2026:DHC:4177

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

% ***Judgment reserved on: 02.02.2026***
Judgment pronounced on: 12.05.2026

\+ O.M.P. (COMM) 502/2024 & I.A. 46323/2024 (Stay)

EUREKA FORBES LIMITED .....Petitioner
Through: Dr. Amit George, Mr. Shivankar Sharma and Mr. Ayush Singh, Advocates.

versus

INDIAN RAILWAY CATERING AND TOURISM CORPORATION .....Respondent
Through: Mr. Shreyans Jain, Ms. Harshita Singh and Mr. Harshit Bhardawaj, Advocates.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition has been instituted under Section 34 of the **Arbitration and Conciliation Act, 1996**[1], seeking to set aside the **Order dated 21.08.2024**[2] and **Order dated 21.10.2024**[3] [*collectively referred to as* **"Impugned Orders"** *hereinafter*] passed by the learned Sole Arbitrator in arbitration proceedings bearing Reference No. DIAC/7248/11-23 titled *"Indian Railway Catering and Tourism*

[1] A&C Act
[2] Impugned Order I
[3] Impugned Order II

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Corporation v. Eureka Forbes Limited".

2. It is apposite to note that **Eureka Forbes Limited**[4], the Petitioner herein, was arrayed as the Respondent before the learned Arbitral Tribunal, whereas **Indian Railway Catering and Tourism Corporation**[5], the Respondent herein, was the Claimant before the learned Arbitral Tribunal. However, for the sake of convenience and clarity, the parties shall hereinafter be referred to in the same manner and rank as assigned to them in the present Petition.

3. By way of the Impugned Order I, the learned Arbitrator proceeded against the Petitioner *ex parte* and, as a consequence thereof, rejected the counterclaim preferred by the Petitioner, which is stated to be amounting to Rs. 2,53,13,571/-. The relevant portion of the Impugned Order I, which forms the ground for assailing it, reads as follows:

> "In the circumstances, the Respondent is proceeded *Ex parte*.. Hence, the Counter Claim is rejected."

4. Subsequently, an application dated 28.08.2024 was preferred by the Petitioner before the learned Arbitrator, seeking the setting aside of the aforementioned Impugned Order I.

5. By way of Impugned Order II, the learned Arbitrator dismissed the Petitioner's aforesaid application and declined the Petitioner's prayer seeking restoration/revival of its counterclaim. However, insofar as the Respondent's claims were concerned, the learned Arbitrator observed that the arbitral proceedings had not been formally closed and that the Statement of Defence filed by the Petitioner

[4] Petitioner
[5] Respondent

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continued to remain on record. The learned Arbitrator further noted that, notwithstanding the earlier order proceeding *ex parte* against the Petitioner, the Petitioner would nevertheless remain entitled to participate in the ongoing arbitral proceedings.

BRIEF FACTS:

6. It is stated that the Petitioner is a portfolio company of Advent International, a global private equity firm. The Petitioner operates in the health and hygiene segment and is engaged in the manufacture and distribution of products such as water purifiers, vacuum cleaners, and air purifiers. The Respondent, on the other hand, is a Public Sector Enterprise engaged, *inter alia*, in providing services and facilities associated with railway operations.

7. The Respondent invited bids through its **Model Bid Document dated 20.06.2015**[6] for the management, operation, and maintenance of **Water Vending Machines**[7] and for the sale of potable drinking water at railway stations across designated clusters. Pursuant thereto, the Petitioner participated in the bidding process and submitted its financial bids in respect of two clusters, *namely*, **Cluster No. 02 (East Zone - Samastipur Division)**[8] and **Cluster No. 06 (South Zone)**[9].

8. Upon evaluation of the bids submitted by the participating entities, the Respondent issued a **Letter of Award dated 04.09.2015**[10] in favour of the Petitioner in respect of Cluster 02, awarding the licence for the operation and management of WVMs at an annual licence fee of Rs. 50,88,000/-, exclusive of applicable taxes.

