



2024 : DHC : 663



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 30.01.2024+ **O.M.P. 2/2024 & I.A. 1877/2024**

DHEERAJ RASTOGI

..... Petitioner

Through: Mr. Mohit Chaudhary & Mr.
Vikrant Yadav, Advocates.

versus

DNATA INTERNATIONAL PVT. LTD.

..... Respondent

Through: Mr. Pushpendra Kr. Dhaka,
Advocate.**CORAM:****HON'BLE MR. JUSTICE PRATEEK JALAN****J U D G M E N T****PRATEEK JALAN, J. (ORAL)**

1. By way of this petition under Section 34 of the Arbitration and Conciliation Act, 1996 [“hereinafter, “the Act”], the petitioner assails an arbitral award dated 25.10.2023 rendered by a learned sole arbitrator adjudicating disputes between the parties under an Employment Contract dated 14.09.2011 [hereinafter, “the Contract”].

A. Facts

2. By way of the Contract, the petitioner was appointed as Head – Finance of the respondent-company, which is part of the Dnata Group of Companies, headquartered in Dubai. The respondent is engaged in the business of booking tour and travel services for its customers. It is undisputed that the petitioner was subsequently designated as the Chief

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Financial Officer [hereinafter, “CFO”] of the respondent-company. He was also appointed as one of the directors of the respondent-company. The dispute arises out of certain fraudulent transactions committed by some of the employees of the respondent-company. No direct allegation of fraud or similar misconduct was made against the petitioner, but he was suspended on 12.12.2019 and his employment was subsequently terminated by a communication dated 07.02.2020.

3. The petitioner challenged the validity of the termination by a legal notice dated 26.03.2020 and claimed compensation in the sum of ₹2.5 crores. The respondent replied through counsel’s communication dated 21.04.2020, and disputed the assertions of the petitioner. Ultimately, the Court appointed the sole arbitrator by an order dated 29.08.2022 in ARB.P. 408/2020 [“*Dheeraj Rastogi vs. Dnata International Pvt. Ltd.*”].

4. The petitioner, in his statement of claims, sought a declaration against the validity of the termination notice, direction for restoration of the petitioner’s employment with the respondent-company, back wages amounting to ₹2.57 crores, damages of approximately ₹7.14 crores, interest and costs. The proceedings were defended by the respondent and culminated in the impugned nil award. By way of the impugned award, the learned arbitrator has decided against the petitioner on the question of validity of the termination dated 07.02.2020 and has consequently declined the other claims.

B. Submissions

5. Mr. Mohit Chaudhary, learned counsel for the petitioner, submits that the petitioner holds degrees in business administration and law. He had approximately 12 years’ experience in the travel and tourism industry

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prior to joining the respondent's employment on 14.09.2011. Mr. Chaudhary draws my attention to the following clauses of the Contract:

"O. Notice Period and Termination

1. On completion of the probationary period, termination of this Employment Contract will require notice in writing [2] months in advance by either side to the other. The Employee's services may be terminated by the Company **without assigning any reason by giving [2] month's notice or by making payment of fixed remuneration** in lieu of notice. Similarly, the Employee may also resign from service by giving [2] month's notice or payment in lieu of notice.

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3. The Company shall have a **right to terminate the Employees employment forthwith without notice or compensation in lieu thereof in case:**

(a) **the Employee has been found guilty of any gross misconduct/indiscipline;**

(b) **the Employee has violated any terms of employment or other policy of the Company;**

(c) **the Employee has have been persistently negligent or impunctual;**

(d) the Employee has become insolvent;

(e) the Employee has been convicted for any offence under any law enforce;

(f) the Employee does not have any mental/physical capacity to carry on his/her duty; and

(g) **the Employee has committed any act detrimental to the interest of the Company.**

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P. Code of Conduct & Business Ethics

The Employee is expected to carry out his/her duties and responsibilities in a professional and ethical manner, and conduct himself/herself in such a way that his/her behaviour will not reflect adversely on him/her or the Company. The Employee shall render the services exclusively to the Company and shall not accept any other assignment of whatsoever nature from any third party. The Employee will also not engage in or be concerned with any business or profession in India or abroad either directly or indirectly, whole time or part time.

