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

Reserved on: 7 September 2026
Pronounced on: 16 September 2026

\# **CNR No. DLHC010059632026**

\+ FAO(OS) (COMM) 29/2026 & CM APPL. 11008/2026

UNISON HOTELS PRIVATE LIMITED .....Appellant

Through: Mr. Darpan Wadhwa and Mr. Rajiv Nayar, Sr. Advs. with Mr. Ajay Bhargava, Mr. Shivank Diddi, Mr. Arsh Alok and Ms. Sanjana, Advs.

versus

IFFCO TOKIO GENERAL INSURANCE COMPANY LIMITED .....Respondent

Through: Mr. A.S. Chandhiok, Sr. Adv. with Ms. Bindu Saxena, Mr. Tanpreet Gulati, Ms. Aparajita Swarup and Mr. Dhruv Chandra Saxena, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT

% **16.09.2026**

C. HARI SHANKAR, J.

A. The *lis*

1. This appeal throws up, for consideration, the seminal issue of whether the unanimous arbitral award forming subject matter of challenge, rendered by a three member Arbitral Tribunal, would stand vitiated *solely* on the ground that two years elapsed between the reserving and the rendition of the award.

2. A learned Single Judge of this Court has answered the issue on the affirmative.

3. Unison Hotels Pvt Ltd[1], aggrieved by the decision, has appealed under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996[2].

B. Facts

4. UHPL ensured its Hotel with IFFCO Tokio General Insurance Company Ltd[3] by taking two policies; a Standard Fire and Special Perils Policy[4] for ₹ 186,44,11,765/- and a Fire Loss of Profit Policy[5] for ₹ 100 Crores. The Policies were valid for the period 1 April 2007 to 31 March 2008.

5. During the period of validity of the Policies, a fire broke out in the Hotel on 26 January 2008. UHPL sought redemption of the Policies, claiming ₹ 68.64 crores under the MD Policy and ₹ 100 crores under the LOP Policy. Consequent to payment, by the Insurance Company to UHPL, of ₹ 20 crores under the MD Policy and ₹ 30 crores under the LOP Policy, the Insurance Company submitted that the claims between them stood settled on 30 January 2012.

6. To the extent its claims had been short paid by the Insurance

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1 "UHPL", hereinafter
2 "the 1996 Act", hereinafter
3 "Insurance Company", hereinafter
4 "MD Policy", hereinafter
5 "LOP Policy", hereinafter

Company, UHPL invoked arbitration, as provided in Clause 13, which was common to both the Policies, and which read thus:

> "13. If any dispute or difference shall arise as to the quantum to be paid under This Policy (liability being otherwise admitted) such difference shall independently of all other questions be referred to the decision of a sole arbitrator to be appointed in writing by the parties to or if they cannot agree upon a single arbitrator within 30 days of any part of invoking arbitration, the same shall be referred to a panel of three arbitrators, comprising of two arbitrators, one to be appointed by each of the parties to the dispute/difference and the third arbitrator to be appointed by such two arbitrators and arbitration shall be conducted under and in accordance with the provision of the Arbitration and Conciliation Act, 1996. It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as here in before provided, if the Company has disputed or not accepted liability under or in respect of this policy.
>
> It is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon this Policy that the award by such arbitrator/arbitrators of the amount of the loss or damage shall be first obtained."

7. A three member Arbitral Tribunal was appointed, on 27 April 2012, to adjudicate on the dispute. Statement Of Claim was filed on 7 September 2012. The award was reserved, by the learned Arbitral Tribunal, on 6 March 2021, and was pronounced on 6 March 2023.

8. The learned Arbitral Tribunal framed, as a preliminary issue, "the question of the effect of the full and final settlement of the claims arrived at between the parties". The learned Arbitral Tribunal found the settlement not to be voluntary and thereafter proceeded to adjudicate on the merits of the claims.

9. A total amount of ₹ 65,12,97,874/- was awarded against the

Insurance Company and in favour of the Hotel with 9% simple interest per annum from the date of filing of statement of claim till the date of award and interest for the future at the same rate till realisation. Costs of ₹ 50 lakhs were also awarded.

C. Submissions before the learned Single Judge

10. The award was challenged by the Insurance Company before this Court, under Section 34 of the 1996 Act, by way of OMP (Comm) 197/2023.

C.I Submissions of Insurance Company before the learned Single Judge

11. The primary submission advanced by the Insurance Company before the learned Single Judge was that the arbitral award was vitiated by inordinate and unexplained delay. Reliance was placed, for this proposition on the judgments of this Court in ***DDA v. GL Litmus Events (P) Ltd***[6], ***BWL Ltd. v. Union of India***[7], ***HR Builders v. Delhi Agricultural Marketing Board***[8], and ***Gian Gupta v. MMTC Ltd***[9].

12. Reliance was also placed, by the Insurance Company, on Clause 13 of the Policies, under which no dispute was referable to arbitration if the insurance company had not accepted its liability in respect of the Policy. In other words, it was only the quantum of the claim which

6 **2025 SCC Online Del 9906**
7 **2012 SCC Online Del 5873**
8 **2024 SCC Online Del 7635**
9 **2020 SCC Online Del 107**

was arbitrable and not its admissibility. If liability was not admitted by Insurance Company, no arbitrable dispute would arise.

13. It was, therefore, submitted that after the claim of UHPL stood fully and finally settled, no arbitrable dispute survives for consideration and the Arbitral Tribunal had no jurisdiction. It was submitted that the UHPL was estopped from raising any claim after settlement of the claim and acceptance, by it, of the settled amount.

C.II Submissions of UHPL before the learned Single Judge

14. UHPL contended, *per contra*, that an arbitral award would be vitiated by delay only where the delay was unexplained and adversely reflected on the findings recorded in the award. For this purpose, UHPL relied on the judgment of the Supreme Court in ***Lancor Holdings Limited v. Prem Kumar Menon***[10], and this Court in ***Director General, CRPF v. Fibroplast Marine Pvt. Ltd***.[11].

15. It was further submitted that the plea of the Insurance company of the claim of the UHPL having been settled by accord and satisfaction was rejected on the ground that the settlement was not voluntary.

16. UHPL contended, on the other hand, that the settlement was vitiated by coercion and undue influence and would not, therefore, impact the arbitrability of the dispute.

[10] **2025 SCC OnLine SC 2319**
[11] **2022 SCC OnLine Del 1335**

D. Findings of the learned Single Judge

17. Having thus recorded the submissions of both sides, the learned Single Judge, apropos the decision in ***Lancor Holdings***, observes as under:

> "6. The judgements in ***Gian Gupta (supra)*** and ***BWL Ltd. (supra)*** relied upon by the petitioner and the judgement in ***Director General, Central Reserve Police Force (supra)*** relied upon by the respondent were considered by the Supreme Court in case of ***M/s. Lancor Holdings Limited (supra)***. It is held that delay in delivering the award cannot be the sole ground for setting it aside. There cannot be a straight-jacket formula and the issue would depend upon the facts of each case as to whether the delay had an adverse effect on the findings recorded. An unexplained delay in delivering the award brings it within the ambit of being in conflict with the public policy of India and patent illegality. Further that the aggrieved party need not avail the remedy under Section 14(2) of the Act to challenge the delay. The paragraph from judgement is quoted below:-
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>> "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 Section34(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 of1996 as a condition precedent to lay a challenge to that delayed and tainted award under Section 34 thereof.…..”

18. The learned Single Judge in the impugned judgment, holds as under:

> “12. The issue of jurisdiction of the Tribunal in absence of an arbitral dispute in view of the couched language of the arbitration clause needed consideration from various angles, (i) whether the issue of quantum of claim dependent on outcome of challenge to settlement was an arbitrable dispute; (ii) whether the Tribunal had jurisdiction to decide the validity of the settlement between the parties; and lastly (iii) whether the “admitted liability” foundation for arbitrable dispute was eroded after the claim was settled. The Arbitrator after only deciding that the settlement was not voluntary proceeded to deal with the claims on merits.
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> 13. No doubt, the objection of non-existence of the arbitral dispute finds mention in the award but it cannot be lost sight of that the contentions raised is fortified by raising various arguments. With the passage of time due to limitation of human memory the arguments no longer remain potent. Inordinate delay jolts the confidence of the parties as to whether the submissions were effectively weighed. The written submissions made in a matter can only be supplement and not substitute oral arguments. It is trite law that the justice should not only be done but should also appear to have been done. It would be relevant to quote the following paragraph of ***M/s. Lancor Holdings Limited (supra)***:
>
>> “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 wellnigh 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."

14. The germane of arbitration was to provide speedy and alternative forum for resolution of disputes. By the Amendment Act (Act 3 of 2016), Section 29A was inserted in the Act stipulating that the award to be pronounced within twelve months from entering of the reference. The amendment was not applicable to pending proceedings unless the parties specifically agreed to it. In the case in hand the arbitrator was appointed in April, 2013 and the proceedings concluded in March, 2023. The Act was amended in 2016 crystallising the object of speedy resolution by fixing period for conclusion of proceedings, albeit not applicable to the present case but still the fact is that there was a gap of two years between reserving and pronouncing the award.

15. Another angle to be considered is that arbitration proceedings are designed with the object of minimum intervention by the court. The remedy against an award under Section 34 is not equivalent to the appellate jurisdiction and the award can be challenged only on the ground mentioned in Section 34. In other words there is a limited scope of interference by the court in the award and in such a scenario the timely rendering of an award dealing with each and every contention and argument in support thereof gains more importance. The contention of the learned senior counsel for the respondent that the arguments raised now were not pressed before the Tribunal is a dispute fanned by delay in pronouncement of the award as the contention may be noted but the arguments in support thereof go begging.

16. The reasons given in the award for delay in pronouncement are that hearing was interrupted by covid-19; the matter was concluded on 06.03.2021, but written submissions were filed in August, 2021; and lastly that the members of the Tribunal could not meet to finalise the award due to Covid-19 which receded in the last quarter of 2022. It would be apposite to note that the hearing of the matter continued and the award was reserved during the pandemic. After excluding the time taken by the parties to file

written submissions there is a delay of more than eighteen months in pronouncing the award.

17. The period affected by Covid-19 was considered by the Supreme Court in ***Suo Motu Writ Petition (C) No.3/2020*** and by order dated 10.01.2022, limitations expiring between 15.03.2020 to 28.02.2022 were ordered to start from 01.03.2022. Further, for computing the period under Section 23(4) and 29A of the Act and for Section 12A of the Commercial Court Act, 2015, the period from 15.03.2020 to 28.02.2022 was excluded. The reason in the award for attributing the delay to Covid-19 till the last quarter of 2022 is not in consonance with the order of the Supreme Court. Moreover, after exclusion of time up to 28.02.2022 there is still a delay of almost one year in pronouncing the award. The reason mentioned that after reserving the judgment the members of the Tribunal could not meet for a long time, fortifies that for a considerable time there was no deliberation on matter after award was reserved.

18. *The findings on the jurisdictional issue raised were affected by the delay caused in pronouncement of the award.* The reasons for the delay mentioned in the award are not sufficient. In the facts and circumstances the award is vitiated by inordinate delay, is patently illegal and is unsustainable.

19. *The detailed reasons given for dealing with the merits of the claim need not be gone into as the issue of existence of arbitral dispute in view of the language of the arbitration clause goes to the root of the jurisdiction of the matter and the decision on this was adversely impacted by the delay."*

(Emphasis supplied)

19. Following the above discussion, the learned Single Judge has proceeded to set aside the arbitral award and allow OMP (COM) 197/2023.

20. Aggrieved thereby, UHPL is in appeal before us under Section 37(2)(b) of the 1996 Act.

E. Rival Submissions before us

21. We have heard Mr. Darpan Wadhwa, learned Senior Counsel for the appellant and Mr. A. S. Chandhiok, learned Senior Counsel for the respondent at length.

E.I <u>Submissions of Mr. Darpan Wadhwa</u>

22. Arguing on behalf of UHPL, Mr. Darpan Wadhwa advances the following submissions:

(i) Delay in delivering an arbitral award is not, by itself, sufficient to set it aside, as held by the Supreme Court in ***Lancor Holdings*** (from which Mr. Wadhwa sites paras 1, 19 to 21 and 63) and ***C. Velusamy v. K. Indhera***[12].

