LANCOR
CREATING ENDURING VALUE

Date: 1st November, 2025

To,

Manager - Listing Compliance
National Stock Exchange of India Limited
'Exchange Plaza'. C-1, Block G,
Bandra Kurla Complex, Bandra (E),
Mumbai - 400 051
Symbol: LANCORHOL

To,

Corporate Relationship Department,
BSE Limited,
Phiroze Jeejheebhoy Towers,
Dalal Street,
Mumbai – 532370.
Scrip Code : 509048

Dear Sir/Madam,

Sub.: Intimation under Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing Regulations") -

In compliance with Regulation 30 read with Schedule III of the SEBI (Listing Obligations and Disclosures Requirement) 2015, in continuation of the intimation dated 31st October, 2025 we wish to inform you that the Hon'ble Supreme Court at its hearing held on 31.10.2025 passed an Order (Order was downloaded from the Portal of the Hon'ble Supreme Court of India on 31.10.2025), copy of which is enclosed.

The details that are required to be disclosed as per SEBI Master Circular No. SEBI/HO/CFD/PoD2/CIR/P/0155) dated November 11, 2024 and Schedule Ill of Regulation 30 of the Listing Regulations, are provided in Annexure I to this letter.

This is for your information and record.

Thanking You,

Yours Faithfully,

For LANCOR HOLDINGS LIMITED

KAUSHANI CHATTERJEE

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KAUSHANI CHATTERJEE
COMPANY SECRETARY & COMPLIANCE OFFICER

Annexure I

Details as required under Regulation 30 read with Schedule III of the Listing Regulations and SEBI Master Circular No. SEBI/HO/CFD/PoD2/CIR/P/0155) dated November 11, 2024

S. No.	Particulars	Description of events
1	Name of the Court / Authority / Tribunal	Hon'ble Supreme Court of India
2	Case / Petition / Reference No	Civil Appeal Nos. 10074-10075 of 2024
3	Parties to the Litigation:	Lancor Holdings Limited – Claimant Prem Kumar Menon & Others – Respondents
4	Brief details of the litigation / dispute:	Attached
5	Date and nature of order passed:	Date of the Order - 31.10.2025 The Civil Appeals filed by the Company - Lancor have been allowed.
6	Brief details of the order / judgment (including monetary impact, if any):	Attached
7	Impact of the Order on the Company:	The guideline value of the property is approximately ₹139 crores. Based on the Company's internal assessment and reference to prevailing market information, the indicative current market value of the said property is expected to be around ₹190 crores. This assessment is subject to market conditions and independent valuation, if undertaken. Further, based on prevailing commercial rental benchmarks, the

		property has the potential to generate an estimated annual rental income of approximately ₹12 crores, subject to lease finalisation, tenant profile, and commercial terms.
8	Company's response / proposed course of action:	Accepting the Order of the Hon'ble Supreme Court of India and treating the litigation as closed in all respects.

KAUSHANI CHATTERJEE

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LANCOR
CREATING ENDURING VALUE

Brief of the case

A Joint Development Agreement (JDA) was executed for development of the land belonging to the Menons and your Company Lancor, being the Respondents and Claimant respectively, before the Hon'ble Supreme Court of India.

The Company duly completed the commercial building named as Menon Eternity, whereby, as agreed in the JDA, 50% of the built-up area of the entire building together with car parks devolved on Lancor represented by all the areas in 2nd floor, 3rd floor, 4th floor, 5th floor and 50% area in the 10th Floor (Northern Wing) of the building. The remaining areas in the building being 6th floor, 7th floor, 8th floor and 9th floor and 50% of the 10th Floor (Southern Wing) devolved on the Respondents.

Dispute arose between the Claimant and the Respondents which led to an Arbitration and subsequent proceedings in the Hon'ble High Court of Madras.

Aggrieved by the Order of the Hon'ble High Court of Madras, the matter was taken to the Hon'ble Supreme Court of India for adjudication. The appeal was allowed in favour of Lancor and the Judgement was pronounced yesterday, i.e., 31.10.2025, copy attached and is self-explanatory.

The guideline value of the property is approximately ₹139 crores.

Based on the Company's internal assessment and reference to prevailing market information, the indicative current market value of the said property is expected to be around ₹190 crores. This assessment is subject to market conditions and independent valuation, if undertaken.

Further, based on prevailing commercial rental benchmarks, the property has the potential to generate an estimated annual rental income of approximately ₹12 crores, subject to lease finalisation, tenant profile, and commercial terms.

The Book Value of the Property is Rs.28.34 Crores as on 31.03.2025.

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Lancor Holdings Limited
VTN Square, 2nd Floor, No.58, (Old No.104) G.N. Chetty Road,
T. Nagar, Chennai - 600017 +91 44 28345880-83 | www.lancor.in
CIN:- L65921TN1985PLC049092 GSTIN:- 33AAACD2547C1ZA

Reportable

2025 INSC 1277

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs. 10074-10075 OF 2024

M/s. Lancor Holdings Limited … Appellant

versus

Prem Kumar Menon and others … Respondents

J U D G M E N T

SANJAY KUMAR, J

1. Two questions arise for consideration in these appeals: -

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

(ii) Is an arbitral award that is unworkable, in terms of not settling the disputes between the parties finally while 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?

In this case, the learned Arbitrator reserved his arbitral award on 28.07.2012 but pronounced it only on 16.03.2016, i.e., nearly three years and eight months later, with no definite resolution of the matter. Significantly, no explanation worth the name was offered by him for the delay.

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.

3. In ***Harji Engg. Works Pvt. Ltd. vs. Bharat Heavy Electricals Ltd. and another***[1], a learned Judge of the Delhi High Court was faced with an arbitral award that was pronounced with a delay of over three years. No explanation was offered in the award for the delay. On facts, the learned Judge found that the hearings in the arbitration had not even concluded. In that scenario, the learned Judge formulated the question as to whether the delay of more than three years and, thereafter, the haste in which the award was passed made it contrary to public policy? Noting that Section 28 of the erstwhile Arbitration Act, 1940 (for short, 'the Act of 1940'), empowered the Court to enlarge the time for making an award but delay in the making of an award otherwise amounted to grave misconduct and was sufficient to set aside that award under Sections 30 and 33 thereof, the learned Judge observed that no specific period was prescribed in the Act of 1996 for making and publishing the award. The learned Judge, however, opined that the underlying principle

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1 (2009) 107 DRJ 213 = (2008) 153 DLT 489

and policy of law remained intact that arbitration proceedings should not be unduly prolonged and delayed. It was observed that it is natural and normal for an arbitrator to forget contentions and pleas raised by the parties during the course of hearing, if there was a huge gap between the last date of hearing and the date on which the award was made and, therefore, an arbitrator should make and publish an award within reasonable time. What was reasonable time was flexible, *per* the learned Judge, and would depend upon the facts and circumstances of each case. Further, it was opined that in the event there is delay, it should be explained, as abnormal delay without satisfactory explanation would amount to undue delay and would cause prejudice. Holding that arbitration proceedings must be concluded expeditiously so as to be just, fair and effective, the learned Judge observed that the statute imposed additional responsibilities and obligations upon the arbitrator to make and publish the award within reasonable time and without undue delay. The learned Judge held that a party must be satisfied that the arbitrator was conscious of and had taken into consideration all contentions and pleas before rejecting or partly rejecting a claim. This was held to be the right of the party which should not be denied. The learned Judge observed that the Court has limited power to set aside an arbitral award under Section 34 of the Act of 1996 but held that the award which was passed three years after the date of the last effective hearing, without satisfactory explanation for that delay, was contrary to justice as it defeated the very purpose and

fundamental basis for alternative dispute redressal. Further, having found that the arbitrator had not even concluded the hearings in the arbitration proceedings, the learned Judge held that the award was contrary to principles of fair play, as justice should not only be done but should manifestly be seen to be done. On these grounds, the learned Judge set aside the arbitral award.

4. Thereafter, in ***Peak Chemical Corporation Inc. vs. National Aluminium Co. Ltd.***[2], another learned Judge of the Delhi High Court dealt with an arbitral award delivered with a delay of four and a half years. It was contended before the learned Judge that the delay was a sufficient reason, by itself, to set aside that award. Noting that no two cases are the same and it would depend upon the facts and circumstances of each case as to whether delay in its pronouncement would vitiate an arbitral award, the learned Judge observed that delay was not specified as one of the grounds to set aside an arbitral award under Section 34 of the Act of 1996. The learned Judge opined that it would be straining the language of the provision to hold that delay in the pronouncement of an award would, by itself, place it in conflict with the public policy of India within the meaning of Section 34(2)(b)(ii) of the Act of 1996. On facts, the learned Judge found that the award comprehensively dealt with all aspects of the matter, factual and legal, and held that it would not be in the interest of justice to set aside the said award only on the ground of delay, requiring another fresh determination.

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[2] (2012) 188 DLT 680 = 2012 Supp (1) Arb LR 184

5. Again, in ***Union of India vs. Niko Resources Ltd. and another***[3], the same learned Judge held that a delay of four years in the pronouncement of the arbitral award was indeed extraordinary but affirmed that the delay did not, *per se*, vitiate the award, though ultimately he found it liable to be set aside on other grounds. In that case, there were two separate awards - a majority award and a dissenting minority award. There was a delay of over four years in the delivery of the majority award. No explanation was forthcoming for the delay and for not dealing with the findings of the dissenting arbitrator in his minority award. Reference was made by the learned Judge to the decision of this Court in ***Oil and Natural Gas Corporation Ltd. vs. Saw Pipes Ltd.***[4], wherein it was observed that Sections 23 and 28 of the Act of 1940 specifically provided that the arbitrator shall pass the award within the time fixed by the Court but not providing a time limit in the Act of 1996 had no bearing on the interpretation of Section 34 thereof. This Court had further observed that, for achieving the object of speedier disposal of a dispute, justice in accordance with law could not be sacrificed. The learned Judge then stated that one possible remedy available to a party aggrieved by delay in pronouncing the award is to approach the arbitral tribunal itself with a prayer to expedite the award. The learned Judge opined that, if after being approached by either party with a prayer to expedite the pronouncement of the award, the arbitrator failed to do so, the Court could be approached in

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3 (2012) 191 DLT 668 = (2012) 3 Arb LR 19

4 (2003) 5 SCC 705

terms of Section 14(2) of the Act of 1996. The learned Judge concluded that, given the scheme of the Act of 1996, it would be appropriate to exhaust the remedy under Section 14(2) before challenging the award under Section 34 thereof. Reiterating his earlier view that delay, *per se*, was not one of the grounds under Section 34, the learned Judge observed that it would have to be shown that the award suffered from patent illegality on account of such delay. The learned Judge added that the Court should also weigh as to what would be the cost incurred and the time spent in the arbitral proceedings before interfering on the sole ground of delay. In effect, the learned Judge held that it would be the facts and circumstances of a given case which would determine whether the delay was so unconscionable as to vitiate the award. On facts, the learned Judge found that the majority award did not inspire confidence as it failed to discuss the points raised by the dissenting arbitrator in the minority award. The learned Judge held that though the delay in the pronouncement of the award, *per se*, did not vitiate it, that delay led to the award being vitiated by patent illegality.

