2025:DHC:1380-DB

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

% *Date of Decision: 03.03.2025*

\+ **FAO (COMM) 53/2025 & CM APPL. 12360-61/2025**

DIRECT NEWS PVT. LTD .....Appellant

Through: Ms Ekta Choudhary, Mr Anand Krishna and Mr Ayush Kumar, Advocates.

versus

DTS TRAVELS PVT. LTD .....Respondent

Through: Mr Deepak Dhingra and Ms Sneh Somani, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (*ORAL*)

1. The appellant is a media company and runs an English news channel named 'NewsX'. It was formerly known as INX News Private Limited. The appellant has filed the present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 [**A&C Act**] impugning an order dated 30.07.2024 [**impugned order**] passed by the learned Commercial Court in OMP (COMM) No.12/2020 captioned *Direct News Pvt Ltd v. DTS Travels Pvt Ltd* whereby the appellant's application under Section 34 of the A&C Act was rejected.

2. The appellant had filed the said petition [OMP (COMM) No.12/2020] assailing the Arbitral Award [**impugned award**] dated 18.09.2019 passed

by the learned Sole Arbitrator [**Arbitral Tribunal**] whereby the Arbitral Tribunal had awarded a sum of ₹45,58,193.11 (Rupees Forty-Five lacs Fifty-Eight thousand One hundred Ninety-Three and Eleven paisa only) along with pendente lite interest at the rate of nine per cent per annum in favour of the respondent. The Arbitral Tribunal had further awarded future interest at the rate of nine per cent per annum from the date of the impugned award till the date of realisation, if the awarded amount was not paid within the period of 30 days.

FACTUAL CONTEXT

3. The impugned award was rendered in the context of the disputes that had arisen between the parties in connection with the Transport Agreement dated 15.09.2011 [**the Agreement**]. The respondent is engaged in the business of providing services of a 'Cab Operator' to public in general. The appellant being desirous of availing such services had entered into the Agreement. It was agreed that the term of the Agreement would be for three years commencing from 05.09.2011, however, the same could be terminated by either parties without assigning any reason by giving three months' notice in writing[1]. Further, the appellant could also terminate the Agreement forthwith without any notice if it was found that the respondent had failed to discharge any of its obligations under the Agreement. Clauses 1.c and 1.d of the Agreement are relevant and are reproduced as under: -

> "1. **Term and termination**
> c. Either party may terminate this agreement without assigning any reason by giving 3 months

[1] Clause 1.c of the Transport Agreement dated 15.09.2011

notice in writing to the other party.

d. Notwithstanding anything contained hereinabove, INX News may terminate the Agreement forthwith without any notice to the Vendor, if in its opinion, the Vendor has failed to discharge any of its obligations stipulated herein or the Vendor commits a material breach of any term or condition of this Agreement and fails to rectify the same within fifteen (15) days of being requested to do so. After the termination of the Agreement, the Parties would settle dues if any within a reasonable period of time."

4. It was also agreed that the respondent would raise monthly bills in two parts. First part being the Part A relating to fixed committed billing and the second part, Part B, being the supplementary bill for extra kilometres/hours at the agreed rates.

5. It is the respondent's case that it provided the agreed services and periodically raised the bills for the services rendered. However, the appellant did not discharge the bills in entirety and a sum of ₹46,95,759/- (Rupees Forty Six lacs Ninty Five thousand Seven hundred and Fifty Nine only) remained outstanding. The respondent claimed that it sent legal notices dated 24.09.2013, 22.10.2013, and 23.01.2014 and called upon the appellant to pay the outstanding amount along with interest at the rate of twenty-four per cent per annum, but the appellant failed and neglected to do so. In the aforesaid circumstances, the respondent issued a notice dated 22.05.2015 under Section 21 of the A&C Act seeking reference of the disputes to arbitration and also proposed the name of a former Judge of this court to be appointed as the sole arbitrator. However, the appellant rejected the respondent's request.

6. In view of the above, the respondent filed a petition under Section 11 of the A&C Act being Arb. P No.594/2015 in this court seeking appointment of an arbitrator, which was allowed by an order dated 08.01.2016.