(ii) Delay in delivery would vitiate an arbitral award only if (a) the delay is unexplained and (b) the delay has an adverse impact on the findings in the award. A balance has to be struck between the pace of arbitration and satisfactory meaningful content thereof, as the Court and the parties have interest in a "correct decision". It is only, therefore, where the award is "clearly riddled with the damaging effects of delay" that it can be considered to be in conflict with public policy or vitiated by patent illegality. In the present case, the delay is explained, and has no adverse impact on the findings in the arbitral award. This position, in fact, stands acknowledged by the learned Single

[12] **2026 SCC OnLine SC 142**

Judge in para 6 of the impugned judgment.

(iii) The delay in delivery of the award in the present case has been explained as attributable to the following causes:

(a) The final hearing was interrupted by the onset of the COVID pandemic, which concluded, resulting in the hearings concluding on 6 March 2021.

(b) The parties did not file written submissions on or before 15 April 2021 as directed, but sort multiple extensions. The written submissions were ultimately filed only in August 2021. This delay was directly attributable to the parties.

(c) Again owing to the COVID pandemic meetings of the Arbitral Tribunal, for deliberating on the issues, were interrupted. Ultimately, the learned Arbitral Tribunal held four meetings to analyse evidence, documents and finalised the award.

(iv) The delay did not adversely impact the findings in the arbitral award, as the award was detailed, reasoned, unanimous and unambiguous. Findings were returned on all aspects, including the effect of the full and final settlement, extension of the reinstatement period, and various heads under the MD Policy and LOP Policy. The impugned judgment does not at all examined the findings in the arbitral award on merits. Rather, in paragraph 19, it states that the detailed reasons given for dealing with merits "need not be gone into".

(v) The impugned judgment fails to identify any specific finding which is erroneous, inadequate or unsupported by evidence.

(vi) Equally, the impugned judgment fails to identify any submission which was not considered by the learned Arbitral Tribunal, or any inconsistency in reasoning, attributable to delay. For that reason, the finding, of the learned Single Judge, that the oral arguments not adequately considered due to lapse of time, was not sustainable.

(vii) The impugned judgment sets aside the arbitral award without examining or demonstrating how the delay adversely impacted the findings therein.

(viii) The impugned judgment is incorrect in noting that the learned Arbitral Tribunal did not consider the issue of jurisdiction raised by the Insurance Company in the context of Clause 13 of the agreement. For this purpose, the Insurance Company contended that, in view of the final settlement of the dispute with UHPL, no arbitrable dispute survived. As against this, UHPL contended that the settlement was not voluntary. The arbitral award has dealt with this aspect specifically and extensively.

(ix) The learned Single Judge has merely recorded that "with the passage of time due to limitation of human memory the arguments no longer remain potent" and that the findings on the issue of jurisdiction were affected by the delay. These observations are entirely speculative, unsupported by any material on record.

(x) As held in ***Lancor Holdings***, the issue is whether the delay has an adverse impact on the decision, and not whether there is a possibility of such impact. The learned Arbitral Tribunal recorded detailed findings on each issue with reference to arguments and evidence.

(xi) The learned Single Judge has erred in holding that the reasons provided by the learned Arbitral Tribunal for delay were inadequate, and not in consonance with the judgment of the Supreme Court in ***In Re: Cognizance for Extension of Limitation.***[13] The impugned judgment further errs in holding that, even after excluding the period up to 28 February 2022, there remains a delay of almost one year in rendition of the award. It took considerable time for the learned Arbitral Tribunal to convene physical meetings, deliberate on complex issues involving voluminous evidence, documents and detailed written submissions. In these circumstances, the delay could not be said to be inordinate and sufficient to constitute the sole basis to set aside the arbitral award.

(xii) Once an Arbitral Tribunal has provided reasons for delay, the Court, under Section 34 of the 1996 Act, is not to sit in

[13] **Suo Motu Writ Petition (Civil) No. 3 of 2020**

judgment over the correctness, adequacy or sufficiency of those reasons. Reliance has been placed, for this proposition, on ***Punjab State Civil Supplies Corpn. Ltd v. Sanman Rice Mills***[14] and ***Dyna Technologies (P) Ltd v. Crompton Greaves Ltd***[15].

(xiii) The Insurance Company was estopped from challenging the arbitral award on the ground of delay, in view of Section 4[16] of the 1996 Act, which deems a party who, despite being aware of non-compliance with any provision of the 1996 Act, and fails to object there to. The Insurance Company neither (a) raised the issue of delay before the learned Arbitral Tribunal at any stage, nor (b) filed any application under Section 14(2)[17] read with Section 14(1)(a)[18] of the 1996 Act, seeking termination of the mandate of the learned Arbitral Tribunal on the ground of unreasonable delay, nor (c) issued any communication expressing concern regarding delay. Rather, the Insurance Company actively participated in the proceedings.

(xiv) The Supreme Court held, in ***Velussamy***, that, in the

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[14] **2024 SCC OnLine SC 2632**

[15] **(2019) 20 SCC 1**

[16] **4. Waiver of right to object.**

A party who knows that

(a) any provision of this Part from which the parties may derogate, or

(b) any requirement under the arbitration agreement, has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object.

[17] 14. Failure or impossibility to act.—

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(2) If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate.

[18] 14.

(1) The mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, if—

(a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay;

event of failure of an arbitrator to act without undue delay, the party had to approach the arbitrator first and, thereafter, the Court, under Section 14 of the 1996 Act, seeking termination of the mandate of the arbitrator for this reason.

(xv) The learned Single Judge travelled beyond the pleadings, in examining the issue of non-arbitrability of the dispute. The issue of non-arbitrability was not raised by the Insurance Company before the learned Arbitral Tribunal, and was not even pleaded in the Section 34 petition. The issue was raised for the first time in additional written submissions filed in the Section 34 proceedings. The learned Single Judge could not, therefore, have adversely commented on the said issue and based his findings on these averments.

(xvi) Section 29A[19] of the 1996 Act had been inserted by the Arbitration and Conciliation (Amendment) Act, 2015[20] , Section 26 of which expressly provided that it would not apply to arbitral proceedings commenced before its introduction, unless the parties agreed otherwise. In the present case, the arbitral proceedings commenced with the invocation, by UHPL, of arbitration, by its notice dated 15 February 2012, well before 23 October 2015. There was no agreement, between the parties, to

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[19] 29-A. **Time limit for arbitral award.—**

(1) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23:

Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavor may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.

[20] "the 2015 Amendment Act" hereinafter

apply Section 29A.

(xvii) The impugned judgment militates against the legislative policy of minimal judicial intervention, envisaged in the 1996 Act. Section 5[21] of the 1996 Act provides that no judicial authority would intervene except where so provided under Part I thereof. The grounds for challenge to an arbitral award, as contained in Section 34[22], are exhaustive and narrow. The principle of judicial restraint also stands embodied in the judgments of the Supreme Court in ***Ssangyong Engineering and Construction Co Ltd v. NHAI***[23], ***Delhi Airport Metro Express Pvt Ltd v. Delhi Metro Rail Corporation Ltd***[24] and

[21] **5. Extent of judicial intervention.** - Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.

[22] **34. Application for setting aside arbitral award.**

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application [1][establishes on the basis of the record of the arbitral tribunal that]—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

[23] **(2019) 15 SCC 131**

[24] **(2022) 1 SCC 131**

Associate Builders v. D.D.A.[25]

Apart from the decisions already noted, Mr. Wadhwa placed reliance on the judgments of the Supreme Court in paras 36, 36.1, 50 to 57 and 138 of ***SBI General Insurance Co. Ltd v. Krish Spinning***[26].

E.II Submissions of Mr. Chandhiok

23. Responding to Mr. Wadhwa's submissions, Mr. Chandhiok contends as under:

(i) The scope of interference, under Section 37, is even more circumscribed than the scope of interference under Section 34 of the 1996 Act. Section 37 is akin to a second appeal under the Code of Civil Procedure, 1908. The finding, by the learned Single Judge, that the reasons cited in the arbitral award to justify the delay in its rendition were insufficient, is a finding of fact, which cannot be interfered with, in appeal, under Section 37.

(ii) Delay in pronouncement of an arbitral award is in itself sufficient to set aside. Reliance is placed, for this purpose, on the judgments of the Supreme Court in ***O.N.G.C. v. Saw Pipes Ltd***[27] and ***Lancor Holdings***, the judgments of Division Benches of this Court in ***BWL Ltd v. Union of India***[28] and of the learned Single Judges of this Court in ***Gian Gupta*** and ***Harji***

[25] **(2015) 3 SCC 49**
[26] **(2024) 12 SCC 1**
[27] **(2003) 5 SCC 705**
[28] **2012 SCC OnLine Del 5873**

Engineering Works Pvt Ltd v. B.H.E.L.[29] The delay rendered the award opposed to public policy as well as patently illegal. Reliance has also been placed, in this context, on the judgment of the Division Bench of this Court in ***D.D.A. v. G.L. Litmus Events Pvt Ltd***[30], the Special Leave Petition against which was also dismissed by the Supreme Court. Inordinate delay in rendition of an arbitral award gave rise to a presumption that the parties contentions, demeanour of witnesses and intricate details of the record would inevitably have faded from the memory of the arbitrator.

(iii) The impugned judgment clearly observes that the delay in rendition of the arbitral award has impacted it, inasmuch as there was no decision, by the learned Arbitral Tribunal, on its own jurisdiction, in the face of Clause 13 of the Policies. The learned Single Judge has held that "the issue of existence of arbitration disputes in view of the language of the arbitration clause goes to the root of the jurisdiction of the matter and decision of this was definitely impacted by delay".

(iv) The impugned judgment further notes that, even if the period till 28 February 2022 were to be excluded, there was still a delay of almost one year in rendering the award.

(v) The COVID-19 pandemic could not constitute a legitimate basis to explain the delay in rendition of the arbitral

[29] **2008 SCC OnLine Del 1080**
[30] **2025 SCC OnLine Del 9906**

award, as the arbitral proceedings continued during the currency of the pandemic.

(vi) It was admitted, in the arbitral award itself, that, after the award was reserved, the members of the learned Arbitral Tribunal did not meet for a long time, thereby demonstrating that, for a considerable period of time, there was no deliberation on the issues involved, which obviously meant that all that was urged had been forgotten.

(vii) The issue before the Supreme Court in ***Velusamy*** was whether an arbitral award delivered after termination of the mandate of the Arbitral Tribunal could be regularised under Section 29A(5) of the 1996 Act. It was not, therefore, of relevance in the present case.

(viii) ***Lancor Holdings*** was rendered under Article 142 of the Constitution of India and could not, therefore, be cited as a precedent by UHPL. Even otherwise, the decision held that delay in making or pronouncing an award was opposed to the public policy of India.

(ix) The findings in the arbitral award were a verbatim copy of the written submissions of UHPL, which also indicated absence of independent application of mind. The learned Arbitral Tribunal had not evaluated the evidence or addressed the contentions of the Insurance Company.

(x) Inasmuch as there was no admission of liability by the

Insurance Company, the dispute in question was not arbitrable under Clause 13 of the Policies. The learned Arbitral Tribunal did not refer to, much less consider, the core terms of the Policies or the arbitration clause. The execution of Discharge Receipts, towards full and final settlement, resulted in discharge of the liability by accord and satisfaction. The arbitration agreement itself stood extinguished thereby. The learned Single Judge was, therefore, justified in his view that, owing to the inordinate delay in rendition of the arbitral award, this aspect, and the submissions advanced in connection therewith, had been forgotten by the learned Arbitral Tribunal. Mr. Chandhiok drew attention to para 32 of the arbitral award to support his submission that the learned Arbitral Tribunal had not addressed the issue of arbitrability of the dispute in the light of Clause 13 of the Policies.

In support of his submissions, Mr. Chandhiok placed reliance on paras 39 to 47 and 53 to 55 of the judgment of the learned Single Judge of this Court in ***G.L. Litmus Events Pvt Ltd v. D.D.A.***[31] as well paras 28 and 31 of the appellate judgment of the Division Bench, already cited *supra*.

