



Arb.O.P.(comdiv)No. 54 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.11.2024

PRONOUNCED ON : 13.12.2024

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

Arb.O.P.(comdiv)No. 54 of 2021

And

A.No. 4552 of 2021

M/s. Sun Motors
Represented by its Managing Partner
Mr.Rakesh Ramesh Mirje,
having Office at Gat No. 144, Halondi
Tal-Hatkanangle, Kolhapur – 416 103,

and

Head Office at C.S.No. 1475/76,
C/o. Auto India Madhavnagar Road,
Sangli – 416 416

... Petitioner/Claimant

Vs.

M/s. Ashok Leyland Limited
Represented by its President – LCV
Mr.Nitin Seth,
No.1, Sardar Patel Road,
Guindy, Chennai – 600 032.

... Respondent/Respondent



Arb.O.P.(comdiv)No. 54 of 2021

PRAYER: Original Petition filed under Section 31(3) 34(2)(b)(ii) and 34 (2A) of the Arbitration and Conciliation Act, 1996, to call for the records pertaining to the Arbitral Award dated 06.11.2020 and set aside the award dated 06.11.2020 on the file of the Hon'ble Tribunal and allow the claims as prayed for by petitioner /claimant with costs of Arbitration.

For Petitioner : Mr. J.Ravikumar

For Respondent : M/s. Rank Associates

ORDER

The Petition has been filed under Section 31(3) 34(2)(b)(ii) and 34 (2A) of the Arbitration and Conciliation Act, 1996, to call for the records of the Arbitral Award dated 06.11.2020 set aside the same and to allow the claim as prayed for by the petitioner/claimant with costs.

2. The petitioner, M/s. Sun Motors is in the business of dealership of automobiles. The respondent / M/s. Ashok Leyland Ltd., is a manufacturer of heavy vehicles light commercial vehicles, passenger vehicles and Multi-



Arb.O.P.(comdiv)No. 54 of 2021

Utility Vehicles. The petitioner was issued with a letter of intent dated 27.02.2012 offering dealership for unspecified period equivalent to the long term investments to be made for infrastructure, according to the instructions of the respondent. The petitioner was of the opinion that they would be the sole dealer in Kolhapur and neighbouring Districts at Maharashtra. There were various clauses in the agreement relating to the specification of the dealership office, showroom, workshop and necessary infrastructure. The respondent was also specific about the location of the showroom, layout, design of the showroom and workshop, and other interior and IT infrastructure.

3. The petitioner claimed that in the year 2011-2012, they had invested a sum of Rs.2/- crores on land and in construction of an exclusive building for the showroom and workshop and on interiors, furniture and on tools and equipment which are required for the vehicles of the respondent. They also spent on Information Technology and Dealer Identification Materials.



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4. The petitioner commenced selling vehicles through their dealership on and from 30.11.2012. However, various disputes arose between the petitioner and the respondent with both alleging fundamental breaches of the contract, frustrating the dealership business. The petitioner charged that the respondent failed to provide financial protection during the first four years of the dealership. It was also alleged that the respondent had strangled the business of the petitioner. They also had a vindictive approach against the petitioner herein. It was also contended that the respondent compelled insurance to be provided to the customers only through specific insurance agencies with whom the respondent had an agreement for brokerage. It was also contended that the respondent demanded that warranty and annual maintenance contract must be entered into compulsorily with every customer, though they were only optional.

5. The petitioner also contended that the respondent set unrealistic sales targets. The respondent was a relatively new entrant in the light motor vehicle category. The respondent then terminated the dealership of the petitioner and appointed a second dealer for the territory assigned to the petitioner. This was contrary to the assurances made at the time of issuance of



Arb.O.P.(comdiv)No. 54 of 2021

the letter of intent. All these disputes led to the constitution of an arbitral tribunal to examine and adjudicate the disputes between the petitioner and the respondents.

