

I-pay Clearing Services Private Limited vs. ICICI Bank Limited

Pranjali Bharti*

Abstract

The Arbitration and Conciliation Act, 1996 was introduced in response to the UNCITRAL Model Law on International Commercial Arbitration, to consolidate and amend the law relating to domestic and international commercial arbitration in India (UNCITRAL Model Law). The Section 34 of the Arbitration and Conciliation Act 1996 entails that the aggrieved party can file application for setting aside the arbitral award. The provision under Section 34(4) of the Act intends to uphold the sanctity of an award which lacks in 'finding and reasons'. The Supreme Court has used discretionary power under Section 34(4) of the Act in this case. The object of the Section 34(4) of the Act is for remission of award only in those situations where the defect in award is curable and setting aside of award can be prevented. However, it would be contrary to the object of the said provision if the Arbitral Tribunal changes the award in the process of remission on an application under Section 34(4) of the Act, where there are distorted attempts to alter the award.

Keywords: Arbitration and conciliation, UNCITRAL model, arbitral award, arbitral tribunal, discretionary power

INTRODUCTION

- 13th November 2017–The Arbitral award passed by a Sole Arbitrator in favour of the Appellant.
- The Respondent filed petition under Section 34(1) of the Act before Bombay High Court through Notice of Motion No. 550 of 2018 to seek interim order to stay the operation, and execution of the award.
- The Appellant filed Motion of Motion No. 1549 of 2019 under Section 34(4) of the Act, requesting that the proceedings be adjourned for three months or for such other period as the Court may choose.
- 16th July 2019–The Bombay High Court dismissed the application of the Appellant on the grounds that there was no finding on the issue of the legality of the termination of contract between the parties and the defect in the award was incurable.
- Aggrieved by the decision of the Bombay High Court, the Appellant approached the Supreme Court for challenging the award passed.

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Relevant Facts

- On November 4, 2002, I-pay (the Appellant) and ICICI Bank Limited (the Respondent) signed an agreement to develop various software application packages to administer Smart Card-based loyalty programmes.
- ICICI discontinued the agreement, resulting in a dispute that was sent to arbitration, where I-pay demanded Rs. 95 crores in damages from ICICI.

- On November 13, 2017, the Sole Arbitrator issued an order requiring ICICI to pay INR 50 crores in damages, plus interest at 18% per annum, for the loss caused to I-pay.
- ICICI filed a patent illegality petition in Bombay High Court, which resulted in the award being set aside.
- In the same petition, the appellant sought to remit the matter to the Sole Arbitrator under Section 34(4) of the Act, but the High Court denied his request.
- Aggrieved with the dismissal order, the applicant files an appeal with the Hon'ble Supreme Court.

ISSUE

Whether the contract was illegally and abruptly terminated by the respondent [1]?

CONTENTION OF PARTIES, DELIBERATIONS AND JUDGEMENT

Appellants Contentions

- The respondent illegally and abruptly terminated the parties' contract, but the Arbitrator did not record comprehensive reasoning on the problem addressed as a result, under Section 34(4) of the Act, a defect such as a lack of reasons or gaps in the reasoning can be corrected, and the award can be remitted to the arbitrator for reasons.
- In *Kinnari Mullick v. Ghanshyam Das Damani* [2], and *Som Datt Builders Limited v. State of Kerala* [3], *Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd.* [4], when the arbitral decision does not contain any reasons or if the award has certain gaps in the reasoning, the language of Section 34(4) of the Act is broad enough to permit the Arbitrator to eliminate the grounds for setting aside the award.
- Relied on judgments of Singapore Court of Appeals in *AKN & Anr. v ALC & Ors.* [5], in which it was noted that Section 34(4) of the Act is based on Article-34(4) of the UNCITRAL Model Law on International Commercial Arbitration, and Singapore High Court in *Permasteelisa Pacific Holdings Ltd. v Hyundai Engineering & Construction Co. Ltd.* [6] and ruled that remission is a curable approach to set aside the award
- In remission proceedings under Section 34(4) of the Act, errors in an arbitral award that can be corrected must be addressed [7].

Respondents Contentions

- The parties were in 'accord and satisfaction,' and their contractual obligations were mutually terminated by a letter dated June 1, 2010, signed by both parties, detailing the contract's terms of closure, and so no compensation was required.
- High Court validly dismissed the application by Appellant as the arbitral award passed by Arbitrator didn't address the vital issue as he didn't consider the relevant evidence produced by respondent. The award was clearly unconstitutional and incorrect since it failed to specify the actual nature of the alleged breach and the date of alleged termination, which cannot be rectified by the Arbitrator's remission under Section 34(4) of the Act.
- In continuation proceedings, the Arbitrator cannot change his award since doing so would be a violation of Section 34(4) of the Act and would imply that the Arbitrator was acting in the capacity of the Court, which is the only one with the ability to set aside the award.
- The distinction between "findings" and "reasons" can be found in this Court's decision in the matter of *Income Tax Officer, A Ward, Sitapur v. Murlidhar Bhagwan Das*.