E.III Submissions of Mr. Wadhwa in rejoinder

24. Mr. Wadhwa, in rejoinder, disputes Mr. Chandhiok's submission that ***Lancor Holdings*** is not a valuable precedent, or that it

[31] **2025 SCC OnLine Del 5772**

has been rendered under Article 142 of the Constitution of India. Article 142, he submits, was relied upon, by the Supreme Court, only in support of its decision not to send the dispute back for de novo consideration by the arbitrator, though he had left many issues undecided. Mr. Wadhwa points out, further, that ***Lancor Holdings*** also took note of the judgment of the learned Single Judge of this Court in ***G.L. Litmus Events***.

25. Mr. Wadhwa further submits that the only issue raised by the Insurance Company before the learned Arbitral Tribunal was the plea of discharge of the liability by accord and satisfaction. Clause 13 of the Policies, he submits, was never made subject matter of dispute. In fact, by drawing attention to sub-paras (a) to (g) of the Statement of Defence filed by the Insurance Company before the learned Arbitral Tribunal, the Issues framed by the learned Arbitral Tribunal in para 5 of the arbitral award, and paras 12 to 14, 24 and 25 of the arbitral award, Mr. Wadhwa submits that the learned Arbitral Tribunal was only called upon to decide as to whether the claims of UHPL against the Insurance Company stood discharged by accord and satisfaction.

F. The Statement of Defence

26. The resolution of the controversy in dispute turns, to some extent, on the assertions contained in the Statement of Defence of the Insurance Company before the learned Arbitral Tribunal. It was sought to be contended that the learned Arbitral Tribunal has not addressed the issues advanced before it, owing to the delay which had been occasioned in its rendition. In fact, the impugned judgment specifically faults the learned Arbitral Tribunal for not having properly addressed the objection of the Insurance Company with respect to arbitrability of the dispute in the light of Clause 13 of the Policies.

27. Mr. Wadhwa has sought to contend, in this regard, that no specific objection with respect to arbitrability of the dispute in the light of Clause 13 of the Policies was advanced by the Insurance Company in the arbitral proceedings. To the extent that the Insurance Company had objected to the Statement of Claim filed by UHPL, Mr. Wadhwa's contention is that the learned Arbitral Tribunal has adequately addressed the points urged.

28. The Statement of Defence of UHPL runs into over 90 pages. We deem it appropriate to reproduce in *extenso* the following paragraphs from the Statement of Defence:

> "2. Preliminary Objections/Submissions:
>
> The Respondent states and submits that the arbitration is not maintainable, this Hon'ble Tribunal has no jurisdiction and the claims of the Claimant are not maintainable, misconceived and untenable and liable to be dismissed in limine for each of the following preliminary objections which go to the root of the matter and are set out hereinafter without prejudice to one another:
>
> (a) The Parties having arrived at full and final settlement of all of the Claims of the Respondent under the Fire and Special Perils (Materials Damage) Policy No. 11181790 (the "Fire MD Policy") and Business interruption/Fire Loss of Profit Policy No. 11181787 (the "LOP Policy" in respect of its property known as Grand Hotel situate in Vasant Kunj, New Delhi (the "Hotel") the contract of insurance contained in the said Policies between the Parties came

to an end and stood extinguished and the arbitration clause contained therein also perished along with it.

(b) There is no arbitrable dispute between the parties, they having entered into a full and final settlement of all claims of the Claimant under the Fire MD Policy and the LOP Policy (collectively the "Claims").

(c) The Claimant having arrived at full and final settlement after discussions/negotiations and having agreed to the amount in full and final settlement the Claims under the Fire MD Policy and the LOP Policy (collectively the "two Policies") after due consideration of the loss and damage assessed by the Surveyors and the Claimant having issued at its free will and volition the Discharge Receipts in respect of the same under the two Policies without any reservation or condition and depositing the moneys so received in full and final settlement of its clauses under said two Policies, the Claimant is estopped from disputing or challenging in any manner whatsoever.

(d) The Claimant by signing and delivering unconditional discharge receipts with respect to the full and final settlement of its claims under the two Policies Media representation to the Respondent intended to induce the Respondent to make the payments of the amounts referred to in the Discharge receipts in full and final settlement of Claims of the Claimant under the two Policies and on the basis thereof received the payorders and collected the amounts thereunder without any reservation, the Claimant is estopped from questioning the settlement or claiming the differential.

(e) By depositing the payorders received in terms of the Discharge Receipts and collecting the payments thereunder the Claimant accepted the settlement unconditionally and cannot now change the terms on which the payment was accepted unilaterally nor can it go back on the settlement.

(f) The Claimant having discussed with the Respondent the settlement of the Claims under the two Policies and upon the Respondent making the proposal for full and final settlement after the Claimant after discussions and various clarifications and provision of information and negotiations and thereupon it having thereafter accepted the offered amount and after having signed and delivered to the Respondent the discharge receipts on 23.01.2012 with respect to its Claims under the two Policies, in full and final satisfaction and discharge of its Claims, the Claimant unconditionally and irrevocably waived and relinquished and fully and forever released and discharged the Respondent in respect of all of its liability or obligations towards the Claimant with respect to the Claims under the two Policies.

(g) The questioning/challenging of full and final settlement by the Claimant is an afterthought, the quantum of the settlement amount having been arrived at and accepted by the Claimant after negotiation and without any objection. The allegation of duress, coercion and undue influence with respect to the full and final settlement or about the Claimant's alleged "dire" financial situation is an after thought and nothing but a device to avoid full and final discharge and settlement of the Claims.

(h) The Claim is not maintainable on account of negligence of the Claimant. The fire took place at 12.40 p.m. and Respondent was informed about the same at 12.55 p.m. over telephone. The Respondent immediately appointed the Surveyor and surveyor was at the place of incident at 3 p.m. The Surveyor observed that the fire spread in the premises in a very short time inspite of the flame and smoke detectors as sprinkler lines were not functional or poorly pressurized. He also observed that various fire hydrants installed along with fire hoses in several sections of the hotel were not or perhaps could not be used. So was also the case with the handheld fire extinguishers (except for a few handheld fire extinguishers, majority of these were not used), which instead of being used were burnt in unused status which clearly evidenced the carelessness and negligence on the part of the Claimant. These facts were pointed out by the surveyor in their letters dated 30/01/2008 and 23/02/2008.

(i) The reinstatement of damage or destruction or loss can only be to what it was prior to loss, damage or destruction thereof. The Claimant having altered and changed the insured asset i.e. the Hotel including change in layout, design etc. from what it was, the claims are inadmissible and not maintainable and without prejudice to the foregoing in any event the Claim on that account cannot exceed the cost of restoration thereof.

(j) The terms of policy have to be strictly construed and the words of the condition relating to reinstatement period under the Fire MD Policy containing the express term of the contract between the parties is clear and unambiguous. There is no entitlement as a matter of right or otherwise of the insured for extension of time for reinstatement work. The Claim on account of art work was for a much higher amount, which may have been based on the cost as declared by the Claimant, however the Claim on that account has to be in accordance with the terms of the Fire

MD Policy as the Policy limits the Claim on this account to an amount of Rs. 10,000/- the same was settled for the said amount as per policy terms and conditions and the Claim over and above the said limit was and is admissible under the Policy. Further claims on account of borrowings by the Claimant or on account of use by the Respondent of its own funds on the ground that had the Claim been paid when made, the funds used by the Respondent would have been the funds of the Claimant and that the Claimant would not have used borrowed funds, are claims of consequential and indirect loss and damage are inadmissible, misconceived and not maintainable in law.

(k) The cause of action for the claims under the two Policies arose on 26.01.2008 when the fire took place at the Hotel. The claims are barred by limitation as the arbitration in respect of the Claims was commenced only after the expiry of a period of three years from the date of cause of action i.e. 26.01.2008 under the Standard Fire and Special Perils Policy (Material Damage) No. 11181790 and under the Fire Loss of Profit Policy No. 11181787. Merely because the Claimant tooks its time in formulating/ fleshing out and quantifying its Claim or because the parties continued to discuss the Claims or the quantum thereof or a settlement was arrived at a later date will not and can not in law extend limitation.

(l) The Claimant is guilty of suppressing various material facts and making incorrect statements as can be seen form the true and correct facts setout in this Statement of Defense and the Statement of Claim is liable to be dismissed on this ground alone.

3. FACTS:-

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b) The Respondent issued following 2 insurance policies in favour of the Claimants for their Hotel property - The Grand, Vasant Kunj, Phase II, Nelson Madela Road, New Delhi 110070:

> (1) The Fire MD Policy - Policy No. 11181790 - Standard Fire & Special Perils Policy (Material Damage) Policy period: 01.04.2007 to 31.03.2008. Sum insured: Rs.1,864,411,765, Premium: Rs. 2,161,222.
>
> Under the policy the Reinstatement Value Policies clause at page 19 reads as follows:

"It is hereby declared and agreed that in the event of the property insured as mentioned in the policy schedule within the policy being destroyed or damaged, the basis upon which the amount payable under (each of the said items of) the policy to be calculated shall be cost of replacing or reinstalling on the same site or any other site with property of the same kind or type but not superior to or more expensive than the insured property when new as on date of the loss.... "

(2) LOP Policy- Policy No. 11181787 - Fire Loss of Profit Policy (Business Interruption). Policy period: 01.04.2007 31.03.2008. Sum Insured: Rs. 1,000,000,000. Premium: Rs. 14,73,150.

The calculation methodology for computation of the loss of profit upon occurrence of loss as stipulated under the said policy was business interruption on turnover basis as per policy conditions.

c) On 26.01.2008, at around noon, a fire took place at the Lower Ground floor level in Japanese display kitchen area of Enoki Restaurant and spread rapidly through the air duct passage causing serious damages to various restaurants, bars, coffee shop, lobby, lounge and certain other areas. The fire brigade reached the premises shortly and put out the fire in about three and a half hours.

(d) The Respondent was telephonically informed by the Claimant about the fire incident and immediately the Respondent within a matter of an hour or so appointed M/s. K.D. Kohli & Co. Pvt. Ltd. (the "Surveyor") as the surveyor who visited the premises on the same day at around 3.15 pm and tried to take pictures but were later instructed by the fire fighters to leave as the fire was still raging and were apprehensive that injuries could be caused due to falling debris. The Surveyor again visited the premises on 27th January, 2008 and requested the Claimant to provide various documents and information and also requested them to do the needful for rehabilitation........

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(h) Despite several Letter/reminders/ requests to the Claimant no document was handed over to the Surveyor or the Respondent.......

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(j) On 20.02.2008, the surveyor alongwith Mrs. Sadhna Trehan of the Respondent visited the Hotel premises and after examining the situation, the Respondent requested the Surveyor by its letter / email dated 21.02.2008 to coordinate with the Claimant as the debris removal was proceeding at an unusually slow pace and despite it being started on 10.02.2008 only a small percentage has been accomplished and greater part needs to be removed. Email dated 21.02.08 is annexed herewith as Annexure R-8.

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(l) On 28.02.2008, the Respondent wrote to Claimant and asked it to submit Claim bill by 06.03.2008. On 28.02.2008 and 29.02.2008 Joint inspection meeting to verify the damage and actions taken in regard thereto were carried out by the Surveyor and the Claimant. A copy of the said letter / email dated 28.02.08 is annexed hereto and marked as Annexure R-10.

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(p) The Claimant also submitted their Claim alongwith supporting compilation and Claim Form to the Surveyor under the Standard Fire and Special Perils Policy No. 11181790 for Material Damage inter alia, claiming a total estimated sum of Rs. 68,64,23,750 for material damage caused to the Claimant's Hotel due to accidental fire. It may be mentioned that details of the Claim were submitted by the Claimant to the Surveyor on 07.03.08 at 7.30 p.m.

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(s) *The Surveyor, on 31.03.2008 wrote a letter to the Respondent and informed that inordinate delay is on the part of the insured. It was further informed that loss under MD policy may not exceed 18 crores and under LOP 26.88 Crores*.

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(w) The First Interim Report dated 14.05.2008 was submitted by the Surveyor in which it was stated that estimated loss is of Rs. 38 Crores for Material Damage and Rs. 27 Crores for Loss of Profit. According to the said report the reasons for spread of fire are:

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The Surveyor provisionally assessed the loss at Rs. 38 crores and recommended interim payment of Rs. 20 crores to the Claimant to facilitate faster rehabilitation and reduction in the period of interruption which may have a positive and beneficial effect on the loss of gross profit Claim. Accordingly interim payment of Rs 20 Crore was made to the Claimant.

