2026:DHC:7283

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

\# **CNR No. DLHC012223932016**

\+ O.M.P. (COMM) 415/2016

CAVERA SYSTEMS (INDIA) PVT. LTD. & ANR.

....Petitioners

Through: Mr. Alok Kumar, Sr. Adv. with Mr. Varun Maheshwari, Mr. Amit Kumar Singh, Mr. Manan Soni, Ms. Kavita Bardia and Ms. Suhani Jain, Advs.

versus

TECHNOLOGY DEVELOPMENT BOARD .....Respondent

Through: Mr. Rakesh Kumar Singh and Ms. Sonali Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT(ORAL)

% 18.08.2026

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996[1] has been filed by the Petitioners challenging the Arbitral Award dated 25.05.2016 passed by the learned Sole Arbitrator.

2. Technology Development Board[2] is a Board constituted by the Government of India under provisions of the Technology Development Board Act, 1995 for assisting and disbursing loans to the companies/organizations engaged in development and

[1] "the Act", hereinafter
[2] "Respondent or TDB", hereinafter

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commercialization of indigenous technologies and adaptation of imported technologies for wider domestic applications.

3. The Petitioner No.1 approached the Respondent for financial assistance for its project titled "Development and Commercialization of VERA PON System [Fibre to the Home (FTTH) optical access system].

4. A loan agreement dated 07.11.2007 was executed between the parties and its terms were subsequently varied by a supplementary agreement dated 16.07.2010.

5. The Respondent sanctioned loan assistance to the Petitioners. It is alleged that the project was being developed in a technically sound manner but, according to the Petitioners, could not be commercially successful for reasons beyond their control.

6. Thus, the Petitioners' sought rescheduling of the repayment of the loan. In response, the Respondent agreed to rescheduling subject to submission of post-dated cheques and execution of a second supplementary agreement. The Petitioners did not accede to the said condition.

7. The Respondent thereafter, issued a Show Cause Notice dated 19.12.2012 and subsequently recalled the financial facility by Notice dated 01.02.2013. In reply to the recall notice, the Petitioners requested the Respondent to declare the project as a failure and to waive the loan with interest.

8. The disputes were thereafter referred to arbitration. Before the learned Arbitral Tribunal, the Petitioners pleaded, *inter alia*, that the project had failed and that they were entitled to waiver of the loan amount and interest under Rule 19(13) of the Technology Development Board Rules, 1996[3]. The learned Arbitral Tribunal framed, *inter alia*, the following issues:

> *"6. Whether the Respondent is entitled to the waiver of the loan amount and the interest thereon in terms of Rule 19(13) of the TDB Rules, 1996?*
> *7. Whether the Project undertaken by the Respondent was a failure?"*

9. The Arbitral Tribunal rejected the Petitioner's objection that the arbitral proceedings were premature, holding that the pendency of its request for declaration of project failure and waiver of the loan under Rule 19(13) of the TDB Rules did not constitute a condition precedent to TDB's invocation of arbitration or pursuit of its recovery claim.

10. The Tribunal further held that, under Article III of the Loan Agreement, the determination of whether the project had succeeded or failed was exclusively entrusted to the Monitoring Committee/Technology Development Board, whose decision was final and binding on Cavera.

11. Accordingly, the Tribunal treated the issues regarding project failure and consequential waiver of loan as matters beyond its jurisdiction and declined to adjudicate Issues No. 6 and 7.

[3] "TDB Rules, 1996", hereinafter

12. Since Petitioner had defaulted in repayment of the loan and had not paid any instalment despite the supplementary agreement and recall notice, the Tribunal allowed Respondent's claim for recovery of the outstanding loan amount along with interest and costs.

13. Issues No.6 and 7 were consequently decided in the negative and against the Petitioners. The claim of the Respondent for recovery was thereafter allowed. The learned Arbitral Tribunal held that a sum of Rs.5,12,68,725/- was outstanding and awarded interest @ 10% p.a. from 25.02.2013 till the date of the award and thereafter till full realization besides cost of Rs.50,000/-.

14. Learned Counsel for the Petitioners submits that the impugned award is in violation of Section 34(2)(b)(11) of the Act being against the public policy of India. It is submitted that the Respondent did not raise the plea of lack of jurisdiction at the appropriate stage and that the objection was introduced only after the final arguments.

