IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION (L) NO.8122 OF 2020

Arbaza Alimentos Ltda … Petitioner
Vs.
MAC Impex and others … Respondents

WITH
INTERIM APPLICATION NO.4643 OF 2022
AND
INTERIM APPLICATION (L) NO.37242 OF 2022
IN
COMMERCIAL ARBITRATION PETITION (L) NO.8122 OF 2020

Mr. Chaitanya B. Nikte a/w. Mr. Hitanshu S. Jain and Mr. Prajit S. Sahane for Petitioner.

Mr. Mahesh Vaswani a/w. Ms. Shreya Tiwari, Ms. Sheetal Patkar, Mr. Sunil Behal and Mr. Ashutosh Shukla and Ms. Priyali Chavan i/b. Ms. Dharini Nagda for Respondents.

CORAM : MANISH PITALE, J.

Reserved on : 3rd MARCH, 2023
Pronounced on : 5th JUNE, 2023

ORDER :

. The petitioner is seeking enforcement of foreign arbitral award dated 24.09.2020, passed by a learned sole arbitrator, who was appointed by the Grain and Feed Trade Association (GAFTA), with the arbitration being held in the United Kingdom (UK). It is an admitted position that the respondents did not challenge the said arbitral award on merits before the competent courts in UK.

2. The petitioner is a company registered under the laws of Brazil and it is engaged in the business of export of various agricultural products to number of countries including India. Respondent No.1 is a partnership firm registered in India, engaged in the business of trading,

including import / export of agricultural products. Respondent Nos.2 to 4 are the partners of respondent No.1 firm. The respondents are resisting enforcement of the aforesaid foreign arbitral award on various grounds. Before referring to the said grounds, it would be appropriate to first refer to the chronology of events, leading upto filing of the present petition.

3. On 04.09.2019, the petitioner and respondent No.1 entered into a contract whereby the said respondent agreed to buy and the petitioner agreed to sell 780 Metric Tonnes (MT) of Brazilian Brown Eyed Beans. The consignments were to be dispatched in 3 shipments / parcels of 10 containers each from Brazil to India. The contract was executed under the aegis of the Global Pulse Confederation and GAFTA. The agreed payment terms were to be 'cash against documents'. As per the contract, the quality of the aforesaid goods was to be determined finally at the time of loading, with respondent No.1 as the buyer having right to attend the loading and to inspect the same. It was specifically agreed between the parties under the said contract that if any conflict arose at the destination i.e. in India about the standard of the goods imported or if it was to be in conflict with any regulation or law, the buyer was to be fully liable for the consequences. The goods were required to be dispatched on Cost Insurance Freight basis to Nhava Sheva, India.

4. It is significant that one of the terms of the contract specified that the contract was executed as per Global Pulse Confederation (GPC) Contract No.1. This was a standard form of contract, which *inter alia*, provided for resolution of disputes between the parties by way of arbitration. Clauses 24 and 25 of GPC Contract No.1 specified that the seat of arbitration would be England and that the arbitration would be governed by the GAFTA Simple Disputes Arbitration Rules No.126. According to the petitioner, the said arbitration clauses, forming part of GPC Contract No.1, stood incorporated by way of reference in the

aforesaid contract dated 04.09.2019, executed between the parties.

5. The petitioner dispatched 30 containers in 3 parcels of 10 containers each. The first parcel was dispatched on 20.09.2019, the second and third were dispatched subsequently. The petitioner, as the seller, sent a duplicate of the contractually agreed documents to respondent No.1 i.e. the buyer, which included the invoice, original bill of lading and certificate of quality issued by a contractually agreed GAFTA approved superintendent.

6. On 19.11.2019, respondent No.1 raised concerns about the quality of the first parcel, which had reached the port at Nhava Sheva on 07.11.2019. Although, in terms of the contract, the quality of the material was final at the time of loading, yet the petitioner appointed a surveyor company at the port in India, who confirmed that the quality of the first parcel was good as per the contract executed between the parties. But, there was a dispute between the parties with regard to the aspect of the quality of the goods. Although respondent No.1 had paid for the first lot of containers supplied by the petitioner, it refused to pay for the second and third lots, despite the same having reached the port at India.

