

(2006) 02 DEL CK 0175
In the Delhi High Court
Case No : CS (OS) No. 1201 of 1993

Electrical Manufacturing Company Ltd.	APPELLANT
Vs	
National Thermal Power Corporation Ltd. and Another	RESPONDENT

Date of Decision : 10-02-2006

Acts Referred:

Arbitration Act, 1940 — Section 30, 33
General Clauses Act, 1897 — Section 6
Limitation Act, 1963 — Section 5

Citation : (2006) 1 ARBLR 449 : (2006) 3 BC 575 : (2006) 129 DLT 224 :
(2006) 87 DRJ 465

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Manmohan, Ashok Jain and Pankaj Jain, for the Appellant; R.K. Joshi, for Defendant No. 1 and Sunil Narula, for Defendant No. 2, for the Respondent

Judgement

Sanjay Kishan Kaul, J.

IA No.8683/1993 & is No.2004/1995 (under Sections 30 & 33 of the Arbitration Act, 1940)

1. The NTPC, the respondent No.1 awarded a contract to the petitioner for the 400 KV Transmission Line Tower Package for Rihand STPP, Kanpur-Etah and Kanpur - Kanpur Lines in terms of the award letter dated 7.12.1984, accepting the petitioner's proposal dated 27.4.1984. The terms of the Agreement between the parties contained an Arbitration Clause 26.6.1. Disputes arose between the parties and the petitioner invoked the Arbitration Clause and nominated Shri J.C. Jain as the Arbitrator. Respondent No.1 was called upon to appoint their Arbitrator vide letter dated 20.3.1992. Respondent No.1 failed to appoint its Arbitrator within the stipulated period of sixty (60) days as per the Arbitration Clause and as a consequence thereof the petitioner vide its letter dated 7.7.1992 called upon the President of the Institute of Engineers (India) to nominate the

Arbitrator. The Institute of Engineers (India) vide letter dated 29.9.1992 nominated Shri P.P. Aggarwal as the second Arbitrator and also appointed Shri Som Gupta as the third Arbitrator as per the request. The Arbitral Tribunal made and published the award dated 5.5.1993 and the respondents aggrieved by the same has filed the objections.

2. The award is an ex parte award and a non-speaking award. Thus the only question which has been raised and which has to be decided is whether or not the respondents were liable to be proceeded against ex parte.

3. It may be noticed that respondent No.2 is M/s. Power Grid Corporation of India Limited. In order to appreciate the aforesaid issue some relevant dates would have to be considered.

4. The contract awarded to the petitioner is stated to have been completed in October 1988 and the line was taken over by respondent No.1 in January 1989. The petitioner had certain claims against respondent No.1 and apparently discussions were taking place between the parties from February 1989 to July 1990 but there was no settlement arrived at between the said two parties.

5. A Committee of respondent No.1 considered all the aspects and proposed a settlement on 3.1.1991 accepting only a claim of Rs.10.35 lakh against the petitioner's claim of Rs.91.02 lakh provided no further claims were raised and the proposal of the Committee was approved by the competent authority. This was not acceptable to the petitioner and the petitioner addressed letter dated 18.7.1991 to the Executive Director of respondent No.1 with copies marked to all the relevant officers seeking a decision on the pending disputes between the parties to be given within thirty (30) days. The Executive Director respondent No.1 vide letter dated 14.8.1991 confirmed to the petitioner that the said letter dated 18.7.1991 has been forwarded to the GM (TL-NR), "Engineer". The petitioner addressed a letter dated 2.9.1991 to the said Engineer confirming that the letter dated 18.7.1991 is the required notice as per the terms and conditions of the contract. This notice was given in view of the provisions contained in the Arbitration Clause No.26.0. The Arbitration Clause reads as under:

26.0 ARBITRATION

26.1 If any dispute or difference of any kind whatsoever shall arise between the owner and the Contractor, arising out of the Contract for the performance of the Works whether during the progress of the Works or after its completion or whether before or after the termination, abandonment or breach of the Contract, it shall, in the first place, be referred to and settled by the Engineer, who, within a period of thirty (30) days after being requested by either party to do so, shall give written notice of his decision to the owner and the Contractor.

