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

Date of decision: 03rd APRIL, 2025

IN THE MATTER OF:

+ **FAO (COMM) 90/2025**

BANK OF BARODA

.....Appellant

Through: Mr. Sougat Sinha and Ms. R Gayathri
Manasa, Advocates

versus

CITY HAWKS MANPOWER SERVICES AND CONSULTANCY

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN

SHANKAR

JUDGMENT (ORAL)

SUBRAMONIUM PRASAD, J.

CM APPL. 19739/2025 (Exemption)

Allowed, subject to all just exceptions.

FAO (COMM) 90/2025, CM APPL. 19738/2025

1. The present Appeal has been filed by the Appellant under Section 13 of the Commercial Courts Act, 2015 read with Section 37 of the Arbitration and Conciliation Act, 1996 challenging the Order dated 30.01.2025, passed by the learned District Judge (Commercial Division), Dwarka District Courts in OMP(COMM.) 21/2024. By the said Order, the learned District Judge dismissed OMP(COMM.) 21/2024, which was filed by the Appellant



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herein under Section 34 of the Arbitration Act challenging the award dated 04.09.2024, passed by the learned Sole Arbitrator allowing the claims of the Respondent herein.

2. Shorn of unnecessary details, the facts, leading to the present case are as under:

- a) It is stated that a Memorandum of Understanding dated 26.07.2010 was entered into between the Appellant and the Unique Identification Authority of India (UIDAI) whereby the Appellant herein was appointed as a Registrar for implementation of the Unique Identification (UID) Scheme of the Government of India for providing unique identification numbers to the residents of India.
- b) It is stated that the Appellant herein entered into an Agreement with the Respondent herein on 14.05.2015 by which the Respondent was appointed as an enrolment agency for collecting demographic and biometric information of the individuals as desired by the Appellant. It is stated that disputes arose between the Appellant and the Respondent as the Appellant herein refused to make payments against the invoice raised by the Respondent between April, 2017 to December, 2017 amounting to Rs.21,85,575/-. Material on record reveals that the Appellant herein refused to pay the abovementioned amount to the Respondent herein because of imposition of penalty by the UIDAI on the Appellant herein.
- c) Respondent herein invoked the Arbitration Clause by sending a notice dated 14.05.2015 under Section 21 of the Arbitration Act



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to the Appellant herein. It is stated that when satisfactory response was not received by the Respondent, the Respondent approached this Court by filing a Petition under Section 11 of the Arbitration Act, being ARB.P.1257/2021, seeking appointment of an Arbitrator to adjudicate on the disputes between the parties. This Court *vide* Order dated 23.08.2022 constituted an Arbitral Tribunal to adjudicate on the disputes between the parties.

- d) The learned Arbitrator, after considering the material on record, came to the conclusion that the decision of the Appellant to withhold the payment of the Respondent on the ground that the UIDAI had decided to impose penalty on the Appellant is not sustainable and is contrary to the Agreement entered into between the Appellant and the Respondent. The learned Arbitrator, therefore, passed the Award dated 04.09.2024 awarding Rs.21,85,575/- to the Respondent herein along with interest @12% per annum from 01.06.2020 till the date of payment.
- e) The said award was challenged by the Appellant herein by filing a Petition under Section 34 of the Arbitration Act before the District Judge.
- f) The learned District Judge, *vide* Order dated 30.01.2025, affirmed the award dated 04.09.2024.
- g) It is this Order which is under challenge in the present Appeal.

3. At this juncture, it is pertinent to extract the relevant portions of the



Agreement entered into between the Appellant and the Respondent. Clauses 6.3(8) and 6.3(9) of the Special Conditions of the Contract dated 14.05.2015 reads as under:

“6.3(8)

Payment shall be subject to adherence to the Service Level Agreements and after recovering the full amount of penalty if any, imposed on the Supplier by Bank.

6.3(9)

Supplier shall submit his bill/ invoice with comprehensive statement of enrolment/UID issued etc details as per the Bank's requirement to be submitted to respective 'Bank's controlling authorities as identified by Bank for payments.”

