SUPREME COURT OF INDIA
Bench: JUSTICE ABHAY S. OKA and JUSTICE PANKAJ MITHAL
Date of Decision: 26-09-2023

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 35197/2019
(Arising out of impugned final judgment and order dated 14-06-2019 in Appeal No. 284/2019 in Arbitration Petition No.214/2014, Appeal No. 286/2019 in Arbitration Petition No.210/2014, Appeal No. 287/2019 in Arbitration Petition No.364/2014, Appeal No. 288/2019 in Arbitration Petition No.211/2014 and Appeal No. 290/2019 in Arbitration Petition No.218/2014 passed by the High Court of
Judicature at Bombay)

CENTRAL WAREHOUSING CORPORATION **Petitioner(s)**

VERSUS

AQDAS MARITIME AGENCY PRIVATE LIMITED **Respondent(s)**

Section, Acts, Rules, and Article:

Section 34 and 37 of the Arbitration and Conciliation Act, 1996

Clause XII of the agreement

Subject: Arbitration - Interpretation of contract clause - Challenge to the Arbitrator's interpretation of Clause XII of the agreement - Reliance on a prior Supreme Court decision - Allegation that the decision was ignored by the Courts dealing with remedies under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996 - Examination of the relevant clause and facts - Determination of whether the Arbitrator's interpretation was a possible view based on the material on record.

Headnotes:

Arbitration – Interpretation of contract clause – Petitioner challenged the interpretation of Clause XII of the agreement by the learned Arbitrator – Reliance on a prior decision of the Supreme Court - Argument that the decision was ignored by the Courts dealing with remedies under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996 – Examining the relevant clause and facts, the Court found that the Arbitrator's interpretation was a possible view based on the material on record – Special Leave Petitions dismissed. [Para 5-14]

Referred cases:

Rashtriya Ispat Nigam Limited vs. Dewan Chand Ram Saran (2012) 5 SCC 306

Representing Advocates:

For Petitioner(s): Ms. Aditi Tripathi, Adv. and Mr. Rahul Narayanan, AOR

O R D E R

Delay condoned.

Heard the learned counsel appearing for the petitioner. The learned Arbitrator has interpreted sub-clause (i) of Clause XII of the agreement entered into between the parties.

Heavy reliance is placed by the learned counsel appearing for the petitioner on the decision of this Court in *Rashtriya Ispat Nigam Limited vs. Dewan Chand Ram Saran*[1]. The learned counsel appearing for the petitioner has made best possible efforts to persuade us to interfere. She submitted that this Court has dealt with an identical clause in the agreement. She submitted that this binding decision has been ignored by both the Courts dealing with the remedies under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996[2]. She further submitted that though the attention of the learned Arbitrator was drawn to the said binding decision, he has completely brushed it aside and therefore, the ground of patently illegality was available.

In paragraphs 43 and 46 of the decision in *Rashtriya Ispat Nigam Limited* (supra), this Court held thus:

"43. In any case, assuming that Clause 9.3 was capable of two interpretations, the view taken by the arbitrator was clearly a possible if not a plausible one. It is not possible to say that the arbitrator had travelled outside his jurisdiction, or that the view taken by him was against the terms of contract. That being the position, the High Court had no reason to interfere with the award and substitute its view in place of the interpretation accepted by the arbitrator."
(underlines supplied)

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"46. In view of what is stated above, the respondent as the contractor had to bear the service tax under Clause 9.3 as the

liability in connection with the discharge of his obligations under the contract. The appellant could not be faulted for deducting the service tax from the bills of the respondent under Clause 9.3, and there was no reason for the High Court to interfere in the view taken by the arbitrator which was based, in any case on a possible interpretation of Clause 9.3. The learned

1 (2012) 5 SCC 306

2 For short, "1996 Act"

Single Judge as well as the Division Bench clearly erred in interfering with the award rendered by the arbitrator. Both those judgments will, therefore, have to be set aside."

We have perused the impugned award of the learned Arbitrator very carefully. We must note here that this is an award of an Arbitrator, not a judgment of any Judicial Officer. Nevertheless, we find that there was a detailed consideration of the decision relied upon by the learned counsel appearing for the petitioner and the learned Arbitrator found that the facts of the case before the Apex Court were different in the sense that the Apex Court was dealing with a clause in the agreement which was entered into in the year 2000 and much water had thereafter flown till the present agreement of 2005 was executed. Moreover, the learned Arbitrator has taken into consideration various factors, such as existing trade practises, impact of conflicting stands taken by the contracting parties, the service tax rules as applicable to the handling and transport service provider and recipients of the services and the ambiguity in Clauses XII and XXII.

After having perused the relevant part of the award of the learned Arbitrator, we concur with the finding of the Courts dealing with the remedies under Sections 34 and 37 of the 1996 Act that the view taken by the learned Arbitrator on the interpretation of the relevant Clause was a possible view which could have been taken on the basis of the material on record. We, therefore, decline to entertain the Special Leave Petitions. Hence, the

Special Leave Petitions are dismissed.

Pending application, if any, shall also stand disposed of.