

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 25.08.2021

+ **O.M.P. (COMM) 247/2021 AND IA Nos. 10535/2021 & 10537/2021**

BLS INTERNATIONAL SERVICES LIMITED Petitioner

versus

M/S DIGICALL GLOBAL PRIVATE LIMITED Respondent

Advocates who appeared in this case:

For the Petitioner : Ms Shweta Bharti, Advocate.

For the Respondent :

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner (hereinafter 'BLS') has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter the 'A&C Act') impugning an arbitral award dated 04.03.2020 (hereinafter 'the impugned award') delivered by the Arbitral Tribunal constituted of a Sole Arbitrator.

2. The impugned award was rendered in the context of the disputes that have arisen between the parties in connection with an Agreement

dated 12.09.2013 whereby the respondent (hereinafter 'Digicall') had agreed to provide Call Centre Operation Services to BLS. By the impugned award, the Arbitral Tribunal has awarded a sum of \$23,366.16/- plus \$4,344/- (aggregating to \$27,710.16/-) in favour of Digicall on account of payments due for services rendered by it.

3. The Arbitral Tribunal further held that withholding of the said amount by BLS was unjustified and had caused wrongful loss to Digicall. Accordingly, the Arbitral Tribunal also entered an award for preference interest on the said amount, at the rate of 9% per annum from the date of filing the suit [CS(OS) 3723/2014, which was filed on 29.11.2014 before this Court] till the date of the award. In addition, the Arbitral Tribunal also awarded future interest at the rate of 11% per annum on the awarded amount from the date of the impugned award till the date of realization, in the event the awarded amount was not paid within a period of thirty days from the date of the impugned award. In addition, the Arbitral Tribunal had also awarded costs in favour of Digicall. BLS had also preferred counter claims but the same were rejected by the Arbitral Tribunal.

4. The controversy in the present case arises in the following context:

4.1 On 17.05.2013, BLS was awarded a contract by the Embassy of India, Washington DC for providing certain services for processing of visas, other consular and allied services (hereinafter 'VISA Services'). BLS submits that it was approached by Digicall for providing Call

Centre Operation Services (hereinafter 'Call Centre Services') in respect of telephone calls originating from United States of America (USA) and Canada by applicants/prospective applicants for visas. BLS claims that the Call Centre Services were vital for BLS to render VISA Services to the Embassy of India, as contracted in terms of the Agreement dated 17.05.2013 entered into with the Embassy of India, Washington DC.

4.2 After certain negotiations, Digicall sent an email dated 01.06.2013, whereby Digicall agreed to provide the Call Centre Services for an initial period of sixty days, provided the said term was further extendable by thirty days on mutually agreed terms.

4.3 BLS claims that on 19.05.2013, the Embassy of India in Washington DC imposed a penalty of \$181,852.68/- on account of deficiency in VISA Services provided by BLS. BLS claims that the deficiency in VISA Services provided by it was on account of deficiency on the part of Digicall in providing the Call Centre Services.

4.4 On 12.09.2013, BLS entered into an agreement with Digicall (hereinafter 'the Agreement'), whereby Digicall agreed to provide the Call Centre Services to BLS for the consideration stated therein.

4.5 BLS submits that the Call Centre Services provided by Digicall were deficient and it had received several complaints in that regard. Further, BLS claims that it had sent several communications to Digicall pointing out certain deficiencies and expressing dissatisfaction as to the quality of the Call Centre Services being provided by Digicall.

4.6 By an email dated 15.01.2014, BLS terminated the Agreement with Digicall. Immediately thereafter on 17.01.2014, Digicall called upon BLS to clear the outstanding amount of \$108,906.11/-. BLS disputed the said amount and declined to pay the same.

4.7 On 29.11.2014, Digicall filed a Summary Suit being CS(OS) 3723/2014 in this Court seeking recovery of ₹65,34,366.60/- (Rupees Sixty-Five Lacs Thirty-Four Thousand Three Hundred Sixty-Six and Sixty Paise only) from BLS. Digicall claimed that BLS owed the said amount being the balance outstanding consideration for the Call Centre Services rendered by it.

4.8 BLS disputed the claims made by Digicall in the abovementioned suit. BLS filed its Written Statement and also raised a counter claim of ₹2,90,64,600/- on the account of loss allegedly suffered by it due to deficiency in the Call Centre Services provided by Digicall. Notwithstanding that BLS had made a counter claim against Digicall, it also filed an application under Section 8 of the A&C Act [IA No. 20382/2015 in CS(OS) 3723/2014], praying that the parties be referred to arbitration. According to BLS, the parties had agreed to refer the disputes to arbitration in terms of the Arbitration Clause, as included in the Agreement dated 12.09.2013.

4.9 The aforesaid application preferred by BLS under Section 8 of the A&C Act, was allowed by an order dated 02.11.2017 and, the parties were referred to arbitration.

