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

Judgment reserved on: 30.05.2025
Judgment pronounced on: 01.09.2025

\+ **O.M.P. (COMM) 189/2018 & I.A. 47338/2024**

GL LITMUS EVENTS PVT. LTD.

…….Petitioner

Through: Mr. P.V. Kapur, Sr. Adv. with Mr. Vijay M. Phadke, Ms. Manali Singhal, Mr. Santosh Sachin, Mr. Deepak Singh Rawat, Advs.

versus

DELHI DEVELOPMENT AUTHORITY

……Respondent

Through: Mr. Ramesh Singh, Sr. Adv. with Ms. Shobhana Takiar, SC with Ms. Chand Chopra, Ms. Neha Bhupathiraju, Ms. Mage Nanya, Mr. Kuljeet Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

1. The present petition is filed under section 34 of the Arbitration and Conciliation Act, 1996 (***"1996 Act"***) assailing the Arbitral Award

dated 27.11.2017 passed by the learned Sole Arbitrator wherein all the 16 claims raised by the petitioner were rejected.

FACTUAL BACKGROUND

2. M/s GL Event Services and M/s Meroform (India) Pvt. Ltd. formed a consortium and signed a Consortium Agreement dated 19.05.2009 to bid for a tender related to the Commonwealth Games 2010, which were scheduled to be held in Delhi in October, 2010.The consortium formed a Joint Venture Company namely GL Litmus Events Pvt. Ltd. i.e. the petitioner, in pursuance of Clause 1 of Annexure - A of the Consortium Agreement.

3. The responsibility of organizing the Commonwealth Games Projects for Design Built Maintenance and Rental Contract for Temporary Accommodation using Tensile Fabric at Commonwealth Games Village was assigned to the respondent. Pursuant to this, the respondents invited applications for short-listing suitable organization/companies for providing Games Overlays/ temporary fitments on Turnkey basis and for executing works under Commonwealth Games Projects, through a Global Tender, published in various newspapers.

4. The petitioner submitted its bid in the said tender and subsequently, the respondent accepted the bid *vide* its Letter of Acceptance dated 02.03.2010 to the petitioner. As per the said Letter of Acceptance, the date of the commencement of the Execution of work under the aforesaid Project was fixed as 02.03.2010 and the Work was to be completed in three Phases. As per the condition stipulated in the Letter of Acceptance, the petitioner was submitted two Performance Bank

Guarantees equal to 5% of the tendered amount, which amounted to a sum of Rs. 2,06,89,513/-.

5. Thereafter, the respondent *vide* its letter dated 15.03.2010, entered into an Agreement dated 12.04.2010 under the aforesaid project, namely, "*Design Built Maintenance and Rental Contract for Temporary Accommodation using Tensile Fabric at Commonwealth Games Village*" with the petitioner. The essence of this Agreement was providing certain identified goods and services on a "rental" basis for a definite period of time. Payment schedule for all the three phases was stipulated in Annexure II in the said Agreement.

6. The entire Project work was to be completed in three phases. For Phase I, the date of completion for structure type A, A', B, B' & C was 120 days from the date of its issue and for other remaining structures, 150 days from the date of commencement, i.e. 2.3.2010 as per the Letter of Acceptance. For Phase II, the date of completion was 20th October 2010. Phase III of the Project was to be completed by 24th December 2010. For the sake of perusal, relevant portion from the said Agreement is extracted below:-

vi)	Time allowed for completion of work	For Phase-I (Period of execution of work)	
		For Structure Type A, A', B, B', C For other Structure	120 days from the date of issue of this letter of acceptance. 150 days from the date of issue of this letter of acceptance.
		Phase-II (Period of Maintenance of work)	From the date of completion of Phase-I up to 20th October 2010
		Phase-III (Period of Removal of Structure)	20th October 2010 to 24th December 2010

7. Under the said Agreement, the respondent had provided a Schedule of Quantities, which contained the description of items and the quantities and units required and the total amount for every item. For the said Schedule, the petitioner raised Bill of Quantities (BOQs), which also contained the description of the items supplied, quantities and the price for such items. These items included dining halls, resident centres, religious centres, drivers lounge, police posts and watch towers, security fences, sauna, amongst other items.

8. The petitioner raised total 18 invoices for the total work done. Since the respondent was not releasing the full amount as claimed by the petitioner, the petitioner, *vide* letter dated 02.01.2013, invoked the arbitration clause being Clause 25 of the Agreement dated 12.04.2010.

9. Consequently, the Sole Arbitrator was appointed on 20.03.2013 who resigned on 12.04.2013. On 14.05.2013, new Arbitrator was appointed who tendered resignation as an Arbitrator on 05.02.2014. On 13.02.2015, again new Arbitrator was appointed who also tendered his resignation. On 29.04.2015, the incumbent Arbitrator was appointed who passed the impugned Award.

