

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

+ **FAO No. 167/2017**

% **25th July, 2017**

INDIAN OIL CORPORATION LTD. Appellant

Through: Ms. Meenakshi Arora, Sr. Adv.
with Ms. Mala Narayan and Mr.
Rahul Narayan, Advocates.

versus

M/S ANEJA TRANSPORTERS Respondent

Through: Mr. Uday Singh Chauhan, Adv.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this first appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') the appellant impugns the judgment of the court below dated 7.12.2016 by which the objections filed by the appellant under Section 34 of the Act have been dismissed.

2. The relevant paras of the impugned judgment for dismissing the objections are paras 7 to 18 and these paras read as under:-

“7. I have heard arguments as submitted by Ld. Counsels for the parties. I have gone through the entire materials on record including the Award of Ld. Arbitrator.

8. Written submissions also filed by the petitioner and respondent.

9. Before going into the merits of the case, I deem it appropriate to refer provisions which deals with the making of application U/s. 34 of the Arbitration & Conciliation Act, 1996. I have gone through the provisions of Section 34 of the Arbitration & Conciliation Act, which reads as under:

“Section 34:-Application for setting aside arbitral award:- (1)

Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the court only if -

(a) the party making the application furnishes proof that -

(i) a party was under some incapacity: or

(ii) the arbitration agreement is not valid under the law to which he parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that-

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation – Without Prejudice to the generality of sub-clause (ii) of clause (b), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application has received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.”

10. The grounds so taken by the Objector/applicant in the objections are not covered under Section 34 of the Arbitration & Conciliation Act. Reliance is placed on the judgment cited as **2013 (5) R.A.J., 35 (Del) titled as M/S. SMCC-SCC-PVCC JV Vs. Rail Vikas Nigam Ltd**, wherein it was held that “As can be seen, the objections filed by the petitioner are not covered by any of the grounds enumerated in Section 34 or any other section, hence, the award can not be set aside. Merely saying that the award is against the public policy is not enough; the petitioner has to make out a strong case within four corners of the provision. In the present case, the petitioner has failed to demonstrate any ground to show that the award can be set aside despite of the fact that the petitioner owe a duty to do so and that too convincingly, for the Court to come to a finding that the arbitral award is in conflict with the provisions.”

11. Further, in case cited as **198 (2013) DLT 738 titled as National Highways Authority of India Vs. Oriental Structure Engineers Ltd.**, it was held that “ The scope of Section 34 of the Arbitration & Conciliation Act, 1996 is limited to the stipulations contained in Section 34 (2) of the Act. The jurisdiction of the Court to interfere with an Award of the Arbitrator is always statutory. Section 34 is mandatory nature, and an Award can be set aside only on the Court finding the existence of the grounds enumerated therein and in no other way. The word in Section 34 (2) that, “ An Arbitral Award may be set aside by the Court only if “ are imperative and take away the jurisdiction of the Court to set aside an Award

on any ground other than those specified in the Section. The Court is not expected to sit in appeal over the findings of the Arbitral Tribunal or to re-appreciate evidence as an appellate Court.”

12. Even the Hon'ble High Court in the judgment titled as '**National Highways Authority of India Vs. Oriental Structure Engineers Ltd'** (supra) has also relied upon the judgment titled as **Oil & Natural Gas Corporation Limited V. SAW Pipes Ltd., (2003) 5 SCC 705**. In the aforesaid judgment, Hon'ble High Court has been pleased to held in para No. 24 as under:—

“The petitioner has challenged the arbitral award on the grounds as set out in the petition and there is not even a whisper in the said grounds as to how they fall under the limited and narrow mandate of Section 34 of the Arbitration & Conciliation Act, 1996. Even if the additional grounds under Section 34, as laid down by the Supreme Court in the case of **ONGC VS. Saw Pipes Ltd., 2003(2) Arb. LR 5 (SC)**, are considered, which are patent illegality arising from statutory provisions or contract provisions or that the award shocks the conscience of the court, no such facts are narrated in the petition. The endeavor of the petitioner is thus to convert the challenged to the arbitral award into an appellate proceeding involving a total re-hearing of the matter and re-appreciation of evidence, and which endeavor as per the consistent dicta of the Supreme Court is impermissible in law”.

13. Further, as per the settled proposition, the scope of interference by the Court in respect of an award under the Act is limited. The award is not open to challenge on the ground that the arbitrator has reached on wrong conclusion or has failed to appreciate facts.

14. Further, with regard to the other grounds taken by the petitioner it is note worthy that the Ld. Arbitrator while deciding the dispute and after due consideration of claim of the petitioner, passed the impugned award. The law is settled that this Court is not supposed to sit in appeal U/s 34 of the Act qua the impugned award and the grounds for setting aside the impugned award cannot be allowed to be deviated from the grounds as mentioned U/s 34 of the Act. This Court has limited jurisdiction to decide the objections U/s 34 of the Act.

15. Further, a perusal of impugned Award clearly shows that the learned Arbitrator has duly dealt with the matter. The detailed well reasoned impugned Award has been passed. He has dealt with each and every aspect of the matter. The finding arrived at by the learned Arbitrator are supported by cogent reasons. After considering the record the arbitral award has been passed. In these circumstances, this court is of the view that, the impugned Award passed by learned Arbitrator is well reasoned award. The court is not required to appreciate and reevaluate the findings given by the learned Arbitrator. The Ld. Arbitrator has duly explained for arriving at its decision.

