

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Orders Reserved on : 03.12.2025
Pronouncing orders on : 08.12.2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

Arb O.P(COM.DIV.) No. 35 of 2022
and A.Nos.376 & 1619 of 2022

The Tamil Nadu Housing Board,
TNHB, Anna Nagar Circle,
Rep.by its Superintending Engineer,
Chennai 40

Petitioner(s)

Vs

M/s. N.C.C.Ltd,
formerly M/s. Nagarjuna Construction Company Ltd,
No.190A, 7th and 8th Floor,
Pettukola Towers,
Kilpauk, Chennai 600 010

Respondent(s)

PRAYER Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, praying to set aside the award dated 30.07.2020.

For Appellant(s): Mr.J.Ravindran
Additional Advocate General
assisted by
Mr.S.Aravindran for
Fox Mandal Associates

For Respondent(s): Mr.P.J.Rishikesh



WEB COPY



2/24

Arb O.P(COM.DIV.) No. 35 of 2022

ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for the sake of brevity, hereinafter referred to as 'the Act') by the Tamil Nadu Housing Board challenging the Award passed by the Sole Arbitrator, dated 30.07.2020.

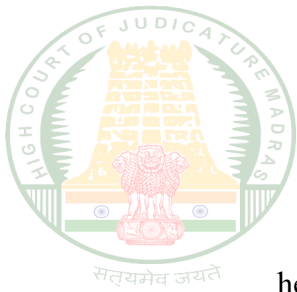
2. When this petition came up for admission on 09.03.2022, this Court passed the following order:

Captioned 'Arbitration Original Petition' [hereinafter 'Arb OP' for the sake of convenience and clarity] has been presented in this Court on 18.12.2020 assailing an 'arbitral award dated 30.07.2020 bearing reference O.P.No.215 of 2000' [hereinafter 'impugned award' for the sake of convenience and clarity] made by an 'Arbitral Tribunal' ['AT'] constituted by a sole Arbitrator.

2. Respondent before AT i.e., 'Tamil Nadu Housing Board' ['TNHB'] is the petitioner before this Section 34 Court and contractor who was claimant before AT is the lone respondent in the captioned matter.

3. Parties will be referred to as 'TNHB' and 'contractor' for the sake of convenience and clarity.

4. Captioned Arb OP is in the Admission Board and therefore it was



WEB COPY

heard out in accordance with 'The Madras High Court (Arbitration) Rules, 2020' [hereinafter 'MHC Arbitration Rules' for the sake of convenience and clarity] more particularly Rule 8 thereat and Clause 8 of the practice directions thereat.

5. Mr.J.Ravindran, learned Additional Advocate General appearing on behalf of Mr.S.Aravindan, learned counsel of M/s.Fox Mandal & Associates (Law Firm) for petitioner-TNHB, notwithstanding very many averments in the petition and several grounds in the petition submits that his campaign against the impugned award is threefold and the three points are as follows:

- (a) Delay in making of the award;
- (b) There is no arbitration agreement at all i.e., no arbitration clause in the primary contract; and
- (c) In the impugned award, interest has been awarded in favour of the contractor. Unexplained delay in making the award is almost 8 years (a little more than 6 years i.e., from 24.11.2013 to 03.02.2020 at the least);

6. Before proceeding further it is deemed appropriate to set out short facts shorn of elaboration i.e., minimum facts imperative to appreciate this order that is being made at this prima facie stage. Short facts are that the work is for construction of 560 HIG Flats in what is known as S.A.F. Games Village at Koyambedu; that the value of the contract is in the region of 61.98 Crores; that the period of contract is 12 months; that there was alleged delay leading to disputes/arbitral proceedings; that arbitral proceeding made by a three member AT earlier on 10.01.2000 got derailed owing to one of the learned arbitrators not to sign the award; that thereafter there was a judicial order of this Court (by consent of parties) vide O.P.No.215 of 2000 dated 26.02.2007 wherein the earlier derailed award



