

(2004) 10 DEL CK 0086

In the Delhi High Court

Case No : EA No's. 403-404 of 2004 in Ex. P. No. 240 of 2003

Sial Bioenergie

APPELLANT

Vs

Sbec Systems

RESPONDENT

Date of Decision : 07-10-2004

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 44, 48, 48(1)

Citation : AIR 2005 Delhi 95 : (2004) 3 ARBLR 429 : (2004) 115 DLT 294 : (2005) 79 DRJ 156

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : P.V. Kapur, Vipin Sanghi, Dhruv Wahi and Sanjay Bhartari, for the Appellant; Rajiv Sawhney Rakesh Sawhney, Veronica Mohan and Ashutosh Khaitan, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal , J

1. A submission has been made on behalf of the Judgment Debtor in support of these applications which seek to lead oral evidence in support of the objections (EA.No. 733/03) to the enforcement of the Award dated 19th May, 2003 under Sections 48 and 34 of the Arbitration & Conciliation Act, 1996 (in short the `1996 Act'), the phrase `furnish proof to the Court' in Section 48(1) would include oral evidence.

2. Section 48 of the 1996 Act reads as follows:-

"48.Conditions for enforcement of foreign awards.- (1) Enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the court proof that-

(a) the parties to the agreement referred to in Section 44 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication

thereon, under the law of the country where the award was made; or.

(b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or.

(c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be enforced; or.

(d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or.

(e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

(2) Enforcement of an arbitral award may also be refused if the court finds that-

(a) the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or.

(b) the enforcement of the award would be contrary to the public policy of India.

Explanation.--Without prejudice to the generality of Clause (b) of this section, it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption.

(3) If an application for the setting aside or suspension of the award has been made to a competent authority referred to in Clause (e) of Sub-section (1) the court may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security."

3. On the strength of the aforesaid plea, it has been contended by Mr. Rajiv Sawhney, the learned senior counsel, appearing on behalf of the Judgment Debtor that Shri Sushil K. Agrawal and Shri S.S. Agrawal should be permitted to be summoned as witnesses of the judgment debtor/applicant and they should also be permitted to be cross-examined. It is submitted that Shri Sushil Agrawal had filed his affidavit in support of the objections and was a witness of the applicant before the arbitrator like S.S. Agrawal and both of them were cross-examined before the arbitrator. Thus S.K. Agrawal and S.S. Agrawal are required to depose inter alias as witnesses of the applicant as they had personal knowledge of the entire case and can depose in support of the applicant's

objections in this Court.

4. In reply, Mr. Kapur, the learned senior counsel, appearing on behalf of the decree holder has submitted that the objections(EA.No. 733/03) to the enforcement of the award have already been raised by way of affidavit and counter affidavit to the said objections has been filed which constitute sufficient material for disposal of the said objections.

5. In my view the whole purpose of the 1996 Act would be completely defeated by granting permission to the applicant/JD to lead oral evidence at the stage of objections raised against an arbitral award. The 1996 Act requires expeditious disposal of the objections and the minimal interference by the Court as is evident from the Statement of Objects and Reasons of the Act which reads as follows:-

"4. The main objectives of the Bill are as under:-

(ii) To make provision for an arbitral procedure which is fair, efficient and capable of meeting the needs of the specific arbitration."

x x x x x x x x x x x x x x (v) to minimize the supervisory role of courts in the arbitral process.

6. At the stage of the objections which are any way limited in scope due to the provisions of the Act to permit oral evidence would completely defeat the objects underlying the 1996 Act. The process of oral evidence would prolong the process of hearing objections and cannot be countenanced.

7. Furthermore the Supreme Court in Food Corporation of India Vs. Indian Council of Arbitration and Others etc. etc., had summarized the ethos underlying the Act as follows:-

"The legislative intent underlying the 1996 Act is to minimize the supervisory role of the Courts in the arbitral process and nominate/appoint the arbitrator without wasting time leaving all contentious issues to be urged and agitated before the arbitral tribunal itself."

8. Accordingly, I see no merit in these applications and the prayer made therein is rejected.

9. Applications stands dismissed accordingly.

10. A copy of this order be given dusty to the learned counsel for the parties under the signature of the Court Master. Ex.P.240/03 & EA.Nos. 490,578,733,799/03,17,67-68,290/04

List the matter on 8th October, 2004.