IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMP No.27640 of 2025 in CWP No.1816 of 2018 & CMP No.27641 of 2025 in CWP No.1817 of 2018.
Reserved on: 23.04.2026
Decided on: 06.05.2026

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1. CMP No. 27640 of 2025 in CWP No.1816 of 2018

L&T Himachal Hydro Power Limited

...Petitioner/non-applicant.

versus

Government of Himachal Pradesh and another

...Applicants/Respondents

2. CMP No. 27641 of 2025 in CWP No.1817 of 2018

L&T Himachal Hydro Power Limited

...Petitioner/non-applicant.

versus

Government of Himachal Pradesh and another

...Applicants/Respondents

Coram

Hon'ble Mr.Justice Jiya Lal Bhardwaj, Judge.

Whether approved for reporting?[1] Yes.

For the petitioner(s): **Mr.Viplav Sharma, Senior Advocate with Mr.Pratham, Advocate and Mr.Dalip Kumar, Advocate.**

[1] *Whether the reporters of Local Papers may be allowed to see the judgment?*

For the respondents: **Mr.Gagan Anand, Special Senior Standing Counsel for Government of Himachal Pradesh with Mr.Ramanjit Singh, Ms.Simran Arora and Mr.Karan Singh, Advocates.**

Jiya Lal Bhardwaj, Judge

The respondents-State/applicants have preferred these applications under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act, 1996'), seeking direction to refer the parties to mediation in view of Clause 53 of the Pre-Implementation Agreement (hereinafter referred to as 'PIA') dated 15.03.2011, thereby upholding the sanctity of the Arbitration Agreement voluntarily executed between the petitioner and the respondents/applicants.

2. For the sake of convenience and for deciding both applications, the facts of CWP No.1816 of 2018, are taken.

3. Before considering the application for referring the dispute to the Arbitrator, the prayers made in the writ petition are reproduced hereunder:-

> *"a) Issue a writ of mandamus declaration or any other appropriate writ, order or direction holding the action of the respondents in failing to decide the representation dated 16.09.2017 of the petitioner seeking withdrawal from the Reoli-Dugli Hydro Electric Power Project in*

District Lahaul & Spiti, Himachal Pradesh as violation of Article 14 of the Constitution of India and;

(b) Issue a writ of mandamus or any other appropriate writ, order or direction declaring that the Reoli-Dugli Hydro Electric Power Project in District Lahaul & Spiti, Himachal Pradesh has become techno-economically unviable and consequently direct the respondents to refund the petitioner the Upfront Premium Deposit of INR 84,00,00,000/- (Rupees Eighty Four Crores) as deposited by the petitioner on 08.11.2011 along with interest at the rate of 18% per annum from the date of deposit till the date of refund.

c) To pass a writ of mandamus directing the respondents to refund the upfront premium of Rs. 84,00,00,000/- (Rupees Eighty Four Crores) so deposited by the petitioner and quashing and setting aside the impugned Annexure P-B dated 23.11.2019 issued by respondent No.2 being illegal, unjust, arbitrary and against the provisions of natural justice."

4. This Court had issued notice in the writ petition on 06.08.2018 to the respondents/applicants and the status quo as on that day was ordered to be maintained.

5. The respondents/applicants filed reply to the petition on 22.09.2018, and raised preliminary objection that the petition is not maintainable as the petitioner has not exhausted the remedy available to it, under Clause 53 of PIA, which provides that "any difference and/or disputes arising any time between the parties out of this PIA/IA or interpretation thereof shall be endeavored to be resolved by the parties hereto by mutual

negotiations, failing which, the matter shall be referred to the Arbitrator to be appointed as per provisions of the Act, however, all disputes shall be settled within the jurisdiction of Courts of Himachal Pradesh."

6. The record shows that the matter was heard by this Court on different dates and on 21.03.2024, learned senior counsel for the petitioner had concluded his arguments and at the request of learned counsel for the respondents/applicants, the matter was adjourned to 05.04.2024. Thereafter, on numerous occasions, the respondents/applicants sought time to argue the matter. However, instead of arguing the matter, the respondents/applicants filed application on 10.11.2025 seeking direction to refer the parties to arbitration, in view of Clause 53 of 'PIA' dated 15.03.2011.

