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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: May 12, 2009
Date of Order: May 25, 2009

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25.05.2009

Container Corporation of India Ltd.

...Petitioner

Through : Mr. B. Datta, Sr. with Mr. M.M. Kalra, Advocates

Versus

Texmaco Limited

...Respondent

Through: Mr. T.K. Ganju, Sr. Adv. with Ms. Roopa Dayal, Advocates

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. This petition is under Section 34 of Arbitration & Conciliation Act, 1996 (for short, "the Act") with a prayer of setting aside the order passed by the learned Arbitral Tribunal on 1st May 2009 whereby the Arbitral Tribunal rejected the application made by petitioner under Section 23 of the Act.

2. It is contended by counsel for the petitioner that the petitioner had filed a written statement to the claim filed by the respondent before the Arbitral Tribunal. In the written statement, the petitioner had taken the stand that the liquidated damages were rightly imposed by petitioner corporation and besides that the petitioner had also suffered losses on account of serious delays in making delivery as per the contract. The petitioner in the written statement inadvertently did not make the counter claim of the losses suffered to the tune of Rs.9,60,32,652/- although the petitioner annexed Annexure-R-I

with the written statement giving details of the losses suffered. During hearing of the matter before the Arbitral Tribunal, petitioner moved an application seeking amendment of its written statement so as to include the counter claim of Rs.9,60,32,652/-. This application was dismissed by learned Arbitral Tribunal without issuing notice to the respondent and without deciding the application on merits. It is contended that by dismissing the application, the Arbitral Tribunal in fact has rejected the counter claim of the petitioner and, therefore, the order passed by the Arbitral Tribunal is to be considered as an interim award which can be challenged under Section 34 of the Act and therefore this petition under Section 34 was maintainable.

3. A perusal of the order dated 1st May 2009 passed by the learned Arbitral Tribunal shows that the Tribunal dismissed the application for amendment of written statement on the ground that it was made at the stage when the final arguments were being addressed before the Tribunal. The claimant had already concluded its arguments and the respondent had partly argued the matter and the matter was posted for hearing of remaining arguments on 28th April 2009 when it could not be taken up and was posted on 1st May 2009 when an application under Section 23 of the Act was filed by the petitioner for amendment of written statement so as to include a counter claim. The Tribunal dismissed the application having regard to the gross delay in making application and did not consider it appropriate to allow the prayer made in the application.

4. The Arbitral Tribunal has wide discretion to allow or dismiss applications for amendment of claim or written statement filed before it during the proceedings. There is no provision under the Act for approaching

the Court against an order of allowing or dismissing the amendment application. The issue pressed for by petitioner is whether dismissing of an application of amendment of the written statement so as to include the counter claim amounts to giving an interim award which can be challenged under Section 34.

5. An interim award is in the nature of a decision of the Arbitral Tribunal on some of the claims of the parties. Occasionally, the Arbitral Tribunal is called upon to give a part award particularly when a part of the claim of the claimant stands admitted by the opposite party either in the pleadings or otherwise. The act does not define an interim award. Section 2(c) of the Act, however provides that an arbitral award included an interim award. Generally an interim award is like a preliminary decree within the meaning of Section 2 (2) of the Civil Procedure Code or it is like a decree based on the admissions of parties as envisaged under Order 12 Rule 6 CPC. However, in any case, an interim award must make a provisional arrangement by the Arbitral Tribunal during the proceedings pending before it, but before passing the final award.

6. I consider that dismissing of an application for amendment of the written statement whereby the petitioner was not allowed to include the counter claim at a belated stage cannot be termed as an interim award so as to allow challenging such order under Section 34. The petitioner would be at liberty to assail the final award and can take all the ground of challenge as available under law as and when final award is passed by the learned Arbitral Tribunal. The petitioner cannot be allowed to challenge dismissal of its application for amendment as an interim award. One of the purposes of enactment of Arbitration & Conciliation Act, 1996 was to minimize the

intervention of the courts during arbitral proceedings and that is why Section 5 of the Act prohibits the Courts from interfering in the arbitration process. The judicial intervention during arbitral proceedings is not permissible unless it is specifically provided by Part-I of the Act. The effect of non-obstantive clause in Section 5 is that the provisions of Part-I of the Act will prevail over any other law for the time being in force in India. This provision recognizes minimum role of judicial intervention in arbitral proceedings. It clearly brings out the object of the Act i.e. to minimize the judicial intervention and to encourage speedy and economic resolution of disputes by the arbitral tribunal, in case where the disputes are entered by the arbitration agreement.

7. In view of foregoing discussion, I find that this petition is not maintainable and is hereby dismissed. No orders as to costs.

May 25, 2009
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SHIV NARAYAN DHINGRA J.