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AA-206-2023

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KHOT

ON THE 17th OF JULY, 2026ARBITRATION APPEAL No. 206 of 2023*M/S DUNCANS TEA LTD.**Versus**M/S ATHARVA PACKAGING PVT. LTD.*

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Appearance:

Shri Nikhil Chandra Das - Advocate for the appellant.

Shri Bhuwan Gautam with Ms Mayuri Jain - Advocate for
respondent.

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ORDER

The present appeal has been filed by the appellant under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act of 1996') being aggrieved by order dated 30.01.2023 passed by the VIII District Judge Bhopal in MJC AV 190/2013, whereby the application submitted by the appellant under section 34 of the Arbitration and Conciliation Act 1996 (herein after referred to as . the Act of 1996') has been rejected.

2. It is the case of the appellant that the respondent has invoked the provisions of Section 20 of the Micro, Small and Medium Enterprises Development Act, 2006 (herein after referred to as 'Act of 2006') before the M.P. Micro and Small Enterprises Certification Council.

3. It is submitted that the Council without adhering to the provisions of



sub-section 2 of section 18 of the Act of 2006 proceeded with the matter and passed an award vide award dated 12.08.2013. The said award was challenged under Section 34 of Act of 1996 by filing an application for setting aside the said award before the Civil/Commercial Court, which was rejected. It is submitted that as per Section 34(2)(b)(ii) of the Act of 1996 the award passed by the Council is in conflict with public policy of India i.e. in contravention with the fundamental policy of the Indian law, therefore, the award ought to have been set aside by the competent Civil/Commercial Court. Therefore, the order passed by the Commercial/Civil Court dated 30.01.2023 deserves to be set aside so also the award dated 12.08.2013 passed by the Council.

4. It is further submitted that the council has heard the matter/dispute finally on 27.05.2012, however, the award was passed on 12.08.2013. It is submitted that as the award has been passed after lapse of about 1 year and 3 months, therefore, any such award, which has been passed after an inordinate delay, is also passed in conflict with the policy of Indian law, therefore the same deserves to be quashed. No other ground has been raised during the course of argument before this Court.

5. Per contra, learned counsel for the respondent has submitted that it is not the case of the appellant that he was not heard or given opportunity of hearing, instead the appellant was served with a notice dated 15.03.2012 to submit his response. Thereafter the respondent has submitted his response vide letter dated 10.04.2012. Thereafter the matter was fixed for hearing on 09.07.2012 by issuing notice to the appellant but appellant by letter dated



09.07.2012 has again sought time to argue the matter then again notice was issued on 09.10.2012 to appellant. The appellant has submitted written synopsis and arguments on 16.11.2012 and thereafter the Council heard the matter on 27.05.2013 and passed the award on 12.08.2013. It is submitted that the Council has followed the provisions of law provided under the Act of 2006 and thereafter passed the award, therefore it does not fall within any of the parameter of Section 34(2)(b)(ii) of the Act of 1996. Thus, it does not called for any interference under section 37 of the Act of 1996. The Jurisdiction of this Court under Section 37 is narrower than Section 34 of the Act of 1996. As the parameters of Section 34(2)(b)(ii) of the Act of 1996 have not been met out by the appellant, therefore, there is no question of interference at this stage. It is submitted that the matter has been pending since 2011 and till 2026 the respondent is not able to reap the fruits of the award.

6. Heard learned counsel for the parties and perused the record.

7. From perusal of the record, which has been requisitioned from the Council, it is found that the petitioner was served with a notice dated 15.03.2012 (page No. 199) of the record. The appellant submitted reply to the notice, which is tagged at page 201, which does not contain any averment or prayer in regard to that the matter be referred for conciliation as per section 18(2) of the act of 2006. The appellant has contested the matter on merits and thereafter filed a detailed reply which is tagged at page No. 216. The matter was heard finally by the Council on 27.05.2013 and the award was passed on 12.08.2013. On application been filed by the appellant under



section 34 of the Act of 1996 for setting aside of the award, the appellant had never raised the issue that on submission of an application before the Council under the Act of 2006, the Council ought to have sent the matter for conciliation as per Section 18(2) of the Act of 2006. The only contest which was made was that the wrong applicability of the interest over the principal amount, which is the jurisdiction of the Council. The Civil/Commercial Court while dealing with the issue raised by the appellant in the application has found that the parameters to set aside an award passed under section 34(2)(b)(ii) of the Act of 1996 are not met and therefore rejected the application.