10. By way of the impugned Award dated 27.11.2017, the Arbitrator dismissed each of the 16 claims raised by the petitioner.

11. Feeling aggrieved by the impugned Award, the present petition has been filed. Even though the petitioner has prayed for setting aside the entire Award, however, the petitioner has challenged claim Nos. 1, 3, 4, 5, 6, 7, 8, 10 and 12 out of the total 16 claims.

SUBMISSIONS

On Behalf of the Petitioner

12. Mr. P.V. Kapur, learned Senior Counsel appearing for the petitioner vociferously, at the outset, submits that the impugned Award passed by the learned Sole Arbitrator ought to be set aside only on the ground that the same has been pronounced after a period of more than 19 months from the date of reserving the Award which is against the principles of natural justice.

13. The arguments were first concluded on 10.09.2015 and the Award was reserved. The arguments were again reopened on a limited issue as some new documents were filed by the respondent along with their written submissions. The arguments were closed on 04.05.2016. Even going by the second date of closure of arguments confined to respondent's new documents, the Award was rendered only on 27.11.2017, amounting to an unexplained and unjustified delay of 19 months. Reliance is placed on ***Harji Engg. Works (P) Ltd. v. Bharat Heavy Electricals Ltd., 2008 SCC OnLine Del 1080, CRPF v. Fibroplast Marine (P) Ltd., 2022 SCC OnLine Del 1335.***

14. The delay impacts the enforceability of the Award and vitiates the arbitral process under Section 34(2)(b)(ii) of 1996 Act, being contrary to public policy and principles of natural justice.

15. Learned senior counsel for the petitioner further states that the Award is in total disregard of section 18 of 1996 Act as the petitioner and its evidence was not treated equally with that of the respondent. The Arbitrator relied on unproved documents, denied during admission/denial, filed by the respondent.

16. *On merits*, Mr. Kapur, learned senior counsel contends that while relying on the endorsement made by the petitioner "Bills and

Measurements Accepted" on unilaterally prepared so called "Measurement Books 1 to 8, the Arbitrator refused to even consider the claims and detailed evidence of the petitioner. The Arbitrator proceeded on the basis that having made such an endorsement, the petitioner was estopped from raising any claim in respect of quantities supplied and rates applied by the respondent even if the respondent recorded incorrect quantities supplied or applied arbitrary rates for making payment to the petitioner. The Arbitrator has given no reason at all as to the effect of the endorsement the petitioner made on the 9th and Final so-called Measurement Book "Bill and Measurement accepted without prejudice to our claims under arbitration".

17. The Arbitrator completely disregarded the fact that Measurement Books 1 to 8, was prepared by the respondent contrary to Clauses 6 and 7of the Contract and behind the back of the petitioner, were only for receiving Payment of Advances as stipulated in Clause 7and were not final. The Arbitrator further failed to consider or deal with the submission of the petitioner that all the measurement that the respondent had unilaterally recorded in Measurement Books 1 to 8 were re-recorded and subsumed in the 9th and Final Measurement Book which were accepted without prejudice. The Arbitrator has not dealt with the aforesaid submission at all and it is impossible for this Hon'ble Court in a challenge under section 34 to guess or supply a reason. If the arbitrator had given a single reason, howsoever tenuous, it would have been a different matter but not to give any reason at all is fatal to the Award.

18. Learned senior counsel for the petitioner further submits that the

petitioner had raised the plea of duress during arbitration alleging that the DDA would not pay the petitioner its dues unless and until the petitioner made the endorsement even in the absence of a stipulation in the Contract for asking the petitioner to make such an endorsement. The Award is completely silent on the petitioner's plea of duress *vis-a-vis* the endorsements made on the interim Measurement Books 1 to 8.

19. In the present case, it has been the petitioner's case right from the start that the Measurement Books were prepared by the respondent behind the petitioner's back thereby denying the opportunity to object to their contents. The Measurement Books were produced for the first time during Arbitration proceedings pursuant to the Arbitrator's Order dated 06.11.2013. Even at the time when the petitioner endorsed the last page of the Measurement Books 1 to 8, no copy thereof was provided to the petitioner. The petitioner never had an opportunity to question the contents of the Measurement Books either before the respondent or even before the Arbitrator.

20. During arbitration proceedings, the petitioner by its affidavit admission/denial dated 30.11.2013, categorically denied the Measurement Books, the Running Account Bills, the analysis of the rates and the approval document. Despite such denial, the respondent did not lead any evidence to prove those documents according to law as was the necessary corollary to the said order dated 06.11.2013. Hence, neither the Measurement Books nor the Running Account Bills, the analysis of rates and the approval document could have been relied upon by the Arbitrator. Contrary to the settled law, the

Arbitrator relied upon the denied documents to reject the petitioner's claims.

