



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

% Reserved on : 06.03.2025
Pronounced on : 01.07.2025

+ **O.M.P. (COMM) 415/2024 &I.A. 44283/2024**

RAHEJA DEVELOPERS LIMITED

.....Petitioner

Through: Mr. Rajshekhar Rao, Senior Advocate
with Ms. Manmeet Kaur, Mr. Gurtejpal Singh,
Ms. Aashna Chawla, Ms. Aashna Arora, Ms. Suditi
and Mr. Debarshi Roy, Advocates

versus

AHLUWALIA CONTRACTORS INDIA LTD

.....Respondent

Through: Mr. Shashank Garg, Senior Advocate
with Ms. Nishtha Jain, Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

I.A. 44283/2024 (For placing on record additional grounds and documents)

1. By way of the present application, the petitioner/applicant seeks to place on record additional grounds and documents, mentioned as under, for setting aside of the award dated 29.04.2024 (hereinafter, referred to as the 'impugned award'):

- a. That the Ld. Sole Arbitrator became functus officio on 28.02.2023 and as such the Award dated 29.04.2024 is beyond the statutory period envisaged under Section 29A (4) of the Act;
- b. That the Ld. Sole Arbitrator acted in excess of his jurisdiction by passing the Award beyond the statutory time period envisaged Section 29A (4) of the Act;
- c. That the Ld. Sole Arbitrator failed to consider that Section



29A(4) empowers the Court to extend the period for making the Arbitral Award beyond a period of twelve months or eighteen months, as the case.

d. The Ld. Sole Arbitrator erred in dismissing the Application filed by the Petitioner seeking permission to record the additional documents without Application of mind and failed to consider the complaint filed by the project residents on account of the defective work carried out by the Respondent.

2. The petition is filed under Section 34 of the Arbitration and Conciliation Act (hereinafter, referred to as '*the Act*'), assailing the impugned award dated 29.04.2024 delivered by the Arbitral Tribunal comprising of a Sole Arbitrator (hereinafter, referred to as '*AT*').

3. The impugned award came to be delivered in the context of a Civil Works Contract Agreement (CWC) dated 06.12.2010, which was executed between the parties for the construction work of 6 towers (clubbed as 2 towers - T1 & T2) and a non-tower area comprising 336 dwelling units to be undertaken by the respondent/claimant at *Raheja Sampada, Sector 92-95, Gurgaon, Haryana*.

4. The respondent/claimant, vide its Statement of Claim, filed 10 claims and subsequently, 3 additional claims amounting to Rs.2,20,30,880/-. The petitioner, on the other hand, vide its Statement of Defence, disputed the same and filed 6 counter-claims.

5. Pertinently, on 14.02.2019, Mr. Prem Kumar was appointed as the Sole Arbitrator vide order of this Court. However, on the erstwhile Arbitrator recusing himself on account of ill health, Hon'ble Mr. Justice Jayant Nath, Former Judge of this Court, was appointed as the Sole Arbitrator vide order dated 03.11.2022. In pursuance thereof, proceedings recommenced from the stage of final arguments, from 29.11.2022, and the



impugned award came to be passed on 29.04.2024.

6. Vide the impugned award, the AT allowed the Claim Nos. A, B, C & J and partly allowed Claim Nos. D and E. Further, all the additional claims filed by the respondent were allowed as well as cost of Rs.74,67,333/-. In conclusion, the AT passed the impugned award in favour of the respondent, awarding a total sum of Rs. 10,22,46,103/- along with simple interest @ 8% per annum on the awarded amount from the date of filing of the claim petition till the date of the award, and further, simple interest @ 8% p.a. from the date of the award till recovery by the respondent.

7. A perusal of the record shows that the proceedings under Section 34 of the Act were initiated on 26.07.2024, and the petitioner has preferred the present application to place on record additional grounds and documents in pursuance of this Court's order dated 21.10.2024.

8. At the outset, learned Senior Counsel for the respondent raises a two-fold preliminary objection and submits that *firstly*, the present application is barred by limitation under Section 34(3) of the Act, and *secondly*, even otherwise, the additional grounds sought to be placed on record in the form of an amendment of the Section 34 petition is legally impermissible to be raised at this stage for the first time, and in essence, amounts to a fresh petition being filed.

9. Insofar as the first objection is concerned, it is submitted that the application for amendment to the petition for setting aside of the impugned award cannot be filed after the expiry of three months plus the grace period of thirty days, as provided under Section 34(3) of the Act. It is contended that the present application is an attempt to introduce entirely new grounds after the expiry of the statutory period and allowing the present application



would tantamount to entertaining a fresh petition challenging the award beyond the prescribed period of limitation. Learned Senior Counsel seeks to place reliance on Vastu Invest & Holdings Pvt. Ltd. v. Gujarat Lease Financing Ltd., Mumbai¹ to submit that the present application is not maintainable, being time-barred.

