

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order : 11th April, 2023**
+ O.M.P. 8/2020 & I.A. 11919/2020 & I.A. 6144/2021
MANDAL AND ASSOCIATES & ORS. Petitioners

Through: Mr. Rajiv Dewan and Mr. Angad Singh, Advocates

versus

HERO FINCORP LIMITED Respondent

Through: None

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter "Arbitration Act") has been filed on behalf of the petitioners seeking the following reliefs:

"In light of the aforesaid facts and circumstances it is most respectfully prayed that the award dated 29.01.2020 passed by Sole Arbitrator Shri Anshul Garg, Advocate in Arbitration case titled Hero Fincorp Ltd. Versus M/s Mandal & Associates & Ors. being Case Ref. No. HFCL/AG/2019-20-007 be set aside and quashed for being totally non application of mind and against the public policy.

Pass any other orders or directions as may be deemed fit and proper in the circumstances of the case."

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2. The learned counsel for the petitioners submitted that the respondent sanctioned a loan of Rs. 3,64,21,000/- in favour of the petitioners vide Sanction Letter bearing reference No. 1779613 dated 28th February 2017. Subsequently, the parties entered into two Loan Agreements dated 28th February 2017 on mutually agreed and acknowledged terms and conditions for disbursement of first tranche of the loan of Rs.3,30,66,000/- of the said loan amount within 180 months along with interest at 10.65% per annum by way of Equated Monthly Installments (hereinafter “EMI”), and the second tranche of loan amount of Rs. 33,55,000/- was disbursed on 31st May 2018 after due deduction of process fee and insurance etc.

3. It is submitted that the petitioners were regular in paying the EMI of the loan and also adhered to the terms of repayment *qua* both the Loan Agreements. It is submitted that due to certain financial difficulties, the petitioners could not pay the EMI for the month of June 2019 and as a result the respondent Company issued a Loan Recall Notice dated 20th June 2019 to the petitioners thereby calling upon them to pay the dues as of 17th June 2019 to the tune of Rs.3,65,57,580/- along with the applicable interest and charges as agreed between the parties.

4. The learned counsel submitted that due to the said disputes, the respondent filed an arbitration claim and arbitration proceedings between the parties were initiated. On 29th January 2020 the learned Arbitrator passed the impugned Award, of which the petitioner is aggrieved and is now before this Court challenging the same.

5. It is submitted that at the time of passing the impugned Award, no

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cause of action had arisen since the amount pending for payment for June 2019 was duly paid by the petitioners. It is further submitted that the impugned Award and the findings therein are patently illegal, against public policy, against the fundamental policy of India and hence, liable to be set aside. Reliance has been placed upon the judgments passed in *Associate Builders vs. Delhi Development Authority*, (2015) 3 SCC 49 and *ONGC Ltd. vs. Saw Pipes Ltd.*, (2003) 5 SCC 705.

6. The learned counsel further submitted that the learned Arbitrator did not properly consider the submissions of the parties while passing the Award. The impugned Award is contrary to the substantive provisions of law as well as the terms of the Letters dated 28th August 2020 and 29th August 2020. It is submitted that the impugned Award proceeded primarily on the basis that the petitioners defaulted in payment of loan, which is not the factually correct position as the petitioners have already made the payment of amounts due to respondents, who have accepted the payments with an assurance that the litigations pending against the petitioners will be withdrawn.

7. It is submitted that the impugned Award is unlawful, perverse and has been passed without application of mind and hence, is liable to be set aside.

8. None has been appearing for the respondent despite the order of the Predecessor Bench of this Court whereby the petitioners were directed to communicate a copy of the order dated 4th August 2022 to the respondent and it was also stated that the respondent be represented before the court on the next date. However, till date none has entered appearance on

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behalf of the respondents. This Court does not find any reason to keep the instant petition under Section 34 of the Arbitration Act pending and shall proceed with the assistance of the learned counsel for the petitioners.

9. Heard the learned counsel for the petitioners and also perused the record including the impugned Award.

10. The petitioners have invoked Section 34 of the Arbitration Act to challenge the impugned Award dated 29th January 2020. The position regarding a challenge to an arbitral award has been settled. A party to the arbitration proceedings bringing a challenge under Section 34 must satisfy the test laid down by virtue of the provisions of the Arbitration Act as well as the law settled by way of pronouncements by the Hon'ble Supreme Court.

11. The tenable grounds for challenge to an award, that have also been invoked by the petitioners, are the grounds of patent illegality, contravention of public policy and fundamental policy and/or perversity which may shock the conscience of the Court. Moreover, Section 34 of the Arbitration Act also uses the words "*An arbitral award may be set aside by the Court only if*", which signifies the intent of limiting the scope of interference by Courts in an Arbitral Award, passed after thorough procedure, involvement of parties, and appreciation of facts, evidence and law, "*only*" in the event of the circumstances delineated in the provision being met. The limited grounds which may invite the intervention and action thereupon by the Courts are explicitly laid down under the provision. What is to be seen by a Court exercising jurisdiction under Section 34 of the Arbitration Act is that an award passed by an Arbitral

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Tribunal may only be set aside if it is patently illegal, against the public policy of India, based on no evidence and delineates no reason for passing the Award.

12. It has been argued on behalf of the petitioners that the impugned Award is patently illegal. In the landmark judgment of ***Delhi Airport Metro Express Pvt Ltd vs. Delhi Metro Rail Corporation, (2022) 1 SCC 131***, the Hon'ble Supreme Court, regarding the question what amounts to patent illegality, held as under:-

“29. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression “patent illegality”. Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression “patent illegality”. What is prohibited is for Courts to reappreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as Courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of

perversity falling within the expression “patent illegality”.”

13. The judgment clarifies the position that any error in an arbitral award cannot be categorised as patent illegality. An error which goes to the root of the matter and is linked with the contravention of public policy or public interest would amount to patent illegality. Moreover, it has been categorically stated that the Court need not enter into the merits of the case and re-appreciate the evidence while adjudicating upon the arbitral award.

14. Further, the Hon’ble Supreme Court in *Associate Builders (Supra)*, clarified the position regarding an objection on the ground of contravention of fundamental policy of India and held that the requirement that an adjudicatory authority must apply its mind can be described as a fundamental policy of Indian law since it is deeply embedded in the system of jurisprudence in the Country. The requisite which, hence, comes out from the judgment is that an arbitrator while passing the award must apply his mind and, to an extent, act judiciously.

15. In the instant matter as well, the petitioners needed to satisfy that the findings of the learned Arbitrator in the impugned Award were patently illegal on the face of the record so as to shock the conscience of the Court or so perverse or irrational that no rational person could have arrived at such a conclusion or that such findings were made on the basis of no evidence. Moreover, the Hon’ble Supreme Court in *Anand Brothers (P) Ltd. vs. Union of India & Ors., (2014) 9 SCC 212*, has observed that the Court shall not enter into the validity of the findings of

an arbitrator as long as the arbitrator has supported his conclusion with findings.

16. While passing the impugned Award in the instant matter, the learned Arbitrator took into consideration the Clause 3 of the Agreements whereby it was stated that any delay or default in payment of any EMI shall make the petitioners herein liable to pay to respondent, in trust at the Default Interest Rate as mentioned in the schedule, besides constituting a default thereby making all sums under the said agreement due and payable to respondent forthwith. Further, the Clause 10A of the Agreements was also referred to which stated that if the petitioners herein failed to pay the respondents any amount, when due and payable under the said agreement, the same shall constitute an event default. Since, the petitioners failed to make the monthly payments duly, the Loan Recall Notice was served as the non-payment amounted to a default, as per the terms of the Agreement.

17. The learned Arbitrator, being a creature of the Agreement between the parties, as per Clause 14.4 of the Agreements, interpreted and appreciated the provisions of the Agreements while reaching the conclusion. There is nothing on record to suggest that the learned Arbitrator did not consider the submissions of the parties or that the Award has been passed on the basis of no evidence.

18. Moreover, the petitioners have failed to show that the findings in the impugned Award *qua* the granting of the Award in favour of the respondents are so perverse or illegal that no rational person could have reached the conclusion. As discussed in the foregoing paragraphs, this

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Court need only to examine whether the Award is supported by findings and shall not enter into the validity of the findings and in the instant impugned Award, the conclusion drawn is based on findings with reference to the relevant provisions of the Agreements executed between the parties as well as the documents and other material on record before the learned Arbitrator.

19. Therefore, considering the facts and circumstances, the submissions made on behalf of the petitioners, the contentions raised in the pleadings as well as the findings in the impugned Award, this Court is of the view that the impugned Award dated 29th January 2020 does not warrant any interference from this Court. The petitioners have not been able to show that the impugned Award is patently illegal, against the fundamental policy, passed without application of mind or against provisions of law or on the basis of no evidence.

20. Accordingly, the instant matter is dismissed for being devoid of any merit along with pending applications, if any.

21. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

APRIL 11, 2023

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Click here to check corrigendum, if any

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