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

+ O.M.P. (T) (COMM.) 59/2025

COMMISSIONER M.C.D. & ANR.

.....Petitioners

Through: Mr. Sanjay Vashistha, Mr. Siddhartha Goswami, Advocates with Mr. Kamleshwar Dayal, EE, MCD.

versus

M/S SATISH BUILDERS

.....Respondent

Through: Mr. Anshul Mittal, Mr. Sameer Dawar, Mr. Sarthak T. and Ms. Sagun Tiwari, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

29.08.2025

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1. This petition is filed on behalf of the Petitioners under Section 14(1) of Arbitration and Conciliation Act, 1996 ('1996 Act') for terminating the mandate of the Sole Arbitrator owing to the fact that the arbitral proceedings commenced in the year 2007 but no significant progress has been made till date. Several allegations have been levelled against the Arbitrator in the petition to support the termination.
2. Learned counsel for the Respondent does not dispute this position and in fact supports the Petitioner in seeking termination of mandate of the Arbitrator on the ground that the prolonged arbitration proceedings are causing prejudice to the Respondent also.
3. From the list of dates and events, it is seen that the Sole Arbitrator was appointed by this Court on 19.07.2007 and despite extension of mandate



of the Arbitrator from time to time and issues having been framed on 25.03.2008, till date final arguments have only commenced. It needs no reiteration that the object of an alternate dispute resolution mechanism is to have expeditious and effective disposal of the disputes between the parties through a private forum of their choice. The Supreme Court in ***Union of India and Others v. Uttar Pradesh State Bridge Corporation Limited, (2015) 2 SCC 52*** held as under:-

“14. Speedy conclusion of arbitration proceedings hardly needs to be emphasised. It would be of some interest to note that in England also, Modern Arbitration Law on the lines of Uncitral Model Law, came to be enacted in the same year as the Indian law which is known as the English Arbitration Act, 1996 and it became effective from 31-1-1997. It is treated as the most extensive statutory reform of the English arbitration law. Commenting upon the structure of this Act, Mustill and Boyd in their Commercial Arbitration, 2001 companion volume to the 2nd Edn., have commented that this Act is founded on four pillars. These pillars are described as:

- (a) The first pillar : Three general principles.*
- (b) The second pillar : The general duty of the Tribunal.*
- (c) The third pillar : The general duty of the parties.*
- (d) The fourth pillar : Mandatory and semi-mandatory provisions.*

Insofar as the first pillar is concerned, it contains three general principles on which the entire edifice of the said Act is structured. These principles are mentioned by an English Court in its judgment in Deptt. of Economics, Policy and Development of the City of Moscow v. Bankers Trust Co. [2005 QB 207 : (2004) 3 WLR 533 : (2004) 4 All ER 746 : 2004 EWCA Civ 314] In that case, Mance, L.J. succinctly summed up the objective of this Act in the following words : (QB p. 228, para 31)

“31. ... Parliament has set out, in the Arbitration Act, 1996, to encourage and facilitate a reformed and more independent, as well as private and confidential, system of consensual dispute resolution, with only limited possibilities of court involvement where necessary in the interests of the public and of basic fairness.”

Section 1 of the Act sets forth the three main principles of arbitration law viz. (i) speedy, inexpensive and fair trial by an impartial tribunal; (ii) party autonomy; and (iii) minimum court intervention. This provision has to be applied purposively. In case of doubt as to the meaning of any provision of this Act, regard should be had to these principles.

15. In the book O.P. Malhotra on the Law and Practice of Arbitration and



Conciliation (3rd Edn. revised by Ms Indu Malhotra), it is rightly observed that the Indian Arbitration Act is also based on the aforesaid four foundational pillars.

*16. First and paramount principle of the first pillar is “fair, speedy and inexpensive trial by an Arbitral Tribunal”. Unnecessary delay or expense would frustrate the very purpose of arbitration. Interestingly, the second principle which is recognised in the Act is the party autonomy in the choice of procedure. This means that if a particular procedure is prescribed in the arbitration agreement which the parties have agreed to, that has to be generally resorted to. It is because of this reason, as a normal practice, the court will insist the parties to adhere to the procedure to which they have agreed upon. This would apply even while making the appointment of substitute arbitrator and the general rule is that such an appointment of a substitute arbitrator should also be done in accordance with the provisions of the original agreement applicable to the appointment of the arbitrator at the initial stage. [See *Yashwith Constructions (P) Ltd. v. Simplex Concrete Piles India Ltd.* [(2006) 6 SCC 204]] However, this principle of party autonomy in the choice of procedure has been deviated from in those cases where one of the parties have committed default by not acting in accordance with the procedure prescribed. Many such instances where this course of action is taken and the Court appoint the arbitrator when the persona designata has failed to act, are taken note of in paras 6 and 7 of *Tripple Engg. Works [North Eastern Railway v. Tripple Engg. Works, (2014) 9 SCC 288 : (2014) 5 SCC (Civ) 30]* . We are conscious of the fact that these were the cases where appointment of the independent arbitrator made by the Court in exercise of powers under Section 11 of account of “default procedure”. We are, in the present case, concerned with the constitution of substitute Arbitral Tribunal where earlier Arbitral Tribunal has failed to perform. However, the above principle of default procedure is extended by this Court in such cases as well as is clear from the judgment in *Singh Builders Syndicate [Union of India v. Singh Builders Syndicate, (2009) 4 SCC 523 : (2009) 2 SCC (Civ) 246]*.*

