend themselves and therefore, the petitioner is precluded from raising this issue in the present proceedings.

(d) To substantiate this ground, the learned counsel relied upon the judgment of the Apex Court in the case of ***Union of India Vs. Susaka (P) Ltd. [reported in 2018 (2) SCC 182]***.

(e) The re-export was a part of the same transaction and the respondent had acted upon only at the request of the petitioner, initiated the re-export process and incurred additional costs towards the same, which the petitioner was refusing to pay. The sole Arbitrator categorically rendered a finding that there was no pleading to the effect that the re-export was governed by a separate contract. Therefore, the finding rendered by the sole Arbitrator was a possible view based on the materials placed before him and this Court, exercising jurisdiction under Section 34 of the Arbitration Act, cannot interfere with such a possible view.

(f) The sole Arbitrator is the final Fact Finding Authority and the award was passed with well reasoned findings on interpretation of the contract and it cannot be re-appreciated by this Court under Section 34 of the Arbitration Act.

(g) The petitioner had consented for bringing back the goods to India and all the transactions were a continuation of the performance of the contract of carriage executed between the petitioner and the

respondent. The subsequent Bill of Lading had emanated from the previous House Bill of Landing and therefore, bringing back the goods from Russia to Tuticorin is a part of the same transaction and the contract was terminated only at Tuticorin and not at Russia as was contended on the side of the petitioner.

6. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned award passed by the sole Arbitrator.

7. The following issues arise for consideration in this petition :

"(1) Whether the MTD dated 09.3.2019 covered in invoice No.SAK044 was only for export of goods to Russia from India?"

(2) Whether the contract was terminated at Russia ?

(3) Whether the re-export that took place from Russia to Tuticorin Port was a fresh/independent contract?

(4) Even assuming that the re-export from Bronka, Russia to the Tuticorin Port was a

fresh/independent contract, whether the petitioner had taken such a stand before the sole Arbitrator in order to enable the respondent to raise their defence on this issue ? and whether this issue is a question of fact or the documents, by themselves, in terms of the e-mail communications established that such re-export was a fresh/ independent contract, which did not have any connection with the original MTD dated 09.3.2019 ?

(5) Even assuming that the materials placed before the sole Arbitrator established the fact that the re-export that took place from Russia to Tuticorin was an independent contract, whether the arbitration clause contained in the MTD dated 09.3.2019 can be incorporated by reference in the fresh contract?

(6) Whether the re-export of the goods from Russia to the Tuticorin Port only involved a single mode of transport since the carriage of goods was only by sea from Russia to Tuticorin? and in the absence of an element of multi modality, whether the terms of the Standard Conditions governing the MTD will not apply for the re-export and consequently,

whether the arbitration clause contained in the MTD dated 09.3.2019 cannot be applied to the fresh contract for the re-export of goods from Russia to Tuticorin ? and

(7) Whether the award is liable to be set aside under Section 34(2)(a)(ii), Section 34(2)(a)(iv) and Section 34(2A) of the Arbitration Act ?"

8. In order to decide all these issues, this Court has to necessarily go through the award that has been passed by the sole Arbitrator, examine the manner, in which, the above issues have been dealt with while rendering the findings and conclude as to whether such findings fall foul of any of the eight pigeon holes available for the Court dealing with the petitions under Section 34 of the Arbitration Act as per the judgment of the Hon'ble Apex Court in the case of ***Ssangyong Engineering & Construction Co. Ltd. Vs. National Highways Authority of India [reported in AIR 2019 SC 5041]***.

9. Before dealing with the above issues, it will be relevant to extract the following issues that were framed by the sole Arbitrator :

"(a) Whether there exists a valid and enforceable arbitration agreement between the parties ?

(b) Whether the respondent is due and liable to pay a sum of Rs 29,53,278/- being the expenses and charges paid borne by the claimant for re-exporting the consignment from Russia to Tuticorin ? and

(c) Whether the claimant is entitled to interest on the aforesaid sum and if so, at what rate ?"

10. While dealing with issues (a) and (b), the sole Arbitrator had gone into the issue of jurisdiction raised by the petitioner in extenso.

11. As a first step, the sole Arbitrator took into consideration Ex.C3(a), which is the MTD dated 09.3.2019. This document involves three parties. They are (1) the consignor (the petitioner); (ii) the consignee (M/s.Allisons); and (3) the freight forwarder (the respondent). It is not in dispute that the terms and conditions as contained in this document are governed under the Act. The important definitions are enumerated under Sections 2(c), 2(e), 2(f), 2(k), 2(l)

and 2(m) of the Act.

12. The petitioner does not dispute the fact that there was a multi-modal transportation since the respondent had undertaken the export customs clearing of the goods and transported the customs sealed container from the CFS to the Tuticorin Port by way of road transport and from there, the cargo was loaded on board the ship and the consignment was transported to Bronka, Russia by way of sea. Hence, there were more than two modes of transport involved in the present case. This satisfies the requirements under Section 2(k) of the Act.

