

(2017) 07 DEL CK 0097

In the Delhi High Court

Case No : First Appeal From Order No. 235 Of 2016

Municipal Corporation Of Delhi

APPELLANT

Vs

M/S Engineering Development Corporation

RESPONDENT

Date of Decision : 20-07-2017

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 7(3), 11, 34, 37

Citation : (2017) 07 DEL CK 0097

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Sunil Goel, Renu Gupta, Anusuya Salwan, Nikita Salwan

Judgement

Valmiki J. Mehta, J

1. This first appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter "the Act") impugns the judgment of the court below

dated 10.12.2015, by which the court below has dismissed the objections filed by the appellant under Section 34 of the Act.

2. A reading of the judgment shows that there is no discussion with respect to what were the facts of the case of the respective parties, what were

the facts in issue, how the facts in issue were decided in terms of the order showing reasoning, discussion and thus the conclusions of the Award are

not illegal or perverse or violative of ingredients of Section 34 of the Act. The impugned judgment simply reproduces in most paras judgments of the

Supreme Court stating that courts under Section 34 of the Act do not sit as a appellate court. There is absolutely no discussion as to the disputes

which arose and how the reasoning and conclusions given by the Arbitrator in the Award need not be interfered with. In order to appreciate the lack

of discussion and reasoning in the impugned judgment, the relevant paras of the impugned judgment are reproduced hereunder:-

6. First of all, it may be noted that the objections except for one regarding the jurisdiction of arbitrator and pertaining to decision on the claims out

of ambit of agreement, all the other objections raised are in the form of appeal filed before the court which is not permissible.

7. Ld. counsel for petitioner has placed reliance upon 2014 STPL (Web) 574 SC Oil & Natural Gas Corporation Ltd. Vs. Western Geco International

Ltd. wherein it was observed that "" an award could be set aside if it is contrary to:

(1) fundamental policy of Indian Law

(2) the interest of India ; or

(3) justice of morality, or

(4) in addition, if it is patently illegal

8. It was further observed that an award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such

award is opposed to public policy and is required to be adjudged void.

9. Ld. counsel for plaintiff has further placed reliance upon ONGC Ltd. Vs. Garware Shipping Corporation Ltd. AIR 2008 Supreme Court 456

wherein it was observed that ""award based on wrong basis and perverse condition is liable to be set aside. There is no proposition that the courts

could be slow to interfere with arbitrator's award, even in such cases.

10. Reliance was also placed upon 2005 (2) ARBLR 412 Gau Union of India & Anr. Vs. J.G. Engineers Pvt. L.t dwherein the findings of Hon'ble

court was that the arbitrator exceeded the scope of arbitration in as much as, he passed the award relating to the matter excepted by the terms of the

contract agreement and said matters being outside the purview of the arbitration, the award passed by the arbitrator was held to be illegal being

contrary to the terms of the contract and also provisions of the Act.

11. Reliance was further placed upon 2014 STPL (Web) 578 SC Harsha Constructions Vs. Union Of India & Ors. by L dc.ounsel for petitioner

wherein it was observed that "" Arbitration arises from a contract and unless there is specific written contract, a contract with regard to arbitration

cannot be presumed. Section 7 (3) of the act clearly specifies that the contract

with regard to arbitration must be in writing. If a non arbitrable dispute is referred to an Arbitrator and even if an issue is framed by the Arbitrator in relation to such a dispute, there cannot be a presumption or a conclusion to the effect that the parties had agreed to refer the issue to Arbitrator. It was accordingly held that it was not open to the Arbitrator to decide the issues which are not arbitrable and the award, so far as it relates to disputes regarding non arbitrable disputes, is bad in law and is liable to be quashed

.

12. In the instant matter, as already noted, except for one objection regarding the claim made before Ld. Arbitrator beyond the scope of arbitration, others are in the form of appeal and therefore this court is not empowered to treat the objection petition as appeal as there cannot be any denovo trial or appreciation of evidence. It has been held by Hon'ble Supreme Court continuously that a court should approach an award with a view to support it, if that is reasonable, rather than to destroy it by calling it illegal and further that a court cannot substitute its own evaluation to come to the conclusion that arbitrator had acted contrary to the bargain between the parties. Reliance is placed upon 2002 (65) DR J400 UOI Vs. Hakam Chand and Co. and AIR 1989 SC 1263 Food Corporation of India Vs. Joginder Pal Mahinder Pal.

13. In the instant matter, none of the ground mentioned in the authorities (supra) relied upon by counsel for petitioner are available on the basis of which an award can be set aside .

14. In Baron International Ltd. vs. Startron Video P. Ltd. And Anr. OMP No. 124/2009 decided on 25.02.2010 and 2008(3) R.A.J. 612(Del) and

Hindustan Lever Ltd. vs. Shiv Khullar inter-alia, it was observed that ""a commonly held belief that while considering objections U/s 34 of the Act, the

Court cannot look into the evidence before the Arbitrator also needs to be clarified. There is a difference in reappreciating evidence and considering

whether material evidence has been ignored. Whereas the former would be an activity prohibited while considering objections U/s 34 of the Act for

the reason an Arbitrator is a chosen forum by the parties to conclude rival issues of fact between the parties, the latter would be an activity to find out

whether learned Arbitrator has acted within his mandate for the reason the mandate of the Arbitrator is to decide on facts after considering all the

relevant facts and not ignoring the same.

