IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-CARB-48-2023 (O&M)
Date of Decision: 06.11.2023

DIRECTOR GENERAL SCHOOL EDUCATION-CUM-STATE PROJECT DIRECTOR

......APPELLANT

Vs.

M/S UNIFAB TEXTILES AND ANOTHER

........RESPONDENTS

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Sanjeev Sharma, Senior Advocate, with
Mr. Shekhar Verma, Mr. Aneesh Chopra, Ms. Maninee Lidoo and Mr. Brijesh Ladwal, Advocates,
for the appellants.

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HARPREET KAUR JEEWAN, J.

1. The present appeal has been filed for setting aside the impugned order dated 11.08.2023, passed by the learned Additional District Judge-cum- Presiding Judge Exclusive Commercial Court, SAS Nagar (Mohali), whereby the petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for short *'the Act')* was filed and the impugned Award, dated 20.04.2021, passed by the learned Arbitrator regarding a dispute between the parties which arose by an agreement/allotment of order for supply of school uniforms to the appellants was upheld.

2. The brief facts of the case are that the appellant invited online bid applications for supply of school uniforms for the year 2018-19 for the Government schools across the State of Punjab through e-tender form dated 02.02.2019 (Annexure O-2) for implementing "Samagra Shiksha" a new integrated Centrally Sponsored Scheme to provide free uniform to all the female students and to SC/ST/BPL male students for Class I to 8th standard studying in Government schools. Respondent No. 1 (hereinafter referred to as the *'Manufacturer'*) applied for the said bid and was declared to be the successful bidder by the appellant. The respondent-manufacturer had also given an undertaking dated 14.02.2019 (Anenxure O-3) regarding supply of 5 lakhs set of school uniforms by a fixed date upto 31.03.2019. The appellant accepted the aforesaid undertaking and issued an allotment letter dated 15.02.2019 (Annexure O-4) in its favour. Thereafter, the appellant, issued a communication dated 05.04.2019 (Annexure O-5) to the respondent-Manufacturer and extended the period of time for supply of uniforms upto 08.04.2019. Thereafter, a show cause notice dated 14.10.2019 (Annexure O-8), was issued by the appellant to the respondent-Manufacturer for not complying with the terms of the tender and to show cause as to why the bank guarantee submitted by the respondent-manufacturer may not be forfeited; as to why the respondent-Manufacturer may not be blacklisted; and as to why his further payment not be withheld. It was also alleged in the show cause notice that only 2,83,383 set of uniforms have been supplied by the respondent-Manufacturer uptill 15.04.2019, i.e. after the due date. The respondent-Manufacturer filed its response dated 03.12.2019 (Annexure O-9) to the aforesaid notice. Finding the reply to be unsatisfactory, the appellant passed an order dated

28.08.2020 (Annexure O-11) against the respondent-Manufacturer and forfeited the bank guarantee submitted by the respondent-Manufacturer, blacklisted his company and also withheld his further payments.

2.1 Aggrieved against the said order, the respondent-Manufacturer filed a Civil Writ Petition bearing No. 14642 of 2020 before this Court for appointment of an arbitrator vide order dated 30.10.2020 (Annexure O-12), Hon'ble Justice M.S. Sullar (Retd.) was appointed as the Sole Arbitrator with the consent of both the parties.

2.2 Pursuance to the said order, both the parties appeared before the learned Arbitrator on 09.11.2020 and the respondent-Manufacturer filed statement of claims dated 09.11.2020 (Annexure O-13), regarding its grievances. A reply was submitted by the appellant to the aforesaid petition on 18.11.2020 (Annexure O-14). A replication to the aforesaid reply was also filed by the respondent-Manufacturer on 29.11.2020 (Annexure O-15).

3. The Arbitrator passed the Award dated 20.04.2021, whereby the respondent-manufacturer was held entitled to a sum of ₹8,02,54,075/- minus deduction of penalty for delayed delivery in the same manner as previously deducted for previous orders. The claim of the respondent-manufacturer on account of the delivery and transportation cost was declined . The claim of the respondent-manufacturer regarding the bank guarantee furnished by him amounting to Rs. 1.5 crore along with interest at the rate of 4.5% per annum from the date of encashment by the appellant-department was allowed. The respondent-manufacturer was so held entitled to *pendente lite and* future interest @ 9% per annum along with proportionate costs of the said amount.

