

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

FAO No.2885 of 2015 (O&M)

Date of decision: 27.08.2015

M/s Omega Ag. Seeds (India) Limited

... Appellant

Vs.

Punjab Agro Industries Corporation Ltd. & another ... 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. Amit Kaith, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.8810-CII-2015

For the reasons stated in the application, duly supported by an affidavit, delay of 22 days in re-filing the appeal is condoned.

C.M. stands disposed of.

C.M.No.8811-CII-2015

Prayer in the application is for condonation of delay of 3503 days in filing the appeal on the ground that appellant had earlier filed a Civil Revision No.3302 of 2005 and the same was withdrawn vide order dated 24.07.2014 realizing that order of Additional District Judge was appealable under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996 (herein after referred to as the Act, 1996) and therefore, period spent during the pendency of the revision petition,

is liable to be condoned, as per Section 14 of Limitation Act, 1963.

For the reasons stated in the application, duly supported by an affidavit, delay of 3503 days in filing the appeal is condoned.

C.M. stands disposed of.

C.M.No.17591-CII-2015

The application is allowed, subject to all just exceptions. Agreement dated 22.10.1998 is taken on record.

FAO No.2885 of 2015 (O&M)

Challenge in the present appeal is to the impugned Award dated 30.07.2001 and order dated 08.01.2005, whereby, the objections filed by the appellant under Section 34 of the Act, 1996 have been dismissed.

Mr. Amit Kaith, learned counsel appearing on behalf of the appellant submits that as per Clause 44 of the Financial Collaboration Agreement (hereinafter referred to as the 'Agreement'), certain acts were to be performed by the parties to the agreement and the appellant had performed the said part of the agreement, whereas, respondent-Punjab Agro Industries Corporation Limited failed to perform the same, therefore, the appellant is entitled to refund of ₹1,00,000/- (Rupees one lac.).

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

It would be apt to reproduce Clause 44 of the Agreement, which reads thus:-

“On the signing of this Agreement, the Collaborator shall deposit with the Corporation by way of earnest money, a sum of Rs.1 Lac (Rupees One lac.). This amount will be transferred by the Corporation in due course to the Company to be adjusted as the Collaborator's payment towards the equity share capital.

In case this Agreement is cancelled by the Corporation or it is not implemented, then and in that case, the Corporation shall refund the amount of earnest money to the Collaborator after deducting such expenses as may have been incurred by it on the project.”

The appellant-claimant had sought a reference before the Arbitrator on the ground that Corporation had not adhered to the terms and conditions of Clause 44 of the Agreement (supra) and therefore, entitled to refund of ₹1,00,000/- (Rupees one lac.). The Arbitrator on the basis of the evidence found that the Corporation had invested a sum of ₹ 80,000,00/- (Rupees eighty lacs.) towards equity share participation in the company, but the appellant-company violated the provisions of Clause 22 of the Agreement and further the claimant did not make available the accounts of the Company, i.e, M/s Omega Ag.Seeds (India) Limited for the inspection of the Accountant appointed by the respondent-Corporation.

In view of the fact that request made to the Company for refund of ₹ 80,000,00/- (Rupees eighty lacs.) along with interest was

agreed by the Board of Directors of Company in their meeting held on 29.4.1996. Since the appellant-Company was bound by the terms and conditions of the Agreement, Clause 44, *ibid*, envisages situation of refund of the earnest money after adjusting/deducting such expenses by the respondent-Corporation. The Punjab Agro Industries Corporation had already incurred ₹ 80 lacs (Rupees eighty lacs) therefore, in my view, impugned Award dated 30.07.2001 and order dated 08.01.2005, in not accepting plea of refund of ₹1,00,000/- (Rupees one lac.) is fair, legal and justified and cannot be said to be erroneous or suffering from any infirmity, illegality, much less without jurisdiction.

There is no merit in the appeal.

Accordingly, the same is hereby dismissed.

(AMIT RAWAL)
JUDGE

August 27, 2015
savita