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

+ O.M.P. (COMM) 387/2020 & IA 2638/2020

CL EDUCATE LTD.

..... Petitioner

Through: Mr. Rajat Arora, Mr. Ekansh Bansal
and Ms. Vishalakshi Singh, Advs.

versus

INDIACAN EDUCATION PVT. LTD.

..... Respondent

Through: Ms. Jaspreet Sareen and
Mr. Sradhananda Mohapatra, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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12.03.2020

O.M.P. (COMM) 387/2020

1. The present petition has been filed by the petitioner challenging the interim award / order dated February 3, 2020. Admittedly, the said award / order was passed by the learned Tribunal on an application filed by the petitioner under Sections 23(2) and 23(2)/(3) of the Arbitration and Conciliation Act, 1996 for amendment of the statement of claims and for taking on record the additional documents.

2. When the matter was listed on the first day, an issue of maintainability was raised by this Court in view of the fact that the impugned order only decides an application filed by the petitioner seeking amendment of the claim and taking on record the additional documents. Learned counsel for the petitioner has relied upon the judgment of this court in the case of *Cinevistaas Ltd. v. Prasara Bharti*, 2019 SCC OnLine Del

7071.

3. Even on merits it is the contention of the learned counsel for the petitioner that in the application for amendments, the petitioner had primarily sought the amendment in the following manner:

Original Statement of Claim	Amended Statement of Claim
1. Brief description of the nature and circumstances of the dispute giving rise to the present claim. (v) It is pertinent to mention that in terms of Schedule IX of the Business Transfer Agreement, Account Receivables from Business Partners as mentioned by the Respondent were Rs.93,51,692/- (Ninety Three Lakhs Fifty One Thousand Six Hundred and Ninety Two Only)	Brief description of the nature and circumstances of the dispute giving rise to the present claim. (v) It is pertinent to mention that in terms of Schedule XI of the Business Transfer Agreement, Account Receivables from Business Partners as mentioned by Respondent is Rs.93,51,692/- and the pending claim against the Respondent by the Busienss Partner is Rs.22,23,722/-. That after deducting the pending claims of Rs.22,23,722/- from the account Receivable i.e. Rs.93,51,692/, the final account receivable from the Business Partners is Rs.71,27,970/-. [AMENDMENT ALLOWED]
2. Brief description of the nature and circumstances of the dispute giving rise to the present claim. (vi) The said representation by the Respondent was false and misleading, and Claimant Company realized only Rs.30,53,736/- (Thirty Lakhs Fifty Three thousand Seven Hundred Thirty Six Only). For the sake of easy calculations it is hereby mentioned that Rs.7,34,373/- (Seven Lakh Thirty Four Thousand Three Hundred Seventy Three only) was remitted by Respondent and Rs.23,19,363/- (Twenty Three Lakh Nineteen Thousand Three Hundred Six Three only) were remitted by Business Partners, making it a total of Rs.30,53,736/- (Thirty Lakhs Fifty Three Thousand Seven Hundred Thirty Six Only). The remaining Account Receivables worth Rs.62,97,956/- were not received by the	Brief description of the nature and circumstances of the dispute giving rise to the present claim. (vi) That due to misrepresentation and deliberate concealment of various facts by the Resondent, the Claimant could only realize an amount of Rs. 29,35,956/- out of the total receivables of Rs.71,27,970/-. That the Claimant could not realize an amount of Rs.41,92,014/- due to the misrepresentation of the true and correct facts by the Respondent and therefore, the Respondent is liable to put the Claimant in the same financial position as if the Respondent had never misrepresented to the Claimant.” [AMENDMENT NOT ALLOWED]

