

FAO No. 3333 of 2015 and connected cases [1]

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

Date of decision: 22nd February, 2023

(1) FAO No. 3333 of 2015 (O&M)

M/s Cephram Agencies Pvt. Ltd. Appellant

Versus

Punjab State Industrial Development Corporation Ltd. Respondent

(2) FAO No. 3337 of 2015 (O&M)

M/s Cephram Agencies Pvt. Ltd. Appellant

Versus

Punjab State Industrial Development Corporation Ltd. Respondent

(3) FAO No. 4932 of 2015 (O&M)

Punjab State Industrial Development Corporation Ltd. Appellant

Versus

M/s Cephram Agencies Pvt. Ltd. Respondent

(4) FAO No. 6024 of 2017 (O&M)

Punjab State Industrial Development Corporation Ltd. Appellant

Versus

M/s Cephram Agencies Pvt. Ltd. Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Himanshu Bansal, Advocate for the appellant in FAO Nos. 3333 and 3337 of 2015 and for respondent in FAO No. 4932 of

2015 and FAO No. 6024 of 2017.

Mr. V. M. Gupta, Advocate for the respondents in FAO Nos. 3333 and 3337 of 2015 and for the appellants in FAO No. 4932 of 2015 and FAO No. 6024 of 2017.

AVNEESH JHINGAN, J (Oral):

1. This order shall dispose of above-mentioned four appeals , as the parties are common and facts are similar.
2. For the sake of convenience, facts are being taken from FAO No. 3333 of 2015.
3. The brief facts are that the parties signed Memorandum of Understanding (for short, 'MoU'). Clause of the MoU provided for dispute resolution through arbitration mechanism. The dispute between the parties was referred to the Arbitral Tribunal. The proceedings culminated into award dated 2.7.1.2011. The order was corrected under Section 33 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') on 8.9.2011.
4. Aggrieved of the award both the parties filed objections under Section 34 of the Act. The objections were allowed on 13.3.2013 and award modified.
5. The common legal issue involved in these cases is that while dealing with objections under Section 34 of the Act, the award could not have been modified.
6. The issue is no longer *res integra*. In ***Kinnari Mullick and another v. Ghanshyam Das Damani, (2018) 11 SCC 328***, the Supreme Court held:

“No power has been invested by the Parliament in the Court to remand the matter to the Arbitral Tribunal except to

*adjourn the proceedings for the limited purpose mentioned in sub-section 4 of Section 34. This legal position has been expounded in the case of **McDermott International Inc. (supra)**. In paragraph 8 of the said decision, the Court observed thus:*

“8....parliament has not conferred any power of remand to the Court to remit the matter to the arbitral tribunal except to adjourn the proceedings as provided under sub-section (4) of [Section 34](#) of the Act. The object of sub-section (4) of [Section 34](#) of the Act is to give an opportunity to the arbitral tribunal to resume the arbitral proceedings or to enable it to take such other action which will eliminate the grounds for setting aside the arbitral award.”

[Emphasis supplied]

14. In any case, the limited discretion available to the Court under [Section 34\(4\)](#) can be exercised only upon a written application made in that behalf by a party to the arbitration proceedings. It is crystal clear that the Court cannot exercise this limited power of deferring the proceedings before it suo moto. Moreover, before formally setting aside the award, if the party to the arbitration proceedings fails to request the Court to defer the proceedings pending before it, then it is not open to the party to move an application under [Section 34\(4\)](#) of the Act. For, consequent to disposal of the main proceedings under [Section 34](#) of the Act by the Court, it would become functus officio. In other words, the limited remedy available under [Section 34\(4\)](#) is required to be invoked by the party to the arbitral proceedings before the award is set aside by the Court.”

7. In **Radha Chemicals v. Union of India, 2019(1) Apex Court Judgments (SC) 330**, the Supreme Court held:

*“5. This court in a series of judgments culminated in **Kinnari Mullick and another v. Ghanshyam Das Damani, (2018) 11***

SCC 328 held that the court while deciding a Section 34 petition has no jurisdiction to remand the matter to the Arbitrator for a fresh decision. It is, therefore, clear that the learned Single Judge's judgment is contrary to this judgment as a result of which both the judgments of the Single Judge as well as the Division Bench have to be set aside."

8. The Supreme Court in ***Project Director, National Highways No. 45-E and 220 National Highways Authority of India v. M. Hakeem and another, 2021(9) SCC 1***, after considering its earlier decisions in ***Kunnari Mullick's case (supra)*** and ***Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies Pvt. Ltd., 2021 SCC Online 157***, held that there is no power under Section 34 of the Act to modify the arbitral award.

The relevant portion is quoted below:

"39. As has been pointed out by us hereinabove, McDermott (supra) has been followed by this Court in Kinnari Mullick (supra). Also, in Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies Pvt. Ltd., 2021 SCC OnLine SC 157, a recent judgment of this Court also followed McDermott (supra) stating that there is no power to modify an arbitral award under Section 34 as follows: -

(f) In law, where the Court sets aside the award passed by the majority members of the tribunal, the underlying disputes would require to be decided afresh in an appropriate proceeding.

Under Section 34 of the Arbitration Act, the Court may either dismiss the objections filed, and uphold the award, or set aside the award if the grounds contained in sub-sections (2) and (2A) are made out. There is no power to modify an arbitral award.

40. It can therefore be said that this question has now been settled finally by at least 3 decisions of this Court. Even

otherwise, to state that the judicial trend appears to favour an interpretation that would read into [Section 34](#) a power to modify, revise or vary the award would be to ignore the previous law contained in the 1940 Act, as also to ignore the fact that the 1996 Act was enacted based on the UNCITRAL Model Law on International Commercial Arbitration, 1985 which, as has been pointed out in Redfern and Hunter on International Arbitration, makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the ‘limited remedy’ under [Section 34](#) is co- terminus with the ‘limited right’, namely, either to set aside an award or remand the matter under the circumstances mentioned in [Section 34](#) of the Arbitration Act, 1996. ”

9. In view of the law laid down, the impugned order is set aside.
- The matter is remitted back for deciding the objections under Section 34 of the Act afresh, in accordance with law.
10. The appeals are disposed of.
11. Photocopy of the order be placed on the file of each connected case.

[AVNEESH JHINGAN]

JUDGE

22nd February, 2023

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1. Whether speaking/ reasoned

:

Yes / No
2. Whether reportable

:

Yes / No