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[6] Bid Document
[7] WVM
[8] Cluster 02
[9] Cluster 06
[10] LOA

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9. Pursuant to the aforesaid LOA, the parties entered into a **Licence Agreement dated 14.09.2016**[11], whereby the licence was granted to the Petitioner for an initial tenure of five years, with a provision for extension in accordance with the terms and conditions stipulated under the License Agreement.

10. Subsequently, disputes arose between the parties, primarily concerning the alleged non-payment of certain outstanding licence fees payable under the Licence Agreement.

11. In view of the disputes that had arisen, the Respondent, by communication dated 20.02.2023, invoked the arbitration clause and proposed the appointment of an Arbitrator for the adjudication of the disputes between the parties.

12. As the parties failed to arrive at a consensus regarding the appointment of an Arbitrator in terms of the arbitration agreement, the Respondent approached this Court by filing a Petition under Section 11 of the A&C Act, seeking the appointment of an Arbitrator.

13. By way of an Order dated 23.11.2023 passed in ARB.P. No. 521/2023, this Court appointed Mr. B. B. Chaudhary, retired District and Sessions Judge, as the learned Sole Arbitrator to adjudicate upon the disputes that had arisen between the parties.

14. Thereafter, the Respondent filed its Statement of Claim before the learned Arbitrator on 06.05.2024. The Petitioner subsequently filed its Statement of Defence on 24.06.2024 in response to the claims raised by the Respondent herein.

15. On 03.07.2024, the learned Arbitrator recorded the appearance of the counsel appearing on behalf of the Petitioner, Ms. Saumya

[11] Licence Agreement



Bajpai. During the course of the said proceeding, the learned Arbitrator observed, *inter alia*, that in the event the Petitioner proposed to file a counterclaim, the same could be filed, and that the Respondent would be at liberty to file its reply to the counterclaim and a rejoinder to the Statement of Defence before the next date of hearing.

16. It is an undisputed position on record that, pursuant to the liberty granted by the learned Arbitrator, the Petitioner herein filed its counterclaim on 10.07.2024.

17. The matter was thereafter listed for hearing on 31.07.2024. On the said date, no one appeared on behalf of the Petitioner. As recorded in the order passed on the aforesaid date, the Deputy Counsel of the **Delhi International Arbitration Centre**[12] contacted the counsel who had previously been appearing on behalf of the Petitioner. However, the said counsel informed that she was no longer representing the Petitioner in the arbitral proceedings. The order further records that the learned counsel for the Respondent herein had earlier addressed an email seeking two weeks' time to file its reply to the counterclaim and rejoinder to the Statement of Defence, which request was reiterated on that date. In view of the aforesaid circumstances, the proceedings were adjourned to 21.08.2024, with directions that the order be circulated to the parties as well as their respective counsel, including the Petitioner at its official email addresses.

18. On the next date of hearing, *i.e.*, 21.08.2024, Impugned Order I was passed, whereby the learned Arbitrator recorded that the Order dated 31.07.2024 had been circulated to the Petitioner at multiple

[12] DIAC

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email addresses, and that the emails sent to *animesh@eurekaforbes.com* and *compliance@eurekaforbes.com* had not bounced back. In the absence of any appearance on behalf of the Petitioner on the said date as well, the learned Arbitrator proceeded *ex parte* against the Petitioner. Simultaneously, the learned Arbitrator rejected the counterclaim filed by the Petitioner. The learned Arbitrator further directed that upon the Respondent herein filing an affidavit regarding the claim for interest, the DIAC would proceed to assess the arbitral fees and other charges and call upon the parties to deposit their respective shares thereof.

19. Thereafter, on 28.08.2024, the Petitioner filed an application before the learned Arbitrator seeking recall of the Impugned Order I and restoration of its counterclaim. In the said application, the Petitioner contended, *inter alia*, that its non-appearance on the relevant dates was neither deliberate nor intentional and occurred due to circumstances beyond its control.

20. The Respondent herein thereafter filed its reply dated 24.09.2024 opposing the said application and contesting the reliefs sought by the Petitioner.

