

F.A.O.No.5770 of 2013 (O&M)

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

F.A.O.No.5770 of 2013 (O&M)

Date of Decision: September 01, 2016

Bharat Sanchar Nigam Limited, Sector 34, Chandigarh

...Appellant

Versus

M/s Aksh Optifibre Limited, Gurgaon & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

**Present: Mr.Ashwani Talwar, Advocate,
for the appellant.**

**Mr.Yogesh Goyal, Advocate for
Mr.Pritam Saini, Advocate,
for respondent No.1.**

AMIT RAWAL, J. (Oral)

**Appellant-BSNL is aggrieved of the dismissal of the
objections filed under Section 34 of the Arbitration and Conciliation Act,
1996 (for short “1996 Act”) against the award dated 10.9.2007.**

**Mr.Ashwani Talwar, learned counsel for the appellant
submits that appellant-BSNL had placed an order upon the firm to supply
optifibre cable for the period 2000-2001 and the rate was ₹39,960/- per**

KM and ultimately when the tender was issued, the rate was negotiated and finalised at ₹35,208/- per KM, but by the time the contract was finalised with regard to other period, the entire supplies have been made and, therefore, in view of Clause 7.4, the arbitration clause was invoked, but the Arbitrator and as well as the Objecting Court declined to interfere. He submits that the objections were falling with the realm of Section 34 of 1996 Act. The claim was sustainable as BSNL had been put to loss of considerable amount. The State exchequer cannot be put to loss.

Per contra, Mr.Yogesh Goyal Advocate for Mr.Pritam Saini, Advocate for respondent No.1-contractor submits that once the rate was finalised at ₹39,960/- per KM and the entire supplies were made, the BSNL cannot take the plea of lesser rate of some other work.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no merit in the submission of Mr.Talwar, but force in the contention of Mr.Goyal, for, once the rate has already been settled at ₹39,960/- for the period 2001-2001, BSNL cannot turn around and take the benefit of different rates by some other contractor, particularly when the entire supplies in respect of the order placed had been received by them and rightly so, the Arbitrator declined the relief. I am of the view that the objections were not falling with the

realm of Section 34 of 1996 Act.

It is now a settled law that in what circumstances, the award has to be interfered with. The question, which is now 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 34 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 judgments, 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 embark on a path by substituting its own view in support of the Arbitrator's view. It is not the case of the appellant that the award is against the public policy or has violated the principles of judicial approach, much less against the statute and other provisions of

was contemplated and was within its scope. The parties to the *lis* had participated in the proceedings and were given proper notice not only with regard to the appointment of the Arbitrator but vis-a-vis proceedings. 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 claims of respective parties to the *lis*.

In my view, the award read as a whole is just, fair and reasonable. 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 arises from the award. The same is perfect and justified.

There is no merit in the appeal. The same is accordingly dismissed.

September 01, 2016
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(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No