

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

**F.A.O.No.6713 of 2016 (O&M)**

**Date of Decision: November 17, 2016**

**State of Punjab & others**

**...Appellants**

**Versus**

**PBIL-APEX Consortium Ltd., New Delhi & others**

**...Respondents**

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

**Present: Mr.P.S.Bajwa, DAG, Punjab.  
for the appellants.**

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

**CM No.23309-CII of 2016**

For the reasons mentioned in the application, which is supported by an affidavit, delay of 28 days in filing the appeal is condoned.

CM stands disposed of.

**FAO No.6713 of 2016**

Appellant-State of Punjab is aggrieved of the impugned order, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short “1996 Act”), have been dismissed.

Mr.P.S.Bajwa, learned Deputy Advocate General, Punjab submits that the commencement of the work for widening, strengthening of Dera Baba Nanak, Gurdaspur-Mukerian Road was to start on 12.5.2002, to be completed on 11.2.2003. However, it was extended upto 30.11.2004 and there were different extensions with a clear indication and undertaking that the Contractor will not claim the escalation charges. Despite that, he sought

a reference to the Arbitrator claiming escalation charges, which was not permissible in law in view of the undertaking. In fact, the filing of the reference was, *ex-facie*, not maintainable in view of law of estoppel. The contention of the Contractor has erroneously been believed on the premise that the alleged undertaking and consent was on the basis of the undue influence and caution. In support of his reference, the aforementioned ingredients have to be proved by direct and cogent evidence and, therefore, the award of the Arbitrator was not sustainable. All these points were raised in the objections as the award was liable to be set-aside being not falling within the parameters of Section 34 of 1996 Act.

I have heard the learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in the submissions of Mr.Bajwa, for, even if the person has issued No Objection Certificate for taking payment, he cannot be estopped to raise the plea vis-a-vis outstanding amount. The aforementioned view of mine is fortified by the ratio decidendi culled out by the Hon'ble Supreme Court in **Chairman and M.D., N.T.P.C. Ltd. Versus M/s. Reshmi Constructions, Builders and Contractors, 2004 AIR (SC) 1330**. The extension was not on account of the fault of the Contractor, but owing to the non-availability of the site as the sanctioned area was falling under the forest land and the work was for widening of the road and, thus, for all intents and purposes, it was extended. In view of the extensions, the prices of the raw material increased and in this backdrop of the matter, the escalation was charged. I am of the view that the Arbitrator has the jurisdiction to try the matter. Neither the Objecting Court nor this Court cannot sit on the arm chair of the Arbitrator to re-appreciate the evidence even if a different opinion is to be formed. The

ratio decidendi culled out in **Union of India and others Versus M/s. Master Construction Co., 2011 AIR SC (Civil) 1312** would not apply as assuming for a sake of argument though not admitting that obtaining of the undertaking and consent was not on account of the fraud, but was voluntary one, yet in view of the ratio decidendi culled out in **Chairman and M.D., N.T.P.C. Ltd.'s case** (supra), the claim can always be lodged.

For the foregoing reasons, I do not intend to differ with the findings rendered by the Additional District Judge, Gurdaspur. No case for interference is made out.

Appeal stands dismissed.

**November 17, 2016**  
**ramesh**

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

**Whether speaking/reasoned**

**Yes/No**

**Whether Reportable:**

**Yes/No**