

222 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 7th February, 2023

1. FAO-3219-2016 (O&M)

M/s. Amba Poly Chrome Pvt. Limited ... Appellant

Versus

The Punjab State Co-operative Supply and Marketing Federation Limited
through General Manager and others

... Respondents

2. FAO-3269-2016 (O&M)

M/s. Amba Poly Chrome Pvt. Limited ... Appellant

Versus

The Punjab State Co-operative Supply and Marketing Federation Limited
through General Manager and others

... Respondents

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Neeru, Advocate for the appellant(s).
Mr. Vikas Singh, Advocate for respondents No. 1 and 2.

AVNEESH JHINGAN , J.(Oral)

1. These two appeals under Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') are filed aggrieved of dismissal of objections under Section 34 of the Act.

2. Learned counsel for the parties are *ad idem* that the facts, issues involved in both appeals are similar and two petitions are filed as two contracts were made.

3. For the sake of convenience, the facts are taken from FAO-3219-2016.

4. The brief facts are that The Punjab State Co-operative Supply

and Marketing Federation Limited (respondent) invited tenders on 8.5.2008 for supply of three lakhs PP bags and the appellant was the successful bidder. Purchase order dated 15.5.2008 was placed for supplying one lakh bags by the first week of June, 2008. The appellant was required to deposit security of Rs. 50,000/-. On failure of the appellant to supply the bags, arbitration proceedings culminated in award dated 20.12.2011 and the respondent was found entitled to sum of Rs. 12,72,205/- along with interest @ 12% per annum. The objections under Section 34 of the Act were dismissed on 23.9.2013. In appeal, this Court vide order dated 14.1.2014 held that the award showed lack of application of mind and remanded the matter to the Arbitrator. It was observed that decision would be taken, considering the scope of Clause 7 of the contract and the correspondence exchanged between the parties.

5. After remand, award dated 11.5.2015 was passed, allowing the claim of the respondents to the tune of Rs. 12,72,205/- along with interest @ 12% with effect from 8.10.2009. The objections under Section 34 of the Act were dismissed on 21.3.2016 and hence, the present appeal.

6. Learned counsel for the appellant submits that the appellant had not deposited security of Rs. 50,000/-, hence, there was no contract between the parties. It is argued that the date for supply of the bags was extended up to 9.6.2008 yet the purchase order was given to the other party on 9.6.2008. It is further argued that no notice for arbitration was given.

7. Learned counsel for the respondents submits that in spite of giving reminders and last opportunity to supply the bags not later than 9.6.2008, the appellant failed to supply the goods. It is further argued that to comply with the purchase order the appellant had supplied the bags

which failed in quality test.

8. Heard learned counsel for the parties and perused record.
9. The scope of interference under Section 37 of the Act is limited. In '**Haryana Tourism Limited vs. M/s. Kandhari Beverages Limited, 2022 (3) SCC 237**, the Supreme Court held as under :-

“ 8. As per settled position of law laid down by this Court in a catena of decisions, an award can be set aside only if the award is against the public policy of India. The award can be set aside under Sections 34/37 of the Arbitration Act, if the award is found to be contrary to, (a) fundamental policy of Indian Law; or (b) the interest of India; or (c) justice or morality; or (d) if it is patently illegal. None of the aforesaid exceptions shall be applicable to the facts of the case on hand. The High Court has entered into the merits of the claim and has decided the appeal under Section 37 of the Arbitration Act as if the High Court was deciding the appeal against the judgment and decree passed by the learned trial court. Thus, the High Court has exercised the jurisdiction not vested in it under Section 37 of the Arbitration Act. The impugned judgment and order passed by the High Court is hence not sustainable.”

10. After remand of the matter by this Court, the Arbitrator passed the award after considering the Clause 7 of the agreement, evidence adduced by the parties and the correspondence between them. It is not in dispute that the appellant had supplied sample bags which failed in quality test. It is not the case of the appellant that in spite of extending the time for supply of bags upto 9.6.2008, bags were supplied or dispatched to the respondent.

11. The contention that the petitioner failed to deposit the security amount results in nullifying the purchase order lacks merit. The conduct

of the appellant in pursuance to purchase order was taken into account by the Arbitrator while passing the impugned award. It has been specifically recorded that the appellant supplied the sample bags which failed in quality test. The contention that no arbitration notice was served need not be dwelled upon, moreso, when the appellant participated in the earlier arbitration proceedings, the matter travelled all the way to the High Court, and even after remand, the appellant appeared before the Arbitrator invited the award and at this belated stage after thought objection is being raised. A feeble attempt is being made to challenge the quantification of the claim done by the arbitrator, there cannot be re-appreciation of evidence in the proceedings under Section 37 of the Act.

12. No ground is made out for interference and the appeals are dismissed.
13. Since the main cases have been dismissed, the pending application(s), if any is rendered infructuous.
14. A photocopy of this order be placed on the file of connected case(s).

(AVNEESH JHINGAN)
JUDGE

7th February, 2023

<i>anuradha</i>	Whether reasoned/speaking	Yes/No
	Whether reportable	Yes/No