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HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal No. 1241 of 1996**

South Eastern Coalfields Ltd., A Govt. Company within the meaning of Section 617 of the Companies Act having its registered office at Seepat Road, Bilaspur, Through General Manager, Jamuna & Kotma Area, South Eastern Coalfields Ltd. PO Jamuna Colliery, Tahsil Anupur, District Shadol, M.P.

---- Appellant

Versus

M/s. Sarvatra Road Runners (Pvt.) Ltd., having its office at 58, Connaught Place, New Delhi.

---- Respondent

Miscellaneous Appeal No. 1242 of 1996

South Eastern Coalfields Ltd., A Govt. Company within the meaning of Section 617 of the Companies Act having its registered office at Seepat Road, Bilaspur, Through Chief General Manager, Hasdeo Area, SECL, P.O. South Jhagrakhand Colliery, District Surguja, M.P. (Now Chhattisgarh).

---- Appellant

Versus

M/s. Sarvatra Road Runners (Pvt.) Ltd. (SRPL), having its office at 58, Connaught Place, New Delhi.

---- Respondent

Judgment Reserved on : 02.09.2016**Judgment delivered on : 28.09.2016**

For Appellant	: Dr. N.K.Shukla, Senior Advocate with Shri Vaibhav Shukla, Advocate.
For Respondent	: Shri Ravish Agrawal, Senior Advocate with Shri V.C.Ottalwar and Shri K.S.Jha, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice**C A V Judgment**

1. A short but interesting question which arises in these appeals is whether the Arbitrator could entertain the claims and disputes which had not been referred to him by the referring Court.

2. At the outset, it would be pertinent to mention that these appeals relate to the proceedings which took place before the year 1995 and therefore, it is not disputed before us that the act governing these appeals would be the Arbitration Act, 1940 (hereinafter referred to as 'the Act') and not the Arbitration and Conciliation Act, 1996.

3. The facts relevant for decision of the case are that in the year 1981, M/s. Sarvatra Road Runners (Pvt.) Ltd. (hereinafter referred to as 'the Claimant') entered into a contract with the South Eastern Coalfields Limited ((hereinafter referred to as 'the SECL') for transportation of coal. It appears that first there was an oral agreement entered into between the parties on 01.11.1981 and thereafter, a formal written agreement was entered into on 13.11.1982 but the said agreement made it clear that it was effective from 01.11.1981. Clause 21 of this agreement provided that all the disputes arising out of this contract should be referred for arbitration. On 04.01.1984, another agreement for transportation was entered into between the parties. This agreement was also made effective from 26.03.1981 and clause 40 of this agreement contained an arbitration clause. On 07.03.1986, one week before the agreements were to end, the SECL terminated both the agreements on the ground that performance of the Claimant was unsatisfactory.

4. According to the Claimant, it made a lot of efforts to get the matter decided outside the Court but when these efforts were not fruitful, on 03.03.1989, the Claimant filed an application under Section 20 of the Act for appointment of the Arbitrator before the District Judge, Bilaspur. The case was registered as Civil Suit No. 19-A of 1989. In this claim petition, the Claimant claimed that the SECL owed an amount of Rs. 1,29,23,748.91 paise but it clearly limited its claim to Rs. 1,00,00,000/- only. On 06.09.1989, the District Judge referred the matter for arbitration. The terms of the reference read as follows:

“14. Issue No. 2: - In the light of the foregoing discussions, Petitioner's application under Section 20 of the Arbitration Act is hereby allowed and the dispute between the parties including the claim of the petitioner and the counter claim of the respondent as enumerated by them in their petition and written statement, is hereby referred to the sole arbitrator who shall be an officer of the respondent-Company not below the rank of Director appointed by the Chairman-cum-Managing Director of the Company who is directed to make such appointment, under intimation to this Court, within one month of the receipt of the order of reference and the arbitrator so appointed by him shall adjudicate the matter within five months of his appointment. Costs shall abide the result of the arbitration. Pleader's fee Rs. 250/- if certified. ”

5. It would also be not out of place to make reference to para 7 of the aforesaid order which reads as follows:

“7. According to the petitioner/plaintiff, the disputes have arisen between the petitioner-Company and the respondent-Company arising out of the agreements dated 13.11.82 and 04.01.84 on various points (in all 7 in number) as enumerated in para 15 of the petition giving rise to a claim of Rs. 1,29,23,748.94 as detailed in para 16 of the petition. After deducting an amount of Rs. 28,77,196.62, the petitioner-Company restricts its claim to the tune of Rs. One Crore Only and for the adjudication of which he prays for referring the matter to the arbitration as per terms of the agreement.”

