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

Date of decision: 30.08.2024

+ **O.M.P. 7/2024, I.A. 37811/2024**

VANDNA RANI

.....Petitioner

Through: Mr. Abhimanyu Yadav, Adv.

versus

INDIAMART INTERMESH LTD

.....Respondent

Through: Mr. Naman Joshi, Ms. Amber Tickoo,
Ms. Seema Joshi, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 seeking to set aside the Arbitral Award dated 14.06.2024 to the extent whereby the learned arbitrator has held that the termination of the employment of the petitioner is in accordance with the appointment letter dated 08.06.2018.

2. The facts are that the petitioner was offered the position of Assistant Manager-Client Acquisition *vide* letter of appointment dated 08.06.2018 and was working as an employee of the respondent company on salary basis.

3. Subsequently, the respondent company terminated the employment of the petitioner *vide* letter dated 29.07.2021 in terms of Clause 8 of the appointment letter. Clause 8 of the appointment letter reads as under:

“Termination

During probation period, your services can be terminated, without notice and assigning any reason, if your services are not found satisfactory. After confirmation of your employment, notice of termination of employment will be 15



days or 15 day's salary in lieu of notice from either party. Notwithstanding the aforementioned, the Company shall be entitled to terminate your employment without notice and compensation in any of the following events:

i) if you are in the opinion of the Company, guilty of dishonesty, misconduct or negligence in performance of your duties.

ii) if you have been found to have committed a serious breach or continual material breach of any of your duties or obligations;

iii) if you are found to have made illegal monetary profit or received any gratuities or other rewards, in cash or in kind, out of any of the Company's affairs or any of its subsidiaries or related companies.

You would also be liable to be removed from the services at any time without any notice and compensation, in case, if any information Furnished by you in connection with the above appointment is found incorrect at any stage or correct information is found suppressed.”

4. Since there were disputes subsisting between the parties, the petitioner invoked arbitration on 28.03.2022 and thereafter, filed an application under section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an arbitrator. The learned arbitrator was appointed by this court *vide* order dated 17.02.2023. The appointment letter contains the arbitration clause being Clause 11 which reads as under:

“11. Dispute Resolution

In case of any dispute or difference in respect of interpretation of the terms & conditions of this agreement, both the parties shall resolve the same amicably through discussions by the duly



appointed representatives. However, any dispute having not resolved shall be referred to the sole arbitration by a person duly nominated by the company as an arbitrator, whose decision shall be final and binding on both the parties. The arbitration shall be at Delhi and proceedings shall be in English.”

5. Learned Sole Arbitrator entered into reference on 25.02.2023 and the petitioner filed her statement of claim before the arbitrator on 14.03.2023. Thereafter, the respondent filed its statement of defence and the Arbitral Award came to be passed on 14.06.2024 whereby the learned Arbitrator held that the termination of the employment of the petitioner was in accordance with the appointment letter dated 08.06.2018.

6. Mr. Yadav, learned counsel for the petitioner has challenged the said Award only on the ground that the termination of the petitioner was in violation of Section 30 of the Delhi Shops and Establishment Act, 1954 whereby the petitioner should not have been discharged from her services without giving one month prior notice in writing or wages in lieu of such notice.

7. It is stated that the respondent company is a commercial establishment under Section 2(5) of the Delhi Shops and Establishment Act, 1954 and should have fulfilled the terms of Section 30 of the Delhi Shops and Establishment Act, 1954. Since, no such notice or salary prior to the termination was given to the petitioner therefore, the termination of the petitioner is void.

8. Learned counsel for the petitioner has placed reliance on ***Kotharaju Narayana Rao vs. Tekumalla Ramachandra Rao***, AIR 1959 Andhra



Pradesh 370 (V 46 C107) to state that when the contract executed between the parties is unlawful in nature, it is upon the court to consider the question whether the agreement is unlawful or not even without a pleading.

9. I have heard learned counsel for the parties.

10. In the present case, the learned Arbitrator has dealt with the issue of termination and Section 30 of the Delhi Shops and Establishment Act, 1954 in paras below:

“55. In my considered view, the contention of the Claimant that Clause 8 of the Appointment Letter dated 08.06.2016 is void under Section 23 of Indian Contract Act, 1872 and cannot be enforced, is beyond the pleaded case of the Claimant in her Statement of Claim. There is no averment in the Statement of Claim, which seeks to challenge the validity of the Clause 8 of the Appointment Letter dated 08.06.2016. In fact, the Claimant has not sought any declaratory relief that Clause 8 of the Appointment Letter dated 08.06.2016 is void and unenforceable.

56. In view of the fact that there were no averments in the above regard in the Statement of Claim, no opportunity was available to the Respondent to rebut the said case in its pleadings in the Statement of Defence. Basis the pleadings of the parties, the Points of Determination were framed by the Tribunal vide Procedural Order 25.11.2023. In the absence of any pleadings by the Claimant, no issue was struck with regard to the validity and enforceability of Clause 8 of the Appointment Letter dated 08.06.2016.

57. Accordingly, in my considered view the Claimant at the stage of oral arguments cannot be allowed to raise the plea as regards the validity and enforceability of Clause 8 of the Appointment Letter dated 08.06.2016, when (i) no such plea has been raised in the Statement of Claim; (ii) no issue has been struck in this regard; and (iii) no evidence has been led on the said aspect by the Claimant. Therefore without any factual foundation having been laid by the Claimant, the plea regarding validity and enforceability of Clause 8 of the Appointment Letter dated 08.06.2016, cannot be considered



and deserves to be rejected on this ground alone.

.....

