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

\+ FAO(OS) (COMM) 181/2017

PAWAN HANS HELICOPTERS LTD ..... Appellant

Through: Mr.Puneet Taneja, Advocate with Ms.Shaheen, Advocate

versus

CONCESSIONAIRE DOCUMENTION INDIA PVT LTD ..... Respondent

Through: None

**CORAM:**
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**
**HON'BLE MR. JUSTICE R.K.GAUBA**

**O R D E R**

% **27.09.2017**

CM No.35223/2017

Allowed subject to just exceptions.

FAO (OS) (COMM) 181/2017

1. Pawan Hans Helicopters Ltd. (hereinafter referred to as 'Pawan Hans') appeals against a judgment of the learned Single Judge rejecting its petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act).

2. The respondent (hereinafter referred to as 'the claimant') had entered into a contract for travel handling of passengers embarkation, disembarkation, loading and unloading of baggage etc. for helicopter flights of Pawan Hans to Mata Vaishno Devi Shrine from Katra - Sanjhi Chhat - Katra vide an agreement for covering the period from 01.11.2008 to

31.10.2010. The contract period was further extended up to 30.06.2011. Dispute arose between the parties on account of Pawan Hans's cross appeal and termination of the contract. The claimant sought money under 8 separate heads. It claimed *inter alia* that the agreement was illegally terminated. The Tribunal upheld the illegal termination of the agreement and awarded ₹32,20,721/- under two broad heads - firstly, on account of amounts withheld unjustifiably and secondly, on refund of bank guarantee. This amount included the *pendente lite* interest till the date of the award.

3. In its Section 34 proceedings, Pawan Hans contended that the deductions made from the running bills of the contractor were justified because it did not maintain regular books of accounts indicating that due payments were made or released on account of statutory dues such as Provident Fund, Employees State Insurance Corporation (ESI), periodically in respect of all the employees. The other contention made was that certain amounts claimed and granted by the Tribunal were outside the contract, since, the respondent-claimant had sought for amounts that were not envisioned in the agreement i.e. loading and boarding expenses of few of Pawan Hans's employees. It was urged that this claim was unsupported by any defence. The learned Single Judge in the course of lengthy discussions and submissions on behalf of the parties and the materials before him i.e. the award, the claims and the documents in the pleadings, concluded that there was no patent illegality or any other ground on which Section 34 could be persuaded. He accordingly rejected the petition and upheld the award by the impugned judgment.

4. Mr.Puneet Taneja learned counsel urges that the findings with respect to unjustifiability of the deductions due to violation of ESI liability towards

ESI and EPF payments, is plainly unreasonable. It is contended that the evidence on record clearly shows that the Tribunal did not consider the materials in appropriate perception. Learned counsel relied upon the bills raised periodically to say that in fact the number of workmen deployed differ and were substantially less than what were agreed upon. More importantly there was no evidence to say that periodic payments were deposited with the statutory authorities. It was also argued that so far as the payments towards loading and boarding expenses of alleged employees and the officials of Pawan Hans are concerned, the award exceeds the contract terms and therefore was contrary to Section 20(3) of the Act.

5. This Court has carefully considered the submissions. The scope of the Appellate Court under Section 34 is narrow. The Appellate Court does not second guess, or rather third guess, the confines of the Arbitral Tribunal unless there is manifest unreasonableness or patent illegality. The contentions urged with respect to the possible contingent liability of Pawan Hans, is really one of anticipation and speculation. In this regard, Pawan Hans in fact states that non-compliance (not strictly established by commencing evidence) of statutory provisions would render it potentially liable as a principal employer, in future. Now this can hardly be the basis for justifiable deduction, more so when it was under a duty to monitor the contract on a day-to-day or periodic basis – in accordance with its terms. There is no indication from the materials on record or at least what were shown to the Court that such steps were taken. Rather, Pawan Hans appears to have resorted to ad-hoc and periodic cuts, in deducting from the bills without any exception. In these circumstances it cannot be held that the submission with regard to unreasonable approach of the Tribunal, was

established. Likewise with respect to the complaint that amounts were awarded in excess of the contract of what was agreed to or rather services provided outside the contract and therefore violated its terms, the Court is not inclined to accept this contention either. Contemporaneously the bills submitted to Pawan Hans were neither responded to nor rejected. By all accounts that appears to have been just kept aside. It is only in the arbitration proceedings that for the first time, Pawan Hans urged that it was not liable to pay the amounts. Furthermore, the Court is of the opinion that such factual appreciation is entirely within the domain of the Tribunal in accordance with established law. Since there is no unreasonableness in the findings – in the sense that the award is based on reasoning and a factual analysis that cannot be characterized as patently unreasonable, the learned Single Judge cannot be faulted for affirming them.

6. In the above terms the appeal is dismissed without merit.

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Dismissed.

**S. RAVINDRA BHAT, J.**

**R.K.GAUBA, J.**

**SEPTEMBER 27, 2017**
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