2025:DHC:11979

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

Judgment reserved on: 18.09.2025
Judgment pronounced on:24 .12.2025

\+ **O.M.P. 1277/2013**

M/S TRAFFIC MEDIA (INDIA)

...Petitioner

Through: Mr. Arvind Nayar, Sr Adv, Mr. Aman Vaccher, Mr. Ashutosh Dubey, Advs.

versus

DELHI METRO RAIL CORPORATION ...Respondent

Through: Mr. Arjun Natarajan, Mr.Aayush Kumar, Mr. Nakul Gupta, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (***"the Act"***) seeking setting aside of the Arbitral Award dated 01.02.2013 passed by the Arbitrator in the matter of "*M/s Traffic Media (India) Pvt. Ltd v. Delhi Metro Rail Corporation."*

FACTUAL BACKGROUND

2. The petitioner, M/s Traffic Media (India) Pvt. Ltd., (Claimant in the Arbitral Proceedings) is a company engaged in the business of outdoor, indoor and transit advertising. In 2010, the respondent, Delhi Metro Rail Corporation (***"DMRC"***) (Respondent in the Arbitral Proceedings), invited tenders for grant of advertising rights through pre-designed panels

inside RS-3 standard gauge metro trains operating on two metro corridors, namely the Inderlok–Mundka Line (Line-5) and the Central Secretariat - Badarpur Line (Line-6).

3. The petitioner submitted its bid on 16.04.2010 and was declared the highest bidder. Following negotiations, DMRC issued a letter of acceptance dated 06.05.2010 confirming the licence fee rates and the advertising area per train. Thereafter a Contract Agreement (***"Contract"***) was entered into on 02.07.2010. Initially, 12 four-car RS-3 trains were proposed to be handed over to the petitioner, and the petitioner deposited the requisite licence fee and security amounts. Between May and August 2010, possession of several trains operating on Line-5 was handed over to the petitioner from time to time. By August 2010, a total of 21 trains pertaining to Line-5 had been handed over, and the petitioner deposited an aggregate amount of approximately Rs. 1.22 crores towards licence fee and security deposit in respect thereof.

4. Disputes arose when DMRC sought to compel the petitioner to take possession of five additional RS-3 trains bearing numbers TS-610 to TS-614, which were intended for operation on Line-6. The petitioner objected on the ground that Line-6 was not operational or complete at the relevant time and that the said trains could not be commercially utilised. The petitioner repeatedly communicated that it could not take possession of Line-6 trains until the line became operational.

5. Despite the objections, DMRC issued letters threatening deemed handover of possession and demanding licence fees for the Line-6 trains. The petitioner sent detailed representations and a legal notice disputing the demands and alleging coercive conduct. DMRC, instead of responding to the representations, issued a 15-day termination notice

dated 16.09.2010 under Clause 22 of the Contract and terminated the Contracton 15.11.2010.

6. Due to this action, the petitioner invoked arbitration. By an Award dated 01.02.2013, the Arbitrator held, inter alia, that Line-6 was not complete until January-February 2011 and that forcing Line-6 trains onto Line-5 was unreasonable. However, while rejecting DMRC's counter-claim for licence fees relating to the five Line-6 trains, the Arbitrator also rejected the petitioner's claim for refund of the licence fee and security deposit already paid for Line-5 trains, despite the petitioner not being able to utilize the advertisement panels on these trains due to pre mature termination of the Contract by the respondent.

7. Aggrieved, the petitioner has filed the present petition under Section 34 of the Act, challenging the Award.

SUBMISSIONS ON BEHALF OF THE PETITIONER

8. Mr. Arvind Nayar, learned Senior Counsel for the petitioner, contends that the impugned Award is patently illegal, perverse, and internally contradictory.

9. At the outset, he submits that though the Arbitrator has reproduced the facts and submissions advanced by the parties, there is a complete absence of consideration and adjudication of the contentions raised by the petitioner. The impugned Award merely records conclusions without disclosing the reasoning or the mental process which led to such conclusions. It is settled law that a "finding" is distinct from a "reasoning". Reasoning gives the thought process on the basis of which the findings are reached.

10. In the present case, it is stated that the Award is entirely bereft of reasons, investigations, or analysis, thereby rendering it impossible for

the Court to test the correctness of the conclusions arrived at by the Arbitrator. There is no discernible thought process in support of the findings returned in the Award, which vitiates the same. Reliance is placed on *Anand Brothers Pvt. Ltd. v. Union of India &Ors.*[1], *Gora Lal v. Union of India*[2], *SomDatt Builders Ltd. v. State of Kerala*[3], *Fixopan Engineers (P) Ltd. v. Union of India*[4], *and Jai Singh v. DDA.*[5]

11. It is further submitted that the Arbitrator, having categorically recorded findings in favour of the petitioner and having observed that the Contractwas one-sided and oppressive, has nonetheless concluded that the Contract was binding, valid and enforceable. This conclusion is entirely unreasoned and unsupported by any analysis.

12. The rejection of the petitioner's claim for refund of the advertisement fee and security deposit is equally erroneous. The Arbitrator has proceeded on the flawed premise of "deemed acceptance", a concept unilaterally imposed by the respondent without any contractual or legal foundation. Consent to contractual obligations cannot be coerced or presumed, particularly when the Contract itself contemplated an equal distribution of trains on Line No. 5 and Line No. 6. The respondent could not, in law or in fact, compel the petitioner to accept trains exclusively on Line No. 5 in substitution of Line No. 6.

