

**HIGH COURT OF DELHI****Bench: Hon'ble Mr. Justice Manoj Kumar Ohri****Date of Decision: 09 November 2023**

O.M.P. (COMM) 92/2023, I.A. 3949/2023 and I.A. 3950/2023

**SAPNA @ SAPNA CHAUDHARY****..... Petitioner****versus****MX MEDIA AND ENTERTAINMENT PTE LTD****..... Respondent****Section, Acts, Rules, and Articles Mentioned:**

- Section 34 of the Arbitration & Conciliation Act, 1996
- Section 21 of the Arbitration & Conciliation Act, 1996

**Subject of the Judgment:**

Challenge to an Arbitral Award under Section 34 of the Arbitration and Conciliation Act, 1996, involving a dispute arising out of a Services and Alliance Agreement and its amendments, concerning advance payment and breach of exclusivity clause.

**Headnotes**

Arbitration and Conciliation Act, 1996 – Section 34 – Challenge to Arbitral Award – Petitioner challenges the arbitral award under Section 34 of the A&C Act – Objection to the award delivered by the Arbitral Tribunal concerning a Services and Alliance Agreement. [Para 1]

Arbitral Proceedings and Award – Disputes arising from the Services and Alliance Agreement and subsequent amendments – Award of Rs.2 crore with interest by Arbitral Tribunal to the respondent for breach of Agreement by the petitioner – Rejection of claims related to damages for losses and goodwill. [Para 2-3]

Novation and Amendment of Agreement – Contention that the initial Agreement was novated by a subsequent agreement without an arbitration clause – Court finds subsequent agreement only amended certain clauses, not novating the original agreement. [Para 4, 6]

Validity of Arbitral Proceedings – Petitioner's argument on the invalidity of arbitral proceedings due to alleged novation – Court upholds the validity of proceedings, finding no novation of the original agreement. [Para 4, 6-8]

Issuance of Post-dated Cheque and Settlement – Argument that issuance of post-dated cheque resolved disputes and arbitral tribunal was not a competent forum – Court rejects the contention, finding no conclusive settlement agreement. [Para 4, 8]

Public Policy – Claim that the award is against the Public Policy of India – Court rejects the contention as baseless and without explanation. [Para 9]

**Decision – High Court dismisses the petition, upholding the arbitral award – Finds no merit in objections under Section 34 of the A&C Act. [Para 10]**

Referred Cases:

- BL Kashyap and Sons Ltd. V. Mist Avenue Pvt. Ltd. [2023 SCC OnLine Del 3518] [Para 7]

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

### **JUDGMENT**

1. By way of present petition filed under Section 34 of the Arbitration & Conciliation Act, 1996 (hereafter, the 'A&C Act'), the petitioner/judgment debtor has raised objections to the Award dated 31.10.2022 (hereafter, the '*impugned award*') delivered by the Arbitral Tribunal comprising of Sole Arbitrator (hereafter, 'AT').

2. The impugned award was delivered in the context of Services and Alliance Agreement dated 12.04.2019 (hereafter, the '*Agreement*') and amended on 22.05.2019. The respondent/claimant/award holder has claimed itself to be a company engaged in the business of production, development, marketing and distribution of media and entertainment content. The judgement debtor is claimed to be a renowned artist in the entertainment industry in India. Under the Agreement, judgement debtor received a sum of Rs.2.5 crores on 31.05.2019 as advance payment towards her obligation under the Agreement. Disputes arose between the parties and in the negotiations held on 05.02.2020, judgement debtor issued a post-dated cheque for a sum of Rs.2 crore towards refund of the advance received by her. A Draft Settlement Agreement prepared at the instance of decree holder was however not signed by the judgement debtor. Admittedly, the post-dated cheque for Rs.2 crore was not presented and encashed. Disputes further arose when decree holder claimed breach of exclusivity clause of the Agreement when judgement debtor uploaded a music video of her song '*Jalebi*' on the YouTube. Later, settlement talks were initiated between the parties but the same did not fructify resulting in an email dated 10.11.2020 sent by judgement debtor thereby terminating the Agreement. Decree holder issued notice dated 15.03.2021 under Section 21 of the A&C Act resulting in commencement of the arbitral proceedings. Vide the impugned award, AT partially allowed the claim and awarded a sum of Rs.2 crore alongwith interest @ 12% from 25.08.2020 till payment.

