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* IN THE HIGH COURT OF DELHI

+ OMP No. 45 OF 2003

+ OMP No. 46 OF 2003

% Date of decision : 14.12.2005

UNION OF INDIA & ANR.

... ... PETITIONERS
through : Mr. Suresh Kait, Advocate

- VERSUS -

M/S. JAYASWALS NECO LTD. (OMP No. 45/2003)

M/S. ASHUTOSH CASTINGS LTD. (OMP No. 46/2003)

... ... RESPONDENTS
through : Mr. Sidharth Bhatnagar with
Ms. Swati Grover, Advocates

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

SANJAY KISHAN KAUL, J. (ORAL)

1) These are two awards both dated 09.10.2002 of the Sole Arbitrator, Shri H.K. Jaggi, Chief Bridge Engineer, Northern Railway against which the petitioners are aggrieved and have filed objections under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred to as, 'the said

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(14)

Act'). The two contracts forming subject matter of the two awards are by the Railway Department of the Union of India with two sister concerns. An open tender was floated by the Railway Board for supply of SGCI inserts and the respondents were successful bidders and the contracts were entered into on 18.06.1999. The relevant clauses are as under :-

"Clause 6.3 : The rates and other terms and conditions as accepted under this contract will remain current and valid for a period up to 5-4-2000. The purchaser also has right to defer deliveries and enhance (i.e. to slow down supplies) delivery period up to 6 months beyond 5-4-2000."

Clause 9.1 : The quantity on order shall be supplied up to 5-4-2000 in equal monthly instalments. The consignee-wise supplies are to be effected on the same monthly instalment basis.

Delivery period of the said contract is up to 5-4-2000. Supplies have to be commenced from 5-4-1000 and consignee wise supplies are to be effected on the equal monthly instalments basis.

Clause 10.1 : The Ministry of Railways (Railway Board) reserves the right to enhance or reduce the contracted quantity up to 30% at the accepted rate, terms and conditions of the order at its sole discretion. The discretion of the Ministry of Railways (Railway Board) in this regard shall be exercised at least 30 days in advance of the due date of completion of the contracted quantity. If quantity is increased by or up to 30% suitable extension in delivery period will be granted by the purchaser.

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Further, the IRS conditions of contract (incorporated by Clause 18 of the contract) provided :-

Clause 3800 : Increase or Decrease of Quantities - The purchaser shall be entitled at any time to increase or decrease the approximate total quantities of each description of stores shown in the said contract by not more than 30 per cent and will give reasonable notice in writing of any such increase or decrease to the Contractor."

- 2)The delivery had to be completed by 05.04.2000 and the respondent started delivery process under the contract according to the orders placed by the petitioner. The petitioners exercised their right to short-close the contract to the amount of the quantity of 70% as permissible under clause 10.1 in terms of the letter dated 09.02.2000 and that is what gave rise to the claim of the respondent.
- 3)The Arbitrator on consideration of the matter found that 30 days' notice period in pursuance to the short-close notice dated 09.02.2000 would expire only in the first week of March, 2000 and, thus, the respondent, even if it has manufactured more, is not entitled to damages for the full amount, but only to the extent the supplies had to be made up to March, 2000.
- 4)In view of the aforesaid, a specific query was put to learned counsel for the petitioners as to under which clause of sub-section (2) of Section 34 of the said Act, would the objections of

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the petitioners fall. It cannot be disputed that unless the objections fall within the said parameters, it is not for this Court to sit as an appellate court to examine the matter. The scope of interference of the court in objections filed under Section 34 of the said Act has already been explained by the Apex Court in Oil and Natural Gas Corporation Ltd. v. Saw Pipes Ltd., AIR 2003 SC 2629.

- 5) Learned counsel for the petitioners seeks to contend that such an objection would fall within clause (iv) of para (a) of sub-section (2) of Section 34 of the said Act as the arbitral award deals with dispute not contemplated by or not falling within the terms of the submission to arbitration. I am unable to persuade myself to agree with the submission of learned counsel for the petitioners since the very question before the Arbitrator was whether the respondent was entitled to damages and, if so, to what extent on account of the petitioners exercising the right for short-closure of the contract. This fell very well within the reference and, in fact, was the very substance of the reference. The Arbitrator on consideration of the material before him came to the conclusion that the respondent would be entitled to part amount on account of the fact that the supplies had to be made over a scheduled period of time and since the foreclosure was

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as late as 09.02.2000 to the extent the delivery had to be made by the respondent by the first week of March, 2000, short-closure could not take place, but that the short-closure was valid for the remaining amounts.

6)I find no merit in the objections.

7)Dismissed.

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* Dismissed.

December 14, 2005
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SANJAY KISHAN KAUL, J.