

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

CR No.1599 of 2021(O&M)
Reserved on 21.11.2022
Date of Decision:22.12.2022

M/s National Collateral Management Services Ltd. ... Petitioner

Vs.

The Haryana Cooperative Supply and Marketing Federation Ltd.
and another ... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Naresh Markanda, Sr. Advocate with
Mr. Rohan Markanda, Advocate and
Mr. Karan Gupta, Advocate
for the petitioner.

Mr. Baldev Raj Mahajan, Sr. Advocate with
Mr. Aman Bahri, Advocate and
Mr. Dinesh Kumar Jangra, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. The petitioner has assailed the order dated 06.08.2021 passed by the Additional District Judge, Chandigarh, whereby the Court has allowed the application for staying the operation of the award dated 12.11.2018 corrected vide order dated 14.01.2019 during pendency of the objection petition under

Section 34 of the Act.

[2]. Perusal of the impugned order would show that the stay application has been entertained, thereby unconditionally staying the operation of the award dated 12.11.2018 and corrected vide order dated 14.01.2019 in violation of Section 36 of the Arbitration and Conciliation Act, 1996 as amended from time to time.

[3]. Learned Senior Counsel for the petitioner submitted that the impugned order has been passed in utter disregard to the provisions of Section 36(2)(3) of the Act. The filing of objection petition under Section 34 of the Act shall not by itself render that award unenforceable, unless the Court grants an order of the operation of the stay of the arbitral award in accordance with the provisions of sub Section 3 on a separate application made for that purpose. In the event of filing such an application under sub Section 2 of the Act for stay of operation of the arbitral award, the Court may subject to such conditions as it may deem fit, grant stay for operation of such award for the reasons to be recorded in writing. For grant of stay in the case of an arbitral award for payment of money, the Court is to have due regard to the provisions for grant of stay in a money decree under the provisions of the CPC. The power under sub Section 36(3) of the Act to grant stay of an award is coupled

with the duty to impose conditions which could include the condition of securing the award by deposit in Court, of the amount of the award. However, the Court may not impose condition for stay, if it deems appropriate not to do so. The power of Court to grant unconditional stay of an award is not unfettered, however, the same is subject to the condition in the second proviso i.e. the Court is satisfied that a *prima facie* case is made out that- (i) the arbitration agreement or contract which is the basis of the award; or (ii) the making of the award, was induced or effected by fraud or corruption.

[4]. Once an application under Section 36(2) of the Act is filed for stay of operation of the arbitral award, the Court may subject to such conditions as it may deem fit, grant stay of the operation of such award, for reasons to be recorded in writing. The Court is empowered to impose such conditions as it might deem fit and may grant stay of operation of the award subject to furnishing of security covering entire amount of the award including interest. The proviso to Section 36(3) of the Act makes it clear that while considering an application for grant of stay in the case of an arbitral award for payment of money, due regard to be given to the provisions for grant of stay of a money decree under the provisions of the CPC. The proviso to Section 36(3) of the Act further stipulates that where the Court is satisfied that a

prima facie case is made out that (a) the arbitration agreement or contract which is the basis of the award or, (b) the making of the award was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under Section 34 of the Award.

[5]. On the strength of **Pam Developments Private Limited Vs. State of West Bengal, (2019) 8 SCC 112, Sepco Electric Power Construction Corporation Vs. Power Mech Projects Ltd., 2022 SCC OnLine SC 1243** and **Board of Control for Cricket in India Vs. Kochi Cricket Private Limited and others, (2018) 6 SCC 287**, learned Senior Counsel for the petitioners submitted that a differential treatment to the Government in certain cases may not be so applicable while considering a case against the Government under the Arbitration Act. There is no requirement under the Arbitration Act for a notice to be given to the Government before invoking arbitration proceeding against the Government. Similarly, Section 36 of the Act does not provide for any special treatment to the Government while dealing with the grant of stay in an application under proceedings of Section 34 of the Act. Section 26 of the Arbitration and Conciliation (Amendment) Act, 2015 postulates that nothing contained in this Act shall apply to the arbitral proceedings commenced, in accordance with the

provisions of Section 21 of the Principal Act, before the commencement of this Act unless the parties otherwise agree but this Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this Act. Bare reading of Section 26 of the (Amendment) Act, 2015 would make it clear that if in all cases where petition under Section 34 of the Act is filed after the commencement of the Amendment Act and an application for stay having been made under Section 36 of the Act therein, will be governed by Section 34 of the Act as amended and Section 36 of the Act as substituted. But if the petition under Section 34 of the Act is filed before commencement of Amendment Act, then the meaning attached to Section 26 of the Arbitration and Conciliation (Amendment) Act, 2015 would have the meaning as held in **BCCI's case (supra)** and **Civil Appeal No.3972 of 2019 (arising out of Special Leave Petition (Civil) No.1550 of 2018)** titled **Bharat Broadband Network Limited Vs. United Telecoms Limited** decided on 16.04.2019.

[6]. On the strength of the aforesaid precedents, learned Senior Counsel for the petitioners submitted that the impugned order is totally non-speaking and is liable to be set aside.

[7]. On 17.08.2021, following order was passed:-

“Inter-alia contends that vide the impugned

order dated 06.08.2021, the Additional District Judge, while entertaining a stay application, has unconditionally stayed the operation of the award dated 12.11.2018 and 14.01.2019 on account of the execution having been filed in the Court of Additional District and Sessions Judge, Panchkula. Reliance is placed upon the provisions of Section 36 of the Arbitration and Conciliation Act, 1996 as amended, to submit that award has to be treated as a money decree and the provisions for grant of stay under Civil Procedure Code are to be kept in mind. It is further contended that there is no challenge that the arbitration agreement, contract or the making of award was induced or effected by fraud or corruption.

Notice of motion.

Mr. Aman Bahri, Additional Advocate General, Haryana accepts notice on behalf of respondents and prays for time to complete his instructions.

List on 17.11.2021.

**(G. S. SANDHAWALIA)
JUDGE”**

August 17, 2021
Sachin M.

[8]. Thereafter, on 29.10.2022, the case was adjourned to 01.11.2022. On 01.11.2022, turn of the case did not reach and the case was adjourned to 07.11.2022 by order. On 07.11.2022, none appeared on behalf of the respondents and the case was adjourned to 21.11.2022 and the case was heard in the presence of both the parties.

[9]. During course of arguments, learned Senior Counsel for the respondents owing to the nature of order passed by the Additional District Judge, Chandigarh agreed for remanding the case to the Court of Additional District Judge, Chandigarh with a direction to revisit all the issues in question.

[10]. In view of settled legal position as enumerated above, it is a well established as of now that the arbitral award cannot be stayed in routine. A due regard has to be given to the provisions for grant of stay of money decree under the Code of Civil Procedure. Unconditional stay can only be granted in case, the award is suffered with fraud or corruption.

[11]. In view of aforesaid legal position and in view of facts and circumstances of the case, I deem it appropriate to set aside the impugned order dated 06.08.2021 and remand this case back to the Additional District Judge, Chandigarh to revisit the issues in question and pass appropriate order in accordance with law.

[12]. For the reasons recorded hereinabove, the present revision petition is disposed of.

22.12.2022

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No