21. By way of the subsequent Order on 21.10.2024, being Impugned Order II, the learned Arbitrator observed that the arbitral proceedings had not been formally closed and that the Statement of Defence filed by the Petitioner continued to remain on record. The learned Arbitrator further observed that, notwithstanding the fact that the Petitioner had earlier been proceeded against *ex parte*, the Petitioner would still be entitled to participate in the ongoing arbitral proceedings. However, the learned Arbitrator ultimately dismissed the





Petitioner's application seeking recall of the Impugned Order I on merit and also declined the Petitioner's prayer for restoration/revival of its counterclaim.

22. Aggrieved by the Impugned Order I, whereby the Petitioner's counterclaim was rejected and the proceedings were directed to continue *ex parte*, as well as the subsequent Impugned Order II dismissing the Petitioner's application for recall of the said order, the Petitioner has approached this Court by way of the present Petition under Section 34 of the A&C Act.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

23. Learned counsel for the Petitioner would submit that the Impugned Order I, whereby the Petitioner's counterclaim came to be rejected by the learned Arbitrator, constitutes an Interim Award within the meaning of Sections 2(1)(c) and 31(6) of the A&C Act. It would be contended that the rejection of the counterclaim amounts to a conclusive determination of the Petitioner's substantive claim raised before the learned Arbitral Tribunal. Consequently, the said determination would attain finality in respect of the counterclaim and would therefore bear the character of an Interim Award, rendering the same amenable to challenge under Section 34 of the A&C Act.

24. In support of the aforesaid contention, learned counsel for the Petitioner would place reliance upon the judgment of the Hon'ble Supreme Court in ***IFFCO Ltd. v. Bhadra Products***[13], to contend that where an arbitral tribunal conclusively determines an issue during the course of arbitral proceedings, such determination would partake the

[13] (2018) 2 SCC 534





character of an Interim Award. It would thus be submitted that any order of the arbitral tribunal which finally decides a substantive issue or claim between the parties would fall within the ambit of an "award" and would therefore be susceptible to challenge under Section 34 of the A&C Act.

25. Learned counsel for the Petitioner would further submit that the rejection of the counterclaim by way of the Impugned Order I is wholly unreasoned and appears to rest solely upon the non-appearance of the Petitioner's counsel on the said date of hearing.

26. It would be contended that the learned Arbitrator failed to undertake any examination of the pleadings, documents, or materials placed on record in support of the counterclaim, thereby resulting in the Petitioner's substantive claim being rejected without any adjudication on the merits. Such a course of action, according to the Petitioner, would be contrary to the statutory scheme governing arbitral proceedings, particularly the mandate of Sections 18, 23, and 25 of the A&C Act, which require the learned arbitral tribunal to ensure equal treatment of the parties, afford them a full opportunity to present their case, and adopt an appropriate procedural course even in the event of non-appearance of a party.

27. In order to bolster the aforesaid submissions, learned counsel for the Petitioner would further point out several shortcomings, inconsistencies, and internal contradictions in the subsequent Impugned Order II, whereby the Petitioner's application seeking recall of the *ex parte* order and restoration of the counterclaim came to be dismissed.

28. Learned counsel for the Petitioner would also place reliance



upon the judgment of this Court in ***Mittal Pigments (P) Ltd. v. Gail Gas Ltd***[14] to submit that an arbitral tribunal, before proceeding *ex parte* against a party, is required to examine whether the absence of the concerned party is attributable to sufficient cause and to adopt a fair and reasonable procedural course consistent with the Principles of Natural Justice. Accordingly, it would be submitted that the present case falls foul of the legal principles enunciated in the aforesaid judgment, inasmuch as the Impugned Order I came to be passed without issuance of any pre-emptory notice indicating that the proceedings would be conducted *ex parte* in the event of continued non-appearance.

