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Delhi High Court declines to interfere with arbitral award; reaffirms narrow scope of Section 34 review and waiver of objections to tribunal composition

Supreme Advertising Pvt. Ltd. v. Genus Power Infrastructures Ltd., O.M.P. (COMM) 115/2016 & O.M.P. (COMM) 159/2016, Delhi High Court, judgment dated 13 July 2026 (Harish Vaidyanathan Shankar, J.)

The decision touches on several recurring points of contention in Section 34 proceedings - the consequence of an even-numbered arbitral tribunal, the limits of a court's power to revisit findings on account of material shortages, the fate of a limitation plea raised belatedly, and the true boundary between a permissible correction of an award and an impermissible review of it.

The Dispute

The case arose from a 2005 arrangement between Supreme Advertising Pvt. Ltd. and Genus Power Infrastructures Ltd., under which Genus Power was to act as the lead entity for bidding on electrification projects floated by UPPCL in Uttar Pradesh and by JVVNL in Rajasthan, while Supreme Advertising was to execute the erection and civil works. The commercial relationship broke down in 2006 amid mutual allegations — Supreme Advertising complained of delayed material supply and withheld running-account payments, while Genus Power alleged abandonment of the works, shortage and misappropriation of materials, and losses on account of dismantled equipment. A Minutes of Meeting/MoU dated 8 October 2006 attempted to record a reconciliation mechanism, but the dispute nonetheless proceeded to arbitration before a two-member tribunal comprising Justice P.C. Jain (Retd.) and Justice J.R. Chopra (Retd.), constituted pursuant to orders of the Rajasthan High Court.

The Arbitral Award, dated 7 March 2014 and subsequently corrected on 17 May 2014, allowed certain claims of Supreme Advertising while also allowing three counterclaims of Genus Power for unaccounted material, for dismantled material, and for interest on delayed payments. Both parties filed cross-petitions under Section 34 of the Arbitration and Conciliation Act, 1996, each challenging the portions of the award decided against it. The two petitions were heard together and disposed of by a common judgment.

What the Court Held

1. **An even-numbered tribunal is a curable irregularity, not a nullity.** Supreme Advertising argued that a two-member tribunal contravened Section 10 of the Act, which requires an odd number of arbitrators, and that this vitiated the entire proceeding. The Court held following the Supreme Court's decision in Narayan Prasad Lohia v. Nikunj Kumar Lohia that Section 10 is a derogable provision. An objection to the composition of a tribunal must be raised before the tribunal itself, under Section 16 read with Section 4 of the Act, and a party that participates in the reference for several years without demur, leads evidence, cross-examines witnesses and invites adjudication on merits will be treated as having waived the objection. Raising the point for the first time after an adverse award is, in the Court's words, an attempt to keep a jurisdictional objection in reserve and deploy it only once the outcome is unfavourable — conduct the Court was not prepared to countenance.

2. **Findings on shortage of material were upheld as a plausible view, not a perverse one**. A recurring argument was that the tribunal's findings on unaccounted and dismantled material rested on nothing more than schedules prepared unilaterally by Genus Power. The Court rejected this characterization on the facts, noting that the schedules were substantially derived from Supreme Advertising's own erection bills and running-account bills, and that Supreme Advertising's own witnesses had made material admissions in cross-examination regarding the need for reconciliation. Once a counterclaiming party demonstrates a discrepancy using the opposite side's own record, the evidentiary burden shifts, and a bare denial does not entitle the other side to a fresh evidentiary hearing before the Section 34 court. The takeaway for clients is a practical one: reconciliation statements and running bills exchanged during performance of a contract can and will be used against the party that generated them if a dispute later arises.

3. **A limitation plea raised for the first time in oral arguments will not be entertained.** Supreme Advertising sought, at the hearing stage of the Section 34 petition, to argue that Genus Power's counterclaims were time-barred — a plea that had never been raised before the tribunal and did not even feature in the pleadings of the Section 34 petition itself. Relying on Ramesh B. Desai v. Bipin Vadilal Mehta and a line of Delhi High Court authority, the Court held that limitation is ordinarily a mixed question of law and fact requiring pleadings, a framed issue, and evidence on the accrual of the cause of action — none of which had occurred here. A litigant cannot hold back such a plea and introduce it for the first time at the submissions stage of a Section 34 challenge; doing so would require the reviewing court to conduct a fresh factual inquiry that Section 34 does not permit.

4. **The line between correcting an award and reviewing it was carefully drawn**. Genus Power had approached the tribunal under Section 33 of the Act after the original award, and secured a reduction in the amount awarded to it under one of its own counterclaims, from roughly ₹20.19 crore to ₹18.39 crore. Supreme Advertising argued this amounted to an impermissible review by a tribunal that had become functus officio. The Court disagreed, observing that the tribunal had itself rejected several of the corrections Genus Power sought precisely because they went beyond clerical, typographical or computational error and had allowed only those corrections traceable to arithmetical slips in the original award. A change in the quantum awarded, without more, does not establish that a tribunal exceeded its Section 33 jurisdiction; what matters is whether the underlying findings on liability and entitlement were reopened, and here they were not.

Why This Matters for Your Contracts and Disputes

This judgment is a useful reminder of a few points we routinely advise on:

- If you have a live objection to how an arbitral tribunal has been constituted, it must be raised before the tribunal at the earliest opportunity, ideally with the statement of defence. Participating in the reference without protest, even where you reserve your rights informally, is likely to be read as a waiver.

- Contemporaneous documents, running bills, reconciliation statements, site correspondence, carry more weight before an arbitral tribunal than after-the-fact submissions, and a party cannot disown figures in its own bills simply because those figures are later used against it.

- A limitation defence, if available, should be pleaded and put in issue before the tribunal itself. It is unlikely to find a sympathetic audience if raised for the first time at the Section 34 stage, let alone during oral submissions.

- Section 33 applications remain a narrow, useful tool for correcting genuine computational or clerical errors in an award, but they are not a route to reopen findings, and a well-drafted Section 33 application, supported by the arithmetic already on record, is more likely to survive challenge than one that asks the tribunal to reconsider its reasoning.

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