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

% **Reserved on: 14th February, 2023**
Pronounced on: 16th May, 2023

\+ O.M.P. (COMM) 495/2020 & I.A. 8960/2020

DEPARTMENT OF TRANSPORT, GNCTD ..... Petitioner

Through: Mr. Darpan Wadhwa, Sr. Advocate with Mr. Sameer Vashisht, ASC (Civil) for GNCTD alongwith Ms. Sanjana Nangia, Advocate

versus

STAR BUS SERVICES PVT LTD ..... Respondent

Through: Mr. Paras Kuhad, Sr. Advocate with Mr. K.R. Sasiprabhu, Mr. Manu Aggarwal, Mr. Jitin Chaturvedi, Mr. Vishnu Sharma and Mr. Manan Shishodia, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

FACTUAL MATRIX

1. The petitioner has preferred the present petition raising objections under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act") for setting aside the Arbitral Award dated 9th June, 2020

passed in the matter titled ***"Star Bus Services Pvt Ltd vs Department of Transport, Government of NCT of Delhi"*** by the Sole Arbitrator.

2. The Arbitral Tribunal passed the Impugned Award and awarded the respondent an amount of Rs.57,04,47,373/- with interest at 9% per annum from 5th June, 2016 till the date of payment. The respondent was also awarded a cost of Rs.2,29,90,875/- vide the Impugned Award.

3. Previously, in light of havoc created by the repeated fatal accidents due to rash and negligent driving by the blue line bus drivers, in the Public Interest Litigation bearing W.P. (Crl.) 878/2007 titled as "***Court on its own motion vs. State of Delhi & Ors.***" and in furtherance of the order passed by the Hon'ble Supreme Court in ***MC. Mehta vs. Union of India*** **(1997) 8 SCC 770**, the Division Bench of this Court took *suo motu* action directing the GNCTD to formulate a proper policy for providing better public transport system in Delhi.

4. To provide safer and better quality public transport system, a policy was formulated by Delhi Integrated Mechanism of Transportation System Ltd. (hereinafter referred to as "DIMTS") which was entrusted with the task of formulating the said policy for the GNCTD. DIMTS classified 657 bus routes in Delhi into 17 Clusters as part of the scheme, and each cluster comprised of bunch of routes.

5. On 26th February, 2008, the Respondent invited bids for provision of bus services in Cluster-01 vide Request for Qualification (RFQ) for private stage carriage buses through corporate entities to which Claimant was an eligible entity. After due evaluation of proposals, the GNCTD accepted the proposal of the Claimant in respect of Cluster-01 and in furtherance of the same, issued a

Letter of Acceptance dated 5th May 2009. Between the Claimant and the Respondent, a Concession Agreement dated 12th April, 2010 was duly executed whereby the respondent was to induct 231 low floor CNG buses for the route as specified in Cluster-I, which was a BOOT contract i.e. Build-Own-Operate-Transfer Contract. The period of concession under the Contract was 10 (ten) years beginning from Commencement Date.

6. As per the terms agreed between the Claimant and the Respondent in CA, the Respondent was required to provide a consolidated Depot at Gadaipur, Delhi, with certain civil infrastructure facilities stipulated therein. During the subsistence of the contract, issues arose between the parties due to the termination of the said contract by the respondent on 4.2.2016.

7. The *lis* of the provision of buses with respect to the Concession Agreement underwent a series of litigations. Finally, this Court in O.M.P. (T) (COMM.) No. 05 of 2016 and Arbitration Appeal No. 31 of 2015, with the consent of the parties, terminated the mandate of the Sole Arbitrator and appointed Justice R.C. Lahoti (Retd.), as the Sole Arbitrator to adjudicate the disputes. The Sole Arbitrator was also directed to consider the aspect of Directions dated 16.12.2015 passed in Arbitration Appeal No. 31 of 2015.

SUBMISSIONS

(on behalf of the petitioner)

8. Learned senior counsel for the petitioner submitted that the impugned award has been obtained by the respondent by inducing fraud upon the learned Arbitral Tribunal as well as the petitioner. The award has been passed beyond the terms of the Concession Agreement executed between the parties. The

arbitral award is unintelligible. The learned Arbitrator failed to consider the admissions made by the respondent in its pleadings before the learned Arbitral Tribunal as well as before this Court in the matters arising out of the same proceedings.

9. It is stated that the learned Arbitrator failed to adjudicate the claims as per the order of reference dated 11th March, 2016 passed in O.M.P. (T) (COMM.) No. 05 of 2016 and ignored vital material documents and thus, wrongly concluded that the petitioner breached the terms of the Concession Agreement. Since the learned Arbitral Tribunal arrived at a wrong finding in as much as that the petitioner breached material terms of the Concession Agreement, for this reason alone, the Counter Claims raised by the petitioner were rejected.

10. It is further submitted that the impugned award is contrary to the public policy of India, contrary to the contractual provisions, completely arbitrary, based on perverse appreciation of evidence as well as that the Award was selective in appreciating the material available on record, hence the same deserves to be set aside. The impugned award has been passed after a long and substantial delay of 18 months. The last hearing in the Arbitration proceedings was held on 8th September, 2018 and the award was passed on 9th June, 2020. There is no explanation or justification in the arbitral award for such a gross delay.

11. It is submitted that the delay of 18 months has proved fatal as the learned Arbitrator has recorded the majority of facts incorrectly, and has ignored and over-looked the vital material facts as well as documents which were the part

of arbitral record, totally ignored the evidence recorded in the matter making the award absolutely perverse, incorrect, contrary to the public policy as well as in complete derogation of various laws of India.

12. It is further submitted that the impugned award is vitiated by fraud since the respondent never disclosed in the pleadings or in the evidence that it diverted of Rs.26,73,29,885/- to one Argentum Auto Pvt Ltd. for purchase of 100 buses, which buses were admittedly never inducted. The impugned award is contrary to the public policy of India, contrary to the contractual provisions, completely arbitrary, based on perverse appreciation of evidence and is selective in appreciating the material available on record.

13. It is submitted that the learned Arbitrator has wrongly held that the breach was committed by the Department of Transport on that day itself when it was found that it was not in a position to make available the Gadaipur Depot to the Concessionaore. The entire claim of the respondent-claimant, validating its illegal termination, for the reason of non-allotment of the bus depot at Gadaipur, as per Article 5.1 (f) read with Schedule 9 of the Concession Agreement was not maintainable, was misconceived and was barred by law. The learned Arbitrator has wrongly recorded in paragraphs 8.71 and 8.72 of the impugned award that the petitioner was in breach of Article 5.1 (c) and Article 7.1 (b) of the Concession Agreement. The learned Arbitral Tribunal has given this finding contrary to the material on record while ignoring the letters as well as the admission of the respondent.

14. It is further submitted that the learned Arbitral Tribunal overlooked the *mala fides* and illegal practices of the respondent in as much as the termination

of the Concession Agreement vide notice dated 4th February, 2016 was intentional and a calculated move. The learned Arbitral Tribunal ignored the terms of the Concession Agreement that service of a notice of 90 days was a *sine qua non* for termination of the Concession Agreement and gave a clean chit to the respondent.

15. It is also submitted that the learned Arbitral Tribunal has wrongly rejected all the counter claims made by the petitioner. The prime reason for dismissal of the counter claims were the reasoning adopted by the learned Arbitral Tribunal in favour of the respondent for allowing its claim. The learned Arbitral Tribunal was foxed and deceived by the respondent and the respondent, by playing fraud, obtained an Award of Rs.57,04,47,373/- in terms of Article 17.4.2 read with Article 17.6 of the Concession Agreement. The learned Arbitral Tribunal, for arriving at the said figure, relied upon a certificate of the Statutory Auditor of the company, which was submitted by the respondent to the petitioner vide its letter dated 22nd February, 2016. The said certificate was to the effect that the amount of debt due on the respondent was Rs.63,38,30,414/-. In terms of Articles 17.4.2 and 17.6, the learned Arbitral Tribunal awarded 90% of the said amount. The learned Arbitral Tribunal grossly erred and wrongly recorded that the petitioner never disputed the said certificate. The delay of 18 months in passing the award acted as a catalyst in the fraud committed by the respondent. In view of the aforesaid, it is stated that the impugned award is liable to be set aside.

(on behalf of the respondent)

16. *Per Contra,* learned senior counsel for the respondent submitted that a bare perusal of the award shows that the learned Arbitrator has duly considered the pleadings, evidence (oral and documentary) and the submissions (oral and written) made by the parties before him. It is submitted that before the learned Arbitrator, the parties had filed documents running into several thousand pages, and detailed Written Submissions, with Claimant's Written Submissions running into 79 pages and the Petitioner's into 147 pages. The learned Arbitrator has specifically recorded in the award that he took into consideration all the submissions made on behalf of the two parties, and went through the pleadings, documents and oral evidence brought on record of the learned Tribunal.

