IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 04.08.2022

\+ **FAO (COMM) 112/2022 & CM No.7895/2021**

M/S SCHOLASTIC INDIA PVT. LTD. & ANR. ..... Appellants

versus

SMT. KANTA BATRA ..... Respondent

Advocates who appeared in this case:

For the Appellants : Mr Vishesh Issar and Ms Krishna Parkhani, Advocates.

For the Respondent : Mr Rajeev Saxena, Mr Sumit K. Batra, Mr Shrey Chathaly and Mr Kshitij Chhabra, Advocates.

AND

\+ **FAO (COMM.)71/2021 & C.M.No.9784/2021**

SMT. KANTA BATRA ……Appellant

versus

M/S SCHOLASTIC INDIA PVT. LTD. & ANR. ..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr Rajeev Saxena, Mr Sumit K. Batra, Mr Shrey Chathaly and Mr Kshitij Chhabra, Advocates.

For the Respondents : Mr Vishesh Issar and Ms Krishna Parkhani, Advocates.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

VIBHU BAKHRU, J

1. These are cross appeals under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (hereafter the '**A&C Act**') impugning an order dated 17.08.2020 (hereafter the '**impugned order**') passed by the learned Additional Commercial Judge. By the impugned order, the learned Court allowed the application filed by Scholastic India Pvt. Ltd. [the appellant in FAO (COMM) 112/2022, hereafter referred to as '**Scholastic**'] under Section 34 of the A&C Act impugning an arbitral award dated 05.09.2017 (hereafter the '**impugned award**').

2. The disputes between the parties arise in connection with a Lease Deed dated 08.03.2013 (hereafter the '**Lease Deed**') in respect of a property bearing "*Killa No. 6/1, admeasuring 6 kanals 9 marlas, falling in rectangle No. 24, Khewat Khata No. 1821209, situated at Village Gopalpur, District Gurgaon, Haryana alongwith built up structure admeasuring 25,000 sq. ft*" (hereafter the '**premises**').

3. In terms of the Lease Deed, Smt. Kanta Batra [the Appellant in FAO (COMM) 71/2021 and hereafter referred to as the '**Lessor**'] had leased the premises to Scholastic for a period of three years commencing from 01.03.2013 till 28.02.2016. In terms of Clause 5(b)

of the Lease Deed, Scholastic had deposited a sum of ₹15,00,000/- as interest free security deposit. A fire broke out in the said premises on 18.08.2014, which caused damage to the premises. The Lessor commenced the repairs to the premises in October 2014. She also informed Scholastic that the construction would be completed by 01.01.2015. The reconstruction/repairs were completed on 08.03.2015. Scholastic did not resume possession of the premises and claims that the Lease Deed stood terminated.

The Disputes

4. The Lessor claimed that the lease was not terminated in accordance with the agreed terms. In any event, Scholastic was not entitled to terminate the lease during the lock-in period. Accordingly, she claimed lease rentals quantified at ₹44,49,450/-, which includes service tax as well as expenditure incurred on the air-cooling unit. In addition, the Lessor claimed an amount of ₹1,09,58,054/- on account of expenditure incurred in repairs of the said premises. The said claim is premised on the basis that fire had broken out on account of negligence on the part of Scholastic to maintain its electrical installation (computers).

5. Scholastic disputed the claims. It claimed that the incident of fire on 18.08.2014 was a force majeure event and resulted in termination of the lease. It denied that it was liable to pay any lease rentals as claimed. Scholastic also disputed that it was responsible for the incident of fire or to reimburse any amount incurred by the Lessor

in repairs to the premises. Scholastic claimed that it was entitled to a refund of the security deposit of ₹15,00,000/- along with interest at the rate of 14% per annum. It also claimed expenses incurred due to fire quantified at ₹7,57,882/-.

The Impugned Award

6. In view of the aforesaid disputes, the Arbitral Tribunal struck the following issues:

> "13. On pleadings of parties following issues were settled:
>
> I. Whether there was termination of the contract as per the agreement Ex. R-3?
>
> II. Whether the claimant is entitled for an amount as claimed towards the rent, in terms of agreement Ex. R-3?
>
> III. Whether the claimant is entitled for an amount, allegedly spent on renovation of property, besides other claim made in the claim statement?
>
> IV. Whether the claimant has violated terms of agreement Ex R-3, when she failed to get the premises insured?
>
> V. Whether the respondents are entitled to the amount claimed in the counter claim?"

