2025:DHC:1115

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

Decided on: 21.02.2025.

\+ O.M.P. (COMM) 370/2021, I.A. 17061/2021 & I.A. 9346/2022

M/S ISC PROJECTS PRIVATE LIMITED .....Petitioner

Through: Mr. Dayan Krishnan, Sr. Advocate with Mr. Rishi Agrawala, Ms. Aarushi Tiku, Mr. Vikram Choudhary, Mr. Naman Agarwal, Mr. Nilay Gupta, Mr. Sukrit Seth, Advocates.

versus

STEEL AUTHORITY OF INDIA LIMITED .....Respondent

Through: Mr. Jayant Mehta, Sr. Advocate with Ms. Priyanka Goswami, Ms. Anusuya Sadhu Sinha, Mr. Tavdeep Singh, Mr. Archit A., Advocates.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

1. The present petition, under Section 34 of the Arbitration and Conciliation Act, 1996 ["the Act"], arises out of an arbitral award dated 12.03.2020, passed by a three-member arbitral tribunal. The arbitral tribunal has adjudicated disputes between the parties under a contract agreement dated 18.08.2010, for railway track work for an internal yard at the respondent's Bhilai Steel Plant.

2. By this judgment, I propose to dispose of the first objection raised on behalf of the petitioner, which is that the award is liable to be set aside as it is signed by only two of the three arbitrators, without any explanation in the award for the omission of the signature of the third arbitrator.

A. Facts and Litigation History:

3. The parties entered into the contract agreement on 18.08.2010. The agreement contained an arbitration clause [Clause 46.2], the relevant extracts of which are set out below:

> "*46.2* ***Arbitration***
> *46.2.1 Conciliation shall be resorted to prior to invoking Arbitration. The applicable rules for Conciliation proceedings shall be that of "SCOPE forum of Conciliation and Arbitration" (SCFA). The Arbitration Clause is to be invoked by the parties to the Contract only on failure of conciliation proceedings to amicably settle the disputes.*
> ***46.2.2. The arbitration shall be governed in accordance with The Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act") of India. The language of Arbitration shall be English**.*
> *xxxx xxxx xxxx*
> *46.2.5 Arbitration of contracts, with Indian parties, where contract value is more than Indian Rs. 5 Crores and the contracts with foreign parties for value of more than Indian Rs. 5 Crores and up to Indian Rs. 20 Crores shall be* ***governed by the Rules of Indian Council of Arbitration (ICA)/ "SCOPE Forum Council of Arbitration (ICA)/ "SCOPE Forum of Conciliation and Arbitration" (SCFA) as agreed by the party. The venue shall be New Delhi***."[1]

4. In view of the nature of the challenge being considered, it is not necessary to examine the factual dispute in detail. Suffice it to state that disputes arose between the parties with regard to execution of the work, which led to institution of a petition by the petitioner for interim measures of protection under Section 9 of the Act, before the District Court, Durg.

[1] Emphasis supplied.

The petition was dismissed on 07.11.2015. During the pendency of the petition, the respondent had terminated the contract on 17.10.2015. The High Court of Chhattisgarh, by its order dated 03.05.2016, dismissed the appeal against the order of the District Judge. By the same order, the Court also disposed of a petition filed by the petitioner for appointment of an arbitrator under Section 11(6) of the Act, granting liberty to the petitioner to move the Standing Conference of Public Enterprises Forum for Conciliation and Arbitration, New Delhi ["SCOPE"], for such appointment.

5. Pursuant to this order, a three-member arbitral tribunal was constituted. The petitioner nominated a former judge of the Supreme Court as its nominee [hereinafter, "Arbitrator A"], and the respondent nominated a former Chief Labour Commissioner, Government of India [hereinafter, "Arbitrator B"]. SCOPE appointed another former Judge of the Supreme Court of India as the Presiding Arbitrator.

6. The petitioner's statement of claim was for the principal amount of Rs. 21,59,17,463/-, and the respondent made a counter claim for the principal amount of Rs. 82,23,68,475/-.

7. Pleadings were completed before the arbitral tribunal. Extensions of the mandate of the tribunal were granted by mutual consent of the parties on 13.12.2018, and by the Court on 19.07.2019 and 27.01.2020. The final extension of time expired on 13.03.2020.

