
Plea not taken in the Arbitration cannot be raised in S.34 or in the SLP – Supreme Court of India

S Ravi Shankar¹

Arbitration is kept beyond the technical complex procedures prescribed in the Code of Civil Procedure & Evidence Act. Arbitration Procedure can be either decided by the parties jointly or by the arbitrator in consultation with parties, in case of Adhoc Arbitration. If it is an institutional Arbitration the procedure prescribed in the Rules of the Arbitral Institution, shall have to be followed. The foundation of Arbitration is giving equal opportunity to all the parties. Leaving that the arbitration procedure is very flexible and the arbitrator need not be very strict in the pleadings also.

But a recent Arbitration appeal which came up for hearing before Supreme Court of India, proves that pleadings before the Arbitrator is also important and a party cannot take a new ground which was never raised before the Arbitrator, while challenging the arbitration award. That means in the application filed under S.34, grounds which were not raised before the arbitrator cannot be raised. This is mainly because if Arbitrator had the chance of examining that ground he would have changed his verdict.

Facts of the case: Union of India (Railways) granted a works contract to M/S. Suska (P) Ltd for the repairing work of Traction motors of Electric Locomotive type. Disputes arose between the parties and the Respondent contractor invoked Arbitration and the Arbitrator allowed many of the claims and granted Pre-Arbitration interest, pendent lite interest and also future interest. Union of India challenged the said award in the High Court of Bombay under S.34 of the Arbitration and Conciliation Act,1996. The Single Judge of the High Court upheld the award except certain modifications to the award relating to certain heads of interest. Union of India did not choose to file any appeal against the order of the Single Judge. The Division bench set aside the order of the Single Judge, holding that none of the grounds raised by Union of India, can be raised in a S.34 Application. Hence Union of India challenged the Judgment of division bench before the Supreme Court of India.

Decision of the Court: The only point argued in the Special Leave Petition was Clause.13 of the contract between the parties provide that no interest shall be payable to the contractor upon the earnest money or security deposit or the amounts payable under the contract. But the Supreme Court of India vide a detailed Judgment dated 08th December 2017 in the case of Union of India (Railways) Versus Suska (P) Ltd., 2017 online SCC 1436, dismissed the appeal on the following two grounds:

¹ The Author is an Expert Arbitration lawyer and a Senior Partner of Law Senate, Arbitration law firm.

- a. The above said argument was first time raised in the Special Leave Petition before the Supreme Court of India, hence not permissible, even though it is a valid ground.
- b. A Government should not flight with a citizen on technical grounds, when the facts say it is a fair decision.

Comments: This Judgment re-confirms the importance of proper pleadings, even in arbitration proceedings.

