



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

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FAO-3525-2013(O&M)
Date of Decision: 09.01.2025

M/S SCALE AWAY INDIA PVT LTDAppellant(s)

Versus

PANIPAT THERMAL POWER STATIONRespondent(s)

CORAM: HON'BLE MS. JUSTICE LAPITA BANERJI

Present:- Mr. Kunal Mulwani, Advocate,
for the appellant.

Mr. Dinesh Arora, Advocate, with
Mr. Jatin Sehra, Advocate,
for the respondents.

LAPITA BANERJI, J.(Oral)

1. In the present appeal the impugned order dated March 23, 2013, passed by the learned Additional District Judge, Panipat, in an application under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the 1996 Act') has been assailed, by the appellant. The brief facts of the case are that the appellant-claimant was engaged by the respondent for cleaning of boilers vide work order No.38/BM-II-559 dated November 14, 2006 and work order No.61/BM-II-557 dated March 16, 2007.

2. It is submitted on behalf of the appellant that the learned Sole Arbitrator was correct in passing the award whereby he had directed payment for work order No.38/BM-II-559 dated November 14, 2006 which had been carried out by the claimant. He had combined the claims under work orders of 2006 and 2007 and held that the payment for the works which had been completed by the contractor, had to be made in terms of

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the work order No.38/BM-II-559 dated November 14, 2006. It was also held that 90 per cent of the amount due and payable under the said 2006 work order was payable to the contractor by the respondent-Department. Under work order of March 16, 2007 the contractor was required to carry out the work of cleaning boilers for an amount of Rs.11,32,000/- which the contractor had not done. Therefore, the respondent-Department was only liable for making payment of Rs.2,68,523/- for the loss incurred (being the difference of amount that was payable to the claimant-contractor being Rs.11,32,000/- and the amount of Rs.13,90,000/- that was actually paid by the Department to a new contractor).

3. Learned counsel appearing on behalf of the appellant submits that the impugned judgment and order passed under Section 34 of the 1996 Act, suffers from material irregularity and is liable to be set aside. He submits that the learned Additional District Judge, Panipat, was wrong to set aside the arbitral award dated February 2, 2010 by holding that since there was no reference made before the learned Arbitrator with regard to the work order of November 14, 2006, therefore, the Ld. Arbitrator could not have decided any dispute arising out of the said work order. He also argues that since the Department has submitted to the jurisdiction of the learned Arbitrator any pending issue between the parties could have been adjudicated by the learned Arbitrator.

4. It is further contended that since the respondent vide its letter dated October 22, 2008 have themselves stated that the work order of 2007 would be carried out by another suitable agency at the risk and cost of the claimant and the difference of the amount payable to the claimant under the 2007 work order and the amount actually paid to a new suitable agency



would be recovered from the pending payments to the claimant, it evidenced the intention of the parties to have all the pending disputes being adjudicated together. There was no valid reason by the Court adjudicating the application under Section 34 of the 1996 Act to set aside the arbitral award and grant liberty to the parties to get a fresh Arbitrator appointed in accordance with law.

5. *Per contra*, learned counsel appearing on behalf of the respondent-Department submits that the award has been correctly set aside by the learned Additional District Judge, vide the impugned order dated March 23, 2013 since the reference to the arbitral Tribunal has been made only in respect of work order of 2007 and no reference was made before the arbitral Tribunal with regard to the work order of 2006.

6. I have heard learned counsel for the parties and perused the material on records.

7. It appears from Paragraph C of the statement of claims that reference was made only with regard to the work order No.61/BM-II-557 dated March 16, 2007. Furthermore, it appears that even though brief/vague reference was made in Paragraph R with regard to the pending payments but there is no detail as to on what basis and under which previous work order any claim was made and an unpaid amount was due from the Department. In Paragraph Q of the statement of claim, the claimant-appellant has assessed its loss and profit to the tune of Rs.4,79,750/- for leaving the job of cleaning at NTPC Korba due to acceptance of work order of 2007. Furthermore, the appellant-claimant had claimed for idle labour charges, maintenance expenses and transportation of materials etc. and also a substantial amount of Rs.17,46,223/- for



cumulative loss of stationery, man and material and profit that it is earned.

