IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O.No.1979 of 2015 (O&M)
Date of Decision: September 30, 2015

M/s Equipment Conductors & Cables Ltd., Gurgaon

...Appellant

Versus

Chief Engineer, M/s Transmission Corporation of Andhra Pradesh Ltd., Hyderabad & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Mr.Paras Money Goyal, Advocate,
for the appellant.

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AMIT RAWAL, J.

CM No.6181-CII of 2015

For the reasons mentioned in the application, which is supported by an affidavit, delay of 19 days in filing the appeal is condoned.

CM stands disposed of.

FAO No.1979 of 2015 (O&M)

The appellant has challenged the order dated 28.8.2014 passed by the Additional District Judge, Chandigarh, whereby the petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act") for setting-aside the award dated 21.6.2010, has been dismissed.

Mr.Paras Money Goyal, learned counsel appearing on behalf of the appellant submits that all the claims were illegally held to be time barred by the arbitrator, i.e., Haryana Micro and Small Enterprises Facilitation Council inasmuch as the claim application was filed on 9.7.2001, whereas the due date of the amount/payment, including the interest, if any, was with effect from the year 1993, i.e., 29.3.1993, 30.3.1993, 31.3.1993, 15.4.1993, July, 1993 and November, 1993. He submits that the arbitrator, much less, Additional District Judge failed to consider that the application had been filed under Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 (for short "MSMED Act"), which is a beneficial statute and a complete code in itself. He dismissed the objections erroneously by applying the provisions of Section 43 of the Act by holding that the Limitation Act is applicable to the arbitration proceedings. He further submits that the Interest Act 1993 and as well as MSMED Act, 2006 statutorily prohibit the applicability of the Limitation Act, 1963. He further submits that the claim of the claimant was with regard to the interest on the delayed payment, therefore, the special act, will have a over riding effect over the general act. The Facilitation Council was to act as an arbitrator. He further submits that the award and as well as the order under challenge are liable to be set-aside and the matter be remitted back to the arbitrator to decide the matter afresh.

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

The appellant in his claim petition claimed an amount of ₹,36,45,398/- upto 30.6.2001, which was subsequently revised to

₹2,74,68,136/- upto 31.1.2008 on account of interest on the delayed payment of the price of the goods, i.e., 4200 Kms. Of 6/2.59 mm Aluminium wire over ½ 59 mm HTGS wire ACSR conductor code name "WEASEL".

A perusal of the table furnished by the arbitrator clearly shows that all the payments pertained to the year 1993. The claim, as noticed above, was filed in 2001. As per the provisions of Section 43 of the 1996 Act, the provisions of Limitation Act are applicable to the arbitration proceedings, thus, it cannot be said that the applicability of the Limitation Act expressly included for determination of the dispute by the Council.

It is now a settled law that in what circumstances the award has to be interfered with. The question, which is now 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 as statutorily prescribed under Section 34 of the Act, the same cannot be interfered with. In this context I intend to refer the judgments of Hon'ble Supreme Court rendered 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 judgments, 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 substituting its own view in support of the Arbitrator's 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 Arbitrator has dealt with the dispute which was contemplated and was within its scope. The parties to the *lis* had participated in the proceedings and were given proper notice not only with regard to the appointment of the Arbitrator but vis-a-vis proceedings. In my view, the award of the Arbitrator does not suffer from any illegality inasmuch as the Arbitrator, who is an expert, has dealt with the matter and decided the respective claims of the parties to the *lis.*

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

I do not find any illegality and perversity in the impugned order and as well as the award, by which the claim made by the appellant was found to be, *ex-facie,* time barred and the orders cannot be said to have been passed without jurisdiction.

Accordingly, the appeal is dismissed.

September 30, 2015 **(AMIT RAWAL)**
ramesh **JUDGE**