IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1399 of 2015 (O&M)
Pronounced On: 17.07.2018

M/s. Kandhari Beverages Limited, Chandigarh

.... Appellant

Versus

Haryana Tourism Limited, Chandigarh and another

.... Respondent

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Kanwal Chaudhary, Advocate
for the appellant.

Mr. Nitin Jain, Advocate and
Mr. Sushil Jain, Advocate
for respondent No. 1.

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JASWANT SINGH, J.

1. Present appeal under Section 37 of arbitration and conciliation Act, 1996 (for short 'Act') is filed seeking quashing of order dated 25.09.2014 whereby Ld. Additional District Judge, Chandigarh has dismissed objection petition filed under Section 34 of the Act and upheld award dated 17.11.2005.

2. The facts emerging from pleadings and arguments of both the counsels are that the respondent-Haryana Tourism Ltd. (for short 'Corporation') invited tenders/quotations for the supply of Aerated Cold Drinks at its Tourist Complexes for the period 15.05.2001 to 14.05.2002. The appellant-Private Company filed tender and it was accepted by Corporation. As per Clause I of the agreement, the appellant-Company was supposed to pay a sum of ₹ 20 Lakh on account of Brand Promotion which had to be spent as per mutual agreement between the parties. The said

Clause of the agreement reads as under:-

> *" The company would pay ₹20 Lakh to HTC on account of their Brand Promotion which will be spent as per mutual agreement between HTC and Coca Cola of marketing activities and programmes involving all Haryana Tourism outlets. These activities should include signage, press advertisements, fairs, food festivals, other events etc. at the same outlets. "*

3. The Corporation organised a Mango Mela on 07/08th July' 2001 at Yaadwinder Garden, Pinjore and respondent-Corporation spent a sum of ₹ 1 Lakh and said amount was borne by the appellant-Company. The Corporation proposed to hold two Gurdaas Maan nights on 04.06.2001 and 07.06.2001 in its two outlets and as per appellant, they spent a sum of ₹ 4.75 Lakh towards arrangements, however, respondent-Corporation abruptly cancelled said programme resulting into loss of ₹ 4.7 Lakh to the appellant. Thereafter meetings took place between both the parties to hold Musical Nights of Gurdaas Maan/Malkiat Singh. As per appellant, they spent a sum of ₹ 13.92 Lakh still respondent asked the appellant vide letter dated 20.09.2001 to deposit a sum of ₹ 19 Lakh as sponsorship money. The appellant replied aforesaid letter but Corporation vide letter dated 17.01.2002 unilaterally terminated their contract. The matter reached to Sole Arbitrator who vide award dated 17.11.2005 directed the appellant to pay a sum of ₹ 9.5 Lakh within a period of 30 days. The appellant also lodged its counter claim of ₹ 13.92 Lakh alongwith interest @ 24%, however, learned Arbitrator dismissed claim of the appellant and allowed claim of the respondent to the extent of ₹ 9.5 Lakh. It is apt to notice here that first Arbitrator was transferred before conclusion of proceeding and second did

not proceed with the matter and it was third Arbitrator appointed by Managing Director of Corporation who passed final award.

4. The appellant filed objection petition under Section 34 of the Act before learned Additional District Judge, Chandigarh who vide impugned order dated 25.09.2014 dismissed objection petition on the ground that there is no reason to interfere in the award because scope of interference is limited and no ground as contemplated under Section 34 is made out.

5. Mr. Kanwal Chaudhary, counsel for the appellant, vehemently contended that there was no lapse on the part of appellant. The respondent wrongly demanded a sum of ₹ 19 Lakh as sponsorship money and learned Courts below have committed patent error in awarding a sum of ₹ 9.5 Lakh because respondent never spent said amount for promotion of brand of both the parties. The appellant was not supposed to pay a sum of ₹ 20 Lakh to respondent whereas said money was supposed to be incurred with the mutual consent of both the parties. There was no question of making payment to respondent and learned Arbitrator has wrongly awarded a sum of ₹ 9.5 Lakh. The counsel further contended that appointment of Arbitrator was bad in the eyes of Law because Managing Director of the Corporation has no authority to appoint fresh Arbitrator when earlier Arbitrator could not pass the award. In case where appointment is by name or designation, on account of recusal of Arbitrator, arbitration clause ceases to exist. In support of his contention, learned counsel cited judgment of Hon'ble Supreme Court in the case of **State of West Bengal Vs. National Builders (1994) 1 SCC 235, Maharaji Educational Trust & Anr. Vs. SGS Construction & Developers Pvt. Ltd. 2012 (4) RAJ 70 (Delhi), Konkan Railway**

