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

APPEAL NO. 391 OF 2013
IN
ARBITRATION PETITION NO. 87 OF 2013
WITH
NOTICE OF MOTION (L) NO. 1464 OF 2013

Steel Authority of India Ltd. .. Appellant
vs.
Pacific Gulf Shipping Co. Ltd. .. Respondents

…....

Mr. S. C. Naidu with Mr. Saurabh Kulkarni i/b. C. R. Naidu & Co. for Appellant.

Mr. Prashant S. Pratap- Senior Advocate with Ms. Trupti R. Agarwal, Mr. Ashwini Sinha i/b. Ms. Lavina Kriplani for Respondents.

…....

CORAM : DR. D. Y. CHANDRACHUD, AND
M. S. SONAK, JJ.

19 September 2013

P.C. :

The Appeal arises from a decision of a learned Single Judge dated 19 March 2013 on a petition under Section 34 of the Arbitration and Conciliation Act, 1996 which sought to question the legality of an arbitral award rendered by a three member arbitral tribunal. The learned Single Judge has dismissed the Arbitration Petition consequent upon which the original Petitioners are in Appeal.

2] The dispute between the parties arises out of a Charterparty of 15 November 2010 in respect of the vessel m. v. Navios Sagittarius. The

Appellants are charterers of the vessel. The respondents are the owners. The vessel was nominated for a voyage charter to carry a consignment of coking coal in bulk from DBCT, QLD, Australia, to three nominated Ports of discharge in India namely Vizag, Paradip and Haldia. The dispute between the parties relates to the quantum of demurrage that was payable to the Respondents upon the completion of discharge. Clause 33 of the Charterparty, which was described as a "Time Counting Provision" inter alia provided that :

> "At each discharging port : Time to count 24 hours after Notice of Readiness is served on arrival of the vessel within port limits at each port of discharge and whether in berth or not and in free pratique and ready in all respects to discharge the cargo."

3] The facts are not in dispute. Notice of Readiness was tendered by the vessel on arrival at Vizag on 28 February 2010 at 1515 hours. Under the Charterparty the obligation to obtain a berth was that of the charterer, the Appellant to these proceedings. Under Clause 33 laytime would commence 24 hours after tender of the Notice of Readiness. Laytime commenced at 1515 hours on 29 December 2010. On 31 December 2010 a notice was given by the port authorities to the Master to pick up anchor and go to the Pilot Boarding ground. However, between 0845 hours and 1415 hours on 31 December 2010 the vessel reported an engine problem to the port authorities. Admittedly the problem was rectified at 1425 hours on 31 December 2010 when the vessel reported readiness to the port authorities.

3a] Before the arbitral tribunal the submission of the Appellant proceeded on the basis that the vessel had developed engine trouble between 0845 hours and 1415 hours on 31 December 2010 as a result of which the vessel was not ready to proceed.[1] The arbitral tribunal excluded the period between 0845 hours and 1415 hours on 31 December 2010 since the vessel was not ready in all respects during that period to discharge the cargo. The contention of the Appellant is that besides the exclusion of the period between 0845 hrs and 1415 hours on 31 December 2010 which was occasioned as a result of engine failure, the Appellant was entitled to the exclusion of a further period between 1415 hours on 31 December 2010 until 2140 hours on 2 January 2011 when the vessel actually berthed. There is no dispute about the fact that in the meantime, the Appellant nominated a second vessel, which was carrying cargo consigned to the Appellant and which accordingly berthed. The learned Single Judge has rejected the challenge to the Arbitral Award, holding that this constituted a fair interpretation of the terms of the Charterparty by an expert arbitral tribunal.

4] Clause 38 of the Charterparty contains the following provision:

> "In the event of breakdown of ~~gears/cranes/winches and~~ equipments of the vessel by reason of disablement or insufficient power etc., the period of such inefficiency shall not count as laytime, irrespective of vessel is on demurrage or not."

1 Paragraph 21 of the Arbitral Tribunal's award.

For convenience of exposition, we have incorporated (and struck off) in clause 38 the words “gears/cranes/winches and” which were consciously deleted by the parties at the time of the execution of the Charterparty. Clause 38 indicates that in the event of a breakdown of the equipment of the vessel by reason of disablement, such period shall not count as laytime irrespective of whether the vessel was on demurrage. The submission of the Appellant is that clause 38 must relate only to the breakdown of discharge equipment and would not cover engine failure.

5] The interpretation of clause 38 was within the jurisdiction of the arbitral tribunal. If the tribunal has adopted a plausible interpretation neither the learned Single Judge in a Petition under Section 34, nor for that matter, this court in an appeal from the decision of the Single Judge would be justified in substituting its interpretation. But that apart, we find that the interpretation which has been adopted by the arbitral tribunal is the only correct interpretation. Parties consciously deleted the words gears/cranes/winches when they executed the Charterparty. Clause 38 covers the breakdown of 'equipments of the vessel' which would not count as laytime. Hence the view which has been taken by the arbitral tribunal is correct and does not call for any interference. The view is based on an interpretation of the terms of the contract.

6] The counter claim which was made by the Appellant was essentially consequential in nature. As the arbitral tribunal noted, the counter claim was for consequential damages on account of the vessel

not being able to proceed to the berth when the Port had called for it at 0845 hours on 31 December 2010. As a matter of fact, the admitted position was that since the vessel in question was unable to berth between 0845 hours and 1415 hours on 31 December 2010, the Appellant nominated a second vessel which was carrying cargo which was consigned to the Appellant during this period. In the circumstances, having regard to this factual background, the arbitral tribunal noted that no evidence was led before the tribunal to show that the Respondents were aware of the possibility of any consequential damage. This part of the reasoning of the arbitral tribunal is unexceptionable and was correctly not held to result in a ground within the meaning of Section 34 for setting aside the Award.

7] The final aspect of the submission of the Appellant relates to the award of interest. The claim before the arbitral tribunal was for interest at the rate of 12% per annum. The arbitral tribunal has awarded interest at the rate of 9% per annum from 24 May 2011 namely the date on which the cause of action had accrued. The submission of the Appellant is that the Tribunal ought not to have awarded anything in excess of the LIBOR rate since the award is in foreign currency.

8] Section 31(7)(a) of the Arbitration and Conciliation Act 1996 confers discretion upon the arbitral tribunal, where the Award is for the payment of money, to award interest unless otherwise agreed by the

parties at such rate as it deems reasonable. We find no reason or justification to accept the submission that since the award was in foreign currency, the arbitral tribunal ought to have awarded no more than the LIBOR rate. LIBOR does not circumscribe the discretion of the tribunal. Senior Counsel appearing on behalf of the Respondents has submitted that even in the U.K. the Judgment Debts (Rate of Interest) Order 1993 prescribes a rate of 8% per annum in relation to any judgment entered after the coming into force of the Order. Be that as it may and quite independently, we have come to the conclusion that the award of interest by the arbitral tribunal, cannot be regarded as being penal, unconscionable or disproportionate.

9] The view which has been taken by the learned Single Judge does not suffer from any error. No case for interference in appeal has been made out. The appeal is dismissed.

10] In view of the disposal of the appeal, the Notice of Motion in the appeal (Notice of Motion (L) No. 1464 of 2013) does not survive and is disposed of.

(Dr. D. Y. Chandrachud, J.)

(M. S. Sonak, J.)

Chandka