

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

**Civil Revision No.1798 of 2019
Date of Decision: 02.04.2019**

State of Haryana

.....Petitioner

Vs

**Link Utsav Registration Plates Private Limited & another
....Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Kuldeep Tiwari, Addl. A.G., Haryana
for the petitioner.

Mr. S.K. Garg Narwana, Sr. Advocate with
Mr. Sanjiv Kumar Aggarwal, Advocate
for respondent No.1/caveator.

RAJ MOHAN SINGH, J.

[1]. Petitioner-State of Haryana has challenged the order dated 20.02.2019 passed by the Addl. District Judge, Chandigarh vide which the application filed by the petitioner-State under Section 36(3) of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') for staying the enforcement of Arbitral award dated 27.11.2018 during pendency of the petition under Section 34 of the Act was dismissed.

[2]. In brief necessary facts of the present case can be

noticed hereasunder.

[3]. Under Rule 50 of the Cental Motor Vehicle Rules, 1989, every motor vehicle is required to be affixed with High Security Registration Plate (hereinafter to be known as 'HSRP'). For implementation of the aforesaid scheme, the petitioner-State invited bids in order to select a vendor for supplying and affixing registration plates in the state of Haryana. Respondent No.1 was second lowest bidder and was granted the assignment as the lowest bidder was rejected due to some default. Respondent No.1 was invited to match the offer of lowest bidder to which respondent No.1 gave its consent to supply the HSRP at the rate, terms and conditions offered by lowest bidder i.e. M/s JKSDH High Security Number Plate (J.V.).

[4]. Respondent No.1 gave an undertaking to abide by terms and conditions on 17.02.2012. Petitioner issued a letter of intent dated 21.02.2012 and performance security to the tune of Rs.4 crore was deposited by respondent No.1 on 02.03.2012. Concession agreement was entered into between the petitioner and respondent No.1 on 27.04.2012 and the respondent No.1 was granted concession to implement HSRP project in the State of Haryana for a period of 10 years from the date of signing of the agreement.

[5]. In the meantime, bids were also invited for HSRP project in National Capital Territory of Delhi (NCT of Delhi) by the Government of NCT. Respondent No.1 also submitted its bid and the same was accepted. Letter of acceptance was issued on 02.04.2012. Later on difference arose between the parties in respect of charging more amount for HSRP in the State of Haryana as compared to the charges in NCT of Delhi. Violation of provision was alleged in terms of clause 13.1.3 of the agreement, whereby the firm undertook not to reduce the sale price of HSRP to any other person than the price chargeable under the contract and, if it reduces the price, then the Concessionaire shall notify such reduction to the State Government of the price payable under this agreement and for HSRP supplied after the date of coming into force of such reduction of the rates shall stand reduced to that level.

[6]. A show cause notice was issued on 03.10.2012 to respondent No.1 which was replied by the respondent Company to the effect that the Concession agreement was signed with the Government of Delhi before it was signed with the Government of Haryana and the same would not apply retrospectively. The stand of respondent No.1 was not accepted and order dated 21.11.2013 was passed by the State of Haryana thereby reducing the price chargeable by respondent No.1 for fixing the

registration plate.

[7]. Respondent No.1 filed petition under Section 9 of the Act. The petition was dismissed by the Addl. District Judge, Chandigarh on 09.12.2013. Thereafter FAO No.6281 of 2013 was filed by respondent No.1 which was disposed of vide order dated 24.01.2014. Operative part of the order i.e para No.4 reads as under:-

“4. The respondent State would immediately appoint Arbitral Tribunal in terms of the arbitration clause and proceedings before the Arbitral Tribunal would commence expeditiously. The Arbitral Tribunal to be set up is requested to conclude the arbitral proceedings expeditiously and preferably within 4 months from the date of first motion hearing before the Arbitral Tribunal since the dispute which has arisen between the parties can largely be resolved by interpretation of the concessionaire agreement and materials on record including the comparative chart in the reply submitted by the petitioner concessionaire in its response dated 27.7.2012 (P-4) and supplementary letter dated 3.10.2012 (P-5). The payment of amounts which would lie in the Escrow account will be governed by the fate of the arbitration to be paid to the successful party.”

[8]. Perusal of the aforesaid order would show that the payment of amounts which would lie in the Escrow account was to be governed by the fate of the arbitration and to be paid to the successful party. Escrow account was directed to be opened and maintained in the Bank and the same was ordered to be created forthwith. It is not disputed that the aforesaid account

was created in the Bank. The aforesaid appeal was disposed of thereby directing that the proceedings before the Arbitral Tribunal would commence immediately and the price difference shall be maintained in an Escrow account and the payment of account which would lie in Escrow account shall be governed by the fate of the arbitration and the same would be paid to the successful party. The matter was referred to the Arbitral Tribunal and the Arbitral Tribunal by majority view decided the same vide award dated 27.11.2018, allowing the case of respondent No.1 thereby setting aside the order dated 21.11.2013 passed by the State of Haryana reducing the price.

[9]. Against the aforesaid award, the petitioner-State of Haryana has preferred petition under Section 34 of the Act. Petitioner also filed an application under Section 36(3) of the Act for staying enforcement and operation of the Arbitral award dated 27.11.2018.

[10]. In view of amended provision, there cannot be automatic stay of enforcement of award after the amendment Act No.3 of 2016. In view of amended provision, the Arbitral award can only be stayed on a separate application subject to such conditions as the Court may deem fit for grant of stay for reasons to be recorded in writing provided that the Court shall while considering the application for grant of stay has to give

due regard to the provisions for grant of stay of a money decree under the provisions of CPC. In a way, the award is a money decree and the same can only be stayed for the reasons to be recorded in writing subject to the terms and conditions as may be deemed fit by the Court.

[11]. In the instant case, the Addl. District Judge, Chandigarh has allowed respondent No.1 to withdraw the money lying in the Escrow account maintained by the petitioner-State of Haryana subject to condition that respondent No.1 shall abide itself by furnishing guarantee equal to the withdrawal amount in the shape of bonds with one surety of the equal amount which would be subject to the fate of the petition under Section 34 of the Act.

[12]. During course of the arguments, it could not be disputed by learned counsel for the petitioner-State of Haryana that on 05.03.2019, the security has been furnished by respondent No.1 and the amount has been withdrawn and share of the State has been deposited. Now the petition under Section 34 of the Act is fixed for 28.04.2019 before the trial Court.

[13]. Learned Senior counsel for respondent No.1 submitted that the impugned order has already been implemented even

before filing of the present revision petition, which was filed on 07.03.2019 against the impugned order dated 20.02.2019.

[14]. I have considered the submissions made by learned counsel for the parties.

[15]. During the intervening period, the security has been furnished by respondent No.1 on 05.03.2019 and the amount has also been withdrawn. Share of the petitioner-State of Haryana has been deposited, therefore, in my considered opinion nothing survives in this revision petition. If the petitioner has any other grievance in respect of residual claim of any kind, it can approach the trial Court in accordance with law.

[16]. In view of above, I see no justification to interfere in the impugned order dated 20.02.2019 passed by the Addl. District Judge, Chandigarh. This revision petition is accordingly dismissed.

April 02, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No