

Larsen Air Conditioning & Refrigeration Co. v. Union of India (Civil Appeal No. 3798 of 2023)

Karthika Muthuraj*

Introduction

To reduce the burden of the court and to resolve the dispute between the parties amicably through the process of Alternate Dispute Resolution (hereinafter referred to as ‘ADR’) has been evolved giving an opportunity to the parties to settle the dispute through communication. Alternative Dispute Resolution includes the methods of Arbitration, Mediation, Conciliation, Judicial settlement through Lok Adalat was laid under section 89 of Code of Civil Procedure, 1908 in India. In ADR mechanism, a neutral third party along with the parties to the dispute communicate the differences of opinion and try to resolve the dispute. Arbitration is a form of quasi-judicial adjudicatory procedure in which the parties or the court appoints an arbitrator or arbitrators from the panel to decide a dispute between the parties. In the case of *Collins v. Collins* arbitration was defined as “An arbitration is a reference to the decisions of one or more persons either with or without an umpire, a particular matter in difference between the parties”. The parties file a joint application before the court giving consent of the parties agreeing to the process of arbitration and settle the dispute through. The Arbitration and Conciliation Act, 1996 governs all aspects of the arbitration process, including the binding of the award passed through it. According to section 36 of the Arbitration and Conciliation Act of 1996, the arbitrator's decision is legally binding on the parties and can be enforced as a court order and the same is equivalent to the order passed by the trial court. Arbitration is more flexible than court proceedings and cost effective. The Supreme Court in the case of the *Larsen Air Conditioning & Refrigeration Co. v. Union of India* 2023 case are carefully analysed and upheld the restrictions placed on courts by Section 34 of the Arbitration

* Student of VIII Semester B.A., LL.B. (Hons.), School of Legal Studies, CMR University

and Conciliation Act, 1996 with regard to amending arbitral verdicts in a recent ruling dated August 11, 2023. The Court highlighted the distinctions between the 1996 Act and its predecessor, emphasizing the exclusion of the ability to modify awards, as well as the legislative intent behind the latter.

Facts of the Case

The dispute between the appellant and Union of India (hereafter 'respondent-state') arose from a contract entered into pursuant to being awarded the tender. In the course of work, certain disputes arose. On 22.04.1997, the respondent-state referred the dispute to arbitration, and the proceedings closed on 24.10.1998. The tribunal published its award on 21.01.1999 and directing the first four respondents to pay 18% pendente lite and future compound interest on the award in respect of Claim Nos. 1-8. The respondent-state challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'). The district court², dismissed the challenge on the ground that it could not sit in appeal over the award and since the respondent-state had failed to file any proof of the grounds alleged. Aggrieved, the respondent-state, preferred an appeal before the High Court in 2003. The High Court referred to this court's judgments in *K. Marappan v. Superintending Engineer TBPHLC Circle Anantapur*³, *M/s Raveechee & Co. v. Union of India*⁴ and *Ambica Construction v. Union of India*⁵ while deciding this question of pendente lite interest; it was held that the bar to award interest on the amounts payable under the contract would not be sufficient to deny the payment of interest pendente lite. The High Court proceeded to reduce the rate of interest from 18% (as ordered by the arbitrator), to 9% per annum. The remaining amount was directed to be deposited by the appellants as expeditiously as possible, with the interest accrued, not later than 12 weeks from the date of the judgment. On other grounds, it was held that there was no scope for interference in the arbitral award. Therefore, the High Court first, by partially granting the appeal, the High Court scrutinised and expressed its disagreement with the arbitrator's reasons about the amount of damages granted for non-issuance of the tender document and company inactivity. Second, the High Court lowered the interest rate to 9% p.a. after ruling that the 18% p.a. interest rate granted under pendente lite could not be awarded. Regarding the

residuary portion of the award, the Hon'ble High Court decided it would be wise to avoid from intervening.

Issues Raised in the Case

In this case, the most specific question addressed was whether the High Court could modify the arbitral verdict. The Hon'ble Supreme Court took this into consideration since, as in this instance, the High Court changed the arbitral decision to lower the interest from compound interest of 18% to 9% simple interest per year. The counsel also cited a relevant clause of the General Conditions of Contract which prescribed that the award of the arbitrator shall be final and binding on both the parties. The counsel for the Respondent-state, while justifying the reduction of interest component and disallowance of awarding damages/compensation, submitted that the High Court had taken an all-encompassing view by considering the relevant provisions of the Act and the Indian Contract Act, 1872.

Judgement and Analysis

In appeal, Section 37 of the Act grants narrower scope to the appellate court to review the findings in an award, if it has been upheld, or substantially upheld under Section 34. It is important to notice that the old Act contained a provision¹⁴ which enabled the court to modify an award. However, that power has been consciously omitted by Parliament, while enacting the Act of 1996. This means that the Parliamentary intent was to exclude power to modify an award, in any manner, to the court. This position has been iterated decisively by this court in *Project Director, National Highways No. 45E and 220 National Highways Authority of India v M. Hakeem*. The Court reiterated that under Section 34 of the Act, courts have limited jurisdiction to interfere with arbitral awards. They can only do so on grounds of “patent illegality,” where the illegality must be substantial and not trivial. The Court emphasized that awards should not be set aside merely due to differences in interpretation. The Supreme Court ruled that in the present case, since the arbitration proceedings began in 1997, which was after the enactment of the 1996 Act on 22nd August 1996, the arbitrator and the resulting award are subject to the 1996 statute. According to

Section 31(7) of this legislation, the statutory interest rate is fixed at 18% per annum, provided that the award does not specify a different interest rate. Therefore, there is no justification for the High Court's intervention in the arbitrator's determination of accrued and payable interest. In contrast to the previous Act, the court lacks the authority to alter the award and can only invalidate it partially or entirely if it finds that the conditions outlined in Section 34 of the 1996 Act have been met. Therefore, Supreme Court decided to set aside the appeal by reinstating the 18% per annum as awarded by the arbitrator at the first instance. The Supreme Court further directed the respondent to pay the outstanding dues within eight weeks.

Conclusion

The Supreme Court has rightly held that the High Court had erred in modifying the award given by the arbitrator and reducing the statutory interest awarded thereon, which is contrary to the provisions of the Arbitration and Conciliation Act, 1996. The Supreme Court rightly clarified that the 1996 Act applied to this case because the arbitration proceedings commenced after its enactment. According to Section 31(7) of the 1996 Act, the statutory interest rate was fixed at 18% per annum unless the award specified otherwise. Consequently, the Supreme Court concluded that the High Court had no valid reason to intervene in the arbitrator's determination of the interest rate. It emphasized that, unlike the previous Act, the court's authority was limited to setting aside an award under certain conditions specified in Section 34 of the 1996 Act, not altering its terms.