8. The impugned award is dated 12.03.2020. As filed before this Court, it contains two parts. The first part is an award of 50 pages, signed only by Arbitrator B. The claims of the petitioner have been dismissed, and the counter claims of the respondent have been allowed to the extent

of Rs. 5,83,10,232/-. The second part of the award is a single page award signed by the Presiding Arbitrator. It states that the Presiding Arbitrator has gone through the award written by Arbitrator B, and that he is in agreement with the findings recorded and orders passed by him. The operative portion of the award signed by Arbitrator B has been reproduced.

9. The petitioner received the impugned award from SCOPE on 21.05.2020. In the meanwhile, it had filed a request for extension of the mandate of the arbitral tribunal before the Commercial Court, Naya Raipur on 16.03.2020. Although notice was issued, returnable on 01.04.2020, the proceedings were never taken up due to suspension of the normal functioning of the Courts, in the wake of the COVID-19 pandemic.

10. After receipt of the award, the petitioner filed a petition under Section 34 of the Act before the Commercial Court, Naya Raipur. The Commercial Court, by order dated 06.09.2021, held that it did not have territorial jurisdiction to entertain the petition under Section 34 of the Act, and returned the petition to the petitioner to file before the jurisdictional Court.

11. The present petition was filed before this Court on 22.11.2021.

12. When the petition was instituted before this Court, the respondent first took an objection as to the territorial jurisdiction of this Court. By an order dated 06.05.2022, execution of the impugned award was stayed, subject to the petitioner depositing the awarded amount in this Court. By an order dated 02.06.2022, the petitioner was permitted to furnish a bank guarantee instead of depositing the amount in Court. The respondent's

preliminary objection, with regard to jurisdiction of this Court, was rejected by an order dated 21.05.2024.

B. Correspondence in the arbitral record

13. Significantly, during the pendency of the proceedings before the Commercial Court, Naya Raipur, the arbitral record was summoned from SCOPE, and has been transmitted to this Court.

14. The record includes communications between the members of the arbitral tribunal *inter se*, and with SCOPE[2]. In order to ensure the completeness of the record, an order was passed on 13.09.2024, directing SCOPE to transmit to this Court, the record of the subject arbitration, including any other correspondence. The Registry has placed on record, a communication of SCOPE dated 14.10.2024, to the effect that the complete arbitration record had been submitted to the Commercial Court, Naya Raipur. The parties have therefore proceeded on the basis that the record before this Court is complete.

15. The record of SCOPE includes a cover letter dated 19.05.2020, by which a copy of the award, signed by the Presiding Arbitrator and Arbitrator B, was transmitted to the parties, and two e-mail communications addressed by Arbitrator A.

16. By an e-mail dated 13.03.2020, addressed to the Presiding Arbitrator and copied to Arbitrator B and an official of SCOPE, Arbitrator A stated as follows:

> "*Dear Brother,*
> ***An Award written by [Arbitrator B] was received by me today in the morning at 11.30 A.M****. The case was heard somewhere in September and after that* ***there was no meeting amongst the three arbitrators***

[2] These letters have also been taken on record in these proceedings, by consent of learned counsel for the parties vide order dated 22.11.2024.

regarding the course of action to be taken. As I understand from our telephonic conversation on 12.03.2020 the (illegible) for giving the Award is 15.02.2020, whereas an official of the SCOPE who called me today, told me that the last date for giving the Award is 13.03.2020. ***You had received the award from Arbitrator B on 08/09.03.2020. The award written by [Arbitrator B] duly signed by you endorsing the same has been sent by you to the SCOPE****.*

You had called up on telephonic on 9th/10th March, 2020 informing me that a copy of the award was sent to me. But I did not receive the same till yesterday. On 12th March, 2020 you rang me up again at around 6'o Clock in the evening to know my views on the Award and I informed you that I had not received the copy of the award. You have now sent me a copy of Award today in the morning. ***I substantially do not agree with the award written by [Arbitrator B] and it is impossible for me to write my opinion in this short period****.*

