



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMM. ARBITRATION PETITION NO. 2 OF 2025
ALONG WITH
INTERIM APPLICATION (L) NO. 17316 OF 2023
IN
COMM. ARBITRATION PETITION NO. 2 OF 2025

ECGC Limited

...Petitioner

Versus

Baco Metallic Industries

...Respondent

Mr. Nirman Sharma a/w Mr. Roop Basu and Ms. Heenal Wadhwa i/b The Law Point for the Petitioner.

Mr. Ankit Lohia a/w Mr. Udit Gupta and Mr. Harsh Kesharia for the Respondent.

CORAM : SOMASEKHAR SUNDARESAN, J.

RESERVED ON : MARCH 5, 2025.

PRONOUNCED ON : OCTOBER 15, 2025.

JUDGEMENT:

Context and Factual Background:

1. This Petition is a challenge mounted under Section 34 of the Arbitration and Conciliation Act, 1996 ("***the Act***") challenging an arbitral award dated March 28, 2023 ("***Impugned Award***") on the premise that the findings in the Impugned Award are contrary to the terms of the contract; contrary to the fundamental principles of evidence; and contrary to fundamental principles of insurance law.

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2. The Petitioner, ECGC Ltd. ("**ECGC**") issued a shipment comprehensive risk policy ("**SCR Policy**") to the Respondent, Baco Metallic Industries ("**Baco**") for the period from October 14, 2016 to October 13, 2017 ("**Policy Period**"). In terms of the policy, Baco was to apply for a "credit limit" approval before making a shipment of leather footwear manufactured by Baco, to an Italian buyer PM Trade SRL ("**Buyer**"). Baco effected shipments during the Policy Period. The Buyer raised disputes over quality of the products supplied. Baco engaged with the Buyer and provided discounts on the amounts payable by the Buyer and agreed to pay for the leather that was supplied by an affiliate of the Buyer for Baco to make shoe products. A credit collection agency was engaged to pursue recovery of amounts from the Buyer.

3. Baco lodged an insurance claim on ECGC for Rs. ~75.77 lakhs, which was 90% of a loss of USD 127,904, valued at Rs. ~84.19 lakhs (value of goods exported and not paid for by the Buyer). ECGC approved a sum of Rs. 16.71 lakhs, which was 90% of the loss assessed by ECGC at Rs. ~18.57 lakhs (EUR 25,513.44) and stated that this was being paid as a special case condoning several lapses and deficiencies. Baco accepted this sum but represented repeatedly against this assessment. When the third representation for claim amount of Rs. ~45.43 lakhs was being considered, arbitration was invoked. ECGC

offered a further sum of Rs. ~12.59 lakhs, which was also offered in the arbitration proceedings.

4. Arbitration proceedings were conducted for a claim amount of Rs. ~59.05 lakhs (the original claim amount reduced by the amount actually paid out by ECGC). This was allowed by the Impugned Award, with interest on the claim amount from the date of the cause of action until filing of the claim, and also *pendente lite* at 9.5% per annum. Post-award interest at the same rate was allowed. Costs in the sum of Rs. 9.95 lakhs were also allowed.

Contentions of the Parties:

5. I have heard Mr. Nirman Sharma, Learned Advocate on behalf of ECGC and Mr. Ankit Lohia, Learned Advocate on behalf of Baco. With their assistance in the form of verbal submissions and written notes on arguments, I have examined the record. It would be useful to summarise their contentions.

6. ECGC claimed before the Learned Arbitral Tribunal that the claim relates to an “excluded risk” because Baco had admitted to quality issues with the footwear it supplied; and had also pointed to a set-off. Since the Impugned Award has rejected these grounds, Mr. Sharma on behalf of ECGC would contend that the Impugned Award is

liable to be set aside on the premise of being contrary to and beyond the scope of the contract i.e. the SCR Policy. The Learned Arbitral Tribunal has pronounced upon the merits of the quality issues, without hearing the Buyer, and was therefore vulnerable as contrary to the rules of evidence. The quality issues had been considered behind the back of the Buyer who was the one who raised the quality issues.

7. Mr. Sharma would rely on decisions of the National Consumer Dispute Redressal Commission (“*NCDRC*”) in proceedings where policy holders had approached that forum, to indicate that once a quality dispute has been raised, the exclusion clause would get triggered. Insurance policy contracts must be strictly construed, Mr. Sharma would contend, and submit that the exercise of discretion to pay despite the contractual framework is the insurer’s prerogative and it is not open to the Learned Arbitral Tribunal to make inroads into exercise of such discretion.

