

**252 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-1018-2021

Date of Decision: 7th February, 2023

M/s Bharti Airtel Ltd.

... Petitioner

Versus

M/s. Ghanghas Communications and another

... Respondents

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sanjiv Pabbi, Advocate for the petitioner.

AVNEESH JHINGAN , J.

1. Aggrieved of order dated 31.10.2019 dismissing of objections under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act'), the present appeal is filed.

2. Shorn of unnecessary details, the relevant facts are that M/s Ghanghas Communications (hereinafter referred to as 'the respondent') was a distributor of the appellant-company. The agreement between the parties dated 27.7.2008 provided for dispute resolution through arbitration.

3. The respondent raised a dispute claiming a sum of Rs. 9,70,000/- along with interest. The amount included refund of amount of Rs.6 lakhs, on account of non-supply of material. The arbitrator vide award dated 9.5.2016 found respondent to be entitled to sum of Rs.6,50,000/- along with interest @ 18% per annum from the date of award till the date of payment (including security of Rs. 50,000/-).

4. The respondent to substantiate its claim of refund of Rs.6 lakhs filed an affidavit of the proprietor and he appeared as a witness withstood the cross-examination. The respondent also placed on record

affidavit in form of company transaction which recorded issuance of demand draft on 24.10.2008. The appellant denied the liability and took the defence that the draft of rupees six lakhs was paid by M/s. Tayal Traders. A photocopy of the affidavit of proprietor of M/s. Tayal Traders (Jatinder Tayal) was produced.

5. The Arbitrator took into consideration that only a photocopy of the affidavit was annexed with the reply and in spite of availing number of opportunities, Jatinder Tayal had not come present to support the affidavit. Further, that the dispute arose in the year 2011 and the affidavit is of the year 2013. The arbitrator concluded that claimant was able to prove payment of Rs. 6 lakhs by means of demand draft but no goods were supplied and it was not case of the appellant that goods were supplied to M/s. Tayal Traders. The claim of the respondent for refund of rupees six lakhs along with interest was allowed.

6. Aggrieved of the award, both the parties filed objections under Section 34 of the Act, which were dismissed on 31.10.2009.

7. Learned counsel for the appellant submits that the claim of rupees six lakhs was wrongly allowed as the payment was not made by the respondent. It is further argued that photocopy of affidavit of Jatinder Tayal was not considered.

8. The scope of interference under Section 37 of the Act is limited. In '*Haryana Tourism Limited vs. M/s. Kandhari Beverages Limited*, 2022 (3) SCC 237, the Supreme Court held as under :-

“ 8. As per settled position of law laid down by this Court in a catena of decisions, an award can be set aside only if the award is against the public policy of India. The award can be set aside under Sections 34/37 of the Arbitration Act, if the award is found to be contrary to, (a) fundamental policy of Indian Law; or (b) the interest of India; or (c) justice or morality; or (d) if it is patently illegal. None of the aforesaid exceptions shall be applicable to the facts of the case on hand. The High Court has entered into the merits of the claim and has decided the appeal under Section 37 of the Arbitration Act as if the High Court was deciding the appeal against the judgment and decree passed by the learned trial court. Thus, the High Court has exercised the jurisdiction not vested in it under Section 37 of the Arbitration Act. The impugned judgment and order passed by the High Court is hence not sustainable.”

9. In proceedings under Section 37 of the Act, the evidence is not to be re-appreciated. There is another aspect of the matter that the appellant had produced the photocopy of the affidavit and in spite of availing number of opportunities, Jatinder Tayal was not examined to support the affidavit. The evidence on record including the deposition of Manager (Finance) of appellant was duly considered to conclude that respondent had made payment of rupees six lakhs to the appellant by way of demand draft, no material was supplied to the respondent and claim of rupees six lakhs was allowed along with interest.

10. No interference is called for. Appeal is dismissed.

(AVNEESH JHINGAN)
JUDGE

7th February, 2023

anuradha

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No