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

\+ O.M.P. (COMM) 152/2024 & I.A. No. 7701/2024

M/S RTCL LTD ..... Petitioner

Through: Mr. Chirag Alagh and Mr. R. K. Alagh, Advocates alongwith Mr.Amitabh Agarwal, AR of petitioner.

versus

M/S SUPERIOR FABRICS PVT LTD ..... Respondent

Through: Ms. Abhinav S. Raghuvanshi, Ms. Shweta and Ms. Rukhsar Ansari, Advocates.

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

O R D E R

% **15.04.2024**

I.A. No. 7700/2024 (for exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

O.M.P. (COMM) 152/2024 & I.A. No. 7701/2024

1. The present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 seeking to set aside the impugned award dated 15.01.2024.

2. Learned counsel for the petitioner submits that the award dated 15.01.2024 suffers from legal infirmity and is liable to be set aside. Learned counsel for the petitioner has predominantly challenged the award on the ground of procedural bias. Learned counsel also submits that the learned tribunal failed to look into the relevant documents and this has resulted into

a perverse award. Learned counsel submits that though the petitioner/claimant had made several claims, however, the learned arbitral tribunal has only granted the claim regarding de-sealing expenses and the other claims were rejected by the tribunal.

3. Learned counsel for the petitioner further submits that his counter claims were also rejected by the learned tribunal illegally and arbitrarily. He submits that the affidavit of the respondent was taken on record at the stage of the final arguments, though; the learned tribunal relied upon the affidavit of the respondent but did not look into the affidavit filed by the petitioner. Learned counsel for the petitioner also submits that his counter affidavit for specific performance and damages were rejected arbitrarily by the learned tribunal.

4. Learned counsel further submits that the counter claim for Rs.50 lacs regarding refund of advance money paid by the petitioner was also wrongly rejected by the learned tribunal. He submits that deposit of Rs.50 lacs was not even disputed by the respondent/claimant; however, the learned tribunal rejected this counter claim merely on the ground that the same was not in accordance with law.

5. The jurisdiction of the Court is very limited under Section 34 of the Arbitration and Conciliation Act, 1996 as has been held in a catena of judgments. In ***Dyna Technologies Private Limited v. Crompton Greaves Limited***[1], the Supreme Court inter-alia held as under:

> *"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier*

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[1] (2019) 20 SCC 1

manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.

25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

6. The law regarding jurisdiction of the court at the stage of Section 34 of the Arbitration and Conciliation Act is very well defined. The court at this stage cannot sit in appeal over the award passed by the learned arbitrator. The grounds as mentioned in Section 34 of the Arbitration and Conciliation Act are very clear. The court can interfere in the award passed by the learned arbitrator only if the award was induced or affected by fraud or corruption or was in violation of Section 75 and Section 81 of the Arbitration and Conciliation Act or the same is patently illegal on the face of it. However, in case the illegality is trivial and does not affect the root of the matter, the award is not liable to be set aside. The arbitral award can also be set aside if it is in conflict with the fundamental policy of Indian law or if it is in conflict with the most basic notions of the morality, justice or reason[2].

7. In view of this, it is pertinent to go through the relevant portions of

[2] ***Ssangyong Engineering and Construction v. National Highways Authority of India*** (2019) 15 SCC 131

the impugned arbitral award which are as follows:

> *"217. Even though Clause 2.4 of the MOU indicates that it had deposited a cheque for Rs.50,00,000.00 with the Claimant, there is nothing on record to show that the same was in fact encashed by the Claimant. The Respondent, being the claimant of this amount and the party who could have produced the best evidence, such as bank statement, to prove the actual deduction of the amount from the Respondent's bank account, had the onus to prove that the claimed amount had been deducted from the Respondent's account and credited to the Claimant's account. However, the Respondent has not produced any such evidence and thus failed to prove the actual payment of the claimed amount of Rs. 50,00,000.00.*
>
> *218. Thus, the Tribunal rejects the claim for refund of Rs.50,00,000.00*
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> *219. As regards the claim for Rs.10,58,00,000.00, the Respondent submits that the Contract between the parties envisaged a construction cost of Rs.10,58,00,000.00 which it was entitled to recover from the sales proceeds. According to the Respondent, since the Contract could not be completed due to the reasons attributable to the Claimant, it is entitled for recovery of the said amount of Rs.10,58,00,000.00.*
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> *220. Since it admittedly did not complete the construction, the Tribunal notes that this claim of the Respondent is not in the nature of compensation for damages, but recovery of expenses which it had never incurred. Since, admittedly the Respondent had not incurred the said amount towards construction cost, the claim is liable to be dismissed.*
>
> *221. At the best what the Respondent could have claimed, is the cost it had incurred until the Project Site was taken over by the Claimant. However, the Respondent has not made any such claim. During the hearing, the Respondent has submitted that, under Clause 3.7.1 read with Clause 3.6 of the Agreement, the Claimant ought to have carried out the valuation of the work done till date at the time of taking of taking over of the Project*

Site, however, the Claimant has not carried out any such valuation of the Agreement.