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*18. In *Singh Builders Syndicate [Union of India v. Singh Builders Syndicate, (2009) 4 SCC 523 : (2009) 2 SCC (Civ) 246]* pendency of arbitration proceedings for over a decade was found by this Court to be a mockery of a process. This anguish is expressed by the Court in the said judgment in the following manner : (SCC p. 527, paras 15-19)*

“15. The object of the alternative dispute resolution process of arbitration is to have expeditious and effective disposal of the disputes through a private forum of the parties' choice. If the Arbitral Tribunal consists of serving officers of one of the parties to the dispute, as members in terms of the arbitration agreement, and such tribunal is



made non-functional on account of the action or inaction or delay of such party, either by frequent transfers of such members of the Arbitral Tribunal or by failing to take steps expeditiously to replace the arbitrators in terms of the arbitration agreement, the Chief Justice or his designate, required to exercise power under Section 11 of the Act, can step in and pass appropriate orders.

16. We fail to understand why the General Manager of the Railways repeatedly furnished panels containing names of officers who were due for transfer in the near future. We are conscious of the fact that a serving officer is transferred on account of exigencies of service and transfer policy of the employer and that merely because an employee is appointed as arbitrator, his transfer cannot be avoided or postponed. But an effort should be made to ensure that officers who are likely to remain in a particular place are alone appointed as arbitrators and that the Arbitral Tribunal consisting of serving officers, decides the matter expeditiously.

17. Constituting Arbitral Tribunals with serving officers from different faraway places should be avoided. There can be no hard-and-fast rule, but there should be a conscious effort to ensure that the Arbitral Tribunal is constituted promptly and arbitration does not drag on for years and decades.

18. As noticed above, the matter has now been pending for nearly ten years from the date when the demand for arbitration was first made with virtually no progress. Having regard to the passage of time, if the Arbitral Tribunal has to be reconstituted in terms of Clause 64, there may be a need to change even the other two members of the Tribunal.

19. The delays and frequent changes in the Arbitral Tribunal make a mockery of the process of arbitration. Having regard to this factual background, we are of the view that the appointment of a retired Judge of the Delhi High Court as sole arbitrator does not call for interference in exercise of jurisdiction under Article 136 of the Constitution of India.”

4. Section 14 of 1996 Act outlines the circumstances in which there is a failure or impossibility of the Arbitrator to act and provides that the mandate of an Arbitrator shall terminate if he becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act. From a reading of Section 14 and judgment of the Supreme Court in ***U.P. State Bridge (supra)***, there can be no doubt that if an Arbitrator does not act with the required or expected expediency, resulting in proceedings being unnecessarily



prolonged, the entire purpose of taking recourse to alternate dispute resolution mechanism gets defeated and certainly serious prejudice is caused to the parties due to non-conclusion of proceedings in reasonable time.

5. Learned counsels for the parties rightly submit that the arbitral proceedings have progressed at a snail's pace having commenced in 2007. In these circumstances, I am constrained to terminate the mandate of the Arbitrator *albeit* without casting any aspersions.

6. Learned counsels for the parties at this stage jointly propose the name of Mr. Rajesh Bisaria, Advocate as the Sole Arbitrator.

7. Accordingly, with the consent of the parties, mandate of Mr. S.K. Tandon, Advocate is terminated and Mr. Rajesh Bisaria, Advocate (Mobile No. 9425010132) is appointed as Sole Arbitrator. Arbitral proceedings will be held under the aegis of Delhi International Arbitration Centre ('DIAC'). Fee of the Arbitrator shall be as per the DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018. The arbitration proceedings shall continue from the stage already reached and on the basis of the material evidence already on record of the ongoing arbitral proceedings.

8. Learned Arbitrator shall give disclosure under Section 12 of the 1996 Act before entering upon reference.

9. Learned counsels for the parties are at liberty to collect the arbitral record from the erstwhile Arbitrator.

10. Petition stands disposed of in the aforesaid terms.

JYOTI SINGH, J

AUGUST 29, 2025/Shivam/S. sharma