M/S. DYNA TECHNOLOGIES PVT. LTD. A

v.

M/S. CROMPTON GREAVES LTD.

(Civil Appeal No. 2153 of 2010)

DECEMBER 18, 2019 B

[N. V. RAMANA, MOHAN M. SHANTANAGOUDAR AND AJAY RASTOGI, JJ.]

Arbitration and Conciliation Act, 1996 – ss.31(3) and 34 – Contract entered into between a company and the respondent for an aquaculture unit to be set up by such company – Respondent invited tenders for carrying out certain works for construction of ponds, channels, drains and associated works – Appellant gave proposal, estimate and quotation for carrying out the work – Respondent issued work order on 15.11.94 – On 05.01.95, the respondent instructed the employees of the appellant to stop the work – Appellant claimed compensation for premature termination of the contract – Dispute referred to Arbitral Tribunal – Claim no. 3 (loss of profit), disallowed by the Arbitral Tribunal – Not questioned by the appellant and attained finality – Only objection is in reference to claim no.2 (losses due to unproductive use of machineries) which was accepted by the Arbitral Tribunal for Rs. 27,78,125/- with interest @ 18% p.a.– Single Judge upheld the award – Division Bench partly allowed the appeal and set aside the award of the Tribunal relating to claim no.2 – Held: Mandate u/s.31(3) is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the Courts from a fair reading of the award and documents referred to thereunder, if the need be – In the present case, although the Tribunal dealt with the claims separately under different sub-headings, the award is confusing and jumbled the contentions, facts and reasoning, without appropriate distinction– It abruptly concluded at the end of the factual narration, without providing any reasons – Inadequate reasoning and basing the award on the approval of the respondent cannot be stated to be appropriate considering the complexity of the issue involved, and accordingly the award is unintelligible and cannot be sustained – Legislative intention of providing s.34 (4) was to make the award enforceable, C D E F G H

after giving an opportunity to the Tribunal to undo the curable defects – When the High Court concluded that there was no reasoned award, then the award ceased to exist and the Court was functus officio *u/s.34 for hearing the challenge to the award – In such case, the High Court ought to have considered remanding the matter to the Tribunal in the usual course but, it analyzed the case on merits – However, in the present case such remand to the Tribunal would not be beneficial as the case has taken more than 25 years for adjudication, without any end for the parties – Respondents to pay Rs. 30,00,000/- to the appellant in full and final settlement against claim no.2 within 8 weeks, failing which the appellant will be entitled to interest at 12% p.a. until payment, for providing quietus to the litigation.*

Arbitration and Conciliation Act, 1996 – s.34 – Mandate of – Discussed.

Arbitration and Conciliation Act, 1996 – s.31 – Requirement of reasoned award – Discussed.

Arbitration and Conciliation Act, 1996 – s.34 – Challenge to arbitral award – Award whether unintelligible or there is inadequacy of reasons in award – Held: If the challenge to an award is on the ground that it is unintelligible, the same would be equivalent of providing no reasons at all – Ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award – In case of an award challenged on adequacy of reasons, the Court while exercising jurisdiction u/s.34 has to adjudicate the validity of such award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration – Courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards.

Disposing of the appeal, the Court

HELD: 1.1 Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. Arbitral awards should not be interfered with in a casual and cavalier 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. 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. [Paras 26, 27] [310-H; 311-A-D]

K.N. Sathyapalan (Dead) by Lrs. v. State of Kerala, **(2007) 13 SCC 43 : [2006] 9 Suppl. SCR 864 – referred to.**

1.2 Arbitration proceedings are not *per se* comparable to judicial proceedings before the Court. A party under Indian Arbitration Law can opt for an arbitration before any person, even those who do not have prior legal experience as well. The intention of the legislature to provide for a default rule, should be given rational meaning in light of commercial wisdom inherent in the choice of arbitration. [Paras 30] [312-C]

1.3 The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the Courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regards to the speedy resolution of dispute. Three characteristics of a reasoned order can be fathomed: proper, intelligible and adequate. If the reasoning in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the