13. It is further submitted that Line No. 6 was expected to generate maximum revenue. Non-operationalisation of Line No. 6 caused substantial financial loss to the petitioner. Both lines were required to be operational at the time of execution of the contract so as to balance

[1] (2014) 9 SCC 212.
[2] (2003) 12 SCC 459.
[3] (2009) 10 SCC 259.
[4] 2005 SCC OnLine Del 852.
[5] 2008 SCC OnLine Del 1808.

revenue generation. However, Line No. 6 was completed only in January–February 2011, and despite this, the petitioner was forced to accept all trains on Line No. 5 under a fictitious and non-existent concept of "deemed acceptance". The respondent, by continuing to allot trains only on Line No. 5 without Line No. 6 being operational, itself committed breach of the contract. Reliance is placed on *Kailash Nath Associates v. Delhi Development Authority.*[6]

14. The Arbitrator has erroneously dismissed the petitioner's claim for compensation of Rs. 10,00,000/- towards mental tension and agony on the premise that such relief could be granted only by a consumer forum. The Arbitrator was, however, duty-bound to adjudicate all disputes arising between the parties, particularly when issues concerning the consequences of the respondent's arbitrary and oppressive conduct had been framed. The rejection of the claim on this ground amounts to a failure to exercise jurisdiction. Reliance is placed on *Tejpal Singh v. Surinder Kumar Dewan*[7], wherein damages for mental agony and harassment were upheld even in a commercial contractual dispute.

15. It is further submitted that the petitioner made substantial financial investments on theexpectation that the licence would subsist for its full contractual term. Due to the respondent's arbitrary and unilateral conduct, the petitioner was compelled to surrender the licence prematurely and was deprived of the opportunity to recoup its investment. In these circumstances, it is stated that the petitioner was entitled to compensation, particularly when the advertising panels installed by the petitioner vested exclusively in the respondent, and the

[6] (2015) 4 SCC 136.
[7] 2022 SCC OnLine Del 4667.

costs incurred towards their manufacture and installation, though in accordance with the Contract, were not reimbursed.

16. The Arbitrator has further erred in disallowing the petitioner's claim of Rs. 8,00,000/- towards installation of panels and allied works, without recording any reasons.Additionally, the Arbitrator has wrongly rejected the petitioner's claim for refund of the security deposit along with interest thereon. It is submitted that there was no default or breach on the part of the petitioner which could justify forfeiture of the security deposit. The respondent has unlawfully retained the said amount and is consequently liable to refund the same along with interest. In this regard, reliance is placed on the judgments in *Union of India v. N.K. Garg & Co.,*[8] *and Kailash Nath Associates v. Delhi Development Authority*.[9]

17. Finally, it is submitted that until the year 2013, the respondent did not allot the advertisement work to any third-party agency. As such, no loss was caused to the respondent at any point of time. In the absence of any demonstrable loss, the respondent's actions in forfeiting the petitioner's amounts and denying its legitimate claims are wholly arbitrary, unreasonable and legally unsustainable.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

18. Mr. Natarajan, learned counsel for the respondent, submits that the Arbitral Award is a reasoned and well-considered Award passed after appreciation of all pleadings, documents, and submissions of the parties. It is argued that the scope of interference under Section 34 of the Act is extremely limited and that this Court cannot sit in appeal over the findings of fact or re-appreciate evidence.

[8] 2015 SCC OnLine Del 13324.
[9] (2015) 4 SCC 136.

19. He states that the petitioner lacked the requisite financial capacity to perform its obligations under the Contract and failed to pay the licence fee and security deposit in accordance with the contractual terms, thereby committing a fundamental breach of the Contract. The petitioner's allegation that Line No. 6 was incomplete and that it was being compelled to accept trains meant for both Line No. 5 and Line No. 6 is contrary to its own contemporaneous correspondence dated 09.08.2010 and 14.08.2010, which clearly demonstrate the petitioner's financial inability to take over the trains offered. The present stand of the petitioner is, therefore, an afterthought and untenable.

20. In view of the petitioner's defaults, the breach of contract squarely lies on the petitioner. Consequently, the respondent was fully justified in terminating the Contract and forfeiting the security deposit in terms of Clauses 22 and 26 thereof. It further submitted that the respondent is entitled to recover damages and losses suffered due to the petitioner's breach. The loss sustained by the respondent comprises the unpaid licence fee in respect of trains allotted to the petitioner up to the date of termination.

21. The respondent has suffered loss of licence fee for 26 trains up to the date of termination. The licence fee payable for 21 trains alone amounts to Rs. 1,46,59,991/-, whereas the amount paid by the petitioner under the Contract dated 02.07.2010 is only Rs. 1,22,82,760/-. Thus, the respondent's losses exceed the amount deposited by the petitioner.

22. The petitioner has no right to seek refund of any amounts paid to the respondent, as the same have been lawfully appropriated towards losses suffered on account of the petitioner's breach. Without prejudice, any

claim for compensation is governed by Section 74 of the Indian Contract Act, 1872, and the petitioner has failed to prove any actual loss.

