
(2014) 09 RAJ CK 0018

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 4412, 4413, 4414, 4415 and 4416/2014

The Executive Engineer (E), BSNL Electrical Division

APPELLANT

Vs

Nice Diesel Engine Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 11-09-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2(1)(c), 33, 34, 75, 81

Citation : (2014) 09 RAJ CK 0018

Hon'ble Judges : M.N. Bhandari, J.

Bench : Single Bench

Advocate : D.C. Meena, Executive Engineer (E), N.K. Choudhary, SW (E) and Party-in-Person, for the Appellant; Aseem Mehrotra and Party-in-Person, for the Respondent

Final Decision : Disposed off

Judgement

M.N. Bhandari, J. By these writ petitions, a challenge is made to the interim award dated 04.12.2013 passed by the sole Arbitrator.

2. An objection has been taken for maintainability of the writ petition. It is submitted that if petitioner-company is aggrieved by the interim award, remedy lies under Section 34 of Arbitration and Conciliation Act, 1996 (in short "Act of 1996"). A reference of Section 2(1)(c) of the Act of 1996 has been given to show that definition of "arbitral award" includes interim award. In view of definition aforesaid, interim award is nothing but an award thus can be challenged under Section 34 of the Act of 1996. The writ petition for the aforesaid would not be maintainable. A reference of Paras 38 and 73 of the judgment of Hon'ble Apex Court in the case of McDermott International Inc. Vs. Burn Standard Co. Ltd. and Others, has been given to show that present award is akin to preliminary decree and if one is aggrieved, it can be subject matter of challenge under Section 34 of the Act of 1996. Prayer is accordingly made to dismiss the writ petitions.

3. The petitioner, on the other hand, argued the writ petition on merit and

submitted that without adjudication of the issues, an interim award has been passed. It is nothing but giving final relief along with interest @11% per annum without adjudication. It is settled law that interim order/award should not be of the nature giving final relief otherwise nothing remains to be adjudicated while passing final award. The final relief can be given after adjudication of the dispute between the parties and it can be when not only pleadings are complete but evidence is led. In the instant case, the Arbitrator ignored the procedure while passing the interim award. In view of above, interim award is void on the face of it and for that reason, writ petition is maintainable. The petitioner-company is not required to submit objection under Section 34 of the Act of 1996 to challenge the interim award when it is void on the face of it.

4. He further submits that if preliminary objection raised by the respondents is accepted, liberty be given to the petitioner to challenge interim award under Section 34 of the Act of 1996. The period spent before this court may be condoned to maintain the objection and at the same time, direction be given to the Arbitrator to pass final award.

5. I have considered rival submissions made by the parties and perused the record.

6. By this writ petition, a challenge is made to the interim award passed by the Arbitrator. The question is as to whether writ petition would be maintainable when statutory remedy under Section 34 of the Act of 1996 exist. An interim award is defined to be an arbitral award as per definition given under Section 2(1) (c) of the Act of 1996. For ready reference, definition of "award" is quoted hereunder:

"2(1)(c) "arbitral award" includes an interim award"

7. The perusal of definition shows that interim award is an arbitral award. In the background aforesaid, now Section 34 of the Act of 1996 is referred and is quoted hereunder:

"34. Application for setting aside arbitral award.-(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if--

(a) the party making the application furnishes proof that ----

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise

unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matter 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, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that -----

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation.---Without prejudice to the generality of sub-clause (ii), 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 or was in violation of section 75 or section 81.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award, or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of the arbitral tribunal will eliminate the grounds for setting aside the arbitral award."

8. The provision quoted above provides an application for setting aside of an arbitral award. In view of above, the petitioner was having remedy under Section 34 of the Act of 1996.

9. The only argument raised to justify filing of writ petition is that impugned interim award is void on the face of it. I find that interim award directs for payment of the amount with interest @11% per annum, to be levied every

month of delay. This court could have commented on the award but taking into consideration that remedy lies to the petitioner, all the objections can be taken by invoking jurisdiction under Section 34 of the Act. It is otherwise a fit case where serious view could have been taken by this court against the interim award because both the parties have admitted that other than exchange of claim petition and response thereupon by the petitioners, they have not exchanged the affidavit. The interim award was thus passed without evidence of the parties. It is otherwise granting final relief on one of the issue of the claim. The Arbitrator was expected to take care that it is final award which would decide the dispute regarding acceptance of claim. If it is finally rejected then how part of claim can be accepted by interim award. In case of rejection of the claim, what will happen to the interim award of the nature passed herein.

10. The writ petitions are however preferred against interim award and are not maintainable and accordingly dismissed however with liberty to maintain application under Section 34 of the Act of 1996 to challenge the interim award. The appropriate application may also be filed indicating that for substantial period, the matter remain pending before this court. If any such application is moved, the competent court would consider and decide the same as per provisions of law. I further find that arbitration is pending from the year 2012. The purpose of the arbitration is for expeditious settlement of dispute. The object aforesaid would be frustrated if delay is caused by the Arbitrator to resolve the dispute. In view of above, I expect that the Arbitrator would now expedite the proceedings and pass final award at the earliest and if possible, within a period of three months from the next date fixed for further proceedings. It is however clarified that if objections are made under Section 34 of the Act of 1996, the competent court would decide the same after hearing both the parties and without being influenced by the observations made by this court.

11. In view of disposal of the writ petitions, applications for vacation of the stay order so as stay applications stand disposed of.