7. In this backdrop, the petitioner was constrained to approach this Court on 22.05.2020, under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the ‘Arbitration Act’) for interim measures. In the said proceedings, respondent No.1 contended before this Court that it was willing to resolve the disputes amicably. During the course of the proceedings, it was recorded that the said respondent sought a discount of USD 100 per MT. But, the petitioner did not agree to the same, and therefore, respondent No.1 had decided not to take delivery of the goods.

8. In this backdrop, on 27.07.2020, the petitioner issued arbitration notice and called upon respondent No.1 to pay the entire unpaid amount of USD 354,375 along with costs, failing which the petitioner would have to proceed for arbitration under the aegis of GAFTA. The petitioner also suggested names of GAFTA approved arbitrators.

9. As the disputes could not be resolved, the petitioner applied to GAFTA for appointment of arbitrator as per the GAFTA Simple Disputes Arbitration Rules No.126. Eventually, GAFTA appointed a sole arbitrator. The parties were put to notice and the arbitration proceedings commenced.

10. On 28.08.2020, the petitioner filed a detailed claim before the learned arbitrator, claiming the aforesaid amount along with costs and interest on late payment for the first parcel. On 04.09.2020, the respondents filed their objection to jurisdiction, statement of defence and also a counter-claim before the learned arbitrator. The respondents specifically objected to jurisdiction of the learned arbitrator, claiming that there was no arbitration agreement between the parties as there was no incorporation of the arbitration agreement by reference and that GAFTA had no jurisdiction to appoint the sole arbitrator.

11. The proceedings culminated in the form of the said foreign arbitral award dated 24.09.2020. The learned arbitrator directed the respondents to pay the amount claimed i.e. USD 354,375 along with interest @ 12% p.a. from 10.11.2019 until payment, along with further direction to pay cost and 4% interest thereon. The counter-claim of the respondent was dismissed. It is an admitted position that the respondent did not challenge the said award before the competent Courts in England and that the award has attained finality.

12. The present proceedings stood initiated on behalf of the petitioner

seeking enforcement of the said foreign arbitral award dated 24.09.2020. Upon the respondents being put to notice, they entered appearance through counsel and the matter was taken up for hearing.

13. Mr. Chaitanya Nikte, learned counsel appearing for the petitioner submitted that the aforesaid foreign arbitral award deserved to be enforced at the earliest as the respondents had failed to make out any ground for resisting such enforcement, within the narrow compass of jurisdiction available to the Court under Section 48 of the Arbitration Act. It was submitted that a perusal of the grounds raised in the reply on behalf of the respondents would show that the respondents have virtually raised challenge on merits against the said arbitral award, akin to challenges raised by parties under Part I i.e. under Section 34 of the Arbitration Act. The learned counsel submitted that since Part I of the Arbitration Act is not applicable at all, all such grounds deserve to be rejected at the threshold.

14. The learned counsel then referred to judgements of the Supreme Court in the cases of *Renusagar Power Company Limited Vs. General Electric Company*, **1994 Supp (1) SCC 644**, *Shri Lal Mahal Limited Vs. Progetto Grano SPA*, **(2014) 2 SCC 433** and *Vijay Karia and others Vs. Prysmian Cavi E Sistemi SRL and others*, **(2020) 11 SCC 1**, to contend that Section 48 of the Arbitration Act clearly has a ‘pro-enforcement bias’ as recognized in the New York Convention of 1958. By referring to various portions of the aforementioned judgements, learned counsel for the petitioner submitted that it was only when the award shocked the conscience of the Court and it was found contrary to the public policy of India that enforcement could be denied. By referring to the arbitral award, it was submitted that the learned arbitrator had considered all the contentions of the rival parties and arrived at reasonable findings, which did not give rise to any ground under Section 48 of the Arbitration Act to

deny enforcement.

15. The learned counsel placed specific reliance on the judgement of the Supreme Court in the case of *Inox Wind Limited Vs. Thermocables Limited*, **(2018) 2 SCC 519**, to contend that, in the facts of the present case, the arbitration agreement had been incorporated in the contract executed between the parties as specific reference was made to GPC Contract No.1 in the contract dated 04.09.2019, executed between the parties.

