Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3209 OF 2007

INDIAN RARE EARTHS LTD. .....APPELLANT

VERSUS

UNIQUE BUILDERS LTD. ....RESPONDENT

O R D E R

The appellant has preferred this appeal by special leave against the impugned judgment and order dated 05.08.2005 passed by the High Court in ARBA No.2 of 2002 dismissing the appeal and civil revision filed by the parties against the order dated 29.04.2002 passed by the 1st Additional Civil Judge (Senior Division), Cuttack, in Misc. Case No.78 of 2000 dismissing the application filed by the present appellant under section 30 read with section 33 of the Arbitration Act, 1940 (for short the 'Act'), for setting aside the Award passed by the learned Arbitrator in Misc. Case No.671/93(117/83) dated 19.12.1996.

The facts of the case lie in narrow compass.

The appellant being a government company, entered into a works contract with the respondent-company for structural steel and cladding work for 4 bulk warehouses. The work was to be completed within 18 months from the

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date of the award of the work order i.e. 14.12.1979. A contract was signed between the parties wherein there was a provision for arbitration in case of dispute that may arise between the parties. From perusal of general conditions of the contract, we found that there was a clause to the effect that any increase in statutory levies such as taxes and duties and statutory increase in steel prices shall be paid by the appellant. Before the work was completed, a dispute arose and ultimately, the same was referred to the Arbitration.

The respondent-contractor made a claim of Rs.97,54,143.78 on different heads which have been noted by the High Court and the same is extracted hereinbelow:

"STATEMENT OF CLAIM OF M/S UNIQUE BUILDERS LIMITED AGAINST INDIAN RARE EARTHS LIMITED FOR CONSTRUCTION OF OSCOM/S-3 STRUCTURAL STEEL AND CLADDING WORK IN BULKWAREHOUSES, BEFORE THE HON'BLE ARBITRATOR JUSTICE B.K. RAY.

1	Escalation as per annexure and the same submitted to M/s Dastur & Co.	Rs.22,13,368.38
2	40% of the overheads as per enclosed statement (Annexure-2)	Rs.2,00,672.48
3	Encashment of bank guarantee (Letter at Annexure-3)	Rs.2,50,000.00
4	Loss due to complete damage of workshop and store shed made of steel column, trusses with A.C. Sheet-1,200 sq.ft. @ Rs.200/- per sq. ft.	Rs.2,40,000.00
5	Loss of Welding Machine, Drilling Machine, Jigs, Tools, Tackles, Electrodes, Store items (As per Annexure-5)	Rs.1,30,000.00
6	Legal expenses for fighting the	Rs. 75,000.00
		Rs.31,09,040.86
7	Interest @ 18% from 11.8.82 to 31st December, 1992 (Annx.7)	Rs.58,13,991.42

8	Loss for extra liability for payment of Income Tax by not availing of the adjustment of loss of Rs.16,62,223.00 upto previous eight years from the account year starting from Accounting year 82-83, i.e. 50% of the above loss of Rs.16,62,223 (Annx.8)	Rs.8,31,111.50
		Rs.97,54,143.78

Although the respondent made a claim of Rs.97,54,143.78/- but the Arbitrator after hearing the parties and considering all objections raised by the appellant, passed an Award for Rs.19,55,368/- with pendente lite interest at the rate of 15% per annum from the date of institution of the suit till the date of the Award. The said Award was challenged by the appellant before the 1st Additional Civil Judge (Senior Division), Cuttack on various grounds by filing an application under section 30 of the Act being Misc. Case No.78 of 2000, for setting aside the said Award. The 1st Additional Civil Judge (Senior Division), Cuttack, dismissed the said application. Aggrieved by the same, the appellant preferred an appeal before the High Court. The High Court after considering the case of the appellant and the respondent and referring to the claims made by the respondent, finally upheld the Award passed by the learned Arbitrator.