23. The petitioner's claim of Rs. 8,00,000/- towards alleged losses was rightly rejected by the Arbitrator for want of evidence. The petitioner has not challenged this finding, which has attained finality, disentitling the petitioner to any recovery on this account. In any event, the petitioner is liable to pay licence fee for at least 21 trains up to 15.11.2010, during which period the petitioner admittedly took over and operated the said trains and derived benefit under the Contract.

ANALYSIS AND FINDINGS

24. I have heard the learned counsel for the parties and perused the material on record.

25. Before analyzing the present case, it is important to set out the scope of interference under Section 34 of the Act. In ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***,[10] the Court held as under:

> *"**Scope of interference with an arbitral award***
>
> ***74.** The aforesaid judicial precedents make it clear that while exercising power under Section 34 of the 1996 Act the Court does not sit in appeal over the arbitral award. Interference with an arbitral award is only on limited grounds as set out in Section 34 of the 1996 Act. A possible view by the arbitrator on facts is to be respected as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It is only when an arbitral award could be categorised as perverse, that on an error of fact an arbitral award may be*

[10] *(2025) 2 SCC 417.*

set aside. Further, a mere erroneous application of the law or wrong appreciation of evidence by itself is not a ground to set aside an award as is clear from the provisions of sub-section (2-A) of Section 34 of the 1996 Act.

***75.** In Dyna Technologies [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1, paras 27-43] , a three-Judge Bench of this Court held that courts need to be cognizant of the fact that arbitral awards are not to be interfered with in a casual and cavalier manner, unless the court concludes that the perversity of the award goes to the root of the matter and there is no possibility of an alternative interpretation that may sustain the arbitral award. It was observed that jurisdiction under Section 34 cannot be equated with the normal appellate jurisdiction. Rather, the approach ought to be to respect the finality of the arbitral award as well as party's autonomy to get their dispute adjudicated by an alternative forum as provided under the law.*

***76.** Now, we shall examine the scope of interference with an arbitral award on ground of insufficient, or improper/erroneous, or lack of, reasons.*

Reasons for the award — When reasons, or lack of it, could vitiate an arbitral award

***77.** Section 31(3) of the 1996 Act provides that an arbitral award shall state reasons upon which it is based, unless:*

(a) the parties have agreed that no reasons are to be given, or

(b) the award is an arbitral award on agreed terms under Section 30.

…

79. *On the requirement of recording reasons in an arbitral award and consequences of lack of, or inadequate, reasons in an arbitral award, this Court in Dyna Technologies [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1, paras 27-43] held : (SCC p. 14, paras 34-35)*

"34. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute.

35. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are : proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the

nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the court needs to have regard to the document submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards."

80. *We find ourselves in agreement with the view taken in Dyna Technologies [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1, paras 27-43] , as extracted above. Therefore, in our view, for the purposes of addressing an application to set aside an arbitral award on the ground of improper or inadequate reasons, or lack of reasons, awards can broadly be placed in three categories:*

(1) where no reasons are recorded, or the reasons recorded are unintelligible;

(2) where reasons are improper, that is, they reveal a flaw in the decision-making process; and

(3) where reasons appear inadequate.

81. *Awards falling in Category (1) are vulnerable as they would be in conflict with the provisions of Section 31(3) of the*

1996 Act. Therefore, such awards are liable to be set aside under Section 34, unless:

(a) the parties have agreed that no reasons are to be given, or

(b) the award is an arbitral award on agreed terms under Section 30.

82. *Awards falling in Category (2) are amenable to a challenge on ground of impropriety or perversity, strictly in accordance with the grounds set out in Section 34 of the 1996 Act.*

83. *Awards falling in Category (3) require to be dealt with care. In a challenge to such award, before taking a decision the Court must take into consideration the nature of the issues arising between the parties in the arbitral proceedings and the degree of reasoning required to address them. The Court must thereafter carefully peruse the award, and the documents referred to therein. If reasons are intelligible and adequate on a fair reading of the award and, in appropriate cases, implicit in the documents referred to therein, the award is not to be set aside for inadequacy of reasons. However, if gaps are such that they render the reasoning in support of the award unintelligible, or lacking, the Court exercising power under Section 34 may set aside the award."*

26. The question before this Court is whether the impugned Award dated 01.02.2013 is liable to be set aside under Section 34 of the Act?

27. The Arbitrator had framed the following issues:

"a) Whether in law, the License Agreement dated 02.07.2010 executed between the Claimant & the Respondent is null and void? OPC.

b) Whether the Claim Petition has legally and validly been instituted by the Claimant? OPC

c) Whether the Claimant is entitled to the refund of any amount as well as the security amount paid in compliance of the License Agreement dated 02.07.2010, from the Respondent? OPC

d) Whether the Claimant is entitled to any compensation from the Respondent, on account of mental tension and agony? OPC.

e) Whether the Claimant is guilty of breach of the term., and the conditions of the License Agreement dated 02.07.2010? OPR

f) Whether the Counter Claimant is entitled to an award of Rs. 90,18,508/- being the outstanding amount payable by the Claimant, in compliance of the terms of the License Agreement dated 02.07.2010? OPR

g) Whether the Counter Claimant is entitled to the refund of the expenditure incurred or costs or loss suffered by it on account of illegal acts and conduct of the Claimant? OPC

h) Whether the parties are entitled to any interests and costs on the above claims and the counter claims? OPR/OPC

i) Whether without any prior notice from the Respondent its counter claim is maintainable or not in law? OPR/OPC"

28. At the outset, it is evident that though the Arbitrator framed as many as

nine distinct issues, touching upon the validity of the contract, breach, entitlement to refund, forfeiture, compensation, counter-claims and costs, the Award does not contain any issue-wise discussion or adjudication. The Arbitrator has, in fact, expressly recorded that "the discussion was not held issue-wise" and that observations would instead be made prayer-wise. Even thereafter, the Arbitral Award does not undertake a substantive examination of pleadings, evidence, contractual clauses, or rival submissions, but merely records conclusions against each prayer.

