NTPC LTD. A

v.

M/S. DECONAR SERVICES PVT. LTD.

(Civil Appeal No. 6483 of 2014)

MARCH 04, 2021 B

[N.V. RAMANA, SURYA KANT AND ANIRUDDHA BOSE, JJ.]

Arbitration Act, 1940: Arbitral award – Objections against – For the objector/appellant in order to succeed in their challenge against an arbitral award, they must show that the award of the arbitrator suffered from perversity or an error of law or that the arbitrator has otherwise misconducted himself – Merely showing that there is another reasonable interpretation or possible view on the basis of the material on the record is insufficient to allow for the interference by the Court. C

Judicial review: Arbitral award – Held: Court does not sit in appeal over an award passed by an arbitrator. D

Dismissing the appeals, the Court

HELD : 1.1 This Court has consistently held that the Court does not sit in appeal over an award passed by an arbitrator. [Para 11][473-A-B] E

Kwality Manufacturing Corporation v. Central Warehousing Corporation **(2009) 5 SCC 142 – relied on.**

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1.2 It is also a settled proposition that where the arbitrator has taken a possible view, although a different view may be possible on the same evidence, the Court would not interfere with the award. [Para 12][473-E]

Arosan Enterprises Ltd. v. Union of India **(1999) 9 SCC 449 : [1999] 2 Suppl. SCR 621 – relied on** G

2. For the objector/appellant in order to succeed in their challenge against an arbitral award, they must show that the award

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of the arbitrator suffered from perversity or an error of law or that the arbitrator has otherwise misconducted himself. Merely showing that there is another reasonable interpretation or possible view on the basis of the material on the record is insufficient to allow for the interference by the Court. [Para 13][474-C-D]

State of U.P. v. Allied Constructions **(2003) 7 SCC 396 : [2003] 2 Suppl. SCR 55;** *Ravindra Kumar Gupta and Company v. Union of India* **(2010) 1 SCC 409 : [2009] 16 SCR 142;** *Oswal Woollen Mills Limited v. Oswal Agro Mills Limited* **(2018) 16 SCC 219 : [2018] 3 SCR 1062 – relied on.**

3. In the facts at hand, it is an admitted fact that there was substantial delay attributable to the appellant in handing over the sites for the 68 B, C and D quarters to the respondent. The appellant has not contested this finding. With respect to the first issue, *viz.*, on the issue of refund of rebate, the Arbitrator held that the rebate of 16% on the price of construction of 100 units of A and B quarters was given by the respondent on the condition that he would be able to execute both the works simultaneously. The Arbitrator interpreted the rebate as a conditional one on analysis of the documents on record, particularly the letter dated 14.06.1988 sent by the respondent to the appellant subsequent to the negotiations held between them, the award of both contracts to the respondent on the same date and the works programme (L-2) for both the works. The Arbitrator specifically highlighted that the appellant had not denied the L-2 programme, which indicated that both the works were to be carried out together. From a reading of the above material, the Arbitrator held that the intention of the parties was to complete the work together, which would have enabled the respondent to reduce its costs and optimizing its charges, thereby allowing it to grant the 16% rebate to the appellant. By delaying the handing over of the sites, the appellant had therefore breached the condition for the grant of rebate, entitling the respondent to a refund of the same. [Paras 15, 16][474-F-H; 475-A-C]

4. The appellant sought to canvas an alternate interpretation regarding the rebate on the basis of the letter dated 14.06.1988, stating that the same was granted merely for the awarding of both sets of contract to the respondent. While such an interpretation is possible, this is not sufficient to interfere with the award passed by the Arbitrator. As already highlighted, the Court does not sit as an appellate Court over the decision of an arbitrator, and cannot substitute its views for that of the Arbitrator as long as the Arbitrator had taken a possible view of the matter. In the present case, the Arbitrator has given clear reasoning for the possible view taken by him on the interpretation of the contract between the parties. As such, the Courts below rightly refused to interfere with the holding of the Arbitrator on the first issue. [Para 17] [475-C-E]

