IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 1469 OF 2014

Manish Mehta
Age : 45 years, Occupation : Businessman,
Residing at Amarswarup, Bhaji Mandi,
Itwari, Nagpur, Maharashtra – 440 002. .. **PETITIONER**

V E R S U S

1. **India Cements Capital &**
Finance Limited
(formerly known as Arunal Sugars
Finance Limited, a company
incorporated under the Companies Act,
1956, and having its registered office at
Dhun Building, 827, Anna Salai,
Chennai 600 002, and Corporate Office
at 38, Sterling Road, Chennai 600 034.

2. **M/s. Munis Forge Limited**
Registered Office at 258,
Small Factory Area,
Bagadganj, Nagpur,
Tahsil & District – Nagpur.

3. **Shri. Rajendra Kumar Mehta**
R/o. Flat No. 205,
Swapnlok Building,
Near Big Bazar, Hiwari Nagar,
Nagpur – 440 008. .. **RESPONDENTS**

Adv. Nidhi Chauhan i/b. Adv. Akshay Naidu Advocate for the Petitioner.
Adv. Saakshi Jha a/w. Adv. Manish M. Bohra i/b. M/s. A. S. Khan & Associates, for Respondent No. 1.

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CORAM : ARUN R. PEDNEKER, J.
RESERVED ON : 13th OCTOBER 2026
PRONOUNCED ON : 29th OCTOBER 2026

JUDGMENT :-

1. By the present Petition, the Petitioner challenges the arbitral award dated 04.08.2012 passed by the Sole Arbitrator in relation to Hire Purchase Agreement No. 4922, executed between the parties on 07.01.1998.

2. The Petitioner is the guarantor for the loan facility extended by Respondent No. 1 to Respondent No. 2. Respondent No. 1 invoked arbitration under Clause 24(A) of the Agreement on 21.05.2003 and filed Statements of Claim dated 14.08.2003 and 27.08.2003.

3. Respondent No. 2 filed its Written Statement, and Respondent No. 1/Claimant filed its Rejoinder Affidavit on 16.08.2004. Respondent No. 1 filed its Affidavit of Evidence on 05.07.2005, and the Petitioner filed its Written Statement/Reply on 21.07.2006, with a prayer to treat the same as an Affidavit-in-Chief.

4. It is stated that the matter was reserved for judgment on 30.01.2008. However, the Sole Arbitrator passed an Award dated 04.08.2012. It is

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contended that the Award was not served upon the Petitioner. Consequently, Arbitration Petition (L) No. 1931 of 2013 was filed before this Court seeking certified copies of the Award. By an order dated 19.03.2014, this Court recorded that the Arbitrator had tendered a packet containing a certified copy of the Award, which the Petitioner received for the first time on that date.

5. Challenging the award before this Court under Section 34 of the Arbitration Act the learned Counsel for the Petitioner **Ms. Nidhi Chauhan** submits as under :

I) The impugned Award is unreasoned and, therefore, patently illegal under Section 34(2A) of the Act. Learned Counsel submits that the Arbitrator has not dealt with the objections raised by the Petitioner in its Affidavit-in-Reply-cum-Examination-in-Chief. The said objections are recorded in Paragraph 9 of the Award; however, no findings have been rendered on any of them. Thus, the Award suffers from this infirmity, being in contravention of Section 31(3) of the Arbitration Act, and is liable to be set aside.

II) The Arbitrator failed to consider the contents of the Hire Purchase Agreement (HPA) and to adjudicate upon the crucial evidence on record. It is submitted that the HPA was executed on stamp paper in Madras, whereas

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the stamp paper from Maharashtra is unnumbered. There is also an internal page in the HPA on the unnumbered stamp paper from Maharashtra. The names of the owners mentioned in the HPA and the Deed of Guarantee are different. There are anomalies in the execution of the HPA and the Deed of Guarantee, both dated 07.01.1998. The stamp paper is dated 01.08.1996, i.e., 18 months prior to the execution of the documents. It is submitted that, under Section 52-B of the Maharashtra Stamp Act, if a stamp paper is not utilized within six months of its purchase, it is to be treated as invalid.

The Arbitrator failed to record the admissions made by Respondent No. 1 regarding the existence of the machinery and the fact that no legal steps were taken during the years 1998–1999.

III) The invocation of arbitration is invalid. Respondent No. 1 relied upon a letter dated 23.04.2003. However, a plain reading of Section 21 of the Arbitration Act envisages that arbitral proceedings commence on the date on which the request for referring the dispute to arbitration is received by the Respondent. The Arbitrator failed to ascertain whether such notices were served upon the Respondents / present Petitioner, as the postal receipts and acknowledgments of receipt were not placed on record.

