IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

FAO No.4305 of 2013 (O&M)
Date of decision: 08.05.2015

M/s Punjab Agro Rice Bran Extractions Ltd.
….. Appellant

versus

M/s Banwari Lal Suresh Kumar and others
……Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Amit Jhanji, Advocate for the appellant
Mr.P.S.Rana and Mr.Gaurav Singh Rana, Advocates for respondent No.1
Mr.Anupam Singla, Advocate for respondent No.2

1. Whether Reporters of Local Newspapers 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?

Kuldip Singh, J.

Appellants have filed this appeal against judgment dated 10.5.2013, passed by the learned District Judge, Chandigarh, vide which, the objections filed by the appellants under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') against the arbitration award dated 31.10.2003 were dismissed.

The brief history of the case, in terms of the facts put forward by the appellants is that M/s Punjab Agro Rice Bran Extractions Limited (for short, 'PARBEL'), which was 100% subsidiary owned by the Punjab Agro Industries Corporation Limited (for short, 'PAIC), a Government owned company, entered into an agreement with Banwari Lal Suresh Kumar government contractor – respondent

No.1 on 19.5.1982 for construction of factory within eight months i.e. by 18.1.1983. PAIC was to promote and develop agricultural industries in the State of Punjab. PARBEL was promoted by PAIC to set up rice bran extraction unit at Sadiq Road, Guru Harsahai, District Ferozepur. The agreement was signed between the respondent No.1- contractor and Om Sahai who was then Director of PAIC. The required work of the construction of the factory was ultimately completed by 13.1.1984. PAIC was of the view that the construction was not satisfactory and there were various defects in the construction. Ultimately, PAIC i.e. respondent No.2 got their factory constructed from other person at the risk and cost of the contractor respondent No.1. On account of this, a dispute arose between PAIC and the contractor – respondent No.1. Respondent No.2 PAIC issued a notice on 8.3.1983 asking respondent No.1 for referring the matter to the Arbitrator. Respondent No.1 agreed to the arbitration and vide letter dated 27.1.1984 gave the names of two arbitrators for settlement of dispute. In the meanwhile, the Punjab Agro Industries in pursuance to its disinvestment plans entered into disinvestment agreement on 19.9.1985 with Kewal Singh Dhillon and Associates whereby the equity share holding of PARBEL was sold to Kewal Singh Dhillon and Associates. According to the appellants, under the disinvestment agreement dated 19.9.1985, it was clearly stated that any liability which is not reflected in the balance sheet as on 20.7.1985 shall be to the account of the PAIC. Under clause 12 all the statutory payments and relevant clearance pertaining to the period before the date of taking over shall be responsibility of the respondent No.2- PAIC. During the pendency of arbitration proceedings, PAIC moved an application on 7.8.1999 for deletion of their own name from the arbitration proceedings. The said application was allowed by the Arbitrator on 22.1.2000 and name of respondent No.2- PAIC was deleted. The said order was challenged in the High Court vide Civil Revision No.1796 of 2000. Another order declining the plea of the appellants that the matter should be heard under the old Arbitration Act, 1940 was also challenged by Civil Revision No.1795 of 2000. Vide order dated 24.1.2001, both the said Civil Revisions were dismissed. Regarding the plea of the deletion of the name, the High Court held that the said order can be challenged after the passing of the award. The Arbitrator vide impugned award dated 31.10.2003 wrongly held the appellants to be liable to pay a sum of Rs.14,65,330/- along with simple interest @ 12% per annum. The appellants claim that the present management which had purchased the PARBEL vide disinvestment agreement dated 19.9.1985 is not liable to pay the amount. Rather the old management i.e. PAIC which has entered into the contract with contractor for PARBEL and with which the dispute arose and which had incurred the liability under the clause 11 and 12 of the agreement dated 19.9.1985 is liable to pay the amount of the award. Further the appellants also challenged that the order of the Arbitrator deleting the name of respondent No.2 – PAIC vide order dated 22.1.2000 is illegal and liable to be set aside.

I have heard learned counsel for the parties and have carefully gone through the file.

First of all, this Court is required to examine whether the name of the PAIC was rightly or wrongly deleted by the Arbitrator on 22.1.2000. A copy of the order passed by this Court in Civil Revision No.1796 of 2000 along with Civil Revision No.1795 of 2000 (Annexure A-11) goes to show that regarding the deletion of name of the PAIC from the array of the parties, it was observed as under:-

> *"As such, the parties can make the challenge only after the Arbitrator's award has been made. The petitioner had been participating in the proceedings before the Tribunal, rather it was the petitioner who had proposed to be governed under the new Act, which is evident from the correspondence referred to above and once it has agreed to the jurisdiction of the Tribunal under the new Act, it is estopped from withdrawing therefrom. Thus, this Court cannot interfere in the exercise of its extra-ordinary jurisdiction under Article 227 of the Constitution of India."*

In this way, it was opened to the appellants to challenge the order dated 22.1.2000 passed by the Arbitrator, deleting the name of the PAIC, while challenging the award.

