IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-CARB-24-2022 (O&M)
Date of decision : - 16.12.2022

M/s Ford India Limited

.....Appellant

VERSUS

M/s Excel Automotive Private Limited & another

....Respondents

CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Puneet Bali, Senior Advocate with
Mr. Vipul Joshi, Advocate, for the appellant.

Mr. Naresh Markanda, Senior Advocate with
Mr. Rohan Markanda, Advocate, for respondent No.1.

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AUGUSTINE GEORGE MASIH, J.

CM-64-FCARB-2022

Prayer in this application under Rule 3-A (i) of Chapter – 6, Part – B, Volume – V of the Punjab and Haryana High Court Rules and Order is for grant of leave to file the appeal notwithstanding the absence of the name of the undersigned counsel in the Roll of Advocates prepared by this Court.

For the reasons stated in the application, the same is allowed.

Leave granted.

CM-65-FCARB-2022

Prayer in this application is for condonation of delay of 53 days in filing the appeal.

Notice of the application.

Mr. Rohan Markanda, Advocate, accepts notice on behalf of respondent No.1. Mr. Naresh Markanda, learned senior counsel, appearing for respondent No.1 states that no reply is required to be filed and the delay in filing the appeal may be condoned for the reasons as mentioned therein.

We are also satisfied as to the period spent in filing the appeal leading to the delay having been explained which is neither deliberate nor intentional but under the *bona fide* belief with no undue benefit having been extracted in the said process by the applicant – appellant, we accept the prayer made in this application and condone the delay of 53 days in filing the appeal.

CM-67-FCARB-2022

Exemption is granted from filing certified copy of the impugned award dated 31.03.2012 passed by the Sole Arbitrator, impugned judgment dated 30.03.2022 as well as from filing the entire arbitral record pertaining to the main appeal, subject to all just exceptions.

Application stands disposed of.

CM-68-FCARB-2022

Exemption is granted from filing certified/typed/legible copies of the annexures appended along with the main appeal, subject to all just exceptions.

Application stands disposed of.

FAO-CARB-24-2022

Challenge in this appeal is to the order passed by the Commercial Court at Chandigarh, dated 30.03.2022, vide which the objections preferred by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as '1966 Act') to the Arbitration Award dated 31.03.2012 passed by the Sole Arbitrator – respondent No.2, has been dismissed.

2. Learned senior counsel for the appellant has contended that the impugned order, as passed by the Commercial Court at Chandigarh, is not sustainable as it has failed to exercise its powers conferred on it under Section 34 of the 1996 Act. He asserts that the learned Sole Arbitrator has gone against the provisions of the agreement, which has been entered into between the parties. Relying upon Clause (f) of paragraph 13 of the Standard Provisions of the agreement, which was entered into between the parties, he contends that the contract could be terminated at will by the appellant by giving 120 days notice to the dealer i.e. respondent No.1. The said power having been exercised when notice dated 10.01.2004 had been issued by the appellant to terminate the agreement by giving a notice for the period as prescribed therein to respondent No.1 specifically mentioning that the agreement shall cease to operate w.e.f. 12.05.2004, the dealership of respondent No.1 came to an end and therefore, there was no liability thereafter. The award which has been granted beyond the period of 12.05.2004 for any act done at the end of respondent No.1 would not be sustainable.

It has further been asserted that the Arbitrator has wrongly proceeded to declare the termination to be illegal on the ground that the person, who has terminated the said agreement i.e. the Vice-President (Marketing, Sales & Service), was not the authorized person to do so, which is contrary to the pleadings and the assertions of the counsel before the Sole Arbitrator as this was never an issue raised nor was any such assertion at the end of respondent No.1. Submission has also been made by him that Clause E (ii) of the agreement has been totally ignored which expressly and explicitly authorized the President or Vice-President (Sales and Marketing) to terminate the agreement dated 10.02.2000. The claims which have been granted vide the impugned award are on the assumption that the termination of the agreement by the appellant was illegal. The effect thereof is that in case the finding of illegality of termination are not sustained, all the claims awarded on the said basis and upon the said contingency are liable to be set aside and rejected. Any claim beyond the period of termination i.e. May, 2004 (month of termination of agreement) till April, 2008 (month of filing the statements of claim by respondent No.1) could not have been granted as despite respondent No.1 being aware of the termination of the agreement continued to hold to the lease premises and its staff members for a period of almost four years, for which the appellant cannot be burdened. Similar is the argument raised by the learned senior counsel for the appellant with regard to the damages which have been granted to respondent No.1 as a consequence of termination of agreement.

