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

+ **FAO(OS) (COMM) 179/2017 & CM No.34914/2017**

DELHI TRANSPORT CORPORATION Appellant

Through: Mr.Sarfaraz Khan, Advocate

versus

M/S ADWEL ADVERTISING & ANR

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

% **25.09.2017**

CM No.34913/2017

Allowed subject to just exceptions.

CM No.34912/2017

For the reasons stated in the application, delay of 21 days in filing the appeal is condoned.

The application is disposed of.

FAO (OS) (COMM) 179/2017

1. Delhi Transport Corporation (DTC) appeals against the decision of the learned Single Judge, rejecting its petition under Section 34 of the Arbitration and Conciliation Act, 1996. The dispute between it and the respondent (hereinafter referred to as 'ADWEL'), pertains to the payments to be made/adjusted *inter se*, further to an agreement between them with respect to the advertisements to be put by ADWEL. ADWEL successfully

participated in the tender process and was awarded contracts for 9 shows, in 2001. During subsistence of the contract for these shows and placement of the advertisements in the bus shelters, ADWEL took possession of all the sites which were not made available and that as the contract period commenced, several shelters either got damaged, missing or dismantled. DTC also counterclaimed before the Arbitrator, contending that ADWEL did not pay the license fee either for the entire period in respect of a few shelters provided to it, nor did it pay them for part of the payment.

2. The Tribunal accepted the several claims of ADWEL and awarded approximately ₹4.5 crores with interest. DTC too had counter claim; for its counter claims were rejected. Some of its counter claims were accepted.

3. DTC's petition was premised on a few broad grounds i.e. that there was inadequate evidence to sustain the finding favouring ADWEL and that the uncritical acceptance of the latest claim with respect to some of the amount was manifestly erroneous.

4. By the impugned order the learned Single Judge discussed each contention with respect to the multifarious claims of the parties and concluded that having regard to the narrow jurisdiction of the Court under Section 34 of the Arbitration and Conciliation Act, 1996, especially with respect to the kind of errors that can be corrected, no interference was warranted.

5. The learned Single Judge pointedly referred to *Steel Authority of India Ltd. v. Gupta Brother Steel Tubes Ltd.* (2009) 10 SCC 63 where the Supreme Court observed that if the conclusion of the arbitrator is based on a possible view of the matter, the Court ought not to intervene under Section 34 of the Arbitration and Conciliation Act.

6. The learned Single Judge also considered the errors in the Tribunal's decisions which were not of the kind contemplated by the law declared i.e. contemplated by law, finding contrary to the contract or finding manifestly perverse or unreasonable having regard to the entirety of the circumstances.

7. DTC through its counsel reiterated the submissions and grounds urged in support of the appeal. It is contended that ADWEL was primarily responsible for producing the evidence which he did not produce under the circumstances, neither could the Tribunal nor the learned Single Judge have awarded the amounts for sustaining the award. Relevant discussions on this aspect, adequacy of evidence, by the impugned order is as follows:-

“ 12. Insofar as the first ground is concerned, it cannot be disputed that Adwel was obliged to produce a copy of the lists of BQSs submitted by it along with its bid. However, it appears that the same was not available and at any rate was not produced before the arbitrator. It was possible for the arbitrator to draw an adverse inference, however, the arbitrator considered the other material on record to return his findings. The arbitrator rejected the documents produced by DTC as it did not bear any signatures or stamp of Adwel. This court cannot review the decision of the arbitrator and supplant its view. The scope of judicial review under Section 34 of the Act is limited and unless this court finds that any of the grounds as set out in Section 34(2) of the Act are established, the impugned award cannot be interfered with.

x x x

14. In the present case, this court is unable to conclude that the decision of the arbitrator to reject the lists of BQSs as produced by DTC on the ground that the same did not bear the signatures of Adwel is perverse or patently illegal.

15. This court is also unable to accept that the impugned award is liable to be set aside on the ground that the

arbitrator has erred in arriving at its findings. As pointed out above, an arbitral award cannot be set aside on the ground that the arbitrator's findings are erroneous. The views expressed by the arbitrator is a plausible one and no interference would be called for under Section 34 of the Act. As is apparent from the arbitrator's conclusion and reasoning, as noticed hereinbefore, the impugned award largely turned on the findings of fact returned by the arbitrator after considering the material on record. It is trite law that the arbitrator has the final word on issues of fact and unless the findings are found to be perverse or patently illegal, the same cannot be interfered with."

8. The learned Single Judge also cited ***Associate Builders v. Delhi Development Authority***. (2015) 3 SCC 49 to hold that unless there is a perversity in the award or a patent error of law, or it is shown that the award is contrary to an express term of the contract, interference is not warranted or justified. This Court finds no reason, having regard to the conspectus of the circumstances, to interfere with the reasoning in the impugned judgment.

9. The appeal is therefore dismissed as unmerited.

CM No.34911/2017

Dismissed.

S. RAVINDRA BHAT, J.

SUNIL GAUR, J.

SEPTEMBER 25, 2017

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