I would request you being the Presiding Arbitrator to ask the parties to get the time extended to enable me to write my opinion. I find it very strange that [Arbitrator B] did not choose to send the copy of the award written by him to me. [Arbitrator B] did not deem fit to circulate the Award to both the Arbitrators and send it only to the Presiding Arbitrator for opinion. You have agreed with the opinion written by [Arbitrator B] and sent it to the SCOPE*.*

Under circumstances, it is a fait accompli as you both have already agreed and sent a signed copy of the award to the SCOPE ***without consulting or sending a copy of the award to me****. If you are not prepared to ask the parties to get the date extended then that let the proposed Award being majority opinion be published along with the present dissent note of mine recording the sequence of events and my dissent. Though I would like to express my views in detail as we had dealt with the case on more than 20 hearings, I still leave it to your discretion to deal with the matter as per law and as the situation so warrants.*

I am sending a copy of this letter to [Arbitrator B] as well as to the SCOPE.

With kind regards,
[Arbitrator A]
Arbitrator
13.03.2020"[3]

17. The second e-mail was addressed by Arbitrator A to SCOPE on 18.05.2020, which reads as follows:

[3] Emphasis supplied.

> "*Dear [Official of SCOPE]*
> *In the above noted case award has been written by [Arbitrator B] one of the Arbitrator.* ***On 13.03.2020 I sent an email to Presiding Arbitrator dis-agreeing with the proposed award to could not write the order as the time for pronouncing the award was to expire on next day. Presiding Arbitrator has wrote back to me that he is not going to ask for further extension and is announcing the award by majority. Accordingly, the Award was announced****.*
> *Your already have a photocopy of my cancelled cheque in INOX vs. SAIL case. I am sending another photocopy of cancelled cheque. Kindly release the payment due to me for doing the above noted case.*
>
> *With regards,*
> *[Arbitrator A]*
> *Arbitrator*"[4]

18. The arguments of learned counsel for the parties are founded on these communications.

C. Relevant provisions of the Act

19. Learned counsel for the parties have cited the following provisions of the Act:

> "***29. Decision making by panel of arbitrators****.—(1) Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator,* ***any decision of the arbitral tribunal shall be made by a majority of all its members****.*
> *(2) Notwithstanding sub-section (1), if authorised by the parties or all the members of the arbitral tribunal, questions of procedure may be decided by the presiding arbitrator.*
> *xxx xxx xxx*
> ***31. Form and contents of arbitral award.—****(1)* ***An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal****.*
> *(2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the* ***signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated. ……..***"[5]

[4] Emphasis supplied.
[5] Emphasis supplied.

D. Submissions of learned counsel for the parties:

a. For the Petitioner

20. Mr. Dayan Krishnan, learned Senior Counsel for the petitioner, submitted that the decision in the present case does not constitute an award in the eyes of law, as it does not satisfy the requirement of Section 31 of the Act. The general principle, laid down in the statute, is that an award of multi-member tribunal must be signed by all its members. As an exception, an award signed by a majority would nonetheless remain valid, but only if the reasons for omission of the missing signature are stated. Mr. Krishnan submitted that, in the present case, the award as it stands, does not contain any explanation for the omission of the signature of Arbitrator A.

21. To the extent that the explanation can be discerned from the communications set out above, Mr. Krishnan argued that the reason is unsatisfactory. It is evident that Arbitrator A was left out of the tribunal's deliberations at the stage of finalising the award. In the written submissions filed on behalf of the petitioner, such a process has been characterized as an "*abuse of the arbitral procedure*".

22. The suggestion of Arbitrator A, that the parties be requested to seek a further extension of the mandate of the tribunal, was also declined. The other two members of the arbitral tribunal thus rendered the impugned award a *fait accompli.* The proposed award was transmitted to Arbitrator A only on the day before the expiry of the mandate, making it impossible for him to publish his dissent.

b. For the Respondent

23. Mr. Jayant Mehta, learned Senior Counsel, and Ms. Priyanka Goswami, learned counsel, addressed submissions on behalf of the respondent. Their principal submission was that the facts of the present case do not disclose any ground for setting aside of the award, as enumerated in Section 34(2) of the Act. They submitted that all three members of the arbitral tribunal participated fully in the arbitral proceedings. Arbitrator A was present at all hearings, including for recording of evidence and final arguments. The award was thereafter reserved on 19.09.2019. There is no requirement that all the arbitrators must pronounce their award by way of a single opinion, and the statute expressly recognizes the validity and sanctity of a majority award.

