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

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Judgment delivered on: 14.03.2023

+ FAO (COMM) 48/2023 & CM APPLS. 9032-34/2023

THE INDIA GOVERNMENT MINT

..... APPELLANT

versus

ALFA SECURITY AND ALLIED SERVICES RESPONDENT

Advocates who appeared in this case:

For the Appellant: Mr. Kamal Kant Jha and Mr. Avinash Singh,
Advocates.

For the Respondent: None.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant impugns order dated 20.10.2022, whereby the objections filed by the appellant under Section 34 of the Arbitration and Conciliation Act (hereinafter referred to as the Act) challenging the Award dated 05.11.2020 of the Arbitral Tribunal have been dismissed.

2. Learned counsel for appellant submits that the learned District

Judge has erred in rejecting the objections by merely holding that the objections do not fall within the parameters of interference as explicitly laid down by the Supreme Court in several judgments referred to in the order.

3. He submits that the learned District Judge has erred in not appreciating that the Arbitral Tribunal has returned contradictory findings of fact. He submits that on the one hand the Tribunal has held that the respondent/claimant was at fault and on the other hand held that the respondent/claimant has not committed any breach of contract.

4. Learned counsel for appellant further submits that the respondent/claimant had filed a writ petition before the High Court of Judicature at Hyderabad impugning the invocation of the subject Bank Guarantee and the writ petition was dismissed. Thereafter, a writ appeal was filed and the Division Bench in Writ Appeal No.1198/2016 by judgment dated 10.11.2016 held that the clauses of the NIT would apply even for the extended period of contract even though no formal document was executed.

5. Appellant had invited bids on 15.02.2013 for hiring skilled and unskilled manpower for one year through outsourcing agency on as and when required basis. The bid of the respondent was successful and a Letter of Intent dated 24.05.2013 was issued, valid for a period of one year from 01.06.2013 till 31.05.2014.

6. The Letter of Intent specifically stated that 21 skilled labour and 69 unskilled labour would be required to be supplied by the respondent. The bifurcation of the skilled and unskilled workers into different fields, *inter-alia*, electrician, cook, plumber, carpenter, welder etc. was specifically mentioned in the Letter of Intent. The Letter of Intent, however, clarified that the maximum number of skilled labour would not exceed 21 and unskilled labour would not exceed 69.

7. It is not in dispute that the respondent duly complied with the terms and conditions of the Letter of Intent and supplied the workers for the entire period of one year, however, one of the contentions raised by the respondent was that though the tender was for supply of 90 workmen, order was placed only for supply of approximately 40 workmen throughout the period of one year.

8. The Letter of Intent further stipulated that the contract could be extended on the same terms and conditions for a further period of three months or till execution of a new contract, whichever was earlier.

9. In alleged exercise of power under the said clause, a letter of extension was given on 29.05.2014, extending the contract for a period of three months. The letter, however, specified that the maximum number of workers would be 40 workers i.e., 10 skilled and 30 unskilled.

10. Respondent supplied the workmen for one month in the extended period i.e. for June, 2014 and thereafter, did not supply any workman in July and August. Consequent to which, the appellant invoked the performance guarantee on 02.07.2014 and forfeited the amount. It was this invocation of Bank Guarantee, which was challenged in the writ petition before the High Court of Judicature at Hyderabad.

11. The Arbitral Tribunal after considering the claim of the respondent well as the evidence led by the parties held that the claimant had not committed any breach of the original contract, however, held that the claimant should have provided the manpower for the months of July and August, 2014. The Tribunal held that the same did not amount to a breach of contract for the reason that the original period of contract was duly performed.

12. The Arbitral Tribunal held that the appellant (respondent before the Tribunal) had failed to prove any loss or damage suffered by it on account of respondent's failure to supply manpower for the remaining two months of the extended period. The Tribunal noticed that the manpower requirement as per the tender was 90 and during the entire contractual period, the appellant did not hire even 50% of the manpower, it intended to hire under the NIT. The Tribunal further held that fortunately for the appellant, the claimant had not made any claim towards loss of hiring of manpower by the appellant.

13. With regard to the performance guarantee, the Tribunal held

that the performance Bank Guarantee was called for and submitted on the basis of the requirement projected in the NIT i.e. for 90 workers and if the requirement projected had been only for 40 workers then the amount of performance Bank Guarantee would have been much lesser. The Tribunal further held that the appellant neither pleaded nor placed on record any document to show loss which he had suffered on account of the claimants failure to supply manpower during the extended period.

