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

% Judgment pronounced on: 30th October, 2023

\+ FAO(OS) (COMM) 47/2021 & CM APPL. 10659-10661/2021

UNISON HOTELS PRIVATE LIMITED ..... Appellant

versus

VALUE LINE INTERIORS PRIVATE LIMITED .....Respondent

Advocates who appeared in this case:

For the Appellant: Mr. Sanjeev Sindhwani, Sr. Advocate with Mr. Aseem Chaturvedi and Mr. Shivank Diddi, Advocates.

For the Respondent: Mr. Sameer Rohatgi, Mr. Namit Suri, Ms. Purnima Singh, Mr. K. Singh and Mr. Arjun Kaushal, Advocates.

CORAM:-
HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J.

1. This is an appeal under Section 37(1)(c) of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as "*said Act*") read with Section 13(1) of Commercial Courts Act, 2015. Appellant has prayed that the impugned judgment dated 01.03.2021, passed by the learned Single Judge in OMP (Comm.) No.97/2016 be set aside and consequently, also the Award dated 08.05.2015, passed by the learned Sole Arbitrator in the arbitration captioned "Value Line Interiors

Private Ltd. vs. Unison Hotels Pvt. Ltd".

2. Appellant is engaged in the hospitality sector and is operating and managing a hotel in New Delhi, being run under the name and style of *"The Grand"*. There was an agreement between the appellant and the respondent for carrying out interior works at said hotel. Certain disputes arose between the parties in or around the year 2011 which led to the invoking of arbitration by the respondent. It is not in dispute that the respondent filed an application under Section 11(6) of said Act before this Court and resultantly, Sole Arbitrator was appointed vide order dated 09.10.2012. The adjudication was to be done under the aegis of and as per the Rules of the Delhi High Court Arbitration Centre (now known as *Delhi International Arbitration Centre*) (DIAC).

3. As per the appellant, the Sole Arbitrator had called upon the parties to appear before him on 09.11.2012 for a preliminary hearing, but none appeared. DIAC had, in the meanwhile, issued one more communication dated 30.10.2012 to the respondent inviting it to file its statement of claim within the prescribed period. Another communication was sent to respondent on 05.02.2013 calling upon it to do the same within 15 days, else it would result in closure of the proceedings on the assumption that it was not interested in continuing with such proceedings. According to the appellant, since the respondent did not file any Statement of Claim within the aforesaid

period, it presumed that the respondent was no longer interested in continuing with the proceedings.

4. Be that as it may, fact remains that the respondent filed its Statement of Claim on 22.01.2014. Accordingly, appellant was asked to file its Statement of Defence and/or counter-claim. Since such communication was received by the appellant after almost one year, it requested DIAC to furnish information as regards the previous correspondence and communications between DIAC and respondent. However, instead of providing any such details of any such communication, DIAC granted another period of 30 days to the appellant to file its Statement of Defence vide its letter dated 06.03.2014. Appellant again insisted DIAC to provide all such details, as already demanded and sent one more letter dated 29.03.2014. DIAC vide its letter dated 15.04.2014 informed the appellant that its right to file Statement of Defence and/or counter-claim had been closed and appellant was also called upon to pay its share of the Arbitrator’s fee.

5. Appellant, eventually, appeared before the Arbitrator on 16.07.2014 and raised same objection but instead of adjudicating said objections, the Arbitrator directed the appellant to file its Statement of Defence and counter-claim, if any, within a period of 30 days, subject to cost of Rs.10,000/-.

6. Feeling aggrieved by the aforesaid order dated 16.07.2014, appellant preferred a petition before this Court under Section 40(2) read with Section 25(a) and Section 32(2)(c) of the said Act. Said petition was disposed of by this Court on 15.10.2014 observing that the Arbitrator was empowered to address the concerns of the appellant and to pass appropriate orders and accordingly, the petition was dismissed. Appellant accordingly filed an application before the Arbitrator which also did not find favour and the same was dismissed by the Arbitrator on 31.10.2014 and the right of the appellant to file the Statement of Defence was closed and the matter was scheduled for recording evidence of the respondent.

7. Appellant, feeling aggrieved by the order dated 31.10.2014, preferred an appeal before this Court again and said petition, i.e. OMP No.1609/2014 was dismissed by this Court on 27.01.2015 holding that it was not maintainable as the order dated 31.10.2014 was not appealable. This Court also observed that the remedy available with the appellant was to await the Award and challenge the same in accordance with law.

