



Arb.OP.(comdiv) No.624 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2025

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THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

Arb.O.P.(Comm.Div.) No.624 of 2022
and
A.No.5061 of 2022

Principal Chief Materials Manager,
Southern Railway,
Chennai.

.. Petitioner

-VS-

M/s.Hindustan Wagon,
Howrah.

.. Respondent

Petition under Section 34(2)(iv) & 34(2)(b)(ii) of the Arbitration and Conciliation Act, 1996, has been filed seeking to set aside the Arbitration Award dated 30.03.2022 and Supplementary Award dated 05.05.2022 passed by the Sole Arbitrator in the dispute between the petitioner and the respondent.

For Petitioner : Mr.M.Karthikeyan

For Respondent : Mr.Dinesh Balachandran
& Mr.B.Surendhar



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ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (in short “the Act”) seeking to set aside the Arbitral Award dated 30.03.2022 as well as the Supplementary Award dated 05.05.2022 passed by the Arbitral Tribunal in favour of the respondent and against the petitioner.

2. The respondent was appointed as a contractor by the petitioner. They had supplied materials to the petitioner. There arose a dispute between the parties arising out of the contract for supply of materials. In accordance with the arbitration clause, arbitration was initiated by the respondent and an arbitrator was appointed by the petitioner from the panel of arbitrators constituted by them to adjudicate the dispute between the petitioner and the respondent. In the arbitration, a claim was made by the respondent against the petitioner for non-payment of the value of the materials supplied by the respondent to the petitioner. Both the parties participated in the arbitration and an arbitral award dated 30.03.2022 and supplementary award dated 05.05.2022 came to be passed, which is the subject matter of challenge in this petition.



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3. Under the impugned arbitral award, the petitioner has been directed to pay the respondent a sum of Rs.12,06,941/- within a period of 45 days from the date of publication of the award and it was made clear that failure to make the said payment within such period would attract interest at 8% per annum in addition to the award amount. Aggrieved by the impugned arbitral award, this petition has been filed under Section 34 of the Act.

4. The petitioner has raised the following grounds in this petition:-

(a) The impugned arbitral award is a non-speaking order as no reasons have been assigned for awarding the said sum of money to the respondent.

(b) The respondent had failed to supply the right materials sought for by the petitioner as per the terms and conditions of the contract, which amounts to breach of contract. The petitioner having rejected the materials supplied by the respondent is not liable to pay for the invoice raised by the respondent. According to the petitioner, the arbitrator has failed to take note of the said fact while passing the impugned arbitral award.



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(c) The Arbitrator has erroneously passed the impugned arbitral award contrary to the provisions of Clause 64(3)(b)(i) of General Conditions of Contract (GCC) and para 2905(d)(i) of IRS conditions of contract, as per which, the arbitral award shall state item-wise the reasons upon which it is based. According to the petitioner, no proper reasoning has been given by the Arbitrator in the impugned arbitral award.

(d) According to the petitioner, since they have communicated to the respondent that the materials supplied by the respondent to the petitioner is not as per the purchase order and having rejected the materials, the respondent is not entitled for the payment of invoice raised on the petitioner, which the Arbitrator has failed to take note of.

(e) Eventhough the communication sent by the petitioner to the respondent intimating rejection of the goods was beyond the period of 90 days, the contract does not provide for consequences. Further, the Arbitrator on her own decided and concluded that the petitioner is liable to pay the value of the invoices raised by the respondent, despite the fact that the materials having been used by the petitioner and some materials are still available in the premises of the petitioner.



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5. The learned counsel for the petitioner drew the attention of this

Court to the impugned arbitral award dated 30.03.2022 as well as the supplementary award 05.05.2022 along with the documents filed before the Arbitrator by the petitioner, which were marked as exhibits, and would reiterate the aforesaid grounds raised in this petition.

6. On the other hand, the learned counsel for the respondent would submit that the contract specifically provides that within a period of 90 days from the date of taking delivery of the materials from the respondent, the petitioner will have to communicate the respondent about the rejection of the goods. Having not done so, the Arbitrator has rightly passed the impugned arbitral award in favour of the respondent and against the petitioner. He would also submit that the view taken by the Arbitrator is only in accordance with the terms and conditions of the contract entered into between the parties and it is a possible view. He would also submit that once the view is a possible one, the question of interference by this Court does not arise under Section 34 of the Act. He would further submit that when the petitioner has admitted the receipt of the materials from the respondent and the petitioner has also admitted



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that the communication intimating the respondent about the rejection of the goods was sent only beyond the period of 90 days, there is no scope for interference by this Court under Section 34 of the Act, as only in accordance with the terms and conditions of the contract, the Arbitrator has passed the impugned arbitral award.

