

rrpillai

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 221 OF 2023**

Union of India, through Principal Chief
Engineer / Deputy Chief Engineer,
having office At Central Railway,
represented by Dy. CE/TP, Central
Railway, CSMT, Mumbai. ... Petitioner

Vs.

M/s. Bridge Track And Tower Pvt. Ltd.
(earlier known as M/s. Manish Forgings
Pvt. Ltd.), a private ltd. company
having its office at 6th floor 18 R. N.
Mukherjee Road, Kolkata- 700 001.
And also having address at:-
Shed No. 2, Plot No. 10, Sector-A, Urla
Industrial Estate, Raipur- 492 221. ... Respondent

Mr. Chetan C. Agrawal a/w Saurabh Gori for the
Petitioner/Applicant.

Mr. Aseem Naphade a/w Deepanjali Mishra a/w A. P. Singh i/b
A. P. Singh & Co. for the Respondent.

CORAM : GAURI GODSE, J

RESERVED ON : 17th OCTOBER 2025

PRONOUNCED ON : 4th FEBRUARY 2026

RAJESHWARI
RAMESH
PILLAI

Digitally
signed by
RAJESHWARI
RAMESH
PILLAI
Date:
2026.02.04
15:09:37
+0530

JUDGMENT:

1. This arbitration petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (“Arbitration Act”), to set aside the arbitral award passed by the sole arbitrator. The claim in the arbitration is based on a purchase order placed by the petitioner with the respondent (claimant) for the fabrication and supply of 344 fans weighing 60 kg, shaped switches, as per the contract between the parties. By the arbitral award, the respondent’s claim is granted for non-payment of Rs. 24,93,462/- towards the cost of supply of 45 sets of contract goods, and the PVC amount of Rs. 6,38,932/-, which was withheld by the respondent.

Basic Facts:

2. The petitioner had placed a purchase order with the respondent for the fabrication and supply of 344 sets of 60 kg, overriding fan-shaped switches. The petitioner placed another purchase order for the supply of 1014117 ERC. The petitioner alleged that, without supplying the goods, the respondent, in collusion with some railway staff, fabricated the record showing delivery of the goods and fraudulently received the payment. Hence, criminal proceedings were initiated, and the CBI in

Pune commenced an investigation. A charge sheet was filed for the offence of forgery and cheating. By relying on Clause No. 2401 of the Indian Railways Standard Conditions of Contract (“IRS terms and conditions”), the petitioner withheld the amount payable to the respondent towards the first purchase order.

3. The arbitral tribunal opined that, under Clause No. 2401 of the IRS terms and conditions, before withholding or retaining any payable amount, the petitioner was required to notify the contractor of such withholding or retention. Since the petitioner failed to submit any evidence to prove that a show cause notice or an intimation was served upon the respondent, the onus of proving the same was not discharged, and thus the petitioner was not entitled to withhold the amount on the ground of pending adjudication of the criminal proceedings. Being aggrieved by the award directing the release of the payment, the original respondent has filed this petition to set aside the award.

4. The following are the admitted dates and events regarding the contract between the parties:

- a) On 22nd July 2011, the petitioner floated a tender for the fabrication and supply of 60 kg (UIC) overriding fan-shaped switches. The respondent submitted a quotation in response to the tender. The petitioner issued a letter of acceptance to the respondent on 17th November 2011. Accordingly, the petitioner issued a purchase order on 9th February 2012 for the fabrication and supply of 60 kg (UIC) fan-shaped overriding switches. The contract value of the purchase order was Rs. 1,98,21,758/-. The second purchase order dated 17th July 2012 was issued by the petitioner for the supply of 10,14,117 Elastic Rail Clips (“ERC”).
- b) Thus, based on the letter of acceptance dated 17th November 2011, two purchase orders were placed. The first purchase order was on 9th February 2012, and the second was on 17th July 2012.
- c) The respondent accordingly raised three invoices totalling Rs. 6,38,932/-. Three separate invoices dated 21st December 2013 were raised. Two invoices for an amount of Rs. 9,41,976/- each, for the supply of 17 sets of the said goods and 11 sets of the said goods, respectively.