7. The respondent filed the statement of claim before the Arbitral Tribunal, which was subsequently amended. The respondent by way of the amended statement of claim dated 12.05.2017, claimed a sum of ₹46,95,759/- (Rupees Forty-Six lacs Ninety-Five thousand Seven hundred and Fifty-Nine only) as outstanding. The appellant filed its statement of defence, *inter alia,* claiming that the services provided by the respondent were deficient on the following counts: (i) shortage of cabs; (ii) badly maintained cabs; (iii) non availability of drivers; (iv) misbehaviour of drivers; (v) non availability of GPS in cabs; (vi) tampered meters; and (vii) non tax registration in Haryana.

8. In addition, the appellant also raised a counter claim for a sum of ₹10,97,259 (Rupees Ten lacs Ninety-Seven thousand Two hundred and fifty-nine only). A tabular statement giving the break up of the counter claim amount as set out in the statement of defence and counter claim filed by the appellant is set out below: -

Description	Amount (₹)
Cab Shortage	5,82,427
Uniform & GPS Mobile	4,79,032
Mobile Switched off	500
Tampered meter	4,500
Refused to go on shoot	2,000
Perfume and Tissue Paper	28,800

Total	10,97,259

9. The appellant claimed that it had paid a sum of ₹1,04,01,482 to the respondent against the aggregate amount of bills to the tune of ₹1,03,64,014/- as raised by the respondent. Thus, the appellant had paid an excess amount of 37,468/- (Rupees Thirty Seven thousand Four hundred and Sixty Eight only). The appellant did not produce any document or any other material to establish the aggregate value of the bills as raised, but has relied upon the figures as set out in the petition filed by the respondent under Section 11 of the A&C Act.

10. It is material to note that in its petition under Section 11 of the A&C Act the respondent had claimed that a sum of ₹46,95,759/-(Rupees Forty-Six lacs Ninety Five thousand Seven hundred and Fifty Nine only) was payable and it had raised the bills to the extent of ₹1,03,64,014/- during the period from 20.09.2011 to 23.04.2013. However, in the amended statement of claims, the respondent claimed that it had raised the bills aggregating an amount of ₹1,50,59,773/- during the period of 20.09.2011 to 23.04.2013 and also produced the copies of the said bills.

IMPUGNED AWARD

11. In view of the pleadings of the parties, the Arbitral Tribunal framed the following issues for consideration: -

> "1. Whether the Claimant is entitled for a sum of Rs.46,95,759.00 (Rupees Forty Six lacs ninety five thousand seven hundred Fifty Nine only) in view of Transport Agreement dated 15.09.2011 and

reconciliation statement dated 9th of November, 2012? OPC.
2. Whether the Respondent failed to make the payment within the time prescribed under the clause-8 of the Transport Agreement? OPC.
3. Whether the Respondent is entitled for an award of Rs.11,34,727/- (Rupees Eleven lakhs thirty four thousand seven hundred and twenty seven only) in lieu of the reductions liable to be made by the Respondent and the additional payment made by the Respondent to the Claimant, under the Agreement dated September 15, 2011? OPR.
4. Whether the Claimant is entitled for any interest as claimed in the claim petition?
5. Whether the Respondent is entitled for any interest as claimed in the counter-claim?
6. Relief."

12. The Arbitral Tribunal examined the pleadings, rival contentions as well as the evidence led by the parties and decided the issues in favour of the respondent.

13. A plain reading of the impugned award indicates that the Arbitral Tribunal accepted the respondent's claim as the respondent had produced its statement of account and copies of bills to establish its claims. However, the appellant had not produced any document to counter the claims made by the respondent.

14. The respondent examined two witnesses, who established the statement of account as well as the bills raised. In addition, the respondent also produced the copy of the reconciliation statement dated 09.11.2012, which indicates that the appellant had agreed to pay a sum of ₹33,00,615/- as on 09.11.2012 and further a sum of ₹7,64,328/- towards the bills raised by

the appellant in September 2012. The Arbitral Tribunal noted that the parties had reconciled the amounts due and had prepared a reconciliation statement. Although the appellant had disputed the reconciliation statement, the record indicated that the respondent had also sent emails dated 13.12.2014 and 15.01.2015, which were not specially controverted. In so far as the counter claim is concerned, the Arbitral Tribunal found that the appellant had failed to establish the same.