15. Learned Counsel appearing for the Petitioners has also highlighted the statutory scheme governing jurisdictional challenge set out in Sections 4 and 16 of the Act. Section 4 and 16 are reproduced hereinbelow:

> *"4. Waiver of right to object.—A party who knows that—*
> *(a) any provision of this Part from which the parties may derogate, or*
> *(b) any requirement under the arbitration agreement,*
> *has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within*

that period of time, shall be deemed to have waived his right to so object.

16. Competence of arbitral tribunal to rule on its jurisdiction.-

16(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

16(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

16(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified."

16. It is also submitted that the Respondent actively participated in trial on Issues No.6 and 7. It cross-examined the Petitioners' witnesses on these issues and led its own evidence without seeking to reserve any right or demur to jurisdiction.

17. *Per contra*, learned Counsel for the Respondent submits that the arbitration was validly invoked under Article X Clause 10.1 of the Loan Agreement, which provided for arbitration of disputes but excluded matters for which the Agreement specifically provided a separate mechanism for determination.

18. According to learned Counsel for the Respondent, the issue of whether the project was successful or had failed was expressly entrusted to the Monitoring Committee/Board under Article III, and its decision was final and binding on petitioner. Therefore, the arbitrator had no jurisdiction to decide project failure or consequent waiver of the loan.

19. Learned Counsel for the Respondent argued that the request for waiver under Rule 19(13) of the TDB Rules did not create any enforceable right in favour of Petitioner and was only a matter for consideration by the Board after a declaration of project failure, which was not a condition precedent for initiating recovery proceedings.

20. Learned Counsel further relied on Article 9.1 of the Agreement to contend that any delay or inaction by the Board in exercising its rights would not amount to waiver of its remedies. It is also submitted that Petitioner had already been granted extensions through the Supplementary Agreement dated 16.07.2010 but failed to comply with subsequent restructuring requirements, including execution of another supplementary agreement and furnishing post-dated cheques.

21. Therefore, according to Respondent, Petitioner remained liable to repay the loan amount, and its plea of project failure could not defeat TDB's recovery claim.

22. I have heard both the parties and perused the record.

23. The principal ground raised by Petitioner for non-payment of loan amount was (i) project failure (ii) entitlement of loan waiver. However, according to the Petitioner, the tribunal refused to decide the defences of the Petitioner.

24. According to learned Counsel for the Petitioner, if the Tribunal

had no power to decide on the Petitioner's substantial defences, it could not decide the dispute effectively. In such a case Arbitral Tribunal must have recused itself from jurisdiction or at least held the arbitration to be premature till the same is decided by the TDB.

25. I am of the view that before examining this issue raised by the Petitioner, it would be relevant to go through the contractual scheme between the parties for adjudication of disputes.

26. Article 3.5 and 10.1 assume significance in this regard, the same read as follows:

> "*"3.5 The decision of the Monitoring Committee/Board regarding successful completion or failure of the project shall be final and binding on the Borrower.*
>
> *10.1 If any dispute or difference arises between the Parties hereto as to the construction, interpretation, effect and implication of any provision of this Agreement including the rights or liabilities or any claim or demand of any Party against other or in regard to any matter under these presents but excluding any matters, decisions or determination of which is expressly provided for in this Agreement, such disputes or differences shall be referred to the sole arbitration of the Chairperson, Technology Development Board or that of his nominee and the decision of such arbitrator shall be conclusive and binding on the Parties hereto. → A reference to the arbitration under this Clause shall be deemed to be submission within the meaning of the Arbitration And Conciliation Act, 1996 and the rules framed thereunder and any statutory modifications thereof for the time being in force, which shall be deemed to apply to the arbitration proceedings under this Clause."*

27. Upon a plain reading of the above, it can be made out that the Loan Agreement itself created a mechanism whereby the Monitoring Committee was empowered under Article 3.5 to determine whether the

project had succeeded or failed, and such decision was made final and binding on the borrower.

28. Further, Article 10.1 expressly excluded matters "*the decisions or determination of which is expressly provided in this Agreement*" from the scope of arbitration.

29. Thus, according to this court, the Tribunal correctly held that while it had jurisdiction to decide Respondent's claim for recovery of the loan amount, it could not assume the role of the Monitoring Board and adjudicate whether the project had failed.