68. The Claimant also contends that Clause 8 of the Appointment Letter dated 08.06.2016 is contrary to Section 30 of the Delhi Shops And Establishment Act, 1954. According to the Claimant, as per Section 30 of the Delhi Shops And Establishment Act, 1954 no employer can dispense with the services of any employee who has been in continuous employment for not less than three months, without giving at least one months' notice in writing or wages in lieu of such notice. Accordingly, the Claimant submits that Clause 8 of the Appointment Letter dated 08.06.2016 providing for only 15 days' notice is contrary to Section 30 of the Delhi Shops And Establishment Act, 1954 and therefore the Claimant's termination is illegal.

69. Section 30 of the Delhi Shops and Establishment Act, 1954 provides as under:

“30. Notice of Dismissal.-

(1) No employer shall dispense with the services of an employee who has been in his continuous employment for not less than three months, without giving such person at least one month's notice in writing or wages in lieu of such notice: Provided that such notice shall not be necessary where the services of such employee are dispensed with for misconduct, after giving him an opportunity to explain the charge or charges alleged against him in writing.

(2) No employee who has put in three months' continuous service shall terminate his employment unless he has given to his employer a notice of at least one month, in writing. In case he fails to give one month's notice he will be released from his employment on payment of an amount equal to one month's pay



(3) In any case instituted for a contravention of the provision of sub-section (1), if a Magistrate is satisfied that an employee had been dismissed without any reasonable cause or discharged without proper notice or pay in lieu of notice, the Magistrate may, for reasons to be recorded in writing. award, in addition to one month's salary compensation to the employee as follows:

(a) Where immediately before his discharge or dismissal, the employee was in receipt of a salary not exceeding Rs. 100 per month, such amount of compensation not exceeding his month's salary, as the Magistrate may direct.

(b) Where immediately before his dismissal or discharge, the employee was in receipt of a salary exceeding hundred rupees per mensem, such amount of compensation not exceeding hundred rupees as the Magistrate may direct

(4) The amount payable as compensation under this section shall be in addition to any fine payable under section 40.

(5) No person who has been awarded compensation under this section shall be at liberty to bring a civil suit in respect of the same claim,”

70. At the outset from a reading of Section 30(3) of the Delhi Shops and Establishment Act, 1954, it appears that the jurisdiction to decide whether there is any contravention of Section 30(1) thereof and to award compensation and/or fine for the contravention thereof, lies exclusively with the Magistrate of the First Class. This is fortified by Section 45 of the Act, which provides as under:

“45. Cognizance of offence.-

(1) No prosecution under this Act, or the rules or orders made thereunder shall be instituted except by or with the previous sanction of the Chief Inspector appointed under the Act.



(2) No court inferior to that of a Magistrate of the First Class shall try any offence under this Act or any rule or order made thereunder.”

71. Accordingly, a designated authority has been given the jurisdiction under Section 30(3) of the Act. Therefore, any dispute arising out of Section 30 of the Delhi Shops and Establishment Act, 1954 is not arbitrable and therefore cannot be decided by this Tribunal.

72. The Respondent is also right in contending that there is no averment in the Statement of Claim that Clause 8 of the Appointment Letter is contrary to Delhi Shops and Establishment Act, 1954 and in the absence of any pleadings in this regard, the Claimant cannot be allowed to raise the said issue during the course of arguments.”

11. The learned Arbitrator has categorically held in Para 72 of the Award that the petitioner did not raise the issue of termination of the petitioner being *void* and violative of Section 30 of the Delhi Shops and Establishment Act, 1954 in the statement of claim filed by the petitioner and in the absence of the said pleadings, the petitioner could not be permitted to raise the said issue during the course of the oral arguments.

12. The learned Arbitrator has further gone to discuss the said issue to hold that it is the Magistrate of the First Class who can take cognizance of any violation under the provisions of Delhi Shops and Establishment Act, 1954 and the same is envisaged under Section 45 of the Delhi Shops and Establishment Act, 1954,

13. I am of the view that once the pleadings are silent regarding the averment and if it is permitted to be raised for the first time in oral arguments, the respondent has had no opportunity to meet the said averment. The pleading is the foundation of any case and the absence of pleading



cannot be cured.

14. The scope of interference as mandated under Section 34 of the Arbitration and Conciliation Act, 1996 is very narrow and limited, and in order to adjudicate the matter related to the interpretation of the contract, determination of facts and appreciation and re-appreciation of evidence, the learned Arbitrator is the best authority for the said purpose. In this regard, reliance is placed on **MMTC VS Vedanta Limited**, (2019) 4 SCC 163 wherein the Hon'ble Supreme Court of India inter alia held as under:

“11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii), i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the “fundamental policy of Indian law” would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury reasonableness. Furthermore, “patent illegality” itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract. 12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b) (ii), but such interference does not entail



a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (See Associate Builders v. DDA, (2015) 3 SCC 49). Also see ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705; Hindustan Zinc Ltd v. Friends Coal Carbonisation, (2006) 4 SCC 445; and McDermott International v. Burn Standard Co. Ltd., (2006) 11 SCC 181).”

15. The reliance of the petitioner on **Kotharaju Narayana** (supra) is also misconstrued as in the present case, it is an admitted fact that the petitioner had duly signed the appointment letter and performed her obligations in terms of the said employment letter, hence, the appointment letter cannot be deemed as unlawful being contrary to the Delhi Shops and Establishment Act, 1954. There can be no fault with the reasoning of the Arbitrator that under Section 45 of the Delhi Shops and Establishment Act, 1954, it is the Magistrate of First Class who is the designated authority to take cognizance of any violation of the Act.

16. In view of the above findings, I am of the view that there is no infirmity in the findings of the arbitrator and the same needs to be upheld.

17. For the said reasons, the petition is dismissed.

JASMEET SINGH, J

AUGUST 30, 2024/DM/PP

(Corrected and Released on 12.09.2024)