A **grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. The Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards. [Paras 35, 36] [313-F-H; 314-A-D]**

Raipur Development Authority v. Chokhamal Contractors **AIR 1990 SC 1426 : [1989] 3 SCR 144 ;** *S. Harcharan Singh v. Union of India* **(1990) 4 SCC 647 : [1990] 1 Suppl. SCR 76 ;** *Som Datt Builders Ltd. v. State of Kerala*, **(2009) 4 ARB LR 13 SC – referred to.**

1.4 The legislative intention of providing Section 34 (4) in the Arbitration Act was to make the award enforceable, after giving an opportunity to the Tribunal to undo the curable defects. This provision cannot be brushed aside and the High Court could not have proceeded further to determine the issue on merits. In case of absence of reasoning the utility has been provided under of Section 34(4) of the Arbitration Act to cure such defects. When there is complete perversity in the reasoning then only it can be challenged under the provisions of Section 34 of the Arbitration Act. The power vested under Section 34 (4) of the Arbitration Act to cure defects can be utilized in cases where the arbitral award does not provide any reasoning or if the award has some gap in the reasoning or otherwise and that

can be cured so as to avoid a challenge based on the aforesaid curable defects under Section 34 of the Arbitration Act. However, in this case such remand to the Tribunal would not be beneficial as this case has taken more than 25 years for its adjudication. When the High Court concluded that there was no reasoned award, then the award ceased to exist and the Court was *functus officio* under Section 34 of the Arbitration Act for hearing the challenge to the award under the provisions of Section 34 and come to a conclusion that the arbitration award was not in terms of the agreement. In such case, the High Court ought to have considered remanding the matter to the Tribunal in the usual course. However, the High Court analyzed the case on merits, but, for different reasons, the validity of High Court's interference not go into. Although the Arbitral Tribunal has dealt with the claims separately under different sub-headings, the award is confusing and has jumbled the contentions, facts and reasoning, without appropriate distinction. The Tribunal rendered the award with narration of facts with references to the annexures wherever it relied upon by it. The Tribunal abruptly concluded at the end of the factual narration, without providing any reasons. Interestingly, the factual narration is coupled with the claimant's argument, which is bundled together. A close reading of the same is required to separate the same wherein the Arbitral Tribunal has mixed the arguments with the premise it intended to rely upon for the claimant's claim. Further, it has reduced the reasons for respondent's defense. In spite of independent application of mind based on the documents relied upon, but cannot sustain the award in its existing form as there is a requirement of legal reasoning to supplement such conclusion. In this context, the complexity of the subject matter stops the Court from supplementing such legal reasoning and the aforesaid award cannot be sustained as being reasoned. [Paras 37-41] [314-E-H; 315-A-D, G-H; 316-A-B]

1.5 From a perusal of the award, the inadequate reasoning and basing the award on the approval of the respondent herein cannot be stated to be appropriate considering the complexity of the issue involved herein, and accordingly the award is unintelligible and cannot be sustained. In any case, the litigation

has been protracted for more than 25 years, without any end for the parties. In totality of the matter, it is considered appropriate to direct the respondents to pay a sum of Rs. 30,00,000/- (Rupees Thirty Lakhs only) to the appellant in full and final settlement against claim No. 2 within a period of 8 weeks, failing which the appellant will be entitled to interest at 12% per annum until payment, for providing quietus to the litigation. [Paras 43, 44] [316-F-H; 317-A]

Russell on Arbitration, **23rd edn. (2007) – referred to.**

Case Law Reference

[2006] 9 Suppl. SCR 864	**referred to**	**Para 20**
[1989] 3 SCR 144	**referred to**	**Para 31**
[1990] 1 Suppl. SCR 76	**referred to**	**Para 32**
(2009) 4 ARB LR 13 SC	**referred to**	**Para 33**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2153 of 2010.

