

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

215

FAO-4879-2016 (O&M)

Date of decision: 16th May, 2023

M/s. Rajul Gases Pvt. Ltd.

....Appellant

Versus

Union of India and another

....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Karan Gupta, Advocate for the appellant.

Mr. Sudhir Nar, Advocate for respondent No. 1.

AVNEESH JHINGAN, J (Oral):**CM-16664-CII-2016**

1. This is an application for condonation of delay of 70 days in filing the appeal.

2. For the reasons recorded in the application, the same is allowed and delay of 70 days in filing the appeal is condoned.

Main case

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

4. Brief facts are that on 12.12.2006 respondent No.1 placed a purchase order for supply of 13701 cubic metre of dissolved Acetylene gas. The supply was to be completed by 31.3.2008. On request of the appellant two extensions were granted and the time was extended up to 30.10.2008.

The communication of the last extension specifically stated that all terms and conditions remain unchanged. The respondent No.1 exercising the optional clause enhanced the quantity of the gas to be supplied to 17811 Cubic metre. The enhancement was protested by the appellant. On failure of appellant to supply the enhanced quantity the respondent in accordance with the terms and conditions proceeded to purchase the quantity of undelivered gas to be at the risk and cost of the appellant. The dispute was referred for arbitration and proceedings culminated in award dated 29.3.2014. The claim made by the appellant challenging the purchase at the risk and cost of the appellant was dismissed. The objections under Section 34 of the 1996 Act were dismissed on 19.9.2015. Hence, the present appeal.

5. Learned counsel for the appellant submits that enhancement of the quantity of the gas supplied was subsequent to the initial period fixed for the supply of the gas and the appellant was not obliged to comply with it.

6. Learned counsel for the respondent No.1 defends the impugned order.

7. Heard learned counsel for the parties and perused the record.

8. Before proceedings further it would be appropriate to reproduce the optional clause agreed between the parties and also the relevant portion of the communication extending the delivery period

“OPTIONAL CLAUSE-Ordered quantity may be increased or decreased by 30% at purchaser’s option, during currency of the contract. Ordered quantity may be increased by 30% at any time before last date of delivery even though

ordered quantity is supplied in full.”

“Delivery period is hereby extended upto 30.10.2008 with leviable LD & DC printed overleaf. Firm may please note that if the material is not received by 30.10.2008 risk purchase action shall be initiated without any further notice.

All other terms and conditions remain unchanged.”

9. It is undisputed fact that the date of supply of purchase order was extended up to 30.10.2008 on the request of the appellant. The period for delivery was extended but the terms and conditions were not changed. The parties agreed that in view of the optional clause the respondent had the right to increase or decrease the quantity of the gas to be supplied with the variation of 30%.

10. The contention raised by the counsel for the appellant has been dealt with in detail in the arbitral award as well as in the impugned order. It was rightly held by the arbitrator that with the extension of time the operation period of the purchase order stood extended. Moreso, with the extension of time, terms and conditions were not changed. The contention that the appellant was not obliged to comply with order which was enhanced after 31.30.2008 (i.e. original date for supply of gas) lacks merit.

11. The scope of interference under Section 37 of the 1996 Act is limited. Reference in this regard has been made to “***N Haryana Tourism Limited vs M/s Kandhari Beverages Limited, 2022(3) SCC 237***”. There cannot be re-appreciation of the award. The conclusion arrived at by the arbitrator is plausible calling for no interference under Section 37 of the 1996 Act.

12. The appeal is dismissed.

13. Since the main case has been dismissed, the pending application(s), if any is rendered infructuous.

[AVNEESH JHINGAN]
JUDGE

16th May, 2023
anuradha

1. Whether speaking/ reasoned

:

Yes / No
2. Whether reportable

:

Yes / No