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

Decided on: 24.04.2024

+ **O.M.P. (COMM) 150/2024**

MR. SAHIL CHOPRA

..... Petitioner

Through: Mr. Amit Chadha, Mr. Kaushal
Jeet Kait, Mr. Daksh Gupta, Ms.
Aeshana Singh, Advocates.

versus

MUNICIPAL CORPORATION OF DELHI

..... Respondent

Through: Mr. Pritish Sabharwal, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

I.A. 7695/2024 (for exemption) & I.A. 7696/2024 (for exemption)

Exemptions allowed, subject to all just exceptions.

The applications stand disposed of.

I.A. 7694/2024 (condonation of delay)

1. The petitioner has filed this application, invoking Section 14 of the Limitation Act, 1963, to seek exclusion of time spent in the District Court in a petition under Section 34 of the Arbitration and Conciliation Act, 1996, for the purposes of limitation in filing of OMP(COMM) 150/2024.
2. It is submitted that the challenge to the impugned award dated 30.12.2020 was originally lodged before this Court, but the Registry had raised a defect that the matter does not fall within the pecuniary jurisdiction of this Court. The petitioner therefore filed the petition before the District Judge (Commercial), Patiala House Courts, New Delhi, who



also rejected the petition on the ground of pecuniary jurisdiction, by an order dated 19.02.2024. The present petition was filed on 08.03.2024.

3. In these circumstances, the application is allowed.

O.M.P. (COMM) 150/2024 & I.A. 7693/2024

1. The petitioner has filed this petition under Section 34 of the Arbitration and Conciliation Act, 1996 [“the Act”], against an award of a learned sole Arbitrator dated 30.12.2020.

2. By the impugned award, the claims of the petitioner (being the claimant in the arbitral proceedings) and counter claims of the respondent were disposed of. The learned Arbitrator awarded the sum of Rs. 94 lakhs against the petitioner, payable to the respondent alongwith interest @8% per annum from 17.12.2011 till the date of the award, and further interest @6% per annum on the principal amount from date of award till realisation.

A. Facts

3. The arbitral proceedings arise out of an Agreement dated 07.07.2010 [“Agreement”] for an outdoor advertising site, which was awarded by the respondent – Municipal Corporation of Delhi, to the petitioner as proprietor of M/s Prime Impex. The site was tendered by the respondent on 09.06.2010 and the petitioner was the highest bidder. An offer letter dated 24.06.2010 was issued for a monthly license fee of Rs. 7,22,000/-. The term of the Agreement was three years. The petitioner also placed a security deposit with the respondent equivalent to three months’ license fee.

4. The petitioner paid the monthly license fee until December, 2011. By a letter dated 01.12.2011, he purported to surrender the license, under



Clause 26 of the Agreement. The petitioner claimed to have handed over the site to the respondent after issuance of this letter.

5. The genesis of the disputes lies in a communication dated 09.07.2013 addressed by the respondent to the petitioner, stating that the license fee had not been deposited regularly, leading to an outstanding sum of Rs. 2,97,89,549/- on this account. By communication dated 14.07.2013, the petitioner drew the respondent's attention to the letter of 01.12.2011 surrendering the site. After some further correspondence between the parties, during which they maintained their respective positions, this Court referred the parties to arbitration by order dated 19.10.2016 in ARB.P. 587/2016.

6. Before the learned Arbitrator, the petitioner raised the following disputes:

“44. That the following disputes have arisen between claimant and respondent which required adjudication through arbitration:-

a. Whether the claimant is liable to pay license fee every month to the respondent in respect of the advertisement displayed at the site despite surrendering the site on 01.12.2011 and information of surrender of site was duly acknowledged by respondent?

b. Whether demand of Rs.5,71,84,433/- raised by the respondent on the claimant in the blacklisting order dated 18.05.2016 is illegal, unlawful and void and is liable to be quashed?

c. Whether demand allegedly raised by respondent is barred by limitation being beyond period of three years.

d. Whether letter dated 16.6.2016 whereby claimant has been barred from participating in future tenders for a period of 5 years is illegal, unlawful and void and is liable, to be quashed?

e. Whether blacklisting order dated 18.05.2016 is illegal, null, void and contrary to law and is liable to be quashed?

f. Whether blacklisting order dated 18.05.2016 is in accordance with law?

g. Whether claimant is entitled to participate in advertisement tenders



of respondent as it is holding registration certificate as advertiser from respondent?”