10. As regards the second objection, it is submitted that the additional grounds sought to be raised were never pleaded before the AT or in the original petition, and thus, amount to setting up a new case beyond the scope of the original proceedings, which is not permissible at this stage. Moreover, learned Senior Counsel states that the application filed by the petitioner before the AT for placing on record additional documents was duly considered and dismissed. In support of his submissions, reliance is placed upon the decisions in State of Maharashtra v. Hindustan Construction,² and New Delhi Municipal Council v. Décor India Pvt Ltd.³

11. The petitioner, on the other hand, draws the attention of this Court to the order dated 21.10.2024 and submits that the present application was filed in pursuance of the said order, whereby the petitioner had sought leave of the Court to file an appropriate application amending the petition in light of the Supreme Court decision in Rohan Builders (India) Private Limited vs Berger Paints India Limited.⁴

12. It is the case of the petitioner that the present application is filed to include a legal ground pertaining to lack of inherent jurisdiction of the AT to pass the impugned award. While placing reliance on Lion Engineering

¹ 2001 (2) Mh.L.J 565.

² (2010) 4 SCC 518.

³ OMP (Comm) 502/2020, dated 16.02.2023.

⁴ 2024 SCC OnLine SC 2494.



Consultants vs State of Madhya Pradesh & Ors.,⁵ Hindustan Zinc Limited v. Ajmer Vidyut Vitran Nigam Ltd.,⁶ AC Chokshi Share Broker Pvt Ltd. v. Jatin Pratap Desai & Anr.,⁷ and Union of India vs RCCIVL-LITL,⁸ it is submitted that the plea of lack of inherent jurisdiction on account of the AT being *functus officio* at the time of passing of the award can be taken at any stage of proceedings. Therefore, it is contended that an amendment to Section 34 petition on the aforesaid ground, being purely legal in nature without the introduction of any new facts, is not subject to limitation as prescribed under Section 34(3) of the Act.

13. Learned Senior Counsel also seeks to distinguish the judgment in Hindustan Construction (Supra) relied on by the respondent, and submits that Section 34 itself enables the Court to allow an amendment to the petition assailing an arbitral award when peculiar circumstances so warrant and in the interest of justice. Therefore, it is contended that it carves out an exception to the rule of limitation, which is not absolute in nature.

14. It is further submitted that after taking into account the exemption of time period on account of COVID-19 pandemic, the parties could have consented to extend the mandate of the AT till a maximum period of 18 months after the completion of the pleadings, i.e., till 26.08.2023. Thereafter, the said mandate could only be extended vide order passed by a competent Court under Section 29A(4) of the Act. Reliance in this regard is placed on Rohan Builders (Supra). It is also submitted that as per Section 29A(7) of the Act, AT reconstituted shall be in continuation of the previously appointed AT. Reliance is placed on Tata Sons (P) Ltd. v. Siva

⁵ (2018) 16 SCC 758.

⁶ (2019) 17 SCC 82.

⁷ SLP (C) No. 18393 of 2021, decided on 10.02.2025.

⁸ FAO (OS) (COMM) 197/2023 decided on 08.07.2024.



Industries & Holdings Ltd.⁹ to submit that the said Section is retrospective in nature and considering that the reconstituted AT began from the stage of final arguments, the mandate will also be calculated accordingly.

It is submitted that since no application was preferred for extension of mandate prior to the passing of the award, the AT became *functus officio* after 26.08.2023. However, the impugned award came to be passed only on 29.04.2024, i.e., beyond the statutory period. Thus, it is contended that this ground goes to the very root of the matter and ought to be allowed to be pleaded while assailing the impugned award.

15. *Per contra*, learned Senior Counsel for the respondent submits that this Court is statutorily empowered to extend the mandate of the AT for sufficient cause, even after the expiry of the period prescribed under Section 29A(1) read with Section 29A(3) of the Act. Attention of this Court is drawn to order dated 02.01.2024 passed by the AT, wherein it was noted that the one-year mandate had expired and sought consent of the parties for extension of mandate for a period of six months, which was duly communicated by the parties vide emails dated 04.01.2024 and 05.01.2024. In light of the same, it is argued that the conduct of both the parties is evident in establishing consensual extension of mandate of the AT for passing of the award and that the petitioner's attempt to retrospectively withdraw its consent is *malafide* and bad in law. Even otherwise, it is submitted that since the substitute Arbitrator entered into reference on 29.11.2022, the statutory period of 18 months within which award was to be passed would be calculated thereon.

16. At this stage, learned Senior Counsel for the petitioner submits that

⁹ (2023) 5 SCC 421.



consent given on 05.01.2024 is meaningless in law considering that once mandate had previously been extended by consent between the parties, only a competent Court was empowered to extend it further, in line with Section 29A(4) of the Act. Though learned Senior Counsel concedes that the AT's mandate would be calculated from 29.11.2022, i.e., first proceedings held after the appointment of the present AT by this Court, he however contends that the substituted Arbitrator cannot get a similar mandate of 18 months. Reference is made to the order of this Court passed in O.M.P. (T) (COMM.) 107/2022 dated 03.11.2022, whereby it was directed that the proceedings shall be undertaken by the newly appointed substitute Arbitrator from the stage of final arguments.