7. It has been averred in the application that the petitioner is seeking refund of upfront premium of Rs.84 Crores deposited on 08.01.2011 along-with interest @18% per annum and as per order dated 21.03.2024, this Court had allowed the petitioner to amend the prayer clause, thereby permitting it to also seek the quashing of termination letter dated 23.11.2019, on

the ground that the same is illegal, arbitrary and violative of the principles of natural justice.

8. It has further been averred that in the year 2008, the respondents/applicants had invited bids for setting up of 420 MW Hydro Electric Power Plant in District Lahaul & Spiti, Himachal Pradesh on BOOT basis vide advertisement dated 08/09.06.2008 and after careful scrutiny of the documents, the same was allotted to the petitioner. Thereafter, 'PIA' was entered into between the parties on 15.03.2011. As per terms of the 'PIA', the petitioner was permitted to incorporate a Special Purpose Vehicle having its registered office in the State of Himachal Pradesh for the implementation of Reoli-Dugli HEP Project and thereafter tripartite agreement dated 18.10.2011 was executed on 18.10.2011.

9. On 11.03.2014, the petitioner had submitted Detailed Project Report (DPR). As per Clause 3(6) of PIA, the petitioner was required to sign the Implementation Agreement within a period of two months after submission of DPR. On 05.09.2016, the respondents/applicants informed the petitioner that since the policy guidelines stand amended vide Notification dated 17.08.2016, last and final opportunity was granted to it to enter

into Implementation Agreement within a period of two months. On 10.10.2016, the petitioner requested the respondents/applicants to execute a Power Purchase Agreement at tariff determined as per Central Regulatory Electricity Commission. The petitioner was called for hearing on 18.11.2016 and subsequently after a period of almost 10 months from the meeting, the petitioner sent a communication dated 16.09.2017 to the respondents/applicants, seeking withdrawal from the project in terms of Clause 15 of 'PIA'. On 18.09.2017, the DPR submitted by the petitioner was modified and submitted to the CEA for Techno Economic Clearance, which is pending till date.

10. On 20.06.2018, another meeting was held between the parties, wherein it was conveyed by the petitioner that it is facing a number of challenges in implementing the project including increase in tariff, in accessibility to the project site, transmission issues, environmental floor release condition, goods and service tax, land acquisition etc. and sought withdrawal from the project. Accordingly, on 23.11.2019, the project was cancelled by the respondents/applicants and was re-allotted to SJVN Limited for its execution. Consequent upon the decision taken by the respondents/applicants, the letter of allotment dated

30.10.2009 was cancelled and upfront premium of Rs.84 Crores stood forfeited and reverted back to the respondents-State/applicants.

11. In the application, it has also been averred that the instant proceedings instituted by the petitioner are unlawful, gratuitous and not maintainable in law, especially in view of Clause 53 of the 'PIA' dated 15.03.2011. Section 8 of the Act mandates that, if any, dispute is governed by an arbitration agreement, then the Court, if the party so requests, to such effect, shall refer the parties to arbitration. In the present case, the respondents/applicants have raised a preliminary objection regarding its maintainability. This objection was grounded in view of the existence of a binding arbitration agreement under Clause 53 of 'PIA' dated 15.03.2011 and the disputes between the parties fell within the ambit of Arbitration Agreement, thereby rendering the writ petition not maintainable. Once the respondents/applicants have taken an objection regarding the maintainability of the writ petition on the ground of existence of a binding arbitration clause, such an objection must be adjudicated at the threshold, before examining the merits of the case. The dispute raised by the petitioner is purely contractual in nature and

entirely covered by the terms of the 'PIA' and there is a dispute regarding interpretation of Clause 15 and determination as to which party is in breach of contractual obligations. Such adjudication necessarily entails leading evidence, examination of technical materials, commercial considerations, performance records and financial implications etc.

12. The petitioner filed reply to the application and opposed the application on the grounds that the same is mis-conceived in law and on facts, is grossly belated and is an attempt to divest this Court of jurisdiction after it has been consciously and repeatedly exercising jurisdiction in these very proceedings. This Court has already exercised its writ jurisdiction at multiple stages and such jurisdiction cannot now be divested at the behest of the State, once the matter is in seisin. The nature of dispute is squarely concerns the arbitrary and unconstitutional forfeiture and withholding of public money by the State, which raised issues of public law rights under Articles 14, 19, 21, 265 and 300A of the Constitution of India and thus amenable to writ jurisdiction, notwithstanding the presence of an arbitration clause. The writ petition seeking refund of amount wrongly retained by the State instrumentalities are expressly held to be maintainable