6. In terms of the order passed by the learned District Judge, the Chairman-cum-Managing Director of the SECL first appointed Shri M.A.Ubaid as Arbitrator on 23.11.1989. He however could not complete the proceedings and therefore on 24.03.1992, Shri D.G.Raibhagkar was appointed as Arbitrator. He also did not complete the proceedings. Thereafter, Shri S.J.P.Rana and then Shri K.C.Nadkeoylar were appointed as Arbitrators on 19.01.1993 and 19.03.1993, respectively. Thereafter, the Claimant filed an application for appointment of some other Arbitrator. On 07.05.1994, the District Judge, Bilaspur, on an application of the Claimant being M.J.C. No. 7 of 1994, appointed Shri Justice B.C.Varma, retired Chief Justice of Punjab & Haryana High Court as the Sole Arbitrator with the consent of the parties. The relevant portion of the order appointing Shri

Justice B.C.Varma as Arbitrator reads as follows:

“7. The application under Sec. 12 (with the particulars as mentioned in the application dated 5.5.94) is allowed. Shri Justice B.C.Varma (retired Chief Justice of Punjab and Haryana High Court) is appointed as an arbitrator in relation to the alleged agreement between the parties and in the context of the order passed in Civil Suit No. 19-A/89. The parties have agreed that they would bear all the remuneration and expenses as fixed by Shri Justice B.C.Varma. The non-applicant shall produce before the newly appointed arbitrator all relevant documents and evidence which may be in their possession. The newly appointed arbitrator shall adjudicate the matter within five months of the receipt of the order of appointment. The formal appointment be made immediately as directed in the order. ”

7. One other important fact needs to be noted is that when the arbitration proceedings were pending before M.A.Ubaid, the Claimant filed an application on 03.03.1991 for amendment of its claim and claimed enhancement of the claim from Rs. 1,29,23,748.95 to Rs. 2,36,64,510.89/-. This application was filed before the District Judge who rejected the same vide order dated 03.09.1991. While rejecting the application, the learned District Judge gave the following reasons:-

"7. On, 03.03.89, Applicant has filed application U/s 20 of the Arbitration Act and requested to entrust the dispute between parties regarding his claim of Rs.1,29,23,748.95/- , as per condition laid in agreement, to the Arbitrators for adjudication. As stated, the cause of action has arisen for the same on 16.04.86. Now amending the application, the Applicant wants to claim Rs.2,36,64,510.89/- in place of Rs.1,29,23,748.95/-. If application of applicant is admitted and Order of Reference is amended, it would adversely effect the Non-Applicant as the excess amount Applicant wants to claim now, has become out of limitation and he is not eligible for said as per law of limitation

7. Thus, since Non-Applicant and his Counsel do not agree to the said application filed by Applicant and since the said application has been filed after much delay and since this Court has no power to grant permission for amendment in Order of Preference, hence application filed by the Applicant is rejected with cost."

8. It is not disputed that this order was never challenged by the Claimant in any proceedings. Thereafter, the proceedings commenced before Shri Justice

B.C.Varma. Before the Arbitrator, the Claimant now claimed an amount of Rs.20,89,76,014.00. The SECL raised a specific objection that the Arbitrator could not enhance the claim amount beyond the one stated before the District Judge in the application filed under Section 20 of the Act. The Arbitrator rejected the objection raised by the SECL that the Claimant could not be permitted to raise the claim from Rs. 1,00,00,000/- to Rs. 20,89,76,014.00 vide order dated 25.09.1994 and thereafter, vide his award dated 10.05.1995, the Arbitrator after considering the rival contentions of the parties and the claims of both the parties, held as follows:

"73...In final analysis, I hereby hold the Contractor-Claimant i.e. Sarvatra Road Runners Private Ltd. entitled to a sum of Rs. 3,03,83,000.00 in all from the Respondent-SECL. I further hold the claimant entitled to and award interest on the said principal amount except on the amount awarded under item 8 & 11 above at the rate of .9% p.a from 1.4.1986 till 23rd November, 1989 when the dispute was first referred to Arbitrator Shri M.A.Ubaid and @ .18% p.a. thereafter till the making of this award. I further direct that all this amount awarded be paid to the Contractor i.e. M/s. Sarvatra Road Runners Pvt. Ltd. within two months from today failing which the principal amount adjudged/awarded as indicated above except items 8 and 11 shall carry further interest @ .18% until the date of decree by court or date of payment whichever is earlier.

