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O.S.A.(CAD)No.101 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

O.S.A.(CAD)No.101 of 2024
and
C.M.P.No.19347 of 2024
in
O.S.A.(CAD)No.101 of 2024

M/s.Lucky Star Computers India Pvt. Ltd.,
Represented by its Directors
Mr.Anilkumar Vadakkepattam
No.1613/1614, 5th Main Road
E Block, AECS Layout, Kundalahalli
Brookefields, Bengaluru - 560 037.

.. Appellant

Vs.

Redington (India) Ltd.,
Represented by its Deputy General Manager
Redington House, Centre Point
Plot No.11 (SP)
Thiru.Vi.Ka.Industrial Estate
Guindy, Chennai-600 032.

.. Respondent

Original Side Appeal filed under Order XXXVI Rule 9 of the
Madras High Court Original Side Rules read with Section 37(1)(c) of the
Arbitration and Conciliation Act, 1996 and Section 13(1A) of the
Commercial Courts Act, 2015 praying to set aside the impugned order



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dated 25.03.2024 passed by this Hon'ble Court in Arb.O.P.(Comm.Div.)No.330 of 2023 and consequently, set aside the impugned award dated 23.03.2023 passed by the Arbitral Tribunal and to direct the respondent to pay the costs;

For Appellant : Mr.Karthik Sundaram

ORDER

(Order of the Court was made by **M.Sundar, J.**)

Captioned 'Original Side Appeal' {hereinafter 'OSA' for the sake of brevity} is an intra-Court appeal and the same has been presented in this 'Commercial Appellate Division' {hereinafter 'CAD' for the sake of brevity} on 12.08.2024 assailing an 'order dated 25.03.2024 in Arb O.P.(Com.Div.)No.330 of 2023 and application thereat' {hereinafter 'impugned order' for the sake of convenience, clarity and brevity} made by the Commercial Division of this Court in a Section 34 petition i.e., Section 34 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience and clarity].

2. Mr.Karthik Sundaram, learned counsel for appellant is before us in the Admission Board.



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3. Owing to the limited legal perimeter within which the captioned OSA has to perambulate, short facts shorn of granular details will suffice.

4. Factual matrix in a nutshell is that an 'agreement captioned 'Distribution Agreement' dated 28.09.2017' {hereinafter 'said Distribution Agreement' for the sake of brevity, convenience and clarity} was entered into between the appellant - 'Lucky Star Computers India Pvt. Ltd.,' {hereinafter 'Lucky Computers' for the sake of brevity} and respondent - 'Redington (India) Ltd.,' {hereinafter 'Redington' for the sake of brevity}; that vide said Distribution Agreement Lucky Computers appointed Redington as distributor and also as an authorized distributor for the purpose of effecting sale and distribution of its products; that the Redington accepted the appointment as distributor on terms and conditions that have been drawn and adumbrated in said Distribution Agreement; that clauses 5 and 6 of said Distribution Agreement captioned 'Payment and Discounts' and 'Stock Rotation' respectively deal with return of products supplied by Lucky Computers to Redington; that it is to be noted that this CAD is informed at the Bar that products to be supplied are hardware peripherals pertaining to Apple (to be noted, this is not set



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out in the said Distribution Agreement as it refers only to 'products'); that said Distribution Agreement became operative; that under said Distribution Agreement, Lucky Computers was supplying 'products' {to be noted, 'hardware peripherals' are being referred to as 'products' for the sake of convenience and clarity}; that with regard to two consignments of products, the same were returned by Redington to Lucky Computers under Ex.C9 dated 08.06.2018 and Ex.C10 dated 20.06.2018; that Redington returned these products after making full payment to Lucky Computers; that the admitted position of Lucky Computers is that it has resold in open market at least 1/3rd of these returned products which have been returned to Lucky Computers; that thereafter Redington sent two credit notes namely, Ex.R1 and Ex.R2 both dated 12.07.2018 with regard to these products; that it is the case of Lucky Computers that these credit notes i.e., Ex.R1 and Ex.R2 have the effect of cancellation of Ex.C9 and Ex.C10; that post Ex.R1 and Ex.R2, Redington sent two other tax invoices namely, Ex.C11 and Ex.C12 both dated 13.07.2018; that in these tax invoices ironically there was no tax component though they are captioned 'Tax Invoices'; that it is the specific case of Lucky Computers that Redington could not have returned the products after making full payment for the same; that this is the burden of song qua Lucky



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Computers; that this burden of song was disbelieved by Arbitral Tribunal;

that it is to be noted that arbitrable disputes erupted, an 'Arbitral Tribunal'

