**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH**

**FAO No.564 of 2013 (O&M)**
**Date of Decision.16.11.2016**

M/s Siyag Construction Company .......Appellant

Vs

Union of India and another ........Respondents

Present: Mr. P.S. Rana, Advocate
for the appellant.

Mr. Ashwinie Kumar Bansal, Advocate
for the respondents.

**CORAM:HON'BLE MR. JUSTICE AMIT RAWAL**

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**AMIT RAWAL J. (ORAL)**

The appellant-contractor is aggrieved of the impugned order whereby the Objecting Court while dealing with the objections under Section 34 of the Arbitration and Conciliation Act, 1996 has set aside the award passed by the Arbitrator, who, while entertaining the claim Nos.2, 4 and 5, awarded interest @₹62,966/- against the claim of ₹9,52,131/- plus ₹1,60,000/- for future interest @10%, in essence, an amount of ₹2,22,966/- was awarded including the interest as mentioned above.

Mr. Rana, learned counsel appearing for the appellant submits that the Objecting Court has committed a travesty of justice by embarking path of re-appreciation of the evidence which is not permissible in view of the law laid down by Hon’ble Supreme Court in ***Navodaya Mass Entertainment Ltd. Vs. J. M. Combines (2015) 5 SCC 698***. There was no occasion for the parties to lead evidence yet the evidence had been led and looked into whereas the objection petition has to be decided summarily. The Union of India had unnecessarily harped upon clause 9 of the contract by fixing the time line for submission of the bill after signing off and payment which is totally alien to the statutory provisions of the Limitation Act. Any clause filing the time line against the provisions of the Limitation Act would be void in view of Section 28 of the Indian Contract Act, thus, the order under challenge is liable to be dismissed.

Per contra, Mr. Ashwinie Kumar Bansal, learned counsel appearing for the Union of India submits that no doubt, the Objecting Court has taken note of the specific objection regarding clause 9 but on various other grounds, the award has been set aside and therefore, there was no occasion for the Union of India to assail the order any further. The Arbitrator had erroneously rejected the objection raised viz-a-viz the applicability of clause 9. The terms and conditions of the contract are *sine qua non* and therefore, the award against such terms can always be set aside as falling within the parameters of Section 34 of the 1996 Act, thus, urges this Court for confirming the order under challenge.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Rana, for, the Arbitrator had only awarded compensation on claim Nos.2, 4 and 5, as noticed above. The work commenced on 10.01.2007, to be completed on 08.07.2007, but was completed on 23.06.2007. The order under challenge, in my view, falls within the ratio decidendi culled out by Hon'ble Supreme Court in ***Navodaya Mass Entertainment Ltd.'s case*** (supra), for, it is not the scope of the Objecting Court to re-appreciate and re-examine the evidence unless and until the award apparently suffers from patent illegality and is against the public policy. The expression “patent illegality” has been brought within the ambit of public policy by Hon'ble

Supreme Court in ***National Highway Authority of India Vs. Cementation India Ltd. 2015(3) RAJ 1.***

It is also settled law that even if on re-appreciation of the evidence, a different opinion is to be formed, the Court would be skeptical/circumspect in interfering by entertaining the objection. The Arbitrator being an expert examined the provisions of the Act and held the claim to be falling within clause 10(c)(a) of the contract which requires no advance notice with regard to price variation. The Objecting Court has committed falsity, much less, illegality in setting aside the well reasoned award. There is no reasoning assigned as to how the award rendered in favour of contractor falls within the ambit of Section 34 of the 1996 Act.

In my view, clause 9 of the contract is totally against the provisions of Section 28 of the Contract Act. For the sake of brevity, Section 28 reads as under:-

> "28 **Agreements in restraint of legal proceedings, void**. — Every agreement,—
> (a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or
> (b) which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent.]
> Exception 1.— **Saving of contract to refer to arbitration dispute that may arise**. —This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.
> Exception 2.— **Saving of contract to refer questions that have already arisen**. —Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.
> Exception 3. **Saving of a guarantee agreement of a bank or a financial institution**.-.-This section shall not render illegal a contract in writing by which any bank or financial institution stipulate a term in a guarantee or any agreement making a provision for guarantee for

extinguishment of the rights or discharge of any party thereto from any liability under or in respect of such guarantee or agreement on the expiry of a specified period which is not less than one year from the date of occurring or non-occurring of a specified event for extinguishment or discharge of such party from the said liability.

Explanation.-

(i) In Exception 3, the expression "bank" means-

(a) a "banking company" as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(b) "a corresponding new bank" as defined in clause (da) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(c) "State Bank of India" constituted under section 3 of the State Bank of India Act, 1955 (23 of 1955);

(d) "a subsidiary bank" as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);

(e) "a Regional Rural Bank" established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976);

(f) "a Co-operative Bank" as defined in clause (cci) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(g) "a multi-State co-operative bank" as defined in clause (cciiia) of section 5 of the Banking Regulation Act, 1949 (10 of 1949); and

(ii) In Exception 3, the expression "a financial institution" means any Public financial institution within the meaning of section 4A of the Companies Act, 1956 (1 of 1956).

Section 43 of the Arbitration and Conciliation Act, 1996 envisage the applicability of the Limitation Act, thus, by putting a time line in submission of the claim is totally arbitrary and not in consonance with the aforementioned statutory provisions of law.

For the reasons aforementioned, the order under challenge is not sustainable in the eyes of law and the same is hereby set aside. The award of the Arbitrator is restored and the appeal stands allowed.

**(AMIT RAWAL)**
**JUDGE**

**November 16, 2016**
Pankaj*

Whether reasoned/speaking Yes/No

Whether reportable Yes/No