16. It was further submitted that the objection regarding jurisdiction was raised on behalf of the respondents before the learned arbitrator also, which was dealt with in detail and that this Court could not sit in appeal over the findings of the learned arbitrator in that regard. It was submitted that the quality of the goods, as per the contract, was to be verified by the respondents at the time of loading in Brazil and having failed to do so, they had no right to reject the goods when they reached the port in India. It was further submitted that even after disputes arose between the parties, the respondents sought concession of USD 100 per MT from the petitioner, thereby indicating that the root cause of the dispute was not the quality of the goods. These aspects were dealt with in great detail by the learned arbitrator and therefore, in the light of the settled position of law, there was no question of denying enforcement of the award in question.

17. It was further submitted that the respondents were unnecessarily invoking Section 47(1)(a) of the Arbitration Act, to contend that the original award was not placed before this Court and that therefore, enforcement ought to be denied. By referring to the award on record, it was submitted that the original award received by the petitioner was specifically placed before this Court along with the present petition, and

that therefore, the said ground was also without any substance. On this basis, it was submitted that this Court may direct enforcement of the foreign arbitral award at the earliest.

18. On the other hand, Mr. Mahesh Vaswani, learned counsel appearing for the respondents submitted that a perusal of the award would demonstrate that enforcement of the same would be contrary to the public policy of India and hence enforcement ought to be denied under Section 48(2)(b) of the Arbitration Act. It was submitted that the manner in which the learned arbitrator proceeded with the matter, indicated that the same was in contravention with the fundamental policy of Indian law, *inter alia*, for the reason that no arbitration agreement was executed between the parties. It was further submitted that the lightning speed with which the learned arbitrator proceeded under the GAFTA Simple Disputes Arbitration Rules No.126, it was clear that sufficient opportunity was not granted to the respondents to present their case, and therefore, the enforcement of the foreign arbitral award ought to be denied.

19. The learned counsel for the respondents submitted that although reference was made to GPC Contract No.1 in the specific contract dated 04.09.2019 executed between the parties, the same was not enough for reaching the conclusion that there was indeed an arbitration agreement between the parties. It was submitted that GPC Contract No.1 itself required the parties to specifically fill and sign forms, which would then give rise to an arbitration agreement between the parties. In the absence of such forms being duly filled and signed by the parties, it could never be said that there was an arbitration agreement between the parties. On this basis, it was submitted that the entire arbitral proceedings were rendered without jurisdiction.

20. It was further submitted that the learned arbitrator could not have pronounced upon its own jurisdiction, for the reason that the GAFTA Simple Disputes Arbitration Rules No.126 do not provide for such a power in the arbitrator to decide his own jurisdiction. In fact, such power was found only in the GAFTA Expedited Arbitration Procedure Rules. Therefore, while the learned arbitrator purportedly proceeded under the GAFTA Simple Disputes Arbitration Rules No.126, he wrongly invoked the GAFTA Expedited Arbitration Procedure Rules to decide upon his own jurisdiction. This was a fundamental flaw that vitiated the arbitral award itself.

21. Apart from this, the learned counsel for the respondents vehemently argued that the goods received in India i.e. Brazilian Brown Eyed Beans, upon being tested in terms of the laws of India, were found to be unfit for human consumption and in fact poisonous. The relevant reports of the government laboratories were made available to the learned arbitrator. But the same were rejected on frivolous grounds. It was submitted that when the goods received from the petitioner were not only of inferior quality but were found to be unfit for consumption, there was no question of any liability on the part of the respondents to make any payments. It was further submitted that the respondents were never granted an opportunity to verify the quality of the goods at the time of loading in Brazil. It was submitted that when the goods were in conflict with the laws in India, the same was sufficient ground to deny enforcement of the award, as being contrary to the public policy of India. The learned counsel for the respondents also referred to judgements upon which reliance was placed on behalf of the petitioner as regards the scope of jurisdiction available with this Court while deciding the present petition. It was submitted that even if the jurisdiction was within a narrow compass, there was sufficient material

in the present case to invoke such jurisdiction for denying enforcement of the foreign arbitral award.