7. The respondent, in turn, claimed an amount of Rs. 5,71,84,433/-, principally on account of arrears of license fee.

8. The learned Arbitrator framed the following issues:

“16. On the pleadings of the parties, following issues were framed on 08.06.2018:

a. Whether the claimant has surrendered the site and handed over the possession of the site on 01.12.2011? If so, what is the effect? OPC

b. Whether the claimant is entitled to the remission of 33% on the license fee as claimed? OPC

c. Whether the demand of an amount of Rs. 5,71,84,433/- raised by the respondent on the claimant is illegal, unlawful and void? OPC

d. Whether the demand raised by the respondent is barred by limitation? OPC

e. Whether the action of the respondent in barring the claimant and blacklisting it from participating in future tenders is illegal, unlawful? OPC

f. Whether the claimant is entitled to its claim? OPC

g. Whether the respondent is entitled to its counter claim? OPR

h. Relief.

No other issue arose nor pressed for.”

9. The parties also examined witnesses – four on behalf of the petitioner, and six on behalf of the respondent.

10. By the impugned award, the learned Arbitrator has held that the petitioner had not, in fact, surrendered the site on 01.12.2011 as claimed. The learned Arbitrator has found that the site was, in fact, being used by another company under a contract entered into by the petitioner through a different concern. Although the case of the respondent was that the site was being used in this manner even beyond the term of the Agreement, the learned Arbitrator has awarded the respondent arrears of license fee



only for the period that the Agreement was in existence. From this amount, the learned Arbitrator allowed remission of 33% in monthly licence fee, on the ground of installation of solar panels for electricity in terms of the respondent's Outdoor Advertisement Policy, 2007. The learned Arbitrator has also awarded interest at the aforesaid rate of 8% per annum for the pre-award period and 6% per annum by way of future interest, instead of the contractually provided rate of 2% per month.

B. Submissions of learned counsel

11. Mr. Amit Chadha, learned counsel for the petitioner, principally contends that the learned Arbitrator ought not to have awarded arrears of license fee even for the period of the Agreement, as the respondent's claims on this account were barred by limitation. He submits that the contractual period came to an end on 23.07.2013, whereas the counter claim was lodged by the respondent only on 09.10.2017.

12. In support of this argument, Mr. Chadha submits that the learned Arbitrator's reliance upon Section 17 of the Limitation Act, 1963 ["the Limitation Act"], is misplaced, as there are no findings of fraud or mistake to support it.

13. Mr. Pritish Sabharwal, learned counsel for the respondent, on the other hand, submits that the learned Arbitrator has returned a clear finding that the petitioner's case was built on an edifice of deceit. Whilst claiming that he had surrendered the advertisement site on 01.12.2011, the petitioner was, in fact, letting out the site to advertisers well thereafter, and even after the Agreement had concluded.

14. In such circumstances, Mr. Sabharwal submits that the learned arbitrator has rightly accepted the respondent's contentions based upon



Section 17 of the Limitation Act, that limitation would begin to run only when the petitioner's fraud was discovered by the respondent, i.e., on 10.11.2015. He submits that on this reasoning, the findings of the learned Arbitrator are unassailable and, in any event, are based upon an interpretation of contractual clauses and assessment of evidence led before the learned Arbitrator, which do not invite interference of this Court under Section 34 of the Act.