Deliberations

The Supreme Court examined various provisions of the Arbitration and Conciliation Act, 1996 and referred to:

- *AKN & Anr. v. ALC & Ors.* [9], Singapore Court of Appeals in by considering legislative history of the Model Law, held that remission is a 'curative alternative'.

- In the case of *Kinnari Mullick v. Ghanshyam Das Damani* [10], the essence of exercising power under Section 34(4) of the Act is to enable the Tribunal to take such actions as are necessary to eliminate the grounds for setting aside the arbitral award by correcting the award's errors.
- *Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd.* [11], the Supreme Court held in respect of the award which it found to be unintelligible and inadequately reasoned, highlighted the defected award which can be cured and stated that [12]:
 - i. If an award is being challenged on the basis of impropriety or perversity in reason, it can only be contested on the grounds set out in Section 34 of the Arbitration Act.
 - ii. Incomprehensible rewards will be set aside, with party authority to eliminate reasoned prizes.
 - iii. The purpose of Section 34(4) of the Arbitration Act was to make the award enforceable once the arbitral tribunal had the opportunity to correct curable errors.
 - iv. The use under Section 34(4) of the Arbitration Act has been provided to correct such deficiencies in the lack of reasoning. Only when the reason is completely perverse can it be challenged under Section 34 of the Arbitration Act.
 - v. The power to cure defects vested under Section 34(4) of the Arbitration Act can be used in cases where the award does not provide any reasoning or has some gap in reasoning or otherwise, and that can be cured in order to avoid a challenge based on the aforementioned curable defects under Section 34 of the Arbitration Act [13].
- *Som Datt Builders Limited v. State of Kerala* [14], The Court held that, in light of Section 34(4) of the Act, the High Court should have given the Arbitral Tribunal an opportunity to give reasons for the findings already recorded in the award where no reasons are given.
- *Income Tax Officer, A Ward, Sitapur v. Murlidhar Bhagwan Das* [15], held that it is clear that 'finding is a decision on an issue'.
- In *J. Ashoka v. University of Agricultural Sciences* [16], the Court has held that 'reasons' are the connections between the sources on which particular conclusions are founded and the actual conclusions.

RULE OF LAW

The procedure for setting aside an arbitral award made by an arbitral tribunal is set out in section 34 of the Arbitration and Conciliation Act of 1996, which includes court intervention. The Section 34(4) provides the discretionary power of court to refer back case to the Arbitral tribunal for remission of arbitral award, if presence of any curable defect, to eliminate the grounds for setting aside.

JUDGEMENT

The Supreme Court ruled that Section 34(4) of the Act can only be utilized to record reasons for findings already indicated in the award or to fill up gaps in the award's reasoning. The Court, quoting the case of *Income Tax Officer, A Ward, Sitapur v. Murlidhar Bhagwan Das* [17], for the difference between 'finding' and 'reasons', stated that the Arbitrator's failure to review the relevant material presented by ICICI to prove 'accord and satisfaction' between the parties amounts to patent illegality, and that such factors must be addressed by the Court itself, where there is a lack of finding of main issues. In this situation, no more justifications are required, and no gaps in the reason are allowed.

The language in Section 34(4) of the Act permits the Court to exercise discretionary powers to remit an award to an arbitral tribunal, giving the arbitral tribunal the option of continuing the proceedings. The grounds raised in the application filed under Section 34(1) of the Act by the party who has challenged 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, must be considered whenever an application is filed under Section 34(4) of the Act [18].

The Supreme Court dismissed the appeal, noting that even if the arbitral tribunal intentionally want to hold that the parties were in 'accord and satisfaction,' he cannot do so by amending the award itself, which he has already issued, based on new material that was previously ignored. In the lack of a conclusion on the contested issue, no amount of explanation can compensate for the award's inadequacy [19].

ANALYSIS

The decision laid down by the Supreme Court in above case clarifies when an application under Section 34(4) of the Act can be considered and accepted. It also specifies the vital factors that a court considering an application under Section 34(4) of the Act must take into consideration. The Court correctly concurred with ICICI's argument that the award is perverse and patently illegal since the Arbitrator ignored main and significant facts on the record, which cannot be remedied by the Arbitrator's remittal under Section 34(4) of the Act.

CONCLUSION

The Arbitration Act's Section 34(4) must only be used in cases when it might eliminate grounds for curable flaws in the arbitral judgement. If a party submits an application under Section 34(4) of the Arbitration and Conciliation Act, the Court is not required to refer the case to an Arbitral Tribunal unless it seems that the award itself contains a patent illegality, such as failure to reach a decision on a contested subject. As a result, the Court may allow the arbitrator to reopen the arbitral procedures at the request of a party in order to provide reasons or fill in gaps in the reasoning in support of a conclusion already made in the award. However, the Court states that in circumstances where it appears that the award itself is patently illegal by failing to record a finding on a contested issue then the Court may refuse to grant a party's request to allow the Arbitral Tribunal to resume the proceeding or remission of the said award.

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