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The Company's policy on Code of Conduct and Business Ethics, which forms part of this Employment Contract can be obtained from the Human Resources Department.

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U. Arbitration

All disputes relating to this Employment Contract shall be settled through arbitration in accordance with the Arbitration and Conciliation Act, 1996 and conducted by a single arbitrator appointed by the Company. Arbitration will take place in Delhi and in the English language. The award will be binding on the Employee and the Company. The Company however shall be entitled (without limitation to other rights and remedies available under law) to obtain injunctive relief or equitable relief from any court of competent jurisdiction.”¹

Clause 7.1 of the Employment Regulation Manual, which has been referred to in the impugned award, reads as follows:

“7. SAFEGUARD OF COMPANY IMAGE, FACILITIES AND PROPERTY

7.1 Staff are expected to safeguard company image and funds, protect and conserve all equipment, material and property owned or leased by the company. They are expected to follow operating instructions and procedures for all equipment and facilities they use.”²

6. Mr. Chaudhary submits that the genesis of the dispute between the parties arises out of misconduct of three other employees of the Inbound Travel Department of the respondent-company, who were indulging in fraudulent activities, including diversion of funds into their own account which they opened under the name of “Crreative”. Although no such allegation was made against the petitioner, the respondent suspended the petitioner on 12.12.2019 and conducted an “internal investigation”. The respondent thereafter terminated the employment of the petitioner on

¹ Emphasis supplied.

² Emphasis supplied.

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07.02.2020, stating that the internal investigation had come to the conclusion that he failed to disclose the fraud in the company to the finance team in the Dnata head office and that he failed to take corrective action.

7. Mr. Chaudhary submits that the findings of the learned arbitrator, upholding the aforesaid termination, are directly contrary to the evidence on record, which shows that the petitioner is the one who lodged an FIR in July 2019 against the concerned employees. It is submitted that the petitioner also informed the head of the respondent-company in India, i.e. the India head of Dnata's business, with regard to the facts of which he was aware. He contends that the award incorrectly ascribes an admission to him with regard to failure to take preventive steps. While attributing responsibility for approval of vouchers to the petitioner, Mr. Chaudhary submits, the award fails to take into account that the vouchers approved by the petitioner had in fact already been checked at three levels within the respondent-company. He submits that the finding of the learned arbitrator that the Registrar of Companies was not informed is misconceived, inasmuch as the petitioner was not required to inform the Registrar of Companies of the allegations against the other employees. He similarly submits that the learned arbitrator has erred in holding that the petitioner was aware of the investigation by the Registrar of Companies, which started only in November 2021, long after the termination of the petitioner's employment.

8. Mr. Chaudhary's final ground of challenge is that the learned arbitrator had committed a manifest error in rejecting the entirety of the petitioner's monetary claims on the ground that the termination itself had

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been upheld. He contends that at least part of the claim for compensation ought to have been adjudicated even though the termination had been held to be valid, inasmuch as it was based upon the illegal use of the petitioner's digital signature and authorisation even after his termination.

9. No other ground of challenge is pressed by Mr. Chaudhary.

C. Analysis

10. As far as the validity of termination notice is concerned, it may be noticed that Clause O(1) of the Contract gave either party the right to terminate the Contract with two months' notice, or payment of remuneration in lieu of notice. Clause O(3) specified the grounds upon which the respondent had the right to terminate the employment without notice or compensation. The learned arbitrator has found in favour of the respondent in terms of Sub-Clauses (b), (c) and (g) of Clause O(3) read with Clause 7.1 of the Employment Regulation Manual.

11. The learned arbitrator noticed the contention of the claimant that Clause O(3) could have been invoked only after a finding that the claimant was guilty of any of the acts specified therein by taking recourse to arbitration proceedings and not on a mere "internal investigation". However, he also noticed the contention of the respondent that the allegations of fraud against employees in India office were not communicated to its head office in Dubai by the petitioner, who was the CFO of the respondent-company, but by other whistle blowers.