Corporation Vs. Rani Construction Pvt. Ltd. **2002 (1) RAJ 165 (SC), M/s SBP & Co. Vs Patel Engineering Ltd**. **2005 (9) SC 219, Pandey & Co. Builders Pvt. Ltd. Vs. State of Bihar 2007 AIR (SC) 465, GAIL & Anr. Vs. KETI Constructions 2007 (6) SCR 439, Union of India Vs. PAM Developers Pvt. Ltd. 2014 (2) Arb. L.R. 27 (SC), A. Ayyasamy Vs. Parmasivam AIR 2016 (SC) 4675.**

6. Per contra, counsel for the respondent contended that scope of interference under Section 34 as well 37 of the Act is very limited and Courts cannot sit as Appellate Authority over the decision of Arbitrator. The award can be set aside only within parameters of Section 34(2) of the Act and Court has no power to re-appreciate evidences considered by Arbitrator. Learned counsel in support of his contention cited judgment of Hon'ble Supreme Court in the case of **Oil & Natural Gas Corporation Ltd. Vs Saw Pipes Ltd**. **J.T. 2003 (4) S.C. 171**.

7. Having scrutinized record of the case and hearing arguments of both counsel, this Court finds that below mentioned questions arise for adjudication:

i) Whether Arbitrator had jurisdiction to pass impugned award?

ii) Whether Arbitrator had awarded claim of ₹ 9.5 Lakh as per terms and conditions of agreement executed between the parties?

iii) Whether impugned award and judgment deserves to be set aside?

8. The appellant raised question of jurisdiction before the learned Arbitrator who vide order dated 17.03.2005 rejected contention of the appellant and said order still holds the field because it was never set

aside by any higher court. The appellant did not challenge said order rather joined proceedings. As order dated 17.03.2005 was not challenged before appropriate forum, the appellant is precluded from raising said question at this stage and even otherwise findings of learned Arbitrator on this issue seems to be correct, in the light of arbitration clause of agreement.

9. Learned Arbitrator has awarded a sum of ₹ 9.5 Lakh holding that claimant did not spend any amount on marketing activities and programmes to be held on Haryana Tourism day, therefore, it would be unfair to order to pay entire amount which was to be paid by present appellant to respondent–Corporation. True that scope of interference at appellant stage is limited, however, an award cannot be upheld which is on the face of it is illegal or beyond the scope of substantive provision of the Act or the contract.

10. In the present case, a sum of ₹ 20 Lakh was to be paid by appellant to respondent-Corporation on account of their brand promotion which had to be spent as per mutual agreement between both the parties on marketing activities. It is conceded fact that corporation did not spend even singly penny on account of Brand Promotion i.e. marketing activities. It is also undisputed fact that Corporation vide letter dated 22.05.2001 cancelled holding of Cultural Evenings scheduled for 04.06.2001 and 07.06.2001.

A sum of ₹ 20 lakh was required to be paid by appellant, but it had to be incurred with the consent of both the parties and due to one or another reason mutual consent could not be reached. As the respondent–Corporation did not spend even single penny on marketing activities, it had no right to recover any amount from appellant. The respondent has no right to enrich itself when no expenses were incurred and contract was terminated mid of the term. The findings of Arbitrator are perverse and contrary to terms and conditions of contract (as reproduced hereabove) which is basis of claim awarded. Learned Objecting Court did not appreciate actual fact and figures and dismissed objection petition simply citing few judgments of Hon'ble Supreme Court. Therefore, award as well as impugned order dated 25.09.2014 passed by Ld. Additional District Judge, Chandigarh, deserves to be set aside and present appeal deserves to be allowed.

In view of above findings, present **appeal is allowed**, and impugned award dated 17.11.2005 and order dated 25.09.2014 passed by learned Additional District Judge, Chandigarh are set aside.

July 17th, 2018 **(JASWANT SINGH)**
'dk kamra' **JUDGE**

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No