

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
COMMERCIAL DIVISION

BEFORE:

The Hon'ble Justice Soumen Sen

And

The Hon'ble Justice Biswaroop Chowdhury

FMAT (ARBAWARD) 20 of 2024

Steel Authority of India Ltd.

Vs.

Technofab Engineering Ltd.

For the Appellants : Mr. Sarathi Dasgupta, Adv.
Mr. Arijit Basu, Adv.

For the Respondent : Mr. Ravi Ranjan, Adv.
Mr. Somnath Gangopadhyay, Adv.
Mr. Nishant Gaurav, Adv.

Order dated : 7th January, 2025

Soumen Sen, J. (Oral):

1. The appeal is arising out of an order dated 27th March, 2024 passed by the learned Judge, Commercial Court at Alipore in an application for setting aside of the Award. The respondent is the Award- holder.

2. It appears from the impugned judgment that on and from paragraph 16 till paragraph 22, the learned Judge, Commercial Court has recorded the submission of the parties and reproduced sections and few decisions of the Hon'ble Supreme Court and thereafter, arrived at a cryptic conclusion in paragraph 28 without even discussing the objections raised by

the appellant in relation to the merits of the Award. The learned Judge, Commercial Court although has referred to the decisions of the Hon'ble Supreme Court which defines the limited scope of review of an Award in a proceeding under Section 34 of the Arbitration and Conciliation Act, 1996 and that the Court in such a proceeding cannot undertake an independent assessment of the merits of the Award or interfere with the Award unless it is found that the Arbitrator's approach is arbitrary or capricious, there is no discussion in the impugned judgment with regard to the various objections raised by the appellant in the application for setting aside of the Award.

3. It appears that in the application for setting aside of the Award the appellant has contended that the learned Arbitrator has not decided all the issues and refund of liquidated damages could not have been allowed by the learned Arbitrator when the delay is admitted. The arbitrator has selectively relied upon the delay analysis report dated 29th September, 2015 and not the entire report which clearly states that the delay beyond 10 months was attributable to the respondent. It is submitted that the work was completed in extended time and there was no evidence to show that the award holder had suffered any loss for damages. There was no counter claim for liquidated damages in the arbitration proceedings. The learned counsel has also argued that the arbitrator has also misconstrued Article 9 of the Contract and Clause 29.2 and Clause 42 of the GCC. The arbitrator has not considered in the Award various objections raised by the appellant.

4. In view of the order proposed we do not wish to make any observation with regard to the submission made by the learned counsel for

the appellant. However, the interpretation of a clause in the contract falls within the exclusive domain of the arbitrator. A possible view by the arbitrator on facts has necessarily to be accepted as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon, when he delivers his Arbitral Award. Thus, an Award based on little evidence or no evidence, which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Once it is found that the arbitrators' approach is not arbitrary or capricious then he is the last word on facts. (See ***Associate Builders Vs. Delhi Development Authority, 2015 (3) SCC 49***). When the view taken by the arbitrator is a possible or a plausible one, on his analysis of evidence and interpretation of contractual and/or statutory provisions and did not suffer from any manifest error, it is not open to the Court to interfere with the Award. (See ***Indu Engineering & Textiles Ltd. v. Delhi Development Authority, 2001 (5) SCC 691***).

5. The learned Judge, Commercial Court although reminded himself of the limited jurisdiction that the Court exercises in deciding such an application has failed to even indicate briefly with reasons for not accepting the objections raised by the appellant.

6. Reasons introduce clarity in an order. In deciding the said application, the learned Judge Commercial Court is expected and required to indicate its reasons, howsoever brief, in its order so as to disclose its mind. It is all the more necessary when its order is amenable to further avenue of challenge. Failure to give reasons amounts to denial of justice. In the celebrated case of ***Alexander Machinery (Dudley) Ltd. v. Crabtree***

reported at **1974 LCR 120** it was observed: *“Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at”*. Reasons substitute subjectivity by objectivity. In a recent judgment ***State Project Director, UP Education for All Project Board & Ors. v. Saroj Maurya & Ors.***, reported at **2024(8) SCR 733** the Hon'ble Supreme Court observing that no decision could be legally sustainable in the absence of reasoning set aside the decision of the Division Bench of the High Court as the said decision failed to disclose and furnish any reason.

7. In view of the fact that the impugned order is unreasoned, we set aside the order under appeal and direct the learned Judge, Commercial Court at Alipore to rehear the application for setting aside of the Award and decide the matter afresh and dispose of the said application for setting aside of the Award by a reasoned order without being influenced by any observations made in this order.

8. In view of the fact that the respondent is the award holder and the matter is pending since 2021, we direct the learned Judge, Commercial Court, Alipore to dispose of the application preferably within three months from the date of communication of this order by either party without granting any adjournment to either of the parties unless it is unavoidable. Since the parties have filed their respective law notes before the learned Commercial Court the hearing of the application should be expedited.

9. It appears from the order dated 16th May, 2024 that a sum of Rs. 1,16,94,845/- has been secured with the learned trial judge. The said

security shall continue till the disposal of the application for setting aside of the Award which is now required to be heard afresh.

10. With the aforesaid direction, the appeal is, accordingly, disposed of.

11. TCR shall be sent down to the Commercial Court concerned.

12. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)