

FAO) No. 2049 of 2016

[1]

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 2049 of 2016 (O&M)

Date of decision: 9th March, 2023

M/s Project & Equipment Development Corporation

Appellant

Versus

Uttar Haryana Bijli Vitran Nigam Ltd. and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rajinder Goyal, Advocate for the appellant.
Mr. R. S. Longia, Advocate for respondent No. 1.

AVNEESH JHINGAN, J (Oral):

1. This appeal is filed aggrieved of order dated 16.11.2015, deciding objections under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act').

2. The brief facts are that the appellant was awarded tender by Dakshin Haryana Bijli Vitran Nigam Ltd. for supply of 5000 Stay sets. The terms and conditions provided for dispute resolution through arbitration. The dispute between the parties was referred to the arbitrator at the instance of Uttar Haryana Bijli Vitran Nigam Ltd. The proceedings culminated in award dated 16.9.2010. Aggrieved of the award, the appellant filed objections under Section 34 of the Act. The award was set aside and the matter was remanded back to Managing Director of Dakshin Haryana Bijli Vitran Nigam Ltd. to appoint an arbitrator within two months in consonance with Clause 24 of the agreement.

3. Learned counsel for the appellant relies upon the decisions of the Supreme Court in *Kinnari Mullick and another v. Ghanshyam Das Damani*, (2018) 11 SCC 328 and *Mcdermott International Inc. v. Burn*

Standard Co. Ltd. and others, (2006) 11 SCC 181 to submit that under Section 34 of the Act the matter cannot be remanded.

4. Learned counsel for respondent No. 1 in view of the decisions of the Supreme Court is not disputing the legal position. Submission is that liberty be granted to the respondent-Dakshin Haryana Bijli Vitran Nigam Ltd. to get the dispute resolved by arbitration.

5. In view of the decisions of the Supreme Court, cited above, the court after setting aside the award could not have remanded the matter.

6. The appeal is allowed. The impugned order to the extent of remanding the matter back to the Managing Director for appointment of the arbitrator is set aside.

7. Needless to say that the respondent-Dakshin Haryana Bijli Vitran Nigam Ltd. would be at liberty to avail remedies in accordance with law including seeking fresh arbitration.

[AVNEESH JHINGAN]
JUDGE

9th March, 2023
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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | No |