IN **THE COURT OF THE III ADDITIONAL DISTRICT & SESSIONS JUDGE, RANGA REDDY DISTRICT AT L. B. NAGAR**

Present : Smt. C.Ratna Padmavathi,
II Addl. District & Sessions Judge
FAC III Addl. District & Sessions Judge
Ranga Reddy District at L. B. Nagar

Dated this the 17th day of October, 2024

A.O.P. NO. 526 of 2021

Between:

M/s. SR Power Systems India Pvt. Ltd.,
Door no. 6-8-680/8/1/403,
Sri Venkatramana Apartments,
Thakur Mansion Lane, Somajiguda,
Hyderabad.

Represented by its Authorized Representative,
Ms. G. Krishna Veni, Director,
D/o. G. Venkaiah,
Aged about 41yrs, Occ: Business.

--Petitioner

A N D

1. M/s. Empower Solar Energy Pvt. Ltd.,
   Door No. 985, Plot no. 270/E/A,
   Road No. 10, Jubilee Hills,
   Hyderabad – 500 033.

Represented by its Authorized Representative,
Pavan Kumar Panati, Director.

2. The Chairman,
   Micro and Small Enterprises Facilitation Council,
   Ranga Reddy Region, DIC, 4th Floor,
   Spoorthy Bhavan, Collectorate,
   Lakdi-ka-pul, Hyderabad – 500 004.

..... Respondents.

This petition is coming on this day before me for final hearing in the presence of M/s. S. K. S. Kiran, Advocate for the petitoner and of M/s. D. L. Kiranprakash, Advocate for Respondent no.1, right to file counter for Respondent no.2 is forfeited and the matter having been heard and stood over till this day for consideration, this Court delivered the following:

ORDER

1. This is a petition filed by the petitioner under Sec.34 of the Arbitration and Conciliation Act, 1996, for setting aside the impugned Arbitral Award dated 29.08.2020 in Arb. Case No. 385/MSEFC/2019 and to award costs of the petition.

2. For the sake of convenience, the parties herein are referred to as per their status in the arbitration case.

3. The petitioner herein is the petitioner in Arb. Case No. 385/MSEFC/2019 where under final award was passed on 29.08.2020 and Arbitral Tribunal only awarded Rs. 1,32,562/- though the claim made by the petitioner is for Rs.32,22,770/-.

4. The brief facts of the case as set forth by the petitioner in the said arbitration case are as follows:

The petitioner/claimant is a supplier of goods and services. Whereas, respondent i.e., respondent no.1 is a buyer as per Micro, Small and Medium Enterprises Development Act, 2006 (inshort MSMED Act).

The Respondent No.1 is a Developer of 2MW Solar Power plant at Vinjamoor village, Nalgonda district and the petitioner is a contractor to Respondent no.1 to supply the equipment, material and services towards setting up of solar plant. As per the contract price clause of letter of contract the respondent has to pay to the petitioner 10% over and above, his supply cost, construction cost and service cost. As per the contract payment terms clause of the letter of contract. The respondent has to pay against proforma invoices and for services on prorate basis.

The petitioner has supplied the material and rendered services worth Rs. 1,65,22,771/- for which the respondent No.1 has paid an amount of Rs.1,33,00,000/- and refused to pay the remaining amount of Rs. 32,33,770/- and in that regard a dispute has arisen between the parties and subsequently the petitioner referred the dispute to MSEFC (Micro and Small Enterprises Facilitation counsel) u//sec. 18(1) of the MSEFC Act 2006 and MSMEFC conducted conciliation, but it failed. Thereupon, MSEFC commenced the arbitration proceedings on 26.10.2019 and passed the final award dt. 29.08.2020 for meager amount of Rs. 1,32,562/- though the claim is for 32,33,770/-.

5. Being aggrieved by the said award the petitioner preferred the present petition u/sec. 34 of Arbitration and Conciliation Act, 1996 on various grounds which are urged as follows:s :-

1. **That the impugned Award is non speaking award and is cryptic and against the principles of natural justice and violative of fundamental policy of Indian law.**
2. **The Arbitral Tribunal did not consider the seven invoices submitted by the petitioner and did not give reasons as to why they are not considered .**
3. **The arbitral Tribunal only placed reliance on the vague statement of Respondent no.1 and though the respondent failed to submit the ledger account to disprove the**

invoices filed by the petitioner, but the Arbitral Tribunal purposefully excluded the invoices submitted by the petitioner and violated the fundamental policy of Indian Law and passed the award and while excluding the seven invoices did not provide an opportunity to the petitioner to present its case and thereby violated the principles of natural justice and prayed for setting aside the impugned award dt. 29.08.2020.

6. The respondent no.1 herein is the respondent in Arb. Case No. 385/MSESC/2019. Whereas, respondent no. 2 is the chairman of Micro Small Enterprises Facilitation Council (Arbitrator).

