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

% **Judgment reserved on: 30.04.2026**
Judgment pronounced on: 05.05.2026

\+ O.M.P. (COMM) 349/2023

JAKSONS DEVELOPERS (P) LTD .....Petitioner

Through: Mr. Sumit Bansal, Sr. Adv. with Mr. Udaibir Singh Kochar, Mr. Pankaj Gupta, Mr. Utsav Garg, Ms. T Rampal, Ms. Nikita Gupta, Ms. Samvartika Pathak & Mr. Pushkar Khanna, Advs.

versus

DELHI DEVELOPMENT AUTHORITY .....Respondent

Through: Mr. Sanjay Vashistha, Mr. Siddhartha Goswami, Mr. Krish Bhatia & Mr. Aditya Sachdeva, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN

J U D G M E N T

1. This petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') seeking setting aside/modification of the arbitral award dated 25.04.2023 (for brevity 'the award') alongwith addendum dated 21.05.2023.

2. The facts shorn of unnecessary details are that the respondent/Delhi Development Authority (DDA) invited bids for commercial plot No. 3B1, Twin District Towers, Rohini (admeasuring

11130.40 sq. mtrs.) for construction of a hotel to provide accommodation for the Commonwealth Games 2010 (CWG). The petitioner/ Jakson Developers (P) Ltd. was the successful bidder and on 04.01.2008 a Demand-cum-Allotment Letter was issued. The hotel project was required to be made operational within twenty four months from the date of allotment. The petitioner company was obligated to furnish a performance security equivalent to five percent of the bid amount in the form of a bank guarantee, valid for a period of four years. The petitioner submitted building plans in March 2008, however the Chief Fire Officer approved them only in November 2008 and Delhi Urban Arts Commission in December 2008. In the meanwhile, the petitioner submitted a Performance Bank Guarantee (PBG) of Rs.9,30,00,000/- (Rupees Nine Crores and Thirty Lakhs) under clause Clause 3.14 of the tender document and was given formal possession of the plot on 08.09.2008. The petitioner continued construction above plinth level in anticipation of plan approval and the DDA levied "Prior to Sanction Charges" against the petitioner, which were deposited by the petitioner in May 2009 being a condition for formal approval of the building plans.

2.1 The respondent/DDA intended to invoke the PBG in May 2010 for non-completion of the work within twenty four months of the allotment letter. The petitioner filed a petition under Section 9 of the Act and this Court on 09.06.2010 restrained DDA from encashing the PBG. The relevant part of the order dated 09.06.2010 is as under:

> "In view of the submission made by the petitioner in the petition as well as from the documents placed on record, I

> am of the view that the petitioner has made a prima facie case in its favour for grant of ex parte ad interim injunction
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> Till the next date of hearing, the respondent is restrained from invoking and encashing the bank guarantee as furnished by the petitioner in pursuance of the performance security as per Clause 3 .14 of the general terms and conditions of the tender document with the respondent for allotment of hotel plot 3B 1, Twin District Centre, Sector 10, Rohini, Delhi."

2.2 The petitioner completed the hotel and made it operational in September 2010 before the start of CWG 2010 and applied for the completion certificate on 15.09.2010 but the respondent rejected the request on 21.09.2010. The petitioner rectified the issues on 24.09.2010 and sought Limited Term Permission, which was granted on 29.09.2010 subject to conditions. The hotel was used during the CWG 2010 and the permission was extended from time to time. Thereafter, disputes between the parties were referred to arbitration. The court appointed a sole arbitrator vide order dated 12.05.2011. The application under Section 17 of the Act was decided on 22.10.2013 and the arbitrator directed that respondent can encash the PBG but the amount was to be kept in a Fixed Deposit (FDR) with a nationalized bank. The relevant part of the order dated 22.10.2013 is as under:

> "67. Since the invocation of the bank guarantee does not fall in any of the exceptions to the general rule, the interim order restraining the bank guarantee does not deserve to be confirmed. Accordingly the same is vacated subject to the Respondent keeping the amount that may be realised as a result of encashment of bank guarantee in a fixed deposit in a nationalised bank during the course of

these proceedings. The said amount along with interest accrued thereon shall abide the outcome of the matter."