222. Relevant clauses read as follows: ....

...

223. A plain reading of the above quoted Clauses would show that Clause 3.7.1 of the Agreement, including the requirement for valuation, would come into play only if the conditions stipulated in subclauses (a) to (d) of Clause 3.6 of the Agreement are applicable. These subclauses presuppose the currency of the Contract. However, as found by the Tribunal earlier in this Award, the time for completion and the grace period had long expired before the Claimant took over the Project Site. Thus, the Tribunal is of the opinion that the Claimant was not required under the Contract to carry out any valuation when it took over the Project Site.

224. Even if it is assumed that Clause 3.6 and Clause 3.7.1 of the Agreement are applicable in the present case, the failure of the Claimant to carryout valuation will not absolve the Respondent from its onus to prove the expenses incurred by it till the date of taking over of the Project Site by the Claimant.

225. In this regard, it is also worthwhile to appreciate that as has been rightly pointed out by the Claimant during final arguments that under Clause 3.5 of the MOU the Respondent was under an obligation to maintain a detailed register of expenses incurred by it during the construction period. Clause 3. 5 of the Mo U reads as follows:

"3.5 Second Party/Builder shall maintain a detailed register of its Expenditure, incurred under various heads, in construction and execution of the 'said project as shall also keep the inventory, receipts, invoice, vouchers and other miscellaneous documents relating to such expenditures and shall share the same with the OWNER as and when required by the OWNER so as to enable the OWNER to determine, calculate and estimate the actual cost of construction and execution of the 'said project'

226. Not only did the Respondent not produce any such register before this Tribunal, but also has not provided any explanation for not producing the same.

227. Even if the Register had been maintained & was not available to the Respondent, it would have other documents including bills/invoices, bank records etc. to prove the expenses incurred. No such evidence has also been produced.

228. Thus, the Tribunal holds that the Respondent failed to discharge its burden to prove the claim of Rs.10,58,00,000.00 or any part thereof towards construction cost the claim and hence the claim is dismissed.

229. With regard to the claim of □ 10,07,40,000.00, being the 30% share of profit from the Project, the Tribunal has already found that the Respondent failed to complete the Works under the Contract within the stipulated time and resultantly, the Claimant took over the Project Site and completed the Project at its own cost. The Tribunal notes that the Respondent's right to the share in the profit under the Contract is subject to it successfully completing the Project by discharging its obligations, including by investing the construction cost. Thus, the Tribunal is of the considered opinion that the Respondent is not entitled for the claim of Rs.10,07,40,000.00 towards the 30% share of profit from the Project.

230. In view of the above the Counterclaims of the Respondent are dismissed.”

8. A perusal of the award reveals that the award is well-reasoned and does not suffer from any infirmity or illegality. As this court does not sit in appeal over the arbitral award, there can be no re-appreciation of the evidence. Further, in view of the 2015 Amendment, it is clear that an award cannot be annulled just due to a misapplication of the law or a change in the value of the evidence or a divergent perspective is possible. Moreover, the

Apex Court in ***Indian Oil Corpn. Ltd. v. Shree Ganesh Petroleum***[3], inter-alia held that:

> *"45. The Court does not sit in appeal over the award made by an Arbitral Tribunal. The Court does not ordinarily interfere with interpretation made by the Arbitral Tribunal of a contractual provision, unless such interpretation is patently unreasonable or perverse. Where a contractual provision is ambiguous or is capable of being interpreted in more ways than one, the Court cannot interfere with the arbitral award, only because the Court is of the opinion that another possible interpretation would have been a better one."*

9. Thereby, it is a settled principle that merely because another view could have been taken is no ground for the court to interfere in the award. In the present case, the contention of the petitioner is that the arbitral tribunal has overlooked the petitioner's affidavit along with certain relevant documents and that they have arbitrarily rejected the petitioner's claims citing that they are not in accordance with law. However, a perusal of the impugned award indicates that it is a fair and well-reasoned decision taking into consideration all facts and circumstances and without any illegality or infirmity. Further, it has time and again been held that the arbitrator is the final judge of the facts and the court cannot interfere into an arbitral award only because a differing interpretation of the evidence is possible. [4]

10. The facts which have been raised by learned counsel do not call for any interference, hence, the present petition is dismissed.

DINESH KUMAR SHARMA, J

APRIL 15, 2024/ssc

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[3] (2022) 4 SCC 463

[4] ***Swan Gold Mining Ltd. vs. Hindustan Copper Ltd***. (2015) 5 SCC 739