

9.
*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Date of Decision: 16.08.2011

% O.M.P. 3/2009

SUSHIL PANDIT & ANR Petitioners
Through: Mr. Upmanyu Hazarika, Senior
Advocate, with Mr. Inder Raj &
Mr. Paul Paske, Advocates.

versus

M/S ADSERT WEB SOLUTIONS PVT. LTD. & ORS Respondents
Through: Mr. U.K. Chaudhary, Senior
Advocate, with Mr. Alishan Naqvee
& Ms. Rupal Bhatia, Advocates for
the respondents No. 1 to 4.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may
be allowed to see the judgment? : **No**
2. To be referred to Reporter or not? : **Yes**
3. Whether the judgment should be reported
in the Digest? : **Yes**

VIPIN SANGHI, J. (Oral)

1. By this petition under Section 34 of the Arbitration & Conciliation Act, 1996 the petitioner assails the order dated 11.10.2008 passed by the learned Arbitrator under Section 33(1)(b) of the Act, whereby the

learned Arbitrator has allowed the respondent's application seeking clarification/interpretation of the award made and published on 27.05.2008.

2. The learned Arbitrator rendered her final award dated 27.05.2008. The respondent then moved an application dated 23.06.2008 under Section 33(1)(b) of the Act before the learned Arbitrator to seek certain clarification/interpretation of the final award dated 27.05.2008.

3. Section 33(1)(b) in express terms states that *within 30 days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties and **if so agreed by the parties**, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.* It is, therefore, clear and this position is not even contested by the respondent that an application under Section 33(1)(b) of the Act to seek interpretation of a specific point or a part of the award can be made only by the agreement of the parties, and not otherwise.

4. When the said application dated 23.06.2008 was moved by the respondent, the petitioner responded vide a letter dated 25.06.2008. The said letter addressed to the learned Arbitrator, with copy to the respondent, stated as follows:

"Dear Madam,

With respect to the captioned matter, on 23.06.2008 we have been served with a copy of an application under section 33(1) (b) of the Arbitration and Conciliation Act, 1996 (hereinafter "the Act") filed by the Counsel for the Respondents.

At the very outset we humbly submit that the instant application filed by the Respondents is not maintainable as the Respondents have failed to comply with the procedure stipulated under section 33(1) (b) of the Act. In this regard, we wish to state that the instant application is not filed with the agreement of the Claimants and that the Claimants do not agree to the filing of the same by the Respondents. As such the instant application merits rejection at the threshold.

Without prejudice to the forgoing, in case the Learned Arbitrator decides to consider the instant application dated 23.06.2008 filed by the Respondents, the Claimants humbly crave leave to file its reply to the application and also make appropriate submissions in a hearing before the Learned Arbitrator.

We shall be ever obliged to comply with the directions of the Learned Arbitrator on the present application.

Thanking you

Yours sincerely,

Sd/-

For New Delhi Law Offices (South)" (emphasis supplied)

5. On 02.07.2008, the learned Arbitrator passed the following order:

"This order will dispose of an application filed by the Respondents under Section 33(1)(b) of the Arbitration & Conciliation Act, 1996 (in short 'the Act'). Notice of this application was sent by the Respondent to the Claimant before filing this application. The claimant vide his letter dated 25.06.2008 has raised objection on the maintainability of this application, inter-alia, on the ground that this application has not been filed with

the agreement of the claimant. In the absence of any agreement by the claimant this application is not maintainable.

I have considered the application and also perused the Award. Since specific point has been raised by the respondent as to whether compensation has to be paid by the respondents to the claimant upon transfer of their entire shareholding or otherwise, it requires clarification. Hence, I fix 30.07.2008 at 4.00 P.M. as the date for appearance of the parties. The Claimant/Respondents herein, if so like, can file reply within a week on receipt of this order.

Sd/-
{Justice Usha Mehra (Retd.)}
Sole Arbitrator

NEW DELHI

DATED: 02.07.2008" (emphasis supplied)

6. From the aforesaid, it would be seen that the learned Arbitrator took note of the petitioners' letter dated 25.06.2008 raising an objection to the maintainability of the application, *inter alia*, on the ground that the application had not been filed with the agreement of the claimant-petitioner. While deciding to entertain the application to seek interpretation/clarification, as moved by the respondent, the learned Arbitrator did not address the petitioners' objection that the application had been moved without the agreement of the petitioner. What propelled her to entertain the application for clarification is the fact that "*since specific point has been raised by the respondent as to whether compensation has to be paid by the respondents to the claimant upon transfer of their entire shareholding or otherwise, it requires clarification*".

