

(2022) 04 OHC CK 0033
In the Orissa High Court
Case No : ARBA No.04 Of 2021

Jindal India Thermal Power Ltd

APPELLANT

Vs

Quartz Infra and Engineering Pvt. Ltd

RESPONDENT

Date of Decision : 06-04-2022

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 27, 34

Citation : (2022) 04 OHC CK 0033

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : S.P. Mishra, C. Mukhopadhyay, S. Mohanty, P. Mehta, D. Vyas, A.K. Panigrahi

Judgement

Arindam Sinha, J

1. Mr. Mishra, learned senior advocate appears on behalf of appellant and submits, impugned is judgment dated 9th April, 2021 made by the Court below in rejecting his client's challenge to award dated 21st February, 2017. He submits, he has several points, of which he wants to urge first, the point on the Tribunal having rejected his client's application under section 27, Arbitration and Conciliation Act, 1996 for summoning further witnesses.

2. He refers to undated order of the Tribunal dealing with the application of his client to submit, majority view was that the application was delayed and evidence regarding the purpose for summoning the persons (level books), were already on record and relevance thereof was not in issue at that juncture.

3. He submits, , contrary view was taken by order dated 23rd September, 2015. The dissenting co-arbitrator said that the application deserved to be allowed, the rejection tantamount to foreclosing respondent's evidence, which may cause serious prejudice to respondent defence and defeat the ends of justice.

4. He then points out from impugned judgment that in paragraphs 9 and 9(a) the Court below had dealt with the rejection of the application by the Tribunal. He

submits, the Court said that his client had not challenged the order of the Tribunal before any higher forum and accepted the same. At stage of application under section 34 such question had been raised, which, in said Court's view, is not legally sustainable as the Tribunal had passed the order, on consideration of facts and circumstances regarding relevance of evidence of the witnesses to be examined. He submits, his client's case was foreclosed and there has been prejudice caused to it.

5. The point raised goes to the root of the matter. It is to be decided before any other point appellant may have/urge. Respondent will be heard on this point, on adjourned date. Court has noticed and respondent is to answer on the scope of section 27 providing permission to a party to apply with approval of the arbitral Tribunal, to the Court for assistance in taking evidence. Whether the requirement to obtain the approval is a mandate for adjudication on discretion to be exercised is a question to be answered. Since the provision gives permission to a party to apply to the Court for assistance in taking evidence, the object may be that requirement of approval of the arbitral Tribunal is a requirement preventing the party from applying directly to the Court, a requirement of procedure.

6. Respondent will also be heard on the Court below having dealt with the point on reliance of reasoning in impugned award on finding that time was not essence of the contract, the award having come much later than when the application was rejected. Furthermore, no appeal is provided from an order under section 27 in the Act. Respondent is also to address Court on whether, therefore, there could be acceptance of the order by appellant.

7. List on 13th April, 2022.

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