8. Appellant filed a Special Leave Petition (SLP) before the Hon'ble Supreme Court impugning the order dated 27.01.2015. Said SLP was considered by Supreme Court on 27.04.2015 and was disposed of. The directions contained in the aforesaid order are very essential in context of the disposal of the present appeal. Said order

reads as under:-

> *"Heard learned counsel for the petitioner,*
>
> *Without interfering with the order impugned in the special leave petition, we are inclined to grant liberty to the petitioner to file appropriate application before the Arbitrator to file counter claim and reply to the claim and make a suggestion in the application that he would pay costs of fifty thousand rupees to the other side. If such an application is filed with the aforesaid suggestion within three weeks; the Arbitrator shall consider it and he would have the liberty to allow the same, despite the order passed by the High Court.*
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> *The special leave petition is, accordingly, disposed of."*

9. Appellant, same day, i.e., on 27.04.2015 sent an email to the Arbitrator informing him about the aforesaid development. There is no qualm that such e-mail was duly received by the learned Arbitrator. It is also not in dispute that along with the said e-mail, the appellant had sent communication, which it had received from its advocate and in such communication, it was clearly mentioned that the Supreme Court had given liberty to the petitioner (appellant herein) to file appropriate application before the learned Arbitrator seeking to file its reply to the Statement of Claim and counter-claim, if any.

10. It will also be worthwhile to mention here that when the Arbitrator took up the arbitration proceedings on 28.04.2015, no one appeared from the side of the appellant. The Arbitral Tribunal, in its proceedings, made a mention about the e-mail received from the

appellant intimating about the SLP and also regarding the prayer that four weeks' time may be allowed to move such application. Counsel for the claimant, however, informed the Arbitral Tribunal that the claimant had no intimation about any such SLP or about any such order passed by the Supreme Court.

11. Arbitral Tribunal observed about the previous conduct of the appellant and noted that irrespective of the appellant having approached the Supreme Court and obtained the alleged liberty, it was but appropriate for said appellant to have put in appearance before the Arbitral Tribunal and eventually went on to observe that there was no procedure for seeking adjournment through e-mail and, therefore, the right of the appellant to cross-examine the witnesses of the claimant was closed and since no defence was put in by the respondent, the matter was fixed up for arguments, next day itself. No intimation was sent to the appellant about the closure of the right to cross examine the witnesses and the listing of the proceedings for the very next day.

12. On 29.04.2015, none appeared for the appellant before the Arbitrator and after hearing arguments, the matter was reserved for pronouncement of Award.

13. Though the appellant later learnt that the Arbitrator had reserved the matter for final pronouncement, it, in compliance with the directions of the Supreme Court, filed an application before the

2023:DHC:7837-DB

Arbitrator and DIAC on 16.05.2015, i.e. within the period of three weeks permitted by the Supreme Court and also sent a cheque of Rs.50,000/- in favour of the respondent in terms of the order of the Supreme Court dated 27.04.2015.

14. The Award was pronounced by the Arbitrator on 08.05.2015.

15. Feeling aggrieved, the appellant filed a petition under Section 34 of the said Act. However, the learned Single Judge was pleased to dismiss such petition vide order dated 01.03.2021 impugned herein.

16. Learned Single Judge concluded that there was no reason to interfere with the award under challenge and observed that it was not a case where Unison (appellant herein) was unable to present its case.

17. Learned Single Judge in the impugned order dated 01.03.2021 held as under:-

> *"39. According to Unison, the impugned award is liable to set aside on the aforesaid ground. However, given the facts as narrated above, this Court is unable to accept that Unison was "otherwise unable to present its case". On the contrary, Unison had ample opportunity to file its defence and also raise counter-claim(s), but it willfully embarked on a course to obstruct the arbitral proceedings instead of contesting the claims/proceedings. According to Unison, the arbitral proceedings were liable to be terminated as VIPL-had not filed its Statement of Claims, within the time as prescribed. Unison was also given an opportunity to*

2023:DHC:7837-DB

urge this contention as a defence to the proceedings instituted by VIPL but Unison did not do so.