13. It is also not in dispute that the MTD dated 09.3.2019 contains an arbitration clause in Clause 25 whereby it has been made clear that if there has been any difference of opinion or dispute, which could not be settled amicably, it should be settled by a sole arbitrator appointed by the multi-modal transport company. In this case, at the instance of the respondent, the sole Arbitrator was appointed by this Court by passing an order in Arbitration O.P.(Com.Div.) No.314 of 2021 dated 03.2.2022.

14. The main focus of the arguments was as to whether the re-export of goods is an independent/fresh contract between the parties and it does not form part of the MTD dated 09.3.2019 and therefore, the arbitration clause provided therein cannot be automatically read into the fresh contract that was entered into between the parties. This was attempted to be explained by various correspondences/communications that took place between the parties vide Ex.R14 series.

15. At this juncture, it will be relevant to consider the submission of the learned Senior Counsel appearing on behalf of the petitioner to the effect that a preliminary objection on the jurisdiction was taken under Section 16 of the Arbitration Act in I.A.No.1 of 2022 and it was rejected on 08.8.2022 by the sole Arbitrator without proper appreciation.

16. This submission made by the learned Senior Counsel appearing on behalf of the petitioner is unsustainable. The jurisdiction was questioned by the petitioner under Section 16 of the Arbitration Act only on the ground that a criminal complaint was lodged against

the respondent and others with respect to the transaction in dispute, that it was investigated in Crime No.17 of 2019 on the file of the Inspector of Police, Central Crime Branch, Tirupur City, that therefore, there was a clear element of fraud, which could not be decided by the Arbitral Tribunal and that it was beyond the purview of adjudication of the Arbitral Tribunal. In the said application, the petitioner did not take a ground that the re-export was done by virtue of a fresh contract, which did not contain an arbitration clause and that therefore, the Arbitral Tribunal was lacking jurisdiction. The sole Arbitrator rightly rejected the said application by order dated 08.8.2022 and it is justified since the criminal case itself was subsequently quashed by a learned Single Judge of this Court in CrI.O.P.Nos.30986 of 2019 and 16314 of 2020 by common order dated 16.8.2022.

17. Even in the statement of defence that was filed, the petitioner stated that the Bill of Lading in TUP.No.103159 dated 09.3.2019 was not a valid and enforceable agreement of arbitration and that therefore, there was no existence of a valid agreement between the parties.

18. The grounds that the re-export constituted a fresh contract, that the fresh contract did not contain an arbitration clause and that as a consequence, the Arbitral Tribunal was lacking jurisdiction, were never raised by the petitioner either at the time when the respondent filed Arbitration O.P.(Com.Div.) No.314 of 2021 before this Court seeking to appoint an arbitrator or when the statement of defence was filed. Instead, those defences were raised for the first time at the time of arguments and while filing the written submissions before the sole Arbitrator.

19. The issues as to whether the re-export was an independent contract between the parties and as to whether the same would not form part of the MTD dated 09.3.2019, are certainly questions of fact. Therefore, the petitioner ought to have taken those grounds at least while filing the statement of defence before the sole Arbitrator. This would have given an opportunity to the respondent to rebut those defences by way of explaining the correspondences/communications that took place between the parties in a series of e-mails marked as Ex.R14 series. The sole Arbitrator rendered a finding that such factual defence without a pleading could not be examined by him since the

claimant should not be taken by surprise by taking such a factual plea touching upon the jurisdiction of the sole Arbitrator at the time of arguments.

20. In so far as the above finding is concerned, the learned Senior Counsel appearing on behalf of the petitioner submitted that the sole Arbitrator ought not to have applied the strict rigors of the provisions of the CPC whereas Section 19(1) of the Arbitration Act liberates the Arbitral Tribunal from following such strict procedure and that therefore, the sole Arbitrator ought to have independently considered this issue since it goes to the root of the matter touching upon the jurisdiction of the Arbitral Tribunal.

21. It is true that the rigors of the provisions of the CPC and the Indian Evidence Act will not curtail the procedure that can be evolved by the sole Arbitrator. However, that does not mean that an issue of fact need not be taken by a party at the time of pleadings and that it can be straight away agitated at the time of arguments. This procedure cannot be permitted since the party on the one side cannot be taken by surprise and he must know all those defences that are

agitated by the opposite party. In the absence of the same, the party on the one side will be deprived of a fair opportunity and the same will result in violation of the principles of natural justice.

22. In the case in hand, the issue regarding the jurisdiction of the Arbitral Tribunal is an issue, which has to be evolved based on fundamental facts. The reason is that the original MTD dated 09.3.2019 contains an arbitration clause and it is certainly a question of fact for the Arbitral Tribunal to ascertain as to whether the latter developments regarding the re-export from Russia to the Tuticorin Port are a continuation of the earlier contract or an independent contract, which has no nexus to the original contract. In view of the same, the petitioner cannot assume that even in the absence of pleadings, the sole Arbitrator has to decide this issue by pouring into the documents that are available. Hence, this Court does not find any ground to interfere with the finding of the sole Arbitrator to the effect that the plea that the return of goods was not covered under Ex.C3(a) could not be countenanced in the absence of requisite pleadings.

