

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

FAO No.3114 of 2013 (O&M)

Date of decision: 2.9.2016

M/s J K Transformers & Switchgears

... Appellant

Versus

Uttar Haryana Bijli Vitran Nigam Limited and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Rajesh Sethi, Advocate, with
Ms.Pridhi Jaswinder Sandhu, Mr.Prince and
Mr.Gaurav Kamboj, Advocates,
for the appellant.

Mr.P.S.Poonia, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

The appellant contractor is aggrieved of the dismissal of the objections filed under Section 34 of 1996 Act for setting aside of the award dated 20.7.2009 whereby the claim of the UHBVN has been allowed.

Mr.Sethi learned counsel appearing on behalf of the contractor submits that the contract agreement for supply of transformers had been entered into between the parties. There was some dispute and the respondents erroneously cancelled the agreement and invoked risk and cost. Since the contract, envisaged resolution of dispute through arbitration, the matter was referred to the arbitrator, but the arbitrator has assigned no reason much less cogent reasons nor there is any compliance of Section 3 of

to place on record contract awarded to the other contractor as well as payment to whom work was awarded at the risk and cost. He submits that only a show cause notice Ex.P9 was received by the contractor to show that an amount of Rs.1,51,68771.25 was outstanding owing to the awarding of the contract to the other contractor. Besides this, there is no evidence. He draws attention of this Court to the award. The relevant portion reads as : -

“Tender Enquiry QD-158 was floated by DHBVN for supply of 400 KVA distribution transformers. The respondent submitted offer against the above tender enquiry vide letter dated 25.8.2003. The offer of the firm (respondent) was accepted vide memo No.Ch-7/QH-158 dated 6.4.2004 and P.O. No.HH-5664 dated 24.5.2004 was issued by UHBVN for supply of 400 KVA distribution transformers numbering 55. The respondent signed all the terms and conditions as contained in Schedule B, C & D. A legal contract was formed and the respondent also acted on the same. The respondent submitted the drawings although not within the stipulated time vide letter 15.7.2007. The drawings were returned vide letter dated 25.8.2004 with certain observations. The revised drawings were submitted vide letter dated 8.10.2004. The drawings were approved subject to some conditions vide letter dated 19.10.2004. The respondent submitted type test certificate vide letter dated 31.12.2004 which were examined and certain discrepancies were pointed out. The respondent was requested to submit Temperature Rise Test and also reminded. The respondent breached the contract at every stage. The respondent neither submitted type test certificates, nor drawings and did not supply the material as per terms and conditions of the contract.

The respondent in his preliminary objections/pleas has gone into certain technical details which have been detailed in his claim petition. He has submitted that the claim petition can

not be maintained on these grounds. The respondent maintains that there is no valid, legal and enforceable agreement between the parties because the respondent had at no stage any relation/dealing with UHBVN vis-a-vis supply of material so neither the claimant can maintain a claim petition nor this Hon'ble authority has the jurisdiction to entertain and decide the dispute. The respondent stated that as a matter of fact and in reality an agreement of answering respondent came into being with DHVBN as per which only the managing Director of DHVBN is competent to act as arbitrator. The respondent has been denying the documents and photocopies filed by the claimant. The claimant has mentioned that Shri R.K.Jain, XEN/MM who represented the claimant failed to prove any resolution whereas it is required under the Companies Law – UHBVN being accompany incorporated under the Companies Act, 1956. The respondent has demanded compensation and dismissal of arbitration case.

After going through the above discussions, claims and defense statement of the parties, evidence filed by the claimant and respondent, cross-examination and arguments (both oral and written). I came to the conclusion there was a legal and valid contract between the parties. The existence of contract can not be denied in arbitration matters on mere technicalities and procedural flare ups. There is sufficient evidence on record to prove that there constitutes and valid and legal contract between the parties.

Section 8 of the Indian Contract Act, 1872 states that performance of the conditions of the proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposed.

The respondent in this case submitted drawings, type test certificate and other documents to the claimant and this act is

a sufficient proof of performance of the conditions of the proposal under the Indian Contract Act, 1872 and automatically and validly accepted the proposal of the claimant. The respondent can not deny that they had not accepted the offer and not a party to the case.

From the above discussions and after going through the claim filed by the claimant, reply/objections and counter claim of the respondent, evidence and detailed arguments of both the parties, I announce my award/give decisions that the claimant is allowed to recover following amount from the respondent : -

<i>Price difference on account of the material purchased from the market by re-inviting tenders from M/s Svasca Industries, Ghaziabad at the capitalized rate of 608428.95 per transformer minus 341000.09 the rate on which order was placed on M/s JK Transformers is equal to 267428.95 x 55 Transformers</i>	<i>Rs.1,47,08,592.25</i>
<i>Liquidated Damage Charges @ 5% on Rs.1,65,173.00 per transformer i.e. equivalent FOR destination rate per transformers for 55 Transformers</i>	<i>Rs.4,54,226.00</i>
<i>Publication cost of NIT</i>	<i>Rs.5953.00</i>
<i>Total</i>	<i>Rs.1,51,68,771.25</i>

Interest on the above amount @ 18% from the date of demand to its actual payment is recoverable from the respondent.

I, on this 20th day of July, 2009 framed and announced my award in the above matter. The signed copy of the award is sent to both the parties. The award has been published on NJSP of Rs.120/- supplied by the claimant. The original award is retained in my office for record and future necessity.

Given under my hand this 20th day of July 2006.”

Per contra, Mr.Poonia learned counsel appearing on behalf of the respondents submits that Ex.P9 before the arbitrator contained every

making the calculations, the demand was raised. The contractor having failed to make payment, the dispute was referred to the arbitrator. The arbitrator had examined every document and arrived at a finding thus the award cannot be said to be against public policy or compliance of the provisions of the Act. The objections were not falling within the realm of the Act.

I have heard the learned counsel for the parties and perused the paper book and of the view that there is substance and force in the submission of Mr.Sethi in order to establish the claim, the claimant in order to substantiate the claim of risk and cost have to place on record the contract awarded to the other contractor as well as payment i.e. extra than one agreed with the previous contractor, in my view even the arbitrator has not discussed any evidence. There is no compliance of the provisions of Sub Section 3 of Section 31. The respondents miserably failed to prove on record any evidence involving the risk and cost. In my view, the award is, thus, not sustainable and muchless against the public policy and thus, the objections were falling within the realm of aforesaid provision. The objecting court has not taken notice of the same.

For the foregoing reasons, the award as well as the impugned order of the objecting Court are set aside and the appeal stands allowed.

(AMIT RAWAL)
JUDGE

September 2, 2016
Paritosh Kumar

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No