5. The second issue pertains to the grant of escalation charges for work done by the respondent beyond the scheduled period of the contract. The Arbitrator only allowed a part of the claim made by the respondent under this head. The Arbitrator took a view on the construction of the clauses of the contract that the firm price clause operated only with respect to the period for which the contract subsisted, and would not subsist beyond the scheduled period of the contract. The Arbitrator also noted that the appellant accepted the work undertaken by the respondent beyond the period of the contract without objections. The Arbitrator also carefully assessed the period of delay attributable to the appellant and awarded escalation to the respondent only for the same. With respect to the question of law as to whether the Arbitrator could order such an escalation, this Court has, in a catena of judgments, upheld the same. [Paras 18, 19][475-E-H; 476-A]

Assam State Electricity Board v. Buildworth Private Limited **(2017) 8 SCC 146 : [2017] 7 SCR 123 – relied on.**

New India Civil Erectors (P) Ltd. v. Oil & Natural Gas Corporation **(1997) 11 SCC 75 : [1997] 2 SCR 86;** *State of Orissa v. Sudhakar Das (Dead) by Lrs* **(2000) 3 SCC 27 : [2000] 1 SCR 1136;** *General Manager,*

A *Northern Railway v. Sarvesh Chopra* **(2002) 4 SCC 45 : [2002] 2 SCR 156 – held inapplicable.**

6. Any decision regarding the issue of whether an arbitrator can award a particular claim or not, will revolve on the construction of the contract in that case, the evidence placed before the B **arbitrator and other facts and circumstances of the case. No general principle can be evolved as to whether some claim can be granted or not. The appellant has neither been able to point out any error apparent on the face of the record, nor otherwise made out a case for interference with the award by the Arbitrator** C **with respect to this issue. [Paras 25, 26][477-F-G; 478-A-B]**

Case Law Reference

(2009) 5 SCC 142	**relied on**	**Para 11**
[1999] 2 Suppl. SCR 621	**relied on**	**Para 12**
D **[2003] 2 Suppl. SCR 55**	**relied on**	**Para 13**
[2009] 16 SCR 142	**relied on**	**Para 13**
[2018] 3 SCR 1062	**relied on**	**Para 13**
[2017] 7 SCR 123	**relied on**	**Para 19**
E **[1997] 2 SCR 86**	**held inapplicable**	**Para 22**
[2000] 1 SCR 1136	**held inapplicable**	**Para 23**
[2002] 2 SCR 156	**held inapplicable**	**Para 24**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6483 of 2014. F

From the Judgment and Order dated 09.04.2010 of the High Court of Delhi at New Delhi in FAO(OS) No. 136/2010.

With

Civil Appeal No. 6484 Of 2014. G

Puneet Taneja, Manmohan Singh, Ms. Laxmi, Advs. for the Appellant.

R. Gowrishankar, S. Rajappa, Advs. for the Respondent.

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The Judgment of the Court was delivered by

N. V. RAMANA, J.

1. The present Civil Appeals, by way of Special Leave arise out of the impugned common judgment dated 09.04.2010 passed by the Division Bench of the High Court of Delhi, whereby the High Court dismissed the appeals filed by the present appellant against the dismissal of their objections to an award passed by the Arbitrator under the Arbitration Act, 1940.

2. A conspectus of the facts necessary for the disposal of the present appeal is as follows: the appellant had issued two tenders for the construction of certain quarters in which the respondent had participated. The first project related to the construction of 100 units of A and B type quarters. The second, was with respect to construction of 68 units of B, C and D type quarters. It appears that while the respondent was L-3 with respect to the first project, he was L-2 with respect to the second. After negotiations between both parties, the appellant decided to award both contracts to the respondent on the basis of an offer by the respondent of 16% rebate on the prices for completing the first project, in the event he was awarded both contracts. The two letters of award were issued on 29.06.1988 to the respondent. It appears from the record that there was some delay in the handing over of sites by the appellant, which resulted in a delay in the completion of the construction of quarters in both projects. Since there were disputes between the parties regarding the final payment due to the respondent-contractor, the respondent sought arbitration under the dispute resolution clause, and an Arbitrator was appointed.

3. The learned Arbitrator, vide awards dated 07.07.2000, granted relief to the respondent under different heads of the contract. With respect tothe first contract pertaining to the construction of 100 units of A and B type quarters, the Arbitrator awarded a sum of Rs. 23,89,424/- with interest at 18% *per annum pendente lite* and 21% future interest to the respondent. With respect to the second contract pertaining to the construction of 68 units of B, C and D type quarters, the Arbitrator awarded Rs. 24,36,532/- at 18% per annum *pendente lite* and 21% future interest to the respondent.