C. Analysis

15. The question of limitation with respect to the respondent's counter-claims [issue 'd'] has been considered in paragraph Nos. 22.1 and 22.2 of the impugned award. The learned Arbitrator accepted the case put forward by the respondent in the following terms:

*“22.2 On the other hand, it is the submission of respondent that since the very beginning, the Claimant has been a defaulter in making payment of Monthly License Fee. The Respondent in this regard, during the course of the agreement issued Show Cause Notice for payment of the dues. In fact, Claimant vide letter dated 03.04.2012 (Exhibit-15), sought to contend that the amounts as stated in the show cause notice were not as per the calculation and sought to surrender the site. However, site was never surrendered by the Claimant. **Vide letter dated 30.03.2012, Claimant sought to bring to the notice of the Respondent that they had submitted a draft dated 29.03.2012, being No.010201 for an amount of Rs.14,51,220/- towards security fee for three months after deducting 33% remission. However, the draft had been cancelled at the request of Magnum¹ and credited back to its account.** The Respondent had on 09.07.2013 demanded an amount of Rs.2,97,89,549/- (Rupees Two Crore Ninety Seven Lakh Eighty Nine Thousand Five Hundred and Forty Nine Only) from the Claimant (Exhibit R-18). However, claimant contended vide letter dated 14.07.2013 it had already surrendered the site on 01.12.2011. Another show-cause notice was issued on 21.11.2013 requesting Claimant to*

¹ In the arbitral proceedings, the respondent had led evidence to allege that the advertisement site was being used, even after the alleged surrender, by agencies to whom the site was given by a company called 'US Adcom Pvt. Ltd.'. The Managing Director of US Adcom Pvt. Ltd., during cross-examination, stated that it had taken the site from one 'M/s Magnum' through the petitioner, who was alleged to be a partner in M/s Magnum.



*make payments of the said amount (Exhibit-20). During this time, the Claimant approached Public Grievance Commission ("PGC") for redressal of its grievances. During the course of proceedings before the PGC, various proof were called from the Claimant, in respect of the purchase and installation of the solar panel. The PGC had directed the Respondent to verify the details and see who was running advertisements on the sites. Enquiry revealed that the Claimant was operating the site under a different name, being M/s Magnum and never surrendered the site. The Respondent had never authorised M/s Magnum to run the site and therefore Mr. Sahil Chopra, the Claimant, illegally sold the site to US Adcom Private Limited. This fraud came to the knowledge of the Respondent only on 10.11.2015, after reasonable diligence. Hence in view of section 17 of the Limitation Act, the limitation would begin to run only from 10.11.2015. The Counter Claim in the present case has been filed on 09.10.2017, which is within the time period as prescribed. Hence the Claim/demand is within limitation. Reliance is placed on: Pallav Sheth v Custodian and Ors., (2001) 7 SCC 549, Syed Shah Ghulam Ghouse Mohiuddin and Ors. v. Syed Shah Ahmed Mohiuddin kamisul Quadri (died) by Lrs. And Ors. (1971) 1 SCC 597.*²

16. It is evident from the above that the learned Arbitrator has given the respondent the benefit of Section 17 of the Limitation Act. Learned counsel before me accept the position that, if the benefit of Section 17 of the Limitation Act has been rightly given to the respondent, the counter claims are within limitation, and that, if such benefit has been conferred erroneously, then the counter claims would be out of time. In order to determine this issue, the analysis of the learned Arbitrator on issue 'a', as set out above, is required to be considered.

17. Issue 'a' concerns the veracity of the petitioner's case with regard to surrender of the site and handing over of possession. The learned Arbitrator has found that the petitioner's request to adjust the monthly license fee for the notice period of three months, with the security amount deposited by the petitioner, was both contrary to the terms of the

² Emphasis supplied.



Agreement and also factually unproven.