17. It is submitted that the Petitioner's case in its Reply has been noted at paras 5.1 – 5.8; its case in Counter-Claim is noted at paras 6.1-6.7; oral submissions made by the learned senior counsel for the petitioner have been noted *inter alia* at para 8.60. The award clearly shows application of mind by the learned Arbitrator to the material considered relevant by him, in light of his interpretation of the contract; the award contains conclusions of the learned Arbitrator on each issue, as also the documents on the basis of which those conclusions have been arrived at.

18. It is further submitted that it is not a requirement of law, or a test under Section 34 of the Act, that each and every document filed before the learned Arbitrator and all the responses to the oral cross-examination, should find reference and analysis in the arbitral award. It is submitted that the adequacy of consideration, validity of conclusions after consideration, adequacy of

reasoning for such conclusions, are not grounds on which an Award may be interfered with under Section 34.

19. It is submitted that the order dated 16th December, 2015 was passed by this Court in an Appeal filed by the Petitioner herein under Section 37 against certain orders passed by the then Sole Arbitrator under Section 17 of the Act, wherein it directed the Respondent to induct 10 buses by 31st January, 2016 and 20 more buses by 15th February, 2016 , i.e., after the date of 25th January, 2016 on which the Petitioner was required to handover the Banda Bahadur Marg-II depot to the respondent after fully repairing it.

20. It is also submitted that it was contended by the petitioner that it has been prejudiced by the alleged delay in making of the award. This submission is unfounded since a bare perusal of the award shows that oral and written submissions of both parties, i.e., including the Petitioner, have been considered at length by the learned Arbitrator. It is submitted that in the absence of any material prejudice having been shown to have been caused by the delay in making the Award, this cannot by itself be a ground for setting it aside.

21. It is submitted that the main issue before the learned Tribunal was fundamental breach of the contract by the Petitioner by failing to provide the contractually stipulated depot. On this issue, the contentions of the Petitioner, and the responses of the Claimant, have been specifically considered by the Arbitrator at para 8.62, and he has given detailed reasons in support of his finding as to fundamental breach by the Petitioner in this regard at paras 8.63-8.65. The learned Arbitrator has held that the obligation of the Petitioner to

provide Depot specified in the contract was a condition precedent for the Respondent's obligations to come into effect.

22. It is also submitted that the learned Arbitrator has further come to a finding that the Petitioner's fundamental breach of the contract left the Respondent with no option except, or at least entitled it, to terminate the Contract. The learned Arbitrator has also found in the above conspectus of facts that the Respondent's stoppage of bus services was on account of the situation created by the Petitioner by its fundamental breach of the Contract.

23. It is submitted that in support of its argument that there was fraud committed by the Claimant, the Petitioner has urged that it came to know about Argentum for the first time from the disclosure made by the Claimant in its Affidavit of Evidence. It is submitted firstly that such voluntary disclosure by the Claimant is wholly inconsistent with the Petitioner's submission that it was a fraudulent and clandestine transaction. Secondly, it is submitted that this is a factually false plea being set up by the Petitioner, and it did in fact know about the Argentum transaction much prior to this.

24. It is further submitted that the learned Arbitrator has referred to and interpreted the provisions of the contract in this regard, referred to the material relevant in the context of such interpretation; and given a finding with reasons. With respect to Termination Payment, the learned Arbitrator has considered the notices of termination issued by each party and the replies to these notices. It has been noted that the contract contemplates that the certification of the amounts of debt due, subordinate debt and equity by the statutory auditor of the Company shall be sufficient, "without anything more", to make the petitioner

liable to make the Termination Payment to the Claimant. Thus, on an interpretation of the contract by the learned Arbitrator, no inquiry into utilization of the debt is contemplated by the contract, for the Termination Payment becoming payable to the Claimant as per the certification of the statutory auditor. The evidence allegedly not considered by the learned Arbitrator, according to the Petitioner's submission, was thus, on a finding as to the interpretation of the Contract by the learned Arbitrator, not relevant to the questions which arose before him.

25. It is submitted that in view of the above, it would also be highly inequitable to set aside the impugned arbitral award. It has been found as a matter of fact that the petitioner had committed fundamental breaches of the contract. The Claimant, thus, became entitled to damages under Section 73 of the Act, as well as full termination payment. The Respondent had claimed over Rs.458 crores as damages from such breach and over Rs.175 crores as interest thereon, over and above Termination Payment of Rs.94,17,50436.33 (the total claim being upwards of Rs. 728 crores). However, during the course of Arbitration, the Respondent decided to not press its claim for damages and instead confine its claim to the Termination Payment amount of about Rs.94 crores.

26. In view of the aforesaid, it is submitted that the instant petition is devoid of merits and is liable to be dismissed.

ISSUES & ANALYSIS

27. The instant petition came up for hearing on 6th October, 2020 wherein learned senior counsel for the respondent submitted that he did not wish to file

any response to the petition. Accordingly, the right to file response by the respondent stood closed. Written Submissions were filed by both the parties for convenience of the Court. The matter was heard at length with arguments being advanced by learned counsels on both the sides. This Court has also perused the entire material on record.

28. The issues that arise for the consideration of this Court are whether in the facts and circumstances of the case, this Court can interfere with the award rendered by the learned Sole Arbitrator. Upon perusal of the pleadings and hearing the parties at length, this Court opines that the controversy between the parties *qua* the impugned award may be narrowed down to adjudicate the following issues:

i. Whether the impugned award is vitiated by fraud, is patently illegal and is in conflict with Public Policy of India

ii. Whether the delay in the pronouncement of the award after final arguments have concluded has vitiated the award

29. Before adjudicating upon the merits of the case, it is essential to recapitulate the idea, purpose, goal and objective of the Arbitration Act as well as Section 34 of the Act to understand the implications the provisions therein have on the powers and jurisdiction of this Court.

Spirit of the Arbitration Act

30. The Arbitration Act was enacted for providing a mechanism to the public to resolve their disputes in a process less rigorous, technical and formal than that of litigation. It has proven to be easier, more accessible, efficient and

even cost effective for the parties involved, whether at an individual level or at the level of a business or corporation.

31. The alternative dispute mechanism is not only advantageous for the people involved in disputes but has also been aiding the effective disposal and release of burden on the Courts of the Country. The parties have a more hands-on involvement in an Arbitration process and play an active role in the adjudication process.

32. The Hon'ble Supreme Court in ***Union of India vs. Varindera Constructions Ltd.*, (2018) 7 SCC 794,** while discussing the object of arbitration held as under:-

> *"12. The primary object of the arbitration is to reach a final disposition in a speedy, effective, inexpensive and expeditious manner. In order to regulate the law regarding arbitration, legislature came up with legislation which is known as Arbitration and Conciliation Act, 1996. In order to make arbitration process more effective, the legislature restricted the role of courts in case where matter is subject to the arbitration. Section 5 of the Act specifically restricted the interference of the courts to some extent. In other words, it is only in exceptional circumstances, as provided by this Act, the court is entitled to intervene in the dispute which is the subject-matter of arbitration. Such intervention may be before, at or after the arbitration proceeding, as the case may be. In short, court shall not intervene with the subject-matter of arbitration unless injustice is caused to either of the parties."*

33. Therefore, expeditious and effective disposal of matters are most certainly considered the primary objectives of the enactment of the Arbitration Act. To fulfil the objective of introducing the Arbitration Act, it has been deemed necessary by the legislature as well as the Hon'ble Supreme Court to

limit interference by the Courts in the process of arbitration, whether before, during or after the conclusion of the proceedings.

34. The petitioner, before this Court, has invoked Section 34 of the Arbitration Act to challenge the impugned award. The relevant portion of the said provision is reproduced hereunder for perusal and consideration:-

> *"34. Application for setting aside arbitral award.—*
> *(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).*
> *(2) An arbitral award may be set aside by the Court only if—*
> *(a) the party making the application establishes on the basis of the record of the arbitral tribunal that—*
> *(i) a party was under some incapacity, or*
> *(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or*
> *(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or*
> *(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:*
> *Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or*
> *arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or*
> *(v) the composition of the arbitral tribunal or the*

arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award: Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence. …"

35. The contents of the provision clearly show that the intention of Legislature while enacting the Arbitration Act, as well as while carrying out amendments to the same, was that there should be limited intervention of the Courts in arbitral proceedings, especially after the proceedings have been

concluded and an award, thereto, has been made by the concerned Arbitral Tribunal. Any claim brought forth a Court of law under Section 34 of the Arbitration Act shall be in accordance with the principle of the provisions laid down under the Arbitration Act as well as interpreted by the Hon'ble Supreme Court.