Mr. Vinoo Bhagat, learned counsel appearing for the appellant, assailed the said Award and the impugned order passed by the High Court on various grounds *inter alia*

the jurisdiction of the Arbitrator in passing a non-speaking Award when arbitrability of the disputes was questioned. Mr. Bhagat, learned counsel, also submits that in absence of any specific provision, the claim against the escalation of prices ought not to have been awarded. In this connection, Mr. Bhagat relied upon various decisions of this Court in the case of *T. N. Electricity Board vs. Bridge Tunnel Constructions & Ors.* - (1997) 4 SCC 121; *V. G. George vs. Indian Rare Earths Ltd. & Anr.* - (1999) 3 SCC 762; and *Associated Engineering Co. vs. Government of Andhra Pradesh & Anr.* - (1991) 4 SCC 93.

We have gone through the decisions relied upon by Mr. Bhagat, learned counsel appearing for the appellant. The *ratios decidendi* in those decisions are based on different facts of the cases.

In the instant case, the only question that arises for our consideration is as to whether the non-speaking Award given by the Arbitrator can be set aside on the grounds asserted by the appellant.

A five-Judge Constitution Bench of this Court in the case of *Raipur Development Authority etc. etc. vs. M/s Chokhamal Contractors etc. etc.* - AIR 1990 SC 1426, considered the scope of section 30 of the Arbitration Act, 1940 and held as under :

> "It is now well settled that an award can neither be remitted nor set aside merely on the ground that it does not contain reasons in support of the conclusion or decisions reached in it except where the arbitration agreement or the deed of submission requires him to give reasons. The arbitrator or umpire is under no obligation to give reasons in support of the decision reached by him unless under the arbitration agreement or in the deed of submission he is required to give such reasons and if the arbitrator or umpire chooses to give reasons in support of his decision it is open to the Court to set aside the award if it finds that an error of law has been committed by the arbitrator or umpire on the face of the record on going through such reasons. The arbitrator or umpire shall have to give reasons also where the court has directed in any order such as the one made under section 20 or section 21 or section 34 of the Act that reasons should be given or where the statute which governs an arbitration requires him to do so.

A three-Judge Bench of this Court in another case of *S. Harcharan Singh vs. Union of India* – (1990) 4 SCC 647, reiterated its earlier view that the arbitrator's adjudication is generally considered binding between the parties for he is a tribunal selected by the parties and the power of the court to set aside the award is restricted to cases set out in section 30 of the Act.

As notice above, although the respondent claimed a sum of Rs.97,54,143.78/- but the Arbitrator only awarded a sum of Rs.19,55,368/- (Rupees nineteen lakh fifty five thousand three hundred and sixty eight only) with pendente lite interest at the rate of 15% per annum from the date of institution of the suit till the date of the

Award. Admittedly, the Award is a non-speaking award. Hence, it is not permissible for the court to probe into the mental process of the learned Arbitrator especially when the Arbitrator rejected major portion of the claim made by the respondent.

In the background of all these facts, we do not find any reason to interfere either with the Award passed by the learned Arbitrator or with the impugned order passed by the High Court. Hence, this appeal is dismissed.

.....J
[M. Y. EQBAL]

.....J
[ARUN MISHRA]

NEW DELHI;
AUGUST 05, 2015.

ITEM NO.106 COURT NO.10 SECTION XIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s).3209/2007

INDIAN RARE EARTHS LTD. Appellant(s)

VERSUS

UNIQUE BUILDERS LTD. Respondent(s)

(With office report)

Date : 05/08/2015 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE M.Y. EQBAL
HON'BLE MR. JUSTICE ARUN MISHRA

For Appellant(s) Mr. Vinoo Bhagat,Adv.
Ms. Praveena Gautam, Adv.
Mr. Rutwik Panda, Adv.

For Respondent(s) Mr. Yasobant Das, Sr. Adv.
Mr. Arunav Patnaik, Adv.
Mr. D.B. Ray, Adv.
For Mr. Shibashish Misra,Adv.

UPON hearing the counsel the Court made the following
O R D E R

This appeal is dismissed in terms of the signed reportable order.

The pending interlocutory applications, if any, stand disposed of.

(Sanjay Kumar-II) (Indu Pokhriyal)
Court Master Court Master
(Signed reportable order is placed on the file)