29. The prayers of the petitioner are as follows:

> *(i) "to pass an order thereby declaring the agreement dated 02.07.2010 null & void;*
>
> *(ii) to pass an order thereby directing the Respondents to return the amount deposited by the Claimants with them against the advertisement fee as well as security in compliance with the terms and conditions void agreement dated 02.07.2010;*
>
> *(iii) to pass an order thereby directing the Respondents to compensate the Claimants in tune of Rs. 10,00,000/- against the mental tension and agony caused by the illegal acts of the Respondents;*
>
> *(iv) to pass an order thereby directing the Respondents to compensate the Claimants in tune of Rs. 8,00,000/- against the installation of the penal / instruments at the strep hangers of the metro train,*
>
> *(v) to award the interest @ 18% p.a. on the amount deposited from the date of deposition and also on*

compensation from the date of demand notice dated 20.09.2010;

(vi) to award the cost of proceedings in favour of the Claimants andagainst the Respondents,

(vii) Any other relief, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, may also be passed in favour of the Claimants."

30. The findings in relation to Prayer 1 read as under:

"Prayer No.1 The condition about number of train on each line and the timing of offering of train was not specified in the Contract Agreement. Clause 19 of the agreement appears to be confusing.

Further the L-6 was not complete and was completed only sometime in January & February, 2011 and the Claimants was being forced to take trains meant for L-6 on L-5 itself and no reply by the Respondents when the same was objected to. The Arbitration Tribunal has been appointed only after the Claimants went to the Hon'ble High Court.

I find that though the conditions in the agreement appear to be one sided. The Contract Agreement can not be declared null & void as I agree with the submission of the Respondents on the subject that the agreement duly fulfilled essential requisites of legal, valid, binding, an enforceable and concluded agreement as prescribed by Indian Contract Act, 1872. Hence the contract can not be considered null & void.

Since the Contract Agreement is not null & void. The Prayer No.1 cannot be granted."

31. Relevant Clauses of the Contract Agreement read as under:

"B. DMRC has agreed to provide to the Licensee pre-designed panels inside the train sets operating in Inderlok–Mundka line and Central Secretariat–Badarpur line during the tenure of this Agreement, hereinafter referred to as advertisement spaces, on the terms and conditions hereunder contained.

2. …These fifty trains will be introduced over a period of time on Inderlok–Mundka line and Central Secretariat–Badarpur line. All these fifty trains will be of standard gauge.

Clause 7(A)(III):

The licence period for the whole lot of 50 train sets will start from the date of handover of the first train set or 7 days after the date of issue of taking over notice of the first train set, whichever is earlier.

Clause 7(A)(IV):

The licence fee for subsequent years will be increased from this date for all trains, irrespective of the dates from which other train sets have been handed over.

Clause 14:

The licensee confirms that he/she/they have seen the inside train panels and strap hanger locations and fully understand and comprehend the technical requirements of the advertisement insert media. Licensee is also fully satisfied as to the business viability of licensing the advertisement panels and strap hangers and shall not claim any compensation, dues or any other consideration whatsoever on this account.

Clause 19:

The set of fifty (50) trains operating at present will be treated as one lot. Any additional train set/s Coaches introduced within the tenure of this agreement will also become part of this lot. The license will start from the date of handover of the first train sets or from the date of notice issued for taking over of the first train set, whichever is earlier. The license fee for subsequent years will be increased from this date for all trains, irrespective of the dates from which other train sets have been handed over. The license fees for the individual train sets will be initiated from the date of issue of notice for taking over or handover of the train set, whichever is earlier.

50 Standard gauge (RS-3) trains will be inducted on the Inderlok–Mundka line and Central Secretariat–Badarpur line of DMRC Cover a period of around one year. The RS-3 trains which are operational at the time of award of contract will be considered as one lot and will be handed over to the licensee after award of contract. For the trains which will be inducted subsequently (after award of contract), DMRC will serve a

seven-day taking over notice to the licensee to take over these trains. The Licensee will have to deposit advance three months' licence fee and security deposit equivalent to 3 months licence fee within 5 days of issue of taking over notice. The licensee will have to take over these trains within 7 days from the date of issue of the taking over notice, or these trains would be deemed to be handed over seven days after the date of issue of taking over notice.

Clause 20

The licensee agrees to submit additional interest-free security deposit and licence fees on a prorate basis as and when additional train sets are commissioned by DMRC and handed over to the licensee. The Licensee agrees unequivocally to take up all the additional train sets. Failure to take up additional train sets by the licensee will be treated as a breach of agreement and will lead to forfeiture of licence fees and the interest-free security deposit in favour of DMRC (Licensor).