3. Decree holder had filed three claims. It claimed Rs.2.5 crores that was paid to judgement debtor as advance payment. Decree holder claimed that judgement debtor committed breach of the Agreement. Judgement debtor contended that Agreement dated 12.04.2019 as amended on 22.05.2019 were *void ab initio* as the same were exploitative. It was further contended that though the judgement debtor was obligated to perform, the Agreements were frustrated, closed and terminated on account of COVID-19 being the *Force Majure* event under Clause 11.1 of the Agreement. Even otherwise, the initial agreement dated 12.04.2019 was novated by the subsequent agreement 22.05.2019 which did not contain any arbitration clause. Further, the parties reached an oral understanding on 05.02.2020 resulting in issuance of the post-dated cheque dated 25.08.2020 of Rs.2 crores by judgement debtor as full and final settlement. It was also claimed that though judgement debtor had offered 17 live events till February, 2020, the decree holder arm-twisted her and obtained the post-dated cheque of Rs.2 crores against her will. AT noting the issuance of post-dated cheque of Rs.2 crores by the judgement debtor which concededly was never encashed by decree holder, awarded a sum of Rs.2 crores. The second claim was filed seeking damages to the tune of Rs.1,16,68,400/- towards losses suffered by the decree holder on account of breaches committed by the judgement debtor. The claim was rejected as the decree holder had failed to substantiate the same. The third claim related to the damages suffered to the decree holder's goodwill. The said claim was also rejected for the lack of evidence.

4. Before this Court, judgement debtor reiterated the contention raised before the AT that the initial Agreement dated 12.04.2019 was novated by subsequent amending agreement dated 22.05.2019 which did not contain any arbitration clause. The entire arbitral proceedings were invalid as the arbitration clause contained in the earlier Agreement did not survive post the amending agreement. It was also contended that with issuance of post-dated cheque of Rs.2 crores by the judgement debtor, all the disputes came to an end and the AT was not the competent forum for realisation of the amount under the post-dated cheque. The decree holder ought to have approached a Civil Court. Another contention was raised that the impugned award is also against the Public Policy of India. Reliance is placed on the decision of a Coordinate Bench of this Court in BL Kashyap and Sons Ltd. v. Mist Avenue Pvt. Ltd.<sup>1</sup>

5. Decree holder, on the other hand, resisted the submissions made on behalf of judgement debtor. It is however, submitted that decree holder has not challenged rejection of its other claims by the AT.

6. A mere perusal of the two Agreements would reveal that by the subsequent agreement, only clause 2.3.4 was added to the earlier Agreement besides replacing clause 2.4.1 and amending the definition of expression 'Videos' in clause 1.1.12 of the earlier Agreement. The subsequent agreement only amended and did not novate the earlier Agreement is evident from the following extracts of the subsequent agreement:-

*"A. The Parties have entered into a Services and Alliance Agreement dated April 12, 2019 ("Agreement") recording the detailed terms and conditions for the engagement of the Artiste and for availing her Services.*

*B. Pursuant to and in terms of the Agreement, the Parties are hereby desirous of amending their understanding in relation to the Artiste's engagement for Live Events and Videos. Accordingly, the Parties are now executing this Amendment Agreement to record the revised terms and conditions thereof.*

xxx

xxx

xxx

*4. Any and all capitalized terms used in this Amendment Agreement but not specifically defined herein shall have the meaning ascribed to such terms in the Agreement.*

*5. With effect from the Amendment Execution Date, the Agreement shall stand amended to the extent provided in this Amendment Agreement, and the terms of the Agreement shall be*

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<sup>1</sup> 2023 SCC OnLine Del 3518

*read and construed in conjunction with the terms of this Amendment Agreement. All other terms of the Agreement shall remain unchanged and continue to be in force except to the extent modified hereunder."*

7. Reliance by the judgement debtor on the decision in BL Kashyap (Supra) is entirely misplaced as in the said decision the parties had reached a written MoU containing recitals thereby cancelling the earlier Agreement.
8. The issuance of post-dated cheque on 05.02.2020 also did not novate the earlier Agreement. Concededly, the Draft Settlement Agreement prepared at the instance of decree holder was never signed by the judgement debtor.
9. Judgement debtor has only raised a bald contention that the award is against the Public Policy of India without any further explanation. The contention is bereft of any basis and is thereby rejected.

10. Consequently, the objections raised in the present petition merits rejection and the petition is accordingly dismissed alongwith pending applications.

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