6. Yet again, the very same learned Judge affirmed the view taken by him as to delay, *per se*, not being sufficient to set aside an arbitral award in his later decision in ***Oil India Limited vs. Essar Oil Ltd.***[5]. On facts, the learned Judge found that the impugned awards, both majority and minority, were detailed and reasoned and dealt with each claim and counter claim at great

[5] ILR 2012 6 Delhi 222 = (2012) 192 DLT 417 = (2012) 3 Arb LR 220

length. The learned Judge, therefore, opined that the passage of time since the reserving of the award did not lead to any plea or submission of the parties being overlooked and concluded that delay in the pronouncement of the awards did not render them patently illegal or opposed to the public policy of India. In the appeal arising from this judgment in FAO (OS) 503 of 2012, reported in ***Oil India Limited vs. Essar Oil Limited***[6], a Division Bench of the Delhi High Court upheld the view taken by the learned Judge. SLP (C) No. 146 of 2017 filed by Oil India Limited assailing the decision of the Division Bench was dismissed by this Court on 13.02.2017.

7. Prior thereto, in ***BWL Ltd. vs. Union of India and another***[7], a Division Bench of the Delhi High Court had considered two arbitral awards passed nearly 5 years after conclusion of the regular hearings and 2 years 7 months after the last clarificatory hearing. A learned Judge had held that the delay was not fatal, leading to the appeal. The Bench observed that human memory is short and it was doubtful whether substantive hearings and a meagre clarificatory hearing long ago would leave sufficient imprints on the mind of the arbitrator to be remembered so that the award could be pronounced long thereafter. The Bench opined that justice must not only be done but must also appear to have been done and set aside the impugned awards, agreeing with the view taken in ***Harji Engg. Works Pvt. Ltd.*** (*supra*) that such an arbitral award was against the public policy of India.

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6 (2016) 6 Arb LR 97 (DB)
7 2012 SCC OnLine Del 5873

8. A few years later, in ***Gian Gupta vs. MMTC Ltd.***[8], another learned Judge of the Delhi High Court dealt with an award which was reserved on 27.11.2007 and pronounced on 20.12.2013. There was, thus, a delay of more than six years in the delivery of the award. The learned Judge observed that exhaustion of the remedy under Section 14(2) of the Act of 1996 should not be read as a mandatory recourse in order to mount a challenge on that ground under Section 34 thereof. The learned Judge noted that the decision of the Division Bench in ***BWL Limited*** *(supra)* was challenged unsuccessfully before this Court in SLP (C) No. 4299 of 2013. He further noted that whether an arbitral award would be vitiated by delay or not would depend on the facts and circumstances of each case and, in that case, the learned Judge found that there was little explanation for the delay of six years. The learned Judge, accordingly, set aside the award on the ground that it was contrary to the principles of fair play and justice.

9. Again, in ***Director General, Central Reserve Police Force vs. Fibroplast Marine Private Limited***[9], a learned Judge of the Delhi High Court dealt with an arbitral award that was pronounced with a delay of nearly one and a half years and opined that the inordinate and unexplained delay rendered it amenable to challenge under Section 34(2)(b)(ii) of the Act of 1996. The learned Judge held that, apart from the delay, the award was vitiated by patent illegality and was in conflict with the public policy of India.

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8 (2020) SCC OnLine Del 107 = (2020) 1 Arb LR 406

9 (2022) 3 High Court Cases (Del) 304

10. In ***K. Dhanasekar vs. Union of India***[10], a learned Judge of the Madras High Court was dealing with an arbitral award passed with a delay of 3 years and 7 months. The learned Judge followed ***Harji Engg. Works Pvt. Ltd.*** (*supra*) and observed that it is natural for an arbitrator to forget contentions and pleas raised by the parties during the course of arguments and held that the arbitrator should make and publish the award within a reasonable time. Abnormal delay without satisfactory explanation, *per* the learned Judge, caused prejudice. The learned Judge opined that it would certainly have an impact and be violative of the public policy of India and, accordingly, set aside the arbitral award on the ground that it was vitiated by the long delay.

11. Again, in ***Unique Builders vs. Union of India***[11], another learned Judge of the Madras High Court, while dealing with a delayed arbitral award, rejected the contention that such delay had no impact in the pre-Section 29A era. The learned Judge noted that the arbitral tribunal had not offered any reason for the delay in the passing of the award and observed that the delay certainly prejudiced the parties. Referring to earlier decisions, the learned Judge held that there was a strong likelihood of the arbitrator forgetting arguments and relevant facts with passage of a long interval of time. Having found that the award was vitiated on the ground of delay on the part of the arbitrator in publishing the award within a reasonable time, the learned Judge set aside the arbitral award.

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10 2019 SCC OnLine Mad 38989
11 2025 SCC OnLine Mad 239

12. More recently, in ***GL Litmus Events Pvt. Ltd. vs. Delhi Development Authority***[12], a learned Judge of the Delhi High Court considered an arbitral award delivered with a delay of over one and a half years. Taking note of the precedential law laid down by that Court, the learned Judge referred to the decision of this Court in ***Anil Rai vs. State of Bihar***[13], wherein it was emphasised that justice delayed would be justice denied. Noting that the said decision was given in the context of judicial proceedings, the learned Judge observed that the same principle would apply with equal force to arbitral proceedings as the very objective of the Act of 1996 is to provide an efficacious and speedy mechanism for dispute resolution. On facts, the learned Judge found that the parties were constrained to request the arbitrator to deliver the award on three separate occasions but despite the same, the delay of over one and a half years ensued. Opining that arbitrators are human beings whose ability to recollect oral submissions and evaluate evidence would diminish over a period of time, the learned Judge held that such delay would not be a mere procedural lapse but would cause substantive prejudice to the parties as it would strike at the heart of fairness in adjudication. The learned Judge opined that when an arbitrator pronounces an award after a long gap, the very faith of the parties in arbitration proceedings being an efficacious remedy would stand diminished. The learned Judge further opined that there was a real and substantial risk when

12 2025 SCC OnLine Del 5772
13 (2001) 7 SCC 318

an award is rendered after a long gap that it is based on selective recollection of submissions, thereby effecting the fairness of the process. The learned Judge, accordingly, set aside the award on the ground that it was opposed to the public policy of India, covered by Section 34(2)(b)(ii) of the Act of 1996.

13. Interestingly, apart from ***Anil Rai*** (*supra*), this Court had other occasions to frown upon undue delays on the part of High Courts in delivering judgments. In ***R.C. Sharma vs. Union of India and others***[14], a 3-Judge Bench of this Court was critical of the delay of 8 months in the delivery of a judgment by a High Court. Observing that the Code of Civil Procedure, 1908, did not prescribe a time limit for the delivery of a judgment, the Bench observed that unless explained by exceptional and extraordinary circumstances, delay in delivery of judgments was highly undesirable, as it is not unlikely that some points which a litigant considers important may escape notice. It was further observed that what is more important is that litigants must have complete confidence in the result of the adjudication and that confidence would be shaken if there is excessive delay between hearing of arguments and delivery of the judgment. It was pointed out that justice, as often observed, must not only be done but must manifestly appear to be done. Again, in ***Kanhaiyalal and others vs. Anupkumar and others***[15], this Court affirmed its earlier view in ***Bhagwandas Fateh Chand Daswani vs. HPA***

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14 (1976) 3 SCC 574
15 (2003) 1 SCC 430

International[16] that long delay in the delivery of a judgment would be sufficient to set it aside as such delay would give rise to unnecessary speculation in the minds of the parties and the party whose case was rejected by the High Court may have an apprehension that the arguments raised at the Bar were not reflected or appreciated while delivering the judgment.

14. Now, turning to the statutory scheme, we may first note that Section 23 of the Act of 1940 provided that the Court shall, by order, refer the matter in difference in any suit to the arbitrator and shall, in the order, specify such time as it thinks reasonable for the making of the award. Section 28(1) of the Act of 1940 empowered the Court, if it thought fit, irrespective of whether the time for making the award had expired or not and whether the award had been made or not, to enlarge the time for making the award. Section 28(2) thereof dealt with enlargement of time for making the award with the consent of the parties and stated that any provision in the arbitration agreement, whereby the arbitrator was empowered to enlarge the time for making the award without the consent of the parties, would be void and of no effect.

However, no such time stipulations found mention in the Act of 1996 till the insertion of Section 29A therein, *vide* Amendment Act No. 3 of 2016, with retrospective effect from 23.10.2015. Thereby, time for the making of domestic arbitral awards was mandatorily fixed by requiring the same to be pronounced within 12 months from the date of completion of the pleadings

16 (2000) 2 SCC 13

under Section 23(4) of the Act of 1996. Power to extend that time was conferred upon the parties, under Section 29A(3) of the Act of 1996, subject to a maximum period of 6 months. Section 29A(4) of the Act of 1996, however, empowered the Court to grant further extension of time if sufficient cause was shown therefor.