22. The learned counsel for the respondents relied upon judgement of the Supreme Court in the case of *Duro Felguera S.A. Vs. Gangavaram Port Limited*, **(2017) 9 SCC 729**, to contend that the question as to whether an arbitration agreement was incorporated by way of reference in a contract, is always a question of construction of the document, demonstrating the intention of the parties. It was contended that in the facts of the present case, such incorporation could not be inferred and that it could be said to be virtually a unilateral addition or alteration of the contract by the petitioner. Reliance was placed on *Ssangyong Engineering and Construction Company Limited Vs. National Highway Authority of India*, **(2019) 15 SCC 131** in this regard. Reliance was also placed on the judgement of the Supreme Court in the case of *Jagdish Chander Vs. Ramesh Chander and others*, **(2007) 5 SCC 719**, to contend that a clause ought not to be considered as an arbitration agreement if it contemplates fresh or further consent of the parties to refer the disputes to arbitration. It was emphasized that if the contentions of the petitioner were to be accepted, then it would adversely affect party autonomy as recognized by the Supreme Court in the case of *Bharat Aluminum Company Vs. Kaiser Aluminum Technical Services Inc.*, **(2016) 4 SCC 126**.

23. It was also alleged that principles of natural justice were violated and that enforcement of the said arbitral award would amount to violating public policy of India, as the respondents had correctly refused to accept the goods that were poisonous in nature. The learned counsel for the respondents relied upon judgement of the Gujarat High Court in the case of *Western Shipbreaking Corporation Vs. Clare Haven Limited, UK*, **1998 (Supp.) ArbLR 53 (Gujarat)**, which laid down that the

Indian Courts ought to first arrive at satisfaction about genuineness and authenticity of the award placed on record. According to the respondents, the award placed along with the petition was not an original award, as required under Section 47(1)(a) of the Arbitration Act. On this basis, it was submitted that the present petition deserved to be dismissed.

24. Heard learned counsel for the parties and perused the material on record. In the first instance, it would be appropriate to deal with the contention raised on behalf of the respondents under Section 47(1)(a) of the Arbitration Act. The respondents allege that the original award is not placed on record with the present petition and that on this short ground itself, the present petition ought to be dismissed. This Court has perused the material, particularly the award placed on record along with the petition. A perusal of the same shows that it is indeed the original award issued by the learned sole arbitrator, which bears his signature and the date 24.09.2020, including the symbol and seal of GAFTA. The letter issued by the concerned officer of the Dispute Resolution Service of GAFTA, forwarding the award to the petitioner is also placed on record. This Court is satisfied that the award placed on record is indeed the original award and that therefore, there is no substance in the said contention raised on behalf of the respondents. Accordingly, the said contention, raised on the basis of Section 47(1)(a) of the Arbitration Act, is rejected.

25. It is significant that the learned counsel for the rival parties, both, have referred to the judgements of the Supreme Court laying down the law as regards the jurisdiction of the Court under Section 48 of the Arbitration Act. The said provision concerns conditions for enforcement of foreign awards. The respondents have relied upon Section 48(2)(b) of the Arbitration Act, as also Explanation 2 thereof to contend that

enforcing the said foreign arbitral award would be contrary to the public policy of India and the fundamental policy of Indian law.

26. The Supreme Court in the cases of **Renusagar Power Company Limited Vs. General Electric Company** *(supra)*, **Shri Lal Mahal Limited Vs. Progetto Grano SPA** *(supra)* and **Vijay Karia and others Vs. Prysmian Cavi E Sistemi SRL and others** *(supra)* has laid down in detail as to the scope of jurisdiction available to the Court under Section 48 of the Arbitration Act to deny enforcement of a foreign arbitral award. In the case of **Renusagar Power Company Limited Vs. General Electric Company** *(supra)*, the Supreme Court clarified that the expression 'public policy of India' has to be construed in a narrow fashion and it cannot be given wide interpretation. In the case of **Shri Lal Mahal Limited Vs. Progetto Grano SPA** *(supra)*, the Supreme Court has laid down that Section 48 of the Arbitration Act does not give an opportunity to the Court to have a second look at the foreign arbitral award at the enforcement stage. This clearly indicates that the Court, while exercising jurisdiction under Section 48 of the Arbitration Act, cannot venture into the merits of the matter. In the said judgement, the Supreme Court has further laid down that procedural defects in the course of arbitration proceedings leading to such a foreign arbitral award, do not necessarily provide an excuse to deny enforcement of the award on the ground of public policy.