74. I further hold the Claimant entitled to the cost of the Arbitration, which cost shall also include the fee payable to the Arbitrator as agreed to by the parties at the commencement of the proceedings, the Advocate fee and expenses incurred during the proceedings.

A sum of Rs. 90,400/- is awarded on this account (cost) which shall be paid to the Contractor by the SECL."

9. Here, it would also be pertinent to mention that during pendency of the proceedings, the Arbitrator vide order dated 04.12.1994 had passed an interim award of Rs. 62,73,600/- in favour of the Claimant which was challenged by the SECL by filing objections. The SECL also filed objections to the aforesaid award dated 10.05.1995 before the learned District Judge which was numbered as M.J.C. No. 27 of 1995. The said objections filed under Sections

30 and 33 of the Act have been rejected vide order dated 26.07.1996. Hence, two appeals have been filed by the SECL.

10. Though, number of points have been raised in this appeal, during the course of these proceedings, Dr. N.K.Shukla, learned Senior Counsel appearing for the SECL has limited his arguments mainly to the point that the award has been passed beyond the scope of reference. According to him, the Arbitrator had no jurisdiction to award any amount over and above Rs. One Crore which was the amount to which the Claimant had restricted its claim. The second ground urged by Dr. Shukla is that the memorandum of understanding in the claim petition was entered into by the SECL with the Claimant, which was a Company. It is submitted that this Company has now ceased to exist. The argument in this behalf is there is only one person who is now representing the Company and a Company must have at least two Director or share holders and therefore, there is no valid representation on behalf of the Company.

11. Shri Ravish Agrawal, learned Senior Counsel appearing for the Claimant contends that there is no error apparent on the face of record. He submits that what was disputed to the Arbitrator are not only the claims made in the claim petition but all the disputes arising between the parties. In this behalf, he has again made reference to the order of reference quoted hereinabove and especially to the following portion:

"14. ...the dispute between the parties including the claim of the petitioner and the counter claim of the respondent as enumerated by them in their petition and written-statement, is hereby referred to the sole arbitrator ..."

Learned Senior counsel has also made reference to the second order dated 07.05.1994 whereby Shri Justice B.C.Varma was appointed as Arbitrator, especially the following portion of the order:

"...it is ordered that the matter in dispute as stated in the facts and as per order of this Court passed in Civil Suit No. 20A/89 dated 6th September, 1989 and as per order dated 7th May 1994 is referred to the newly appointed arbitrator..."

12. In fact, the Arbitrator himself had dealt with this issue in his order dated 25.09.1994. It would be relevant to quote the reasoning of the Arbitrator given in this behalf.

"The order of reference clearly states that "disputes between the parties including the claim of the Petitioner and the counter claim of the respondent as enumerated by them in their petition and written statement is hereby referred to the sole Arbitrator..."

Reading of this clause in the order of reference clearly bring out the intention of the learned District Judge who wanted the Arbitrator to Arbitrate upon all the disputes between the parties arising out of contract and in relation thereto. However, he mentioned, as a measure of caution, that the dispute included, the claim and counter claim enumerated to the petition and written statement.

The law on the subject is also clear. The word "includes" is often used in the interpretation clause in order to enlarge the meaning of the word or phrase occurring in the body of the statute. When it is so used, these words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include. Reference may be made to the decision of the Supreme Court in the case of *I.T. Commissioner, Andhra Pradesh v. Taj Mahal Hotel* AIR SC 168."

13. The Arbitrator held that the word 'includes' would mean that what was referred to for adjudication to him was not only the dispute raised by the Claimant in the claim petition, but all other disputes including the claim referred in the claim petition.