4. Aggrieved against the said Award, the appellant filed an Objection Petition under Section 34 of the Act before the learned Additional District Judge-cum-Commercial Court at SAS Nagar (Mohali). However, the said petition was dismissed by the learned Additional District Judge, vide its order dated 11.08.2023.

5. Aggrieved against the aforesaid impugned Award and the order, the appellant filed the present appeal before this Court.

6. Learned Senior Counsel appearing for the appellant raised the first contention that learned Additional District Judge had no jurisdiction to pass the impugned order as the Court was not having powers as to deal with a 'commercial dispute' which is defined under sub-section (c) of section 2 of the the Commercial Courts Act, 2015. As per the notification issued by the Government of Punjab, dated 14.06.2019, bearing endorsement No. S.O.59/C.A.4/2016/Ss.3 and 3-A/2019, read with notification No. 1197 Spl. Gazettee-II (7-G) dated 04.07.2019, issued by the learned Registrar General of this Court, only the Additional District Judge 1, 2 and 3 have been designated as“Commercial Courts” in each District in the State of Punjab (except in Sessions Division Ludhiana).

6.1 Another contention that was raised on behalf of the appellant that technical specification of the fabric of the uniform as well as the time period for delivery of the articles were the material considerations as per clause 17 and 18 of the E-tender document for “acceptance of the goods”. The dispute was with regard to the technical specifications of the fabric of the uniform which were supplied by the respondent-manufacturer as well as the non-delivery of the articles within the stipulated time mentioned in the contract. However, the arbitrator rendered perverse and patently illegal findings by observing that the time period was extended and uniforms were accepted by the appellant-department as such holding that the penal clause of the contract could not have been invoked by the appellant-department and further the respondent-manufacture was entitled for the payment. Even the Additional District Judge did not appreciate the controversy in terms of the mandatory clause of 17 and 18 of the e-tender document while dismissing the objection petition. The Arbitrator as well as the Additional District Judge did not appreciate the difference between the "supply" and "acceptance" of goods while holding that the goods were consumed as such amounts to acceptance of the goods.

6.2 The learned Senior counsel raised another contention on behalf of the appellant that the dismissal of the objections and acceptance of the Award is not sustainable on the ground of parity. The work was divided amongst the contractors and the respondent-manufacturer was awarded 35% of the total amount of the contract. All the three manufacturers failed to supply the uniforms as per the terms of the contract, as such, which resulted in dispute and thereafter three Awards were passed by separate Arbitrators, two Awards in favour of the manufacturer in Khadim India Limited vs. DGSE-cum-State Project Director, SAS and one in favour of the manufacturer in M/s in Manjeet Plastic Industries and another vs. SAS Punjab which subsequently were set aside on 16.08.2023. However, the Award in favour of the respondent-manufacturer was upheld by the Additional District Judge by passing the impugned order dated 11.08.2023.

6.3 It is further contended on behalf of the appellant that the view taken by the Arbitrator is based on no evidence and the Arbitrator's view is not even a possible point of view to take into consideration because the respondent wants to first establish that it had discharged the obligation under the contract to supply the uniforms within time and secondly, the uniforms supplied were as per the specifications given in the e-tender. As the respondent-manufacturer failed to prove both the said points, hence, the respondent-manufacturer was not entitled to receive the consideration under the agreement. However, the Arbitrator awarded the entire amount to the respondent-manufacturer without there being any evidence on the fact that the manufacturer complied with his part of the contract or not.

7. We have considered the aforesaid contentions and perused the paper-book.

8. For deciding the scope of judicial intervention under the Act, the provisions under Sections 5 and 34 of the Arbitration & Conciliation Act, 1996 are relevant. As per the provisions of Section 5 notwithstanding anything contained in any other law for the time being in force, no judicial authority shall intervene except where so provided in this part, regarding the matters governed by this part. Section 5 under Part-I of the Act deals with "Domestic Arbitration".

9. Section 34 also comes under Part-I of the Act and provides various grounds on which Arbitral Award can be set aside. The said section provides primarily 8 grounds where judicial intervention can be made by way of setting aside of an Award relating to domestic arbitration. The said grounds are as under:-

(I) Party was under some incapacity.

(II) Arbitration agreement is not valid under law.