36. The Law Commission of India in its 246th Report has also elaborated upon the background of introducing Section 34 of the Arbitration Act and laid down as under:-

> *"3. The Arbitration and Conciliation Act, 1996 (hereinafter "the Act") is based on the UNCITRAL Model law on International Commercial Arbitration, 1985 and the UNCITRAL Conciliation Rules, 1980. The Act has now been in force for almost two decades, and in this period of time, although arbitration has fast emerged as a frequently chosen alternative to litigation, it has come to be afflicted with various problems including those of high costs and delays, making it no better than either the earlier regime which it was intended to replace; or to litigation, to which it intends to provide an alternative. Delays are inherent in the arbitration process, and costs of arbitration can be tremendous. Even though courts play a pivotal role in giving finality to certain issues which arise before, after and even during an arbitration, there exists a serious threat of arbitration related litigation getting caught up in the huge list of pending cases before the courts. After the award, a challenge under Section 34 makes the award inexecutable and such petitions remain pending for several years. The object of quick alternative disputes resolution frequently stands frustrated.*
>
> *4. There is, therefore, an urgent need to revise certain provisions of the Act to deal with these problems that frequently arise in the arbitral process. The purpose of this Chapter is to lay down the foundation for the changes suggested in the Report of the Commission. The suggested amendments address a variety of*

> *issues that plague the present regime of arbitration in India and, therefore, before setting out the amendments, it would be useful to identify the problems that the suggested amendments are intended to remedy and the context in which the said problems arise and hence the context in which their solutions must be seen.*
> ***
>
> *25. Similarly, the Commission has found that challenges to arbitration awards under Sections 34 and 48 are similarly kept pending for many years. In this context, the Commission proposes the addition of Sections 34(5) and 48(4) which would require that an application under those sections shall be disposed of expeditiously and in any event within a period of one year from the date of service of notice. In the case of applications under Section 48 of the Act, the Commission has further provided a time-limit under Section 48(3), which mirrors the time-limits set out in Section 34(3), and is aimed at ensuring that parties take their remedies under this section seriously and approach a judicial forum expeditiously, and not by way of an afterthought."*

37. With the repeal of Arbitration Act of 1940 by way of Arbitration Act, 1996, the legislature sought to achieve the objective of reducing the supervisory role of courts in arbitration proceedings. The amendment of Section 34 was also to have the Courts readily and expeditiously adjudicate upon any proceedings arising out of arbitration proceedings. The challenge to an award also must be disposed of as expeditiously possible by the Courts.

38. It is clear that the speed and efficiency of disposal of disputes between parties are few of the substantial and key purposes of the introduction, development and promotion of resolving disputes by way of alternate mechanisms of dispute resolution.

39. Hence, the objective, goal and purpose of the Act as well as the intention of the legislature have to be given due consideration while adjudicating a petition under Section 34 of the Arbitration Act.

Scope of Powers of Arbitrator & Intervention of Courts

40. The Arbitrator, who in his wisdom, passes an award, upon conducting the arbitration proceedings with the participation of parties to the dispute, considering the Statement of Claim and Statement of Defence presented by and on behalf of the parties, the relevant documents placed on record by the parties, is considered a Court for the purposes of adjudicating the dispute before him. An unfettered intervention in his functioning would defeat the spirit and purpose of the Arbitration Act, as discussed in the foregoing paragraphs.

41. An Arbitrator has wide powers while adjudicating arbitration proceedings. There is, undoubtedly, a scrutiny on the Arbitrator and the awards passed by him, which has been stipulated under the Arbitration Act. However, there is a deemed privilege of limited intervention from the Courts which the Arbitrators have. The same has been reiterated by the Hon'ble Supreme Court time and again.

42. There is an extent to the accountability put upon an Arbitrator while passing an award. This is evident from the fact that with the enforcement of the Arbitration and Conciliation Act, 1996, an Arbitrator needs only to adhere to and fulfil the requirements under Section 31 of the Act. The limited requirements under Section 31 are reproduced hereunder:-

"Form and contents of arbitral award. –

> *(1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.*
> *(2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.*
> *(3) The arbitral award shall state the reasons upon which it is based, unless—*
>
> > *(a) the parties have agreed that no reasons are to be given, or*
> > *(b) the award is an arbitral award on agreed terms under section 30*
>
> *(4) The arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place.*
> *(5) After the arbitral award is made, a signed copy shall be delivered to each party.*
> *(6) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award. …"*

43. In addition to the requirements laid down under the provision, an Arbitrator, although acting in accordance with the requirements of the Arbitration Act, need not act as a formal Court while adjudicating a dispute and pass an award which is lengthy, detailed or speaking. The Hon'ble Supreme Court has reiterated that an award which is not speaking shall be set aside by the Court only in exceptional cases.

44. In ***Anand Brothers (P) Ltd. vs. Union of India & Ors.,*** **(2014) 9 SCC 212,** the Hon'ble Supreme Court on the question of a reasoned or speaking Award observed and held as under:-

*"**7.** Before we examine whether the expression "finding" appearing in Clause 70 would include reasons in support of the conclusion drawn by the arbitrator, we consider it appropriate to refer to the Constitution Bench decision of this Court in Raipur Development Authority v. Chokhamal Contractors wherein this Court was examining whether an award without giving reasons can be remitted or set aside by the Court in the absence of any stipulation in the arbitral agreement obliging the arbitrator to record his reasons. Answering the question in the negative, this Court held that a nonspeaking award cannot be set aside except in cases where the parties stipulate that the arbitrator shall furnish reasons for his award. This Court held: (SCC pp. 750-51, para 33)*

> *"33 . ... When the parties to the dispute insist upon reasons being given, the arbitrator is, as already observed earlier, under an obligation to give reasons. But there may be many arbitrations in which parties to the dispute may not relish the disclosure of the reasons for the awards. In the circumstances and particularly having regard to the various reasons given by the Indian Law Commission for not recommending to the Government to introduce an amendment in the Act requiring the arbitrators to give reasons for their awards we feel that it may not be appropriate to take the view that all awards which do not contain reasons should either be remitted or set aside."*

Having said that, this Court declared that the Government and their instrumentalities should-as a matter of policy and public interest-if not as a compulsion of law, ensure that whenever they enter into an agreement for resolution of disputes by way of private arbitrations, the requirement of speaking awards is expressly stipulated and ensured. Any laxity in that behalf might lend itself to and, perhaps justify the legitimate criticism, that the Government failed to provide against possible prejudice to public interest.

***8.** The following passage is in this regard apposite: (Raipur Development Authority case, SCC pp. 752-53, para 37)*

> *"37. There is, however, one aspect of non-speaking awards in non-statutory arbitrations to which Government and*

governmental authorities are parties that compel attention. The trappings of a body which discharges judicial functions and is required to act in accordance with law with their concomitant obligations for reasoned decisions, are not attracted to a private adjudication of the nature of arbitration as the latter, as we have noticed earlier, is not supposed to exert the State's sovereign judicial power. But arbitral awards in disputes to which the State and its instrumentalities are parties affect public interest and the matter of the manner in which Government and its instrumentalities allow their interest to be affected by such arbitral adjudications involve larger questions of policy and public interest. Government and its instrumentalities cannot simply allow large financial interests of the State to be prejudicially affected by non-reviewable---except in the limited way allowed by the statute-non-speaking arbitral awards. Indeed, this branch of the system of dispute resolution has, of late, acquired a certain degree of notoriety by the manner in which in many cases the financial interests of Government have come to suffer by awards which have raised eyebrows by doubts as to their rectitude and propriety. It will not be justifiable for Governments or their instrumentalities to enter into arbitration agreements which do not expressly stipulate the rendering of reasoned and speaking awards. Governments and their instrumentalities should, as a matter of policy and public interest-if not as a compulsion of law-ensure that wherever they enter into agreements for resolution of disputes by resort to private arbitrations, the requirement of speaking awards is expressly stipulated and ensured. It is for Governments and their instrumentalities to ensure in future this requirement as a matter of policy in the larger public interest. Any lapse in that behalf might lend itself to and perhaps justify, the legitimate criticism that Government failed to provide against possible prejudice to public interest."

9. *Reference may also be made to the Arbitration and Conciliation Act, 1996 which has repealed the Arbitration Act, 1940 and which*

seeks to achieve the twin objectives of obliging the Arbitral Tribunal to give reasons for its arbitral award and reducing the supervisory role of courts in arbitration proceedings. Section 31(3) of the said Act obliges the Arbitral Tribunal to state the reasons upon which it is based unless the parties have agreed that no reasons be given or the arbitral award is based on consent of the parties. There is, therefore, a paradigm shift in the legal position under the new Act which prescribes a uniform requirement for the arbitrators to give reasons except in the two situations mentioned above. The change in the legal approach towards arbitration as an alternative dispute resolution mechanism is perceptible both in regard to the requirement of giving reasons and the scope of interference by the court with arbitral awards. While in regard to requirement of giving reasons the law has brought in dimensions not found under the old Act, the scope of interference appears to be shrinking in its amplitude, no matter judicial pronouncements at time appear to be heading towards a more expansive approach that may appear to some to be opening up areas for judicial review on newer grounds falling under the caption "public policy" appearing in Section 34 of the Act. We are referring to these developments for it is one of the well-known canons of interpretation of statutes that when an earlier enactment is truly ambiguous in that it is equally open to diverse meanings, the later enactment may in certain circumstances serve as the parliamentary exposition of the former.