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It is submitted that, after the issuance of the notice under Section 21 of the Arbitration Act, the Respondents issued a winding-up notice dated 22.05.2003 under Section 439 of the Companies Act. This indicates that the Respondents were unclear as to which remedy ought to be pursued for resolution of the dispute. The letter dated 23.04.2003 merely contemplated the possibility of invoking arbitration. Further, the primary requirement of the notice being received by the Petitioner herein was not fulfilled.

It is further submitted that the notice was issued after five years from the date of the last outstanding payment. It is also submitted that the Award was reserved for judgment on 30.01.2008 but was passed only on 04.08.2012, i.e., after a delay of more than four years. The Arbitrator failed to record any reasons for the said delay.

IV) It is submitted that the Petitioner stands discharged as a surety owing to a variance in the contract. The Petitioner retired from Munis Forge on 28.09.2006 and, therefore, is not liable under the purported Deed of Guarantee. Respondent Nos. 1 and 2 varied the terms of the contract by a letter dated 17.09.1998, whereby the schedule of delivery was amended. The said amendment was not communicated to the Petitioner. Accordingly, it is

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submitted that, under Section 133 of the Indian Contract Act, 1872, the surety stands discharged from the alleged liability owing to the variance in the terms of the contract.

It is submitted that, in view of the multiple irreconcilable anomalies in the Award, the impugned Award dated 04.08.2012 is patently illegal, is contrary to the public policy of India, and is liable to be set aside.

6. The learned counsel for the Petitioner relies upon the following Judgments as follows :

A) ***Gorkha Security Services vs. Directorate of Health Services 2026 SCC Online Del 3253.***

B) OPG Power Generation Pvt. Ltd. Vs. Enexio Power Cooling Solutions India Pvt. Ltd. And Anothers 2025 2 SCC 417.

C) Associates Builders vs. Delhi Development Authority 2015 3 SCC 49.

D) Vishal Projects Pvt. Ltd. vs. M/s Vishal Structurals Pvt. Ltd & Ors 2025 INSC 507.

7. Per contra, learned Counsel for the Respondent **Ms. Saakshi Jha** submits that the Petition does not disclose any ground contemplated under Section 34 of the Arbitration and Conciliation Act, 1996. In response to the submissions made by the Petitioner, learned Counsel for the Respondents

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submits that the arbitration was invoked in accordance with Clause 24(A) of the Hire Purchase Agreement dated 07.01.1998, at the instance of the Claimant, after issuing notices to the borrowers and the guarantors.

8. It is submitted that mere delay in passing the Award does not, by itself, render the Award perverse or liable to be set aside. The delay must be examined in the factual context of the proceedings and cannot mechanically be treated as a ground for nullifying an otherwise valid Arbitral Award.

9. It is submitted that mere delay in passing an Award, without demonstrating any independent statutory infirmity, does not constitute a standalone ground under Section 34 of the Arbitration and Conciliation Act, 1996, for setting aside the Award.

10. It is further submitted that the arbitral proceedings were duly invoked under Section 21 of the Arbitration and Conciliation Act, 1996. The Respondents had communicated their intention to commence the arbitral proceedings. It is further submitted that the appointment of the Arbitrator was in accordance with the Agreement and was never challenged in a timely manner.

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11. It is submitted that the Petitioner ought to have challenged the appointment of the Arbitrator by availing the remedy under Section 13 of the Arbitration Act. It is further submitted that an application under Section 13 was filed belatedly; however, the same was dismissed.

12. It is submitted that, having failed to challenge the constitution or appointment of the Arbitrator at the relevant stage, the Petitioner cannot now seek to resurrect the same objection indirectly through a Petition under Section 34 of the Arbitration Act. It is further submitted that, prior to the Arbitration and Conciliation (Amendment) Act, 2015, the Act contained no provision equivalent to sub-section (5) of Section 12 or the Seventh Schedule. The parties were free, under Section 11(2), to agree on the procedure for appointing the Arbitrator, and an appointment made in accordance with the agreed procedure was valid. The only avenues for challenge were under Sections 12(3) and 13, which required the challenge to be made within 15 days, and Section 16(2), which required a plea challenging the jurisdiction of the Arbitral Tribunal to be raised no later than the submission of the Statement of Defence.

13. It is submitted that the Amendment Act, 2015, is prospective and not retrospective in its operation, as held in ***Bhadra International (India Private***

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Limited) vs. Airport Authority of India, reported in AIR OnLine 2026 SCC 44.

14. It is submitted that the Award was duly communicated to the Petitioner. It is further submitted that the contents of the Award demonstrate that the contentions raised by the Petitioner were considered. The Arbitrator considered the respective contentions of the parties and arrived at findings after considering the material placed before him.

