

MMTC Ltd. V/s M/s Vedanta Ltd.¹ (Supreme Court of India, 18 February 2019)

March 04, 2019

Introduction:

The Supreme Court of India recently observed that in the exercise of its appellate powers (under Section 34 and Section 37 of the Arbitration & Conciliation Act, 1996 (“**the Act**”)), the Courts cannot undertake an independent assessment of the merits of an arbitral award.

Factual Background:

M/s Vedanta Ltd. (“**Respondent**”) invoked the arbitration clause in the agreement dated 14 December 1993 (“**Agreement**”) entered into with MMTC Ltd. (“**Appellant**”) claiming payments for goods sold by the Respondent to one Hindustan Transmission Products Ltd. (“**HTPL**”) through the Appellant. By its majority award dated 27 June 2001 (“**Award**”), the three-member Arbitral Tribunal, *inter alia*, allowed the claims of the Respondent and directed the Appellant to pay the same along with interest.

The Appellant challenged this Award u/s 34 of the Act before the Learned Single Judge of the Bombay High Court, *inter alia*, on the ground that the disputes before the Arbitral Tribunal were not arbitrable in as much as the same were not covered by the arbitration clause contained in the Agreement. The Learned Single Judge after considering the entire evidence and material on record dismissed the challenge vide its order dated 05 August 2002. The said order passed by the Learned Single Judge was challenged by the Appellant before the Division Bench of the Bombay High Court only on one ground namely that the disputes before the Arbitral Tribunal were not arbitrable. The Division Bench vide its order dated 9 February 2009 refused to interfere with the order passed by the Learned Single Judge and dismissed the appeal filed by the Appellant.

The Appellant accordingly preferred a Civil Appeal against the said order dated 9 February 2009 passed by the Division Bench of the Bombay High Court before the Supreme Court of India.

Issues and Findings:

1. While examining the question of the arbitrability of the disputes between the Appellant and the Respondent, the Supreme Court revisited the existing position of law² with respect to the scope of interference with an arbitral award in India under Section 34 and 37 of the Act in light of the Arbitration and Conciliation (Amendment) Act, 2015 (“**2015 Amendment**”)³.

¹ Civil Appeal No. 1862 of 2014, Supreme Court of India, 18 February 2019

² *Associate Builders v. Delhi Development Authority*, (2015) 3 SCC 49; *ONGC Ltd. v. Saw Pipes Ltd.* (2003) 5 SCC 705; *Hindustan Zinc Ltd. v. Friends Coal Carbonisation* (2006) 4 SCC 445; *McDermott International v. Burn Standard Co. Ltd. & Ors.* (2006) 11 SCC 181

³Section 34 - Application for setting aside arbitral award. –

- (1) ..
- (2) An arbitral award may be set aside by the Court only if—
 - (a) ...
 - (b) the Court finds that—
 - (i) ...
 - (ii) The arbitral award is in conflict with the public policy of India.
Explanation 1 -- For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—
 - (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or
 - (ii) it is in contravention with the fundamental policy of Indian law; or

2. After analysing the extent to which Courts can substitute the conclusion arrived at by the Arbitral Tribunal with its own conclusion by way of judicial interference, the Supreme Court held that *such interference cannot travel beyond the restrictions laid down under Section 34*. It was clarified that in exercise of powers under Section 37, the Court must only ascertain that the exercise of power by the High Court under Section 34 has not exceeded the scope of the provision. It was accordingly concluded that the Court cannot undertake an independent assessment of the merits of the award.
3. The Supreme Court also observed that in case an arbitral award has been confirmed under Section 34 and thereafter in an appeal under Section 37, the Supreme Court must be extremely cautious and slow to disturb such concurrent findings.
4. On the basis of the above and after appreciating the material on record on the issue of arbitrability of the disputes, the Award, as confirmed by the High Court in exercise of its powers under Section 34 & 37 of the Act, was held to be a possible view based upon reasonable construction of the Agreement and consideration of material on record. Therefore, the Supreme Court declined to interfere with the Award thereby dismissing the civil appeal filed by the Appellant.

ELP COMMENTS

This ruling crystallises the position of law, as it has been settled by judicial precedents from time to time that Courts must exercise judicial restraint while exercising jurisdiction under Section 34 and 37 of the Act unless the findings of the Arbitral Tribunal are ex facie perverse or patently illegal.

In fact, post the 2015 Amendment, it has now been provided under the Act that an arbitral award shall not be set aside merely on the ground of an erroneous application of law or by re-appreciation of evidence. Keeping in mind the scheme of the provisions contained in Section 34 and 37 of the Act and the 2015 Amendment which aims at ensuring that the supervisory role of the Courts is kept at minimum, the Supreme Court has rightly concluded that review of the findings contained in the arbitral award cannot be made in terms of re-assessment of the material on record and/or the merits of the dispute. In the absence of such judicial restraint, the expediency and finality offered by arbitration proceedings as a measure for alternative dispute resolution would be rendered ineffective.

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(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2 -- For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.

- (3) ...
- (4) ...
- (5) ...
- (6) ...