26.2 Save as hereinafter provided, such decision in respect of every matter so referred shall be final and binding upon the parties until completion of the Works and shall forthwith be given effect to by the Contractor who shall proceed with

the Works with all due diligence, whether he or the owner requires arbitration as hereinafter provided or not.

26.3 If after the Engineer has given written notice of his decision to the parties, no claim to arbitration has been communicated to him by either party within thirty (30) days from the receipt of such notice, the said decision shall become final and binding on the parties.

26.4 In the event of the Engineer failing to notify his decision as aforesaid within thirty (30) days after being requested as aforesaid, or in the event of either the owner or the Contractor being dissatisfied with any such decision, or within thirty (30) days after the expiry of the first mentioned period of thirty (30) days, as the case may be, either party may require that the matters in dispute be referred to arbitration as hereinafter provided.

26.5 All disputes or differences in respect of which the decision, if any, of the Engineer has not become final or binding as aforesaid, shall be settled by arbitration in the manner hereinafter provided.

26.6.1 The arbitration shall be conducted by three arbitrators, one each to be nominated by the Contractor and the owner and the third to be named by the President of the Institution of Engineers, India. If either of the parties fails to appoint its arbitrator within sixty (60) days after receipt of a notice from the other party invoking the Arbitration Clause, the President of the Institution of Engineers, India, shall have the power at the request of either of the parties, to appoint the arbitrator. A certified copy of the said President making such an appointment shall be furnished to both the parties.

26.6.2 The arbitration shall be conducted in accordance with the provisions of the Indian Arbitration Act, 1940 or any statutory modification thereof. The venue of arbitration shall be New Delhi, India.

26.7 The decision of the majority of the arbitrators shall be final and binding upon the parties. The expenses of the arbitration shall be paid as may be determined by the arbitrators. The arbitrators may, from time to time, with the consent of all the parties enlarge the time for making the award. In the event of any of the aforesaid arbitrators dying, neglecting, resigning or being unable to act for any reason, it will be lawful for the party concerned to nominate another arbitrator in place of the outgoing arbitrator.

26.8 The arbitrator shall have full powers to review and/or revise any decision, opinion, directions, certification or valuation of the Engineers in consonance with the Contract, and neither party shall be limited in the proceedings before such arbitrators to the evidence or arguments put before the Engineer for the purpose of obtaining the said decision.

26.9 No decision given by the Engineer in accordance with the a foregoing provisions shall disqualify him as being called as a witness or giving evidence before the arbitrators on any matter whatsoever relevant to the dispute or

difference referred to the arbitrators as aforesaid.

6. The object of the aforesaid notice was thus that the petitioner had exercised the right in terms of Clause 26.1 for settlement by the Engineer. The Engineer never notified any decision and thus the petitioner addressed letter dated 20.3.1992 to respondent No.1 that in view of the failure of the Engineer to notify his decision as per Clause 26.4, the matter ought to be referred to Arbitration.

7. However, some intervening factors came into being in view of the fact that National Power Transmission Corporation Limited (NPTC) was an entity which was sought to be carved out from respondent No.1, which would have concern with the dispute with the petitioner. The necessary formalities had however not been completed and thus by letter dated 4/28.11.1991, respondent No.1 asked the petitioner to address all the communications to the DGM (CS) of the said NPTC Limited. It is the stand of the petitioner that since NPTC has not come into being for dealing with the petitioner despite notice dated 4/28.11.1991, the petitioner had no option but to address the communication dated 20.3.1992 to the respondent No.1. However, the documents available show that the concerned officials of respondent No.1 directed a copy of this letter to be faxed to the NPTC Limited. The respondent No.2, the present name by which the said corporation known, is the changed name of NPTC Limited.

8. At this stage it may also be taken note of that two letters both dated 29.9.1992 were written by the Institute of Engineers to respondent No.1 stating that they had appointed the Arbitrators and it is stated that the same was received by respondent No.1 on 20.10.1992. These letters were brought to the notice of respondent No.2 only on 12.11.1992 when they received a letter dated 6.11.1992 from respondent No.1 including the two letters dated 29.9.1992. This admission has been made in paragraph 2.26 (iii) of Objections.

