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

FAO-2732-2022

Date of Order:-02.09.2024

Bharat Sanchar Nigam Ltd.

...Appellant

Versus

M/s Lovee Agencies and another

...Respondents

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present :- Mr.K.K. Gupta, Advocate
for the appellant.

SUVIR SEHGAL, J.

1. This appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short "the Act") assailing judgment dated 20.9.2021 passed by the learned Additional District Judge, Ambala, whereby objections filed by respondent No.1 under Section 34 of the Act against award dated 08.08.2017 passed by respondent No.2, have been accepted.

2. Brief facts, leading to the filing of the instant appeal are that the appellant entered into an agreement dated 19.1.2017 whereby respondent No.1 was appointed as a franchisee for selling SIM cards to new customers and was to be paid commission at the rate specified in the agreement. Clause 30 of the agreement provided for the resolution of



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disputes, if any, through the medium of arbitration. When differences arose between the parties, respondent No.2 was appointed as an arbitrator by the appellant on 26.11.2016 pursuant to order dated 16.09.2015 passed by the learned Additional District Judge, Ambala. Respondent No.1 filed a statement of claim before the arbitrator alleging that an amount of Rs.2,90,200/- had been illegally recovered from the commission payable to it, besides claiming compensation of Rs.2 lakhs. The claim was opposed by the appellant by filing a statement of defence and an award dated 08.08.2017 was announced by the arbitrator. Dissatisfied with the award, respondent No.1 filed objections under Section 34 of the Act, which have been accepted by learned Additional District Judge, Ambala vide the impugned judgment.

3. The sole argument raised by Mr.K.K.Gupta, learned counsel for the appellant is that the learned Additional District Judge, has erred in accepting the objections on the ground that the award is non-speaking. Referring to the award, he contends that the arbitrator has given reasons in support of the findings arrived by him.

4. I have heard counsel for the appellant and examined the documents placed on the record with the paper-book.

5. At the outset, the conclusion arrived at by learned Arbitrator vide the award dated 08.08.2017 deserve to be noticed and are reproduced hereunder:

“After going through the arguments of the parties and also the documents submitted by the Respondent and the applicants, I as the arbitrator in the case have come to the following conclusion:-



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(1) *The franchisee M/s Lovee Agencies have done a good job by selling a large number of SIMs to the potential customers of the Mobile services. They have also been duly compensated by way of commission to the tune of approx.. Rs.30 Lakhs by the respondent as per the Agreement.*

(2) *M/s Lovee Agencies have not been paid commission in respect of 1451 SIMs sold by them, which were not recharged, to that extent the commission is not payable to them and therefore there is no loss to them as it amounts to only stopping of the payment for services not rendered. This may not be treated as a loss as no customer was acquired by BSNL in respect of these SIMs.*

(3) *Non payment of Rs.2,90,200/- by the Respondent to the applicant for the 1451 SIMs seems to be in order.*

(4) *The Franchisee M/s Lovee Agency who did a good job of marketing and felt aggrieved on this account need to be encouraged by giving them more business for the sake of maintaining a better business relation.*

(5) *The loss claimed by the applicant and also by the respondent are not tenable and not payable by either party.*

(6) *Parties will bear their own cost of Arbitration.”*

6. A bare perusal of the above reproduced relevant extract of the award shows that the Arbitrator has not discussed the evidence brought before him nor has he given any reasons in support of the award. In **Som Datt Builders Limited Versus State of Kerala (2009) 10**



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SCC 259, Hon'ble Supreme Court has held as under:

“25. The requirement of reasons in support of the award under Section 31 (3) is not an empty formality. It guarantees fair and legitimate consideration of the controversy by the Arbitral Tribunal. It is true that Arbitral Tribunal is not expected to write judgment like a Court nor it is expected to give elaborate and detailed reasons in support of its finding (s), but mere noticing the submissions of the parties or reference to documents is no substitute for reasons, which the Arbitral Tribunal is obliged to give. Howsoever, brief these may be, reasons must be indicated in the award as that would reflect the thought process leading to a particular conclusion. To satisfy the requirement of Section 31 (3), the reasons must be stated by the Arbitral Tribunal upon which award is based; want of reasons make such an award legally flawed.”

7. In **Anand Brothers Private Limited Versus Union of India and others (2014) 9 SCC 212**, Supreme Court observed that Section 31 (3) of the Act obliges the Arbitral Tribunal to state the reasons upon which the award is based unless the parties have agreed that no reasons be given or the arbitral award is based on the consent of parties. The Supreme Court noticed that there is a paradigm shift in the legal position under the new Act, which prescribes a uniform requirement for the arbitrators to give reasons except in the two situations mentioned above.
8. Insofar as the present case is concerned, no material has been brought on the record to show that there was any agreement between the parties that the arbitrator is not obliged to give reasons. The



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award is definitely not based on the consent of the parties. Therefore, the award does not fall within the four corners of the two situations contemplated by the Supreme Court in *Anand Brother's* case (supra). The learned Arbitrator has failed to notice the evidence brought before him nor has he supported the award with any reasons. The award suffers from patent illegality and has rightly been set aside. This Court, therefore, does not find any infirmity or illegality in the judgment passed by the learned Additional District Judge, Ambala.

9. Appeal is devoid of merit and is hereby dismissed with liberty to the parties to pursue the remedies in accordance with law.

10. Since the main appeal has been dismissed, pending application, if any, shall also stand disposed of.

(SUVIR SEHGAL)
JUDGE

02.09.2024

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Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No