3. Learned senior counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court in **Hajee S.V.M. Mohamed Jamaludeen Brothers and Co. Vs. Government of Tamil Nadu** (1997) 3 SCC 466, where, in the similar facts and circumstances, the Hon'ble Supreme Court had explained the position of law. Reliance has also been placed upon the two judgments of the Bombay High Court in **Midas**

Constructions Vs. Harikripa CHSL (2018) SCC Online Bombay 4867 and **Saibaba Automobiles Vs. Indian Oil Corporation Limited** (2013) SCC Online Bombay 514.

4. Senior counsel for the appellant has pointed out that in the impugned order, learned Commercial Court at Chandigarh, has not dealt with any of the legal objections which have been raised by the appellant against the award passed by the Sole Arbitrator. The Court has proceeded to reject the objections simply quoting the limited scope of interference as provided for under Section 34 of the 1996 Act by overlooking the powers conferred upon the Court to interfere where the Arbitrator has proceeded to ignore and overlook the terms and conditions of agreement and returned a perverse finding. The order passed by the Commercial Court is perverse and contrary to the settled provisions of law as the Arbitrator being a creator of a contract is bound by the terms thereof and its jurisdiction is limited to the question of reference and confines to the contracts.

5. Learned senior counsel for the appellant has also relied upon the judgment of the Hon'ble Supreme Court in **Associate Builder Vs. Delhi Development Authority** (2015) 3 SCC 49 to contend that the Arbitral Tribunal being bound by the terms of the contract, if such terms are contravened, it would render the award liable to be set aside under Section 34 of the 1996 Act. Non-assigning of reasons by the Arbitrator for an award would also amount to patent illegality on the face of the award. He, therefore, on these basis, contends that the impugned order dated 30.03.2022 deserves to be set aside and the objections as preferred by the appellant against the award of the Sole Arbitrator, dated 31.03.2012, may be

accepted.

6. On the other hand, learned senior counsel for respondent No.1 has supported the order passed by the Commercial Court at Chandigarh rejecting the objections which have been raised by the appellant under Section 34 of the 1996 Act to the award of the Arbitrator by asserting that the grounds for assailing the order are untenable as they are beyond the scope of Section 34 of the 1996 Act. He asserts that the Court cannot set aside or interfere with the award where the objections which have been raised do not fall within the ambit of Section 34. He has placed reliance upon the judgment of the Hon'ble Supreme Court in **Delhi Airport Metro Express Pvt. Ltd. Vs. Delhi Metro Rail Corporation Ltd.** (2022) 1 SCC 131. Reference has also been made to the judgment of the Hon'ble Supreme Court in **MMTC Limited Vs. Vedanta Limited** (2019) 2 Supreme Court Cases 163.

7. Learned senior counsel has contended that the Court cannot act as an appellate forum while exercising its jurisdiction under Sections 34/37 of the 1996 Act. Within the limited jurisdiction and scope as provided for, the Court below has rightly not exceeded to its jurisdiction while passing the impugned order. Learned senior counsel for respondent No.1 has also projected and emphasized upon the fact that two grounds which have been pressed into service by the appellant are the findings of the learned Arbitrator on the issue of termination of agreement being perverse, illegal and beyond the terms of the contract and that the compensation awarded to respondent No.1 for the period 2004 to 2008 are not sustainable. His submission is that as regard the issue of termination of contract is

concerned, in the objections as raised under Section 34 of the 1996 Act by the appellant, no such ground was urged in the said objections. Appellant has failed to assail any of the grounds which have been referred to and relied upon by the learned Arbitrator holding the termination to be illegal and against the terms of the contract. The hostile approach of the officers of the appellant which resulted in illegal termination of the contract, which was pleaded on the part of respondent No.1, had resulted in illegal termination of the agreement and so found by the Arbitrator, has not been assailed in the objections under Section 34 and therefore, the appellant is precluded from taking any new reason in the present proceedings. In support of this contention, he has relied upon the judgment of the Hon'ble Supreme Court in **State of Maharashtra Vs. Hindustan Construction Company Limited** (2010) 2 Supreme Court Cases 518.