8. Mr. Lohia on behalf of Baco, would contend that the material on record would show that Baco had indeed completed all the shipments contracted with the Buyer and there had been no complaints from the Buyer, who in fact, engaged in discussions for repeat orders. When the time to pay came near, quality issues were raised and that too in relation to shipments worth USD 26,500 out of the total shipments

of USD 250,660. While Baco claims to have firmly denied the quality issues raised by the Buyer, to buy peace, Baco agreed to deductions of USD 45,000 in the current invoice and USD 30,000 for future invoices, subject to getting future business and making immediate payments. Despite such offers, the Buyer still defaulted

9. According to Mr. Lohia, the discounts are a commercial call and the risk of non-payment is what Baco was insured against and ought to be paid. A debt collection agency was engaged by Baco at ECGC's request, and inputs from this agency received directly, led to ECGC seeking clarifications. However, ECGC indeed allowed a part of the claim and thereafter allowed representations to be made. When proceedings under Section 11 of the Act were pending, ECGC made a further offer of Rs. ~12.59 lakhs, Mr. Lohia would submit, and indicate that this amount is admitted even in the Statement of Defence filed in the arbitral proceedings. Baco would submit that the deductions were based primarily on the quality disputes and the payment of dues owed to the affiliate of the buyer for supply of leather. Baco would contend that since the additional sum of Rs. ~12.59 lakhs were admitted as payable, it was clear that ECGC was agreeing to pay a total of Rs. ~32.56 lakhs. The dispute was therefore narrowed down to the legitimacy of the deductions.

10. According to Mr. Lohia, ECGC's contention about the Learned Arbitral Tribunal wrongly deciding upon quality disputes is untenable since the existence of quality disputes was part of the draft issues offered by ECGC to the Learned Arbitral Tribunal. Throughout the proceedings there was no contention that assessment of quality disputes was outside the scope of consideration by the Learned Arbitral Tribunal. He would build on it further to contend that once ECGC had exercised its discretion under the SCR Policy to allow a certain amount, it was open to the Learned Arbitral Tribunal to examine if ECGC had conducted itself in accordance with its own interpretation of the SCR Policy. Mr. Lohia would contend that the affiliate of the Buyer who supplied the leather has been admittedly treated as a third party and there was no case for a set-off being inferred from the obligation to pay the supplier of leather from the proceeds of sale of the footwear to the Buyer. Therefore, in summary, it is contended that the Learned Arbitral Tribunal has returned a plausible view which cannot be lightly disturbed in the premises set up by ECGC.

Analysis and Findings:

11. The core issue that has arisen for consideration is whether the Impugned Award is contrary to the contract and whether the Impugned Award is an implausible reading of the SCR Policy.

Therefore, it would be useful to extract the exemption provisions that ECGC seeks to invoke:

Failure or refusal on part of the buyer to accept the goods and / or to pay for the whole or any of it is due to his claim that –

(i) *he is justified in withholding such payment or part thereof by reason of any payment, credit, set-off or counterclaim or that*

(ii) *he is excused from performing his obligations under the contract on account of any disputes or allegations relating to quality, quantity and specifications, delivery schedule etc. of the good supplied to him unless the insured has obtained a final judgement enforceable against the buyer from a competent court of law in the buyer's country, provided that ECGC in its discretion and on being satisfied that the allegations of dispute raised by the buyer as aforesaid is not tenable or justified in light of information gathered by or made available to it, agree in writing to waive this exclusion.*

[Emphasis Supplied]

12. At first blush, this provision appears to make a clear case for ECGC having the discretion to waive the exclusion, but a close reading of the same would indicate that a plausible view about the exercise of that discretion is that ECGC has to necessarily be satisfied that the allegation of quality dispute is not tenable or justified. Without such a satisfaction, it is plausible to hold, the contract does not even contemplate the ability of ECGC to waive this exclusion. Therefore, if ECGC were to have waived the exclusion in part, it is plausible to take a

view that there is no need to have insisted on a competent court of the Buyer's jurisdiction to rule on the quality issue. Since the existence of quality issue was an issue framed in the arbitration proceedings, at that too at the request of ECGC, it is plausible to hold ECGC had taken a view that quality issue did not have merit, which is why it ended up paying Rs. 16.71 lakhs to Baco.

