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An award may not be remitted to the Arbitrator if no findings on the contentious issues are addressed in the Award

I-Pay Clearing Services Pvt. Ltd. v. ICICI Bank Ltd.

Case No.	Civil Appeal No. 7/2022
Date	03 January 2022
Court	Supreme Court of India
Coram	Hon'ble Mr. Justice Subhash Reddy Hon'ble Mr. Justice Hrishikesh Roy

1. BRIEF FACTS:

- 1.1 On 4 November 2002, I-Pay Clearing Services (hereinafter “**Appellant**”), entered into an agreement with the ICICI Bank (hereinafter “**Respondent**”) to develop software application packages for the management of Smart Card based loyalty programs (“**Service Provider Agreement**”) for one of the Appellant’s clients, Hindustan Petroleum Corporation Ltd. (“**HPCL**”). In furtherance to this, on 4 February 2003, the Appellant and the Respondent entered into another agreement, to develop a postpaid Smart Card Loyalty Program akin to a credit card, under the name Drive Smart Software (“**Drive Smart Agreement**”). In the sequence of events, the Respondent sent a letter on 10 December 2003, whereby it terminated the initial Service Provider Agreement and requested the Appellant to develop a Drive Track Fleet Card for the fleet industry and the same was to be treated as an extension of the Drive Smart Agreement. It was named as Drive Track Program.
- 1.2 The legal proceeding in the present case commenced when the Appellant filed a suit in Hon’ble Bombay High Court claiming that the Respondent has abruptly terminated the Service Provider Agreement due to which the Appellant has suffered a total loss of Indian Rupees Ninety-Five Crores. As the said agreement contained an arbitration clause, the Hon’ble court referred this dispute for arbitration under Section 8 of the Arbitration and Conciliation Act, 1996 (“**Act**”) and as subsequently the arbitration proceedings commenced before a Sole Arbitrator.
- 1.3 Post the completion of the arbitration proceedings, the Ld. Sole Arbitrator passed an award and directed the Respondent to pay an amount of Indian Rupees Fifty Crores with an interest of 18% p.a. in favour of the Appellant. The Tribunal also granted cost award in favour of the Appellant, amounting to Indian Rupees Fifty Thousand.
- 1.4 The Respondent, dissatisfied with the award filed an application under Section 34(1) of the Act to set aside the award on the ground that there was an accord and satisfaction vide letter dated 1 June 2010 between the parties and the contractual obligations between the parties were thus settled. While the Section 34 proceedings were undergoing, the Appellant filed a Notice of Motion under Section 34(4) of the Act seeking directions to adjourn the proceedings for a period of three months and direct the Arbitral Tribunal for reconsideration of the issues. This Notice of Motion was rejected by the Hon’ble High Court. Aggrieved by it, Appellant filed the present appeal before the Hon’ble Supreme Court.

2. ISSUES RAISED:

- Whether an arbitral award can be remitted to the Arbitrator if no findings on the contentious issues are provided in the Award?
- Whether court has the power to set aside the award when an application is filed under Section 34(4) to remit the matter to the Arbitrator?

3. SUBMISSIONS OF THE APPELLANT:

- 3.1 The Appellant contended that the Respondent has illegally and abruptly terminated the Service Provider Agreement and the Arbitrator has ruled in the favour of the Appellant holding that there was no accord and satisfaction between the parties. However, the Arbitrator omitted to give adequate reasons in support of this point. Hence it was pleaded that the award should be remitted to the arbitrator. The Appellant relied on the case of *Kinnari Mullick and Anr. v. Ghanshyam Das Damani*¹, *Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd.*², *Som Datt Builders v. Limited v. State of Kerala*³ and Singaporean Court judgements in *AKN & Anr. v.*

¹ (2018) 11 SCC 328.

² (2019) SCC OnLine SC 1656.

³ (2009) 10 SCC 259.

*ALC & Ors.*⁴ and *Permasteelisa Pacific Holdings Ltd. v. Hyundai Engineering & Construction Co. Ltd.*⁵ in which it was held that the lack of reasons or gaps in the reasoning is a ‘curable defect’ and in such a case, the Arbitral Tribunal can be directed to resume the proceedings to rectify and fill such gaps.

- 3.2 The Appellant further submitted that the aim of remitting a matter to the Arbitral Tribunal is to eliminate the errors or defects and to ultimately preserve the award. Thereby, the Appellant requested the Court to set aside the impugned judgment of the Hon’ble Bombay High Court with a prayer to issue a direction for the remission of the award to Arbitral Tribunal.

