

\$~19

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

Date of Decision: 29th October, 2018

+ **O.M.P. (COMM) 105/2017**

ASIM KUMAR MONDAL Petitioner
Through: Mr. J. S. Kanwar and Mr. V. K.
Pandey, Advocates. (M:9871949697)
versus

M/S ESCORTS LIMITED & ORS. Respondents
Through: Mr. P. R. Sikka and Mr. Amet Sikka,
Advocates for R-1. (M:98110545612)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996 has been filed challenging award dated 1st November, 2011 passed by the learned Sole Arbitrator. Learned counsel for the Petitioner submits that the award was passed *ex-parte* as the counsel for the Petitioner had stopped appearing. This Court has perused the impugned award. It is a wholly unreasoned award. The entire section of the award on 'Findings' is set out below:

"FINDINGS

1. Claimant has claimed Rs.66,00,000/- together with pendentalite and future interest.

This Tribunal has gone through the statement of account and satisfies itself of the claim made by the claimant.

I hold and award Rs.66,00,000/- together with interest @ 12% per annum w.e.f. 5th March, 2005 till the date of award.

2. Claimant has claimed cost of litigation.

Respondents have compelled the claimant for invoking the present claim and have paid not only the arbitral fee but have incurred substantial amount on litigation.

I hold an award to Rs.25,000/- as cost of litigation.

Respondents No.1, 2 & 3 are several and jointly liable to discharge the liability.

Let the parties be informed accordingly.”

2. As per the Supreme Court’s judgment in ***Som Dutt Builders Ltd. v. State of Kerala (2009) 10 SCC 259***, it is the settled position in law that an arbitral award has to be reasoned. In the said judgment, the Court held as under:

“25. The requirement of reasons in support of the award under Section 31(3) is not an empty formality. It guarantees fair and legitimate consideration of the controversy by the Arbitral Tribunal. It is true that the Arbitral Tribunal is not expected to write a judgment like a court nor is it expected to give elaborate and detailed reasons in support of its finding(s) but mere noticing the submissions of the parties or reference to documents is no substitute for reasons which the Arbitral Tribunal is obliged to give. Howsoever brief these may be, reasons must be indicated in the award as that would reflect the thought process leading to a particular conclusion. To satisfy the requirement of Section 31(3), the reasons must be stated by the Arbitral Tribunal upon which the award is based; want of reasons would make such award legally flawed.”

3. The impugned award is a completely cryptic and unreasoned award. The entire claim, which the Respondent has made, has been allowed without any basis, reasoning and without reference to any documentary evidence or even the pleadings and claims. The basis of allowing the claim is also not

mentioned, nor is there any justification for the amount awarded. The award is wholly unsustainable and is, accordingly, set aside.

4. Both parties agree that the parties may, therefore, be referred to arbitration by a Sole Arbitrator. Accordingly, **Mr. H. P. Sharma (Retd. ADJ, Delhi – M:-9810968693)** is appointed as a Sole Arbitrator to adjudicate upon the disputes between the parties. The fee of the learned Arbitrator is fixed at Rs.2 lakhs, to be shared equally by the parties. The learned Arbitrator shall consider the pleadings, which are already on record. The arbitral record, tagged with the present file, shall be transmitted to the Arbitrator. If any evidence is required to be recorded, the same may be done. As the matter is an old matter, the notice for arbitration having been given on 5th October, 2006, the award shall be passed within a period of 6 months from the first date of hearing before the Arbitrator. If any extension is required, the learned Arbitrator may apply for the same. The venue for the arbitration shall be decided in consultation with the parties.

5. List before the Learned Arbitrator on 26th November 2018. The parties are directed to contact the Arbitrator to ascertain the time and venue of the proceedings.

6. Petition is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

OCTOBER 29, 2018/dk