6. The petitioner filed a claim statement before the Tribunal seeking to declare that the termination of the dealership dated 24.11.2017 was illegal and arbitrary and was in breach of the terms of the agreement and for a direction against the respondent to pay the residential damages of Rs.6.33/- Crores which according to the petitioner was the profit made by the respondent on the sale of vehicles and for a direction against the respondent to pay exemplary damages of Rs.50,00,000/- and to pay to the petitioner a sum of Rs.81,70,000/- towards business loss due to appointment of another dealer in the same territory and to pay damages for loss suffered owing to oppressive and arbitrary acts of the respondent and for unlawful termination of Rs.1,69,77,915.76 and for a direction against the respondent to pay damages of Rs.7,60,971.42 on account of loss on sale of service vehicle and spares and for a direction against the respondent to pay a sum of Rs.2,97,33,873.00 towards interest on the total damages claim and for a sum of Rs.16,840.00 towards interest for delayed payment of bills and for the costs of the arbitration proceedings.



Arb.O.P.(comdiv)No. 54 of 2021

7. An arbitral Tribunal was constituted by appointment of a former Judge of this Court. During the arbitration proceedings, on the side of the claimant, the managing partner Rakesh Mirje was examined as CW-1. On the side of the respondent, Pritam Sail, Regional Manager (West) of the respondent was examined as RW-1. During trial, the petitioner marked Exs. C-1 to C-442. On the side of the respondents, Exs.R1 to R11 were marked. Finally, by award dated 06.11.2020, the learned Arbitrator held that the petitioner/claimant was not entitled to any of the reliefs sought. It was also held that the expenses for the arbitration should be shared equally between the two parties.

8. Questioning this award, the present petition has been filed under Section 31(3), 34(2)(b)(ii) and 34(2A) of the Arbitration and Conciliation Act, 1996.

9. Even before proceeding further with the facts of the case, it would only be appropriate to examine the provisions under which the present petition has been filed.



Arb.O.P.(comdiv)No. 54 of 2021

10. Section 34 (2)(b)(ii) is as follows:-

“34. Application for setting aside arbitral award

1.

2. *An arbitral award may be set aside by the Court only if -*

(b) the Court finds that-

(ii) the arbitral award is in conflict with the public policy of India.”

[Emphasis Supplied]

11. Section 34 (2A) is as follows:-

“(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.”

[Emphasis Supplied]

12. The learned counsel for the petitioner Mr. J.Ravikumar stated



Arb.O.P.(comdiv)No. 54 of 2021

that a reading of the award would indicate that it suffers from patent illegality and therefore argued that this Court should interfere with the award.

13. According to the learned counsel, there has been no discussion at all about the oral and documentary evidence adduced by CW-1 and RW-1. The learned counsel contended that both the witnesses had been cross examined extensively. A reading of the entire award would reveal that there has been no reference at all to the evidence adduced. The learned counsel further claimed that the learned Arbitrator had repeated verbatim, the written arguments filed by the respondent and had given the same as his reasons for negating the claim of the petitioner.

14. It was also argued that the learned Arbitrator had not even considered the claim statement or the arguments advanced on behalf of the petitioner herein. It was therefore contended that the award should be set aside on the ground of patent illegal as provided under Section 34 2(A) of the Act and also on the ground that it is in conflict with public policy in India as provided under Section 34 (2)(b)(ii) of the Act.

15. Mr. Kuberan, learned counsel for M/s. Rank Associates for the



Arb.O.P.(comdiv)No. 54 of 2021

respondent however denied and disputed the contentions of Mr.J.Ravikumar.

According to him, the learned Arbitrator had given more than sufficient reasons for rejecting the claim. The learned counsel stated that the learned Arbitrator had referred to the necessary aspects required to adjudicate the dispute between the parties. The learned counsel supported the procedure adopted and also the final finding of the learned Arbitrator and asserted that the Petition should be dismissed.

16. I have carefully considered the arguments advanced and perused the materials available on records.

17. The main thrust of the arguments of Mr.J.Ravikumar was about the nature of the award itself. According to the learned counsel, the learned Arbitrator had given a summary of the statement of the claim and also reproduced the various heads under which the claim was made. Thereafter, the learned Arbitrator had examined the statement of defence. He had then examined the contract and had given his observations about the interpretation of the contract though that was not an issue before the learned Arbitrator.



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18. Thereafter, the learned Arbitrator had stated about the written submissions of the respondent. It is with respect to the said portion, namely, the written submissions by the respondent that the learned counsel raised his primary grievance.

