Steel Authority Of India Limited And Others Vs Amiya Steel Private Limited And Others

Court: Calcutta High Court

Date of Decision: Aug. 7, 2019

Acts Referred: Arbitration And Conciliation Act, 1996 â€" Section 16, 34

Hon'ble Judges: Sanjib Banerjee, J; Suvra Ghosh, J

Bench: Division Bench

Advocate: S. N. Mitra, D. N. Sharma, Shailendra Jain, S. Mondal, S. Agarwal, Supriyo Bose, Prithwiraj Sinha, Surajit Sen

Final Decision: Disposed Of

Judgement

The Court : Both sides are in appeal from an order of December 12, 2018 passed on a challenge by the Steel Authority of India Ltd. (SAIL) to an

arbitral award of September 30, 2008. The challenge was under Section 34 of the Arbitration and Conciliation Act, 1996.

The facts have been appropriately recorded in the detailed judgment and order impugned herein. SAIL manufactures steel and steel products and has

a plant at Bokaro. In 2004, SAIL invited tenders for purchase of sponge iron on conversion of iron ore for manufacturing steel at its Bokaro plant. The

claimant in the arbitration proceedings, a manufacturer of sponge iron, submitted its tender and price bid. Certain correspondence were exchanged

between the parties and it appears that a memorandum of understanding was entered into between the parties on February 12, 2005 wherein the

SAIL described as Ã¢â‚¬Å“the purchaserÃ¢â‚¬ and the claimant before the arbitral reference as Ã¢â‚¬Å“the sellerÃ¢â‚¬. Such memorandum of understanding was

valid for a period of a year from March 1, 2005 and it contemplated that SAIL would place purchase orders on the claimant for conversion of iron ore

to be supplied by SAIL to sponge iron as per the agreed specifications. There was a security deposit which was to be furnished.

By a communication of April 7, 2005, the claimant requested SAIL to place purchase orders, but SAIL did not immediately respond to such letter. By

a letter dated May 9, 2005, SAIL requested the claimant to supply its income tax PAN number so that the earnest money deposited could be

refunded. Such letter implied that the agreement was not to be acted upon any further. Disputes and differences arose between the parties and an

arbitral reference commenced. SAIL questioned the very basis of the reference by applying under Section 16 of the Act of 1996. By an order dated

April 10, 2006, the arbitrator rejected the objection. SAIL then filed a counter-statement and the entire matter was considered on merits by the

arbitrator while rendering his award of September 30, 2008.

The claimant sought damages. The arbitrator first went about assessing whether there was a concluded contract between the parties for the claimant

to allege breach of such concluded contract and claim damages as a consequence. The arbitrator found, after a detailed discussion which has been

appreciated even in the impugned judgment, that there was a concluded contract between the parties. The arbitrator then found that there was a

breach and the claimant was liable to be compensated by SAIL. As to the assessment of the quantum, the arbitrator placed reliance on the evidence

of a chartered accountant as to the loss of profit occasioned to the claimant pursuant to the issuance of the letter dated May 9, 2005. The arbitrator

also held that since the agreement could be terminated upon three monthsÃ¢â‚¬â„¢ notice, the agreement would be deemed to have been terminated on or

about August 8, 2005. Thus, the arbitrator awarded damages for the period between March 1, 2005 and August 8, 2005 amounting to a total of

Rs.3.87 crore. Before critically addressing the award, the impugned judgment records the accepted parameters for assessing an arbitral award in this

jurisdiction. There is a reference to Section 34 of the said Act of 1996 and copious references to the principles that ought to be followed on the receipt

of a challenge to an arbitral award. In particular, the Court of first instance notices the principles enunciated in a recent Supreme Court judgment

reported at (2015) 3 SCC 49 (Associate Builders). In course of such discussion, the Court of first instance refers to the arbitrator being the master of

the quality and the quantity of evidence and that if a possible view was taken by the arbitrator on facts, it was not liable to be interfered with in this

jurisdiction of limited authority.

However, despite recording the applicable principles without blemish, when it came to the consideration of the impugned arbitral award or assessing

the propriety thereof, the Court seems to have fallen into error by perceiving that there was no evidence as regards a particular period of time when

the arbitrator was satisfied that the same evidence which applied to the period between March 1, 2005 and March 31, 2005 would suffice for the

subsequent period of April 1, 2005 to August 8, 2005. While the Court of first instance finds that there was no evidence at all for the period after

March 31, 2005, the arbitrator found that the comparable figure for March, 2005 was enough to guide the arbitrator to assess the quantum of damages

suffered based on the price indicated in the memorandum of understanding between the parties and the cost of production per metric tonne likely to be

incurred by the claimant in the reference.

The Court of first instance is clearly in error. Such Court accepts that the arbitrator had appropriately concluded that there was a concluded contract

between the parties. The Court accepts the factum of breach as had been accepted by the arbitrator. The Court accepts the quantum of damages as

awarded by the arbitrator, but only for the month of March, 2005. The completely unacceptable reasoning evident from the judgment impugned for

disregarding the claim for the balance period is that the chartered accountant who was examined on behalf of the claimant had given figures for

financial year 2004-05 and since financial year 2004-05 ended on March 31, 2005, there was no evidence at all as to the cost of production for the

subsequent financial year on the basis of which the arbitrator could have passed the award for the period April 1, 2005 to August 8, 2005.

