IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

217 FAO-2496-2014 (O&M)
Date of decision: 30.09.2024

Haryana Tourism Corporation Limited

… Appellant

Vs.

Tarun Marwaha and another

… Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr.Kamal Sehgal, Advocate
for the appellant.

Respondent No.1 proceeded against ex parte
vide order dated 31.03.2022.

SUVIR SEHGAL J.

1. Instant appeal filed under Section 37 of the Arbitration and Conciliation Act. 1996 (for short “the Arbitration Act”) assailing judgment dated 21.12.2013 passed by the learned District Judge, Ambala, whereby objections filed by the appellant under Section 34 of the Arbitration Act, against award dated 12.01.2011 passed by respondent No. 2 have been dismissed.

2. Factual Matrix leading to the filing of the appeal are that the appellant is running Kingfisher Tourist Complex at

Ambala and auctioned the shops at the complex on 20.03.2006. Respondent No.1 was the highest bidder for a gift shop and a license agreement, dated 31.03.2006, Ex.A-1 was entered into with him for a period of 5 years with effect from 01.04.2006 to 01.03.2011. The license was granted to him for Rs.26,51,000/- to be paid in advance in installments subject to terms and conditions specified in the license deed. During the license period, Central Government imposed service tax at the rate 12% and 3% cess on the said amount with effect from 01.06.2007 and vide letter dated 30.07.2007, respondent No.1 was asked to deposit service tax and cess. A dispute was raised by respondent No.1, which was referred for adjudication to the Arbitrator-respondent No. 2 and vide award dated 21.12.2013, learned Arbitrator partly accepted the claim and held that the service tax was payable by the appellant and directed that the amount already recovered from respondent No.1 be adjusted against future license fee payable by respondent No.1. Appellant filed objections under Section 34 of the Arbitration Act which, as noticed above, were rejected by the learned District Judge, Ambala vide order impugned herein.

3. I have heard counsel for the appellant who has argued that the Arbitrator has ignored Clause 8 of the license Agreement Ex.A-1, which clearly imposes the duty to pay all taxes and cess upon the licensee.

4. The sole dispute referred for adjudication to the learned Arbitrator was as to which are the two parties was liable to pay service tax and cess imposed by the Government of India w.e.f. 01.06.2007. The controversy revolves around the interpretation of Clause 8 of the license Agreement, Ex.A-1, which is reproduced hereunder:-

> "*8. The licensee shall pay water charges, electricity charges, house tax and all other taxes and cess as may be imposed by the authorities during the period it enjoys the premises and the currency of the agreement.*"

5. Undisputedly, respondent No.1 had a licensee for a period of five years from 01.04.2006 to 31.03.2011. The service tax and cess was imposed during the currency of said agreement. A bare perusal of the above reproduced clause shows that the licensee, i.e. respondent No.1, was bound to pay not only the taxes, which were applicable at the time of execution of the agreement, but also taxes, which may be imposed in future by the authorities during the period of the license agreement. It was, therefore, the liability of respondent No.1 to deposit the newly imposed taxes. However, learned Arbitrator has not appreciated the clear language of this condition and proceeded to pass the award against the appellant. The Arbitrator and learned District Judge, have erred

in coming to the conclusion that the service tax had been levied on the owner of the premises, which in the present case, is the appellant.

6. The finding recorded by both the Arbitrator and by the learned District Judge, Ambala are contrary to the settled legal position. In ***Pearey Lal Bhawan Association Versus Satya Developers Pvt. Ltd. (2010)56 RCR (Civil) 24,*** Delhi High Court has been held as under:-

> *"14. It is true, that the contracts entered into between the parties in this case, spoke of the plaintiff lessor's liability to pay municipal, local and other taxes, in at least two places. The Court, however, is not unmindful of the circumstances that service tax is a species of levy which the parties clearly did not envision, while entering into their arrangement. It is not denied that leasing, and renting premises was included as a "service" and made exigible to service tax, by an amendment; the rate of tax to be collected, is not denied. If the overall objective of the levy as explained by the Supreme Court, were to be taken into consideration, it is the service which is taxed, and the levy is an indirect one, which necessarily means that the user has to bear it. The rationale*

why this logic has to be accepted is that the ultimate consumer has contact with the user; it is from them that the levy would eventually be realized, by including the amount of tax in the cost of the service (or goods).”

7. It is therefore, evident that the levied tax has to be collected by respondent No.1 and the Arbitrator as well as the District Judge, have not appreciated the import of Clause 8 reproduced above. As the arbitrator has failed to decide the dispute in accordance with the terms of the contract governing the parties, it would attract “the patent illegality ground” as the oversight amounts to gross contravention of Section 28(3) of the Arbitration Act that enjoins the Arbitral tribunal to take into account the terms of contract while making an award. The patent illegality is not only apparent on the face of the award but also goes to the root of the matter and deserves interference as has been held by the Supreme Court in ***State of Chhatisgarh and another Versus Sal Udyog Private Limited*** ***(2022)2 SCC 275.***

8. For the aforegoing reasons, appeal is allowed, objections filed under Section 34 of the Arbitration Act, are accepted and impugned judgment passed by the learned District Judge, Ambala, as well as award dated 21.12.2013 are

set aside. Liberty is given to the parties to pursue the remedies, if so advised, in accordance with law.

9. As the main appeal has been decided, all pending applications shall stands disposed of.

30.09.2024 **(SUVIR SEHGAL)**
pooja saini **JUDGE**

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No