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

Judgment pronounced on: 29.10.2024

+ **O.M.P. (COMM) 88/2021 & I.A. 3291/2021 (condonation of delay)**

HR BUILDERS THROUGH GPA HOLDER..... Petitioner

Through: Mr. Sidharth Chopra, Mr. Vishesh Wadhwa, Ms. Swadha Gupta, Mr. Ayush Singh and Mr. Aditya Raj, Advs.

versus

DELHI AGRICULTURAL MARKETING BOARD.....Respondent

Through: Mr. C.S. Parashar and Mr. Shajan Ali, Advs.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the A&C Act') assails an arbitral award dated 21.09.2020 (hereinafter referred to as "the award") passed by the learned Sole Arbitrator.

2. The short ground on which the award has been challenged by the petitioner is that there was an inordinate delay in passing of the award. Admittedly, the learned Sole Arbitrator was appointed by this Court *vide* order dated 04.02.2015 passed in ARB. P. No.569 of 2014.

3. On 16.01.2018, arguments were concluded by the parties before the learned arbitrator. The proceedings dated 16.01.2018 read as under :-

*"The rejoinder arguments advanced on behalf of the Claimant, heard. The ld. Counsel for both the parties state that they would like to file brief written synopsis of the arguments. They shall do so on **02.02.2018 at 2.00***



PM.”

4. The subsequent proceedings dated 02.02.2018 read as under :-

“The Ld. Counsel for the Respondent has today filed the written synopsis on behalf of the Respondent.

Shri V.K. Mittal, the authorized representative of the Claimant company has telephonically requested for grant of 3/4 days more time in order to enable them to file the written synopsis. Allowed. They shall do so on 07.02.2018 at 2.15 PM.”

5. Thereafter, no proceedings were held and the award was passed on 21.09.2020 i.e., almost two years and eight months after the proceedings stood concluded before the learned Sole Arbitrator.

6. Prior to the issuance of the award, the petitioner had filed a petition under Section 14 and 15(2) read with Section 11(6) of the A&C Act, being O.M.P.(T) 2/2020, before this Court. It has been, inter-alia, averred in the said petition as under:-

“14. Evidently, in the case at hand the arbitration commenced on 05.06.2014, when the Applicant issued a notice invoking arbitration and the matter was finally reserved for passing an award on 16.01.2018, the matter has been pending since past 6 years and more than two years have lapsed since, the matter was reserved for passing of award. The Ld. Sole Arbitrator without providing any explanation has failed to carry out his duty as an arbitrator and has misconducting himself by failing to pass as award for more than two years. Therefore, the mandate of the arbitrator ought to be terminated.

15. It is pertinent to mention due to the failure on part of the Ld. Sole Arbitrator to discharge his duties i.e. passing an award within reasonable time has caused grave prejudice to the Applicant as the matter is now pending since past six years. Therefore, the present application.

16. It is humbly submitted that the erstwhile Ld. Sole arbitrator appointed by this Ho’ble Court has de facto & de jure failed perform his functions and has failed to act without undue delay which demands termination of the mandate of the Ld. Sole Arbitrator. It is pertinent to mention that the erstwhile arbitrator was appointed by this Hon’ble



Court vide order dated 05.02.2015 upon filing of an application by the Applicant, as the Respondent had failed to appoint the arbitrator therefore, extinguishing its right to appoint the arbitrator. It is submitted that consequent to declaration of termination of the mandate of the erstwhile Ld. Sole Arbitrator, this Hon'ble Court alone has the jurisdiction as well as the powers to appoint/ substitute the Ld. Sole Arbitrator. Hence, the present application”

7. It was during the pendency of the aforesaid petition that the impugned award was passed.

8. One of the contentions raised by the learned counsel for the petitioner is that the award was passed in haste, and as a reaction to the aforesaid petition filed by the petitioner. Learned counsel for the petitioner further contends that in terms of the ratio laid down by judgments of the Coordinate Benches of this Court in *Gian Gupta v. MMTC Ltd.*, MANU/DE/0037/2020, *Harji Engineering Works Pvt. Ltd. vs. BHEL*, 153 (2008) DLT 489 and *BWL Limited v. Union of India*, MANU/DE/5699/2012, the award deserves to be set aside on the ground of inordinate delay in passing the same.

9. The respondent has filed a reply to the present petition. Neither the said reply nor the submissions of the learned counsel for the respondent deals with the issue raised by the petitioner *viz.* inordinate delay in issuing the award after completion of arbitral proceedings, although the respondent has sought to justify the delay in completion of arbitral proceedings. The reply filed on behalf of the respondent also makes various averments as regards the merits of the impugned award.

ANALYSIS AND CONCLUSION

10. Having perused the record of the case and heard respective submissions of the learned counsel, I find merit in the submissions made on



behalf of the petitioner. It can hardly be disputed that there was, indeed, an inordinate delay in passing the impugned award.

11. The delay is even more conspicuous in light of the fact that after the final arguments were concluded on 16.01.2018, the petitioner was compelled to file a petition under Section 14 and 15(2) of the A&C Act, to ventilate its grievance as regards the inordinate delay. The said petition was filed on 25.02.2020. It was more than seven months after the said petition was filed that the impugned award was issued.

12. In *Harji Engineering Works Pvt. Ltd. v. BHEL*, (supra), this Court has dealt with the issue as to whether a delay of three years between the last effective hearing and making of the award was sufficient to set aside the award. The Court relied upon the judgment of the Bombay High Court in *Bhogilal Purushottam Shah v. Chimanlal Amritlal Shah & Ors.*, MANU/MH/0148/1927: AIR (1928) Bom 49, to conclude as follows :-

“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 unduly prolonged and delayed, remains intact and embodied. Section 14 of the Act stipulates that mandate of an arbitrator would terminate if he de jure 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 and 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 contention 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.**

13. In ***BWL Limited*** (supra), a Division Bench of this Court again had the occasion to deal with the issue as to whether inordinate delay in passing of an award is a valid ground for setting aside the same. It was observed by the Division Bench as under :-

“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. The decisions are:-

- a. Anil Rai v. State of Bihar (2001) 7 SCC 318;
- b. Kanhaiyalal & Ors. v. Anupkumar & Ors. (2003) 1 SCC 430;
- c. Bhagwandas Fatechand Daswani & Ors. v. HPA International & Ors. (2000) 2 SCC 13; and
- d. Kunwar Singh & Ors. v. Sri Thakurji Maharaj 1995 Supp (4) SCC 125.

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.”

14. Again, in ***CRPF v. Fibroplast Marine (P) Ltd.***, (2022) 3 HCC (Del) 304, where the arbitral award was rendered after an inordinate delay of almost eighteen months, this Court held as under :-

“45. In the given circumstances, this Court is of the view that inordinate, and unexplained delay in rendering the award makes it amendable to challenge under Section 34(2)(b)(ii) of the A&C Act, that is, being in conflict with the public policy of India.

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77. As noted at the outset, the impugned award was rendered after an inordinate and unexplained delay. Further, considering the impugned award on merits, this Court is of the view that the same is vitiated by patent illegality and in conflict with the public policy of India.”

15. The aforesaid judgments squarely apply to the facts of the present case.

16. It is noticed that in ***Union of India v. Niko Resources Ltd. & Ors.***, 2021: DHC:3876, it was observed by a Co-ordinate Bench of this Court, that



delay *per se* is not identified as one of the grounds under Section 34 of the A&C Act. However, in **Gian Gupta** (supra), this Court had the occasion to deal with the judgment rendered in **Niko Resources Ltd.** (supra) and also a judgment rendered by another Co-ordinate Bench of this Court in **Peak Chemical Corporation Inc. v. National Aluminium Co. Ltd.**, 2012:DHC:830, which also states that delay by itself does not invalidate an arbitral award and other attended circumstances have to be seen to assess whether the award is vitiated on account of delay in issuing the same.

17. In **Gian Gupta** (supra), this Court noticed that a Division Bench of this Court in **BWL Limited** (supra) had expressly approved the decision in **Harji Engineering Works Pvt. Ltd.** (supra). Further, with regard to the observations in **Niko Resources Ltd.** (supra) and **Peak Chemical Corporation Inc.**(supra), it has been observed as under :-

*“16. Having considered the aforesaid judgments, I am firmly of the view that the impugned award in the present case is unsustainable. The Division Bench decision in **BWL Ltd.** (supra) supports MMTC’s position that inordinate delay per se vitiates an award. The reasoning elaborated in **Harji Engineering** (supra) has been expressly approved by the Division Bench. As the judgment of the learned Single Judge in **BWL Ltd.** which was under challenge before the Division Bench (judgment dated 04.07.2012 in OMP 771 and 772/2010) relied upon the decision in **Peak Chemicals**, it is evident that the Division Bench was cognizant of the view taken in that judgment. Further, both **Peak Chemicals** (paragraph 29) and **Niko Resources** (paragraph 48) acknowledge that the question of whether an award is vitiated by delay would depend upon the facts and circumstances of each case. In the present case, there is little explanation for the delay of six years. The grounds cited in the last two paragraphs of the majority award (extracted above) do not justify the delay. The award was ultimately published on the stamp paper purchased 11 months prior and could have been pronounced much earlier.”*

18. In **Niko Resources Ltd.** (supra), even while observing the delay *per se* may not invalidate an award, it was held by the Court that it is open to the



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aggrieved party to file a petition under Section 14(2) of the A&C Act on account of “Failure to Act”.

19. In the present case, the situation had already reached a point that the petitioner had to invoke the jurisdiction of this Court under Section 14(2) of the A&C Act on account of inordinate delay in passing the award. There appears to be some substance in the apprehension of the petitioner that the award was passed as a reaction to the said petition being filed.

20. Another exacerbating factor in the present case is that even after the petition under Section 14 and 15(2) of the A&C Act was filed, the learned sole arbitrator took more than seven months to issue the award. By then, more than two years and eight months had already passed from the date on which rejoinder arguments were concluded before the learned Sole Arbitrator.

21. In the circumstances, the impugned award is liable to be set aside on the application of the principle laid down in *Harji Engineering Works Pvt. (supra)*, *BWL Limited (supra)* and *Gian Gupta (supra)*.

22. The present petition is accordingly allowed; the impugned award is consequently set aside. The pending application also stands disposed of.

SACHIN DATTA, J

OCTOBER 29, 2024/r, sl