

(2022) 05 DEL CK 0043

In the Delhi High Court

Case No : Original Miscellaneous Petition (COMM.) No. 413 Of 2020, I.A. Nos. 3298, 3299 Of 2020, 4644 Of 2021

Cars 24 Services Limited

APPELLANT

Vs

Sea Gate Facilitymanagement (P) Limited

RESPONDENT

Date of Decision : 06-05-2022

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 28(2), 28(3), 34

Citation : (2022) 05 DEL CK 0043

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Anil Sapra, Dhruv Mohan, Akshay Sapra, Sarthak Katyal, Chirag Jamwal, Shubham Chandel

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J

1. The petitioner (hereafter 'Cars 24') has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter 'the A&C Act') impugning an arbitral award dated 06.12.2019 (hereinafter 'the impugned award') delivered by the Arbitral Tribunal comprising of a learned Sole Arbitrator.

2. The impugned award was rendered in the context of disputes that have arisen between the parties in connection with an agreement dated 09.02.2016. The disputes before the Arbitral Tribunal relate to the respondent's claim for outstanding payments for the services rendered by it for the months of September, October, November and seven days of December, 2017; and, for one month notice period. The Arbitral Tribunal accepted the aforesaid claim preferred by the respondent and entered an award for a sum of ₹1,13,32,016/-. In addition, the Arbitral Tribunal awarded interest at the rate of 18% per annum on the aforesaid amount. The Arbitral Tribunal also awarded costs for the arbitral proceedings, in favour of the respondent (hereafter 'Sea Gate') and rejected the

counter-claims preferred by Cars 24.

3. The controversy in the present case arises in the following context.

4. Cars 24 is a company incorporated under the Companies Act, 2013 and is engaged in the business of operating, maintaining and development of an E-commerce platform for providing service of sale and purchase of used/pre-owned cars.

5. Sea Gate is a company incorporated under the Companies Act, 1956 and is, inter alia, engaged in the work of providing security service arrangements, housekeeping and other contractual staff service.

6. On 09.02.2016, the parties entered into a 'Contract for Security Service Arrangement' (hereafter 'the Agreement'), whereby Sea Gate agreed to provide security, house-keeping and other contractual staff services at various offices of Cars 24 located across India, in terms of Appendix A of the Agreement.

7. The disputes arose between the parties in respect of payments for services, which according to Sea Gate were due and payable by the petitioner and were withheld.

8. It is averred in the petition that in the month of September, 2017, Cars 24 was constrained to withhold the payments due to Sea Gate as it had failed to perform its statutory obligations and make payments for salary, Provident Fund (PF) and Employee State Insurance (ESI). Further, since Sea Gate failed to make the payments to its employees and fulfil its statutory obligations, Cars 24 engaged another agency (TOPS Security Limited) to provide the services. According to Cars 24, most of the employees deputed by Sea Gate tendered their resignation and joined the employment of TOPS Security Limited (hereafter 'TOPS'). They continued to be deployed at the establishment of Cars 24 and salaries were paid by TOPS.

9. Sea Gate claims that by various communications, it had requested Cars 24 to clear the outstanding dues amounting to ₹16,00,206/- for the month of September, 2017; ₹29,80,365/- for the month of October, 2017; ₹30,43,920/- for the month of November, 2017; and ₹6,85,426/- for the period 01.12.2017 till 07.12.2017. Sea Gate states that Cars 24 had released partial payment in its favour, however, the said amount was not sufficient to clear the dues of the guards and housekeeping personnel. Further, Cars 24 had released some salary for the month of October, 2017 through a third party without informing it.

10. Thereafter, by a letter dated 07.12.2017, Cars 24 issued a Termination cum Demand Notice and called upon Sea Gate to pay an amount of ₹1,05,00,000/-, on account of the loss and damages incurred, within a period of seven days from the receipt of the said notice. Sea Gate replied by a communication dated 12.12.2017 and rejected the claim made by Cars 24. Sea Gate further called upon Cars 24 to pay the outstanding amount of ₹1,13,32,016/- along with interest at the rate of 24% per annum from the date of the bills raised till the

date of realisation.

11. Thereafter, on 21.12.2017, Sea Gate issued a legal notice to Cars 24 as well as to TOPS and requested Cars 24 to disburse the pending payment of ₹ 1,13,32,016/- along with interest at the rate of 24% per annum from the date of the bills raised till the date of realisation, within a period of fifteen days from the receipt of the said notice. Sea Gate also stated that none of the staff members deployed by it should be a part of either Cars 24 or TOPS.

