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

\+ FAO 470/2017, C.M. APPL. 43842/2017 and 43844/2017

MLD PACKERS

..... Appellant

Through: Mr.Rahul Tewari, Advocate.

Versus

INDIAN RAILWAY CORPN. & TOURISM LIMITED & ANR

..... Respondent

Through: Mr. Nikhil Majithia, Advocate for IRCTC

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 10.01.2018

This appeal impugns an order dated 11.07.2017 passed by the learned ADJ-02, Patiala House Courts, New Delhi dismissing the appellant’s challenge to a portion of the arbitration award dated 10.03.2015. The appellant was aggrieved by the non-grant of its claim of damages of approximately Rs.18,23,723/-. The said award had noted as under:

“The claimant has also claimed a sum of Rs.18,23,723/- towards loss to the firm along with interest. However, it has submitted the details in letter dated 22.12.2014 for a sum of Rs.17,23,723/- which is as under:

S.No.	*Post*	*Number of Employee*	*Monthly Salary*	*10 Month Salary*

A	*Manager*	*1*	*Rs.12,000/-*	*Rs.1,20,000/-*
B	*Skilled Labour*	*5*	*Rs.7,500/-*	*Rs.3,75,000/-*
C	*Unskilled*	*8*	*Rs.6,500/-*	*Rs.5,20,000/-*
D	*House Keeping Employee*	*2*	*Rs.3,000/-*	*Rs.60,000/-*
E	*Security Guard*	*3*	*Rs.7,000/-*	*Rs.2,10,000/-*
			Total	*Rs.12,85,000/-*

1. *Security Guard 2 Rs. 6858.56 Per Month 24 Month Salary*

   Rs. 3,29,211/-

2. *Minimum Charge of electricity Rs. 4563 Per Month*

   Rs. 1,09,512/-

Total Amount Rs.17,23,723/-

The claimant did not adduce any evidence to prove expenditure of labour in the factory or the loss sustained by him on account of non payment of price for corrugated boxes. In the absence of any evidence on record, the said claims are not sustainable and are rejected.

In view of the above discussion, I hold that the Claimant is entitled to Rs.2,65,640/-. Reference is decided accordingly."

The challenge to the award was dismissed on the ground that under the Arbitration and Conciliation Act,1996, intervention by the Court in the challenge to an arbitral award is limited only to a few grounds such as fraud or bias by the Arbitrator. The Court had supervisory role at a minimum level. The impugned order also concluded that the Arbitrator had dealt with the matter squarely within the terms of the reference of the lis to him. Having considered the award and the arguments, the Court concluded that there was nothing in it which would be construed as perverse or unreasonable. The Court also noted that the appellant had been unable to establish that the Arbitrator had gone beyond the scope of reference or that his conclusion was contrary to law or that he had granted relief in a matter which was not in dispute. Furthermore, the appellant had also failed to establish the salary or expenses claimed to have been incurred by it in the course of business. Hence, logically, the claim had to be disallowed. The Court had referred to various judgments in support of the proposition that the scope of interference by the Court in a challenge to an arbitral award is rather limited. It held as under:

> *"7. 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 cannot 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."

8. 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."*

9. 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 SCO 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 endeavour 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 endeavour as per the consistent dicta of the Supreme Court is impermissible in law."*

The learned counsel for the appellant now seeks time to obtain instructions apropos how and why the claim of Rs.17,23,723/- could not be substantiated in the arbitration proceedings. The Court notes that time was taken on the previous date also to seek such instructions but to no avail. Be that as it may, such explanation would be of no consequence at this stage since no such evidence has been led before the Arbitrator. His decision was only on the basis of the evidence and the record available. The award cannot be faulted for adhering to the record and the law. The ground for a challenge to the award on a possible substantiation of the disallowed claim is not envisaged under the limited grounds for challenge under section 34 of the Act. Therefore, insofar as the appellant itself has not been able to show what is wrong with the conclusion arrived at, the appeal would be without basis.

The learned counsel for the respondent, who appears on advance notice, refers to a judgment of this Court in ***Ahluwalia Contract (India) Limited vs. The Union of India*** FAO (OS) (COMM) 143/2017, decided on 17.10.2017 which held that some material evidence is necessary to be led before the arbitrator before grant of damages. The relevant portion of the judgement reads as under:

> *"9. Bharat Coking (supra) and Brijpaul (supra), no doubt, are authorities for the proposition that the Court even in arbitration cases should be conscious of and ordinarily should not refuse claims towards loss of profits. At the same time, the reference to Section 73 - which finds express mention in Brijpaul (supra) clarifies that damages claimed cannot be granted as a matter of course; some material evidence is necessary. In this case, the extensions led to claims for payments on various accounts and heads during the extended period. The cumulative effect of the award and the impugned judgment is such that the majority of such heads of claim for extra expenditure, increased salary and other overheads for the additional period have been granted. They are based upon certain formulae under the contract. However, in the case of the claim of general loss of profits, having nexus with the value of the contract, the Court finds that there is no worthwhile evidence - apart from the line of questioning adopted by the claimants.*
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> *10. That in arbitration proceedings, just as in civil cases, an injured party can claim damages, does*

not necessarily translate into an award for damages towards loss of profits unless some diligence is exercised by the party (in the present case, Ahluwalia claiming it). In other words, a claim for damages (general or special) in the proceedings, cannot as a matter of course, result in an award, without proof of having suffered injury. The tribunal - as well as the learned Single Judge in this case appreciated the conspectus of circumstances. The former had the benefit of consideration of record as the primary adjudicatory body. The Tribunal was unable to discern any substantial material to justify the claim for damages towards loss of profits. Having regard to these facts, this Court is of the opinion that the rejection of claim nos. 12-13 was dealt with correctly and reasonably by the learned Single Judge in the impugned judgment, which does not warrant interference."

In view of the aforesaid judgment it is evident that for ascertainment of damages, some evidence ought to be led by the appellant/claimant to prove that it had indeed suffered damages. A claim for damages is not to be awarded for the asking. There being no evidence to establish the claim, neither the arbitration award nor the impugned order can be faulted with. In the circumstances, the appeal being without merit, is dismissed.

NAJMI WAZIRI, J

JANUARY 10, 2018/acm