



2024:DHC:7501-DB



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

+ **FAO (COMM) 191/2024**

M/S ASSOCIATED TUBES

.....Appellant

Through: Mr.Milan Laskar, Advocate.

Versus

ANIL SINGHAL

.....Respondent

Through: None

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Date of Decision: 25th September, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

C.M.No.55825/2024

1. Keeping in view the averments in the application, the delay in filing the present appeal is condoned.

2. Accordingly, the application stands disposed of.

C.M.No.55824/2024

3. Exemption allowed, subject to all just exceptions.

4. Accordingly, the application stands disposed of.

FAO (COMM) 191/2024 & C.M.No.55823/2024

5. Present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 ("the Act") has been filed challenging the judgment dated 12th March, 2024 passed by the learned District Judge (Commercial Court)-06,

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West Delhi, Tis Hazari Courts in OMP(Comm.) 09/2022, whereby the petition under Section 34 of the Act filed by the appellant for setting aside of arbitral award dated 24th December, 2021 passed by the learned Sole Arbitrator, was dismissed.

6. Learned counsel for the appellant contends that the impugned award dated 24th December, 2021 is beyond the scope of arbitration. He states that the quotation dated 18th November, 2019 does not contain any arbitration clause. He emphasises that the arbitration was limited to disputes arising out of agreement-cum-quotation dated 21st June, 2019. He therefore states that disputes with respect to the said quotation dated 18th November, 2019 could not have been adjudicated by the learned Sole Arbitrator.

7. He further states that the learned Sole Arbitrator wrongly fixed the price for third SS Tube Mill at Rs.12,00,000/- without providing any reasons for the same.

8. He also states that the learned District Judge as well as the Sole Arbitrator failed to consider that the size of the 3rd SS Tube Mill was different from the other two SS Tube Mills and not in accordance with the order/requirements of the appellant. He states that price of the third Tube Mill has been fixed equivalent to the other two mills even though the third SS Tube Mill is of different size.

9. It is settled law that the scope of interference under Sections 34 and 37 of the Act is limited. Adjudication of grounds raised by the appellant in the present appeal will require re-appreciation of facts, evidence and interpretation of contractual terms, which is beyond the scope of interference in an appeal. Further, the appellant has been unable to make out a case of patent illegality or error apparent on face of record.



10. This Court is further of the opinion that the appellant believes that the arbitral award is not the end of the dispute, but a prelude to stage two of their dispute – this time before the Courts. The appellant's belief is contrary to the intent and object of the Act. It is trite law that this Court will not re-assess and re-examine the evidence placed before the learned Sole Arbitrator. The proceedings under Section 37 of the Act are even more limited in scope than those under Section 34 and cannot be equated with the normal appellate jurisdiction of this Court. (See: ***Reliance Infrastructure Ltd. v. State of Goa 2023 SCC OnLine SC 604***).

11. In the debit note dated 18th March, 2020, the appellant has stated that the agreed amount cost of each machine is Rs.12,00,000/- and for three machines it is equal to Rs.36,00,000/-. No positive evidence was led by either parties to show that the price is anything other than Rs. 12,00,000/- [Para 32 of the impugned award]. Therefore, notwithstanding the fact that third mill was of a different size, the price has been fixed at Rs.12,00,000/- basis the debit note of the appellant.

12. The averments with respect to lack of jurisdiction are misconceived. Prior to the arbitration proceedings, the respondent had filed a suit for recovery against the appellant in respect of both quotation dated 21st June, 2019 and 18th November, 2019. The appellant had filed an application under section 8 of the Act in the said suit, which was allowed vide order dated 06th August, 2020. Further, the learned Sole Arbitrator was appointed pursuant to the order dated 14th December, 2020 passed by this Court, wherein the appellant had given a no objection to appointment of Arbitrator.

13. Consequently, even if it is assumed that the quotation dated 18th November, 2019 does not have an arbitration clause and the arbitration



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clause in admitted agreement-cum-quotation dated 21st June, 2019 cannot be read into the quotation dated 18th November, 2019, the appellant cannot claim that quotation dated 18th November, 2019 is beyond the scope of arbitration, as the appellant has filed an application for reference of disputes (arising out of both agreement-cum-quotation dated 21st June, 2019 and quotation dated 18th November, 2019) to arbitration and consented to appointment of the Arbitrator.

14. Accordingly, the present appeal being bereft of merit is dismissed along with the application.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

SEPTEMBER 25, 2024
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