

HIGH COURT OF CHHATTISGARH, BILASPUR

Arbitration Appeal No.62 of 2011

(Arising out of order dated 9-8-2011 passed by the District Judge, Raipur
in Arbitration Case No.34-A/2009)

M/s. Inaba Steels Pvt. Ltd., Plot No.17, S.B.I. Colony, Fafadih,
Raipur (C.G.)

---- Appellant

Versus

1. Chhattisgarh State Power Distribution Company Ltd., (formerly known by the name Chhattisgarh State Electricity Board), through its Managing Director.
2. Executive Engineer (O&M) Division, CSPDL Urla, Raipur.
3. Shri S.K. Tiwari (Former Judge, High Court of Calcutta), 27, Kholi, Bilaspur Sole Arbitrator.

---- Respondents

For Appellant:	Mr. V.R. Rao, Senior Advocate with Mr. A.K. Mishra, Advocate.
For Respondents No.1 and 2: -	Mr. K.R. Nair, Advocate.
For Respondent No.3:	None present.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

03/11/2017

1. Invoking appellate jurisdiction of this Court under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996'), the appellant herein has preferred this appeal calling in question the impugned order passed by the learned District Judge, Raipur, granting application under Section 34 (2) of the Act of 1996 setting aside the award passed by the arbitral tribunal on 25-6-2009.

2. Essential facts requisite to determine the *lis* between the parties are as under: -

2.1) On the application of the appellant herein, two power connections were given by the respondent Board, now a Company, one 33 KV under the Executive Engineer (O&M) Division, Urla, Raipur and another being 11 KV by the Executive Engineer (O&M) Rural Division, Raipur. Both the lines had separate billing meter and operation, and maintenance was also separate. The respondent Board finding that illegal abstraction of electricity (theft) was being done, conducted raid by the officials of the Board one after the another and the equipments belonging to the Board (CTPT) were seized and removed from the factory premises. Panchnama was prepared and based on the said raid and the Panchnama prepared, charge-sheet was filed by the Board before the jurisdictional criminal court in which the officers of the appellant Company were acquitted finding that the offence of theft of electricity was not found proved. It is the case of the appellant that as a result of disconnection of 11 KV line, the cooling system of the appellant stopped functioning causing damage to equipments and products which they got evaluated by an expert agency in the field and the respondent Board was noticed to make payment of the same and when it was not accepted, that led to filing of application by the appellant herein for constitution of arbitral tribunal to determine the arbitral dispute arisen between the parties.

2.2) Finally, arbitral tribunal was constituted with the intervention

of the court and a claim of ₹ 17,41,000/- towards damages and ₹ 1,00,000/- towards costs was claimed.

2.3) The arbitral tribunal after hearing both the parties and after appreciating oral and documentary evidence on record, granted ₹ 17,41,000/- towards damages and ₹ 1,00,000/- towards anticipated profit by passing award on 25-6-2009.

2.4) The respondent Board/Company filed application under Section 34 (2) of the Act of 1996 before the District Judge calling in question the award for setting aside the same on the ground that under Section 34 (2)(b)(ii) of the Act of 1996, the award passed by the arbitral tribunal is in conflict with the public policy of India.

2.5) The learned District Judge by its impugned order, set aside the award holding that the appellant Company had admitted tampering of high tension line as well as the appellant Company has made an application for depositing the disputed bill and as such, the fact that theft of electricity has been admitted by the appellant Company as well as that acquittal of officers of the appellant Company from the criminal charges, the appellant Company is not entitled for damages. It was further held that ₹ 1,00,000/- damages granted to the appellant Company is in conflict with the terms of the agreement and therefore that also cannot be maintained. Finally, with the aforesaid observation the arbitral award has been set aside by the learned District Judge.

2.6) Feeling aggrieved against the said order passed by the learned District Judge, this appeal, as stated herein-above, has

been filed by the claimant Company.

3. Mr. V.R. Rao, learned Senior Counsel appearing for the appellant, would submit that the learned District Judge is absolutely unjustified in setting aside the award on the non-existent ground that the appellant Company has admitted tampering of high tension line, whereas the appellant Company had not admitted the theft of electricity and the learned District Judge has totally misdirected himself by holding so and therefore the award is based on material available on record and the order impugned suffers from perversity. He would further submit that the appellant Company has already been acquitted from criminal charges therefore, the question of admission of having committed theft of electricity does not arise and the award of ₹ 1,00,000/- towards damages is admissible as per the agreement.
4. Mr. K.R. Nair, learned counsel appearing for respondents No.1 and 2, vehemently opposing the submissions made by Mr. Rao, would submit that from time to time, the appellant Company has made applications for depositing the disputed amount of electricity which is apparent from Annexures R-6 and R-10 filed before the learned Sole Arbitrator, which would go to show that the appellant Company has admitted the theft of electricity and the learned District Judge has not committed any illegality in holding so. He would further submit that when the award was challenged that it is in conflict with the public policy of India, merits of the award can be looked into and placed reliance upon the judgment of the Supreme

Court in the matter of **Associate Builders v. Delhi Development Authority**¹.

