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

**FAO-5910-2013 (O&M)
Date of decision : 11.02.2016**

M.L. Jain

...Appellant

Versus

Haryana State Electronics Development Corporation Ltd. and
another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Praveen Gupta, Advocate
for the appellant.

Mr. Pankaj Gupta, Advocate
for respondent No.1.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not? **YES**
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J. (ORAL)

The appellant is aggrieved of the order dated 27.04.2004, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act') seeking setting aside the Award dated 27.04.2004, have been dismissed.

Mr. Praveen Gupta, learned counsel appearing on behalf of the appellant-Company submits that the Arbitrator has not taken into consideration the terms and conditions of the agreement,

therefore, the objections were falling within the parameters of Section 34 of the 1996 Act. A Collaboration Agreement dated 21.06.1993 was entered into which the HSIIDC, had invested the certain amount by purchasing the shares of the Company. As per the terms and conditions of the Agreement, after a period of five years of commercial production, the Company was to buy back the shares. Though, the right was exercised on 04.01.1995 by offering a payment of ₹ 52,000/- as odd amount and thereafter, acceptance the letter dated 10.05.1995. Somehow other, the Company did not purchase the shares. The clause (d) and (f) of the Collaboration Agreement entitles the HSIIDC to off-load the shares in the open market by way of public auction and in case of any short fall, could have resorted to the resolution of dispute through the Arbitrator, having not done so, the Award is against the public policy.

Mr. Pankaj Gupta, learned counsel appearing on behalf of respondent No.1, submits that as per the clause 23 (a), an option was given to the Company that at any time after the Company had come into commercial production, the HARTRON with the consent of the incoming Collaborator off-load its share-holding in the Company, partially or fully in such manner as it may deem fit and the incoming collaborator will have the pre-emptive right to buy the share-holding of the Corporation. However, after giving the offer, the appellant-Company did not make the payment, particularly after having been informed on 10.05.1995, which necessitated respondent-HARTRON to send a legal notice for resolution of the dispute. The Award of the Arbitrator is as per the terms and conditions and there is no

illegality and perversity, the Court cannot sit in an appeal as there is limited scope for the interference, thus, the objections were not falling within the purview of Section 34 of the 1996 Act.

I have heard the learned counsel for the parties and appraised the paper book.

It would be apt to reproduce Clause 23-(a) to 23-(f) of the agreement which read thus:-

23. a) At any time after the Company goes in for commercial production, the Corporation may with the consent of the incoming Collaboration off-load its share-holding in the Company partially or fully in such manner as it may deem fit. The incoming Collaborator will however have the pre-emptive right to buy the share-holding of the Corporation. Similarly, after the shares of the company are duly listed on the Stock Exchange/OTCEI, and with the consent of the Corporation, the incoming Collaborator, may buy its share-holding at a mutually agreed price which shall be equal to or higher than that provided under sub clause I.

b) After expiry of five years from the date of commencement of commercial production by the Company or at the expiry of 7 years from the date of its incorporation whichever is earlier, the incoming Collaborator shall be bound to purchase the equity share-holding of the Corporation in the Company. Provided that the Corporation may in its discretion retain the shares acquired by it through over subscription or rights issue or bonus shares.

C) On buy back of share-holding of the Corporation by the incoming Collaborator under sub clause (b), the price to be paid shall be highest of the ;

i) Issue price of the shares plus simple interest for the

period at the lowest normal lending rate of interest on terms loans under refinance scheme of IDBI prevailing at the time of first issue of shares to the Corporation under this agreement. OR

ii) The average price of the shares ruling on any of Indian Stock Exchange for a period of two months preceding the date on which the incoming Collaborator ought to purchase the shares held by the Corporation as provided in clause (b) above; OR

iii) Assessed value of the shares as determined by the Auditors of the Company on the basis of net worth of the Company on the date of sale of the shares.

d) The sale and purchase of the shares, by the incoming Collaborator, provided under sub clause (a) and (b), payment of price therefor, and delivery of share-scrips and transfer deeds relative thereto, shall be completed within one month from the due date or date of option under sub-clause (a) as the case may be. Provided that failure of the incoming collaborator to pay for and purchase the shares within one month after exercising the option shall be construed as his consent to the Corporation to off loading these shares in the market.

e) In the event of incoming Collaborator fails to purchase the equity shares of the Corporation in the Company as provided in clause 23 above, the operation of clause 18 hereof will remain suspended at the option of the Corporation until the entire sum payable by the incoming collaborator for the purchase of the share-holding of the Corporation in the Company is paid off in full and the Managing Director being nominee of the incoming collaborator, shall resign. In such an event the Corporation shall also have the option to recommend one of its nominees to be appointed as Managing

Director by the Board of Directors and the said nominee of the Corporation after being so appointed, shall continue as Managing Director as long as the operation of clause 18 remains suspended.

Immediately upon the completion of the payment by the incoming Collaborator of the full amount payable in respect of purchase of shares mentioned in clause 23 hereinabove, this clause will cease to be operative and the Management of the Company will be carried on as before by the Managing Director who will be appointed on the recommendations of the incoming collaborator in terms of clause 18 thereof.

f) The Corporation shall, in the event of the incoming collaborator failing to purchase the equity shares of the Corporation in the Company as provided in clause 23 or to pay for them as provided in sub-clauses within the time limit specified in the sub-clause (d) above, be entitled to sell its shares in the Company at the risk and cost of the incoming collaborator either by public auction or through the recognized Share Brokers at the Stock Exchange where the shares are listed by private negotiations.

The proviso to clause (d) reveals that on failure of the incoming collaborator to pay for and purchase the shares within one month after exercising of the option, shall be construed as his consent to the respondent No.1-Corporation to off-load the shares in the market.

Clause (e) and (f) entitles the Corporation to sell its shares in the Company at the risk and cost of the incoming collaborator, in open market either by public auction or through recognized share brokers at the Stock Exchange. Respondent No.1-

Corporation did not do so and it continued to the correspond despite the fact that the Company after having giving the offer way back in the month of 1996 and refused to buy back the shares. The Arbitrator, in my view, has not taken into consideration the aforementioned facts and the provisions of Contract. This Court cannot remain oblivious of the fact that the shares are still with the Corporation, whereby the compensation of ₹ 17,53,920/- along with interest @ 12% has been awarded in favour of the Corporation. The Corporation has failed to apply the *doctrine* of election, as per the proviso to clause (d) and (f) of the Agreement *ibid*, on having not done so, the Corporation has failed to adhere to the terms and conditions of the Agreement.

Keeping in view the what has been observed above, the impugned order and the Award are hereby set aside. However, it shall not preclude the Corporation to the exercise its franchise strictly as per the terms and conditions i.e. by selling the shares in open market by way of public auction or or through recognized share brokers at the Stock Exchange. In case of any short fall, it can seek the resolution of the dispute in accordance with law.

With the aforementioned observations, the appeal stands allowed.

11.02.2016
yogesh

(AMIT RAWAL)
JUDGE