

**IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH**

**FAO No. 3864 of 2012(O&M)**  
**Date of Decision: August 21, 2015**

**Union of India**

**..... Petitioner**

**Versus**

**M/s Varun Associate and another**

**..... Respondent**

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. Ashwinie Kumar Bansal, Advocate  
for the appellant.

Mr. Ashish Grover, Advocate  
for respondent No.1.

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**Amit Rawal, J (Oral)**

The challenge in the present appeal is to the order dated 9.4.2012 whereby objections filed by the appellant-Union of India against the finding rendered by the Arbitrator viz-a-viz clause 2 of the agreement which according to the objector was not arbitrable has been dismissed.

Mr. Ashwinie Kumar Bansal, learned counsel for the appellant submits that clause 2 of the agreement envisages that the levy of compensation is within the domain of the Superintending Engineer and the said amount cannot be referred to the arbitration. In essence, it is excluded from clause 25 of the Arbitration clause and in this context, he has cited the judgment of Delhi High Court in **Oil & Natural Gas Corporation Limited Vs. Mitra Guha Builder (India) Company 2010 (8) RCR (Civil) 1485 and Delhi Development**

**Authority Vs. Verma Construction Company 2010 (6) RCR (Civil)****220.**

He further submits that the Additional District Judge has not referred to the objections and the order is non-speaking, much less sketchy. The arbitrator has not adjudicated the claim/counter claim of compensation and has just given a passing reference. The compensation is not arbitrable as it falls under the excepted clause mentioned above and parties to the *lis* have to initiate the proceedings in a civil court. In essence, in case the amount has been deducted it would be the contractor who would be filing civil suit and if otherwise, it would be the department.

I have heard learned counsel for the parties and appraised the paper book.

I would be committing fallacy in case, I do not extract the relevant portion of the award, which is subject matter of the controversy in the present appeal.

*“It is observed that compensation of Rs.470715.00 was levied by S.E.vide letter dated 21.8.2009 (R-10) after issue of show cause notice dated 27.5.2009. It is also observed that both these letters were issued in void when the time of contract was already lapsed on 21.2.2008. However, action of S.E.for levy of compensation is an excepted matter for arbitration under clause 25 & clause 2 of the agreement. The show cause notice dated 27.5.2009 and compensation letter dated 21.8.2009 (R-10) both were issued when the final payment was already over due and matter was already subjudice as the arbitration was already invoked by*

*claimants on 10.3.2009. As such under the circumstances I hold that respondents are not entitled to deduct Rs. 470715.00(Rs.373643.00 deducted from final bill + Rs.97072.00 withheld from 3<sup>rd</sup> R/A bill= Rs.470715.00) imposed under clause 2 before getting their action of imposing such compensation adjudicated by competent court.”*

The plain and simple language of the observations of the Arbitrator, irresistibly concluded that the arbitrator has not adjudicated the claim/counter claim of the parties to the *lis* falling under the excepted clause. It has given passing reference, by observing, that the department cannot adjudicate the compensation part in view of clause 2 of the agreement.

Mr. Ashwinie Kumar Bansal, learned counsel appearing on behalf of the appellant during the course of arguments pointed out that the department has already deducted the amount of compensation and as per the mandate of the details cited (**supra**) it is the contractor who has to initiate the suit for recovery, and in case suit is filed, the objection of limitation will not be raised by the department. Whereas while noticing the contention, Mr. Ashish Grover, learned counsel appearing on behalf of the respondents after conjointly reading the observations of the Arbitrator(**supra**) submits that it is not clear whether the amount has been deducted or not. The objections, in my view against the award were not maintainable as the Arbitrator did not adjudicate the claim. The amount of compensation which was falling under the excepted clause and

rightly so against the mandate of the judgment noticed above, and thus rightly the objections have been dismissed, accordingly the impugned order is set aside.

It is worthwhile to mention that, since, it is not clearly discernible from the extracted portion of the award, I would refrain myself in giving liberty by selecting one of the parties to the *lis* to initiate the recovery proceedings for recovery of the amount due and rather would leave this question open full by giving liberty to both the parties to the *lis* to initiate proceedings for recovery of the amount in case the amount has been deducted or not.

With the aforementioned observations, the appeal stands disposed of.

**(AMIT RAWAL)**  
**JUDGE**

**August 21, 2015**  
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