{hereinafter 'AT' for the sake of brevity} was constituted; that AT after full contest i.e., after oral and documentary evidence before it, rendered an 'award dated 23.03.2023' {hereinafter 'impugned award' for the sake of convenience and clarity} acceding to the claim of Redington; that the claim of Redington was return of monies for products which were returned after making full payment i.e., products covered under Ex.C9 dated 08.06.2018, Ex.C10 dated 20.06.2018, Ex.R1 dated 12.07.2018 and Ex.R2 dated 12.07.2018 relatable to Ex.C11 and Ex.C12 both dated 13.07.2018; that it was the further contention of Lucky Computers that the claim after making payment should be based on Ex.C11 and Ex.C12 and not on Ex.C9 and Ex.C10; that after full contest, AT vide impugned award acceded to the claim of Redington; that it is to be noted that Redington was claimant before AT and Lucky Computers was respondent before AT; that Lucky Computers assailed the impugned award before Section 34 Court in and by a petition namely, Arb.O.P.(Comm.Div.)No.330 of 2023; that after full contest, Section 34 Court dismissed the Section 34 petition and sustained the impugned award; that aggrieved by the impugned order of Section 34 Court



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captioned intra-Court Appeal i.e., OSA has been filed in this CAD; that it is to be noted, that before Section 34 Court, the challenge to impugned award was predicated on Section 34(2A) {Patent Illegality} and Section 28(3) {terms of the contract} read with Section 34(2A) of A and C Act; that it is to be noted, Section 34 petition does not set out the sub-clauses and grounds with specificity but learned counsel for appellant in the hearing very fairly submitted that challenge to impugned award before Section 34 Court was predicated on Section 34(2A) and Section 28(3) read with Section 34(2A) of A and C Act; that the matter was argued in the Admission Board.

5. After hearing learned counsel for the appellant, this CAD is of the considered view that the captioned OSA does not pass muster in the Admission Board. In other words, it fails in the Admission legal drill and the sequitur is, captioned OSA will stand dismissed. The reasons are as follows:

(i) As would be evident from the factual matrix supra, the primary contention of Lucky Computers is that Ex.R1 and Ex.R2 cancelled Ex.C9 and C10. This has been disbelieved by AT vide paragraph No.27 of the impugned



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award *inter alia* by interpreting Ex.C9, Ex.C10, Ex.R1 and Ex.R2 as well as assessing and appreciating oral evidence from witness. Paragraph No.27 of impugned award reads as follows:

'27. It is no doubt true that there are certain passages in PW-1's evidence which give the impression of an admission that Ex.R-1 and R-2 cancel out Ex.C-9 and C-10. The documentary evidence is, however, to the contrary. Moreover, in assessing and appreciating the oral evidence of a witness, one must necessarily bear in mind that cross examination is an unequal duel between the witness and a skilled lawyer. That apart, the oral evidence of PW-1 is not of much assistance as he was not the concerned person who transacted with the respondent which is clear from the e-mail dated 04.12.2019 sent by Mr.Anil V.P to the claimant wherein it is admitted that "the person who transacted with us no more with RIL".'

The simple point is re-appreciation of evidence is forbidden in a legal drill predicated on Section 34(2A) of A and C Act vide the proviso thereat. To be noted, Section 34(2A) of A and C Act reads as follows:

'34. Application for setting aside arbitral award



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(1)

(2)

(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 re-appreciation of evidence.'

In the light of the aforementioned obtaining position, we are of the considered view that this view of AT cannot be found fault with. In any event, on a demurrer, a careful perusal of paragraph No.27 of impugned award makes it clear that it is a plausible view and when it is a plausible view Section 34 Court will not interfere;

(ii) The next point is, the claim of Redington if at all and if that be so, should have been by resorting to Ex.C11 and Ex.C12 and not on the basis of Ex.C9 and Ex.C10 as according to Lucky Computers, the same have been cancelled by Ex.R1 and Ex.R2. As the cancellation of Ex.C9 and Ex.C10 by Ex.R1 and Ex.R2 theory has been disbelieved, it



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hardly matters as to whether the claim is predicated on Ex.C9 and Ex.C10 or Ex.C11 and Ex.C12. The Factual matrix is that certain products (two consignments) supplied by Lucky Computers to Redington were returned by Redington after making full payment for the same and it is the admitted case of Lucky Computers that a part of returned consignment has been sold in open market and Lucky Computers has not returned the monies received qua returned products. Therefore, the second point also in our considered view does not hold water;

(iii) The next point that was urged is that Redington cannot return products after making full payment. In support of this contention, reliance was placed on clauses 5 and 6.1 of said Distribution Agreement which read as follows:

'5. Payment and Discounts

5.1 The Company shall raise invoices along with the products supplied to the Distributor.

5.2. The Distributor shall make payments to the Company for the products sold to the Distributor within sixty (60) days from the date of invoice after



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adjusting credit notes issued by the Company for the products returned as per Clause 6.1 below.