4. Aggrieved by the above awards, the appellant filed objections against both the awards before the Delhi High Court under Sections 30

A and 33 of the Arbitration Act, 1940. *Vide* separate orders dated 16.12.2009, the learned Single Judge of the Delhi High Court dismissed the objections of the appellant (except to the extent of modifying the interest rate granted by the Arbitrator) with cost of Rs. 50,000/- and made the award an order of the Court.

B 5. The appellant challenged the above orders in appeal before the Division Bench of the High Court under Section 39, Arbitration Act, 1940, which was dismissed *vide* the common impugned judgment dated 09.04.2010, with cost of Rs. 10,000/-.

6. Aggrieved by the same, the appellant has filed the present Civil C Appeals by way of Special Leave against the impugned judgment.

7. Heard the learned counsel for the appellant and the respondent at length.

8. The learned counsel for the appellant confined his arguments to three main points- the refund of the rebate agreed upon by the parties, D the grant of escalation of charges for work done beyond the scheduled period and the costs imposed on the appellant by all three forums below. Although the first issue of the three arises only in Civil Appeal No. 6484 of 2014, as the latter two issues are common to both appeals, and the facts are connected, all the issues are being taken up together.

E 9. The learned counsel for the appellant submitted that the Arbitrator erred in holding that the rebate was a conditional one, as the terms of the offer by the respondent and the letter of award do not indicate the same. Further, the learned counsel also submitted that the Arbitrator erred in granting escalation of prices when the contract F expressly indicated that the "*quoted price shall remain firm during the execution of the contract*". The Courts below should therefore have interfered with the award passed by the Arbitrator as the same was passed contrary to the terms of the contract between the parties.

10. On the other hand, the learned counsel for the respondent G supported the impugned judgment passed by the High Court and stated that there are concurrent findings against the appellant, who has only been prolonging the litigation. The respondent submitted that the scope of interference in an arbitral award was limited, as the Court did not sit in appeal over an award. As long as the Arbitrator has taken a reasonable view, the Court should not interfere in the same.

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11. Before proceeding further, it is necessary to make note of the scope of interference by Courts in arbitral awards passed under the Arbitration Act, 1940. This Court has consistently held that the Court does not sit in appeal over an award passed by an arbitrator. In ***Kwality Manufacturing Corporation v. Central Warehousing Corporation*, (2009) 5 SCC 142** this Court held as follows:

> "**10.** At the outset, it should be noted that the scope of interference by courts in regard to arbitral awards is limited. A court considering an application under Section 30 or 33 of the Act, does not sit in appeal over the findings and decision of the arbitrator. Nor can it reassess or reappreciate evidence or examine the sufficiency or otherwise of the evidence. The award of the arbitrator is final and the only grounds on which it can be challenged are those mentioned in Sections 30 and 33 of the Act. Therefore, on the contentions urged, the only question that arose for consideration before the High Court was, whether there was any error apparent on the face of the awardand whether the arbitrator misconducted himself or the proceedings."
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> (*emphasis supplied*)

12. Further, it is also a settled proposition that where the arbitrator has taken a possible view, although a different view may be possible on the same evidence, the Court would not interfere with the award. This Court in ***Arosan Enterprises Ltd. v. Union of India*, (1999) 9 SCC 449** held as follows:

> "**36.** Be it noted that by reason of a long catena of cases, it is now a well-settled principle of law that reappraisal of evidence by the court is not permissible and as a matter of fact exercise of power by the court to reappraise the evidence is unknown to proceedings under Section 30 of the Arbitration Act. In the event of there being no reasons in the award, question of interference of the court would not arise at all. In the event, however, there are reasons, the interference would still be not available within the jurisdiction of the court unless of course, there exist a total perversity in the award or the judgment is based on a wrong proposition of law. In the event however two views are possible on a question of law as well, the court would not be justified in interfering with the award.

A **37.** The common phraseology "error apparent on the face of the record" does not itself, however, mean and imply closer scrutiny of the merits of documents and materials on record. The court as a matter of fact, cannot substitute its evaluation and come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. If the view of the arbitrator is a possible view the award or the reasoning contained therein cannot be examined..."

