

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION PETITION NO. 778 OF 2024

Sanjeev Malhotra

....Petitioner

: Versus :

SBI Global Factors Ltd. & anr.

....Respondents

Mr. Haresh Jagtiani, Senior Advocate with Mr. V.N. Shingnapurkar, Mr. Harshad Shingnapurkar, Mr. Pushpvijay Kanoji, Mr. Pranay Kamdar, Mr. Ritwik Kulkarni and Mr. Dhananjay Nagarkar, for the Petitioner.

Mr. Cherag Balsara with Mr. Ashish Mehta and Ms. Jovita Pareira i/b. Mr. Raj Kakde, for Respondent No.1.

Mr. Mahesh Ayar, for Respondent No.2.

CORAM : SANDEEP V. MARNE, J.

JUDG. RESD. ON : 8 DECEMBER 2025.

JUDG. PRON. ON : 23 DECEMBER 2025.

JUDGMENT :

1) The Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) seeking invalidation of the Arbitral Award dated 4 April 2024 passed by the learned sole Arbitrator. By the impugned Award, the Arbitral Tribunal has allowed the claims of Respondent No.1 in the sum of Rs.

28,16,51,442.87/- in respect of domestic factoring facility alongwith interest @ 18% p.a. w.e.f. 1 April 2011. The Arbitral Tribunal has further directed Petitioner and Respondent No.2 to jointly and severally pay to Respondent No.1 amount of Rs.15,29,35,047.19/- towards reverse factoring facility alongwith interest @ 18% p.a. w.e.f. 1 April 2011. Petitioner and Respondent No.2 are further ordered and directed to specifically perform the obligations in sanction letter dated 21 June 2007. The Arbitral Tribunal has also awarded costs of arbitration in favour of Respondent No.1.

FACTS

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2) Petitioner was a Director and shareholder of Respondent No.2-Company- M/s. Rayalseema Commodities Ltd., which is currently under liquidation and which used to carry on business *inter alia* of export, purchase, sale, distribution, stocking, dealing with, and importing of flowers, agricultural products, rice, wheat, pulses, sugarcane, oil seeds, spices, alcohol, beverages, tea, coffee etc. The name of Respondent No.2-Company was formerly Sudarshan Overseas Limited. By Certificate of Incorporation consequent upon change of name dated 4 March 2010, Respondent No.2 is now known as M/s. Rayalseema Commodities Limited (**Rayalseema**).

3) Respondent No.1 was formerly known as Global Trade Finance Ltd which is a subsidiary of State Bank of India. On 15 January 2010, Global Trade Finance Ltd amalgamated with SBI Factors and Commercial Services Private Limited, and the resultant Company is known as SBI Global Factors Ltd. They are collectively referred to as **SBI Global**.

4) By letter of sanction dated 21 June 2007, SBI Global sanctioned to Rayalseema trade finance facilities upto the limit of Rs.15 crores subject to the condition of Petitioner alongwith Mr. Sudarshan Malhotra and Sunayana Malhotra, giving their personal guarantees. Petitioner as Director of Rayalseema was authorised to seek revision/enhancement of the trade finance facilities sanctioned vide letter dated 21 June 2007. Rayalseema executed Global Accounts Receivable Management Agreement (**GARMA**) and Import Factoring Agreement with SBI Global on 3 July 2007. Petitioner executed Deed of Guarantee dated 5 September 2007 in favour of SBI Global. At the request of Rayalseema, SBI Global realigned the credit facilities vide Letter of Sanction dated 13 September 2007 and factoring facility with the limit of Rs.20 crores. The credit facilities were realigned by sanction letter dated 22 November 2007 by enhancing maximum limit of factoring facilities to Rs.22 crores. There was further realigning of credit facilities by letter dated 25 February 2008 enhancing the limit of factoring facilities to Rs.25 crores. By further letter of sanction dated 29 May 2008, the limit of factoring facilities was enhanced to Rs.29 crores.

5) SBI Global claimed that as on 31 March 2011, an amount of Rs.28,16,51,442.87/- was due and payable under the domestic factoring facility. It was also claimed that as on 31 March 2011, further amount of Rs.15,29,35,047.19/- was due and payable under the reverse factoring facility. The total outstanding amount claimed was Rs.43,45,86,490.06/-. SBI Global filed Suit No. 1006 of 2009 in this Court seeking recovery of amount under the credit facilities *inter alia* against the Petitioner and Rayalseema. The Defendants in the Suit took out Notice of Motion for reference of disputes to arbitration. The Motion was opposed by SBI Global and this Court

dismissed the same by order dated 20 August 2009. The Defendants in the Suit filed Special Leave Petition before the Hon'ble Supreme Court, which passed consent order dated 18 January 2011 referring the disputes to arbitration. This is how the Arbitral Tribunal of Justice S. P. Kurdukar, Retired Judge of the Hon'ble Supreme Court was constituted to resolve the disputes amongst the parties.

6) SBI Global filed Statement of Claim claiming the amounts of Rs.28,16,51,442.87/- and Rs.15,29,35,047.19/- alongwith 18% interest from 1 April 2011, as well as sought specific performance of obligations set out in the Letter of Sanction dated 21 June 2007 and subsequent amendments thereto. The claim was resisted by Respondent No.2-Rayalseema by filing Statement of Defence. Rayalseema also filed counterclaim. Petitioner also resisted the claim filed by SBI Global by filing its Written Statement *inter alia* claiming discharge from personal liability/guarantee on account of resignation as Director. Petitioner also raised alternate defence of absence of liability in respect of enhancement of credit facilities, claiming that he had never stood as a guarantor in respect of the enhanced credit limits.

7) Petitioner filed application for amendment of Written Statement to incorporate the pleading of forgery in respect of various documents relied upon by SBI Global. Petitioner's application was rejected by order dated 25 April 2018. Petitioner thereafter filed application dated 27 July 2018 for sending Deed of Guarantee to Government-recognised forensic laboratory and according to the Petitioner, the same was not decided by the learned Arbitrator. Petitioner secured report of Truth Labs Forensic Services dated 1 October 2019 suggesting that signatures of

Petitioner on Deed of Guarantee was forged. Petitioner accordingly filed application under Section 151 of the Civil Procedure Code, 1908 on 3 October 2019 for taking on record the report of Truth Labs Forensic Services. According to the Petitioner, even this application was not decided. Between 5 October 2019 to 26 November 2019, oral arguments were advanced. Thereafter, hearing of the arbitral proceedings could not be conducted on account of COVID-19 pandemic. Petitioner filed Application dated 30 April 2022 for rehearing the oral submissions on account of passage of more than 31 months of advancement of oral submissions. On 2 May 2022, the learned Arbitrator took up the matter for hearing the arguments in rejoinder of SBI Global, and parties were directed to file their written submissions. On 3 October 2002 and 10 October 2022, Petitioner and SBI Global filed their respective written submissions. On 22 September 2023, Petitioner filed application under Section 16(3) and 16(4) of the Arbitration Act seeking termination of arbitral proceedings. According to the Petitioner, the said application was not decided. On 9 January 2024, Petitioner filed application under Section 27 of the Arbitration Act for production of original Deed of Guarantee before the learned Arbitrator. On 9 January 2024, Petitioner filed application for sending the Deed of Guarantee for forensic examination, to take on record report of handwriting expert, and for decision of Section 27 application before making of Award. On 9 January 2024, Petitioner filed one more application seeking rehearing of oral submissions. On 12 January 2024, arguments on application under Sections 16(3) and 16(4) of the Arbitration Act were heard and the matter was adjourned for declaration of Award. On 4 April 2024, the Arbitral Tribunal made the Award allowing the claims of SBI Global. The learned Arbitrator has directed Petitioner and Rayalseema to jointly and severally pay

to SBI Global amount of Rs.28,16,51,442.87/- in respect of the domestic factoring facility alongwith interest @ 18% p.a. The learned Arbitrator has further directed Petitioner and Rayalseema to pay to SBI Global further amount of Rs.15,29,35,047.19/- towards reverse factoring facilities alongwith interest @ 18% p.a. from 1 April 2011. Petitioner and Rayalseema are directed to specifically perform the obligations under sanction letter dated 21 June 2007. Petitioner and Rayalseema are also directed to pay to SBI Global costs of arbitration of Rs.30,51,355/-.