19. According to him, on and from paragraph No.118 of the award except for the modification of the first few words in each paragraph, the award was an exact cut and paste of the written submissions of the respondent. The Arbitrator had accepted the written submissions made by the respondent and had changed only the preliminary words in each paragraph.

20. In view of the said submission made, I had examined the written arguments filed on behalf of the respondent and compared the same with the Award passed by the learned Arbitrator. It is found that the learned Arbitrator had extracted the written arguments verbatim and had only added a few words at the beginning of each paragraphs and had stated that he agrees to whatever had been stated in the written arguments. The following table showing the comparison between the Award and the written arguments would



Arb.O.P.(comdiv)No. 54 of 2021

provide clarity:

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S.No.	AWARD	WRITTEN ARGUMENTS
1.	Paragraph No.118	IIInd bullet point in D – Preliminary Objections
2.	Paragraph No.119	IVth bullet point in D – Preliminary Objections
3.	Paragraph No.120	Vth bullet point in D – Preliminary Objections
4.	Paragraph No.122	E - Preliminary Objections
5.	Paragraph No.123	F - Preliminary Objections
6.	Paragraph No.124	G - Preliminary Objections
7.	Paragraph No.125	Excluding the tabular column
8.	Paragraph No.128	N - Preliminary Objections
9.	Paragraph No.129	R - Preliminary Objections
10.	Paragraph No.131	U - Preliminary Objections
11.	Paragraph No.132	V - Preliminary Objections
12.	Paragraph No.133	W - Preliminary Objections
13.	Paragraph No.134	X - Preliminary Objections
14.	Paragraph No.135	Y - Preliminary Objections
15.	Paragraph No.136	EE - Preliminary Objections
16.	Paragraph	II - Preliminary Objections



Arb.O.P.(comdiv)No. 54 of 2021

S.No.	AWARD	WRITTEN ARGUMENTS
	No.137	
17.	Paragraph No.138	Extracted from tabular column in PP) Allegation of Oppressive and Arbitrary Acts.
18.	Paragraph No.139	Extracted from tabular column in PP) Allegation of Oppressive and Arbitrary Acts.
19.	Paragraph No.140	QQ - Preliminary Objections
20.	Paragraph No.141	VV - Preliminary Objections
21.	Paragraph No.142	Ist paragraph in inner page 24 (continuation of VV)
22.	Paragraph No.143	WW & XX - Preliminary Objections

21. After practically extracting the written arguments of the respondent, the learned Arbitrator had listed out the citations relied on by the learned counsel for the petitioner herein and thereafter had stated that much knowledge had been acquired by the sole Arbitrator from the above referred pronouncements. He also stated that the said pronouncements are not applicable and are distinguishable on facts. Finally, the learned Arbitrator had rendered his conclusion in Paragraph No.147 and had rejected the reliefs and had answered the Issue Nos.1, 2, 3, 4, 5, 6, 10, 11, 12 and 13 against the claimant and had held that the Issue Nos.7, 8, and 9 are academic and need



not be answered.

22. It is thus evident that the learned Arbitrator had unfortunately practically extracted the written arguments submitted on behalf of the respondent and had added only a few words either as prefix or as suffix and had affirmed the stand of the respondent and had proceeded to reject the claim of the petitioner herein. There was no reference to the evidence or to the documents produced during the course of trial.

23. In *Dyna Technologies Pvt. Ltd Vs. Crompton Greaves Ltd.*, reported in **2019 20 SCC 1**, the Hon'ble Supreme Court had considered an Award wherein, the contentions of both the parties had been stated and conclusion rendered. It had been held as follows:

41. Interestingly, the factual narration is coupled with the claimant's argument, which is bundled together. A close reading of the same is required to separate the same wherein the Arbitral Tribunal has mixed the arguments with the premise it intended to rely upon for the claimant's claim. Further, it has reduced the reasons for Respondent's defense.



In spite of our independent application of mind based on the documents relied upon, but cannot sustain the award in its existing form as there is a requirement of legal reasoning to supplement such conclusion. In this context, the complexity of the subject matter stops us from supplementing such legal reasoning and we cannot sustain the aforesaid award as being reasoned.