29. Further reliance would be placed by the learned counsel for the Petitioner upon the judgment of this Court in ***Cinevistaas Ltd. v. Prasar Bharti***[15] to contend that an order which results in the final determination of a claim or counterclaim during the course of arbitral proceedings would fall within the category of an Interim Award. On the strength of the said decision, it would be asserted that the Impugned Order I, having resulted in the rejection of the Petitioner's counterclaim, squarely falls within the ambit of an Interim Award and is therefore amenable to challenge under Section 34 of the A&C Act.

30. Learned counsel for the Petitioner would also submit that the learned Arbitrator committed an error in holding that the learned Arbitral Tribunal lacked jurisdiction to recall an *ex parte* order. It would be contended that such a view overlooks the observations of the Hon'ble Supreme Court in ***Srei Infrastructure Finance Ltd. v. Tuff***

[14] (2023) SCC Online Del 977
[15] 2019 SCC OnLine Del 7071

Drilling (P) Ltd.[16], wherein it has been held that an arbitral tribunal possesses the inherent power to recall an order proceeding *ex parte* against a party, particularly where sufficient cause for the absence of the party is demonstrated.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

31. ***Per contra***, learned counsel appearing on behalf of the Respondent would contest the submissions advanced on behalf of the Petitioner and would contend that the Impugned Orders passed by the learned Arbitrator do not suffer from any legal infirmity warranting interference by this Court. It would be submitted that the orders impugned in the present proceedings were passed in accordance with the procedure governing arbitral proceedings and within the jurisdiction vested in the learned Arbitral Tribunal.

32. Learned counsel for the Respondent would further submit that the Impugned Orders are a direct consequence of the conduct of the Petitioner, both during the course of the arbitral proceedings as well as prior thereto. It would be contended that, despite being afforded multiple opportunities to participate in the arbitral proceedings and to pursue its defence and counterclaim, the Petitioner failed to avail itself of the same. According to the Respondent, the situation that ultimately culminated in the passing of the Impugned Orders arose solely on account of the Petitioner's own omissions and lack of diligence in prosecuting the proceedings before the learned Arbitrator.

33. Learned counsel for the Respondent would also submit that due and sufficient notice of the arbitral proceedings and the dates of

[16] (2018) 11 SCC 470



hearing had been duly served upon the Petitioner, and that the Petitioner was fully aware, at all material times, of the hearings scheduled before the learned Arbitrator. It would be contended that the Petitioner failed to demonstrate any sufficient or justifiable cause for its non-appearance on the dates fixed for hearing, *i.e.*, on 31.07.2024 and 21.08.2024.

34. It would further be urged that the explanation subsequently sought to be advanced by the Petitioner for its absence does not merit acceptance. Learned counsel for the Respondent would also seek to draw the attention of this Court to certain averments made by the Petitioner, which, according to the Respondent, are incorrect and misleading.

35. Learned counsel appearing on behalf of the Respondent would further contend that there exists no statutory provision under the A&C Act mandating the issuance of a pre-emptory notice before an arbitral tribunal proceeds *ex parte* against a party. It would be submitted that where a party, despite due notice, fails to appear before the learned tribunal without demonstrating sufficient cause, the learned arbitral tribunal is well within its jurisdiction to proceed with the matter in the absence of such party. In the present case, it would be contended that the learned Arbitrator acted within the bounds of the powers conferred under the A&C Act and that no violation of the Principles of Natural Justice can be alleged.

36. Learned counsel for the Respondent would also contend that the present Petition is not maintainable under Section 34 of the A&C Act. It would be submitted that the Impugned Orders, insofar as they direct that the Petitioner be proceeded against *ex parte* in the arbitral

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proceedings, are purely procedural in nature and do not amount to an arbitral award or Interim Award within the meaning of the A&C Act. Consequently, it would be argued that such procedural directions are not amenable to challenge under Section 34 of the A&C Act and the present petition is therefore liable to be dismissed as not maintainable.

ANALYSIS:

37. This Court has heard the learned counsel appearing on behalf of the parties and has carefully perused the paperbook as well as the other material documents placed on record.

