

(2009) 07 DEL CK 0172

In the Delhi High Court

Case No : FAO (OS) No. 185 of 2007 and CM No's. 7903 and 10759 of 2007

Union of India (UOI) and Another

APPELLANT

Vs

Sudhir Engineering Company

RESPONDENT

Date of Decision : 20-07-2009

Acts Referred:

Arbitration Act, 1940 — Section 30, 33

Arbitration and Conciliation Act, 1996 — Section 31, 31(1), 31(2)

Citation : (2010) 8 RCR(Civil) 2082

Hon'ble Judges : Neeraj Kishan Kaul, J;Mukul Mudgal, J

Bench : Division Bench

Advocate : Preeti Dalal, R.S. Bhatnagar and Maneesha Dhir, for the Appellant;
Raman Kapur, Manish Kumar and Amit Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—This appeal challenges the order of the learned Single Judge dated 13th September, 2006 dismissing the objections preferred by the appellants (respondents before the learned Single Judge) by filing of IA No. 7169/1994 u/s 30 and 33 of the Arbitration Act, 1940 (hereinafter referred to as "the 1940 Act"). The learned Single Judge held that the award was signed by two Arbitrators and the third Arbitrator declined to do so. The learned Single Judge reasoned as under:

4. On the first objection, it may be noted that since time was expiring 2 Arbitrators who had concurred in the award, getting no response from the 3rd Arbitrator, published the award.

5. Surely, if 1 out of the 3 Arbitrators refuses to sign an award that does not mean that the majority would be left high and dry. It was open to the 3rd Arbitrator to give a dissenting award.

2. The reasoning given by the learned Single Judge is unexceptionable, particularly, when the learned Arbitrators view in respect of claims No. 1,3 and 5

was very factual in nature and did not warrant interference in the limited jurisdiction of the Court in dealing with the challenges to the arbitral awards.

3. In so far as the reasoning of the learned Single Judge in respect of non-signing of the award by the third Arbitrator is concerned, the reasoning is unexceptionable, in so far as it relates to the reluctance/obdurance/refusal of the third Arbitrator to sign the award. In fact, the reasoning of the learned Single Judge is in conformity with the legislative wisdom contained in Section 31 of the Arbitration Act, 1996 (hereinafter referred to as the "1996 Act") the relevant part of which reads as follows:

31. Form and contents of arbitral award.

(1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.

(2) For the purposes of Sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

4. In our view, Section 31 was drafted by the Legislature in view of such situation having occurred where one of the three Arbitrators declined to sign the award and therefore, Section 31(2) clearly provides that so long as the arbitral award is signed by the two Arbitrators and records the reasons for non-signing of the award by the third Arbitrator, in so far as the proceedings under the 1996 Act are concerned, that is sufficient to render the said award enforceable. The present proceedings are, however, under the 1940 Act. While such a provision is not contained in the 1940 Act, which is silent on this issue, we, nevertheless feel that the reasoning given by the learned Single Judge is indeed what may be termed as prescient in nature, as Section 31(2) of the 1996 Act now reflects to a large extent the reasoning of the learned Single Judge.

5. The other grievance raised by the learned Counsel for the appellant was that the order of reference of this Court dated 13th November, 1992 read as follows:

1. Whether the disputes and differences which have arisen between the parties are liable to be presented before the Arbitrator? If so, its effect?

6. It has been submitted that the above order of reference clearly visualizes the filing of the counter-claim. Quite apart from the fact that the order of reference uses the phrase "have arisen" which may refer to the claims/differences prior to the order of reference dated 13th November, 1992, in any case, the arbitral tribunal in its interim award has reasoned as follows:

...Consequently, these arbitrators feel that the counter claims being raised by the respondents before the Tribunal of Arbitrators are not covered by the reference order and as such these two arbitrators are also of the considered opinion that consideration and decision of the counter claims can, at the most, be kept open

so that if the respondents have any legal remedy for getting such counter claims determined by law the same may not get barred by the present award of the Arbitrators by majority decision.

7. Thus, in our view, the grievance raised by the appellant, even if accepted, is fully redressed by the observations of the learned Arbitrators. We may also refer to the finding of the learned Single in paragraph 7 of the impugned judgment, which reads as follows:

7. It is settled law that where disputes are referred to an Arbitrator by a court or by the nominating authority, mandate of the Arbitrator is to decide the disputes which are referred and no more.

8. No fault could be found by the court to the above reasoning of the learned Single Judge nor was any pointed out by the learned counsel.

9. Accordingly, we are satisfied that there is no merit in this appeal and the same is dismissed and stands disposed of. All the pending applications also stand disposed of.