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## SUPREME COURT ON THE SETTING ASIDE ARBITRAL AWARD

### A. Introduction

Supreme Court (**SC**), in *Kandhari Beverages* case,<sup>1</sup> followed the settled legal position in a catena of judicial decisions to hold that an arbitral award can be set aside only if it is against public policy in India.

### B. Brief Facts:

1. The appellant, Haryana Tourism Limited (**HTL**). HTL had invited tenders for supply of aerated cold drinks at its tourist complexes for a year from May 15, 2001.
2. The tender submitted by the respondent, Kandhari Beverages Limited (**Kandhari**) was accepted by HTL. Per agreement between them, Kandhari was to pay Rs. 20 lakhs to HTL for brand promotion and use as per mutual agreement.
3. In a 'Mango Mela' event organised by HTL, Rs. 1 lakh was spent. The parties agreed to hold musical nights for brand promotions and Kandhari reported spending about Rs. 14 lakhs. HTL, however, demanded Kandhari to deposit Rs. 19 lakhs as sponsorship money. After about two months, HTL terminated the contract which led to the dispute.
4. During arbitration, the counter-claim by Kandhari was dismissed with a direction for payment of Rs. 9.5 lakhs. Aggrieved by this, it appealed to Additional District Judge (**ADJ**) under Section 34 of the Arbitration and Conciliation Act, 1996 ("**Act**").<sup>2</sup> The ADJ dismissed the appeal.
5. Kandhari, dissatisfied with the dismissal, appealed before the High Court of Punjab & Haryana (**HC**) under Section 37 of the Act.<sup>3</sup> HC examined the merits of the claim, allowed the appeal, and set aside the arbitrator's award.<sup>4</sup> Being aggrieved, HTL appealed to the SC.

### C. Order and Reasoning:

1. HTL submitted that the HC had materially erred in quashing and setting aside the arbitral award and in doing so, exceeded its jurisdiction. Kandhari challenged the competence of the arbitrator and argued that he did not have jurisdiction to pass the award and that the appointment of arbitrator was violative of the contract between parties.

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<sup>1</sup> *Haryana Tourism Limited vs. Kandhari Beverages Limited* (11.01.2022 - SC) : MANU/SC/0033/2022.

<sup>2</sup> Application for setting aside arbitral award.

<sup>3</sup> Appealable Awards.

<sup>4</sup> F.A.O. No. 1399 of 2015 (O&M).

2. SC held that the jurisdiction of the arbitrator cannot be questioned. It held that the HC had entered into the merits of the claim, which was not permissible. It held:

*“8. As per settled position of law laid down by this Court in a catena of decisions, an award can be set aside only if the award is against the public policy of India. The award can be set aside under Sections 34/37 of the Arbitration Act, if the award is found to be contrary to, (a) fundamental policy of Indian Law; or (b) the interest of India; or (c) justice or morality; or (d) if it is patently illegal. None of the aforesaid exceptions shall be applicable to the facts of the case on hand. The High Court has entered into the merits of the claim and has decided the appeal under Section 37 of the Arbitration Act as if the High Court was deciding the appeal against the judgment and decree passed by the learned trial Court. Thus, the High Court has exercised the jurisdiction not vested in it under Section 37 of the Arbitration Act. The impugned judgment and order passed by the High Court is hence not sustainable.”*

3. Thereby, the ADJ’s order under Section 34 of the Act was restored. In other words, the arbitral award was restored.

#### **D. Conclusion**

This judgement reconfirms that an arbitral award can be set aside under Sections 34 and 37 of the Act only if it is found contrary to any of the following:

1. Fundamental policy of Indian law.
2. Interest of India.
3. Justice or morality.
4. Patent illegality.

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