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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL JURISDICTION

COMMERCIAL ARBITRATION PETITION NO.88 OF 2017

The Purvanchal Gramin Bank	...Petitioner
V/s.	
M/s.FINO Pay Tech Ltd. & Anr.	...Respondents

Ms.Pooja Patil – Khandeparkar with Mr.J.B. Navlani i/b
Mr.Kusumakar Kaushik for the Petitioner.

Mr.Arif Bookwala, Senior Counsel with Ms.Aparajita Chandra i/b
Ms.Amrita Saldana for the Respondents.

CORAM : R.D. DHANUKA, J.
DATE : 5TH JANUARY, 2018.

P.C. :-

1. By this petition filed under section 34 of the Arbitration & Conciliation Act, 1996 the petitioner seeks to impugn the arbitral award dated 12th August, 2016 allowing the claim for payment of unpaid bills with interest and rejecting the counter claims made by the petitioner.
2. A Tripartite Services Agreement was executed between the petitioner and the respondents on 1st February, 2010, wherein the respondents undertook to act as Technology Service Provider and business correspondent (BC) for providing complete end-to-end

solution towards disbursement of funds to beneficiaries for the projects undertaken by the bank under IT Enabled Financial Inclusion Mode.

3. It is the case of the petitioner that under the said Tripartite Services Agreement, the respondents were responsible to issue smart cards in the form of debit card which would contain a metallic chip holding the finger prints and photographs as well as basic demographic information, account and keys after due personalization. The said card was also required to display a printed photograph and the signature on the said card as well as a printed demographic data on the card which was mandatory under the Tripartite Services Agreement.

4. The dispute arose between the parties. The said Tripartite Services Agreement was terminated by the respondents. The respondents filed various claims before the learned sole arbitrator. The petitioner filed the written statement and the counter claim. The parties also laid oral evidence before the learned arbitrator. The impugned award was rendered by the learned arbitrator on 12th August, 2016.

5. Ms.Khandeparkar, learned counsel appearing for the petitioner invited my attention to some of the provisions of the Tripartite Services Agreement and also some of the findings rendered

by the learned arbitrator and also some of the portions of the oral evidence described in the arbitration petition by the petitioner. She submits that though the witness examined by the respondents in his cross-examination had admitted that the smart cards issued by the respondents did not contain the requirements in terms of the provisions of the Tripartite Services Agreement entered into between the parties, the learned arbitrator rendered a perverse finding against the petitioner and in favour of the respondents. She placed reliance on the findings recorded in paragraph 6(g) of the award and would submit that the learned arbitrator has erroneously rendered a finding that the petitioner had waived the requirements under the Tripartite Services Agreement.

6. The next submission of the learned counsel is that the learned arbitrator has not considered various submissions advanced by the petitioner before the learned arbitrator.

7. Mr.Bookwala, learned senior counsel for the respondents on the other hand invited my attention to some of the findings rendered by the learned arbitrator and would submit that the learned arbitrator has considered oral as well as documentary evidence and has recorded various findings of fact which cannot be interfered by this Court in this petition filed under section 34 of the Arbitration & Conciliation Act, 1996. He further submits that substantial amount for

the same work was already paid by the petitioner from time to time without raising any objection. The reasons given by the petitioner for not paying the remaining amount was after-thought and contrary to the factual position.

8. A perusal of the award indicates that the learned arbitrator has allowed the claim for unpaid bills. The principal objection of the petitioner before the learned arbitrator for not making payment of the remaining amount was that the smart cards issued by the respondents were not in accordance with the obligations of the respondents prescribed under the Tripartite Services Agreement.

9. Learned counsel for the petitioner does not dispute that substantial amount of payment was already made by the petitioner to the respondents for issuance of debit cards under the said Tripartite Services Agreement without raising any objection. A perusal of the award and more particularly the finding to which my attention is invited by the learned counsel for the petitioner in paragraph 6(g) while dealing with issue no.1 clearly indicates that the learned arbitrator has not rejected the contentions of the petitioner only on the ground that the petitioner can be said to have waived the requirements, if any, but also has given a positive finding that all the details were lodged on the chip of the card and all the detailed information was already there. The petitioner had based on the

material supplied by the respondents, gave each individual an account number.

10. I have also perused the impugned award rendered by the learned arbitrator minutely. The learned arbitrator has taken into consideration the oral as well as documentary evidence laid by the parties and has interpreted the terms of the Tripartite Services Agreement which interpretation is a possible interpretation. The findings of fact rendered by the learned arbitrator are based on appreciation of oral as well as documentary evidence and the findings being not perverse, cannot be interfered with by this Court in this petition filed under section 34 of the Arbitration & Conciliation Act, 1996.

11. In my view, the petition is devoid of merits and is accordingly dismissed. No order as to costs.

(R.D. DHANUKA, J.)