IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ARBITRATION APPEAL NO. 1 OF 2018

Vodafone Mobile Services Limited .. Appellant

VERSUS

M/s Aditya Televentures & another .. Respondents

Mr. P. R. Katneshwarkar, Senior Counsel instructed by Mr. A. S. Gandhi, Advocate for the Appellant.
Ms. P. S. Talekar, Advocate for the Respondents.

CORAM : R. M. JOSHI, J.
DATE : 8th OCTOBER, 2025.

PER COURT :

1. This Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short ' Act of 1996') takes exception to the order dated 13.11.2017 passed by the District Judge -1, Aurangabad in Miscellaneous Application No. 372/2014 filed under Section 34 of the Act of 1996 whereby the challenge to the award dated 19.08.2014 passed by the Arbitral Tribunal came to be rejected.

2. The facts which led to filing of this Appeal are narrated in short as under :-

i. Admittedly, the Memorandum of Understanding (for short 'MOU') was executed between the Appellant and Respondent on

01.06.2006 in respect of franchisee of the Appellant-Mobile Service Provider for a period of five years, with extension thereof mutually. According to the Appellant, said agreement provides for termination thereof in Clause No. 66. It is contemplated therein that in three situations the agreement could be terminated. Firstly, immediately by the company, in case of any violation of the agreement, secondly, immediately by the company in case it is found that the Franchisee is acting in any manner which is detrimental to the company's interests or its image and thirdly, by either party by giving three months notice in writing.

ii. First Information Came to be lodged against the proprietor of the Respondent by its female employee making allegations against him in respect of offences punishable under Section 376 of the Indian Penal Code and others. A news came to be published in this regard in the newspaper on 31.01.2007 in the title "Hutch Gallery owner held for blackmailing lady employee". According to the Appellant, the news so published pursuant to the First Information Report came to be lodged against the proprietor of the Respondent was an act detrimental to the image of the company. Consequently, the company issued notice dated 19.02.2007 to the

Respondent terminating the contract with immediate effect. Respondent No. 1 issued notice to the Appellant-company on 05.10.2007 claiming damages. A notice was also issued to the company invoking arbitration clause. Undisputedly, the dispute between the parties was referred to the sole Arbitrator for adjudication and after considering the statement of claim, written statement and evidence placed on record, an award came to be passed on 19.08.2014 operative part of which reads as follows :-

ORDER

> The Respondent Nos. 1 and 2 jointly and severally do pay the following amount.
>
> 1. The respondents do pay to the claimant Rs.3,14,66,783/- as the net commission of the unexpired period form 01.02.2007 to 31.05.2011, plus Rs. 2 Lacs as deposit with the respondent, total Rs. 3,16,66,783/- (Rupees Three Crore, Sixteen Lacs, sixty six thousand, seven hundred eighty three only.)
>
> 2. Rs. 2,00,000/- (Two lacs) towards Arbitration expenses.
>
> 3. The respondents do pay to the claimant, interest @ 12% p.a. on the above amount in Para No.

1 of this order from the date of notice dated 21/02/2007 till the date of this order.

4. The respondents do pay to the claimant interest at the statutory rate @ 18% p.a. from the date of this order till the full satisfaction of the amount due stated in Para 1 and 2 of this order.

5. The respondent do bear the cost incurred by it in this proceeding.

6. The claimant should arrange to get this award duly stamped as per the Indian Stamp Act, 1958, Article 12.

Being aggrieved by the said award, an Application was moved before the District Court under Section 34 of the Act of 1996 being Civil Miscellaneous Application No. 372/2014. This Application came to be dismissed by the impugned order dated 13.11.2017. Hence, this Appeal.

