

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

**F.A.O. No.6470 of 2012 (O&M)**

**Decision : 03.02.2014**

M/s Genus Electrotech Ltd.

**..... Appellant(s)**

**Versus**

Uttar Haryana Bijli Vitran Nigam and anotehr

**..... Respondent(s)**

**CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

**Present:** Mr.Naresh Markanda, Sr. Advocate with  
Mrs.Kavita Markanda, Advocate  
for the appellant(s).

Mr.Sunil Kumar Arora, Advocate,  
for respondent No.1.

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1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

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**RAJIV NARAIN RAINA, J.**

This appeal arises out of an arbitration award dated 1<sup>st</sup> July, 2009 objected to by a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996. The objections have failed before the learned Additional District Judge, Panchkula vide order dated 18<sup>th</sup> October, 2012. The Court has found that the claims and counter claims were discussed threadbare by the sole arbitrator and the findings recorded in the award are supported by reasoning based on materials on record produced by the

parties. The court has found no patent illegality or injustice in the award. The award went against the appellants and in favour of the Uttar Haryana Bijli Vitran Nigam. The dispute arose out of supply of 3500 KM of Rabbit Conductors, the demand for which was placed by the objector to be supplied by the respondents. The purchase order was placed on 20<sup>th</sup> September, 2005. The only dispute raised before me in this appeal under Section 37 of the Act is with respect to award of interest to be charged on liquidated damages and whether it would run @ 10% or 5%.

2. Mr.Arora learned counsel appearing for the Power Corporation produced a document being the supplementary conditions of contract signed by the parties which he submitted replaced Clause 23 of Schedule-D of the contract agreement. From the replaced clause, he submits that the liquidated damages would run @ 10% and not 5%. Since the document was not placed on record by the appellants, this Court directed that the same be placed on record through an application to be filed by Mr.Arora.

3. Mr.Markanda learned senior counsel appearing for the appellant had sought time to seek instructions from his client on the supplementary contract which was not produced in appeal before this court. The document has been placed on record through CM No.2143-CII of 2014 which supports the stand taken by Mr.Arora on 27<sup>th</sup> January, 2014. Mr.Markanda is not in a position to dispute the document executed between the parties. Therefore, the liquidated damages would run @ 5% interest payable by the supplier to the respondent Nigam and not as claimed in the appeal.

4. Mr.Arora, however, concedes that the security amount of ₹79,45,000/- which has been encashed by the Nigam will be adjusted from

the default principal amount from the date of the award till the date of encashment.

5. It is also agreed that the interest would be applicable on the total amount after adjustment of the security demanded vide notice dated 21<sup>st</sup> June, 2007. It is also agreed that the interest on the principal amount will accrue from the date as directed by the arbitrator in the award till the date of encashment of the security amount. It is also agreed that since the bank guarantee was encashed, therefore, the interest would be applicable only on the remainder of the principal amount.

6. Nothing further remains for decision in this case. The appeal stands disposed of in the above terms.

**(RAJIV NARAIN RAINA)**  
**JUDGE**

**February 03, 2014**  
Paritosh Kumar