8. As regards the compensation as has been awarded by the Sole Arbitrator, learned senior counsel for respondent No.1 has contended that the amounts, which have been awarded as compensation, are based upon documentary evidence which have been produced on record. Once the pleadings have been substantiated, the compensation as has been awarded by the Arbitrator cannot be faulted with. There is no ground to assail the findings of fact rendered by the learned Sole Arbitrator when they are found to be based upon the evidence on record. In any case, he asserts that the Court has no jurisdiction to interfere on the question of findings returned by the learned Arbitrator unless the same are perverse and based on no evidence. On this basis, he submits that the present appeal would not survive and deserves to be dismissed as the impugned order dated

30.03.2022 passed by the Commercial Court at Chandigarh being in accordance with law, call for no interference by this Court in the present appeal.

9. We have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the relevant documents, the relevant portion of the award dated 31.03.2012 as also the impugned order dated 30.03.2022 passed by the Commercial Court at Chandigarh.

10. The first thing which needs to be emphasized upon is that the Court while exercising its jurisdiction under Sections 34/37 of the 1996 Act, is not sitting as an Appellate Authority and therefore, has to restrict its power of interfere within the domain as mandated under aforesaid sections. The grounds for setting aside an arbitral award have been laid down under the statute and therefore, the Court is to restrict its interference within the scope thereof and thus, cannot expand it any further. The Court cannot substitute its mind for that of the Arbitral Tribunal when a different possible view qua the interpretation of the clauses of an agreement may exist. Interference would be called for if the terms of an agreement are clear and lucid and completely different version is accepted by the Arbitral Tribunal. The Court, therefore, interferes in case the award is contrary to the terms and conditions of the agreement entered into between the parties or where the award had been passed by the Arbitrator contrary to the terms of the agreement. It needs to be added here that generally, the interpretation given to a clause of the agreement by the Arbitrator is to be accepted provided the same is in consonance with the letter and spirit of the

agreement but if the interpretation given is by misreading the clause or overlooking and ignoring the same leading to a conclusion which is perverse and patently illegal, the Court may exercise its jurisdiction to interfere under Sections 34/37 of the 1996 Act. In other words, it is open to the Court to consider whether the award is against the specific terms of the agreement and if it finds so, interference with it on the ground of patent illegality and opposite to the public policy of India would be permissible and justified. Reference for support of this proposition can be made to the judgment in **Delhi Development Authority Vs. R.S. Sharma and Company** (2008) 3 Arb. LR 362 (SC).

11. The admitted facts are that the agreement, which was entered into between the parties on 10.02.2000 was to subsist upto 31.08.2002. There being no renewal of the said agreement under Paragraph 20, Paragraph 23 of the Standard Provisions of agreement would come into play as none of the parties terminated the said agreement but continued to have business relation and transactions in consonance and in continuance with the agreement dated 10.02.2000. The effect thereof was that the said agreement continued to operate and the parties were governed by the same terms and conditions as entered into between the appellant and respondent No.1. It is not in dispute that respondent No.1 did not invoke any of the clauses as contained in paragraph 13 to terminate the agreement between the parties, rather the appellant proceeded to issue notice dated 10.01.2004 terminating the agreement at will by invoking its powers as contained therein by giving 120 days notice to respondent No.1. It was specifically mentioned therein that the Dealer Sales and Service Agreement would be

terminated with effect from close of business on 11.05.2004 and that respondent No.1 will cease to be a dealer of Ford India Private Limited effective from 12.05.2004.

12. Since the appellant had to receive certain 'C' forms from respondent No.1 which were not issued, a legal notice was served upon respondent No.1 on 09.12.2004 which was replied by respondent No.1 raising a claim of Rs.49,59,508/- which was responded to by the appellant vide letter dated 19.01.2005. Reference of the alleged dispute of non-settlement of its various claims to arbitration was sought by respondent No.1 on 06.01.2007 by approaching the High Court of Punjab and Haryana for appointment of Sole Arbitrator under Section 11 of the 1996 Act leading to appointment of the Sole Arbitrator vide order dated 15.02.2008.

13. The statement of claim was filed by respondent No.1 on 19.04.2008. After the pleadings and the leading of evidence by the parties, learned Sole Arbitrator proceeded to give his award on 31.03.2012, wherein it was held that the termination of agreement vide notice dated 10.01.2004 by the appellant was illegal as the agreement dated 10.02.2000 came to an end in terms of Clause (G) of the agreement on 31.08.2002 itself as there was no express renewal of the agreement by the parties beyond 31.08.2002. Since the agreement had ceased to exist w.e.f. 31.08.2002, the question of termination of the agreement on 10.01.2004 did not arise. Another aspect which was concluded by the Arbitrator was that the termination letter was signed by the Vice-President (Marketing, Sales and Service) which was not the Competent Authority as it was not in conformity with the terms of agreement. Apart from that, there being denial of principles of natural

justice as there was no notice issued prior to termination of the agreement notice dated 10.01.2004. Another aspect which was concluded by the Sole Arbitrator was that the termination of the agreement was as a result of personal vendetta of some officers of the appellant against respondent No.1. On all these counts, it was concluded that the termination of the agreement was illegal and hence, non-est in the eyes of law.