27. The aforementioned judgements were taken into consideration in the subsequent judgement in the case of **Vijay Karia and others Vs. Prysmian Cavi E Sistemi SRL and others** *(supra)*. In this judgment, the Supreme Court took note of the fact that as per Section 48 of the Arbitration Act, the Parliament of this country has incorporated the 'pro-enforcement bias' seen in the New York Convention of 1958. This makes it abundantly clear that while exercising jurisdiction under the

said provision, this Court is expected to enforce a foreign arbitral award as a rule and deny its enforcement, only as an exception. The relevant portions of the judgement of the Supreme Court in the case of **Vijay Karia and others Vs. Prysmian Cavi E Sistemi SRL and others** *(supra)* read as follows: -

> "50. The US cases show that given the "pro-enforcement bias" of the New York Convention, which has been adopted in Section 48 of the Arbitration Act, 1996 - the burden of proof on parties seeking enforcement has now been placed on parties objecting to enforcement and not the other way around; in the guise of public policy of the country involved, foreign awards cannot be set aside by second guessing the arbitrator's interpretation of the agreement of the parties; the challenge procedure in the primary jurisdiction gives more leeway to Courts to interfere with an award than the narrow restrictive grounds contained in the New York Convention when a foreign award's enforcement is resisted.
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> 59. On the other hand, where the grounds taken to resist enforcement can be said to be linked to party interest alone, for example, that a party has been unable to present its case before the arbitrator, and which ground is capable of waiver or abandonment, or, the ground being made out, no prejudice has been caused to the party on such ground being made out, a Court may well enforce a foreign award, even if such ground is made out. When it comes to the "public policy of India" ground, again, there would be no discretion in enforcing an award which is induced by fraud or corruption, or which violates the fundamental policy of Indian law, or is in conflict with the most basic notions of morality or justice. It can thus be seen that the expression "may" in Section 48 can, depending upon the context, mean "shall" or as connoting that a residual discretion remains in the Court to enforce a foreign award, despite grounds for its resistance having been made out. What is clear is that the width of this discretion is limited to the circumstances pointed out hereinabove, in which case a balancing act may be performed by the Court enforcing a foreign award.
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> 83. Having said this, however, if a foreign award fails to determine a material issue which goes to the root of the matter or fails to decide a claim or counter-claim in its entirety, the

> award may shock the conscience of the Court and may be set aside, as was done by the Delhi High Court in Campos (supra) on the ground of violation of the public policy of India, in that it would then offend a most basic notion of justice in this country. It must always be remembered that poor reasoning, by which a material issue or claim is rejected, can never fall in this class of cases. Also, issues that the tribunal considered essential and has addressed must be given their due weight – it often happens that the tribunal considers a particular issue as essential and answers it, which by implication would mean that the other issue or issues raised have been implicitly rejected. For example, two parties may both allege that the other is in breach. A finding that one party is in breach, without expressly stating that the other party is not in breach, would amount to a decision on both a claim and a counter-claim, as to which party is in breach. Similarly, after hearing the parties, a certain sum may be awarded as damages and an issue as to interest may not be answered at all. This again may, on the facts of a given case, amount to an implied rejection of the claim for interest. The important point to be considered is that the foreign award must be read as a whole, fairly, and without nit-picking. If read as a whole, the said award has addressed the basic issues raised by the parties and has, in substance, decided the claims and counter-claims of the parties, enforcement must follow.

28. The said parameters of jurisdiction specified by the Supreme Court need to be applied to the facts of the present case to examine the rival contentions. The respondents have vehemently claimed that since there was no arbitration agreement between the parties, there was no question of the learned arbitrator assuming jurisdiction in the matter. It would be appropriate to refer to the contract dated 04.09.2019, executed between the parties. There can be no dispute about the fact that the said contract dated 04.09.2019, specifically stated that the terms of the contract were as per GPC Contract No.1. There is also no dispute about the fact that GPC Contract No.1 contained the clause for resolution of disputes by arbitration. This aspect was specifically taken into consideration by the learned arbitrator in the award, while holding that reference to GPC Contract No.1 and presence of arbitration clause

therein, clearly indicated that there was indeed an arbitration agreement between the parties. In this regard, the petitioner is justified in relying upon judgement of the Supreme Court in the case of **Inox Wind Limited Vs. Thermocables Limited** *(supra)*, wherein it is held that a general reference to a standard form of contract would be enough for incorporation of an arbitration clause. The relevant portion of the said judgement reads as follows: -