3. Learned Senior Counsel for the Appellant submits that the agreement between the parties permitted its termination in three contingencies as recorded in Clause No. 66(a), (b) and (c). It is his submission that all these three clauses are independent to each other

and it is open for the Appellant-company to terminate the agreement by invoking any of the clauses independently or simultaneously. It is his submission by referring to the First Information Report against the proprietor of Respondent No. 1 so also the news published in the newspaper that it is sufficient to indicate that the same is detrimental to the reputation of the company. It is his submission that damage to the reputation would be totally to the subjective satisfaction of the Appellant-company and could not be determined by any other person including Courts. It is his submission that once it is held that the image of the company was damaged since it is detrimental to its interest, it was open for the company to terminate the contract with immediate effect in view of Clause No. 66(b). It is his alternate submission that in any case it was open for the Appellant-company to terminate the contract by invoking Clause No. 66(a) as well as Clause No. 66(c). He sought to argue that before the Arbitrator a specific issue was raised with regard to the invocation of Clause No. 66(c) of the agreement. It is argued that the Arbitral Tribunal has failed to take into consideration the same and it has resulted into wrongly allowing the claim of the Respondent contrary to the terms of agreement between parties. It is his submission that at the most the Respondent would have been entitled to receive three months compensation in lieu of notice of three months however, in no case, he would be entitled for any damages as granted by the Arbitral Tribunal. Objection is also sought to be raised with regard to the arrival of amount of compensation/damages on the ground that such findings are not based upon the evidence on record but it is only surmises and conjunctures. Thus, it is his submission that in absence of any evidence being placed for determination of amount of damages/compensation, the award in question cannot sustain. On the point of grant of interest, it is his submission that grant of said interest is contrary to the provisions of Section 31(7) of the Act of 1996 so also Section 2(b) of the Interest Act. It is his submission by referring to Section 73 of the Contract Act that the Arbitral Tribunal has failed to take into consideration the fact that indirect damages could not have been granted. In support of his submissions, reliance is placed on judgment in case *Indian Oil Corporation Ltd. vs. Amritsar Gas Service & others*, **(1991) 1 Supreme Court Cases 533.**

4. Learned counsel for Respondent, at the outset, made submissions with regard to the scope and ambit of Section 37 and jurisdiction of this Court to cause interference in the impugned award and order passed by the District Court under Section 34 of the

Act of 1996 stating that the jurisdiction of this Court becomes extremely limited while exercising powers under Section 37 of the act of 1996 as compared to Section 34 of the Act of 1996. In this regard reference is made to Section 34, which according to her, enables any Court to cause interference in the award only in the contingencies as referred therein.

5. To support said submission, reference is made to the judgment of the Supreme Court in case of *Punjab State Civil Supplies Corporation Limited and Another vs. Sanman Rice Mills and others,* **2024 SCC OnLine SC 2632**. She has made specific reference to the latest judgment of the Supreme Court in case of *Somdatt builders – NCC – NEC (JV) vs. National Highways Authority of India and others*, **2025 SCC OnLine SC 170** in order to substantiate her point. It is her further submission that in view of the settled position of law the findings of fact recorded by the Arbitral Tribunal cannot be interfered with unless they are patently illegal/perverse. She further submitted that even in case of an incorrect finding of fact or even for inappropriate application of law, does not become a ground to cause interference in the order impugned unless the case is covered by Section 34 of the Act. It is argued that there was no reason or

question of damage being caused to the company on account of lodging of First Information Report against the proprietor of Respondent No. 1 and it could not be detrimental to image of the company. She drew attention of the Court to the findings recorded by the Arbitral Tribunal indicating that infact the termination of contract/agreement has been done on 31.01.2007 itself whereas the notice was subsequently issued on 19.02.2007. It is submitted that the Tribunal has recorded finding of fact on the basis of evidence led by the Appellant-company that immediately on the same day the signboards of the company were removed and Respondent No. 1 was estopped from conducting said business. It is submitted that the said finding of fact being in consonance with the evidence on record, does not deserve any interference. It is also pointed out to this Court that he Arbitral Tribunal so also the District Court has taken into consideration the conduct of the Appellant of not complying with the order passed by the Court under Section 9 of the Act whereby Respondent No. 1 was permitted to continue with the business. It is submitted that if that order was implemented/complied with by the Appellant-company, there was no question of seeking any damages or grant thereof. It is submitted that having regard to the material on record, award passed by the Tribunal does not deserve any interference. As far as award of interest is concerned, it is argued that the Arbitral Tribunal has jurisdiction under Section 31 of the Act to award interest and that such order cannot be construed as against the public policy.