9. An Ordinance was brought into force on 8.1.1993 for vesting all the relevant division of respondent No.1 in respondent No.2 with retrospective effect from 1.4.1992. This was followed up with Act 24 of 1993 known as the National Thermal Power Corporation Limited, Hydro Electric Power Corporation Limited and the North-Eastern Power Electric Corporation (Acquisition and Transfer of Power Transmission System) Act, 1993 (hereinafter referred to as the said Act).

10. Prior to the Ordinance the petitioner addressed a letter dated 9.12.1992 to the Arbitrators requesting for convening of a meeting, which was convened on 13.1.1993. The Arbitrator entered upon reference on the said date. The next meeting was fixed for 11.2.1993 inviting claims from the petitioner and records that both the parties should be requested to attend the meeting as per the agenda annexure 1 to the Minutes. The order sheet records that if the parties fail to attend the meeting, the proceedings would be ex parte.

11. In the second meeting none was present for respondent No.1 and respondent No.1 was proceeded ex parte. However the factum of the promulgation of the Ordinance on 8.1.1993 whereby all the assets and liabilities of respondent No.1

had been taken over by respondent No.2 with effect from the date mentioned therein was noticed. A request was made on behalf of the petitioner that the respondent No.2 should also be impleaded as a party. The statement of claim was taken on record and the request to make respondent No.2 a party was agreed to by the Arbitrators. Copies of these Minutes were sent to both respondent Nos.1 & 2 and the next date was fixed as 25.3.1993. The third meeting was held on 7.4.1993 after intimating all the parties by a telegram and over that there is no dispute. None appeared for either respondent No.1 or respondent No.2 and thereafter the meeting was fixed for 20.4.1993 to continue up to 25.4.1993 each day. The agenda for those meetings was also fixed.

12. The respondent No.2 through counsel addressed a letter dated 9.4.1993 to the Arbitrators disputing their jurisdiction to proceed with the matter on account of the fact that Arbitration Clause had been resorted to without first an endeavor being made to amicably settle the matter. A request for adjournment was made to adjourn the proceedings by about sixty (60) days to enable the said respondent to challenge the appointment of the Arbitrators. At that stage of time no grievance was made in respect of the respondent being unaware about the Arbitration proceedings.

13. The fourth meeting of the Arbitrators was held on 20.4.1993. This meeting was attended by the counsel for respondent No.2. Some disputes had arisen as to the nature of proceedings held as much as the proceedings recorded the counsel for respondent No.2 failed to file a proper authority while on the other hand this position has been disputed by respondent No.2 who immediately thereafter sent a telegram that the Arbitrators were insisting on an extension of time for making the award and for payment of the share of the fee of respondent No.2 in case the said respondent wanted an adjournment. Respondent No.2 thereafter did not participate in the Arbitration proceedings for the next three days when proceedings were held and were concluded on 24.4.1993. The award was made on 5.5.1993 for a sum of Rs.72,69,096.00 against the original claim of Rs.3,98,15,875.05.

14. At the inception of the hearing itself a query was posed to the learned counsel for the petitioner as to how the award could be made against respondent No.1 in view of the fact that by the statutory enactment itself, the rights and obligations stood vested in respondent No.2. Learned senior counsel for the petitioner could not seriously dispute the proposition that the award against respondent No.1 could not be sustained and thus pressed for the award to be made rule of the Court only against respondent No.2, the Power Grid Corporation of India Limited. The Arbitrators in fact ought to have substituted respondent No.2 in place of respondent No.1 rather than adding respondent No.2 as a party. This, however was not done apparently because the Arbitration notices had already been issued at the stage when the obligations of respondent No.2 in law had yet to arise.

15. The first submission of the learned counsel for respondent No.2 is on account

of what is claimed to be invalidity of the invocation for Arbitration itself. This submission is based on the fact that the petitioner was informed in terms of letter dated 4/28.11.91 that it is respondent No.2, which would administer the Contract w.e.f. 16.8.1991 and this letter was duly received by the petitioner on 17.12.1991. It is not in dispute that the ordinance was passed only on 8.1.1993 though the statute was sought to be retrospectively brought into force from 1.4.1992. However, the material aspect is that the Arbitration was invoked on 20.3.1992 even prior to the notional date from which the ordinance would have come into force. Learned counsel for respondent No.1 referred to the judgment of the Apex Court in Commissioner of Income Tax B. and O. v. Maharaja Pratapsingh Bahadur AIR 1961 SC 1026. It was observed in paragraph 5 as under:

