

**DYNA TECHNOLOGIES PVT. LTD. v. CROMPTON GREAVES LTD.,
2019 SCC ONLINE SC 1656**

Supreme Court of India; 3- judge bench, **NV Ramana**,
Ajay Rastogi, Mohan M. Shantanagoudar JJ; decided
on 18 December 2019

Standard of setting aside; facets of a reasoned award; the power of remission *et. al.*

The Supreme Court re-emphasized in this case that under the ACA the award must be reasoned.

The matter arose out of a dispute about the 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 examined its jurisdiction "under Section 34 of the Arbitration Act" before it "devolve[d] into the contractual issues" and concluded:

- (i) 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.
- (ii) 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.
- (iii) 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 an 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: –

- (i) 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].
- (ii) Under the Arbitration Act, 1940, there was no obligation to give reasons as held in *Raipur Development Authority v. Chokhamal Contractors and Ors.*, (1989) 2

SCC 721, but the ratio of that case “has not found the favor of the [l]egislature,” and accordingly Section 31 (3), ACA was enacted.

- (iii) The mandate under Section 31(3) of the ACA is to have reasoning, which is intelligible and adequate, even if inappropriate cases implied (from documents and award).
- (iv) Three characteristics of a reasoned order are: proper, intelligible and adequate.
- (v) 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 ACA. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent to providing no reasons at all.
- (vi) Courts are required to be careful while distinguishing between the 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.
- (vii) 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: –

- (i) 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.”
- (ii) 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.
- (iii) 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 a case, the High Court ought to have considered remanding the matter to the tribunal in the usual course.

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.