7. The Arbitral Tribunal found that Scholastic was not entitled to terminate the lease during the lock-in period of the initial two years except on account of any breach or failure on the part of the Lessor to fulfil its obligations or in the event that any of the representations,

undertaking or warrantees furnished by the Lessor are found to be false, untrue or misleading. The Arbitral Tribunal found that Scholastic had not issued any notice terminating the said lease during the lock-in period. The Arbitral Tribunal reasoned that Scholastic could not terminate the Lease Deed during the lock-in period without a notice specifying any failure on the part of the Lessor to fulfil the obligations or pointing out any representation, undertaking or warranty which was discovered to be false. The Arbitral Tribunal held that since no such notice had been issued during the lock-in period, the Lease was not terminated in accordance with terms of the Lease Deed. The first issue was decided accordingly.

8. Insofar as claims made by the Lessor are concerned, the Arbitral Tribunal found that the Lessor had assumed possession of the premises in October 2014 and therefore, Scholastic was not liable to pay any rent after September 2014. The Tribunal also found that the Lessor was reconstructing the premises from October 2014 till 08.03.2015 and during the said period, the premises (which was to be used as godown) would not be usable. The Lessor had also not demanded rent from Scholastic during the said period. The Tribunal found that none of the parties had terminated the Lease Deed in accordance with the terms thereof but since the Lessor had assumed possession in October 2014, Scholastic was not liable to pay any rent for the period after September 2014. The second issue was decided accordingly.

9. Insofar as lessor's claim for cost of repairs is concerned, the Arbitral Tribunal held that the Lessor was entitled to the expenditure incurred in repairing the premises. The Arbitral Tribunal reasoned that in terms of Clause 5(j) of the Lease Deed, Scholastic was obliged to handover vacant and peaceful possession of the premises in the same condition, subject to normal wear and tear, at the time of termination of the lease.

10. The Arbitral Tribunal also found that fire had broken out as a result of failure on the part of Scholastic to maintain its electrical equipment. The same had resulted in short-circuit which in turn had resulted in the incident of fire breaking out at the premises. Accordingly, the Arbitral Tribunal rejected Scholastic's contention that the incident of fire was a force majeure event and therefore, it was not liable to pay any compensation.

11. Having found that the Lessor was entitled to the cost of repairs, the Arbitral Tribunal examined the documents and material produced by the Lessor in support of quantification of damages. The Lessor had produced a tabulation of the amounts spent by her aggregating an amount of ₹1,09,58,054/- and certain materials / documents to support the entries in the tabular statement. The Arbitral Tribunal found that some of the entries were for expenditure incurred prior to 18.08.2014 (the date of the incident of fire). Accordingly, the Arbitral Tribunal rejected the said entries. It further found that some of the entries were not supported by corresponding bills. Further, some of the invoices did not specify the items of the construction material. The said tabular

statement also included an entry for expenditure of ₹20,00,000/- incurred on labour which was not supported by other documents.

12. In view of the above, the Arbitral Tribunal did not accept the Lessor's claim in its entirety. The Lessor had also relied on a bank statement indicating the amounts spent on repairs of the premises, which was reflected in her Income Tax Return for the assessment year 2015-16. The witness examined on behalf of the Lessor (CW-2) had also filed an affidavit affirming that he was a Chartered Account and verified the statement of the bank account and the Income Tax Returns filed by the Lessor. The Arbitral Tribunal after evaluating the said material found that the Lessor was entitled to a sum of ₹66,89,570/- as expenditure incurred on re-construction of the premises. After deducting a sum of ₹15,00,000/- furnished as a security deposit, the Arbitral Tribunal awarded a sum of ₹51,89,570/- in favour of the Lessor.

13. In addition, the Tribunal awarded *pendente lite* interest at the rate of 6.5% per annum quantified at ₹6,74,644/- and future interest at the rate of 6.5% per annum on the awarded amount in case the said amount was not paid within a period of one month from the date of the award.