(5) No doubt, under Section. 6 of the General Clauses Act it is provided that where any Act repeals any enactment, then unless a different intention appears, the repeal shall not affect the previous operation of any enactment so repealed or anything duly done there under or affect any right, obligation or liability acquired, accrued or incurred under any enactment so repealed. It further provides that any legal proceedings may be continued or enforced as if the repealing Act had not been passed. Now, if the amending Act had repealed the original Section. 34 and merely enacted a new section in its place, the repeal might not have affected the operation of the original section by virtue of section 6. But the amending Act goes further than this. It repeals the original Section 34, not from the day on which the Act received the assent of the Governor-General but from a stated day, viz., March 30, 1948, and substitutes in its place another section containing the proviso above mentioned. The amending Act provides that the amending section shall be deemed to have come into force on March 30, 1948, and thus by this retrospectivity, indicates a different intention which includes the application of Section. 6. It is to be noticed that the notices were all issued on August 8, 1948, when on the statute book must be deemed to be existing an enactment enjoining a duty upon the Income Tax Officer to obtain prior approval of the Commissioner, and unless that approval was obtained, the notices could not be issued. The notices were thus invalid. The principle which was applied by this Court in M.K. Venkatachalam, I.T.O. and Another Vs. Bombay Dyeing and Mfg. Co., Ltd., is equally applicable here.

16. However a reference to the judgment shows that the Apex Court was concerned with repeal of an Act and the enactment of a provision dealing with sanction from retrospective date. This is not so in the present case. Not only that there was no analogous provision to sub-Section 3 of Section 4 of the said Act.

17. In the present case the said Act was introduced inter alias with the object of dealing with the problem of uneven distributed energy sources in the country and multiplicity of authorities for generating power planning and constructing. Respondent No.2 was set up by the name of NPTC in October 1989 to undertake the programme of development of an integrated power system network, co-

ordinating an integrated operation of regional grids system and work towards the establishment of a National Power Grid. Sub-Section 3 of Section 1 provided that the relevant provisions of the Act were deemed to have come into force on 1.4.1992. Sub-Section 3 of Section 1 of the said Act reads as under:

(3) The provisions of section 8 to 11 and section 13 to 16 shall be deemed to have come into force on the 8th day of January, 1993 and the remaining provisions of this Act shall be deemed to have come into force on the 1st day of April, 1992 and any reference to the commencement of this Act in any provision of this Act shall be construed as a reference to the commencement of that provision.

18. It may be noted at this stage the reference to the Corporation was to respondent No.2 in terms of definition Clause (c) of Section 2 of the said Act. Clause (a) of Section 2 provided that "appointed day" meant the first day of April, 1992 and thus in terms of Section 3 of the Act the right, title and interest in respect of the power transmission system (with which we are concerned in the present case) stood transferred and vested in the Central Government which in turn was deemed to have transferred the same and vested the same in respondent No.2.

19. It is also relevant to note that Section 4 of the said Act dealt with the general effect of vesting and relevant sub-Section 3 of Section 4 reads as under:

(3) If, on the 8th day of January, 1993, any suit, appeal or other proceeding of whatever nature in relation to any property or assets which have been transferred to, and vested in, the Corporation under sub-section (2) of section 3, instituted or preferred by or against any of the three companies was pending, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the power transmission system of that company or of anything contained in this Act, but the suit, appeal or other proceeding may be continued, prosecuted or enforced, subject to the provisions of sub-section (1) of section 5, by or against the Corporation.

20. The object of the aforesaid sub-Section was to protect all legal proceedings of whatever nature whether for or against respondent No.2.

21. In my considered view the submission advanced by learned counsel for respondent No.2 cannot be accepted, as it is contrary to the object and the wordings of the said Act. It is apparent from the reading of the aforesaid provisions that, as was mentioned in the Act, whatever was done for or against the NTPC whether in the form of rights, obligations, title or interest or any legal proceedings for or against the said entity was deemed to have been instituted and continued against respondent No.2. It was not as if a new chapter had begun against respondent No.2.