(III) No proper notice given to the party raising a challenge to the award.

(IV) The Award deals with a dispute not contemplated by or not falling within the terms of the submission to the arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration.

(V) Where there is challenge to the composition of Arbitral Tribunal or the procedure adopted by the Arbitrator was not in accordance with the agreement of the parties.

(VI) The subject matter of the dispute is not capable of settlement by Arbitration under the law for the time being in force [Sub-Section 2 (i) of Section 34]

(VII) Where the Award is in conflict with the public policy of India [Sub-Section 2b (ii) of Section 34]

(VIII) The Award is vitiated by patent illegality appearing on the face of the Award (Sub-Section 2A of Section 34)

9.1 It is well settled now that the Court does not sit in an appeal over an Arbitral Award and may interfere only on the 8 grounds provided under Section 34 of the Act. The power of the Civil Court to interfere with an arbitral Award is restricted only to 8 pigeon holes as per Section 34 of the Act.

10. In the present case the appellant had challenged the Award before the Civil Court *inter alia* on various grounds by way of filing a petition under Section 34 of the Act. The dismissal of the said petition has been challenged firstly on the ground that the Civil Court was not having jurisdiction to decide the said petition as it was not a 'Commercial Court'

designated under the Commercial Courts Act, 2015 and by way of notification by the State Government. The said arguments are without any force. The appellant themselves have filed an objection petition under Section 34 of the Act before the District Judge, SAS Nagar, Mohali. It was filed as an arbitration case-objection petition and no contention was made in the said petition as to there being a ‘commercial dispute' between the parties. Neither the appellant submitted to the jurisdiction of the Commercial Court at the time of filing of the said petition nor did the appellant ever raised any such objection during the pendency of the said petition. There is nothing on record as to if any request was ever made to the District Judge for transferring the same to a Commercial Court. It is for the first time at the time of filing of the present appeal, this objection has been raised and the principle of waiver would come into play. Merely, on account of the fact that the objection petition has been decided by the Court of the Additional District Judge who was not notified as a “Commercial Court”, the Award cannot be set aside as the appellant themselves submitted to the jurisdiction of the Court for decision of their objection petition under Section 34 of the Act. The decision of the said petition by the said Court is merely an irregularity and on this ground the Award cannot be set aside.

11. The learned Arbitrator observed that supply was made by the respondent-Manufacturer, vide order dated 15.02.2019 for supply of 4,25,432 sets of uniforms and the only condition in the tender notice was that the material of the uniform should conform to the specifications provided under the Tender Notice. Accordingly it was explained to the competent authority that '*Patka*' for boys and socks etc., were not possible

as per the specifications mentioned in the tender and the authorities were satisfied with the same.

12. It was further observed by the Arbitrator that considering the samples of the uniforms and laboratory reports, the financial bid of the claimant firm was accepted on 20.02.2019 by the respondent. It was also observed by the Arbitrator that it is not disputed that the claimant firm did not supply the uniform as per the specifications and pattern. It had supplied the balance 4,16,168 sets of the uniforms but the payment amounting to ₹8,02,54,077/- was withheld by the supplier. The claim petition filed by the manufacturer was partly accepted by holding that as per Clause 18 of the tender document the consignment was to be delivered within 60 days from the date of placing of the order for all the students, as such the cut off date for providing the supply was 15.04.2019 but it was extended upto 23.04.2019 as the review meeting was held on 23.04.2019 and 24.04.2019 under the Chairmanship of the Secretary & the Minister of the Department of Education, Punjab. The admission made by RW-1 for convening the said review meetings was taken into consideration.

13. The Arbitrator further observed that as per the tabulated information regarding the supply, the claimant had supplied all the uniforms before 30.04.2019 except 4705, 222 and 306 uniforms which were supplied on 01.05.2019, 06.06.2019 and 25.06.2019, respectively. These uniforms have already been delivered and used by the students. The Arbitrator has further observed that the appellant-department had already made the payment by imposing penalty of 4% and 2% on the delayed supply, vide bill No. 101 to 134 regarding a bulk of the complete sets of the

uniforms with same specifications. As such, the appellant-department cannot deny the payment of the balance sets of uniforms under the same set of circumstances. The action of the appellant-Department was held unjustified for withholding the balance payment of the uniforms, as well as withholding of the bank guarantee. The Arbitrator has also observed that on one hand all sets of uniform with same specifications supplied by the manufacturer were accepted after considering the laboratory report and distributed among the students and on the other hand, the appellant-department is denying the balance payment of the remaining sets of uniforms.