7. The petitioner filed its response to the order dated 02.07.2008 passed by the learned Arbitrator on 14.07.2008. The petitioner in the said response, inter alia, stated as follows:

“3. That since the above application was not filed with the agreement of the Claimants, the Claimants issued a letter dated 25.6.2008 raising objections to the maintainability of the above application under Section 33 (1) (b) of the Act. It is respectfully submitted that any application under Section 33 (1) (b) of the Act can be filed by any of the parties before and Arbitral Tribunal in a case where the interpretation of a specific point or part of the Arbitral Award is involved only “if it is so agreed by the parties”. Since the instant application was not filed with the agreement of the Claimants and the Claimants did not agree to the filing of the same by the Respondents, the same was contrary to the provisions of the Act, not maintainable and required to be dismissed at the threshold.

4. Thereafter, the Learned Hon’ble Arbitrator vide Order dated 02.07.2008, disposed off the above application filed by the Respondents by holding that in the absence of any agreement by the Claimants, the said application was not maintainable. In these circumstances, the Claimants are advised that there is no occasion for filing of any reply to the instant application and no directions can be given to this effect.

5. That without prejudice to the aforesaid, even otherwise the Claimants have been advised not to make any submissions/reply with regard to the issues raised or allegations made by the Respondents in the said application before the Learned Arbitrator. This is in light of the fact that once the final award has been passed and published by the Learned Arbitrator on 27.05.2008, the mandate of the Learned Arbitrator and the present proceedings stand terminated in terms of Section 32 of the Act. The Claimants humbly submit that for the aforesaid reasons, the matters raised by the Respondents in the instant application cannot be entertained or considered by the Learned Arbitrator in light of the above provisions of the Act.

It is submitted accordingly.”

8. The learned Arbitrator thereafter fixed the hearing on 30.07.2008 when Claimant No. 1 appeared in person and informed the Tribunal that his lawyer was not available. The matter was adjourned to 19.08.2008. On 19.08.2009, the petitioner-claimant appeared through counsel, who again contended that the Tribunal did not have jurisdiction to entertain the application for clarification/interpretation moved by the respondent. The proceedings were adjourned to 15.09.2008. It appears that on the said date, the petitioner did not participate in the proceedings. Thereafter the impugned order came to be passed on 11.10.2008.

9. The submission of the learned senior counsel for the petitioner is that the impugned order has been passed without jurisdiction and there is patent error in the said order. He submits that the finding of the learned Arbitrator that the application seeking clarification moved by the respondent is maintainable, as the petitioner is deemed to have given its consent vide his letter dated 25.06.2008, is patently incorrect and contrary to the plain reading of the said letter. He submits that even in his application dated 14.07.2008 filed by the petitioner, in response to the order passed by the learned Arbitrator dated 02.07.2008, the petitioner had categorically stated that the learned Arbitrator had no jurisdiction to deal with the application for

clarification/interpretation, and that the same was not maintainable.

10. Mr. Hazarika submits that once the final award dated 27.05.2008 had been rendered, unless an application under Section 33(1)(a) to seek correction of computation or typographical errors had been moved within 30 days, or an application under Section 33(1)(b) had been moved within the same period by agreement of the parties, the learned Arbitrator became *functus officio* and could not have decided to entertain the application moved by the respondent for clarification/interpretation, merely because the learned Arbitrator felt the necessity to do so. There is no inherent or statutory power of review vested in an arbitral tribunal.

11. On the other hand, the submission of learned senior counsel for the respondent is that, firstly, the present objection petition is not maintainable as the petitioner has not impugned the final award dated 25.07.2008, but has only challenged the subsequent order dated 11.10.2008 passed on the respondents application under Section 33(1)(b) of the Act. He submits that the order passed under Section 33(1)(b) of the Act merges into the final award and the petitioner could have impugned the final award, but not the order passed on the application under Section 33(1)(b) of the Act, independent of the final award.