15. Prior to insertion of Section 29A in the statute book, in the event of failure of an arbitrator to act without undue delay, recourse was provided under Section 14 of the Act of 1996 to dual remedies – by approaching the arbitrator first and, then, the Court. Section 14(1)(a) states that the mandate of an arbitrator would stand terminated if he either becomes *de jure* or *de facto* unable to perform his functions or, for other reasons, fails to act without undue delay. Section 14(2) states that, if a controversy remains concerning any of the grounds referred to in Section 14(1)(a), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the arbitrator's mandate. Though it is argued before us that recourse must necessarily be taken to this remedy under Section 14(2) if a party is aggrieved by long delay on the part of an arbitrator in delivering the arbitral award, we may observe that, in reality, a party to an arbitration proceeding would not willingly choose to incur the risk of provoking the wrath of the arbitrator by moving such an application as, in the event of failing in that endeavour, the very same arbitrator would continue with the arbitration proceedings and deliver a verdict. Being human, an arbitrator, who is

unsuccessfully subjected to a proceeding seeking the termination of his/her mandate under Section 14(2), on grounds of his/her personal failure, may well be prone to bias against the party who had subjected him to such process. Therefore, notwithstanding this remedy provided by the statute, to what extent it has actually been of use is open to question. Though Section 34(2)(b) of the Act of 1996 speaks of an award being set aside if it is in conflict with the public policy of India and *Explanation 1* thereto elucidates that an award would be construed to be so if it is against the most basic notions of morality or justice or if the making of the award was induced or affected by fraud or corruption, it would be rather difficult for a party to establish the bias that may develop if the arbitrator bears a grudge against the party who had unsuccessfully taken him/her to Court under Section 14(2) of the Act of 1996. Therefore, one would not ordinarily come across an instance of a party to the arbitration unilaterally approaching the Court under Section 14(2) of the Act of 1996, thereby taking on the risks involved therein.

16. It is perhaps for this reason that the Act of 1996 came to be amended, with retrospective effect from 23.10.2015, so as to curb possible delays on the part of arbitrators more effectively. The Statement of Objects and Reasons dated 25.11.2015 of Amendment Act No.3 of 2016 sets out that the Act of 1996 was enacted to provide for speedy disposal of cases relating to arbitration with least amount of intervention by the Courts but, with passage of time, some difficulties in the applicability of the Act of 1996 were noticed.

Therefore, amendments were proposed to be made in the Act of 1996 to facilitate and encourage alternative dispute mechanisms, especially arbitration, 'for settlement of disputes in a more user-friendly, cost effective and expeditious disposal of cases, as India was committed to improve its legal framework to obviate delay in disposal of cases'. In this regard, an amendment was proposed that an arbitral tribunal should make its award within a period of 12 months from the date it enters upon the reference, giving liberty to the parties to extend such period up to 6 months, beyond which extension could only be granted by the Court on sufficient cause being shown.

17. Notably, on the issue of a 'dilatory arbitrator', ***Russel on Arbitration***[17] states that an arbitral tribunal is required to conduct proceedings and adopt procedures that would avoid unnecessary delay and refusal or failure to conduct the proceedings or make an award with reasonable dispatch can lead to that tribunal's removal, although the delay would have to be truly exceptional so as to cause substantial injustice to the applicant. As to what would be reasonable dispatch was stated to depend on circumstances - for instance, a decision in a 'documents-only' case may be expected more quickly than in an arbitration where the testimony of many witnesses has to be considered. It was further stated that a delay of 12 months in publishing an award was inordinate and was capable of founding an application to have that award set aside.

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[17] Russel on Arbitration 24th Edition. Chapter 7 (Para 7-127).

18. Similarly, on 'Duty to act promptly' in Chapter 5, titled 'Powers, Duties, and Jurisdiction of an Arbitral Tribunal', ***Redfern and Hunter***[18] states thus:

> 'An arbitral tribunal has an obvious moral obligation to carry out its task with due diligence. Justice delayed is justice denied. Some systems of law endeavour to ensure that an arbitration is carried out with reasonable speed by setting a time limit within which an arbitral tribunal must make its award. The time limit fixed is sometimes as short as six months (as in the ICC rules), although generally it may be extended by consent of the parties, or at the initiative of the institution or the tribunal. If an award is not made within the time allowed, the authority of the arbitral tribunal may be regarded as having terminated, with the risk that any award will be null and void. Some systems of law provide that an arbitrator who fails to proceed with reasonable speed in conducting the arbitration and making his or her award may be removed by a competent court, and deprived of any entitlement to remuneration. The Model Law provides that the mandate of an arbitrator terminates if he or she 'fails to act without undue delay'.

The learned authors pointed out that though the above sanctions may act as a spur to the indolent arbitrator, they do not compensate a party who suffered financial loss as a result of delay in the conduct of the arbitration. It was noted that delay in the conduct of an arbitration may have serious financial consequences as awards of interest rarely compensate a party for the financial loss suffered in the interim. It was pointed out that faced with increasing delays in the conduct of arbitrations, major institutions revised their rules to improve the speed and efficiency of arbitrations. Though the

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[18] Redfern and Hunter on International Arbitration. 7th Edition (Paras 5.74 and 5.75).

above observations were made in the context of international arbitrations, the same principle would hold good for domestic arbitrations also. Therefore, when the Arbitrator presently took years together to deliver the Award, the least that the parties would expect is a quietus being given to their disputes instead of being relegated to another round of arbitration/ litigation. The Arbitrator, therefore, failed to live up to that minimal expectation reposed in him by law and by the parties themselves.

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'[19], 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

[19] Journal of International Dispute Settlement (February, 2010).

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.

21. We may now note the relevant facts. The respondents in these appeals are brothers. The subject land, being an extent of 20 grounds and 600 sq. ft (1.116 acre) situated at New No.165, Old Door No. 110, St. Mary's Road, Chennai, was owned by them. While so, they entered into Joint Development Agreement dated 17.12.2004 (JDA) with one Lancor Gesco Properties

Limited (LG) for the development of this land by construction of a building thereon for their mutual benefit. This JDA envisaged construction of a residential or commercial building at the cost and expense of the developer and delivery of 50% of the built-up area in the building to the respondents free of cost. In return, the developer was to be conveyed, free from all encumbrances, an undivided 50% share in the land along with 50% share in the building erected thereon. The developer was required to make a refundable interest-free deposit of ₹3,57,00,000/- with the respondents and another refundable interest-free deposit of ₹25,00,000/- within six months thereafter. These security deposits were to be returned by the respondents within 15 days of fulfilment by the developer of the stipulated conditions, in terms of Clause 6 of the JDA, which reads to the following effect:

> 'a. LG completes the construction of the building in all respects, including the landowners' constructed area fit for occupation and the Architects for the project certify to the landowners that the building had been put up and completed according to the sanctioned plan and is fit for occupation.
>
> b. LG has applied to the Chennai Metropolitan Development Authority for a Completion Certificate in respect of the said building; and
>
> c. LG offers, in writing, to handover the landowners' constructed area to the landowners, after the conditions stipulated in clause (a) and (b) are fulfilled.

22. The date on which all the above conditions stood fulfilled was to be treated as the 'Handover Date'. It was also agreed between the parties that,

irrespective of the landowners taking delivery of their constructed area, upon expiry of 15 days from the Handover Date, the developer was deemed to have fulfilled its obligation to deliver the landowners' constructed area, irrespective of whether or not physical possession thereof had been taken by the landowners, and the security deposits would be due and payable to them on such date, i.e.,15 days after the Handover Date. It was expressly agreed between the parties that the developer was not required to handover physical possession of the landowners' constructed area to them until the security deposits together with interest, if any, in terms of the agreement had been returned by the landowners to the developer. The interest that was contemplated was payable at the rate of 12% per annum in the event the landowners did not refund the deposits within 15 days from the Handover Date. In addition to the two security deposits referred to above, the developer made another refundable interest-free deposit of ₹1,25,00,000/-. This deposit was to be returned by the landowners to the developer within 30 days from the Handover Date. The parties were to decide whether the land should be developed into a commercial or a residential complex within 120 days.

23. Under Clause 25 of the JDA, the developer was required to appoint the Architect for the development after obtaining the consent of the landowners. Under Clauses 36 and 37, two powers-of-attorney were to be executed by the landowners in favour of the developer. The first one was to enable the developer to carry out the development and obtain various approvals,

sanctions and permissions relating thereto in addition to entering into agreements to sell or lease or mortgage, by way of deposit of title deeds, the developer's constructed area and its proportionate undivided share in the land. The second one was to be kept in escrow with Housing Development Finance Corporation Limited (HDFCL), which was to deliver the same to the developer on the Handover Date in accordance with the terms of the Escrow Agreement. This second power-of-attorney was to authorize and empower the developer or its nominees to execute and register sale deeds in respect of the developer's undivided share in the land and its share in the constructed area. This power-of-attorney was to be irrevocable and was to be acted upon only after the developer delivered or was deemed to have delivered the landowners' constructed area to them. In the event of breach or violation of the terms of the JDA, the aggrieved party was entitled to give written notice to the defaulting party and such defaulting party was required to rectify the breach within 30 days of the receipt of such notice. The landowners were entitled to terminate the JDA only if the developer failed to complete the development within the agreed time; failed to deliver the landowners' constructed area within the stipulated time without encumbrances; or permitted a change in ownership of its equity share capital. In the event of such termination, the landowners were to return the security deposits of the developer after deducting the losses that they may have suffered. Clause 52 of the JDA provided for resolution of disputes through arbitration.

24. A Supplemental Agreement was executed on 17/18.12.2004 by and between the parties, whereby it was agreed that till the Handover Date was reached, the proceeds received by the developer in connection with sale of the constructed area would be deposited in a separate bank account and such amounts would be used only for the purpose of financing the cost of development; repayment of loans taken for such development; payment of interest on such loans; and payment of taxes in relation to the development. Another supplemental agreement was executed by the parties on 29.03.2006, whereby they agreed upon appointment of M/s. Natraj & Venkat, Architects, as the Project Architect for the development of the property in terms of the JDA. This agreement recorded that the parties had agreed upon construction of a multi-storied software technology park on the land. In terms of this supplemental agreement, the 2nd, 3rd, 4th and 5th floors were allotted to the share of the developer, while the 6th, 7th, 8th, and 9th floors fell to the share of the landowners. The 10th floor was to be shared by both parties, along with the terrace and common areas. The building was to be named 'Menon Eternity'. An additional sum of ₹25,00,000/- was also deposited by the developer under this agreement towards security deposit. The agreement also recorded that the second power-of-attorney had been executed by the landowners and was kept in escrow with the HDFCL. A third supplemental agreement was executed on 22.02.2007. Thereunder, the developer agreed to pay to the landowners an additional interest-free refundable deposit of

₹3,00,00,000/-. Meanwhile, Lancor Gesco Properties Limited was renamed as Lancor G. Corp. Properties Limited on 10.05.2005. Thereafter, Lancor G. Corp. Properties Limited was amalgamated with Lancor Holdings Limited, the appellant before us (hereinafter, 'the Company'), *vide* the scheme sanctioned by the Madras High Court on 23.08.2007.