The total claim made was for sum of Rs.32,46,223/- along with interest @ 13%. It is apparent from reading of the statement of claim that the entire claim relates to work order of 2007 and no reference has been made to the learned Arbitrator with regard to any claim relating to work order of 2006.

8. The same is also apparent from perusal of the covering letter issued by the Arbitrator to the Chief Engineer, Panipat Thermal Power Station, HPGCL (respondent). It is clear that the Sole Arbitrator himself acknowledged and accepted the fact that he had been appointed for deciding the disputes between the parties arising out of the work order March 16, 2007. Therefore, it is clear that in the mind of the learned Arbitrator also there was no confusion with regard to the terms of the reference and the disputes that he was appointed to adjudicate upon pursuant to the reference.

9. Under Section 34(2)(a)(iv) of the 1996 Act, an arbitral award can be set aside if it deals with a dispute which is not contemplated by or does not fall within the terms of the submission to the arbitration or contains decisions on matters beyond the scope of submission to arbitration. Vide the impugned judgment the arbitral award has been set aside because the learned Additional District Judge, Panipat, came to the finding that no dispute arising out of the 2006 work order was referred to the Arbitrator.

10. This Court is unable to accept the contention of the appellant that by not raising any objection with regard to the disputes arising out of 2006 work order, the respondent-Department had submitted to the jurisdiction of the learned Arbitrator in respect of the said work order.



Since, it has already been discussed-above that there was no mention of the 2006 work order in the statement of claim and also in the reference made before the learned Arbitrator, there was no scope to raise any objection or deal with disputes relating to the 2006 work order. To the mind of this Court it is clear that the respondent-Department could not have demolished a case, which was not contemplated as a part of the reference and/or raised in the statement of claim.

11. As per the settled principles of law, the scope of the Appellate Court in setting aside a judgment passed under Section 34 of the 1996 Act is extremely narrow as has been elucidated by a three Judge Bench of the Apex Court in **“Konkan Railway Corporation Limited versus Chenab Bridge Project Undertaking” (2023) 9 SCC 85.**

“14. Analysis: At the outset, we may state that the jurisdiction of the Court under Section 37 of the Act, as clarified by this Court in MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 is akin to the jurisdiction of the court under Section 34 of the Act. Scope of interference by a court in an appeal under Section 37 of the Act, in examining an order, setting aside or refusing to set aside an award, is restricted and subject to the same grounds as the challenge under Section 34 of the Act.

15. Therefore, the scope of jurisdiction under Section 34 and Section 37 of the Act is not akin to normal appellate jurisdiction. It is well-settled that courts ought not to interfere with the arbitral award in a casual and cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle courts to reverse the findings of the Arbitral Tribunal.”

12. A beneficial reference may also be made to decision of the Supreme Court in ***UHL Power Company Ltd. v. State of Himachal***



Pradesh (2022) 2 SCC (Civ) 401, where a similar view was taken. The relevant extract of the same is reproduced hereinbelow:-

“15....the learned Single Judge committed a gross error in reappreciating the findings returned by the Arbitral Tribunal and taking an entirely different view in respect of the interpretation of the relevant clauses of the implementation agreement governing the parties inasmuch as it was not open to the said court to do so in proceedings under Section 34 of the Arbitration Act, by virtually acting as a court of appeal.

16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed..”

13. This Court is of the view that the impugned judgment is well-reasoned and the learned Arbitrator had made a jurisdictional error. Therefore, under Section 34(2)(a)(iv) of the 1996 Act, the learned Additional District Judge, Panipat had correctly set aside the arbitral award. Consequently, the appeal is **dismissed**.

14. Pending application(s), if any, are disposed of.

09.01.2025

Jyoti Thakur

(LAPITA BANERJI)
JUDGE

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No