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

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Date of Judgment: 04th March, 2021

+ **O.M.P. (COMM) 91/2021 & I.A. No. 3301/2021 & I.A. No. 3302/2021**

AHLCON PARENTERALS
INDIA LTD.

..... Petitioner

Through: Dr B.K. Dash and Sh. Vishal
Verma, Advocate.

versus

SCAN BIOTECH LTD.

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

VIBHU BAKHRU, J. (ORAL)

1. Ahlcon Parenterals (India) Ltd. (hereinafter 'Ahlcon'), a company incorporated under the Companies Act, 1956, 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 31.08.2020, as amended on 16.09.2020 and 26.09.2020 (hereafter 'the impugned award') delivered by the Arbitral Tribunal comprising of a former judge of the Supreme Court of India as the Sole Arbitrator.

2. The impugned award has been rendered in the context of disputes that have arisen between the parties in relation to a Loan License Agreement (hereafter 'the Agreement') dated 25.01.2012, which was further on 21.01.2015 and 20.01.2017.

3. Ahlcon had claimed an amount of ₹3,87,07,178.39 along with interest. The Arbitral Tribunal partly allowed the claims and by the impugned award, entered an award for an amount of ₹1,39,76,327 with interest at the rate of 12% per annum from 25.01.2015 till the date of payment. The Tribunal further awarded proportionate cost in relation to the proceedings, incurred by the petitioner.

4. Ahlcon assails the impugned award to the limited extent that the Arbitral Tribunal has disallowed its claim to the extent of ₹2,57,61,614.52, which Ahlcon claims were due and payable in respect of products supplied to M/s Rowtech Ltd. and M/s Alter Ego Ltd.

5. Ahlcon is engaged in the business of manufacturing and selling pharmaceutical formulations. Ahlcon manufacturing facility is located at Bhiwadi, Rajasthan. Ahlcon states that it had spare capacities at its manufacturing facilities and the respondent (hereinafter 'Scan Biotech') was desirous of utilising the same. Therefore, the said parties entered into the Agreement dated 25.01.2012, whereby Ahlcon agreed to manufacture certain formulations on job work basis on the terms and conditions as set out in the Agreement. In terms of the Agreement, the formulations were to be manufactured strictly according to the specifications as provided by Ahlcon.

6. The Agreement (Loan License Agreement – LLA) continued to be in operation till 24.01.2019.

7. Ahlcon claimed that it had supplied finished products (formulations) to Scan Biotech and to other entities at the instance of Scan Biotech. It claimed that Scan Biotech used to accept deliveries of the formulations supplied in India at Ahlcon's manufacturing facility. However, insofar as the exports are concerned, Ahlcon used to dispatch the products in question to various entities at the instance of Scan Biotech.

8. The overseas entities included M/s Spring Bourne Management and Trading Ltd. at UK, M/s Rowtech Ltd. at UK (hereinafter 'Rowtech') and M/s Alter Ego Ltd. at Ukraine (hereinafter Alter Ego). Ahlcon claimed that M/s Spring Bourne Management and Trading Ltd. was a sister concern of Rowtech and Scan Biotech had issued a corporate guarantee to secure the payments due to Ahlcon for the formulations exported to M/s Spring Bourne Management and Trading Ltd. According to the Ahlcon, this established that supplies were made by it to Rowtech and AEL at the instance of the Scan Biotech.

9. The controversy involved in the present petition, essentially, relates to payments claimed by Ahlcon for the products exported to Rowtech and Alter Ego.

10. Whilst Ahlcon claimed that Scan Biotech was also liable to pay for the supplies made by Ahlcon to Rowtech and Alter Ego, Scan Biotech disputed the same. According to Scan Biotech the said

supplies were made against invoices raised on the said entities and Scan Biotech had no liability for such supplies. Amount due, if any, against such supplies was payable by those entities and not by Scan Biotech.

11. The claims made by Ahlcon in the Statement of Claims are summarised as under:-

Claim No. 1	An award declaring that the respondent is in breach of agreement dated 25.01.2012;
Claim No. 2	An Award for a sum of Rs. 3,87,07,178.39/- in favour of Claimant and against the Respondent
Claim No. 3	An Award of simple interest at the rate of 12% p.a. on the amount claimed as above from the date of cause of action till 31.07.2019, which is Rs. 1,27,19,810/- in favour of Claimant and against the Respondent
Claim No. 4	An Award the cost and expenses of the Arbitration Proceedings.

