

FAO No. 2874 of 2020

[1]

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

FAO No. 2874 of 2020 (O&M)

Date of decision: 1st March, 2023

Punjab State Power Corporation Ltd.

Appellant

Versus

M/s Swastik Transformers Industries & another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. J. S. Rana, Advocate for the appellant.
Mr. Aakash Singla, Advocate for respondent No. 1.

AVNEESH JHINGAN, J (Oral):

This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') is filed aggrieved of the dismissal of objections under Section 34 of the Act.

The brief facts are that the parties entered into a contract for repair of transformer. The terms and conditions provided for dispute resolution through arbitration mechanism. Respondent No. 1 (hereinafter referred to as 'the respondent') raised a claim and the arbitration proceedings were initiated which culminated in award dated 20.4.2016. The respondent was found entitled to recover interest @ 12% of 70% of the cost of new transformer. The objections filed by the appellant under Section 34 of the Act were dismissed on 19.4.2019.

Learned counsel for the appellant submits that the evidence adduced to substantiate that the respondent was intimated about the damage of transformer and that there was delay in supply of the repaired transformer was not considered.

Learned counsel for the respondent defends the impugned order and submits that the respondent was never intimated by the appellant with regard to the damage to the transformer.

The scope of interference under Section 37 of the Act is limited. Reference in this regard is made to the decision of the Supreme Court in *Haryana Tourism Limited v. M/s Kandhari Beverages Limited*, 2022(3) SCC 237.

From the perusal of the award, it is forthcoming that a specific finding was recorded that the appellant in spite of availing numerous opportunities failed to produce evidence that the respondent was intimated about the damage to the transformer. The stand taken was that the recoveries were being made from the respondent as per the official record maintained.

The specific stand of the respondent that there was no intimation of the damaged transformer went unrebutted.

There is another aspect to be considered that the contention now being raised was never raised in the objections under Section 34 of the Act. There were no specific pleadings that there was evidence on the record to the effect that intimation of damaged transformer was sent to the respondent and same was not considered.

No case is made out for interference in the impugned order.

The appeal is dismissed.

[AVNEESH JHINGAN]
JUDGE

1st March, 2023
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |