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

+ **FAO(OS) (COMM) 6/2016**

Date of decision: 12th February, 2018

PINNACLE AIR PVT LTD THR ITS AUTHORISES
REPRESENTATIVE Appellant

Through Mr.Tanmay Mehta and
Mr.Manan Batra,Advocates

Versus

CAPTAIN RICHARD SLOAN NORRIS Respondent

Through Ms. Sonal Jain and Mr.Saharsh
Jauhari, Advocates

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

This intra court appeal by Pinnacle Air Pvt. Ltd. under Section 37 of the Arbitration & Conciliation Act, 1996 (Act) impugns order dated 10.02.2016 passed by the Learned Single Judge upholding the Award dated 31.10.2015 awarding US \$ 34000/- to the respondent, Captain Richard Sloan Norris, with simple interest @10% from 1st June, 2012 till realization.

2. Learned counsel for the appellant has submitted that the respondent had committed frauds. Firstly, the respondent had concealed his sickness/ailment. Secondly, the respondent was

negotiating with three other parties, namely, Electrosteel group, Kalyan Family and Titan. Thirdly, the respondent had procured Foreign Aircrew Temporary Aviation (FATA) Certificate by paying bribe. On merits, it is submitted, that the Letter of Appointment in favour of the respondent was issued in order to enable him to secure Indian Visa and no legal rights and liabilities had accrued. Further, the respondent had breached clauses 5.2 and 5.3 of the said contract, as he did not have license to fly Phenom 100 Aircraft in India in the absence to valid FATA certificate and also on account of his medical condition. It was submitted that the Award was contradictory.

3. We have perused the Award and contentions raised but do not find any good ground and reason to interfere and set aside the findings and direction against the appellant.

4. Arbitration Award is detailed, and does justice by balancing equities. The Arbitration Award substantially rejects claims of the respondent of US \$ 371,109.77 including salary of US\$ 8000 per month till February, 2013, claim for expenses incurred, compensation for loss of opportunity, mental harassment and interest. Respondent has been awarded salary of US\$ 8000 per month from 11th November, 2011 i.e. the date on which the Visa was granted, till 12th April, 2012 i.e. the date on which the respondent had left India.

6. The Letter of Appointment dated 12th October, 2011 is undisputed. The Letter of Appointment was signed and executed by the appellant through their authorised signatory and by the respondent. Appellant and respondent had simultaneously signed the detailed

contract with different clauses including the arbitration clause. Appellant had appointed the respondent as Captain of Phenom 100 Aircraft on monthly salary of US \$ 8000 with effect from 12th October, 2011. Appellant had admittedly paid US \$ 6000 to the respondent after issue of the Letter of Appointment for undergoing four day recurrent training in Texas, United States of America. The respondent had obtained employment Visa to fly Phenom 100 aircraft in India on the basis of the said letter of appointment and terms of contract. Paragraph 9 of the Award states that the appellant had not denied entering into an employment contract with the respondent. It was also recorded that the appellant had always told the respondent to adhere to the terms of the contract. Mails written by the appellant to the Indian missions state that the respondent was inducted as an employee in service of the appellant. Award in paragraph 25 holds that the agreement/contract of employment was binding and enforceable. Respondent had undergone recurrent training and having a valid foreign license had applied for FATA to comply with the contract. Respondent had written e-mails in December, 2011 and January, 2012 about acute financial distress. Appellant had never communicated that the contract was cancelled or terminated. Appellant had stated that acquisition of the aircraft was delayed.

7. The contention of the appellant that the respondent was in touch with Captain Sakeer C. Sheik and had also written communications to Electrosteel, Kalyan family and Titan is correct but this factum has to be understood in the factual context of the present case. The

respondent had reached India on 1st April, 2012. The appellant had not been able to secure and purchase Phenom 100 Aircraft, though the respondent was in employment with the appellant since 12th October, 2011. The appellant had agreed to pay US \$ 8000 per month to the respondent, however, no payment except for US \$ 6000 towards training was actually paid. Therefore, the respondent was in touch with others. Albeit, both respondent and appellant were bound by the contract. Moreover, Titan Aviation was represented by Capt. Sakeer C. Sheik who had negotiated the contract between the appellant and the respondent. Appellant was engaged by Electrosteel Aviation Limited for providing air management services.

8. The respondent had flown to India and had applied for FATA. Earlier DGCA had granted him security clearance to fly aircraft in India and had directed the respondent to submit documents for validation of foreign pilot license. While in India, the respondent fell sick and had undergone diagnostics tests which had revealed a small growth in bladder. He was subsequently operated abroad on 23rd May, 2012. The respondent did not reveal this fact to the appellant, it is apparent for the reason he was earlier unaware and taken aback by the medical complications, which would have affected him professionally. This is the reason and cause for not awarding claim for back wages after 10th April, 2012. Medical certificates on record before the Arbitrator establish and show that the respondent was in good health before he came to India and the illness was not known to him and had manifested for the first time only after the he had reached India (see

paragraph 27 of the award). Respondent had subsequently vide mails dated 28.4.2012 onwards informed the appellant about his medical condition(see paragraph 6 of the award).

9. Contention of the appellant that the award was contradictory, is because the arbitrator had to set out facts and reasons in favour and against the appellant and the respondent. Claims made by the respondent against the appellant were substantially rejected. We have to understand the reasoning and findings recorded by the arbitrator and not read words and reasoning out of the context. The impugned award balances equities in the facts and is just and fair. Award notices several facts and facets, which were favorable and unfavorable to the competing parties. There are findings against the appellant. It was accepted and admitted that the appellant did not purchase or acquire Phenom 100 aircraft. Agreement between the parties was never terminated and cancelled. Contention that the Letter of Appointment and the contract were documents of convenience and no legal right had accrued to the respondent has not been absolutely and firmly accepted, as noticed in paragraph 6 above. This contention would also reflects on the appellant and their conduct. They would and should bear the consequences. The contract was negotiated and was detailed one incorporating several terms and conditions. It was certainly signed by the authorised representative of the appellant and the respondent.

11. The Award is primarily based upon facts and we do not see any good ground or reason to upset just, equitable and fair decision in the

Award, upheld by the Learned single judge, in exercise of jurisdiction under Section 37 of the Act.

12. The appeal is dismissed. No costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

FEBRUARY 12, 2018
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