
Bank Guarantee can be released by an Additional Arbitration Award – Delhi High Court

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One of the frequently encountered issue in arbitration proceedings is missing out of a claim and parties seeking remedy by way of an amendment to the award or by way of an additional award. Normally the scope of correction of the award under S.33 of Arbitration and Conciliation Act,1996 is limited to errors and if both the parties agree, an interpretation of an issue. But if a substantial issue is already decided in the arbitration award but a consequential prayer was missed out in the claim and hence arbitrator could not grant an award, then an application seeking additional arbitration award can be filed. In such situations, the opposite parties also raise the issue of limitation, without understanding the settled law that the consequential directions do not require to be raised within the limitation period, if the substantial issues are already raised within the limitation period.

Relating to an arbitration arising out of a supply contract between Motorola and Mahanagar Telecom Nigam Limited (MTNL), in a proceeding to challenge the arbitration award under S.34 of the Arbitration & Conciliation Act,1996, Delhi high court by a detailed judgment dated 31st March, 2017, in SCC Online Del 7736, upheld the sustainability of not only the main arbitration award but also an additional arbitration award. In this case MTNL challenged the Arbitration award which was in favour of the claimant on various grounds, before the High Court of Delhi.

Both the arbitral awards involved in this case were passed by a sole Arbitrator arising out of a Letter of intent dated 11th January 2000, for providing 50K lines of CDMA IS-95 A, WLL equipment project in Delhi MTNL on turnkey for survey, design and supply of equipment, installation, testing, commissioning, making over system consignee, training, providing AMC etc., in favour of Motorola. The arbitrator passed the final arbitration award in favour of Motorola, holding that the breaches to the contract are attributable to MTNL and not to Motorola. But since there was no specific claim seeking the return of bank guarantees furnished by Motorola, the award did not have such a direction. Hence Motorola filed an application seeking an additional award, directing MTNL to return the Bank Guarantee. Hence Arbitrator passed an additional award directing MTNL to return the Bank Guarantees.

Hence MTNL challenged both the main award as well as additional award. The additional award was challenged under S.34 on two main grounds. The first was that the application was barred by law of limitation, hence it must be rejected. The 2nd ground was that in the absence of an issue relating to return of Bank guarantee and consequential findings in the main award, the arbitrator ought to have rejected the application for additional award. But in a detailed judgment, Justice Mr. Muralidhar of Delhi High Court upheld the award with a finding that the additional award is legal and no need to frame a separate issue for return of BG since the

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arbitrator has already found that the breach is committed by MTNL, in the main award and direction to return of BGs is just a consequential award.

