

PBSA010044012022



Presented on : 20-04-2022
Registered on : 20-04-2022
Decided on : 11-02-2026
Duration : 3 years, 9 months, 21 days

IN THE COURT OF
Additional District Judge-2 AT Mohali,S.A.S Nagar
Presided Over by Neetika Verma

ARB/951/2022

1. Institute of Nano Science and Technology, Knowledge City, Sector-81, SAS Nagar, Mohali-140306, Punjab, through its Director.
2. Union of India, through its Secretary, Govt. of India, Ministry of Science and Technology, Department of Science and Technology, Government of India, Technology Bhawan, New Mehrauli Road, Institutional Area, Near Qutab Hotel, New Delhi-110016.

....Objectors/Petitioners

Versus

1. Sam (India) Builtwell Private Limited, 435, Jagriti Enclave, Vikas Marg Extension, Delhi-110092.

....Respondent

2. Er. Sh. Rakesh Misra, Sole Arbitrator, B-1/501, Lotus Pond, 2A, Vaibhav Khand, Indira Puram, Gaziabad, UP-201014.

.....Performa Respondent

Objections under Section 34 of the Arbitration & Conciliation Act against the award dated 31.07.2021

(Neetika Verma, ADJ, SAS Nagar, UID No. PB0209)

passed by respondent no.2 i.e. Er. Sh. Rakesh Misra, Sole Arbitrator, certified copy of which was received on 05.08.2021.

Present: Sh. Puneet Chauhan, Advocate for the petitioners.
Ms. Risha Mittal, Advocate for the respondent no.1.
Respondent No.2 – Sole Arbitrator.

ORDER:-

The objectors/petitioners have filed the present objections under Section 34 of the Arbitration and Conciliation Act against the award dated 31.07.2021 passed by the respondent no.2 the Sole Arbitrator. It has been contended that the award dated 31.07.2021 passed by the respondent no.2 the Sole Arbitrator is liable to be set aside being contrary to the facts on record and settled law. It has been further contended that the petitioner no.1 invited percentage rate composite bids from eligible contractors in two bid system for the subject work on 06.03.2017 with the last date of submissions of bids on 10.04.2017, which was further extended to 20.04.2017. A pre bid meeting was held on 29.03.2017. Five bids including that of respondent no.1 were received, which were scrutinized by the petitioner no.1 on technical parameters with respect to the eligibility criteria prescribed in the bid document. Out of five bids received, bids of four bidders including that of respondent no.1 were technically qualified and the bid of M/s Deepak Builders was not found to be technically qualified. The financial bids of all the four qualified bidders were opened on due date and the bid of respondent no.1 was found to be the lowest and

accordingly, the bid of respondent no.1 was accepted by the petitioner no.1. Accordingly, the work was awarded to the respondent no.1 by the petitioner no.1 vide letter dated 09.05.2017 for a tendered amount of Rs.150,78,19,030/- with stipulated date of start as 19.05.2017 and stipulated date of completion 18.03.2019 i.e. a period of 22 months. Consequently, the respondent no.1 submitted performance guarantee of Rs.7,54,00,000/- and the parties entered into a formal agreement vide agreement dated 30.05.2017. M/s Deepak Builders i.e. the non-qualified bidder filed a writ petition bearing no. CWP-COM No.126 of 2017 in the Hon'ble Punjab and Haryana High Court challenging the rejection of its technical bid. On receipt of notice from the Hon'ble Punjab and Haryana High Court, the petitioner no.1 vide letter dated 11.05.2017 directed the respondent no.1 to keep work of construction on hold till the matter is decided by the Hon'ble High Court . The said writ petition was dismissed by the Hon'ble High Court vide judgment dated 17.05.2017 and thereafter, the petitioner no.1 vide letter dated 18.05.2017 asked the respondent no.1 to resume the work. Thereafter, M/s Deepak Builders approached the Division Bench of the Hon'ble High Court of Punjab and Haryana and the Division Bench of the Hon'ble High Court allowed the said writ petition and vide judgment dated 04.08.2017 directed the petitioners to take a decision as to whether it wished to proceed with the present tender process (initial tender process) or to invite fresh tenders by 20.08.2017. In view of the directions issued by the Division Bench of Hon'ble Punjab and

