



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RA-CR-84-2024 in ARB-291-2023

Date of decision : 24.05.2024

NKC Constructions Pvt. Ltd.

.....Applicant/Petitioner

Versus

Punjab Small Industries & Export Corporation Ltd. and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA, ACTING CHIEF JUSTICE

Present: Mr. Rohan Markanda, Advocate,
for the applicant-petitioner.

Ms. Madhu Dayal, Advocate,
for the respondents.

G.S. SANDHAWALIA, ACTING CHIEF JUSTICE (Oral)

1. This review application has been filed by the petitioner seeking review of the order dated 10.05.2024 at the first instance to the extent that while referring the matter to the Arbitrator, the applicant-petitioner was directed to make necessary pre-deposit of 10% as per clause 25 (viii) of the agreement (Annexure A-1) inter-se the parties.

2. It is submitted that the clause as such was held to be illegal and arbitrary by the Apex Court in **ICOMM Tele Ltd. Vs. Punjab State Water Supply and Sewerage Board and another, (2019) 4 SCC 401** and **Lombardi Engineering Limited Vs. Uttarakhand Jal Vidyut Nigam Limited, (2024) 4 SCC 341**. It is submitted that the issue of pre-deposit as such was objected to also by the applicant-petitioner in the communication dated 07.10.2022 (Annexure A-15).



3. Learned counsel for the respondents, on the other hand, has pointed out to a judgment as such passed by this Bench in ARB-127-2019, titled “**M/s The Assan Co-op L & C Society, Bahadurgarh, District Jhajjar Versus Haryana Vidyut Prasaran Nigam Ltd. (HVPNL)**”, decided on 03.11.2021.

4. A perusal of the said judgment of this Court would go on to show that terms of the arbitration clause were different and there was no such condition as such of forfeiture, which has been held to be bad in **ICOMM Tele Ltd.’s case** (supra) and thus it was distinguished by this Court. The said judgment was also noticed by the Apex Court in **Lombardi Engineering Limited’s case** (supra).

5. In such circumstances, in the peculiar facts and circumstances of the case, and terms of the agreement inter-se the parties, the order dated 10.05.2024 passed by this Court is re-called and modified to the limited extent that there is no requirement of pre-deposit of 10% as per clause 25 (viii) of the agreement.

6. Review application is, accordingly, disposed of.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

May 24, 2024
ndj

Whether speaking/reasoned	Yes
Whether reportable	No