The third invoice was for Rs. 6,09,514/- for the supply of 11 sets of the said goods.

- d) Out of the total invoices raised by the respondent, the above-referred invoices for a total sum of Rs. 31,32,396/- were unpaid by the petitioner. Hence, the respondent initiated arbitration proceedings.

Submissions On Behalf Of The Petitioner:

5. Learned counsel for the petitioner submitted that the adjudication on the second purchase order should have been done by the learned arbitrator, as the papers and proceedings of the CBI enquiry were brought on record before the learned arbitrator. The award grants the petitioner permission to notify the lien and also awards interest, which is contrary to clauses 2401 and 2403 of the IRS terms and conditions. The petitioner has already notified the lien on 6th August 2019, and a copy of the same is filed on the record of this arbitration petition in the application for stay. Thus, the lien notified by the petitioner must continue till the final decision of the CBI enquiry.

6. Learned counsel for the petitioner, therefore, submits that when the CBI enquiry is initiated and is pending in respect of

the illegal release of the amount towards the invoice of the second purchase order, the petitioner would be entitled to have a lien on the amount payable towards the first purchase order. The learned arbitrator has also permitted the petitioner to notify the lien. Thus, under the award, once the petitioner is permitted to notify a lien on the amount due and payable under the first purchase order, the award directing the petitioner to release the payment would be illegal and unsustainable in law.

7. Learned counsel for the petitioner submits that the petitioner had a right to withhold the amount from any other contract in view of the pending CBI enquiry. To support his submissions, learned counsel for the petitioner relied upon the decision of the Hon'ble Apex Court in the case of *M/s. H.M. Kamaluddin Ansari & Co. Vs. Union of India & Others*¹. Learned counsel for the petitioner submitted that after the amounts were illegally released by the officers of the petitioner in connivance with the respondent, a CBI enquiry was initiated and is pending adjudication. A charge sheet has already been filed, and copies of the papers and proceedings of the CBI enquiry were placed on record before the learned arbitrator. Hence, in view of the pending CBI enquiry into the illegal

¹ (1983) 4 SCC 417

release of the amount under the second purchase order, the petitioner is entitled to continue with the lien already notified, in view of the liberty granted by the learned arbitrator. Hence, until the CBI enquiry is concluded, the lien shall continue; therefore, the award directing payment needs to be set aside.

Submissions On Behalf Of The Respondent:

8. Learned counsel for the respondent supports the impugned award. According to the learned counsel for the respondent, the defence raised by the petitioner is based on a lien until the CBI enquiry is concluded. Thus, the petitioner contends that withholding the amount is subject to the outcome of the CBI enquiry. Learned counsel for the respondent submitted that the findings in the criminal Court would not be binding in the civil proceedings. Therefore, in the present case, the result of the CBI enquiry would not have any bearing on the release of the amount withheld by the petitioner as per the invoices in lieu of the first purchase order.

9. So far as the petitioner's contention on the right to keep a lien on the amount payable for the material supplied as per the first purchase order on the ground of pending CBI enquiry is concerned, learned counsel for the respondent submits that in

the CBI enquiry the issue as to whether the goods were actually supplied and whether the amount is payable for the first purchase order would not be adjudicated. Hence, the allegation that the amount released under the second purchase order was illegal, without the actual supply of the material, cannot be a ground for withholding payments for the goods admittedly supplied under the first purchase order.

10. According to the learned counsel for the respondent, withholding an amount during the pendency of the CBI enquiry is contrary to the law laid down by the Hon'ble Apex Court in the case of *Vishnu Dutt Sharma Vs. Daya Sapra(Smt)*² and *Shanti Kumar Panda Vs. Shakuntala Devi*³.

