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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO(OS) 42/2024**

DHEERAJ RASTOGI

..... Appellant

Through: Mr. Mohit Chaudhary, Mr. Kunal Sachdeva, Mr. Vikrant Arora and Ms. Srishti Bajpai, Advocates

versus

DNATA INTERNATIONAL PVT LTD.

..... Respondent

Through:

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Date of Decision: 05th April, 2024.

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

CM APPL. 20268/2024 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

FAO(OS) 42/2024

1. The present appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 ('Act of 1996') challenging the judgment dated 30th January 2024 passed by the learned Single Judge in O.M.P. No. 2/2024 ('impugned judgment'). By way of the impugned judgment, the petition filed on behalf of the Appellant under Section 34 of the Act of 1996 challenging the Arbitral Award dated 25th October 2023 ('Arbitral Award') has been dismissed.
2. The facts of the case to the extent relevant for the present appeal are that an Employment Contract dated 14th September, 2011 ('the Contract')



was executed between the parties wherein the Appellant was appointed as Head-Finance of the Respondent, Company, which is a part of the Dnata Group of Companies, headquartered in Dubai. Respondent is engaged in the business of booking tour and travel services for its customers. The Appellant was subsequently designated as the CFO¹ of the Respondent-Company and in the year 2019, Appellant was appointed as a Director of the Respondent-Company.

3. 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 Appellant, however, vide notice dated 12th December, 2019 Appellant was suspended from performing his duties and subsequently, his employment was terminated vide termination letter dated 07th February, 2020 ('termination letter').

4. Thereafter, the Appellant vide legal notice dated 26th March, 2020 challenged the validity of the termination letter and invoked the arbitration clause. The Respondent-Company replied to the said legal notice, and disputed the assertions of the Appellant. Ultimately, the Court appointed the sole Arbitrator by an order dated 29.08.2022 in ARB.P. 408/2020².

5. The Appellant in his statement of claim, sought a declaration for the termination letter to be held as invalid and also sought directions for restoration of his employment with the Respondent Company with back wages amounting to Rs. 2.57 crores and damages of approximately Rs.7.14 crores along with interest. The Arbitral proceedings were defended by the Respondent and culminated in the impugned Nil award. By way of the

¹ Chief Financial Officer

² Dheeraj Rastogi v. Dnata International Pvt. Ltd.



Arbitral Award, the learned Arbitrator decided against the Appellant on the question of validity of the termination letter and consequently declined the other claims of the Appellant.

6. The Arbitral Award was challenged by the Appellant, by way of a petition under Section 34 of the Act of 1996 in O.M.P. No. 2/2024, however, vide impugned judgment learned Single Judge found no grounds for interference and upheld the Arbitral Award passed by Sole Arbitrator on 25th October, 2023.

7. Learned counsel for the Appellant states that the learned Single Judge failed to appreciate that even after the illegal termination of the Appellant from service, the Respondent continued to use the digital signature of the Appellant and even used the digital keys of the Appellant to authorize bank payments, which cannot be done unless approved by the Appellant. He states that no such permission was sought or granted by the Appellant. He states that banking transactions to the tune of more than Rs. 50 crores were executed after the alleged termination dated 07th February, 2020. He states that the said actions of the Respondent were illegal and therefore the Appellant herein filed a criminal complaint in Noida Court against senior officials of the Respondent, who are involved in the fraudulent authorization.

7.1. He states that, therefore, the claim for compensation which is based on illegal use of Appellant's digital signature and authorization, even after his termination ought to have been adjudicated by the learned Arbitrator. He states, however, learned Single Judge failed to appreciate this submission.

8. He states that the learned Single Judge and the learned Arbitrator failed to appreciate that the termination letter dated 07th February, 2020 was



issued without affording any opportunity to the Appellant to defend himself. He states that the exercise of right to terminate the services of an employee under Clause O(3) of the Contract was dependent on a conclusive finding of fact to the effect that the employee (in question) is guilty of any conduct enumerated under sub-clauses (a) to (g) of Clause O(3). He states that the termination was effected without any notice or compensation in lieu thereof and therefore, the learned Arbitrator erred in upholding the validity of the termination dated 07th February, 2020.

9. He states that learned Arbitrator failed to appreciate that there is no allegation of financial fraud against the Appellant. He states that the termination from services has adversely affected the reputation of the Appellant, which caused losses and therefore, the Appellant was entitled to the relief of damages in Claim No.3.