16. Further, the learned Arbitrator has duly explained for arriving at its decision. It is a well settled principle of law that when the arbitrator has given reasons, it is not for the court to see the reasonableness of the reasons given by the arbitrator or sufficiency of the reasons. However, what reasons are required, it depends upon the facts of the each case.

17. In the instant case, in view of the above said discussion and after considering the contention of learned counsel for parties and in view of the various authoritative pronouncements discussed above and as this court is not sitting in appeal against the impugned Award passed by Sole arbitrator, the court is not required to re-appreciate or re-evaluate the material on record before the learned Arbitrator, the objector has failed to show as how the passing of the impugned award is against principles of natural justice. Therefore, there is nothing in the impugned award to show that there was no evidence to support the findings of the Arbitrator which calls for interference, as such the findings of Arbitrator which have been objected are upheld.

18. Accordingly, in view of the guidelines in the aforesaid judgments, I do not find any substance in the objections filed by the objector, as the same are without any basis. The award so passed by the Ld. Arbitrator is fully justified and reasoned and Ld. Arbitrator has decided all the issues and there is no irregularities in the award itself. Accordingly, the petition is meritless and is hereby dismissed. No order as to cost. The file be consigned to record room.”

3. It is seen that the above paras contain no discussion of the relevant facts and issues and the reasoning/discussion of the court below as to why as per the issues to be decided the reasoning and discussion *qua* the issues in the Award is correct/legal or illegal/unjustified. The impugned judgment is therefore a non-speaking judgment. Recently in the judgment in the case of ***Harbhajan Kaur Bhatia Through Her Attorney Charanjit Singh Bhatia Vs. M/s Aadya Trading Investment Pvt. Ltd. and Anr.*** FAO No. 355/2016 decided on 18.7.2017 I have set aside an order passed

by the court under Section 34 of the Act by observing that order which decides objections under Section 34 of the Act must be a speaking judgment i.e what are the facts of the case have to be stated, what are the issues to be decided have then to be stated, how the Arbitrator has dealt with the issues and by what discussion and reasoning then has to be stated, and as to how such reasoning and conclusions in the Award are neither illegal nor perverse or within the ingredients of Section 34 of the Act for the court hearing objections under Section 34 of the Act to set aside the Award as court hearing objections is not an appellate court to re-apprise the findings of facts and conclusions arrived at by the Arbitrator.

4. The relevant paras of the judgment in the case of ***Harbhajan Kaur Bhatia (supra)*** are paras 6 to 9 and these 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.

8. To show that the present impugned judgment is a completely non-speaking judgment, and as stated above is an apology for the expression judgment, the relevant paras of the impugned judgment of the court below are reproduced as under:-

"5. I have heard Id. counsel for both the parties very extensively. I have also gone through the file and written submissions placed on record.

6. Hon'ble Delhi High Court in case titled as **DDA vs Anand Associates 151 (2008) DLT 18** had held that court does not sit in appeal over an Award passed by Arbitrator. I cannot reappraise evidence which had been led before Arbitrator. Court has very limited jurisdiction.

7. As per Section 34 of Arbitration and Conciliation Act, an arbitration award can be set aside by the court only if it satisfies any of the grounds mentioned in section 34 (2) and (3) of the Act. Under no other ground, arbitration award can be set aside. The only ground under which award can be interfered with is under section 34 of the Act.

8. According to Section 34 (2) (i), if a party is under some incapacity, award can be set aside. Here there is no incapacity of the objector. As per sub clause (ii), if the Agreement is invalid then also award can be set aside. Here the agreement was valid. As per sub clause (iii), if objector is not given proper notice then award can be set aside. Here objector had participated in the proceedings. As per sub clause (iv), if the award deals with dispute not contemplated then also award can be set aside. Here dispute referred was as per Agreement and was contemplated. As per sub clause (v), if composition of the Tribunal is not as per agreement then also award can be set aside. Here there was nothing wrong with the composition. As per Section 34 (2) (b), if subject matter of the dispute is

not capable of settlement or the Award is in conflict with public policy of India then award can also be set aside. Here subject matter is capable of settlement and the award was not in conflict with public policy.

9. This court is not to sit in appeal over the Award passed. It is merely to see if Arbitrator has not acted as per law or he himself misconducted or the Award was in conflict with existing legal provisions. All averments regarding competency of A.N.Sharma could have been proved before arbitrator by leading evidence. Unfortunately, objector had not led any evidence. Function of the court is akin to executing court. Like executing court cannot go beyond decree, this court cannot go beyond the award. Objections call for dismissal and same are dismissed. File be consigned to Record Room. No order as to costs.”

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.”

5. Since the impugned judgment dated 7.12.2016 is a non-speaking judgment, accordingly, applying the ratio of ***Harbhajan Kaur Bhatia (supra)***, this appeal is also allowed and the impugned judgment is set aside and the matter remanded to the court below to decide the objections under Section 34 of the Act by a speaking judgment and as per the observations made in Para 3 of the present judgment and the relevant observations in the case of ***Harbhajan Kaur Bhatia (supra)***.

6. Parties to appear before the District and Session Judge (Patiala House Courts) New Delhi on 24.8.2017 and the District and Sessions Judge will mark the objections under Section 34 of the Act to

a competent court in accordance with law. Copy of today's judgment passed by this Court and the impugned judgment dated 7.12.2016 be placed before the ACR Committee of the year 2010 of the concerned Judge who has passed the impugned judgment.

JULY 25, 2017/ib

VALMIKI J. MEHTA, J