13. Against this backdrop, the provision governing the commercial risks actually covered by the SCR Policy is also noteworthy:

Failure or refusal on the part of the buyer to accept the goods which have already been exported from India, where any such failure or refusal is not excused by and does not arise from or in connection with any breach of contract or warranty on the part of the insured or from any other cause within his control provided that the insured shall, if so required by ECGC, establish to the satisfaction of ECGC through such means or documents as ECGC may require including appropriate legal proceedings against the buyer if necessary, that the said failure or refusal on the part of the buyer was wrongful:

[Emphasis Supplied]

14. Therefore, having agreed to pay Rs. 16.71 lakh, it is plausible for the Learned Arbitral Tribunal to have taken a view that ECGC did not truly believe that the quality dispute had merit. ECGC did not insist on legal proceedings to be initiated or for a pronouncement by a judicial forum in Italy, to pay Rs. 16.71 lakh, or to further offer Rs. 12.59

lakh. Therefore, it appears that ECGC was negotiating its way with Baco, and therefore, the Learned Arbitral Tribunal taking a firm view on evidence in the matter is not at all, in my opinion, in the realm of an implausible conclusion.

15. Another plausible view of the provisions extracted above relate to the set-off contention set up by ECGC and rejected by the Learned Arbitral Tribunal. The set-off, counterclaim or credit alluded to, relate to the Buyer refraining from making payment on the ground of such credit, set-off or counterclaim. The issue is whether it could be a plausible view that when Baco indicated that the Buyer would need to pay Baco, for Baco to be able to pay the supplier of the leather (who is Baco's affiliate), it would follow that there was a set-off by the Buyer that is discernible.

16. There is nothing to indicate that the Buyer claimed a set-off. The core issue was the quality dispute raised by the Buyer and whether the fact pattern fell in the realm of ECGC being satisfied that the quality issue is not tenable or not justified. This is what fell for consideration by the Learned Arbitral Tribunal. There was no set-off claimed by the Buyer. It was not claimed by the Buyer that the Buyer had paid its affiliate instead of paying Baco. Therefore, the ground of set-off is not tenable. Merely because Baco indicated that it would be from the cash

flowing from the Buyer that Baco could pay for the leather, it would not follow that a set-off was the cause for the non-payment by the Buyer. There is nothing to show that the affiliate of the Buyer would not pursue Baco for payments for the leather.

17. It is in this light and in the context of trite law on how the Section 34 Court must assess the challenge to arbitral awards, that one must examine the Impugned Award. The Learned Arbitral Tribunal has held that the deductions by ECGC on the ground of quality disputes are not tenable and also held, on the examination of evidence, that the quality issue raised by the Buyer appeared to be an afterthought to wriggle out of the liability. The issues were framed by the Learned Arbitral Tribunal in consultation with the parties. The consideration of the veracity of the quality dispute was an integral part of the arbitral process with the issues being framed. If ECGC was of the view that Buyer needed to be summoned for evidence from the Buyer to fall for consideration, Section 27 of the Act could have been invoked to seek issuance of witness summons to the Buyer. On the other hand, what appears from the record is that ECGC examined the material before it and took a considered view to make a part payment of Rs. 16.71 lakhs, and when Section 11 proceedings were initiated, ECGC made a further offer of an additional sum of Rs. 12.59 lakhs. This is a waiver, and indeed within the discretion of ECGC but the very jurisdictional fact for

exercise of such discretion to waive was for ECGC to arrive at a view that the quality dispute was without merit.

18. In that light, it cannot be missed that the Learned Arbitral Tribunal has closely examined contemporaneous documentary evidence including correspondence between the parties and noticed that ECGC's credit sanction had been based on the debt acknowledgement by the Buyer, and returned a valid and plausible finding.

19. It is trite law that the arbitrator is the master of the evidence and is the best judge of the adequacy of the quantity and quality of evidence. The Learned Arbitral Tribunal has returned plausible findings on the acceptance of a discount by Baco being under distress and in the lure of future business, which did not transpire. The Learned Arbitral Tribunal has also examined the correspondence from the debt collection agency and found that the agency was indeed appointed at the recommendation of ECGC.

20. That apart, the correspondence with the agency and the correspondence between Baco and the Buyer has also be meticulously examined to return a plausible finding about the quality dispute being an afterthought. That ECGC exercised its discretion to pay, would indicate that ECGC's contemporaneous view was consistent with this

finding, since going by a strict reading of the SCR Policy as canvassed by ECGC, such discretion could have been exercised only if ECGC were of the view that the quality dispute was not tenable. The views of the debt collection agency have also been held by the Learned Arbitral Tribunal as not contradicting Baco's stance of the quality dispute being without merit, for it to turn the needle in the Learned Arbitral Tribunal's mind, in ECGC's favour.

21. Taking a holistic view of the matter, and adopting the approach of interpreting insurance contracts strictly, it cannot be missed that unless ECGC was of the view that the quality dispute was not tenable, it would not have made any payment on the claim. The payment being made in a purely commercial contract cannot be an *ex gratia* payment of which no notice could be taken. Therefore, I am not satisfied that a case has been made out for intervention under Section 34 of the Act.