Arbitral Proceedings

12. In view of the disputes between the parties, Sea Gate, by its letter dated 18.01.2018, invoked the agreement to refer the disputes to arbitration.

13. Thereafter, Sea Gate filed a petition before this Court (being Arb. P. 134 of 2018) seeking appointment of an arbitrator. This Court, by an order dated 14.03.2018, referred the matter to the Delhi International Arbitration Centre for appointing a Sole Arbitrator to adjudicate the disputes between the parties.

14. Before the Arbitral Tribunal, Sea Gate filed its Statement of Claims and claimed an amount of ₹1,13,32,016/-, on account of the outstanding payments for the services rendered for the months of September, October, November and seven days of December, 2017 along with payment of one month notice period. It also claimed pendente lite and future interest at the rate of 24% on the aforesaid amount till the date of payment; and, pre suit interest at the rate of 24% on the aforesaid amount from the date of raising the bills.

15. Cars 24 filed its Statement of Defence before the Arbitral Tribunal and also raised counter-claims. The counter-claims made by Cars 24 are tabulated below:

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Counter-claims

Particulars

Amount

Counter-claim 1

Compensation for the Loss of Business as well as Loss of goodwill and reputation

☐ 50,00,000/-

Counter-claim 2

Damages suffered by the petitioner due to the respondent's breach of trust and fraud in connivance with Mr.

Ramesh Kumar Das;

☐ 50,00,000/-

Counter-claim 3

Compensation for loss suffered due to respondent's non- submission of statutory returns/filings with the various governmental authorities

□ 55,00,000/-

Counter-claim 4

Direction to the respondent to disclose its all-unlawful transactions done by it in connivance with Mr. Ramesh Kumar Das.

16. Before the Arbitral Tribunal, Sea Gate contended that in terms of Clause 5 of the Agreement, it was required to raise monthly invoices on Cars 24 and it was required to make the said payment within a period of thirty days from the date of submission of invoices. Further, Cars 24 had made part payment towards salary for the month of September, 2017, however, the same was not adequate. It was further contended that despite repeated requests, the payment for the months of October and November, 2017 were not released. Cars 24 had abruptly terminated the Agreement by issuing the notice dated 07.12.2017, without giving a thirty days prior notice as contemplated under the Agreement. Sea Gate also submitted that it complied with all the necessary statutory requirements and deposited the contributions with the concerned authorities as well as shared proof of the same with Cars 24.

17. Cars 24 contended that Sea Gate did not comply with certain clauses of the Agreement (Clauses 2, 5, 9, 10, 12 and 22) and therefore, the claims raised by it are not maintainable. It was further contended that Sea Gate had not shared the necessary challans and returns of the statutory compliances, deductions, payments for the employees' benefits under PF, ESI contribution etc.

The Impugned Award

18. The Arbitral Tribunal accepted that Sea gate was entitled to the amount as claimed. In view of its finding, the counter-claims made by Cars 24 were rejected.

19. The Arbitral Tribunal found that there was no issue regarding payment of statutory dues and Sea Gate had furnished the requisite details along with its monthly bills till the month of August, 2017.

20. The Arbitral Tribunal further held that Cars 24 ought to have retained the money equivalent to the amount of statutory compliances/deductions and released the remaining amount. The Arbitral Tribunal also held that the security guard/housekeeping staff deployed by Sea Gate were engaged with Cars 24 upto 07.12.2017

21. The Arbitral Tribunal found that non-compliance of Clauses 12 and 22 of the Agreement, which required supervisors to inspect the deployed personnel, did not materially affect the Agreement in any significant manner as no loss had been proved by Cars 24.

22. Cars 24 contended that Sea Gate was, at the most, entitled to the commission and not payment of salary to the employees as the same was paid through TOPS. The said contention was rejected on two grounds. First, that the said payment to the employees of Sea Gate was not proved; and second, the same was not permissible under the Terms and Conditions of the Agreement.

23. The Arbitral Tribunal further found that the Termination Notice dated 07.12.2017 was to take effect from 07.12.2017 and thus, the Agreement was terminated by Cars 24 without a thirty days prior notice, as mandated by the Agreement and thus, Cars 24 was liable to pay Sea Gate salary for one month in lieu of the notice.