7. The respondent no.1 filed counter and contended that it is a Engineering Procurement Contract (EPC contract) and they were entrusted with the contract i.e., Commercial Solar Energy System Installation Contract by M/s. ENER SOL INFRA Pvt. Ltd., for purpose of erection and installation of a 33KV Plant Electricals at Solar Plant and the petitioner is a Sub Contractor who agreed to undertake the work of testing and commissioning part of the main contract and after negotiations the

Respondent i.e., M/s. Empower Solar Energy Pvt. Ltd., agreed to entrust the said work to the petitioner. Later, the petitioner failed to use the required equipment as per the work order which resulted in incomplete installation and they supplied inferior quality goods which are not up to the standard and the said incomplete and inferior supply of equipment did not enable the commissioning of the solar plant.

During the course of supply, the petitioner raised invoices but on verification found that the invoices raised were double billed and the double invoices were brought to the notice of the respondent. During the course of re-conciliation of accounts, due to the sub-standard material, the equipment got damaged and the solar plant could not be commissioned.

8. But the petitioner submitted some of the bills which are not related to the project. On account of the default committed by the petitioner, the Respondent has no other option to attend the commission of the plant due to which the respondent had to suffer loss i.e., an amount of Rs. 16,00,000/- towards differential value of GST and 20 panels were damaged worth Rs.1,80,862/- and other losses including the incidental expenses of Rs.

21,88,530/- for completing the job which is to be compensated by the petitioner..

The respondent further contended that the award is reasoned award by considering the totality of circumstances and the documents, prayed for dismissal of the OP.

9. Heard both sides. Both sides filed written arguments.

The learned counsel for the petitioner in his written arguments mentioned in a tabular form by mentioning the assailed portion of the award and the reasons for assailing with particular portion of the award and argued that the award is not based on evidence and it shows the bias towards the respondent and the award is devoid of proper reasons for arriving to the conclusions which is contrary to the public policy of India and the award is non speaking order and lacks judicial approach and exceeded its jurisdiction and the award was not even signed by even a single member of the Tribunal and reiterated the grounds urged in the main AOP.

Whereas the learned counsel for respondent no.1 in his written arguments reiterated the contentions urged in the counter and further argued that as per Sec. 34(3) of Arbitration and Conciliation Act an application is to be made within three months from the date of award but in case on hand, the application is to be filed on or before 28.11.2020 but it was filed on 14.09.2021 and thereby it was not filed in time and is barred by limitation.

The respondent further reiterated that on account of latches on the part of the petitioner i.e., supply of sub-standard quality of material, the respondent suffered loss to a tune of Rs. 21,88,530/- and after considering the evidence on record, the arbitrator allowed the claim of the petitioner to an extent of Rs.1,32,562/- only and there are no grounds to set aside the said award and prayed for dismissal of the petition.

10. Now the point that arises for determination is:-

> **"Whether impugned Arbitral Award dated 29.08.2020 in Arbitration case No.385/MSEFC/2019 warrants any interference and is liable to be set aside (or) not?"**

11. <u>POINT</u> :-

The petitioner herein is the claimant in arbitration case No.385/MSEFC/2019 who made the claim for Rs.32,22,770/- on the ground that the respondent failed to pay the remaining invoices amount which was due towards the work order given by the respondent for supply of equipment, material and services for setting up of the solar power plant for M/s. ENERSOL Infra Private Ltd.,

Thereupon, a final arbitration award was passed by the respondent No.2 herein on 29.08.2020 whereunder, the claim of the claimant was allowed only to an extent of Rs.1,32,562/- though the claim was made for Rs.32,22,770/-.

Being aggrieved by the said Award, the Petitioner in the said arbitration case, who is the petitioner herein preferred the present petition under Sec.34(2) of the Arbitration and Conciliation Act, 1996 for setting aside the said Award. The Respondents 1 who is the respondent in the said arbitration case filed counter opposing the petition.

12. At this juncture, it is relevant to state that Arbitration is one of the modes of alternative dispute resolution where the parties to the “lis” can

settle the dispute before an Arbitrator appointed by the parties to the dispute (or) by the court at the request of the parties and the Award passed by the Arbitrator becomes final and binding on the parties. Hence, an aggrieved party can only take recourse under Sec.34(2) of the Arbitration and Conciliation Act, 1996 for setting aside the arbitral Award on the grounds as laid down therein.

At this juncture, it is relevant to extract **Section 34(2) of the Arbitration and Conciliation Act, 1996**

> **An arbitral award may be set aside by the Court only if —**
>
> **(a) the party making the application furnishes proof that—**
>
> **(i) a party was under some incapacity, or**
>
> **(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or**

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in

conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

b) the Court finds that—(

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation. — Without prejudice to the generality of sub-clause (ii) it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

Now the present petition is to be decided in terms of Section 34(2) of Arbitration and Conciliation Act, 1996 . Hence, it is to be seen whether the grounds urged by the petitioner herein falls under any of the clauses under Sec.34(2) of Arbitration and Conciliation Act, 1996.