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14. *It is trite that a finding can be both: a finding of fact or a finding of law. It may even be a finding on a mixed question of law and fact. In the case of a finding on a legal issue the arbitrator may on facts that are proved or admitted explore his options and lay bare the process by which he arrives at any such finding. It is only when the conclusion is supported by reasons on which it is based that one can logically describe the process as tantamount to recording a finding. It is immaterial whether the reasons given in support of the conclusion are sound or erroneous. That is because a conclusion supported by reasons would constitute a "finding" no matter the conclusion or the reasons in support of the same may*

> *themselves be erroneous on facts or in law. It may then be an erroneous finding but it would nonetheless be a finding. What is important is that a finding presupposes application of mind. Application of mind is best demonstrated by disclosure of the mind; mind in turn is best disclosed by recording reasons. That is the soul of every adjudicatory process which affects the rights of the parties…."*

45. Therefore, while considering a challenge to an arbitral award where private parties are involved, the Court need not examine the validity of the findings or the reasoning behind the findings given by an Arbitrator. The extent to which a Court may exercise supervisory powers in this respect is limited to examining whether the Award and the conclusion drawn therein is supported by findings and not whether the findings themselves are erroneous or sound.

46. It has also been reiterated that, while adjudicating a challenge under Section 34 of the Arbitration Act, the Courts must limit themselves to examining the award itself and not the facts of the case. A Court shall not conduct a roving enquiry into the facts and evidence of the matter and neither shall the Court sit in appeal against the award of the Arbitrator.

47. In ***UHL Power Co. Ltd. vs. State of Himachal Pradesh***, **(2022) 4 SCC 116**, the Hon'ble Supreme Court reiterated the narrow scope under Section 34 of the Arbitration Act and held as under:-

> *"**16.** As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed. In MMTC Ltd. v. Vedanta Ltd. 5, the reasons for*

vesting such a limited jurisdiction on the High Court in exercise of powers under Section 34 of the Arbitration Act have been explained in the following words: (SCC pp. 166-67, para 11)

> *"11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury6 reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract."*

17. *A similar view, as stated above, has been taken by this Court in K. Sugumar v. Hindustan Petroleum Corpn. Ltd., wherein it has been observed as follows: (SCC p. 540, para 2)*

"2. The contours of the power of the Court under Section 34 of the Act are too well established to require any reiteration. Even a bare reading of Section 34 of the Act indicates the highly constricted power of the civil court to interfere with an arbitral award. The reason for this is obvious. When parties have chosen to avail an alternate mechanism for dispute resolution, they must be left to reconcile themselves to the wisdom of the decision of the arbitrator and the role of the court should be restricted to the bare minimum. Interference will be justified only in cases of commission of misconduct by the arbitrator which can find manifestation in different forms including exercise of legal perversity by the arbitrator."

48. In ***Delhi Airport Metro Express Pvt Ltd vs. Delhi Metro Rail Corporation,*** **(2022) 1 SCC 131**, the Hon'ble Supreme Court to this aspect held as under:-

> *"28. The limited grounds available to Courts for annulment of arbitral awards are well known to legally trained minds. However, the difficulty arises in applying the well established principles for interference to the facts of each case that come up before the courts. There is a disturbing tendency of Courts of setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award."*

49. Further, in ***State of Jharkhand vs. HSS Integrated DSN*****, (2019) 9 SCC 798,** the Hon'ble Supreme Court held that even when there are more than one plausible views and the Arbitrator, in his wisdom, adopts one of them, having given reasons for his findings, the Courts shall not interfere with such an Award. It was observed as under:-

> *"6.1. In Progressive-MVR3, after considering the catena of decisions of this Court on the scope and ambit of the proceedings under Section 34 of the Arbitration Act, this Court has observed and held that even when the view taken by the arbitrator is a plausible view, and/or when two views are possible, a particular view taken by the Arbitral Tribunal which is also reasonable should not be interfered with in a proceeding under Section 34 of the Arbitration Act.*
> *6.2. In Datar Switchgear Ltd., this Court has observed and held that the Arbitral Tribunal is the master of evidence and the findings of fact which are arrived at by the arbitrators on the basis of the evidence on record are not to be scrutinised as if the*

> *Court was sitting in appeal. In para 51 of the judgment, it is observed and held as under: (SCC pp. 169-70)*
>
> > *"51. ..... The proposition of law that the Arbitral Tribunal is the master of evidence and the findings of fact which are arrived at by the arbitrators on the basis of evidence on record are not to be scrutinised as if the Court was sitting in appeal now stands settled by a catena of judgments pronounced by this Court without any exception thereto."*

50. Hence, the law which has been settled by the Hon'ble Supreme Court is that the scope of interference with an arbitral award under Section 34 of the Arbitration Act is fairly limited and narrow. The Courts shall not sit in an appeal while adjudicating a challenge to an award which is passed by an Arbitrator, the master of evidence, after due consideration after facts, circumstances, evidence and material before him. Therefore, it is clear that this Court shall also limit itself to the award in question and not re-appreciate evidence and all material before the Arbitrator.

Issue I

51. In light of the precedents discussed above, it is clear that the scope of interference under Section 34 of the Arbitration and Conciliation Act, 1996, is limited. The Court should not act as an appellate Court and should only interfere in cases where the award is against the fundamental policy of Indian law or where there is a patent illegality or error apparent on the face of the award.

52. This Court has carefully considered the submissions made by the parties and perused the records. The present petition challenges the award dated 9th June, 2020 passed by the learned Arbitral Tribunal comprising Hon'ble Justice R.C. Lahoti (Retd.) as the Sole Arbitrator. The Petitioner has raised several

objections to the said award, alleging that it was obtained by fraud, the learned Arbitrator failed to consider vital material documents and admissions made by the Respondent, the arbitral award is unintelligible and contrary to the public policy of India, amongst others.

53. The Respondent, on the other hand, has submitted that the learned Arbitrator has duly considered the pleadings, evidence, and the submissions made by the parties before him. It has been submitted that the delay in passing the award has not caused any material prejudice to the Petitioner, and the adequacy of consideration, validity of conclusions, and adequacy of reasoning for such conclusions are not grounds on which an award may be interfered with under Section 34 of the Act.

54. The main issue before the learned Arbitral Tribunal was whether the Petitioner committed a fundamental breach of the contract by failing to provide the contractually stipulated depot to the Respondent. The learned Arbitrator had considered the contentions of the Petitioner and the responses of the Respondent and has given detailed reasons in support of his finding as to fundamental breach by the Petitioner in this regard. The learned Arbitrator has also found that the Petitioner's fundamental breach of the contract left the Respondent with no option except, or at least entitled it, to terminate the Contract.

55. The Petitioner has alleged that the Respondent committed fraud by diverting Rs. 26,73,29,885/- to Argentum Auto Pvt. Ltd. for the purchase of 100 buses, which were never inducted. However, the Respondent has submitted that it had voluntarily disclosed this transaction in its Affidavit of

Evidence, and the Petitioner was aware of the same much prior to that. It has also been contested that the submissions as regards fraud was not made before the learned Arbitrator.

56. With respect to the allegations of fraud committed by the Respondent, this Court finds that the Respondent had voluntarily disclosed the transaction in question, and the Petitioner was aware of the same much prior to that. The learned Arbitral Tribunal has considered the contentions of both parties and has given reasons for its findings.

57. The Petitioner has also alleged that the learned Arbitral Tribunal overlooked the malafides and illegal practices of the Respondent in intentionally and calculatedly terminating the Concession Agreement vide notice dated 4th February, 2016.

58. However, the Respondent has submitted that the learned Arbitral Tribunal has considered the contentions of both parties and has given reasons for his findings. The Petitioner has further alleged that the arbitral award is unintelligible and contrary to the public policy of India. However, the Respondent has submitted that the learned Arbitrator has duly considered the pleadings, evidence, and submissions made by the parties before him and has given a reasoned award.

59. On perusal of the records and the submissions made by the parties, this Court finds that the learned Arbitral Tribunal has considered the contentions of both parties and has given a reasoned award. In the present case, the petitioner has additionally raised several grounds for setting aside the arbitral award,

including that the award is contrary to the public policy of India, based on a perverse appreciation of evidence, and has been obtained by fraud.

60. The Petitioner has not been able to demonstrate any substantial evidence to establish any fraud as the basis of the award. On a careful analysis of the submissions and the award, it appears that the petitioner has not been able to establish a ground for setting aside the award on merits so far. Therefore, on merits this Court does not find any merit in the Petitioner's contentions that the arbitral award is unintelligible and contrary to the public policy of India.

Issue II

61. Alternate Dispute Resolution is a mechanism that was envisioned and introduced to usher in a regime of time-bound, inexpensive and party-driven justice delivery system, thereby remedying the maladies of the conventional justice-delivery system. However, of late, these mechanisms including arbitration have faced heat over their real effectiveness and meeting of the objectives behind their introduction to legal system.

