Contract Act – Liability of a party under an agreement prescribing purchase of a certain quantity of goods and failure thereof shall be limited / calculated based on the original price of the product, the price at which it was sold to the subsequent purchaser, and the costs involved in the additional process.(2023-2)210 PLRIJ 017

PRINT / DOWNLOAD PDF

Chairman, Coal India Limited v. Star Cement Limited. **(2023-2)210 PLRIJ 017**

Synopsis : Contract Act, 1872, if a party agrees to purchase a certain quantity of goods but fails to do so, they are liable to compensate the other party for the loss suffered, unless there is a genuine pre-estimate of damages. In cases where the price of a commodity increases and the original buyer no longer finds it viable, the seller can sell the commodity to a third party at the risk and cost of the original buyer. However, any shortfall in price can be realized from the original buyer, and the additional costs incurred would be borne by the original buyer. The compensation for the non-breaching party is calculated based on the original price of the product, the price at which it was sold to the subsequent purchaser, and the costs involved in the additional process.

Before; Chief Justice, Sanjib Banerjee, Justice H. S. Thangkhiew.
The CHAIRMAN, COAL INDIA LIMITED & ors
Versus
STAR CEMENT LIMITED
WA No. 8 of 2023 with MC (WA) No. 9 of 2023

(i) Contract Act, 1872 (9 of 1872) – It is quite common, particularly in the international grain trade or in case of high sea sales of commodities that a party agrees to purchase a certain quantity of goods but reneges on the same – In such a scenario, as per the law in force in this country, notwithstanding any agreement between such parties, the party in breach would be liable to compensate the other party only to the extent of the loss suffered by such other party, unless there is a genuine pre-estimate indicated by way of liquidated damages. [Para 6]

***Held*, It often happens that the price of a commodity goes up and the party who had contracted to purchase the same originally no longer finds such price to be commercially viable. In such a scenario, the seller may sell the same commodity at the risk and cost of the original buyer to a third party; but it is only if there is a shortfall in the price that such shortfall can be realised from the original buyer. Of course, the additional costs incurred would be to the account of the original buyer. At the end of the day, it is a question of calculating the quantum of compensation that the party not in breach is entitled to by taking into account the original price of the product, the price at which it was sold to the subsequent purchaser and the costs incurred in conducting the additional exercise. [Para 7, 8]**

(ii) Contract Act, 1872 (9 of 1872) – Respondents were required to lift a certain guaranteed amount of coal periodically, but they failed to do so – Appellant raised claim for such minimum guaranteed amount – Whether the private respondents would be liable to compensate the appellant for the value of the quantum of coal that was not lifted, particularly since such coal was sold to a subsequent purchaser – Plea that a party could not make a profit by claiming compensation, as compensation, in effect, is intended only to make good the loss suffered by a party – Relevant clause cannot be read as a penalty, as that may be prohibited by the Contract Act, 1872 – The minimum guaranteed amount or the value thereof can be seen to be a form of liquidated damages indicating the highest amount that the appellant herein could have received for the private respondents not lifting the quantum of coal that was specified in the agreement – It also has to be accepted that if the amount of material not lifted by the private respondents was subsequently sold, the amount realised on such account would have to be deducted from any claim for compensation that the appellant may have – However, appellant would be entitled to the additional costs incurred in conducting the second sale.[Para 5]

For the Appellants : Mr M.Z. Ahmed, Sr Adv. with Mrs B. Dutta, Sr Adv.Mr. A.M. Dutta, Adv. For the

Contract Act – Liability of a party under an agreement prescribing purchase of a certain quantity of goods and failure thereof shall be limited / calculated based on the original price of the product, the price at which it was sold to the subsequent purchaser, and the costs involved in the additional process.(2023-2)210 PLRIJ 017

Respondent : Dr A. Saraf, Sr Adv. with Mr Z.A. Chowdhury, Adv.

judgment

Sanjib Banerjee, Chief Justice, (Oral) – *(19.06.2023)* – The appeal is directed against a judgment and order of September 29, 2016 passed on a writ petition instituted by the respondents herein. 2. The grievance carried by the private respondents to the writ court was that in terms of a coal supply agreement the private respondents were required to lift a certain guaranteed amount of coal periodically, but they failed to do so following which the appellant herein raised the claim for such minimum guaranteed amount. It also appears that some bank guarantees may have been furnished by the private respondents as a part of their promise to lift the minimum guaranteed amount.