24. The reasons for the omission of the signature of Arbitrator A are evident from his communication itself – he did not sign the award because he did not agree with it. There is no requirement of a detailed and reasoned dissent; the absence of one can certainly not affect the validity of the majority award duly signed by two of the three arbitrators. Factually, learned counsel contended that it was open to Arbitrator A to have prepared his award within the time available before the expiry of the mandate of the tribunal. There is no explanation for his awaiting the communication of the Presiding Arbitrator on 12.03.2020, or indeed for not preparing and publishing a reasoned dissent even thereafter.

25. Learned counsel submitted that practical considerations also require the impugned award to be upheld. The arbitral proceedings took approximately three years, several hearings were held, and a majority award has been published, to which the challenge is on account of a procedural and curable defect. It was submitted that setting aside of the

award in these circumstances, would necessitate a fresh round of avoidable litigation. In the context of this submission, it may be noted that, in the course of hearing, Mr. Krishnan stated that the petitioner would be agreeable to reference of the proceedings only for final hearing to a new arbitral tribunal constituted of a single arbitrator. He submitted that such a course would be in the interest of expedition of further proceedings. However, Mr. Mehta and Ms. Goswami, upon instructions, expressed the respondent's unwillingness to this course of action. They submitted that, if the impugned award is set aside, the respondent insists upon the natural legal consequence, i.e. of institution of *de novo* proceedings.

26. Learned counsel for both sides cited several judgments in the course of their submissions, which will be dealt with later in this judgment.

E. Analysis:

a. Applicable principles

27. The above quoted provisions of the Act have been considered in several decisions of the Courts, including the judgment of the Supreme Court in *Dakshin Haryana Bijli Vitran Nigam Ltd. vs. Navigant Technologies Pvt. Ltd.*[6]. The Court held that, in the case of a multi-member tribunal, only a unanimous award or a majority award is an arbitral award; a dissenting opinion is not an award at all[7]. However, it was also held that all members of the tribunal should have signed the award, and that a dissenting opinion, if any, must be delivered

[6] (2021) 7 SCC 657 [hereinafter, "*Dakshin Haryana*"].
[7] *Ibid*, paragraphs 18, 22 and 23.

contemporaneously with the majority award[8]. For the present purposes, paragraph 26 is of relevance, which reads as follows:

> "*26. Section 31 (1) is couched in mandatory terms, and provides that an arbitral award shall be made in writing and signed by all the members of the Arbitral Tribunal. If the Arbitral Tribunal comprises of more than one arbitrator, the award is made when the arbitrators acting together finally express their decision in writing and is authenticated by their signatures. An award takes legal effect only after it is signed by the arbitrators, which gives it authentication. There can be no finality of the award, except after it is signed, since signing of the award gives legal effect and validity to it. The making and delivery of the award are different stages of an arbitration proceeding. An award is made when it is authenticated by the person who makes it.* ***The statute makes it obligatory for each of the members of the Tribunal to sign the award, to make it a valid award. The usage of the term "shall" makes it a mandatory requirement. It is not merely a ministerial act, or an empty formality which can be dispensed with.***"[9]

28. Although the opinion of a dissenting arbitrator has been characterized only as an "*opinion*" and not as an "*award*", the Court has emphasized that both must be issued at the same time[10]. Commentaries by Russell, Gary Born and the judgment in *Ssangyong Engg. & Construction Co. Ltd. v. NHAI*,[11] have been cited, to clarify that the dissenting opinion of a minority arbitrator, can be considered at the stage of judicial scrutiny of the validity of the majority award. The following observations in Born's commentary, apposite for the present purposes, have been quoted by the Supreme Court[12]:

> *"Even absent express authorization in national law or applicable institutional rules (or otherwise),* ***the right to provide a dissenting or separate opinion is an appropriate concomitant of the arbitrator's***