(x) The Respondent at the instance of the Reinsurers appointed Cunningham Lindsey International Pvt. Ltd. (CLIP) as another surveyor on 16.05.2008 and the MIs. KD Kohli shared the records with CLIP ("for the sake of brevity M/s. KO Kohli & Co. and CLIP are together referred to as the "Surveyors"). The Respondent released 1st Interim Payment of Rs. 20 Crores under the Material Damage Claim on 06/06/2008.

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(dd) On 13.10.2008 Interim survey report was submitted by Cunningham Lindsey International Pvt. Ltd. It recommended interim payment of upto Rs. 30 Crores to the Claimant. The relevant portion of the Report is reproduced below:

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The said interim Report further stated that against the Insured/Claimant's Claim of Rs.100,00,00,000, and its recommendation to retain the loss reserve at Rs.75,00,00,000 towards the business interruption claim, it may be in order to consider an interim payment of up to Rs.300,000,000 to the Insured, for the present. It stated that it is not satisfied that, even if it is able to compute a lower gross profit than that projected by the Insured, the liability of the Insurers will be more than the recommended interim payment. The Interim Survey Report dated 13.10.2008 is annexed as Annexure R-21.

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(gg) On 25th February, 2009 on the repeated concerns and disagreement expressed by the Claimant regarding the value at risk and the period of restoration required for removal of interruption and with a view to have another opinion, and not as any dissatisfaction with the Surveyors work, the Respondent appointed Mr. Samir Bajpai, an expert in the above matters to, inter alia, express his opinion and recommendations in this regard. Mr. Samir Bajpai has experience of, inter alia, design and development of hotel projects including site selection, mixed land use developments including 5 star hotels and high end service apartments and design development of international standard hospitals at Mohali and Naida for Fortis Healthcare Ltd. And is a civil engineer and has Masters in Business Administration. The said expert vide his report dated 17.03.2009 concluded that the rehabilitation of the affected hotel could be carried out within 28 weeks i.e. 7 months to put the property back into pre event status.

(hh) The Claimant raised certain objections to the said Report dated 17.03.2009 by its letter dated 13.08.2009 on the ground inter alia that the appointment of the expert was 13 months after the accident and that his opinion is based on the documents largely and his interaction with the surveyors. On 16.11.2009 the Claimant sent detailed final claim bill of Rs 57 .97 Crores for Material Damage. On 05.12.2009 the Claimant submitted its detailed working in support of LOP Claim for the interruption period 26.01.2008 to 25. 02.2009.

(ii) *On 07.09.2011 Final Joint Survey Report was submitted by KO Kohli & Co. and Cunningham Lindsey International Pvt. Ltd. The said Report recommended the following amounts towards full and final settlement:*

Under Policy No. 11181790 - Standard Fire & Special Perils Policy (Material Damage) - Rs. 20,19,19,599 (out of which Rs. 20 Crores was already paid and the balance amount payable was Rs. 19,19,599).

Under Policy No. 11181787 -- Fire Loss of Profit Policy Rs. 70,52,90,638 (out of which Rs. 30 Crores was already paid and the balance amount payable was Rs.40,52,90,638.

(jj) OD On 15.09.2011 the Claimant wrote an email to the Respondent that Surveyors have submitted their report hence claim may be processed and also acknowledged receipt of on account payment of Rs. 50 crores against claims of Rs. 160 crores and requested for copy of survey reports.

As it was obvious that the Claim of the Claimant were inflated and the Claimant had not only been negligent in discharge of its obligations and delays have been solely because of the conduct of the Claimant including its failures, the Respondent in the totality of facts and circumstances made the final assessment of the Claimant's claims. It on 14.12.2011 the Respondent informed the Claimant about the approval of claims by competent authority for full and final payment and requested them to return the Discharge Vouchers duly signed and stamped alongwith NOC from financial institutions to enable Respondent to process payment mentioning *that the balance payable under Material Damage is - Rs. 1,919,599 and under Fire Loss of Profit is - Rs. 405,290,638.*

(kk) *In reply to above referred letter dated 14.12.2011, Mr. Rajesh Rustagi, Group CFO & Company Secretary, Unison Hotels informed the Respondent by its letter dated 21.12.2011 that since they had claimed Rs. 57,98,05,120 - Material Damage and Rs. 1,00,00,00,000 - Loss of Profit totaling to Rs. 1,57,98,05,120 while ITGI has offered Rs. 20,19,19,599 - Material Damage and Rs. 70,52,90,638 - Loss of Profit, totaling to Rs. 90,72,10,237, there is a Differential Amount of Rs. 67,25,94,883.*

It was further stated:

> "Thus we are accepting the Offered Amount as partial payment out of the total claim reserving our right to claim Differential Amount. We are accepting the Offered Amount with and under protest and only towards partial payment of Total Claim Amount without prejudice to our right to claim the Differential Amount".

There was not even a whisper of any purported bad financial situation or coercion on account thereof of the Claimant by the Respondent or its financial hardship in the said letter.

(ll) Thereafter on 23.12.2011, a meeting was held in the corporate offices of the Respondent in Gurgaon between Mr. Parag Gupta, Ms. Sadhana Trehan and Mr. Dinesh Pargain of the Respondent and Mr. Rajesh Rustogi, the CFO of the Claimant at which the Claimant discussed the basis of full and final settlement and after satisfying itself sent on the same day its letter dated 23.12.2011 whereby the Claimant agreed to accept the offered full and final settlement amount without any reservation and enclosed therewith its unconditional full and final settlement discharge receipts with respect to its Claims under the two Policies. The Claimant quite obviously as it is now apparent as an afterthought and with deliberate intent on a device to renege on the unconditional discharge receipts duly signed and enclosed therewith, referred in this letter to its alleged "bad financial condition". The fact that it was an afterthought would be evident when this letter is read with Claimant's earlier letter of 21.12.2011 which was by its CFO and who must have known its purported "bad financial condition" in which the Claimant did not even allude much less made any reference to its "bad financial condition" and by which it wanted only the reservation to claim the differential amount (which is now claimed) at a later date after receipt of the settlement amount. The Claimant by signing and delivering unconditional discharge receipts made a representation to the Respondent intended to induce · the Respondent to make the payments of the amounts referred to therein in full and final settlement of the Claim of the claimant under the two Policies. The Respondent upon receipt of unconditional discharge receipts duly signed issued payorder dated 30/01/2012 of Rs. 18,84,045 and Rs. 40,51,26,934 in favour of the Claimant. The Claimant thereafter deposited and collected the payment obtained by making a representation that full and final settlement of the Claims under the two Policies has been arrived at and thereby induced the payments and therefore the Claimant is estopped from questioning the full and final settlement or claiming the differential.

(mm) Despite accepting the payment after duly signing the unconditional discharge receipts and collection of payments under the payorder issued by the Respondent, the Claimant wrote its letter dated 01.02.2012 questioning the full and final settlement towards the policies........

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(nn) In reply to the above letter dated 01.02.2012, the Respondent wrote its letter dated 16.02.2012 to the Claimant denying its contention and stated that the amount was accepted without any kind of duress and selective use of these words is making an underhanded attempt to escape the finality of settlement of claim.

(oo) On 17.02.2012, the Respondent received Notices dated 15.02.2012 from Khaitan & Co. Advocate invoking arbitration clause in the two Policies and alleging that their client was coerced into accepting the Admitted Amount by issuing the discharge vouchers out of utter necessity to pay the bankers and creditors and the said acceptance was a result of coercion, duress and undue influence by the Respondent and thus invalid and nominated Mr. Justice S.K. Mahajan (Retd.) as Sole Arbitrator to adjudicate upon the dispute."

(Emphasis supplied)

G. The Arbitral Award

29. Placing the horse after the cart as it were, and having paraphrased the impugned judgment of the learned Single Judge and the rival contentions of learned Senior Counsel before us, we turn, now, to the arbitral award, to ascertain what exactly it holds. We would be referring to the award only to the extent it is relevant, given the nature of the impugned judgment and the rival submissions made by learned Senior Counsel. More particularly, since the impugned judgment does not deal with the merits of the dispute, but sets aside the arbitral award on the ground of delay in its rendition, we would also be adverting more to this aspect when dealing with the award.

30. The learned Arbitral Tribunal framed the following issues in para 5 of its Award, for consideration:

> "(i) Whether the claims under two insurance policies, namely, fire (material damage) policy ("Fire MD Policy") and Loss of Profit Policy ("LOP Policy") are barred by Limitation?
>
> (ii) What is the effect of full and final settlement of claims arrived at by
> the parties?
>
> (iii) Is the Claimant entitled to recover from the Respondent any amount under the two insurance policies?
>
> (iv) Whether any party is entitled to cost of these proceedings?
>
> (v) the question of admissibility and maintainability of the claims would be covered under Issue No. 3. The question whether the Claimant is entitled to interest, if any, would also be covered by Issue No.3 ...""

31. Having set out, thereafter, the evidence adduced before it, the learned Arbitral Tribunal, proceeds from para 11 of its award, to provide its reasons and findings. Para 12 of the award records the preliminary objection of the Insurance Company, as advanced before the learned Arbitral Tribunal, thus:

> "12. At the outset, Respondent raised "Preliminary Objection" with regard to the maintainability of the claims on the ground of full and final settlement and estoppel on the premise of the "discharge receipts" and payments made by the Respondent to the Claimant. The Respondent has setup a case of complete discharge and consequently argued that no claims can be agitated by the Claimant before this Tribunal."

32. Paras 13 and 14 of the arbitral award set out the rival stands of the Insurance Company and UHPL with respect to the objection to maintainability of the claim of UHPL in the light of the discharge voucher signed by it. Thereafter, the learned Arbitral Tribunal has addressed this issue in paras 15 to 32 of the Arbitral Award thus:

> "15. Whereas the Claim voucher was provided to the Claimant on 15.12.2011, no Survey Report Copy was provided to the Claimant till the start of the Arbitration proceedings and nearly three months after statement of claim was filed by the Claimant on 07.09.2012 and despite several letters including letter dated 01.02.2012 by CW-1 asking the Respondent for settlement of the balance payment.
>
> 16. While the claimant was not provided with a copy of the survey Report for the purpose of understanding the deductions made, the Respondent also brushed aside the objections made by the Claimant vide letters dated 21.12.2011 and 18.04.2011.
>
> 17. The Respondent failed to show how the full Survey Report has been attached to the email dated 03.10.2011 sent by Mr. Anupam Shukla to CW-1, when the said fact stems out to be incorrect.
>
> 18. The respondent had sent a letter dated 15.12.2011 informing without explanation, the amounts of the final claim settlements along with discharge receipts required to be signed by the Claimants accepting the amounts in full and final settlements.
>
> 19. It may be noted that even though the Claim was in excess of Rs. 100 crores, the Claimant was provided relief by way of an on-account payment by the Respondent who offered a settlement voucher nearly 4 years after the date of loss requiring the Claimant

to not only keep the Company going but to also restore/ reinstate the premises to 5-star standards at their own costs.

20. In such circumstances, the Claimant very clearly alleged the financial duress being faced by it in their letter dated 23.01.2012 wherein it stated as follows:

> "Owing to our bad financial conditions, we agree to accept the above-mentioned amount of Rs. 90,72,10,237/-, as directed by you, and request you to kindly release the payment of the said amount forthwith. We are, therefore, forwarding you the said discharge vouchers along with the requisite revenue stamp and signature and addresses of the witnesses and request you to release the admitted payment immediately."

21. In fact, it was very clearly brought out during the examination of CW-1, that the Claimant had no option but to borrow funds on short term basis to meet the dual requirement of running the property and also reinstating the damaged portions of the Hotel.

22. The relevant cross-examination is as under:

Q. 321 Please see para 62 of your Affidavit of Evidence. Since when did the financial condition of the Claimant start to deteriorate?

Ans. Financial condition of the Claimant started deteriorating after commencement of operations post fire."

Q. 329 Kindly look to paragraph 69 of your Affidavit of Evidence. Can you explain what you meant by "severe financial strain"?

Ans. By "severe financial strain" I mean requirement of funds for meeting obligations towards banks each other financial institutions."