even where arbitration clauses exist. The invocation of Section 8 of the Act in the year 2025 is ex-facie belated, after the respondents have filed reply, the petitioner's rejoinder has been filed, interim and clarificatory orders have been passed and even amendment of the writ petition has been allowed. It has further been averred that Section 8(1) of the Act mandates that an application for reference to arbitration must be filed 'not later than the date of submitting his first statement on the substance of the dispute'. The respondents/applicants have filed detailed reply/counter affidavit on 20.09.2018, which constitutes their first statement on the substance of the dispute. Having submitted to the jurisdiction of this Court and having participated in the proceedings for nearly seven years, the respondents/applicants are now statutorily barred from invoking Section 8 of the Act, at this belated stage.

13. The legislative purpose of the 2015 amendment was to eliminate dilatory tactics and ensure that a party wishing to rely on an arbitration clause must elect that remedy at the very first opportunity. The respondents/applicants' seven years delay is against this mandate. It has been averred that under the un-amended Section 8 of the Act, the Hon'ble Supreme Court in

Booz Allen and Hamilton Inc. vs. SBI Home Finance Ltd. and others (2011) 5 SCC 532, has held that though Section 8 of the Act, did not prescribe a rigid period of limitation, the scheme of the Act and the provisions of the Section clearly indicate that the application thereunder should be made at the earliest. Further, the respondents/applicants have not complied with the provisions of Section 8(2) of the Act, since the respondents/applicants have neither filed an original arbitration agreement nor have placed on record any duly certified copy thereof. It has been averred that this Court vide order dated 06.08.2018 had passed the status quo order, recognizing the need to protect the petitioner's right pending adjudication. Vide order dated 18.09.2019, this Court had allowed the applications filed by the respondents/applicants, seeking clarification/vacation of status quo only to the limited extent of permitting the State to proceed with re-allotment and thereafter, the petitioner had been constrained to move an application bearing CMP No.14610 of 2019, when the respondents/applicants were terminating the PIA forfeiting the upfront premium vide letter dated 23.11.2019 and this Court vide order dated 10.12.2019, clarified that forfeiture of Rs.84 Crores could not be effected during the pendency of the

writ petition and the question of forfeiture/refund would abide by the final outcome of this writ petition. Thereafter, vide order dated 11.03.2020, this Court had allowed the petitioner's amendment application incorporating an additional prayer seeking challenge to impugned termination. The application filed after seven years of the writ petition is impermissible and abusive attempt to oust the constitutional jurisdiction of this Court after they have submitted to it and obtained orders in their favour.

14. The respondents/applicants filed rejoinder to the reply and controverted the submissions.

15. I have heard learned counsel for the parties and also perused the record carefully.

16. Before adverting to the merits of the case, it would be relevant to reproduce the provisions of Section 8 of the Act after its amendment, which read as under:-

> "***8. Power to refer parties to arbitration where there is an arbitration agreement*** –
>
> *(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute,*

then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

[Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application alongwith a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.]

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."

17. A perusal of Section 8 of the Act, clearly provides that if a party to the Arbitration Agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, to

seek reference of the parties to arbitration. Admittedly, in the present case, the writ petition was instituted before this Court on 03.08.2018 and this Court had issued the notice to the respondents/applicants on 06.08.2018 and thereafter various orders have been passed by this Court as mentioned above. No doubt, when the written statement/reply was filed by the respondents, an objection has been taken regarding the maintainability of the writ petition on the plea that the petitioner has not exhausted the remedy available to it under Clause 53 of the 'PIA', but no pro-active steps were taken by the respondents/applicants to file an application under Section 8 of the Act, before this Court. When the respondents/applicants had passed the office order dated 23.11.2019, to forfeit the upfront premium amount of Rs.84 Crores deposited by the petitioner, without any liability of the Government, subject to the decision of this Court, no steps were taken even thereafter also to file an application for referring the dispute. Thereafter, this Court had heard the matter on 21.03.2024 and the senior counsel for the petitioner had concluded his arguments and no arguments were advanced by the respondents/applicants on the plea that the learned Advocate General is not available on account of pre-