21. Learned senior counsel for the petitioner further submits that at the same time, the receipt of the measurement details accompanied with its invoices that duly and fully complied with Clauses 6 and 7 of the Contract were disregarded by the Arbitrator. The Arbitrator further disregarded the invoices 4 to 6 of the petitioner on the specious ground that since those invoices were submitted on a single date i.e. 28th July 2010 whereas, as per Contract, they were to be submitted on monthly basis, the petitioner's invoices could not be regarded as Running Account bills. In respect of other invoices, the Arbitrator has given no other reason at all as to why they could not be regarded as Running Account Bills.

22. These findings of the Arbitrator violate sections 18, 19, 24, 28 and 34 of the 1996 Act. Hence, the petitioner was prevented and disabled from presenting its case and the evidence of the petitioner was not considered at all by the Arbitrator and contrary to settled law, the Arbitrator relied upon the inadmissible evidence of the respondent.

On Behalf of the Respondent

23. Refuting the above submissions, Mr. Ramesh Singh, learned Senior Counsel vehemently submits that delay in pronouncing the Award is not *per se* fatal to the Award. In the present case, the arbitral record is both voluminous and complex. The Arbitrator has considered all the facts and documents placed before him while rejecting the claims of the petitioner with a reasoned Award, and therefore, the delay, if any, in pronouncement of the Award does not affect the reasoning or

findings in the Award. Reliance is placed on ***Union of India v. Niko Resources Ltd., 2012 SCC OnLine Del 3328***and ***Peak Chemical Corporation v. National Aluminium Co. Ltd., 2012 SCC OnLine Del 759*** wherein it is observed that it would not be in the interest of justice to set aside an Award merely on the ground of delay, especially if considerable time and money had already been spent in the arbitral proceedings.

24. *On merits*, Mr. Singh, learned senior counsel submits that the petitioner has mischaracterized the Agreement as a simple "goods and services contract" / "rental contract" and has attempted to falsely distinguish the same from a "works contract" so as to dispute the relevancy and necessity of the Measurement Books. In terms of clause 6 of the Agreement, the Measurement Books are a record of the work done by the petitioner and form the sole basis to determine the amount of work done by the petitioner. Further, the Agreement itself defines "Works" and "Works Agreement" as the provision of goods and services to DDA. Hence, the Arbitrator has not erred in referring to the Contract as a "works contract" when the contract itself calls it so.

25. He further submits that the Claims No. 3-6 pertained to alleged outstanding dues against certain invoices raised by the petitioner. The Arbitrator rejected claim Nos. 3-6 on the ground, *inter alia*, that the petitioner accepted the Measurement Books and their respective Running Account Bills. The claims of the petitioner on the basis of unilaterally prepared and unapproved invoices were therefore untenable and therefore rightly ignored. In other words, the Arbitrator relied upon the Measurement Books and their corresponding Running

Account Bills with the endorsement of the petitioner "Bills and Measurement Accepted" as opposed to unilaterally prepared invoices of the petitioner to rule on the said claims.

26. As per Clause 6 of the Agreement, the parties were required to carry out joint measurements of the work done, and if the Contractor had an objection to any of the recorded measurements, the Contractor was required to make a note to that effect with reasons. In compliance thereof, such measurements were undertaken during the course of the work and each of such Measurement Books (i.e., from 1-8, excluding the Measurement Book for the 9th & Final Bill, which the petitioner allegedly signed without prejudice) was signed by the petitioner with the undertaking "Bills and Measurement Accepted" without any reservations whatsoever.

27. In addition, the petitioner has also signed Running Account Bills along with each Measurement Book, with the same endorsement "Bills and Measurement Accepted". There was no reservation lodged by the petitioner to any of the 1-8 Running Account Bills or the Measurement Books forming the basis of the said 1-8 Running Account Bills. Even the reservation to the Measurement Book for the 9th & Final Bill has been made only to suggest that the endorsement was without prejudice to the rights and contentions of the petitioner in the arbitration proceedings, since the petitioner had invoked arbitration by then.

28. With regard to the argument that the Measurement Books are one sided and were never shown to the petitioner until the they were filed during the arbitration proceedings, and signatures can only be found

on the last page which shows that they were signed under duress or protest are completely false and contradictory stances. The petitioner in its Statement of Facts has only contended to deny the contents of Measurement Book is that legally the Measurement Book do not have the force of law to deny payments and that it was never given a copy of the Measurement Books. In rejoinder, it is further contended that the petitioner has recorded its objections to the measurements while signing the RA Bills and that such measurements cannot be accepted as final. No documents whatsoever were filed by the petitioner during the arbitral proceedings in support of the argument that the Measurement Books or the Running Account Bills, although signed by the petitioner's own representative, were not shared with them or that it had contemporaneously issued any letters to the respondent opposing the measurements recorded in the Measurement Books on the basis of which the Running Account Bills were cleared.