Q. 330 Were the loans referred to in paragraph 70 of your Affidavit of Evidence paid, and if so when and to whom?

Ans. Yes, they were paid in financial year 2011-12 itself immediately after the receipt of the payment from Respondent. The banks I financial institutions were Kotak Mahindra Bank and HDFC Limited."

Q.332 When were the loans referred to in Question No.330 taken by the Claimant?

Ans. The loan from Kotak Mahindra Bank was taken in Financial Year 2009-10 and from HDFC Ltd. in the Financial Year 2011-12.

23. Two statements submitted on behalf of the Claimant containing financial details that were culled out from the audited Statements of Account and Balance Sheets on perusal reveals that during the period, F.Y. 2007-2008 to F.Y. 2011-12 the expenses towards interest as well as the repayments made by the Claimant to the Bank/ FI's were increasing year on year and the cumulative amount of interest paid by the Claimant at the end of F.Y. 2012 stood at Rs. 119.32 crore and on the same date, repayments of loan cumulatively were to the tune of Rs. 284.41 crore.

24. Thus, the statements also reveals that the additional loans that were taken by the Claimant during the same period stood at Rs. 376 crores. The other statement shows that the Claimant continued to remain under financial duress and financial crunch and to meet its financial duress and suffered financial crunch and to discharge its financial obligations, it had to avail additional loans from time to time from Bank/FIs. The said statement also supports the fact that Rs. 40.51 crore, that was received by the Claimant from the Respondent on 30.12.2012 against the purported final settlement receipts, was mainly utilized in immediately repaying the outstanding loans, i.e., Rs. 15 Crore to Kotak Mahindra Bank, Rs. 15.25 crore to HDFC Limited and Rs. 5.56 Crore to Punjab National Bank.

25 In our view, the Claimant had made it clear that there was substantial financial pressure and that it had no option but to accept the payments made by the Respondent after 4 years of the date of Loss under duress.

26. Discharge Receipts were submitted by the Claimant on 23.01.2012. Respondent took advantage of its superior bargaining position and its refusal to pay even the amounts which had been determined by the Respondent itself as being due to payable to the Claimant in respect of its claims, without complying with the pre-conditions of executing the two Discharge Receipts strictly as prescribed and demanded by the Respondent establishes the element of coercion. As the covering letter of the Claimant itself states, the said Discharge Receipts were given owing to financial difficulty and to comply with the 'directions' given by the

Respondent to that effect. For this reason alone, the submission that the Discharge Receipts were given owing to financial difficulties and to comply with the 'directions' given by the Respondent to that effect is supported. Thus, the submission of the Discharges Receipts by the Claimant to the Respondent cannot be termed as an act that was done voluntarily or of its own free will.

27. The Claimant relied upon the ratio of the judgements of the Hon'ble Supreme Court rendered in the following two cases:

(i) ***National Insurance Company Limited v. Mis Boghara Polyfab Pvt. Ltd***.[32]

> "26. When we refer to a discharge of contract by an agreement signed by both the parties or by execution of a full and final discharge voucher/ receipt by one of the parties, we refer to an agreement or discharge voucher which is validly and voluntarily executed. If the party which has executed the discharge agreement or discharge voucher, alleges that the execution of such discharge agreement or voucher was on account of fraud/coercion! undue influence practiced by the other party and is able to establish the same, then obviously the discharge of the contract by such agreement/ voucher is rendered void and cannot be acted upon."

(ii) ***Oriental Insurance Company Limited v. Dicitex Furnishing Limited***[33].

28. The Claimant also relied upon a recent judgement of the Hon'ble Delhi High Court delivered on 06.07.2021 in the case of ***Gail (India) Limited v. Bansal Infratech Synergies Limited***[34] wherein the above-mentioned judgments of the Hon'ble Supreme Court have been relied upon. On the contrary, the Respondent has relied upon (i) ***Bhishunndeo v. Seogeni Rai***[35] at 283 (para 25), (ii) ***Ladli Prasad v. Kamal Distrillery Co***.[36], Paras 7 (lack of financial resources), 22(3) (financial constraint), 23, 31 (allegations never pleaded and proved cannot travel beyond the pleadings), (iii) ***New India Assurance Co. Ltd. v. Genus Power Infrastructure***

[32] **2009 (1) SCC 267**
[33] **(2020) 4 SCC 621**
[34] **2021 SCC OnLine Del 3628**
[35] **AIR 1951 SC 280**
[36] **AIR 1963 SC 1279**

Limited[37]- Paras 4 (allegation) 7, 9 (what claimant contending was the plea) &, 10 (no particulars), (iv) ***ONGC Mangalore Petrochemicals Ltd. v. ANS Constructions Limited & Anr.***[38]**,**Paras 23, 24 (arguments), 25,26& 30 (what is financial duress), (v) ***Haryana State Cooperative Supply & Marketing Federation Ltd. v. IFFCO Tokio General Insurance Co. Ltd. & Anr., National Consumer Disputes Redressal Commission, New Delhi.***[39]

29. The Claimant also relied upon the contents of the following circulars issued by the IRDA:-

(i) Ref. No.: IRDA/NL/CIR/Misc./173/09/2015 dated 24.09.2015

(ii) Ref. No.: IRDA/NL/CIR/Misc./113/06/2016 dated 07.06.2016

30. After perusing the Judgements cited by the parties, we find that the conclusion whether the Discharge Receipts were submitted voluntarily or under coercion due to financial distress depends upon the facts and circumstances of each case, as facts of no two cases are akin and so are the ratio of these judgements. On the premise of the facts stated above, we find no escape from concluding that there has not been a full and final settlement between the parties in the matter of its Material Damage and Business Interruption Claims. Once the Respondent had, on its own, decided that it would settle the claims of the Claimant for a certain sum of money; the said sums of money assumed the character of property that belonged to the Claimant. Act of withholding payment of that amount to the prejudice of the claimant with the intention of forcing the Claimant to enter into an agreement of full and final settlement by way of signing the Discharge Receipts, despite the fact that the said amounts were considerably lower than the Claims made by the Claimant, clearly falls within the definition of 'coercion' as defined in Section 15 in the Indian Contract Act, 1872. Claimant has established a case that it was in desperate need of funds and the Respondent misused its superior bargaining power. Moreover, the Respondent did not discharge the burden of proving that the said agreement was not induced by undue influence within the meaning and content of Section 16 of the Indian Contract Act, 1872.

31. The judgements relied upon by the Respondent are distinguishable on facts in as much as we have come to a

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[37] **(2015) 2 SCC 424**
[38] **(2018) 3 SCC 373**
[39] **Revision Petition No. 4713 of 2012**, decided on 5 April 2013

conclusion that there was financial duress and abuse of dominant position by the Respondent in the face of facts of the present case.

32. The question of limitation does not arise as the payment under protest was only accepted around January 2012 and the claims are for the remaining unpaid amounts. Thus, the plea of limitation and maintainability is not available to the Respondent."

H. The Legal Position

33. Section 29A was introduced in the 1996 Act, by Section 15 of the Arbitration and Conciliation (Amendment) Act, 2015[40] with effect from 23 October 2015. Section 29-A(1), as inserted by Section 15[41] of the 2015 Amendment Act, requires the arbitral award to be made within 12 months from the date of entering upon the reference by the

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[40] "2015 Amendment Act", hereinafter

[41] 15. After section 29 of the principal Act, the following new sections shall be inserted, namely:—

"29A. (1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.

Explanation.—For the purpose of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment.

(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent. for each month of such delay.

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.

Arbitral Tribunal.

34. Section 6(a)[42] of the Arbitration and Conciliation (Amendment) Act, 2019 replaced Section 29A(1) with a substituted provision requiring the Arbitral Tribunal to make the arbitral award within 12 months from the date of completion of pleadings under Section 23(4) of the 1996 Act. Significantly, Section 1(2) of the 2019 Arbitration and Conciliation (Amendment) Act read with Notice No. SO 3154(E) dated 30.08.2019 issued by the Ministry of Law & Justice brought Section 6(a) of the 2019 Amendment Act into force from 30 August 2019.

35. In the present case, pleadings themselves were completed with the filing of the Statement of Defence on 3 January 2013. As such, Section 29A(1), whether in its originally inserted form, or in its amended *avatar*, would not apply. The issue of whether the delay in rendition of the arbitral award would vitiate it has therefore to be examined agnostic of Section 29-A.

36. The leading decision on the aspect of delay in rendition of

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[42] 6. In section 29A of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23:

Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavour may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.";

(b) in sub-section (4), after the proviso, the following provisos shall be inserted, namely:—

'Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:

Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.'.

arbitral awards prior to the introduction of Section 29-A, and the extent to which such delay imperils the award, is the judgment of the two Judge Bench of the Supreme Court in ***Lancor Holdings.*** Learned counsel for both sides, before us, have relied on the said decision. It is necessary, therefore, to advert to the decision in some detail.

37. The decision in ***Lancor Holdings***

37.1 The Supreme Court has in para 1.1 of the decision in ***Lancor Holdings,*** identified the very first issue as arising before it for consideration as "the effect of undue and unexplained delay in the pronouncement of an arbitral award upon its validity."

37.2 The arbitrator, in ***Lancor Holdings***, reserved the award on 28 July 2012 but pronounced it *nearly three years and eight months later* on 16 March 2016. The Supreme Court observes, in para 2 of the report that the arbitral award *did not provide any definite resolution of* the *dispute* and did *not, also contain "any explanation worth the name" for the delay* in rendition of the award.

37.3 The Supreme Court, thereafter, adverts to the views expressed by various High Courts on the aspect of delay in rendering arbitral awards, and the effect thereof, during which course the judgment also takes note of the decisions of this Court in ***Harji Engineering Works, BWL Gian Gupta*** and ***GL Litmus Events*** (of the learned Single Judge). In as much as these decisions have been considered by the Supreme Court in ***Lancor Holdings,*** before proceeding to export its own views in the matter, the need for referring to the said decisions is obviated.

37.4 One of the contentions advanced before us by Mr. Wadhwa is that the appropriate remedy with the Insurance Company, if it was aggrieved by the delay, which had taken place in rendition of the award, was to seek remedies under Section 14 of the 1996 Act. ***Lancor Holdings,*** particularly addresses and rejects this submission in the following paragraphs:

> "17. Prior to insertion of Section 29-A 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 1996 Act 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.
>
> 18. 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.
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25.2. **...**Further, it would not be necessary for an aggrieved party to invoke the remedy under Section 14(2) of the 1996 Act 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."

37.5 The following paragraphs from ***Lancor Holdings,*** are also in relevance:

"21. Notably, on the issue of a "dilatory arbitrator", *Russel on Arbitration* 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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24. However, the undeniable fact remains that Section 34 of the 1996 Act 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.

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25.1 In this regard, in his seminal article, titled “Arbitrators and Accuracy” [Journal of International Dispute Settlement (February, 2010).] , 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.”

25.2. 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 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 1996 Act, or Section 34(2-A) 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 1996 Act 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.

25.3. 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.”

37.6 In the afore-extracted paragraphs, ***Lancor Holdings*** lays down the following principles:

(i) Delay in pronouncement or rendition, in order to vitiate the arbitral award has to be truly exceptional, resulting in substantial injustice to the applicant.

(ii) It could not be denied that, with the passage of time, human memory debilitates, and it might be impossible for an arbitrator to totally recall the evidence adduced and submissions advanced before him. If such delay is unexplained, it would give rise to speculation and suspicion in the minds of the parties, which would erode the requirement of absolute faith and trust in the system. This was a consequence which, at all costs, had to be eschewed.

(iii) The extent to which delay vitiates an award would, however, have to be examined on the individual facts of each case. The Court would have to examine the import and impact of the delay on the final decision of the Arbitral Tribunal and as to whether the arbitral award would stand vitiated *owing to the lapses committed by the Tribunal because of the delay*. In other words, *mere delay by itself would not ipso facto vitiate an arbitral award unless it had resulted in "lapses" as understood by the Supreme Court in* ***Lancor Holdings.***

(iv) A balance was required to be struck between the pace of arbitration, culminating in an award, and the satisfactory meaningful content of the award. The requirement of a correct decision could not be sacrificed at the altar of speed and economy.