Haryana High Court, Chandigarh vide judgment dated 04.08.2017, after seeking recommendations from the Committee, it was decided to continue with the initial tender process and under intimation to the respondent no.1 as well as to the other tenders, opened the financial bid of M/s Deepak Builders as it was found to be lesser than that of respondent no.1. Thus, the work was awarded to M/s Deepak Builders and letter of intent dated 09.05.2017 was issued to respondent no.1 and was canceled vide letter dated 20.08.2017 and consequently, the respondent no.1 was asked to vacate the site within 25 days. However, the respondent no.1 did not vacate the site. Thereafter, the respondent no.1 filed SLP before Hon'ble Supreme Court of India on 24.08.2017 against the order dated 04.08.2017 passed by the Hon'ble Punjab and Haryana High Court and the Hon'ble Supreme Court vide judgment dated 14.12.2017 ordered that the tender awarded to M/s Deepak Builder dated 20.08.2017 be set aside and the tender awarded to the respondent no.1 dated 09.05.2017 be restored. The respondent no.1 sent its letter dated 16.12.2017 to petitioner no.1 referring the order dated 14.12.2017 passed by the Hon'ble Supreme Court of India and respondent no.1 further contended that it is willing to match the offer of M/s Deepak Builder to the tender. Accordingly, in compliance of the order of the Hon'ble Supreme Court of India, petitioner no.1 vide letter dated 18.12.2017, accepted the offer of respondent no.1 and awarded the construction work to him at its modified offer amount of Rs.146,64,53,365/-, which was 9.60% below the modified estimated

cost of Rs.162,21,52,926/-. In these facts and circumstances, the respondent no.1 invoked the arbitration clause on 11.10.2019 and Sh. Sushil Kumar Mittal was appointed as Sole Arbitrator on the mutual consent of respondent no.1 and petitioner no.1. The respondent no.1 filed its claim before the Sole Arbitrator claiming the claims under 8 different heads. The claim was allowed vide award dated 31.07.2021, wherein compensation of Rs.4,03,87,736/- in total was awarded alongwith damages and other costs and interest. The objector has challenged the award dated 31.07.2021 on the grounds that it is contrary to the facts on record and settled law and as such, is liable to be set aside. It has been averred that the Arbitrator did not appreciate the evidence of petitioner no.1 and gave wrong weightage to the evidence of respondent no.1 doing injustice to petitioner no.1. It was further alleged that the ld. Arbitrator had ignored the fact that actions of petitioner no.1 have not been called into question at any point of time in the entire litigation. The respondent no.1 had been blowing hot and cold in the same breath as on one hand during the proceedings before the Hon'ble Supreme Court of India and as well as through letter dated 16.12.2011, he conveyed its mind that he is ready to match the bid of M/s Deepak Builders and on the other hand, respondent no.1 filed the arbitration proceedings before the Arbitrator and that too for the claim for the period during 01.07.2017 to 31.12.2027. It is further alleged that the ld. Arbitrator has failed to consider the fact that the respondent no.1 was not eligible to get any compensation under Section 73 of the

Contract Act for keeping staff and T&P Machinery idle till 31.12.2017 as there was no breach on the part of petitioner no.1. The Arbitrator also failed to consider the orders of Division Bench of Hon'ble High Court of Punjab and Haryana of 24.05.2017 and 01.06.2017. It was the duty of respondent no.1 to take all reasonable steps to mitigate its losses upon the cancellation of the contract. It is also contended that the Arbitrator has failed to appreciate the fact that NIT for the work in question was uploaded on 16.03.2017, pre-bid meeting was held on 29.03.2017 and the minutes thereof uploaded on Institute Website and CPPP portal on 03.04.2017. The uploaded lab blocks tender drawings show the floor to floor height as five meter. Thus, the calculations have been incorrectly mentioned by the Id. Arbitrator and the description of the items have not been correctly mentioned. It is further contended that the Arbitrator has passed the award in a hasty move without taking into consideration the details of the case of the objector and has passed an exorbitant compensation. The Arbitrator has failed to consider the bare reading of clause 8.1 (1) at page 68 of the contract, wherein the words "all heights" have been used. The submissions of the institute have been totally ignored by the Arbitrator and the award has been passed against the settled principles of law. It was thus, prayed that the award be set aside in the interest of justice.

2. In reply to the said objections, the respondent no.1 preliminary objected that the objection petition is not maintainable and the same has been filed on false and frivolous grounds. All the

contentions so raised by the objector were denied being wrong and incorrect and it was stated that the award had been passed in detail after taking into consideration each and every aspect put forth by the objector and by perusal of the evidence led by both the parties. A prayer for dismissal of the petition was made.

3. On presentation of the objection petition, a letter of request was written to the learned Arbitrator, learned arbitrator/respondent no.2 supplied the record, which has been perused.

4. I have heard the learned counsel for the parties and have also gone through the pleadings and records.

5. Admittedly, **as per Section 34 (2) of the Arbitration and Conciliation Act, 1996**, an arbitral award can be set aside only in the following eventualities:-

(a) The party making the application furnishes proof that-

- (i) A party was under some incapacity, or
- (ii) The arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force, or;
- (iii) The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) The arbitral award deals with a dispute not contemplated by or not falling within the terms of the indication thereon, under the law for the time being in force, or

(v) The arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration; Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(vi) The composition of the arbitral or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) The Court finds that:

(i) The subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

- (ii) The arbitral award is in conflict with the public policy of India.

