

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No.2010 of 2010 (O&M)

Date of decision : 10.12.2015

M/s Luvkush Textiles

...Appellant

Versus

The Uttar Haryana Bijli Vitran Nigam Ltd. and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Ashok Sharma, Advocate for the appellant.

Mr. Tushar Gautam, Advocate for
Mr. Jasbir Mor, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

The appellant-Contractor is aggrieved of the order, whereby objection filed under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside of the award dated 22.02.2007, has been dismissed.

Mr. Ashok Sharma, learned counsel appearing on behalf of appellant submits, that award is not in consonance with the terms and conditions of the contract as the Nigam had failed to place on record any proof vis-a-vis the liquidated damages as the claim of the Nigam vis-a-vis forfeiture of the security has been upheld. He submits that the contractor did not receive any notice of cancellation of the contract nor remaining work of the contract

had been undertaken at the risk and cost, therefore, the respondents in the absence of any evidence could not have been granted the liberty to forfeit the security amount in the shape of liquidated damages.

Mr. Tushar Gautam, Advocate for Mr. Jasbir Mor, learned counsel appearing on behalf of Nigam submits, that Arbitrator was none else but Chief Engineer of UHBVN Panchkula who was expert in deciding the lis between the parties. The objections filed were not within the parameters and realm of Section 34 of 1996 Act and rightly so have been declined.

I have heard learned counsel for the parties and appraised the paper book and find that there is no substance in the appeal and same is liable to be dismissed for the following reasons:-

As per the purchase order dated 04.08.2000, the appellant firm was to supply 3097 KM of ACSR Squirrel conductor within 10 months from 18.07.2000 i.e. the date when the contract in question had come into force and the stipulated date of completion of contract was 22.09.2001. Only material, to the extent of 1095.706 Kms, was supplied within the stipulated period, thereafter, the contract was cancelled on 31.07.2002. The Contractor failed to supply the entire material which was agreed to be entered within the stipulated period. The order of the contractor to supply the material lying ready with him after cancellation of the delivery period is immaterial.

Keeping in view the aforementioned facts, the Arbitrator has rightly upheld the decision of Nigam in forfeiting the earnest money as the Contractor had failed to supply the agreed material.

It is now a settled law that as to under what circumstances the award has to be interfered with. The question which has now been raised in the aforementioned appeal has already been answered by the Hon'ble Supreme

Court in catena of judgments, wherein, it has been laid down that until and unless the award suffers from illegality or for want of reasons as statutorily prescribed under Section 31 (3) of the Act, the same cannot be interfered with. In this context I intend to refer the judgments of Hon'ble Supreme Court in **Associate Builders Vs. Delhi Development Authority (2015) 3 SCC 49 and Navodaya Mass Entertainment Ltd. Vs. J. M. Combines (2015) 5 SCC 698.** In the aforementioned judgment the Hon'ble Supreme Court had culled out the ratio decidendi by holding that until and unless there is error apparent on the face of record or the arbitrator has not followed statutory legal position, it is only in these circumstances it would be justified interfering with the award. The High Court should not act as a Court of appeal and reappraise the material/evidence and embarked on a path by substitution in its own view. It is not the case of the appellant that the award is against the public policy or has violated the principles of judicial approach, much less against the statute and other provisions of Section 34 of the Act.

The award read as a whole is just, fair and reasonable. It is now a settled law that the Arbitrator or Committee is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

In my view, no error of law arise from the award as well as order impugned. The award is perfect and justified. There is no merit in the aforementioned appeal.

Appeal is dismissed.

10.12.2015

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**(AMIT RAWAL)
JUDGE**