40. Unison's case is principally founded on an order dated 27.04.2015 passed by the Supreme Court in Unison's SLP (SLP No. 12084/2015). Mr. Wadhwa earnestly contended that on 27.04.2015, the Supreme Court had granted Unison an opportunity to file its Statement of Defence within a period of three weeks of the said order, but Unison was effectively prevented from doing so, as the Arbitral Tribunal had heard the matter and reserved the award without waiting for Unison to file its application and Statement of Defence. This, according to Mr. Wadhwa, would fall within the scope of Section 34(2)(a)(iii) of the A&C Act.

41. This Court finds it difficult to accept the said contention. This is principally for two reasons. First, that Unison had acted in a manner to effectively frustrate the opportunity granted by the Supreme Court by an order dated 27.04.2015. The Supreme Court had granted liberty to Unison to file an application before the Arbitral Tribunal requesting it to permit Unison to file its reply and counter-claim(s) with the suggestion that it would pay costs of ₹50,000/- to VIPL. Armed with this ex parte order, Unison decided not to participate in the hearings that were scheduled before the Arbitral Tribunal, which this Court must observe, had been scheduled at the instance of Unison. Unison neither appeared before the Arbitral Tribunal nor paid the costs, as applicable under the Rules of DIAC and as directed by the Arbitral Tribunal. Clearly, the order of the Supreme Court did not entitle the appellant to ignore the orders passed by the Arbitral Tribunal and avoid the proceedings before the Arbitral Tribunal. It merely gave an added opportunity to Unison to make an application

> *before the Arbitral Tribunal to grant it further time to file its Statement of Defence/counterclaim(s) on payment of costs. It did not grant blanket protection to Unison against non-compliance of the other orders passed by the Arbitral Tribunal or by this Court. But true to its obstructive and, as put by Mr. Wadhwa, combative approach; Unison proceeded to treat the order passed by the Supreme Court as licence to avoid the proceedings and ignore the hearing before the Arbitral Tribunal, which was fixed earlier at its instance. Obviously, this is not the import of the order dated 27.04.2015, passed by the Supreme Court. Unison having acted in a manner to frustrate the opportunity provided by the Supreme Court, cannot now be heard to contend that it has been denied its right to present its case."*

18. Learned Single Judge further observed that the Supreme Court had not directed the Arbitral Tribunal to accept Unison's request for filing a Statement of Defence and it had merely enabled Unison to file an application to permit it to file its Statement of Defence/counterclaim and agree to pay Rs.50,000/- as cost.

19. It was also observed that the Arbitral Tribunal was well within its jurisdiction to accept or reject such an application. Impugned order also records that Unison had been given full opportunity to cross-examine the witness and to advance arguments to contest the claim but Unison elected not to avail such opportunity and did not appear before the Arbitral Tribunal on the hearing, as scheduled and, therefore, Unison had no ground to impugn the award. Observing that

Unison was aware about the hearing scheduled on 23.04.2015 and the fact that the matter had been adjourned to 28.04.2015, it could not claim ignorance of the decision of the Arbitral Tribunal to close the evidence on that date and to continue to hear the final arguments on the next date, the petition of appellant herein filed under Section 34 of the said Act was held as unmerited.

20. Sh. Sanjeev Sindhwani, learned Senior Counsel for the appellant has assailed the award as well as the impugned order, *inter alia*, on the following grounds:-

> *(i) The award is liable to be set aside as on account of the hasty action on the part of the learned Sole Arbitrator, appellant was unable to present its case. The Supreme Court, vide its order dated 27.04.2015, had given liberty, in no uncertain terms, to the appellant to file its reply to the statement of claim and also counter-claim, if any, within a period of three weeks. The contents of the order were duly brought to the attention of the Arbitrator but the Arbitrator did not even choose to wait for such reply and counter-claim and closed the right of appellant, in gross defiance and utter disregard to the specific directions of the Apex Court. The tearing haste is borne out from the fact that same day i.e. 27.04.2015, an email was sent to learned Sole Arbitrator and learned Sole Arbitrator took up the matter on 28.04.2015 and did mention in his proceedings about the factum of receiving the email sent by the appellant but went on to observe that there was no procedure of seeking adjournment through email and the right of the appellant to cross-examine the witness was closed and the matter was fixed on 29.04.2015 for arguments and after hearing arguments from the opposite side, the matter was reserved for pronouncement. It is vehemently contended*

that the order passed by the Supreme Court was binding on the Arbitral Tribunal and any award passed in disregard of any such binding order is apparently against the public policy. The Arbitrator should have waited for the reply to the statement of claim and the manner in which the proceedings were taken up in quick succession clearly demonstrates that because of such unwarranted haste, appellant could not present its case, despite there being due opportunity granted in this regard by the Supreme Court.