12. Mr. Chaudhary further submits that after the passing of the order

dated 02.07.2008, the respondent had preferred O.M.P. No. 395/2008 under Section 9(ii)(e) of the Act to seek a stay of the show-cause notice dated 02.07.2008 issued by the learned Arbitrator on the respondent's application under Section 33(1)(b) of the Act. The said petition had been dismissed by a learned single Judge of this court on 29.07.2008, whereby he returned the finding on a reading of the letter dated 25.06.2008, that the petitioner had given its consent to the filing of the application under Section 33(1)(b) of the Act. Mr. Chaudhary submits that a perusal of the letter dated 25.06.2008 shows that in the first part the petitioner objected to the maintainability of the said application on the ground that there was no consent given by the petitioner. However, in the second part, the petitioner stated that in case the Arbitrator decides to consider the application for clarification as moved by the respondent, the petitioner shall contest the same and make its submissions. The petitioner had also stated that the petitioner *"shall be ever obliged to comply with the directions of the learned Arbitrator on the present application"*. This, according to Mr. Chaudhary, amounts to the petitioner giving his consent.

13. Mr. Chaudhary submits that against the order dated 29.07.2008 passed in O.M.P.395/2008, the petitioner had preferred an appeal before the Division Bench, being FAO(OS) No. 345/2008. He submits that though, in those proceedings, the petitioner had withdrawn the petition under Section 9 of the Act, the findings of the learned single

Judge as contained in the order dated 29.07.2008, has attained finality.

14. Mr. Chaudhary places reliance on a decision of a learned single Judge of the Gauhati High Court in ***Hirendra Debbarma and Ors. Vs. Rebati Mohan Debbarma***, 2001 (4) CCC 254 (Gau.), wherein it had been held that a suit can be allowed to be withdrawn by the learned trial court so long it is pending, but once the suit is disposed of by passing a contested judgment followed by a decree, the learned trial court became *functus officio* and as such the decided suit could not be allowed to be withdrawn even by the learned trial court and as such normally the appellate court also cannot exercise the power to allow a suit to be withdrawn. What the appellate court can do is to allow the withdrawal of the appeal in view of Order 23 Rule 1 read with Section 141 CPC.

15. Having heard the submissions of the learned counsel, and perused the impugned order and the documents relied upon by the parties and considered their respective submissions, I am of the view that the present petition is maintainable and the impugned order is patently illegal and cannot be sustained.

16. As I have already noticed, an application under section 33(1)(b) of the Act could not be moved without the consent of all the parties concerned. The learned arbitrator decided to entertain the respondents application under section 33(1)(b) vide order dated 02.07.2008 without

addressing the express objection raised by the petitioner to its maintainability (as the petitioner had not given and was not willing to give his consent), and only on account of the reason that a specific point had been raised by the respondent as to whether compensation has to be paid by the respondent to the claimant upon transfer of their entire shareholding, or otherwise. According to her, that was a reason good enough to grant a clarification. This clearly shows that the arbitrator, while deciding to grant the clarification sought by the respondent, completely misdirected herself and brushed aside the specific objection of the petitioner without even considering the same in her order dated 02.07.2008.

17. The learned arbitrator has sought to furnish justification for entertaining the respondents application under section 33(1)(b) in the impugned order dated 11.10.2008 by returning a finding that vide its letter dated 25.06.2008, the petitioner had given his consent to the filing of the application under section 33(1)(b) of the Act. The said finding of the learned arbitrator, to say the least, is patently laconic, and such as to shock the conscience of this Court.

18. There could not have been any clearer expression used by the petitioner, than what was employed by him in its communication dated 25.06.2008, to expressly deny his consent to the entertainment of the respondents application under section 33(1)(b) of the Act. I have already extracted the relevant portion from the said letter herein

above. Merely because the petitioner stated in the said letter that *“without prejudice to the foregoing, in case the learned arbitrator decides to consider the instant application dated 23.06.2008 filed by the respondents, the claimants humbly crave leave to file its reply to the application and also make appropriate submission in a hearing before the learned arbitrator”* and that the petitioner *“shall be ever obliged to comply with the directions of the learned arbitrator on the present application”*, it does not mean that the petitioner had given up its first and foremost objection to the maintainability of the respondent’s application under section 33(1)(b) of the Act.