Claimant Company.	
3. Brief description of the nature and circumstances of the dispute giving rise to the present claim (viii) The said representation by the respondent was also false and was overstated, and despite rigorous follow-ups with students, the claimant company has only recovered Rs. 25,55,560/- (Twenty Five Lakh Fifty Five Thousand Five Hundred Sixty Only). This further resulted in a loss of Rs.55,84,944/- (Fifty Five Lakh Eighty Four Thousand Nine Hundred Forty Four Only) to the Claimant Company.	Brief description of the nature and circumstances of the dispute giving rise to the present claim (viii) The said representation by the Respondent was also false and was overstated, and despite rigorous follow-ups with students, the claimant company has only recovered Rs. 14,70,823.70/-. This further resulted in a loss of Rs.66,69,684.99/- to the Claimant Company. [AMENDMENT NOT ALLOWED]
4. Brief description of the nature and circumstances of the dispute giving rise to the present claim (ix) In view of the above two misrepresentations, the Claimant Company suffered a direct loss of Rs.1,18,82,900/- (One Crore Eighteen Lakhs Eighty Two Thousand Nine Hundred Only)	Brief description of the nature and circumstances of the dispute giving rise to the present claim (ix) In view of the above two misrepresentations, the Claimant Company suffered a direct loss of Rs.1,08,61,698/- which the Respondent is liable to pay to the Claimant in terms of Clause 8 and 9 of the BTA. [AMENDMENT ALLOWED]

4. The grievance of the petitioner in the present petition primarily is with regard to the disallowance of the amendments sought at serial nos. 2 and 3 inasmuch as in the amendment related to serial no. 2 above, the petitioner had sought to amend figure of Rs.30,53,736/- with figure of Rs.29,35,956/-. In that regard, it was the case of the petitioner that the petitioner had not received an amount of Rs.30,53,736/- but only an amount of Rs.29,35,956/- which shall result in excess claim of Rs.1,17,780/-.

5. The second amendment which was disallowed by the learned Tribunal is that the petitioner had sought to amend the figure of Rs.25,55,560/- with Rs.14,70,823.70/. The plea of the petitioner in that regard was that the

petitioner had only received an amount of Rs.14,70,823.70/- and not Rs.25,55,560/-.

6. Learned counsel for the respondent states that the present petition filed by the petitioner is totally misconceived inasmuch as even if the amendments have been disallowed, the petitioner would still be within its right to produce relevant evidence in support of the claims in terms of the amendments sought before the learned Arbitrator and if it is able to satisfy the Tribunal with regard to the amounts as sought to be incorporated through amendments, the Tribunal can allow the same in favour of the petitioner. In support of her submissions, she has drawn my attention to Para 23 of the impugned order, wherein the Arbitral Tribunal has held as under:

“23. The Claimant thereafter seeks to substitute para (xxx), (xxxi) and (xxxiii) of the Statements of Facts of Claim. We find that most of such proposed amendments are an elaboration of statements already made in the Statement of Claim in different places. Some other lines sought to be added are not such which would change the cause of action or cause prejudice to the Respondent, however, we note that it would be up to the Claimant to establish its claims by leading evidence on the averments made. Hence we see no difficulty in allowing these proposed amendments.”

7. She also states, respondent shall not take any objection with regard to the grant of said claims (if proved) on the ground, the same has not been prayed for. It is for the petitioner to prove the said claims on the basis of a credible evidence. The said submission of the learned counsel for the respondent is taken on record.

8. I take on record the statement made by the counsel for the petitioner that the petitioner has in fact received an amount of Rs.7,34,373/- from the

respondent. I also take on record the statement made by the counsel for the petitioner that the final claim of the petitioner shall not exceed Rs.1,08,61,698/-.

9. In view of the above statements, impugned order is set aside. The two amendments which have been disallowed, are now permitted to be incorporated in the statement of claims by the petitioner.

This order shall not preclude the parties to take all pleas, as available to them both on facts and in law before the Arbitral Tribunal.

Petition stands disposed of.

IA 2638/2020

Dismissed as infructuous.

V. KAMESWAR RAO, J

MARCH 12, 2020/jg