WEB COPY

qua three member AT was set aside; that the first sitting i.e., preliminary hearing was on 28.04.2008; that the impugned award was ultimately made 12 years later on 30.07.2020; that the claim of the contractor was under various heads such as Non payment of final bill, Encashment of Bank Guarantees, reimbursement of works contract tax, Non construction of the pump rooms and pump sets, cost of rectification work etc.; that TNHB made a counter claim under various heads such as additional sales tax, cost of non construction of pump rooms, pump sets, cost of rectification works, excess amount paid in respect of external electrical works, excess amount paid in respect of drain works, reimbursement of statutory levies etc.; that before AT there was no oral evidence but 25 exhibits on the side of contractor and 10 exhibits on the side of TNHB (P series and R series respectively) were marked and vide the impugned award, contractor was ultimately awarded 51.48 Lakhs together with interest at the rate of 9% per annum from 21.08.1998 and further interest at the rate of 18% per annum on Rs.51.48 Lakhs in the event of non payment within 2 months.

7. Reverting to the aforementioned three grounds of attack qua campaign of TNHB against the impugned award, attention of this Court was drawn to proceedings of Hon'ble AT dated 24.11.2013 wherein minutes make it clear that arguments have concluded and the proceedings stand adjourned for passing award. Learned Additional Advocate General points out that there is no mention about parties seeking time for filing written arguments in this 24.11.2013 proceedings. However, more than 6½ years later on 03.02.2020 next proceedings were made by Hon'ble AT saying that the matter was adjourned and the matter is standing over for passing of award awaiting written arguments. Ultimately, the impugned award was made on 30.07.2020. This 6½ years delay vitiates the impugned award is learned State counsel's say.



WEB COPY

8. It was submitted that the captioned Arb OP is governed by pre 23.10.2015 regime of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience and clarity] and therefore, there was no statutory requirement of 1 year or 6 months extension by extension i.e., Section 29A of A and C Act but the delay is unexplained and it vitiates the award is the argument. To buttress this argument, oft-quoted *Ani Rail* case law [*Anil Rai vs. State of Bihar* reported in (2001) 7 SCC 318] was pressed into service and attention of this Court was drawn to paragraph No.5 thereat wherein excerpted portions of *R.C. Sharma* case law [*R.C.Sharma v. Union of India* reported in (1976) 3 SCC 574] has been extracted and reproduced saying that unless explained by exceptional or extraordinary circumstances, such delay is undesirable even when written arguments are submitted.

9. To be noted, of the three points qua challenge to impugned award the third point is dovetailed with the first point as the third point is a sequitur qua first point.

10. Second point is there being no arbitration. Learned Additional Advocate General very fairly submitted that this point was not raised before AT but it is still open to TNHB to raise it before this Section 34 Court. In support of this argument, *Lion Engineering* principle [*Lion Engineering Consultants vs. State of Madhya Pradesh and Others* reported in (2018) 16 SCC 758] was pressed into service. In *Lion Engineering* principle, the ratio laid down in *MSP Infrastructure case law* [*MSP Infrastructure Ltd., Vs. M.P. Road Development Corpn. Ltd.*, reported in (2015) 13 SCC 713] was held to be not good law. In other words, *Lion Engineering* principle is to the effect that it is open to the parties to raise such a plea for the first time before a Section 34 Court even if it had not been raised under Section 16 before AT. There is no difficulty in accepting this proposition but this Court is unable to accept the argument in the case on hand, the reason is



WEB COPY

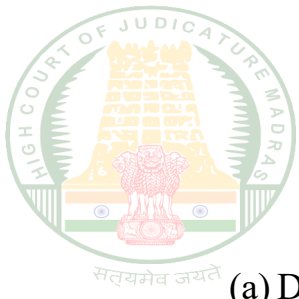
appointment of sole arbitrator was by way of a judicial order in O.P.No.215 of 2000 made in the presence of both parties and it is not a judicial order which merely examined existence of arbitration agreement qua sub-section (6A) of Section 11 of A and C Act. Under such circumstances, second point does not weigh by this Court.