(ii) There is no communication in writing that the appellant had been proceeded against ex parte and, therefore, also the award is required to be set aside. The denial of opportunity to the appellant of being heard and presenting his case is a complete violation to the principle of natural justice.

21. All such contentions have been refuted by Sh. Sameer Rohtagi, learned counsel for respondent. It is argued by Sh. Rohtagi that appellant has not disclosed any reason, much less a justifiable one, to interfere either with the award or with the order passed by learned Single Judge. It is contended that the findings on the facts as well as on the law given by the Arbitral Tribunal are not amenable to interference either under Section 34 or Section 37 of said Act. The scope of judicial scrutiny and interference by any appellate court under Section 37 of said Act is even more constricted and restricted. It is argued that umpteen opportunities were available to the appellant who is responsible for its miseries as it did not bother to present itself before the learned Arbitral Tribunal.

22. He however, concedes that the Supreme Court had enabled the appellant to file an application before the Arbitrator to place its statement of defence and counter-claim but submits that there was no direction to adjourn the arbitration proceedings by three weeks and for reason best known to the appellant, it never chose to appear before the Arbitral tribunal. It is contended that the Arbitrator was concerned enough as he even fixed up the matter for final arguments on the next day i.e. on 29.04.2015 but since appellant did not even bother to participate in the arbitral proceedings, keeping in mind the previous conduct of the appellant, the Arbitrator was left with no option but to reserve the award after hearing the respondent.

23. It is thus contended that the contention of the appellant is fallacious as at no point of time, it was unable to present its case. On the contrary, it deliberately did not participate in such proceedings. It is stressed that there is nothing at all which may even remotely suggest that the award has been passed in disregard to the order passed by the Supreme Court. Appellant, consciously and deliberately, chose not to appear before the Arbitrator, mindful of the consequences arising therefrom. His wilful abstention, thus, makes him disentitled to seek any relief whatsoever.

24. We may note that the case of the appellant is, principally, based on order dated 27.04.2015 of the Supreme Court whereby liberty was granted to the appellant to file an application before the Arbitrator

seeking permission to file a counter claim and reply to the claim and make a suggestion that it would pay cost of Rupees fifty thousand to the Respondent. It was also directed that if the application was filed within three weeks, the Arbitrator shall consider it and that he would have the liberty to allow the same, despite the order passed by the High Court.

25. Appellant informed the Arbitral Tribunal on the very same day i.e. on 27.04.2015 by sending an email. Such email was received and acknowledged by the Arbitral Tribunal as stands reflected in its proceedings dated 28.04.2015. However, the Arbitral Tribunal, taking note of the previous conduct of the appellant, went on to observe that it was but appropriate for the appellant to have, at least, put in appearance and, therefore, its right to cross-examine the witnesses of the claimant was closed and matter was fixed for arguments on 29.04.2015.

26. On 29.04.2015 as none appeared for the appellant, arguments were heard. The award was eventually published on 08.05.2015.

27. Even if it is assumed for a moment that the conduct of the appellant was not above-board as it did not appear before the Arbitral Tribunal after the above order of the Supreme Court, fact remains that all such alleged previous acts and conduct of the appellant stood automatically merged in the order of the Supreme Court whereby

liberty was granted to the appellant to move an application within three weeks seeking permission of the Arbitral Tribunal to file not only statement of defence but also a counter-claim. The Arbitral Tribunal was in the thick of the things as the order of the Supreme Court was brought to its attention and in such a situation, unmindful of the previous conduct of the appellant, the Arbitral Tribunal should have acted in consonance with the directions passed by the Supreme Court, instead of making the order of the Supreme Court redundant and superfluous.

28. Non-appearance of appellant was hardly of any significance in the view of the order of the Supreme Court. Further, the application was filed before the Arbitral Tribunal within the period of three weeks granted by the Supreme Court. There is nothing on record to indicate or infer that appellant himself was responsible for frustrating the opportunity and liberty granted to it by the Supreme Court.