18. Clause 26 of the Agreement, which provides for surrender, is set out below:

“26. The Contractor may surrender the contract by giving three months' notice in writing, provided:-

i. The Contract has been in force for at-least four months, i.e no surrender notice is permissible during the initial four months of the Contract period.

ii. The surrender notice shall not be valid unless upto date dues, including those for the notice period are paid up on the date of receipt of such surrender notice.

iii. In case the contractor wants to withdraw the surrender notice and he may do so by giving a request in writing provided the request has been received before the re-tender of the contract and up-to date dues, interest, if any, towards the same have been duly deposited.”

19. The learned Arbitrator has found, on construction of this clause, that the petitioner was not entitled to waiver of the notice period of three months by adjustment of the security deposit. The learned Arbitrator relied, for this purpose, upon Clause 24 of the Agreement, which is set out below:

“The contractor shall be liable to deposit security amount equivalent to 03 months' license fee. The security deposited by the contractor shall not be allowed to be adjusted in any circumstances.....”

20. The learned Arbitrator also found that the petitioner had admitted in cross examination that there was no clause in the Agreement which permits adjustment of license fee against the security deposit. That being the position, she held that the surrender notice dated 01.12.2011 was invalid.

21. More importantly, for the purposes of Section 17 of the Limitation Act, the learned Arbitrator further found that, even on a factual basis, the



petitioner, in fact, had not surrendered the site on 01.12.2011 as claimed, and was using the site well after the alleged surrender.

22. The following findings in the impugned award are relevant in this regard:

- A. The petitioner had addressed a letter dated 03.04.2012, stating that he “would like to surrender the subway”³. This letter was issued five months after the alleged surrender on 01.12.2011.⁴
- B. In the communication dated 03.04.2012, the petitioner admitted that he was to pay license fee for the period between 12.12.2011 to 12.04.2012, again, well after the alleged surrender on 01.12.2011.⁵
- C. The petitioner had submitted security deposit of Rs. 14,51,220/- by draft dated 29.03.2012, submitted on 30.03.2012. Although the bank draft was subsequently cancelled, the learned Arbitrator has noted that the petitioner failed to explain why it sent the draft at all, if the site had already been surrendered.
- D. Most significantly, the learned Arbitrator has noted the evidence on record to the effect that the site was being used, even after the alleged surrender, by agencies to whom the site was given by a company called ‘US Adcom Pvt. Ltd.’. The Managing Director of US Adcom Pvt. Ltd., in turn, stated that it had taken the site from one ‘M/s Magnum’ through the petitioner, who was a partner in M/s Magnum. The purchase orders and bills also contain the

³ Emphasis supplied.

⁴ Refer: Paragraph 19.6 of the impugned award.

⁵ Ibid.



petitioner's signature. The analysis of the learned Arbitrator on this point is contained in paragraph 19.8 to 19.14 of the award, which are reproduced below:

“19.8 According to respondent, when the claimant approached Public Grievance Commission (PGC) for redressal of grievances, it was directed to verify the details and to see who was running advertisement on the site. To ascertain the entity under whose authorization these advertisements were being undertaken, details were requested from various Companies, being Aircel, Mahagun India Pvt. Limited, Fortis vide letters dated 19.12.2013. The Respondent got in touch with the Aircel Company, who vide letter dated 05.02.2015 informed the Respondent that during the time of inspection, the advertisement site was given to Aircel for advertisement by a company namely US Adcom Pvt. Limited. Aircel Company also provided a copy of the agreement which was entered into between US Adcom Private Limited and Aircel. On getting to know the same, the Respondent directed M/S Prime Impex to state on affidavit that the advertisement site at CGO Complex was not given to US Adcom Private Limited by M/S Prime Impex. The said affidavit was filed and signed by the Claimant, however, it is alleged that the averments made in the affidavit were false. In the meantime, officials of the Respondent visited the office of US Adcom Pvt. Limited on 10.11.2015 to get the requisite clarification. Mr. U.S. Sharma, the Managing Director of US Adcom Private Limited informed Respondent that the site in question was purchased by it from M/s Magnum through its partner Mr. Sahil Chopra, the Claimant. US Adcom Private Limited also provided the copies of the purchase order as well as the bill submitted by Magnum. The purchase orders as well as the bills contain the signatures of Mr. Sahil Chopra. It is therefore clear that Mr. Sahil Chopra was the face of Magnum. Further, M/s Magnum in its details has the email id of M/s Prime Impex. Mr. Sahil Chopra of M/s Prime Impex time and again represented to the Respondent that it has surrendered the Advertisement site sometime around December, 2011. However, the actual fact, which emerges from the enquiry conducted by the Respondent, is that the Claimant was operating the site under a different name, being M/s Magnum and never surrendered the site. The Respondent had never authorized M/s Magnum to run the site and therefore Mr. Sahil Chopra, the Claimant herein, illegally sold the site to US Adcom Private Limited.

