

CR No.2685 of 2018

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

**CR No.2685 of 2018
Date of decision:30.04.2018**

NHPC Ltd. ... Petitioner
Vs.

Patel Engineering Ltd. and another ... Respondents

CR No.2686 of 2018

NHPC Ltd. ... Petitioner
Vs.

Patel Engineering Ltd. and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Lokesh Sinhal, Advocate
for the petitioner.

Mr. D.S.Chadha, Advocate
for the caveator/respondent No.1.

AMIT RAWAL J. (Oral)

Notice of motion.

Mr. D.S.Chadha, Advocate accepts notice on behalf of
caveator/respondent no.1/contractor.

This order of mine shall dispose of two revision petitions
bearing No.s.2685 and 2686 of 2018. The facts are being taken from CR
No.2685 of 2018.

The present revision petition is directed against the order dated
23.02.2018 (Annexure P-8) passed by the Special Commercial Court,

(Haryana), whereby, appeal filed by the petitioner under Section 37(2)(b) of Arbitration and Conciliation Act, 1996 (in short “1996 Act”) against the order dated 04.10.2017 passed by the Arbitrator in references no.7 and 8 , has been dismissed for want of territorial jurisdiction.

Concededly facts as emanate from the pleadings and arguments of Mr. Sinhal are that agreement was entered into between the contractor and NHPC for the purpose of setting up Hydroelectric Project in the State of West Bengal. Eight references arose from the dispute with regard to payment. Four had already been decided against which three FAOs are pending adjudication after undergoing rigmarole of objections decided by the Principal Court. The aforementioned FAOs are pending adjudication in respect of references no.I and III, whereas, reference no.II has been rejected. Vis-a-vis reference no.IV against the award of the Arbitrator, objections under Section 34 of 1996 Act, were filed by the petitioner at Faridabad but the same were transferred owing to the seat of Commercial Court. The present revision petition as noticed above has arisen from the interim order passed by the Arbitrator arising out of pendency of references no.VII and VIII.

Mr. Lokesh Sinhal, learned counsel appearing on behalf of the petitioner submitted that contractor during the pendency of the references before the Arbitrator (Tribunal) moved an application under Section 17 of 1996 Act, for releasing the payment without noticing the objection that NHPC had been making the payment in respect of other references by causing deductions. Vide impugned order dated 04.10.2017, Tribunal

restrained the petitioner from effecting any recoveries/adjustments from the respondent till adjudication of the dispute under reference VIII. Since the aforementioned order was assailable in the appeal under Section 37(2) (b) of 1996 Act, was preferred against the aforesaid order before the Special Commercial Court at Gurugram. The Commercial Court despite adverting to the provisions of Section 42 of 1996 Act, rejected the appeal for want of territorial jurisdiction, for the reason that neither the Court at Faridabad nor at Gurugram had the jurisdiction, therefore, the order under challenge is not sustainable as it is against the provisions of Section 42 of 1996 Act.

Mr. D.S.Chadha, learned counsel appearing on behalf of respondent no.1 being the officer of the Court and caveator in a very fair and honest manner submitted that order under challenge is not sustainable, for, it is against the statutory provisions of Section 42 of 1996 Act as the contractor had not raised such objection with regard to maintainability of the appeal before the Commercial Court at Gurugram. It was suo-moto action taken by the trial Court resulting into passing of the impugned order.

I have heard the learned counsel for the parties, appraised the paper book and of the view that order under challenge is not sustainable as it suffers from infirmity. For the sake of brevity, provisions of Section 42 of 1996 Act read as under:-

“42. Jurisdiction.—Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that

Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.”

Concededly, objection under Section 34 of 1996 Act, with regard to reference No.IV, originally filed at Faridabad but on establishment of Special Court at Gurugram, was transferred to the Special Court at Gurugram, are pending adjudication. This fact was brought to the notice of the same very Court who passed the impugned order which itself was sufficient for the Court below to try and decide the appeal on merits instead of advertng to the objection qua territorial jurisdiction.

In my view, the Court has shirked in not addressing the issue on merits and should not have non-suited the petitioner for the reasons which are not sustainable in the eyes of law.

On reading the plain and simple language of aforementioned provisions of 1996 Act, it leaves no manner of doubt that the Commercial Court at Gurugram would have the territorial jurisdiction. The impugned order, thus, in my view suffers from fallacy and perversity and also illegality. Resultantly, the same is hereby set aside and matter is remitted back to the Special Commercial Court at Gurugram for deciding the appeals preferred by NHPC on merits, in accordance with law.

Revision petitions stand disposed of.

The parties through their counsel are directed to appear before the Commercial Court at Gurugram on 15.05.2018.

(AMIT RAWAL)
JUDGE

April 30, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No