

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

DECIDED ON: 13th January, 2023

(i) C.R. No. 1082 of 2021 (O&M)

Dakshin Haryana Bilji Vitran Nigam

.....PETITIONER

VERSUS

M/s NKG Infrastructure Ltd. and others

.....RESPONDENTS

(ii) C.R. No. 1083 of 2021 (O&M)

Dakshin Haryana Bilji Vitran Nigam

.....PETITIONER

VERSUS

M/s NKG Infrastructure Ltd. and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Lakshay Mehta, Advocate for petitioner.

Mr. Shivam Grover, Advocate for respondent No.1.

Mr. Vibhu Agnihotri, Advocate for respondents No. 2 to 4.

AVNEESH JHINGAN, J (ORAL)

These two revision petitions are filed challenging the fixation of fees of Arbitral Tribunal in violation of the provisions of Arbitration and Conciliation Act, 1996 and the judgment passed by this Court in ***Punjab State Power Corporation Limited Vs. Union of India and others***, 2017 SCC Online P&H 5375.

Following orders were passed on 24.5.2021:-

"The short point involved in this revision petition is whether the fee payable to the Arbitral Tribunal is to be a composite fee as payable under the Fourth Schedule under the Arbitration and Conciliation Act, 1996 (Amended) or whether each Arbitrator has to be paid individually.

Notice of motion for 30.11.2021.

Notice re: stay.

In the meantime, let the fee of the Arbitrators as assessed by order dated 30.01.2021 be deposited with the Registry of this Court (in the name of the Registrar) within a period of one month and kept in the form of a FDR bearing interest and not to be released till further orders. Meanwhile the Arbitrators are directed to continue with the proceedings and consider the counter claims in accordance with law.

Photocopy of this order be placed on the other connected file."

On 5.7.2021:-

"The applicant/petitioner seeks modification of the interim order dated 24.05.2021 passed by this Court beside extension of time to comply with the said order.

Learned counsel for the petitioner herein would contend that vide an order dated 24.05.2021, this Court had directed for the fee of the Arbitrators as assessed by order dated 30.01.2021 to be deposited with the Registry and the same to be kept in the form of the FDR bearing interest and not to be released till further orders. It is submitted that in fact the order dated 30.01.2021 would only pertain to the fee of the Arbitrators pertaining to the main case whereas the petitioners too have been directed to pay an amount for the counter claim that has been filed. It is submitted that by order dated 09.06.2021 (Annexure A-3) the petitioner has been directed to pay the fee of Rs.2,86,500/- to each Arbitrator for the counter claim filed, which is not payable to them. It is submitted that in case the payment of the said amount is not stayed, the entire petition itself would be rendered infructuous.

I have heard learned counsel for the petitioner and deem it appropriate to modify the order dated 24.05.2021 whereby the petitioner herein was directed to make a payment in terms of the order dated 30.01.2021. The said order is modified and the petitioner is now also directed to make a payment of Rs.2,86,500/- to each the three arbitrators to be deposited with the Registry and to be kept in the form of the FDR bearing interest and not to be released till further orders.

Let the payment in terms of the said order be deposited within a period of one month from today.

Both the misc. applications stand disposed of, accordingly."

On 5.5.2022:-

"Learned counsel for the respondents, at this stage, pray that 1/3rd of Arbitral fee, which stands deposited before this Court, should be released, to be distributed equally between all the three Arbitrators as there is no dispute regarding that amount. Learned counsel for the petitioner is unable to deny that there is indeed no dispute regarding 1/3rd of the amount so deposited before this Court. Accordingly, it is directed that 1/3rd of Arbitral fee deposited in compliance of order dated 24.05.2021/05.07.2021 be released on submission of adequate proof of identity, to be disbursed equally amongst three Arbitrators.

List for arguments on 12.07.2022.

Photocopy of the order be placed on the file of connected case."

Learned counsel for the parties are *ad-idem* that the matter is now covered by the decision of the Supreme Court in ***Oil and Natural Gas Corporation Ltd. Versus Afcons Gunanusa JV***, 2022 AIR (Supreme Court) 4413 and submits that these petitions be disposed of in terms of the decision of the Supreme Court.

Learned counsel for the petitioner further submits that the amount deposited in pursuance to order of this Court be released to the Arbitrator alongwith the interest accrued on the FDR.

In view of above, the petitions are disposed of and Registry is directed to release the amount to the Arbitrator and the amount kept in the FDR along with accrued interest on the FDR.

Since the main cases have been disposed of, pending applications, if any, are rendered infructuous.

Photocopy of this order be placed on the file of connected case.

13th January, 2023

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**(AVNEESH JHINGAN)
JUDGE**

Whether speaking/reasoned *Yes*

Whether reportable *No*