

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

**FAO-CARB-38 of 2018 (O&M)**

Date of Decision: 25.10.2018

New & Renewable Energy Department, Haryana Renewable Energy  
Development Agency (HAREDA)

.....Appellant

versus

m/S Andy Solar Private Limited and another

..Respondents

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE  
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

**Present :** Mr. Naveen Singh Panwar, Advocate,  
for the appellant.

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**KRISHNA MURARI, C.J.(oral)**

By means of this appeal, the appellants have challenged the judgment and order dated 26.07.2018 passed by Additional District Judge-cum-Presiding Judge, Special Commercial Court, Gurugram, dismissing the application filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') for setting aside the arbitral award dated 01.05.2017 passed by the sole arbitrator.

2. Shorn of unnecessary details, facts relevant for the purpose are that a dispute between the appellant and the respondents arising out of a contract was referred to the sole arbitrator, who made an award dated 01.05.2017. Admittedly, the appellant made an application under Section 34 of the Act before the Special Commercial Court at Gurugram on 02.01.2018, which has been dismissed by the order under appeal.

3. There is no dispute about the fact that the award was made by the sole arbitrator on 01.05.2017 and the date of institution of proceedings under section 34 of the Act is 02.01.2018. The appellant has not pleaded any

where either before the Court below or before this Court with respect to the date of having received the copy of the award and as such it has to be presumed that he got knowledge of the award on the date it was pronounced i.e. 01.05.2017.

4. Having noticed the undisputed fact with respect to the date of the award and the date of institution of proceedings under Section 34 of the Act before the Court below, it is clear that the proceedings were initiated not only beyond the prescribed period of limitation of three months but also beyond the extended period prescribed under the proviso.

5. It may be relevant to extract Section 34(3) of the Arbitration and Conciliation Act, 1996 prescribing for limitation which reads as under:-

“34. Application for setting aside arbitral award.—

3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award, or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.”

6. The issue that the period prescribed by Section 34(3) of the Act and the extended period under the proviso is not liable to be extended by invoking the provisions of Section 5 of the Limitation Act, 1963 stands settled by the decisions of the Hon'ble Apex Court in ***Union of India v. Popular Construction Co. AIR 2001 SC 4010*** and ***Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department and others (2008) 7 SCC 169.***

7. In view of the aforesaid pronouncements of the Hon'ble Apex Court, the law stands settled that the challenge to an arbitration award under Section 34 of the Act can only be made within three months from the date on which the party receives the award and the said period is liable to be extended by a further period of 30 days on sufficient cause being shown and not thereafter.

8. Admittedly, in the case in hand, the proceedings under section 34 of the Act were instituted by the appellant on 02.01.2018 which is even beyond the extended period provided under the proviso and thus were clearly barred by limitation.

9. We are surprised that neither the issue of limitation was raised by the respondents before the Court below nor the Court below took upon itself to consider the matter from the point of limitation.

10. Since the proceedings initiated by the appellant under Section 34 of the Act were barred by limitation, hence it was not incumbent upon the Court below to test the validity of the award on-merits. The objections filed by the appellant having been dismissed, though for a different reason, but in any case, since in view of the limitation prescribed by Section 34 of the Act, they were liable to be dismissed, hence no exception is taken to the impugned judgment passed by the Court below.

11. Appeal accordingly fails and stands dismissed.

(KRISHNA MURARI)  
CHIEF JUSTICE

(ARUN PALLI)  
JUDGE

25.10.2018  
ravinder

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