11. Issue limited notice regarding admission on points 1 and 3. Issue notice returnable in four weeks i.e., returnable by 06.04.2022. Private notice permitted. Notice through all available electronic modes of communications (subject of course to proof being demonstrated) also permitted.

12. As regards captioned application for stay, this Court reminds itself about the proviso to sub section (3) of Section 36 of A and C Act Though interest is the most contentious issue, this Court deems it appropriate (at this prima facie stage) to hold that 65 to 70 Lakhs would appropriately be the exposure qua impugned award for TNHB and therefore, there shall be an interim order i.e., interim order of stay of the impugned award subject to the condition that 50% of this sum i.e., Rs.35 Lakhs is deposited to the credit of captioned Arb OP within a fortnight from today i.e., on 23.03.2022.

13. List on 06.04.2022.

3.The above order captures the issues involved in the present petition and the issues that has to be gone into while deciding this petition finally. As could be seen from the above order, there are only two issues which will be gone into by this Court and they are:



WEB COPY

(a) Delay in making the Award and

(b) Interest that has been awarded in the Award which was passed with an unexplained delay of almost eight years and interest imposed even for this period by the Sole Arbitrator.

4. Heard Mr.J.Ravindran, learned Additional Advocate General assisted by Mr.S.Ravindran appearing on behalf of the petitioner and Mr.P.J.Rishikesh, learned counsel appearing on behalf of the respondent.

5. The first issue to be gone into pertains to the delay in passing the Award. While dealing with this issue, this Court has to see as to whether undue and unexplained delay in passing the Award will result in interfering with the Award on the ground that it is in conflict with the Public Policy of India and thereby, attracts Section 34(2)(b)(ii) of the Act or under Section 34(2A) of the Act on the ground that it is vitiated by patent illegality.

6. Before going into this issue, it will be relevant to take note of the latest judgement of the Apex Court in ***Lancor Holdings Limited vs. Prem Kumar Menon and Others*** reported in ***2025 SCC Online SC 2319***. The relevant portions are extracted hereunder:



WEB COPY

19. However, the undeniable fact remains that Section 34 of the Act of 1996 does not postulate delay in the delivery of an arbitral award as a ground, in itself, to set it aside. There is no gainsaying the fact that inordinate delay in the pronouncement of an arbitral award has several deleterious effects. Passage of time invariably debilitates frail human memory and it would be well-nigh impossible for an arbitrator to have total recall of the oral evidence, if any, adduced by witnesses; and the submissions and arguments advanced by the parties or their learned counsel. Even if detailed notes were made by the arbitrator during the process, they would be a poor substitute to what is fresh in the mind immediately after conclusion of the hearings in the case. More importantly, such delay, if unexplained, would give rise to unnecessary and wholly avoidable speculation and suspicion in the minds of the parties. Absolute faith and trust in the system is essential to make it work the way it is intended to. Once that belief is shaken, it would lead to a breakdown of that system itself. A situation that is to be eschewed at all costs.

20. That being said, we must also recognize that, in the usual course, long delay in the passing of arbitral awards is not the norm. However, when an instance of undue delay in the delivery of an arbitral award occasionally crops up, given the weighty preponderance of judicial thought on the issue with which we are in respectful agreement, we are of the considered opinion that each case would have to be examined on its own individual facts to ascertain whether the delay was of such import and impact on the final decision of the arbitral tribunal, whereby that award would stand vitiated due to the lapses committed by the arbitral tribunal owing to such delay. We are also conscious of the fact that there must be a balance between the pace of the arbitration, culminating in an arbitral award, and the satisfactory meaningful content thereof. In this regard, in his seminal article, titled 'Arbitrators and Accuracy'¹⁹, Professor William W Park says thus:

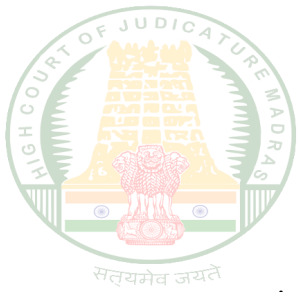


WEB COPY



‘Although good case management values speed and economy, it does so with respect for the parties' interest in correct decisions. The parties have no less interest in correct decisions than in efficient proceedings. An arbitrator who makes the effort to listen before deciding will enhance both the prospect of accuracy and satisfaction of the litigants' taste for fairness. In the long run, little satisfaction will come from awards that are quick and cheap at the price of being systematically wrong.