24. By the impugned award, the Arbitral Tribunal awarded a sum of ₹ 1,13,32,016/- along with interest at the rate of 18% per annum from 08.12.2017 till the date of realisation of the awarded amount, in favour of Sea Gate. The Arbitral Tribunal also held that Sea Gate was entitled to the costs incurred by it.

25. Aggrieved by the impugned award, Cars 24 has filed the present petition.

Submissions

26. Mr Sapra, learned counsel appearing for Cars 24, contended that the impugned award was vitiated by patent illegality on the face of the award. He submitted that the decision of the Arbitral Tribunal to award service charges to Sea Gate from September 2017 to 07.12.2017 is unsustainable in view of the findings of the Arbitral Tribunal. He submitted that the Arbitral Tribunal had accepted that Sea Gate had not provided any documents for payment of ESI, PF and other statutory dues in respect of its employees deployed with Cars 24 and that it had also defaulted in its obligations to send supervisors periodically. He submitted that the payment of service charges was contingent upon Sea Gate, furnishing proof of such payments and since it had failed to do so, it was not entitled to receive any amount. Similarly, Sea Gate had also defaulted in providing the necessary supervision and therefore, was not entitled to the service charges. However, the Arbitral Tribunal had erroneously held that periodical visits of the supervisors in terms of Clause of 22 of the Agreement, were not significant.

27. Next, he contended that the Arbitral Tribunal had overlooked the failure on the part of Sea Gate in providing proof of payment of PF, ESI and other statutory dues on the reasoning that 'poor employees could not be made to suffer for the defaults on the part of Sea Gate'. He submitted that this consideration is wholly extraneous to the disputes as, once it was accepted that Sea Gate had defaulted in providing proof of payment of necessary statutory dues, Cars 24 could not be called upon to pay any service charges on the ground that Sea Gate's employees would suffer. He submitted that the impugned award is contrary to Section 28(2) and 28(3) of the A&C Act as it had disregarded the express terms of the Agreement.

28. Mr Jamwal, learned counsel appearing for Sea Gate, countered the aforesaid submissions. He pointed that the Arbitral Tribunal had found that Cars 24 had illegally terminated the Agreement. He contended that Cars 24 had already deployed another agency (TOPS) with effect from 01.09.2017, while the Agreement with Sea Gate was subsisting. He contended that the payments due to Sea Gate were withheld not on account of any deficiency in furnishing proof of payment of ESI/PF, but because Cars 24 had decided to engage another agency and hired the services of the employees deployed with establishments of Cars 24 through that agency. He stated that therefore, no payments were made in the months of September and October, 2017 and a partial payment of ₹15 lakhs was made on 09.11.2017.

Reasons and Conclusion

29. The Arbitral Tribunal has awarded an amount of ₹1,13,32,016/- on account of unpaid bills. Admittedly, Sea Gate has raised invoices for the services rendered from 01.09.2017 to 07.12.2017. The breakup of the said amount is as under: -

“(a) Rs 16,00,206/- (September, 2017)

(b) Rs 29,80,365/- (October, 2017)

(c) Rs 30,43,920/- (November, 2017)

(d) Rs 6,85,420 (Up to 7th day of December, 2017)”

The invoices for the month of September are for an aggregate amount of ₹31,00,206/-. However, Cars 24 had made a partial payment of ₹15,00,000/- on 09.11.2017 in respect of the invoices raised for the month of September, 2017.

30. Cars 24 had contested the claims made by Sea Gate, inter alia, on the ground that its claims were contrary to the terms of the Agreement. In particular, Cars 24 had relied upon Clauses 2,5,9,12 and 22 of the Agreement.

31. In terms of Clause 2 of the Agreement, Sea Gate had undertaken that the security and housekeeping personnel deployed at the establishments of Cars 24 would be its employees and it would comply with the necessary statutory requirements such as payment of Minimum Wages, ESI, PF, etc. In terms of Clause 5 of the Agreement, Sea Gate had agreed to raise monthly bills on Cars 24 on the first day of each working month for services provided in the previous month. Cars 24 was obliged to make the payments within a period of thirty working days of the presentation of the bills. The payments were subject to production of necessary challans and returns for the statutory deductions and payments for the employee benefits like PF, ESI, etc. In terms of Clause 9 of the Agreement, Sea Gate had also agreed to submit the PF/ESI employee wise challans and a copy of the returns along with its monthly bills. In addition, Sea Gate had also agreed to submit attendance sheets of the security guards/ housekeeping staff deployed by it after receiving approval from the Warehouse In-charge. In terms of Clauses 12 and 22 of the Agreement, Sea Gate had

agreed that a Field Supervisor would visit the establishments of Cars 24 on a weekly basis and provide feedback to Sea Gate. The Field Supervisor was also required to report to the administrative staff of Sea Gate regarding deployment of security guards, housekeeping staff and any daily incidents that happened at site.