29. The plea with regard to duress and coercion has not been specifically pleaded by the petitioner in its Statement of Facts or in rejoinder. It was only during the course of oral arguments in arbitration proceedings that the petitioner sought to improve its case and aver that the Measurement Books were signed under protest.

30. Arguing duress for the first time in oral arguments without leading any evidence does not entitle the petitioner to now challenge the Award on the basis that the plea of duress was not accepted by the Arbitrator. If it was the petitioner's case that the Measurement Books were signed under duress, the onus was on the petitioner to specifically plead and prove the said duress in order to dispute the contents of

contemporaneously signed documents. Admittedly, it chose not to lead any evidence, in this regard, as recorded in the Arbitrator's Order dated 10.09.2015.

31. Learned senior counsel further submits that the petitioner falsely argues that it denied the Measurement Books, during the course of admission/denial of documents. A closer look would evince that it has merely stated "Denied (deductions made by Respondent not known or explained)". The petitioner has not denied the existence of the said Measurement Books or the signatures of its officers on the said Measurement Books. The petitioner has also failed to discharge the onus that the deductions were not known or unexplained or that they were contrary to the terms of the contract, which it admittedly did not do, having led no evidence in support of this claim. Similarly, the petitioner has not even denied the signatures of its officers on the Running Account Bills, or its very existence by way of its Admission Denial Affidavit, and it has merely stated "Denied (not issued to the Claimant)".

32. Since the Petitioner has not led any evidence whatsoever that it did more work than what was recorded in the Measurement Books, and in the absence of any evidence before the Arbitrator, even more so as the element of duress and coercion were neither specifically pleaded nor proved, there is no infirmity in the reasoning of the Arbitrator to refute the petitioner's claims. A party that has chosen not to lead evidence cannot now seek to improve its case and have a second bite at the cherry.

33. Lastly, it has been contended that the scope of judicial interference

under section 34 is very limited and does not include re-appreciation of evidence.

ANALYSIS AND FINDINGS

34. I have heard learned senior counsel for the parties and perused the material available on record including the judgments cited.

35. The principles with regard to interference by a Court under section 34 of 1996 Act against the Arbitral Award have been reiterated time and again by the Hon'ble Supreme Court and this Court. The scope under section 34 of the 1996 Act is very limited and narrow as the Court does not sit in appeal over the Award or review the Award passed by the Arbitral Tribunal nor re-appreciates the evidence.[1] Further, it is the prerogative of the Arbitral Tribunal to interpret the terms of the Contract and if the Arbitral Tribunal has adopted a view which is plausible and reasonable, the Court is not required to interfere even if an alternative view is possible.[2]

36. To set aside the Award, the Award must fall under any of the categories/grounds as mentioned in section 34 of the 1996 Act. One of the grounds, amongst other, pertains to public policy of India. Explanation 1 of section 34(2)(b)(ii) of 1996 Act further provides that the Award in conflict with *inter alia*, the fundamental policy of Indian law or the most basic notions of morality or justice shall be set aside.

37. In this regard, the Hon'ble Supreme Court in ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd., (2025) 2 SCC 417*** has observed as under:-

[1]***Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corpn. Ltd., (2024) 2 SCC 375.***
[2]***Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1.***

"55. The legal position which emerges from the aforesaid discussion is that after "the 2015 Amendments" in Section 34(2)(b)(ii) and Section 48(2)(b) of the 1996 Act, the phrase "in conflict with the public policy of India" must be accorded a restricted meaning in terms of Explanation 1. The expression "in contravention with the fundamental policy of Indian law" by use of the word "fundamental" before the phrase "policy of Indian law" makes the expression narrower in its application than the phrase "in contravention with the policy of Indian law", which means mere contravention of law is not enough to make an award vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country.

56. Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that:

(a) violation of the principles of natural justice;

(b) disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and

(c) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law.

However, while assessing whether there has been a

contravention of the fundamental policy of Indian law, the extent of judicial scrutiny must not exceed the limit as set out in Explanation 2 to Section 34(2)(b)(ii).