2.3 The award was passed on 25.04.2023, and an addendum thereto on 21.05.2023. The DDA was held not entitled to invoke the PBG and was directed to release the PBG amount to the petitioner. The interest accrued on the PBG amount was not to be released to the petitioner, aggrieved the petitioner filed the present petition.

3. Learned counsel for the petitioner argues that the finding that the respondent could not have invoked the PBG has attained finality. Vide order dated 22.10.2013, the PBG was directed to be kept in a FDR and the interest accrued thereon was a part and parcel of the PBG only. The submission is that the award to the extent of denying the petitioner interest accrued on FDR suffers from patent illegality.

4. *Per contra*, the discretion under Section 31(7) of the Act is with the arbitrator to include or not to include interest in the sum for which the award is made. The arbitrator denied the petitioner grant of interest under Section 31(7) of the Act and the petitioner is not entitled to get interest accrued on the FDR. The plea is that in absence of the challenge to the non-grant of interest under Section 31(7) of the Act the petitioner cannot pray for release of the interest accrued on FDR.

4.1 The argument is that the delay in completion of work was attributable to both the parties and consequently the petitioner was rightly denied the interest accrued on the FDR.

5. The only pin-pointed issue is that whether after the conditional encashment of the PBG pursuant to the order under Section 17 of the Act with a rider to keep the amount in an FDR in a nationalized bank, can the interest accrued on the FDR be retained by the respondent in spite of the decision that the PBG could not have been encashed?

6. The petitioner in compliance with clause 3.14 of the tender document furnished a PBG to the tune of five percent of the bid amount. Clause 3.14 of the tender document provided penalty for non-completion of the hotel within twenty four months. The PBG to the extent of penalty amount scheduled in the clause for the period of delay in completion of the hotel could be encashed.

7. The dispute arose between the parties with regard to the delay in completion of the project. In the application filed under Section 9 of the Act this Court vide order dated 09.06.2010, restrained invoking and encashing of the bank guarantee. After appointment of the arbitrator by order dated 22.10.2013 the interim relief was decided under Section 17 of the Act. The restraint order was vacated subject to the condition that during the pendency of the arbitration proceedings the realised amount shall be kept in an FDR in a nationalized bank and the amount along with interest accrued on FDR shall abide by the outcome of the proceedings. The PBG was encashed and kept in an FDR by the respondent. The arbitrator vide award dated 25.04.2023, held that the respondent was neither entitled to invoke nor to encash the PBG. The claim of the petitioner for direction to the respondent not to encash PBG was allowed. The relevant paragraphs of the award

are reproduced below:

> "131. Dehors the aforesaid discussion regarding substantial delays of the parties as well as of the CFO and DUAC, respondent was not entitled to invoke bank guarantee as the hotel was operational during the Commonwealth Games and thereafter for number of months in accordance with the permission given by respondent. Obviously, the said permission was given as the construction of the hotel was complete and it was found fit for being operationalised. At that stage the hotel only lacked occupancy certificate. Respondent has not pleaded that notwithstanding the fact that the construction of the hotel was not complete and it was not capable of being operationalised, it was still being given limited term permission. Therefore, since the construction of the hotel was complete, it was operational during the Commonwealth Games and it is not the case of respondent that there were complaints from the customers about any inadequacy in services of the hotel, there cannot be any loss to respondent or public at large on the spacious ground that hotel did not have the completion certificate/occupancy certificate as on 03.01.2010 or on the date limited term permission was granted. In the circumstances the occupancy certificate was a mere formality.
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> 132. Respondent has not adduced evidence to show any loss suffered by it or by the public at large due to the hotel not having been granted occupancy certificate before the Common Wealth Games in terms of clause 4.13 of the tender document. The said clause being a penalty clause, respondent in order to invoke the bank guarantee was bound to show loss suffered by it due to breach, if any, of clause 3.14 of the underlying contract. Learned counsel for respondent has relied on the decisions which deal with clauses that provide for liquidated damages in the event of breach of the underlying contract.