8. The counsel for the appellant submits that the ground of the application for setting aside an award states that the award was illegal, it is exhaustive and it includes that any provisions of Act of 2006 is not followed then the award is in conflict with the policy of Indian law, therefore, it ought to have been set-aside by the Civil/Commercial Court.

9. From the perusal of the order sheets and the reply submitted before the Council, it is found that the appellant has never taken such ground before the Council, which appellant could have taken at the relevant point of time for Conciliation. Conciliation and mediation is for the purpose that the dispute can be resolved amicably between the parties by relegating it to some mediator. As the appellant has shown its inclination to contest the matter on merits and filed the reply, it was not require to send the matter for Conciliation. Even otherwise, after a lapse of 16 years, the matter cannot be remanded for conciliation when the appellant contested the entire dispute on



merits. Therefore remand, at this stage when the dispute has been contested between the parties on merits, just for the sake of conciliation would be a futile exercise.

10. The appellant and the respondents are on the loggerheads. The respondent is not ready to compromise on the rate of interest awarded by the Council, therefore, in the considered opinion of this court, as the appellant has never raised any such issue before any of the forum, either before Council or civil/commercial, in the considered opinion of this Court, at this stage appellate stage, the ground taken by the appellant that conciliation has not been taken place is not sustainable in the eye of law.

11. The Hon'ble Apex Court in the case of *Mcdermott International Inc vs Burn Standard Co. Ltd & Ors. (2006) 11 SCC 181*, Hon'ble Apex Court has held in paragraph -52 as under :-

“52. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finally offered by it.”

12. Also, in paragraph 14 of *MMTC Limited vs. Vedanta Limited (2019) 4 SCC 163*, it has been 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."

13. The Apex Court, in paragraph 11 of *Bharat Coking Coal Ltd. Vs.*

L.K. Ahuja (2001) 4 SCC 86, has observed as under :-

"11. There are limitations upon the scope of interference in awards passed by an arbitrator. When the arbitrator has applied his mind to the pleadings, the evidence adduced before him and the terms of the contract, there is no scope for the court to reappraise the matter as if this were an appeal and even if two views are possible, the view taken by the arbitrator would prevail. So long as an award made by an arbitrator can be said to be one by a reasonable person no interference is called for. However, in cases where an arbitrator exceeds the terms of the agreement or passes an award in the absence of any evidence, which is apparent on the face of the award, the same could be set aside."

14. In *Dyna Technology Private Limited v. Crompton Greaves*

Limited (2019) 20 SCC 1, the Supreme court observed as under :-

"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.

25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

15. Further, in the case of *Punjab State Civil Supplies Corporation*

Limited and Another vs. Sanman Rice Mills and Others (2024) SCC OnLine

SC 2632, the Apex Court has held in paragraphs – 20 and 21 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.”

16. The Hon'ble Apex Court in the case of **S.V. Samudram vs. State of Karnataka** and another reported in (2024) 3 SCC 623 has held as under:-

17. It would be useful to examine the expositions of this Court on the scope to interfere with arbitral awards under Sections 34 and 37 of the A&C Act. The judgment and order of the learned Civil Judge was dated 22-4-2010. The position as to whether an arbitral award can be modified in the proceedings initiated under Sections 34/37 of the A&C Act is no longer res integra. While noting the provisions, more specifically, Section 34(4) of the A&C Act; the decisions rendered by this Court, including the principles of international law enunciated in several decisions recorded in the treatise *Redfern and Hunter on International Arbitration*, 6th Edn., this Court in *NHAI v. M. Hakeem* [*NHAI v. M. Hakeem*, (2021) 9 SCC 1 : (2021) 4 SCC (Civ) 437 (two-Judge Bench)] , categorically held that any Court under Section 34 would have no jurisdiction to modify the arbitral award, which at best, given the same to be in conflict with the grounds specified under Section 34 would be wholly unsustainable in law. The Court categorically



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observed that any attempt to “modify an award” under Section 34 would amount to “crossing the Lakshman Rekha”.

17. When the facts and circumstances of the case are tested on the anvil of principle expounded by the Hon’ble Apex Court, this Court is of the considered opinion that the award passed by the Council and the order of the Commercial Court rejecting the application under Section 34 of the Act of 1996 are in consonance of the scheme of the Act of 1996 which are not beyond the jurisdiction and against the public policy.

18. In view of the above, the appeal fails in scrutiny by this Court and is hereby dismissed. No order as to cost(s).

(DEEPAK KHOT)
JUDGE

RAGHVENDRA