8) Aggrieved by the Award dated 4 April 2024, Petitioner has filed the present Petition under Section 34 of the Arbitration Act.

SUBMISSIONS

9) Mr. Jagtiani, the learned Senior Advocate appearing for the Petitioner has essentially raised four objections to the Arbitral Award which are (i) dispensing with the need for SBI Global to prove that there is any debt owing to it by the principal debtor or by the guarantor, (ii) inordinate and unexplained delay in passing the Award, (iii) casual and cavalier approach of the learned Arbitrator not inspiring confidence to a lay person who may be affected by such an Award, and (iv) non-decision of several Interim Applications filed by the Petitioner before disposing off arbitral proceedings by final Award.

10) So far as the first objection is concerned, Mr. Jagtiani would submit that it is an elementary proposition that for liability to be foisted on a guarantor, lender must first establish that there is a subsisting debt owing from the principal debtor. That the learned

Arbitrator has virtually absolved SBI Global from proving that there was any subsequent debt or liability in its favour from the principal debtor-Rayalseema. Inviting my attention to the findings recorded in para-15 of the Award, Mr. Jagtiani would submit that the finding that Rayalseema 'almost admitted the claim' indicates the cavalier manner in which the Arbitral Tribunal has dealt with the vital issue of burden of proof of SBI Global to prove existence of subsisting debt or liability of Rayalseema. That the expression 'almost admitted' actually means no admission. That the Arbitral Tribunal has not conducted any enquiry by discussing evidence on record for holding that there exists any subsisting debt or liability by Rayalseema towards SBI Global. That the finding of 'almost admission of claim' by Rayalseema is factually incorrect as both Rayalseema as well as Petitioner specifically denied any such liability.

11) Mr. Jagtiani would press the second ground of inordinate and unexplained delay in passing the Award by contending that oral arguments by parties were concluded on 26 November 2019 and no Award was made until onset of Covid-19 in March 2020. Even if it is considered that the learned Arbitrator was not justified in passing the Award for duration of Covid-19 pandemic until 28 February 2022, directions were given by the learned Arbitrator on 30 June 2022 to file written submissions, which parties did by 1 October 2022. However, since no Award was made, written application was made by the Petitioner on 30 March 2022 for rehearing of arguments. The application went unheeded, and the impugned Award has been passed after a period of 18 months from filing of written submissions. He would submit that Petitioner had relied upon judgment of the Apex Court in Anil Rai v. State of Bihar¹ in

¹ (2001) 7 SCC 318

support of the contention of vitiation of judgment on account of inordinate delay. That the learned Arbitrator, without discussing the relevance of the judgment, has simply brushed aside the same holding that the same arose in context of criminal proceedings. That this constitutes perverse understanding of law by the Arbitral Tribunal, making out a fit ground for setting aside the impugned Award. He would rely upon judgment of the Apex Court in *M/s. Lancor Holdings Limited vs. Prem Kumar Menon and Ors.*² in support of his contention of setting aside the Arbitral Award on account of inordinate delay in pronouncing the Award. In support of the same contention, he also relied upon judgment of the Madras High Court in *Unique Builders vs. Union of India*³ and of Delhi High Court in *Department of Transport Versus. Star Bus Services Pvt. Ltd.*⁴ Mr. Jagtiani relies on following judgments in support of his contention of Arbitral Award being vitiated on account of inordinate delay:

- (i) *Harji Engg. Works Pvt. Ltd. vs. Bharat Heavy Electricals Ltd. & Anr.*⁵,
- (ii) *Union of India vs. Niko Resources Ltd. & Anr.*⁶,
- (iii) *BWL Ltd. vs. Union of India & Anr.*⁷,
- (iv) *Gian Gupta vs. MMTC Ltd.*⁸,
- (v) *Ashok Investors Trust Ltd. vs. Cheerful Trade & Realty Developers Pvt. Ltd.*⁹,
- (vi) *HR Builders vs. Delhi Agricultural Marketing Board*¹⁰
- (vii) *GL Litmus Events Pvt. Ltd. Vs Delhi Development Authority*¹¹

2 2025 SCC OnLine SC 2319

3 2025 SCC Online Mad 239

4 2023 SCC Online Delhi 2890

5 ILR (2009) II Delhi 286

6 2012 SCC OnLine Del 3328

7 2012 SCC OnLine Del 5873

8 2020 SCC OnLine Del 107

9 2025 SCC OnLine Bom 527

10 2024:DHC:8400

11 2025:DHC:7609

12) Mr. Jagtiani would then press three grounds of casual and cavalier manner in which the Arbitral Tribunal has rendered its findings. That specific arguments were advanced to suggest that where there is change in terms of guarantee without the consent of the guarantor, the principle of novation of contract applies. However, the learned Arbitrator has brushed aside the argument without discussing the same. That case laws relied upon by the Petitioner in support of contention of novation of contract are also brushed aside without even bothering to discuss the same.

13) Lastly, Mr. Jagtiani would submit that several vital interim applications filed by the Petitioner before the learned Arbitrator have remained to be decided. That some of the applications are sought to be disposed of in the final Award which ought to have been decided before making of the Award. That the Petitioner is not even granted opportunity of hearing in the said applications thereby violating the principles of natural justice. On above broad submissions, Mr. Jagtiani would pray for setting aside the impugned Award.

14) The Petition is opposed by Mr. Balsara, the learned counsel appearing for Respondent No.1. He would submit that none of the contentions sought to be agitated on behalf of the Petitioner would constitute a valid ground for setting aside the Arbitral Award enumerated under Section 34 of the Arbitration Act for invalidating the Arbitral Award. That the debt was clearly proved and guarantor's liability is co-extensive and immediate. That the quantum of debt was never disputed by any of the parties. That SBI Global produced sanction letters, GARMA agreement, import

factoring agreements, ledger extracts, invoices financed, and outstanding receivable statements which constitute primary evidence, which was never rebutted by the Petitioner. None of the supportive documents were disputed in the Statement of Defence filed by the Petitioner. That the principal debtor did not dispute the debt in any manner whatsoever. That guarantor's liability being co-extensive with the principal debtor, absence of any dispute created by the principal borrower in respect of the debt would clearly bind the Petitioner. That Petitioner's own conduct and correspondence during increase in the credit facilities constitutes deemed acknowledgment.

15) Mr. Balsara would further submit that the ground of delay in pronouncing the Award sought to be raised by the Petitioner is clearly misplaced and that the same cannot constitute a ground for setting aside the Award. That mere cause of delay in pronouncement of the Award is not sufficient and it must be demonstrated that the delay materially affected integrity or executability of the Award as held by the Apex Court in ***Lancor Holdings*** (supra). That in the present case, the Petitioner himself has caused the delay as he went on filing several applications thereby causing the delay in the arbitral proceedings. That the Petitioner suffered no prejudice on account of the so-called delay. That parties submitted written submissions afresh in the year 2022, thereby removing the risk of arguments being forgotten. That the Petitioner cannot be permitted to take benefit of his own wrong.

16) Mr. Balsara would further submit that the learned Arbitrator has recorded adequate reasons while making the impugned Award. Adequacy of reasons is not for the Court to second

guess unless the Award is untenable. That the Award needs to be read as a whole and not hyper-technically, as held in *Associate Builders vs. Delhi Development Authority*¹². That the learned Arbitrator has rejected Petitioner's argument of novation/variation. Relying on *Punjab National Bank Ltd. vs. Shri Vikram Cotton Mills and Anr.*¹³, he would submit that continuing guarantee survives contractual variations where the guarantor has agreed in advance.

17) Lastly, Mr. Balsara would submit that there is no perversity in any of the findings recorded by the Arbitral Tribunal. That the Award is made after affording opportunity of hearing to the Petitioner. That the learned Arbitrator has acted in his discretion. That therefore no case is made out for interference by applying the tests laid down in *Ssangyong Engineering and Construction Company Limited vs. National Highways Authority of India (NHAI)*¹⁴. That the learned Arbitrator has implicitly rejected Petitioner's Interim Applications. That once the guarantee is held to be valid, all related applications relating to authenticity thereof is deemed to have been rejected. Relying upon judgment in *Oil and Natural Gas Corporation Limited (ONGC) vs. Western Geco Internattional Limited*¹⁵, he would submit that the Petitioner had abundant opportunities of hearing. That the allegation of forgery is an afterthought since the guarantee was admitted in the Statement of Defence, in preliminary reply and affidavit of evidence. That the Petitioner acted on the guarantee for years and cannot be permitted to rely on report of private lab secured by way of an afterthought.

12 (2003) 3 SCC 49

13 (1970) 1 SCC 60

14 (2019) 15 SCC 131

15 (2014) 9 SCC 263

On above broad submissions, Mr. Balsara would pray for dismissal of the Arbitration Petition.

REASONS AND ANALYSIS

18) Petitioner was a director of Second Respondent-Company-Rayalseema and is shown to have been a guarantor to the credit facilities availed by Rayalseema initially upto the limit of Rs.15 crores, which was gradually enhanced from time to time. On account of Rayalseema's failure to repay the outstanding loan amounts, SBI Global initially filed a suit in this Court, which was driven to arbitration by Petitioner Rayalseema by filing application under Section 8 of the Arbitration Act. Despite this Court rejecting the application, Petitioner and Rayalseema approached the Apex Court and secured an order for resolution of disputes through private arbitration.

19) The Arbitral Tribunal has passed following operative directions in the Award dated 4 April 2024 :

1. The Arbitration Petition filed by the Claimant (SBI Global Factors Ltd. vs. Rayalseema Commodities Limited & Anr.) is allowed with costs.

2. (i) Respondent No.1 and Respondent No.2 are jointly and severally held liable and directed to pay to the Claimant an amount of Rs.28,16,51,442.87 in respect of domestic factoring facility along with interest at the rate of 18% per annum from 1st April 2011 till payment and recovery.

(ii). Respondent No.1 and Respondent No.2 are jointly and severally held liable and directed to pay to the Claimant an amount of Rs.15,29,35,047.19 with interest at the rate of 18% per annum towards the reverse factoring facility along with interest from 1st April 2011 till payment and recovery.

(iii) Respondent No.1 and Respondent No.2 are ordered and directed to specifically perform the obligations as set out in the letter of sanction dated 21st June 2007 and subsequent amendments thereto.

(iv) Respondent No.1 and Respondent No.2 are jointly and severally ordered and directed to pay, as per bill of costs submitted by the claimant, a sum of Rs.30,51,355/- (Rupee thirty lakhs fifty one thousand three hundred fifty five only) to the Claimant towards the costs incurred by the claimants in prosecuting the present litigation from the date of first meeting dated 22-03-2011 till payments. In default, Respondent No.1 and Respondent No.2 are jointly and severally ordered and directed to pay interest thereon at the rate of 15% per annum within one month till payment and recovery, in default 18% per annum thereon till the payment.

20) As observed above, the Petitioner has raised only four objections to the Arbitral Award viz. (i) failure by SBI Global to prove existence of debt owing to it by Rayalseema or by Petitioner, (ii) inordinate and unexplained delay in passing the Award, (iii) casual and cavalier approach of the Tribunal in deciding the objection of novation/variation of loan agreement discharging the Petitioner from the contract of guarantee, and (iv) non-decision of several Interim Applications filed by the Petitioner before disposing off arbitral proceedings by final Award.

OBJECTION OF DISPENSING WITH THE REQUIREMENT TO PROVE EXISTENCE OF DEBT OF RAYALSEEMA OR PETITIONER

21) The first ground raised by the Petitioner for challenging the Arbitral Award is dispensing with the need to prove existence of debt owing to SBI Global by Rayalseema and the Petitioner. This ground is essentially raised on account of finding recorded by the Arbitral Tribunal in para-15 of the Arbitral Award observing that

Rayalseema had 'almost admitted' the claim. In para-15 of the Arbitral Award, it has held thus :

15. Respondent No.1 in its Statement of Defence (for short "SOD") has almost admitted the claim, including the execution of letter of guarantee dated 5th September 2007 (Exhibit C-69, page 72, Vol.-IV) by Respondent No.2. It admitted the liability to pay the amount to the Claimant as claimed in the Statement of Claim.

22) It is contended by the Petitioner that the burden of proving existence of liability to pay debt was on SBI Global and instead of recording the findings about discharge of such burden by SBI Global on the basis of material available on record, the Arbitral Tribunal has, in a casual and cavalier manner, held that Rayalseema had 'almost admitted' the claim. Thus, much capital is sought to be made by the Petitioner on account of use of the words 'almost admitted' in para-15 of the Arbitral Award.

23) In my view, the above contentions raised by the Petitioner arise out of skewed and myopic reading of the Arbitral Award. After setting out the facts, the Arbitral Tribunal has discussed the pleadings of the Petitioner and Rayalseema in paras-15 to 17 of the Award. In para-15 of the Award, the Arbitral Tribunal has discussed the contents of the Statement of Defence filed by Rayalseema. It appears that the Arbitral Tribunal has perused the contents of the Statement of Defence of Rayalseema and has arrived at a finding that claim of SBI Global, as well as, execution of Deed of Guarantee dated 5 September 2007 by the Petitioner is admitted by Rayalseema. The Tribunal further contended that Rayalseema also admitted the liability to pay the amount to SBI Global. I have gone through the Statement of Defence filed by Rayalseema. Apart from raising few technical objections,

Rayalseema has not asserted in its reply that it never availed any credit facilities from SBI Global. In fact, in para-8 of the Statement of Defence, Rayalseema admitted sanction of credit facilities vide letter dated 21 June 2007. Rayalseema further admitted sanctioning of guarantee dated 5 September 2007 by Petitioner in paras-12 to 14 of the Statement of Claim. I therefore do not find any perversity in the findings recorded by the Arbitral Tribunal about the claim being almost admitted by Rayalseema in the Statement of Defence. The admission by Rayalseema is possibly qualified by the learned Arbitrator by use of the words 'almost' on account of the fact that some disputes are raised by Rayalseema in the Statement of Defence. However, it cannot be contended that the phrase 'almost admitted' would mean exactly reverse eventuality as sought to be suggested by Mr. Jagtiani. The findings in the Award need to be read as a whole and a party cannot be permitted to pluck out a word in the Award for the purpose of suggesting perversity in the overall findings in the Award. On a true and meaningful reading of the Statement of Defence filed by Rayalseema, there can be no doubt to the position that three aspects viz. (i) sanction of credit facilities, (ii) execution of guarantee by the Petitioner, and (iii) liability to repay the credit facilities are all admitted by Rayalseema. The first ground of challenge raised by the Petitioner is thus completely baseless and is raised only for being rejected.

OBJECTION OF DELAY IN MAKING THE AWARD

24) The second ground of challenge raised by the Petitioner is about inordinate and unexplained delay in passing the Award. This is the main ground on which the Award is sought to be invalidated. While narrating the facts of the case, chronology of

events leading to passing of the Award is already indicated. The arbitral proceedings commenced after passing of order dated 18 January 2011 by the Supreme Court, when SBI Global filed its Statement of Claim on 18 April 2011. After completion of pleadings by the parties, issues were framed by the Arbitral Tribunal by order dated 6 December 2014. Thereafter, parties led their respective evidence which was completed by June 2017. Thereafter, counsels appearing for parties canvassed oral submissions on 3 October 2019, 4 October 2019, 5 October 2019, 25 November 2019 and 26 November 2019. It appears that rejoinder and surrejoinder arguments were scheduled to be conducted on 7 February 2020 and 8 February 2020. However, the said meetings were cancelled due to Covid-19 pandemic. On 22 October 2021 and 23 October 2021, though hearings were scheduled through video conference, the same could not be concluded due to technical glitches. On 2 May 2022, rejoinder submissions were concluded by SBI Global through video conferencing and parties were directed to file their written submissions. The written submissions were accordingly filed by SBI Global on 3 August 2022 and by Petitioner on 1 October 2022. On 9 January 2024, Petitioner filed three separate applications: i) under Section 27 of the Arbitration Act for approval to approach the Court to take assistance for the purpose of evidence, (ii) for directions to adjudicate applications before adjudicating the claims of SBI Global, and (iii) for rehearing or oral arguments. At this belated stage, Petitioner moved application under Section 16(3) and 16(4) of the Arbitration Act and the Tribunal was required to spend time in deciding the said application. Though the said application was scheduled to be heard on 4 December 2023, Petitioner's counsel sought adjournment. The application was ultimately heard on 12 January 2024.

25) It is in the above background that the Arbitral Award is pronounced on 4 April 2024. Considering the above position, it cannot be concluded that there is any inordinate delay in pronouncing the Award by the Arbitral Tribunal. Delay if any in pronouncing the Award, is also attributable to the Petitioner himself who kept on filing series of applications before the Arbitral Tribunal. This is discussed in some details in the latter part of the judgment.

26) After insertion of Section 29A in the Arbitration Act, the issue of vitiation of award by reason of delay in making the same is not too difficult to resolve. However, the present case deals with commencement of arbitral proceedings before incorporation of Section 29A by the 2015 Amendment Act. In *Lancor Holdings* (supra) relied upon by the Petitioner, the Apex Court has discussed the principles of delay in making the award and the effect of such delay has on the validity of the award in respect of arbitral proceedings prior to the 2015 amendments. The issue for consideration is captured in Para 1 and 2 of the judgment as under:

Two questions arise for consideration in these appeals:—

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

2. The issue of delay in the delivery of an arbitral award is relevant now only in the context of the **period prior to insertion of Section 29A in the Arbitration and Conciliation Act, 1996** (for short, 'the Act of 1996'), which put in place stringent timelines for passing of an arbitral award. During that earlier era, the question as to whether long delay in the passing of the award would impact its validity, to the extent of that award being set aside on that ground under Section 34 of the Act of 1996, was considered by different High Courts.

(emphasis added)

27) It is held by the Apex Court in *Lancor Holdings* that Section 34 of the Arbitration Act does not postulate delay in delivery of Arbitral Award as a ground in itself to set aside the Award. However, the Apex Court, at the same time, has highlighted the position that inordinate delay in pronouncement of the Award has several deleterious effects. The Apex Court held in para 19 and 20 as under:

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

20. That being said, we must also recognize that, in the usual course, long delay in the passing of arbitral awards is not the norm. However, when an instance of undue delay in the delivery of an arbitral award occasionally crops up, given the weighty preponderance of judicial thought on the issue with which we are in respectful agreement, we are of the considered opinion that each case would have to be examined on its own individual facts to ascertain whether the delay was of such import and impact on the final decision of the arbitral tribunal, whereby that award would stand vitiated due to the lapses committed by the arbitral tribunal owing to such delay. We are also conscious of the fact that there must be a balance between the pace of the arbitration, culminating in an arbitral award, and the satisfactory meaningful content thereof. In this regard, in his seminal article, titled 'Arbitrators and Accuracy' (Journal of International Dispute Settlement (February, 2010)), Professor William W Park says thus:

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

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

28) Thus, while observing that the delay in delivery of Arbitral Award can be a ground for setting aside the same, the Apex court has added a caveat that the recourse to setting aside the Award on the ground of patent delay must be taken only in cases where the negative effect of delay in delivering of Arbitral Award is explicit and adversely reflects in the findings of the Award. Also, the

delay needs to be unexplained. The Apex Court has thus balanced the concept of pace of Arbitration with satisfactory and meaningful content thereof. In para 63 of the judgment the Apex Court has concluded as under :

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

(i) What is the effect of undue and unexplained delay in the pronouncement of an arbitral award upon its validity? - Delay in the delivery of an arbitral award, by itself, is not sufficient to set aside that award. However, each such case would have to be examined on its own individual facts to ascertain whether that delay had an adverse impact on the final decision of the arbitral tribunal, whereby that award would stand vitiated due to the lapses committed by the arbitral tribunal owing to such delay. It is only when the effect of the undue delay in the delivery of an arbitral award is explicit and adversely reflects on the findings therein, such delay and, more so, if it remains unexplained, can be construed to result in the award being in conflict with the public policy of India, thereby attracting Section 34(2)(b)(ii) of the Act of 1996 or Section 34(2A) thereof, as it may also be vitiated by patent illegality. Further, it would not be necessary for an aggrieved party to invoke the remedy under Section 14(2) of the Act of 1996 as a condition precedent to lay a challenge to that delayed and tainted award under Section 34 thereof.

(ii) Is an arbitral award that is unworkable, in terms of not settling the disputes between the parties finally but altering their positions irrevocably thereby leaving them no choice but to initiate further litigation, liable to be set aside on grounds of perversity, patent illegality and being opposed to the public policy of India? If so, would it be a fit case for exercise of jurisdiction under Article 142 of the Constitution? - The very basis and public policy underlying the process of arbitration is that it is less time-consuming and results in speedier resolution of disputes between the parties. If that premise is not fulfilled by an unworkable arbitral award that does not resolve the disputes between the parties, on one hand, leaving them with no choice but to initiate a fresh round of arbitration/litigation but the arbitrator, in the meanwhile, also changed their positions, irrevocably altering the pre-existing balance between the parties prior to the arbitration,

then such an arbitral award would not only be in conflict with the public policy of India but would also be patently illegal on the face of it. It would therefore be liable to be set aside under Section 34(2)(b)(ii) and/or Section 34(2A) of the Arbitration and Conciliation Act, 1996. Further, if the necessary conditions for exercise of power by this Court under Article 142 of the Constitution of India are made out, in terms of the Constitution Bench decision in *Gayatri Balasamy vs. ISG Novasoft Technologies Limited* (supra), this Court would be justified in exercising such jurisdiction.

29) Thus, in every case, mere delay in delivery of Award by itself cannot be a sufficient ground for setting aside the Award. In the present case, the Petitioner has not demonstrated as to how the effect of the alleged delay in delivery of Arbitral Award adversely reflects on the findings therein. The case does not involve failure to decide any contention raised by any party. The Arbitral Tribunal has conducted factual inquiry into existence of debt in favour of SBI Global Factors Ltd., existence of valid bank guarantee covering the entire debt and liability of the Petitioner to repay the same. The delay is also not unexplained as Petitioner has contributed to such delay by filing several Interim Applications before the Arbitral Tribunal. In my view therefore, this is not a fit case for setting aside the Arbitral Award only on the ground of delay.

30) It is also seen that the ground of delay is raised by the Petitioner for somehow escaping or delaying the liability to pay the outstanding loan amounts. Out of the four grounds urged before me, only two relate to correctness of findings recorded by the Arbitral Tribunal on merits. These two relate to failure to prove existence of debt and extension of credit limits to Rayalaseema amounting to novation/variation of contract of guarantee. The other two grounds do not relate to merits of the findings recorded by the Arbitral

Tribunal, but relate to the allegation of delay in delivery of Award and failure to decide pending Interim Applications. So far as the two grounds relating to correctness of findings on merits are concerned, I am satisfied with the manner in which the enquiry is conducted by the Arbitral Tribunal and also concur with the conclusions reached by it on the issue of subsistence of debt payable by Rayalseema to SBI Global as well as Petitioner's liability arising out of guarantee for repayment of outstanding amounts under credit facilities disbursed to Rayalseema. In the next part of the judgment, I have discussed the correctness of the findings recorded by the Arbitral Tribunal on the issue of novation/variation of the contract.

31) Thus, even if it is momentarily accepted that there is some delay on the part of the learned Arbitrator in making of Award, the delay *ipso facto* has not adversely reflected on the findings in the Award. There is also some explanation to the delay. In that view of the matter, the objection of inordinate delay in delivery of the Award is liable to be rejected. After having discussed the ratio of the judgment of the Apex Court in **Lancor Holdings** (supra), it is not necessary to separately discuss the ratio of the judgment of the Delhi High Court in **Harji Engg. Works Pvt. Ltd.** (supra). Similarly, the judgments of various High Courts relied on by Petitioner deal with the issue of delay in delivery of arbitral award in facts of each case. Some of them relate to arbitral proceedings post insertion of Section 29A in the Arbitration Act. It is therefore not necessary to discuss the ratio of judgments of High Courts in **Department of Transport, GNCTD** , **Unique Builders** , **Union of India vs. Niko Resources Ltd.** , **BWL Ltd.** , **Gian Gupta, Ashok Investors Trust Ltd.** , **HR Builders**, and **GL Litmus Events** (supra).

32) The Petitioner has also relied upon the judgment of the Apex Court in the case of *Anil Rai Vs. State of Bihar* (supra) and it is his complaint that the arbitral tribunal has erroneously brushed aside the judgment holding that the same applies in criminal cases. The judgment in *Anil Rai* highlights the problem of delay in pronouncing the judgment in criminal appeals by the High Courts. The Apex Court has directed implementation of the remedial measures to tackle the problem of delay in pronouncing the judgments. Some of the remedial measures are as under:

(iv) Where a judgment is not pronounced within three months from the date of reserving judgment, any of the parties in the case is permitted to file an application in the High Court with a prayer for early judgment. Such application, as and when filed, shall be listed before the Bench concerned within two days excluding the intervening holidays.

(v) If the judgment, for any reason, is not pronounced within a period of six months, any of the parties of the said lis shall be entitled to move an application before the Chief Justice of the High Court with a prayer to withdraw the said case and to make it over to any other Bench for fresh arguments. It is open to the Chief Justice to grant the said prayer or to pass any other order as he deems fit in the circumstances.

33) The mechanism of assigning the proceedings to another arbitrator is not provided for in the Arbitration Act and therefore the principles in *Anil Rai* for rehearing of case by another Bench in the event of failure to pronounce the judgment in 6 months, cannot be implemented in arbitral proceedings. However in appropriate case, the parties have the remedy of seeking substitution of arbitrator by filing application under Section 14(2) read with Section 11 of the Arbitration Act if there is inordinate delay in pronouncing the award. In the present case, Petitioner did exercise the remedy of filing application under Section 14 seeking

termination of mandate of the Arbitrator. He filed Commercial Arbitration Petition (L) No.2174 of 2022 in this Court under Section 14(1)(a) read with Section 14(2) of the Arbitration Act seeking termination of mandate of the Arbitral Tribunal. The Petition was rejected by passing order dated 15 September 2023, which is referred to in the latter part of the judgment. Thus few days before pronouncement of the award on 4 March 2024, the Petitioner was before this Court urging termination of mandate of the arbitral tribunal. He either complained to this Court about delay or he consciously gave up that ground. He concentrated on the issue of termination of mandate due to discovery of alleged ground of forgery. In my view, Petitioner's reliance on judgment of the Apex Court in *Anil Rai* does not assist his case.

NON-RECORDING OF REASONS AND CASUAL APPROACH IN REJECTING THE OBJECTION OF NOVATION/VARIATION OF CONTRACT

34) The third ground argued before me is about alleged casual and cavalier approach of the learned Arbitrator in recording findings in the impugned Award. It is alleged that the objection of enhancement in credit facilities amounting to novation/variation of contract is casually brushed aside by the Arbitral Tribunal. Petitioner has particularly highlighted paragraph 25 of the Award in which following findings are recorded:

25. It is urged on behalf of Respondent No.2 that the original sanction letter dated 21st June 2007, for which Respondent No.2 has given letter of guarantee dated 5th September 2007 (Exhibit-69), has totally undergone a change and, therefore, Respondent No.2 is not liable to pay any amount / dues of Respondent No.1 to the Claimant. This contention has also no substance because all applications requesting for further funds were signed by Respondent No.2. The judgments cited on this point on behalf of Respondent No.2 are clearly distinguishable and the same are not applicable to the present case.

35) Mr. Jagtiani would particularly highlight the last sentence in paragraph 25 of the Arbitral Award in which judgments cited by the Petitioner on the issue of novation/variation of contract are held to be distinguishable without even naming the judgments and discussing ratio thereof. This again is a myopic and skewed reading of findings of the Arbitral Tribunal on the part of the Petitioner. The Arbitral Tribunal has noted Petitioner's objection of guarantee being restricted to originally sanctioned limit of Rs.15 crore and on applicability thereof to the additional credit facilities sanctioned by SBI Global. In paragraph 24 of the Award, the Arbitral Tribunal has noted the objection of material change in the credit facilities without consent of the Petitioner and therefore the guarantee dated 5 September 2007 being rendered unenforceable. The objection is however repelled by the learned Arbitrator by holding in paragraph 24 of the Award as under:

24. It is then urged by Mr. Rahul Malhotra, learned Advocate for Respondent No.2, that it had signed only one guarantee letter dated 5th September 2007 (Exhibit-69), which was for Rs.15,00,00,000/- (Rupee Fifteen Crores) for this facility dated 21st June 2007, which came to be amended by the Claimant and Respondent No.1 from time to time by increasing funds / monies lent and advanced by way of loan without any consent or intimation to Respondent No.2. Therefore, the facility dated 21st June 2007 has undergone material changes without the consent of Respondent No.2. Therefore, the facility dated 21 June 2007 has undergone material changes without the consent of Respondent No.2 and hence, the same is illegal and not binding upon him. Consequently his guarantee letter dated 5th September 2007 (Exhibit-69) is unenforceable against him. This submission has again no substance. Respondent No.1 from time to time took monies / advance on loan by making various applications to the Claimant and these applications were granted. It may be noted that Respondent No.2 was the Director of Respondent No.1, who was given all the powers by Respondent No.1 under the resolution passed by the Company to deal with the business and ask for more funds from the Claimant. Therefore, Respondent No.2 is liable for the non-payment of the monies taken on loan from the Claimant. It may be noted that all these applications for enhancement of loans / factoring facilities were signed by Respondent No.2. The letter of guarantee dated 5th September 2007

(Exhibit-69) deals with the factual position. This submission is without any merits.

36) Thus, the Arbitral Tribunal has held that Petitioner was the Director of Rayalseema, who was given all powers by the Board under the resolution to deal with the business and to procure more funds from SBI Global. The Arbitral Tribunal has recorded finding of fact that all applications for enhancement of loans/factor in facilities were signed by the Petitioner. No attempt is made before me to demonstrate any perversity in the said finding of fact. Therefore, once it is proved that Petitioner in his capacity as a Director of Rayalseema has signed applications for enhancement of credit limits, he cannot be permitted to raise the objection of material change in the terms of guarantee. This essentially means that Petitioner in his capacity as a Director, has actively participated in procuring sanctions for additional funds from SBI Global. Therefore, Petitioner cannot seek to escape liability arising out of guarantee by taking a specious plea of material change in the terms of letter of guarantee without his consent.

37) I have also gone through the Letter of Guarantee dated 5 September 2007, which contains following clauses:

In consideration of the above, I have at the request of the Client agreed to give a proper unconditional and irrevocable Guarantee in favour of your Company thereby guaranteeing payment of the entire Outstanding Amount (i.e. the amount initially sanctioned as well as increased limit) under the Facility and under every Agreement(s) executed by the Borrower with you/in your favour.

NOW, THEREFORE in consideration of your Company at the request of "the Client" and myself Sanjeev Malhotra residing at House No-7, Asola Village Mehrauli, New Delhi (hereinafter referred to as "I" or "the Guarantor") sanctioning Trade Finance Facility to the Client, do hereby for myself and my heirs, executors and administrators, absolutely, irrevocably and unconditionally guarantee (as primary

obligor and not merely as surety) that in the event of the Client failing or neglecting or refusing for any reason whatsoever to pay to your Company the amount remaining unpaid under the Facility including any additional limits granted under the Facility or under any Agreement(s) executed/to be executed by the Client with you/in your favour including all amendments/addendums thereto pursuant to the Facility ("Outstanding Amount"), I shall pay to your company forthwith upon demand on me by your Company without any reference whatsoever to the Client, the Outstanding Amount under the Facility/ under every Agreement(s) executed by the Borrower with you/in your favour pursuant to the Facility together with all interest due thereon and all costs, charges and expenses whatsoever which your Company might suffer in or be put to or become liable by any reason of any default on the part of the Client in payment thereof. Such demand on me by your Company would be final and conclusive of the failure, neglect or refusal by or on the part of the Client to pay to your Company the amount under the Facility/Agreement(s) and/or the Client committing a default breach under the Agreement(s).

....

I expressly agree that my liability and obligation under this Guarantee shall be continuing, absolute, unconditional and irrevocable irrespective of any disputes or differences of whatsoever nature between the Client and your Company. I expressly agree that my liability and obligation under this Guarantee shall be continuing and binding until the Borrower is fully discharged from all liabilities by your Company.

....

I am aware that in the event of the Client committing a default under any one of the accounts in the Facility and/or under any of the Facility Agreement, all the amounts due and outstanding under all the other accounts and the other agreements executed under the Facility shall become immediately due and payable. I hereby expressly agree that this Guarantee and my liability and obligation under this Guarantee shall be continuing and shall extend to or cover any and all the sums of money due and payable by the Client to your Company in respect of all the accounts under the Facility and shall remain valid and binding on me till the Client is fully and completely discharged under the Agreement(s).

....

I the Guarantor expressly irrevocably and unconditionally agree that your Company shall be entitled to enforce this Guarantee without making any demand on or taking any proceedings against

the Client for all the amounts due and payable by the Client to your Company under and in relation to the Agreement.

38) Thus the guarantee was not restricted to any particular amount and covered “*the entire outstanding amount (i.e. the amounts initially sanctioned as well as increased limit) under the facility*”. The objection of novation/variation of contract of guarantee due to enhancement in the limit of credit facilities was thus baseless and has rightly been rejected by the Arbitral Tribunal. There are reasons recorded in the Arbitral Award and it cannot be contended that the objection is brushed aside in a casual manner. It is another thing that the objection was so absurd that the same actually deserved to be casually brushed aside.

39) It is a well settled position that inadequacy or insufficiency of reasons in the Arbitral Award cannot be a ground for setting aside the same. An Award would become susceptible to challenge as being unintelligible when the Arbitral Tribunal fails to record any reasons for arriving at a particular conclusion. On the other hand, the Arbitral Tribunal may record some reasons, which may appear to be insufficient or inadequate or inelaborate to the losing party. While deciding a particular issue, the Arbitral Tribunal may not express itself by recording very detailed and elaborate reasons, but may set forth some reasons to support the conclusion. So long as the Court agrees with the ultimate conclusion recorded by the Arbitral Tribunal, the Court cannot set aside the Award on technicality of absence of elaborate or extensive reasons, which the Court may expect the Arbitral Tribunal to record. The test is, on meaningful reading of the entire Award, whether the Court can extract what the Arbitral Tribunal wants to hold and why it has held so. The test is not to match the expectation of the Section 34 Court

about the level of elaborateness of reasons. Given that the Court needs to show significant deference to the arbitral awards and must grant broad latitude to the factual findings recorded therein, all that needs to be seen is whether the reasons are discernible from the award. Reasons in the award need not be elaborate always, they can also be compendious. So long as the recorded reasons pass the muster of conveying to the Court what is meant to be said and why it is said, interference in the Award on the objection of lack of reasons would be avoided. Arbitral Tribunal is not a Court which is expected to record very detailed or elaborate reasons in support of each of the finding. The Arbitral Tribunal can be accused of passing non-speaking Award only if the Award contains no reasons at all. However, where some reasons can be discerned supporting the ultimate conclusion reached, with which Section 34 Court ultimately concurs, there is no room for setting aside the award. Under Section 34 of the Arbitration Act, the Court ultimately does not sit as a court of appeal over the arbitral award.

40) The principles discussed above find support in the judgment of the Apex Court in *OPG Power Generation Private Limited vs. Enxio Power Cooling Solutions India Pvt. Ltd. and Another*¹⁶ in which it is held thus:

168. We have given due consideration to the above submission. In our view, a distinction would have to be drawn between an arbitral award where reasons are either lacking/unintelligible or perverse and an arbitral award where reasons are there but appear inadequate or insufficient. **In a case where reasons appear insufficient or inadequate, if, on a careful reading of the entire award, coupled with documents re-cited/relied therein, the underlying reason, factual or legal, that forms the basis of the award, is discernible/intelligible, and the same exhibits no perversity, the Court need not set aside the award while exercising**

16 (2025) 2 SCC 417

powers under Section 34 or Section 37 of the 1996 Act, rather it may explain the existence of that underlying reason while dealing with a challenge laid to the award. In doing so, the Court does not supplant the reasons of the Arbitral Tribunal but only explains it for a better and clearer understanding of the award.

(emphasis added)

41) The issue of adequacy of reasons has also been dealt with by the Apex Court in *Dyna Technologies Pvt. Ltd. vs. Crompton Greaves Limited*¹⁷, In which the Court has held in paragraph 35 as under:

35. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. **If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all.** Coming to the last aspect concerning the challenge on adequacy of reasons, **the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner.** On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards.

(emphasis added)

17 (2019) 20 SCC 1

42) In *Ravi Raghunath Khanjode and others vs. Harasiddh Corporation*¹⁸, I have followed the ratio of the judgment in *OPG Power Generation Private Limited* (supra) and it is held in paragraphs 46 and 47 as under:

46. It is also settled law that the Award need not be set aside on the ground of inadequacy of reasons so long as the ultimate conclusions reached by the Arbitral Tribunal are found to be correct. Reference in this regard can be made to the judgment of the Apex Court in *OPG Power Generation Private Limited v. Enxio Power Cooling Solutions India Private Limited* in which it is held in para-168 as under :—

xxx

47. Therefore even if the reasons recorded by the arbitral tribunal for repelling the objection of requirement to secure permission under Section 43 of BTAL Act or Section 36A of the MLRC are to be construed as inadequate or insufficient, I am of the view that the Award is not rendered bad on that ground alone. It is not that the learned Arbitrator has recorded absolutely no reasons. I am in agreement with the ultimate conclusion reached by the learned Arbitrator for the reasons indicated in the later part of the judgment. The objection of failure to record reasons is accordingly rejected.

43) In my view therefore, the Award cannot be annulled only because the Petitioner expects the Arbitral Tribunal to have recorded better reasons while rejecting the objection of variation/novation of contract.

OBJECTION OF NON-DECISION OF APPLICATIONS BY THE TRIBUNAL

44) The fourth and the last objection raised by the Petitioner to the impugned Arbitral Award is non-decision of various Interim

18 2025 SCC Online Bom 4505

Applications filed by Petitioner. Petitioner has given list of eight applications alongwith its note, which is as under:

List of applications filed by the Petitioner before the Ld. Arbitrator:

(i) Application dated 11th December 2017 to amend the Statement of Defence (Has been decided by Ld. Arbitrator vide order dated 25th April 2018)

(ii) Application dated 27th July 2018 to send the alleged DoG for forensic examination; (Has been dismissed simultaneously with the Arbitral Award without hearing the parties)

(iii) Application dated 3rd October 2019 to take on record report of the handwriting expert in respect of the alleged DoG; (Has been dismissed simultaneously with the Arbitral Award without hearing the parties)

(iv) Application dated 30th April 2022 for rehearing of oral arguments in the arbitration proceedings; (Has been dismissed simultaneously with the Arbitral Award without hearing the parties)

(v) Application dated 22nd September 2023 under section 16(3) and 16 (4) of the A&C Act for termination of arbitral proceedings; (Has been dismissed simultaneously with the Arbitral Award - Without assigning any reasons on merits)

(vi) Application dated 9th January 2024 under section 27 of the A&C Act for approval to approach the Hon'ble Court to take assistance for the purpose of evidence; (Not been adjudicated by Ld. Arbitrator and does not form mention in the Arbitral Award)

(vii) Application dated 9th January 2024 for directions to adjudicate the applications before adjudicating the claims of Respondent No. 1 finally; (Not been adjudicated by Ld. Arbitrator and does not form mention in the Arbitral Award)

(viii) Application dated 9th January 2024 for rehearing of oral arguments in the arbitration proceedings (Not been adjudicated by Ld. Arbitrator and does not form mention in the Arbitral Award)

45) Before dealing with each of the applications filed by the Petitioner, it must be observed that all of them were filed after Petitioner decided to change his stand. In his Statement-of-Defence, Petitioner had not disputed genuineness of deed of guarantee. His

main objection to the deed of guarantee was about enhancement in credit limits constituting discharge of liability arising out of guarantee. The fact that Petitioner raised objection of guarantee not covering enhanced credit limits contained implicit admission of having signed and executed the Letter of Guarantee. The Statement-of-Defence was filed by the Petitioner on 3 June 2011 and he stood by the defence so adopted even at the time of filing of evidence.

46) In his Affidavit-of-Evidence filed on 14 June 2017, the Petitioner gave an express admission that "*I have signed my personal guarantee for Rs.15 crore only*". After recording of evidence was complete, Petitioner came out with the novel idea of disowning his signature on the deed of guarantee and filed application for amendment of Written Statement on 11 December 2017 to include the defence of forgery in his signature on the bank guarantee. The application was rejected by the Arbitral Tribunal on 27 July 2018. Since his application for amendment of Written Statement was rejected, there was no underlying pleading in respect of the defence of forgery in the signature on Letter of Guarantee. Despite this, Petitioner went on filing series of applications, which were aimed at creating doubts about genuineness of his signature on the guarantee. The first application in the series, which is second application in the list, was filed on 27 July 2018 for sending the deed of guarantee for forensic examination. The application has been dealt with by the Arbitral Tribunal in paragraph 27 of the Award by holding as under:

27. Later on, in 2017, Respondent No.2 sought the permission of the Tribunal to amend the Statement of Defence by making averment that the letter of guarantee dated 5th September 2007 (Exhibit C-69) is forged one and not enforceable against Respondent No.2. This application was heard by the Arbitral Tribunal and rejected the same as an afterthought attempt to alter the original Statement of

Defence. Again in the year 2018, the Claimant filed an application with the same averment that the letter of guarantee dated 5th September 2007 (Exhibit C-69) is forged one and it may be sent to the handwriting expert for his opinion as to whether the signature on the said document is of Respondent No.2. This application was rejected by the Arbitral Tribunal in view of the earlier order passed on 25th April 2018. Again on 3.10.2019, Respondent No.2 filed an application by sending a letter of guarantee dated 5th September 2007 (Exhibit C-69) along with the Report of Forensic Services called Truth Labs. The handwriting expert, by its letter dated 1 October 2019, gave an opinion that the signature sent along with the letter of guarantee dated 5th September 2007 (Exhibit C-69) is not similar to the signature on Exhibit C-69. This application was rejected in view of my earlier order passed on 25th April 2018. No application was made by Respondent No.2 to the Tribunal to send his signature for comparison with signature on Exhibit 69 to the handwriting expert.

47) Thereafter, application was filed on 3 October 2019 to take on record the report of private hand-writing expert. This application is rejected by recording detailed findings in paragraph 40 of the Award, which read thus:

40. Mr. Rahul Malhotra, learned Advocate for Respondent No.2, submitted that the Report of "Truth Labs Forensic Services" clearly opines that the signature on the disputed document, i.e. Deed of Guarantee (Exhibit 69) dated 5.9.2007, is not of Respondent No.2. He further submitted that the said Report can safely be accepted. I do not see any substance in this submission because Respondent No.2 never made any application to the Tribunal to send the document, i.e. the Deed of Guarantee (Exhibit 69) dated 5.9.2007 and the signature of Respondent No.2 to the handwriting expert. The Report filed before me was obtained by Respondent No.2 without knowledge and information to the Arbitral Tribunal. This procedure is totally unacceptable. At this stage, it may be noted that Respondent No.2 in his SOD, has admitted his signature on the Deed of Guarantee (Exhibit 69) dated 5.9.2007 to the extent of Rs.15 Crores and not any increase made in the Global Accounts Receivable Agreement and the Import Factoring Agreement, both dated 3.7.2007 by the Claimant and Respondent No.1. Such a variation without knowledge to Respondent No.2 is void and these Agreements as well as the Deed of Guarantee (Exhibit 69) dated 5.9.2007 are not binding upon Respondent No.2 and consequently, the Deed of Guarantee (Exhibit 69) dated 5.9.2007 is rendered void and unenforceable against him.

48) The contention of application dated 27 July 2018 and 3 October 2019 being rejected without hearing the parties is not only factually incorrect but also irresponsible. The oral arguments were canvassed by the parties between 5 October 2019 to 26 November 2019. Thereafter written submissions were submitted by the parties. It therefore cannot be said that the two applications were decided without hearing the Petition.

49) The fourth application dated 30 April 2022 was filed seeking rehearing of oral submissions. The application is rejected by recording following findings in paragraph 39 of the Award:

39. Mr. Rahul Malhotra, learned Advocate for Respondent No.2, firstly, submitted that the arbitration proceedings commenced 10 years back and during this period, due to COVID-19, all activities were suspended. He further submitted that oral arguments be reheard. The Tribunal may consider and decide the issues in accordance with law. In support of this submission, he relied upon the judgment of the Supreme Court in the case of Anil Rai vs. State of Bihar reported in 2001(1) ACR 2046 (SC). He submitted that this judgment squarely applies to the facts of the present case. I have gone through this judgment and it is totally non-applicable to the facts of the present civil case. The reported judgment is under the Indian Penal Code and on facts, it is held that if the judgment is not pronounced within a period of 6 months, any of the parties of the said lis shall be entitled to move an application before the Chief Justice of the High Court with a prayer to withdraw the said case and to make it over to any other bench for fresh arguments. I do not think, this situation arises in the present case and the ratio of the judgment is applicable. In my opinion, the first submission related to delay made on behalf of Respondent No.2, cannot be accepted and hence, the same is rejected.

50) At this stage, Petitioner filed Commercial Arbitration Petition (L) No.2174 of 2022 in this Court under Section 14(1)(a) read with Section 14(2) of the Arbitration Act seeking termination

of mandate of the Arbitral Tribunal. The Petition was rejected by passing order dated 15 September 2023 which reads thus:

. By this petition filed under Section 14(1)(a) of the Arbitration and Conciliation Act, 1996, the petitioner is seeking termination of mandate of the learned sole arbitrator. It is the case of the petitioner that since the learned arbitrator has become de-jure unable to perform his functions, the mandate must terminate.

2. The basis of the said contention raised on behalf of the petitioner is that according to him, after about six years of pendency of the arbitral proceedings, certain facts came to light pertaining to a document i.e. deed of guarantee dated 5/9/2007, which is the basis of the case of the petitioner in the arbitral proceedings. The claim of respondent No.1 (original claimant) is for recovering specific amount from the respondent No.2 as the original borrower and the petitioner as the guarantor.

3. According to the petitioner, the original document i.e. deed of guarantee dated 5/9/2007, was in the custody of Central Bureau of Investigation (CBI) and inspection of the document was carried out and according to the petitioner, there was enough material to indicate that the signatures on the deed of guarantee purported to be that of the petitioner were forged.

4. The petitioner places reliance on report of a Government forensic laboratory in respect of some of the documents in the custody of CBI showing that signatures of the petitioners were mechanically affixed, not being genuine. In that light, according to the petitioner, an opinion was received from a private laboratory i.e. Truth lab, finding that the document did not have signature of the petitioner. On this ground, it is alleged that deed of guarantee dated 5/9/2007, is a forged document. In that light, the petitioner filed an application for amending the statement of defence but, this application was dismissed by order dated 25/4/2018, passed by the learned arbitrator. Subsequently, an application dated 27/7/2018, was filed in the arbitral proceedings for sending the said document for forensic examination. The said application is said to be pending before the learned arbitrator. Another application dated 3/10/2019 was moved on behalf of the petitioner for taking the report of the Truth lab dated 1/10/2019 on record and the same is also pending before the arbitrator. It is in this backdrop, that the petitioner has filed the present petition under Section 14 of the aforesaid Act, seeking termination of mandate of the learned arbitrator.

5. The learned counsel appearing for the petitioner places reliance on judgments of the Supreme Court in the case of A. Ayyasamy Vs. A. Paramasivam & Ors. , Rashid Raza Vs. Sadaf

Akhtar, as also judgment of the Andhra Pradesh High Court in the case of Vasant Rao and Ors. Vs. Farooq-Ali and Ors.. It is submitted that once the issue pertaining to forgery of signature on a document has arisen before the learned arbitrator, it becomes a non arbitrable issue, thereby indicating that the mandate of the learned arbitrator deserves to be terminated, as he has become de jure unable to perform as an arbitrator.

6. The learned counsel appearing for respondent No.1 opposed to the contentions raised on behalf of the petitioner and he submits that an application seeking amendment of statement of defence was correctly rejected by the learned arbitrator on 25/4/2018, making specific observations as to the statements given by the petitioner regarding his signature on the document in question i.e. deed of guarantee dated 5/9/2007. It is further submitted that the report of the Government forensic laboratory was not concerned with deed of guarantee dated 5/9/2007 and hence reliance placed thereon is misplaced. It is further submitted that before obtaining and relying upon the report of the private laboratory i.e. Truth lab, the petitioner ought to have invoked Section 26 of the said Act, which pertains to appointment of an expert by an arbitral tribunal. In any case, it is submitted that in the facts and circumstances of the present case, the petitioner cannot seek termination of mandate of the learned arbitrator under Section 14 of the said Act.

7. This Court has considered the contentions raised on behalf of the parties in the backdrop of material placed on record. Since the petitioner specifically invoked Section 14 of the said Act, reference to the same is necessary. Section 14 of the Act reads as follows:

14. Failure or impossibility to act - (1) (The mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, if - (a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay ; and
(b) he withdraws from his office or the parties agree to the termination of his mandate.

(2) If a controversy remains concerning any of the grounds, referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate.

(3) If, under this section or sub-section (3) of section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of Section 12.

8. A perusal of the above quoted provision shows that mandate of an arbitrator terminates upon such arbitrator becoming de jure unable to perform functions and that such arbitrator has to be substituted by another arbitrator.

9. This Court is of the opinion that the aforesaid provision can be invoked in a situation where the arbitrator has been rendered de jure unable to perform functions as a matter of law or due to certain facts. The aforesaid provision specifically provides that even if the mandate of the learned arbitrator is terminated, such arbitrator has to be substituted by another arbitrator.

10. In any case, the contentions raised on behalf of the petitioner are on the aspect of non arbitrability of the dispute itself. The said contention cannot be countenanced while considering the application or petition filed under Section 14 of the said Act.

11. If such a plea was to be considered and accepted, there would be no question of the arbitrator being substituted by another arbitrator. Therefore, it also cannot be said that under the said provision, the mandate of the learned arbitrator shall stand terminated qua the petitioner while the arbitral proceedings and mandate of the learned arbitrator would continue as between the original claimant (respondent No.1) and the original borrower i.e. respondent No.2. Therefore, the grievance sought to be raised on behalf of the petitioner cannot in any manner be relatable to Section 14 of the aforesaid Act, which concerns a completely different situation on facts and law.

12. On this short ground, the present petition deserves to be dismissed. It is for this reason that it would not be appropriate to comment upon the report of the Government as well as private laboratories. The petitioner has also moved applications before the learned arbitrator for sending the document for forensic examination and also for taking the report of the private laboratory on record. The applications are pending before the learned arbitrator. In this situation, it would not be appropriate for this Court to make any observations in that regard.

13. The petition is dismissed. A statement is made on behalf of the petitioner that he desires to pursue such remedy as may be available in law and under the provisions of the said Act in the pending arbitral proceedings. Needless to say, the petitioner does not need any liberty to proceed in accordance with law.

51) Thereafter, parties filed written submissions before the learned Arbitrator in August and October 2022. Petitioner

thereafter filed Application dated 22 September 2023 under Section 16(3) and 16(4) of the Arbitration Act which has been dealt with by the Arbitral Tribunal in paragraph 42 of the Arbitral Award accusing the Petitioner of approbating and reprobating according to his convenience. As observed, it was the Petitioner who had got the Suit of SBI Global disposed of by seeking Reference to Arbitration and thereafter filed applications under Section 16 of the Arbitration Act challenging jurisdiction of the Arbitral Tribunal. Thus, the application filed by the Petitioner on 22 September 2023 was entirely baseless and inconsistent with its stand that the disputes were required to be resolved by private arbitration.

52) Petitioner thereafter filed three applications on 9 January 2024, which were aimed essentially at delaying the decision of the arbitral proceedings. Some of the prayers made in the said applications were already covered by the earlier applications. These applications again were aimed at proving non-pleaded defence of forgery in the signature of the Petitioner on deed of guarantee. It is thus more than apparent that the Petitioner filed baseless applications before the Arbitral Tribunal and is himself responsible for delaying the decision of arbitral proceedings. The contention of non-decision of those baseless applications is thus completely erroneous.

53) In my view therefore, the fourth and the last ground of objection of failure to decide the applications filed by Petitioner is again baseless and in any case cannot be a ground for setting aside the Arbitral Award.

CONCLUSIONS

54) Considering the overall conspectus of the case, I am of the view that the Petitioner has failed in respect of all the four objections of challenge to the award urged before me. The Award, to my mind, appears to be indefensible. Filing of the present Petition is nothing but one more attempt on the part of the Petitioner to avoid the liability to repay outstanding amount under the credit facilities to the first Respondent. The Award being unexceptionable, the Petition is liable to be dismissed.

55) Though the Arbitration Petition is dismissed, it is not considered expedient to impose any further costs on the Petitioner considering twin factors of award of costs of Arbitration in favour of Respondent No.1 and award of default interest of 18% on the awarded sum.

ORDER

56) Arbitration Petition is accordingly dismissed without imposing any further costs on the Petitioner.

[SANDEEP V. MARNE, J.]