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63. As we have already noticed, the object of inserting Explanations 1 and 2 in place of earlier explanation to Section 34(2)(b)(ii) was to limit the scope of interference with an arbitral award, therefore the amendment consciously qualified the term "justice" with "most basic notions" of it. In such circumstances, giving a broad dimension to this category [In conflict with most basic notions of morality or justice.] would be deviating from the legislative intent. In our view, therefore, considering that the concept of justice is open-textured, and notions of justice could evolve with changing needs of the society, it would not be prudent to cull out "the most basic notions of justice". Suffice it to observe, they [Most basic notions of justice.] ought to be such elementary principles of justice that their violation could be figured out by a prudent member of the public who may, or may not, be judicially trained, which means, that their violation would shock the conscience of a legally trained mind. In other words, this ground would be available to set aside an arbitral award, if the award conflicts with such elementary/fundamental principles of justice that it shocks the conscience of the Court."

38. The first and foremost argument raised by the learned senior counsel for the petitioner is that the Award has been pronounced after an inordinate and unexplained delay of 19 months from the last clarification hearing which itself is a ground to set aside the Award. *Per contra*, learned senior counsel for the respondent has submitted that the Award solely cannot be set aside on the ground of delay, other factors including the merits of the Award also need to be looked into.

39. The 1996 Act is self-contained code designed to provide party autonomy, time bound proceedings and efficacious resolution of disputes, amongst the other fundamental features of 1996 Act. Although section 29A of 1996 Act was notified in 2015 by way of an amendment which is not applicable in the present case, it clearly provides that the Award shall be delivered within twelve months from the date of entering reference. This clearly puts out the intention of the legislature that the arbitral proceedings including the passing of the Award should be completed in a time bound manner as it is one of the salient features of the 1996 Act.

40. The principle of ***justice delayed is justice denied*** has been repeatedly emphasized by the Hon'ble Supreme Court, *inter alia,* in ***Anil Rai v. State of Bihar, (2001) 7 SCC 318***. Although, I am conscious of the fact that the said judgment was given in the context of judicial proceedings, however the principle applies with equal force to the arbitral proceedings to deliver the Arbitral Award timely, where the objective of 1996 Act is to provide an efficacious and speedy mechanism of dispute resolution.

41. It is apposite to refer to several decisions of this Court passed in the

arbitration context:-

41.1 In ***Harji Engg. Works (P) Ltd. (supra)***, a single judge bench of this Court set aside the Award only on the ground that the same was delivered after a delay of three years. Operative portion of the said judgment is extracted below:-

> *"16. The Act based on UNCITRAL Model Law seeks to ensure fast and quick disposal and curtail delays (See, Sections 4, 12, 13, 16, 23 and 34(3) of the Act). 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. 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.*
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> *17. Section 28 of the Arbitration Act, 1940 is not incorporated in the Act. 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 leads to termination of the mandate of the arbitrator.

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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. Counsel for the respondent had submitted that this Court should examine and go into merits and demerits of the claims and counter claims with reference to the written submissions, claim petition, reply, document etc. for deciding whether the award is justified. In other words, counsel for the respondent wanted the Court to

step into the shoes of the Arbitrator or as an appellate court decide the present objections under Section 34 of the Act with reference to the said documents. This should not be permitted and allowed as it will defeat the very purpose of arbitration and would result into full fledged hearing or trial before the Court, while adjudicating objections under Section 34 of the Act. 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.

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22. In view of the above, the award dated 21st February, 2006, is set aside. The objector will be entitled to costs."

(Emphasis added)

It was observed that Arbitration's primary objective is speedy disposal of disputes, ensuring justice and upholding contractual rights. Though the 1996 Act does not specify a strict timeline for delivering Awards before the amendment which came in 2015, it requires Arbitrators to act with reasonable dispatch and promptness, as undue delay can terminate their mandate under section 14 of 1996 Act.

41.2 In ***Niko Resources Ltd. (supra),*** a single judge bench of this Court while considering the judgment of ***Peak Chemical Corporation (supra)***, categorically observed that "*delay in pronouncement of the Award per se does not vitiate it*". In later part of my judgment, both the aforesaid judgments will be discussed in detail.

41.3 In ***BWL Ltd. v. UOI, FAO (OS) 398-399/2012***, ***dated: 26.11.2012,*** a division bench of this Court while relying on ***Harji Engg. Works (P) Ltd. (supra)***, set aside the Award solely on the ground that the same was passed after a delay of two years and seven months from the last clarification hearing and delay of nearly 5 years after the original hearing was concluded. Relevant paragraphs are extracted below:-

"7. What faith would one have in such an arbitrator? What would be the use to remit a part of the award to the same arbitrator whose past conduct does not inspire confidence

of doing speedy justice?

8. Human memory is short. We are doubtful whether substantive hearings which were concluded on October 06, 2004 and the meagre clarificatory hearings which were concluded on February 16, 2008 left sufficient imprints on the minds of the learned Arbitrator to have remembered the arguments and pronounce the award(s) on September 21, 2010 and September 23, 2010.