15. It is further submitted that the Arbitration Petition be dismissed.

16. Having considered the rival submissions and examined the material on record, the core issue that arises for consideration before this Court is as follows :-

i) Whether, the Arbitrator was appointed in accordance with the terms of the contract ? If not, whether the non-raising of objection by the Petitioner within time, would amount to waive of objection to the appointed Arbitrator ?

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ii) Whether, the Award passed by the Arbitrator is an unreasoned Award and thus suffers from patent illegality ?

iii) Whether, there was a delay in pronouncing the Award and, if so, whether the Award is liable to be set aside on that ground in the present case ?

17. At the outset, it can be seen that the Arbitrator was appointed by the Respondent. The present arbitral proceedings predate the Arbitration and Conciliation (Amendment) Act, 2015. If there was any defect in the appointment of the Arbitrator, the Petitioner ought to have raised an objection at the initial stage, while filing the Reply. Failure to raise such an objection amounts to a waiver of the right to challenge the procedure adopted for the appointment of the Arbitrator.

18. This Court in the case of ***State of Maharashtra vs. Morya infrastructure Private Limited*** in paragraph Nos. 29, 33 and 34 held as under :

> *29. The Hon'ble Supreme Court in Quippo Construction Equipment Limited v. Janardan Nirman Private Limited, (2020) 18 SCC 277, while affirming the legal position in Narayan Prasad Lohia v. Nikunj Kumar Lohia, (2002) 3*

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SCC 572, has held that Sections 10 and 16 of the Arbitration and Conciliation Act, 1996 are required to be read conjointly. It has been held that if a party does not raise an objection under Section 16 with regard to the constitution of the arbitral tribunal, such party shall be deemed to have waived its right to object under Section 4 of the Act.

33. *It has thus been clarified that a challenge to the composition of the arbitral tribunal must be raised before the tribunal itself under Section 16(2), not later than the submission of the statement of defence. Section 16 further makes it clear that such a plea can be raised even by a party who has appointed or participated in the appointment of an arbitrator. However, if no objection is raised within the prescribed time, Section 4 operates as a deemed waiver of the right to object.*

34. *Thus, from conjoint reading of Sections 10, 16 and 4, it is evident that an objection to the composition of the arbitral tribunal is a matter which is derogable and must be raised in the manner and within the time prescribed under Section 16(2), failing which the party is precluded from raising such objection at a subsequent stage.*

Thus, the objection that the Arbitrator was not appointed in accordance with the terms of the contract cannot be raised at later stage, as the same was not raised before the submission of statement of defence before the Arbitrator and the parties have participated before the arbitrator. It appears that objection was raised later, during the pendency of proceedings as regards the eligibility of the Arbitrator which was rejected.

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19. In the present case, the Arbitral Award was pronounced more than four and a half years after the conclusion of arguments. The matter was reserved for Judgment on 30.01.2008, but the Award was passed only on 04.08.2012, i.e., after a delay of more than four and half years. The Arbitrator has also failed to record any reasons for the delay.

20. The Hon'ble Supreme Court while dealing with the case of delay in pronouncing the Arbitral Award, in the case of ***M/s. Lancor Holdings Limited vs. Prem Kumar Menon reported in AIR OnLine 2025 SC 1153*** in Paragraph Nos. 19 and 20 held as under :

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

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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.*

21. The Supreme Court in ***M/s. Lancor Holdings Limited*** *(supra)* has observed that an inordinate delay in passing an arbitral award raises doubts as to whether the Arbitrator has properly appreciated the evidence and arguments. However, it has also observed that the Award does not, per se, stand vitiated on account of such delay. The Court must examine the Award, and each case must be assessed on its individual facts to determine whether the delay has affected the Arbitrator's examination of the material on record. In the instant case, we find that the response of the Petitioner is referred to in the Award. However, the same does not form part of the record, nor is it dealt with by the Arbitrator.

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22. Learned Counsel for the Petitioner submits that the specific defence raised before the Arbitrator pertains to Section 139 of the Indian Contract Act, 1872, which provides for the discharge of a surety where the creditor's act or omission impairs the surety's eventual remedy. Section 139 of the Indian Contract Act, 1872, is reproduced below :

> *If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.*

23. It is submitted that the creditor deviated from the original agreement, which provided for termination of the agreement upon the first default, and that the period of limitation would have commenced from the date of such default. However, Respondent No. 2 had offered a one-time settlement (OTS) of the outstanding loan as early as 24.07.1999. At the time of the OTS offer, Respondent No. 1 had claimed an outstanding amount of Rs. 30,35,706/-. Respondent No. 1 thereafter rejected the OTS offer after a lapse of five years and levied penal interest at the rate of 36% on the outstanding loan, thereby claiming an amount of Rs. 66,74,192/-.

