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

+ **FAO(OS) 16/2013 and CM No.3959/2013**

RAM SYAL & SONS ENGINEERS PVT. LTD. Appellant

Through: Mr S.S. Jauhar, Adv.

versus

INDIAN RAILWAY CONSTURCTION Respondent

Through: Mr K.R. Gupta and Mr Vikas Singh,
Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% 30.09.2015

1. The present appeal is directed against the judgment and order of the learned Single Judge dated 01.11.2012 partly accepting objections preferred by the respondent, i.e., Indian Railway Construction Company (IRCON) against an award dated 14.07.2009.

2. The brief facts are that IRCON was awarded a project for construction of a four lane road/highway by Punjab Public Works Department. IRCON in turn, sub-contracted the project to the appellant which was assigned around a 9 km stretch extending from 266.200 km to 275.525 km. The sub-contract was signed by the parties on 05.06.1987. The appellant was aggrieved by the slow progress and hindrance caused by IRCON at the site, which according to it, unduly restricted its scope and activity and also obstructed its other works and activities in as much as it called for deployment of commitment of manpower and equipment. It, therefore, sought for a

reference after expressing its inability to continue with the execution of the contract. Apparently, about 40% of work has been executed by the appellant. The reference which was initially made to Chief Justice T.P. Chawla (Retired) culminated in an award though unsigned dated 15.10.2006, but, unfortunately, before it could be published, the Arbitrator died. This Court's effort to convince the parties to accept the said award and proceed to agitate their grievance was unsuccessful. Consequently, another Arbitrator, this time, Justice R.C. Chopra (Retired) was nominated.

3. In arbitration, the appellant/claimant had initially sought an award for the sum of over ₹7 crore claiming undue delay for completion of the proceedings; it sought leave to amend the claim and restrict them. The final leave and the order was made on 14.07.2009. The Arbitrator awarded a sum of ₹56,27,262/- and directed an additional ₹10,00,000/- to be paid as cost to the appellant/claimant. Since the award was framed in terms of the provision of old law, i.e., Arbitration Act, 1940, it had to receive the imprimatur of the Court; in proceedings for converting the award into the rule of the Court. IRCON preferred objections under Sections 30/33 of the old Act. The learned Single Judge in the impugned judgment—rendered in OMP No.491/2009 interfered with the award so far as it pertained to claims No. 1(a) to 1(e) and 1(h). The Arbitrator had awarded ₹11,50,851/- towards these claims; however, the learned Single Judge, reduced the amount to ₹5,96,931/-.

4. Mr Jauhar, learned counsel for the appellant, urges that the award is a reasoned one and that in these circumstances, the learned

Single Judge should not have ignored findings which were recorded by the Arbitrator. He relies upon the text of Sections 30 and 31 of the old Arbitration Act as well as the judgment of the Supreme Court reported as *State of Rajasthan vs. Puri Construction Company Limited and Anr.* (1994) 6 SCC 485. Counsel highlights that primary determination in the award is clear enough as to the reason which persuaded the Tribunal to award various amounts ultimately directed to be paid to the appellant. Learned counsel submitted that the amount of ₹ 5,00,000/- directed by the Arbitrator was towards Claim No.1(a) to (e) was on account of quantity of the cinder, fly ash or slag. He relied upon the observations of the Arbitrator to say that, IRCON had admitted that the sum was paid to the claimant by the respondent under the head.

5. The Arbitrator noted that the disputes were based upon the rate applied by the claimant who had applied the rates approved by the Project Manager of IRCON in Ex.C/66. The learned Arbitrator had taken note of these submissions and granted the relief to the Appellant. It is also submitted that the Arbitrator took into account the amended claim in the measurement book of IRCON as well as various documents—apparent from the facial reading of the award. Based upon these materials, a sum of ₹1,50,000/- was awarded.

