

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 10.8.2009
Date of Order: 25th August, 2009

OMP No. 257/2009
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25.8.2009

M/s Woodfun

... Petitioner

Through: Mr. Sandeep Sharma, Advocate

Versus

National Thermal Power Corporation Ltd.

... Respondent

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

By this petition under Section 34 of the Arbitration & Conciliation Act, the petitioner has assailed an award dated 27th February, 2009 whereby the learned Arbitrator has allowed some of the claims and disallowed some of the claims of the petitioner and allowed one of the counter claims and disallowed rest of the counter claims of the respondent. The learned Arbitrator after making adjustments of the amount allowed in favour of the claimant/petitioner and amount allowed in favour of the respondent, awarded a sum of Rs.8,52,203.00 in favour of the petitioner/claimant.

2. The petitioner has challenged the award claim-wise and has under each claim stated that the award of the Arbitrator was not justified on merits and observation

of the Arbitrator regarding failure of petitioner to produce evidence in support of the claim was not justified. The petitioner has therefore, prayed that the award passed by the learned Arbitrator in respect of Claims No. 4,5,6,8,9,10 & 12 be set aside and the amounts as claimed by the petitioner under these claims be allowed. Similarly, the petitioner has taken the stand that the Arbitrator wrongly allowed the counter claims no. 2 & 6 of the respondent failed to appreciate that the counter claims made by the respondent were only for the sake of making the counter claims. It is submitted that the learned Arbitrator failed to appreciate the material placed before him.

3. It is settled law that while considering objections under Section 34 of the Arbitration & Conciliation Act, 1996 the Court does not act as a Court of Appeal and cannot re-write an award after re-appreciating the evidence produced before the Arbitrator. The Arbitrator is appointed by the consent of the parties. He is a Judge chosen by the parties, his decision is final and binding on the parties and the award can be set aside only if the petitioner is able to make out a case under Section 34 of the Arbitration & Conciliation Act, 1996 which reads as under:

“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 subsection (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 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, 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.

4. The Arbitrator is a sole judge of the quantity and quality of the evidence and whether a fact has been proved or not proved. This Court cannot look into the evidence produced before the learned Arbitrator in order to arrive at a conclusion whether the evidence was sufficient/insufficient, relevant/irrelevant, properly appreciated/not appreciated. The petitioner has failed to make out a case under any of the grounds as stated under Section 34 of the Arbitration & Conciliation Act, 1996. The petition is liable to be dismissed and is hereby dismissed.

August 25, 2009
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SHIV NARAYAN DHINGRA, J.