It has to be appreciated that the matter before the arbitrator was as to what would be the compensation due to the claimant in the reference as a

consequence of the breach by SAIL in cancelling the agreement at a time when purchase orders ought to have been placed and the claimant would

have been otherwise engaged in converting iron ore to sponge iron. There is no dispute Ã¢â‚¬" and none has been pointed out in the judgment impugned

Ã¢â‚¬" that the claimant had to make its manufacturing facility ready for the purpose of undertaking the conversion work. The agreement between the

parties envisaged a continuos process by which iron ore would be supplied by SAIL and the converted sponge iron would be made over by the

claimant to SAIL. The price per metric tonne that the claimant was to receive under the agreement was Rs.7950/-. As per the evidence of the

chartered accountant, the aggregate cost of conversion including transportation was to be Rs.5513/- per metric tonne. If the cost of conversion in the

month of March was to be Rs.5513/- per metric tonne, which is accepted in the judgment and order impugned, it defies reason as to how such

comparable figure for the month of March, 2005 could not be applicable for the month of April or the following month, for that matter. The end of a

financial year and the beginning of another does not imply that cost estimates relevant the previous day become utterly irrelevant the following day. If

the price was to remain constant over the entire period of contract, it is difficult to accept that the cost of production would have been something in

March and quite different in April or the following month.

The evidence before the arbitrator, as far as the month of March was concerned, is found to be adequate in the judgment and order impugned but

since such was the estimate that was sought to be for the year 2004-05, it did not imply that such figure would not be relevant for the following month.

Since the arbitrator awarded the compensation on the same basis for the entire period for which the claimant was found to be entitled, and such period

was not over a long stretch of time, the Court of first instance could not have faulted the award on the ground of it being founded on inadequate

evidence, far less no evidence at all, particularly, since the Court accepted the quantum that was awarded for the month of March, 2005.

The other aspect of the interference by the Court is to the head of costs. It was asserted in the statement of claim by the claimant that it had incurred

Rs.1 lakh by way of expenses. However, the arbitrator, while disposing of the reference, took into account the number of days over which the arbitral

reference was spread and the costs that may have been reasonably incurred by the claimant in course of such proceedings and found Rs.4 lakh to be

a more suitable figure. Matters as to costs are not easily tinkered with unless they appear to be grossly disproportionate to the claim or they shock the

conscience of the Court as being extravagant or the like. If the arbitrator found that Rs.4 lakh would be the appropriate figure, considering the

expenses of the arbitrator, the expenses of the claimant pursuing the claim which substantially succeeded and such relevant considerations, there was

hardly a scope for the Court in exercise of its authority under Section 34 of the Act of 1996 to interfere therewith.

The fundamental basis of the argument on behalf of SAIL in course of the present proceedings has been that the Court of first instance could not

have allowed the quantum of damages even for the month of March, 2005 since the chartered accountant had made a mistake in dealing with the

evidence as would be apparent from the affidavit filed in lieu of examination-in-chief. According to SAIL, the arbitrator failed to notice the

arithmetical mistake and passed an award based on the mistake. In short, it is the submission on behalf of SAIL that even when an arithmetical

mistake is apparent, the Court cannot correct the same in proceedings under Section 34 of the Act of 1996.

In support of such contention, SAIL has referred to the judgment reported at (2010) 11 SCC 296, the judgment in Associate Builders referred to

above and the judgments reported at (2004) 1 SCC 252 and (2018) 11 SCC 328.

It was evident from the award impugned before the Court of first instance that in subtracting the cost of production from the agreed price under the

memorandum of understanding there was an arithmetical error. The claimant was to get Rs.7950/- per metric tonne for supply of the converted goods.

There is no dispute in such regard as the same is evident from letters dated January 22, 2005 and January 25, 2005 exchanged by the parties. The

evidence before the tribunal was that the conversion cost including transportation amounted to Rs.5513/- per metric tonne. Thus, the difference would

be Rs.2437/- per metric tonne and not Rs.2454/- per metric tonne as was found to be the figure by the arbitrator.

When arithmetical errors of such kind are apparent from the face of the award, where the parameters for the calculation or the bases are not altered,

it is always open for a Court in receipt of a challenge under Section 34 of the Act to correct the same. It would be a complete waste of time to notice

such minor arithmetical mistake and to remand the matter back to the arbitrator for correction; though if the mistake is on some assumption or more

complex calculation, the matter may be referred to the arbitrator for correction. In the present case, there was no error committed by the Court of

first instance in correcting the figure from Rs.2454/- per metric tonne to Rs.2437/- per metric tonne.

Accordingly, the appeal preferred by the claimant in the arbitral reference succeeds and the appeal preferred by SAIL fails. The judgment and order

impugned is set aside except insofar as it corrected the arithmetical mistake. The claimant in the reference will be entitled to the full complement of

compensation as found due by the arbitrator except that the rate would be Rs.2437/- per metric tonne instead of Rs.2454/- per metric tonne. Further,

the award of Rs.4 lakh on costs gets resurrected.

APO No.102 of 2019 along with GA No.609 of 2019 and APO No.12 of 2019 along with GA No.113 of 2019 are disposed of without any order as to

costs.

Urgent certified website copies of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.