9. Justice should not only be done but should also appear to have been done. Justice delayed is justice denied.

10. This was so observed by the Supreme Court in various decisions. Even when Judges have pronounced judgments after reserving them for more than six months the same have been set aside by the Supreme Court requiring the matter to be heard afresh and re-decided……

11. With respect to arbitration, a learned Single Judge of this Court, in the decision reported as 153 (2008) DLT 489 Harji Engineering Works Pvt. Ltd. v. BHEL, set aside an award which was pronounced after three years of the last hearing holding that such an award would be against the public policy of India.

12. We agree."

41.4 In ***Satya Parkash & Brothers Pvt. Ltd. v. North Delhi Municipal Corporation, 2017 SCC OnLine Del 8346***, a single judge bench of this Court while relying on ***Harji Engg. Works (P) Ltd. (supra)*** and ***BWL Ltd. (supra),*** set aside the Award solely on the ground of delay

that the same was passed after almost three years.

41.5 In ***Gian Gupta v. MMTC Ltd., 2020 SCC OnLine Del 107***, a single judge bench of this Court while relying on ***Harji Engg. Works (P) Ltd. (supra)***, ***BWL Ltd. (supra)*** and ***Satya Parkash & Brothers Pvt. Ltd. (supra)***, set aside the Award solely on the ground that the same was passed after more than six years from the date of conclusion of hearings.

41.6 In ***CRPF (supra),*** a single judge bench of this Court set aside the Award, *inter alia*, on the ground that the same was rendered after almost 18 months after the conclusion of the hearing. Relevant paragraphs from the aforesaid judgment are extracted below:-

> *"40. ……. Nonetheless, the award was required to be made within a reasonable period. It is difficult to accept that a period of almost one-and-a-half years is reasonable in the given facts and circumstances of this case.*
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> *41. The question whether the delay in making the impugned award rendered it liable to be set aside as opposed to public policy would also necessarily have to be considered in the context of the challenge now raised by the petitioner on merits.*
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> *42. In Peak Chemical Corpn. Inc. v. National Aluminium Co. Ltd. [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. ……..*

43. It is apparent from the above that the court had held that an arbitral award cannot be set aside solely on the ground that there was delay in its pronouncement. The court observed that delay in pronouncing the award is not one of the grounds as specified under Section 34 of the A&C Act. 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. [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 : (2012) 192 DLT 417] ; and Union of India v. Niko Resources Ltd. [Union of India v. Niko Resources Ltd., 2012 SCC OnLine Del 3328 : (2012) 191 DLT 668]

44. The decision in Peak Chemical Corpn. Inc. case [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. [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. However, it is not necessary to further examine whether there is any conflict in between the two decisions. This is because, in the present case the delay in making the award is not the sole reason for setting aside the award. The delay is also compiled with the Arbitral Tribunal overlooking vital aspects of the dispute as is discussed hereafter.

45. 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 A&C Act, that is, being in conflict with the public policy of India."

41.7 In ***Department of Transport v. Star Bus Services (P) Ltd., 2023 SCC OnLine Del 2890***, a single judge bench of this Court while relying on aforenoted several decisions, set aside the Award solely on the ground that the same has been passed after a period of more than one and half years from the date on which the Award was reserved.

41.8 In ***HR Builders v. Delhi Agricultural Marketing Board, 2024 SCC OnLine Del 7635***, a single judge bench of this Court while relying on several decisions of this Court, set aside the Award solely on the ground that the same was passed after a period of two years and eight months from the date of reserving the Award.

42. In the present case, on perusing the arbitral record, the order dated 10.09.2015 passed by the Arbitrator records that both the parties were heard at length and have nothing to say or produce any evidence or documents except the written submissions to be filed before

19.10.2015, hence, the Arbitrator was requested to conclude the proceedings. For the sake of perusal, order dated 10.09.2015 is extracted below:-

DELHI DEVELOPMENT AUTHORITY
OFFICE OF THE SUPERINTENDING ENGINEER (ARBN.)
B2B, JANAKPURI, NEW DELHI-110058

No. S.E.(Arbn.)/DDA/272/ 703-705 Dated: 10/9/15

Before:
Sh. D.V. Raghav
Sole Arbitrator

In the matter of Arbitration between:

1. M/s G.L.Litmus Events Pvt. Ltd. ... Claimant(s)
Versus
2. Delhi Development Authority
(Through its Executive Engineer/CGD-1) ... Respondent(s)

Name of work: - Commonwealth Games Project assigned to DDA.

SH: Design Built Maintenances and Rental Contract for Temporary accommodation using Tensile Fabric at Commonwealth Games Village.