25. The core dispute that arose between the parties was whether or not the construction of the building was completed as per the agreed terms. Another dispute was with regard to the sale deeds executed by the Company in its own favour by using a copy of the second power-of-attorney, while the original remained with HDFCL. Further, refusal by the respondents to refund the security deposits to the Company was another issue. The respondents' case was that the building was not completed as agreed upon and, therefore, the Handover Date, in terms of the JDA, had not materialized. According to the Company, the building stood completed on 29.07.2008, when it applied for a Completion Certificate. The Project Architect issued Certificate dated 10.10.2008 stating that the building was completed as per the plans and was fit for occupation as soon as the Electricity Board and the Water and Sewerage Board gave the power, water and sewerage connections.

26. In addition to these documents, the Company relied upon the letter dated 22.07.2008 sent by M/s. Future Management and Consultancy Private Limited to respondent No.1 along with a cheque for ₹1,00,00,000/-, as earnest money deposit, for execution of a formal lease agreement in respect

of the 6th floor of the building. Another document relied on by the Company was the lease deed executed on 10.11.2008 between the Company and BNP Paribas Global Securities Market Operations Private Limited in relation to the built-up area of 20,878 sq. feet on the 2nd and 3rd floors of the building.

27. A separate Completion Certificate was obtained by the Company from the Corporation of Chennai on 21.08.2008. Completion Certificate was issued by the Chennai Metropolitan Development Authority on 14.11.2008. Water and sewerage connections were provided by the Chennai Metropolitan Water Supply and Sewage Board on 22.11.2008. Further, Compliance Certificate dated 23.09.2008 was secured from the Director of Fire and Rescue Services and Compliance Certificate dated 25.09.2008 was obtained from the Police (Traffic) Department. Compliance Certificate dated 30.10.2008 was also obtained from the Electronics Corporation of Tamil Nadu, as it was required for operation of a software technology park.

28. However, the respondents were not satisfied that the construction of the building was complete in terms of the JDA. Correspondence ensued between the parties on this account and the Company accepted that certain minor works were still outstanding which required attention, i.e., with regard to the staircase, the basement and the construction of a canopy. On 20.10.2008, the Company took the stand that it had fulfilled its obligations under the JDA and, therefore, the said date should be reckoned as the Handover Date. The Company, accordingly, called upon the respondents to refund the security

deposits. The respondents, however, contested this claim stating that the conditions in Clauses 6(a) and (b) of the JDA were not fulfilled and, therefore, the Handover Date had not come as yet.

29. Surprisingly, on 28.07.2008, the respondents chose to refund to the Company a sum of ₹1,00,00,000/- from out of the security deposits held by them. Further, another sum of ₹1,00,00,000/- was refunded by them on 01.12.2008 during the course of their correspondence. Therefore, out of the security deposits, totalling ₹6.82 crores, a sum of ₹2 crores stood refunded, bringing the balance deposits to ₹4.82 crores. It is at this point of time, i.e., on 19.12.2008, that the Company chose to execute five registered sale deeds in its own favour on the basis of a photocopy of the second power-of-attorney, the original of which was still lying with the escrow account holder, HDFCL.

30. On 05.01.2009, the Company invoked the arbitration clause contained in the JDA, naming Mr. Justice K.P. Sivasubramaniam, a former Judge of the Madras High Court, as its nominee Arbitrator. However, the respondents issued reply dated 27.01.2009 stating that they were advised to resolve the matter without arbitration. No such resolution took place, leading to filing of five applications by the respondents under Section 9 of the Act of 1996. Four out of those applications were dismissed by a learned Judge of the Madras High Court, *vide* common order dated 21.04.2009. As regards the last application, the Company gave an undertaking that it would not disturb or interfere with the joint possession of the property. This application was,

therefore, allowed by the same common order. Appeals were preferred against this common order but the same stood dismissed on 30.11.2009.

31. In the meanwhile, the respondents filed Civil Suit No.279 of 2009 seeking permanent and mandatory injunctions against the Company and the authorities of the Registration department. While so, as the respondents had failed to name their nominee Arbitrator in terms of the arbitration clause, the Company filed a petition in OP No. 137 of 2009 before the Madras High Court under Section 11 of the Act of 1996. Ultimately, the Company's nominee, i.e., Justice K.P. Sivasubramaniam (Retd.) was appointed as the sole Arbitrator.

32. The Company filed its claim statement on 28.09.2009 praying that the Arbitrator may be pleased to pass an award:

> "a) directing the respondents to jointly and severally pay the claimant a sum of Rs.5,92,83,923/- being the refundable security deposit together with interest @ 12% per annum and future interest @ 12% per annum on the sum of Rs.4,82,00,000/- from this date till date of realization.
>
> b) directing the respondents to jointly and severally pay the claimant a sum of Rs.1,21,67,741/- towards rental deposit, caution deposit, OSR charges, demolition charges, together with interest @ 12% per annum and future interest @ 12% per annum on the sum of Rs.1,09,76,830/- from this date till date of realization.
>
> c) directing the respondents to jointly and severally pay the claimant a sum of Rs. 28,63,093/- being the statutory charges together with interest @ 12% per annum and future interest @ 12% per annum on the sum of Rs. 25,82,870/- from this date till date of realization.
>
> d) directing the respondents to jointly and severally to pay the claimant a sum of Rs.37,87,641/- towards maintenance charges together with interest thereon @ 12% per annum, and future interest @ 12% per annum on the sum of Rs.35,82,464/- from this date till date of realization.
>
> e) directing the respondents to jointly and severally pay future maintenance charges @ Rs. 3.50 per sq. ft. per month from this date.

f) directing the respondents to jointly and severally pay the claimant a sum of Rs.4,86,906/- towards electricity consumption charges for common areas, together with interest thereon @ 12% per annum and future interest @ 12% per annum on the sum of Rs.4,65,345/- from this date till date of realization.

g) directing the respondents to jointly and severally pay the future electricity consumption charges in respect of common areas, as per actual meter readings.

h) declaring that the respondents are liable to pay the service tax arising out of the transactions and consequently directing the respondents to jointly and severally pay a sum of Rs.82,40,000/- towards service tax.

i) directing the respondents to jointly and severally pay a sum of Rs.1,00,000/- towards damages for loss of reputation and goodwill.

j) directing the respondents to jointly and severally to pay a sum of Rs.30,18,104/- towards property tax, fire insurance and IBMS cost.

k) declaring that the claimant is entitled to the original of the power of attorney dated 29.03.2006 executed by the respondents in favour of the claimant and presently under the custody of the escrow agent, HDFC, Bangalore.

l) directing the respondents to pay the costs of the proceedings and pass such further or other order in the interests of justice and circumstances of the case."

33. The respondents, along with their statement of defence dated 22.01.2010, raised double the number of counter claims, which read as under:

"1. Declaring and adjudging that (i) the Sale Deed dated 19.12.2008 which is registered as Document No. 2890 of 2008, (ii) the Sale Deed dated 19.12.2008 which is registered as Document No. 2891 of 2008, (iii) the Sale Deed dated 19.12.2008 which is registered as Document No. 2892 of 2008, (iv) the Sale Deed dated 19.12.2008 which is registered as Document No. 2893 of 2008 and (v) the Sale Deed dated 19.12.2008 which is registered as Document No. 2894 of 2008, all in Book I in the Office of the Sub Registrar, Mylapore, Chennai, allegedly executed by the respondents, through the alleged power of attorney holder, Lancor Holdings Ltd., in favour of the claimant, Lancor Holdings Ltd., are illegal, void ab initio and non-est and not binding upon the respondents herein and directing the claimant herein to deliver up the said sale deeds for being cancelled and authorizing the respondents to execute appropriate cancellation deeds and getting the cancellation deeds registered in the jurisdictional Sub Registrar's Office, Chennai.

2. Declaring and adjudging that the lease deed dated 10.11.2008 which is registered as Document No. 1110 of 2009 of Book I in the office of the Sub Registrar, Mylapore, Chennai, allegedly executed by Lancor Holdings Ltd., in favour of BNP Paribas Global Securities Market Operations Ltd., is illegal, void ab initio and non-est and not binding on the respondents and directing the claimant to deliver up the said lease deed and directing the cancellation of the said lease deed by executing a cancellation deed and registering the same in the Office of the jurisdictional Sub Registrar.

2(a). Declaring and adjudging that the lease deed dated 11.01.2010, which is registered as Document No. 928 of 2010 of Book I in the office of the Sub Registrar, Mylapore, Chennai, allegedly executed by Lancor Holdings Ltd., in favour of BNP Paribas Sundaram Global Securities Operations Pvt. Ltd. allegedly leasing the 4th floor in the building 'Menon Eternity' situated at No. 165, St. Mary's Road, Alwarpet, Chennai – 600018, is illegal, void ab initio and non-est and not binding on the respondents and directing the claimant to deliver up the said lease deed and directing the claimant to deliver up the said lease deed and directing the cancellation of the said lease deed by executing a cancellation deed and registering the same in the office of the jurisdictional Sub Registrar.

2(b). Declaring and adjudging that the lease deed dated 11.01.2010, which is registered as Document No. 1263 of 2010 of Book I in the office of the Sub Registrar, Mylapore, Chennai, allegedly executed by Lancor Holdings Ltd., in favour of BNP Paribas Sundaram Global Securities Operations Pvt. Ltd. allegedly leasing the 5th floor in the building 'Menon Eternity' situated at No. 165, St. Mary's Road, Alwarpet, Chennai – 600018, is illegal, void ab initio and non-est and not binding on the respondents and directing the claimant to deliver up the said lease deed and directing the claimant to deliver up the said lease deed and directing the cancellation of the said lease deed by executing a cancellation deed and registering the same in the office of the jurisdictional Sub Registrar.