13. Before perusing the grounds urged by the petitioner in the present AOP, the plea of limitation as raised by the respondents counsel during the course of arguments is to be looked into.

The learned counsel for respondent No.1 mainly submitted in his written arguments as well as in his oral arguments that as per sec 34(3) of the Arbitration and Conciliation Act, 1996, an application for setting aside the award is to be made within three months from the date of the award but here in the case on hand, the date of award is 29.08.2020 but the present AOP was filed on 14.09.2021, though the stipulated period of 90 days will be over by 28.11.2020. He further submitted that even as per orders of the Hon'ble Supreme Court in Suo-motto writ petition No.03/2020 the period of limitation stands excluded from 15.03.2020 till 14.03.2021 in view of Covid – 19 and in those circumstances the present AOP ought to have been filed on (or) before 14.06.2021 but as it was filed on 14.09.2021 which is barred by limitation and on this ground the AOP is liable for dismissal.

In this context the learned counsel for the petitioner reiterated about the exclusion of limitation by the Hon'ble Apex Court in Suo-motto writ petition No.03/2020 and by subsequent orders of the Hon'ble Apex Court ordered extension of limitation from 15.03.2020 till 28.02.2022. I find force in the said submission of petitioner counsel.

In view of the subsequent orders of the Hon'ble Apex Court as stated supra, the limitation for filing present AOP stands extended in view of Covid – 19 and the AOP is deemed to be filed within time.

In this regard the respondent counsel relied upon the citation reported in **Civil Appeal No.6810 of 2022** ***(Bhimashankar Sahakari Sakkare Vs. Walchandnagar Industries Ltd (WIL))*** but the above citation has no direct application to the case on hand.

14. **The main grounds urged by the petitioner** is that the seven invoices filed by the petitioner were not considered by the Arbitral tribunal and purposefully excluded the same and the order is devoid of reasons and did not provide an opportunity to the petitioner to present his case which amounts to violation of principles of natural justice and also amounts to

violation of the fundamental policy of Indian law. Therefore, the grounds urged by the petitioner is that there is violation of **principles of natural justice** and the award passed by the arbitrator is in conflict with **public policy of India**. Which falls under clauses **34 (2) (a) (iii) & 34 (2) (b) (ii) of Arbitration and Conciliation Act, 1996.**

15. It is not out of place to mention that the proceedings under Section 34 (2) of Arbitration and Conciliation Act, 1996, are summary in nature and the scope of enquiry is to be restricted only to any of the grounds as enumerated therein for setting aside the award. Therefore, it is for the petitioner to establish the said ground and the same can be decided on the basis of the Arbitral record that is available on record.

16. Now the Arbitral award is to be looked into to find out whether the grounds urged by the petitioners is sustainable under law (or) not.

At this juncture, relied upon the ruling reported in **(2019) 15 SCC 131** (Ssangyong Engineering and Construction Co. Ltd. vs. National Highway Authority of India) wherein the Hon'ble Apex Court had authoritatively held as follows :-

> **“That reappreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.”**

In view of the settled legal position, the Arbitral Award in question cannot be interfered on the ground that the Arbitral Tribunal has arrived at an erroneous conclusion on the evidence placed before the Arbitral Tribunal.

17. Further, as could be seen from Page 6 of the arbitral Award, the Arbitral tribunal assigned reasons for not considering the invoices in Sl.No.16 to 22. Therefore, the plea of the petitioner that the arbitral order is devoid of reasons for excluding the seven invoices is not acceptable. Further, the reappreciation of evidence by this Court is not permissible in the light of the legal position as referred above. Therefore, the contention of the petitioner that the arbitral award is devoid of reasons is not legally sustainable.

18. Therefore, the only point that is left to be resolved is that whether the Award of the Arbitral tribunal is opposed to public policy of India and it is in violation of principles of natural justice as contended by the petitioner.

At this juncture, relied upon the ruling reported **(2015) 3 SCC 49** ***(Associate Builders v. Delhi Development Authority)*** wherein the expression public policy of India as contained under Sec. 34 (2)(b)(ii) of the Arbitration and Conciliation Act, 1996 was a given a wide interpretation and held that:

> **"Award could be set aside if it is contrary to**
>
> **(a) fundamental policy of Indian Law;**
>
> **(b) the interest of India; (or)**
>
> **(c) Justice; (or)**
>
> **(d) if it is patently illegal and the illegality must go to the root of the matter and the illegality of trivial nature cannot be held as against public policy."**

It was further held that :-

> **"Award can also be set aside if it is so unfair and unreasonable that shocks the conscience of the Court."**

Even the explanation of proviso to Sec.34(2) of Arbitration and Conciliation Act, 1996 makes it clear that an **award is said to be in conflict with the public policy of India if the making of the award was induced or effected by fraud (or) corruption (or) was in violation of Sec.75 (or) Sec.81**.