The Impugned Order

14. Aggrieved by the impugned award, Scholastic filed an application under Section 34 of the A&C Act for setting aside the impugned award [***OMP 74/2019*** captioned "***Scholastic India Pvt. Ltd.***

&Ors. v. Kanta Batra"]. The Court referred to various decisions of the Supreme Court including the decisions in ***Associate Builders v. Delhi Development Authority: (2015) 3 SCC 49*** and ***Ssangyong Engineering and Construction Company Ltd. v. National Highways Authority of India: (2019) 15 SCC 131*** and noted that an arbitral award cannot be set aside except on the grounds as set out in Section 34 of the A&C Act.

15. The Court concurred with the finding of the Arbitral Tribunal that Scholastic had not terminated the Lease Deed in terms thereof. It found that the Arbitral Tribunal had rightly rejected Scholastic's contention that the premises could not be used for fifteen consecutive days on account of a force majeure event and therefore, the Lease Deed stood terminated. The learned Court also concurred with the decision of the Arbitral Tribunal that Scholastic was not liable to pay any rent after September 2014 as the Lessor had come into possession of the premises.

16. The Court held that the Arbitral Tribunal's finding that fire had broken out at the premises on account of a snag in electrical equipment was based on evidence on record and therefore, could not be interfered with under Section 34 of the A&C Act. It also agreed with the decision of the Arbitral Tribunal that the Lessor was liable to compensation for the damage caused to the premises under Section 73 of the Indian Contract Act, 1872. However, the Court did not concur with the decision of the Arbitral Tribunal regarding quantification of damages. First, it found that the Arbitral Tribunal had grossly erred in

relying on the documents (Income Tax Return and bank statements marked as Ex.CW2/1 and CW1/2) respectively as the same were not supported by a certificate under Section 65B of the Indian Evidence Act, 1872. The learned Commercial Court referred to various decisions and held that no person could be saddled with any liability on the basis of any entries in the books of accounts. It also noted that that the witness examined on behalf of the Lessor, CW-2, had admitted that the documents in question had been handed over by the Lessor. In view of the above the Court held that the impugned award was based on no evidence and, therefore, suffered from the vice of patent illegality.

17. The learned Commercial Court rejected Scholastic's challenge to the finding of the Arbitral Tribunal that it had waived its right for performance of Clause 6(n) of the Lease Deed. In terms of the said Clause, the Lessor was obliged to obtain fire and special peril insurance coverage of the entire premises. Failure to comply with the said obligations entitled Scholastic to terminate the Lease Deed. However, it had raised no objection to the failure on the part of the Lessor to obtain an insurance cover. The Arbitral Tribunal, thus, held that it had waived its right to now raise any objection in this regard. The learned Court held that the said finding warranted no interference.

18. The learned Court also rejected Scholastic's contention that it was entitled to refund of the security deposit of ₹15,00,000/- along with interest at the rate of 14% per annum. The learned Court held that Scholastic was under an obligation to restore the premises in the same

condition to the Lessor but it had failed to do so. It concurred with the opinion of the Arbitral Tribunal that the Lessor was entitled to adjust the security interest against the amount spent for reconstruction of the premises.

Reasons and Conclusion

19. Both the parties have assailed the impugned order. The Lessor challenges the impugned order as being beyond the scope of Section 34 of the A&C Act. It is contended on her behalf that the learned Court had proceeded to re-appreciate the evidence regarding quantification of damages, which is impermissible.

20. Scholastic also assails the impugned order to the limited extent that the learned Court has rejected its claim for refund of the security deposit. It is contended on its behalf that having found that the Lessor had failed to substantiate her claim for cost of repairs and reconstruction of the premises, there was no question of permitting adjustment of the security deposit furnished by Scholastic.

