

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

+ **FAO No.25/2017**

% **30th October, 2017**

INDIA INFOLINE LTD. Appellant
Through: Mr. Ajit Rajput, Adv.

versus

SANTOSH KUMAR SAXENA & ORS. Respondents
Through: Mr. Santosh Kumar Saxena,
Respondent No.1 in person.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This First Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') is filed against the judgment of the court below dated 27.7.2016 by which the court below has dismissed objections under Section 34 of the Act.

2. A reading of the judgment shows that the impugned judgment dated 27.7.2016 is not a judgment in the eyes of law. A judgment before it is called a judgment must discuss the issues at hand, how those issues are decided including how the issues are dealt

with under the Award by the Arbitrator. Impugned judgment only refers to the law under Section 34 of the Act and thereafter observes that the Court is satisfied that the objections filed did not come within the scope of Section 34 of the Act.

3. In similar circumstances, in FAO No.355/2016 titled as ***Harbhajan Kaur Bhatia through her Attorney Charanjit Singh Bhatia vs. M/s Aadya Trading & Investment Pvt. Ltd. and Anr.***, I have passed a judgment on 18.7.2017 setting aside the judgment passed under Section 34 of the Act wherein the Court did not pass a judgment as is understood in law as no issues were discussed which arose and nor was any reasoning given as to how issues were being decided.

4. The relevant portion of the judgment in ***Harbhajan Kaur Bhatia's*** case (*supra*) is contained in paras 6 to 9 of the said judgment 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.

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. In view of the above discussion and adopting the observation in *Harbhajan Kaur Bhatia's* case(*supra*), the impugned judgment dated 27.7.2016 is set aside and the matter is remanded to the court below to decide the objections afresh which have been filed under Section 34 of the Act.

6. Parties to appear before the District and Sessions Judge, Patiala House Courts, New Delhi on 23rd November, 2017 and the District and Sessions Judge will mark the objections under Section 34 of the Act to a competent court for disposal of the said case and

preferably if the court which passed the impugned judgment dated 27.7.2016 exists, then to the said court itself.

7. Since respondents have received amounts under the Award, in case the appellant succeeds in the objections filed under Section 34 of the Act then the appellant can always seek restitution including as per Section 144 CPC.

8. In case the appellant has deposited the amount as per the Award with the concerned Stock Exchange then the appellant can seek refund from the said Stock Exchange as the respondents have already received the amounts as per the Award.

9. Appeal is accordingly allowed and disposed of with the aforesaid observations.

OCTOBER 30, 2017
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VALMIKI J. MEHTA, J