

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

FAO No. 10455 of 2014 (O&M)
Date of decision: 15.1.2019

M/s Pitambra Books Private Limited

...Appellant

Versus

The State Project Director Sarva Shiksha Abhiyan Authority, Punjab and
others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sunil Chadha, Senior Advocate with
Mr. Maneet Kumar Arya, Advocate,
for the appellant.

Mr. Anupam Singla, Advocate,
for respondent No.1.

Mr. D.S. Sukarchakia, DAG, Punjab.

JAISHREE THAKUR, J.

The appellant herein seeks to challenge the judgment dated 17.11.2014 passed by the Additional District Judge, Chandigarh, whereby the objections filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (for short '**the Act**'), has been dismissed.

In brief, the facts are that the appellant is a Private Limited Company and entered the business of printing books and has printed a number of books in Punjabi, Hindi, English, Telugu etc. On 6.10.2004, the respondent—State Project Director of the Sarva Siksha Abhiyan (SSA), Punjab, invited tenders for re-printing of text books etc. Two main

conditions of the tender were that the bidder must have previous experience of printing in Punjabi/Gurmukhi, English and Hindi languages and proof of the same was to be submitted along with security deposit of ₹10 lakhs with the tender application. The appellant company submitted its tender on 4.1.2005 and along with the tender document a sum of ₹10 lakhs was deposited towards security. One copy of book/novel 'Lok Kahen Darvesh' printed in Punjabi language, published by Unistar Books Private Limited was also submitted. The bid of the appellant was rejected on the ground that the appellant company had submitted a fake document. A Technical Valuation Committee came to the conclusion that the book/novel by the name of 'Lok Kahen Darvesh', which was submitted by the appellant company as a proof of its capability to print the books in Punjabi language, was already available in the market with different printer's name. Based on this, the bid of the company was rejected and the earnest money was forfeited. The appellant served a legal notice upon the respondents and when there was no response to the said notice, CWP 4176 of 2005 was filed before this Court and the same was dismissed as withdrawn with liberty to the appellant/company to file a representation before the respondents. Consequently, a detailed representation dated 15.4.2005 was filed seeking refund of earnest money and instead of refunding the same, the matter was referred to the Sole Arbitrator Shri Jagtar Singh, Director, S.C.E.R.T., in terms of Clause 11.1 of the tender document. The appellant filed its claim before the said Arbitrator. However, the Arbitrator vide award dated 16.2.2011 came to conclude that the appellant was involved in fraudulent practice on the basis of which earnest money was forfeited by the

respondents. Aggrieved against the said award, objection under Section 34 of the Act was filed, which was dismissed, as afore-noticed, giving rise to the present appeal.

Learned Senior Counsel for the appellant herein though contends that the objection have wrongly been dismissed, but at the same gives up his claim to the refund of ₹10 lakhs, while submitting that he would be satisfied in case observations as made by the Arbitrator “that the appellant company was involved in the fraudulent practice” are expunged. It is further submitted that the observations were made over and above the reference to the Arbitrator. As such the conclusion that the appellant company was involved in fraudulent practice amounts to black listing the company.

Per contra, learned counsel appearing on behalf of the respondent urges that the amount of ₹10 lakhs has rightly been forfeited in terms of the tender document, while further contending that the observations of the Arbitrator regarding fraudulent practice by the appellant-company would not hamper the business of the appellant herein in any manner since he has not been black listed. However, he has no objection in case the observations as made by the Arbitrator “that the appellant company was involved in the fraudulent practice” are expunged.

I have heard learned counsel for the parties and perused the case file. In view of the candid statement made by the learned counsel for the respondent, the present appeal is partly allowed and the impugned judgment is modified to the extent that forfeiture of the earnest money is upheld but the remarks as made by the Arbitrator “that the appellant

company was involved in the fraudulent practice” are expunged. It is made clear that the appellant herein would be at liberty to participate in the bids so floated by the respondent and the remarks as made by the Arbitrator would not stand in its way.

15.1.2019
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No