

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

FAO No.721 of 2014 (O&M)  
Date of decision : 05.02.2016

Naresh Bhandari

...Appellant

Versus

Punjab State Industrial Development Corporation Ltd. and ors.

...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 ? YES
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Rahul Sharma, Advocate for the appellant.

Mr. Vikas Mohan Gupta, Advocate for respondent No.1.

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**AMIT RAWAL, J. (Oral)**

The appellant-Company is aggrieved of the order dated 15.10.2013, whereby objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 seeking setting aside of the award dated 19.05.2010, has been dismissed.

Mr. Rahul Sharma, learned counsel appearing on behalf of appellant submits that collaboration agreement dated 27.04.1995 had been entered into, which contained clause of buy back of the share after five years of the commercial production. The commercial production began on 07.08.1996. The company had sought reference by knocking the door of

BIFR, ultimately vide order dated 21.01.2004, Company was declared SICK. Since collaboration agreement contained arbitration clause, the Arbitrator entered into reference in 2004. As per order dated 20.02.2009 passed by the BIFR, the share capital of the company was reduced by 90% and, therefore, in lieu of the provision of Section 56 of the Contract Act, it was impossible to honour collaboration agreement i.e. buy back share after five years of commercial production. The Arbitrator did not take into consideration the aforementioned fact, much less, the Objecting Court also dismissed the objections by holding that objections were not falling within the realm of Section 34 of the Act. The Arbitration Tribunal only considered Section 22 of the SICA (Sick Industrial Companies Act, 1985) Act and did not refer to the aforementioned clauses.

Mr. Vikas Mohan Gupta, learned counsel appearing on behalf of respondent No.1 submits that terms and conditions of the collaboration agreement are sacrosanct and even adopted by invoking the provision of Statute. The company itself is responsible for the reduction of share capital and cannot take the benefit of same and estopped to raise this plea and had to buy back share after five years of the commercial production. The objections were not falling within the realm of Section 34 of 1996 Act.

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

It would be apt to refer Section 56 of the Contract Act, which reads thus:-

**“56. Agreement to do impossible act**

*An agreement to do an act impossible in itself is*

*void. Contract to do act afterwards becoming impossible or unlawful: A contract to do an act which, after the contract is made, becomes impossible or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.*

*Compensation for loss through non-performance of act known to be impossible or unlawful: Where one person has promised to do something which he knew or, with reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.”*

On perusal of the aforementioned provisions, it is evident that act which occurred afterwards envisages the performance of the contract impossible. Since, the factum of the reduction in the share capital, as per the order dated 20.02.2009 which is the part of the record of the Arbitrator is a matter of record, the Arbitrator, in my view, has not taken into consideration the aforementioned facts, much less, provision of the Act and thus there is total disregard to the statutory provision. This Court cannot remain oblivious of the fact that with the alleged buying of the shares of the company on behalf of PSIDC, the company could not run. The company had on his own invested huge investment and owing to reduction, huge loss has accumulated, therefore, company did not indulge into forcible reduction in the capital. It was on account of unforeseen circumstances which may be on account of stake market or for some other reasons. In my view, the award of the Arbitrator is against public policy as the provision of Section 34 has not

been noticed and thus, objections were falling within the realm of Section 34.

Keeping in view the aforementioned facts, award dated 19.05.2010 and order dated 15.10.2013, has been set aside.

Appeal stands allowed.

**05.02.2016**

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**(AMIT RAWAL)  
JUDGE**