6. At the outset, this Court would like to deal with the scope of interference in the order passed under Section 34 of the Act of 1996 taking exception to the arbitral award. It would be relevant to take note of Section 34 of the Act of 1996, which reads thus :

> **34. Application for setting aside arbitral award.—**
> (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).
>
> (2) An arbitral award may be set aside by the Court only if—
>
> (a) the party making the application 1[establishes on the basis of the record of the arbitral tribunal that]—
>
> (i) a party was under some incapacity, or
> (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law
for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

2[Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the
public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

3[(2A) x x x

(3) x x x

(4) x x x

[(5) x x x

(6) x x x

It is clear from the above provisions that an award passed by Arbitral Tribunal could be set aside in cases covered by Sub-Section 2(a)(i) to (v). Admittedly, none of these grounds are raised nor available to the Appellant to challenge the impugned award. Clause (b) enables the Court under Section 34, to set aside award if subject matter is not capable of settlement by arbitration, which does not apply to present case. It could be set aside if award is in conflict of public policy of India i.e. if obtained by fraud or corruption, it is against fundamental policy of India or in conflict with basic notions of morality or justice. There is no allegation that award is obtained by fraud. The only scope that would remain to test the award impugned is whether it is against fundamental policy of India or is against basic notions of morality or justice. Of course, it would be open for the challenger to raise issue of patent illegality, as provided by judgment of Hon'ble Supreme Court.

12. In this regard it would be pertinent to take note of the observations made by the Supreme Court in case of Somdatt Builders (supra) with regard to scope and ambit of Sections 34 and 37, wherein it has been observed thus :

> *36. In MMTC Ltd. v. Vedanta Ltd., this Court held that as far as Section 34 is concerned, the position is well settled that the court does not sit in appeal over an arbitral award and may interfere on merits only on the limited ground provided under Section 34(2)(b)(ii) i.e. if interference would not entail a review on the merits of the dispute but would be 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. As far as interference with an order made under Section 34 by the court under Section 37 is concerned, it has been held 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.

37. What is public policy of India has been explained in Ssangyog Engineer and Construction Company Ltd. (supra). It means the fundamental policy of Indian law. Violation of Indian statues linked to public policy or public interest and disregarding orders of superior courts in India would be regarded as being contrary to the fundamental policy of Indian law. It would also mean that the arbitral award is against basic notions of justice or morality. An arbitral award can be set aside on the ground of patent illegality i.e. where the illegality goes to the root of the matter but re-appreciation of evidence cannot be permitted under the ground of patent illegality.

38. In PSA Sical terminals Private Ltd. (supra), this Court reiterating the well settled principles held as under :

> *40. It will thus appear to be a more than settled legal position, that in an application under Section 34, the court is not expected to act as an appellate court and reappreciate the evidence. The scope of interference would be limited to grounds provided under Section 34 of the Arbitration Act. The interference would be so warranted when the award is in violation of "public policy of India", which has been held to mean "the fundamental policy of Indian law". A judicial intervention on account of interfering on the merits of the award would not be permissible. However, the principles of natural justice as contained in Sections 18 and 34(2)(a)(iii) of the Arbitration Act would continue to be the grounds of challenge of an award. The ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the "most basic notions of morality or justice". It is only such arbitral awards that shock the conscience of the court, that can be set aside on the said ground. An award would be set aside on the ground of patent illegality appearing on the face of the award and as such, which goes to the roots of the*

matter. However, an illegality with regard to a mere erroneous application of law would not be a ground for interference. Equally, reappreciation of evidence would not be permissible on the ground of patent illegality appearing on the face of the award.

41. A decision which is perverse, though would not be a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. However, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality.