[8] *Ibid*, paragraphs 32-33.
[9] Emphasis supplied.
[10] *Dakshin Haryana*, paragraph 32.
[11] (2019) 15 SCC 131.
[12] Gary Born, *International Commercial Arbitration*, Wolters Kluwer, Edn. 2009, Vol. II, p.2466-2469. [The quotation in the Supreme Court judgment is from the 2009 edition of the commentary, which has since been updated, as reflected in the 3rd Edn., Vol. III, 2020, p.3307-3311.]

adjudicative function and the Tribunal's related obligation to make a reasoned award. *Although there are legal systems where dissenting or separate opinions are either not permitted, or not customary, these domestic rules have little application in the context of party-nominated co-arbitrators, and diverse Tribunals.* ***Indeed, the right of an arbitrator to deliver a dissenting opinion is properly considered as an element of his/her adjudicative mandate, particularly in circumstances where a reasoned award is required.*** *Only clear an explicit prohibition should preclude the making and publication to the parties of a dissenting opinion, which serves* ***an important role in the deliberative process, and can provide a valuable check on arbitrary or indefensible decision making****."*

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There is nothing objectionable at all about an arbitrator "systematically drawing up a dissenting opinion, and insisting that it be communicated to the parties". *If an arbitrator believes that the Tribunal is making a seriously wrong decision, which cannot fairly be reconciled with the law and the evidentiary record, then he/she may express that view.* ***There is nothing wrong — and on the contrary, much that is right — with such a course as part of the adjudicatory process in which the Tribunal's conclusion is expressed in a reasoned manner.*** *And, if the arbitrator considers that the award's conclusions require a "systematic" discussion, that is also entirely appropriate; indeed, it is implied in the adjudicative process, and the requirement of a reasoned award.*

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... ***the very concept of a reasoned award by a multi-member Tribunal permits a statement of different reasons —*** *if different members of the Tribunal in fact hold different views.* ***This is an essential aspect of the process by which the parties have an opportunity to both, present their case, and hear the reasons for the Tribunal's decision; not hearing the dissent deprives the parties of an important aspect of this process***." [13]

29. This Court has had occasion to consider the matter in the following decisions:

A. In *Mahanagar Telephone Nigam Ltd vs. Siemens Public Communication Network Ltd*[14], two out of a panel of three arbitrators had signed an award, which was later sent to the third

[13] Emphasis supplied.

arbitrator. The third arbitrator gave detailed reasons for his disagreement with the majority, and one of the two other arbitrators was persuaded by those reasons. However, he ultimately felt that he could not revisit the award which he had already signed. As the original purported majority award was undated, and did not give reasons for the missing signature of the third arbitrator, the Court found that the award was not a final award of two members, but only a draft award. It was ultimately held as follows:

> "*20. Taking into account the totality of the facts, circumstances and the material brought on record and the manner in· which the arbitral proceedings were conducted by the two arbitrators at the stage of making the award, this Court has no hesitation in holding that the* ***document purported to be a majority award cannot be termed as an award within the meaning of the term or the Act and it is violative of Section 31(2) and Section 31(4) of the Act and is hit by the provisions of Section 34 (2)(a)(v) of the Act.***
> *The Award is, therefore, liable to be set aside on this ground alone.*"[15]

B. In *Government of India vs. Acome*[16], the three arbitrators deliberated on 12.11.2001. Minutes were recorded that a draft award had been discussed. As there was no unanimity on the award, the dissenting arbitrator had stated that his award would be made in due course of time. The award was made more than two months later, on 01.02.2002, and the minority opinion was published on 18.09.2002. The Division Bench held that the award of a multi-member tribunal comes into force on making or publishing the majority award, provided the reason for omission of

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[14] 2005 SCC OnLine Del 237 [hereinafter, "*Siemens*"].
[15] Emphasis supplied.
[16] 2008 SCC OnLine Del 808 (DB) [hereinafter, "*Acome*"].

the signature of the minority arbitrator is contained in the majority award itself. This view has been followed in *Medeor Hospital Ltd. vs. Ernst & Young LLP*[17], where two arbitrators gave their decision on 17.08.2021 and the third arbitrator gave their decision on 04.10.2021. The reason for the missing signature, although not stated in the award, was clear from the fact that she gave a separate opinion, which was, in fact, signed.