12. The learned arbitrator has found that Clauses O(3)(b), (c) and (g) did not require a prior domestic inquiry which, at best, may be required under Clause O(3)(a). He has relied *inter alia* upon paragraph 3.1 of the report of the investigating team, which concluded that the petitioner had

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committed misconduct by concealing the fraudulent activity from Dnata's head office and executive management, with the intention of covering up his lack of control³. Referring to the petitioner's affidavit of evidence and cross-examination⁴, the learned arbitrator analysed the evidence as follows:-

*“48. It is clear from the pleadings of the claimant and his evidence that the claimant was aware that three employees namely Mr. Hridayesh Kumar, Mr. Sameer Ambastha and Ms. Tanya Aggarwal had committed the financial fraud and embezzled the funds. He claims that on coming to know about the fraud he himself made inquiries from the HDFC Bank at his personal level and came to know that three employees had opened an account in the name of 'Crreations' and had diverted the funds in the said account. **He admits that he did not inform about the fraud to Dubai office. He claims that he informed this to Managing Director of India office, but at the same time he has failed to place and prove on record any written communication in support of his this stand.** Accordingly, his bald statement in this regard can not be accepted moreso when respondent has placed on record the anonymous emails/letters Ex.RW1/4 collectively, which according to the respondent triggered the Internal Investigation. **The claimant was also one of the Directors of the respondent and in that capacity he could have informed about the fraud to Dubai office and at best to the Board of Directors, but admittedly he didn't do so. On the contrary he signed the Management Representation Letter for the FY 2018-19 submitted to PWC; stating therein that no fraud was reported in the company.** The claimant has claimed that the IT⁵ was constituted by Dubai office pursuant to information given by him about the fraud but this fact has remained unproved by the cogent evidence. On the contrary the respondent has placed on record and proved the anonymous emails whereby Dubai office was informed about the financial fraud which lead to internal investigation of the causes of financial fraud.*

49. The claimant has admitted that he was bound by the terms of EC⁶ being Exhibit CW1/3. He has admitted that he was

³ Paragraph 46 of the Award.

⁴ Paragraph 47 of the Award.

⁵ Investigation Team.

⁶ Employment Contract.

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involved in the enquiry, in as much as in answer to question no.39 he has stated that he cooperated in the inquiry. He admitted that he has not placed any document on record to show that he took any remedial steps to prevent the fraud and embezzlement of funds. He admitted that as a CFO, it was within his domain to permit or decline payment. He has also admitted that he was suppose to make payment of the vouchers received for payment after verifying its genuineness and correctness. He admitted that he being CFO was incharge of planning and management of funds, financial risks and frauds as well as responsible for the books of accounts. He also feigned ignorance about pilferage of about 26 crores. The claimant also admitted that he did not report about the embezzlement of funds and financial irregularities to the ROC. The claimant admitted that he was aware about the enquiry being conducted by the ROC about embezzlement of funds during his tenure. In my view, what more is required to conclude that the claimant, had violated the terms of his employment, was persistently negligent and had acted detrimental to the interest of the company within the meaning of clauses 3(O)(3)(b)(c) and (g) read with clause 7.1 of the Employment Regulation Manual.”⁷

13. These factual determinations are based entirely upon assessment of the evidence placed by the parties before the learned arbitrator and his interpretation of the contractual clauses, particularly Clause O(3). Interference with such interpretation and findings under Section 34 of the Act is permissible, only if found to be perverse in the sense that no reasonable arbitral tribunal could have come to the same conclusion⁸. On both counts, I do not find any such deficiency in the approach of the learned arbitrator so as to cross this high threshold.

⁷ Emphasis supplied.