21. It is apparent from the above that Scholastic's challenge to the impugned award rests on the premise that the learned Commercial Court had rightly set aside the compensation awarded in favour of the Lessor. As noted above, the Arbitral Tribunal had found that the Lessor was entitled to a sum of ₹66,89,570/- as the expenditure incurred in repairing the premises. It had, accordingly, awarded a sum of ₹51,89,570/- after adjusting the sum of ₹15,00,000/- being the security deposit that was refundable to Scholastic. The Court had

faulted the Arbitral Tribunal for entering an award in favour of the Lessor. It would follow that Scholastic would be entitled to the refund of ₹15,00,000/-, which was furnished as security deposit. Admittedly, the same was due and payable to Scholastic and was therefore, adjusted against the amount of damages found payable to the Lessor. If the Lessor's claim for damages is found to be unsustainable for want of evidence, it would, obviously, follow that Scholastic would be entitled to a refund of the security deposit.

22. Mr Saxena, learned counsel appearing for the Lessor, fairly admitted that if the Lessor's appeal [FAO(COMM) 71/2021] is rejected, Scholastic's appeal [FAO (COMM) 112/2022] was required to be allowed.

23. The principal question to be addressed is whether the decision of the learned Court to interfere with the impugned award is sustainable. The learned Court had referred to the decisions in the case of ***Associate Builders v. Delhi Development Authority*** (*supra*) and ***Ssangyong Engineering and Construction Company Ltd.*** (*supra*) and had rightly concluded that the scope of interference with an arbitral award under Section 34 of the A&C Act is limited. It is now well settled that a court cannot reappreciate or re-evaluate the evidence and supplant its opinion over that of the Arbitral Tribunal in proceedings under Section 34 of the A&C Act. This Court is of the view that having correctly noted the law, the learned Commercial Court committed precisely the same error of re-appreciating and re-evaluating the evidence. First, it found that the Lessor's income tax

returns and the statement of bank accounts were not supported by any certificate under Section 65B of the Indian Evidence Act, 1872 and, therefore, were not admissible. Second, that no liability could be fastened on Scholastic the basis of the entry in the books of accounts.

24. The Indian Evidence Act, 1872 does not apply to proceedings before an Arbitral Tribunal. Section 1 of the Indian Evidence Act, 1872 makes it expressly clear that the said Act does not apply to *"proceedings before an arbitrator"*. Further, Section 19(1) of the A&C Act also expressly provides that the Arbitral Tribunal would not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872.

25. In view of the above, an arbitral award cannot be faulted on the ground that it is non-compliant with the said statutes. Having stated the above, it is necessary to clarify that there may be instances where an arbitral award may be faulted as being in conflict with the public policy of India or on the ground of patent illegality, including that it falls foul of the most basic principles underlying the Indian Evidence Act, 1872. But that does not mean that in all cases where the material relied upon by the Arbitral Tribunal does not measure up to the standards under the Indian Evidence Act 1872, the arbitral award would be liable to be set aside. Clearly, an arbitral award, which is based on no material or evidence at all may be vitiated by patent illegality. However, insufficiency of evidence or material is not a ground for setting aside an arbitral award. It is apparent that in the present case, there was material available on record to substantiate the

claim made by the Lessor. In addition to producing certain invoices, the Lessor had also examined a Chartered Accountant (CW-2). CW-2 had tendered his affidavit affirming that he had verified the Statements of Bank Account no. 913010011412452. He had also filed a copy of the Income Tax Return for the relevant year (Assessment year 2015-16) along with computation of income filed with the Income Tax Authorities. The said return indicated that the expenditure was claimed by the Lessor on repairs of the premises. CW-2 had also produced Statements of Bank Account (CW2/2 colly). The said statements reflected payments to certain entities which the Lessor claimed were against the expenditure incurred for repairs of the building.

26. CW-2 was cross-examined. He denied the suggestion that the documents referred to in his affidavit are forged or contained wrong information.

27. The Arbitral Tribunal had evaluated the material and documents on record as is apparent from the following extract:

> "41. However facts unfolded by Shri Hemant Batra lead this Tribunal to its destination. He unfolds in his affidavit Ex. CW 2/A that being Charted Accountant for the claimant he computed her income and filed her return for Assessment Year 2015-2016, copy of which return is Ex CW 2/1. Along with that return he had relied statement of bank account 913010011412452, maintained by the claimant at Rohtak Branch of AXIS BANK. In that statement of bank account, money spent by the claimant on reconstruction of the warehouse is reflected. When that account statement is scanned it came to light that