Therefore, keeping in mind these competing interests, it is only in cases where the negative effect of the delay in the delivery of an arbitral award is explicit and adversely reflects on the findings in the said award, that such delay, and more so, if it remains unexplained, can be construed to be a factor to set aside that award. Once all the requirements, referred to supra, are fulfilled in a given case and the arbitral award therein is clearly riddled with the damaging effects of the delay, it can be construed to be in conflict with the public policy of India, thereby attracting Section 34(2)(b) (ii) of the Act of 1996, or Section 34(2A) thereof as it may also be vitiated by patent illegality. Further, it would not be necessary for an aggrieved party to invoke the remedy under Section 14(2) of the Act of 1996 as a condition precedent to laying a challenge to a delayed and tainted award under Section 34 thereof. Both provisions would operate independently as the latter is not dependent on the former. This being the legal position, we would have to examine whether the present arbitral award suffers from any such malady owing to the delay, whereby its very validity would stand vitiated. Further, we would also have to see whether the award is liable to be set aside for falling short, as it did not resolve the disputes between the parties but their positions stood altered irreversibly owing to the interim orders passed during the arbitral proceedings. Lastly, if the award is liable to be set aside, the relief to be granted.



WEB COPY



48. The Arbitrator in this case took nearly 4 years to conclude that he had no equitable relief to offer both parties but held in favour of one side in all respects, leaving it to the parties to start litigating again. He conveniently opined that proper pleadings and evidence had not been placed before him and, therefore, he was constrained to relegate the parties to another round of litigation, ignoring the fact that he had already altered their positions and had benefitted one party at the expense of the other. This approach on the part of the Arbitrator, after dithering for nearly 4 years, served absolutely no purpose and reflected total non-application of mind. The delay in the making of the Award resulted in nearly four valuable years passing away with no benefit to show for it. When the public policy underlying resort to arbitration is to make it a time-saving mechanism for resolving disputes, this unexplained and pointless delay of the Arbitrator in concluding the matter clearly pitted his ineffective and futile Award against the public policy of India.

.
.

63. To conclude, the questions framed for consideration in these appeals are answered as under:

(i) What is the effect of undue and unexplained delay in the pronouncement of an arbitral award upon its validity?

- Delay in the delivery of an arbitral award, by itself, is not sufficient to set aside that award. However, each such case would have to be examined on its own individual facts to ascertain whether that delay had an adverse impact on the final decision of the arbitral tribunal, whereby that award would stand vitiated due to the lapses committed by the arbitral tribunal owing to such delay. It is only when the effect of the undue delay in the delivery of an arbitral award is explicit and adversely reflects on the findings therein,



WEB COPY



11/24

Arb O.P(COM.DIV.) No. 35 of 2022

such delay and, more so, if it remains unexplained, can be construed to result in the award being in conflict with the public policy of India, thereby attracting Section 34(2)(b)(ii) of the Act of 1996 or Section 34(2A) thereof, as it may also be vitiated by patent illegality. Further, it would not be necessary for an aggrieved party to invoke the remedy under Section 14(2) of the Act of 1996 as a condition precedent to lay a challenge to that delayed and tainted award under Section 34 thereof.

(ii) Is an arbitral award that is unworkable, in terms of not settling the disputes between the parties finally but altering their positions irrevocably thereby leaving them no choice but to initiate further litigation, liable to be set aside on grounds of perversity, patent illegality and being opposed to the public policy of India? If so, would it be a fit case for exercise of jurisdiction under Article 142 of the Constitution?