32. According to Cars 24, since Sea Gate had not complied with its obligations under the aforesaid clauses, it was not entitled to any payment as claimed.

33. The Arbitral Tribunal had found that there was no issue regarding the deposits of PF, ESI and statutory dues till the month of August, 2017. It had relied upon an internal email sent by the Admin Head (Captain R.K. Das) of Cars 24 to its Vice President (Sh. Gajendra Kumar Jangid). In its email dated 30.08.2017, Captain R.K. Das had confirmed that "PF/ESI compliances are being met. The compliance returns are being forwarded to Finance every month along with monthly invoices". Cars 24 alleged that Captain R.K. Das had colluded with Sea Gate. However, the Arbitral Tribunal, after evaluating the evidence on record, rejected the said contention. Concededly, there is no evidence or material on record to establish that there was any collusion between Sea Gate and any of the staff of Cars 24. This Court finds no infirmity with the said decision.

34. Sh. Gajendra Kumar Jangid, Vice President of Cars 24, was examined as RW-1. The Arbitral Tribunal noted that in his evidence, he had accepted that TOPS had taken over as the new service provider with effect from 01.09.2017. This was while the Agreement between the parties was subsisting and had not been terminated. The obvious inference is that there were no real issues regarding payment of ESI or any statutory dues in respect of the employees of Sea Gate. There were none till 30.08.2017 and the services of Sea Gate had been effectively replaced on 01.09.2017.

35. The Arbitral Tribunal also found that there was no notice issued to Sea Gate informing it that its payments were withheld for want of proof of challans in respect of ESI/PF. This too indicates that the submission of PF or ESI challans was not the ground on which the payments were withheld and, in any event, Sea Gate was not put to notice to cure any such defect.

36. In addition, the Arbitral Tribunal found that Cars 24 had made part payment of ₹15 lakhs for the month of September, 2017 at a belated stage and without insisting on furnishing proof of any payment of ESI/PF in respect of the employees.

37. Indisputably, there was no issue regarding payment of ESI, PF and other statutory dues till 30.08.2017. Notwithstanding the above, Cars 24 had not made payments on account of salary for the month of September, 2017, although it was contended before the Arbitral Tribunal that the amounts were withheld on account of non-furnishing of challans regarding payment of PF, ESI and other statutory dues. The Arbitral Tribunal found that Cars 24 had issued no notice to the said effect. In the written submissions filed by Cars 24 before the Arbitral

Tribunal, it had relied on the evidence of Sea Gate's witness (CW-1). In his cross-examination, the said witness stated as under:

"The claimant did not deposit the PF/ESI contribution with the concerned authority for the months of October, November and seven days of December 2017. After the seventh day of December 2017, the claimant did not depute the staff at the location of the respondent. The claimant did not deposit PF/ESI contributions with the concerned authorities because the respondent had stopped making payment to the claimant."

38. It appears from the above that there was disruption in payment of PF, ESI and other statutory dues because Cars 24 had stopped making any further payments.

39. An overview of the aforesaid facts does support the view that payment of ESI and PF of the employees was not the reason why payments due to Sea Gate were withheld by Cars 24. The Arbitral Tribunal's decision to accept Sea Gate's claim is premised mainly on the aforesaid findings.

40. The Arbitral Tribunal had found that Sea Gate had not submitted the proof of statutory compliances for the month of September, 2017 and in this regard, it observed that Cars 24 ought to have retained an amount equivalent to the amount required for statutory compliances/deductions and released the remaining amount. Cars 24's challenge to the impugned award mainly rests on this observation as is stated in paragraph no. 30 of the impugned award. The same is set out below: -

"30. CW-1 Shri Sumit Anshuman admitted during his cross-examination that the Claimant had not submitted the proof of statutory compliances for the month of September, 2017, Obviously non-compliance by the Respondent is there but a million-dollar question here is whether the poor staff could be punished for fault of the employer i.e. the Claimant? The answer is in the negative. The Respondent ought to have retained the amount equivalent to the amount of statutory compliance/deductions and released the remaining amount."

