

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

FAO-CARB-8 of 2019 (O&M)

Reserved on : 09.07.2019

Date of decision : 12.07.2019

Uttar Haryana Bijli Vitran Nigam Limited, Panchkula and another
.... Appellants

Versus

M/s Contimeters Electrical Private Limited, Delhi and another
..... Respondents

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. R.D. Bawa, Advocate,
for the appellants.

Mr. Tushar Sharma, Advocate,
for respondent No.1.

* * *

RAJIV SHARMA, J.

This appeal is instituted against the judgment dated 07.09.2018 rendered by learned Additional District Judge –cum- Presiding Judge, Special Commercial Court at Gurugram, and also the Award dated 15.11.2010, rendered by learned Arbitrator-cum-Chairman (Retd.) - HPU.

The brief facts necessary for adjudication of this appeal are that the appellants floated tenders vide NIT No. 6 dated 29.08.2000 for supply of single/three phase electronics meters with MCBs against their annual estimated requirement of five lacs single phase meters and 90000 three phase meters for the year 2001-02. Twenty five firms participated in the

tender process. The rates were finalised. The rate contracts were made with seven firms, including respondent No.1 firm, for supply of single phase/three phase electronic meters. The Engineer-in-Chief of the appellants had placed seven orders with respondent No.1 firm for supply of single/three phase electronic meters. The rate contract was valid till 31.03.2002. According to the appellants, respondent No.1 was paid the amount in excess. The appellants decided to encash the bank guarantee. Respondent No.1 instituted a civil suit. The court restrained the appellants from encashing the bank guarantee. Respondent No.1 also issued notice for appointment of Arbitrator in respect of two purchase orders DH64 dated 31.10.2001 and HH5316 dated 15.11.2001, vide letter dated 31.10.2002. The fact of the matter is that after the protracted litigation, the Chief Manager/MM UHBVN was appointed as the sole Arbitrator. The Arbitrator made an ex-parte Award in respect of two purchase orders DH64 dated 31.10.2001 and HH5316 dated 15.11.2001. Respondent No.1 filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Arbitration Act' for the sake of brevity), challenging the ex-parte Award along with an application for condonation of delay. The delay was not condoned. Accordingly, the petition was dismissed by the learned District Judge, Panchkula, vide order dated 06.09.2007. Respondent No.1 filed a writ petition, wherein respondent No.1 was permitted to file petition under Section 34 of the Arbitration Act along with condonation of delay application. The learned District Judge, Panchkula, allowed the petition and set aside the ex-parte Award. Respondent No.1 filed an application on 12.09.2009 for appointment of Arbitrator. The Chairman

vide his noting dated 25.09.2009 ordered that he himself would adjudicate the matter qua the disputes of two purchase orders DH64 dated 31.10.2001 and HH5316 dated 15.11.2001. The notices were issued to both the parties for adjudication of their disputes. Respondent No.1 sent a communication dated 06.07.2009 to the Chairman requesting him to adjudicate disputes in respect of other five purchase orders also. The Chairman suo motu decided to adjudicate disputes in respect of other five purchaser orders also. A preliminary issue regarding limitation was framed. The Arbitrator held that all the claims, including other purchase orders, were within limitation. The term of the Chairman expired on 31.03.2010. Thereafter, the Chairman, Haryana Power Utility, Panchkula, appointed Shri T.K. Dhingra, Director, UHBVN, Panchkula, as Arbitrator. He made the Award on 15.11.2010.

The appellants challenged the Award dated 15.11.2010 by filing objection petition under Section 34 of the Arbitration Act before the learned Additional District Judge -cum- Presiding Judge, Special Commercial Court at Gurugram. The petition was dismissed vide judgment dated 07.09.2018. Hence, this appeal.

Learned counsel appearing on behalf of the appellants vehemently argued that the Arbitrator was appointed for adjudication of dispute qua two purchase orders. However, he has decided dispute qua seven purchase orders. Clause 24 of the contract agreement reads as under :-

“All matters, questions, disputes, differences and/or claims arising out of an/or concerning and/or in connection and/or in consequences or relating to this contract whether or not obligations of either or both parties under this contract be

subsisting at the time of such dispute and whether or not this contract has been terminated or purported to be terminated or completed, shall be referred to the sole arbitration of the Chairman or an Officer appointed by the Chairman as his nominee. The award of the Arbitrator shall be final and binding on the parties to this contract.

