IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.5370 of 2015 (O&M)
Date of decision: 04.09.2015

Capt. Jagbir Singh Randhawa ... Appellant

Vs.

M/s Punjab State Industrial Development Corporation Ltd. & others ... 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. Manoj Vashishtha, Advocate
for the appellant.

Mr. Vikas Mohan Gupta, Advocate
for the caveator/respondent No.1.

AMIT RAWAL J. (Oral)

Notice of motion.

On asking of the Court, Mr. Vikas Mohan Gupta, Advocate accepts notice on behalf of caveator/respondent No.1.

Challenge in the present appeal is to the impugned order dated 25.11.2014, whereby, the objections filed at the instance of the appellant against the Award dated 22.12.2010, have been dismissed.

Mr. Manoj Vashishtha, learned counsel appearing on behalf of the appellant, submits that as per the terms of the Financial Collaboration Agreement (hereinafter referred to as FCA) dated 08.12.1995, the Collaborator was required to buy-back the equity share holding of Punjab State Industrial Development Corporation Limited (hereinafter referred to as the PSIDC) in M/s Ranbro Brakes India within a period of 05 years from the date of commencement of commercial production by the Company, as provided in Clause (22) of the FCA. He further submits that PSIDC did not address any letter to the respondent-Collaborator in individual capacity, but addressed to Capt. Jagbir Singh Randhawa being, Managing Director of M/s Ranbro Brakes India Limited. As per the FCA, certain amounts invested by the appellant have not been taken note of Award, much less, even in the objection petition. He further submits that one time settlement had been entered into between the parties and in view of letter dated 24.03.2007, appellant had deposited 10% of ₹ 450 lakhs and the same has been appropriated, therefore, Tribunal did not have jurisdiction under the Arbitration and Conciliation Act, 1996. Even the company, has not been arrayed as party in the claim petition filed before the Arbitrator. He further submits that company had gone to the BIFR and had been declared sick in the year 2006, therefore, the arbitration proceedings are not maintainable.

Mr. Vikas Mohan Gupta, learned counsel appearing on behalf of caveator/respondent No.1 submits that as per the offer submitted for one time settlement policy, Collaborator had admitted the commencement of full commercial production, as well as, liability of buying back, PSIDCs share holding which had fallen within the express provisions of Collaboration Agreement. Collaborator admitted the execution of agreement, but, thereafter did not honour the same which resulted in dispute. Since the Collaborator's agreement envisaged resolution of dispute through arbitration, jurisdiction of Arbitrator was invoked. He further submits that FCA had been signed by Capt. Jagbir Singh Randhawa and it was he who had to buy back shares, therefore, impleadment of the company in the reference petition was not necessary, thus, objection of non-joinder and mis-joinder of the company is immaterial. He further submits that no counter claim has been filed on behalf of the appellant for allegedly claiming any amount.

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

On noticing the rival contentions of learned counsel for the parties to the lis, there is no dispute with regard to that the company had gone into commercial production on 15.04.1987 and as per Clause 22 of the FCA, shares were to be purchased in the year 2002. One time settlement policy was though entered into between the parties and partly adhered to, but, thereafter, appellant committed default and therefore, PSIDC rightly invoked the arbitration clause for resolution of the dispute with regard to the recovery of the balance amount and equity share holdings. The FCA had been signed by Capt. Jagbir Singh Randhawa, appellant, in his personal capacity and this fact had not been disputed, in any correspondence exchanged between him and PSIDC. However, letters were addressed to Capt. Jagbir Singh Randhawa being Managing Director but aforementioned letters have duly been replied by Capt. Jagbir Singh Randhawa, in his individual capacity, therefore, in my view, aforementioned, objections against Award and impugned order, are not tenable, much less, sustainable. It is immaterial whether the company has been declared sick or not but the fact remains that FCA had been signed by appellant in his individual capacity. Grievance of the appellant that his contribution in the company had not been taken care of by the Arbitrator, is not tenable for want of any counter claim.

It is now 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 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 Arbitrator has dealt with the dispute which was contemplated and was within the scope of it. 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 viz-a-viz proceedings, in my view the award of the Arbitrator does not suffer from any illegality in as much as the Arbitrator who is expert has dealt with the matter and decided the claim of respective claimants to the parties to the *lis.*

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.

Keeping in view the aforementioned finding, I do not find any illegality, much less, perversity, in the impugned order and the appeal is devoid of merit.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 04, 2015
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