C. In *M/s Chandok Machineries vs. M/s S.N. Sunderson & Co.*[18] (to which I was party), the award was signed by all the three arbitrators. Two of the arbitrators signed on 12.06.2017, before their mandate terminated on 13.06.2017, and the third arbitrator signed on 28.06.2017. Reasons for belated signing of the award by the third arbitrator were given by the tribunal in an order dated 05.08.2018, disposing of an application under Section 33(1)(A) of the Act. This Court held that the purpose of Section 31(2) of the Act is to ensure that the absence of signatures of minority members of the tribunal, for whatever reason, does not necessitate a fresh round of litigation, and the decision of a majority would prevail. However, reasons must be given for the absence of any arbitrator's signature. The Division Bench elaborated that this is "*in the nature of procedural safeguard to ensure that all members of the tribunal had the opportunity to participate in the decision-making process*". The Court noted the discussion on the Draft Arbitration Rules

[17] (2023) SCC OnLine Del 2477 [hereinafter, "*Medeor*"].
[18] (2018) SCC OnLine Del 12782 (DB) [hereinafter, "*Chandok Machineries*"].

before the UN Committee considering the corresponding clause of the UNCITRAL Rules.

D. In *MMTC Limited vs. Aust Grain Exports Pvt. Ltd.*[19], some of the orders were not signed by all the arbitrators. The Court held that the irregularities had not affected the final decision and did not go to the root of the matter. The award was therefore upheld.

30. The following decisions of the other High Courts have also been cited by learned counsel for the parties:

A. In *Maharashtra State Electricity Distribution Company Ltd. v. Deltron Electronics*[20], the Bombay High Court dealt with the question of a missing signature in the award. There was some ambiguity as to when the award was made, and whether the Chairman of the arbitral tribunal had participated in the hearings. In the absence of any indication on the record with regard to participation of the Chairman, the Single Judge held as follows:

> "*6……No doubt, under the scheme of the Arbitration and Conciliation Act, 1996, the award within the meaning of the Act is really an award of the majority of the Arbitral Tribunal and the award of any dissenting minority is no award.* ***That still does not dispense with the requirement of participation of all Arbitrators in the reference and in the deliberations for making of the award.*** *Sub-section (2) of section 31 of the Arbitration and Conciliation Act, 1996 requires that if the award is not signed by all members of the arbitral tribunal* ***the reason for omitted signature/s must be stated****. As we have noted the law on the point, what this means is that not just that the reason must be stated mechanically and as a matter of form, but that* ***such reason must be adequate and germane for fulfillment of the requirement of the law that though the arbitrator/s whose signature/s is/are omitted actually participated in the hearings and deliberations for making of***

[19] (2023) SCC OnLine Del 3612 [hereinafter, "*MMTC*"].
[20] 2016 SCC OnLine Bom 9521 [hereinafter, "*Deltron Electronics*"].

> ***the award, his/their signature/s is/are justifiably not appended to the award.*** *The justifiable reason may be absence or unavailability of the arbitrator/s at the time of signing (which is merely a ministerial act) or his/their refusal on the ground of any dissention or disagreement with the majority or the like.* ***As I have noted above, such adequate and germane reason is clearly absent in the present case. In the premises, the impugned award cannot be termed as a valid award in the eyes of law. The want of signature of the Chairman of the Arbitral Tribunal/Council cannot be attributed simply to any administrative exigency or ministerial lapse or difficulty or even his having taken a dissenting view. It rather goes to the root of the award and undermines its validity***."[21]

This question was not addressed in the judgment of the Division Bench in *Delton Electricals v. Maharashtra State Electricity Distribution Co. Ltd.*[22], as the Division Bench found the award liable to be set aside on other grounds[23].

B. In *National Highways Authority of India vs. Jogendar Parsottam Shetiya & Ors.*[24], the Division Bench of the Gujarat High Court relied upon *Dakshin Haryana*, and held that the statutory requirement of signing of the award is mandatory.

