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Pclit Solutions Pvt Ltd. Vs. Mtech Solutions

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Court : Delhi

Decided On : Oct-31-2014

Judge : Deepa Sharma

Appellant : Pclit Solutions Pvt Ltd.

Respondent : Mtech Solutions

Judgement :

$~17 *IN THE HIGH COURT OF DELHI AT NEW DELHI + O.M.P. 647/2013 % Judgment reserved on :

25. 09.2014 Judgment pronounced on :

31. 10.2014 PCLIT SOLUTIONS PVT LTD. ..... Petitioner Through : Mr.Anil Sapra, Sr.Advocate with Mr.Sandeep Sharma and Ms.Rupali Kapoor, Advocates. versus MTECH SOLUTIONS Through : ..... Respondent Mr. Avneesh Garg, Advocate. CORAM HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1 The petitioner herein is dealing in the business of leasing out facilities and services to call centre industry. The respondent herein operates a BPO (Call Centre) and is also in the business of providing IT enabled services. Both the parties entered into a Campaigning Services Agreement on 1.11.06 whereby the premises at Plot No.21, Electronic City, Sector 18, Gurgaon with 166 calling seats, offices and training rooms were taken on rent by respondents herein.

2. In the said agreement, the respondent was required to deposit the security of USD31800which included USD24000 for security for seats and USD7800 as security deposit for PSTN (telephone calling minutes).

3. The dispute arose between the parties and the agreement was terminated between them. This security as per the terms of CSA was refundable without any interest on it. After the dispute arose between the parties, the respondent herein demanded the refund of the security amount. When the petitioner herein refused to refund the same, the dispute was raised by the respondent herein which was referred to the arbitrator.

4. Before the learned arbitrator, the petitioner has not disputed the CSA with the respondent herein. However, it has also not specifically denied the payment of the security deposit by the respondent herein but has only taken the plea that some money was paid by the respondent in respect of the security deposit and some money was asked to be adjusted against the previous security deposit and he had further raised the contention that the security deposit in the previous agreement which the respondent herein had asked to adjust against this agreement, were adjusted against the dues towards the respondent herein in that earlier agreement itself.

5. The learned arbitrator on the basis of the evidences led by both the parties, had reached to the conclusion that the respondent herein had while paid a sum of USD25550 by bank via transfer, balance of USD5250was adjusted against the security amount which was already with the petitioner herein in another contract and thereafter passed the award directing the petitioner herein to refund the said amount of USD31800 to the respondent herein. The learned arbitrator had converted the said USD31800 amount into rupees taking into consideration the rate of one USD as Rs. 14.5 and thus awarded the sum of Rs. 12,87,000/- alongwith the interest.

6. The petitioner herein also raised the contention that learned arbitrator has wrongly interpreted the evidence on record and considered certain contentions as an admission. It is further contended that the finding of the learned arbitrator that there was no documentary evidence on the side of the Respondent to prove the

averments made in its pleading is wrong. The finding of the learned arbitrator that claim of the respondent was not based on any document at all is also contrary because the onus of proving its case was on the respondent herein. It is submitted that basic principles have been overlooked by the learned arbitrator.

7. It is further submitted that findings of learned arbitrator that the respondent could not take two pleas, contrary to each other, is also against the principle of law because the respondent has the freedom to take as many pleas as he desired and the pleas were not in contradiction to each other but were in the form of alternative pleas and thus both the pleas were admissible to be pleaded and could be proved in alternative.

8. It is further submitted that the learned arbitrator has wrongly rejected the claim of the petitioner for the services provided by him to the respondent from 1.11.2006 till 21st November, 2006 on the ground that there was no documentary evidence to prove that any kind of service were provided by the petitioner herein. It is submitted that the fact that the respondent herein had never complained to the petitioner for not providing any service to them clearly shows that the services had been provided to the respondent herein.

9. It is submitted that the findings of the learned arbitrator are contrary to the legal provisions. It is further submitted that the security deposit was not refundable on account of the respondents liability to pay against the services rendered to them for 20 days and remaining amount was to be adjusted in the past and future agreements. It is submitted that since the respondent herein had entered into an agreement dated 21st November, 2006 with M.S. Technocall and he was to provide services to the respondent, therefore, an understanding had entered between the petitioner, the respondent and M.S. Technocall according to which the security amount was presumed to have been transferred from agreement dated 1.11.2006 to agreement dated 21.11.2006. It is prayed that award was liable to be dismissed on these grounds. I have heard the argument. Perused the relevant record.

