

An award cannot be set aside because it is a non-speaking award

S Ravi Shankar¹

Even though the courts in India have consistently held that the Arbitrator is the final judge relating to finding of facts and relating to the interpretation of the terms of the contract. It is also have been a standard view that while exercising the powers under S.34 of the Arbitration and Conciliation Act, 1996, the courts are discharging their duties as supervising courts as provided under the Act and they are not sitting on an appeal over the Arbitration award. It is again settled law that if the view of the arbitrator is a plausible view then the court cannot set aside the award on the ground of availability of a better view.

But at the same time S.31 of the Act, which deals with the form and contents of the award, in the subsection 3, specifically states that the award shall be a reasoned award in normal circumstances barring two situations. Firstly, if the parties in their agreement agreed that no need for reasons or secondly if it an award passed on agreed terms under S.30 of the Act. The Section.30 of the Act deals with the arbitration awards passed by way of a settlement arrived at between the parties. The first case is that the parties themselves enter an agreement and expressly state that the arbitrator award need not state reasons.

In such a situation, a question arises whether an arbitration award can be set aside since it is not a reasoned award, as specified in S.31(3) of the Act. In recent Judgment passed on 24th July 2017, the High Court of Himachal Pradesh in **Praveen Diwan and others Vs Himachal Pradesh Agro Industries corporation Limited 2017 SCC online 1006** held that the award cannot be set aside on the ground that it is not a speaking award. The judgment upheld an award stating that the “reasonableness of the reasoning of an arbitrator cannot be challenged” as held by the Supreme Court of India in *Sudharshan Trading Company Vs Government of Kerala 1989 (2) SCC 38*.

The Courts in India, have consistently taken a view that the supervising court has to restrict itself to the grounds provided in S.34 while testing the sustainability of an Arbitrator award. The Supreme Court of India in the above said *Sudharshan Trading Company (supra)* Judgment also observed that in a non-speaking award, where reasons are not given by the arbitrator, it is not open for the court to probe the mental process of the arbitrator and speculate, where no reasons have been given by the arbitrator for arriving at a certain conclusion.

More over Courts have also stated that it is the duty of the court to take a protective view in favour of a non-speaking award, which can be seen from the judgment of the Supreme Court in *New India Erectors (P) Ltd Vs Oil and Natural Gas commission (1997)11 SCC 75*. The Supreme Court of India in *State of Rajasthan Mines & Minerals Limited Vs Eastern Enterprises*

¹ The Author is an international and Domestic Arbitration lawyer and a Senior partner of Law Senate Arbitration law firm having its offices in New Delhi and Mumbai

(1999) 9 SCC 283 held that the jurisdiction of the court to interfere in the non-speaking award is very limited and court should not try to infer reasons when they are not given by the Arbitrator.