17. I have heard learned Senior Counsels and gone through the material on record.

18. The respondent has raised a preliminary objection that the present application is time-barred inasmuch as the same has been filed beyond the statutory timeline prescribed under Section 34(3) of the Act, i.e., within 3 months of the party having received the award, extendable by another 30 days. While relying on judicial precedents, the respondent has contended that an application seeking to place on record additional grounds is, in essence, an application for modification of the petition filed under Section 34, assailing the award, and thus, has to follow the strict timeline imposed by the statute. Considering that the issue raised goes to the question of maintainability of the application, I find it prudent to first and foremost deal with this.

19. Both parties have sought to place reliance on the decision in Hindustan Construction (*Supra*). Pertinently, while the Supreme Court has



left a small window for possible amendments to the petition, notwithstanding the period of limitation, the threshold to be crossed is rather high. Relevant paragraphs of the said judgment are reproduced herein:

“29. There is no doubt that the application for setting aside an arbitral award under Section 34 of the 1996 Act has to be made within the time prescribed under sub-section (3) i.e. within three months and a further period of thirty days on sufficient cause being shown and not thereafter. Whether incorporation of additional grounds by way of amendment in the application under Section 34 tantamounts to filing a fresh application in all situations and circumstances. If that were to be treated so, it would follow that no amendment in the application for setting aside the award howsoever material or relevant it may be for consideration by the court can be added nor existing ground amended after the prescribed period of limitation has expired although the application for setting aside the arbitral award has been made in time. This is not and could not have been the intention of the legislature while enacting Section 34.

30. More so, Section 34(2)(b) enables the court to set aside the arbitral award if it finds that the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force or the arbitral award is in conflict with the public policy of India. The words in clause (b) “the court finds that” do enable the court, where the application under Section 34 has been made within prescribed time, to grant leave to amend such application if the very peculiar circumstances of the case so warrant and it is so required in the interest of justice.

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36. As noticed above, in the application for setting aside the award, the appellant set up only five grounds viz. waiver, acquiescence, delay, laches and res judicata. The grounds sought to be added in the memorandum of arbitration appeal by way of amendment are absolutely new grounds for which there is no foundation in the application for setting aside the award. Obviously, such new grounds containing new material/facts could not have been introduced for the first time in an appeal when admittedly these grounds were not originally raised in the arbitration petition for setting aside the award. Moreover, no prayer was made by the appellant for amendment in the petition under Section 34 before the



court concerned or at the appellate stage.”

20. A perusal of the aforementioned legal position makes it evident that amendment to a petition under Section 34 is permissible once the original filing is found to be within the prescribed limitation period. Further dwelling on the issue- staying within the mandatory guidelines drawn by the Supreme Court in Hindustan Construction (*Supra*), according to this Court, if the amendment is intended to regularise an otherwise *non est* filing, the same may not be permissible. However, since the original petition under Section 34 has been filed within the statutory limitation period, the subsequent amendments *per se* do not become unavailable to the petitioner.

21. In Hindustan Construction (*Supra*), the Supreme Court has indicated that if the foundational pleadings for a ground sought to be amended do exist in the original petition, the grounds based on such pleadings can be incorporated by way of amendment.

22. Testing the amendment sought on the above yardstick, it is apparent that the additional grounds raised by the petitioner by way of the present application are legal in nature supported by the foundational facts pleaded in the Section 34 petition.

23. Jurisdictional competence of the AT to continue with the arbitral proceedings after the expiration of the period specified under Section 29A of the A&C Act is a legal question that the Court seized of the objections under Section 34 would naturally be enquiring into once the attention of the Court is drawn to the issue. Extension of the mandate of the AT under Section 29A is not dependent upon the explicit or implied consent of the parties for extension, since the extension beyond the first six months is within exclusive supervisory jurisdiction of Courts. The Court may deny extension



of the mandate of the AT in a given case.

24. If there cannot be any waiver of the mandatory procedure under Section 29A for extension of the mandate by the AT, the failure of the petitioner to raise objection regarding termination of the mandate in the original Section 34 petition will not cure the jurisdictional defect or is beyond the competence of Section 34 Court to examine the arbitral award to assess if the same was delivered by an AT rendered *functus officio* with the expiry of the period specified under Section 29A.

25. According to this Court, omission to plead the ground in question in the original Section 34 petition- filed within limitation (condonable) period, will not put the objection beyond the judicial scrutiny under Section 34. Certainly, the amendment does fall within the exceptions carved out in Hindustan Construction (*Supra*). Foundational facts in the nature of bare dates of events and arbitral stages, which is the basis of the ground of challenge in question, are already before Court in the original petition.

26. In view thereof, the amendment sought for is allowed. Be that as it may, the observations made herein are without prejudice to the respondent's rights and contentions on the merits of the additional ground raised by the petitioner, which may be taken up in the final arguments on the Section 34 petition.

O.M.P (COMM.) NO.415/2024 & I.A. 40235/2024

List before Roster Bench on 16.07.2025.

**MANOJ KUMAR OHRI
(JUDGE)**

JULY 01, 2025/ik