10. There is no dispute to the fact that there was CSA between the parties dated 1st November, 2006. Pursuant to that agreement, the petitioner had leased out his

property to the respondent herein for running a BPO. Under the said agreement, the respondent herein was to deposit USD31800 towards security which included USD24000 for security for seats and USD7800 as security deposit for PSTN (telephone calling minutes). The petitioner was non-claimant and claim was filed by respondent herein.

11. The award shows that the contention to the respondent herein(the claimant before the arbitrator), was that the said security amount had been duly deposited with the petitioner herein/nonclaimant.

12. The agreement stood terminated between them on account of failure on the part of petitioner herein in providing services under the contract and so the respondent demanded the refund of security money which the petitioner herein refused to return.

13. After recording the evidences of the witnesses of both the parties, the learned arbitrator had reached to the conclusion that USD31800 was paid towards the security deposit by the claimant to the non-claimant i.e. the petitioner. The claim of the petitioner/nonclaimant before the arbitrator, for service charges for the period 1.11.2006 to 20.11.2006 on account of services being provided to the respondent/claimant, was also rejected by the learned arbitrator on the ground that the petitioner/non-claimant, failed to produce on record any document to support its contentions and even withheld the evidences in its possession. It, therefore, is clear that the findings of the learned arbitrator are based on the evidences produced during the arbitral proceedings.

14. An award under Section 34 can be challenged only on the limited grounds mentioned therein. Section 34(2) of the Arbitration and Conciliation Act uses the expression only if . The relevant provision is reproduced as under:

Section 34 (2)- An arbitral award may be set aside by the Court only if (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 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 (v) the composition of the arbitral tribunal 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.

15. The Supreme Court in the case titled as Delhi Development Authority Vs. R.S. Sharma and Company, New Delhi reported in (2008) 13 SCC80after considering several cases including (2006) 4 SCC445 Hindustan Zinc Ltd. V. Friends Coal Carbonisation,(2006) 1 SCC86 State of Rajasthan V. Nav Bharat Construction Co.,(2003) 5 SCC705 ONGC Ltd. V. Saw Pipes Ltd.,(2002) 4 SCC45 Northern Railway V. Sarvesh Chopra,(2001) 4 SCC86 Bharat Cooking Coal Ltd V. L.K. Ahuja & Co.,(2000) 9 SCC552 Grid Corpn. Of Orissa Ltd V. Balasore Technical School,(2000) 8 SCC1 Union of India V. Popular Builders,(1999) 9 SCC610 Ch. Ramalinga Reddy V. Superintending Engineer,(1999) 8 SCC122 Steel Authority of India Ltd. V. J.C. Budharaja, (1999) 4 SCC491 Food Corporation of India V. Sreekanth Transport, (1997) 11 SCC75 New India Civil Erectors (P) Ltd. V. ONGC,1994 Supp (1) SCC644 Renusagar Power Co. Ltd V. General Electric Co,(1991) 4 SCC93 Associated Engg. Co. V. Govt. Of A.P,(1991) 1 SCC498 Prabartak Commercial Corpn. Ltd. V. Chief Adminstrator, Dandakaranya Project,(1988) 3 SCC82 Continental Construction Co. Ltd. V. State of M.P,(1975) 1 SCC289 N. Chellappan V. Kerala SEB,AIR 1960 SC588 Alopi Parshad and Sons Ltd. V. Union of India has enumerated the grounds on which an arbitral award can be challenged. The relevant paragraph is reproduced as under:

21. From the above decisions following principles emerge:(a) An award, which is (i) (ii) contrary to substantive provisions of law; or the provisions of the Arbitration and Conciliation Act, 1996; or (iii) against the terms of the respective contract; or (iv) patently illegal; or (v) Prejudicial to the rights of the parties; is open to interference by the Court under Section 34(2) of the Act. (b) The 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.

16. While in the above case, Supreme Court has laid down the grounds on which the award can be challenged. In the case titled as Maharashtra State Electricity Board Vs. Sterlite Industries (India) and Another, (2001) 8 SCC482 the Supreme Court has laid down the guidelines to be followed by the court while dealing with an award. It has held as under:

...the arbitrators award both on facts and law is final; that there is no appeal from this verdict; that the court cannot review his award and correct any mistake in his adjudication, unless the objection to the legality of the award is apparent on the face of it.