Clauses of the General terms and conditions:

22. TERMINATION OF AGREEMENT

In the event of failure on the part of Licensee in payment of License fees or any other charges due to the DMRC, breach of any of the terms and conditions of the agreement, DMRC Administration will have the right to terminate the contract and to discontinue the display forthwith and confiscate the advertisement and other materials of the Licensee without

prejudice to any rights available forfeit the security deposit. The Licensee shall also be subject to all provisions of the Delhi Metro Rail operation and maintenance Act and also to the notices issued from time to time by the office of the General Manager (Operations). DMRC may also terminate the contract on administrative ground after giving 3 months notice. If contract is terminated on administrative grounds the security deposit of the licensee will be refunded.

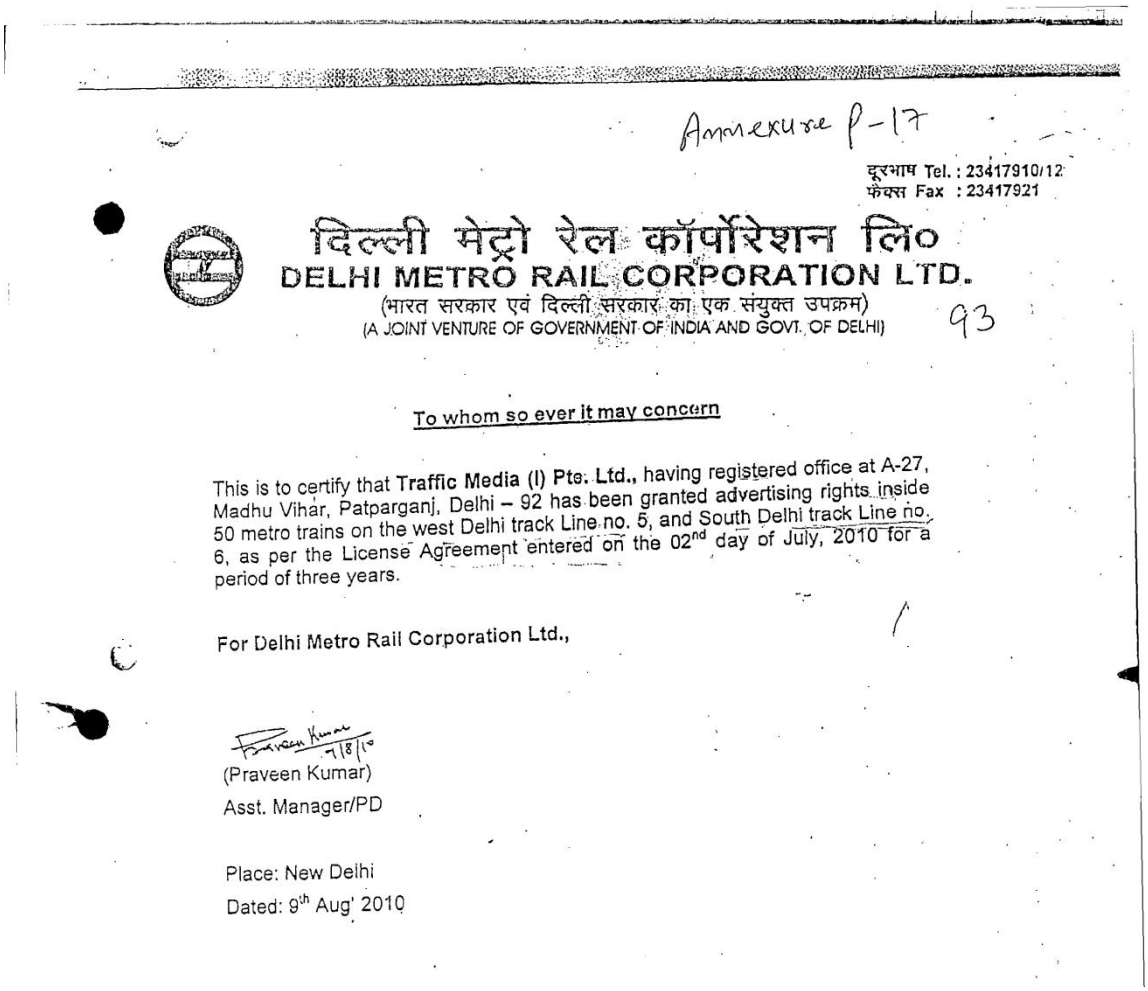
26. SECURITY DEPOSITS:

The Licensee will submit within 7 (seven) days of issue of the letter of acceptance an amount equivalent to 3 (three) months license fee for the trains operational at the time of award of contract as interest free security deposit. The earnest money deposit of the successful tenderer will be adjusted against the refundable interest free security deposit equivalent to 3 (three) months license fee for trains operating at the time of award of contract. For trains which would be handed over subsequently the licensee will have to deposit security amount equivalent to three months licence fee (of trains proposed to be handed over) within 5 days from the date of issue of taking over notice for trains which will be handed over subsequently. For clearance of doubt, if 10 train sets and security deposit of 3 months license fee for these 10 train sets. Subsequently, say after 2 months, 15 more trains are inducted; DMRC will serve a Seven day taking over notice to the licensee. The licensee will have to deposit the advance license fee for 3 months for

these 15 new trains and security deposit equivalent to 3 months license fee for these 15 trains, within 5 days of-issue of taking over notice. Non-payment of advance license fee and security will be construed as breach of contract and DMRC Reserves the right to terminate the contract on this account as per Termination clause of the contract. This amount will only be refunded after completion of the full term of the license period. (three years from the date of hand over of the first train set or seven (7) days from the date of notice' issued for take over of the first train set, whichever is earlier).