4. Similarly, Clause 1.9.2 of the General Conditions of the Contract dated 14.05.2015, which deals with the measures taken by the Purchaser, and Clause 1.9.3, which deals with commissions and fee, reads as under:

“1.9.2 Measures to be taken by the Purchaser: (a)

The Purchaser may terminate the contract if it determines at any time that representatives of the Supplier were engaged in corrupt, fraudulent, collusive or coercive practices during the selection process or the execution of that contract, without the Supplier having taken timely and appropriate action satisfactory to the Purchaser to remedy the situation

(b)The Purchaser may also sanction against the Supplier, including declaring the Supplier ineligible, either indefinitely or for a stated period of time, to be awarded a contract if it at any time determines that the Supplier has, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for, or in executing, a Purchaser-financed contract or any adverse reporting/ blacklisting by UIDAI without giving any notice.



1.9.3 Commissions and Fees: Purchaser will require the successful Supplier to disclose any commissions or fees that may have been paid or are to be paid to agents, representatives, or commission agents with respect to the selection process, or execution of the contract. The information disclosed must include at least the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee.”

5. The learned Arbitrator, after examining various provisions of the Contract, came to the conclusion that when the penalty is sought to be imposed on the grounds of defects, it is incumbent on the party alleging the defect to demonstrate that the other party has indulged in questionable conduct and without demonstrating such a conduct, damages cannot be claimed by the party. The learned Arbitrator held that imposition of penalty by the UIDAI on the Appellant herein, cannot be a ground for the Appellant herein to refuse to pay the dues to the Respondent herein. Relevant portion of the Award dated 04.09.2024 reads as under:

“55. The reliance on Clause 1.9.2 [a] and [b] of the GCC to contend that the imposition of any penalty by the UIDAI would be binding on the Claimant, and that it would absolve the Respondent of any contractual liability toward the Claimant, is unpersuasive for the following three reasons:

First, the clause in question relates to blacklisting and related action, and not to withholding of consideration under the agreement. The withholding of consideration is specifically spoken for in Clause 1.9 .2 [a]and [b] of the GCC and which only permits imposition of penalties by the Respondent itself as being a valid



basis for not making payment of the contractual consideration.

Second, even if one were to assume that the said clause permits imposition of penalties by the UIDAI upon the Claimant raising a dispute thereagainst, the matter would require adjudication so as to determine the veracity of the penalty. In this determination therefore, the veracity of the imposition of the penalty was required to be established before the Arbitral Tribunal. As mentioned hereinabove, aside from merely stating the fact that the penalty had been imposed, the Respondent has not produced any material to justify the basis for the imposition of the penalty or provided even an iota of evidence as regards the alleged corrupt practice that was indulged in by the Claimant.

Third, as already pointed out hereinabove, the Respondent has taken a dichotomous position with regard to the very origin of the penalty. At various instances, it has urged that the penalty was in fact imposed by the UIDAI; whereas at certain instances, it has surprisingly taken a position that the penalty was imposed at its own end after due verification of the corrupt practice carried out by the Claimant. Therefore, looked at from any angle, the Respondent has failed to provide any justifiable reason for the imposition of the penalty upon the Claimant. To add to the intrigue, the Respondent vide e-mail dated 18.07.2017 seems to have requested the UIDAI to explore the possibility of reversing the penalty imposed on the Claimant.”

6. The learned District Judge, while dealing with an application under Section 34 of the Arbitration Act filed by the Appellant herein, challenging the Award dated 04.09.2024, has found no fault with the findings of the learned Arbitrator.



7. The scope of Section 37 of the Arbitration Act has now been crystallized by the Apex Court. In MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163, the Apex Court has 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.”

8. In Punjab State Civil Supplies Corpn. Ltd. & Anr. v. Sanman Rice Mills & Ors., 2024 SCC OnLine SC 2632, the Apex Court has held as under:

*“20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. **The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is***



sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.

