

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

FAO No. 3635 of 2013 (O&M)
Date of decision : March 08, 2018

M/S Kakkar Associates

..... Appellant

v.

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Arvind Mittal, Advocate
for the appellant.

Mr. Sanjay Saini, AAG Haryana.

Ajay Tewari, J (Oral)

This appeal has been filed against the order of the District Judge, Chandigarh dated 30.1.2013 dismissing the objections under Section 34 of the Arbitration and Conciliation Act, 1996 (for short “the Act”) filed by the appellant against an Award dated 31.3.2008.

Counsel for the appellant has argued that the respondent had changed the specifications midterm and had arbitrarily invoked the risk and costs clause.

The Arbitrator considered both these arguments and found that as regards the first argument, the best evidence to prove if there was change in specifications was the two sets of drawings which, as per the appellant, showed that fact but the appellant did not produce the same. As regards the invocation of the risk and costs clause, the Arbitrator found that originally

the work was scheduled to be completed within six months and thereafter the respondent was willing to give further time to the appellant but since the appellant was prevaricating the issue, the risk and costs clause was rightly invoked. The Court below held that the objections raised by the appellant were in the nature of appeal but nevertheless examined them on merits and rejected them. Even before me the same argument has been raised by counsel for the appellant. I am also of the considered opinion that the findings of the Arbitrator and of the Court below are justified in the facts of the case. It cannot be lost sight of the fact that objections under Section 34 of the Act can succeed only if they go to the root of the matter and cannot be raised to attack the findings.

Counsel for the appellant has further argued that the interest component of 18% which was awarded by the Arbitrator is highly excessive and exorbitant. Counsel for the respondent points out that the interest awarded by the Arbitrator was 12% with the stipulation that in case the amount is not deposited within three months, it would be 18%.

I find that in the conspectus of the facts the interest should be kept at 12%. Apart from this finding, there is no merit in the appeal. Consequently, this appeal is disposed of with the observation that the Award is justified but the interest would be kept at 12%.

Before parting with this order, I find one strange fact that even till date no execution has been filed by the respondent for this Award which is almost 10 years old. To my mind, this is a prima facie motivated inaction. In the circumstances of the case, let a copy of this order be sent to the Chief Secretary, Haryana, who shall institute a vigilance inquiry into the causes why no execution has been filed despite the lapse of almost ten years. The

inquiry would pinpoint the official/s who are guilty of this lapse and the proposed departmental/criminal action which may be needed to be taken against the official/s. Report be sent to this Court within six months of the receipt of a certified copy of this order.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

March 08, 2018
'kk'

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No