Agreement No.: 1/EE/CGD-2/DDA/A/2010-11
(Renumbered 05/EE/CGD-8/DDA/2010-11)

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The case came up for hearing on 10-09-2015 at 2-00 PM. The following were present:-

On behalf of the claimant(s)	On behalf of the respondent(s)
Present: 1) Sh. Sanjay Anand	Present: 1) Sh. Amar Singh, Consultant
2) Sh. H.D. Verma	2) Sh. K.K. Jamuda, EE/CGD-1
2) Sh. Vijay Phadke, Counsel	3) Sh. Shashank Garg, Counsel
3) Ms. Natasha Sahrawat, Counsel	
4) Sh. Mohd. Yusuf, Counsel	

CLAIM No. 3 to 6 :- Both the parties were heard at length.

Both the parties stated that they have not to say anything or to produce any evidence or documents except the written submissions, if any, to be filed by them by 19th October, 2015 and requested the arbitrator to conclude the case.

In consultation with and agreed upon by both the parties, the case is concluded today. The claimants are directed to file non judicial stamp paper of requisite value within 15 days time for making and publishing the award.

Both the parties are directed to either file their written submissions before 19th October, 2015 with an advance copy to the other party or exchange the same on the next date of hearing which is fixed for 19th October, 2015 at 3-00 PM. If any of the party fails to do so, it will be presumed that they have not to submit anything in the matter and award will be published in due course of time.

(D.V. Raghav) 10/9/2015
S.E. (Arbitration)

43. Subsequently, some additional documents were filed by the respondent and on 04.05.2016, some clarification was sought from Sh.

P.K. Sudhir (witness of the respondent) and the hearing was closed. So going by the date of 19.10.2015 when the original hearing was concluded, the Award was delivered after a period of more than 2 years 2 months and if from the date of 04.05.2016 when last clarification was sought then the delay in pronouncing the Award is of 19 months.

44. Also, I cannot lose sight of the fact that on three occasions, the parties were constrained to request the Arbitrator to deliver the Award. The first letter dated 07.02.2017 was written by the petitioner to the Arbitrator underlining that prejudice caused as there was delay in delivering the Award. The second letter dated 29.06.2017 was written by the respondent to the Arbitrator requesting to publish the Award expeditiously. Lastly, the third letter dated 30.06.2017 was written by the petitioner again requesting the Arbitrator that "*considerable prejudice is being caused on account of delay in rendering the award.*" The said letter further requested for a convenient time to provide any clarification, if required. These letters reflect not only the anxiety of the parties but also the loss of faith in the arbitral process when proceedings linger without finality.

45. To my mind, Arbitrators are human beings whose ability to recollect oral submissions and evaluate evidence diminishes over a period of time. The delay is not a mere procedural lapse rather it causes substantive prejudice to the parties as it strikes at the heart of fairness in adjudication. When Arbitrator, despite the fundamental features (i.e. i.e. efficiency, speedy disposal) of 1996 Act, pronounce Awards after a long gap, the very faith of parties to the arbitration proceedings

and more particularly commercial arbitrations, as an efficacious remedy stands diminished.

46. There is a real and substantial risk when the Award is rendered after a long gap, that the Award is based on selective recollection of the submissions, thereby affecting the fairness of the process. Oral arguments form the foundation of an effective hearing while written submissions are meant to assist recollection of oral arguments. The Arbitrator, in the present case, held oral hearings on 27.08.2015, 28.08.2015, 10.09.2015 and 04.05.2016 which itself shows the importance of oral hearings. Written submissions cannot substitute oral advocacy. The very fact that the Arbitrator took oral hearings over a period of time reinforces the primacy and relevancy of the oral hearings.

47. The risk of the Arbitrator relying heavily on the written submissions without the benefit of recollection of oral arguments becomes considerably higher when there is an inordinate delay between the arguments advanced and the Award delivered, thereby compromising neutrality and objectivity. Keeping an Award reserved for an unexplained long period fades away the effect of oral arguments advanced by the parties.

48. From the aforesaid judgments, it is discernible that ***Harji Engg. Works (P) Ltd. (supra)*** has been consistently followed by this Court to set aside an Award only on the ground of delay in pronouncement of the Award. I may also note that the said judgment has been approved by the Division Bench of this Court in ***BWL Ltd. (supra)*** which is binding on this Court. However, a Coordinate bench of this

Court in ***Peak Chemical Corporation (supra)*** has taken a different view. Relevant portion from the said judgment is extracted 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 issue-wise. 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."

49. The said judgment observes that the question whether delay itself in pronouncement of Award vitiates the Award, depend on the facts of each case. One of the reasons recorded by the Court to not set aside the Award was that the dispute between the parties had been pending since 1996 and it was further recorded that since the Arbitrator had expired, it would not be in the interests of justice to set aside the Award only on the ground of delay. Hence, the ratio of the said judgment is distinguishable as it was premised on its own peculiar facts, circumstances and reasonings.

