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

Date of decision: 24th APRIL, 2025

IN THE MATTER OF:

\+ **O.M.P. (T) (COMM.) 102/2023 & I.A. 21494/2023**

GREAT EASTERN ENERGY CORPORATION LIMITED

.....Petitioner

Through: Mr. Raj Shekhar Rao, Sr. Advocate with Ms. Shrey Chathly, Adv

versus

SOPAN PROJECTS .....Respondent

Through: Mr. Vadlamani Seshagiri, Mr. Siddharth Sachar, Advocates

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has filed the present petition under Section 14 of the Arbitration and Conciliation Act, 1996 seeking termination of the mandate of the learned Sole Arbitrator.

2. Shorn of unnecessary details, the facts leading to the filing of the present petition are as follows:-

i. The Petitioner is a company engaged in the business of exploration, production, sale and distribution of Coal Bed Methane Gas (CBM), which is an eco-friendly alternative source of fuel. The Petitioner has been awarded an area of 210 square kilometres in Raniganj, West Bengal, to carry out its

business activities, including exploration, production, sale, and distribution of CBM.

ii. The Respondent is a division of Sopan O&M Company Private Limited. The Respondent claims to be engaged in the business of, and having expertise, providing technological support and services in the field of oil and energy.

iii. On 17.09.2010, the Petitioner issued a Work Order in favour of the Respondent for execution of the works for laying and construction of underground MDPE pipeline and associated facilities interconnecting Coal Bed Methane Wells at the Petitioner's facility (Gas gathering station) in Asansol, West Bengal for Rs. 3,72,07.251/-.

iv. On 17.01.2011, the work order was amended to Rs.3,74,46,361/-. The work order was to be completed by 17.03.2011.

v. It is stated that the Respondent did not conclude the work to be executed at the Petitioner's facility as per the Work Order and ultimately abandoned the same, without completion, due to which disputes arose between the parties.

vi. It is stated that on 20.10.2015 The Respondent sent a legal notice cum notice invoking arbitration to the Petitioner, seeking payment of dues and invoices and invoked the arbitration clause 15 contained in the Work Order

vii. On 16.11.2015 the Petitioner as per the Work Order, nominated the learned Sole Arbitrator for the adjudication of disputes between the parties.

viii. On 11.04.2016 the learned Sole Arbitrator scheduled the first hearing in the arbitral proceedings.

ix. On 05.03.2020 final arguments were concluded and the learned Sole Arbitrator reserved the matter for the pronouncement of the arbitral award.

x. It is the case of the Petitioner that after a lapse of more than 3 years, on 04.10.2023 the learned Sole Arbitrator issued an email scheduling a hearing on 17.10.2023 for directions.

xi. It is this delay in passing the award the Petitioner is aggrieved by. Hence, the present petition.

3. The arbitration clause as given in the work order is provided below:-

> *"**15**. JURISDICTION & DISPUTE: This PO will be governed by and interpreted in accordance with the laws of the Republic of India, with the parties submitting to the exclusive jurisdiction of the Courts at New Delhi. In case of dispute parties will try to resolve this by mediation failing which dispute will be settled by arbitration. The arbitration will be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and Arbitration proceedings will be headed by single Arbitrator appointed by GEECL."*

4. It is the case of the Petitioner that the Award was reserved on 05.03.2020 by the learned Sole Arbitrator, however, despite the lapse of a significant amount of time, the award was not rendered. The learned Sole Arbitrator has manifestly failed to act without undue delay, and on this account, his mandate is required to be terminated following the legislative intent enshrined in the Arbitration Act.

5. It is submitted by the learned Counsel for the Petitioner that despite recent correspondence with the parties since October 2023 has not ascribed any reason for not having rendered the award or why the hearing was scheduled on such date thereby demonstrating that the delay is undue, inordinate, unexplainable and inexcusable.

