# Standard of setting aside; facets of a reasoned award; power of remission et. Al. (Supreme Court)

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**Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd.**

**Court**: Supreme Court of India | **Case Number**: CA No. 2153 of 2010 | **Citation**: 2019 SCC OnLine 1656 | **Bench**: NV Ramana, Ajay Rastogi & Mohan M Shantanagoudar JJ | **Date**: 18 December 2019

The Supreme Court has re-emphasised that under the Arbitration and Conciliation Act, 1996 ("**ACA**") the award must be reasoned.

The matter arose out of a dispute about termination of a contract and consequent losses. A three-member arbitral tribunal accepted Dyna's claims. Crompton's application to set aside the award was rejected. Its appeal was allowed partly by a division bench of the High Court, which concluded that the tribunal had not given enough reasons. Now Dyna was before the Supreme Court.

**Firstly**, the court first examined the "jurisdiction of the court under Section 34 of the Arbitration Act" before it "devolve[ed] into the contractual issues" and concluded: –

(a) Arbitral awards should not be interfered with in a casual and cavalier manner, unless the court concludes that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award.

(b) Section 34 cannot be equated with a normal appellate jurisdiction and the mandate is to respect the finality of the arbitral award and party autonomy.

(c) The courts need to be cautious and should defer to the view taken by the arbitral tribunal even if the reasoning in the award is implied unless such award portrays "perversity unpardonable" under Section 34 of the ACA.

**Secondly**, the court turned to "the analysis of the case" and examined the argument that the award was perverse for want of reasons: –

(a) Like the position under the Model Law, India also adopts a default rule to provide for reasons unless the parties agree otherwise [referring to Section 31 (3), ACA].

(b) Under the 1940 Act, there was no obligation to give reasons as held in *Raipur Development Authority Chokhamal Contractors*, (1989) 2 SCC 721, but the ratio of that case "has not found the favour of the [l]egislature", and accordingly Section 31 (3), ACA was enacted.

(c) The mandate under Section 31(3) of the ACA is to have reasoning which is intelligible and adequate, even if in appropriate cases implied (from documents and award).

(d) Three characteristics of a reasoned order are: proper, intelligible and adequate.

(e) Improper reasoning reveals a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all.

(f) Courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards. The degree of particularity of reasons required, in a given case, cannot be stated in a precise manner. Even if the court concludes there are gaps in the reasoning, the court needs to have regard to the documents and the contentions so that awards with inadequate reasons are not set aside in casual and cavalier manner.

(g) On the other hand, ordinarily unintelligible awards are to be set aside.

**Thirdly**, the court discussed the power of remission under Section 34 (4), ACA: –

(a) Section 34(4) cannot be brushed aside. The legislative intention behind it was "to make an award enforceable, after giving an opportunity to the tribunal to undo the curable defects".

(b) The power under Section 34 (4), ACA to cure defects can be utilized in cases where the arbitral award does not provide any reasoning or if the award has some gap in the reasoning or otherwise which can be cured.

(c) The High Court concluded that there was no reasoned award. The award then ceased to exist, and the court was *functus officio* for hearing the challenge to the award. In such case, the High Court ought to have considered remanding the matter to the Tribunal in the usual course.[1]

The court finally concluded that the award was confusing and jumbled the contentions, facts and reasoning, without appropriate distinction. However, given that the litigation continued for twenty-five years, the court made an order of full and final settlement.

[1] **Editor's note**: The issue whether an award can be set aside and then remanded has been discussed in *Kinnari Mullick v. Ghanshyam Das Damani*, (2018) 11 SCC 328 (Dipak Misra, AM Khanwilkar, MM Shantanagoudar JJ). The court held that remand and set-aside are alternatives. Once it is set aside, there is nothing to remand. Then, in *Radha Chemicals v. Union of India*, civil appeal number 10386 of 2018 decided on 10 October 2018 (RF Nariman and Navin Sinha JJ), the court said *Kinnari* had held that while deciding a Section 34 petition the court has no jurisdiction to remand the matter to the arbitrator for a fresh decision. This was in a context where in a Section 34 petition, the court found that the point of limitation had not been decided correctly and, therefore, remanded the matter to the arbitrator for the point be decided afresh.