62. A common criticism faced by arbitration now-a-days is that arbitral tribunals take too long to render the awards. When there is such a delay, the purpose and intent of arbitration as being party-driven, expedient and cost-effective means of dispute resolution, is defeated.[1]

63. In practice, what we often come across is that this expectation of a timely arbitral award is usually not met. The importance of time, in arbitral

[1] *M.L. Adelson & J.D. Hogarth, An Arbitrator's Duty to be on Time, American Bar Association, available at* http://apps.americanbar.org/litigation/committees/adr/articles/fall2015-1115-an-arbitrators-duty-to-be-on-time.html

procedures was concisely laid down in ***Chartered Institute of Arbitrators v. John D. Campbell QC***: "Delay undermines the *raison d'être* of arbitration, weakens public confidence in the arbitral process, and denies justice to the winning party during the period of delay."[2]

64. In the case of ***United Steelworkers of America* v. *American Manufacturing Co.*, 363 U.S. 564 (1960)** Justice Brennan observed that, "an arbitration is a creature of contract." An arbitrator's authority is derived from an agreement between two parties and therefore they are protectors of the integrity of the whole process.

65. Even where the parties have not expressly agreed upon a set time limit, it is the arbitrator's duty to render the award without any undue delay. One solution adopted by various national arbitration laws and institutional rules to overcome delays is by instituting a timeline within which arbitral proceedings are to be completed. This would ensure quick and efficient proceedings and prompt awards.

66. Therefore, the fundamental question is whether time is of such importance that it would serve as grounds to challenge the award and initiate setting aside proceedings or as a reason to refuse recognition and enforcement of the award.

67. Where the agreement between parties makes a provision for the time limit, the parties are bound by the terms of the agreement. The Hon'ble Supreme Court in the case of ***NBCC Ltd. v. J.G. Engg. (P) Ltd.*, (2010) 2 SCC**

[2] *Chartered Institute of Arbitrators* v. *John D. Campbell QC, Decision of the Disciplinary Tribunal of CIArb (May 5, 2011)*, available at : https://www.ciarb.org/.

385 held that, where the agreement between parties stipulates the termination of arbitrators mandate due to passage of time, no extension of time would be possible by the unilateral act of one party. It was held that the Arbitrator was bound to make and publish his award within the time mutually agreed, whether in the tender or a later extension by consent. Without consent to any extension, the arbitral authority comes to an end.

68. It is easy to determine delay when the parties have already agreed upon the time limit in the arbitration contract, but when there is no explicit mention of this in the agreement it becomes important to understand what constitutes delay. The UNCITRAL Model Law, 1985 mentions that the arbitrator is to carry on the proceedings without any undue delay, however, there is no mention of any time limit or a definition of delay. Article 14 reads as under:

> *"If an arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination."*

69. The more time passes, the more significant is the fading of the memories of arbitrator start to fade with respect to the details of the case. Subsequently, the delay would have a negative impact on the quality of the award. This however varies from case to case as all arbitrations need not rely on facts and evidence alone, but for those which are merely legal in nature and addresses the law, the impairment of memory would not play as big a role. Therefore, it is difficult to impose a uniform timeline for all arbitration cases and hence this question regarding how much time would actually constitute a delay must be answered on a case-to-case basis.

70. The 2016 Arbitration Amendment Act introduced similar provisions in India intended to reduce delays, by introducing timelines and by minimising Court interference. Section 29A(1) stipulates that Arbitral Tribunal must render an award within twelve months from the date on which Tribunal entered a reference. With mutual consent of parties, this can be further extended up to another six months under subsection (3). For any further extension, the parties would have to apply to Indian Courts which may or may not grant it based on whether it finds sufficient cause under subsection (5). If such extension is denied, the arbitral tribunal is terminated and a new one is constituted to continue arbitration. However, if the extension has been granted but the Court finds that the tribunal's actions delayed the proceedings, the Court can order a reduction in arbitrator's fees by up to 5% for each month of such delay under subsection (4).

71. Section 29B of the Act provides for fast track arbitration which expedites the process to an extent such that, the arbitration would be completed in six months from the date the arbitral tribunal enters a reference. The parties should agree to this in writing and the procedure takes place on the basis of written submissions without any oral hearings, unless the parties request for it or the arbitral tribunal considers it necessary.

72. It is also pertinent to examine the provisions for time limits in various National Arbitration Laws and Institutional Rules. The UNCITRAL Model Law, designed to assist States in harmonizing arbitration laws, is silent on delayed arbitral awards and its consequences and so are most national arbitration laws. It is generally up to the parties to decide whether they want to follow a set time limit in the arbitration contract. However, some jurisdictions

like Turkey, Taiwan, Egypt, Syria, Sudan and even India, have incorporated time limits, within which an award must be rendered, into their national laws. Arbitral institutions also often provide for a time limit within their rules.

73. At this juncture, this Court will analyse some of these national arbitration laws and institutional laws that include a provision for time limits within which the publication of awards must be complete. Most of the jurisdictions that stipulate a statutory time limit for arbitral proceedings allow the parties to determine an extended time limit which best suits their requirements.

74. Turkish International Arbitration Law, 2001 has been enacted based on the UNCITRAL Model Law and elements of Swiss Law. Article 10(B) specifies a time frame within which the award must be made. Article 10(B) states as under:

> *"B)Unless otherwise agreed by the parties, an award shall be rendered by the arbitrator or the arbitral tribunal as to the relevant dispute within one year, in the case of a sole arbitrator, from the date of their selection or, in the case where there are multiple arbitrators, from the date when the minutes of the arbitral tribunal's first meeting are kept."*

75. It is provided thereunder that in the event of a sole arbitrator, the proceedings should be complete within one year from the appointment of the arbitrator. If there is more than one arbitrator, proceedings are expected to be completed one year from the date of issuance of first minutes of first hearing of the tribunal. This provision applies when there has been no explicit agreement by parties and therefore if there is a mutual agreement this time period can be

extended. In the event an agreement cannot be reached by the parties, the Civil Court of First Instance can extend the deadline upon application by one of the parties. This time limit is to be taken very seriously as Article 15(A)1.c very explicitly states, "*Awards may be set aside ... [if] the award was not rendered within the arbitration term*."[3]

76. Article 21 of Arbitration Law of the Republic of China, 1998, (Taiwan) is comparable with Section 29A of the Indian Act, wherein the provision permits the parties to proceed for civil litigation if the award is not given during the stipulated time frame and the mandate of the arbitrator ends once the suit is initiated. The difference between the two is that in Taiwan, the parties can choose to opt for civil litigation as well as choose to proceed with the arbitration proceedings, which protects party autonomy and flexibility.

77. In Italy, under Section 820 of The Civil Procedure Code, the parties themselves can determine a time limit suitable to them for rendering the award. In absence of any such agreement the award shall be issued within 180 days of the acceptance of the appointment of the arbitrators. However, under certain circumstances competent courts are empowered to extend this period further at the behest of either parties or the arbitrators.

78. Similar provisions of party having autonomy to decide time frame have been mentioned in Belgium. Article 1713 of the Belgian Arbitration Act, 2013 does not provide a time limit within which arbitral tribunals must make an award. In principle, the parties may determine a time-limit or the terms for setting a time-limit. In the absence of an agreement, if the arbitral tribunal is

[3] *Ziya Akinci, Arbitration Law of Turkey : Practice and Procedure, 161 (2011)*

late in making its award and a six-month period has elapsed between the date on which the last arbitrator was appointed, the president of the court of first instance may impose a time-limit on the arbitral tribunal, if so requested by one of the parties.

79. In comparison to these jurisdictions, there is lack of party autonomy in deciding time limit for the arbitration in India under Section 29A which does not provide the parties any autonomy in deciding the time frame of their proceedings or even for extension for the time limit.

80. The Egyptian Arbitration Law 1994, in Article 45 lays down that in the absence of an agreement between two parties, the final arbitral award is to be rendered within twelve months of the date of commencement of proceedings. Any extension decided by the tribunal cannot exceed six months unless agreed upon by the parties.[4] If the time limit has not been adhered to, the parties may request either an extension of the time period or termination of proceedings. In case of termination, the parties may bring the case to the court having initial jurisdiction to hear the case.[5]

81. There is some controversy surrounding the number of extensions parties may request and some argue that the text of the article limits it, whereas some practically argue that unless repeated extensions are permitted, arbitration proceedings could have tragic endings. This proposition was adjudicated upon in an Egyptian case in ***ICC Arbitration Case No. 14695/EC/ND*** in which the

[4] *Egyptian Arbitration Law, 1994, Article 45(2).*
[5] *Mostafa A Hagras, The Egyptian Arbitration Law and Anti-Arbitration Injunctions Due to Expiry the Time Limit for the Final Award - Case Study, Young ICCA Blogl available at* http://www.youngicca-blog.com/the-egyptian-arbitration-law-and-anti-arbitration-injunctions-due-to-expiry-the-time-limit-for-the-final-award-case-study/

Egyptian Arbitration Law was *lex arbitri* and reference was made to 1998 ICC Rules. In this case, even after eighteen months the award had not been rendered. The case finally reached the Cairo Court of Appeal which held that ICC Rules governing this issue under Egyptian Law did not make such a time limit mandatory but parties may otherwise agree to set one.