occupation in some other Court and the matter was adjourned to 05.04.2024. When the matter was listed before the Court on 05.04.2024, a prayer was made to file reply to the amended petition and the Court had granted two weeks' time to do the needful, but had specifically observed that the matter came to be adjourned at the behest of respondents-State/applicants. It was observed that there appears to be no reason to grant further time, but, by way of indulgence, the matter is adjourned to 08.05.2025, on which date, the matter shall be heard finally and no request for adjournment shall be entertained. On 08.05.2024, on the vehement request of learned Advocate General four weeks' time was granted to place on record copy of DPR in electronic form and the matter was ordered to be listed on 10.06.2024. Thereafter, the matter was adjourned on various dates i.e. 13.06.2024, 17.07.2024, 24.08.2024, 12.12.2024 and 04.03.2025. The application under Section 8 of the Act for referring the parties to arbitration came to be filed by the respondents/applicants on 10.11.2025.

18. Learned counsel for the respondents/applicants vehemently argued that once the respondents had specifically pleaded in the written statement/reply filed to the writ petition

that the petition is not maintainable, since the petitioner has not exhausted the remedy available to it, under Clause 53 of the 'PIA', coupled with the fact that this Court cannot look into the issue, which is purely technical in nature, it cannot be construed that there is delay in filing the application for referring the matter to arbitration. To buttress his submissions, he placed reliance upon the decisions of the Hon'ble Supreme Court in ***Morgan Securities & Credit (P) Ltd.*** vs. ***Modi Rubber Ltd., (2006) 12 SCC 642***, ***Booz Allen and Hamilton Inc. vs. SBI Home Finance Ltd. and others (2011) 5 SCC 532, Surya Pharmaceuticals Ltd. vs. State of India, 2025 SCC Online Bom 1133, Pratap Singh vs. Bhagwan Singh, 2025 SCC Online HP 1121, M/s Sawariya Filling Station vs. Union of India and others, 2018 SCC Online P&H 7772 and Triom Hospitality, through its Partner, Mr. Sanjay Sharma vs. J.S. Hospitality Services Pvt. Ltd., 2025 SCC Online Del 8647,*** to contend that once the objection regarding jurisdiction has been taken and the provisions of Section 8 of the Act do not prescribe any time limit for filing an application to seek the matter referred and only states that the objection under Section 8 of the Act, should be taken by the party not later than the date of

submitting of the first statement of the substance of dispute. In the case of respondents/applicants, they had specifically pleaded in the written statement/reply to the writ petition filed by them at the first statement on the substance of the dispute that this Court had no jurisdiction and the petition be dismissed.

19. Learned counsel placed much reliance on the judgment passed by this Court in ***CMPMO No.322 of 2024***, titled, ***Pratap Singh*** vs. ***Bhagwan Singh***, decided on 1st April, 2025. He argued that this Court has categorically held that normally with respect to a suit, the first statement on the substance of the dispute would be the written statement and once in the written statement, it is brought to the notice of the Court that there exists an arbitration agreement between the parties, which embraces the subject matter of the suit, there would be complete compliance with the mandate of the law and the Court would be obliged to refer the parties to arbitration. The absence of any formal request for referring the dispute to arbitration makes no difference.

20. I have gone through the judgments passed by the Hon'ble Apex Court and other High Courts referred to by the learned counsel. In ***Morgan Securities & Credit (P) Ltd.*** case

(supra)**,** the Hon'ble Supreme Court had the occasion to deal with the judicial authority and held that in ordinary parlance 'judicial authority', would comprehend a Court defined under the Act, but also Courts, which would either be a Civil Court or other authorities, which perform judicial functions or quasi-judicial functions.

21. In another judgment ***Booz Allen's*** case (supra) **,** the Hon'ble Supreme Court has held that Section 8 of the Act does not prescribe any time limit for filing an application, but only states that the application under Section 8 of the Act should be filed before submission of the first statement of dispute. In the present case, the application has not been filed before submission of the first statement of dispute. Further, it has been held that if a party who willingly participates in the proceedings in the suit and subjects himself to the jurisdiction of the Court cannot subsequently turn around and say that the parties should be referred to arbitration in view of the existence of an arbitration agreement. The relevant para 29 of the judgment is reproduced as under:-

> *"29. Though section 8 does not prescribe any time limit for filing an application under that section, and only states that the application under Section 8 of the Act should be*