29. Things would have become clearer only when the Arbitral Tribunal had waited for three weeks to enable the Appellant to file the application as permitted by the Supreme Court by its order dated 27.04.2015 but as already noted above, the Tribunal took up the matter on 28.04.2015 and then on 29.04.2015 and reserved the matter for pronouncement of judgment. There was no reason or occasion for the Arbitrator to have shown such tearing hurry. It may also be noticed that the Respondent had itself filed the claim petition

belatedly. DIAC by its communication dated 30.10.2012 had called upon the Respondent to file the Claim within the stipulated period but the claim was filed on 23.01.2014.

30. It cannot be said that the Supreme Court had merely given an 'added liberty' to the appellant to make an application to grant further time to file statement of defence/ counter-claim on payment of cost. We may note that the order of the Supreme Court is very specific and unequivocal as a discernible opportunity of three weeks was granted to the appellant to submit application to file statement of defence as well as counter-claim. Undoubtedly, the eventual discretion always vested with the learned Arbitrator and he was at full liberty to consider such application either way and to take appropriate call but merely because the earlier conduct of the appellant was not up to the mark and that it was communicating electronically and did not appear personally, it should not have been shown exit door.

31. The manner in which the matter was immediately taken up and was eventually reserved for order even before the expiry of time granted by the Supreme Court clearly indicates that not only the appellant was rendered incapable to present its case but the order of the Supreme Court was also made illusory.

32. There was no reason for the Tribunal to have got swayed on account of the previous conduct of the appellant. On the contrary, it

was a case where due regard should have been given to the specific order passed by the Supreme Court.

33. This Court is conscious of the fact that ordinarily, the findings of facts as well as on law rendered by the Arbitral Tribunal as approved by the learned Single Judge, are not amenable to any interference under Section 37 of said Act. Undoubtedly, the scope of judicial scrutiny and interference under Section 37 of said Act is much more constricted and restricted but at the same time if we do not interfere in present peculiar and the unusual factual matrix, it would certainly undermine the majesty of the order of the Supreme Court.

34. Orders passed by the Supreme Court are binding on all Courts and Tribunals within the territory of India.

35. Reference be made to the judgment of a Division Bench of this court in *Devas Employees Mauritius Pvt. Ltd. vs. Antrix Corporation Limited & Ors.* : 2023 SCC Online Del 1608 wherein the principles pertaining to the contours, connotations, meaning, ambit, scope and binding nature of *ratio decidendi* and *obiter dicta* have been summarized. It has been held that *ratio decidendi* of a judgment is a binding force of law under Article 141 of the Constitution of India. It has also been held that ratio of a decision should be understood within the context of the facts of the decision, and it is essentially the application of law to the facts of a particular case. It has also been

held therein that Judicial propriety, dignity and decorum demands that even an obiter dictum, or pronouncements and observations of the Supreme Court that do not strictly constitute the ratio of a judgment delivered by the Supreme Court of India, although not strictly binding, ought to be accepted as binding by courts subordinate to the Supreme Court.

36. In *Devas Employees Mauritius Pvt. Ltd.* (supra), this Court also referred to *Peerless General Finance and Invest Company Ltd. v. CIT*, (2020) 18 SCC 625, wherein the Supreme Court has held that the pronouncement of Supreme Court, even if it could not be strictly called the *ratio decidendi* of the judgment, would still be binding on the High Court.

37. Since, the Supreme Court had granted liberty to the Appellant to file an application within three weeks, it was *sine qua non* for the Arbitral Tribunal to have waited for said application, instead of taking up the matter and reserving judgment within two days much before the expiry of the said period of three weeks. Clearly, the Appellant was prevented from presenting its case.

38. In such a situation, the impugned award is clearly against public policy, being in defiance of the order of the Supreme Court and rendered the appellant unable to present its case. Moreover, the aforesaid order of the Supreme Court, which had been brought to the

knowledge of the Arbitral Tribunal, could not have been brushed aside or ignored by the Arbitral Tribunal. If that is allowed to happen, the principle of Judicial discipline would be the biggest casualty.

39. In the factual matrix, since the Appellant was prevented from presenting its case, this case clearly falls within the purview of Section 34 (2)(iii) of the said Act and as such the impugned order of the learned single judge dated 01.03.2021 dismissing the application filed by the Appellants under Section 34 of the said Act is not sustainable.

40. Consequently, the impugned award dated 08.05.2015 and the impugned order dated 01.03.2021 are set aside. The appeal is allowed in the above terms.

MANOJ JAIN, J

SANJEEV SACHDEVA, J

OCTOBER 30, 2023
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