- The very basis and public policy underlying the process of arbitration is that it is less time-consuming and results in speedier resolution of disputes between the parties. If that premise is not fulfilled by an unworkable arbitral award that does not resolve the disputes between the parties, on one hand, leaving them with no choice but to initiate a fresh round of arbitration/litigation but the arbitrator, in the meanwhile, also changed their positions, irrevocably altering the pre-existing balance between the parties prior to the arbitration, then such an arbitral award would not only be in conflict with the public policy of India but would also be patently illegal on the face of it. It would therefore be liable to be set aside under Section 34(2)(b)(ii) and/or Section



WEB COPY



12/24

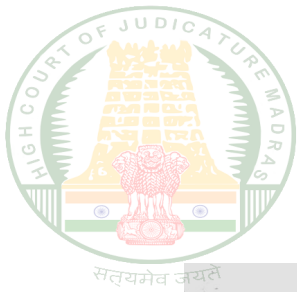
Arb O.P(COM.DIV.) No. 35 of 2022

34(2A) of the Arbitration and Conciliation Act, 1996.

Further, if the necessary conditions for exercise of power by this Court under Article 142 of the Constitution of India are made out, in terms of the Constitution Bench decision in *Gayatri Balasamy v. ISG Novasoft Technologies Limited* (supra), this Court would be justified in exercising such jurisdiction.

7.The ratio in the above judgement is that an undue and unexplained delay in the pronouncement of an Arbitral Award by itself is not a sufficient cause to set aside the Award. However, each case must be examined on its own individual facts to ascertain whether the unexplained delay had an adverse impact on the final decision taken by the Arbitral Tribunal. If the Award stands vitiated on these grounds, the Court can always set aside the Award under Section 34(2)(b)(ii) of the Act and/or under Section 34(2A) of the Act.

8.In the case in hand, the Arbitral Tribunal heard the final arguments on 24.11.2013 and adjourned for passing of the Award. The proceedings of the Arbitrator dated 24.11.2013 is scanned and extracted hereunder:



13/24

Arb O.P(COM.DIV.) No. 35 of 2022

WEB COPY

**BEFORE THE SOLE ARITRATOR OF
HON'BLE MR. JUSTICE K.P. SIVASUBRAMANIAM (RETD)**

O.P. No. 215 of 2000
(On the file of High Court, Madras)

M/s. N.C.C. Ltd. (formerly M/s. Nagarjuna Construction
Company Ltd),
No.190A, 7th & 8th Floor, Pettukola Towers,
Kilpauk, Chennai. 600 010. ...

Claimant

Vs.

The Tamilnadu Housing Board,
Anna Nagar Circle – rep. by its
Superintending Engineer, Chennai.40 ...

Respondent

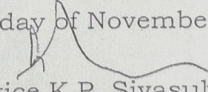
PROCEEDINGS OF THE ARBITRATOR DATED 24.11.2013

In the above matter arguments have been concluded and the proceedings stand adjourned for passing of the Award.

In view of the fact that this is a matter taken up after remand by the Hon'ble High Court, the Arbitrator did not fix the fee and had requested the Learned Counsel appearing for both sides to discuss among themselves and to inform the same to Arbitrator on any agreed amount as Arbitrator fee. I am now informed by both sides that I may myself proceed further to fix a consolidated amount towards Arbitrator fee and expenses.

Having regard to the number of hearings, the Arbitrator is inclined to fix a consolidated amount of Rs. 5,00,000/- (Rupees five lakhs) towards Arbitrator fee and expenses to be shared equally by both sides viz., Rs. 2.5 Lakhs each, which may be paid within a period of 4 weeks after deducting the TDS.

Dated at Chennai on this the 24th day of November, 2013.


(Justice K.P. Sivasubramaniam)
Retd.
Sole Arbitrator.

Copy to:

1. Mr. R. Murari,
Advocate,
Old No.15/3, New No.31, Masilamani Road,
Balaji Nagar, Chennai. 600 014.
2. Mr. Anandamurthy,
Advocate,
No. 48, Lazarus Church Road,
Santhome, Chennai. 600 028.