6. Counsel for IRCON, Mr Gupta, submitted that this Court should not interfere with the impugned judgment of the learned Single Judge. He contended that owing to the long standing dispute between the parties, the modification of the award of the arbitrator by the learned Single Judge was well within his powers and that there was

no requirement to fault with the impugned judgment. To assert his submission learned counsel has placed reliance on the decision of this Court in *Union of India Vs Modern Laminators Ltd.* (2008 (3) Arb LR 489) where the award of the arbitrator was modified under Section 34 of the Arbitration Act by a Single Judge. Reliance has been placed on *Oil and Natural Gas Corporation Vs Western Geo International Ltd.* (2014 (4) Arb LR (102) SC) where a Full Bench of the Supreme Court disagreeing with the award, modified it under Section 34 of the Arbitration and Conciliation Act. It has been argued that the arbitrator had not applied his mind while adjudicating the dispute and that the Single Judge was correct in modifying the award.

7. The learned Single Judge through the impugned order has made a claim-wise analysis of the award of the arbitrator. Modification of the award by the Single Judge is in the following terms:

“28. In conclusion, this Court modifies the impugned Award as under:-

(i) The Award under Claim Nos. 1(a) to 1(e) in the sum of Rs. 5,00,00 is set aside. Instead, it is held that SRS is entitled to a sum of Rs. 36,271.70 under Claim Nos. 1(a) and 1(b) and the claims under Claim Nos. 1(c) to 1(e) are rejected.

(ii) The amount of Rs. 1,50,000 under Claim No. 1(f) is set aside. SRS is held entitled to Rs. 25,808 under Claim No. 1(f).

(iii) The amount of Rs. 5,00,000 under Claim No. 1(h) is upheld.

(iv) IRCON is held entitled to simple interest @ 9% per annum on the sum of Rs. 38,82,290 awarded in its favour from 1st January 1990 till the date of the Award.

Correspondingly, it SRS would also be entitled to pre-reference, pendent lite and post-Award simple interest on all the sums awarded to it under the impugned Award, as modified by this order.

(v) The amount of Rs. 10,00,000 awarded as costs in favour of SRS is hereby set aside.

(vi) Each of the parties will bear their own costs.”

8. By the impugned judgment, the learned Single Judge modified the award only on the ground that the arbitrator did not apply his mind and that there were no reasons for the award.

9. The question for decision before this Court is whether the learned Single Judge could have interfered with the award of the arbitrator and if so to what extent. For the purpose of this discussion reference is made to Section 30 of the Arbitration Act, 1940 which specifies the grounds under which an arbitration award can be set aside by the appellate court.

“30. Grounds for setting aside award.- An award shall not be set aside except on one or more of the following grounds, namely:-

(a) That an arbitrator or umpire has misconducted himself or the proceedings

(b) That an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under section 35;

(c) That an award has been improperly procured or is otherwise invalid.”

10. A reading of the provision makes it clear that the intent of the legislature was to minimize interference by the Court in setting aside

an arbitral award. The grounds for setting aside were clearly enumerated and it is not for the Court to go beyond these to set aside or modify the award. The Supreme Court in a three- Judge bench decision in ***State of U.P. Vs. Allied Construction*** (2003) 7 SCC 396, held as follows:

“4. Any award made by an arbitrator can be set aside only if one or the other term specified in Sections 30 and 33 of the Arbitration Act, 1940 is attracted. It is not a case where it can be said that the arbitrator has misconducted the proceedings. It was within his jurisdiction to interpret Clause 47 of the Agreement having regard to the fact-situation obtaining therein. It is submitted that an award made by an arbitrator may be wrong either on law or on fact and error of law on the face of it could not nullify an award. The award is a speaking one. The arbitrator has assigned sufficient and cogent reasons in support thereof. Interpretation of a contract, it is trite, is a matter for arbitrator to determine (see M/s. Sudarsan Trading Co. v. The Government of Kerala: [1989]1SCR665). Section 30 of the Arbitration Act, 1940 providing for setting aside an award is restrictive in its operation. Unless one or the other condition contained in Section 30 is satisfied, an award cannot be set aside. The arbitrator is a Judge chosen by the parties and his decision is final. The Court is precluded from reappraising the evidence. Even in a case where the award contains reasons, the interference therewith would still be not available within the jurisdiction of the Court unless, of course, the reasons are totally perverse or the judgment is based on a wrong proposition of law. As error apparent on the face of the records would not imply closer scrutiny of the merits of documents and materials on record. Once it is found that the view of the arbitrator is a plausible one, the Court will refrain itself from interfering. ”