6. Stock Rotation

6.1 The Distributor shall have the right to return the products unsold in its inventory for a period of more than 50 days from the date of purchase of the products against which Company shall issue credit notes at the original price at which the products were purchased by the Distributor with applicable GST.'

It was submitted that there appears to be a mismatch as regards 50 days and 60 days but that hardly matters as the bottom line, is Redington cannot return products after making full payment is learned counsel's say. In this view of the matter, Section 28(3) of A and C Act point has been canvassed before Section 34 Court. A careful perusal of clauses 5 and 6.1 of said Distribution Agreement makes it clear that there is a provision for return of products and there can be no dispute about this. As regards Ex.C9, Ex.C10 followed by Ex.R1, Ex.R2 and Ex.C11, Ex.C12, there is nothing to demonstrate that there is cancellation of Ex.C9 and Ex.C10 by Ex.R1 and Ex.R2 as all the four documents captioned 'Tax Invoice' while former tax invoices are with tax,



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the latter are without tax. It appears to be an attempt to sell back with tax component and subsequently, to sell without the tax component. As regards this clause 6.1, learned Arbitrator has dealt with the same in paragraph No.15 of the impugned award and the same reads as follows:

'15. The contention raised by the learned counsel for the respondent is that a right of return contemplated under clause 6.1 ceases to exist if payments have been made. As payments were made by the claimant in the instant case, clause 6.1 does not apply. He submits that admittedly, no credit notes have been issued in this case under Clause 5.2. Therefore, Ex.C-9 and Ex.C-10 were actually sales returns which had the effect of reversing the position of buyer and seller vis-a-vis the parties herein whereunder the claimant became the seller and the respondent became the buyer. In other words, the net effect of Ex.C-9 and Ex.C-20 was to turn Ex.C-4 on its head.

A careful perusal of paragraph No.15 of impugned award brings to light that learned Arbitrator has come to the conclusion that net effect of Ex.C9 and Ex.C20 was to turn Ex.C4 on its head. Thereafter, learned Arbitrator has appreciated oral evidence and this has been articulated in the



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impugned award in paragraph No.27 which has been extracted and reproduced supra. This means that AT has come to the conclusion that parties have understood the said Distribution Agreement Ex.C4 in a particular manner as regards return of products for which the entire consideration has been paid and parties have acted on the same. This douses 28(3) point. The oral evidence has also been appreciated and re-appreciation of oral evidence in a Section 34 legal drill is forbidden as regards Section 34(2A) point is concerned. In this regard, we find that Section 34 Court has held that it could not delve into merits and we find no reason to disagree with Section 34 Court as that is the obtaining legal position qua *Ssangyong* principle [*Ssangyong Engineering and Construction Company Limited Vs. National Highways Authority of India* reported in (2019) 15 SCC 131] which explained *Associate Builders* case [*Associate Builders Vs. Delhi Development Authority* reported in (2015) 3 SCC 49]. Post 23.10.2015, a review of an award on merits is impermissible and therefore,



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Ssangyong principle has been rightly applied by Section 34

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Court. This point also fails;

(iv) As regards the Central Goods and Services Tax Act, 2017, Section 34 of this Act has been pressed into service but Section 34 {Section 34 of A and C Act} Court has held that it is wholly unnecessary and we are in agreement with Section 34 {A and C Act Section 34} Court as the question that was before AT was return of products and the question of tax component was really not even auxiliary.

6. To be noted, myriad grounds have been raised in the memorandum of grounds of appeal but in the Admission Board, the arguments were projected / predicated on the aforementioned points and pointed submissions were made. The pointed submissions have been set out, discussed and our dispositive reasoning has been given point-wise one after the other. Therefore, we make it clear that we have considered those of the points which were projected in the Admission Board and as the matter does not pass muster, it would really be an exercise in futility to embark upon an expedition qua other aspects of the matter which do not fall for consideration either in Section 34 Court or in Section 37



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Court.

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M.SUNDAR.J.,
and
R.SAKTHIVEL, J.,
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7. Ergo, the sequitur is, captioned OSA is dismissed. Consequently, captioned 'Civil Miscellaneous Petition' {hereinafter 'CMP' for the sake of brevity} thereat also perishes with the same and the captioned CMP is disposed of as closed. There shall be no order as to costs.

(M.S.,J.) (R.S.V.,J.)
09.09.2024

Index:Yes
Neutral Citation: Yes
Speaking order

mk

To

The Sub-Assistant Registrar
Original Side
High Court, Madras.

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