the claimant paid a sum of Rs. 2,40,000/- to Haryana Steels on 14/10/2014, Rs. 18,50,000/- to Bansal Steels on 14/10/2014, Rs. 1,47,070/- to V P Batra & Co. 14/10/2014, Rs 23 Lakhs to Rama Enterprises on 7/11/2014, Rs. 2,500/- to Karnal Singh & Co. on 14/11/2014, Rs. 4,50,000/- to Jain Traders on 21/11/2014, Rs. 12 Lakhs to SJK Infrastructures on 26/11/2014 and a sum of Rs. 5 Lakhs to Ms. Geetanjali Baweja on 28/10/2014. Besides the above entries, there is no other entry in that account from October 2014 to 8thMarch 2015, showing that any amount of money was spent by the claimant on reconstruction of the warehouse.

42. An amount to the tune of Rs. 30 Lakhs was paid by her to Shri Anurag Sharma on 3/2/2015 against her borrowing from him of a sum of Rs.10 Lakhs on 7/11/2014, another sum of Rs. 10 Lakhs on 7/11/2014 and a sum of Rs. 10 Lakhs on 11/10/2014. Therefore this entry cannot be said in respect of an amount spent by her on construction of the warehouse.

43. The above statement of account has been relied by the claimant through the deposition of Shri Hemant Batra and was not questioned on behalf of the respondents, during course of his cross-examination. Hence this document is used to arrive at the amount spent by the claimant in reconstruction of the warehouse. When amount spent by the claimant is computed, as reflected in the account statement of her bank account, maintained at AXIS BANK, it comes to Rs. 66,89,570/ only.Therefore this much of amount can be said to have been spent by the claimant on reconstruction of the warehouse in question."

28. The Arbitral Tribunal was not persuaded to accept that vouchers and bills produced were sufficient evidence to reflect the expenditure

incurred on repairs of the premises. Nonetheless, the Arbitral Tribunal accepted that the Lessor had incurred certain expenditure on repairs based on the Income Tax Return filed by the Lessor, which reflected that she had incurred certain expenditure on repairs of the premises. This was coupled with the bank statement which reflected payments of the said amounts. Undeniably, the income tax return furnished by the Lessor for the assessment year 2015-16 was material evidence to establish that the Lessor had claimed that she had incurred certain expenditure for repairs of the premises. Indisputably, this could not be stated to be irrelevant to the Lessor's claim before the Arbitral Tribunal.

29. The learned Commercial Court rejected the contention that the Arbitral Tribunal was not obliged to follow the provisions of CPC or the Indian Evidence Act, 1872 *stricto sensu* and therefore the impugned award could not be set aside on that ground. The learned Commercial Court reasoned that an Arbitral Tribunal was required to make a reasoned award and an award based on no evidence, could not be upheld. This reasoning is apparent from the following extract of the impugned order:

> "40. The abovesaid contention of Ld. Counsel for the respondent appears to be attractive but the same is fallacious in as much as the Ld. Arbitrator is not supposed to follow the CPC or the evidence Act in *stricto senso*, but the Ld. Arbitrator is supposed to pass a reasoned award and an Award which is based on no evidence cannot be upheld in view of the law laid down by the superior courts as discussed in foregoing paras of

this judgment especially in the judgment Ssanyong (supra) it has been reiterated…."

30. This Court is of the view that the learned Commercial Court fell in error in proceeding on the basis that the impugned award is an unreasoned one or that it is based in no evidence at all. The Arbitral Tribunal, as noted above, evaluated the material on record to partly allow the claim of the Lessor. The statements of bank account indicating certain entries to reflect that the Lessor had made payments to certain entities were, undoubtedly, relevant material. The Lessor had reflected certain expenditure incurred on repairs of the building in her income tax return for the assessment year 2015-16. The outflow was corroborated by the Statements of Bank Account. As stated above, this was relevant material for the purposes of the Lessor's claim.

