IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4792-2019 (O&M)
Date of decision : July 14, 2022

The Punjab State Cooperative Supply and Marketing Federation Limited
.....Appellant

Versus

M/s B.D.S. Decor & Prefab (P) Ltd. and another ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Hardik Ahluwalia, Advocate for the appellant.

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LISA GILL, J.

This appeal has been filed by the appellant – Markfed challenging order dated 17.12.2018 passed by the learned Additional District Judge, Chandigarh as well as for setting aside award dated 14.06.2016 passed by the learned Sole Arbitrator.

Brief facts necessary for adjudication of the matter are that appellant invited tenders for construction of first floor of Main Process Plant Building of New Markfed Canneries with pre-fabricated structure, side cladding with Galvalume sheets and PUF panels roofing at village Chuharwali, District Jalandhar. Estimated cost of the project was Rs.1,75,00,000/-. Respondent No. 1, who participated in the tender process, quoted the lowest rate which was accepted by the appellant. Respondent was informed vide letter dated 27.01.2014 for allotment of work on the quoted rates on turn key basis with total cost of Rs.1,19,20,000/-. Time limit for the work was three months, to be considered after 10th day after issuance of allotment letter. Letter dated 28.02.2014 was issued to the respondent by the appellant to the effect that the agreement had not been signed and neither performance security deposited by the said respondent.

Respondent no. 1, it is pleaded, did not respond to letter dated 28.02.2014 but expressed its inability to initiate and undertake the allotted work vide letter dated 19.05.2014. Appellant is stated to have asked respondent No. 1 vide letter dated 26.05.2014 to initiate the work within three days but when respondent No. 1 did not respond favourably, earnest money deposited by the said respondent was forfeited as communicated vide letter dated 30.05.2014. It is the case of the appellant that on account of failure of respondent No. 1 to start the work, fresh tenders had to be called. The work was given on a rate higher than the rate on which respondent No. 1 was to be working, on account of which the appellant had to pay extra amount of Rs.29,75,000/-. Appellant claimed to have suffered the said loss on account of default of respondent No. 1. Arbitration clause was invoked by the appellant and respondent No. 2, was appointed as Sole Arbitrator by the Managing Director, Markfed vide order dated 06.02.2015. Claim was filed by the present appellant with the averments as above.

Objection was raised to the claim and counter claim was also filed. Respondent No. 1 pleaded that in fact no agreement was executed between the parties. It was pleaded that the earnest money furnished by the respondent has in fact been wrongly forfeited as respondent could not execute the work on account of delay in approval of design drawings of the work submitted to the consultant of the claimant.

Learned Arbitrator while considering the facts and circumstances of the case alongwith the evidence brought on record by the parties, rejected the claim of the appellant as well counter claim filed by the respondent. It was observed that in view of the specific arbitration clause in the tender document, arbitration proceedings were maintainable. However, the appellant was not found entitled to the claim as raised while duly noting that the SE and XEN were chargesheeted by the Managing Director, Markfed for wrongly changing the

scope of work without invoking the clause of risk and cost of respondent. At the same time, forfeiture of the earnest money was found to be valid and justified. In the given facts and circumstances, petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for short – 'the Arbitration Act') was filed by both the present appellant as well as respondent No. 1. Learned ADJ, Chandigarh vide impugned order dated 17.12.2018 dismissed both the objection petitions, finding no merit therein. Aggrieved from rejection of its petition under Section 34 of the Arbitration Act, present appeal has been filed by the appellant – Markfed.

Learned counsel for the appellant argues that it is duly proved on record that appellant suffered a loss of Rs.29,75,000/- on account of default on the part of respondent No. 1 who did not complete the work in question as per the tender submitted by it. Therefore, appellant's claim for recovery of Rs.29,75,000/- with interest has been incorrectly rejected by the learned Arbitrator and order dated 17.12.2018 erroneously passed by the learned Additional District Judge, Chandigarh.

Heard learned counsel for the appellant and have gone through the file with his able assistance.

Calling of tenders by the appellant as above and participation by respondent No. 1 therein is a matter of record. It is also not in dispute that respondent No. 1's tender being the lowest was accepted on 27.01.2014. Learned counsel for the appellant is unable to deny that scope of work was changed by the XEN without invoking the clause of risk and cost of the respondent. Both the SE and XEN were chargesheeted by the Managing Director – Markfed in this respect. Minor penalty was imposed upon the SE and inquiry report against the XEN was awaited at the time of passing of impugned award dated 14.06.2016. Reply to the charge sheet was not found satisfactory and regular inquiry was then ordered against him. Learned Arbitrator has specifically observed that allegation of the

XEN wanting to allot the work in question to another party appears to be proved because the XEN sent allotment letter dated 27.01.2014 after one month. The same was received by the respondent at Chandigarh on 26.02.2014 as was evident from the postal stamp and date of the envelope available on record. Finalisation of the contract with the new party is also observed to be done at a higher rate without approval of the competent authority i.e. the Managing Director, Markfed. Learned Arbitrator has passed the Award on the basis of the evidence on record.

Learned Additional District Judge has correctly declined to interfere in the matter. It is a settled position of law that award under Section 34 of the Arbitration Act can be set aside only on the basis of specific grounds contained therein. Clearly, the appellant has failed to make out a case for setting aside the Award dated 14.06.2016. This Court is not to sit as a Court of Appeal and in case plausible and reasonable view has been taken by the Arbitrator on the basis of the evidence on record, the same is not to be interfered, even if a separate view is possible which in any case is not the scenario in the instant case. It has been held by the Hon'ble Supreme Court in **NTPC Ltd. versus M/s Deconar Services Pvt. Ltd. 2021 AIR (Supreme Court) 2588** that to merely show existence of another reasonable interpretation or view on the basis of material on the record is not sufficient to allow for interference.

No other argument has been addressed.

Appeal being devoid of any merit is, accordingly, dismissed with no order as to costs.

(LISA GILL)
JUDGE

July 14, 2022
rts

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No