5. I have heard learned counsel for the parties and considered their rival submissions and also gone through the records with utmost circumspection.
6. It is correct to say that the respondent Company / Board had made an application for setting aside the award under Section 34(2)(b)(ii) of the Act of 1996 that the arbitral award is in conflict with the public policy of India, but it appears that the learned District Judge did not consider the application in that perspective and straightway considered the merits of the matter by holding that because of acquittal of the officers of the appellant Company in criminal case, their claim is not established and further held, it appears from the record that the appellant has admitted tampering of high tension line and thereby attempted the theft of electricity. The learned District Judge also held that since the appellant Company has made application for depositing the disputed amount in installments, the theft of electricity appears to have been proved.
7. Application under Section 34 of the Act of 1996 has a limited scope of raising the grounds mentioned in Section 34. The District Judge is not required to give any finding on independent factual issues apart from the grounds mentioned in Section 34 of the Act of 1996. The Supreme Court in the matter of **Fiza Developers and Inter-Trade Private Limited v. AMCI (India) Private Limited and**

¹ (2015) 3 SCC 49

another² has considered this aspect and held as under: -

“22. ... The grounds for setting aside the award are specific. Therefore, necessarily a petitioner who files an application will have to plead the facts necessary to make out the ingredients of any of the grounds mentioned in sub-section (2) and prove the same. Therefore, the only question that arises in an application under [Section 34](#) of the Act is whether the award requires to be set aside on any of the specified grounds in sub-section (2) thereof. Sub-section (2) also clearly places the burden of proof on the person who makes the application. Therefore, the question arising for adjudication as also the person on whom the burden of proof is placed is statutorily specified. Therefore, the need for issues is obviated.

24. In other words, an application under [Section 34](#) of the Act is a single issue proceeding, where the very fact that the application has been instituted under that particular provision declares the issue involved. Any further exercise to frame issues will only delay the proceedings. It is thus, clear that issues need not be framed in applications under [Section 34](#) of the Act.

30. Having regard to the object of the Act, that is, providing an expeditious alternative binding dispute resolution process with minimal Court intervention, it is difficult to envisage proceedings under [Section 34](#) of the Act as full-fledged regular civil suits under Code of Civil Procedure.”

8. Going by the principle of law enunciated in the above-mentioned judgment, it is apparent on the face of record that the appellant Company has never admitted the fact of tampering with high tension line, on the other hand its officers have been acquitted on the criminal charges by the jurisdictional criminal court. The learned District Judge ought to have considered the issue as to whether the arbitral award is in conflict with the public policy of India or not, that has not been done and the award has been set aside by recording a finding that high tension line has been

2 (2009) 17 SCC 796

tampered with by the appellant Company. Likewise, the submission of applications, from time to time, for depositing the amount determined by the respondent Board / Company in installments would not amount to admission of theft of electricity which the learned District Judge has recorded.

9. Mr. Nair, learned counsel, has also submitted that the appellant Company has not proved that they are entitled for ₹ 17,41,000/-. On behalf of the appellant Company, one Pushkar Kumar was examined and he has proved that the appellant Company has got prepared the report by S.K. Mishra, Manager, who is no more, and has proved the said damages and report. But it appears from the perusal of record that said Pushkar Kumar has been cross-examined in detail by Shri Rajmani Sharma, counsel of the Electricity Board/Company, but he has not been questioned with regard to quantum of damages that have been claimed by the appellant Company and said to have been proved by the arbitral tribunal. Therefore, it cannot be held that the extent of damages has not been proved by the appellant Company.

10. The learned Arbitrator has also set aside the award granting ₹ 1,00,000/- towards damages. Mr. Nair relying upon clause 36 of the agreement between the parties would submit that damages shall not exceed 5% of the monetary award which does not exceed ₹ 10,000/- that is to say, the percentages referred to in clause 36 of the agreement are 5% on any such monetary award which does not exceed ₹ 10,000/-; 3% on the next ₹ 40,000/- or any part

thereof; 2% on the next ₹ 50,000/- or any part thereof and 1% on any excess over ₹ 1,00,000/-. It appears that the appellant Company, as per the agreement clause 36, would be entitled for 1% on the amount of damages i.e. ₹ 17,000/- on ₹ 17,41,000/-. Accordingly, that part of the award is modified.

11. As a fallout and consequence of aforesaid discussion, the impugned order passed by the District Judge is set aside. The appellant would be entitled for award of ₹ 17,41,000/- and so far as loss of profit is concerned, it will be entitled only for ₹ 17,000/- along with interest as directed by arbitral tribunal.

12. The appeal is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge