



\$~P-9

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 29th February, 2024

+ **O.M.P. (COMM) 55/2024 & I.A. 2137/2024**

MAJ. PANKAJ RAI

..... Petitioner

Through: Petitioner in person.

versus

M/S NIIT LTD.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

1. By way of this petition under Section 34 of the Arbitration and Conciliation Act, 1996 [hereinafter, “the Act”], the petitioner seeks setting aside of an Arbitral Award dated 19.10.2023 [hereinafter, “the Award”], by which the learned Sole Arbitrator has rejected his claims against the respondent under an agreement dated 30.12.2015.

A. The Agreement

2. The agreement between the parties, dated 30.12.2015, is entitled “*NIIT License Agreement (Urban)*” [hereinafter, “the Agreement”]. The respondent is engaged in the business of providing education in connection with operation of computers, offering courseware material and technical knowhow for setting up of computer education centres. The Agreement licenses the petitioner to use the respondent’s trade names, designs, copyrights, technical knowhow and course materials, on



a limited and non-exclusive basis, to set up an education centre in the territory of A.S. Rao Nagar, Hyderabad. The location of the proposed education centre is also provided in Schedule 1 of the Agreement. It is the petitioner's case that, pursuant to the Agreement, he incorporated a limited company which set up the education centre as required.

B. The Arbitral Proceedings

3. Disputes having arisen between the parties, the petitioner invoked arbitration by a letter dated 26.07.2017. The Arbitral Tribunal was constituted by an order of this Court dated 04.03.2022 in ARB.P. 447/2021. Although, the company set up by the petitioner was also originally impleaded as a party to the arbitration petition, it was deleted from the array of parties at the request of the petitioner.

4. Before the learned Arbitral Tribunal, the petitioner sought an award of Rs. 99.43 lakhs towards "*losses suffered directly by the Claimant*", Rs. 35.42 lakhs being the "*assured amount by NIIT prior to signing the License Agreement*", interest and costs.

5. Briefly stated, the claims were predicated upon the petitioner's allegation that the respondent had sold courseware to the petitioner at a higher rate than sold to a licensee in a neighbouring area; that the respondent resorted to "petty cheating" by rounding off amounts payable on account of GST; that the respondent did not permit the petitioner to approach institutes within its own territory or to offer discounts from his own share of earnings; that it poached the petitioner's students; and that it had earlier resorted to "legal terrorism" by appointing an arbitrator of its choice. In the impugned Award, the learned Arbitrator has also noted the case of the petitioner that his consent to enter into the Agreement was



vitiated by the respondent's failure to disclose certain orders of the Monopolies and Restrictive Trade Practices Commission ["MRTPC"] and the National Consumer Disputes Redressal Commission ["NCDRC"] passed in the year 1988 and 2012, respectively, in which some observations had been made against the respondent. The petitioner also claimed that he had been unable to realise the assured profit indicated by the respondent [Rs. 35.42 lakhs in three years].

6. The respondent, in its statement of defence, took a preliminary objection against the maintainability of the claims at the instance of the petitioner, on account of the fact that the Agreement contemplated establishment of the education centre by the petitioner's company. It disputed breach of any of the terms and conditions of the Agreement and denied any assurance of fixed returns. The respondent also alleged that the petitioner has instituted numerous litigations against it before various forums and had started a campaign of defamation against the respondent, for which the respondent had filed a suit before this Court, i.e., CS(OS) 57/2018, which resulted in a consent decree dated 03.09.2019.

7. The petitioner examined himself as his only witness. Although he had filed affidavits of two other witnesses, they were not produced for cross-examination. The respondent also produced two witnesses before the Arbitral Tribunal, who were duly cross-examined.

C. The Impugned Award

8. In the Award, the learned Arbitrator has enumerated the following issues:

“(i) Whether the Claimant can, in his capacity as 'Indemnifier' under the License Agreement, maintain the present arbitration proceedings?”



(ii) Whether the Claims as raised by the Claimant, can be the subject matter of arbitration?

(iii) Whether the arbitration agreement as well as the License Agreement stand discharged and extinguished?

(iv) Whether the claims of the Claimant arise out of the License Agreement?

(v) Whether the Claimant is entitled to the claims raised in the Statement of Claim?"

9. The learned Arbitrator decided the issue of maintainability in favour of the petitioner, both on the question of his *locus* and on the question of whether the proceedings are barred by earlier proceedings taken by the petitioner before the Competition Commission of India. However, the learned Arbitrator has rejected the claims, both on the ground that the petitioner's claims had been fully and finally settled, and on merits.

D. Submissions of the Petitioner

10. Maj. Pankaj Rai, the petitioner who argued the case in person, principally submitted that the learned Arbitrator has wrongly implemented a one-sided Agreement and erroneously applied the principle of *caveat emptor*. He relied upon the judgments of the Supreme Court in *IREO Grace Realtech (P) Ltd. v. Abhishek Khanna & Others*¹ and *Mrs. Manju Bhatia & Anr. v. New Delhi Municipal Council & Anr.*² in this connection. He submitted that had he been aware of the full facts, including the antecedents of the respondent and the difference in prices for metro cities and non-metro cities, he would not have entered into this

¹ (2021) 3 SCC 241.