133. In view of the aforesaid discussion respondent was not entitled to invoke and proceed to encash the bank guarantee.

xxx xxx xxx

Claim No. 2

Under this claim claimant requests that respondent be directed not to encash the bank guarantee furnished by claimant in pursuance of clause 3.14 of the tender document.

The claim is allowed in view of the finding that respondent is not entitled to invoke and encash the bank guarantee. Accordingly, respondent is interdicted from proceeding to encash the bank guarantee."

(emphasis supplied)

8. The respondent filed counter claims to invoke/encash PBG and seeking interest for the period from expiry of twenty four months for completion of hotel till the encashment of the PBG. Both the counter claims were rejected.

9. In the award the directions to give effect to the order passed under Section 17 of the Act were not issued. On an application filed under Section 33 of the Act by the petitioner, an addendum dated 21.05.2023 was issued correcting the award. Directions were issued that amount of Rupees Nine Crores and Thirty Lakhs realized on encashment of PBG be released to the petitioner and due to rejection of the claim for interest on the claimed amount the interest accrued on PBG was not to be released to the petitioner. The operative portion of the addendum dated 21.05.2023 is reproduced below:

"a) The respondent shall release to the claimant an amount of Rs. 9,30,00,000/- realised on encashment of

the performance bank guarantee.

b) Since claim no. 8 for interest has been rejected, the interest accrued on the bank guarantee shall not be released to the claimant.

6. This addendum is attached with the corrected Award."

10. The respondent was held not entitled to invoke and encash the PBG and this finding attained finality. The encashment of the PBG by the respondent in pursuance to interim order was conditional. The amount realised could not have been used by the respondent but was to be kept in an FDR in a nationalized bank. The realised amount along with interest accrued on FDR was subject to outcome of the arbitration proceedings. The interest accrued on the FDR was not governed by Section 31(7) of the Act and it partakes of the character of the principal amount kept in FDR. The arbitrator after holding that the respondent could not have invoked/encashed the PBG had no basis to segregate the principle amount and the interest accrued thereon. This is also evident from the orders under Section 17 of the Act wherein it was stated that the amount of PBG along with interest thereon shall abide by the outcome of the matter. The FDR as a whole will have to go as per the decision of the arbitrator with regard to invocation of the PBG.

11. The condition imposed under Section 17 of the Act that the respondent shall not use the amount realised by encashing PBG was to ensure that the FDR be released to the party found entitled to it. The condition got defeated by permitting the respondent to retain the interest of the FDR, inspite of not being entitled to invoke/encash

PBG. The interim arrangement of keeping the PBG amount in the FDR to ensure that the principal amount in the intervening period earns interest and ultimately the entitled party gets the principal amount along interest accrued is negated. The Supreme Court in **Central Bank of India v. Ravindra & Ors.**, (2002) 1 SCC 367 stated as under:

> "25. In State Bank of India v. Avtar Singh Saih [AIR 1986 P&H 381 : (1986) 89 Punj LR 321] while rejecting the borrower's application under Order 6 Rule 5 of the Code of Civil Procedure seeking direction to the bank to point out separately by breaking up its claim so as to show the amount of the principal and the interest separately, it was held that the principal amount found due not only means the principal amount but also the amount due as interest which has become part of the principal."
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> (emphasis supplied)

12. The contention of the learned counsel for the respondent that the arbitrator had a discretion under Section 31(7) of the Act to grant or not to grant interest is of no avail. Section 31(7) of the Act deals that if the parties have not agreed otherwise, the arbitrator while awarding the payment of money may include in the sum the interest awarded at a rate deemed reasonable. In this case, the payment of money was not awarded by the arbitrator, it was held that the respondent was not entitled to invoke and encash the PBG and the rest of the relief was consequential thereto. In other words the award was only that the PBG could not have been encashed, the natural consequence is the end of interim arrangement of keeping the amount of PBG in FDR and the FDR as a whole would be going back to the

petitioner.