> "18. We are of the opinion that though general reference to an earlier contract is not sufficient for incorporation of an arbitration clause in the later contract, a general reference to a standard form would be enough for incorporation of the arbitration clause. In *M.R. Engineers* this Court restricted the exceptions to standard form of contract of trade associations and professional institutions. In view of the development of law after the judgment in *M.R. Engineers'* case, we are of the opinion that a general reference to a consensual standard form is sufficient for incorporation of an arbitration clause. In other words, general reference to a standard form of contract of one party will be enough for incorporation of arbitration clause. A perusal of the passage from *Russell on Arbitration 24th Edition (2015)* would demonstrate the change in position of law pertaining to incorporation when read in conjunction with the earlier edition relied upon by this Court in *M.R. Engineers'* case. We are in agreement with the judgment in *M.R. Engineers'* case with a modification that a general reference to a standard form of contract of one party along with those of trade associations and professional bodies will be sufficient to incorporate the arbitration clause."

29. Applying the said position of law to the facts of the present case, it is found that the contract dated 04.09.2019, executed between the parties specifically incorporated terms of GPC Contract No.1, which indeed contained an arbitration clause. Therefore, there was an arbitration agreement between the parties.

30. This Court does not find any merit in the contention raised on behalf of the respondents that the learned arbitrator did not have any jurisdiction as there was no arbitration agreement between the parties.

Reliance placed upon forms not being filled by the parties is also totally misplaced and it cannot be said that the finding rendered by the learned arbitrator on the aspect of jurisdiction would shock the conscience of this Court, giving rise to any ground under Section 48 of the Arbitration Act to deny enforcement.

31. As regards the learned arbitrator deciding upon his own jurisdiction, without there being a specific clause under the GAFTA Simple Disputes Arbitration Rules No.126, suffice it to say that, a specific clause would not be necessary for deciding such an issue challenging the jurisdiction of the arbitrator, as the said issue goes to the very root of the matter. A decision on the said issue is necessary before proceeding to consider the claims / counter-claim on merits. Therefore, the said contention raised on behalf of the respondents stands rejected.

32. This Court is also not convinced that enforcement of the award would be contrary to the public policy of India because laboratory reports indicated that the goods in question were unfit for consumption. The respondents have claimed that laws of India would not have permitted sale of the said goods, the same being in violation of the quality standards under specific laws. On this basis, the respondents claim that the enforcement of the award would demonstrate conflict with the laws of India and hence public policy of India. This Court is not in agreement with the contention raised on behalf of the respondents, firstly for the reason that as per the contract dated 04.09.2019, executed between the parties, the quality of the goods in question was final at the time and place of loading as per certificate of GAFTA registered analyst. There is no denial about the fact that such quality certificate was indeed issued. The contract also specifically provided that the buyer i.e. Respondent No.1 herein had a right to attend at the time of loading and to appoint a legal representative or a GAFTA registered superintendent

and analyst at its expense. The respondents did not bother to take any such step, in terms of the contract. It is significant that the contract further specified that if there was any conflict with the destination import standards and regulations or laws, respondent No.1 as the buyer would be fully liable for all the consequences. Respondent No.1, having executed the said contract voluntarily and being fully aware of the consequences of such terms, cannot be permitted to turn around and claim that the liability that arose out of its actions under the contract could not be its responsibility, while claiming that the enforcement of the award would be contrary to the public policy of India.

33. The learned arbitrator took into consideration all these aspects of the matter. It is also found that in the proceedings initiated before this Court under Section 9 of the Arbitration Act, the respondents were seeking a concession of USD 100 per MT from the petitioner, thereby indicating that the dispute might have had its roots in the price which the respondents were liable to pay. Having agreed to a specific price in terms of the contract between the parties, the respondents could not be permitted to resile from the same and then to raise the ground of 'public policy of India' to resist enforcement of the arbitral award. This Court finds that within the narrow scope of jurisdiction available under Section 48 of the Arbitration Act, it cannot be said that sufficient grounds are made out by the respondents for resisting enforcement of the said foreign arbitral award.