2(c). Declaring and adjudging that the lease deed dated 25.02.2010, which is registered as Document No. 1422 of 2010 of Book I in the office of the Sub Registrar, Mylapore, Chennai, allegedly executed by Lancor Holdings Ltd., in favour of NEMC Solar Services Pvt. Ltd. allegedly leasing a portion of 10th floor (north wing) measuring 10,339 square feet in the building 'Menon Eternity' situated at No. 165, St. Mary's Road, Alwarpet, Chennai – 600018, is illegal, void ab initio and non-est and not binding on the respondents and directing the claimant to deliver up the said lease deed and directing the claimant to deliver up the said lease deed and directing the cancellation of the said lease deed by executing a cancellation deed and registering the same in the office of the jurisdictional Sub Registrar.

3. Declaring all the acts, deeds and documents done by and/or executed on the basis of the said five sale deeds all dated

19.12.2008 and the said Lease Deed dated 10.11.2008 by the claimant are illegal, void ab initio and non-est and directing the claimant to cancel all such acts, deeds and documents and further direct the claimant to pay to the respondents all the monies and benefits that the claimant has received and/or earned in pursuance of the alleged Sale Deeds and the Lease Deed mentioned above.

4. Declare that the Certificate dated 10.10.2008 issued by the Project Architect, viz., Nataraj & Venkat, having their office at No. 5, Victoria Hostel Road (TNCA Stadium), Chennai 600005, in respect of the building “Menon Eternity” is illegal, void ab initio and non-est.

5. Grant an order of permanent injunction restraining the claimant from relying upon the said certificate dated 10.10.2008 of the said Project Architect.

6. Appoint an independent Architect for joint inspection of the building in the subject property sand for certifying the measurement and quality of the constructed areas of the claimant and the respondents and the building including the common areas and common amenities at the cost and expense of the claimant.

7. Direct the claimant to complete the building and the respondents’ constructed area as per the agreed specifications in the JDA and obtain a Completion Certificate from the said Independent Architect in respect of the said building and obtain an Area Statement for the total super-built-up area duly certified by the said Architect and furnish the same to the respondents.

8. Direct the claimant to deliver to the respondents their 50% constructed area in the building “Menon Eternity” in the subject property, upon the respondents paying to the claimant such sum of monies as this Hon’ble Arbitral Tribunal may be pleased to determine as being due and payable by the respondents to the claimant.

9. Direct the claimant to return to the respondents all original documents of title pertaining to the subject property.

10. Direct the claimant to deliver to the respondents all original/authenticated copies of drawings, plans, literatures, brochures, specifications, etc., pertaining to all the devices, the equipment and the amenities provided at the building in the subject property.

11. Direct the claimant to display the name of the building “Menon Eternity” at a prominent place in the building in the subject property as may be chosen by the respondents.

12. Grant an order of permanent injunction restraining the claimant from using the name “Lancor” anywhere in the building “Menon Eternity” in the subject property.

13. Direct the claimant to pay to the respondents as compensation for the delay in completion of the building a sum of Rs.80,60,456/- and future interest at 12% p.a. on the said sum of Rs.80,60,456/- calculated from this day till the date of its payment in respect of the respondents' constructed area as per the calculations given in paragraph 112 above.

14. Direct the claimant to pay to the respondents as compensation towards loss of previous rents in a sum of Rs.12,41,36,609/- along with future interest thereon at the rate of 12% p.a. calculated from today till the date of its payment as per the calculations given in paragraph 113 above.

15. Direct the claimant to pay to the respondents compensation for loss of rents in respect of the car park areas in a sum of Rs.39,59,220/- together with future interest at 12% p.a. on the said sum of Rs.39,59,220/- calculated from this day till the date of its payment in respect of the respondents' constructed area as per the calculations given in paragraph 114 above.

16. Direct the claimant to pay to the respondents as compensation towards loss of interest on advance rent in a sum of Rs.1,29,63,726/- along with future interest on Rs.1,29,63,726/- thereon at 12% p.a. calculated from this day till the date of its payment as per the calculations given in paragraph 115 above.

17. Direct the claimant to pay to the respondents a sum of Rs.31,75,35,342/- as compensation towards loss of future rents in respect of the respondents' constructed area of 93,050 sq. ft.., calculated from today till 30.11.2017 along with future interest thereon at 12% p.a. calculated from this day till the date of its payment as per the calculations given in the annexure referred in paragraph 116 above.

18. Direct the claimant to pay to the respondents a sum of Rs. 5 Crore or such sum of money, as may be determined by this Hon'ble Arbitral Tribunal, as damages for slandering the title of the respondents to their share of constructed area in the subject property along with interest thereon at 12% p.a. calculated from 17.07.2009 (the date of publication of the Public Notice in the Newspaper) till the date of its payment.

19. Direct the claimant to pay to each of the three respondents a sum of Rs.3 Crore each (in all Rupees Nine Crores) or such sum of money, as may be determined by this Hon'ble Arbitral Tribunal as damages for the claimant having defamed the fair name and reputation of the respondents.

20. Direct the claimant to tender an unconditional apology to the respondents and to withdraw the public notice published in the Hindu daily on 17.7.2009 and prominently publish the unconditional apology and withdraw the said Notice in the same News Paper.

21. Direct the claimant to pay to the respondents the prematurely repaid deposit of Rs.2 Crores and the interest thereon, totally amounting to Rs.2,31,00,000/- along with future interest thereon at 12% p.a. calculated from today till the date of its payment as per the calculations given in paragraph 120 above.

22. Direct the claimant to appoint an independent Agency acceptable to the respondents for maintenance of the common areas and common amenities at the said building in the subject property.

23. Direct the claimant to discharge the loan obtained from HDFC and obtain the original title deeds and documents in respect of the subject property from the HDFC to enable the claimant to return the same to the respondents.

24. Direct the claimant to pay to the respondents the costs of this proceedings and pass such other and further orders as this Hon'ble Arbitral Tribunal may deem fit in the interest of justice."

34. The learned Arbitrator, thereupon, framed the following issues for resolution in the arbitration proceedings:

1. Whether there was any delay on the part of the respondents in handing over the property after demolition?

2. Whether the claimant has discharged its obligations and completed the construction of the building within the stipulated time as required under the Joint Development Agreement and the supplemental agreement?

3. Whether the certificate of the Architect dated 10.10.2008 is valid and binding on the parties and whether the availment of the electricity and water connection was a pre-condition for the completion?

4. Whether there should be an appointment of an Architect afresh?

5. Whether the claimant had complied with the terms of clause 6 of the Joint Development Agreement?

6. Whether 20.10.2008 can be construed as the deemed date of handing over?

7. Whether the terms of the escrow agreement is relevant for these arbitral proceedings and if so whether the claimant had complied with more particularly clause 7?

8. Whether the sale deeds dated 19.12.2008 are supported by good and valid consideration?

9. Whether the claimant is entitled to the various claims as prayed for?

10. Whether the respondents are entitled to the claims made under their counter claims?

11. Whether the parties are entitled to the cost of the proceedings?

12. Whether the claimant was entitled to premature return of the deposits from the respondents?

13. To what other reliefs the parties are entitled to?

35. The Award dated 16.03.2016 reflects that one witness each was examined by the Company and the respondents. Two Engineers from an independent agency, M/s Velu Associates, Engineers, were examined. The Company marked 58 exhibits in evidence while the respondents marked 81 exhibits. The Report of M/s Velu Associates, Engineers, was Ex. A/1.

36. On the crucial issue pertaining to the Handover Date, the Arbitrator noted that Clauses 6(a), (b) and (c) of the JDA were of relevance and, in terms thereof, the requirements were summed up thus:

(i) Construction to be completed and fit for occupation;
(ii) The Project Architect was to certify to the landowners that the building was complete and fit for occupation;
(iii) The Company should have applied for the Completion Certificate from the Chennai Metropolitan Development Authority; and
(iv) The Company should, in writing, offer to handover the landowners' constructed area after fulfilling the three conditions.

37. The Arbitrator then dealt with the Project Architect's Certificate dated 10.10.2008 (Ex. R/20) and opined that, even in terms thereof, the building

was not fit for occupation till power, water and sewerage connections were provided and, as on the date of that certificate, those requirements had not been fulfilled. The Arbitrator, therefore, found fault with the Project Architect for issuing the said certificate stating that the building was fit for occupation when it was not so. The Arbitrator held that the stand of the Project Architect was untenable and was completely violative of its role contemplated under the JDA. In consequence, the Arbitrator held that the certificate issued by the Project Architect was totally invalid and unacceptable. The Arbitrator, in effect, came to the conclusion that Clause 6(a) of the JDA remained unfulfilled. The Arbitrator brushed aside the fact that a completion certificate had not only been applied for but was also secured by the Company from the Chennai Metropolitan Development Authority as he found that various requirements under the JDA had not been complied with. The Arbitrator, therefore, held against the Company not only on Issue No.1 but also on Issue Nos. 2, 3, 5 and 6. As regards Issue No.4, the Arbitrator was of the opinion that there was no requirement to appoint an architect afresh as M/s Velu Associates, Engineers, were appointed as independent engineers during the course of the arbitral proceedings and a report was already submitted by them (Ex. A/1).

38. The Arbitrator relied upon the Engineers' Report (Ex. A/1) and came to the conclusion that major defects were found in the construction even in March, 2011. Further, the Arbitrator concluded that the Escrow Agent, HDFCL, was justified in not handing over the original power-of-attorney to the

Company. The Arbitrator opined that merely because a portion of the building was made ready for occupation, in the context of the letter and list produced by the Company, it did not mean that the entire building was ready for use and occupation, as contemplated under the JDA. The Arbitrator, therefore, held against the Company on Issue No. 7 with regard to the escrow agreement. On Issue No. 8, pertaining to the validity of the sale deeds executed by the Company in its own favour, the Arbitrator held that it was not open to the Company to take the law into its own hands on the self-serving and incorrect assumption that the escrow agent had colluded with the respondents or failed to act neutrally. The Arbitrator, therefore, concluded that the conduct of the Company reflected utter lack of *bonafides* and held in favour of the respondents.