10. We have heard the learned counsel for the Appellant and perused the record.

11. The contention of the Appellant that his claim for damages on account of the alleged misuse of his digital signatures and authorization by the Respondent after his termination has been duly considered by the learned Single Judge in the impugned judgment. The relevant paragraph nos. 17 and 18 of the impugned judgment read as under:

“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 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>
<i>Total</i>	<i>Rs. 7,14,32,230</i>

18. In the pleadings relating to this claim 3, 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."

(Emphasis Supplied)

12. The Appellant has been unable to point out any infirmity in the aforesaid findings of the learned Single Judge, which is based on the analysis of the statement of claim. It is, thus, apparent from the statement of claim that no claim for damages on account of alleged misuse of his digital signatures and authorization was raised before the learned Arbitrator. We, therefore, find no merit in the submission of the Appellant that his claim for damages on account of alleged misuse of his digital signatures and authorization has not been decided.



13. With respect to the challenge to the finding of the learned Arbitrator with regard to the validity of the termination letter dated 07th February, 2020 under claim no.1, we may note that the contentions raised by the Appellant before this Court are identical to the grounds raised before the learned Single Judge. The learned Single Judge, after examining the said findings of the learned Arbitrator, has upheld the same by a detailed reasoning which reads as under:

“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 committed misconduct by concealing the fraudulent activity from Dnata’s head office and executive management, with the intention of covering up his lack of control (Paragraph 46 of the Award). Referring to the petitioner’s affidavit of evidence and cross-examination (Paragraph 47 of the Award), 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 IT (Investigation Team) 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 EC (Employment Contract) being Exhibit CW1/3. He has admitted that he was 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.
(emphasis supplied)”*

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 conclusion (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]. On both counts, I do not find any such deficiency in the approach of the learned arbitrator so as to cross this high threshold.

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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.”

(Emphasis Supplied)

14. The findings of the learned Single Judge at paragraph no. 15 of the impugned judgment are material. The Appellant in his capacity as a director was indeed in a fiduciary position and his failure to report the fraud and embezzlement of funds [which was within his knowledge] to the board of directors was a sufficient ground for the Respondent to entitle it to terminate the employment of the Appellant. The non-reporting of the said fraud and



financial irregularities has admittedly led to an enquiry by the Registrar of Companies ('ROC') against the Respondent³, thus, evidencing the seriousness of the responsibility of reporting of such fraud by the directors.

15. The Appellant has not disputed that as a director on the board of the Respondent and due to his regular interaction with the senior management of the Respondent as well as his counter-part in Dubai, he had all access available to him to notify the factum of the financial fraud committed at office situated in India by the other three employees. This is also the finding of the learned Arbitrator⁴, which has been upheld by the learned Single Judge.

16. The Appellant in the present appeal is merely reagitating the grounds raised in the petition filed under Section 34 of the Act of 1996. The limited scope of interference in an appeal under Section 37 of the Act of 1996 is well settled. The Supreme Court in **MMTC Limited v. Vedanta Limited**⁵ held as under:

“14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.”

(Emphasis Supplied)

17. After referring to the aforesaid view and reviewing the law, the Supreme Court by a Bench of three learned Judges in **UHL Power Company**

³ Para 49 of Arbitral Award dated 25th October, 2023

⁴ Para 48 of the Arbitral Award dated 25th October, 2023



Limited vs. State of Himachal Pradesh⁶ reiterated that the jurisdiction of an Appellate Court is circumscribed. The relevant paragraphs read as under:

“15. This Court also accepts as correct, the view expressed by the appellate court that the learned Single Judge committed a gross error in reappreciating the findings returned by the Arbitral Tribunal and taking an entirely different view in respect of the interpretation of the relevant clauses of the implementation agreement governing the parties inasmuch as it was not open to the said court to do so in proceedings under Section 34 of the Arbitration Act, by virtually acting as a court of appeal.

16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed.”

(Emphasis supplied)

18. The grounds in the memorandum of appeal are a mere reiteration of the grounds raised in the petition filed under Section 34 of the Act of 1996. The findings given by the learned Arbitrator as upheld by the learned Single Judge are plausible and based on admitted facts, which are duly proved by evidence before the learned Arbitrator. No ground for interference in the arbitral award and impugned judgment is made out.

19. We accordingly, find no merits in the appeal and the same is dismissed.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

⁵ (2019) 4 SCC 163

⁶ (2022) 4 SCC 116 Para 15 and 16



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