

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 6878 of 2015 (O&M)
Date of Decision: 21.02.2019

M/s Mehrutherm Engineers and Consultants and another

..... Appellants

VERSUS

The Punjab Small Industries & Export Corporation through the
Managing Director and another

..... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Deepak Arora, Advocate,
for the appellants.

Mr. V.K. Kataria, Advocate,
for respondent No.1.

Service upon respondent No.2 (being Arbitrator) was
dispensed with vide order dated 17.01.2017.

JAISHREE THAKUR, J.(Oral)

1. This is an appeal that has been filed seeking to challenge the order of the District Judge, Chandigarh dated 11.02.2015 dismissing the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act”).

2. In brief, a few facts that need to be noticed are that pursuant to an agreement dated 6.7.2000, certain works were done by

the appellants herein for the Punjab Small Industries & Export Corporation Ltd. The agreement entered into between the parties contained an arbitration clause for settling disputes. Since payments were not made, a claim petition dated 04.06.2013 came to be filed as Arbitration case No. 810 of 2013, by invoking clause 25A of the Contract Agreement. As per Clause 25A of the Contract Agreement, it was stipulated that in case of a dispute the matter would be referred to the Chief Engineer Punjab Small Industries & Export Corporation Ltd., Chandigarh within a period of 180 days or 6 months from the date of payment of final bill or written notice issued to the contractor that his bill is ready for payment and his decision shall be final and binding. In response to the claim, a communication was addressed to the appellants by the Executive Engineer (Electrical), Punjab Small Industries & Export Corporation Ltd., with the subject : *“Claims for arbitration under Clause 25(A) of Contract agreement dated 06.07.2000 (Business Centre building at Ludhiana),”* wherein it was stated that the claim had been considered and found to be time barred. Considering this to be a final award, the appellants herein filed objections under Section 34 of the Arbitration and Conciliation Act, 1996, which too came to be dismissed by the District Judge, Chandigarh by order dated 11.02.2015 holding that it was a mere communication and not an award passed. Aggrieved the present appeal has been filed.

3. Mr. Deepak Arora Learned counsel appearing on behalf

of the appellants would contend that rejection of the claim filed tantamount to an award and the District Judge has erred in dismissing the objection since the claim was filed within the period of limitation. It was contended therein that they had received part payment on 11.12.2011 as well as on 18.06.2013 and the claim had been filed before the last payment received.

4. Whereas this fact is controverted by the learned counsel appearing on behalf of the respondent-Corporation. Mr. V.K. Kataria, learned counsel appearing on behalf of respondent No.1 would contend that in fact it was only a communication and it was not a award since the Arbitrator under Clause 25A of the agreement was to be Chief Engineer, Punjab Small Industries & Export Corporation Ltd. Chandigarh whereas this communication that has been addressed by the Executive Engineer (Electrical), Punjab Small Industries & Export Corporation Ltd., Chandigarh.

5. After having heard learned counsel for the parties and having perused the paper-book, I find that the claim of the appellants herein stands rejected by the Executive Engineer (Electrical), Punjab Small Industries & Export Corporation Ltd., Chandigarh, who was not the competent person to have addressed the issues as per Clause 25A of the agreement dated 06.07.2000. Arbitration clause 25-A reads as under :-

“If any objection, difference or objection whatsoever in any way connected with or arising out of this instrument or the meaning or operation of any part thereof, or the

rights, duties or liabilities of either party then save in so far as the matter is herein before provided for and has been so decided, every such matter including whether its decision has been otherwise provided for and/ or whether it has been finally decided accordingly, or whether the contract should be terminated or has been rightly terminated and as regards the right and obligations of the parties, as the result of such terminating shall be referred for arbitration to Chief Engineer Punjab Small Industries & Export Corporation Ltd. Chandigarh acting as such of the time of reference within 180 days or 6 months from the payment of final bill or written notice issued to the contractor that his bills is ready for payment and his decision shall be final and binding and where the matter involves a claim for or the payment or recovery or deduction of money, only the amount if any, awarded in such arbitration shall be recoverable in respect of the matter so referred if matter is not referred to arbitration within the specified period. All the rights and claims under the contract shall be deemed to have been forfeited and absolutely barred.”

Per the aforesaid clause, any claim that had to be filed, would have to be filed and adjudicated by Chief Engineer, Punjab Small Industries & Export Corporation Ltd. Chandigarh.

6. In view of the above, this Court finds that Executive Engineer (Electrical), Punjab Small Industries & Export Corporation Ltd., Chandigarh, was not a competent person either to accept the claim or to reject the claim. In view of the factual position above, there is no illegality with the order passed. However, since the claim

petition has been rejected by a person not competent to do so on the ground that it is barred by limitation, this appeal is being disposed of with a direction that in case the appellants herein prefers an application/claim in terms of clause of 25A of the Agreement to the Corporation within a period of two weeks on receipt of certified copy of this order, the same shall be looked into and the grievance of the appellants would be addressed. An arbitrator to be appointed within a period of two weeks, who will then conclude within a period of four months.

Appeal stands disposed of accordingly.

21.02.2019

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned : Yes.
Whether reportable : No.