6. It is submitted by the learned Counsel for the Petitioner that there is no prescription under the Arbitration Act that a party ought to seek reasons for the delay from the arbitrator or provide an opportunity thereof before approaching the Court under Section 14 of the Arbitration and Conciliation Act.

7. It is further submitted by the learned Counsel for the Petitioner that inordinate, undue and unexplained delay in tendering an arbitral award is against the public policy of India, the delay has not occurred on account of pandemic and the ensuing restrictions as no such reasoning/justification has been rendered by learned Sole Arbitrator even in the mail dated 04.10.2023.

8. *Per contra,* it is the case of the Respondent that by way of learned Sole Arbitrator's email dated 17.11.2023, the Petitioner herein has been directed to deposit the deficit fee of Rs. 14,80,000/- due and payable to the learned Sole Arbitrator as the Petitioner has only deposited Rs. 3,65,000/-, therefore the present petition is not maintainable unless the Petitioner has cleared its arrears of Rs.14,80,000/-.

9. It is further contended by the learned Counsel for the Respondent that neither were any timelines introduced to Section 14 under the 2015 Amendment (in the manner and nature of Section 29A), and an acceptance of Petitioner's contention that mere delay invites termination of the learned Arbitrator's mandate, without any explanation on record by the learned

Arbitrator on the alleged delay, would operate to amend Section 14 as it stands by reading into the provision strict timelines which was specifically excluded by the Legislature or add an additional ground to the ones provided under Section 14 which would provide for termination of the mandate by efflux of time.

10. It is contended by the counsel for the respondent that Apex Court *vide* Order dated 10.01.2022 passed in **Suo Moto Writ Petition (C) No.3/2020** directed that the period from 15.03.2020 to 28.02.2022 shall stand excluded in computing the periods prescribed under Section 23(4) and 29A of the Arbitration and Conciliation Act,1996. In view of the above, the effective delay is and can be considered to be only of 1 year and 4 months.

11. It is also contended by the learned Counsel for the Respondent that in the intervening period of 3 years and 7 months since the award was reserved, the Petitioner has, admittedly, not made any attempt to follow up with the learned Sole Arbitrator regarding passing of the award. In the circumstances, it could no longer await the passing of the Arbitral Award in the MDPE Arbitration, which is another arbitration in relation to the Gas Gathering Station, South, between the same parties as the Award once passed would no longer be amenable to a valid challenge on the ground of delay.

12. It is the case of the learned Counsel for the Respondent that the termination of the arbitral proceedings, as sought for by the Petitioner, or an order for the arbitral proceedings to be conducted *de novo*, will occasion great prejudice to the Respondent herein (Claimant before the learned Sole Arbitrator in terms of the time spent and costs incurred by it towards the arbitration proceedings. In spite of the learned Sole Arbitrator's direction to

deposit the deficit fee of Rs. 14,80,000/- (after deducting TDS), the Respondent has not responded to the said email and continues to illegitimately and wrongfully seek termination of the mandate of the learned Sole Arbitrator and the proceedings to deny the legitimate interests of the learned Sole Arbitrator and Respondent.

13. Heard the learned Counsel for the parties and perused the material on record.

14. At this stage, it is important to take note of the scheme of the Act as well which would be attracted to deal with a situation of termination of mandate. Relevant portion is given below:

> *"**14.Failure or impossibility to act**.—(1) The mandate of an arbitrator shall terminate if—*
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> *(a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and*
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> *(b) he withdraws from his office or the parties agree to the termination of his mandate.*
>
> *(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.*
>
> *(3) If, under this section or sub-section (3) of Section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of Section 12."*

15. Section 14 of the Arbitration & Conciliation Act delineates the circumstances in which there is a failure or impossibility of the Arbitrator to

act. It is evident that the mandate of an arbitrator shall terminate, if he becomes de jure or de facto unable to perform his functions, or he withdraws from his office or the parties agree to the termination of his mandate, it is open to a party to the arbitration proceedings to approach the court to decide on the termination of the mandate

