IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO No.3780 of 2014 (O&M)
Date of decision : 03.11.2016

Harbhajan Singh Cheema

...Appellant

Versus

PSIDC and others

..Respondents

2. FAO No.4158 of 2014 (O&M)
Date of decision : 03.11.2016

PSIDC

...Appellant

Versus

Shri Harbhajan Singh Cheema and others

..Respondents

3. FAO No.3887 of 2013 (O&M)
Date of decision : 03.11.2016

Harbhajan Singh Cheema

...Appellant

Versus

PSIDC and another

..Respondents

4. FAO No.3148 of 2013 (O&M)
Date of decision : 03.11.2016

PSIDC

...Appellant

Versus

Harbhajan Singh Cheema and another

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. N.S. Boparai, Advocate for appellants
(In FAO Nos.3887 of 2013 and 3780 of 2014) and
for respondent (In FAO No.3148 of 2013 and 4158 of 2014)

Mr. G.C. Garg, Advocate for respondent-PSIDC
(In FAO No.3887 of 2013 and 3780 of 2014)
for appellant (In FAO Nos.3148 of 2013 and 4158 of 2014)

****

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of appeal Nos.3780 of 2014 and 3887 of 2013 against the two different awards. In the first case i.e. FAO No.3780 of 2014, the award is dated 02.04.2009 and in second case i.e. FAO No.3887 of 2013, the award is dated 12.11.2007 whereas the other two appeals filed at the instance of PSIDC were against the order of the Objecting Court, whereby appeal bearing No.4158 of 2014 filed by the PSIDC granting of the interest has been allowed and matter has been remitted back to the Tribunal with regard to the granting of the pre-reference interest in view of provision of Section 31(7) of the 1996 Act and other appeal bearing No.3148 of 2013 has been filed against the dismissal of objection seeking awarding of the interest from the pre-reference period, whereby arbitrator had only awarded interest at the rate of 9% p.a. from 30.06.2004 i.e. from the date of filing of the claim petition.

Mr. N.S. Boparai, learned counsel appearing on behalf of appellant submits that two financial collaboration agreements dated 08.08.1995 and 12.06.1997 were entered into between the parties and by virtue of the same, the appellant had to purchase/buy back the shares, regarding which PSIDC had purchased the same by investing the amount, after five years of the company being put into the commercial production. Since dispute arose, the matter was referred to the arbitrator. The claim petition was not maintainable in the absence of the impleadment of the company and in view of the provisions of Securities Contracts (Regulation) Act and Companies Act, and notification dated 27.06.1961 and 27.06.1969.

He further submits that company has already been registered with BIFR vide reference No.31 of 2010 and, therefore, PSIDC cannot seek the execution of the award in view of ratio decidendi culled out by Hon'ble Supreme Court in *Paramjeet Singh Patheja Vs. ICDS Ltd. 2006(13) SCC 322*. The collaboration agreements were not in accordance with the provision of Section 20 of the Companies Act, much less, 28(2).

Per Contra, Mr. G.C. Garg, learned counsel appearing on behalf of PSIDC submits that in arbitration award dated 02.04.2009 arising out of the collaboration agreement dated 08.08.1995, the arbitrator tribunal awarded the interest at the rate of 9% p.a. w.e.f. 09.10.1995 to 07.05.1997 and has not taken care of about the other aspects i.e. the provisions of Section 31(7) of 1996 Act. The objecting Court ought not to have remanded the matter back, as remand is not permissible. At the best, it could have modified the award by taking into consideration the terms and conditions of the Collaboration Agreement ibid.

He further submits that on first installment, second installment and third installment, tribunal granted interest at the rate of 18% p.a. but has not taken into consideration the interest qua subsequent period claim at the rate of 18% p.a.. Even otherwise, the objection of Mr. Boparai, was not maintainable as it would not falling under the provision of Section 34 of the Act as none of the ingredients have been made out. The award is being executed under the provisions of DRT Act and, therefore, the provisions of Section 22 of the Sick Industrial Companies Act (SICA) would not apply as owing to non-abstante clause in the Act of 1996 and thus urges this Court for modification of the order under challenge by awarding interest at the rate of 24% p.a. and 28% p.a. instead of 9% p.a. and 18% p.a. as first, second and third installments and flat 18% p.a. and 28% p.a. in respect of other case whereas only 9% p.a. has been awarded.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submission of Mr. Boparai, vis-a-vis who is representing Harbhajan Singh Cheema who had entered into collaboration agreement aforementioned for purchase of the share after five years of the commercial production of the company as the terms and conditions of the agreement are sacrosanct between the parties. Non-impleadment of the company would not be necessary, for, collaboration agreement was between the appellant and PSIDC. As regards the applicability of the other laws, I am of the view that this Court in para No.41 of the judgment rendered in CWP No.12861 of 2006 titled as M/s Rama Petrochemical Ltd. and others Vs. Punjab State Industrial Development Corporation Ltd. and others, decided on

27.11.2009, held that provisions of Securities Contracts (Regulation) Act would not apply. As regards the registration of the company with BIFR and applicability of Section 22 of SICA Act and in view of ratio decidendi culled out in *Paramjeet Singh Patheja's case* (Supra), I am of the view that it is not appropriate stage to raise objection. The appellant shall be entitled to raise objection at an appropriate stage, if so advised i.e. before the executing Court.

It is also settled law that even if the Court had formed different opinion on re-appreciation of the evidence, though, it is not so in the present case, even then until and unless there is patent illegality, which has been brought within the ambit of the public policy in view of ratio decidendi culled out by Hon'ble Supreme Court in *National Highways Authority of India Vs. ITD Cementation India Ltd., 2015(5) SCALE 554,* this Court cannot set aside the award in view of the ratio decidendi culled out in *Navodaya Mass Entertainment Ltd. Vs. J. M. Combines (2015) 5 SCC 698*. As regards the contention of Mr. Garg with regard to the awarding of the interest, I am of the view that no doubt the provision of sub-Section 7 of Section 31 of 1996 Act provides granting of interest at the rate of 18% p.a. but keeping in view the social, economic conditions, much less, downfall trend in the industry, I am of the view that awarding of the interest at the rate of 9% p.a. vis-a-vis the arbitration award dated 02.04.2009, concerned i.e. w.e.f. 09.10.1995 to 07.05.1997, interest is perfect, legal and justified. The objecting Court ought not to have remanded back the matter to the arbitrator even on this ground as the question of remand came to be debated upon by the Division Bench of Hon'ble Bombay High Court in *Geogit*

Financial Services Ltd. Vs. Kritika Nagpal, Appeal No.35 of 2013 in Arbitration Petition No.47 of 2009 decided on 25.06.2013, wherein principle has been laid down regarding remanding of the matter. Instant case does not fall within the aforementioned principles. For the sake of brevity, para No.14 of the judgment reads thus:-

> *"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 exercised by the Court while adjourning a petition under Section 34."

Accordingly, both awards of arbitrator i.e. awards dated 12.11.2007 and 02.04.2009 are upheld. Appeals filed by PSIDC are allowed, in part, to the extent of remand and appeals filed by Harbhajan Singh Cheema are hereby dismissed.

03.11.2016 **(AMIT RAWAL)**
pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**