The objection that the arbitrator has to deal with the matters to which the contract relates in the course of his duties or he has expressed his views on any or all of the matters in dispute of difference, shall not be considered as a valid objection.

The Arbitrator may from time to time with the consent of parties to the contract, enlarge the time for making the award. The venue of arbitration shall be the place from which the acceptance of offer is issued or such other place as the Arbitrator in his discretion, may determine.

Subject to the aforementioned provisions, the provisions of the Arbitration Act, 1940 and the Rules thereunder any statutory modifications thereof for the time being in force, shall be deemed to apply to the Arbitration proceedings under this clause”.

According to the plain language of Clause 24 of the contract agreement, all matters, questions, disputes, differences or claims arising out of the contract, whether or not obligations of either or both parties under the contract were subsisting at the time of such dispute and whether or not the contract was terminated or purported to be terminated or completed, were to be referred to the sole arbitration of the Chairman or an Officer appointed

by the Chairman as his nominee.

The Chairman, as noticed above, decided to appoint himself as Arbitrator. He initially entered into dispute qua two purchase orders. Respondent No.1 moved an application to adjudicate the dispute qua remaining five purchase orders. The Arbitrator vide letter dated 08.10.2009 informed that the dispute qua other five purchase orders shall also be adjudicated by him. The appellants did not raise any objection, when the learned Arbitrator started proceedings qua the remaining five purchase orders. The fact of the matter is that all the disputes, differences and claims were required to be referred to the sole Arbitrator or his nominee.

Learned counsel appearing on behalf of the appellants has also submitted that the disputes in respect of five purchase orders were barred by limitation. The learned Arbitrator had framed a preliminary issue in this regard. The appellants have not assailed the same. They have also failed to prove that any prejudice has been caused to them by not permitting cross-examination of the witnesses. The dispute was decided on the basis of documents produced by both the parties.

There is no merit in the contention of learned counsel for the appellants that since term of the Arbitrator had come to an end, therefore, he could not proceed with the matter. The fact of the matter is that the appellants never raised this objection before the Arbitrator. The appointment of sole Arbitrator was in accordance with law. The appellants are estopped from challenging the proceedings after the expiry of term of the Chairman, since they had participated in the proceedings voluntarily. The Arbitrator had sent a letter dated 31.03.2010 to the successor Chairman

that his term has expired. However, the fact of the matter is that no communication was received by him. He continued to hold the proceedings. The legal issue between the parties whether the Chairman, after expiry of his term, should continue or not, also came before this Court in FAO-6184 of 2011, which was decided by the learned Single Judge on 25.02.2016. The operative portion of the judgment dated 25.02.2016 reads as under :-

“Section 16 of the 1996 Act empowers the party to challenge the competency in the jurisdiction of the Arbitrator, once the Nigam had come to know about the contents of letter dated 31.03.2010, nothing prevented him to raise the objections, in this regard, by invoking the aforementioned statutory provisions. It is a settled law that once a Arbitrator has been appointed by name, he shall continue to act as an Arbitrator, even on cessation of his term as employee of a particular Corporation/Board/Nigam. In my view, the Nigam acquiesced, much less, submitted to the jurisdiction of the Arbitrator, after 31.03.2010. Once the Arbitrator was appointed with the consent of the parties, thus, in my view, he continues to have a jurisdiction, though he may have demitted the office of the Chairman.

Keeping in view of above, I am of the view that the order dated 13.06.2011 passed by the Objecting Court accepting the objections on this ground was not sustainable in the eyes of law and accordingly, the same is hereby set aside and the matter is remitted back to the Objecting Court to decide the objections afresh, viz-a-viz the scope of the award, as to whether it was in conformity

with the terms and conditions of the Contract or not, in essence, whether there has been a compliance of sub-Section 3 of Section 28 of the Act.

The parties through their counsel are directed to appear before the Objecting Court on 21.03.2016. However, it is expected that the Objecting Court shall decide the objections as expeditiously as possible preferably within a period of six months from the receipt of the certified copy of this order.

The record of the arbitration proceedings and as well as the Objecting Court be remitted back for adjudication of the objections.

With the aforesaid observations, the appeal is allowed.”

Learned counsel for respondent No.1 has also submitted that SLP was carried against the judgment dated 25.02.2016 and the same was dismissed.

Accordingly, there is no merit in this appeal and the same is dismissed.

(RAJIV SHARMA)
JUDGE

July 12, 2019
ndj

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No