16. The Apex Court in Union of India v. U.P. State Bridge Corpn. Ltd., **(2015) 2 SCC 52,** has held as under:-

> *"**14**. **Speedy conclusion of arbitration proceedings hardly needs to be emphasised.** It would be of some interest to note that in England also, Modern Arbitration Law on the lines of Uncitral Model Law, came to be enacted in the same year as the Indian law which is known as the English Arbitration Act, 1996 and it became effective from 31-1-1997. It is treated as the most extensive statutory reform of the English arbitration law. Commenting upon the structure of this Act, Mustill and Boyd in their Commercial Arbitration, 2001 companion volume to the 2nd Edn., have commented that this Act is founded on four pillars. These pillars are described as:*
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> *(a) The first pillar : Three general principles.*
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> *(b) The second pillar : The general duty of the Tribunal.*
>
> *(c) The third pillar : The general duty of the parties.*
>
> *(d) The fourth pillar : Mandatory and semi-mandatory provisions.*
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> *Insofar as the first pillar is concerned, it contains three general principles on which the entire edifice of the said Act is structured. These principles are mentioned by an English Court in its judgment in Deptt. of*

Economics, Policy and Development of the City of Moscow v. Bankers Trust Co. [2005 QB 207 : (2004) 3 WLR 533 : (2004) 4 All ER 746 : 2004 EWCA Civ 314] In that case, Mance, L.J. succinctly summed up the objective of this Act in the following words : (QB p. 228, para 31)

> *"31. ... Parliament has set out, in the Arbitration Act, 1996, to encourage and facilitate a reformed and more independent, as well as private and confidential, system of consensual dispute resolution, with only limited possibilities of court involvement where necessary in the interests of the public and of basic fairness."*
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> *Section 1 of the Act sets forth the three main principles of arbitration law viz. (i) speedy, inexpensive and fair trial by an impartial tribunal; (ii) party autonomy; and (iii) minimum court intervention. This provision has to be applied purposively. In case of doubt as to the meaning of any provision of this Act, regard should be had to these principles.*

***15**. In the book O.P. Malhotra on the Law and Practice of Arbitration and Conciliation (3rd Edn. revised by Ms Indu Malhotra), it is rightly observed that the Indian Arbitration Act is also based on the aforesaid four foundational pillars.*

***16**. **First and paramount principle of the first pillar is "fair, speedy and inexpensive trial by an Arbitral Tribunal". Unnecessary delay or expense would frustrate the very purpose of arbitration.** Interestingly, the second principle which is recognised in the Act is the party autonomy in the choice of procedure. This means that if a particular procedure is prescribed in the arbitration agreement which the parties have*

agreed to, that has to be generally resorted to. It is because of this reason, as a normal practice, the court will insist the parties to adhere to the procedure to which they have agreed upon. This would apply even while making the appointment of substitute arbitrator and the general rule is that such an appointment of a substitute arbitrator should also be done in accordance with the provisions of the original agreement applicable to the appointment of the arbitrator at the initial stage. [See Yashwith Constructions (P) Ltd. v. Simplex Concrete Piles India Ltd. [(2006) 6 SCC 204]] However, this principle of party autonomy in the choice of procedure has been deviated from in those cases where one of the parties have committed default by not acting in accordance with the procedure prescribed. Many such instances where this course of action is taken and the Court appoint the arbitrator when the persona designata has failed to act, are taken note of in paras 6 and 7 of Tripple Engg. Works [North Eastern Railway v. Tripple Engg. Works, (2014) 9 SCC 288 : (2014) 5 SCC (Civ) 30] . We are conscious of the fact that these were the cases where appointment of the independent arbitrator made by the Court in exercise of powers under Section 11 of account of "default procedure". We are, in the present case, concerned with the constitution of substitute Arbitral Tribunal where earlier Arbitral Tribunal has failed to perform. However, the above principle of default procedure is extended by this Court in such cases as well as is clear from the judgment in Singh Builders Syndicate [Union of India v. Singh Builders Syndicate, (2009) 4 SCC 523 : (2009) 2 SCC (Civ) 246] .