128/



WEB COPY

9. After more than seven years, the Sole Arbitrator reopened the case and the following proceedings came to be passed on 03.02.2020:

In the above arbitral proceeding though considerable time has passed after the last hearing of the arguments of both parties and stood adjourned for passing the Award and as requested by both parties, time was granted for filing the written arguments. As filing of written argument was requested and accepted as a procedural issue and no written arguments were filed even after considerable time by both parties, the Arbitrator had contacted the Learned Counsel representing both parties. After some time Learned Counsel for Claimant informed that they had no further written argument to be filed in addition the written submission was filed by them.

However on the side of the Respondent, there was no positive response. As the earlier proceedings will disclose, there were changes in the counsel representing the Respondent as well as due to non representation of the Respondent on few occasions. I had contacted the Learned Counsel who had argued the case lastly on behalf of the Respondent. Though he assured that the written argument will be filed at the earliest, it did not happen. He also subsequently informed me that there was change of counsel by the Respondent and that he was no more entrusted with cases relating to Tamilnadu Housing Board.

The Respondent being a public institution, I did not wish to proceed further without the authorities being informed. During the month August, 2019, I got in touch with the Learned Advocate General. Immediately thereafter he informed me that the office of the Housing Board has been instructed to take further steps immediately. I was then informed that Mr. R. Jayaseelan, Advocate has been put incharge of the case.



WEB COPY

Mr. R. Jayaseelan, Advocate contacted me and requested for time to interact with the office of the Housing Board. Few days later he informed me that the records were not traceable / available with the office of the Housing Board. Hence on 6.10.2019 I had handed over all the records (xerox copies of exhibits and pleadings) available with me. By the end of December, 2019 Mr. R. Jayaseelan contacted and informed me that the office of the Board was of the view that oral arguments may also be heard again instead of only filing written submission and it was likely that the Board will be represented by the Learned Additional Advocate General.

Hence after consulting Learned Counsel for both sides, I am fixing the next hearing as at 2.30 p.m. on 26.2.2020 at the Arbitration Mediation Council, Y.M.I.A. Building, R  yapettah, Chennai.600 004. If both sides are inclined to file written submission, the same may be complied with on the said hearing date, failing which after the completion of the oral arguments Award will be passed.

Mr. R. Jayaseelan, Learned Counsel for the Respondent may ensure that the copies of the records handed over by the Arbitrator may be returned along with his vakalat before the date of hearing.

10.The matter was once again posted for hearing on 26.02.2020 and the following proceedings came to be recorded by the Sole Arbitrator:

This hearing is pursuant to the proceedings of the Arbitrator dt.03.02.2020 Mr. R. Jayaseelan, Advocate, Standing Counsel for the Respondent, files vakalath. A request is made by the Respondent for fixing a date of hearing for oral arguments. Both sides agree to have the hearing on 16.03.2020 at 2.30 PM at the same venue.



WEB COPY

It is made clear that no further adjournment shall be granted and both sides may make their submissions / file written arguments if any, by the same date.

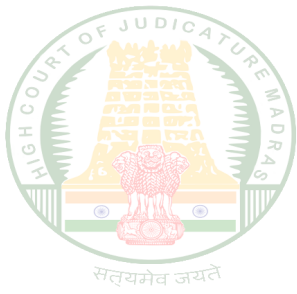
As regards the Arbitral fee a sum of Rs.5,00,000/- were fixed originally as consolidated fee. Both sides may verify whether the said payment has been made. Balance of fee if any, after deducting payments already made, may be paid during the next hearing.

11.The hearing was again fixed on 16.03.2020, at which point of time both sides seems to have been informed the Sole Arbitrator that they will file their written arguments. Recording the same, the following proceedings were issued on 16.03.2020:

Both sides have expressed that no further oral argument is necessary. Both parties request for time to file written submission. Both sides submit that it will be sufficient that if time is granted for filing written arguments.