11. In *Sudarshan Trading Co. v. Govt. of Kerala and Anr* [1989] 1 SCR 665, the Supreme Court held that the correctness of the arbitrator's reasons for making an award cannot be challenged. The arbitrator's appraisal of evidence is not a matter for the Court to examine. This approach was again endorsed in *State of A.P. Vs Rayanim* (1990) 1 SCC 433 and *Bijendra Nath Srivastava Vs. Mayank Srivastava and Ors.* (AIR 1994 SC 2562). Further, in *Sudarshan Kumar (supra)*, the Supreme Court, in unambiguous terms stated that the Court cannot examine whether in arriving at its decision, the arbitrator acted correctly or incorrectly; it was held as follows:

“This, in our opinion, the court had no jurisdiction to do, namely, substitution of its own evaluation of the conclusion of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. Whether a particular amount was liable to be paid or damages liable to be sustained, was a decision within the competency of the arbitrator in this case. By purporting to construe the contract the court could not take upon itself the burden of saying that this was contrary to the contract and, as such, beyond jurisdiction. ”

12. A Court cannot review an award of the arbitrator and correct any mistake in his adjudication unless objection to the legality of the award is apparent on the face of it. The award is the decision of a domestic tribunal chosen by the parties, and the civil courts which are entrusted with the power to facilitate arbitration and to effectuate the awards, cannot exercise appellate or revisional powers over the decision. There can be no re-examination and re-appraisal of the evidence considered by the arbitrator to conclude that the arbitrator's

decision or findings are erroneous. Even if the arbitrator has partly allowed the claim on the disputed item at a higher rate than the agreed rate, it cannot be said that the award is erroneous on that ground.

13. The learned Single Judge, set aside the award and reduced the amount payable on the ground that the arbitrator has not given reasons for arriving at his decision. This however, is beyond the scope of Section 30 of the old Act. The arbitrator is the final arbiter of disputes between the parties and the award is not open to challenge on the ground that the arbitrator has drawn his own conclusions or has failed to appreciate the facts. In an earlier judgment, viz. *M/s National Projects Construction Corporation Ltd. Vs. M/S. R.S. Avtar Singh and Co.* FAO(OS) 89/2009, the question before this Court was whether an award which did not give detailed reasons could be set aside. It was observed as follows:

“Even if it be held that it is obligatory for the Arbitrator to state reasons, it is not obligatory to give any detailed judgment. An award of an Arbitrator should be read reasonably as a whole to find out the implication and the meaning thereof. Short intelligible indications of the grounds should be discernible to find out the mind of the Arbitrator for his action even if it be enjoined that in all cases of award by any Arbitrator reasons have to be stated. The reasons should not only be intelligible but should also deal either expressly or impliedly with the substantial points that have been raised. Even in a case where the Arbitrator has to state reasons, the sufficiency of the reasons depends upon the facts and the circumstances of the case. The Court, however, does not sit in appeal over the award and review the reasons. The Court can set aside the award only if it is apparent from the award that there is no evidence to support the

conclusion or if the award is based upon any legal proposition which is erroneous.”

14. In the present case, the arbitrator, after duly referring to the documents placed on records including the contract between the parties, measurement books as well as other documents made what is a reasoned order. No particular form is required for a reasoned award. When giving a reasoned award the tribunal need not set out what, on its view of the evidence, did or did not happen, and explain elaborately why, in the light of the facts before it, the tribunal reached its decision. It should set out the facts and the general reasoning so as to enable the parties to understand them and why particular issues of facts were determined. What is required is a just and fair approach on part of the arbitrator before coming to his conclusion and giving the award. This, in the opinion of this Court, was correctly done in the instant case. The Single Judge, therefore, could not have modified a part of the award based on his understanding on inadequacies in the award. The Court should avoid applying “rough and ready” justice to determine correctness of awards made after considering all material circumstances.

15. For the above reasons, we are of the opinion that the impugned judgment cannot be sustained. It is accordingly set aside. The appeal is, therefore, allowed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

SEPTEMBER 30, 2015/bg/h