The Security deposit will be refunded only, on satisfactory completion of the full agreement/contract period taking into consideration that all DMRC dues are cleared. The interest free security deposit will be increased by 5% for each completed year on compounding basis. The license agrees to submit additional interest free security deposit and license fees on prorate basis as and when additional train sets are commissioned by DMRC and handed over to the licensee. The licensee agrees unequivocally to take up all the additional train sets. Failure to take up additional train sets by the licensee will be treated as a breach of agreement and will lead to forfeiture of license fees and interest free security deposit in favour of DMRC (Licensor).”

32. The letter demarcating the metro lines as Line 5 and Line 6 is reproduced below:



Annexure P-17

दूरभाष Tel. : 23417910/12
फैक्स Fax : 23417921

दिल्ली मेट्रो रेल कॉर्पोरेशन लि०
DELHI METRO RAIL CORPORATION LTD.
(भारत सरकार एवं दिल्ली सरकार का एक संयुक्त उपक्रम)
(A JOINT VENTURE OF GOVERNMENT OF INDIA AND GOVT. OF DELHI)

93

To whom so ever it may concern

This is to certify that **Traffic Media (I) Pte. Ltd.,** having registered office at A-27, Madhu Vihar, Patparganj, Delhi – 92 has been granted advertising rights inside 50 metro trains on the west Delhi track Line no. 5, and South Delhi track Line no. 6, as per the License Agreement entered on the 02nd day of July, 2010 for a period of three years.

For Delhi Metro Rail Corporation Ltd.,

Praveen Kumar 7/8/10
(Praveen Kumar)
Asst. Manager/PD

Place: New Delhi
Dated: 9th Aug' 2010

33. A perusal of the findings rendered in respect of Prayer No. 1 shows that while adjudicating upon the question of whether a valid Contract existed between the parties, the Arbitrator has merely returned a finding that the Contract "fulfilled the essential requisites of a legal, valid, binding and enforceable Contract". Such a conclusion, in the absence of any supporting reasons or analysis, does not satisfy the requirement of a reasoned Award which has to be proper, intelligible and accurate as explained in the case of ***Dyna Technologies (Supra)***. While the finding that the Contract is valid and enforceable, may have been correct or plausible, it is absolutely without reasons and the same cannot be allowed.

34. The record clearly demonstrates that the petitioner had, from the very inception, consistently disputed the validity of the Contract. This position is evident from the letter dated 20.09.2010 addressed to the respondent, wherein the petitioner categorically asserted that as per the terms and conditions of the tender and the Contract, trains were required to be handed over on both tracks i.e., L-5 and L-6. It was specifically pointed out that even after a lapse of approximately 3 - 4 months, the Central Secretariat - Badarpur line was not operational, and yet the respondent had invited a tender and proceeded to execute an Contract in respect of advertising rights on a line (L-6) and trains which were not in existence or available. On this basis, the petitioner contended that the Contract dated 02.07.2010 was not valid and was void under the provisions of law.

35. In addition to the aforesaid, the petitioner raised challenges to the contractual clauses before the Arbitrator in its Statement of Claims (***"SOC"***). It was contended that Clause 7(A)(III), which stipulated that the licence period for the entire lot of 50 trains would commence from the date of handover of the first train set or seven days after issuance of the taking over notice of the first train set, whichever was earlier, was inherently arbitrary and conferred an undue advantage upon the respondent. Clause 7(A)(IV) was similarly assailed as being one-sided and unreasonable.

36. Clause 14 of the Contract was also challenged as it states that a confirmation by the licensee that it had seen the inside train panels and strength hangers, fully understood the technical requirements of the advertisement, and was satisfied as to the business viability of the licence, thereby waiving any claim for damages, compensation or consideration on that account. The petitioner's case was that such a

clause could not be enforced when, as a matter of admitted fact, the trains pertaining to Line L-6 were not operational or available for inspection.

37. It was also contended that Clause 19 treats all existing and future train sets as a single indivisible lot and introduces a legal fiction of deemed handover merely upon issuance of a taking-over notice, even where actual handover was impossible. Clause 20 then obligates the licensee to unequivocally accept all additional train sets, failing which stringent consequences of forfeiture of licence fee and security deposit are attracted. In a situation where the Central Secretariat - Badarpur line (L-6) was admittedly not operational, these clauses operated to fasten financial and contractual obligations upon the petitioner in respect of trains which were neither available for inspection nor capable of commercial use. The petitioner also reiterated, in its written submissions before the Arbitrator, that Clauses 7, 14, 19 and 20 were void, arbitrary and wholly one-sided. The relevant pleadings are contained in paragraphs 17 and 18 of the replication and paragraphs d, e, f and g of the Written Submissions before the Arbitrator.

38. The respondent, no doubt, refuted these contentions by stating that all the essentials of a valid and enforceable contract were fulfilled and that the Contract had been duly signed by both parties. However, what is conspicuously absent from the Award is any discussion, let alone adjudication, of the specific challenges raised by the petitioner or the contentions of the respondent.