Written submissions by both sides shall be filed within a period of four weeks from today namely on or before 20.04.2020. In the event of any of the parties not complying with the said directions, the arbitrator will proceed further to pass the award.

12.Both sides did not file their written arguments and therefore, the Sole Arbitrator proceeded to pass the Award dated 30.07.2020 based on the pleadings and Exhibits filed before the erstwhile Tribunal.



WEB COPY

13.The Sole Arbitrator has dealt with the claims made by the respondent and the counter claims made by the petitioner and passed the Award. The operative portion of the Award is extracted hereunder:

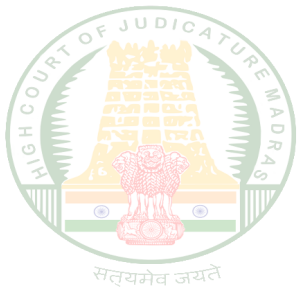
133.Hence I am inclined to hold that Interest at the rate of 9% p.a. shall be leviable from the date when the claim petition was filed viz., 21.8.1998 till date and in the event of the said amount not being paid within a period of two months from this date, interest shall be leviable at the rate of 18% p.a. from this date till realisation.

Amount Payable to the Claimant:

1. Amount due under the Final Bill:	Rs. 13,44,482.00
2. Refund of amount encashed under the BGs:	Rs. 62,00,000.00
Total:	Rs. 75,44,482.00
Deduct amount payable to the Respondent towards Additional Sales Tax.	Rs. 23,96,517.00
Balance amount due to Claimant	Rs. 51,47,965.00
To be rounded off at:	Rs. 51,48,000.00

AWARD

1. The Claimant is entitled to a sum of Rs. 51,48,000/- (Rupees fifty one lakhs forty eight thousand only).



WEB COPY

2. The Claimant is also entitled to interest on the said amount at 9% p.a. from 21.8.1998 till this date.

3. In the event of the Respondent not paying the amount mentioned under Sl. 1 and 2 above within a period of 2 months from today, interest shall be paid on Rs. 51,48,000/- at the rate of 18% p.a. from this date till date of realization.

4. No costs.

14. What is evident from the above is that the Sole Arbitrator heard both sides on 24.11.2013 and thereafter, adjourned for passing of the Award. Since no order was passed for more than seven years, the petition was reopened and both sides did not make their submissions nor did they file any written submissions. From March 2020 onwards, the country was afflicted with the Covid-19 Pandemic and there was a complete shut down. When the Covid Pandemic was at its peak, the final Award came to be passed on 30.07.2020. This Award has been passed without hearing both sides and it is also apparent from the proceedings which has been extracted *supra* that both sides also did not file any written submissions. Thus, in terms of hearing, the last time the Sole Arbitrator heard the parties was in the year 2013 and thereafter, the Award has been passed only based on the materials that were available before the Sole Arbitrator.



WEB COPY

15.The Public Policy underlying resorting to arbitration is to make it a time saving mechanism for resolving disputes and while so, an Award passed with an unexplained and exorbitant delay of more than seven years, certainly is in conflict with the Public Policy of India.

16.The Sole Arbitrator has put the blame on the petitioner for not co-operating for the completion of the proceedings by not filing the written submissions, whereas in the entire Award, there are no reasons assigned as to why the Award was passed with such an exorbitant delay.

17.The Sole Arbitrator after having delayed the passing of the Award for more than seven years, has also imposed interest at the rate of 9% per annum from the date of filing the claim petition till the date of Award (which includes the delay of more than seven years in passing the Award) and if the amount is not paid within two months from the date of the Award, has levied interest at the rate of 18% per annum from the date of Award till the date of realisation.

18.While levying interest, the Sole Arbitrator ought to have taken into consideration the fact that the delay of more than seven years was not

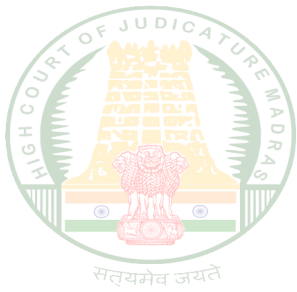


WEB COPY

attributable to either of the parties and therefore, it will be unreasonable to mulct the petitioner with interest even for the period of delay in passing the Award. Such finding rendered by the Sole Arbitrator with respect to awarding of interest certainly suffers from patent illegality.