50. Further, *in* ***Niko Resources Ltd. (supra)*** while relying on ***Peak Chemical Corporation (supra),*** it was observed that it would be "appropriate" to exhaust the remedy under section 14 of 1996 Act before making a challenge under section 34 of 1996 Act on the ground of delay in pronouncement. Hence, delay cannot be the sole ground. Relevant paragraphs are extracted below:-

"49. It appears to the Court that one possible remedy available to a party aggrieved by the delay in pronouncing an Award is to first approach the Tribunal itself with a prayer for expediting the Award and thereafter if that does not prove successful to invoke Section 14 of the Act. …….

50. Under Section 14(2) of the Act a party can seek the Court's interference to terminate the mandate of the Arbitrator if the 'controversy' concerning the Tribunal's de

jure or de facto inability to perform its functions "remains". Therefore, if after being approached by either party with a prayer to expedite the pronouncement of the Award, the tribunal fails to do so, the Court can be approached in terms of Section 14(2). ……

51. Given the scheme of the Act, it might be appropriate to exhaust the above remedy before the stage of challenge to the Award. It hardly needs be stated that delay per se is not identified as one of the grounds under Section 34 of the Act. It would have to be shown that the Award suffered from patent illegality on account of such delay. What also should weigh with the Court when faced with a situation where an Award is sought to be challenged on the ground of delay is to consider the costs incurred and the time spent in the arbitral proceedings. If delay alone was to be the factor then, as is happening not infrequently these days, many an Award would be vulnerable to invalidation on this ground alone. It would be the facts and circumstances of a given case which would determine if the delay is so unconscionable as to vitiate the Award."

51. The said observations of ***Niko Resources Ltd. (supra)*** have already been distinguished by a Coordinate bench of this Court in ***Gian Gupta (supra).*** Relevant paragraph is extracted below:-

"15. With regard to exhaustion of remedies under Section 14 of the Act, I do not read the judgment in Niko Resources to provide for a mandatory recourse to Section 14(2) in

order to mount a challenge under Section 34 on these grounds. The Court has only elucidated upon an alternative remedy which may appropriately be invoked in these circumstances…."

52. As far as judicial pronouncements are concerned, it has been repeatedly urged by the Hon'ble Supreme Court, most recently, in ***Ravindra Pratap Shahi v. State of U.P., 2025 SCC OnLine SC 1813*** to adhere to the principles laid down in ***Anil Rai (supra)***. It was observed in ***Anil Rai (supra)*** as under:-

"9. It is true, that for the High Courts, no period for pronouncement of judgment is contemplated either under the Civil Procedure Code or the Criminal Procedure Code, but as the pronouncement of the judgment is a part of the justice dispensation system, it has to be without delay. In a country like ours where people consider the Judges only second to God, efforts be made to strengthen that belief of the common man. Delay in disposal of the cases facilitates the people to raise eyebrows, sometimes genuinely which, if not checked, may shake the confidence of the people in the judicial system. A time has come when the judiciary itself has to assert for preserving its stature, respect and regards for the attainment of the rule of law. For the fault of a few, the glorious and glittering name of the judiciary cannot be permitted to be made ugly. It is the policy and purpose of law, to have speedy justice for which efforts are required to be made to come up to the expectation of the society of

ensuring speedy, untainted and unpolluted justice."

53. Keeping in view the objectives of the 1996 Act which are speedy and expeditious disposal, an inordinate delay is contrary to the public policy of India which is a ground under section 34 of 1996 Act. The common thread running through most of the judgments reproduced above clearly show that this Court has repeatedly set aside Awards purely on the ground of delay without going into the merits of the dispute. The judgments of ***Niko Resources Ltd. (supra)*** and ***Peak Chemical Corporation (supra)*** have been distinguished by the Court. Hence, once the Award has been set aside only due to delay in pronouncement, the merits of disputes need not be adverted to.

54. In addition, no reasons have been given by the Arbitrator to explain this inordinate delay in pronouncement of the Award.

CONCLUSION

55. For the foregoing reasons, I am of the view that the Award dated 27.11.2017 is against the "public policy of India" covered under section 34(2)(b)(ii) of 1996 Act as it contravenes the most basic notions of justice as the Award has been pronounced after 19 months of conclusion of proceedings. In view of the binding judgment of ***BWL Ltd. (supra)*** and relying on ***Harji Engg. Works (P) Ltd. (supra)*** and ***Gian Gupta (supra),*** the Arbitral Award dated 27.11.2027 is hereby set aside.

56. The petition is allowed and disposed of along with pending applications, if any.

JASMEET SINGH, J

SEPTEMBER 01st, 2025/(MSQ)