3. The legal question that the private respondents raised before the writ court was as to whether the private respondents would be liable to compensate the appellant herein for the value of the quantum of coal that was not lifted, particularly since such coal was sold to a subsequent purchaser. The private respondents asserted that a party could not make a profit by claiming compensation as compensation, in effect, is intended only to make good the loss suffered by a party.

4. In principle, the private respondents may be right. Since the relevant clause cannot be read as a penalty, as that may be prohibited by the Contract Act, 1872, the minimum guaranteed amount or the value thereof can be seen to be a form of liquidated damages indicating the highest amount that the appellant herein could have received for the private respondents not lifting the quantum of coal that was specified in the agreement.

5. It also has to be accepted that if the amount of material not lifted by the private respondents was subsequently sold, the amount realised on such account would have to be deducted from any claim for compensation that the appellant may have. However, the appellant would be entitled to the additional costs incurred in conducting the second sale. 6. It is quite common, particularly in the international grain trade or in case of high sea sales of commodities that a party agrees to purchase a certain quantity of goods but reneges on the same. In such a scenario, as per the law in force in this country, notwithstanding any agreement between such parties, the party in breach would be liable to compensate the other party only to the extent of the loss suffered by such other party, unless there is a genuine pre-estimate indicated by way of liquidated damages.

7. It often happens that the price of a commodity goes up and the party who had contracted to purchase the same originally no longer finds such price to be commercially viable. In such a scenario, the seller may sell the same commodity at the risk and cost of the original buyer to a third party; but it is only if there is a shortfall in the price that such shortfall can be realised from the original buyer. Of course, the additional costs incurred would be to the account of the original buyer.

8. At the end of the day, it is a question of calculating the quantum of compensation that the party not in breach is entitled to by taking into account the original price of the product, the price at which it was sold to the subsequent purchaser and the costs incurred in conducting the additional exercise. It is a matter of evidence where the accounts have to be gone into and such exercise cannot be conveniently conducted in course of proceedings under Article 226 of the Constitution, since the writ proceedings are heard on summary basis and on affidavit evidence alone.

9. The private respondents refer to a previous order of this Court in similar circumstances rendered in WA No. 1 of 2014 (Chairman, Coal India Limited v. Cement Manufacturing Company Ltd) on September 29, 2016. In such case the Court observed that there were several contentious issues that could not be conveniently adjudicated in proceedings under Article 226 of the Constitution. The appeals were disposed of by requiring the parties to take recourse to the settlement mechanism provided in the relevant agreements. The observations in the judgments impugned before the Division Bench were required not to be taken into account for the settlement purpose and certain bank guarantees were required to be kept alive till such time that the settlement negotiations continued and even thereafter.

10. What the judgment of September 29, 2016 does not expressly record is regarding the remedy that may be open to the writ petitioners upon the settlement mechanism failing. Clearly, in view of the observations in the order that there were contentious issues that could not have been conveniently adjudicated in summary proceedings, the writ petitioners in that case would have had to make a claim by way of a civil suit (or, if there was an arbitration agreement, by an arbitral reference).

11. As a result of the previous order, it was no longer open to the private respondents to approach the writ court once again with the same claim upon the settlement mechanism failing. What was not clearly spelt out in the previous order of the Division Bench was that should the settlement fail, the parties would have to approach the regular forum in accordance with law and the writ court was not the proper forum for going into

Contract Act – Liability of a party under an agreement prescribing purchase of a certain quantity of goods and failure thereof shall be limited / calculated based on the original price of the product, the price at which it was sold to the subsequent purchaser, and the costs involved in the additional process.(2023-2)210 PLRIJ 017

such contentious issues.

12. Accordingly, the judgment and order impugned herein dated October 26, 2022 are set aside. The private respondents are directed to keep all bank guarantees alive for a period of three months from date. It will be open to the private respondents to file a civil suit in respect of the claim, whereupon the further continuation of the bank guarantees will abide by any interim order that may be made in such civil suit. It is made clear that since the matter was pending before this Court for a long period of time during the two sets of proceedings, the appellant herein will not urge the ground of limitation and the private respondents' suit, if filed within six weeks from date, will proceed to be adjudicated on merits. 13. This order is without prejudice to the rights and contentions of the parties and they will be entitled to urge all grounds available to them in accordance with law before the appropriate suit court.

14. WA No. 8 of 2023 is allowed to the extent indicated above. 15. MC (WA) No. 9 of 2023 is disposed of.

16. There will, however, be no order as to costs.

Tags: Agreement, Contract