41. The aforesaid observations must be understood in its context. It was not the Arbitral Tribunal's finding that the contractual provisions were required to be overlooked on the ground that the employees of Sea Gate would suffer. The question being considered by the Arbitral Tribunal was, essentially, whether there was any merit in Sea Gate's case that it had withheld the payments for want of necessary challans evidencing payment of PF, ESI and other statutory dues. In this context, the Arbitral Tribunal observed that there was non-compliance on the part of Sea Gate and in such an event, it ought to have retained an amount equivalent to the statutory compliances and release the balance amount. The Arbitral Tribunal was of the view that if Cars 24 was concerned regarding non-payment of ESI and PF contribution, it could have withheld the said amount to that effect and paid the balance. The Arbitral Tribunal had found that persons deployed by Sea Gate had rendered their services at the establishment of Cars

24. And, it was thus, not open for Cars 24 to avoid making any payment at all. Clearly, if there was any dispute regarding payment of PF or ESI contribution, Cars 24 could have retained an equivalent amount.

42. As stated above, the said observations must be understood in the context whether the issue regarding deposit of ESI or PF contribution was a reason for withholding the payment of the amounts due.

43. In *Dyna Technologies Private Limited v. Crompton Greaves Limited*: (2019) 20 SCC 1, the Supreme Court observed as under: -

"35..... Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner...."

44. In the present case, the reasons for awarding charges are clearly stated in the impugned award. It is also apparent that the Arbitral Tribunal was of the view that non-submission of proof of payment of ESI/PF was not the reason for withholding payment at the material time as no notice to the said effect was issued. It also appears that Cars 24 had, in fact, retained the services of the employees deployed by Sea Gate, albeit through another agency (TOPS).

45. In addition, the Arbitral Tribunal had also found that there was non-compliance of Clauses 12 and 22 of the Agreement. According to Sea Gate, it had duly complied with the said clauses and its Field Supervisor had conducted weekly visits at the sites of Cars 24, where its employees were deployed. However, the Arbitral Tribunal found that Sea Gate had failed to comply with the said obligations as it had not produced any material to establish that the Field Supervisor had visited the site of Cars 24 periodically. Notwithstanding the aforesaid finding, the Arbitral Tribunal did not accept that Cars 24 was absolved of its obligations to pay for the services, as it was of the view that the said default was not material.

46. Admittedly, Cars 24 had not issued any notice to Sea Gate in this regard and had accepted the services, unreservedly. In this view, the Arbitral Tribunal's view that non-compliance on the part of Sea Gate was not material and did not disentitle it to receive the charges for the services, cannot be held to be an impossible view. Thus, no interreference under Section 34 of the A&C Act is warranted.

47. The Arbitral Tribunal found that the amounts payable to Sea Gate for the services rendered could not be withheld as, in fact, its staff was deployed at the sites till termination of the Agreement on 07.12.2017. The award in favour of Sea Gate is premised, principally, on the basis that since Cars 24 had availed the services deployed by Sea Gate, it was liable to pay for the same. The impugned award is not premised solely on the basis that the employees of Sea Gate could

not be made to suffer. The failure on the part of Sea Gate to comply with the requirement of furnishing proof of payment of ESI/PF contribution along with its invoices has not been considered as an impediment in awarding Sea Gate's claims as the Arbitral Tribunal had found that no such issue had been raised at the material time. Apart from the observations made in paragraph 30 of the impugned award, the Arbitral Tribunal has also indicated other reasons for accepting the claims of Sea Gate as stated above and the said reasons cannot be faulted.

48. Admittedly, the Arbitral Tribunal has, after evaluating the evidence on record, accepted Sea Gate's contention that its employees were actively deployed with Cars 24 till termination of the Agreement on 07.12.2017. The said finding is based on appreciation of evidence and the material placed on record and therefore, cannot be interfered with in these proceedings. Having found that Cars 24 had availed the services from Sea Gate till its termination on 07.12.2017, the Arbitral Tribunal's decision to allow Sea Gate's claim for service charges till that period, is a plausible view and one that warrants no interference by this Court in these proceedings.

49. In view of the above, the petition is, accordingly, dismissed. The pending applications are also disposed of.