From the Judgment and Order dated 27.04.2007 of the High Court of Judicature at Madras in O.S.A. No. 234 of 2001.

Ms. Renu Gupta, Ms. Akshaya Ganpath, Ms. Diksha Rai, Advs. for the Appellant.

Ramesh Singh, Pankaj Jain, Bijoy Kumar Jain, Advs. for the Respondent.

The Judgment of the Court was delivered by

N. V. RAMANA, J.

1. The question involved herein revolves around the requirement of reasoned award and the cautionary tale for the parties and arbitrators to have a clear award, rather than to have an award which is muddled in form and implied in its content, which inevitably leads to wastage of time and resources of the parties to get clarity, and in some cases, frustrate the very reason for going for an arbitration.

2. This appeal is filed against the final order and judgment dated 27.04.2007, passed by the High Court of Judicature at Madras whereby

the High Court partly allowed the appeal filed by the respondent and set aside the award of Arbitral Tribunal relating to claim no. 2 for payment of compensation for the losses suffered due to unproductive use of machineries.

3. Brief facts of the case are that a contract was entered into between DCM Shriram Aqua Foods Limited (hereinafter referred to as 'DCM' in short) and M/s. Crompton Greaves Limited (hereinafter referred to as "CGL" in short) for an aquaculture unit to be set up by such Principal, namely, DCM. CGL invited tenders for carrying out certain works for construction of ponds, channels, drains and associated works. The appellant M/s Dyna Technologies Pvt. Ltd. gave its proposal, estimate and quotation for carrying out the work. Thereafter, the respondent CGL placed a letter of intent dated 25th July, 1994, relevant portions of which are as under:

> "10.In the event that you are forced to keep your equipment and manpower idle due to non availability of work fronts due to reasons attributable to DCM or due to legal disturbances not connected with you, you shall be compensated as follows:
>
> (i) Maximum seven days of stoppage of work without any compensation.
>
> (ii) CGL reserves the right to advice you to demobilize partially or fully in lieu of paying compensation for such delays. Under such circumstances, you shall be paid such compensation towards transportation of equipment to Site at mutually agreed rates.
>
> (iii) Suitable time extension shall be given to complete the work to compensate the delay caused due to the stoppage of work.
>
> 11. Storage & Security: you will be responsible to provide necessary stores, office and labour camps for your staff at site. Only open area for construction of above will be given to you. Electricity will be provided at one point on chargeable basis at actuals. You will be responsible to tap the same to your required place.
>
> A format work order will be charged subsequently which will cover other General Terms and Conditions. Labour rules, Workmen Compensation etc. which may not be covered by this LOI and the same shall also be part of this LOI."

A 4. The appellant made certain queries and clarifications, and by letter dated 10th October, 1994, CGL amended the contract as suggested by the appellant company. Thereafter, CGL issued work order on 15th November, 1994 setting out the terms and conditions of the work, material portions of which are stated as under:

B **"2. Termination of contract**:

The Company reserves the right to terminate this work at any stage without payment of compensation due to any of the following reasons:

C a. If the original contract between the client and the company is terminated/suspended.

b. The company is unable to proceed with the work due to reasons like non-availability of work fronts, delay in availability of materials or delay in receipt of payments from clients etc.

D

c. If the contractor is not able to carry out work to the satisfaction of the company's clients representatives.

d. If the contractor is unable to ensure adequate progress as required by the company and their purchaser.

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e. Upon termination of this contract/work order, all rights and obligation of the parties, shall cease provided that the termination shall not relieve the contractor of any of his obligations which may have accrued upto the date of termination.

F

Upon termination of this contract/work order due to default on the part of the contractor, he /it shall indemnify the company against all losses incurred by the company as a result of such termination."

G 5. After commencement of the work, the respondent CGL on 5th January, 1995 instructed the employees of the appellant company to stop the work.

6. The appellant company claimed compensation for such premature termination of the contract and ultimately the dispute was H referred to Arbitral Tribunal consisting of three Arbitrators.