19.9 The stand taken by the claimant, on the other hand, is that it has no relation either with Magnum or Magnum International or US Adcom Private Limited. However, in his cross examination, at one stage CWI Sahil Chopra tried to disown his relationship with Ms. Taranjit



Sapra by stating that he met her once or twice but then admitted that they worked together in Magnum in early 2000 which was a partnership firm and he was the working partner. He could not say when he resigned from Magnum. He admitted that office of Magnum was situated in Nehru Place in Siddharth Building, number of which was probably 504-506. However, Ms. Taranjit Sapra (CW4) deposed that she became partner in Magnum in July 2005 and Sahil Chopra was not associated with Magnum in any capacity which is contrary to the admission made by Sahil Chopra that he was a partner with Ms. Taranjit Sapra in 2000 in Magnum. Neither Mr. Sahil Chopra nor Ms. Taranjit Sapra produced the relevant partnership deed. Ms. Taranjit Sapra produced only photocopy of deed of reconstruction of partnership dated 04.05.2012.

19.10 Moreover, as stated above, if Sahil Chopra had no connection with Magnum, it is not understandable as to why the copy of draft dated 29.03.2012 sent by the claimant was cancelled at his request. Further, Ms. Taranjit Sapra admitted that Magnum is maintaining the bank account with Jammu and Kashmir Bank at Greater Kailash at New Delhi and that it is also holding bank account in ICICI Bank at Nehru Place bearing A/c No. 629405042430. RW3, Mr. Jitendra Ram, Sales Officer with ICICI Bank stated that for the aforesaid account number of Magnum, "info @ primeimpex.com" is also the email id given in their account pertaining to Prime Impex. Moreover, the witness also produced the bank account of Mr. Sahil Chopra at ICICI Bank, Nehru place which shows that Prime Impex has also given its address as 904 Siddharth Building, Nehru Place. All this goes to show that both Sahil Chopra and Taranjit Sapra were working together and are trying to suppress the material facts.

19.11 Furthermore, Ms. Taranjit Sapra had admitted that she had business relationship with US Adcom Private Limited. As stated above, it is the case of the respondent that when its officials visited the office of US Adcom Private Limited on 10.11.2015, Mr. U.S. Sharma, its Managing Director informed them that the site in question was purchased by it from M/s Magnum through its partner Mr. Sahil Chopra and provided the copies of purchase order and the bill. **Mr. U.S. Sharma was examined by the respondent as RW5. He admitted that US Adcom Private Limited was in the business of providing advertising service and admitted that an agreement Ex. RW-1/21 was entered into between US Adcom Private Limited and Aircel Limited.** He admitted having worked with Magnum from 2008 onwards but could not say till what period he worked with Magnum. He could not produce the record of the sites granted to his company by Aircel Limited by stating that the company was closed in the year 2015. He could not admit or deny the purchase order Ex. RW-1/24 by stating that the document does not seem to be belonging to his company as logo does not appear to be of his company



and address of office at Okhla is incorrect as office of company was situated in Phase 1 whereas in this document Phase 3 is mentioned.