30. The waiver claim under Rule 19(13) was only consequential to a prior declaration of failure and could not be invoked as a defence in the absence of such declaration.

31. According to this Court, the Tribunal did not hold that it lacked jurisdiction to decide the entire dispute or respondent's recovery claim as it held only that one particular determination i.e. whether the project had succeeded or failed was contractually reserved to the Monitoring board under Article 3.5 and excluded from arbitration by Article 10.1.

32. More importantly, the Tribunal did not merely leave Petitioner's waiver defence undecided as it held that under Rule 19(13), waiver could arise for consideration only after the project had first been declared a failure, and since there was no such declaration, the condition precedent for Petitioner's waiver defence had not arisen.

33. Thus, on the Tribunal's reasoning, there was no necessity either to recuse from the entire arbitration or to hold Respondent's recovery claim premature.

34. Moreover, the contention that the Tribunal ought to have recused itself or treated the reference as premature does not, *ipso facto*, furnish a ground for interference under Section 34.

35. Unless the Petitioner demonstrates that the Tribunal's decision to proceed with the recovery claim, while treating project failure as an excepted matter, contravenes or ignored an express contractual provision, or is an impossible interpretation of the Agreement, or otherwise results in a patent illegality going to the root of the award. This court cannot substitute its own view as to how the arbitral proceedings ought to have been conducted.

36. Moving forward, the next ground which the Petitioner has raised before this court, is that the plea of lack of jurisdiction was not raised at the appropriate stage and that the objection was introduced only after the final arguments, thus amounting to violation of principle of natural justice.

37. At this juncture, it would be relevant to refer to under section 18 and 34(2) (a)(iii) of the Act.

> *"18. Equal treatment of parties. —The parties shall be treated with equality and each party shall be given a full opportunity to present this case.*

34(2)(a)(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;"

38. It can be made out that Section 18 of the Act requires the arbitral tribunal to treat both parties equally and give each party a full opportunity to present its case, while Section 34(2)(a)(iii) provides a ground to set aside an award where a party was not given proper notice of the arbitral proceedings or was otherwise unable to present its case.

39. However, this court is of the view that these sections are not attracted because the Tribunal did not ignore Petitioner's defence of project failure and loan waiver.

40. The Tribunal examined the contractual framework under Article 3.5, Article 10.1 and Rule 19(13) and held that the question whether the project had failed was expressly reserved for determination by the Monitoring board and consequently was therefore outside the Tribunal's jurisdiction.

41. The Tribunal further held that waiver under Rule 19(13) could arise for consideration only after such a declaration of failure had been made, and since no such declaration existed, Petitioner's plea for waiver had not crystallised into an enforceable defence before the Tribunal. Thus, the defence was not left unadjudicated.

42. The contention that jurisdictional objection was raised only after final arguments and that Cavera had no opportunity to respond cannot also *ipso facto* lead to a ground of setting aside an award.

43. According to this Court, merely showing that the objection was raised late is not enough to set aside the award. Petitioner must additionally establish that the jurisdictional submission introduced a case, and that it had no meaningful opportunity to answer it, and this caused actual prejudice.

44. The law is settled that Section 34(2)(a)(iii) is attracted only when a party was genuinely prevented from presenting its case, and not merely because the Tribunal ultimately accepted a legal argument against it.

45. In facts of this case, Petitioner's own defence was based on project failure, and Rule 19(13), and the Loan Agreement. The contractual mechanism i.e. Articles 3.5 and 10.1 were therefore not some new factual material or undisclosed evidence introduced later or behind petitioner's back.

46. This Court is of the view that the aforesaid provisions were of the very agreement governing Petitioner's defence and petitioner had already placed before the Tribunal its entire case as to why the project had failed and why it was entitled to waiver.

47. The Tribunal thereafter interpreted those contractual provisions and held that the determination of project failure was reserved to the Monitoring Committee and excluded from arbitration. Thus, in view of this court, petitioner was not prevented from presenting the factual or

contractual basis of its defence.

48. Thus, it cannot be said that the Petitioner was unable to present its case and suffered demonstrable prejudice.

49. According to this court, Section 34(2)(a)(iii) is not triggered here and the impugned award does not warrant this court's interference under section 34 of the Act.

50. For all the aforesaid reasons, the present petition is dismissed.

OM PRAKASH SHUKLA, J

AUGUST 18, 2026/*gunn/ss*

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