In the case on hand, the Award in question does not fall under any of the above said categories.

Further on perusal of the Arbitral award, there is nothing on record to suggest that there is patent illegality, which goes to the root of the matter.

Thus, the petitioner herein except making oral assertion that the Award in question is opposed to public policy of India but failed to establish the said plea and there is nothing on record to hold that the Award in question is unfair and shocks the conscience of the Court.

Therefore, the ground urged by the petitioner herein under Sec.34(2)(b)(ii) of Arbitration and Conciliation Act, 1996, is not made out.

19. **The second ground that is urged** by the petitioner in the present petition is with regard to seeking interference of the court with the findings arrived by the Arbitrator basing upon the evidence placed before the Arbitrator by excluding the seven invoices relied upon by the petitioner and no opportunity was provided to the petitioner to present its case while excluding seven invoices, as such, there is **violation of principles of natural justice**

As could be seen from the award both the parties are given the opportunity to submit their written statement in respect of their contentions. Further as stated supra, in page No.6 of the award the Arbitral Tribunal has mentioned the reasons for not considering the seven invoices. Therefore, the contention of the petitioner that there is **violation of principles of natural justice does not hold any substance and is not sustainable**.

20. Further, It is needless to state that a Court does not sit in appeal over the Award of an Arbitral Tribunal and by reassessing (or) re-appreciating the evidence as held in catena of decisions. Therefore, an Arbitral Award can be challenged only under the grounds mentioned in Sec.34(2) of the Arbitration and Conciliation Act, 1996 (relied on **2012 (1) SCC 594** (P.R.Shah, Shares and Stock Brokers Pvt. Ltd. vs. B.H.H. Securities (P) Ltd.)). Hence, the court cannot interfere with the arbitral Award on the ground that the Tribunal erred in evaluating the evidence placed by the parties.

At this juncture relied upon the Judgment of the Hon'ble **APEX court in Mega Enterprises and others Vs Halidarms and Snacks Pvt. Ltd.**, wherein it was held that:

> **"The court cannot interfere with the arbitral Award merely on the ground that it does not concur with the inference drawn by Arbitral Tribunal from the evidence led by the parties."**

At this juncture, petitioners counsel relied upon the ruling reported in **(2019) 15 SCC 131** (Ssangyongi Engineering and Construction Co. Ltd. vs.

National Highway Authority of India) wherein the Hon'ble Apex Court had authoritatively held as follows :-

> **"That reappreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award."**
>
> **It was further held --**
>
> **"that under no circumstances can any court interfere with an arbitral award on the ground that justice has not been done in the opinion of the court and that would be an entry into the merits of the dispute which is contrary to the ethos of section 34 of 1996 Act".**

On the same preposition of law petitioners counsel relied upon the citation reported in **Civil Appeal No.837 – 838 of 2022** ***(Indian Oil Corporation Ltd., through its senior manager Vs. M/s. Shree Ganesh Petroleum Rajgurunagar through its proprietor Mr. Laxman Dagdu Thite).***

In view of the above, the arbitral award dt.29.08.2020 cannot be interfered.

21. In those circumstances, the Award passed by the Arbitrator dated 29.08.2020 is neither arbitrary (nor) capricious and needs no interference.

22. The petitioner's counsel further relied upon the following citations.

1) ARBA No.58/2018 ***(Jayaram Panda Vs. Project Director, M/s. National Highway Authority of India and others)***

2) CMA (MD) No.1734/2013 ***(The Union of India, Ministry of Shipping Road, Transport and National Highways New Delhi, through its project Director Vs. J.Auuamar & others)***

3) CMA No.909/2009 (C SRIMANNARAYANA Vs. HINDUSTAN PETROLEUM CORPORATION LIMITED SECBAD AND ANOTHER)

4) Appeal (civil) 7419 2001 of 518 ***(Oil & Natural Gas Corporation Ltd., Vs. SAW Pipes Ltd.,)***

The above referred citations are not applicable to the case on hand as facts and circumstances of the present case are different

23. In the result, the petition is hereby dismissed and the impugned Award of the Arbitral Tribunal dated 29.08.2020 needs no interference. No costs.

Typed to my dictation, corrected and pronounced by me in the open Court on this the 17th day of October, 2024.

II Addl. District & Sessions Judge
FAC III Addl. District & Sessions Judge
Ranga Reddy District at L. B. Nagar.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED – NIL

II Addl. District & Sessions Judge
FAC III Addl. District & Sessions Judge
Ranga Reddy District at L. B. Nagar.