7. The findings and discussion of the Arbitrator with regard to the contentions raised by the petitioner in this petition are as follows:-

“.....a. That the Rejection Advice was issued to Claimant very late which exceeded the prescribed period of 90 days provided in the Contract under IRS condition at para no. 1502.

b. Respondent's justification that delay was caused because of administrative reasons, as a Joint procedure order had to be set in place, for communication of Rejection to supplier, in respect of Non-Stock items is untenable.

c. Material was Accepted by RITES after conducting 1st Inspection, at Kolkata, without any clarification about the base document adopted for Inspection, whereas the same material was later Rejected at Consignees place, after the Joint Inspection conducted by RITES, consignee and



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Claimant, on the grounds that the supplied items was not manufactured by forge welding or ERW. The Authorised Inspecting Authority i.e., RITES had inspected the same material and it had certified the material as Accepted and subsequently at consignee's place, they rejected it. No justification for this could be provided by the Agency or the Respondent.

d. Foremost, it is apparent that there was lot of confusion since very beginning from the time of Tender acceptance and issue of POs. Bid was invited with different specifications, and offer was with some other specifications and the same was accepted. Reasons for this could not be established. However, the Modification Advices were issued changing the procedure from Solid Forge welding to Forge Welding. All these facts lead to unexplainable confusion.

e. AT also noted that RITES, who was in complete knowledge of issue of Modification Advise, did not mention the description as changed in the Modified Advise, in the description column of the Inspection Report and reproduced the description given in the Purchase Order only was enough to lead to confusion.

15.2 Therefore AT considers that the RITES



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Inspection Report dated 01.12.2011, and 31.10.2011 was deficient as it did not bring out the facts clearly. Had RITES been more careful in his first Inspection done at Kolkota at Firms Works, the Firm would have got correct advice quite in time.

Communication of Rejection advice with delay, exceeding the prescribed period is Breach of Trust from the Respondent's side. The Rejection must have been conveyed to Claimant within 90 days as was caused because of Administrative reasons is not considered tenable...."

"...16. Counter Claims of the Respondent:

16.1 As mentioned, in Respondent's submission vide para no. 12.10 above, it is noted by AT that Respondent has made a Claim of Rs. I Lakh each for all 4 Purchase Orders (Totaling to 4 Lakhs) towards incidental Processing and administrative expenses from the Claimant for filing Counters in Court Cases and also cost of processing for this Arbitration.

14.2 AT however, considers, that had the Respondent granted the demand of Arbitration by the Claimant, on receipt of the Claimant's letter dated 29.06.2012 and 30.06.2012, there was no need for the Claimant to file the case in the Court. Therefore considering the default from the



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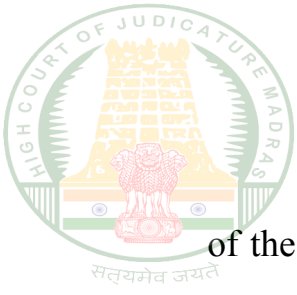


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Respondent's side, AT rejects the demand for Counter Claim raised by the Respondent...."

8. As seen from the discussion and findings of the Arbitrator extracted supra, sound and proper reasoning has been given by the Arbitrator for coming to the conclusion that the petitioner is liable to pay the award amount to the respondent. Admittedly, as per the contract, in case the petitioner decides to reject the materials, they will have to necessarily intimate the respondent about the same within a period of 90 days. The said fact has also not been disputed by the learned counsel for the petitioner. Admittedly, the intimation was made by the petitioner only on 03.05.2012, eventhough they ought to have intimated the respondent on or before 07.03.2012. Only based on the evidence available on record and only based on the terms and conditions of the contract, the Arbitrator has passed the impugned arbitral award.

9. Admittedly, the materials were supplied by the respondent to the petitioner and payments were not made by the petitioner to the respondent. Only in accordance with the terms and conditions of the contract, the claim was made by the respondent to the petitioner, in terms



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of the invoices raised by them on the petitioner, which remained unpaid.

The view taken by the Arbitrator is a legally possible view. Once the view taken by the Arbitrator is a legally possible view, the question of interference by this Court under Section 34 of the Act does not arise. The Arbitrator has acted only in accordance with the terms and conditions of the contract and she has not gone beyond the scope of the contract.

10. For the foregoing reasons, this Court finds no merit in this petition and accordingly, this petition is dismissed. No Costs. Consequently, A.No.5061 of 2022 is closed.

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ABDUL QUDDHOSE, J.

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