NEWSLETTER 4

The Weight of 'the Why' in an Arbitral Award

i. Introduction

Arbitration is a private, party-centric process for resolving a dispute which aspires to be as independent of intervention from national courts as possible. Whilst this makes arbitration a faster and more inexpensive process, legislative and judicial intervention has tried to make it more transparent and reliable. This tug of war in arbitration tries to balance the conflicting needs of autonomy and public interest.

ii. Mandate to Provide Reasons

Section 31 of the Arbitration and Conciliation Act, 1996 (the "**Act**") provides the requirements of the form and contents of an arbitral award. Sub-section 3 of Section 31 makes it mandatory for the arbitral award to state the reasons upon which it is based unless the two exceptions provided therein are satisfied. It is now well-settled law that if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act, such award is liable to be set aside under Section 34 of the Act because a contravention of the Act itself is tantamount to a patent illegality.[1] In other words, a non-speaking arbitral award is vulnerable to challenge under Section 34 of the Act and deserves to be set aside.

An arbitral tribunal is duty-bound to give reasons in the award due to the nature and the context of an arbitration. *Firstly*, it is a principle of natural justice that any order, judgment, award etc. must give reasons for its decision. *Secondly*, an arbitral award is final and binding on the parties to the arbitration.[2] There can be no appeals from the award. Only a minuscule scope for setting aside the award is provided for under the Act, and courts are bound, normally, to not interfere with an award.[3] *Thirdly*, arbitration is a party-centric process. Parties to an arbitration have a right to know the rationale behind the award. An arbitral tribunal's application of mind must be conveyed to the parties via the award.

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[1] *Associate Builders v. DDA*, (2015) 3 SCC 49; *Ssangyong Engg. & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131.

[2] Section 35, Arbitration and Conciliation Act, 1996.

[3] *Konkan Railway Corpn. Ltd. v. Chenab Bridge Project*, (2023) 9 SCC 85; *Sutlej Construction Ltd. v. State (UT of Chandigarh)*, (2018) 1 SCC 718; *Ssangyong Engg. & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131; *Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.*, (2019) 20 SCC 1.

iii. Standard of Reasoning

A question that has knocked on the doors of the courts is about the quality and the quantity of the reasons given in an award—how exhaustively does an arbitral tribunal need to provide reasons? How clearly do the reasons need to be set out?

The Supreme Court of India in *Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.*[4] discussed the requirement of reasons in an award and discussed the fate of an award that contains unintelligible reasoning. The Court clarified that the mandate under Section 31(3) of the Act is for reasons in an award to be intelligible and adequate. It is certainly possible for a court to imply reasons underlying the decision in an award from a fair reading thereof and the documents referred to thereunder.

The Supreme Court in the aforementioned judgment gave three characteristics of a reasoned award—adequacy, intelligibility, and propriety. The perversity of impropriety in reasoning comes in the teeth of Section 34 of the Act. Reasons being unintelligible is tantamount to no reasons at all. However, if there are gaps in the reasoning in an award, a court must have regard to the documents submitted by the parties to the arbitration and contentions raised before the tribunal. If it can be understood and implied how the tribunal applied its mind to reach its decisions, an award can not be set aside merely because the reasons given therein are inadequate.

It is clear from the Court's decision that while unintelligible awards deserve to be set aside, awards containing inadequate reasons may be allowed if the overall reading thereof and the documents submitted to the tribunal can indicate proper—though not apparent—reasoning. Arbitrators are not required to pass an elaborate judgment, but reasons must be given.

iv. Position in the English Law on Arbitration

The English Arbitration Act 1996 ("**English Arbitration Act**"), similar to the Indian Act, broadly reflects the provisions of the UNCITRAL Model Law. It also contains a provision for the inclusion of reasons in an arbitral award. It states that "[the] award shall contain the reasons for the award unless it is an agreed award or the parties have agreed to dispense with reasons."[5] The England and Wales High Court in *Hussmann (Europe) Ltd v. Al Ameen*

[4] (2019) 20 SCC 1.
[5] Section 52(4).

Development & Trade Co and Ors[6] held that it is a failure of the arbitrators to deal with an issue that can be a ground to set an award aside—not mere criticism of the reasoning. An arbitral tribunal is not required to set out each step by which it reaches its conclusion.

v. Conclusion

Reasons are an integral part of an arbitral award. Parties to an arbitration have a right to know the reasons based on which the tribunal took its decisions. In the event that the reasons given are inadequate or unintelligible, an award may be set aside by a court upon an application under Section 34 of the Act. It is noteworthy that the reasons in an award need not be the 'correct' ones—as long as the view taken by an arbitrator is a plausible view, a court, under Section 34, cannot set aside the award. A mere possibility of a different view is not sufficient to render the award ineffective. An arbitrator has the right to be wrong, as long as the view taken thereby is a plausible one.

Best,

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[6] [2000] 2 Lloyd's Rep. 83