39. The relief to be granted as a consequence of such findings was also discussed by the Arbitrator. According to him, 'the situation created by the Company, leading to the finding which was inevitable, was very complex and unusual which required to be carefully dealt with and had, in fact, resulted in some delay in devising a proper relief/Award which would be equitable to both parties'. Having stated so in para 126 of the Award, we may note at this stage, that the Arbitrator completely failed in finding a solution that was 'equitable to both parties' and, instead, tilted wholly in favour of the respondents. The Arbitrator observed that there was no clause in the agreement which specifically governed the peculiar scenario of the

unsustainable sales effected by the Company in its own favour. He observed that there was no stipulation for either liquidated damages or a process for assessing damages to fix fair and just compensation to be paid to the respondents while setting aside the sales. He went on to observe that in the event of the sales being set aside, the Company could not be deprived of its entitlement under law!! Noting that the respondents had not offered any solution so as to render full justice to both parties if the sales were held invalid, he observed that the respondents would be required to restore all the benefits received by them under the contract.

40. Therefore, *per* the Arbitrator, viewed from any angle, the sales being held void or voidable would give rise to a corresponding obligation on the respondents to restore the benefits received by them. However, as the construction of the building was carried out by the Company and if the sale of 50% thereof in its favour was to be set aside, then the Company would be entitled to be paid the expenditure incurred by it, if the contract was rescinded by the respondents. At the same time, according to the Arbitrator, being a wrongdoer, the Company which had acted illegally and unilaterally could not be let off, as it would amount to putting a premium on its wrongdoing. The Arbitrator then stated that, notwithstanding the above finding, granting of consequential reliefs involved very complicated legal and factual hurdles. He opined that the natural result of holding the sale deeds void and unenforceable would lead to invalidating the entire contract, stripping the

Company of its rights over the property leading to its ejectment therefrom, but this would not be possible without the respondents being directed to make good/compensate the Company for the amounts invested by it under the JDA. The Arbitrator observed that he had explored the possibility of moulding the relief in a 'proper and equitable manner', as the respondents could not be allowed to unjustly enrich themselves while the Company could not be allowed to go scot-free, notwithstanding its illegal action.

41. The possible alternatives stated by the Arbitrator were that either the respondents paid the Company for the entire work done by it or the Company compensated the respondents for taking over its share under illegal conveyances. According to the Arbitrator, the first alternative would mean that the Company had to be ejected from the property but would receive compensation in terms of Section 70 of the Indian Contract Act, 1872, while the second alternative would mean that the Company, in order to retain its share in the property, should pay proper compensation to the respondents for obtaining void conveyances. The Arbitrator repeated himself by again stating that the sales by the Company were illegal and unsustainable leading to a very uncertain scenario in the matter of providing further relief but the respondents had satisfied themselves by assailing the sales by the Company in its own favour and had not suggested any solution/relief to fulfil the requirements to which the Company would be entitled to under Section 70 of the Indian Contract Act, 1872. He pointed out that the respondents had not

pleaded for any relief for themselves in the event of the sales being set aside. He further noted that there was no provision in the JDA for liquidated damages which would cover the situation of the sale deeds executed by the Company being set aside on the ground of illegality. Further, he noted that neither party had come forward with any pleading, much less proof, of the actual compensation that would be payable to the Company on the sales being held invalid or even if the entire contract became voidable, entitling the respondents to rescind the contract.

42. The Arbitrator then stated that, in trying to find a solution which would put an end to further litigation, he had also thought of devising a relief which would be equitable to both parties, i.e., by holding that the security deposits collected from the Company and later refunded by the respondents to the Company should be treated as forfeited and treated as the compensation payable by the Company to the respondents for executing the sale deeds in its own favour in an illegal manner, so that such sales could stand regularized. In other words, according to him, the Company would pay back the entire amount of security deposits to the respondents as compensation for the illegal sales effected by it in its own favour and both parties would thereby put an end to the litigation. Strangely, he opined that it was not open to him to grant such relief or quantify compensation in the absence of proper pleading and proof. He, therefore, concluded that, apart from recording a finding and declaring that the sale deeds in favour of the Company were invalid and

illegal, no further relief could be granted and he left it open to both parties to work out their remedies in accordance with law by approaching the competent forum, i.e., either the Civil Court or under the provisions of the Act of 1996 again through another arbitrator, by putting forth appropriate pleadings. Dealing with Issue Nos. 9 and 10, the Arbitrator observed that all claims were rejected subject to the observations made by him. He, however, noted that pursuant to his direction in an interlocutory application filed by the respondents, they had returned the security deposits lying with them to the Company which had, thereupon, put them in possession of their share. Insofar as the interest on the refund of security deposits was concerned, the Arbitrator had then directed the respondents to furnish a bank guarantee for a sum of ₹1.56 crore in favour of the Company. He, therefore, held that there was no necessity to grant any further relief and the Company would not be entitled to any interest on the refund of its security deposits. As regards the other claims and counter claims in monetary terms, the Arbitrator left it open to both sides to take appropriate steps in accordance with law. In summation, the Arbitrator ordered as under: -

> ‘I. The five sale deeds dated 19.12.2008 registered as Nos. 2890, 2891, 2892, 2893 and 2894 of 2008 in the office of the Sub Registrar, Mylapore, Chennai, are declared as 'illegal' and not binding on the Respondents and Respondents are entitled to execute appropriate cancellation deeds.
>
> II. No declaration is necessary in respect of the Lease Deeds mentioned under para 2 of the counter claim in view of the Arbitrator

having been informed that the lease period under the said leases are already over and fresh leases have to be executed only after April, 2016. It is declared that in view of the findings that the sale deeds in favour of the Claimants are illegal and not binding on the Respondent, the Claimant shall not have any right to lease any portion allotted towards their 50% share in the property.

III. All the acts done and deeds executed on the basis of 5 sale deeds dated 19.12.2008 are declared as non-est and illegal and the Respondent shall be entitled to receive all the consequential benefits acquired by the Claimant thereon.

IV. The Project Architect certificate dated 10.10.2008 of M/s. Natraj and Venkat is declared as illegal, non-est, violative of the terms of agreement and not binding on the Respondent.

V. Prayer Nos. 5 to 8 are rejected as unnecessary.

VI. All the individual items of claim under the claim statement as put forth by the Claimant and the individual items of counter claims under Prayer No. 9 to 23, and other additional claims made by both parties, are not considered by the Arbitrator in view of the observations made above. Such claims, counter claims, additional claims are left open to both parties to take appropriate further proceedings in accordance with law.

VII. There will no order as to costs and both parties to bear their respective costs.'

In effect, the Company stood divested of the possession of its 50% built-up share in the building and also the rentals received by it on the basis of such possession, traceable to the sale deeds dated 19.12.2008, as it was directed to make over the same to the respondents.

43. Notably, the Arbitrator had passed an interim order on 23.10.2010, under Section 17 of the Act of 1996, whereby the respondents were directed

to return the security deposits to the Company and, thereupon, the Company was directed to deliver possession of the respondents' 50% share in the building to them. This is the order that the Arbitrator referred to in the concluding portion of the Award. We may note that, by passing this order which was duly acted upon, the Arbitrator altered the factual position wherefrom the parties could not revert to the *status quo ante*, as third-party rights were created by the respondents in respect of their share of the building. Having created that situation, the Arbitrator ought not to have backtracked by failing to resolve the disputes between the parties. He placed the parties in a paradoxical situation as they could not, thereafter, be restored to the positions that they were in before the arbitration proceedings. Having done so, he however left them to fend for themselves with an unresolved scenario where only one party stood benefitted, i.e., the respondents.

44. Aggrieved by the Award, the Company filed OP No.231 of 2016 under Section 34 of the Act of 1996. This petition was disposed of by a learned Judge of the Madras High Court, *vide* order dated 23.12.2016. By the said order, the learned Judge observed that though the Arbitrator had set forth various ways in which the final relief could be moulded, he had stopped short of firming up the final relief with regard to compensation to be paid either way, that is, if, the sales were to be set aside, as was finally done or, in the alternative, if, the sale transactions were to be regularised. Noting that these observations were set out in paras 126 to 136 of the Award, the learned

Judge opined that what compounded the problem was the observation of the Arbitrator that the parties could seek their remedies by taking recourse to a Civil Court or by accessing the Act of 1996 again with the caveat that they could not avail of his services. The learned Judge observed that by doing so, the Arbitrator shut the door on exercise of power under Section 34(4) of the Act of 1996, whereby the Arbitrator could have been called upon to rule on undecided issues. Further, as the parties were not agreeable to treating the Award as an Interim Award, leaving other issues to be addressed in a fresh round of litigation, the learned Judge eschewed that option. The learned Judge was of the opinion that the Arbitrator could have called upon the parties to lead evidence for the purpose of determining compensation, consequent to his finding that the sale deeds were illegal, as the JDA had not been terminated by the respondents despite the breach by the Company. According to the learned Judge, compensation for the delay caused and the costs required to cure the defects in the building should have been the focal point of adjudication by the Arbitrator. In that sense, *per* the learned Judge, the arbitration proceedings remained inchoate and gave rise to another round of litigation at a heavy cost to the parties, both tangible and intangible. The learned Judge further opined that, if the Arbitrator was of the view that one of the parties needed to be compensated, depending on which of the two alternatives suggested by him was adopted, then the Arbitrator ought to have logically processed the matter further on one of the two courses set out by

him. Holding that it was incumbent on the Arbitrator to decide all issues and his failure to do so rendered the Award bad in law, thereby causing grave prejudice to the parties, the learned Judge set aside the Award in part. The finding of the Arbitrator with respect to the Company failing to comply with Clause 6(a) of the JDA was sustained, along with all attendant findings, but the learned Judge was disinclined to accept the Award to the extent it invalidated the sale deeds executed by the Company in its own favour. This, as per the learned Judge, would necessarily have to depend on the course of action which the concerned adjudicator would take thereafter, as it would be open to that adjudicator to permit the Company to claim title to its half-share in the building by paying damages or, in the alternative, declare the sale deeds invalid and allow payment of the cost of construction to the Company. The learned Judge observed that, while taking recourse to such an alternative, the concerned adjudicator would have to bear in mind the terms of the JDA and the nature of the arrangement arrived at between the parties.