82. Both Saudi Arabia and Jordan have similar texts in their Arbitration Laws but Article 37 of Jordanian Laws permits parties to repeatedly extend the deadline. The Arbitration Law No. 31 of 2001, Article 37 states as under:

> *"... In all cases, the tribunal may extend such period provided that the extension shall not exceed six months unless the two parties have agreed on a period of time exceeding that period."*

83. The Syrian Law does not provide for termination of proceedings but on expiry of the time limit, parties can submit the dispute to the Court of original jurisdiction. It also entitles parties to sue for damages caused by this delay by arbitrators. Syrian Arbitration Act, 2008, Article 37 states as under:

> *"... If the arbitration terms have expired and the arbitration board did not settle the dispute without an acceptable excuse, the arbitration party which suffered damage is entitled to refer to the competent court to demand an indemnity from the board."*

84. Some arbitration institutions like ICC, KLRCA, CCA and AAA have included such a provision in their arbitration rules in order to expedite the process. Article 30 of the International Chamber of Commerce rules (ICC) provides the tribunal with six months from the date of last signature to render its final award. The Court can extend this deadline based on a reasonable

request from the tribunal.[6] The Court also has the option of fixing a different time limit based upon the procedural timetable established pursuant to Article 24(2).[7] The said provision reads as under:

> *"During or following such conference, the arbitral tribunal shall establish the procedural timetable that it intends to follow for the conduct of the arbitration. The procedural timetable and any modifications thereto shall be communicated to the Court and the parties."*

85. This time limit established by the ICC is merely an administrative one as it is recognized that very few ICC awards that end in a final award could actually be rendered in a short span of six months. In practice, an arbitral timetable is submitted which gives a considerable amount of time. The Court also provides for extensions taking into account any new estimate provided by the tribunal.

86. In a 1988 decision by the German Federal Supreme Court of Justice such an extension was approved of when the ICC Court granted an extension to a Belgian sole arbitrator.[8] According to ICC's 2016 guidelines, arbitrator fees may be reduced by 5% to 20% depending on the delay and based on whether the delay is justified.[9] However, merely stating that the issues which arose in

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[6] *International Chamber of Commerce Rules, Article 30.*

[7] *International Chamber of Commerce Rules, Article 24(2) states "During or following such conference, the arbitral tribunal shall establish the procedural timetable that it intends to followfor the conduct of the arbitration. The procedural timetable and any modifications thereto shall be communicated to the Court and the parties*."

[8] *Bundesgerichtshof [BGH] [Federal Court of Justice], Apr. 4, 1988, Neue Juristische Wochenschrift [NJW] 3090, 1988 (Ger.). See also Appellationsgerichi [AG] [Appellate Court of Basel-Stadt], Jan. 2, 1984, PRAXISDES Internationalen Privat - Und Verfahrensrechts 44, 1985 (Ger.)., Oberlandesgericht Karlsruhe [OLG] [Higher Regional Court of Karlsruhe], Jan. 4, 2012, SCHIEDSVZ 101, 106, 2012 (Ger.)*

[9] *Cynthia Tang, Gary Seib, Anthony Poon, Philipp Hanusch and Andrew Chin, HKIAC and ICC Take Steps to Tackle Costs and Delay in International Arbitration, GLOBAL ARBITRATION NEWS, (March 14, 2016)*

the arbitration were of complex nature as a reason for delay would not justify a late award.[10]

87. The Kuala Lumpur Regional Centre for Arbitration Rules (KLRCA) in Article 8 stipulates three months from the date of delivery of the closing oral submissions or written statements to the arbitral tribunal. An extension can be provided either by the consent of the parties or by the Director of KLRCA.[11]

88. The Chinese Arbitration Association Rules (hereinafter "CAA") deals with delays in Article 41. Article 41 of the Rules gives 10 days after the closure of hearings and if the time limit set forth under Article 21 of the Arbitration Act has not expired, arbitrators would be reminded to make the award. However, any delay would lead to the publishing of the arbitrators' names in the Association's Publications, therefore ensuring that any arbitrator who cares about their reputation would ensure a prompt rendering of the final award.

89. Rule 41 of the Commercial Arbitration Rules of the American Arbitration Association (AAA rules) also provides a similar provision and requires a prompt award to be made by the arbitrator no later than thirty days from the date of closing of the hearing or the AAA's submission of final statements and proofs to the arbitrator.[12]

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available at https://globalarbitrationnews.com/hkiac-and-icc-take-steps-to-tackle-costs-and-delay-in-international-arbitration-2016-03-14/

[10] *Michael Mcllwrath, ICC To Name Sitting Arbitrators and Penalize Delay in Issuing Awards, KLUWER ARBITRATION BLOG, (Jan 6, 2016) available at* http://kluwerarbitrationblog.com/2016/01/06/icc-to-name-sitting-arbitrators-and-penalize-delay-in-issuing-awards/

[11] *Kuala Lampur Regional Center for Arbitration Rules, Article 8*.

[12] *American Arbitration Association, Rule 45 states "The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than 30 calendar days from the date of closing the hearing, or, if oral hearings have been waived, from the due date set for receipt of the parties final statements and proofs*."

90. Despite the straightforward wording of the provision, the question regarding what constituted a prompt award remains vague. In ***Koch Oil S.A.* v. *Transocean Gulf Oil Co.***[13], the Court held that even though the award was received by parties more than thirty days after the close of hearings, due to the fact that the award was signed (but not issued) within the thirty-day leadline, the challenge to the timeliness of the award was rejected. Therefore, the AAA holds the power to interpret their own rules and the award cannot be vitiated on the grounds of mere technicalities that may arise.

Delay as reason to Refuse Recognition and Enforcement of Award

91. As an academic exercise, this Court has also gone through the rulings of various jurisdictions wherein delay at times can even affect the recognition and enforcement of award under the provisions of New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958. Upon non-compliance with the time-limit in cases where the parties have agreed upon a stipulated time limit, various Courts have taken varying stances based on jurisdiction. For example, in the French jurisdiction, even a minor surpassing of the time limit can lead to the non-recognition and non-enforcement of the award on grounds of violation of public policy.[14] The Italian Arbitration Act specifically lays down expiry of time limit indicated in the Act as a ground for setting aside the award.[15] In contrast to this German Courts have chosen not to deny recognition and enforcement of awards on grounds of delay.

[13] *Koch Oil S.A.* v. *Transocean Gulf Oil Co.*, 751 F.2d 551 (2d Cir. 1985).
[14] *Dubois & Vanderwalle* v. *Boots Frites*, No. 29. Cour dAppel, Paris, 22 September 34 1995.
[15] *Italy - Arbitration (Title VIII of Book IV of the Italian Code of Civil Procedure), Article 829(6) - "…if the award has been rendered after the expiry of the time-limii indicated in Article 820, subject to the provisions of Article 821*;"

92. In a Swiss Federal Court case ***'X v. Z' dated 28 January 2014, 4A 490/2013***, the Court annulled an award which was passed a day after the time limit agreed upon by the parties. This decision confirmed that an agreement between the arbitrator and the parties accepting that the arbitrator's mandate would terminate if the award is not passed before the deadline would have the effect of modifying the original agreement between parties and such an agreement would be binding on the arbitrator and the parties. Such an award can then be annulled on the grounds of lack of jurisdiction.

93. There are also instances where the Courts have made an effort to distinguish between those procedural defects which are essential and non-essential within the application of Article V(1)(d) of the New York Convention, although this distinction is not foreseen within this provision. Article V(1)(d) states as under:

> *"The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place;"*

94. The essential defects are those which would have led to a different decision by the Court. However, an earlier decision by the arbitrator would make no difference to the arbitrator's award and would not constitute an essential defect.[16] Therefore, the impact of surpassing a deadline and rendering an award must be analysed before setting aside the award and an examination of whether any material difference would have arisen in the award had it been passed earlier, should be carried out.

