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

FAO-6581-2019 (O&M)
Date of Decision: October 31, 2019

M/s Piccadilly Sugars and Allied Industries Ltd.

Appellant

Versus

Punjab State Industrial Development Corporation Ltd. (PSIDC) and another

Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Sanjeev Sharma, Sr. Advocate with
Mr. Sandeep Singh, Advocate
for the appellant.

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

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<u>JAISHREE THAKUR, J.</u> <u>(Oral)</u>

1. This is an appeal that has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 seeking to challenge the order of the Addl. District Judge, Patiala vide which he dismissed an application filed by the appellant under Section 9 of the Arbitration and Conciliation Act, 1996.

2. In brief the facts are that the appellant had entered into an agreement dated 03.06.1993 with PSIDC for taking over the Sugar Mills on an "***AS IS WHERE IS BASIS***" on a payment of about ₹11,49,10,150.80/-, which

was inclusive of the land situated beneath the Sugar Mills. In terms of the said agreement, Clause 10 clearly specifies that the Company namely the appellant herein would be responsible for all the liabilities towards the Company: "*The company shall be responsible for all the liabilities in connection with the implementation of the project and would also meet any undermined liability like the enhancement of compensation towards acquisition of land and the PSIDC shall be indemnified and kept indemnified by the company."* Whereas Clause 11 of the agreement specifies that "*That the company shall be entitled to deal with all legal proceedings in any court of law pending or likely to arise in future."*

3. Subsequent to the sale, proceedings were initiated under the Land Acquisition Act and the claimants sought for enhancement of compensation which was allowed by the High Court. In these proceedings, the Company and PSIDC were not made a party. Thereafter, execution proceedings were filed by the claimants before the High Court who had been allowed enhanced compensation, and in those proceedings the appellant appeared as an impleaded party and specifically took up objections that they were not made aware of any proceedings that have been initiated and it was the duty of PSIDC to have informed them of the enhancement sought by the claimants. The executing Court agreed with the contentions raised by the appellant by observing that "*M/s Piccadilly Sugars was neither party when award was passed nor before the Hon'ble High Court.*" Ultimately the objections filed to the execution proceedings were dismissed, leaving it open to PSIDC to seek its remedy against the appellant herein. Thereafter , a meeting was held under the Chairmanship of the Managing Director, PSIDC dated 18.10.2017, wherein they took a conscious decision to recover the amount so paid on account of the enhanced compensation paid to the claimants/land owners from the appellant herein. Consequent to the said decision, the Collector issued notices for attachment which were then again objected to by the appellant herein. Vide order dated 20.09.2018, the Collector Patiala asked the Asstt. Collector, Gr. II to stay the proceedings regarding the attachment and the recovery of ₹27,08,176/- from the appellant firm which order was then *suo-motu* rescinded on 10.10.2018 and an auction has been announced. It was thereafter that the appellant herein filed an application under Section 9 of the Arbitration and Conciliation Act seeking interim protection and stay of the auction notice issued, which application stood dismissed leading to the filing of the instant appeal.

4. Mr. Sanjeev Sharma, Sr. Advocate assisted by Mr. Sandeep Singh, Advocate for the appellant *inter-alia* argues that without invoking arbitration PSIDC has determined a liability. It is argued that without any prior notice, the PSIDC has *suo-motu* decided to recover an amount of about ₹27 lacs without any actual determination by the Arbitrator. It is argued that the Company was never informed about any proceedings pending in the High Court regarding enhancement of the compensation which is not in consonance with the sale-deed/agreement entered into between the parties.

5. Mr. Sahil Sharma, learned counsel appearing on behalf of respondent No.1 herein would contend that the remedy available to the Company would be to challenge the orders of attachment as envisaged under the Punjab Land Revenue Act, 1887 while arguing that the instant appeal itself is not maintainable.

6. I have heard learned counsel for the parties and with their assistance have gone through the paper-book and the orders so impugned.

Admittedly, there is an agreement that has been entered into between the appellant and the PSIDC which has a Clause 19 "*That in case of any dispute relating to the terms and conditions of the Agreement or the interpretation of the Agreement arising between the parties, shall be submitted to Arbitrators whose decision shall be final and binding on the parties.*" This Clause clearly states that any dispute arising out of the sale deed would be referred to an Arbitrator, who would be appointed with the consent of both the parties and the proceedings would be covered by the Arbitration and Conciliation Act. It is also apparent that the Appellant was not informed about the pendency of the proceedings under the Land Acquisition Act before the High Court in terms of the agreement entered into between the parties. But the question of such an action and the consequences arising thereafter is not for this court to determine, and is left to the Arbitrator. On the asking of the Court, it transpires that the appellant has not asked for an Arbitrator to be appointed in terms of Clause 4.4 of the sale deed which is reproduced hereunder.

> "*If any dispute or controversy arises with regard to any clause or fact stated in this sale deed or with regard to any rights or duties agreed in this sale deed or with regard to any dispute concerning this sale deed or any reference shall be decided by an arbitrator to be appointed with the consent of both the parties and the proceedings be governed by the provisions of the Arbitration and Conciliation Act. The award made by the arbitrator shall be binding on both the parties.*"

Mr. Sanjeev Sharma, learned Senior counsel for the appellant submits that he will ask for an Arbitrator to be appointed within a period of two weeks from the date of receiving of this order.

7. To secure the interest of PSIDC and to allow the dispute to be referred to Arbitration , it would be appropriate to direct the Company herein to deposit title deed of un-encumbered land equivalent to the current market value amounting to ₹28 lacs. Needless to say on deposit of the said titled deed, the Auction Notice shall be deemed to be set aside. The attachment orders qua the entire land of the land belonging to the Company pursuant to the orders of the Collector will also stand vacated.

8. Before parting with this order, it is made clear that in case the arbitration is not invoked by the appellant within a period of two weeks or titled deeds are not deposited within a period of four weeks, the PSIDC (after four weeks) will be at liberty to proceed with the auction by following due procedure. The appeal stands disposed of accordingly.

(JAISHREE THAKUR)
JUDGE

October 31, 2019
seema

Whether speaking/reasoned Yes
Whether reportable Yes/No