19.The arguments that were advanced in the year 2013, certainly cannot be recollected in the year 2020. Therefore, the Award has been passed only based on the materials that were available before the Sole Arbitrator without the parties putting forth their arguments either oral or written, before the Sole Arbitrator. It must also be borne in mind that the Covid-19 Pandemic started from March 2020 and there was no occasion for the parties to ascertain as to what happened to the proceedings after 16.03.2020. In a way, it also tantamounts to the petitioner not being able to present their case effectively.

20.The learned counsel for the respondent submitted that the ground of delay in passing the Award has not been raised in the petition filed under Section 34 of the Act and therefore, such a ground cannot be raised at the time of arguments.

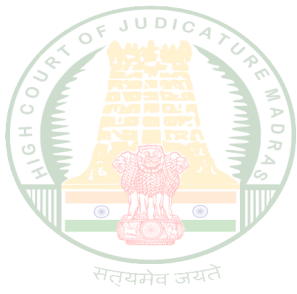


WEB COPY

21. In the considered view of this Court, the Apex Court has clarified the position in *State of Chhattisgarh v. Sal Udyog Private Limited* reported in **2022 2 SCC 275** (Para 24) that even if a ground is not raised in the petition, if the Court is able to ascertain the perversity or patent illegality on the face of the Award, the Court can always strike down the Award on that ground. In the case in hand, the exorbitant and unexplained delay of more than seven years stares on the face of the Award and therefore, this Court can certainly go into the issue of delay which was also one of the ground on which this petition was entertained when it was admitted on 09.03.2022.

22. The learned Additional Advocate General submitted that the petitioner is agreeable for sending back the matter to a new Arbitrator and it can also be made clear in the order that the proceedings before the new Arbitrator will confine itself only to hearing the final arguments and passing the final Award, within the time frame fixed by this Court.

23. In the light of the above discussion, this Court finds that the Award passed by the Sole Arbitrator dated 30.07.2020, is liable to be interfered with for infraction under Section 34(2)(b)(ii) and under Section 34(2A) of the Act.

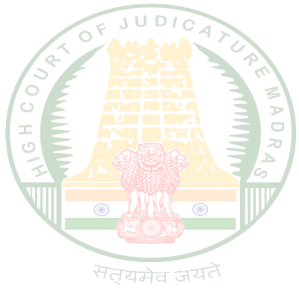


WEB COPY

24.In the result, this Original Petition stands allowed and the Award passed by the Sole Arbitrator dated 30.07.2020, is hereby set aside. It is left open to the parties to agree upon the appointment of a fresh Arbitrator only for the purpose of making their submissions (oral and/or written) and for passing the final Award, within a stipulated time frame. Considering the facts and circumstances, there shall be no order as to costs. Consequently, connected miscellaneous applications are closed.

08-12-2025

Index: Yes
Speaking order
Internet: Yes
Neutral Citation: Yes
ssr



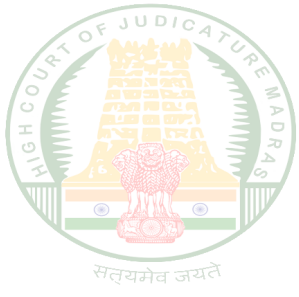
23/24

Arb O.P(COM.DIV.) No. 35 of 2022

WEB COPY

To

M/s. N.C.C.Ltd,
formerly M/s. Nagarjuna Construction Company Ltd,
No.190A, 7th and 8th Floor,
Pettukola Towers,
Kilpauk, Chennai 600 010



WEB COPY



24/24

Arb O.P(COM.DIV.) No. 35 of 2022

N.ANAND VENKATESH J.

SSR

Pre-Delivery Order in
Arb O.P(COM.DIV.) No. 35 of 2022

08-12-2025