12. The amount claimed as Claim No.2 included claims against supplies made to Rowtech and Alter Ego.

13. After examining the pleadings, the Arbitral Tribunal struck the following issues:

- “a. Whether the Claimant is entitled to the claims stated in Para-18 of the Statement of claim? OPC
- b. Whether the Claimant is entitle to claim interest as prayed in Para 29 of the Statement of Claim or any other rate of interest and for what period? OPC
- c. Whether the Respondent is liable to pay or account for the dues shown in the Statement of Claim Para 18 against Rowtech Ltd. and Alter Ego Ltd. as claimed by the Claimant, if so, to what effect? OPC
- d. Whether the claims of the Claimant are barred by limitation as stated by the Respondent in their Statement of Defence? OPR
- e. Relief.”

14. As observed above, the controversy in the present case relates to the decision of the Arbitral Tribunal in respect of Issue No. (c) – whether Scan Biotech is liable to pay for the dues of Rowtech and Alter Ego?

15. The Arbitral Tribunal after examining the evidence and material on record, decided the said issue against Ahlcon and disallowed its claims in respect of the amounts invoiced or claimed to be due from the said companies.

16. It was Ahlcon’s case before the Arbitral Tribunal that Rowtech and Alter Ego were companies owned and controlled by promoters of Scan Biotech and for all intents and purposes, Scan Biotech, Rowtech and Alter Ego were a single economic entity.

17. It was Ahlcon case that the corporate veil of Rowtech and Alter Ego was liable to be pierced and Scan Biotech was liable to pay the amounts due for supplies made to the said entities and/or invoiced to the said entities.

18. The Arbitral Tribunal did not accept the aforesaid contention. Whilst, the Arbitral Tribunal held that in the given cases, the corporate veil of entities could be lifted by the Arbitral Tribunal; it did not accept that the facts in the present case warranted the same. The grounds on which the Arbitral Tribunal rejected Ahlcon's contention are articulated in Sub-paragraph 40.2 of the impugned award. The same is reproduced below:

“40.2 This Arbitral Tribunal will not have jurisdiction to adjudicate and pronounce upon the claims of the Claimant against the two foreign companies, *inter alia*, but primarily on the following grounds:

- a. Both the foreign companies are not signatory to, party to and have not even been mentioned in the Loan and License Agreement dated 25.01.2015.
- b. Both the foreign companies have nowhere claimed through the Respondent Company in relation to its transactions with the Claimant.
- c. Both the foreign companies are not parties in the present Arbitration Proceedings.

In fact, no Application has been filed by the Claimant before the Arbitral Tribunal to implead or join the foreign companies even as a performer Respondent much less as contesting Respondents in the present proceedings.

- d. The doctrine of lifting the corporate veil cannot be invoked against the foreign companies and the Respondent in the facts and circumstances of the case and particularly when they are non-parties to the Arbitration Proceedings.
- e. The principle of Alter Ego or lifting the corporate veil in any case cannot be invoked in violation to the fundamental principle of natural justice. The Arbitral Tribunal cannot in absence of the two foreign companies hold that the corporate veil can be lifted and the liability of the admitted transactions between the Claimant and the two foreign companies can be imposed upon the Respondent. For that matter, the Arbitral Tribunal would not be in a position to pass any Order against the two foreign companies in their absence.
- f. The Orders of the Hon'ble High Court dated 17.01.2019 would clearly come in the way of the Claimant to claim a relief against the two foreign companies in the present Arbitration Proceedings. Even assuming for the case of argument that in

the facts and circumstances of the case, the Arbitral Tribunal could lift the corporate veil and pass appropriate Orders, still the Order of the Hon'ble High Court would not only stare the Claimant in face but it will not be appropriate for this Arbitral Tribunal to take a view contrary or divergent to the view that the Hon'ble High Court has taken. The Arbitral Tribunal cannot by a deeming fiction treat the two foreign companies as part of the Respondent as well as the deemed to be referred to the present Arbitration Proceedings in the garb of the principle of Alter Ego."