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24. It is further submitted that the guarantor would not be liable to pay amounts that could not be recovered by the lender due to negligence or otherwise. The lender had also failed to encash the amount offered under the one-time settlement. It is further submitted that Respondent No. 1 had permitted the hirer to change the schedule for delivery of the machinery under the Hire Purchase Agreement without the knowledge and consent of the surety. This attracts Section 133 of the Indian Contract Act, 1872, as the terms of the original agreement were varied without notice to the guarantor, thereby attracting the provisions of the said Section. It is also submitted that there was no notice invoking arbitration under Section 21 and the notice was issued under Section 439 of Companies Act for winding up.

25. None of the aforesaid defences of the Petitioner has been addressed in the discussion in the Arbitral Award. The Award is virtually unreasoned. It merely records that Respondent No. 2 / present Petitioner had filed an Affidavit-in-Chief and requested that the same be read as examination-in-chief. However, in the subsequent paragraph, the Arbitrator records that Respondent No. 2 had not led any evidence, while dealing with the contention that the Claimant had not led any evidence.

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26. It is observed in the award that the defence raised was that the Claimant had failed to prove the execution of the Hire Purchase Agreement and that the stamp paper had been purchased at Madras. While dealing with these allegations, the Arbitrator observed as follows: "On perusal of all the allegations and contentions, I do not find any merit in the submissions made by Respondent No. 2, for the reason that they are mere oral statements unsupported by any evidence". The Arbitrator has not dealt with any aspect relating to the purchase of the stamp paper at Madras and interpolation of papers or notice invoking arbitration or the liability of guarantor in view of variation of Hire Purchase Agreement, if any.

27. The Award does not deal with the submissions made by the present Petitioner/Respondent No. 2 before the Arbitrator. The Award, per se, appears to have been affected by the inordinate delay of four and half years, which has impaired the Arbitrator's examination of the matter qua the contentions raised specific to the guarantor. Thus, in the instant case, applying the law laid down in the case of ***M/s. Lancor Holdings Limited*** *(supra)***,** this Court finds that the delay in passing the Award has affected the Arbitrator's examination of the material on record qua the material and defence raised by the Petitioner, guarantor.

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28. The next question that arises for consideration is whether the award can be set aside only to the extent of the guarantor, i.e., the Petitioner herein, since the award has been challenged by the guarantor and not by the borrower. The Supreme Court, in the case of ***Gayatri Balasamy Vs. ISG Novasoft Technologies Limited, reported in (2025) 7 SCC 1***, while dealing with the question of whether an arbitral award challenged under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996, can be modified or set aside in part, has made the following observations in Paragraph Nos. 87, 87.1 and 87.2 as under :-

> *87. Accordingly, the questions of law referred to by Gayatri Balasamy are answered by stating that the Court has a limited power under Sections 34 and 37 of the 1996 Act to modify the arbitral award. This limited power may be exercised under the following circumstances:*
>
> *87.1. When the award is severable, by severing the "invalid" portion from the "valid" portion of the award, as held in Part II of our Analysis;*
>
> *87.2. By correcting any clerical, computational or typographical errors which appear erroneous on the face of the record, as held in Parts IV and V of our Analysis;*

29. The Delhi High Court, in the case of ***Komal Narula Vs. DMI Finance Pvt. Ltd. and Another, reported in 2021 SCC OnLine Del 3698***, held that

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the arbitral award could be set aside insofar as the party challenging it was concerned, on the ground that the said party had not received notice of the appointment of the Arbitral Tribunal. However, the award was not interfered with insofar as the other borrowers / parties were concerned.

30. This Court, in the case of ***Lokmanya Multi Purpose Co-operative Society Ltd. v. Melwyn Anthony Vaz and Another, reported in 2026 BHC-GOA:160***, in Appeal under Arbitration No. 19 of 2017, by order dated 30.01.2026, similarly applied the law laid down in ***Gayatri Balasamy (supra)*** and ***Komal Narula (supra)*** and set aside the arbitral award only to the extent of the guarantor who had challenged the award. Although the amount was recoverable jointly from the borrowers and the other guarantors, the Court held that, since the plea of violation of the principles of natural justice had been raised only by the Petitioner therein, the award was liable to be set aside only to that extent.

31. In the instant case, this Court finds that the Arbitrator has failed to deal with the submissions of the guarantor, particularly those concerning the discharge of his liability under Sections 133 and 139 of the Indian Contract Act, 1872. The matter remained pending before the Arbitrator for more than

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four and a half years after the award was reserved, and the Arbitrator has failed to consider and address the submissions advanced on behalf of the Petitioner. In view of the above, the arbitral award is set aside only to the extent of the Petitioner.

32. Accordingly, the impugned Arbitral Award is set aside to the extent of the present Petitioner. The Arbitration Petition is disposed of accordingly.

(ARUN R. PEDNEKER, J.)

Note : Corrected as per Speaking to Minutes of Judgment dated 30.10.2026.

SUFIYAN EHTESHAM SYED

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