C. In *GWL Properties Ltd. vs. James Mackintosh & Co. Pvt. Ltd.*[25], The Bombay High Court found that the views of all the three arbitrators were available. All the arbitrators had applied their minds, exchanged their opinions, and passed their award.

D. Learned counsel for the respondent also relied upon the Patna High Court judgments in *Ram Narain Ram vs. Pati Ram Tewary*[26],

[21] Emphasis supplied.
[22] 2017 SCC OnLine Bom 9000 (DB).
[23] *Ibid*, paragraph 94.
[24] 2021 SCC OnLine Guj 3179 (DB) [hereinafter, "*Jogendar Parsottam Shetiya*"]
[25] 2012 SCC OnLine Bom 404 [hereinafter, "*GWL Properties*"].
[26] AIR 1916 Patna 156 [hereinafter, "*Ram Narain Ram*"].

Raghubir Pandey vs. Kaulesar Pandey[27], and that of the Madras High Court in *R. Ramasubbu vs. AMV Production*[28]. The awards were upheld in these cases, on the specific finding that all the arbitrators had participated in the deliberation, and that the minority arbitrator having not signed the award, did not make a difference in these circumstances.[29]

31. From the aforesaid judgments, the following basic principles, relevant to the adjudication of the present case, emerge:

I. It is the award of the majority alone that constitutes an arbitral award; the opinion of a dissenting arbitrator is not an "*award*" at all.[30]

II. Signatures of all members of the arbitral tribunal should be available on the award. The signing of an award is not a ministerial act, but a substantive requirement.[31]

III. If the signature of any member of the tribunal is omitted, the reasons should be stated. However, the reasons can be supplied separately and subsequently.[32]

IV. The requirement is referable to the need to ensure that all members of the tribunal have had an opportunity to participate in the decision-making process. This requires the Court to consider the reasons apparent

[27] ILR (1944) 23 Pat 719 [hereinafter, "*Raghubir Pandey*"].
[28] O.P. 102/2010, decided on 03.08.2018 by Madras High Court [hereinafter, " *R. Ramasubbu*"].
[29] *Ram Narain Ram* [paragraph 2]; *Raghubir Pandey* [page No. 724]; *R. Ramasubbu* [paragraphs 43-45].
[30] *Dakshin Haryana* [paragraph 18]; *Acome* [paragraph 9]; *Medeor* [paragraph 54]; *Chandok Machineries* [paragraph 10]; *GWL Properties* [paragraph 43]; *Ram Narain Ram* [paragraph 2]; *R. Ramasubbu* [paragraph 46].
[31] *Dakshin Haryana* [paragraph 26]; *Jogendar Parsottam Shetiya* [paragraph 18].
[32] *Chandok Machineries* [paragraphs 12-13].

from the record, to satisfy itself that the reasons are relevant, germane and adequate.[33]

V. While a dissenting opinion has no direct legal effect, it is also not wholly meaningless or irrelevant. The expression of a dissent is part of the adjudicatory mandate of the arbitrator, it forms part of the duty to give reasons, which is enshrined in the Act, constitutes a safeguard against arbitrary and unchecked decision-making, and can be used by the aggrieved party as well as the Court in the course of a challenge to the majority award.[34]

b. Application to the facts of the present case

32. These principles must be applied to the undisputed facts of the case, viz. (a) the signature of Arbitrator A does not appear on the award; (b) The impugned award does not disclose any reason for the fact that the signature of Arbitrator A was missing; and (c) there is no separate dissenting award circulated by him. The question, therefore, is whether the reasons for the missing signature have been disclosed at all, and if so, whether they are relevant, germane or adequate. Conversely, if the reasons show that all three arbitrators have not had the opportunity to participate in the decision-making process fully and equally, such reasons would not be acceptable to justify the missing signature.

