

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

Reserved on 21.11.2022

Date of Decision:22.12.2022

1. CR No.3616 of 2022(O&M)

M/s JITF Urban Waste Management (Ferozepur) Ltd.

... Petitioner

Vs.

Municipal Corporation, Moga and another

... Respondents

2. CR No.3617 of 2022(O&M)

M/s JITF Urban Waste Management (Jalandhar) Ltd.

... Petitioner

Vs.

Municipal Corporation, Jalandhar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Anand Chhibbar, Sr. Advocate with
Mr. Manish Gopal Lakhawat, Advocate and
Mr. Aditya Jain, Advocate
for the petitioner.

Dr. Anmol Rattan Sidhu, Sr. Advocate with
Ms. Mandeep Kaur, Advocate
for respondent No.1.

Mr. R.S. Pandher, Sr. DAG, Punjab.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, CR No.3616 of 2022 titled M/s JITF Urban Waste Management (Ferozepur) Ltd. Vs. Municipal Corporation, Moga and another and CR No.3617 of 2022 M/s JITF Urban Waste Management (Jalandhar) Ltd. Vs. Municipal Corporation, Jalandhar and another are being disposed of. Since both the cases have arisen from the impugned order dated 23.08.2022 passed by the Additional District Judge, Chandigarh, whereby the Court has unconditionally stayed the operation of the arbitral award dated 15.01.2022, therefore, common facts are being noticed.

[2]. 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.

[3]. 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.

[4]. 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.

[5]. 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.

[6]. Notice of motion was issued on 05.09.2022 by passing the following order:-

“Learned Senior counsel for the petitioner contends that in terms of proviso to Section 36(3) of the Arbitration and Conciliation Act, 1996, the arbitral award can only be stayed after having due regard to the provisions for grant of stay in case of money decree under the provisions of CPC. Vide the impugned order unconditional interim order has been passed without putting any condition thereof.

Notice of motion for 27.09.2022.

At this stage, Ms. Mandeep Kaur, Advocate appears and accepts notice on behalf of the respondent No.1/Corporation. She seeks time to have further instructions.

A photocopy of this order be placed on the file of connected case.”

[7]. Even perusal of the order dated 25.07.2022 passed in CR No.2247 of 2022 would indicate that this Court disposed of the said revision petition with a direction that the Commercial Court shall not automatically extend the interim stay dated 26.05.2022. The parties would be heard and it is thereafter, the order regarding interim relief be passed in accordance with law.

[8]. Evidently, the impugned order has been passed vide order dated 23.08.2022 in utter disregard to the provisions of

Section 36 of the Act as amended from time to time.

[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 crystal clear that the impugned order is not legally sustainable.

[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 23.08.2022 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

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No