

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO No. 17/2016**

% **23rd August, 2017**

UNION OF INDIA Appellant

Through: Mr. S.S.Gangwar, Adv.

versus

POOJA SALES CORPORATION AND ANR. Respondents

Through: Mr. Shiv Khorana, Adv.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This appeal is filed against the impugned judgment of the court below dated 1.9.2015 by which the objections under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') filed by the present appellant were dismissed.

2. The only issue which is argued on behalf of the appellant/objector is that the Arbitrator has wrongly granted interest although grant of interest is barred as per Clause 2403 of the contract entered into between the parties.

3. Learned counsel for the respondents in reply has argued that in the written statement in the arbitration proceedings filed at by the appellant, the appellant did not rely upon Clause 2403 and thus did not object to payment of interest on account of Clause 2403. It is argued that even in the objections under Section 34 of the Act filed in the court below there was no objection raised by placing reliance upon Clause 2403 of the contract.

4. I have examined the written statement filed by the appellant in the arbitration proceedings as also the objections filed by the appellant under Section 34 of the Act and it is seen that the appellant has not objected to the grant of interest by placing reliance upon the contractual Clause 2403. Therefore, there is no merit in the appeal as also in the objections which were filed under Section 34 of the Act. In any case, this Court has already decided in the case of *Union of India Vs. N.K. Garg and Co. 224 (2015) DLT 668* that if there is a clause under a contract which denies payment of interest on the justified dues then such a clause denying payment of interest is illegal and it is hit by Section 23 of the Indian Contract Act, 1872. Therefore, even assuming that objections were taken by the appellant

in the arbitration proceedings as also in Section 34 of the Act that interest was not payable because of the contractual Clause 2403, such objections were bound to be rejected in view of the ratio of the judgment in *N.K.Garg's* case (*supra*).

5. In view of the above, there is no merit in the appeal.
Dismissed.

AUGUST 23, 2017/ib

VALMIKI J. MEHTA, J