11. Learned counsel for the respondent thus submits that in the event the petitioner intends to keep a lien on the amounts payable as per the first purchase order on the ground that the amounts were illegally released for the goods not supplied as per the second purchase order can be validly notified only after the petitioner invokes arbitration and raises a claim for recovering the alleged illegal release of the amount. He therefore submits that the petitioner would not be entitled to

2 (2009) 13 SCC 729

3 (2004) 2 SCC 438

seek setting aside of the award on the ground that the petitioner is entitled to keep a lien on the goods actually supplied to the respondent without raising a claim for its recovery. He thus submits that the learned arbitrator has rightly reserved the right of the petitioner to notify a lien pending adjudication. However, the petitioner, without raising a claim to recover the alleged illegal release of the amount under the second purchase order, has simply notified a lien on the amounts due and payable under the first purchase order. To support his submissions, learned counsel for the respondent relied upon the decision of the *Board of Trustees of the Port of Bombay Vs. Sriyanesh Knitters*⁴.

12. Learned counsel for the respondent relies on the definition of 'lien' given in Black's Law Dictionary. He submits that a lien is not a property in or right to the thing itself but constitutes a charge for security thereon. Therefore, without raising a claim to recover the alleged illegal release of the amount, there would not arise any question of keeping a lien on the amount due and payable towards the goods that are admittedly supplied. Learned counsel for the respondent,

4 (1997) 7 SCC 359

therefore, submits that there is no ground to invoke the powers under Section 34 of the Arbitration Act to set aside the award.

Consideration Of The Submissions And Analysis:

13. To consider the rival submissions made on behalf of the parties, I have carefully perused the facts of the case. The facts referred to by the learned counsel for the petitioner, as recorded in the above paragraphs regarding the tender process, the purchase orders, and the invoices raised, are not in dispute. It is also undisputed that the goods were supplied under the first purchase order for which the amounts are withheld. As for the second purchase order, the petitioner alleges that the respondent fraudulently received payment without supplying any material under it. Hence, the CBI has initiated a criminal prosecution against the respondent's employees, its directors, and some of the petitioner's employees. Therefore, according to the petitioner, the amount payable under the first purchase order can be withheld by creating a lien on that amount till final adjudication of the criminal prosecution. However, the petitioner has not raised any claim for the recovery of the amounts alleged to have been illegally and fraudulently recovered by the respondent.

14. The relevant condition of the IRS terms and conditions for withholding and keeping a lien in respect of the sums claimed is in clause 2401, which reads as under:

“2401. Whenever any claim or claims for payment of a sum of money arises out of or under the contract against the Contractor, the Purchaser shall be entitled to withhold and also have a lien to retain such sum or sums in whole or in part from the security if any, deposited by the Contractor and for the purpose aforesaid, the Purchaser shall be entitled to withhold the said cash security deposit or the security, if any, furnished as the case may be and also have a lien over the same pending finalisation or adjudication of any such claim. In the event of the security being insufficient to cover the claimed amount or amounts or if no security has been taken from the Contractor, the Purchaser shall be entitled to withhold and have lien to retain to the extent of the such claimed amount or amounts referred to supra, from any sum or sums found payable or which at any time thereafter may become payable to the Contractor under the same contract or any other contract with the Purchaser or the Government pending finalisation or adjudication of any such claim.

It is an agreed term of the contract that the sum of money or moneys so withheld or retained under the lien referred to above, by the Purchaser will be kept withheld or retained as such by the Purchaser till the claim arising out of or under the contract is determined by the Arbitrator (if

the contract is governed by the arbitration clause) or by the competent court as prescribed under Clause 2703 hereinafter provided, as the case may be, and that the Contractor will have no claim for interest or damages whatsoever on any account in respect of such withholding or retention under the lien referred to supra and duly notified as such to the Contractor.”

15. Clause 2403 of the IRS terms and conditions is regarding keeping liens in respect of claims arising under other contracts. Even under this clause, the retention of the security deposit or any payable amount may be withheld by placing a lien during the adjudication of the purchaser's claim. Thus, raising a claim to recover a sum is necessary to maintain a lien. In the present case, the two purchase orders are under the same contract; therefore, it is not necessary to discuss Clause 2403.

16. Thus, the only controversy to be decided in this arbitration petition is whether, on the ground of a pending CBI enquiry and the criminal prosecution regarding the payments made under the second purchase order, the petitioner would be entitled to withhold the amount payable under the first purchase order by keeping a lien on the same.

