

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

123

FAO No.1345 of 2018 (O&M)

Date of Decision : 12.03.2018

M/s Xalted Information Systems Private Ltd.

..... Appellant

Versus

Hindustan Power Instruments Pvt. Ltd. & anr.

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. Vinod S.Bhardwaj, Punjab
for the appellant.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the order dated 16.01.2018 passed by the Additional District Judge, Chandigarh dismissing an application filed by the appellant under Section 34 (3) of the Arbitration and Conciliation Act, 1996 (for short 'the Act'). Since very limited question is involved detailed reference to the facts may not be necessary except to the extent that respondent No.1-Hindustan Power Instruments Private Limited had moved the respondent No.2-Haryana Micro and Small Enterprises Facilitation Council for a payment which was due to it from the appellant.

The Council arbitrated on the issue under Section 18 of the Act and passed an award in favour of respondent No.1. The appellant filed objections along with an application for condonation of 304 days delay. At that time the appellant also did not deposit 75% of the awarded amount and

2030 days. As regards the delay in depositing the 75% of the awarded amount the learned counsel has argued that the Court below erred in understanding the effect of the judgment passed by the Supreme Court in ***Goodyear India Limited Vs. Norton Intech Rubbers (P) Ltd. & anr., 2012 (6) SCC 345***.

In my opinion, to decide this appeal it may not be necessary to decide this question since apart from the delay in deposit there is an admitted delay of 304 days in filing the objections. As per the learned counsel, for entertaining the objections which the appellant had filed, Section 34 of the Act could not be determinative and the Court should have considered the application as one under Section 5 of the Limitation Act, 1963. In my considered opinion, the argument can not be accepted. Section 18 (3) of the Micro, Small and Medium Enterprises Development Act, 2006 is in the following terms :-

(3)Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.”

It is thus clear that an arbitration under this Section is deemed to be one under the Act and consequently can not be said that even though the objections would be filed under Section 34 of the Act yet the delay has been condoned under Section 5 of the Limitation Act, 1963 and not under

Appeal stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

12.03.2018
Pooja sharma-I

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No