

(2021) 03 DEL CK 0048

In the Delhi High Court

Case No : Original Miscellaneous Petition (COMM) No. 91 Of 2021, Miscellaneous Application No. 3301, 3302 Of 2021

Ahlcon Parenterals India Ltd

APPELLANT

Vs

Scan Biotech Ltd

RESPONDENT

Date of Decision : 04-03-2021

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 34, 34(2), 34(2A)

Citation : (2021) 03 DEL CK 0048

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Dr B.K. Dash, Vishal Verma

Final Decision : Dismissed

Judgement

Claim No. 1, An award declaring that the respondent is in breach of agreement dated 25.01.2012;

Claim No. 2, "An Award for a sum of Rs. 3,87,07,178.39/- in favour of Claimant and against the Respondent

Claim No. 3, "An Award of simple interest at the rate of 12% p.a. on the amount claimed as above from the date

of cause of action till 31.07.2019, which is Rs. 1,27,19,810/- in favour of Claimant and against the

Respondent

Claim No. 4, An Award the cost and expenses of the Arbitration Proceedings.

respect of the amounts invoiced or claimed to be due from the said companies.,

16. It was Ahlcon's case before the Arbitral Tribunal that Rowtech and Alter Ego were companies owned and controlled by promoters of Scan,

Biotech and for all intents and purposes, Scan Biotech, Rowtech and Alter Ego were a single economic entity.",

17. It was Ahlcon case that the corporate veil of Rowtech and Alter Ego was liable to be pierced and Scan Biotech was liable to pay the amounts due,

for supplies made to the said entities and/or invoiced to the said entities.,

18. The Arbitral Tribunal did not accept the aforesaid contention. Whilst, the Arbitral Tribunal held that in the given cases, the corporate veil of entities",

could be lifted by the Arbitral Tribunal; it did not accept that the facts in the present case warranted the same. The grounds on which the Arbitral,

Tribunal rejected Ahlcon's contention are articulated in Sub-paragraph 40.2 of the impugned award. The same is reproduced below:.,

40.2 This Arbitral Tribunal will not have jurisdiction to adjudicate and pronounce upon the claims of the Claimant against the two foreign,

companies, inter alia, but primarily on the following grounds:",

a. Both the foreign companies are not signatory to, party to and have not even been mentioned in the Loan and License Agreement dated 25.01.2015.",

b. Both the foreign companies have nowhere claimed through the Respondent Company in relation to its transactions with the Claimant.,

c. Both the foreign companies are not parties in the present Arbitration Proceedings.,

In fact, no Application has been filed by the Claimant before the Arbitral Tribunal to implead or join the foreign companies even as a performer",

Respondent much less as contesting Respondents in the present proceedings.,

d. The doctrine of lifting the corporate veil cannot be invoked against the foreign companies and the Respondent in the facts and circumstances of the,

case and particularly when they are non-parties to the Arbitration Proceedings.,

e. The principle of Alter Ego or lifting the corporate veil in any case cannot be invoked in violation to the fundamental principle of natural justice. The,

Arbitral Tribunal cannot in absence of the two foreign companies hold that the corporate veil can be lifted and the liability of the admitted transactions,

between the Claimant and the two foreign companies can be imposed upon the Respondent. For that matter, the Arbitral Tribunal would not be in a",

position to pass any Order against the two foreign companies in their absence.,

f. The Orders of the Hon'ble High Court dated 17.01.2019 would clearly come in the way of the Claimant to claim a relief against the two foreign,

companies in the present Arbitration Proceedings. Even assuming for the case of argument that in the facts and circumstances of the case, the",

Arbitral Tribunal could lift the corporate veil and pass appropriate Orders, still the Order of the Honâ?ble High Court would not only stare the",