[16] *Bay ObLG, Decision of September 23, 2004, 4 Z Sch 005/04*, 568 Yearbook Commercial Arbitration XXX 573 (2005)

95. Where the contract between parties is silent on the time limits, often the application of the New York Convention is considered. Even though there are no explicit grounds to lawfully refuse recognition and enforcement of arbitral award even in case of a significant delay, this does not necessarily mean that a late award cannot qualify as one of the grounds enumerated under Article V.[17]

96. Article V(1)(b) of the New York Convention deals with due process. Arbitral tribunals have a duty to evaluate party submissions, give them due consideration and review them before rendering a final award. Therefore, in the instances of considerable delay, the arbitrators will not be able to fulfil this duty as their recollection of submissions and proceedings would fade with time. When there is delay, there are ample chances that the judges' opinions are reconstructed rather than reproduced.[18] Hence, parties are deprived of the guarantee of a proper consideration given to their case, thereby violating this article. Article V(2)(b) of the New York Convention deals with violation of public policy and is closely interrelated with due process. Public policy standards being based on national laws usually vary from jurisdiction to jurisdiction.[19]

97. At this juncture, it is also relevant to take note of the judgement in ***IPCO (Nigeria) Ltd. v. Nigerian National Petroleum Corp (No. 3),*** **[2015] EWCA Civ 1144,** where the Court of Appeal found that, due to an extraordinary delay before the Nigerian courts for the setting aside proceedings, the stay on

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[17] *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, Article V.*

[18] *Gemeinsamer Senat der Obersten Gerichtshöfe des Bundes [GemS-OGB] [Joint Senate of the Supreme Courts of the Federal Republic of Germany] Apr. 27, 1993, Neue Juristische Wochenschrift [NJW] 2603, 2605, 1993 (Ger.)*

[19] *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, Article V(2)(b) states "The recognition or enforcement of the award would be contrary to the public policy of that country.*"

enforcement of award should be lifted subject to a determination by the High Court - for public policy reasons - on the fraud allegations raised by NNPC in Nigeria. There is, however, no definite conclusion or uniform law that is followed in this regard, and once again each case will have to be analysed on a case to case basis however, the parties' conduct during arbitration should not show acquiescence to the delay.

Undue Delay As A Ground For Challenging the Award

98. The setting aside of an award is generally allowed only in appropriate circumstances where delay is caused. Since there is no uniform law on this subject, Courts have adopted a case-to-case analysis of this issue.

99. Prior to the 2016 Amendment Act, Indian Arbitration Law had no provisions stipulating time limits or their consequences. However, various cases in the Indian Courts have discussed the issue. The earliest judgment was ***Oil and Natural Gas Corporation Ltd. v. SAW Pipes Ltd., (2003) 5 SCC 705*** however, ***Harji Engg. Works Pvt. Ltd. v. Bharat Heavy Electricals Ltd., 2008 SCC OnLine Del 1080*** was the first judgment to comprehensively deal with it. The award in this case was challenged on the ground that there was a substantial gap of three years between the final hearing and the award. It was held as under:

> *"**20.** It is natural and normal for any arbitrator to forget contentions and pleas raised by the parties during the course of arguments, if there is a huge gap between the last date of hearing and the date on which the award is made. An Arbitrator should make and publish an award within a reasonable time. What is reasonable time is flexible and depends upon facts and circumstances of each case. Is case there is delay, it should be*

> *explained. Abnormal delay without satisfactory explanation is undue delay and causes prejudice. Each case has an element of public policy in it. Arbitration proceedings to be effective, just & fair, must be concluded expeditiously… Objections are required to be decided on entirely different principles and an award is not a judgment. Under the Act, an Arbitrator is supposed to be sole judge of facts and law. Courts have limited power to set aside an award as provided in Section 34 of the Act. The Act, therefore, imposes additional responsibility and obligation upon an Arbitrator to make and publish an award within a reasonable time and without undue delay. Arbitrators are not required to give detailed judgments, but only indicate grounds or reasons for rejecting or accepting claims. A party must have satisfaction that the learned Arbitrator was conscious and had taken into consideration their contentions and pleas before rejecting or partly rejecting their claims. This is a right of a party before an Arbitrator and the same should not be denied. An award which is passed after a period of three years from the date of last effective hearing, without satisfactory explanation for the delay, will be contrary to justice and would defeat justice. It defeats the very purpose and the fundamental basis for alternative dispute redressal. Delay which is patently bad and unexplained, constitutes undue delay and therefore unjust."*

100. The reasons stated by the Court for setting aside the award was that it was only natural that the arbitrator could forget contentions and pleas raised during the arguments if there is a huge gap between the hearing and the award. Since the 1996 Act provided only for limited grounds on which an award can be set aside, the arbitrator is additionally responsible for rendering a prompt award. Abnormal delays without any explanation from the arbitrator, as was the scenario in this case, would cause prejudice and such an award would be unjust.

101. Way back in 1928, High Court of Bombay in ***Bhogilal Purshottam* v. *Chimanlal Amritlal*, AIR 1928 Bom. 49**, had held that delay in making of an award without any reasonable excuse or cause to explain the said delay, amounts to misconduct. Division Bench did not agree with the view that as there was no express term fixing time period for making an award, it did not amount to misconduct. Unconscionable and unexplained delay amounts to misconduct. Even if no time was fixed for making of an award, it was implied term in an arbitration clause that the award should be made within a reasonable time. It was observed as follows:

> *"On the facts I would hold that it is clear that the award was not made within a reasonable time or anything approaching a reasonable time. Then, does that imply misconduct on the part of the arbitrator? If that delay, is not explained, in my judgment, it does imply misconduct on his part, because it was his duty to make up his mind and decide this dispute. It was his duty to see prima facie that the proceedings were conducted with reasonable diligence, and, if he so far failed in those duties, that he did nothing whatever for some five years, then in my judgment he failed in material respects in his ordinary duties as an arbitrator. That being so in my judgment, he was guilty of misconduct within the meaning of para. 15, and, accordingly, the award may be set aside."*

102. This view was followed by Nagpur High Court in the case of ***Keshava Lal Ram Dayal Kahar* v. *Laxman Lal Ram Kishan Lal*, AIR 1940 Nag. 386**. Sections 8, 9, 28 read with First Schedule, Clause 3 of the Arbitration Act, 1940 required an Arbitrator to proceed with reasonable dispatch and subject to terms of the arbitration clause, an award was required to be published within four months of entering upon reference. Parties (and not the arbitrator) could extend time by mutual consent or time could be extended by the Courts.

However, the Courts have refused to extend the time period under section 28 of the Arbitration Act, 1940 on the ground of undue delay in a plethora of case including ***State of Punjab* v. *Hardyal*, 1985 (2) SCC 629** and ***Flowmore Pvt. Ltd.* v. *National Thermal Power Corpn. Ltd.*, ILR (1996) 2 Del 476 : 1995 (35) DRJ 504**. An arbitrator could be removed on failure to proceed with reasonable dispatch as per provisions of Sections 8 and 11 of the Arbitration Act 1940. There have been cases where arbitrators have been removed for failing to proceed with reasonable dispatch and delay, including the cases of ***Kali Charan Sharma* v. *State of U.P.*, AIR 1985 Delhi 389, *W.S. Construction Company* v. *Hindustan Steel Works Construction Company*, AIR 1990 Delhi 134**. Delay in making an award was considered to be a grave misconduct sufficient to set aside an award under Sections 30 and 33 of the Arbitration Act, 1940.

103. The Indian Act based on UNCITRAL Model Law seeks to ensure fast and quick disposal and curtail delays. Commercial arbitration process should be efficient and disputes decided expeditiously for trade and commerce to prosper and grow. Contractual rights and obligations to have meaning should be enforced. Delay defeats justice and encourages breaches. Arbitration proceedings must be held with reasonable dispatch and promptness.

104. Arbitration proceedings are encouraged because they are speedy alternative to court adjudication. Its primary objective is fast and quick disposal of disputes between parties without delays normally associated with court proceedings. Arbitration implies timeous decisions and promptitude. It is policy of law that arbitration proceedings should not be unduly prolonged. Arbitration proceedings, therefore, are expected to be prompt.

105. Section 28 of the Arbitration Act, 1940 is not incorporated in the new Act of 1996. The Act does not prescribe specific period for making and publishing the award but the underlying principle and policy of law that arbitration proceedings should not be unduly prolonged and delayed, remains intact and embodied. Section 14 of the Act stipulates that mandate of an arbitrator would terminate if he *de juro* or *de facto* is unable to perform his functions or for other reasons fails to act without undue delay. An arbitrator must use reasonable dispatch in conducting the proceedings and making an award. Undue delay itself thus might lead to termination of the mandate of the arbitrator.

106. ***Russels on Arbitration, 22nd Edition*** at pages 140 and 143 has referred to the provisions of the English Arbitration Act, 1996 which stipulates that it is the duty of an arbitration tribunal to avoid unnecessary delay and expense and breach thereof is a ground for removal.