IMPUGNED ORDER

15. The appellant filed the petition under Section 34 of the A&C Act to assail the impugned award on several grounds. The principal contention advanced by the appellant was that the Arbitral Tribunal had erred in ignoring the principles of the Indian Evidence Act, 1872. The appellant claimed that the Arbitral Tribunal had accepted photocopies of the documents including the invoices, which were disputed and reliance on such secondary evidence is impermissible. The appellant claimed that these documents were insufficient to establish the respondent's claim. The appellant contended that only the original invoices accompanied by the log books could be looked into for establishing the amount due to the respondent.

16. The learned Commercial Court did not accept the aforesaid contention and held that in proceedings under Section 34 of the A&C Act, it was impermissible for the Court to reappreciate the evidence and re-adjudicate the claims. The learned Commercial Court referred to the decision of the

Supreme Court in ***Arosan Enterprises Limited v. Union of India & Others***[2] and rejected the appellant's prayer to set aside the impugned award.

REASONS AND CONCLUSIONS

17. Ms Ekta Choudhary, the learned counsel for the appellant has earnestly contended that in terms of the Agreement, the respondent was required to raise bills in two parts. She stated that there may not be the issue regarding the first part, which was of fixed component and the same was paid. But the respondent was required to establish variable dues (supplementary amount) by producing the relevant log books to establish the additional kilometres. She submitted that the respondent had not produced the original log book before the Arbitral Tribunal and therefore, its claim cannot be accepted.

18. Before proceeding further, it would be relevant to refer to clause no. 8 of the Agreement, which contains the provision regarding the bills. The same reads as under: -

> "8. **'Billing'**: The Vendor shall raise a monthly bill in two parts. A Fixed Committed billing and Part-B Supplementary bill for Extra Km/hrs at rates agreed as per Schedule III, alongwith the production of pay log books and other dues for its duties which shall be paid by the client within 20 days of receipt of the same after deduction of tax at source (TDS) as may be applicable and adjusting any other amounts pursuant to any of the other terms of the Agreement. The rates agreed will be revised in the eventuality of hike in fuel prices. Any charges in the rates per km. have to be agreed

[2] (1999) 9 SCC 449

by both parties in writing."

19. There is no dispute that the respondent was required to periodically raise bills comprising of two components. However, in the present case, the respondent had produced the copies of the bills, which according to the respondent, were furnished to the appellant. The witness examined on behalf of the respondent also proved the copies of the original bills that were submitted to the appellant.

20. The question whether the copies of the bills, were sufficient for the Arbitral Tribunal to accept the respondent's claim, is a question, which relates to quality and quantity of evidence.

21. Having noted above, it is also relevant to note that the impugned award does not rest solely on the copies of the bills claimed to have been raised by the respondent. The respondent also produced the statement of accounts, which reflected the quantum of bills raised as well as the amount received. The witness examined by the appellant (CW1) admitted that the parties were maintaining running account.

22. The respondent also produced a copy of the reconciliation statement (Ex.CW1/6) and its witnesses testified to the said statement. Thus, the respondent also led evidence to establish that the parties had reconciled the accounts, and a sum of ₹33,00,615/- was outstanding as on 09.11.2012 and further a sum of ₹7,64,328/- was payable towards the bill for the month of September 2012. Apart from the above material, the respondent also produced certain emails, which pertained to the claims raised by it.

23. Whilst, the appellant disputed the accounts produced by the respondent, but it did not produce the running account maintained in its books despite acknowledging that it had maintained a running account. It claimed that the copies of the bills raised by the respondent were bogus, however, did not produce the copies of the bills that were furnished by the respondent.

24. It is apparent from the reading of the impugned award that the Arbitral Tribunal drew its conclusion after evaluating the evidence and material produced by the parties.

25. We consider it apposite to set out the following passage from the impugned award which is indicative of the above: -

> "27. However, the Respondent did not file its ledger, the invoices received by it from the claimant, apart from some e-mails. From the record it has not been pointed out by Respondent as to which invoices they received and which they did not receive. It has also not pointed the defects in invoices as received by them. The Denials of invoices, reconciliation statement, and Auditors report are only reflected in the admission/Denial of documents. But there is neither any plausible explanation nor any documents filed as to whether they received the same and whether they raised any objections thereto. Before, the reference to Arbitration Tribunal there is not a whisper or grievance raised by the Respondents apart from isolated protest on some isolated issues. Admittedly no claims were also raised by the respondents prior to the commencement of these proceedings. It is also not the case of the Respondent in their pleadings that it did not receive any invoices. Only during admission/

denial of documents, the Respondent denied some of the documents which is not supported by its pleadings. The only bald averment made is that the invoices are "bogus and manufactured". However, they failed to bring on record any of the invoices actually received by them.