39. In Reliance Infrastructure Ltd. (supra), this Court referring to one of its earlier decisions in UHL Power Company Ltd. v. State of Himachal Pradesh, held that scope of interference under section 37 is all the more circumscribed keeping in view the limited scope of interference with an arbitral award under Section 34 of the 1996 At. As it is, the jurisdiction conferred on courts under Section 34 of the 1996Act is fairly narrow. Therefore, when it comes to scope of an appeal under Section 37 of the 1996 Act, jurisdiction of the appellate court in examining an order passed under Section 34,

> *either setting aside or refusing to set aside an arbitral award, is all the more circumscribed.*

7. Keeping in mind the scope and ambit of Sections 34 and 37 of the Act of 1996 and the dictum of the Supreme Court, the facts of the present case would be assessed.

8. It is not in dispute that the MOU dated 01.06.2006 came to be executed between the Appellant and Respodent wherein it was agreed that the Respondent would run franchisee of Appellant for a period of five years with effect from 01.06.2006. Pursuant to the said franchisee agreement, Respondent installed adequate and required infrastructure for conducting business. Further, there is no dispute about the fact that one of the employees of the Appellant was to act as Gallery Incharge and another employee as Gallery Manager and Coordinator. There is denial of the fact that the First Information Report came to be lodged against the proprietor of Respondent by one of the female employees on 30.01.2007. It is the case of the Appellant that by notice dated 19.02.2007, the franchisee agreement came to be terminated in view of Clause No. 66 of the said agreement. It was however case of the Respondent before the Arbitral Tribunal that infact on 31.01.2007 itself the agreement stood

terminated in view of positive acts taken by the Appellant and its employees. In this backdrop, issue came up before the Arbitral Tribunal as to whether the cancellation of dealership was illegal and contrary to the provisions of MOU.

9. Evidence came to be led before the Tribunal wherein it has come on record that on 31.01.2007 itself, there was removal of signboards and equipments from the Respondent-gallery. Arbitral Tribunal has taken note of the fact that the First Information Report came to be registered on 30.01.2007 and on the next day news about said incident appeared in the newspaper. It is observed by the Tribunal that there is nothing on record to indicate that the issue with regard to publication of news item reached to the Appellant's office at Pune before 9.00 am. However, as admitted by the witness of the Appellant, the act of removal of signboard and taking away equipments commenced at 9.00 am at Aurangabad. Thus, the Tribunal has recorded positive finding that infact the termination of franchisee contract has been taken effect on 31.01.2007 without any notice. These findings of fact recorded by the Tribunal are in consonance with the evidence on record hence cannot be termed as perverse.

10. It is sought to be argued on behalf of the Appellant that Sub-clauses (a), (b) and (c) of Clause No. 66 are independent to each other and it is open for the Appellant to invoke any one of them or all of them simultaneously. It is sought to be argued that the Tribunal has failed to taken into consideration the fact that there could be termination of agreement by giving three months notice in writing. It is thus sought to be canvased that at the most the Respondent would have been entitled for compensation for a period of three months and not beyond that. Though such arguments are sought to be made before this Court, perusal of the record indicates that notice dated 17.02.2007 clearly spells out publication of news and cause of action contemplated in Clause No. (b) to be the reason for termination of the agreement, i.e. detrimental act to the image of the Appellant. There was no other reason mentioned while terminating the contract. Moreover, even before the Tribunal, the only contention of the Appellant was that there is termination of contract on the ground of damage caused to the image of the Appellant-company on account of publication of news item in the newspaper against the proprietor of the Respondent. Though issue framed by the Arbitral Tribunal indicates that the issue with regard to the invocation of Sub-clauses (a), (b) and (c) of Clause No. 66 was raised, however, the record does

not indicate Appellant having claimed termination on any other ground than Clause No. (b). Pertinently, the Tribunal has dealt with the said aspect in the award by observing that though Clause No. 66(c) empowers either party to terminate the agreement by giving three months notice in writing, no case is inferred from the record to that effect and hence the contention was not accepted. Having regard to the case sought to be made out by the Appellant before the Arbitral Tribunal, the said finding does not suffer from any error much less patent illegality.