> *filed before submission of the first statement on the substance of the dispute, the scheme of the Act and the provisions of the section clearly indicate that the application thereunder should be made at the earliest. Obviously, a party who willingly participates in the proceedings in the suit and subjects himself to the jurisdiction of the court cannot subsequently turn round and say that the parties should be referred to arbitration in view of the existence of an arbitration agreement. Whether a party has waived his right to seek arbitration and subjected himself to the jurisdiction of the court, depends upon the conduct of such party in the suit."*

22. In the present case, no doubt, the respondents/applicants have taken objection in the written statement/reply to the writ petition regarding maintainability, since the petitioner has not exhausted remedy available under Clause 53 of the 'PIA', but did not take any proactive steps for moving an application under Section 8 of the Act for referring the dispute for arbitration. The mandate of law as propounded is to apply to refer the matter to arbitration not later than the date of submitting the first statement on the substance of the dispute by the party. The other judgments cited by the learned counsel for the respondents/applicants are also not attracted in the peculiar facts and circumstances of the present case, especially when the

respondents/applicants were submitting before this Court and thus, they have waived off their right to apply for seeking reference to arbitration. The record shows that at one point of time, matter was argued on behalf of the petitioners and the respondents/applicants had sought time to make submissions on their behalf and thus, the application filed at this belated stage, cannot be allowed and the matter cannot be referred to arbitration. The plea taken that an objection was taken in the reply to the writ petition does not satisfy the mandate of law. The party requires to apply not later than the date of submitting the first statement of substance of the dispute. If the party has not applied, it has waived off the right to seek reference of dispute to arbitration.

23. So far as the judgment passed by this Court in ***Pratap Singh's*** **case (supra)** is concerned, no doubt, the Court has noticed that once the plea has been taken in the first statement on the substance of dispute in the written statement that there exists an arbitration agreement between the parties, which embraces the subject matter of the suit, there would be complete compliance with the mandate of the law and the Court would be obliged to refer the parties to arbitration. But the

judgment in ***Booz Allen's*** case (supra), passed by the Hon'ble Supreme Court was not brought to its notice, wherein it has been held that though there is no time-limit to file an application under Section 8 of the Act, but it should be filed before submitting the first statement on the substance of the dispute and further, once the party willingly participates in the proceedings in the suit and subjects himself to the jurisdiction of the Court cannot subsequently turn around and say that the parties should be referred to arbitration. Furthermore, the Court has considered the old provisions of Act and not the amended provisions of Section 8 of the Act. In the present case, the respondents/applicants had submitted to the jurisdiction of the Court and reply to the writ petition was filed on 22.09.2018 and application to seek to refer the dispute on 10.11.2025 after more than seven years of filing the reply to the writ petition.

24. There is no murmur in the entire application that why did the respondents/applicants earlier not filed the application to seek reference of the dispute. Once this Court was not brought to the judgment of the Hon'ble Supreme Court, which is binding on this Court, the law laid down by a Co-ordinate Bench of this Court is of no help to the respondents/applicants.

25. Learned senior counsel for the petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in ***SCG Contracts (India) Private Limited*** vs. ***K.S. Chamankar Infrastructure Private Limited and others, (2019) 12 SCC 210*** to contend that since the respondents/applicants have not filed the application within the time of submitting of the first statement on the substance of the dispute, the same cannot be entertained at this belated stage of more than seven years of filing the first statement on the substance of the dispute. He also placed heavy reliance on the judgment passed by the Delhi High Court in ***SSIPL Lifestyle Pvt. Ltd.*** vs. ***Vama Apparels India (P.) Ltd. and another 2020 SCC Online Del 1667*** to contend that since the application has not been filed at the time of filing the reply to the petition, the same cannot be entertained at this stage. He argued that that though there is no limitation period prescribed for filing an application under Section 8 of the Act, but it has to be filed not later than the date of submitting the statement on the substance of the dispute. Further, keeping in view the amendment carried out in the Act in the year 2015, the legislature has now made a conscious change by using the language that if a party to the arbitration agreement so applies

'not later than the date of submission of his first statement'. The use of the word date itself signifies precision and the application has to be filed not later than submitting the first statement on the substance. The purpose behind incorporating the amendment was to tighten the time limit within which arbitration proceedings should commence and conclude. Earlier, under Section 9 of the Act, there was no limitation fixed for commencement for invoking arbitration after seeking interim relief, however, in the amended provisions, within 90 days after the interim order is passed the arbitral proceedings have to be commenced.