39. In the analysis relating to the prayer 1 seeking a declaration that the Contract was void, the Award merely makes a passing observation that Clause 19 “appears to be confusing”, without undertaking any analysis ofthe clause or assigning reasons as to why it was valid and enforceable.

40. It is well settled that the construction of the terms of a contract lies primarily within the domain of the Arbitral Tribunal. So long as the Arbitrator adopts a plausible and reasonable interpretation of the contractual terms, the Award cannot be interfered with merely because another interpretation may also be possible. Interference is warranted only where the construction adopted is such that no fair-minded or reasonable person could have arrived at it.[11]

41. However, the discretion afforded to an Arbitrator in construing contractual terms does not dispense with the obligation to furnish reasons. An Arbitral Tribunal cannot return a finding on a contractual clause without disclosing the basis for such finding. An unreasoned observation particularly in view of clear pleadings and contentions of the parties, falls foul of the requirement of a reasoned award and renders the finding unsustainable in law.

42. Even thereafter, there is no examination of the petitioner's contention that the Contract was wholly one-sided, nor any consideration of the cumulative effect of Clauses 7, 14, 19 and 20. The grounds on which the petitioner sought to have the contract declared void, as pleaded in the SOC, have been brushed aside without reasons. Such non-adjudication of material contentions and cryptic rejection, without any reasoning, which shows alack of thought process behind a finding, striking at the core of an Arbitral Award and warrants interference under Section 34 of the Act.

43. Having dealt with the contention relating to the validity of the Contract, the Arbitrator was required to thereafter adjudicate the issue of breach, including whether the termination of the contract was justified. Issue (e) was expressly framed in this regard; however, no finding whatsoever has

[11] Associate Builders vs. Delhi Development Authority, (2015) 3 SCC 49.

been returned on this issue in the observations or the conclusions of the Award.

44. Instead of dealing with this issue or the corresponding prayer, the Award contains scattered observations touching upon the respondent's actions, primarily while dealing with Counter Claim No. 1. In that context, the Arbitrator records that although the petitioner had initially accepted 21 trains on Line L-5, the dispute arose when rake numbers 610 to 614 were offered on Line L-5 despite having been earmarked for Line L-6, which was admittedly not ready or operational at the relevant time.

45. The Arbitrator further records a categorical finding that there was no provision in the Contract permitting inter-changeability of rakes between Lines L-5 and L-6 but the reason for arriving at the same is not provided. It is also noted that DMRC failed to respond to the petitioner's letters objecting to such deployment, and that even in its reply to the legal notice dated 20.09.2010, DMRC raised a demand for licence fee without including the licence fee for the five disputed trains, which the Arbitrator treats as an admission of wrongdoing. The action of forcibly deploying train numbers 610 to 614 on Line L-5 is expressly characterised as unreasonable. The observations read as under:

> *"a) Counter Claim No. 1 – The Claimants had accepted the 21 trains on L-5. The whole trouble started when rake Nos. 610, 611, 612, 613 and 614 were offered to Traffic Media (I) Pvt. Ltd. on L-5. On 06.08.2010 and 13.08.2010, demand was made for payment of licence fee and security deposit, which were not accepted by Traffic Media. These rakes were meant for L-6 but were offered on L-5 as L-6 was not ready. In their final submission, DMRC on page 6 of RD-5, para-F, are*

mentioned the interchangeability of rakes between L-5 and L-6. I find that there is no such provision in the Agreement. Also I find that the Counter-Claimants (DMRC) did not reply to the letters of the Counter-Respondents (Traffic Media) and turning down the offer of five trains, i.e. 610 to 614, on L-5. The reply given by the Respondents dated 20.10.2010 to the legal notice dated 20.09.2010 raises the demand payment for licence fee but does not include the licence fee for train Nos. 610 to 614 (5 trains), which means admission of wrongdoing on the part of the Respondents. I consider the action of the Respondents to force train Nos. 610 to 614 on L-5 as unreasonable.

Reasonableness and fairness on part of both parties is necessary for successful execution of any agreement. The Counter-Respondents (Traffic Media) must have made their business model on L-5 and L-6 separately, and even the clients for advertisements could be different and therefore, I find forcing upon of trains meant for L-6 on L-5 as unreasonable and unfair. I find the suspicion in the mind of the Counter-Respondents (Traffic Media)reasonable. The Counter-Claimants (DMRC) should have replied to the representations of the Counter-Respondents (Traffic Media) and also should have considered their request for appointment of an Arbitrator instead of terminating the contract. Even the request of the Counter-Respondents (Traffic Media) to defer the operation of the Agreement till completion of L-6 was not agreed to.

Also, as per the Agreement, they have forfeited the amount available with them while terminating the contract in terms of Clause 22. Therefore, I do not find any merit in the Counter-Claims, and therefore, Counter Claim No. 1 is rejected."

46. Notwithstanding these clear and adverse findings against the respondent, the Arbitrator has failed to undertake the analysis as to whether the respondent was in breach of the contract on account of offering and purporting to hand over trains pertaining to Line L-6 on L-5 when the said line was not in operation. This question constituted the fountainhead of the entire controversy between the parties. All consequential issues, including entitlement to refund of licence fee, forfeiture or return of the security deposit, and the quantification of any sums payable by either party, were necessarily dependent upon a prior determination of whether a breach had occurred and, if so, to whom it was attributable. In the absence of any finding on this core issue, the adjudication of ancillary and monetary claims stands vitiated, rendering the Award internally inconsistent and legally unsustainable.