38. At the outset, this Court finds it apposite to reproduce the relevant findings of the learned Arbitrator as recorded in both Impugned Orders:

Order dated 21.08.2024 (Impugned Order I)

> "The Deputy Counsel of DIAC has submitted that order passed on the previous date, was sent to the Counsel for the parties as well as to the Respondent at the email ids as available. Following emails, sent to respondent have bounced back:-
>
> dshinde@eurekaforbes.co.in,
> shashibir@eurekaforbes.com,
> watersolutions@eurekaforbes.com
>
> Emails attached with the order sent at the following email ids have not bounced back:-
>
> animesh@eurekaforbes.com
> compliance@eurekaforbes.com
>
> The previous order dated 31.07.2024 has been served upon the Respondent and none has appeared for it. On the last date, it was informed that the counsel for the Respondent had intimated that he was no more counsel for the Respondent. On the last date also the Respondent was not present.
>
> In the circumstances, the Respondent is proceeded Ex parte. Hence, the Counter Claim is rejected.
>
> The Counsel for the Claimant has submitted that it will take few more days for the Claimant to assess the amount of interest in



respect to the Claim amount and that Claimant will file an affidavit in respect to the Claim to be made in respect to the interest till the filling of the Statement of Claim. It is further stated that the affidavit will be filed within a weeks' time.

On filing the affidavit, the DIAC will assess the Arbitration fee etc. to be deposited by the Claimant of its share as well as that of the Respondent because the Respondent has been proceeded Ex parte.

DIAC shall assess the Arbitration fees and other charges and shall inform the parties to deposit their respective shares. In case the Respondent does not deposit its share of Arbitration fee etc. then it shall be deposited by the Claimant. The status report be submitted on the next date of hearing.

Now come up for further proceedings on 11.09.2024 at 12 Noon through video conferencing.

The order sheet be sent to the Counsel as well as to the parties through email."

Order dated 21.10.2024 (Impugned Order II)

"…..

7. I have heard Shri Ayush Singh, Advocate, Counsel for the applicant/respondent and Mr. V. Siddharth, Advocate, Ld. Counsel for the claimant and I have gone through the record of the arbitration proceedings.

8. The facts stated by the claimant about the orders dated 03.07.2024, 31.07.2024 and 21.08.2024 are correct. Mrs. Saumya Bajpai, Advocate for the respondent was present during the hearing on 03.07.2024. it was directed that 'in case, the respondent filed the counter claim than claimant may file rejoinder/reply to the counter claim before the next date of hearing' i.e. 31.07.2024. On 31.07.2024, none appeared for the respondent. The Dy. Counsel contacted the Counsel for the respondent on mobile and the counsel informed that she was no more counsel for the respondent as such she would not appear. In the circumstances, the matter was adjourned for 21.08.2024 with the directions to the DIAC that order be circulated to the counsels of the parties as well as to the respondent at its officials email IDs.

9. On 21.08.2024, none appeared for the respondent. The Dy. Counsel for the DIAC informed that the orders sent on three emails have bounced back but the order sent to the respondent on its email 'animesh@eurekaforbes.com and compliance@eurekaforbes.com' were not bounced back and as such it was presumed that the respondent had received the order dated 21.07.2024. However, the



respondent did not respond nor appeared and as such the respondent was proceeded with ex-parte. The counter claim filed was 'rejected'.

10. There is no merit in the facts stated in the application or argued by the Ld. Counsel for the respondent that the respondent had not received on the email animesh@eurekaforbes.com and compliance@eurekaforbes.com.

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13. There is no merit in the contention of the claimant that the Arbitrator has no power to recall its order passed for proceedings ex-parte against the respondent. Sub Clause B of Section 25 of the Arbitration and Conciliation Act, 1996 states that if the respondent fails to communicate his statement of defence in accordance with sub section (1) of Section 23, the Arbitral Tribunal shall continue the proceedings without treating that failure in its self as an admission of the allegations by the claimants and shall have the discretion to treat the right of the respondent to file such statement of defence as having being forfeited.