42. It may be beneficial to reduce the concluding paragraph of the award, which reads as under:

3.4. The above arguments and various authorities quoted by them have been studied by the Tribunal and we are convinced that the compensation is payable on the hire charges and expenses incurred by the claimant based on the claims made by him in June 95 and now submitted by the claimant in his revised claim petition on 05.07.1997. We are convinced that the machineries have been actually mobilized from the letter R-3, R-8 and R-10 issued by DCM reporting on the number of machineries deployed by Claimant. The Claimants have produced the log books and bills for the various machineries and modified their claims.



The tribunal had perused the log books and idle wages approved in C- 7 by Respondent and the claims made in R-17.

43. From the facts, we can only state that from a perusal of the award, in the facts and circumstances of the case, it has been rendered without reasons. However, the muddled and confused form of the award has invited the High Court to state that the arbitrator has merely restated the contentions of both parties. From a perusal of the award, the inadequate reasoning and basing the award on the approval of the Respondent herein cannot be stated to be appropriate considering the complexity of the issue involved herein, and accordingly the award is unintelligible and cannot be sustained.

24. The Hon'ble Supreme Court had held that if the Award had been rendered without reasons, it will only be appropriate that the matter is remanded back to the Tribunal. It had been stated so in Paragraph No.39.

39. It may be noted that when the High Court concluded that there was no reasoned award, then the award



ceased to exist and the Court was functus officio Under Section 34 of the Arbitration Act for hearing the challenge to the award under the provisions of Section 34 and come to a conclusion that the arbitration award was not in terms of the agreement. In such case, the High Court ought to have considered remanding the matter to the Tribunal in the usual course. However, the High Court analyzed the case on merits, but, for different reasons and we need not go into the validity of High Court's interference.

25. I am conscious that in the tabular column *supra*, only the comparative paragraphs of the Award and the written submissions of the respondent had been given without extracting the contents there of. But however, even a cursory comparative reading would make it evident that the Award is a practical reproduction of the written arguments submitted on behalf of the respondent.

26. In view of the same, I have no hesitation in holding that the Award cannot be sustained in its existing form and there is a requirement for appropriate consideration of the issues involved. In such circumstances, I would set aside the Award and remand the matter back for fresh consideration. Since the petitioner has raised strong grievances against the



Arb.O.P.(comdiv)No. 54 of 2021

Arbitrator it will only be appropriate that a new Arbitrator is appointed. Since substantial evidence had been recorded, the Arbitrator may take a decision and interact with the parties and take concurrence, whether they would agree to retain the evidence already recorded. If they consent to do so, then the evidence may be retained and opportunity may be granted for any further evidence and if required, record the said additional evidence and if not, proceed to hear arguments and pass an Award. If the parties are of the opinion that evidence has to be adduced afresh, the Arbitrator may take an appropriate decision. In view of the complexity of the matter and the volume of the documents filed on behalf of the petitioner herein, I am not inclined to specify any specific time period for the Arbitrator to dispose the matter.

27. In view of all these reasons, the Award dated 06.11.2020, is set aside. The matter is however remanded back for fresh consideration from the stage of arguments, if agreed upon by the parties or for evidence to be recorded or for any further evidence to be recorded.

28. I would appoint Hon'ble Mr. Justice G.M.Akbar Ali, former



Arb.O.P.(comdiv)No. 54 of 2021

Judge, Madras High Court, No.108/64, 2nd Floor, Catholic Centre, Armenian Street, Parrys, Chennai – 600 001, Mobile No. 9445025151, as sole Arbitrator. The learned Arbitrator may determine his fees in accordance with Schedule to the Arbitrations Conciliation Act, 1996. Any fees determined shall be equally shared between the petitioner and the respondent. An Award shall be passed within a reasonable time.

29. Accordingly, both Arbitration Original Petition and application in A.No.4553 of 2021 are allowed.

13.12.2024

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Index:Yes/No
Neutral Citation:Yes/No
Speaking order : Yes/No

C.V.KARTHIKEYAN, J.

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Arb.O.P.(comdiv)No. 54 of 2021

Pre Delivery Order made in
Arb.O.P.(comdiv)No. 54 of 2021
And
A.No. 4552 of 2021

13.12.2024