21. It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement.”

(emphasis supplied)

9. A perusal of the said Judgments indicate that the scope of Section 37 of the Arbitration Act is exceedingly narrow. A perusal of the Judgments mentioned above shows that the scope of Section 37 of the Arbitration Act is in fact narrower than the scope of Section 34 of the Arbitration Act and more particularly when the award has been upheld.

10. The competent Court repealed the contention of the learned Counsel for the Appellant herein that the Arbitrator had ignored Clause 1.9.2(a) of the Contract. The Court upheld the finding of the Arbitrator that Clause



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1.9.2(a) and (b) of the Agreement would not apply to the instant case. The learned Single Judge also perused Clause 1.9.2(a) and observed that the said Clause only provides for termination of the Contract by the Appellant if it comes to a conclusion that the Respondent was engaged in corrupt, fraudulent or coercive practices during the execution of the contract. The learned Single Judge also held that Clause 1.9.2(b) provides for the Appellant Bank to disable the Respondents' eligibility to be awarded any Contract, if the Respondent indulged in the above-mentioned practices, which could have been done by the Appellant Bank on any adverse reporting by the UIDAI. The learned Single Judge held that Clause 1.9.2(a) does not give any power to the Appellant Bank to impose penalty upon the Respondent, based upon adverse reporting by the UIDAI.

11. The learned Single Judge further dealt with the argument that the Arbitrator gave a wrong finding by putting the onus upon the Appellant Bank to prove the veracity of the imposition of penalty by UIDAI. The issue before the Arbitrator was as to whether the Bank was entitled to recover the penalty amount from the Respondent herein because the penalty was imposed by the UIDAI. The Ld. Single Judge while exercising jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996 has held that the Appellant Bank independently had to substantiate its action for recovery of money and the fact that UIDAI has imposed penalty upon the Appellant Bank does not give the power to the Appellant Bank to recover the penalty amount from the Respondent. The competent Court while exercising jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996 has held that the basis for recovering the penalty amount from the Respondent has been disclosed by the Appellant Bank in their statement of



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defence, wherein the Appellant Bank, in para XIV at page 220 of the petition, had submitted that as per the MOU appointing the Appellant Bank as a Registrar, UIDAI imposes penalty for various kinds of deficiencies in providing of services / corruption and such penalty is deducted from the revenue to be shared with the registrar on monthly basis. Thus, it cannot be said that the conclusion drawn by the Arbitrator and the Ld. Single Judge was so perverse and that the Award was in conflict with the public policy of India or is in conflict with the fundamental policy of Indian law or it is in conflict with the most basic notions of morality or justice.

12. The onus was on the Appellant Bank to prove the justification of the penalty imposed upon the Respondent and the Appellant Bank had to independently justify its penalty as held by the Court of competent jurisdiction.

13. In view of the fact that the Appellant Bank had not led any evidence on this aspect, the imposition of penalty could not be justified. Even the contention that the Arbitrator has travelled beyond the scope of the Agreement and pleadings also does not merit any interference under Section 34 and 37 of the Arbitration and Conciliation Act, 1996.

14. It has been contended by the learned Counsel for the Appellant that the Appellant herein was well within his contractual rights to impose penalty even without giving any notice in view of the adverse report by the UIDAI.

15. UIDAI has not been made a party before the Arbitral proceedings. UIDAI is also not a signatory to the Agreement dated 14.05.2015. There is no clause in the entire Agreement which permits the Appellant to withhold the fees of the Respondent or to impose any penalty on the Respondent in case the UIDAI imposes any penalty on the Appellant.



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16. In view of this, the decision arrived at by the learned Arbitrator, as affirmed by the learned District Judge, cannot be found fault with and the decision of the learned Arbitrator in no circumstances can be said to be arbitrary.

17. Accordingly, the appeal is dismissed along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

HARISH VAIDYANATHAN SHANKAR, J

APRIL 03, 2025

Rahul/RJ