IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No. 10525 of 2014(O&M)
Date of decision : January 29, 2016

M/s Transmission Corporation of Andhra Pradesh Ltd.

.... Appellants

Versus

M/s Equipment Conductors & Cables Ltd.and another

.... Respondents

FAO No. 10507 of 2014(O&M)

M/s Transmission Corporation of Andhra Pradesh Ltd.

.... Appellants

Versus

M/s Equipment Conductors & Cables Ltd.and another

.... Respondents

FAO No. 34 of 2015(O&M)

M/s Transmission Corporation of Andhra Pradesh Ltd.

.... Appellants

Versus

M/s Equipment Conductors & Cables Ltd.and another

.... Respondents

FAO No. 68 of 2015(O&M)

M/s Transmission Corporation of Andhra Pradesh Ltd.

.... Appellants

Versus

M/s Equipment Conductors & Cables Ltd.and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R. K. Sharma, Advocate
for the appellants in all the appeals.

Mr. Paras Money Goyal, Advocate
for respondent No.1 in all the cases
and for the applicant in RA No.293-CII of 2015.

Ms. Nivedita Sharma , Advocate
for the applicant in RA No.293-CII of 2015.

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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?

Amit Rawal, J (oral).
RA No.293-CII of 2015 in FAO No. 10507 of 2014

No ground for review is made out.

The review application is dismissed.

FAO No. 10525, 10507 of 2014 & 34 and 68 of 2015 (O&M)

This order of mine shall dispose of four appeals bearing FAO No. 10525 and 10507 of 2014, FAO No. 34 and 68 of 2015.

FAO No. 10525 and 10507 of 2014 are against the dismissal of objections against the award dated 21.6.2010 whereas in FAO No. 34 and 68 of 2015, objections filed by the appellant has been dismissed for non-deposit of 75% of the amount as per provisions of Section 19 Micro Small and Medium Enterprises Development Act, 2006 and objections filed by the respondents have been accepted and the matter has been remitted back to the arbitrator. Similar is the prayer with regard to the aforementioned FAOs, though they have been filed against the award dated 21.6.2010.

Mr. R. K. Sharma, learned counsel appearing on behalf of the appellants submits that a sum of ₹15,52,089/- viz-a-viz award of ₹19,53,828/- was deposited which constituted 75% of the amount but the objecting court dismissed the objections holding that it was not in conformity with the award dated 21.6.2010.

He further submits that order of the objecting court remanding the matter back to the arbitrator is not permissible in law and in support of his contentions he has relied upon the judgment of Hon'ble Division Bench of Bombay High Court in **Geojit Financial Services Limited Vs. Kritika Nagpal in Appeal No.33 of 2013** and other connected appeals, however certain exceptional circumstances have been carved out where the matter can be remanded back in case the arbitrator has omitted to refer to any of the claim but the instant case is not the case of such type.

Ms. Nivedita Sharma, learned counsel appearing on behalf of the applicants-respondents submits that ₹20 lacs would not constitute 75% of the award as the award contain element of compound interest on the principal which would run into crores of rupees. In short somewhere around ₹2 crore in one case and in other approximately close to ₹2 crores.

She further submits that against the order of remand a review application was filed which was dismissed. the appeal filed in this court also met with the same fate.

I have heard learned counsel for the parties and appraised the paper book as well as case law cited.

Shorn of the facts and submissions noticed above, and as well as case law, I am of the opinion that the ratio decidendi culled out by the Division Bench of Bombay High Court that the objecting court has no power to remand the matter back to the arbitrator once the court has set aside the award is squarely applicable to the present case. It is not the case where the arbitrator has omitted to refer to certain claims so exception carved out in the aforementioned case of Bombay High Court could apply. The relevant portion of the judgment in **<u>Geojit Financial Services Limited's case (supra)</u>** is reproduced hereinbelow:-

> *14. Under sub-section 4 of Section 34, the Court is vested with the discretion, where it is appropriate and where the court is requested by a party, to adjourn the proceedings for a period of time. An adjournment is granted in order to furnish the arbitral tribunal with an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of the Tribunal will eliminate the grounds for setting aside the award. Sub-section 4 of Section 34, therefore, does not contemplate a situation where the proceedings are remanded back to the arbitrator after setting aside the arbitral award. Once an arbitral award is set aside under Section 34, that brings to a conclusion a proceeding before the Court. What sub-section 4 of Section 34 envisages is an opportunity to the arbitral tribunal to resume the arbitration proceedings or to take such other action as would eliminate the grounds for setting aside the award. Without meaning to be exhaustive, we can conceive of a situation where the arbitral tribunal has overlooked a particular item of claim on which parties have led evidence and*

have addressed arguments. A challenge to the arbitral award in such a case would be on the ground that the arbitral tribunal has failed to decide a claim which was raised, controverted and submitted upon. The provisions of Section 34 enable the Court to adjourn the petition under Section 34 so that instead of setting aside the award, the arbitral tribunal can resume the proceedings and take necessary steps to eliminate a ground of challenge. Section 34(4), however, does not contemplate or vest a power in the Court to remand proceedings back to the arbitral tribunal once the Court has set aside the award. Once an award has been set aside, recourse cannot be taken to Section 34(4) since it is evident that the power can be exercised by the Court while adjourning a petition under Section 34.

15. The jurisdiction under Section 34(4) can be exercised in a manner which is strictly consistent with that provision. The equitable jurisdiction which the Court exercises under Article 226 of the Constitution is clearly inapposite when dealing with a petition under Section 34. The learned Single Judge has relied upon his earlier decision in Angel Capital and Debt Market Limited Vs. Sharad Munoti, Which seems to suggest that the Court has while setting aside an award a general power to remand the proceedings for reconsideration. We clarify that this would not reflect the correct position in law.

Accordingly the order passed by the objecting court remanding the matter back is hereby set aside. As regards the objections filed by the appellant against the award aforementioned. It would be apt to refer Section 19 of the Act statutorily provides deposit of 75% of the amount. Section 19 of the Act reads thus:-

> "*Application for setting aside decree, award or order:- No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any Court unless the appellant (not being a supplier) has deposited with it seventy-five percent, of the amount in terms of the decree, award or , as the case may be, the other order in the manner directed by such Court.*
>
> *Provided that pending disposal of the application to set aside the decree, award or order, the Court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case, subject to such conditions as it deemds necessary to impose."*

A serious dispute has been raised viz-a-viz calculation of 75% of the awarded amount whether ₹15,52,089/- would constitute 75% of the awarded amount or whether after calculating compounding interest, 75% of the amount is to be calculated.

Instead of pondering upon the calculations referred to during the course of arguments, I am of the view that the same shall be subject matter of the objecting court. In essence, both the parties shall be given one-one effective opportunity to submit their calculations viz-a-viz amount constituting 75% of the awarded amount as per award dated 21.6.2010 and thereafter the objecting court shall determine 75% of the awarded amount and give another fifteen days' time to the appellant to deposit 75% of the amount. In case of non-deposit of the same, objections shall be deemed to have been dismissed. If otherwise, the objecting court shall decide the matter pragmatically, much less in accordance with law.

With the aforementioned observations, the orders passed by the objecting court are hereby set aside. The matter is remanded back to it.

Parties through their counsel shall appear before the objecting court on 15.2.2016.

All the aforementioned appeals stand disposed of.

(AMIT RAWAL)
JUDGE

January 29 , 2016
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