IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.1027 of 2016 (O&M)
Date of decision:04.03.2016

M/s Essan Multipack Ltd. ... Appellant

Vs.

The Punjab State Cooperative Supply
and Marketing Federation Ltd. and 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. Akshay Bhan, Senior Advocate with
Mr. Gurinder Singh, Advocate
for the appellant.

AMIT RAWAL J.

The appellant is aggrieved of the dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as '1996 Act') seeking setting aside of the award dated 20.03.2006, as well as, of order dated 26.05.2004 vide which the jurisdiction of the Arbitrator, as per provisions of Section 16 of 1996, Act, has been challenged

Mr. Akshay Bhan, learned Senior Counsel assisted by Mr.Gurinder Singh, Advocate submits, that in the year 2001, respondent No.1 floated an open tender for the purchase of LDPE Black Film through press for the requirement of black LDPE sheets of

5400 mm and 6600 mm thickness and 1200 guage +/-20% of virgin material LDPE of grade FA 002 or Equivalent Grade for the manufacture of poythene cover at the unit of Markfed at Anandpur Sahib. The tender of the appellant was accepted and supplementary order was placed. However, the dispute arose between the parties vis-a-vis the quality of material and the matter was referred to the Arbitrator. The Markfed filed a claim for a sum of ₹4,36,93,478/- including interest @ 18% per annum which was seriously disputed. The respondent lost right to seek arbitration, as alleged defect was cured by replacing covers, therefore, no cause of action arose to invoke the arbitration. Accordingly, application in this regard vis-a-vis jurisdiction of the Arbitrator was filed which has declined vide order dated 26.05.2004 and the said observations have also been challenged in the present appeal. The arbitration clause provides the limited scope for reference. Since agreement had fully been implemented and award is not legally sustainable in the eyes of law. Appellant only supplied polythene sheets and thereafter, the poythene rolls were converted by the claimant Markfed, HDPE Sacks, Anandpur Sahib into food grains covers was done in the absence of the representative of the appellant, in this regard, properties of the material cannot be expected to remain same, these facts have totally been ignored by the Arbitrator.

It is a matter of record that as during the manufacturing process the material was sent to Ahemdabad Laboratory by the representative of the respondent and the result/report (Annexure A-8) was found to be satisfactory. Even representative of the Markfed submitted his report on 23.04.2001 (Annexure A-9) with regard to the manufacturing of sheets in the premises of the firm, wherein, it was found that material used by the claimant was above specifications. The Arbitrator erroneously relied upon the report of Ram Institute for Industrial Research, Delhi and IDMA Laboratories Limited Panchkula without realizing the fact that sample sent to the laboratory had no identification mark. The appellant had agreed to replace the LDPE sheets free of costs and the replacement was done on weight to weight basis. The department did not release the payment. The evidence brought on record has not been appreciated by the Arbitrator, thus, the objections were falling within the parameters of Section 34 of 1996 Act.

In support of the application seeking condonation of delay of 831 days, it has been submitted that the objections were dismissed, vide order dated 04.07.2013. The appellant had been diligently pursuing the matter by regularly contacting the counsel at Chandigarh. After dismissal of the objections, did not hear anything from his counsel in the lower Court, thus, remained under the impression that appeal is pending but acquired the knowledge of dismissal of the objections on receipt of notice of the execution petition. It is in these circumstances, delay of 831 days occurred and sought the condonation of delay.

I have heard learned counsel for the appellant and appraised the paper book and of the view that there is no substance in the appeal on merits, as well as, no explanation has come forth in seeking condonation of delay of 831 days, in essence, the application is lacking cogent and substantive reasons in seeking delay. The claim filed with regard to the entire material, i.e., 16918 covers, whereas, the appellant had committed for replacement of 15000 covers and the said commitment surfaced when report was sent to the firm. The firm never contested the aforementioned commitment before the Arbitrator. The Markfed purchased 5000 black polythene cap covers through PUNSUP in July 2002 at the rate of ₹4491.82 per cover involving the payment of ₹2,47,05,000/-. The Arbitrator after examining the evidence brought on record thread bare found that appellant was liable to compensate Markfed vis-a-vis expenditure incurred on transportation of the material and labour charges paid for replacement of LDPE black covers which contains the element of labour charges. The Arbitrator also noticed that Markfed also purchased 5000 black polythene cap covers through PUNSUP. The respondent only supplied 130937.3 kg LDPE sheet material which could replace 6533 covers against the commitment of 15,000 covers.

In my view, the objections vis-a-vis compensation awarded by the Arbitrator do not fall within the realm of provisions of Section 34 of 1996 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. The arbitrator has dealt with the dispute which was contemplated and was within the scope of it.

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.*

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.

In my view, no error of law arise from the award as well as order impugned. The award is perfect and justified.

There is no merit in the aforementioned appeal.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

March 04, 2016
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