14. The objections which have been raised by the appellant to the impugned award dated 31.03.2012 would primarily be dependent upon the validity or otherwise of the termination of the agreement which was entered into between the parties dated 10.02.2000 by the appellant through notice dated 10.01.2004 to be effective from 12.05.2004. In case, it is found that that the termination of the agreement was in consonance with Clause F of paragraph 13 of the Standard Provisions of the agreement, the award itself cannot sustain as it would have an effect of dis-entitling respondent No.1 to the damages and other claims as has been projected by it in its claim petition to the Sole Arbitrator.

15. Briefly, the facts of the case which would be relevant for disposal of the present appeal would be that an agreement was entered into between the appellant and respondent No.1 on 10.02.2000, wherein the appellant being the manufacturer of automobiles with the brand name of Ford India Private Limited appointed respondent No.1 as an authorized dealer for sale and service of automobiles/cars so manufactured by the appellant. The agreement was initially for a period of two years i.e. till 31.08.2002. Both the parties had a right to terminate the dealership agreement in terms of the clause of termination as contained in paragraph 13

of the Standard Provisions of agreement on happening of such events as were pointed out therein. Clause (a) of Paragraph 13 empowered the dealer – respondent No.1 to terminate the agreement at will at any time by giving written notice to appellant at least 30 days prior to the effective date of such termination. Clause (f) thereof gave exclusive right to the appellant to terminate the agreement at will at any time by giving a written notice to respondent No.1 at least 120 days prior to the effective date of such termination. Paragraph 20 deals with the new agreement and paragraph 23 deals with the transactions after termination of agreement which included not only the events that occurring after termination or non-renewal of the agreement, wherein it is stated that either of the parties has any business relation with other party, that would not constitute a renewal of the agreement and such relation shall be governed by the terms identical with provisions of the agreement relating thereto unless the parties execute or renew the agreement superseding this agreement.

16. The relevant clauses/paragraphs with regard to the subsistence or termination of the agreement between the parties as referred to above read as follows:-

Clause G:

This agreement shall continue in force and effect for a term commencing on the date of its execution and expiring August 31st 2002 unless sooner terminated under the provisions of paragraph 13 of the Standard Provisions.

13. Termination

(a) By dealer at Will. The Dealer may terminate this Agreement at any time at will by giving the Company at least thirty (30) days prior written notice of the effective date thereof.

(b) XXXX XXXX XXXX

(c) XXXX XXXX XXXX

(d) XXXX XXXX XXXX

(e) XXXX XXXX XXXX

(f) By Company at Will. The Company may terminate this Agreement at will at any time by giving the Dealer at least one hundred and twenty (120) days prior written notice of the effective date thereof.

(g) XXXX XXXX XXXX

(h) XXXX XXXX XXXX

20. New Agreement

The termination or nonrenewal of this Agreement by the Company in connection with the offer by the Company of a new sales and service agreement for one or more Company Products to the Dealer or the Dealer's successor in interest shall not give rise to the rights and obligations provided in paragraphs 15 and 17 with respect tot he Company Products included in such new agreement, unless otherwise specified by the Company in writing.

23. Transactions after termination

In the event that after termination or nonrenewal of this Agreement, either party has any business relation with the other party, such relations shall not constitute either a renewal of this Agreement or a waiver of such termination or nonrenewal, but all such relations shall be governed by terms identical with the provisions of this Agreement relating thereto and by such supplemental terms and conditions as the Company may determine unless the parties execute a new agreement superseding this Agreement.