107. Under Section 34 of the Act, an award is void if it is contrary to public policy. The expression 'Public Policy' has been explained in ***ONGC Ltd* v. *Saw Pipes Ltd.*, (2003) 5 SCC 705** as under:

> *"31. Therefore, in our view, the phrase "public policy of India" used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in*

> *our view in addition to narrower meaning given to the term "public policy" in Renusagar case it is required to be held that the award could be set aside if it is patently illegal. The result would be ù award could be set aside if it is contrary to:*
>
> *(a) fundamental policy of Indian law; or*
> *(b) the interest of India; or*
> *(c) justice or morality, or*
> *(d) in addition, if it is patently illegal.*
>
> *Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void."*

108. Therefore, the substantial delay in making the award cannot be a regular phenomenon, the Arbitrator must use reasonable despatch in conducting the proceedings and making an award. In ***Peak Chemical Corporation* v. *National Aluminium Co. Ltd.*, 2012 SCC OnLine Del 759**, however, the Court held that, "it is not considered expedient to simply set aside the impugned Award on the sole ground of delay in the pronouncement of the Award." Arriving at a different judgement, this case was followed by ***Union of India* v. *Niko Resources*, 2015 SCC OnLine Guj 635,** where the rendering of the final award was delayed by four years. The Court found that there was failure to deal with certain aspects that were raised and set aside the majority award since it suffered from patent illegality. While the delay alone did not lead to the vitiating of the award, the illegality that arose from the delay caused it to be set aside.

109. The different conclusions arrived at by the Courts in ***Peak Chemicals*** and ***NIKO Resources*** turned on whether the delay caused an illegality in the award. While in ***NIKO Resources*** the party was affected by the adverse award caused by a delay, in ***Peak Chemicals*** the award was just and comprehensive despite the delay and therefore, the delay was an insufficient reason to set aside the award. Justice should not only be done but should manifestly be seen to be done.

110. Learned senior counsel appearing for the petitioner, has assailed the impugned award on several grounds. First, he submitted that there was an inordinate delay in rendering the impugned award. He further submitted that the same was rendered more than eighteen months after the conclusion of the hearing. He submitted that there was no explanation of this delay and therefore, the impugned award is liable to be set aside. He relied on the decision of this Court in ***Harji Engg. Works (P) Ltd.* v. *Bharat Heavy Electricals Ltd.*, 2008 SCC OnLine Del 1080**, the decision of the Madras High Court in ***MK. Dhanasekar Engg.* v. *Union of India*, 2019 SCC OnLine Mad 38989** and the decision of the Supreme Court in ***State of Punjab* v. *Hardyal*, (1985) 2 SCC 629**, in support of his contention.

111. In ***Peak Chemical Corpn. Inc.* v. *National Aluminium Co. Ltd.*, 2012 SCC OnLine Del 759**, a Coordinate Bench of this Court had declined to set aside an arbitral award on the ground that the award was pronounced after an inordinate delay. The relevant extract of the said decision is set out below:

> *"29. The question whether the delay in the pronouncement of an award after final arguments have concluded vitiates the award*

> *will depend on the facts and circumstances of each case. The decisions relied upon by Mr Ganguli turned on their peculiar facts. No two cases are the same. Significantly, delay has not been specified as one of the grounds under Section 34 of the Act for setting aside an award. It would be straining the language of that provision to hold that delay in the pronouncement of an award would by itself place it in 'conflict with the public policy of India' within the meaning of Section 34(2)(b)(ii) of the Act. As will be discussed hereafter, the impugned award sets out comprehensively the facts as pleaded by the parties, the evidence, the submissions of counsel, the analysis of the facts and evidence, and the detailed reasons issuewise. Another factor that requires to be accounted for is that the dispute between the parties has been pending since 1996. It would not be in the interests of justice to set aside the impugned award only on the ground of delay and remand it for a fresh determination. The learned arbitrator who passed the impugned award has since expired. A fresh arbitration before another arbitrator would not be justified considering the time and money already spent in the arbitral proceedings thus far. Therefore, it is not considered expedient to simply set aside the impugned award on the sole ground of delay in the pronouncement of the award. This plea is accordingly rejected."*

112. The question whether the delay in pronouncement of the arbitral award places it in conflict with the public policy of India must be construed in the facts of each case. The said Bench had also reiterated the aforesaid view in three other decisions ***Alfa Laval (India) Ltd.* v. *J.K. Paper Ltd.*, 2012 SCC OnLine Del 1366 ; *Oil India Ltd.* v. *Essar Oil Ltd.* [*Oil India Ltd.* v. *Essar Oil Ltd.*, 2012 SCC OnLine Del 4279**; and ***Union of India* v. *Niko Resources Ltd.*, 2012 SCC OnLine Del 3328**.

113. The decision in ***Peak Chemical Corpn. Inc. v. National Aluminium Co. Ltd.*, 2012 SCC OnLine Del 759** is somewhat in variance with the observations made by this Court in ***Harji Engg. Works (P) Ltd. v. Bharat***

***Heavy Electricals Ltd.*, 2008 SCC OnLine Del 1080**. In that case, the court had held that the award passed after an inordinate and unexplained delay would be "contrary to justice and would defeat justice". Clearly, the award which defeats justice would be in conflict with the public policy of India.

114. Even recently this Court in the case of ***Director General, Central Reserve Police Force v. Fibroplast Marine (P) Ltd.*, 2022 SCC OnLine Del 1335** held that delay in pronouncing an arbitral award can itself be a ground for setting aside the award.

115. Having discussed the aforesaid, this Court is of the view that the award passed after an inordinate, substantial and unexplained delay would be "contrary to justice and would defeat justice". Clearly, the award which defeats justice would be in conflict with the public policy of India. In the given circumstances, this Court is of the view that inordinate, and unexplained delay in rendering the award makes it amenable to challenge under Section 34(2)(*b*)(*ii*) of the Arbitration and Conciliation Act, that is, being in conflict with the public policy of India.

Section 29A of the Arbitration Act

116. Additionally, Chapter VI deals with the making of arbitral award and Termination of Proceedings. Section 29-A specifically states the time limit for arbitral award, and held as under:

> *"29-A. Time limit for arbitral award.—(1) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the*

date of completion of pleadings under sub-section (4) of Section 23:

Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavour may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of Section 23.

(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent for each month of such delay:

Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:

Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the court.

(6) While extending the period referred to in sub-section (4), it shall be open to the court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party."

117. The award in matters is expressly mandated to be made by the learned Arbitral Tribunal within a period of twelve months from the date of completion of pleadings under Sub-Section (4) of Section 23. Section 23(4) states that the statement of claim and defense shall be completed within a period of six months from the date of appointment of Arbitrator.

118. Section 29A (4) stipulates that if the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section

(3), the mandate of the arbitrator(s) shall terminate unless the court has, either prior to or after the expiry of the period so specified, extended the period.

119. In the instant case, as the arbitral record suggests, the Statement of Claim was filed on 30th June, 2016 and the Statement of Defence was filed on 1st August, 2016. There is no material on record to suggest that any extension whatsoever had not been made to extend the mandate of the learned Arbitrator, nor an application under Sub-Section (5) was pending before any Court.

120. Applying the aforementioned position of law to the facts and circumstances of this case, it is evident that vide Procedural Order No. 10 dated 8th September 2018, the learned Sole Arbitrator noted that the hearing has been concluded and accordingly, the case was closed for writing and pronouncing the award. The award was passed on 9th June, 2020. Therefore, there is a substantial gap of more than 1.5 years between the date of reserving the award and the date of award.

121. One of the principal reasons for ensuring that the arbitral award is rendered within a reasonable period of time is to ensure that the efficacy of oral submissions is not lost. A large time gap between hearing of the oral submissions and rendering the decision would, in effect, debilitate the purpose of resorting to arbitration for expeditious adjudication of the disputes. No person can be expected to remember the same after a long period of time. In the instant case, the delay has not even been explained by the learned Arbitrator in the said award.

122. Therefore, the award stands vitiated on two terms, *firstly* for an inordinate, unexplained and substantial delay of more than 1.5 years from the

date on which the award was reserved, thus being in contravention of public policy of India; and *Secondly*, by virtue of the provision of Section 29A(1) read with Section 29A(4), the award is in the teeth of law due to the lack of jurisdiction of the arbitrator which stood terminated in accordance with the said provisions.

CONCLUSION

123. India has long hoped to become an arbitration hub and providing time bound mechanisms for resolving disputes will certainly be a feather in the cap. Introducing Section 29A by way of amendment is therefore intentioned to ensure that the disputes in arbitration are adjudicated in a time-bound manner. As already discussed, Section 29A of the Act mandates that all proceedings must be completed within a period of 12 months starting from the date when the arbitral tribunal enters upon reference. A further 6-month extension may be granted by the consent of the parties. However, after this period ends, the mandate of the tribunal stands cancelled unless extended by a civil court.

124. As noted at the very outset, the impugned award was rendered after an inordinate, substantial and unexplained delay by the learned Sole Arbitrator, and the provision of Section 29A(1) and the bar of Section 29A(4) which states that the mandate of the Arbitrator shall be terminated, this Court is of the view that the impugned award is vitiated by patent illegality and is in conflict with the public policy of India. The impugned award is, therefore, set aside.

125. Since the impugned award has been set aside on the ground that it was rendered after an inordinate delay and due to the expiry of the mandate of the

Arbitrator, this Court considers it apposite to further observe that it will be open for the parties to re-agitate the disputes afresh.

126. The petition is allowed in the aforesaid terms.

127. Pending applications also stand disposed.

128. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

MAY 16, 2023
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Click here to check corrigendum, if any