19. The words and expression *“without prejudice to the foregoing, in case the learned arbitrator decides to consider the instant application dated 23.06.2008 filed by the respondents”*, could never be read, understood or interpreted to mean that the petitioner had consented to the learned Arbitrator entertaining an application under Section 33(1)(b) of the Act. The grammatical meaning of the aforesaid expression is plain and clear, and it does not need any elaboration. The expression *“without prejudice to the foregoing, in case the learned arbitrator decides to consider the instant application”* means, and could only mean, that the petitioner did not give up its objection and went on to state that if its objection is rejected, he would file his reply and also make submissions before the arbitrator. The said liberty was reserved by the petitioner with a caveat, and the said liberty was

not sought unconditionally. The caveat was the foremost objection to the maintainability of the respondent's application. As the petitioner was not certain whether his objection to the maintainability of the application under section 33(1)(b) of the Act would be accepted or rejected by the learned arbitrator, he, while reserving his objection to the maintainability of the application, sought to reserve his rights "*in case*" the learned arbitrator decided to consider the respondents application under section 33(1)(b). Had the petitioner given his consent to the entertainment of the respondents application under section 33(1)(b), where was the question of the petitioner reserving the right or craving leave to file a reply to the respondents application? The petitioner would have, in that eventuality, proceeded to straight away file his reply on merits to the respondents application. However, the petitioner did not participate in the proceedings held for consideration of the respondents application on merits, as is evident from the petitioners response dated 14.07.2008.

20. *Blacks Law Dictionary*, sixth edition states that "*where an offer or admission is made 'without prejudice', or a motion is denied or a suit dismissed 'without prejudice', it is meant as a declaration that no rights or privileges of the party concerned are to be considered as thereby waived or lost except in so far as may be expressly conceded or decided*". It is, therefore, clear that the use of the expression "*without prejudice to the foregoing*" in the petitioners letter

dated 25.06.2008 conveyed the clear intention of the petitioner not to give up his objection to the maintainability of the respondents application and his rights and privileges conferred by section 33(1)(b) of the Act. The later part of the said communication does not concede the said right and privilege reserved by the petitioner in the earlier part of the said communication.

21. The same dictionary further states that the words “without prejudice” simply means this : *“I make you an offer, if you do not accept it, this letter is not be used against me”* [per James, LJ] or *“they are tantamount to saying, I make you an offer which you may accept or not, as you like; but, if you do not accept it, my having made it, is to have no effect at all”* [per Mellish, LJ] in **re River Steamer Co, Mitchell’s Claim, LR** 6 Ch App 822, p. 832]. (See *advanced Law Lexicon, P. Ramanatha Aiyar, third edition reprint 2009, Book 4 page 4972*).

22. In **Waker v. Wilsher**, (1889) 23 QBD 335, the words “without prejudice” were explained by Lindley LJ to mean without prejudice to the position of the writer if the terms he proposes are not accepted.

23. The further statement of the petitioner in the communication dated 25.07.2008 that he shall comply with the directions of the learned arbitrator on the application under section 33(1)(b) cannot be read in isolation of the specific objection raised by him in the earlier

part of the said letter. Even this statement has to be read “without prejudice” to the objection raised by the petitioner in the earlier part of his communication. This statement only means that if, despite the petitioners objection, the learned arbitrator decides to entertain the respondents application, the petitioner shall comply with the learned arbitrator’s directions. The petitioner did not concede its right to object to the entertainment of the respondents application, or to challenge the order that the learned arbitrator may pass. Pertinently, after the passing of the order dated 02.07.2008, the petitioner again raised his objection to the maintainability of the application under section 33(1)(b) vide his filing dated 14.07.2008. He, in fact, refused to make any further submission except to insist on his objection.

24. I fail to understand how the learned arbitrator could have understood the petitioner’s letter dated 25.06.2008, and his submission dated 14.07.2008 in any other manner. Under the garb of interpretation of a communication, the learned arbitrator cannot go patently contrary to the obvious grammatical meaning emerging from the communication.