17. Testing these findings on the anvil of the terms of the agreement entered into between the appellant and respondent No.1, it would be apparent that as per the agreement dated 10.02.2000 entered into between the parties, the said agreement was to come to an end on 31.08.2002. Clause (G) of the agreement stipulated that the agreement shall expire on 31.08.2002 unless terminated sooner under the provisions of paragraph 13 of the Standard Provisions. Therefore, paragraph 13 of the Standard Provisions would be relevant, which deals with the termination. Sub-clause (a) of paragraph 13 empowered the dealer i.e. respondent No.1 to terminate the agreement at will at any time by giving the company i.e. the appellant at least 30 days prior written notice to the effective date thereof. The other clauses related to various contingencies which would lead to the termination of the agreement. Sub-clause (f) of paragraph 13 gives the power to the appellant company to terminate the agreement on will at any time by giving dealer – respondent No.1 at least 120 days prior written notice of the effective date thereof. Paragraph 23 deals with transactions after termination where it is acknowledged that after termination or non-renewal of the agreement if the parties continue with the business transactions and relations such matters shall be governed by the terms identical with the provisions of the agreement entered into between the parties i.e. 10.02.2000 relating thereto and by such supplemental terms and conditions as the company may determine unless the parties executed a new agreement superseding this agreement.

18. A perusal of these terms makes it amply clear that the agreement dated 10.02.2000 was valid upto 31.08.2002. It is not in dispute that there was no termination or renewal of this agreement. The terms and conditions of their business relations were to be, thus, governed by paragraph 23 of the Standard Provisions attached to the agreement dated 10.02.2000, which laid down that the relationship shall be governed by the terms identical to the provisions of the agreement. The business relations, therefore, continued and the terms of the agreement dated 10.02.2000 held the field. If that be so, in case the termination of the agreement, paragraph 13 of the Standard Provisions would have to be invoked by any of the parties which intended to bring to an end the agreement dated 10.02.2000. Paragraph 13 sub-clause (a) gives the authority to the dealer to terminate the agreement on will by giving 30 days notice to the appellant in writing of the effective date thereof. Similarly, paragraph 13 sub-clause (f) gives authority to the appellant company to terminate the agreement dated 10.02.2000 at will by giving respondent No.1 a written notice of 120 days prior to the effective date of such termination.

19. It is an admitted position that the notice dated 10.01.2004 was served upon respondent No.1 by the appellant for termination of the earlier sales and service agreement dated 10.02.2000 w.e.f. 12.05.2004. It may be pointed out that the said notice was signed by the Vice-President (Marketing, Sales and Service). As per Clause E (ii) of the agreement dated 10.02.2000, respondent No.1 had agreed that no one except the President or Vice-President (Sales and Marketing)of the appellant is authorized on behalf of the appellant to make or execute any other agreement relating to

the subject matter hereof or in any manner, to modify the terms thereof or to terminate this agreement, and that only by a written instrument. Therefore, the Competent Authority to terminate the agreement dated 10.02.2000, apart from the President, was the Vice-President (Sales and Marketing) of the appellant.

20. As regards the aspect of violation of principles of natural justice which has also been invoked by the Arbitrator to uphold that the termination was bad, suffice it to say that as per paragraph 13 sub-clauses (a) and (c) thereof, as referred to above, both respondent No.1 and the appellant could terminate the agreement on will at any point of time by giving prior written notice of the effective date thereof for a period as was laid down therein i.e. 30 days for respondent No.1 and 120 days for the appellant. There was, thus, no question of giving prior notice or hearing either of the parties before the termination of the agreement provided the period specified therein for giving a written notice stood completed. The conclusion which has been drawn by the Arbitrator could not have been reached as per the agreement entered into between the appellant and respondent No.1, dated 10.02.2000. The Arbitrator has, therefore, returned its findings totally contrary to the terms of the agreement which are clear and specific without any ambiguity calling for any interpretation.

21. The award, therefore, being against the specific terms of the contract and patently illegal as found above, we are of the view that the interference under Section 37 of the 1996 Act is called for in the present appeal.

22. It may be added here that the compensation/damages as has

been awarded by the Sole Arbitrator as claimed by respondent No.1 are set aside being subsequent to the period of termination of the agreement dated 10.02.2000 which limitation stands approved, the said claims being not maintainable could have not been accepted.

23. With the award being found to be not in consonance with the specific terms of the agreement, the objections as raised by the appellant are accepted and as a result thereof, the award dated 31.03.2012 passed by the Arbitrator is set aside. In view of the above, this appeal is allowed and the impugned order dated 30.03.2022 passed by the Commercial Court at Chandigarh is set aside as the said Court has failed to exercise its powers under Section 34 of the 1996 Act.

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In the light of the disposal of the main appeal, no orders are required to be passed in the present application for stay as the same has been rendered infructuous.

Disposed of as such.

(AUGUSTINE GEORGE MASIH)
JUDGE

16.12.2022 **(SANDEEP MOUDGIL)**
Harish **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*