47. Without adjudicating the core issue the Arbitrator has instead given a finding on prayer 2 which was regarding return of amount deposited, the findings read as under:

"The Respondents to return the amount deposited by Claimants against the advertisement fee as well as security deposit. Since the agreement cannot be declared null & void, hence this prayer cannot be granted."

48. Even, the manner in which Prayer No. 2/claim has been rejected does not align with the standards of a reasoned Award and cannot be sustained in law.

49. The Arbitrator has declined the claim for refund solely on the ground that the Contract was not declared null and void. This finding is incorrect. A claim for refund of amounts deposited under a contract is not dependent, upon the contract being void or voidable. Even where a contract is held to be valid and enforceable, the question whether a party is entitled to retain monies received must necessarily be examined with reference to the contractual terms governing such payments and the facts relating to performance and breach. The Award, however, does not undertake any such examination.

50. What is conspicuously absent from the Award is any discussion of the clauses which directly govern the issue of refund and forfeiture. Clauses 22 and 26 of the Contract expressly deal with termination and refund of the security deposit, and make it clear that forfeiture is permissible only in the event of a failure on the part of the Licensee to pay licence fees or other charges due to the respondent. The Award records no finding that the petitioner committed any such breach or not. In the absence of a finding that the conditions precedent for forfeiture stood satisfied, the Arbitrator could not have upheld the retention of the security deposit without analysing these clauses. The failure to even advert to the relevant contractual provisions vitiates the conclusion reached.

51. The rejection of Prayer No. 2, therefore, is not the result of an independent adjudication of the claim, but a mechanical and consequential rejection flowing from the decision on Prayer No. 1. Such an approach does not meet the requirement of recording reasons under

Section 31(3) of the Act. The finding is rendered without reference to the Contract, without consideration of the material facts, and without any discernible reasons.

52. For these reasons, the finding on Prayer No. 2 is perverse and unsustainable, and is liable to be interfered with.

53. Prayer No. 3 relates to the claim for compensation on account of mental agony. The Arbitrator has rejected this claim on the ground that the Contract does not contain any clause permitting grant of such damages. The petitioner has sought to rely upon the decision in ***Tejpal Singh (Supra).*** In my opinion, the said reliance is misplaced and does not advance the petitioner's case.

54. As reiterated in ***Tejpal Singh (Supra)***, the settled position of law is that damages for mental distress, anguish or injured feelings are ordinarily not awarded for breach of contract, particularly in the case of commercial contracts. The recognised exceptions are limited to contracts whose object is to provide peace of mind or freedom from distress, or cases where mental suffering or nervous shock was, at the time of entering into the contract, within the contemplation of the parties as a probable consequence of breach. The facts in ***Tejpal Singh (Supra)*** fell squarely within such an exception, as the respondent therein was subjected to sealing of his property and criminal proceedings on account of the contractor's unlawful and unauthorized acts.

55. The present case stands on an entirely different footing. The dispute arises out of a commercial licence agreement for advertisement rights. The contract was purely commercial in nature and was not intended to secure peace of mind or freedom from distress. Nor can it be said that mental anguish or non-pecuniary injury was within the contemplation of

the parties as a likely consequence of breach at the time of execution of the contract. The facts pleaded do not disclose any exceptional or egregious conduct comparable to that in ***Tejpal Singh (Supra)*** so as to attract the limited exceptions recognised in law.

56. In these circumstances, the claim for compensation on account of mental agony is not maintainable in law. The rejection of Prayer No. 3, therefore, does not, in itself, call for interference. However the core issues raised before the Arbitrator has not been adjudicated at all, and for the said reasons the Award is being set aside.

57. I do not find it necessary to examine the remaining prayers which are related to cost of panels, interest, costs of arbitration. The Arbitrator has altogether failed to adjudicate the foundational issue, namely, whether the respondent was in breach of the Contract by offering and deploying trains pertaining to Line L-6 on L-5 at a time when the said line was admittedly not operational and in a manner not contemplated by the Contract. This issue lay at the very heart of the dispute between the parties. A determination on breach was a necessary precondition to the adjudication of the other claims and counter claims. In the absence of a finding on whether the termination was valid or which party was responsible for breach, the Arbitrator could not have proceeded either to reject the petitioner's claims or to uphold the respondent's position. The failure to decide this core issue vitiates the Award as a whole.

58. Such an Award squarely attracts the parameters laid down in ***OPG Power (Supra)***where the Hon'ble Supreme Court held that an award is liable and to be interfered with if it records findings but does not draw a reasoned nexus between those findings and the final conclusion, or if it ignores material considerations while reaching its decision.

CONCLUSION

59. In these circumstances, the Award cannot be salvaged by severing individual findings. The non-adjudication of the central issue of breach vitiates the entire Award. The Award, therefore, falls foul of Section 31(3) of the Act, and squarely attracts interference under Section 34 of the Act on the ground that it is arbitrary, perverse, and devoid of intelligible reasons. Once the core issue of breach has not been adjudicated, the Award cannot be sustained in part or as a whole, and is liable and is hereby aside.

60. The petition is allowed.

61. Pending applications, if any also stand disposed of.

JASMEET SINGH, J

DECEMBER 24th, 2025/DE