

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-1798-2015 (O&M)
Date of Decision:- 17.8.2023

Medsave Healthcare (TPA) Ltd. and another

...Appellants

Versus

Patel Hospital Pvt. Ltd. and another

...Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Samir Rathore, Advocate for the appellants.

Mr. David Sardana and Mr. Puneet Sharma,
Advocate for the respondents.

GURVINDER SINGH GILL, J.

1. The appellants assail order dated 16.1.2015 passed by learned District Judge, Chandigarh whereby a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') challenging award dated 4.3.2013 (Annexure A-1) filed by the petitioner has been dismissed.
2. The appellant – Medsave Healthcare Ltd. had appointed respondent - Patel Hospital Private Limited for providing medical services/hospitalization, as may be required to the beneficiaries and clients of '*Bhai Ghanaiya Sehat Sewa Scheme*' on cashless basis. A Memorandum of Understanding (MOU) dated 20.7.2008 was executed amongst the parties. However, subsequently vide letter dated 13.2.2009, the respondent - Patel Hospital Private Limited

was de-empanelled without affording any opportunity of hearing and without offering any explanation & without any show cause notice. Since there was an outstanding payment of Rs. 17,67,271/- due to be paid to the respondent/Hospital, the respondent/Hospital invoked arbitration clause of MOU dated 20.7.2008 by moving an application under Section 11(4) of the Arbitration and Conciliation Act leading to appointment of a sole Arbitrator who delivered his award dated 4.3.2013 (Annexure A-1).

3. The appellants challenged the said award by way of filing a petition under Section 34 of the Act before the District Judge, Chandigarh but the same was dismissed vide judgment dated 16.1.2015, which is assailed before this Court.
4. The learned counsel for the appellants submitted that the impugned award dated 4.3.2013 (Annexure A-1) as well as order dated 16.1.2015 passed by learned District Judge, Chandigarh have been passed without appraising the evidence on record and that the findings as regards entitlement of the respondent/Hospital to an amount of Rs. 17,66,337/- as outstanding amount have been returned without there being any evidence to support the same. It has further been submitted that even the amount of Rs. 2 lacs, which has been awarded to the respondent/Hospital towards loss of reputation and business is also not substantiated by any evidence. The learned counsel pressed into service a judgment of Hon'ble Apex Court rendered in 2014(9) SCC 212 titled as M/s Anand Brothers P. Ltd. Tr. M.D. Vs. Union of India and others, to contend that an Arbitral Tribunal is obliged to state the reasons upon which the findings in the award are passed.

5. Opposing the appeal, the learned counsel for the respondents submitted that it is on very limited grounds that the appellants may assail the award under provisions of Section 34 of the Act and that since no such ground or condition exists in the present case, the appeal deserves to be dismissed.
6. This Court has considered the aforesaid submissions.
7. Undisputedly, it is only on very limited grounds that the award of the Arbitrator may be assailed in terms of Section 34 of the Act, which for the sake of ready reference is reproduced herein-under :-

“34 Application for setting aside arbitral award. —

1. Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).
2. An arbitral award may be set aside by the Court only if—
 - (a) the party making the application furnishes proof that—
 - (i) a party was under some incapacity, or
 - (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or
 - (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
 - (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

- (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless

such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or
- (ii) the arbitral award is in conflict with the public policy of India.

Explanation 1 --For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,--

- (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or
- (ii) it is in contravention with the fundamental policy of Indian law; or
- (iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.--For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappraisal of evidence.

- 3. xxx xxx xxx
- 4. xxx xxx xxx
- 5. xxx xxx xxx
- 6. xxx xxx xxx”

8. Upon perusal of the award dated 4.3.2013 (Annexure A-1), this Court does not find any infirmity in the same so as to justify any interference by the Court in terms of Section 34 of the Act, keeping in view the limitations prescribed under Section 34 of the Act. The respondent – Patel Hospital

Private Limited was supposed to provide a cashless insurance facilities to the patients at the time of admission and it was subsequently that the bill used to be raised. A perusal of award of the Arbitrator shows that the Arbitrator has taken into consideration the Bill (Annexure C/3) which had been submitted by the respondent – Patel Hospital Private Limited, in respect of which the payment was stated to be outstanding. Nothing to the contrary had been brought on record and it was on said count that the Arbitrator had passed the award. Similarly, it goes without saying that on account of de-empanelment of the respondent/Hospital, the respondent/Hospital would have suffered loss in reputation and in his business. Although, the respondent/Hospital claimed an amount of Rs.10 lacs but only an amount of Rs. 2 lacs had been awarded which cannot be said to be unreasonable.

9. As far as the judgment pressed into service by the learned counsel representing the appellants in M/s Anand Brothers' case (supra) is concerned, there is no dispute as regards the broad prepositions of law laid therein to the effect that the award of the Arbitrator has to be well reasoned. In the present case, it cannot be said that the award of the Arbitrator is non-speaking or is not well reasoned or that the conclusions are not well reasoned. As such, the said judgment is not of much avail to the appellants.
10. Having regard to the limited scope of Section 34 of the Act, this Court does not find any ground to interfere with the findings in this regard as recorded by the Arbitrator and affirmed by the learned District Judge.
11. The learned counsel for the appellants also assailed the awarding of interest, as has been awarded by the Arbitrator in respect of the period prior to the

pendency of the arbitration proceedings and in respect of the period *pendente lite* and the period after passing of award till its realization. While this Court does not find any infirmity in awarding such interest by the Arbitrator, as has also been upheld by the District Judge, it is clarified that it is only the interest on the principle amount without any compounding effect, to which the respondent/Hospital would be entitled to.

12. Finding no merit in the present appeal and the same is hereby dismissed.

17.8.2023

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(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No