28. Not only this, to the specific questions (Nos. 40 & 41) of the cross examination put to Sumit Kumar Dewan (RWI) by the Ld. Counsel for the claimant, he admitted that both the claimant and Respondent maintained a running account of the invoices. For the sake of convenience, the said questions and answers are reproduced hereunder:

> Q.40: It is correct that for the invoices raised by the claimant was maintaining a running account?
>
> Ans: Yes, it is correct.
>
> Q.41: Was the respondent also maintaining a running account for the invoices raised by the claimant upon it?
>
> Ans: Yes, it is correct.

29. Not only this, to question No.42, the said witness also admitted that the running account as maintained by the Respondent was in the possession and control of the Respondent.

30. Again, in the answer to question no.52 the said witness admitted that there were no reservations on behalf of the Respondent regarding the services of the claimant when the current management of the Respondent took over from the previous management.

31. In para 10 of the affidavit in evidence filed by RWI, it was deposed that in terms of the agreement the respondent had right to make reductions from the bills raised by the claimant. However, in answer to a specific question (question 53) in this regard to the effect as to whether there are any such document on record, the said witness said **"at**

> **present, I cannot find any document, however, shall inform the Tribunal by the next date".** I have carefully perused the record. It is a fact that are no such document which exist on record."

26. It is material to note that the provisions of Indian Evidence Act, 1872 are not applicable to the arbitral proceedings. Section 1 of the Indian Evidence Act, 1872 as well as the Section 19 of A&C Act expressly stipulate that the Indian Evidence Act, 1872 is not applicable to arbitral proceedings. However, its trite that the fundamental principles of the said enactment would serve as a guide for the Arbitral Tribunal to evaluate the material and draw its conclusions.

27. As noted above, the impugned award is informed by the material placed by the parties on record. Thus, this is not a case where the impugned award is based on no material or evidence at all. It is settled law that the Arbitral Tribunal is the sole judge of the quality and quantity of the evidence.

28. In ***P.R. Shah, Shares and Stock Brokers Pvt. Ltd. v. B.H.H. Securities Private Limited and Ors.***[3], the Supreme Court observed as under:

> "21. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or reappreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. The Arbitral Tribunal has examined the facts and held that both the second respondent and the appellant are liable. The case as put forward by the first respondent has been accepted. Even the minority view was that the second respondent was liable

[3] (2012) 1 SCC 594

> as claimed by the first respondent, but the appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the appellant did the transaction in the name of the second respondent and is therefore, liable along with the second respondent. Therefore, in the absence of any ground under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at."

29. In ***Parsa Kente Collieries Limited v. Rajasthan Rajya Vidyut Utpadan Nigam Limited***[4], the Supreme Court had referred to an earlier decision and observed as under:

> "… 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. It is further observed that 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."

30. A similar view also resonates to a number of decisions rendered by the Supreme Court[5].

31. It is well settled that the court is not required to reappreciate or re-evaluate the evidence and reagitate the disputes. The scope of examination under Section 34 of the A&C Act is confined to determining whether the

[4] (2019) 7 SCC 236

[5] Associate Builders v. Delhi Development Authority: (2015) 3 SCC 49; Swan Gold Mining Ltd. v. Hindustan Copper Ltd.: (2015) 5 SCC 739; State of U.P. v. Allied Constructions: (2003) 7 SCC 396; and Atlanta Limited v. Union of India: (2022) 3 SCC 739

arbitral award is required to be set aside on the grounds as set out under Section 34(2) and 34(2)(a) of the A&C Act[6].

32. In view of the above, we are unable to accept that the impugned award warrants any interference under Section 34 of the A&C Act. The view expressed by the Arbitral Tribunal is a plausible view. There is no ground made out for setting aside the impugned award. We concur with the learned Commercial Court's decision in rejecting the application of the appellant under Section 34 of the A&C Act.

33. The appeal is, unmerited and, accordingly, dismissed. Pending applications are disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

MARCH 03, 2025
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Click here to check corrigendum, if any

[6] The Project Director, NHAI v. M. Hakeem and Another, (2021) 9 SCC 1; MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163.