7. The appellant-claimant made the following claims:-

(1) Losses due to idle charges.

(2) Losses due to unproductivity of the men and machineries which could not work due to hindrances.

(3) Loss of profit as the contract got dissolved and

(4) Interest on the above claims and

(5) Costs.

8. The aforementioned claims are listed in the statement of claims totalling to Rs. 54,21,170.45 initially on 21st June, 1997 and revised to Rs. 53,83,980.45 on 5th July, 1997.

9. The following is a summary of the final claims:-

(1)	Idle Charges for machineries and demobilisation as approved by Respondent	…Rs. 4,18,551.50
(2)	Losses due to unproductive use of machineries	…Rs. 45,85,286.00
(3)	Loss of profit	…Rs. 20,89,925.00
(4)	And (5) Interest and Costs	… to be assessed
		Rs. 70,93,763.33
	Deduct Payment already received	Rs. 17,09,782.88
	Balance due	Rs. 53,83,980.45
		+
		Interest and costs

10. It may be relevant to note at this stage that so far as claim no. 1 in reference to the losses due to idle charges is concerned, it was finally settled amicably by the parties and the balance towards the interest component also stands paid.

A 11. So far as claim no. 3 in reference to loss of profit is concerned, the same was disallowed by the Arbitral Tribunal and it was later not questioned by the appellant-claimant and that attained finality.

12. The only objection is in reference to claim no. 2, *i.e.*, losses due to unproductive use of machineries which was accepted by the B Arbitral Tribunal for a sum of Rs. 27,78,125/- with interest @ 18% p.a. *vide* its award dated 30th April, 1998 and Correction to award dated 5th May, 1998.

13. Aggrieved by the award passed by the Tribunal, an original petition was filed before the learned Single Judge of the High Court of C Judicature at Madras, questioning the award under Section 34 of the Arbitration and Conciliation Act, 1996 (*hereinafter* "Arbitration Act"), by the respondent. The learned Single Judge, while upholding the award of the Tribunal, observed as under:

D "7.**Thus the Arbitrators have given a specific finding that the amount paid as compensation is actually the amount expended by the fourth respondent and therefore the petitioner is liable to reimburse the loss sustained by the fourth respondent. Therefore, this contention is also not acceptable**.

E …

9. Further, the learned counsel for the petitioner took this court to various portions of the Award and tried to convince this Court that the Arbitrators have not decided the issue fully appreciating the evidence on record. In the judgment of the Supreme Court F reported in M/s Sundarsan Trading Company v. Government of Kerala (AIR 1989 Supreme Court 890) it has been clearly held that the power of the Arbitrator in respect of the interpretation of the contract in a matter for arbitration, the Arbitrator can pass the Award by taking a particular view of the contract and hence, G the Court cannot substitute its own decision. Therefore, this Court cannot reappraise the evidence and substitutes its views and set aside the Award. Also in the case of Tamil Nadu Civil Supplies Corporation Limited v. Albert and Company (2000 (III) CTC 83), this Court has held that as per Section 34 of the Act, the Award H of the Arbitrator can be set aside only on the limited grounds

and the Award cannot be interfered with simply because another view is possible on the available materials. The arbitrator is a Judge of choice of parties and this Court cannot set aside unless it suffers from error apparent on the face of the record. It cannot be set aside even if the Court can come to different conclusion on the same facts. The learned counsel for the petitioner has not pointed out any such ground. It cannot also be said that the Award is perverse or has error apparent on the face of the record. Therefore, the Award passed by the Arbitrator is not illegal or invalid and cannot be set aside. Therefore, the petition is dismissed."