23. Having rendered the above finding, this Court also went deeper into the application of mind on the part of the sole Arbitrator with respect to Ex.R14 series. Starting from paragraph 26 running upto paragraph 31, the sole Arbitrator has, in fact, applied his mind on the communications that took place between the parties. This Court also carefully perused Ex.R14 series. It contained the correspondences that took place between the parties from April to December 2019.

24. The petitioner issued two invoices; the first one is dated 25.1.2019 covered under invoice No.SAK040 and the second one is dated 01.3.2019 covered under invoice No.SAK044. Due to some payment issues, the petitioner sent an e-mail dated 04.4.2019 to the respondent informing them to stop delivery of the consignment to the buyer in Russia. However, in so far as invoice No.SAK040 was concerned, the goods were already delivered to the buyer. Hence, what remained was the second consignment pertaining to invoice No. SAK044 dated 01.3.2009.

25. The various correspondences that took place between the parties would show that each party was putting the blame on the other

and that in many of the communications, the respondent did take a stand that they were not liable nor obligated to bring the container back to India and that if required, the petitioner could even engage the services of some other freight forwarder. In spite of such a stand taken by the respondent, the petitioner was insisting that the respondent alone must bring back the container from Russia.

26. At that stage, the issue as to who must bear the demurrage and storage charges assumes significance. The petitioner took a stand that they would pay those charges only upto 09.6.2019 and not thereafter. However, the respondent took a stand that they would be entitled to get the full charges since it had to be paid to the shipping liner. In fact, at one stage, since the charges were not paid, the carrier diverted the goods from Colombo to Malta. At that time, an e-mail dated 14.11.2019 was sent by the respondent to the petitioner explaining the entire transaction and further reiterated their claim that they had arranged for bringing back the goods from Russia to Tuticorin Port and that they would be entitled for all the transportation charges, search, detention and demurrage charges and other statutory charges for transporting the cargo back to India.

27. It is also relevant to take note of the e-mail communication dated 14.11.2019 whereby the respondent categorically informed the petitioner that it was the petitioner, which had requested the respondent to bring back the cargo from Russia to Tuticorin, that for the purpose of complying with the requisite formalities, the respondent arranged for the re-export process at Bronka, Russia in respect of the shipment covered in invoice No.SAK044 and that after getting necessary clearance from the Russian Customs, the cargo was brought back.

28. On a careful consideration of all the communications marked as Ex.R14 series, it is seen that the re-export process forms part of the same transaction based on the request made by the petitioner to bring back the goods from Russia. Thus, the e-mail correspondences between the parties reflect the intention and consensus of the petitioner to bring back the cargo to India, which involves bearing the expenses payable by the petitioner to the respondent. Even in those correspondences, it is clear that Bill of Lading No.SGU0176960 emanated from the previous bill of lading namely House Bill of Lading No.TUP103159.

29. Even factually, there was no delivery of the goods as per Bill of Lading dated 09.3.2019 and it is only discharge from the vessel to the terminal of the Russian Port without moving the goods to the CFS or to the consignee therein. Further, the container was on hold at the terminal under the instructions of the petitioner and latter, with the no objection certificate, the goods were reloaded on board in another vessel and were effectively delivered back at Tuticorin Port.

30. In the light of the above discussions, this Court holds that the entire communications that form part of Ex.R14 series must be read as a whole and that the communications cannot be picked and chosen to suit the requirements of the petitioner. This exercise was properly done by the sole Arbitrator and a finding has been rendered to the effect that the re-export of the goods back to India was only a continuation of the earlier MTD dated 09.3.2019 and that the so-called re-export was not a fresh contract as was contended on the side of the petitioner.

31. In such circumstances, this Court holds that the parties were governed by an arbitration clause and the MTD dated 09.3.2019

fulfilled all the requirements under the Act. The case in hand, in fact, involves a multi-modal transportation and this Court cannot independently deal with the issue of re-transportation of goods from Russia to Tuticorin Port as a single modal transportation. Such an interpretation that is sought to be made by the petitioner is unsustainable.

32. In the considered view of this Court, the findings rendered by the sole Arbitrator are supported by strong reasoning and this Court, exercising its jurisdiction under Section 34 of the Arbitration Act, is not sitting on an appeal or a review against the award passed by the sole Arbitrator. The award passed by the sole Arbitrator neither suffers from patent illegality nor suffers from any conflict with the Public Policy of India. The findings were rendered by the sole Arbitrator only based on the available evidence. Therefore, the impugned award does not fall foul of Section 34(2)(a)(ii) or Section 34(2)(a)(iv) or Section 34(2A) of the Arbitration Act. Accordingly, all the issues that are taken up for consideration are answered against the petitioner.

33. In the result, the above original petition stands dismissed.
confirming the award dated 20.3.2023 passed by the sole Arbitrator.
Consequently, the connected application is also dismissed.

22.9.2025

Index : Yes
Neutral Citation : Yes

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