14. Shri Agrawal, learned Senior Counsel appearing for the Claimant has relied upon two judgments of the Apex Court in this regard. The first judgment is *H.L.Batra & Company v. State of Haryana & Others* {(1999) 9 SCC 188}. In this case, the reference order reads as follows:

"for settling the disputes between the parties, this is to say, M/s. H.L.Batra and Company on the one side and the State of Haryana through the Executive Engineer, Provisional Division, PWD, B&R Branch, Gurgaon on the other side in Agreement No. 22 for the year 1970-71 for the work of construction of a workshop complex and service station at Bus-Stand Rewari"

The Respondents filed counter-claims. The Arbitrator, by a non-speaking award made an award of Rs. 27,303/- in favour of the Claimants. This award was set aside on the ground that before the first Arbitrator, the Claimant had filed thirty claims but before the second Arbitrator, it had filed seven additional claims and these seven claims were beyond the scope of the arbitration. The same view was taken by the Appellate Court and the High Court. The Hon'ble Apex Court held that these claims also arose out of the contract and since reference was for settling the dispute between the parties, the award cannot be set aside on the ground that it was beyond the scope of arbitration.

15. The second judgment, relied upon by Shri Agrawal is *State of Orissa v. Asis Ranjan Mohanty* {(1999) 9 SCC 249}. In this case also, only nine claims had been raised before the first Arbitrator and additional claims were raised before the second Arbitrator. The relevant portion of the judgment reads as follows:

"10. Learned counsel for the appellant also contended that once having raised nine claims before the first arbitrator, the respondent was not entitled to raise any additional claims before the second arbitrator since the second arbitrator was appointed to continue the arbitration which was pending before the first arbitrator. However, the claims which were subsequently raised pertain entirely to the construction work in question and are not outside the ambit of the arbitration clause. In the statement of claims initially filed before the first arbitrator, the respondent had expressly reserved his right to file additional claims. We do not, therefore, see any reason to hold that the respondent was not entitled to file further claims before the second arbitrator.

11. Learned counsel for the appellant relied upon a decision of this Court in *Santokh Singh Arora v. Union of India*. This Court in that case considered the scope of an arbitration on appointment of a new arbitrator by the Court. It held that the

arbitration must be confined to disputes which were the subject-matter of arbitration before the first arbitrator. New disputes arising subsequent to the reference to arbitration could not be raised. The ratio of this decision, however, is not applicable to the present case since the subsequent claims pertain to disputes which were in existence at the time the arbitration clause was invoked and were within the scope of the arbitration clause and the reference."

Relying upon the aforesaid judgments, it is urged that the Claimant was entitled to raise additional disputes before the Arbitrator.

16. After having considered the facts of the case and carefully going through the judgments of the Apex Court, I am of the considered view that the aforesaid two judgments relied upon by Shri Agrawal, learned Senior Counsel have no applicability to the facts of this case.

17. In the present case, while making an application under Section 20 of the Act, the Claimant had quantified its claim to Rs. 1,29,23,748.91 paise. Not only had the Claimant quantified its claim, but it had also made a clear averment in the claim petition that though it is entitled to Rs. 1,29,23,748.91 paise, it restricted its claim to Rs. One Crore only.

18. Another very important fact to be noted is that the Claimant filed an application before the learned District Judge for amendment of the claim claiming enhancement of the amount to Rs. 2,36,64,510.89/-. That application was rejected on the ground that the Claimant could not be allowed to raise fresh claims as they have been raised beyond the period of three years which is the limitation provided.

19. As far as *H.L.Batra & Company* (supra) is concerned, in that case, the Claimant had not quantified its claim in the petition filed under Section 20 of the Act. The reference made to the arbitration was for settling the disputes between the parties. Therefore, all the disputes had been referred to the Arbitrator. In that case, what had happened was that before the first Arbitrator,

claims were made under thirty heads and before the second Arbitrator, the claims were made under thirty-seven heads. The Apex Court held that since the reference Court had referred all the disputes to arbitration, the Claimant could make additional claims before the second Arbitrator. In this case, question of limitation was not considered.

20. As far as *Asis Ranjan Mohanty* (supra) is concerned, in this case, as held by the Apex Court in paragraph 10 quoted hereinabove, the Claimant had expressly reserved his right to file additional claims. As far as the present case is concerned, the Claimant had not made any such reservation but on the contrary in the application under Section 20 of the Act, had confined and limited its claim to Rs. One Crore only.

21. I am clearly of the opinion that when a Claimant files an application under Section 20 of the Act, it is not necessary for the Claimant to quantify the amount or restrict the amount. However, the Claimant, in this case has not only quantified the amount which he was entitled to get but also limited its claim to an amount of Rupees One Crore only which according to it is less than what it was entitled to.