17. Although the petitioner contends that the respondent received the amounts under the second purchase order through fraud and without supplying the material, the petitioner has admittedly not invoked the arbitration clause to recover the allegedly illegally released amount. The only ground raised by the petitioner is that the petitioner would be entitled to withhold the amount by placing a lien on it during the pendency of the CBI prosecution.

18. The Hon'ble Apex Court in *Vishnu Dutt Sharma* held that the judgment of a criminal court in a civil proceedings will only have a limited application, that is, *inter alia*, for the purpose of determining who was the accused and what was the result of the criminal proceedings. It is held that any finding in the criminal proceeding by no stretch of imagination would be binding in a civil proceeding. The Hon'ble Apex Court in the case of *Shanti Kumar Panda* held that a decision by a criminal court does not bind the civil court and would be relevant only to show in evidence the particulars of the dispute.

19. As per Black's Law Dictionary, "A 'lien' is not a property or right to the thing itself, but constitutes a charge or security thereon", and that "The word 'lien' is a generic term and,

standing alone, includes liens acquired by contract or by operation of law”.

20. The Hon’ble Apex Court in the case of ***Board of Trustees of the Port of Bombay*** held that the general lien contemplated by Section 171 of the Contract Act only enables the retention of the bailed goods as security. It is held that if the payment is not made by the consignee to the wharfinger, in a case where Section 171 of the Contract Act applies, the wharfinger can only retain the goods bailed as security and will have to take recourse to other proceedings in accordance with law for securing an order which would then enable the goods to be sold for realization of the amounts due to it. Thus, as held by the Hon’ble Apex Court as per Section 171 of the Contract Act, the retention of goods as security can be held as a lien.

21. In ***M/s. H.M. Kamaluddin Ansari & Co.***, the Hon’ble Apex Court was considering the scope and ambit of Section 41 of the Arbitration Act, 1940, regarding the procedure and powers of the court, and the interpretation of Clause 18 of the standard contract. The Apex Court held that an injunction order restraining the Union of India from withholding the amount due under other pending bills to the contractor would amount to a

direction to pay the amount to the contractor, and such an order was clearly beyond the purview of clause (b) of Section 41 of the Arbitration Act 1940. It was further held that Clause 18 of the standard contract conferred ample power upon the Union of India to withhold the amount, and no injunction order could be passed restraining the Union of India from withholding the amount. However, it was held that Clause 18 merely provided a mode of recovery and would have no application where a claim, even though it be for a sum due and payable, is disputed by the contractor and must be established in a Court of law or by arbitration. Thus, it was held that Clause 18 applied only where a claim is either admitted or, in case of dispute, substantiated by resort to the judicial process. Therefore, when a purchaser had a claim for damages that the contractor disputed, the purchaser was not entitled under Clause 18 to recover the amount of its claim by appropriating other sums due to the contractor until the claim for damages was adjudicated and culminated in a decree.

22. Therefore, a lien can either be maintained under the terms and conditions of a contract or by operation of law. In the present case, the right to maintain a lien is invoked under the

terms and conditions of the contract. As per Clause 2401 of the IRS terms and conditions applicable to the present contract, whenever any claim or claims for payment of a sum of money arises out of or under the contract against the contractor, the purchaser shall be entitled to withhold and also have a lien to retain such sum pending finalisation or adjudication of any such claim. The said clause further provides that the sum of money withheld or retained under the lien by the purchaser will remain withheld or retained until the claim arising out of or under the contract is determined by the Arbitrator or by the competent court. Thus, the terms and conditions of the contract permit the purchaser to retain a lien on the cash security or the claimed amount until the claim is finalised or adjudicated. Therefore, under the terms and conditions of the contract in this case, filing a claim for adjudication is necessary to maintain a lien on the security deposit or the sum payable.