14. At this juncture, we may notice that the performance Bank Guarantee was for a sum of Rs.8.69 lacs, whereas the monthly bill of the respondent/claimant for supply of manpower was approximately to the tune of Rs.2.47 lacs to 2.5 lacs per month.

15. The learned District Judge after examining the record of the Tribunal as well as the judgments of the Supreme Court categorically held that none of the objections of the objector/petitioner (appellant) fulfil the parameters of interference as laid down by the Supreme Court and as such held that the Award did not suffer from any infirmity or error apparent on the face of the record.

16. We are in agreement with the findings of the District Judge that the courts while considering objections under Section 34 do not sit in appraisal of the evidence as a court of appeal.

17. In *Jhang Cooperative Group Housing Society Ltd. v. Pt. Munshi Ram*, 2013 SCC OnLine Del 1886 : ILR (2013) 2 Del 1632, a

coordinate bench of this court in which one of use (*Sanjeev Sachdeva J.*) was a member, relying upon the judgment of the Supreme Court of India in *McDermott International INC. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181 held as under:

“15. The law is no longer res Integra and is settled that where the Arbitrator has assessed the material and evidence placed before him in detail, the court while considering the objections under Section 34 of the said Act does not sit as a court of appeal and is not expected to re-appreciate the entire evidence and reassess the case of the parties. The jurisdiction under Section 34 is not appellate in nature and an award passed by an Arbitrator cannot be set aside on the ground that it was erroneous. It is not open to the court to interfere with the award merely because in the opinion of the court, another view is possible. The duty of the court in these circumstances is to see whether the view taken by the Arbitrator is a plausible view on the facts, pleadings and evidence before the Arbitrator. Even if on the assessment of material, the court while considering the objections under Section 34 is of the view that there are two views possible and the Arbitral Tribunal has taken one of the possible views which could have been taken on the material before it, the court would be reluctant to interfere. The court is not to substitute its view with the view of the Arbitrator if the view taken by the Arbitrator is reasonable and plausible.

16. If the Arbitrator has taken a view which the court finds reasonable and plausible, the court would certainly not interfere.

17. The extent of judicial scrutiny under Section 34 of the Arbitration Act 1996 is limited and scope of interference is narrow. Under Section 37, the extent of judicial scrutiny and scope of interference is further narrower. An appeal under Section 37 is like a second appeal, the first appeal being to the court by way of objections under Section 34.

Where there are concurrent findings of facts and law, first by the Arbitral Tribunal which are then confirmed by the court while dealing with objections under Section 34, in an appeal under Section 37, the Appellate Court would be very cautious and reluctant to interfere in the findings returned in the award by the Arbitral Tribunal and confirmed by the court under Section 34.

18. As laid down by the Apex Court, the supervisory role of the court in arbitration proceedings has been kept at a minimum level and this is because the parties to the agreement make a conscious decision to exclude the courts jurisdiction by opting for arbitration as the parties prefer the expediency and finality offered by it.”

18. Consequently, we are of the view that the Award does not call for any interference in exercise of power under Section 34 of the Act, much less in exercise of powers under Section 37 of the Act.

19. We further find no merit in the contention of the learned counsel for appellant that the respondent had filed a writ petition in the High Court of Judicature at Hyderabad and in an appeal, the Appellate Court held that clauses of NIT would apply to the extended period even though no formal contract was executed. We are of the view that the order does not help the case of the appellant for the reason that the said order passed by the Division Bench of the High Court of Judicature at Hyderabad merely confirms the order of the learned Single Judge relegating the respondent/claimant to the remedy of arbitration.

20. The writ appeal impugned order dated 17.03.2015 in Writ

Petition No. 24422/2014, whereby the learned Single Judge had held the writ petition to be not maintainable and had held that the remedy of the writ petitioner (respondent/claimant) was before the Tribunal.

21. The present proceedings emanate out of an Award passed by the Arbitral Tribunal. Accordingly, the observation of the Division Bench in the judgment in the writ appeal would not further the case of the appellant for the reason that the Arbitral Tribunal has passed the subject Award after considering the pleadings as well as the evidence led by the parties.

22. In view of the above, we find no infirmity in the impugned order rejecting the objections of the appellant under Section 34 of the Act. Consequently, we find no merit in the appeal. The Appeal is accordingly dismissed.

SANJEEV SACHDEVA, J

MARCH 14, 2023
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VIKAS MAHAJAN, J