IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.2062 of 2013
Reserved on 19.11.2014.
Date of decision: 14.1.2015

Punjab State Power Corporation Limited and another **...Petitioners**

Versus

M/s Sky Lab Build Tech Construction (P) Limited and another

...Respondents

CORAM: MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Alok Jain, Advocate for the petitioners

Mr. P.S.Rana, Advocate for the respondent No.1.

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G.S.SANDHAWALIA, J.

1. Challenge in the present revision petition filed by the Punjab State Power Corporation Limited (hereinafter referred to as "the Corporation) under Article 227 of the Constitution of India is to the order dated 19.7.2012 passed by the Civil Judge (Senior Division), Chandigarh whereby application under Section 37 of the Arbitration Act, 1940 (hereinafter referred to as "the Act") read with Sections 5 and 14 of the Limitation Act, 1963 and Section 151 of the CPC had been dismissed being not maintainable. The delay of 1676 days in filing the objections was sought to be condoned in the application filed before the Court.

2. A perusal of the paper-book would go on to show that vide award dated 28.6.2007(Annexure P/2), respondent no.2, the Arbitrator directed that a sum of ₹ 13,000/- which was earnest money be refunded to the contractor along with security deposited to the tune of ₹ 3,437/-. ₹ 26,949/- was awarded against the claim of final bill out of total bill of ₹ 67,660/- and proper certificate for deducting ₹ 1,353/- on account of income tax was to be given on the basis of agreement dated 8.2.1985.

Interest was granted at the rate of 18% per annum from 16.8.1985 to 31.3.2002 and at the rate of 12% per annum from 1.4.2002 till the date of actual payment against the claim of interest at the rate of 24% per annum.

3. The respondent-contractor filed a petition on 17.7.2007 under Section 14(2) read with Sections 17 and 29 of the Act to file the original arbitration award dated 28.6.2007. The Addl. Civil Judge (Senior Division), Chandigarh vide order dated 24.1.2011 accepted the application and made the award rule of the Court and dismissed the objections raised by the corporation which had been filed before filing of the award and while making the award rule of the Court the contractor was held entitled interest at the rate of 6% per annum from the date of judgment dated 24.1.2011. The trial Court had specifically accepted the argument of the counsel for the Contractor that the objections have been filed prior to filing of the award. As per law, they were to be filed within one month after passing of the award by the Arbitrator. The objections being premature could not be considered and that no objections had been filed after filing of the award. Notice had been given to the objector who appeared in Court and having notice of the filing of the award in Court he was required to file objections within one month. Reliance was placed upon the judgment of the Apex Court in **Union of India Vs. M/s Neelam Engineering (2010) 3 SCC 642; State of West Bengal Vs.M/s Mondal and Co. AIR 1984 Calcutta 14** and the judgment of the Madhya Pradesh High Court in **Paltansingh Gulabrai Vs. M.P.State Industrial 1988 Civil Court Cases 75.** Accordingly, objections filed were held not to be acceptable and liable to be rejected while making the award rule of the Court.

4. The decision was challenged by the erstwhile Punjab State Electricity Board by filing an appeal before the Court of Additional District Judge, Chandigarh which was dismissed on 4.1.2012 by holding that the

objections were premature having been filed before the filing of the award. The said order was challenged before this Court by filing Civil Writ Petition No.11113 of 2012 and the said writ petition was dismissed vide order dated 31.5.2012. However, liberty was granted to file fresh objections in case the law permits and the same were to be decided by the trial Court in accordance with law. Resultantly, the impugned order has been passed whereby objections filed by the Corporation have been dismissed being not maintainable.

5. Admittedly, as noticed above, when the Contractor filed petition under Section 14(2) read with Sections 17 and 29 of the Act and the objections filed by the erstwhile Board were dismissed vide a detailed order while disposing of the petition filed whereby the contractor had prayed that the award be made rule of the Court and the petition was accepted and award was made rule of the Court. Relevant portion of the order dated 24.1.2011 reads as under:-

> "In view of discussion on the above issue, petition for making the award dated 28.6.2007 the Rule of the Court, is hereby accepted and objections raised by the objectors are hereby dismissed. Award dated 28.6.2007 is ordered to be made the Rule of the Court. The petitioner is entitled for interest on the amount of award @ 6% p.a. from the date of this judgment/decree till realization. There is no order as to costs. Decree sheet be drawn accordingly. File be consigned to the record room after due compliance."

6. The said order has been upheld in appeal by the Additional District Judge on 4.1.2012 and against the said order Writ Petition was dismissed by this Court on 31.5.2012. The said decision was not further carried to the Division Bench and the matter become final interse the

parties. The liberty granted by this Court was to file fresh objections in case law permits. The issue had been thrashed out on merits earlier and once the decision had become final interse the parties and no appeal was filed against the order passed in the writ petition, the Corporation is not entitled to start proceedings afresh by resorting to another set of objections on new grounds. The argument raised that this Court had given liberty was not liable to be accepted since it was conditional if the law permits.

7. This Court in **Parkash Chand Ahuja, Chandigarh Vs. M/s Dinesh Finance and Chit Fund Co.(Pvt.)Ltd., Chandigarh AIR 1983 (Punjab) 67** has held that objections filed as per Article 119(b) of the Limitation Act, 1963 provides that it begins to run from the date of service of notice of filing of the award and objection filed thereafter would be barred.

8. The Apex Court in **M/s Neelam Engineering's case** (supra) considered a similar issue whereby the original award was filed in the Court on 27.5.1998 and objections were filed earlier on 3.1.1998. It was held that the same could not be treated as valid objections under Sections 33 and 33-A of the 1940 Act in view of Article 119 of the Limitation Act, 1963 and objections filed against something which did not exist on the date when the objections were filed were unacceptable and must be rejected. The argument of the Union of India that it had acted promptly on receiving the copy of the award was rejected by holding that once the award had not been received in Court, the objections had been filed prematurely under Sections 30 and 33 of the 1940 Act, the same could not be treated as valid objections and the appeal was dismissed. The said judgment squarely covers the issue on merits since second set of objections which are now sought to be filed were patently barred by 1676 days as the application itself was filed for condoning the delay. The Additional Civil Judge (Senior

Division), Chandigarh was well justified in rejecting the application under Section 37 of the Act and Sections 5 & 14 of the Limitation Act, 1963.

9. That as noticed, the notice had been issued to the petition on 17.7.2007 and objections had been filed on 21.9.2007 whereas the original award was produced by the Arbitrator on 14.11.2007, thereafter no objections had been filed and they were well aware of the proceedings, they cannot be allowed at this stage to start afresh in view of the bar contained under the Limitation Act, 1963.

10. Accordingly, the present revision petition is dismissed being bereft of merits.

January 14, 2015 **(G.S.SANDHAWALIA)**
Pka **Judge**