(**emphasis supplied**)

14. Aggrieved by the aforesaid decision of the learned Single Judge, the respondent appealed before the Division Bench in O.S.A No. 234 of 2001. As aforementioned, the High Court *vide* impugned order partly allowed the appeal and set aside the award of the Tribunal relating to claim no. 2. The High Court was of the opinion that the award does not contain sufficient reasons and the statements contained in paragraph 3.1 (a) to 3.1 (g) of the award does not provide any reasons, discussions or conclusion. The High Court has observed in the following manner:

"18. It is of course true that an Arbitrator cannot be expected to write a detailed judgment as in a law Court. However, the present Act contemplates that the award of the Arbitrator should be supported by reason. The decision relied upon by the counsel for the respondent, rendered on the basis of the Arbitration Act, 1940, cannot be pressed into service keeping in view the specific provision contained in the Act. Moreover, even assuming that the ratio of the said decision is applicable, we cannot cull out any underlying reason in the award for directing payment of compensation. The basis for the right of the claimant and the basis of the liability of the present appellant have not been indicated anywhere within four corners of the award and in spite of the best efforts it is not possible to discover even any latent reason in the award.

19. It was also contended that the discussion in para 3.1(g) of the award contains the basis and reason given by the Tribunal.

A We have carefully gone through such paragraph as well as the preceding and subsequent paragraphs. In our considered opinion, the statements recited in para 3.1 including para 3.1(g) are only substance of the submissions/claim made by the claimant and para 3.1(g) cannot be construed as a conclusion or even the reasoning given by the Tribunal."

B

15. Having come to a conclusion that the arbitral award was deficient due to the lack of reasoning, the High Court proceeded further to note that the option of Section 34 (4) of the Arbitration Act was not necessary as the compensation could not have been claimed considering the fact that the work order has provision barring claim no. 2, in the following manner:

C

"20. Learned counsel for the respondent has relied upon Section 34(4) of the Arbitration Act and has submitted that in case if this Court finds that the Arbitral Tribunal has not given reason, even though it is so required under Section 31(3) by invoking jurisdiction under Section 31(4), this Court can give opportunity to the Arbitral Tribunal to resume the arbitral proceedings or to take action as in the opinion of the Arbitral Tribunal would eliminate the grounds for setting aside the arbitral award.

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21. We do not think that the present case is a fit case where the Arbitral Tribunal can be called upon to give reasons in support of its conclusion. This is because, in our considered opinion, the terms of the contract clearly exclude the possibility of payment of any compensation on account of premature termination of the contract as envisaged in para C. 2(a)."

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16. Thereafter, the High Court proceeded further to note that the arbitral proceeding was beyond the competence of the Tribunal by considering the conditions under the work order.

17. Learned counsel for the appellant submits that the Arbitral Tribunal comprising of three Arbitrators has looked into the entire material available on record and recorded a finding in reference to claim no. 2 (losses suffered due to unproductive use of machineries) based on the case set up by the parties taking note of Section 73 of the Indian Contract Act, 1872 (*hereinafter* "Contract Act") and relying on the evidence including appraisal of the log books approved by the respondent and held that actual losses/expenses were incurred by the appellant.

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In the given circumstances it was not open for the High Court in appeal to reappraise and substitute its own view in contravention of the clause of the agreement pursuant to which the arbitral dispute was raised and a finding came to be recorded in acceptance of the claim with regard to the losses suffered by the appellant due to unproductive use of machineries and the interference made by the High Court is beyond the scope of Section 37 of the Arbitration Act.

18. Learned counsel further submits that the Division Bench of the High Court did not hold that the evidence relied upon by the Arbitral Tribunal, *i.e.*, the log books were not proper or were lacking quality. As a matter of fact, there was no challenge to the same in the appeal filed by the respondent under Section 37 of the Arbitration Act and only the liability was questioned. The learned counsel further submitted that the only submission of the learned counsel for the respondent before the Arbitral Tribunal and also before the learned Single Judge of the High Court was that there was no provision under the contract granting compensation for loss incurred for unproductive use of machinery and that the Arbitral Tribunal has exceeded its jurisdiction. This issue was examined by the Tribunal and confirmed by the Single Judge of the High Court, after examining the objections raised by the respondent under Section 34 of the Arbitration Act. The learned counsel for the appellant contented that interference at the appellate stage is beyond the scope of Section 37 of the Arbitration Act and in the given circumstances, claim no. 2 which has been set aside by the Division Bench of the High Court under the impugned judgment deserves to be interfered by this Court.