31. The learned Commercial Court referred to the decisions in ***J.K. Synthetics Ltd. v. Dynamic Cements Traders: (2012) SCC OnLine Del 4817, Sheetal Fabrics v. Coir Cushions Ltd.: (2005) SCC OnLine Del 247***, ***M/s Kashmiri Lal Surinder Kumar v. M/s Veer Bhan Ramesh Kumar & Ors: (2015) SCC OnLine Del 10344*** and ***J.K. Aggarwal v. Bank of India: (2008) SCC OnLine Del 1219***, ***Chandradhar Goswami & Ors. v. Gauhati Bank Ltd: (1967) 1 SCR 898***, to conclude that the impugned award is based on no evidence. None of the judgments referred to by the learned Court are an authority for the proposition that books of accounts maintained in normal course or the statement of bank accounts have no evidentiary

value. The decisions referred to rest on the sufficiency of such evidence to impute liability on the defendant.

32. In ***J.K. Synthetics Ltd. v. Dynamic Cements Traders*** (*supra*), the Court had held that entries in the statement of accounts maintained in regular course would be insufficient to charge a person with the liability unless documents of transactions are filed and exhibited. This is not an authority for the proposition that books of accounts maintained in normal course are no evidence. It merely specifies that the entries in the books of accounts by itself are not sufficient evidence for imputing liability.

33. In ***Chandradhar Goswami & Ors. v. Gauhati Bank Ltd.*** (*supra*), the Supreme Court held that Gauhati Bank Ltd. could not, merely by showing entries in its account books, establish that it had advanced ₹10,000/- to the appellants. The Court observed that Section 4 of the Bankers' Books Evidence Act, 18 of 1891 allows certified copies of the accounts to be produced as *prima facie* evidence of the existence of original entries in the accounts and are admitted as evidence of matters, transactions and accounts therein. However, original entries alone would not be sufficient to charge any person with the liability in view of Section 34 of the Indian Evidence Act, 1872. The Court held that further corroborated evidence would be necessary to impute liability on the appellants. The said judgment cannot be misread to mean that books of accounts maintained in the regular course of business are no evidence at all.

34. In ***Sheetal Fabrics v. Coir Cushions Ltd.*** (*supra*), a Single Bench of this Court had admitted a winding up petition against respondent (Coir Cushions Ltd.) on the basis of entries in the books of accounts. The Court had referred to the decision of the Supreme Court in ***Chandradhar Goswami & Ors. v. Gauhati Bank Ltd.*** (*supra*) and held that it would be difficult to hold that a petition for winding up of a company (under Section 433 of the Companies Act, 1956) would be maintainable solely on the basis of books of accounts. However, in that case, the Court found that the same was coupled with an acknowledgement of liability and, therefore, held that *prima facie*, the respondent company was indebted to the petitioner.

35. In ***M/s Kashmiri Lal Surinder Kumar v. M/s Veer Bhan Ramesh Kumar & Ors.*** (*supra*), this Court found that a self-serving statement of an account which is not supported by any evidence was insufficient to fasten a huge liability as claimed in the suit upon the defendants. The Court described the evidence led in that case as "fragile". Thus, this was also a case where the Court found the evidence led by the plaintiff was insufficient to substantiate its claim.

36. In ***J.K. Aggarwal v. Bank of India*** (*supra*), this Court following the decision in the case of ***Chandradhar Goswami & Ors. v. Gauhati Bank Ltd.*** (*supra*) faulted the decision of the trial court to accept the books of accounts maintained by the Bank of India as "conclusive proof" thereof. The question whether a piece of evidence is accepted as a conclusive proof is a matter of sufficiency of evidence.

37. None of the judgments referred to by the learned Commercial Court support the proposition that bank statements of accounts are not relevant material or have no evidentiary value. Thus, it is clear that the learned Commercial Court had embarked upon an exercise to re-evaluate the sufficiency of evidence in material produced by the Lessor and had faulted the Arbitral Tribunal in incorrectly appreciating the sufficiency of the said material. This is clearly outside the ambit of Section 34 of the A&C Act.

38. In view of the above, the impugned order is set aside. The appeal preferred by the Lessor [FAO(COMM) 71/2021] is allowed. In view of the above, Scholastic's challenge to the impugned order does not survive. It's appeal [FAO (COMM) 112/2022] is, accordingly, dismissed. All pending applications are disposed of.

39. The parties are left to bear their own costs.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

AUGUST 04, 2022
RK