(v) Following these observations, the Supreme Court, in para 25.2 of the report, lays down the definite tests which would apply in such a case. *It is clearly held that delay would be a factor to satisfy an arbitral award only where (i) the negative effect of the delay is explicit, (ii) the delay adversely reflects on the findings in the award, (iii) the delay is unexplained and (iv) the arbitral award is riddled with the damaging effects of the delay.* If these circumstances coalesced in any particular case, the award would be liable to be set aside both under Section 34 (2)(v)(ii) as well as Section 34 (2)-A of the 1996 Act as being in conflict with the public policy of India and as vitiated by patent illegality.

(vi) *In each such case where delay in rendition or pronouncement of an arbitral award is cited as a ground to challenge it, therefore, the Court has to examine (i) whether the award suffers from any such malady owing to the delay, as would vitiate its very validity, (ii) the award falls short, as it does not resolve the disputes between the parties and (iii) the positions of the parties stand altered irreversibly owing to interim orders passed during the arbitral proceedings. These are all considerations which, according to* ***Lancor Holdings,*** *are of importance and significance while assessing whether an arbitral award could be set aside solely on the ground that it was rendered belatedly.*

37.7 ***Lancor Holdings,*** thereafter, proceeds, from para 27 to 62 of the report, to analyse, thread bare, the facts of the case, and to take apart the dispute literally strand by strand. It is not necessary for us to burden this judgment by any detailed allusion thereto. Suffice it, however, to state that, following the said analysis, the Supreme Court proceeds, in paras 63, 64 and 66 of the report to observe and hold as under:

> "63. 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!

64. 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 1996 Act 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.

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66. 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."

37.8 Thus, the factors which persuaded the Supreme Court in ***Lancor Holdings,*** to hold that the very findings in the arbitral award were vitiated on the ground of delay were that (i) there were repetitions *ad nauseam* in the award, (ii) the arbitrator was vacillating on the course of action which he was required to follow, (iii) this indicated demonstrable indecisiveness on the part of the learned arbitrator which was clearly attributable to the delay of four years in rendering the award, (iv) at one stage, the award stated that the situation was very complex and required devising of a proper relief which would be equitable to both parties, but the award ultimately, does not devise any such equitable relief, but entirely ruled in favour of one of the parties to the *lis*, (v) the other party was left, by the arbitrator, empty handed with no relief whatsoever except an advice to take recourse to fresh litigation, (vi) the opposite party, without complying with the terms of the contract or discharging its obligations thereunder, was put in possession of the property forming subject matter of the dispute, (vii) "the very objective of an arbitral 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".

37.9 Para 66 of the Report was particularly critical of the manner in which the arbitrator dealt with the matter. The Supreme Court observed that the arbitrator took nearly four years to conclude that he had no equitable relief to offer both parties, but entirely ruled in favour of one of the parties, leaving the other side to start litigating afresh. It was further observed that the learned arbitrator "conveniently" opined that proper pleadings and evidence had not been placed before him and that, therefore, he was constrained to relegate the parties to another round of litigation. In doing so, the learned arbitrator completely ignored the fact that he had already altered the positions of the parties vis-a-vis each other and had benefitted one party at the expense of the other. The Supreme Court referred to this approach as "dithering for nearly four years", and as having served absolutely no purpose, reflective of total non-application of mind. As a result, observed the Supreme Court, the delay had resulted in wastage of four valuable years with no benefit to show for it. The concluding observation in para 66 is particularly telling noting, as it does, that the unexplained and pointless delay on the part of the arbitrator rendered his award contrary to the public policy of India. To the same effect, we may note, is para 76 of the Report, which read thus:

> "76. The arbitrator, therefore, clearly fell into error in reading more into Clauses 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 Engg. and Construction Co.* ***(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."

37.10 Though, therefore, in ***Lancor Holdings,*** the Supreme Court held the delay on the part of the arbitrator in rendering the award to be fatal to its validity, it is clear that the finding is specific to the facts of that case. The delay was of four years, with no explanation whatsoever. The arbitrator first held that the situation was complex and required an equitable solution to be devised and thereafter, did not desire any such solution. Instead, he decided the *lis* entirely in favour of one of the parties and nonetheless left the parties to litigate all over again. The Supreme Court also notes that relevant clauses of the contract between the parties were ignored by the learned Arbitrator.

37.11 It is on a cumulative assessment of these facts that the Supreme Court has observed that the delay in rendering the arbitral award had imperilled it fatally.

37.12 On principle, however, the law declared by the Supreme Court in ***Lancor Holdings,*** as would bind this Court and all other Courts under Article 141 of the Constitution of India, is to be found in para 25.2, which for ready reference, we may reproduce once again:

> "25.2. 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 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 1996 Act, or Section 34(2-A) thereof as it may also be vitiated by patent illegality..."

The ratio of the decision in ***Lancor Holdings*** is contained in the afore-extracted para 25.2, which follows after reference to earlier decisions and authoritative commentaries on the point. *Delay can be said to vitiate an arbitral award only if it is explicit, adversely reflects on the findings in the award and is unexplained to the extent that the arbitral award is riddled with the damaging effects of the delay*. Short of this, the mere fact that an arbitral award was rendered belatedly cannot constitute sufficient basis to set it aside.

37.13 Mr. Chandhiok sought to contend that ***Lancor Holdings*** could not constitute a valuable precedent as it was rendered under Article 142 of the Constitution of India. This contention is clearly incorrect. A bare reading of the judgment reveals that Article 142 has been invoked only in para 87.2.1, while dealing with the issue of whether the matter ought to have been remanded to the Arbitral Tribunal for consideration afresh or whether the arbitral award deserved to be set aside. The Supreme Court chose the second option, invoking for the said purpose, its jurisdiction under Article 142. It is to this limited extent, and for this limited purpose that Article 142 has been invoked in the decision in ***Lancor Holdings.*** The said limited invocation does not, in any way, dilute the precedential value of the decision.

38. *Velusamy*

38.1 We may now advert to the decision in ***Velusamy.***

38.2 ***Velusamy*** relies on ***Lancor Holdings.*** This very reliance is sufficient to negate Mr. Chandhiok's submission that ***Lancor Holdings*** does not constitute a valuable precedent.

38.3 ***Velusamy,*** on facts, is not directly applicable to the case before us, as it refers to proceedings which took place after the introduction of Section 29-A(5) in the 1996 Act. In fact, as Mr. Chandhiok correctly points out, the very question of law which arose for consideration in ***Velusamy***, as set out in para 1 of the report, is distinct and different from that which arises before us. The question read thus:

> "Whether a Court can entertain an application under Section 29-A(5) of the Arbitration and Conciliation Act, 1996 to extend the mandate of the arbitrator(s) for making the award even after an 'award' is rendered, though after the expiry of the statutory limit of eighteen-month period?"

38.4 There are only three paras in ***Velusamy*** which are instructive for adjudicating the dispute on hand, viz:

> "14. Party autonomy, coupled with minimal intervention of judicial authorities, has been the guiding principle for the 1996 Act. This is perhaps the reason for not provisioning a statutory timeline for delivering awards and prescribing consequences of not delivering them on time.
>
> 15. In the event of failure of an arbitrator to act without undue delay, recourse was provided under Section 14 of the 1996 Act 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 with by the parties, apply to the Court to decide on the termination of the arbitrator's mandate. On the other hand, Section 34 of the 1996 Act does not postulate delay in the delivery of the arbitral award as a ground in itself, to set it aside, except, as explained in ***Lancor Holdings***, where the negative effect of the delay in the arbitral award is explicit and adversely reflects on the findings of the award.
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> 20. It is well recognized that a fixed time-limit for the rendering of an arbitral award may foreclose the mandate of a Tribunal if breached. However, such limits are not intended to frustrate the arbitral process. In appropriate cases, Courts have retroactively extended timelines and even upheld awards rendered

outside agreed deadlines where it was necessary to preserve justice and prevent the arbitration from being defeated by technical non-compliance."

38.5 The concluding observation in para 15 of ***Velusamy,*** which refers to the earlier decision in ***Lancor Holdings,*** once again reiterates the position that mere delay in delivery of an award is not sufficient to set it aside, except where the negative effect of the delay in the award is explicit and adversely reflects on the findings in the award.

38.6 Similarly, in para 20 of ***Velusamy***, the Supreme Court has clearly held that awards, even rendered outside agreed deadlines, were at times upheld "where it was necessary to preserve justice and prevent the arbitration from being defeated by technical non-compliance".

38.7 The Supreme Court has concluded the decision in ***Velusamy*** by setting out the principles which emerged from the preceding discussion in the said decision in the various sub paras of para 21. Of these, para 21.8 once again reiterates the principle enunciated in ***Lancor Holdings*** thus***:***

> "21.8. Delay in the delivery of an arbitral award, by itself, is not sufficient to set aside that award. 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."

I. Applying the Law

I.1 <u>Approach in the impugned judgment</u>

39. A significant feature of the impugned judgment is that the learned Single Judge, after arriving at a finding that Clause 13 of the Policies and its effect on the arbitrability of the dispute had not been addressed by the learned Arbitral Tribunal and, has not set aside the arbitral award on that ground. There is no specific finding by the learned Single Judge to the effect that the dispute was not arbitrable in view of Clause 13 and that, therefore, in arbitrating on the dispute, the arbitral award was rendered liable to be set aside. Instead, the learned Single Judge has identified the points which, according to him, would arise when examining the arbitrability of the dispute in the light of Clause 13, and has proceeded to hold that owing to the delay in rendition of the award after it was reserved, and possibly owing to the dilution, in the memory of the members of the learned Arbitral Tribunal of the contentions advanced by the parties with the passage of time, these issues have not been addressed.

40. This is an important distinction. To reiterate, the learned Single Judge has not set aside the arbitral award on the ground that the disputes were not arbitrable in view of Clause 13. He has set aside the arbitral award on the ground that, owing, possibly, to the fact that the Arbitral Tribunal had, because of the delay in rendition of the award, forgotten the submissions advanced before it, the issue of arbitrability of the dispute in the light of Clause 13 has not been adequately addressed. We have to examine whether this view of the learned Single Judge passes muster. It is in that context, that the averments contained in the Statement of Defence filed by UHPL assumes importance.

I.2 Stand of Insurance Company before the Arbitral Tribunal

41. A reading of the paragraphs from the Statement of Defence filed by the Insurance Company before the Arbitral Tribunal, extracted in para 28 *supra*, makes it clear that there was no categorical denial, by the Insurance Company, of the fact that it was liable to pay UHPL against the insurance policies taken out by UHPL with the Insurance Company. The fact that the fire had broken out, damage had taken place and that UHPL was insured with the Insurance Company under Fire MD Policy and the LOP Policy stand admitted. There can, therefore, be no escape from the Insurance Companies' liability to recompense UHPL for the loss suffered by it in the fire. The dispute, therefore, was only with respect to the amount which was payable by the Insurance Company to UHPL. The Insurance Company contended that all amounts payable and duly assessed stood paid to UHPL, whereas UHPL asserted, per contra, that it was entitled to additional amounts, in respect of which, claims stood referred to arbitration. Clearly, therefore, the dispute was arbitrable within the meaning of Clause 13 of the Policies, as the dispute was only with respect to the amount, i.e. the quantum payable and not with respect to the liability of the Insurance Company towards UHPL. From a reading of the Statement of Defence, it is also clear that Mr. Wadhwa is correct in his submission that no specific objection to the arbitrability of the dispute, in the light of Clause 13 of the Policies was urged by the Insurance

Company in the arbitral proceedings.

I.3 Approach of the learned Arbitral Tribunal – Maintainability, as well as Clause 13, effectively addressed

42. The learned Arbitral Tribunal has examined, completely, the aspect of whether the claim of UHPL against the Insurance Company stood discharged by accord and satisfaction, in view of the discharge voucher signed by UHPL and the receipt and acceptance by UHPL, of the payments made by the Insurance Company, as recorded in the discharge voucher. The learned Arbitral Tribunal has come to a conclusion that the discharge voucher stood vitiated by financial duress and abuse by the Insurance Company, of its dominant position, in the facts of the case, and could not therefore, result in discharge of the liability of the Insurance Company towards UHPL by accord and satisfaction.

43. This being the sole ground of maintainability advanced by the Insurance Company before the learned Arbitral Tribunal, and the Arbitral Tribunal having examined the aspect in its entirety, we are unable to accept the submission of the Insurance Company that the aspect of arbitrability of the dispute has not been properly examined by the learned Arbitral Tribunal.