19. Learned counsel also submits that Section 73 of the Contract Act confers a right which is for public interest/benefit and contractual clause, if any, which takes away such a right unilaterally of a party is violative of Section 23 of the Contract Act. The law which is made for an individual's benefit can be waived by only by such individual, however, where law is for public interest or has policy element, then such rights cannot be waived by an individual person inasmuch as such rights are a matter of public policy/public interest.

20. Learned counsel further submits that a contractual provision which is in contravention of a specific statutory provision, if allowed to be implemented, the same will result in frustration of a right conferred by law or if the contractual clause is immoral or opposed to

public policy, in such cases the contractual clause is invalid and void *ab initio* and cannot be enforced to disentitle appellant in claiming the actual loss which has been suffered by it and established before the Arbitral Tribunal and which the respondent is under an obligation to reimburse. In the given circumstances, claim no. 2 which has been set aside by the High Court needs interference by this Court. The learned counsel in support has placed reliance on the judgment of this Court in **K.*N. Sathyapalan (Dead) by Lrs. v. State of Kerala,*** (2007) 13 SCC 43.

21. *Per contra*, learned counsel for the respondent, while supporting the findings recorded by the High Court in the impugned judgment, submits that the claim which has been disallowed by the High Court in the impugned judgment is basically a claim for payment of compensation or damages on account of premature termination of contract and neither the Arbitral Tribunal nor the learned Single Judge of the High Court has considered/examined the terms of the contract in appreciating the right of the claimant to claim compensation of damages and the corresponding liability of the respondent to pay/settle the claim. According to him, as per the terms of contract, no such compensation was payable.

22. Learned counsel further submits that it is well settled that the Arbitral Tribunal cannot travel beyond the terms of contract to award compensation. As a matter of fact, in the present case, the terms of contract expressly prohibit that no compensation is payable if the contract is terminated on account of termination of the project. In the face of such express prohibition, the Arbitral Tribunal has exceeded its jurisdiction and committed a manifest error in directing the payment of compensation even without disclosing the basis of arriving at such a conclusion.

23. Learned counsel for the respondent submits that Section 34(2)(a)(iv) of the Arbitration Act clearly envisages that such an award can be set aside if the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration. When there is a specific exclusion/prohibition in the contract, it was not open for the Tribunal to travel beyond the terms of contract in passing an award which has been taken note of by the Division Bench of the High Court in the impugned judgment and has been rightly set aside, supported by cogent reasons. The learned counsel further submitted that what has been observed by the Division Bench of the High Court in the

impugned judgment is based on settled principles of law and needs no interference.

24. We have heard learned counsel for the parties and with their assistance perused the material available on record.

25. Before we devolve into the contractual issues, we need to observe certain pointers on the jurisdiction of the court under Section 34 of the Arbitration Act. Section 34 as it stood before the Amendment Act of 2015, was as follows-

"34 Application for setting aside arbitral award. —

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application furnishes proof that—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

A (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

B (b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for

C the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation. —Without prejudice to the generality of sub-clause

D (ii) it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

(3)An application for setting aside may not be made after three

E months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period

F of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in

G order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

26. There is no dispute that Section 34 of the Arbitration Act limits

H 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 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.

27. 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.

28. Having established the basic jurisprudence behind Section 34 of the Arbitration Act, we must focus on the analysis of the case. The primary contention of the learned counsel appearing on behalf of the appellant is that the award by the learned Tribunal was perverse for want of reasons. The necessity of providing reasons has been provided under Section 31 of the Arbitration Act, which reads as under:

> **"31. Form and contents of arbitral award.-**
>
> **…**
>
> (3) **The arbitral award shall state the reasons upon which it is based**, unless—
>
> (a) the parties have agreed that no reasons are to be given, or
>
> (b) the award is an arbitral award on agreed terms under section 30."
>
> (**emphasis supplied**)

Under the UNCITRAL Model Law the aforesaid provision is provided as under:

A "(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30."