15. Besides this court, not sitting in appeal, therefore cannot re-appreciate the evidence but also there is no material evidence having not been

considered by Ld. Arbitrator which may call for setting aside of the award. Reliance is placed upon AIR 2012 Supreme Court 1866 P.R. Shah, Shares

& Stock Broker (P) Ltd. Vs. M/s B.H.H. Securities (P) Ltd. & Or s, .(2006) 7 Supreme Court Cases 700 Rajasthan State Road Transport Vs. Indag

Rubber Ltd and 198 (2013) Delhi Law Times 738 National Highways Authority of India Vs. Oriental Structure Engineers Ltd w. herein interalia it was

observed that "" merits of decision of Arbitral Tribunal Award cannot be challenged by a party to contract merely because the interpretation given by

Arbitral Tribunal to contract terms is not to its liking. If two interpretations are possible and the interpretation given by Arbitral Tribunal is a possible

view upon which the court may have a different view, yet award will not be interfered with by court under section 34 of Arbitration and Conciliation

Act. It was further observed that the court cannot sit in appeal and disturb the finding of fact recorded by arbitrator after considering all the material

on record and factual controversy not covered by such material is disallowed to be raised"".

16. The objection pertaining to the claim being beyond the ambit of arbitration is also not sustainable as this court does not find any deviation from the

terms of contract and particularly clause 25 with regard to reference of dispute to arbitrator.

17. It is pertinent to mention here that even otherwise, application under section 11 of the Arbitration and Conciliation Act was moved before Hon'ble

High Court and vide order dated 8.3.2006, Hon'ble High court while declining the plea of objector directed for reference of the dispute to the

Arbitrator under clause 25 of the agreement between the parties. The said aspect in fact having already been considered by Hon'ble High Court, Ld.

counsel for objector is not permitted to reagitate the same before this court.

18. With respect to the pendency of civil suit, the objection raised by Ld. counsel for petitioner that Ld. Arbitrator could not have adjudicated upon that

claim is already answered by Ld. Arbitrator while declining claim no.3 of the claimant due to pendency of the civil suit.

19. Accordingly, finding no merits in the objection petition, same is dismissed. A copy of this order alongwith arbitral record be sent to Ld. Arbitrator.

File be consigned to record room.â??

3. In a recent judgment in FAO No. 355/2016 titled as Harbhajan Kaur Bhatia Vs. M/S Aadya Trading & Investment Pvt. Ltd. & Anr. decided on

18.07.2017 in similar circumstances I have remanded the matter to the trial court after observing that a judgment to be a judgment has to be a

speaking judgment giving reasons and a judgment cannot be a apology for a judgment. At the time of remanding the matter, I have requested Hon'ble

the Acting Chief Justice to issue, if deemed fit, appropriate directions to the trial courts for not passing unreasoned judgments. The relevant paras of

FAO No. 355/2016 are paras 6, 7, 9 and 10, and which paras read as under:-

â??6. The impugned judgment dismissing the objections, I am forced to note, is an apology for the expression judgment. In an impugned judgment

what are the respective cases of the parties and the issues to be decided have to be mentioned. Thereafter how the issues are decided is discussed.

The impugned judgment however only states that Award is passed by the Arbitrator and there are no grounds for setting aside of the Award under

Section 34 of the Act because there is no incapacity of the objector or any issue of lack of notice. It is also observed that the Award does not deserve

to be set aside as it is not in conflict with the public policy of India.

7. This Court is receiving many judgments of the courts below which are most unfortunately dismissing the objections by simply stating that the Award

is not against the public policy or the Award does not violate the ratio of the judgment of the Supreme Court in Oil & Natural Gas Corporation Ltd.

Vs. Saw Pipes Ltd. (2003) 5 SCC 705 and the other connected judgments. In my opinion, this is an unacceptable practice. Since this Court has

received a series of cases where objections under Section 34 of the Act are being decided without even mentioning what the disputes between the

parties are, how the Award has decided the same and how a court hearing objections under Section 34 of the Act cannot interfere because the

Award, as per the reasoning, is neither illegal or perverse including not falling under the ingredients of Section 34 of the Act, therefore, while setting

aside the impugned judgment on the ground of complete absence of reasoning as also discussion as regards what were the issues involved and how

they are decided, a copy of this Court's judgment along with the impugned judgment dated 10.12.2015 be put up before Hon'ble the Acting Chief

Justice, so that appropriate directions can be issued, if Hon?ble the Acting Chief Justice so deems fit, to the District Courts that non-speaking

judgments cannot be passed while dealing with the objections which are filed under Section 34 of the Act.

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9. Accordingly, the appeal is allowed. The impugned judgment dated 10.12.2015 is set aside and it is ordered that the case be remanded back to the

court below to decide the case in accordance with law after setting out the facts in issue, discussion on the relevant issues and giving reasoning for the

conclusion which is to be arrived at by the court below for allowing or dismissing the objections under Section 34 of the Act.

10. Parties to appear before the District and Sessions Court (North), Rohini Courts, Delhi on 24th August, 2017 and the District and Sessions Judge

will mark the objections under Section 34 of the Act for disposal to a competent court in accordance with law. Trial court record be sent back.â??

4. In view of the aforesaid position, it is agreed by the counsel for the parties that the impugned judgment dated 10.12.2015 be set aside but learned

counsel for respondent rightly argues that since there is already sufficient delay and the respondent is deprived of awarded amount under the award,

the matter be expedited and so that the court below will pass a detailed judgment as required by law expeditiously. Accordingly, it is directed that the

concerned court will dispose of the objections under Section 34 of the Act within six months of receiving the copy of the present order.

5. Parties to appear before the District and Sessions Judge, West, Tis Hazari Courts, Delhi on 25.08.2017 and the District and Sessions Judge shall

mark the objections under Section 34 of the Act for disposal to a competent court in accordance with law.