
Supervising court must pass a speaking order even while dismissing a challenge to an Arbitration award – Delhi High Court

S Ravi Shankar¹

All over the world, the supervising courts refrain themselves from interfering in an Arbitration award, for any other reason except those specified in the procedural law. Most of the Arbitration laws are similar to UNCITRAL Model law and hence the grounds are same. Courts also consistently have held that the verdict of an arbitrator with respect to facts of the case, is final. Hence, a reasoned award based on the evidences are respected by the courts. But at the same time supervising courts while exercising their powers under S.34 of Arbitration and Conciliation Act, 1996, cannot make a decision regarding the sustainability of an award like a summary proceeding. Even while dismissing the said S.34 application, the court must pass a speaking order.

Even though arbitration is a private dispute resolution mechanism, it has the supervision of the judiciary of the respective country. Such supervising courts, ensure avoidance of large miscarriage of justice, by testing the award as per the tests prescribed in the Arbitration law. While exercising such an important power, the court is expected to deal with all the grounds raised by the parties, while deciding about the sustainability of the award.

In a recent Judgment delivered on 25th July 2017 in the matter of **Indian oil corporation Limited Vs Aneja Transporters 2017 SCC Online Del 9318**, High Court of Delhi set aside the order of the District court which dismissed the application under S.34 of the Act, challenging an arbitration award. The High court held that the District court ought to have dealt with all the issues raised by the parties and must have passed a reasoned order. Hence after setting aside the order it directed the District court to pass a speaking order.

The lower court (Supervising Court) while deciding the application challenging the Arbitration award under S.34 dismissed the application stating that the challenge does not raise any valid ground stated in S.34 and does not stand scrutiny in the light of the law laid down by the Supreme Court of India in oil and natural Gas Commission Vs SAW Pipes Ltd., (2003) 5 SCC 705. The supervising court did not specifically deal with the issues raised in the award as well as S.34 Application. The High Court held that the Court dealing with an application under S.34 should deal with the issues in the arbitration award as well as the challenge application and then decide if the award is sustainable or not.

Comment of the author: This Judgment will put more pressure on the courts to write speaking orders and hence the process will consume more time than earlier.

¹ The author is an International & Domestic Arbitration lawyer and Senior Partner of Law Senate (Arbitration law firm) having offices in Delhi & Mumbai