IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No. 5985 of 2015(O&M)
Date of decision: September 11, 2015

Haryana Vidyut Prasaran Nigam Limited
.... Appellant

Versus

M/s Telmos Electronics, Jindal Chowk, Delhi and others
.... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Ms. Sonia Madan, Advocate
for the appellant.

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Amit Rawal, J (oral).

The challenge in the present appeal is to the impugned order dated 29.4.2015, whereby, the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called as 'the Act') had been partly allowed. In essence, the amount of compensation awarded by the arbitrator to the extent of ₹1,62,54,108/- has been reduced by ₹10 lacs and the compound interest has been converted into simple interest.

Learned counsel appearing on behalf of the appellant submits that the appellant had filed a counter, claim but in support of the counter claim he could not lead evidence, therefore the application under Order 41 Rule 27 CPC seeking leave of this court to bring on record the documents by way of additional evidence has been sought.

She further submits that in case the aforementioned documents are permitted to be brought on record by remanding the case back to the arbitrator, the arbitrator would have a chance to ponder upon the counter claim and award compensation as claimed.

I have heard learned counsel for the appellant and appraised the paper book and as well as contents of the application.

The argument that the provisions of CPC would apply to the arbitration proceedings, much less in an appeal filed under Section 37 of the Act and therefore, application filed under Order 41 Rule 27 CPC is also permissible, in my view is without merit. It is not the case of the appellant that despite exercise of due diligence, the aforementioned documentary evidence could not be lead before the arbitrator. Once the dispute had arisen, the counter claim had been filed, it can be claimed on the basis of some material or the lapses, if any, on the part of the contractor. It is very strange that Haryana Vidyut Prasaran Nigam Limited has taken the litigation in a most casual and callous manner. I would refrain myself to observe against the conduct of HVPNL but such type of inaction on the part of the officials is liable to be deprecated. The scope of interference for entertaining the objections under Section 34 of the Act against the award is limited. It has to be within the parameters of provisions of Section 34 of the Act.

It is now a 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.

In my view, no error of law arise from the impugned order whereby the objecting court has granted the relief by reducing the amount of ₹10 lacs and converted the compound interest into simple interest. The order is perfect and justified.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 11 , 2015
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