23. In the present case, the petitioner has admittedly not invoked the arbitration clause to recover the amount alleged to have been released by playing fraud. Pendency of the criminal prosecution initiated by CBI cannot be termed as adjudication for recovery of the amount alleged to have been recovered

fraudulently by the respondent. In the criminal prosecution, the petitioner's entitlement to recover the amount from the respondent would not be adjudicated. As per the well-settled legal principles as discussed in the above paragraphs, the findings recorded in criminal proceedings would not bind the civil proceedings, if any, initiated by the petitioner to recover the amount alleged to have been fraudulently recovered by the respondent. Hence, the petitioner is not entitled to charge a lien on the amounts due and payable for the goods admittedly supplied under the first purchase order, by relying upon its right to keep a lien on the ground that a criminal proceeding is pending regarding the amounts recovered by the respondent under the second purchase order.

24. The petitioner has refused to make payment on the ground of invoking Clause 2401 of the IRS terms and conditions applicable to the present contract, which provides that whenever any claim or claims for payment of a sum of money arises out of or under the contract against the contractor, the purchaser shall be entitled to withhold and also have a lien to retain such sum pending finalisation or adjudication of any such claim. Therefore, for the petitioner to

withhold the amount payable to the respondent by keeping a lien, in view of the terms of the contract, the following ingredients must be satisfied:

- a) A claim for payment of a sum of money arises out of or under the contract against the contractor.
- b) The purchaser, i.e., the petitioner, has filed a claim invoking the arbitration clause in the contract.
- c) A cash security deposit or other security is deposited by the contractor.
- d) If the security is insufficient, or if no security has been taken from the contractor, the purchaser shall be entitled to withhold the claimed amount from any sum or sums found payable, or that may become payable, to the contractor under the same contract or any other contract with the purchaser.

25. Thus, it is clear that, as per the agreed terms of the contract, the petitioner would be entitled to charge a lien on any amount payable to the respondent under the same contract, until the adjudication of the claim, provided the petitioner has filed any claim by invoking the arbitration clause. Therefore, the

legal principles settled in *M/s. H.M. Kamaluddin Ansari & Co.*, would not be of any assistance to the petitioner. Even in that decision, the Apex Court, while interpreting the relevant clause of the contract, held that the clause would apply only where a claim is either admitted or, in the event of a dispute, substantiated through the judicial process.

26. By the impugned Award, the arbitral tribunal allowed the respondent's claim towards non-payment of the cost of supply of the material under the first purchase order. Both purchase orders are under the same contract. Hence, the arbitral tribunal rightly held that before withholding the payable amount, the petitioner was required to notify the respondent as per Clause 2401, and the onus was on the petitioner to prove that any show-cause notice or notification was served upon the respondent. Since no such evidence was produced by the petitioner, the arbitral tribunal held that the petitioner can withhold the amount and have a lien on the due amount after notifying the respondent in terms of Clause 2401, pending finalisation or adjudication of the claim.

27. The petitioner has relied upon a copy of the intimation letter dated 16th August 2019 produced in this court; however,

the petitioner has not filed any claim by invoking the arbitration clause to recover the amount. In view of the well-established legal principles as set out in the preceding paragraphs, the pendency of the criminal prosecution regarding the alleged fraudulent recovery of the amount by the respondent under the second purchase order cannot be construed to mean the pendency of an adjudication of a claim as per Clause 2401 of the IRS terms and conditions. Admittedly, the material is supplied by the respondent under the first purchase order. The petitioner has not filed any claim to recover the amount alleged to have been fraudulently recovered by the respondent under the second purchase order. Therefore, the petitioner's withholding of the amount by raising a lien on the amount payable under the first purchase order would neither be valid under the contract nor valid by operation of law. Thus, such an intimation cannot be a ground to set aside the award.

28. I therefore find substance in the arguments raised by the learned counsel for the respondent to support the impugned award. The arbitral tribunal has adopted a judicious approach by correctly interpreting Clause 2401 of the IRS terms and conditions governing the contract between the parties. None of

the grounds contemplated under Section 34 of the Arbitration Act to set aside an award are made out in this petition. Hence, I see no reason to set aside the award.

29. The Arbitration Petition is therefore dismissed.

(GAURI GODSE, J.)