22. There is no doubt that by letter dated 4/28.11.1991 the petitioner was informed by respondent No.1 about the creation of the new entity and this was

followed up by another letter dated 24.4.1992. The moot point however remained that the transfer of the obligations effectively came into being only on 8.1.1993 albeit with retrospective effect from 1.4.1992. The invocation of Arbitration had taken place even prior to that date on 20.3.1992. Thus on 7.7.1992 when the petitioner addressed the communication to the Institute of Engineers the obligations actually had yet to vest with respondent No.2. A copy of that communication was marked to respondent No.1. The endorsement of the documents have shown and it could not be disputed on behalf of respondent No.2 that all the communications were marked by respondent No.1 to respondent No.2. This was happening in the interregnum period till the formalities of takeover were complete and respondent No.1 was forwarding to the relevant officers of respondent No.2 the communications for necessary action.

23. The fact that the statute is retrospective would not mean that the invocation and request for appointment of the Arbitrators was bad in law as on that date respondent No.2 entity had not been transferred the obligations from respondent No.1. The provisions of the said Act are to protect the interregnum communications and transactions and not to declare them null and void.

24. Learned senior counsel for the respondent in this behalf has also sought to advance the submission that the Institute of Engineers never called upon the respondent No.1 or respondent No.2. I fail to appreciate the occasion for the same since all that the Institute of Engineers had to do was to appoint the Arbitrators on account of the failure of respondent No.1 to take action to appoint the Arbitrator. There can be no question of any audi alterem partem principles being applied to such a case. In any case respondent No.1 was aware of such appointment once having been made and did not take any action to challenge the appointment of the Arbitrators. In fact for that matter even respondent No.2 never took any action post 8.1.1993 in this behalf. Even at the stage when a request for adjournment of Arbitration was made in April 1993, which was not entertained, no steps were taken by respondent No.2 to challenge the continuation of the proceedings before the Arbitral Tribunal. Both the respondents slept over their rights at the relevant stage of time. Respondent No.2 being the inheritor of the legacy of respondent No.1 is bound by the actions and inactions of respondent No.1.

25. Learned senior counsel for the respondent also sought to contend that the appointment of the Arbitrator was on behalf of respondent No.1 and not on behalf of respondent No.2. This submission also has only to be stated to be rejected. The transfer of rights had yet to occur when the Arbitrators were appointed. The retrospectivity of the obligations and the rights of respondent No.1 vesting in respondent No.2 would only imply that the appointment of Arbitrators on behalf of respondent No.1 would also be binding on respondent No.2. A similar plea raised about the appointment of third Arbitrator is thus rejected.

26. Learned senior counsel for the respondent sought to contend that sub-

Section 3 of Section 4 of the said Act would have no application in view of the fact that the Arbitration proceedings were still not pending on 8.1.1993 as the first sitting was held by the Arbitrators only on 13.1.1993. Learned counsel referred to the judgment of the Supreme Court in *The Secretary to the Government of Orissa and Another Vs. Sarbeswar Rout*, where it was held that the proceedings in the Court of law commence on the filing of the claim in accordance with prescribed procedures and not when they may be taken up by the Court at a subsequent date. In view of this proposition being laid I see no relevance or applicability of this judgment. A reference was also made to the judgment of the learned single judge of this Court in *National Research Development Corporation of India Vs. Synthite Industrial Chemicals P. Ltd.*, to advance the same proposition. The judgment lays down the proposition that for the purpose of calculation of limitation for making an award, it is the date of entering upon reference which is relevant. To the same effect is the judgment of the learned single judge of the J&K High Court in *Jagjit Singh and Sons Vs. Garrison Engineer*, .

27. Be that as it may, the fact remains that when on 13.1.1993 the Arbitrators held the sitting that the ordinance had already come into being. Learned senior counsel for the respondents sought to contend that the Arbitrators entered upon reference of a dispute between the petitioner and respondent No.1 and not between the petitioner and respondent No.2. There is a fallacy in this argument since the counsel is seeking to draw a distinction between the rights and obligations of respondent No.1 and respondent No.2 in respect of the same transaction. The fact is that the petitioner had entered into the Contract with respondent No.1 but in view of the statutory enactment the rights and obligations of respondent No.1 stood transferred to respondent No.2. The retrospective operation of the Act was to affect a smooth transfer. It was not to evade the liability of respondent No.1 and respondent No.2, which was occurred in the interregnum period of time by respondent No.1. The notice having been issued to respondent No.1 and duly forwarded and received by respondent No.2, it was the duty of respondent No.2 to have attended to the proceedings but respondent No.2 failed to do so.