34. In this backdrop, reliance placed by learned counsel for the respondent on the judgements of the Supreme Court in the case of **Duro Felguera S.A. Vs. Gangavaram Port Limited** *(supra),* **Ssangyong Engineering and Construction Company Limited Vs. National Highway Authority of India** *(supra) and* **Jagdish Chander Vs. Ramesh Chander and others** *(supra)* with regard to the absence of

arbitration agreement between the parties, cannot be of assistance to the respondents. There can be no question of party autonomy of the respondents being adversely affected and reliance placed on the judgement of the Supreme Court in the case of **Bharat Aluminum Company Vs. Kaiser Aluminum Technical Services Inc.** *(supra)* is also misplaced. In the present case, as noted hereinabove, respondent No.1 had executed the contract dated 04.09.2019 with the petitioner, which specifically incorporated GPC Contract No.1 containing the arbitration clause, and therefore, the contentions raised on behalf of the respondents in that regard deserve to be rejected.

35. This Court is also not in agreement with the respondents that there was violation of principles of natural justice as the arbitration proceedings were taken up at lightning speed. The respondents claimed before this Court that during the process when the arbitrator was appointed and the statement of claim was submitted by the petitioner as also the award being rendered, there was hardly any time made available to the respondents to present their case. It is significant that, not only did the respondents in their reply deny the claims of the petitioner, but they also raised a counter-claim. The timelines of the arbitration proceedings were as per the schedules specified under the GAFTA Simple Disputes Arbitration Rules No.126. Both parties, having agreed to arbitration as per the aforementioned rules, it cannot lie in the mouth of the respondents to claim that the schedule was inconvenient for them. In any case, even as per the respondents, the learned arbitrator did take into consideration, the objections raised by the respondents and granted time to the parties to make their submissions. The respondents claim that they were surprised that the last submission of the parties was filed on 18.09.2020, and the award was pronounced on 24.09.2020. This Court is of the opinion that the contents of the award show the effort put in by the

learned arbitrator while considering each and every aspect of the matter, particularly the objections raised by the respondents. It cannot be said that the respondents were not given sufficient opportunity or that relevant issues raised on behalf of the respondents were ignored by the learned arbitrator while rendering the said award. Therefore, even procedurally, it cannot be said that the said award was contrary to the public policy of India. Hence, there is no substance in the said contention raised on behalf of the respondents.

36. Having found that the respondents have failed to make out any worthwhile ground to resist enforcement of the said foreign arbitral award, this Court is convinced that the present petition deserves to be allowed. The foreign arbitral award is found to be enforceable in the facts and circumstances of the present case. Accordingly, the petition stands allowed in terms of prayer clauses (a), (b) and (c), which read as follows: -

> "a. That this Hon'ble Court be pleased to recognize and enforce the subject Foreign Award passed in favour of the petitioner i.e. Award dated 24/09/2020 passed by the Ld. Sole Arbitrator, appointed by the Grains and Feed Trade Association (GAFTA) in the matter of Arbitration bearing Arbitration Petition No.18-157 between the Petitioner and the Respondents held at England, United Kingdom;
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> b. That this Hon'ble Court be pleased to grant leave to enforce and execute the said subject foreign Award dated 24/09/2020 against the Respondents and all its partners;
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> c. That this Hon'ble court be pleased to direct the Respondent No.1 and all its partners including the Respondent Nos.2 to 4 to make the payment to the Petitioner of amount of US $ 354,375 @ 12% per annum from 10/11/2019 until payment and also amount of $ 1783.56 with interest @ 4% p.a. compounded at three monthly intervals from the date of the Award till date of payment, and also amount of GBP 16,000 with interest @ 4% p.a. compounded at three monthly intervals from the date of the Award till date of payment;"

37. In view of the foreign arbitral award being found enforceable, the petitioner shall now proceed for execution of the same in accordance with law. In view of the disposal of the petition, pending applications do not survive and stand disposed of accordingly.

(MANISH PITALE, J.)

Minal Parab