13. From the above pronouncements, and from a catena of other judgments of this Court, it is clear that for the objector/appellant in order to succeed in their challenge against an arbitral award, they must show that the award of the arbitrator suffered from perversity or an error of law or that the arbitrator has otherwise misconducted himself. Merely showing that there is another reasonable interpretation or possible view on the basis of the material on the record is insufficient to allow for the interference by the Court [**See *State of U.P. v. Allied* Constructions, (2003) 7 SCC 396; Ravindra *Kumar Gupta and Company v. Union of India*, (2010) 1 SCC 409; *Oswal Woollen Mills Limited v. Oswal Agro Mills Limited*, (2018) 16 SCC 219**].

14. Keeping in view the above principles, the question before us is whether the arbitral awards in question are assailable on any of the available grounds. While deciding this, due regard must also be given to the fact that both the learned Single Judge, and subsequently the Division Bench, of the Delhi High Court have concurrently held against the appellant herein.

15. Coming to the facts at hand, it is an admitted fact that there was substantial delay attributable to the appellant in handing over the sites for the 68 B, C and D quarters to the respondent. The appellant has not contested this finding before us.

16. With respect to the first issue, *viz.*, on the issue of refund of rebate,the Arbitrator held that the rebate of 16% on the price of construction of 100 units of A and B quarters was given by the respondent on the condition that he would be able to execute both the works simultaneously. The Arbitrator interpreted the rebate as a conditional one on analysis of the documents on record, particularly the letter dated 14.06.1988 sent by the respondent to the appellant subsequent to the negotiations held between them, the award of both contracts to the respondent on the same date and the works programme (L-2) for both

the works. The Arbitrator specifically highlighted that the appellant had not denied the L-2 programme, which indicated that both the works were to be carried out together. From a reading of the above material, the Arbitrator held that the intention of the parties was to complete the work together, which would have enabled the respondent to reduce its costs and optimizing its charges, thereby allowing it to grant the 16% rebate to the appellant. By delaying the handing over of the sites, the appellant had therefore breached the condition for the grant of rebate, entitling the respondent to a refund of the same.

17. The learned counsel for the appellant sought to canvas an alternate interpretation regarding the rebate on the basis of the letter dated 14.06.1988, stating that the same was granted merely for the awarding of both sets of contract to the respondent. While we are in agreement with the appellant that such an interpretation is possible, we are of the opinion that this is not sufficient to interfere with the award passed by the Arbitrator. As already highlighted, the Court does not sit as an appellate Court over the decision of an arbitrator, and cannot substitute its views for that of the Arbitrator as long as the Arbitrator had taken a possible view of the matter. We are of the considered opinion that in the present case, the Arbitrator has given clear reasoning for the possible view taken by him on the interpretation of the contract between the parties. As such, the Courts below rightly refused to interfere with the holding of the Arbitrator on the first issue.

18. The second issue pertains to the grant of escalation charges for work done by the respondent beyond the scheduled period of the contract. It is significant to note herein that the Arbitrator only allowed a part of the claim made by the respondent under this head. In Civil Appeal No. 6483 of 2014, the Arbitrator awarded a sum of Rs. 17,86,212/- against a claim of Rs. 66,98,773/-, while in Civil Appeal No. 6484 of 2014, the Arbitrator awarded a sum of Rs. 3,03,419/- as against a claim of Rs. 42,20,261/-. The Arbitrator took a view on the construction of the clauses of the contract that the firm price clause operated only with respect to the period for which the contract subsisted, and would not subsist beyond the scheduled period of the contract. The Arbitrator also noted that the appellant accepted the work undertaken by the respondent beyond the period of the contract without objections. The Arbitrator also carefully assessed the period of delay attributable to the appellant and awarded escalation to the respondent only for the same.