22. In this case, the second very important factor is that the Claimant filed an application before the Arbitrator in the year 1991 for enhancement of the claim from Rs. 1,29,23,748.91 paise to Rs. 2,36,64,510.89 paise. This application was rejected vide order dated 03.09.1991 and the relevant portion of the order has been quoted hereinabove. This order was never challenged by the Claimant. It was urged by Shri Agrawal, learned Senior Counsel for the Claimant that this order is a non-est order since the Arbitrator had no jurisdiction to entertain such an application. In my view, this contention is without any merit. It is the Claimant who invoked the jurisdiction of the District Judge praying for amendment of the claim petition to claim an amount of

Rs.2,36,64,510.89 paise. This application was rejected on the ground that the claim was much beyond the period of limitation. The Claimant cannot now turn around and say that this order was not binding upon it. It would be a travesty of justice where a party approaching the Court for enhancement of the claim, later when the order is passed against it, claims that the order is without jurisdiction.

23. At this stage, it would again be pertinent to mention that we are dealing with a claim under Section 20 of the Arbitration Act, 1940. Under the Act of 1940, the referring Judge had a lot of control over the arbitration proceedings. The award was not executable as a matter of course. The award had to be filed in a Court to make it a rule of Court. Even an application for extension of time in making the award had to be filed in the Court unless by the consent of the parties, extended the time. The referring Judge under the old Arbitration Act continued to remain in control of the proceedings. We must also remember that under the said Act, when arbitration was made through intervention of the Court, the Arbitrator could not enlarge the scope of the reference. In this behalf, reference may be made to the judgment of the Apex Court in *Orissa Mining Corporation Ltd. v. M/s. Prannath Vishwanath Rawlley*, {AIR (1977) SC 2014} wherein the Apex Court held as follows:

"11. Section 20(1) of the Arbitration Act, 10 of 1940, provides that where a difference has arisen and where any persons have entered into an arbitration agreement they may apply to the court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in court. Sub-section (4) to S. 20 provides that the court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed by the parties. When an agreement is filed in court and order of reference is made then the claim as a result of the order of reference is limited to a particular relief and the arbitrator cannot enlarge the scope of the reference and entertain fresh claims without a further order of reference from the court. On a construction of S. 20 of the Arbitration Act the plea on behalf of the appellant will have to be accepted."

24. Similar view has been taken in *The Managing Director, J&K Handicrafts, Jammu v. M/s. Good Luck Carpets* {AIR (1990) SC 864}. In this case, the Apex Court held as follows:

"4....It cannot be disputed that the jurisdiction of an arbitrator flows from the reference, nor can it be disputed that a reference can only be made with regard to such disputes which are contemplated by the agreement containing the arbitration clause. If what is to be found out is whether the award is without jurisdiction being beyond the scope of reference, there can be no doubt that the agreement containing the arbitration clause has to be looked into for that limited purpose..."

25. The referring Court was the District Judge and it had rejected the application for enhancement of the claim. When the referring Court had rejected the application for enhancement of the claim, then the Arbitrator had no business to entertain the claim beyond what was referred to him. In my view, the Arbitrator totally misconducted himself in taking the view that because the word 'inclusive' had been used, what was referred to him was all the disputes arising out of the arbitration. In the first order, it was clearly spelt out that the claim was restricted to Rupees One Crore only. The District Judge in the second order dated 03.09.1991 refused to enhance the claim amount and the action of the Arbitrator in allowing the claim to be enhanced from Rupees One Crore by more than twenty times to Rs. 20,89,76,014.00, is itself an act of misconduct, especially when the District Judge while rejecting the earlier claim for enhancement had clearly held that fresh claims were not within the time and the arbitrator to whom the matter was referred by the District Judge had no business of sitting over the order of the referring judge, who had clearly held that the claims were beyond the limitation. Surprisingly, the Arbitrator did not even consider the issue of limitation which also amounts to misconduct.

26. Therefore, I am of the considered view that the appeals have to be and the same are accordingly allowed and the award of the Arbitrator is modified to the

extent that the Claimant shall be entitled to only Rupees One Crore plus interest as awarded by the Arbitrator.

27. In view of the decision which I have taken, I feel that it is not necessary to decide the second point raised by Dr. Shukla, learned Senior Counsel for the Appellants.

28. Accordingly, the appeals are allowed in the aforesaid terms. No order as to costs.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE