

were decided in terms of the order showing reasoning, discussion and thus the conclusions of the Award are not illegal or perverse or violative of ingredients of Section 34 of the Act. The impugned judgment simply reproduces in most paras judgments of the Supreme Court stating that courts under Section 34 of the Act do not sit as a appellate court. There is absolutely no discussion as to the disputes which arose and how the reasoning and conclusions given by the Arbitrator in the Award need not be interfered with. In order to appreciate the lack of discussion and reasoning in the impugned judgment, the relevant paras of the impugned judgment are reproduced hereunder:-

“6. First of all, it may be noted that the objections except for one regarding the jurisdiction of arbitrator and pertaining to decision on the claims out of ambit of agreement, all the other objections raised are in the form of appeal filed before the court which is not permissible.

7. Ld. counsel for petitioner has placed reliance upon 2014 STPL (Web) 574 SC Oil & Natural Gas Corporation Ltd. Vs. Western Geco International Ltd. wherein it was observed that " an award could be set aside if it is contrary to:

- (1) fundamental policy of Indian Law
- (2) the interest of India ; or
- (3) justice of morality, or
- (4) in addition, if it is patently illegal

8. It was further observed that an award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void.

9. Ld. counsel for plaintiff has further placed reliance upon ONGC Ltd. Vs. Garware Shipping Corporation Ltd. AIR 2008 Supreme Court 456 wherein it was observed that "award based on wrong basis and perverse

condition is liable to be set aside.” There is no proposition that the courts could be slow to interfere with arbitrator's award, even in such cases.

10. Reliance was also placed upon 2005 (2) ARBLR 412 Gau Union of India & Anr. Vs. J.G. Engineers Pvt. Ltd. wherein the findings of Hon'ble court was that the arbitrator exceeded the scope of arbitration in as much as, he passed the award relating to the matter excepted by the terms of the contract agreement and said matters being outside the purview of the arbitration, the award passed by the arbitrator was held to be illegal being contrary to the terms of the contract and also provisions of the Act.

11. Reliance was further placed upon 2014 STPL (Web) 578 SC Harsha Constructions Vs. Union Of India & Ors. by Ld. counsel for petitioner wherein it was observed that " Arbitration arises from a contract and unless there is specific written contract, a contract with regard to arbitration cannot be presumed. Section 7 (3) of the act clearly specifies that the contract with regard to arbitration must be in writing. If a non arbitrable dispute is referred to an Arbitrator and even if an issue is framed by the Arbitrator in relation to such a dispute, there cannot be a presumption or a conclusion to the effect that the parties had agreed to refer the issue to Arbitrator. It was accordingly held that it was not open to the Arbitrator to decide the issues which are not arbitrable and the award, so far as it relates to disputes regarding non arbitrable disputes, is bad in law and is liable to be quashed " .

12. In the instant matter, as already noted, except for one objection regarding the claim made before Ld. Arbitrator beyond the scope of arbitration, others are in the form of appeal and therefore this court is not empowered to treat the objection petition as appeal as there cannot be any denovo trial or appreciation of evidence. It has been held by Hon'ble Supreme Court continuously that a court should approach an award with a view to support it, if that is reasonable, rather than to destroy it by calling it illegal and further that a court cannot substitute its own evaluation to come to the conclusion that arbitrator had acted contrary to the bargain between the parties. Reliance is placed upon 2002 (65) DR J400 UOI Vs. Hakam Chand and Co. and AIR 1989 SC 1263 Food Corporation of India Vs. Joginder Pal Mahinder Pal.

13. In the instant matter, none of the ground mentioned in the authorities (supra) relied upon by counsel for petitioner are available on the basis of which an award can be set aside .

14. In Baron International Ltd. vs. Startron Video P. Ltd. And Anr. OMP No. 124/2009 decided on 25.02.2010 and 2008(3) R.A.J. 612(Del) and Hindustan Lever Ltd. vs. Shiv Khullar inter-alia, it was observed that "a commonly held belief that while considering objections U/s 34 of the Act, the Court cannot look into the evidence before the Arbitrator also needs to be clarified. There is a difference in reappreciating evidence and considering whether material evidence has been ignored. Whereas the former would be an activity prohibited while considering objections U/s 34 of the Act for the

reason an Arbitrator is a chosen forum by the parties to conclude rival issues of fact between the parties, the latter would be an activity to find out whether learned Arbitrator has acted within his mandate for the reason the mandate of the Arbitrator is to decide on facts after considering all the relevant facts and not ignoring the same."

15. Besides this court, not sitting in appeal, therefore cannot re-appreciate the evidence but also there is no material evidence having not been considered by Ld. Arbitrator which may call for setting aside of the award. Reliance is placed upon AIR 2012 Supreme Court 1866 P.R. Shah, Shares & Stock Broker (P) Ltd. Vs. M/s B.H.H. Securities (P) Ltd. & Ors. , (2006) 7 Supreme Court Cases 700 Rajasthan State Road Transport Vs. Indag Rubber Ltd and 198 (2013) Delhi Law Times 738 National Highways Authority of India Vs. Oriental Structure Engineers Ltd. wherein inter alia it was observed that " merits of decision of Arbitral Tribunal Award cannot be challenged by a party to contract merely because the interpretation given by Arbitral Tribunal to contract terms is not to its liking. If two interpretations are possible and the interpretation given by Arbitral Tribunal is a possible view upon which the court may have a different view, yet award will not be interfered with by court under section 34 of Arbitration and Conciliation Act. It was further observed that the court cannot sit in appeal and disturb the finding of fact recorded by arbitrator after considering all the material on record and factual controversy not covered by such material is disallowed to be raised".