28. It may be noticed that copies of the orders were dispatched to the respondent No.2 but learned counsel for respondent No.2 sought to contend that mere sending a copy of the order was not enough and in this behalf referred to the judgment of the Division Bench of the Calcutta High Court in *Indian Iron and Steel Co. Ltd. Vs. The Sautna Stone and Lime Co. Ltd.*, . However the said matter dealt with the action of an Arbitrator in ex parte award even before the expiry of time to make award when the absence of the parties was not intentional. Once again I fail to appreciate the relevance of this judgment.

29. It is not in dispute that notices were duly served upon respondent No.1. It is also not in dispute that respondent No.2 had knowledge of the proceedings as the relevant documents had been forwarded to respondent No.2. Despite this

fact respondent No.2 failed to enter appearance. I am also unable to accept the plea of the learned senior counsel for the respondent No.1 that there was no power in the Arbitrators to add respondent No.2 as a party. In fact no such addition was necessary and what ought to have been done was only to substitute respondent No.2 in place of respondent No.1.

30. The respondent No.2 even appeared subsequently but instead of participating in the matter was only interested in adjournment. The Arbitrators, even assuming the arguments of the counsel appearing before the Arbitrator to be correct, wanted an extension of time failing which they wanted to proceed with the Arbitration so that the award could be made within the statutory period of time. Respondent No.2 was not willing to join in the extension of time. In such a situation respondent No.2 ought to have taken immediate legal remedy to at least challenge the constitution of the Tribunal if so advised. This respondent No.2 did not do but just kept silent over the matter. The allegations and submissions that the statement of claim was not available with respondent No.2 or that the record is silent about the same or as to what transpired on 20.4.1993 are clearly afterthoughts. It is also to be kept in mind that there was a panel of Arbitrators. Two Arbitrators were appointed by an independent agency. There could have been hardly any grievance made by respondent No.2 about the composition of the Tribunal.

31. Respondent No.2 itself had addressed a communication dated 24.8.1992 to the Institute of Engineers and have made admission themselves in paragraph 2.26 (iii) of the objections that they had received intimation of the appointment of Arbitrators on 12.11.1992. The proceedings have also been sent to respondent No.2. Respondent No.2 having not appeared negligently or willfully, a further opportunity was given by the Arbitrators to the said respondent on 7.4.1993. What respondent No.2 did was addressed a letter through counsel on 1.4.1993 seeking a postponement of hearing by six months on the ground that the Arbitration was premature. It can hardly be accepted that an Arbitral Tribunal would wait for six months in such a situation. The factual matrix set out shows that efforts for reference of disputes to Engineers were made prior to the invocation of Arbitration. Such settlement effort could not have been referred to respondent No.2 since it was respondent No.1 entity, which had dealt with the petitioner at the relevant stage of time. Respondent No.2 apparently was not willing to join the Arbitration proceedings and negligently kept away and did not even take steps to challenge such Arbitration proceedings. There cannot be an indefinite period for pre-Arbitration settlement proceedings to continue. The Contracts stood concluded in 1988 and despite all discussions no settlement could be finalized right till 1991. The dispute resolution mechanism was followed in view of the letter of the petitioner dated 18.7.1991 with a copy marked to the Engineer of the project and the petitioner clarified in terms of letter dated 2.9.1991 that the disputes raised by its earlier letter had been raised before the Engineer of the Contract in terms of Clause 26.4 of the terms and conditions of Contract. The Engineer did not answer to the claim within thirty (30) days of the

receipt of the notice as was required to be done and it is in view thereof that the Arbitration clause was invoked on 20.3.1992.

32. The respondent No.2 cannot be permitted to contend that it wanted the time period for Arbitration to expire and have a right to seek such an extension of six months to frustrate the Arbitration proceedings.

33. The last limb of the submissions of learned senior counsel for respondent No.2 relates to what is claimed to be an undue haste in the Arbitration proceedings. This is sought to be coupled with the submissions about the Government Body, the splitting of the organization, shifting of offices, etc.