² (1997) 6 SCC 370.



Agreement at all, and that he did not have notice of application of the *caveat emptor* doctrine as required under *Manju Bhatia*³.

E. Analysis

(i) Re: full and final settlement

11. Turning first to the question of full and final settlement, the learned Arbitrator has come to a conclusion that the petitioner's claims were settled by the respondent, as acknowledged in an e-mail dated 27.06.2018, after termination of the Agreement by him. The said e-mail reads as follows:

"I acknowledge with thanks receipt of a sum Rs. 297810.39 towards final settlement.

This is without prejudice to my rights to pursuing WA 45612018 before High Court".

Interpreting this communication, the learned Arbitrator has held that the petitioner's claims stood finally settled, subject to his rights and contentions in a writ petition filed before the High Court of Andhra Pradesh [W.A. No. 456 of 2018]. The learned Arbitrator noted that the claimant had not reserved any other liberty and had not withdrawn the consent or contended that it was issued on account of undue influence, coercion or pressure. It was held that all claims under the Agreement stood discharged.

12. Having considered the submissions of Mr. Rai, I am of the view that the impugned Award calls for no interference on this ground as, in the petition [ground B], the petitioner has expressly admitted the "full and final settlement" of 22.06.2018, on the basis of which the learned Arbitrator has held that the petitioner's claims were fully discharged.

³ Supra (Note 2).



13. The learned Arbitrator's Award, on the question of accord and satisfaction, is also based upon an interpretation of the e-mail dated 27.06.2018. It is unnecessary to dilate further upon this in view of the admission noted above. Suffice it to state that the learned Arbitrator's evidentiary assessment is not liable to interference before this Court, unless it is found to be perverse or based on no evidence. Such is not the case here.

14. However, the petitioner has submitted that the entire Agreement dated 30.12.2015, was one sided and liable to be ignored. For this purpose, he has relied upon a judgment of the Supreme Court in *IREO Grace*⁴. In this case, the Supreme Court was concerned with a dispute between home buyers and developers in the context of proceedings under the Consumer Protection Act, 1986. The Court found specific contractual clauses relating to payment of interest and termination to be disadvantageous to home buyers, as opposed to developers. It therefore held that the agreements were one sided, unfair and unreasonable, so as to constitute an "unfair trade practice" under Section 2(1)(r) of the Consumer Protection Act, 1986. It was noted that the Consumer Dispute Resolution Commissions, constituted under the Consumer Protection Act, have clear jurisdiction to declare such contractual terms as unfair trade practices and, thus, null and void. The judgement thus, turns upon the specific statutory scheme of the Consumer Protection Act, 1986, which is not applicable in the present case. The statement of claims filed by the petitioner before the Arbitral Tribunal also does not make out a case of

⁴ Supra (Note 1)



nullity of the Agreement. The Arbitral Tribunal has therefore rightly decided the case within the contractual realm.

15. The petitioner assailed the decision in the impugned Award on the doctrine of *caveat emptor*, on the ground that he had no specific notice of *caveat emptor*, as required by the judgment in *Manju Bhatia*⁵. The observation of the Court in *Manju Bhatia*⁶, with regard to the *caveat emptor* doctrine, are in the context of liability of a builder to compensate allottees of apartments which were demolished, having been constructed in breach of municipal regulations. It is in this context that the Court observed as follows:

“11. In this backdrop, it would be seen that in the tort liability arising out of contract, equity steps in and tort takes over and imposes liability upon the defendant for unquantified damages for the breach of the duty owed by the defendant to the plaintiff. Equity steps in and relieves the hardships of the plaintiff in a common law action for damages and enjoins upon the defendant to make the damages suffered by the plaintiff on account of the negligence in the case of the duties or breach of the obligation undertaken or failure to truthfully inform the warranty of title and other allied circumstances. In this case, it is found that four floors were unauthorisedly constructed and came to be demolished by the New Delhi Municipal Council. It does not appear that the owners of the flats were informed of the defective or illegal construction and they were not given notice of caveat emptor. Resultantly, they are put to loss of lakhs of rupees they have invested and given as value of the flats to the builder-respondent.”

The present case is entirely different. The learned Arbitrator has only invoked the principle to suggest that the petitioner was required to undertake due diligence before entering into the Agreement with the respondent. I do not find any error in this approach, much less one which

⁵ Supra (Note 2).

⁶ Supra (Note 2).



goes to the root of the Award, calling for exercise of jurisdiction under Section 34 of the Act.

(ii) Re: Claims on merits

16. The claims having been held to be discharged by accord and satisfaction, it was not necessary for the learned Arbitrator to discuss the merits of the claims, and the same is the position before this Court. However, the learned Arbitrator has, in any event, also rendered findings on the claims on merits.