⁸ Dyna Technologies (P) Ltd. vs. Crompton Greaves Ltd. [(2019) 20 SCC 1], Associate Builders vs. Delhi Development Authority [(2015) 3 SCC 49] and McDermott International Inc. vs. Burn Standard Co. Ltd., [(2006) 11 SCC 181].

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14. Mr. Chaudhary raises alleged factual discrepancies in the analysis of the learned arbitrator relating to quantum of the alleged fraud⁹, dates of the inquiry by the Registrar of Companies and the observation, that the FIR had not been pursued further¹⁰. However, I am of the view that the award is not liable to be overturned on this basis. The approach of the Court, while scrutinising an arbitral award, is one of caution and circumspection. An award is liable to be interdicted only if the deficiencies pointed out in the challenge go to the root of the matter. The aforesaid approach has been summed up in the judgment of the Supreme Court in *Dyna Technologies (P) Ltd. vs. Crompton Greaves Ltd.*¹¹ in the following terms:-

*“24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, **unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award.** Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. **The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy** to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.*

*25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. **The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even***

⁹ Paragraph 49 of the Award.

¹⁰ Paragraph 32 of the Award.

¹¹ Supra (note 8).

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*if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act.*¹²

15. Viewed from this perspective, the arbitral award is not susceptible to challenge. The petitioner was admittedly the CFO of the respondent-company and served on its Board of Directors. He was thus part of its key managerial personnel and owed a fiduciary duty to the company. These are positions of responsibility which require a high degree of trust. Although the petitioner was an employee of the respondent-company, an Indian entity, the relationship between the Indian entity and the global management is admitted. In fact, in the legal notice dated 26.03.2020, the petitioner contends that he advised the Managing Director of respondent-company to inform the matter to the Dubai head office, but the advice was rejected and the Managing Director directed all other employees not to discuss the matter with the head office. It is also stated therein that the petitioner followed these directions, despite the fact that senior management of the respondent-company were regularly in touch with their counter parts in Dubai for day-to-day activities.

16. I am therefore unable to accept Mr. Chaudhary's submissions with regard to the learned arbitrator's finding on the validity of the termination.

17. The only surviving issue concerns the petitioner's claim for damages on account of alleged misuse of his digital signatures and authorisations by the respondent-company even after his termination. The petitioner's allegations in this regard are contained in paragraphs 17 and

¹² Emphasis supplied.



18 of the statement of claim, wherein the petitioner states that he has filed a criminal complaint in the Court in Noida in this regard. However, I do not find any support in the statement of claim for Mr. Chaudhary's submission that the petitioner's claim for damages arose even partially on this account. In claim No. 2, the petitioner sought damages of ₹2.57 crores on account of employment benefits from the date of termination, until the filing of the petition. The claim for damages and compensation amounting to ₹7.14 crores is contained in Claim No. 3 which the petitioner has summarised as follows:-

<i>Loss of Savings and Income (a separate sheet for said Calculation is enclosed.)</i>	<i>Rs. 2,28,55,419</i>
<i>Damages/ compensation because of mental harassment, mental torture, physical discomfort, loss of prestige in the society, loss of reputation in the professional circle and humiliation, harassment, on professional and personal front, (The same is calculated on the basis of the Equivalent to the loss of employment benefit since 07.02.2020 till the date of filing of the claim application and loss of savings and income)</i>	<i>Rs. 4,85,76,811</i>
Total	Rs. 7,14,32,230

18. In the pleadings relating to this claim¹³, the petitioner has elaborated upon these aspects, but there is no mention at all of any damages arising out of such wrongful use of the petitioner's digital signatures or other authorisation. The damages claimed in fact arise only out of the alleged wrongful termination and not out of any actions of the respondent thereafter. Mr. Chaudhary's submissions in this regard are wholly misconceived.



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D. Conclusion

19. For the aforesaid reasons, I do not find any grounds for interference with the impugned award in exercise of jurisdiction under Section 34 of the Act.

20. The petition is therefore dismissed. The pending application also stands disposed of.

PRATEEK JALAN, J.

JANUARY 30, 2024

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¹³ Page 383 to 391 of the petition.

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