34. The first judgment in this behalf referred to by the learned senior counsel for the respondent in Union of India (UOI) Vs. Ghaziabad Railway Station, . The said case however deals only with lack of adequate notice or opportunity of hearing to a party which would amount to judicial mis-conduct. The next judgment referred to is of Division Bench of this Court in Daisy Trading Corpn. Vs. Union of India (UOI), . The Arbitrator acted contrary to principles of natural justice as the copy of statement of claim was received one day after the date of hearing and before the expiry of time to file counter claim the award was made. Learned single judge of this Court in Union of India Vs. M/s Goyal Enterprises and Another, held that an Arbitrator mis-conducted by proceeding ex parte without informing the respondent that a request for postponement of hearing had not been acceded to. The judgment of the Supreme Court in M/s. Harbans Singh Tuli and Sons Builders Pvt. Ltd. Vs. Union of India, deals with the issue of Court filling the vacancy of an Arbitrator where the occasion to exercise the said jurisdiction had not arisen and it was still open to the concerned party to appoint the Arbitrator. In Dulal Poddar Vs. Executive Engineer, Dona Canal Division and Others, an ex parte award given by an Arbitrator was held illegal and liable to be set aside on the ground that the appointment of an Arbitrator at the behest of the appellant without sending notice to the respondent was not valid. In State of Haryana Vs. Chandra Mani and others, while dealing with the issue of condensation of delay u/s 5 of the Limitation Act, 1963 it was held by the Apex Court that certain amount of latitude within reasonable limits is permissible having regard to impersonal bureaucratic set-up involving red tapism in case of state authorities.

35. As noticed above, none of the aforesaid judgments have any concern with the facts of the present case. Propositions of law are not to be appreciated in isolation but as applicable to the given facts of a case. Respondent No.2 was given adequate opportunity to defend its case. Respondent No.2 is a public corporation having a legal department. The same is the position of respondent No.1. Respondent No.1 was duly kept informed and so was respondent No.2 and respondent No.2 chose to keep away from the Arbitration proceedings. Even at the stage when they had participated they were not willing for an adjournment subject to an extension of the time period for the Arbitrators to make the award. The object was only to prolong the Arbitration and make sure that the time expired with the result that further time would be spent on seeking extension of

time from the Court.

36. The remedy of Arbitration is an expeditious one. The object is settlement of commercial disputes at a fast pace. The object is not to prolong proceedings indefinitely which appeared to be the objective of respondent No.2.

37. It is also to be taken note of that the matter is quite old and about 13 years have passed since the award was made. The petitioner is stated to be running under a scheme of rehabilitation by its new promoters under the supervision of BIFR. It can be hardly expected that after such a long period of time records would be available and that the matter should be sent back for reconsideration merely because respondent No.2 chose to be negligent in conduct of the legal proceedings.

38. I am also constrained to note that the various judgments of the respondent No.2 which have been taken note of are on the basis of the written synopsis filed by respondent No.2. No effort was made to refer to these judgments in this Court or to advance submissions. This was despite the fact that a number of adjournments were granted at the request of learned counsel for respondent No.2 to be in a better position to assist the Court.

39. Insofar as the merits of the matter are concerned the award being a non-speaking and uncontested matter respondent No.2 did not even argue on the same.

40. IA No. 8683/1993 filed by respondent No. 2 is accordingly dismissed while is No.2004/1995 is allowed.

CS (OS) No.1201/1993

41. The objections of respondent No. 2 having been dismissed the award of the panel of three Arbitrators, Shri S.C. Jain, Shri P.P. Aggarwal & Shri Som Gupta dated 5.5.1993 awarding a sum of Rs.72,69,096/- is made rule of the Court qua respondent No.2. Respondent No.1 is not liable for any amount. The petitioner shall also be entitled to interest from the date of the award till the date of decree @ 12 per cent per annum (simple interest) and from the date of decree till the date of realization @ 9 per cent per annum (simple interest). This is taking into consideration the prevailing market rate of interest at the relevant time and the interest being awarded in various matters by this Court. The petitioner shall also be entitled to cost quantified at Rs.7,500/- from respondent No.2.

42. Decree sheet be drawn up accordingly.