44. We are not returning any finding on whether the decision of the learned Arbitral Tribunal, with respect to the plea of accord and satisfaction raised by the Insurance Company is, or is not, legally sustainable. The Learned Single has not examined the arbitral award from that angle and, therefore, exercising, as we are, Section 37 jurisdiction, it would not be proper for us to pronounce thereupon.

45. The learned Single Judge has, however, proceeded to hold that the learned Arbitral Tribunal did not examine the aspect of arbitrability of the dispute in the wake of Clause 13 of the Policies. For this purpose, the impugned judgment has, in para 12, enumerated the aspects which, according to the learned Single Judge, should have been addressed by the learned Arbitral Tribunal while examining the aspect of arbitrability of the dispute vis-a-vis Clause 13. The learned Single Judge expresses its disagreement with the approach of the learned Arbitral Tribunal in proceeding to deal with the claims on merits "after only deciding that the settlement was not voluntary". This lapse, on the part of the learned Arbitral Tribunal - as the learned Single Judge views it – is, according to the impugned judgment attributable to the delay in rendition of the award after it was reserved. This is clear from para 13 of the impugned judgment, already reproduced *supra.*

46. As we have already noted, and as Mr. Wadhwa has correctly submitted, no specific objection to the arbitrability of the dispute, in the wake of Clause 13 of the Policies, was urged by the Insurance Company in its Statement of Defence. Pleadings bind the parties as much in arbitration as in other legal proceedings. A plea that the dispute was not arbitrable, given the nature of Clause 13 of the Policies, is, at the very least, a mixed question of fact and law. It has to be pleaded. In the absence of any p1leadings, objecting to the arbitrability of the dispute on the basis of Clause 13 of the Policies, we are unable to agree with the learned Single Judge or with Mr. Chandhiok, that the learned Arbitral Tribunal was remiss in not examining, holistically, the aspect of arbitrability of the dispute vis-a-vis Clause 13 of the Policies.

47. Even if we were to presume that the learned Arbitral Tribunal ought to have examined the arbitrability of the dispute vis-a-vis Clause 13 of the Policies, despite no specific objection to that effect having been raised by the Insurance Company before it, we are of the opinion that the findings of the learned Arbitral Tribunal indirectly, if not directly, address and decide the issue.

48. Clause 13 of the Policies specifically provides that a dispute between the parties would be arbitrable if there is no contest to the liability of the Insurance Company and the dispute pertains only to the quantum. Clause 13 says just this much, and no more.

49. All that the Arbitral Tribunal would be required to consider, in examining the arbitrability of the dispute vis-a-vis Clause 13 of the Policies, would, therefore, be whether the parties were forming issue only with respect to the quantum of liability, or also on the aspect of liability of the Insurance Company itself.

50. We have already noted, while referring to the relevant paragraphs from the Statement of Defence filed by the Insurance Company, that there was no contest, by the Insurance Company, of the fact that it was liable to recompense UHPL for the loss suffered by it owing to the fire. The dispute related only to quantum. The Insurance Company was of the view that as the entire amount payable to UHPL, as worked out by the surveyor, appointed by it, had been paid and UHPL had acknowledged this fact by signing the discharge voucher, *no further amount was payable by it*.

51. UHPL contended, *per contra,* that the Insurance Company owed more to it than the amount specified in the discharge voucher and that the discharge voucher could not be made binding on UHPL, as it was executed under financial duress and coercion.

52. The learned Arbitral Tribunal has, after a detailed and exhaustive analysis, arrived at the conclusion that the discharge voucher was in fact executed under financial duress and coercion. The sequitur would, therefore, be that the discharge voucher could not liquidate the claim of UHPL against the Insurance Company on the principle of accord and satisfaction. The further sequitur would be, therefore, that the quantum of amount payable by the Insurance Company to UHPL remained open to adjudication.

53. The corollary of these findings would, therefore, be that the dispute remained arbitrable as it related only to the quantum of compensation payable by the Insurance Company to UHPL, the liability to pay being undisputed.

54. We cannot, therefore, agree with the learned Single Judge in his finding that the aspect of arbitrability of the dispute had not been addressed by the learned Arbitral Tribunal.

I.4 Recourse of Section 14 not necessary

55. It is not possible to accept Mr. Wadhwa's contention that the only remedy available with the Insurance Company, apropos the delay in rendition of the arbitral award, was by way of proceedings under Section 14. The Supreme Court has clarified, in no uncertain terms, that the remedy under Section 14 does not eviscerate the right to challenge the award under Section 34 on the ground of delay – provided the appropriate indicia in that regard, are met.

56. We, therefore, reject Mr. Wadhwa's submission that, not having chosen to prefer any proceedings under Section 14, the Insurance Company cannot maintain a challenge to the arbitral award on the ground of delay in its pronouncement under Section 34.

I.5 Finding in impugned judgment on the aspect of delay in rendition of the arbitral award, and its effect

57. In examining whether the arbitral award was vitiated by delay in its pronouncement, the impugned judgment does not, however, conform to the ***Lancor*** principles. The learned Single Judge has not returned any specific finding of adverse impact, of the delay in rendition of the arbitral award which form subject matter of the controversy before us, on the findings in the award. All he says that there is a mere possibility that, owing to the passage of time, the fallibility of human memory, the arbitrators may have forgotten the arguments advance before them. Which argument was forgotten is also not spelt out in the impugned judgment. A mere "possibility of forgetting", absent any specific finding of the delay in the arbitral award having a negative effect on the findings contained therein is, quite clearly, insufficient to set aside the award.

58. Though the aforesaid discussion is by itself sufficient to allow the present appeal, we may nonetheless address the various contentions advanced by Mr. Chandhiok, thus, even if at the cost of some repetition.

I.6 Scope of Section 37

59. Mr. Chandhiok commenced his submissions by drawing our attention to the limited scope of judicial intervention under Section 37 of the 1996 Act. He sought to submit that, an appeal under Section 37 is akin to a second appeal under the CPC. This submission is jurisprudentially incorrect. In ***Bombay Slum Redevelopment Corpn. (P) Ltd. v. Samir Narain Bhojwani***[43], it has been specifically held by the Supreme Court, in para 28, thus:

> "28. The provisions of the CPC have not been made applicable to the proceedings before the learned arbitrator and the Court under Sections 34 and 37 of the Arbitration Act. The legislature's intention is reflected in Section 19(1) of the Arbitration Act, which provides that an Arbitral Tribunal is not bound by the provision of the CPC. That is why the provisions of the CPC have not been made applicable to the proceedings under Sections 34 and 37(1)(*c*). We are

[43] **(2024) 7 SCC 218**

not even suggesting that because the provisions of the CPC are not applicable, the appellate court dealing with an appeal under Section 37(1)(*c*) is powerless to pass an order of remand. The remedy of an appeal will not be effective unless there is a power of remand vesting in the appellate authority. In the Arbitration Act, there is no statutory embargo on the power of the appellate court under Section 37(1)(*c*) to pass an order of remand. However, looking at the scheme of the Arbitration Act, the appellate court can exercise the power of remand only when exceptional circumstances make an order of remand unavoidable."

60. In a similar vein para 14 of the ***Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills***[44] ***holds:***

"14. It is equally well settled that the appellate power under Section 37 of the Act is not akin to the normal appellate jurisdiction vested in the civil courts for the reason that the scope of interference of the courts with arbitral proceedings or award is very limited, confined to the ambit of Section 34 of the Act only and even that power cannot be exercised in a casual and a cavalier manner.

61. The scope of Section 37 jurisdiction has been clarified by the Supreme Court in several decisions, from some of which we may extract the relevant paras thus:

(i) ***MMTC Ltd. v. Vedanta Ltd.***[45]***:***

"13. It is relevant to note that after the 2015 Amendment to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-

[44] **2024 SCC OnLine SC 2632**
[45] **(2019) 4 SCC 163**

section (2-A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."

(ii) ***Haryana Tourism Ltd. v. Kandhari Beverages Ltd.***[46]***:***

"2.3. Feeling aggrieved and dissatisfied with the order passed by Additional District Judge, Chandigarh dismissing the appeal/objection petition under Section 34 of the Arbitration Act, the respondent herein preferred a further appeal before the High Court under Section 37 of the Arbitration Act. By the impugned judgment and order [***Kandhari Beverages Ltd. v. Haryana Tourism Ltd***.[47]], the High Court has allowed the said appeal by entering into the merits of the claim and has quashed and set aside the award passed by the arbitrator as well as the order passed by Additional District Judge, Chandigarh.

*****

8. So far as the impugned judgment and order [***Kandhari Beverages Ltd.*** **v.** ***Haryana Tourism Ltd***.] passed by the High Court quashing and setting aside the award and the order passed by the Additional District Judge under Section 34 of the Arbitration Act are concerned, it is required to be noted that in an appeal under Section 37 of

[46] **(2022) 3 SCC 237**
[47] **2018 SCC OnLine P&H 3233**

the Arbitration Act, the High Court has entered into the merits of the claim, which is not permissible in exercise of powers under Section 37 of the Arbitration Act.

9. As per settled position of law laid down by this Court in a catena of decisions, an award can be set aside only if the award is against the public policy of India. The award can be set aside under Sections 34/37 of the Arbitration Act, if the award is found to be contrary to: (*a*) fundamental policy of Indian law; or (*b*) the interest of India; or (*c*) justice or morality; or (*d*) if it is patently illegal. None of the aforesaid exceptions shall be applicable to the facts of the case on hand. The High Court has entered into the merits of the claim and has decided the appeal under Section 37 of the Arbitration Act as if the High Court was deciding the appeal against the judgment and decree passed by the learned trial court. Thus, the High Court has exercised the jurisdiction not vested in it under Section 37 of the Arbitration Act. The impugned judgment and order [***Kandhari Beverages Ltd***] passed by the High Court is hence not sustainable."

(iii) ***Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills:***

"14. It is equally well settled that the appellate power under Section 37 of the Act is not akin to the normal appellate jurisdiction vested in the civil courts for the reason that the scope of interference of the courts with arbitral proceedings or award is very limited, confined to the ambit of Section 34 of the Act only and even that power cannot be exercised in a casual and a cavalier manner.

15. In ***Dyna Technology Private Limited* v. *Crompton Greaves Limited***, the court observed as under:

> "24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there

being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.

25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

16. It is seen that the scope of interference in an appeal under Section 37 of the Act is restricted and subject to the same grounds on which an award can be challenged under Section 34 of the Act. In other words, the powers under Section 37 vested in the court of appeal are not beyond the scope of interference provided under Section 34 of the Act.

17. In paragraph 14 of ***MMTC Limited* v. *Vedanta Limited*,** it has been held as under:

"14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."

18. Recently a three-Judge Bench in ***Konkan Railway Corporation Limited* v. *Chenab Bridge Project Undertaking***[48] referring to ***MMTC Limited*** (supra) held that the scope of jurisdiction under Section 34 and Section 37 of the Act is not like a normal appellate jurisdiction and the courts should not interfere with the arbitral award lightly in a casual and a cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle the courts to reverse the findings of the arbitral tribunal.

CONCLUSION:

20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court."

I.7 To remand or not?

[48] **(2023) 9 SCC 85**

62. Having observed, in para 28 of ***Bombay Slum Redevelopment Corpn,*** that remand has to be resorted to, while exercising jurisdiction under Section 37 of the 1996 Act, only in exceptional cases, the Supreme Court, in para 29, exemplifies some such exceptional cases thus:

> "29. There may be exceptional cases where remand in an appeal under Section 37 of the Arbitration Act may be warranted. Some of the exceptional cases can be stated by way of illustration:
>
> (a) Summary disposal of a petition under Section 34 of the Arbitration Act is made without consideration of merits;
>
> (b) Without service of notice to the respondent in a petition under Section 34, interference is made with the award; and
>
> (c) Decision in proceedings under Section 34 is rendered when one or more contesting parties are dead, and their legal representatives have not been brought on record."

63. The present case clearly falls within category (a) in para 29 of ***Bombay Slum Redevelopment Corpn,*** as the learned Single Judge has not adverted to merits at all.