19.12 Respondent also tried to prove the record of Aircel with whom service agreement Ex. RW-1/21 was entered by US Adcom Private Limited by examining RW4 Ms. Shaina Subramaniam, Assistant Vice President of Aircel Limited. However, nothing could be brought out from her statement as she deposed that the company is under insolvency as such no records are available.

*19.13 Under the circumstances, although respondents have not been able to prove that US Adcom Private Limited had purchased the site in question from M/s Magnum and advertisement site was given by US Adcom Private Limited to Aircel by virtue of agreement Ex. RW-1/21 due to non availability of record but **fact remains that from the material available on the record, it stand proved that Sahil Chopra had business connection with M/s Magnum on whose request, draft given by the claimant to the respondent was cancelled.**"⁶*

23. It is evident from the above analysis that the respondent had led evidence to show that the site was being used by the petitioner through a different agency – M/s Magnum, which in turn had given the site to US Adcom Pvt. Ltd., well after December, 2011. M/s Magnum was never authorised by the respondent to operate the site and, in any event, had never surrendered the site. The learned Arbitrator has considered the contrary evidence of the petitioner and of the representative of M/s Magnum (Ms. Taranjit Sapra), but disbelieved their evidence.

24. Issue 'a' has thus been decided purely on interpretation of Clauses 24 and 26 of the Agreement, and appreciation of evidence by the learned Arbitrator. These aspects are within the sole domain of the arbitral tribunal, and do not call for any interference under Section 34 of the Act. Questions of contractual interpretation and evidentiary assessment are both liable to challenge only if they are found to be perverse or irrational,

⁶ Emphasis supplied.



in the sense that no reasonable tribunal could have arrived at those findings.⁷ I do not find any ground to hold that the reasoning of the learned Arbitrator, set out above, is vitiated by perversity, unreasonableness or arbitrariness in these respects.

25. Once these findings are sustained, the question of limitation must also be answered against the petitioner, as held in paragraph No. 22.2 of the impugned award, set out above. The learned Arbitrator has accepted the submissions of the respondent and held that the misrepresentations of the petitioner came to light only after the respondent's enquiry on 10.11.2015. I find no ground to interfere with this finding.

26. Mr. Chadha submitted that the award of Rs. 94 lakhs on this account is inconsistent with the decision of the learned Arbitrator rejecting the respondent's counter claim, which was for the very same amount by way of arrears of license fee, as demanded in its communications. This contention is equally unsustainable. The learned Arbitrator has noted that the claim of the petitioner for setting aside of this demand, and the counter claim of the respondent, arise from the same cause of action.⁸ They are, in fact, mirror images of each other. The issues have thereafter effectively been decided conjointly and it has been found that the respondent is entitled to a part of its counter claim. In effect, the petitioner's challenge to the demand has also been rejected, but only to the extent that the counter claim has been allowed, and no more. I do not find this to be an error, far less one which goes to the root of the award

⁷ As held in: *Reliance Infrastructure Ltd. vs. State of Goa*, (2024) 1 SCC 479; *Associate Builders vs. DDA*, (2015) 3 SCC 49.

⁸ Refer: Paragraph 22.3 of the impugned award.



and requires the award to be set aside.

27. It may be noted that, even on the aforesaid findings, the learned Arbitrator has granted substantial relief to the petitioner, by restricting the impugned award to the period of the Agreement, granting remission of 33% on account of use of solar energy and reducing the contractual rate of interest from 2% per month to 8%/6% per annum. It is unnecessary for the Court to enter into these aspects as they are not under challenge.

D. Conclusion

28. In the aforesaid circumstances, I find no merit in the petitioner's challenge to the award. The petition is therefore dismissed, with costs of Rs.30,000/-, payable to the respondent.

29. Pending application also stands disposed of.

PRATEEK JALAN, J

APRIL 24, 2024

"Bhupi"/TJ/