26. Learned counsel has also laid emphasis on the judgment in ***Booz Allen & Hamilton Inc's case*** (supra) to contend that once the party who willingly participates in the proceedings in the suit and subjects himself to the jurisdiction of the Court cannot subsequently turn around and say that the parties should be referred to arbitration in view of the existence of an arbitration agreement.

27. Learned counsel also placed reliance on the judgment of the Hon'ble Supreme Court in ***Union of India and others*** vs. ***Tantia Construction Private Ltd. (2011) 5 SCC 697*** to contend that the petition on account of arbitration clause cannot

be construed an absolute power to the invocation of the writ jurisdiction by the High Court.

28. As already noticed above, after the amendment carried out in the Act in the year 2015, if the party applies not later than date of submitting the first statement on the substance of the dispute, the Court has to refer the matter for arbitration in view of the arbitration agreement. However, in the present case, the application has been filed after seven years of submitting the first statement of substance. No doubt, the plea has been taken in the reply to the writ petition, but the same is not enough, to get the matter referred for arbitration. Not only this, there is no plea ever raised before the Court to refer the matter to arbitration and thus, once the respondents/applicants have submitted before the Court and did not file an application at the time of submitting reply to the writ petition, which would be first statement on the substances of dispute, the plea raised at this belated stage cannot be countenanced and thus, the same is rejected.

29. Furthermore, the judgments cited above by the learned counsel have culled out the principles that the party has to take proactive steps for institution of an application to refer the dispute to arbitration not later than the date of submitting his first

statement on the substance of the dispute and once the respondents/applicants have willingly participated in the proceedings and subjected to the jurisdiction of the Court, cannot take plea at this belated stage to refer the matter to arbitration in view of the arbitration clause in the agreement. There is a purpose to engraft Section 8 of the Act by specifically mentioning to apply not later than the date of submitting first statement on the substance of the dispute. If the objection is taken in the reply/written-statement, but no application is filed to seek reference of the dispute, the party once participated/submitted to jurisdiction has waived off its right to apply later to refer the dispute. In case any other view is taken, it would result to rewrite the provision of Section 8 of the Act. The Courts have to give literal meaning to the provisions of the Act. Once the language of Section 8 of the Act clearly mentions that if the party applies not later than the date of submitting his first statement on the substance of the dispute, the Court cannot interpret that even if the objection is taken in the reply/written statement, it means the party had sought reference of the dispute. It is settled law that the Courts cannot re-write the provisions of the Act and reference, in this regard is made to the judgment of the Hon'ble

Supreme Court in ***Manmohan Das Shah and others vs. Bishun Das AIR 1967 SC 643***. The relevant paragraph of the judgment reads as under:-

> *6……..The ordinary rule of construction is that a provision of a statute must be construed in accordance with the language used therein unless there are compelling reasons, such as, where a literal construction would reduce the provision to absurdity or prevent the manifest intention of the legislature from being carried out. There is no reason why the word "or" should be construed otherwise than in its ordinary meaning. If the construction suggested by Mr. Desai were to be accepted and the word "or" were to be construed as meaning "and" it would mean that the construction should not only be such as materially alters the accommodation but is also such that it would substantially diminish its value. Such an interpretation is not warranted for the simple reason that there may conceivably be material alterations which do not, however, diminish the value of the accommodation and on the other hand there may equally conceivably be alterations which are not material alterations but nevertheless would substantially diminish the value of the premises. It seems to us that the legislature intended to provide for both the contingencies and where one or the other exists it was intended to furnish a ground to the landlord to sue his tenant without having to obtain the previous permission of the District Magistrate. The*

construction of clause (c) placed by the High Court is therefore not correct."

30. Learned senior counsel for the petitioner has also placed reliance on the judgment of the Hon'ble Supreme Court in ***Sukanya Holdings (P) Ltd.*** vs. ***Jayesh H. Pandya and another (2003) 5 SCC 531*** to contend that since the respondents have not filed the original arbitration agreement or duly certified copy thereof with the application, the matter could not be referred. Since the respondents have placed on record the copy of PIA along-with the rejoinder, the said objection taken by the petitioner, is rejected.

31. Resultantly, I do not find any merit in these applications and the same are accordingly dismissed.

32. List CWP Nos.1816 and 1817 of 2018 on 28.05.2026.

(**Jiya Lal Bhardwaj**)
Judge

6th May, 2026
(naveen)