6. At the very outset, before proceeding to adjudicate to the merits of the case, it would be profitable to recount the settled legal position regarding the grounds of challenge. The Hon'ble Apex Court in **“M/S Sudarshan Trading Company Vs. The Govt. of Kerala and another”, AIR 1989 Supreme Court 890** has laid down that a civil court cannot substitute its own judgment nor it can sit as a court of appeal upon the award passed by an arbitrator. Likewise, in **“Gri Corporation of Orissa Ltd. And another vs Balasore Technical School”, 1992 (2) Apex Court Journal 04 (SC)** The Hon'ble Apex Court has laid down that a civil court does not sit in appeal against the award passed by an arbitrator. Powers of the Civil Court where the award is challenged is limited as ordinarily an award passed by the arbitrator is final and conclusive so long as the arbitrator has acted within his authority. It is not open to the court to speculate where no reasons are given as to what impelled him to arrive at his conclusion.

7. In **ONGC Ltd. Vs Saw Pipes Ltd. (2003) 5 SCC. 705,** it has been laid down by the Hon'ble Supreme Court the principles on the basis of which an award can be set aside which are as follows:-

- a) An award which is
 - i) contrary to substantive provisions of law or,
 - ii) the provisions of the Arbitration and Conciliation Act1996, or

1. against the terms of the respective contract; or
 2. patently illegal, or
 3. prejudicial to the rights of the parties, is open to interference by the court under Section 34(2) of the Act
- b) Award could be set aside if it is contrary to;
- a) fundamental policy of Indian Law; or
 - b) the interest of India; or
 - c) justice or morality;
- c) The award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court.
- d) It is open to the Court to consider whether the Award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India.
8. Learned counsel for the objector failed to make out any of the above enumerated grounds. One of the colossal plank of the Ld. Counsel for Objector is that the aforesaid Arbitral Award is against fundamental policy of Indian law and principles of natural justice, but perusal of the Award reveals that same has been passed in consonance with settled principles of law after affording effective opportunity. Palpably, Ld. counsel for the Objector has failed to point out any absurdity much less any perversity in the aforesaid Award dated

31.07.2021. Each and every claim of the Objector has been duly taken into consideration and decided in accordance with law. The Ld. counsel for the Objector has failed to show that as to how the impugned Award is in contravention to the Fundamental Policy of Indian Law. Perusal of the Award reveals that same has been passed after due application of mind to the relevant facts and controversy. No such, contradictory observations has been made regarding the various claims. The Ld. Counsel for the Objector has failed to point out any particular judgment as well as provision of Contract Act and Arbitration and Conciliation Act, 1996 which has been allegedly contravened, while passing aforesaid Award by the Arbitrator. Mere bald assertions would not suffice to conclude that Arbitrator acted arbitrarily and not in accordance with the provisions of law and misconducted the proceedings. From the perusal of the arbitral award, it becomes abundantly clear that all the documents as well as averments/plea raised by the objectors have been duly considered by the Ld. Arbitrator and after the appraisal of the same, award dated 31.07.2021 has been passed.

9. From the nature of the objections that have been raised by the objector and argued, it surfaces that he intends for the re-appreciation of the evidence which is not permissible. Reliance is placed upon the law laid down by Hon'ble Supreme Court of India in case titled as **Navodya Mass vs. J.M Combines 2014 (5) RCR © 602 SC**. The Hon'ble Supreme Court of India in case titled as

Associate Builders vs. Delhi Development Authority 2015 (1)

ACJ 452 also held that the Arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon and that an award based on little evidence and no evidence not measuring up in quality to a trained legal mind would not ipso-facto be invalid.

10. The Hon'ble Supreme Court of India in case titled as **Ssanghong Engineering and Construction Co. Ltd vs. National Highways Authority of India (NHAI)**, decided on 08.05.2019, held that under no circumstance can any Court interfere with an arbitral award on the ground that justice has not been done in the opinion of the Court. That would be an entry into the merits of the dispute which is contrary to the ethos of Section 34 of the 1996 Act. No other ground was pressed for or argued by the Ld. Counsel for the objector, in support of the objections filed under Arbitration and Conciliation Act, 1996.

11. After going through the impugned award, this court does not find it to be a case of non-application of mind or violation of principles of natural justice. In these circumstances, objections of the applicant stands **dismissed**. Memo of costs be prepared. Arbitration record be sent back to the quarter concerned. Present file be consigned to the Record Room, SAS Nagar, Mohali, after due compliance, as per rules.

Pronounced in Open Court.
Dated: 11.02.2026

(Neetika Verma),
Additional District Judge
SAS Nagar/UID-PB0209

Tajinder Singh

(Neetika Verma, ADJ, SAS Nagar, UID No. PB0209)