To determine the controversy as to whether PAIC is necessary party or not, the original agreement dated 19.5.1982 with respondent No.1 – contractor as well as disinvestment agreement dated 19.9.1985 are required to be examined.

The perusal of agreement (Ex. C-44) dated 19.5.1982 shows that the agreement was executed between PARBEL and respondent No.1- contractor for construction of the factory premises.

The agreement was signed by the Director of the then management Shri Om Sahai. It is not disputed that PARBEL was wholly owned subsidiary of PAIC in which PAIC had 100% share. PAIC which was fully owned Government company, under the disinvestment plan sold its equity shares to Kewal Singh Dhillon and Associates vide agreement dated 19.9.1985.

Now a look at the agreement dated 19.9.1985 (Annexure A/4) shows that there was clause 11 and 12 of the said agreement, which are reproduced as under:-

> *"11. Any liability which is not reflected in the balance sheet as on 20.7.1985 shall be to the account of corporation.*
>
> *12. All statutory payments and relevant clearance from the Government agencies pertaining to the period before the date of take over shall be the responsibility of the corporation."*

It goes to show that the liabilities of PARBEL which arose before disinvestment agreement dated 19.9.1985 were the liabilities of the previous management i.e. PAIC. There was no clause in the agreement that all the previous liabilities shall be borne by the new management. Pleadings further show that immediately after the construction of the factory, which was found to be defective, a dispute had arisen in the year 1984 itself regarding the defective construction and the work was got conducted from some other agency. Respondent No.2 had issued a letter dated 8.3.1983 (Annexure A2) invoking the arbitration clause and asking the contractor to nominate the Arbitrator. Vide letter (Annexure A3) dated 27.1.1984, the contractor admitted the receipt of the letter. Therefore, it comes out that whatever the liability existed to the PARBEL, was the responsibility of PAIC which had sold the PARBEL to Kewal Singh Dhillon and Associates on 19.9.1985 vide agreement (Annexure A4). Therefore, I am of the view that the order 22.1.2000 passed by the Arbitrator deleting the name of PAIC as party is illegal and liable to be set aside. Presence of PAIC was very much necessary to decide as to whether the old management is to pay the claim of the contractor or the new management is to meet the claim in terms of clause 11 and 12 of the agreement dated 19.9.1985 (Annexure A4). As such, the order dated 22.1.2000 passed by the Arbitrator deleting the name of the PAIC from the array of respondents is hereby set aside.

The learned District Judge, Chandigarh has also held that the petition filed by the appellant under Section 34 of the Arbitration Act is time barred. In this case, arbitration award was passed on 31.10.2003. The copy of the same is stated to have been supplied on 2.11.2003 to one Harish Kumar for and on behalf of Vinod Sharma, Advocate for PARBEL.

Now the question would arise as to whether the supply of the copy to the counsel is sufficient point for computing the period of limitation. Section 31 sub-section 5 of the Arbitration Act provides as under:-

> *"31(5) After the arbitral award is made, a signed copy shall be delivered to **each party**."*

The emphasis here is on supply of copy of award to the each party. Each party means that it has to be supplied to each party personally and not to any third person. Section 34(3) which provides for limitation for moving application for setting aside the arbitration award also talks about the date on which the party making the application had received the arbitration award. The said section does not talk of supply of copy to any advocate representing the party during the arbitration proceedings. Therefore, the Arbitrator was required to dispatch the duly signed copy of the arbitration award to the parties at their addresses. This was not done in the present case.

It being so, it cannot be said that the petition under Section 34 of the Arbitration Act was time barred.

The findings of the learned District Judge, Chandigarh on issue No.2 are revered.

In view of the foregoing discussions, the appeal is allowed. The impugned jugment dated 10.5.2013, passed by the learned District Judge, Chandigarh as well as the arbitration award dated 31.10.2003 are set aside and the case is remanded back to the Arbitrator for fresh decision. The Arbitrator shall hear all the parties to the present petition including the old management and the new management of PARBEL and allow them to lead evidence and thereafter, keeping in view the observations made by this Court in the present order, while deciding about the matter shall also pass a specific order as to which management is liable to pay the amount to the contractor. Keeping in view the fact that the contractor is suffering for the last several decades, it is desirable that the Arbitrator should also pass interim award under Section 31(6) of the Arbitration Act for interim payment to the contractor.

08.05.2015 **(Kuldip Singh)**
gk **Judge**