17. The scheme of the Arbitration and Conciliation Act clearly shows that as soon as the award is passed, it attains finality and becomes a decree in terms of Section 35 of the Arbitration and Conciliation Act, and the expression An arbitral award can be set aside only if used in Section 34 clearly envisages that the courts are required to honour the award and not to interfere with it, except on the grounds enumerated above.

18. The same view is taken by the Supreme Court in the case of Markfed Vanaspati and Allied Industries Vs. Union of India, (2007)7SCC679 The relevant para 17 of the said case reads as under:

17. Arbitration is a mechanism or a method of resolution of disputes that unlike court takes place in private, pursuant to agreement between the parties. The parties agree to be bound by the decision rendered by a chosen arbitrator after giving hearing. The endeavour of the court should be to honour and support the award as far as possible.

Therefore, it is clear that except on the grounds as shown above, the award cannot be challenged.

19. In the present case, the petitioner has failed to point out any patent illegality in the award. He has also failed to show that the award is contrary to the substantive provision of law. It is also not shown if the award is in violation of any terms of the contract between the parties. There is nothing on record to show that the award is unfair or unreasonable to the extent that it shocks the conscience of the court. The contention raised to challenge the awards shows that challenge actually is to the conclusion of facts by arbitration, which he has based on evidences, recorded by him during proceedings. Findings of facts are under challenge.

20. His first challenge is that arbitrator has wrongly concluded that security of Rs.31800 was paid by respondent. The Arbitrator in its award has based its finding on the evidences on record and finding is duly supported by the reasoning given by arbitrator while reaching to this conclusion.

21. Even otherwise in the petition itself, the petitioner has contended that there was a previous CSA dated 6.9.2006 between the parties and while entering into the CSA dated 1.11.2006, the respondent herein had made a request to adjust the security deposit under the previous CSA dated 6.9.2006.

22. From the evidences produced before arbitrator, it is apparent that while paying the security of USD31800, the claimant i.e. the respondent herein had sent an amount of USD25550 via bank transfer and asked the petitioner herein to adjust USD5250 given as a security in the previous agreement, towards this agreement and the learned arbitrator had reached to this conclusion that the said security amount of previous CSA between the parties had been considered as a security against the current agreement dated 1.11.2006 and the balance amount was paid

on 9th November, 2006 was paid by bank transfer to the petitioner. The findings are based on cogent evidences on record. Moreover, it was only USD5250from the previous contract dated 06.09.2006, which was adjusted. The petitioner herein has not disputed the fact that there was a security given by respondent herein to him in the previous CSA dated 06.09.2006. The contention was that it was adjusted against certain dues payable by respondent herein qua said CSA dated 06.09.2006 and the arbitrator on the basis of evidences before him held that the petitioner herein had failed to prove this contention . Therefore, conclusion of the learned arbitrator of the fact that amount USD31800 was paid towards the security to the petitioner in respect of CSA dated 1.11.2006 cannot be faulted. Moreover, it is the finding of the fact on the basis of the evidences on the record, which certainly cannot be ground of challenge under Section 34 of the Act.

23. Similarly, all the other contentions of the respondents have been duly considered by the learned arbitrator and on the basis of the evidences led by the parties, the learned arbitrator has reached to its conclusion.

24. It is the settled principle of law that this court does not under Section 34 of the Act exercises the jurisdiction of the appellant court. It does not sit in appeal. It is not required to re-appreciate the findings of the learned arbitrator and to judge whether on the basis of the evidences led before the learned arbitrator, the arbitrator has reached to the correct conclusion or not.

25. The same view is taken by the Supreme Court in the case titled as P.R. Shah, Shares and Stock Brokers Pvt. Ltd Vs. B.H.H. Securities Private Limited and Ors. reported in (2012) 1 Supreme Court Cases 594.

26. The relevant paragraph is reproduced as under:

From the above decisions following principles emerge:(a) (i) (ii) An award, which is contrary to substantive provisions of law; or the provisions of the Arbitration and Conciliation Act, 1996; or (iii) against the terms of the respective contract; or (iv) patently illegal; or (v) Prejudicial to the rights of the parties; is open to interference by the Court under Section 34(2) of the Act. (b) The 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.

27. The award has been passed in terms of CSA agreement. It is clear that the direction of the learned arbitrator to refund the security amount is in terms of clause 4.5 of the CSA dated 1.11.2006. It, therefore, cannot be said that the findings of the learned arbitrator is contrary to the terms of the agreement.

28. In view of the above, the present petition is dismissed at the stage of preliminary hearing only. DEEPA SHARMA (JUDGE) OCTOBER31, 2014 sapna

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