19. With respect to the question of law as to whether the Arbitrator could order such an escalation, this Court has, in a catena of judgments, upheld the same. A three-Judge Bench of this Court in ***Assam State Electricity Board v. Buildworth Private Limited*****, (2017) 8 SCC 146,** was faced with almost identical circumstances. In that case, the Arbitrator granted escalation charges beyond what was permissible under the contract between the parties, which prescribed a cap on the same. Upholding such an award, the Court in that case held as follows:

> "**13.**The arbitrator has taken the view that the provision for price escalation would not bind the claimant beyond the scheduled date of completion. This view of the arbitrator is based on a construction of the provisions of the contract, the correspondence between the parties and the conduct of the Board in allowing the completion of the contract even beyond the formal extended date of 6-9-1983 up to 31-1-1986. Matters relating to the construction of a contract lie within the province of the Arbitral Tribunal. Moreover, in the present case, the view which has been adopted by the arbitrator is based on evidentiary material which was relevant to the decision. There is no error apparent on the face of the record which could have warranted the interference of the court within the parameters available under the Arbitration Act, 1940. The arbitrator has neither misconducted himself in the proceedings nor is the award otherwise invalid."
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> (*emphasis supplied*)

20. We are of the opinion that the above holding of this Court is directly applicable to the present case. The Arbitrator in the present case has constructed the present contract, and the fixed price clause, in the same manner. This construction was on the basis of the evidence on record and the submissions of the counsel before him. The Arbitrator has carefully delineated the period of delay attributable to the appellant, and has granted the claim of the respondent only to that limited extent.

21. The counsel for the appellant has placed on record certain judgments of this Court, which according to him mandate a different view. As such, it would be necessary to analyze the same.

22. In ***New India Civil Erectors (P) Ltd. v. Oil & Natural Gas Corporation*****, (1997) 11 SCC 75**, this Court rejected the claim for escalation of prices during the period of delay on the basis of the specific

stipulation in the contract therein, which specifically excluded price escalation "*till the completion of work*". On the other hand, in the present case, the contractual clause stipulates only that the price would be firm during the "*period of execution of the contract*", which the Arbitrator took to refer only to the 12 month period originally stipulated for the execution of the contract. This may appear to be a technical distinction, but it must be remembered that construction of a contract is in the domain of the Arbitrator, and as long as the interpretation given is a possible view, the Court may not interfere with the same. In the ***New India Civil Erectors*** case (*supra*), this Court was of the opinion that, in view of the specific clause of the contract in that case, the granting of escalation prices was not a possible view. This is not the case in the present matter. As we have already held above, we are of the opinion that in the facts and circumstances of the present case, the view taken by the Arbitrator was a possible one, and cannot therefore be interfered with by the Courts.

23. In ***State of Orissa v. Sudhakar Das (Dead) by Lrs*, (2000) 3 SCC 27**, this Court was not seized of the issue of grant of escalation charges beyond the period of the contract or with respect to delay. As such, it has limited applicability to the present case.

24. In ***General Manager, Northern Railway v. Sarvesh Chopra*, (2002) 4 SCC 45**, the Court was seized of a matter pertaining to a reference to arbitration. The considerations of a Court in such a matter are distinct from those of a Court in appeal over the final award of an Arbitrator. Be that as it may, in that case, a contractual clause between the parties specifically excluded any claims of the contractor arising out of delays attributable to the opposite party, which is not the case in the present matter.

25. It is clear from the above analysis that any decision regarding the issue of whether an arbitrator can award a particular claim or not, will revolve on the construction of the contract in that case, the evidence placed before the arbitrator and other facts and circumstances of the case. No general principle can be evolved as to whether some claim can be granted or not. The judgments placed on record by the appellant, wherein claim for escalation was denied, have to therefore be read in the context of their facts, and cannot be read in isolation. It is clear that all the judgments cited by the appellant can be distinguished on facts.

A 26. In these circumstances, we are of the opinion that the appellant has neither been able to point out any error apparent on the face of the record, nor otherwise made out a case for interference with the award by the Arbitrator with respect to this issue.

27. With respect to the final issue, pertaining to imposition of costs B on the appellant by the forums below, we are not inclined to interfere with the same, in view of the fact that the counsel for the appellant has not pressed the same and looking to the quantum involved.

28. In view of the above, we see no reason to interfere with the impugned judgment passed by the High Court.

C 29. Accordingly, the Civil Appeals filed by the appellant are dismissed. The appellant is directed to pay the pending amounts to the respondent within a period of 6 months from the date of this judgment.

30. Pending applications, if any, are accordingly disposed of.

Devika Gujral Appeals dismissed.