4.10 The Arbitral proceedings culminated in the impugned award.

5. Ms Bharti, learned counsel appearing for the petitioner assailed the impugned award on two fronts. First, she submitted that the impugned award is patently illegal as the Arbitral Tribunal had awarded payments in respect of invoices that were raised by Digicall in the name of BLS International FZE, Dubai, UAE (a wholly owned subsidiary of BLS) and the said company was not a party to the arbitral proceedings. Second, she submitted that the Arbitral Tribunal had summarily rejected the counter claim without examining the evidence on record. According to BLS, the said evidence clearly established deficiency in the Call Centre Services.

6. The first question to be examined is whether the impugned award is vitiated on account of patent illegality as the amount awarded by the Arbitral Tribunal in favour of Digicall is stated to be against the invoices raised by Digicall in favour of another company – BLS International FZE, Dubai, UAE.

7. At the outset, it is important to note that it is not BLS's case that the invoices raised by Digicall – in respect of which the Arbitral Tribunal has entered an award against BLS – were in respect of services that were not rendered by Digicall to BLS but to its Dubai subsidiary. The Written Submissions filed on behalf of BLS before the Arbitral Tribunal, clearly accepted that Digicall had raised certain invoices on a monthly basis in the name of BLS International FZE, Dubai, UAE in respect of the services provided to BLS. Clearly, BLS cannot avoid the liability to pay for the Call Centre Services notwithstanding that the invoices were not raised in its name.

8. It is also relevant to bear in mind that it was Digicall's case that it had raised the invoices on BLS International FZE, Dubai, UAE at the instance of BLS. Digicall claimed that it had revised the said invoices at the instance of BLS.

9. In the given circumstances, this Court is unable to accept that the impugned award is vitiated on account of any patent illegality appearing on the face of the award on the aforesaid ground, as urged on behalf of BLS.

10. The next question to be examined is whether the impugned award is patently erroneous or is otherwise opposed to the public policy of India, inasmuch as, the Arbitral Tribunal has rejected the counter claims raised by BLS. The contention that the impugned award is vitiated on the aforesaid ground is unmerited as well. Concededly, BLS had not raised any claim for loss or damages against Digicall at the material time on account of deficiency of the Call Centre Services.

11. Ms Bharti referred to various communications sent by BLS expressing its dissatisfaction as to the services rendered by Digicall. However, the said communications do not, even remotely, suggest that Digicall would be liable for any damages or liable to pay compensation for the loss that may be suffered by BLS on account of any deficiency in the Call Centre Services. No such claim was made by BLS at the material time. In the circumstances, the Arbitral Tribunal had found that BLS's counter claims for damages on account of deficiency in services, was an afterthought and had been raised as a counterblast to

Digicall's action for recovery on the amounts due for the services rendered.

12. Ms Bharti does not dispute that BLS had never put Digicall to any notice that it was suffering losses or had suffered losses, on account of deficiency of the Call Centre Services, prior to filing of the counter claims. BLS had complained about the quality of the Call Centre Services to Digicall, but there is no communication putting Digicall to notice that BLS would hold Digicall responsible for the same and would claim damages for it. Thus, the aforesaid conclusion of the Arbitral Tribunal that BLS's counter-claims are an afterthought and were filed as a counterblast to the claims made by Digicall, cannot be said to be patently illegal or suffering from any perversity.

13. Further, there is no material on record, which would substantiate that BLS had suffered any loss or damage on account of deficiency of the Call Centre Services provided by Digicall. BLS had sought to substantiate its counter claims solely by referring to the penalty imposed by the Indian Embassy on account of the deficiency of VISA Services rendered by BLS.

14. Ms Bharti pointed out that Indian Embassy at Washington DC had imposed penalty of \$1,81,852.68/- on BLS and contended that the same was on account of deficiency of the Call Centre Services rendered by Digicall. However, there is no material to establish that the aforesaid penalty was levied on BLS on account of deficiency of Call Centre Services. The said penalty had been imposed by the Indian Embassy on

account of deficiency of the VISA Services that were outsourced to BLS. The said services included issuance of Visa/OCI/PIO Cards and Surrender of Renunciation of Indian Citizenship certificates, application support services etc.

15. It is also material to note that BLS had disputed that there was deficiency in rendering VISA Services but had subsequently, without prejudice to its contention, offered to settle the disputes by paying an amount of \$1,25,000/-. The said offer was accepted by the Government of India and both the parties (BLS and the Government of India) secured a consent arbitral award dated 28.04.2017.

16. In view of the above, the conclusion of the Arbitral Tribunal that BLS had failed to establish its counter claim and, accordingly, rejected the same, cannot be faulted.

17. This Court is unable to accept that the impugned award is liable to be set aside under Section 34(2A) and/or Section 34(2)(b)(ii) of the A&C Act on the grounds as urged on behalf of BLS.

18. The petition is unmerited and is, accordingly, dismissed. The pending applications are also disposed of.

VIBHU BAKHRU, J

**AUGUST 25, 2021
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