IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 8161 of 2014 (O&M)
Date of decision: March 28, 2019

M/s UNISSI (India) Private Limited

...Appellant

Versus

Post Graduate Institution of Medical Education and Research and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Kamal Sehgal, Advocate,
for the appellant.

Mr. Vikrant Sharma, Advocate,
for respondent No.1.

JAISHREE THAKUR, J.

1. This first appeal has been filed against the judgment dated 31.3.2014 passed by the District Judge, Chandigarh, whereby the objections filed by respondent No.1 herein under Section 34 of the Arbitration and Conciliation Act, 1996 (henceforth called **'the Act'** for short) were disposed of with the modification in the arbitral award dated 23.7.2011 to the extent that the appellant herein was held entitled to recover the awarded amount along with interest at the rate of 7-1/2% w.e.f. 1.12.2003 till actual payment.

2. In brief, few facts need to be noted for proper appreciation of the case. The case of the appellant herein is that respondent No.1 herein invited tender for supply of 30 Pulse Oxymeters in the month of December, 2000. In response to the said tender, the appellant herein made an offer on 15.1.2001 and offered two models of Pulse Oxymeters. The price of the first was quoted

as ₹33,900/- and that of the second as ₹51,990/- excluding central sales tax. Eventually, after negotiations, the tender of the appellant was accepted and order for supply of 41 Pulse Oxymeters at the rate of ₹51,990/- was placed on 29.9.2002 for ten departments of the respondent—Institute.

3. On 1.11.2002, the appellant supplied 41 Pulse Oxymeters to the respondent—Institute and the same were duly installed in different departments from 21.11.2002 to 25.11.2002 to the satisfaction of all the 10 departments. Therefore, on satisfactory installation and demonstration, the appellant was entitled to receive the entire price of 41 Pulse Oxymeters immediately after 25.11.2002. However, since despite repeated requests of the appellant, no payment was made to the appellant and rather the respondent—Institute raised certain objections with regard to the specifications. Ultimately, on 19.2.2003, the respondent—Institute asked the appellant to collect all the Pulse Oxymeters at its own cost and also forfeited the amount of earnest money as well as the performance bank guarantee, giving rise to a dispute between the parties, which, after litigation upto Supreme Court, was referred to an Arbitrator.

4. The Arbitrator, after scrutiny of the evidence produced before it by the respective parties, allowed the claim of the appellant and held it entitled to ₹12,58,160/- with interest at the rate of 9% per annum w.e.f. 1.12.2003 till the date of passing of the award. It was further directed that in case awarded amount is not paid by 30.9.2011, the respondent—Institute shall also pay future interest at the rate of 12% per annum from 1.10.2011 till the date of payment. Aggrieved against the Award dated 23.7.2011, the respondent No.1 herein filed a petition under Section 34 of the Act for setting aside the award. The District Judge modified the award to the extent that the appellant herein is held entitled to recover the awarded amount along with interest at the rate of

7.5% per annum. The interest was reduced from 9% and 12% to 7-1/2%, giving rise to the instant appeal.

5. Mr. Kamal Sehgal, learned counsel appearing on behalf of the appellant, submits that the impugned judgment, modifying the award dated 23.7.2011 is not sustainable in the eyes of law. It is submitted that it is settled principle of law that the Arbitrator had the jurisdiction and discretion to award interest keeping in view the facts and circumstances of the case and the District Judge ought not to have interfered in the same by reducing the rate of interest as awarded. In support of his arguments, learned counsel relies upon **McDermott International Inc. Vs. Burn Standard Co. Ltd. and others 2006 (11) SCC 181, Pushpa P. Mulchandani and others Vs. Radhakrishin Tahiliani and others, Appeal No. 981/2001 in Arbitration Petition No. 432 of 1998 decided by Bombay High Court on 30.4.2015** and **Angel Broking Ltd. Vs. Sharda Kapur FAO Nos. 435 and 492 of 2016 decided by the Delhi High Court on 9.5.2017.**

6. Per contra, Mr. Vikrant Sharma, learned counsel appearing on behalf of respondent No.1, submits that the judgment passed by the District Judge is founded on sound reasoning and no interference is called for in the same. The Arbitrator had awarded highly excessive rate of interest and therefore, the District Judge has rightly reduced the same.

7. I have heard learned counsel for the parties and perused the impugned judgment as well as the case law cited.

8. The sole question that arises for consideration in this appeal is, whether the District Judge was justified in reducing the rate of interest as awarded by the Arbitrator, particularly after holding that the Arbitrator has rightly held the appellant entitled to recover a sum of ₹12,58,160/-?.

9. The objections, which were filed under Section 34 of the Act to challenge an award of an Arbitrator can be entertained by the Court only if the conditions, as specified in Section 34 (2) (b) of the Act are satisfied. Section 34 (2) (b) of the Act is reproduced as under:-

> ***"34. Application for setting aside arbitral award. (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).***
>
> *(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."

10. Courts can interfere in the arbitral process only under the limited grounds provided under the Arbitration and Conciliation Act, 1996. To successfully challenge an award, an objector has to bring his case within the said parameters and the court may set aside the award only if the objector satisfies the court in that regard. A reading of the said section leaves no scope for the Court to modify or alter an award of the Arbitrator. He can either accept the objection raised that the award is to be set aside or affirm the award. A perusal of the judgment rendered in **McDermott International Inc. (supra)** clearly delineates this proposition, wherein it has been held as under:-

"The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it."

11. The judgment rendered in **McDermott International Inc. (supra)** has subsequently been followed in **Angel Broking Ltd. (supra)**, wherein the Delhi High Court, while dealing with the issue whether the Court below as per Section 34 of the Act could modify the award and grant additional reliefs not granted by the award or grant alternate relief , went on to hold that the civil court hearing objections under Section 34 of the Act has only power to set aside the award and thereafter the parties would be free again to invoke arbitration proceedings. In other words, the court hearing objections under Section 34 of the Act cannot alter or modify the award. Therefore, in the view of the settled proposition of law, this Court is of the opinion that the impugned judgment passed by the District Judge, Chandigarh, reducing the rate of interest allowed by the Arbitrator is untenable, specially in view of the fact that the Court itself held that there was no infirmity in the Award so passed.

12. Consequently, the appeal is allowed. The impugned judgment passed by the District Judge, Chandigarh is hereby set aside.

March 28, 2019 **(JAISHREE THAKUR)**
prem **JUDGE**

Whether speaking/reasoned Yes
Whether reportable No