19. It is at once clear from the above that the decision of the Arbitral Tribunal to reject Ahlcon's claim for amounts due against invoices raised on Rowtech and Alter Ego and/or for goods supplied, is supported on cogent reasons. And, this Court is unable to accept that the aforesaid decision is patently illegal on the face of the award or the same falls foul of the Fundamental Policy of Indian Law. The scope of the examination under Section 34 of the A&C Act is limited. The Court cannot supplant its view on that taken by the Supreme Court.

20. It is settled law that the Arbitrator is the final adjudicatory authority for determining questions of fact and the said findings, even though the same may be erroneous, are not amenable to judicial review unless it is established that the findings are perverse or patently illegal. The said principle has been clearly explained in the following

often quoted passage from the decision of the Supreme Court in *Associate Builders v. Delhi Development Authority: (2015) 3 SCC 49*:

“It must clearly be understood that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts.”

21. In *Ssangyong Engineering and Construction Co. Ltd. v. N.H.A.I.: (2019) 15 SCC 131*, the Supreme Court held as under:

“(v) "Patent illegality" appearing on the face of the award refers to such illegality as goes to the root of the matter, but which does not amount to be erroneous application of the law. As such, contravention of a statute not linked to public policy or public interest, cannot be said to amount to "patent illegality". Mere contravention of the substantive law of India is no longer a ground available to set aside an arbitral award.

(vi) A Section 34 court cannot re-appreciate evidence, even on the ground of patent illegality.”

22. It appears that there is ample evidence on record to show that Scan Biotech, Rowtech and Alter Ego are connected. According to

Ahlcon, 75% of the outstanding share capital of Roweck is held by Sameer Srivastava who was also one of the Directors of that company. It is stated that Sameer Srivastava and his brother Salil Srivastava are also Directors in various companies registered in India, including Rowtech Formulations India Pvt. Ltd. Further, it also appears from the record that Scan Biotech had issued a corporate guarantee for products supplied to Spring Bourne Management and Trading Ltd., a company incorporated in United Kingdom. It is contended that that company is a sister concern of Rowtech and is also a business partner of Scan Biotech. Scan Biotech also claims that Rowtech and Alter Ego had been clearing consignments on behalf of Scan Biotech at the final destination. They also arranged for storing of the goods till the same were sold. Ahlcon claims that Rowtech and Alter Ego had also acted as intermediaries for negotiating and concluding sales of goods on behalf of Scan Biotech.

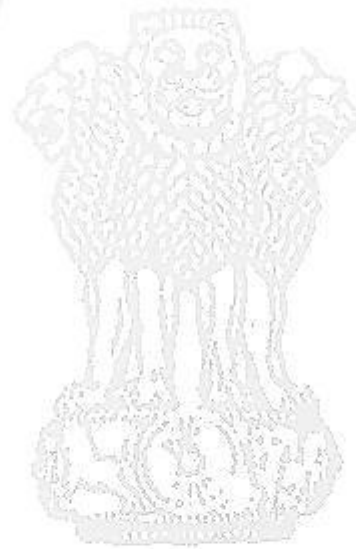
23. Undisputedly, the material produced by Ahlcon regarding the connection between Scan Biotech and Rowtech and Alter Ego is not insubstantial. However, even if it is accepted that a conclusion different from that reached by the Arbitral Tribunal, is plausible; the same cannot be a ground to interfere with the impugned award. As observed earlier, this Court does not act as the first appellate court and reappreciate the evidence led by parties. This Court cannot re-evaluate the evidence and supplant its opinion over that of the Arbitral Tribunal.

24. The conclusion of the Arbitral Tribunal is a plausible one and therefore, the impugned award cannot be interfered with in proceedings under Section 34 of the A&C Act. Plainly, none of the grounds as urged on behalf of Ahlcon falls within the scope of Sub-sections (2) and/or (2A) of Section 34 of the A&C Act.

25. This Court finds no reason to interfere with the impugned award. The petition is, accordingly, dismissed. The pending applications are also disposed of.

MARCH 04, 2021
MK/RK

VIBHU BAKHRU, J



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