45. Both sides were aggrieved by the order dated 23.12.2016 passed by the learned Judge. OSA No. 39 of 2017 was filed by the respondents while the Company filed Cross-Objection No.58 of 2017 therein. A Division Bench of the Madras High Court disposed of the matters on 30.01.2019. Noting that the building in question was awarded the US Green Building Council Norms and Standard Certification, the Division Bench observed that the core question to be decided by it in the appeal and the cross-objection was as to

whether setting aside of the Award in part by the learned Judge was sustainable. Considering the scope of Section 37 of the Act of 1996, the Bench observed that it did not find any perversity in the Award as the Arbitrator did not have the power to grant relief that went beyond what was claimed by the parties. Referring to case law, the Bench observed that relief not founded on pleadings could not be sustained and opined that the learned Judge was not correct in finding fault with the Arbitrator for not finally deciding the dispute between the parties. The Bench opined that, as the Company had not sought any alternative relief, the Arbitrator was not at fault for failing to grant relief to it after declaring the sale deeds illegal. The observation of the learned Judge that the Arbitrator ought to have called upon the parties to lead evidence, if necessary, and to amend their pleadings was, therefore, held to be unsustainable. The order of the learned Judge to the extent it partly set aside the Award was, therefore, set aside. In the result, the appeal filed by the respondents was allowed and the Company's cross-objection was dismissed. Hence, these appeals by the Company.

46. Having given our earnest consideration to the Award in question, we are of the opinion that the repetitions *ad nauseam* in the Award and the vacillation by the Arbitrator as to what he should do clearly manifest that the delay on his part contributed to his demonstrable indecisiveness. Having stated at one stage that the situation created by the Company was very complex requiring to be carefully dealt with resulting in some delay in devising

a proper relief/award which 'would be equitable to both parties', the Arbitrator ultimately did not devise any such relief which was equitable to both parties but held entirely in favour of the respondents. He set aside the sale deeds executed by the Company in its own favour and divested it of its possession over its 50% share in the building, apart from directing payment of all the rentals received by it to the respondents. In effect, the Arbitrator left the Company empty-handed with no relief whatsoever being granted to it except for advice to take recourse to fresh litigation. The respondents, on the other hand, were put in possession of their share of the building, free of cost and without discharging their obligations in terms of the JDA. They were also enriched to the extent of appropriating all the rentals collected by the Company till 2016. As noted by the Arbitrator himself and affirmed by both the Courts that heard the matter thereafter, the building was not built gratuitously by the Company and it was to be given its 50% share in the building, along with a corresponding share in the land, to be enjoyed by it and/or its nominees with full rights. However, without that coming to pass, the Company was left with nothing while the respondents got to enjoy the possession of their share in the building for the past 15 years, provided to them free of cost and without discharge of their corresponding obligations. In this scenario, the respondents obviously did not think it fit to terminate the JDA!

47. Arbitration, an alternative dispute resolution mechanism, is envisioned as a substitute to time-consuming and costly litigation in Courts. The aim and

objective of this mechanism is to ensure settlement of disputes between parties with minimum intervention by the Court. That is the reason why Section 34 of the Act of 1996 is crafted in a manner so as to restrict the grounds on which the arbitrator's award can be set aside. Unless the limited grounds stipulated in the provision are made out, an arbitral award cannot be invalidated. However, the very objective of the exercise would be lost if, after the entire process, an arbitrator fails to resolve the disputes between the parties and leaves them high and dry with advice to initiate a fresh round of arbitration/litigation once again. In his article, 'Arbitrators and Accuracy' (*supra*), Professor William W Park says as follows:

> 'An arbitrator's primary duty remains the delivery of an accurate award, resting on a reasonably ascertainable picture of reality. Litigants wanting only quick or cheap solutions can roll dice, and have no need of lawyers. Evidentiary tools in arbitration should balance sensitivity toward cost and delay against the parties' interest in due process and correct decisions. If arbitration loses its moorings as a truth-seeking process, nostalgia for a golden age of simplicity will yield to calls for reinvention of an adjudicatory process aimed at discovering the facts, finding the law, and correctly construing contract language….Much of the criticism of arbitration's cost and delay thus tells only half the story, often with subtexts portending a cure worse than the disease. An arbitrator's main duty lies not in dictating a peace treaty, but in delivery of an accurate award that rests on a reasonable view of what happened and what the law says.'

48. The Arbitrator in this case took nearly 4 years to conclude that he had no equitable relief to offer both parties but held in favour of one side in all respects, leaving it to the parties to start litigating again. He conveniently

opined that proper pleadings and evidence had not been placed before him and, therefore, he was constrained to relegate the parties to another round of litigation, ignoring the fact that he had already altered their positions and had benefitted one party at the expense of the other. This approach on the part of the Arbitrator, after dithering for nearly 4 years, served absolutely no purpose and reflected total non-application of mind. The delay in the making of the Award resulted in nearly four valuable years passing away with no benefit to show for it. When the public policy underlying resort to arbitration is to make it a time-saving mechanism for resolving disputes, this unexplained and pointless delay of the Arbitrator in concluding the matter clearly pitted his ineffective and futile Award against the public policy of India.

49. Significantly, in ***MMTC Limited vs. Vedanta Limited***[20], this Court observed that it is well-settled that, in exercise of power under Section 34 of the Act of 1996, the Court would not sit in appeal over an arbitral award and would interfere on merits only if the award was found to be against the public policy of India. It was noted that violation of public policy would include violation of the fundamental policy of Indian law, violation of the interest of India, conflict with justice or morality or the existence of patent illegality in the arbitral award. Patent illegality was held to mean contravention of the substantive law of India, contravention of the Act of 1996 and contravention of the terms of the contract. It was also noted that after the amendment to

20 (2019) 4 SCC 163

Section 34 in the year 2015, the position stood modified as *Explanation 1* to Section 34(2) demonstrated that contravention of public policy of India would now mean fraud or corruption in the making of the award or contravention of particular provisions of the Act of 1996 or of the fundamental policy of Indian law and conflict with the most basic notions of justice and morality. Further, Section 34(2A) of the Act of 1996 provides that in domestic arbitrations, patent illegality appearing on the face of an award is a ground to set it aside.

50. In ***Ssangyong Engineering and Construction Company Limited vs. National Highway Authority of India***[21], this Court observed that a domestic award would be liable to be set aside if it is contrary to the fundamental policy of Indian law, as understood in paras 18 and 27 of ***Associate Builders vs. Delhi Development Authority***[22], or if it is against the basic notions of justice or morality, as set out in paras 36 to 39 thereof. It was noted that *Explanation 2* to Section 34(2)(*b*)(*ii*) and *Explanation 2* to Section 48(2)(*b*)(*ii*) were added by Amendment Act No.3 of 2016 only to ensure that the law laid down in ***Oil and Natural Gas Corporation Limited vs. Western Geco Internation Limited***[23], as understood in paras 28 and 29 of ***Associate Builders*** *(supra)*, was done away with. Further, it was noted that an additional ground was made available under Section 34(2A), brought in by Amendment Act No.3 of 2016, and that the patent illegality appearing on the face of the award must

21 (2019) 15 SCC 131
22 (2015) 3 SCC 49
23 (2014) 9 SCC 263

go to the root of the matter, but would not amount to mere erroneous application of law. It was also noted that a decision which was perverse, as understood in paras 31 and 32 of ***Associate Builders*** *(supra),* while no longer being a ground of challenge apropos the public policy of India would certainly amount to patent illegality appearing on the face of the award.

51. More recently, the scope of interference with an arbitral award in exercise of power under Section 34 of the Act of 1996, which would also define the contours of the appellate jurisdiction under Section 37 thereof, was settled by a Constitution Bench in ***Gayatri Balasamy vs. ISG Novasoft Technologies Limited***[24]. The majority opinion therein held that the Court would have a limited power under Sections 34 and 37 to modify an arbitral award in the following circumstances -1. When the arbitral award is severable, by severing the invalid portion from the valid portion of the award; 2. By correcting any clerical, computational or typographical errors which appear on the face of the award as well as other manifest errors, provided that such modification does not necessitate a merits-based evaluation. 3. By modifying post-award interest in certain circumstances; and 4. By exercise of power under Article 142 of the Constitution, *albeit* such power being exercised with great care and caution and within the limits of the constitutional power.

52. We may now note certain undeniable factual aspects in the case on hand. The building is now complete and the floors falling to the share of the

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respondents have been put to beneficial use by them, since the delivery of possession thereof pursuant to the direction of the Arbitrator on 20.10.2010. The floors that fell to the share of the Company, which were put to use by it till the passing of the Award, have remained vacant and unused since then. The Company obtained Certificate dated 10.10.2008 from the Project Architect that the building was completed according to the sanctioned plan and was fit for occupation. Further, the Company not only applied for a Completion Certificate from the Chennai Metropolitan Development Authority in July, 2008, but also obtained it on 14.11.2008. The Company wrote to the respondents on 20.10.2008, stating that it was ready to handover their 50 % share of the constructed area to them and that it should be treated as the 'Handover Date'. These acts on the part of the Company confirmed that the three conditions stipulated in Clauses 6(a), (b) and (c) of the JDA stood duly complied with.

53. In this context, the review and exercise undertaken by the Arbitrator to assess the 'validity' of the Project Architect's Certificate dated 10.10.2008 is open to question. As already noted hereinbefore, Clause 6(a) of the JDA reads as follows:

> 'a. LG completes the construction of the building in all respects, including the LAND–OWNERS CONSTRUCTED AREA fit for occupation and the Architects for the project certify to the LAND OWNERS that the building has been put up and completed according to the sanctioned plan and is fit for occupation.'

It is clear from a bare reading of the above clause that the certification by the Project Architect was only to confirm that the building had been put up and completed according to the sanctioned plan and was fit for occupation. The phrase had to be read in its entirety and with continuity. By reading it so, it reflects that the 'fitness for occupation' was only in the context of the building being completed in accordance with the sanctioned plan and no more. The next clause, viz., Clause 6(b) is of relevance in this regard and it reads as follows:

> 'LG has applied to the Chennai Metropolitan Development Authority for Completion Certificate in respect of the said building'.