Standard of Review:

22. It is now trite law that the Section 34 Court must not lightly interfere with arbitral awards. The scope of review by the Section 34 Court is also well covered in multiple judgments of the Supreme Court

including *Dyna Technologies*¹, *Associate Builders*², *Ssyangyong*³, *Konkan Railway*⁴ and *OPG Power*⁵. Even implied reasons, if discernible, may be inferred to support a just and fair outcome arrived at in arbitral awards. To avoid prolixity, I am not reproducing copiously from these judgments. Suffice it to say (to extract from just one of the foregoing), in *Dyna Technologies*, the Supreme Court held thus:

“24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.

25. Moreover, umpteen number of judgments of this Court have

¹ *Dyna Technologies Private Limited v. Crompton Greaves Ltd* – (2019) 20 SCC 1

² *Associate Builders vs. Delhi Development Authority* – (2015) 3 SCC 49

³ *Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India* – (2019) 15 SCC 131

⁴ *Konkan Railways v. Chenab Bridge Project Undertaking* – 2023 INSC 742

⁵ *OPG Power vs. Enoxio* – (2025) 2 SCC 417

categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act.”

[Emphasis Supplied]

23. In **OPG Power**, the Supreme Court explained the scope of interference with interpretation and construction of a contract accorded in an arbitral award in the following words:-

“72. An arbitral tribunal must decide in accordance with the terms of the contract. In a case where an arbitral tribunal passes an award against the terms of the contract, the award would be patently illegal. However, an arbitral tribunal has jurisdiction to interpret a contract having regard to terms and conditions of the contract, conduct of the parties including correspondences exchanged, circumstances of the case and pleadings of the parties. If the conclusion of the arbitrator is based on a possible view of the matter, the Court should not interfere. But where, on a full reading of the contract, the view of the arbitral tribunal on the terms of a contract is not a possible view, the award would be considered perverse and as such amenable to interference.”

[Emphasis Supplied]

24. I have applied the aforesaid standard in my assessment of the Impugned Award. For the reasons set out above, a plausible view has been returned by the Learned Arbitral Tribunal. For the very same reasons, it cannot be contended that the view taken in the Impugned

Award is not even possible. In my opinion, the Learned Arbitral Tribunal's view is not implausible. The standard of an impossible view is referred to in *OPG Power* for holding that an arbitral view is perverse. .

25. In my opinion, the view taken by the Learned Arbitral Tribunal is not a view on equity, as contended by Mr. Sharma, but is an informed view of the factual matrix, returned within the strict confines of the terms of the contract, for the reasons explained above. The Learned Arbitral Tribunal has indeed made references to ECGC being an arm of the State and Baco being a small business, alluding to the need for ECGC to be reasonable in its exercise of discretion. However, in my opinion, such grounds are not even necessary to bolster what the Learned Arbitral Tribunal has otherwise found on interpretation of evidence. As stated above, even implied reasons found by the Section 34 Court to be discernible, could support the outcome obtaining in an arbitral award, as declared by the Supreme Court in *Dyna Technologies*.

26. Indeed, ECGC's view canvassed before this Court could also be argued to be a plausible view, but it must be remembered that the Section 34 Court is not an appellate court. it is not permissible to substitute one plausible view taken by the Learned Arbitral Tribunal

with another competing plausible view canvassed by the party challenging the arbitral award before the Section 34 Court. Therefore, the reliance on decisions of the NCDRC is of no avail in the assessment of the challenge to the Impugned Award, since the proposition canvassed on behalf of ECGC would at best be a competing plausible view.

27. The principles of the requirement of the insured to demonstrate utmost good faith or for strict interpretation of insurance contracts can never be quarrelled with. On assessment of evidence, ECGC has not made out a case for breach of utmost good faith by Baco, and indeed as explained above, a strict interpretation would show that ECGC was in a binary position and could have either taken a view that the quality dispute was untenable (to honour the claim) or that it was meritorious (to deny the claim as being entirely excluded). It was not open to ECGC to bargain its way through the proceedings, offering different amounts at different stages of the proceedings. The view of the Learned Arbitral Tribunal on the obligation to pay cannot be faulted.

Conclusion and Directions:

28. Therefore, I am of the view that no interference is called for. The Petition is ***dismissed***. Interim Applications, if any shall also stand ***disposed of*** accordingly. Deposits, if any, made in this Court shall

stand released within a period of four weeks from the upload of this judgement on the website of this Court.

29. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]