29. Similar to the position under the Model Law, India also adopts a default rule to provide for reasons unless the parties agree otherwise. B As with most countries like England, America and Model Law, Indian law recognizes enforcement of the reasonless award if it has been so agreed between the parties.

30. There is no gainsaying that arbitration proceedings are not *per se* comparable to judicial proceedings before the Court. A party C under Indian Arbitration Law can opt for an arbitration before any person, even those who do not have prior legal experience as well. In this regard, we need to understand that the intention of the legislature to provide for a default rule, should be given rational meaning in light of commercial wisdom inherent in the choice of arbitration.

D 31. A five-Judge Constitution Bench of this Court in the case of ***Raipur Development Authority v. Chokhamal Contractors***, AIR 1990 SC 1426, considered the scope of Section 30 of the Arbitration Act, 1940 and held as under:

"It is now well settled that an award can neither be remitted nor set aside merely on the ground that it does not contain reasons E in support of the conclusion or decisions reached in it except where the arbitration agreement or the deed of submission requires him to give reasons. The arbitrator or umpire is under no obligation to give reasons in support of the decision reached by him unless under the arbitration agreement or in the deed of F submission he is required to give such reasons and if the arbitrator or umpire chooses to give reasons in support of his decision it is open to the Court to set aside the award if it finds that an error of law has been committed by the arbitrator or umpire on the face of the record on going through such reasons. The arbitrator G or umpire shall have to give reasons also where the court has directed in any order such as the one made Under Section 20 or Section 21 or Section 34 of the Act that reasons should be given or where the statute which governs an arbitration requires him to do so."

32. A three-Judge Bench of this Court in another case of ***S. H Harcharan Singh v. Union of India***, (1990) 4 SCC 647, reiterated

its earlier view that the arbitrator's adjudication is generally considered binding between the parties for he is a Tribunal selected by the parties and the power of the Court to set aside the award is restricted to cases set out in Section 30 of the Arbitration Act, 1940.

33. However, the ratio of ***Chokhamal*** case (*supra*) has not found favour of the Legislature, and accordingly Section 31(3) has been enacted in the Arbitration Act. This Court in ***Som Datt Builders Ltd. v. State of Kerala***, (2009) 4 ARB LR 13 SC, a Division Bench of this Court has indicated that passing of a reasoned award is not an empty formulation under the Arbitration Act.

34. It may be relevant to note ***Russell on Arbitration***, 23rd edn. (2007), wherein he notes that:

> "If the Court can deduce from the award and the materials before it, which may include extracts from evidence and the transcript of hearing, the thrust of the tribunal's reasoning then no irregularity will be found…. **Equally, the court should bear in mind that when considering awards produced by non-lawyer arbitrators, the court should look at the substance of such findings, rather than their form, and that one should approch a reading of the award in a fair, and not in an unduly literal way**."
>
> (**emphasis supplied**)

35. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the Courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regards to the speedy resolution of dispute.

36. When we consider the requirement of a reasoned order three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasoning in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground

A that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the B nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted C by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and D unintelligible awards.

37. At this juncture it must be noted that the legislative intention of providing Section 34 (4) in the Arbitration Act was to make the award enforceable, after giving an opportunity to the Tribunal to undo E the curable defects. This provision cannot be brushed aside and the High Court could not have proceeded further to determine the issue on merits.