It may be noted that this clause only required the Company to apply for the completion certificate and it was not necessary that the said certificate should have been issued by the Handover Date. In this regard, we may note that unless a completion certificate is issued by the competent authority, neither an electrical connection nor a water supply and sewerage connection would ordinarily be provided to a building. Therefore, the Arbitrator's finding that provision of such facilities must also be read into Clause 6(a) to certify the 'fitness of the building for occupation' would tantamount to putting the cart before the horse. Further, the Arbitrator completely overlooked the fact that the Project Architect was appointed with the consent of the respondents and neither the searching scrutiny of the Project Architect's certificate nor a challenge thereto by the respondents was contemplated by Clause 6(a) of the

JDA. Mere issuance of that certificate by the Project Architect was sufficient to confirm compliance with Clause 6(a). In this regard, useful reference may be made to the observations of a 3-Judge Bench of this Court in ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***[25], which are extracted hereunder:

> **84.** An Arbitral Tribunal must decide in accordance with the terms of the contract. In a case where an Arbitral Tribunal passes an award against the terms of the contract, the award would be patently illegal. …. where, on a full reading of the contract, the view of the Arbitral Tribunal on the terms of a contract is not a possible view, the award would be considered perverse and as such amenable to interference [*South East Asia Marine Engg. & Constructions Ltd.* v. *Oil India Ltd.*, (2020) 5 SCC 164 : (2020) 3 SCC (Civ) 1].

Therefore, the exercise undertaken by the Arbitrator and his findings thereon were utterly perverse, as he completely misconstrued and misunderstood the scope of what was intended under Clauses 6(a), (b) and (c) of the JDA.

54. In any event, as already noted, the Company secured all the necessary certificates and clearances in October/November 2008 itself. Admittedly, certain shortcomings were still there in the building, that is, with regard to the slipshod tiling of the staircase; water seepage in the basement area and, in particular, the electrical room; and the erection of a canopy. However, these shortcomings were not sufficient to infer violation of Clause 6(a), whereby the

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respondents could have said that the building was not fit for occupation. It may be noted that after the passing of the interim order dated 20.10.2010 by the Arbitrator, the respondents themselves executed a registered lease deed on 14.02.2011 renting out the 8th floor in the building to Cognizant Technology Solutions India Pvt. Ltd. for a monthly rental of ₹13,44,070/-. The lease was to commence from 15.12.2010 and was for a period of nine years, with rental escalation every three years. This lease deed demonstrates that the building was ready for occupation and use at least by December, 2010.

55. The Arbitrator, therefore, clearly fell into error in reading more into Clause 6(a), (b) and (c) than was permissible. The Award was ultimately passed by him with a delay of nearly 4 years, not even settling the matter finally but requiring the parties to litigate or seek arbitration afresh. In ***Ssangyong Engineering and Construction Company Limited*** (*supra*), it was observed that an argument to set aside an award on the ground of being in conflict with "most basic notions of justice" can be raised only in very exceptional circumstances, that is, when the conscience of the Court is shocked by infraction of some fundamental principle of justice. The undue delay and wavering attitude of the Arbitrator, contributing to his rudderless Award, are utterly shocking, to say the least, as he totally lost sight of the very purpose of the exercise. Further, owing to the pointless Award passed by him with a delay of nearly 4 years, the parties were left with no option but to litigate once again in relation to a contract dating back

to the year 2004! The Award is, therefore, liable to be set aside as it is in clear conflict with the public policy of India and is also patently illegal.

56. That being settled, we are now faced with the issue as to what would be the best course of action to be taken at this late stage. Merely setting aside the Award would mean that the parties may have to take recourse to arbitration or litigation once again. But that is also not a possible course of action, given the fact that much water has flown under the bridge pursuant to the interim and final directions of the Arbitrator. The respondents were given possession of their share of the building in the year 2010 itself and they have inducted third parties into their allotted floors under lease deeds. The situation created by the Arbitrator, *vide* his interim order, is irreversible after this length of time. We are, therefore, of the opinion that this is a fit case for exercise of jurisdiction under Article 142 of the Constitution so as to do complete justice at this stage, instead of relegating the parties to another round of arbitration/ litigation, incurring more costs and expending more valuable time.

57. In the context of this Court's power to do complete justice in a matter of this nature under Article 142 of the Constitution, the observations in ***Gayatri Balasamy*** (*supra*) are of guidance. The same are extracted hereunder:

> **'84.** As far as the applicability of Article 142 of the Constitution is concerned, this power is to be exercised by this Court with great care and caution. Article 142 enables the Court to do complete justice in any cause or matter pending before it. The exercise of this power has to be in consonance with the fundamental principles and objectives behind the 1996 Act and not in derogation or in suppression thereof.

> **86.** While exercising power under Article 142, this Court must be conscious of the aforesaid dictum. In our opinion, the power should not be exercised where the effect of the order passed by the Court would be to rewrite the award or modify the award on merits. However, the power can be exercised where it is required and necessary to bring the litigation or dispute to an end. Not only would this end protracted litigation, but it would also save parties' money and time.*'* (*emphasis is ours*)

58. Reference was made in ***Gayatri Balasamy*** (*supra*) to the earlier Constitution Bench decision in ***Shilpa Sailesh vs. Varun Sreenivasan***[26], which summarized the scope of the power under Article 142 of the Constitution and, in particular, para 19 thereof, which reads as under:

> "*19*. Given the aforesaid background and judgments of this Court, the plenary and conscientious power conferred on this Court under Article 142(1) of the Constitution of India, seemingly unhindered, is tempered or bounded by restraint, which must be exercised based on fundamental considerations of general and specific public policy. Fundamental general conditions of public policy refer to the fundamental rights, secularism, federalism, and other basic features of the Constitution of India. Specific public policy should be understood as some express pre-eminent prohibition in any substantive law, and not stipulations and requirements to a particular statutory scheme. It should not contravene a fundamental and non-derogable principle at the core of the statute. Even in the strictest sense, it was never doubted or debated that this Court is empowered under Article 142(1) of the Constitution of India to do "complete justice" without being bound by the relevant provisions of procedure, if it is satisfied that the departure from the said procedure is necessary to do "complete justice" between the parties.

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59. Therefore, while exercising power under Article 142, this Court must be conscious of the dictum in ***Shilpa Sailesh*** (*supra*). Further, such power should not be exercised where the effect of the order of this Court would be to rewrite the arbitral award or modify it on merits, but such power can be exercised where it is required and necessary to bring the litigation or dispute to an end as this would not only end protracted litigation but would also save parties money and time. The caveat is, therefore, subject to that exception and would ordinarily be applicable in a case where there is an 'arbitral award' to begin with, i.e., an award that resolved the issues between the parties one way or the other, but is found to be perverse, opposed to public policy or patently illegal and, in consequence, unsustainable. Presently, that is not the situation as we find that the Arbitrator failed to render an arbitral award in the true sense, though he rendered findings on the factual issues framed by him, as he did not resolve the disputes between the parties. Further, in terms of interpretation of the JDA, we find all the findings of the Arbitrator to be perverse, being opposed to the clear language of the relevant clauses in the JDA. Only the finding with regard to the illegality shrouding the execution of the sale deeds by the Company in its own favour is valid and sustainable. However, having held so, after altering the parties' positions irrevocably with his interim direction, the Arbitrator left them hanging by directing them to separately seek resolution of Issues 9 and 10 framed by him, with regard to the relief to be granted, through a fresh resolution process all over again.

60. Given these circumstances, we are of the firm opinion that exercise of jurisdiction under Article 142 of the Constitution is the only viable alternative in this case as the other alternative would be to set aside the Award, thereby relegating the parties to another round of arbitration/litigation after 16 years! Doing so would be a travesty of justice and nothing short of making a mockery of the process to the extent of shaking the very faith and trust that parties necessarily have to repose when they resort to arbitration to settle their disputes. As observed in ***Gayatri Balasamy*** (*supra*), the power under Article 142 can be exercised where it is required and necessary to bring the litigation or dispute to an end as it would not only end protracted litigation, but would also save parties' money and time. That apart, as already noted, relegating the parties to fresh arbitration/litigation after setting aside the Award is not even a plausible option in this case as it is not possible to turn back the clock and restore the parties to the *status quo ante*, owing to the developments after delivery of possession of the respondents' share of the building in 2010, resulting in creation of third-party interests. The undeniable fact as on date is that the respondents are enjoying their 50% share of the building by putting the same to beneficial use, while the Company has been divested of occupation and use of its 50% share since passing of the Award.

61. We are conscious of the fact that the Company resorted to patent illegality in executing registered sale deeds in its own favour on the strength of a photocopy of the second power-of-attorney, the original of which

remained with the escrow agent, HDFCL, knowing fully well that this course of action on its part was opposed to the terms of the contract. The Company must necessarily be penalized for this illegal action. Further, it is not possible at this stage to determine with precision the incomplete works that were there in the building which were attended to by the respondents at that time. However, the fact remains that the respondents would have expended funds and effort to complete the building in all respects so as to put their share therein to beneficial use and they deserve to be compensated therefor.

62. Given these facts, we are of the opinion that equities and the interest of justice would be sufficiently served by directing that the execution of the sale deeds by the Company on 19.12.2008, though unlawful in its inception as it was based on a violation of the agreement terms and was without obtaining the original power-of-attorney from the escrow agent, HDFCL, should be treated as lawful and valid at this stage, instead of requiring their cancellation and execution of fresh sale deeds involving payment of higher stamp duties and registration charges. This would, however, be at the cost of penalizing the Company for such violation, by directing forfeiture of the security deposits of ₹6.82 crores. Further, as the respondents have to be compensated for the works undertaken by them for the completion of the building, we consider it appropriate to grant a sum of ₹3.18 crores under this head, so as to bring the amount payable by the Company to a round figure of ₹10 crores. This amount shall be paid by the Company to the respondents within three months from

today, be it in lump sum or in instalments. Upon making the full payment of this amount, the Company would be entitled to take possession of its 50% share in the building, in keeping with the terms of the JDA with regard to the apportionment and sharing of the built-up areas and the common areas, apart from the share in the land itself. The parties would then be at liberty to deal with and enjoy their respective shares in the building. This arrangement, in our considered opinion, would bring the curtains down and end this litigation while doing justice to both parties, who would otherwise be required to initiate a fresh round of arbitration/litigation, involving more time and money.

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.

64. The appeals are accordingly allowed, in terms of what has been stated in paras 60 to 62 hereinabove.

In the circumstances, parties shall bear their own costs.

....., J
(SANJAY KUMAR)

……......, J
(SATISH CHANDRA SHARMA)

October 31, 2025
New Delhi.