Claimant in face but it will not be appropriate for this Arbitral Tribunal to take a view contrary or divergent to the view that the Honâ?ble High Court,

has taken. The Arbitral Tribunal cannot by a deeming fiction treat the two foreign companies as part of the Respondent as well as the deemed to be,

referred to the present Arbitration Proceedings in the garb of the principle of Alter Ego.â??,

19. It is at once clear from the above that the decision of the Arbitral Tribunal to reject Ahlconâ?s claim for amounts due against invoices raised on,

Rowtech and Alter Ego and/or for goods supplied, is supported on cogent reasons. And, this Court is unable to accept that the aforesaid decision is",

patently illegal on the face of the award or the same falls foul of the Fundamental Policy of Indian Law. The scope of the examination under Section,

34 of the A&C Act is limited. The Court cannot supplant its view on that taken by the Supreme Court.,

20. It is settled law that the Arbitrator is the final adjudicatory authority for determining questions of fact and the said findings, even though the same",

may be erroneous, are not amenable to judicial review unless it is established that the findings are perverse or patently illegal. The said principle has",

been clearly explained in the following often quoted passage from the decision of the Supreme Court in Associate Builders v. Delhi Development,

Authority: (2015) 3 SCC 49:,

â??It must clearly be understood that when a court is applying the ""public policy"" test to an arbitration award, it does not act as a court of appeal and",

consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the,

ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or,

on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Once it is found that the,

arbitrators approach is not arbitrary or capricious, then he is the last word on facts.â??",

21. In *Ssangyong Engineering and Construction Co. Ltd. v. N.H.A.I.*: (2019) 15 SCC 131, the Supreme Court held as under:",

â??(v) "Patent illegality" appearing on the face of the award refers to such illegality as goes to the root of the matter, but which does not amount to be",

erroneous application of the law. As such, contravention of a statute not linked to public policy or public interest, cannot be said to amount to "patent",

illegality". Mere contravention of the substantive law of India is no longer a ground available to set aside an arbitral award.",

(vi) A Section 34 court cannot re-appreciate evidence, even on the ground of patent illegality.â??",

22. It appears that there is ample evidence on record to show that Scan Biotech, Rowtech and Alter Ego are connected. According to Ahlcon, 75% of",

the outstanding share capital of Roweck is held by Sameer Srivastava who was also one of the Directors of that company. It is stated that Sameer,

Srivastava and his brother Salil Srivastava are also Directors in various companies registered in India, including Rowtech Formulations India Pvt. Ltd.",

Further, it also appears from the record that Scan Biotech had issued a corporate guarantee for products supplied to Spring Bourne Management and",

Trading Ltd., a company incorporated in United Kingdom. It is contended that that company is a sister concern of Rowtech and is also a business",

partner of Scan Biotech. Scan Biotech also claims that Rowtech and Alter Ego had been clearing consignments on behalf of Scan Biotech at the final,

destination. They also arranged for storing of the goods till the same were sold. Ahlcon claims that Rowtech and Alter Ego had also acted as,

intermediaries for negotiating and concluding sales of goods on behalf of Scan Biotech.,

23. Undisputedly, the material produced by Ahlcon regarding the connection between Scan Biotech and Rowtech and Alter Ego is not insubstantial.",

However, even if it is accepted that a conclusion different from that reached by the Arbitral Tribunal, is plausible; the same cannot be a ground to",

interfere with the impugned award. As observed earlier, this Court does not act as the first appellate court and reappreciate the evidence led by",

parties. This Court cannot re-evaluate the evidence and supplant its opinion over that of the Arbitral Tribunal.,

24. The conclusion of the Arbitral Tribunal is a plausible one and therefore, the impugned award cannot be interfered with in proceedings under",

Section 34 of the A&C Act. Plainly, none of the grounds as urged on behalf of Ahlcon falls within the scope of Sub-sections (2) and/or (2A) of",

Section 34 of the A&C Act.,

25. This Court finds no reason to interfere with the impugned award. The petition is, accordingly, dismissed. The pending applications are also",

disposed of.,