

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

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Judgment Reserved on: 20th July, 2015
Judgment Delivered on: 24th September, 2015

+ **FAO(OS) 377/2015**

M/S HARJINDER SINGH NAMDHARI APPELLANT

VERSUS

NATIONAL BUILDING CONSTRUCTION COMPANY LTD.

..... RESPONDENT

Advocates who appeared in this case:

For the Appellant: Mr Sanjay Bansal, Advocate.

For the Respondent: None.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

CM No.12467/2015 (exemption)

Exemption is allowed subject to all just exceptions.

FAO(OS) 377/2015

1. The present appeal has been filed by the appellant impugning the order dated 15.04.2015 passed in OMP 215/2013, whereby the

objections filed by the appellant to the Award dated 12.11.2012 have been dismissed.

2. The respondent had also filed objections under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the said Act'), which was registered as OMP 171/2013. Both the objections, i.e. one filed by the appellant, registered as OMP 215/2013, and the objection filed by the respondent, registered as OMP 171/2013, have been disposed of by a common judgment dated 15.04.2015.

3. The present appeal is only concerned with that part of the judgment insofar as it deals with the objections filed by the appellant registered as OMP 215/2013.

4. The challenge in the appeal is to the award to the extent it allowed some of the counter-claims of the respondent and to the extent certain claims of the appellant that were not allowed. The counter-claim Nos. 2, 3, 5 & 8 have been awarded in favour of the respondent.

5. Counter-claim No. 2 concerns recovery on account of excess consumption of steel. Under the contract the respondent was to supply material for the work to be performed by the appellant. The dispute pertained to the quantity of steel supplied to the appellant but not accounted for. The Arbitrator after considering various documents

placed on record to show the quantity of steel of various diameters which had been supplied to the appellant but were not accounted for, assessed the counter claim in favour of the respondent.

6. The learned Single Judge has rightly held that the said counter-claim pertains to pure factual determination. The Arbitrator has formed an opinion based on the documents and records produced before it. The view taken by the learned Arbitrator on this factual issue has to be held to be conclusive.

7. With regard to the Material Account Statement, the Arbitrator has noted that the contractor had not submitted the Material Account Statement as per the terms of the work order. The learned Single Judge has refused to interfere with the said award of counter-claim as the same is based on the documents produced before the Arbitrator. The award in respect of counter-claim No. 5 has been found by the learned Single Judge to have been awarded for valid reasons and no ground for interference with the said award has been found. The learned Single Judge has found that the issues raised by the appellant in the objections were purely factual in nature and did not call for any interference.

8. The Supreme Court in the case of **McDermott International Inc. v. Burn Standard Co. Ltd. and Ors: (2006) 11 SCC 181** held as under:

“The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it.”

9. Where the Arbitrator has assessed the material and evidence placed before him in detail, the court while considering the objections under Section 34 of the said Act does not sit as a court of appeal and is not expected to re-appreciate the entire evidence and reassess the case of the parties. The jurisdiction under section 34 is not appellate in nature and an award passed by an Arbitrator cannot be set aside on the ground that it was erroneous. It is not open to the court to interfere with the award merely because in the opinion of the court, another view is possible. The duty of the court in these circumstances is to see whether the view taken by the Arbitrator is a plausible view on the facts, pleadings and evidence before the Arbitrator. Even if on the assessment of material, the court while considering the objections under section 34 is of the view that there are two views possible and

the Arbitral Tribunal has taken one of the possible views which could have been taken on the material before it, the court would be reluctant to interfere. The court is not to substitute its view in place of the view of the Arbitrator if the view taken by the Arbitrator is reasonable and plausible.¹

10. A Division Bench of this Court in **National High Authority v. Italian Thai Development Public Company Limited: 2014 (1) Arb.LR 41 (Delhi) (DB)** held as under:

*“We do not find any error in the reasoning adopted by the learned single Judge or the conclusion arrived by him. The findings of the Tribunal fall within the realm of pure findings of fact. There is nothing on record to establish that the findings were of such a nature as would move the conscience of the court or that there was any error of fact which would result in a monumental miscarriage of justice. We may refer to the decision of a Division Bench of this court in the case of **Food Corporation of India v. Shanti Cereals Pvt. Ltd., 2010 (3) ARB. LR 296 (Del.) (DB)**. In the said decision the Division Bench of this court, in the context of examination of factual pleas raised before the court, observed as under:-*

“7. Further, the argument of learned senior counsel for the appellant that the rice supplied by FCI to the respondent was not damaged and, in fact, was of a fine quality, cannot be sustained by us. As has been consistently held by this court, as

¹ Jhang Cooperative Group Housing Society v. P.T Munshi Ram & Associates Private limited: 202(2013) DLT 218.

well as the Hon'ble Supreme Court, the forum to raise factual pleas and contentions in an arbitration matter is only the arbitral tribunal. It is against the propriety of the legal regime, as well as the mandate of law set out in Section 34 of the Arbitration and Conciliation Act, 1996 that the courts in objection (and more so in appeal under Section 37) should entertain the arguments that are purely factual in nature. There is no gainsaying that the arbitral tribunal is the master of the factual arena and has the right to even go wrong while deciding the factual issues, unless there is something manifest from the face of the award that is so grave as to move the conscience of the court that the error would result in a monumental miscarriage of justice.”
(underlining added)

11. This Court in **National Highways Authority of India** (*supra*) has laid down that the Arbitral Tribunal is the master of the factual arena and has the right to even go wrong while deciding the factual issues, unless there is something manifest from the face of the award that is so grave as to move the conscience of the court that the error would result in a monumental miscarriage of justice. The court would not, in objections under section 34 and more so in an appeal under section 37, entertain arguments that are purely factual in nature.

12. Further, in **Steel Authority of India v. Gupta Brothers Steel Tubes Limited**; 2009 10 SCC 63, the Supreme Court has laid down that an error relatable to interpretations of the contract by an

Arbitrator is an error within his jurisdiction and such error is not amenable to correction by Courts as such error is not an error on the face of the award. The Supreme Court has further laid down that the Arbitrator having been made the final arbiter of resolution of disputes between the parties, the award is not open to challenge on the ground that the Arbitrator has reached a wrong conclusion. The courts do not interfere with the conclusion of the Arbitrator even with regard to the construction of contract, if it is a plausible view of the matter.

13. The disputes raised by the appellant are purely factual in nature and do not call for any interference. The arbitrator, based on the material and evidence produced before him, has returned findings of fact with regard to the quantity of steel supplied to the appellant but not accounted for and the Material Account Statement. The factual findings of facts returned by the arbitrator do not merit any interference and have rightly not been interfered by the learned single judge.

14. We find no infirmity in the impugned judgment. The appeal is, accordingly, dismissed with no orders as to costs.

SANJEEV SACHDEVA, J.

SEPTEMBER 24, 2015
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BADAR DURREZ AHMED, J.