14. While dealing with the objections under Section 34 of the Act, the Additional District Judge considered that the vital point for determination by the Arbitrator was with regard to timely delivered of uniforms. The appellant-department had claimed breach of contract but it was observed by the Additional District Judge that the Arbitrator had rightly come to the conclusion that the objector department is not entitled to withhold the payment of the supplier and it has also been rightly held by the Arbitrator that the supplier is entitled to bank guarantee along with interest. It was also observed by the Additional District Judge that the Arbitrator has rightly observed that the condition of delivery of time upto 15.02.2019 loses its significance as the time was extended by the appellant-department up-to 08.04.2019. The Additional District Judge also considered the observations made by the Arbitrator with regard to the letter dated 07.03.2019 which was addressed to all the District Education Officers whereby a direction was issued that the delivery of the uniforms should not be provided to those schools who have been converted into

smart schools. It was on account of that reason that the total number of sets of uniforms to be supplied by the manufacturer-firm was reduced from 4,25,432 to 4,16,168. The fact also taken note of was that up-to 01.03.2019, a GST number was not available with the appellant-department and the manufacturer on 01.03.2019 sought permission to begin with the billing process of the uniforms sets with GST numbers of the appellant-department, whereby the appellant-department informed the manufacturer that the GST number had been applied and the same will be provided whenever it is allotted to the department.

15. Finding, the Award well reasoned and based upon the evidence, the Additional District Judge rejected the petition.

16. We have considered the contentions raised on behalf of the appellant that the fabric of the uniform supplied by the respondent-manufacturer was not as per the technical specifications. In this regard, reliance has been placed upon by the appellant to Clause 17 of the "Tender for Supply" (Annexure O-2). The said clause of the tender reads as under:-

> *"17. **Inspecting/Testing***
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> *The material supplied by the supplier will be inspected by the inspection committee formed by the State Project Director, and samples of each item of Uniforms drawn on random basis will be sent to the approved Laboratories for lab testing. The goods shall be accepted after the receipt of satisfactory lab testing report. The cost of testing of samples shall be borne by the supplier."*

17. A perusal of the said clause clearly indicates that the appellant department had reserved the right to accept the goods after receipt of a satisfactory testing report. It has been observed by the Arbitrator that the

appellant-department had made part payment by imposing penalty @4% and 2%. As such, the Arbitrator observed that since the uniforms were accepted by the department and were used by the students therefore, the payment for the remaining uniforms cannot be totally withheld and should be released to the manufacturer by imposing the penalty on the same. The view taken by the Arbitrator and the dismissal of the objections by the Additional District Judge to the said findings is not unjust. The Arbitrator has taken into consideration the conduct of the appellant. The uniforms were not returned to the manufacturer. The manufacturer could have sold it somewhere else. The goods were received, never returned and used by the students as such, therefore the findings of the Arbitrator that manufacturer is entitled for the payment though subject to deduction of penalty is just and equitable and does not fall in any of the pigeon holes upon which the findings can be set aside under Section 34 of the Act.

18. Similarly, the question of delay in supply of the goods has been properly dealt with by the Arbitrator by observing that part payment was made by imposing penalty and the remaining payment was withheld. The penalty was imposed on account of delay in supply as such, the finding of the Arbitrator and the dismissal of the objections by the Additional District Judge are based on equity.

19. The Arbitrator has not gone beyond the terms and conditions of the agreement between the parties. A reasoned Award has been passed by the Arbitrator and the objections filed by the appellant have been dismissed on the basis of plausible and cogent reasons. No other view is possible.

20. In view of the aforesaid reasons, the issuance of notice to the respondent-manufacturer is dispensed with.

21. The present appeal is devoid of any merits and hence is accordingly, dismissed in *limine.*

22. Pending miscellaneous applications, if any, also stand disposed of.

(G.S. SANDHAWALIA) **JUDGE**	**(HARPREET KAUR JEEWAN)** **JUDGE**

November 06, 2023

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Whether Speaking	Yes
Whether Reportable	Yes