4. SUBMISSIONS OF THE RESPONDENT:

- 4.1 The Respondent submitted that the Appellant failed to come forth with any material ground for remitting the matter to the Arbitral Tribunal. Moreover, it was submitted that the Arbitral Tribunal has not considered the relevant documentary evidence produced by the Respondent.
- 4.2 The Respondent contended that the letter dated 1 June 2010 which was produced before the Tribunal, was signed by both the parties for the closure/settlement of the contract and resulted in accord and satisfaction of the contractual obligations/claims between them. However, the Arbitral Tribunal did not consider the said letter/evidence and made an award against the Respondent without even providing proper reasons in support of his decision.
- 4.3 It was contended that there was no ‘finding’ in the award to show that the Respondent illegally terminated the Service Provider Agreement. It contended that *firstly*, ignoring this relevant evidence constitutes a valid ground to patent illegality⁶ under domestic arbitration and *secondly*, that even if the Arbitrator wishes to change the award in the remittal process, he cannot rewrite his own award.

5. DECISION OF THE COURT:

- 5.1 The Hon’ble Supreme Court observed that the cases cited by the Appellant were distinguishable on facts and would be of no use in this matter. Remission under Section 34(4) of the Act is not admissible when there was no finding at all on a specific claim perused by the Respondent in the arbitration proceedings. The court discussed that Section 34(4) of the Act, which allows for the relegation of the Award for reconsideration before the same Arbitral Tribunal, can only be used to record reasons for findings previously made in the Award or to fill in the gaps in the Award’s reasoning.
- 5.2 The Hon’ble Court, placing reliance on the judgment in the case of *Income Tax Officer, A Ward, Sitapur v. Murlidhar Bhagwan Das*⁷, held in plain language, that findings are a conclusion on an issue. Furthermore, the Court noted that “*reasons are the links between the resources on which certain conclusions are founded and the actual findings*”.
- 5.3 Moreover, the Hon’ble Court further observed that in the absence of a specific finding of the Arbitral Tribunal in its Award, as pleaded by the Respondent, that the relevant letter and evidence produced before the Arbitrator to prove ‘accord and satisfaction’ between the parties was not considered and this approach, in essence, amounts to patent illegality. Such aspects require a judicial mind and are to be considered by the Court itself.

⁴ (2015) SGCA 63.

⁵ (2005) SGHC 33.

⁶ Section 34 (2A) of the Act.

⁷ AIR 1965 SC 342.

- 5.4 Furthermore, the Court also observed that Section 34(4) of the Act expressly states that the Court has the discretion to refer the matter to the Arbitral Tribunal for one final chance to resume the proceedings or to not refer. The phrase “*when it is appropriate*” in itself suggests that the Court had the authority to remit the matter when a party requests it. It was also observed that:

“When an application is filed under Section 34(4) of the Act, the grounds raised in the application filed under Section 34(1) of the Act by the party who has questioned the Arbitral Tribunal's award, as well as the grounds raised in the application filed under Section 34(4) of the Act and the reply thereto, must be considered. It is not always necessary for the Court to remit the issue to an Arbitral Tribunal only because a party files an application under Section 34(4) of the Act. No award can be remitted to the Arbitrator under the cover of further explanations and filling in the gaps in the reasoning if there are no findings on the contested issues in the award. If no findings are made on the contested issues in the award, or if any conclusions are made without regard for the substantive evidence on file, the award itself may be thrown aside.”

- 5.5 Thus, the court observed that on a fair reading of Sections 31, 34(1), 34(2A), and 34(4) of the Act, it can be deduced that on party's request, the Court can allow the Arbitral Tribunal to resume the arbitration proceedings for the purpose of giving reasons or filling gaps in the reasoning in support of a finding already made in the Award. However, in circumstances where it appears that the award itself contains patent illegality, such as by failing to record a ruling on a contested matter, the Court may refuse to grant a party's request for the Arbitral Tribunal to reopen the arbitral proceedings. The court also held that Respondent rightly contended that even if the Arbitral Tribunal wants to consciously hold that there was ‘accord and satisfaction’ between the parties on further consideration of the evidence, which was previously ignored, it cannot do so by altering the award itself, which he has already passed.
- 5.6 Referring to the judgement in *J. Ashoka v. University of Agricultural Sciences and Ors.*⁸, in which it was held that reasons are the links between the materials on which certain conclusions are based and the actual conclusions, the Hon'ble Supreme Court dismissed the appeal without interfering with the order passed by the Hon'ble Bombay High Court.

6. PSL OPINION:

- 6.1 Hon'ble Supreme Court in this judgment offers a clear interpretation of Section 34(4) of the Act, relating to an application for remission of the matter before the Arbitral Tribunal so that Tribunal may be given one last opportunity to eliminate/cure the grounds for setting aside the Award.
- 6.2 The judgment makes it amply clear that within an Award, if there are certain gaps in the reasoning provided by the Arbitral Tribunal, the Court may allow the parties to go back to the same Tribunal so that the Arbitral Tribunal can fill-up these shortcoming/gaps in the award within the time period set by the Court. Another interesting learning is that in absence of any specific findings given by the Arbitral Tribunal in its award in relation with a contentious issue raised by a party, then no re-insertion of reasons after a re-assessment the Award can be allowed. This is also so because non-recording of findings on an issue raised by a party in the award would be amongst one of the patent illegalities grounds to challenge and set-aside such award under Section 34 of the Act.

⁸ (2017) 2 SCC 609.