33. In order to consider the reasons available on record, albeit supplied later, I have examined the correspondence between the arbitrators *inter-se*

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[33] *Siemens* [paragraph 17-20]; *Chandok Machineries* [paragraph 11]; *MMTC* [paragraphs 47-49]; *Deltron Electronics* [paragraphs 5-6]; *GWL Properties* [paragraphs 43-44]; *Ram Narain Ram* [paragraph 2]; *Raghubir Pandey* [page No.726]; *R. Ramasubbu* [paragraphs 44-45].
[34] *Dakshin Haryana* [paragraphs 39-43]; *Acome* [paragraph 9].

and with SCOPE, and am of the view that the petitioner's argument must prevail for the following reasons:

a) Arbitrator A in his e-mail dated 13.03.2020, addressed to both the other arbitrators, states that there were deliberations between Arbitrator B and the Presiding Arbitrator, to which Arbitrator A was not party. In fact, the two other arbitrators had sent the award to SCOPE before it had even reached Arbitrator A. The contents of the said e-mail have not been controverted by either of the other arbitrators or by SCOPE. This shows that Arbitrator A was not invited to participate in the deliberation of the tribunal, at the stage of final decision making.

b) The draft award was sent to Arbitrator A only on the eve of expiry of the mandate of the tribunal. Arbitrator A suggested requesting the parties to approach the Court for an extension, but that too was declined. He was therefore unable to prepare and present his detailed dissent.

c) An attempt was made on behalf of the respondent to submit that Arbitrator A ought to have prepared his own award within the period of the tribunal's mandate, or even thereafter. The judgment of the Supreme Court in *Dakshin Haryana*, however, indicates that a minority view can be formulated only after the majority view is known.[35] In any event, I do not find any support for the suggestion that Arbitrator A was *required* or *bound* to prepare his opinion in anticipation of the opinion circulated by the other arbitrators.

[35] *Ibid*, paragraph 33, where the Supreme Court has cited Fouchard, Gaillard, Goldman, *International Commercial Arbitration*, Eds. Emmanuel Gaillard, John Savage, p.786 (Kluwer Law International).

d) In all the cases cited on behalf of the respondent, where a majority award has been upheld despite a missing signature, either the reasons for the missing signature have been found to be satisfactory, or time was given to the dissenting arbitrator to prepare his dissent, but he failed to do so. The facts of the present case fall, in my view, on the other side of the line, where one of the three arbitrators was excluded from the final consultation process, and was also not given the opportunity to publish a dissenting award.

e) The purpose of a multi-member tribunal comprising of appointees of each party, as provided under Section 11(3) of the Act, is for the constitution of a tribunal, which is in accord with the consent of the parties. Party autonomy, and adjudication by a consensually appointed tribunal, are intertwined. The Act recognizes the concept of party appointed arbitrators, which is reflected in the arbitration clause in the present contract also. A party is entitled to the assurance that the arbitrator nominated by it will have a seat at the table when the fate of the litigation is decided.

f) However, the Court has to be careful to ensure that a recalcitrant or obstructive minority arbitrator cannot hold the proceedings to ransom, by refusing to sign the award. If at all any arbitrator refuses to participate in the process or otherwise obstructs the making of the award, the situation would be different, but there is nothing in the present case to suggest such conduct on the part of Arbitrator A. In fact, learned counsel for the respondent also did not invite an inference of this nature. The balance between the two

competing considerations has been struck in the statute itself, when it provides that an award signed by the majority shall be valid, but that the reasons for the omission of any signature must be stated.

34. For the aforesaid reasons, I do not find the procedure followed in this case to inspire confidence. I am therefore of the view that the impugned award is liable to be set aside on the first ground urged by the petitioner. I appreciate that this entails another round of arbitral proceedings, but considerations of expediency and convenience cannot, in my view, override principles of fairness and procedural integrity, which must underpin arbitral adjudication. As noted above, the petitioner's suggestion that the matter may be sent for re-adjudication only at the stage of final hearing, was not accepted by the respondent. Unfortunately, both parties must bear the consequences.

F*. *Conclusion:

35. The petition is, therefore, allowed, and the impugned award dated 12.03.2020 is set aside. Resultantly, the bank guarantee provided by the petitioner in terms of order dated 02.06.2022, is discharged. The Registry is directed to release the bank guarantee to the petitioner, forthwith.

36. Parties are free to take steps for adjudication of their disputes afresh, in accordance with law.

37. There will be no order as to costs.

PRATEEK JALAN, J

FEBRUARY 21, 2025
"*Bhupi/Ainesh*"/