16. The objection pertaining to the claim being beyond the ambit of arbitration is also not sustainable as this court does not find any deviation from the terms of contract and particularly clause 25 with regard to reference of dispute to arbitrator.

17. It is pertinent to mention here that even otherwise, application under section 11 of the Arbitration and Conciliation Act was moved before Hon'ble High Court and vide order dated 8.3.2006, Hon'ble High court while declining the plea of objector directed for reference of the dispute to the Arbitrator under clause 25 of the agreement between the parties. The said aspect in fact having already been considered by Hon'ble High Court, Ld. counsel for objector is not permitted to reagitate the same before this court.

18. With respect to the pendency of civil suit, the objection raised by Ld. counsel for petitioner that Ld. Arbitrator could not have adjudicated upon that claim is already answered by Ld. Arbitrator while declining claim no.3 of the claimant due to pendency of the civil suit.

19. Accordingly, finding no merits in the objection petition, same is dismissed. A copy of this order alongwith arbitral record be sent to Ld. Arbitrator. File be consigned to record room."

3. In a recent judgment in FAO No. 355/2016 titled as *Harbhajan Kaur Bhatia Vs. M/S Aadya Trading & Investment Pvt. Ltd. & Anr.* decided on 18.07.2017 in similar circumstances I have remanded the matter to the trial court after observing that a judgment to be a judgment has to be a speaking judgment giving reasons and a judgment cannot be a apology for a judgment. At the time of remanding the matter, I have requested Hon'ble the Acting Chief Justice to issue, if deemed fit, appropriate directions to the trial courts for not passing unreasoned judgments. The relevant paras of FAO No. 355/2016 are paras 6, 7, 9 and 10, and which paras read as under:-

“6. The impugned judgment dismissing the objections, I am forced to note, is an apology for the expression judgment. In an impugned judgment what are the respective cases of the parties and the issues to be decided have to be mentioned. Thereafter how the issues are decided is discussed. The impugned judgment however only states that Award is passed by the Arbitrator and there are no grounds for setting aside of the Award under Section 34 of the Act because there is no incapacity of the objector or any issue of lack of notice. It is also observed that the Award does not deserve to be set aside as it is not in conflict with the public policy of India.

7. This Court is receiving many judgments of the courts below which are most unfortunately dismissing the objections by simply stating that the Award is not against the public policy or the Award does not violate the ratio of the judgment of the Supreme Court in **Oil & Natural Gas Corporation Ltd. Vs. Saw Pipes Ltd. (2003) 5 SCC 705** and the other connected judgments. In my opinion, this is an unacceptable practice. Since this Court has received a series of cases where objections under Section 34 of the Act are being decided without even mentioning what the disputes between the parties are, how the Award has decided the same and how a court hearing objections under Section 34 of the Act cannot interfere because the Award, as per the reasoning, is neither illegal or perverse including not falling under the ingredients of Section 34 of the Act, therefore, while setting aside the impugned judgment on the ground of

complete absence of reasoning as also discussion as regards what were the issues involved and how they are decided, a copy of this Court's judgment along with the impugned judgment dated 10.12.2015 be put up before Hon'ble the Acting Chief Justice, so that appropriate directions can be issued, if Hon'ble the Acting Chief Justice so deems fit, to the District Courts that non-speaking judgments cannot be passed while dealing with the objections which are filed under Section 34 of the Act.

XXXXX

XXXXX

XXXXX

9. Accordingly, the appeal is allowed. The impugned judgment dated 10.12.2015 is set aside and it is ordered that the case be remanded back to the court below to decide the case in accordance with law after setting out the facts in issue, discussion on the relevant issues and giving reasoning for the conclusion which is to be arrived at by the court below for allowing or dismissing the objections under Section 34 of the Act.

10. Parties to appear before the District and Sessions Court (North), Rohini Courts, Delhi on 24th August, 2017 and the District and Sessions Judge will mark the objections under Section 34 of the Act for disposal to a competent court in accordance with law. Trial court record be sent back."

4. In view of the aforesaid position, it is agreed by the counsel for the parties that the impugned judgment dated 10.12.2015 be set aside but learned counsel for respondent rightly argues that since there is already sufficient delay and the respondent is deprived of awarded amount under the award, the matter be expedited and so that the court below will pass a detailed judgment as required by law expeditiously. Accordingly, it is directed that the concerned court will dispose of the objections under Section 34 of the Act within six months of receiving the copy of the present order.

5. Parties to appear before the District and Sessions Judge, West, Tis Hazari Courts, Delhi on 25.08.2017 and the District and Sessions Judge shall mark the objections under Section 34 of the Act for disposal to a competent court in accordance with law.

JULY 20, 2017
rb

VALMIKI J. MEHTA, J