13. The argument of the respondent that the delay in completion of project was attributable to both the parties and therefore the respondent was to keep the interest on the FDR is noted to be rejected. The conclusion of the arbitrator is unambiguous that the respondent could not have invoked the PBG, there is no discussion and reason recorded in the award for directing non-release of interest of the FDR to the petitioner. The non-release of FDR interest to the petitioner relying upon rejection of grant of interest under Section 31(7) of the Act on the claimed amount is against the statutory provisions vitiating the finding with patent illegality.

14. Another angle to be considered is that on one hand the counter claims of respondent for invoking PBG and for seeking interest for the period of delay in completion of the hotel was rejected yet, the respondent was indirectly awarded interest from date of opening of FDR till encashment. Both of these findings are mutually contradictory.

15. The view of the arbitrator of segregating the principle amount of the FDR from the interest accrued thereon is not a plausible view. The only possible view after concluding that the PBG could not have been invoked, is that the FDR as a whole should go to the petitioner.

16. There cannot be quarrel with the proposition that scope of interference under Section 34 of the Act is limited but in case of a perverse finding and award suffering from patent illegality for being against the statutory provision, the interference should be made under

Section 34 of the Act.

17. The Supreme Court in **Gayatri Balasamy v. ISG Novasoft Technologies Ltd.**, (2025) 7 SCC 1 held that while an arbitral award cannot be modified under Section 34 of the Act, a severable part of the award may be set aside. The relevant paragraphs are quoted below:

> "32. In the present controversy, the proviso to Section 34(2)(a)(iv) is particularly relevant. It states that if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the arbitral award which contains decisions on matters non-submitted may be set aside. The proviso, therefore, permits courts to sever the non-arbitrable portions of an award from arbitrable ones. This serves a twofold purpose. First, it aligns with Section 16 of the 1996 Act, which affirms the principle of *kompetenz-kompetenz*, that is, the arbitrators' competence to determine their own jurisdiction. Secondly, it enables the Court to sever and preserve the "valid" part(s) of the award while setting aside the "invalid" ones. [The "validity" and "invalidity", as used here, does not refer to legal validity or merits examination, but validity in terms of the proviso to Section 34(2)(a)(iv) of the 1996 Act.] Indeed, before us, none of the parties have argued that the Court is not empowered to undertake such a segregation.
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> 33. We hold that the power conferred under the proviso to Section 34(2)(a)(iv) is clarificatory in nature. The authority to sever the "invalid" portion of an arbitral award from the "valid" portion, while remaining within the narrow confines of Section 34, is inherent in the Court's jurisdiction when setting aside an award.
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> 34. To this extent, the doctrine of *omne majus continet in se minus*—the greater power includes the lesser—applies squarely. The authority to set aside an arbitral award necessarily encompasses the power to set it

> aside in part, rather than in its entirety. This interpretation is practical and pragmatic. It would be incongruous to hold that power to set aside would only mean power to set aside the award in its entirety and not in part. A contrary interpretation would not only be inconsistent with the statutory framework but may also result in valid determinations being unnecessarily nullified.
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> (emphasis supplied)

18. The award directing release of amount of Rs. 9,30,00,000/- realised on encashment of PBG and the directions qua the interest accrued on FDR not to be released to the petitioner are severable, are not dependant on other claim awarded and are not intricately connected with each other. The award to the extent directing that the interest accrued on the FDR for the amount realised on encashment of PBG shall not be released to the petitioner, is set aside.

19. The petition is allowed.

AVNEESH JHINGAN, J

MAY 05, 2026
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Reportable:- **Yes**