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18. In Singh Builders Syndicate [Union of India v. Singh Builders Syndicate, (2009) 4 SCC 523 : (2009) 2 SCC (Civ) 246] pendency of arbitration proceedings

for over a decade was found by this Court to be a mockery of a process. *This anguish is expressed by the Court in the said judgment in the following manner : (SCC p. 527, paras 15-19)*

> *"**15. The object of the alternative dispute resolution process of arbitration is to have expeditious and effective disposal of the disputes through a private forum of the parties' choice.** If the Arbitral Tribunal consists of serving officers of one of the parties to the dispute, as members in terms of the arbitration agreement, and such tribunal is made non-functional on account of the action or inaction or delay of such party, either by frequent transfers of such members of the Arbitral Tribunal or by failing to take steps expeditiously to replace the arbitrators in terms of the arbitration agreement, the Chief Justice or his designate, required to exercise power under Section 11 of the Act, can step in and pass appropriate orders.*
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> *16. We fail to understand why the General Manager of the Railways repeatedly furnished panels containing names of officers who were due for transfer in the near future. We are conscious of the fact that a serving officer is transferred on account of exigencies of service and transfer policy of the employer and that merely because an employee is appointed as arbitrator, his transfer cannot be avoided or postponed. But an effort should be made to ensure that officers who are likely to remain in a particular place are alone appointed as arbitrators and that the Arbitral Tribunal consisting of serving officers, decides the matter expeditiously.*
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> *17. Constituting Arbitral Tribunals with serving officers from different faraway places should be avoided**. There can be no hard-and-fast rule, but***

> ***there should be a conscious effort to ensure that the Arbitral Tribunal is constituted promptly and arbitration does not drag on for years and decades.***
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> *18. As noticed above, the matter has now been pending for nearly ten years from the date when the demand for arbitration was first made with virtually no progress. Having regard to the passage of time, if the Arbitral Tribunal has to be reconstituted in terms of Clause 64, there may be a need to change even the other two members of the Tribunal.*
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> *19. The delays and frequent changes in the Arbitral Tribunal make a mockery of the process of arbitration. Having regard to this factual background, we are of the view that the appointment of a retired Judge of the Delhi High Court as sole arbitrator does not call for interference in exercise of jurisdiction under Article 136 of the Constitution of India. "*
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> (emphasis supplied)

17. A perusal of the abovesaid judgment indicates the importance of speedy resolution of the disputes by arbitral proceedings. The parties would suffer a serious injury due to the non-conclusion of the arbitral proceedings. It is the bounden duty of the person appointed as arbitrator who have sufficient time at their disposal to attend to this task assigned by them and conclude the arbitral proceedings in a speedy manner.

18. Material on record indicates that the Arbitrator was appointed on 16.11.2015 and the award was reserved on 05.03.2020. Arbitral proceedings cannot be kept pending for eight years without award being pronounced by the learned Sole Arbitrator. The learned Sole Arbitrator scheduled a hearing

on 17.10.2023 but has not provided any reasons as to why the hearing was scheduled or why the award has not been pronounced.

19. It is made clear that no aspersion is being cast on the learned Arbitrator regarding his impartiality or independence or that either of the sides has got any apprehension on that ground. In fact, an affidavit to this effect has also been filed on 17.01.2025. The affidavit categorically states that the allegations regarding the independence and impartiality of the learned Sole Arbitrator concerning his independence or impartiality are eschewed from the Petition.

20. This Court is of the opinion that the mandate of the learned Sole Arbitrator is to be terminated on account of undue and unexplained delay in rendering the arbitral award which goes against the public policy of India.

21. With these observations, the petition is allowed along with pending applications (s), if any.

SUBRAMONIUM PRASAD, J

APRIL 24, 2025
hsk/mp