I.8 <u>"Merits need not be gone into"</u>

64. In fact, the observation of the learned Single Judge, in para 19 of the impugned judgment, to the effect that the detailed reasons provided in the arbitral award for dealing with the merits of the claim were not required to be gone into, is even by itself sufficient to vitiate the impugned judgment. One of the cardinal tests for deciding whether delay in rendition of an arbitral award vitiates it, is the impact and effect of the delay on the findings on merits contained in the arbitral award. In holding that it was not necessary to refer to the findings in the arbitral award on merits, therefore, the learned Single Judge has ruled contrary to the declaration of law in ***Lancor Holdings*** and ***Velusamy***.

65. We are confident that, in passing the present judgment, we are not transgressing the jurisdiction vested in us by Section 37 of the 1996 Act. The learned Single Judge has not adverted to the merits of the arbitral award at all, but has set aside solely on the ground of delay. While examining, in exercise of the appellate jurisdiction vested in us by Section 37 of the 1996 Act, whether the view of the learned Single Judge is legally sustainable, we, at the very least, have to determine whether the learned Single Judge was correct in setting aside the arbitral award solely on the ground of delay and whether, in so deciding, the learned Single Judge has applied the correct legal principles.

66. For the reasons set out earlier in this judgment as well as hereinafter, we are of the opinion that the answers to both these questions have necessarily to be in the negative. Section 37, therefore, obligates us to interfere in the present case.

I.9 Re. plea that delay by itself is sufficient to set aside an arbitral award

67. Mr. Chandhiok further submits that delay in pronouncement of an arbitral award is sufficient in itself to set it aside. It is not necessary to once again deal with this submission except to draw attention to the observations already made by us earlier, as the issue stands concluded by the decision in ***Lancor Holdings,*** particularly by paras 25.2 and 25.3 thereof. The decisions of this Court in ***BWL Limited, Harji Engg. Works (P) Ltd., Gian Gupta*** and ***G.L. Litmus*** have all been noticed in ***Lancor Holdings*** and need not, therefore, be dealt with individually here.

I.10 Re. plea that the learned Arbitral Tribunal failed to address Clause 13 of the Policies

68. Mr. Chandhiok's next contention is that the learned Single Judge was correct in holding that the arbitral award in the present case was vitiated as there was no decision, by the learned Arbitral Tribunal, on its own jurisdiction, in the face of Clause 13 of the Policies. We have already rejected this submission for two reasons; firstly, because Clause 13 was never specifically invoked by the Insurance Company either in the Statement of Defence or the pleadings before the learned Arbitral Tribunal and, secondly, even otherwise, the findings of the learned Arbitral Tribunal effectively adjudicate on the aspect of maintainability of the arbitration in the light of Clause 13 of the Policies. We are in agreement with the findings in the arbitral award that the arbitral proceedings were maintainable.

I.11 Whether the delay was sufficiently explained

69. It is further contended by Mr. Chandhiok that the reasons for delay, as provided in the arbitral award were insufficient. The learned

Single Judge has also ruled, likewise.

70. With respect, we cannot agree.

71. The learned Arbitral Tribunal has clearly held that the proceedings took place during the COVID-19 pandemic and, once the period of the pandemic is excluded, the reaming delay is only of one year. During that period, there was considerable delay on the part of the parties in filing the written submissions, despite the time in that regard having been fixed by the learned Arbitral Tribunal.

72. It cannot be forgotten that, unlike ***Lancor Holdings,*** this was a case of an Arbitral Tribunal consisting of three learned Arbitrators of undisputed eminence, one being a learned retired Judge of the Supreme Court, the second a learned retired Chief Justice of the High Court of Jammu and Kashmir and the third a learned retired Judge of this Court. Where a three member Arbitral Tribunal is involved, it goes without saying that they are required to concur among themselves, and arrive at a consensus, or otherwise, before finally pronouncing the award.

73. Viewed in that light and, the fact that the period included the pandemic lockdown, it cannot be said that the delay in rendering the arbitral award was unexplained.

74. Besides, at the cost of repetition, delay in its rendition does not vitiate an arbitral award, unless it is positively demonstrated and held that the delay fatally impacted the findings in the award. There is no such finding by the learned Single Judge.

I.12 All issues discussed – Delay did not impact findings in the arbitral award

75. Even otherwise, as we have already observed, the arbitral award discusses all issues threadbare. The learned Single Judge does not hold in the impugned judgment, that any aspect of this dispute was left undecided- except the effect of Clause 13 of the policies, with which finding we have already respectfully expressed our inability to concur. We have also perused the said findings and, irrespective of whether would, or would not, otherwise withstand Section 34 scrutiny, do not find this to be in any way adversely effective by the time taken to render the award after it was reserved.

76. The submission that, as the learned Arbitral Tribunal did not meet for a long time after reserving of the award, it indicated that "there was (*sic* were) deliberations upon the issues involved, which obviously meant that, all that was urged have been forgotten" is presumptuous, to say the least, and is also, to an extent, dismissive of the capability and capacity of the learned arbitrators, who constituted the Tribunal.

77. Most significantly, Mr. Chandhiok has not pointed a single argument which was urged before the learned Arbitral Tribunal and was not considered by it, while rendering the arbitral award. This single fact, to our mind, is sufficient to completely demolish the submission that the award was vitiated by delay in its rendition. If the contentions advanced by the parties have been considered by the learned Arbitral Tribunal, it is obvious that it cannot be contended that the delay in rendering the award imperilled it, or indicated that the Arbitrators had forgotten the arguments which were advanced.

78. Mr. Chandhiok has, therefore, merely presumed that "all that was urged had been forgotten", without pointing out a single point which was urged and which, from the arbitral award, appeared to have been forgotten.

I.13 The Division Bench judgment in ***G.L. Litmus Events***

79. The judgment of the Division Bench of this Court in ***G.L. Litmus Events*** was rendered after the decision of the Supreme Court in ***Lancor Holdings***, and considers the decision. As such, it assumes some significance. Mr. Chandhiok places extensive reliance on the decision in ***G.L. Litmus Events***, asserting that it covers the case.

80. We find ourselves unable to agree.

81. Three stark features distinguish the present case from ***G.L. Litmus Events***. Firstly, and most significantly, *the arbitral award provided no explanation for the delay, and this aspect weighed heavily both with the learned Single Judge as well as with the Division Bench of this Court in the decision to set aside the award.* Secondly, as many as three communications were addressed by the parties to the arbitrator in that case, requesting for an expeditious award, but to no avail. Thirdly, and, again, significantly, *the decision does not address the requirement of the findings in the arbitral award having to be prejudicially affected by the delay in its rendition as a pre-requisite for setting aside the award on that ground; indeed, it does not appear that this plea, so assiduously canvassed before us by Mr. Wadhwa, was even advanced before the Division Bench in that case.* The plea that was advanced was of the absence of any finding of prejudice and miscarriage of justice, which has been rejected by the Division Bench.

82. This position is clear from the following passages from the judgment:

> "28. Even if it is presumed that the final hearing was completed on 04.05.2016, still there is a huge delay for about 18 months and 23 days i.e. approximately 19 months in passing the award. Learned Counsel for the appellant argued that delay in passing the award would become fatal only if some prejudice is caused to a party or demonstrable miscarriage of justice has happened. However, the law does not require that to hold such time barred award null and void, any fact manifesting prejudice or miscarriage of justice should be brought on record. Therefore, when an award is unreasonably delayed, parties are not required to show any prejudice or miscarriage of justice because these two factors are automatically implied.
>
> *****
>
> 31. In the present case, the award has been passed after a delay of approximately 19 months. The learned Single Judge has observed that the parties had, on three occasions, written to the Arbitrator to pronounce the award, which shows the anxiety of the parties and also suggests they have lost faith in the arbitral process. *We also find that no explanation has been given by the Arbitrator in the Award for the delay*. We are of the view that such inordinate *unexplained* delay would render the arbitral proceeding contrary to the public policy of India, and the award was rightly set aside under Section 34(2)(b)(ii) of the Act."
>
> (Emphasis supplied)

83. The position that delay in rendition of an arbitral award is fatal only where (i) the delay is unexplained, and (ii) the delay affects the findings in the award, stands reiterated in ***Velusamy***, which was rendered after the decision of the Division Bench in ***G.L. Litmus Events***. The Division Bench, therefore, had no occasion to see ***Velusamy***.

84. The decision of the Division Bench in ***G.L. Litmus Events*** cannot, therefore, come to the aid of the Insurance Company.

J. The Sequitur

85. We find ourselves, therefore, unable to sustain the impugned judgment, for the following reasons:

(i) Delay in rendition of an arbitral award is not, by itself, sufficient to set it aside. Additionally,

(a) the delay must be unexplained, and

(b) the findings in the award must be affected by the delay.

(ii) In the present case, the learned Arbitral Tribunal has provided an explanation for the delay, which, to our mind, adequately explains it. Moreover, unlike ***G.L. Litmus Events***, neither side raised any objection regarding the delay in rendering the award at the time, and the plea was advanced by the Insurance Company only in its Section 34 petition, when it found that the award went against it.

(iii) The arbitral award is detailed and comprehensive, and deals with all aspects of the dispute. The learned Single Judge has not held, in the impugned judgment, that any finding in the arbitral award is affected by the delay in its rendition.

(iv) Rather, the learned Single Judge holds that it is not necessary to enter into the merits of the arbitral award, which militates against the test laid down in ***Lancor Holdings*** and ***Velusamy***, both of which require, as a necessary *sine qua non*, the findings in the arbitral award to be *affected by the delay in its rendition*, for the award to be set aside on that ground.

(v) We, on facts, do not find any ground to hold that any of the findings in the arbitral award were affected by the delay in its rendition. Nor, for that matter, has Mr. Chandhiok so contended before us.

(vi) The finding, in the impugned judgment, that the arbitral award does not address the aspect of arbitrability of the dispute in the light of Clause 13 of the Policies, cannot operate, in our view, to vitiate the award, for a variety of reasons, viz.

(a) There is no accompanying finding, in the impugned judgment, that, in fact or in law, the dispute was not arbitrable in view of Clause 13. Having noted this aspect of the matter, the learned Single Judge proceeds to hold that the learned Arbitral Tribunal omitted to deal with it, probably because, with the passage of time, the submissions advanced in that regard were effaced from the memory of the Members of the learned Arbitral Tribunal.

(b) The impugned judgment does not, however, identify any submission, advanced by either of the parties, which has not been dealt with, by the learned Arbitral Tribunal.

(c) In the absence of any such finding, the observation that the submissions advanced before the learned Arbitral Tribunal may have been forgotten is a mere presumption, at best, and wholly insufficient to invalidate the arbitral award.

(d) Clause 13 of the Policies was, moreover, never invoked by the Insurance Company in its Statement of Defence.

(e) The only plea raised by the Insurance Company, to contest the validity of UHPL's claims, was the plea that they stood discharged by accord and satisfaction.

(f) This aspect has been addressed, in detail, by the learned Arbitral Tribunal, and the impugned judgment does not question the correctness of the decision of the learned Arbitral Tribunal in that regard.

(g) We, besides the findings in the arbitral award also effectly address the aspect of arbitrability of the dispute in the light of Clause 13 of the Policies, even if it does not expressly advert to the Clause.

(vii) Mr. Chandhiok has not sought to urge, before us, that there was any submission advanced before the learned Arbitral Tribunal, which has escaped its attention or not been addressed in the arbitral award.

(viii) Delay in rendition of an arbitral award is not, by itself, envisaged as a ground to set it aside, in Section 34 of the 1996 Act. Delay becomes fatal only where it is unexplained, and imperils the findings in the award. These requirements are not met in the present case.

K. Conclusion

86. For the above reasons, we are unable to sustain the impugned judgment dated 30 January 2026 of the learned Single Judge. It is accordingly quashed and set aside.

87. OMP (Comm) 197/2023 is accordingly remanded for consideration *de novo* by the learned Single Judge, uninfluenced by any observations or findings contained in the impugned judgment.

88. We also clarify that all observations contained in this judgment are to be treated as having been returned only for the purposes of adjudicating on the present appeal, which is limited to the issue of whether the arbitral award, in the present case, was liable to have been set aside, as the learned Single Judge has done, solely on the ground of delay in its rendition. We have held otherwise.

89. The appeal is accordingly allowed with no orders as to costs.

C. HARI SHANKAR, J.

VINOD KUMAR, J.

SEPTEMBER 16, 2026/*aky/yg*