17. The petitioner's allegations against the respondent have been rejected on the following findings:

- a. That the petitioner was liable to pay the price charged by the respondent for courseware, on the date when he purchased it [20.07.2017], because the downward revision of price took place thereafter. The learned Arbitrator has rejected the petitioner's contention that the respondent was obligated to inform him in advance about the impending revision in price, on a future date. Upon consideration of the documentary and oral evidence, the learned Arbitrator held that the respondent was under no such obligation.
- b. The learned Arbitrator rejected the petitioner's case of petty cheating on account of rounding off the GST amount by the respondent, holding that the invoice generated by the respondent for the course material supplied, was not subjected to any rounding off, and that the petitioner had failed to lead any evidence in this regard in his affidavit of evidence. The learned Arbitrator has also observed that the rounding off, claimed by the petitioner, was for a



sum of Rs. 2.68, whereas the losses claimed were to the tune of Rs. 99 lakhs.

- c. The learned Arbitrator has also found that the petitioner's allegation of being stopped from approaching any institute within the territory allotted to him, is incorrect. The instance given by the petitioner in this regard was, in fact, of an institute outside his territory of A.S. Rao Nagar, as admitted by him in cross-examination.
- d. On the question of discount also, the learned Arbitrator has held that the petitioner did not make any specific averment with regard to any incident or lead any evidence in support of his contention that he was not permitted to give discounts. The evidence of one of the respondent's witnesses was also to the contrary.
- e. The petitioner's allegation of poaching of his students by the respondent, is based upon the respondent's operation of a portal – 'NIIT.tv', which contains free pre-recorded videos available to the students. The learned Arbitrator has found that the claimant admitted in cross-examination that no fees were charged for these courses, and accepted the evidence of the respondent that the pre-recorded videos are in fact available on various sites.
- f. On the question of choice of arbitrator, the learned Arbitrator noted that the respondent had earlier appointed an arbitrator in the year 2017, upon invocation of arbitration by the petitioner. The said allegation was found to be irrelevant to the proceedings and also subject to legal remedy available to the petitioner.



- g. The petitioner's contention with regard to any misrepresentation or material concealment on the part of the respondent, has also been rejected on the ground that the petitioner was obligated to carry out due diligence. It has been held that the respondent was not obligated to disclose any orders of the MRTPC or NCDRC against it, and that the petitioner has also not shown any correlation between such alleged suppression and the losses claimed by him.
- h. The learned Arbitrator, upon a consideration of the genuineness and the contents of the correspondence between the parties, has found against the claimant's case of an assurance of minimum revenues.

18. The learned Arbitrator has, therefore, held that the petitioner's claims are outside the scope of the Agreement, breach on the part of the respondent has not been established, and that neither the alleged losses nor causation have been proved by the petitioner.

19. The judgments of the Supreme Court on the scope of interference under Section 34 of the Act, reserve these aspects to the domain of the Arbitral Tribunal except on narrow grounds, such as a failure to consider material evidence, return of a finding based on no evidence, or interpretative or evidentiary findings which are perverse, in the sense that no reasonable person could have arrived at those conclusions. In this regard, following its judgment in *Associate Builders vs. Delhi Development Authority*⁷, the Supreme Court in *Ssangyong Engg. & Construction Co. Ltd. vs. NHAI*⁸ has held as under:

⁷ (2015) 3 SCC 49, paragraphs 31 and 32.

⁸ (2019) 15 SCC 131.



“38. Secondly, it is also made clear that reappreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.

xxxx

xxxx

xxxx

xxxx

40. The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in *Associate Builders* [*Associate Builders v. DDA*, (2015) 3 SCC 49], namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2-A).

41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of *Associate Builders* [*Associate Builders v. DDA*, (2015) 3 SCC 49], while no longer being a ground for challenge under “public policy of India”, would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.”⁹

20. Even in such circumstances, interference is warranted under Section 34 of the Act, only if patent illegality or perversity, in this narrow sense, “goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award”, as held by the Supreme Court in *Dyna Technologies (P) Ltd. v. Crompton*

⁹ Emphasis supplied.



*Greaves Ltd.*¹⁰. The aforesaid view has also been reaffirmed by the Supreme Court in *Delhi Airport Metro Express (P) Ltd. v. DMRC*¹¹.

21. Having considered the submissions of the petitioner, I am of the view that each of the findings of the learned Arbitrator noted above, are based upon a cogent interpretation of contractual clauses and analysis of evidence. As noted above, the learned Arbitrator has analysed each claim with reference to the applicable provisions of the Agreement, and the documentary and oral evidence placed before him. The petitioner therefore has not made out a case for interference with the impugned Award in accordance with these criteria.

22. The petitioner's contentions, relying upon the judgments in *IREO Grace*¹² and *Manju Bhatia*¹³ have been discussed above, and held to be inapplicable in the present case. The same position also obtains as far as merits of the petitioner's case are concerned.

F. Conclusion

23. For the aforesaid reason, the impugned Award dated 19.10.2023 does not call for interference under Section 34 of the Act. The petition, alongwith pending application, is therefore dismissed.

PRATEEK JALAN, J.

FEBRUARY 29, 2024

SS/Tejas/

¹⁰ (2019) 20 SCC 1, Para 24.

¹¹ (2022) 1 SCC 131, Paras 27-31.

¹² Supra (Note 1)

¹³ Supra (Note 2).