25. The submission of Mr. Chaudhary that the order passed by a learned Single Judge of this Court in O.M.P. No.295/2008 on 29.07.2008 had attained finality and binds the petitioner, is completely without merit. First and foremost, the said petition under section 9(ii)(a) of the Act was not even maintainable to seek an interim stay of the show

cause notice dated 02.07.2008 issued by the learned arbitrator. The power under section 9(iii) of the Act conferred on the Court relates not to the arbitral proceedings, but to the subject matter of dispute. This is clear from clauses (a) to (d) of section 9(ii) of the Act, which read as follows:

- “(a) *the preservation, interim custody or sale of any goods **which are the subject- matter of the arbitration agreement;***
- (b) ***securing the amount in dispute in the arbitration;***
- (c) *the detention, preservation or inspection of any property or thing **which is the subject- matter of the dispute in arbitration,** or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;*
- (d) ***interim injunction or the appointment of a receiver;”** (emphasis supplied)*

26. Clause (e) of section 9(ii), which reads “such other interim measure of protection as may appear to the Court to be just and convenient” have to be read *ejusdem generis* with the earlier clauses of section 9(ii). The use of the words “such other interim measure of protection” clearly shows that clause (e) also deals with the interim measures of protection, other than those set out in clauses (a) to (d) in relation to the subject matter of arbitration. Moreover, an order to seek an injunction against an arbitration proceeding is certainly not an

order of “protection”. Such an interpretation would be contrary to the express language of section 5 of the Act which states “*notwithstanding anything contained in any other law for the time being in force, in matters governed by this part, no judicial authority shall intervene except where so provided in this part*”. In fact, a perusal of the order of the Division Bench in FAO (OS) No.345/2008 dated 13.08.2008 shows that even the Division Bench doubted the maintainability of the petition under section 9 of the Act for the relief sought by the petitioner. I may also refer to a decision of this Court in ***Bharat Sanchar Nigam Ltd. v. Kaveri Telecom Products Ltd. & Anr.***, O.M.P. No.313/2006, decided on 10.08.2009, reported as MANU/DE/1772/2009, wherein this Court has held:

“8. The counsel for the petitioner has urged that the language of Section 9(ii)(e) is very wide. Reliance is placed on Maharashtra State Elect. Board v. Datar Switchgears Ltd. 2003 (Suppl.) Arb. LR 39 (Bomb.) & on BLB Institute of Financial Markets Ltd. v. Ramakar Jha MANU/DE/1359/2008 : 154 (2008) DLT 121 in support of the wide amplitude of Section 9(ii)(e). However, the counsel for the petitioner, on inquiry as to whether any of the said judgments lay down that the powers thereunder can be invoked to set aside any errors in the arbitral proceedings, even if necessary to provide protection to any of the parties, the counsel for the petitioner has fairly stated that in none of the judgments such proposition has been laid down. I may however notice that the single judge of Bombay High Court in Maharashtra State Electricity Board, though holding the powers of the court under Section 9(ii)(e) to be very wide, made the said observations only in the context of ensuring compliance of interim order of the Arbitral Tribunal. Else therein also, relying on Bhatia International v. Bulk Trading SA MANU/SC/0185/2002 : (2002) 4 SCC 105, it was held

that the Act does not contemplate the interference of courts at the interim stage in matters of jurisdiction of the Arbitral Tribunal and that the court would in such cases not be entitled to exercise powers under Section 9.

15. *The contention of the counsel for the petitioner that Section 9(ii)(e) ought to be read/interpreted so as to vest power in this Court to correct such errors committed by the arbitrator cannot be permitted. Section 9(ii)(e) empowers the court only to pass orders of interim nature. The said power cannot be said to be encompassing within itself the right to correct the errors committed during the course of arbitral proceedings and with respect whereto the party may be needing protection."*

27. It is well settled that the principles of *res judicata* would apply only when the earlier *lis* was inter parties, and had attained finality in respect of the issues involved. The said principle has no application, inter alia, in a case where the judgment and/or order had been passed by a court having no jurisdiction. Reference may be made in this regard to the judgments of the Supreme Court in ***Union of India v. Pramod Gupta (D) by LRs & Ors.***, JT 2005 (8) SC 203 para 28; and ***Fida Husain & Ors. v. Moradabad Development Authority***, 2011 (7) Scale 757, para 15.

28. Secondly, proceedings under section 9 are proceedings to secure interim measures. The Court, while dealing with a petition under section 9 of the Act, does not return any conclusive and binding findings, as the appreciation of the case of the parties in proceedings under section 9 of the Act is based on a *prima facie* evaluation. A petition under section 9 of the Act cannot be equated to a civil suit,

and an order passed under section 9 cannot be treated as a decree of a civil court, as it lacks the characteristic of finality. This is another reason why the order dated 29.07.2008 cannot be considered to operate as a *res judicata* against the petitioner.