11. Insofar as the ground sought to be made out for termination of contract is concerned, the Tribunal has held that in no manner whatsoever publication of news against the proprietor of the Respondent could be considered as detrimental to the image of the company. In this regard detailed reasoning is found in Paragraph Nos. 13 and 14 of the award. The Arbitral Tribunal has rightly held that the damage caused to the Appellant-company could have been considered and except in case there was deficiency of service on account of any act related to the business, the agreement of the Appellant-company was effected in any manner. This Court finds no perversity in the findings recorded by the Arbitral Tribunal for not

accepting case of Appellant in respect of the alleged personal grievance against the proprietor of the Respondent by employee, news came to be published and publication of such news would not be a good ground for taking action of termination of contract. Thus, this is not a case wherein the Tribunal has not taken into consideration the case sought to be made out by the rival parties in respect of the issue with regard to the legality of termination of contract and the findings arrived at by the Tribunal cannot be held to be inconsistent with the record and contrary to the settled position of law in this regard.

12. Once it is held that termination of agreement/contract is illegal, next question arose before the Tribunal is to determine compensation to be granted to the Respondent. Record indicates that during the course of recording of evidence, material document with regard to the business of the Appellant-company was sought to be brought on record through cross-examination of the witness of Appellant-company. There is no denial of the fact that the relevant record required for determination of this issue was in the control and custody of the Appellant and it was necessary for the Appellant to place the same before the Arbitral Tribunal. In absence thereof, the

Tribunal has placed reliance on the record available in public domain which indicated increase in the business of Appellant-company during the relevant time. The Tribunal has also held that increase of business was in entire Maharashtra circle and since the Respondent-gallery was located in Aurangabad, which is a developing district, determination of compensation has been done on the basis of said data available on record. In case Appellant had any record with it to contradict the same, it was obligatory on the part of the Appellant to have produced the same before the Tribunal. In any case, it cannot be said that the Tribunal has determined the amount of damages/compensation on assumption and by no stretch of imagination this can be called as surmises and conjunctures. The award passed by the Tribunal clearly indicates reasons being recorded for arrival of said conclusion. Pertinently, the Tribunal has even deducted expenses from the amount to be paid to the Respondent. Thus, this is not a case wherein determination of compensation/damages is resulted into bonanza to the Respondent.

13. It was contended on behalf of the Appellant that compensation/damages could not have been granted for the period from notice of arbitration till the award was passed. This submission

deserves no consideration for the reason that admittedly after invocation of arbitration clause, an Application came to be filed under Section 9 of the Act before the District Court seeking interim relief and interim relief was granted permitting the Respondent to continue with the said business. This order is not set side by any competent Court. Further, admittedly the said order was not implemented. If the said order was implemented by the Appellant there would not have been any need or question of granting damages/compensation to the Respondent for the said period. In these facts, this Court finds no reason to accept the contention of Appellant in that regard.

14. Coming to the issue of granting of interest by Tribunal to the Respondent, this is not a case wherein interest has been granted without jurisdiction. Needless to say that Section 31(6) of the Act of 1996 enables the Tribunal to direct interest. Interest has been granted by giving justification therefor.

15. Having regard to the aforestated facts, and the scope and ambit of Sections 34 and 37 of the Act of 1996, it cannot be said that case has been made out by the Appellant that the impugned award could be set aside on the ground of being contrary to the

fundamental policy of Indian law, interest of India, justice or morality or even on the ground of patent illegality as contemplated by judgment of Hon'ble Supreme Court in case of *ONGC vs. Saw Pipes*, **(2003) 5 SCC 705**.

16. The District Judge while deciding Application under Section 34 has rightly taken into consideration facts and law applicable to the case and hence the order impugned does not deserve interference. Appeal, therefore, deserves to be dismissed and accordingly stands dismissed.

17. Consequently, Respondent is permitted to withdraw the amount deposited in this Court.

18. At this stage, learned Senior Counsel for Appellant seeks stay of the order passed by this Court for a period of six weeks.

19. Learned counsel for Respondent opposed the said request.

20. In the interest of justice and to enable Appellant to challenge order of this Court before Hon'ble Supreme Court this order is stayed and interim relief granted earlier to continue for a period of six weeks.

(R. M. JOSHI)
Judge

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