38. In case of absence of reasoning the utility has been provided under of Section 34(4) of the Arbitration Act to cure such defects. When F there is complete perversity in the reasoning then only it can be challenged under the provisions of Section 34 of the Arbitration Act. The power vested under Section 34 (4) of the Arbitration Act to cure defects can be utilized in cases where the arbitral award does not provide any reasoning or if the award has some gap in the reasoning G or otherwise and that can be cured so as to avoid a challenge based on the aforesaid curable defects under Section 34 of the Arbitration Act. However, in this case such remand to the Tribunal would not be beneficial as this case has taken more than 25 years for its adjudication. It is in this state of affairs that we lament that the purpose of arbitration as an effective and expeditious forum itself stands effaced. H

39. It may be noted that when the High Court concluded that there was no reasoned award, then the award ceased to exist and the Court was *functus officio* under Section 34 of the Arbitration Act for hearing the challenge to the award under the provisions of Section 34 and come to a conclusion that the arbitration award was not in terms of the agreement. In such case, the High Court ought to have considered remanding the matter to the Tribunal in the usual course. However, the High Court analyzed the case on merits, but, for different reasons and we need not go into the validity of High Court's interference.

40. Coming back to the award, we need to see whether the award of the Arbitral Tribunal can be sustained in the instant case. Although the Arbitral Tribunal has dealt with the claims separately under different sub-headings, the award is confusing and has jumbled the contentions, facts and reasoning, without appropriate distinction. The Tribunal rendered the award with narration of facts with references to the annexures wherever it relied upon by it. The Tribunal abruptly concluded at the end of the factual narration, without providing any reasons, in the following manner:

> "**(3) Claim for unproductive usage of machineries**
>
> **....**
>
> (g) **All the above facts clearly establish that the machineries deployed by the Claimant had to do unproductive work by shifting from one place to another to suit the availability of work.The contract contemplates only payment for actual turnover of earthwork and for this they had received amount totaling to Rs. 1709782.88.** The Claimant claims that the hire charges paid to the machineries, men and engineers should be reimbursed to him. He has given the actual expenses in his claim statement.
>
> (**emphasis supplied**)

41. Interestingly, the factual narration is coupled with the claimant's argument, which is bundled together. A close reading of the same is required to separate the same wherein the Arbitral Tribunal has mixed the arguments with the premise it intended to rely upon for

A the claimant's claim. Further, it has reduced the reasons for respondent's defense. In spite of our independent application of mind based on the documents relied upon, but cannot sustain the award in its existing form as there is a requirement of legal reasoning to supplement such conclusion. In this context, the complexity of the subject matter stops
B us from supplementing such legal reasoning and we cannot sustain the aforesaid award as being reasoned.

42. It may be beneficial to reduce the concluding paragraph of the award, which reads as under:

C "3.4. The above arguments and various authorities quoted by them have been studied by the Tribunal and we are convinced that the compensation is payable on the hire charges and expenses incurred by the claimant based on the claims made by him in June 95 and now submitted by the claimant in his revised claim petition on 05.07.1997. **We are convinced that the**
D **machineries have been actually mobilized from the letter R-3, R-8 and R-10 issued by DCM reporting on the number of machineries deployed by Claimant**. The Claimants have produced the log books and bills for the various machineries and modified their claims. **The tribunal had perused the log**
E **books and idle wages approved in C-7 by Respondent and the claims made in R-17**."

(**emphasis supplied**)

43. From the facts, we can only state that from a perusal of the
F award, in the facts and circumstances of the case, it has been rendered without reasons. However, the muddled and confused form of the award has invited the High Court to state that the arbitrator has merely restated the contentions of both parties. From a perusal of the award, the inadequate reasoning and basing the award on the approval of the
G respondent herein cannot be stated to be appropriate considering the complexity of the issue involved herein, and accordingly the award is unintelligible and cannot be sustained.

44. In any case, the litigation has been protracted for more than 25 years, without any end for the parties. In totality of the matter, we
H consider it appropriate to direct the respondents to pay a sum of

Rs. 30,00,000/- (Rupees Thirty Lakhs only) to the appellant in full and final settlement against claim No. 2 within a period of 8 weeks, failing which the appellant will be entitled to interest at 12% per annum until payment, for providing quietus to the litigation. A

45. In view of the conclusions reached, the appeal is disposed of to the extent indicated herein. There shall be no orders as to the costs. B

Divya Pandey Appeal disposed of.