29. Thirdly, the petitioner did not accept the order dated 29.07.2008 passed by the learned Single Judge in O.M.P. No.395/2008. The petitioner assailed the said order in FAO (OS) No.345/2008. As an issue with regard to the maintainability of the petition under section 9 itself arose, the petitioner sought leave to withdraw the petition under section 9, and the said leave was granted. The petitioner was also granted liberty to seek appropriate relief in accordance with law.

An appeal is a continuation of the original proceedings. Therefore, when the matter was dealt with by the Division Bench in FAO (OS) No.345/2008, and the Division Bench in that appeal allowed the withdrawal of the petition under section 9 itself, with liberty to the petitioner to seek appropriate relief in accordance with law, it cannot be said that the order dated 29.07.2008 passed by the learned Single Judge in O.M.P. No.395/2008 had attained finality. The withdrawal would obviously relate back to a point of time prior to the passing of the order dated 29.07.2008 by the learned Single Judge, as by the said order the said OMP had been dismissed, and there was nothing left to be withdrawn. In fact, the said order did not survive at all.

30. Lastly, I may note that if the respondent was aggrieved by the permission granted by the Division Bench to the petitioner to withdraw the petition under section 9, even after its dismissal by the learned Single Judge, the respondent ought to have availed of legal remedy available to it against the order dated 13.08.2008 passed in FAO (OS) No.345/2008. That was never done and the order dated 13.08.2008 permitting the petitioner to withdraw the petition under section 9 of the Act has attained finality.

31. The decision in **Hirendra Debbarma** (supra) relied upon by the respondent is of no avail, as the said decision also deals with the aspect of withdrawal of a “suit” at the appellate stage in a situation where a “decree” had been passed by a trial court against the plaintiff, which is not the case in hand.

32. I also find no merit in the submission of Mr. Chaudhary that the present petition is not maintainable as the petitioner has only impugned the order dated 11.10.2008 passed by the learned arbitrator, and not the award made by her on 27.05.2008. In my view, the submission of Mr. Chaudhary is hyper technical and the respondent is resorting to hairsplitting by making the aforesaid submission. The petitioner has accepted the final award dated 27.05.2008. It is the clarification/interpretation order dated 11.10.2008, by which the petitioner is aggrieved. According to the petitioner, the said order has been passed without jurisdiction, and in blatant violation of the

essential requirement of mutual consent, as prescribed in section 33(1)(b) of the Act. Whether the petitioner styles the present petition as one assailing only the order dated 11.10.2008 passed by the learned arbitrator, or as one assailing the final award dated 27.05.2008 as modified by the order dated 11.10.2008, in my view, it makes no difference to the case. Even if the order dated 11.10.2008 is taken to have merged with the original award dated 27.05.2008, the petitioner can selectively challenge that part of the award, which is separable from the rest of the award. The petitioner is not obliged to challenge the entire award. The mere nomenclature used by the petitioner in the petition, as one challenging the order dated 11.10.2008 and not the award dated 27.05.2008 as clarified/interpreted on 11.10.2008, to my mind, makes no difference at all.

33. Mr. Chaudhary also sought to defend the order dated 11.10.2008 passed by the learned arbitrator by attempting to make submissions on merits. Mr. Hazarika also had his own submissions to make in response to the said endeavour made by Mr. Chaudhary. However, I have not entered into that controversy at all, as, in my view, the learned arbitrator had no jurisdiction at all to proceed to entertain and deal with the respondents application under section 33(1)(b) of the Act, as the petitioner had expressly denied consent to vest jurisdiction in the tribunal to entertain the respondents application to grant clarification/interpretation in respect of the award.

34. If, according to the respondent, the award was deficient or needed clarification/interpretation, and the petitioner was not willing to give its consent to the arbitrator entertaining the respondents application for such purpose, it was open to the respondent to approach this Court under section 34 of the Act. The endeavour of the respondent to force an order under section 33(1)(b) of the Act, even in the face of the express and vehement objection and opposition of the petitioner to such an exercise being undertaken by the arbitrator, was most unjustified.

35. I am, therefore, of the view that the impugned order dated 11.10.2008 passed by the learned arbitrator, whereby she has clarified/interpreted the final award dated 27.05.2008, has been passed completely without jurisdiction, and the same cannot be sustained. I, accordingly, allow this petition with costs quantified at Rs.2 lacs.

VIPIN SANGHI, J

AUGUST 16, 2011

“BSR”/sr’