14. In this matter, the arbitration proceedings have not been closed and the statement of defence is there on the file. The respondent can continue to participate in the proceedings in spite of the fact that it has been proceeded exparte. However, there is no merit in the case of the applicant/ respondent that the respondent had no information of the proceedings dated 31.07.2024 and 21.08.2024. The Counsel for the respondent was present in the proceeding dated 03.07.2024 and it was specifically told that in case the respondent wanted to file the counter claim than it should be filed with a copy to the claimant and that claimant should file the reply to the counter claim before the next date of hearing i.e. 21.07.2024. On 31.07.2024 neither the counsel nor any representative of the respondent appeared during the proceedings. The counsel was contacted by the DIAC for nonappearance but she said that she was no more counsel for the respondent and as such she would not appear. In case the counsel was no more representing the respondent that she should have informed the respondent about the next date of hearing. It is not the case that such date was informed by the previous counsel to the respondent. However, it was specifically ordered that the order be circulated to the counsel of the parties and to the respondent at its official Email IDs for the hearing to be scheduled for 21.08.2024. On 21.08.2024, none appeared for the respondent. The Dy. Counsel for DIAC informed that the emails sent to the respondent at following email IDs ‘animesh@eurekaforbes.com and compliance@eurekaforbes.com' were not bounced back where as the other three emails sent to the respondent were bounced back. Consequently, it was proper notice to the respondent to put appearance and participate in the proceedings fixed for 31-07-2024 and 21.08.2024. Hence, the

respondent has proper notice for their appearance but respondent and the counsel choose not to put appearance on 31- 07-2024 and 2024. The principals of natural justice were duly followed before the respondent was proceeded with the order of ex-parte on 21.08.2024.

15. There is no merit in the application of the respondent to set site ex-parte proceeding initiated against it.

16. The respondent had filed counter claim. Since, none appeared for the respondent on 21.08.2024, therefore, the counter claim was rejected. Although, specifically an award for dismissal of counter claim for non-prosecution, could have been passed yet the rejection of the counter claim amounts to dismissal of the award.

17. The Arbitral Tribunal is not empowered to set a site the award passed or the interim award including rejection of claim or counter claim, can be challenged in appeal or revision as the case may be but it cannot be set aside by the Arbitral Tribunal who has passed the same. Therefore, the order passed in respect to the counter claim on 21.08.2024 cannot be set aside by this Tribunal.

18. In view of the above discussion, the application for setting as site the exparte proceedings or in respect to the counter claim are dismissed."

39. From a bare perusal of the Impugned Order I, the following material findings of the learned Arbitrator emerge:

(a) The DIAC Deputy Counsel informed the learned Arbitral Tribunal that the previous order dated 31.07.2024 had been circulated to the parties and their counsel through the available email addresses.

(b) Certain emails sent to the Petitioner herein at dshinde@eurekaforbes.co.in, shashibir@eurekaforbes.com, and watersolutions@eurekaforbes.com had bounced back, indicating non-delivery.

(c) However, emails sent to animesh@eurekaforbes.com and compliance@eurekaforbes.com had not bounced back, leading the learned Arbitral Tribunal to treat the previous order as duly served upon the Petitioner herein.





(d) Despite such service, no one appeared on behalf of the Petitioner herein on the relevant date of hearing before the learned Arbitrator.

(e) The learned Arbitral Tribunal also recorded that on the previous date it had been informed that the Petitioner's earlier counsel was no longer representing the Petitioner herein, and even on that date the Petitioner had remained unrepresented.

(f) In view of the non-appearance of the Petitioner despite service of the order, the learned Arbitral Tribunal decided to proceed *ex parte* against the Petitioner.

(g) Consequent to proceeding *ex parte*, the learned Arbitral Tribunal rejected the counterclaim filed by the Petitioner.

40. Further, from a perusal of the Impugned Order II, which came to be passed upon the Petitioner filing an application seeking recall of the Impugned Order I, the following material findings of the learned Arbitrator emerge:

(a) The learned Arbitral Tribunal considered and examined the factual narration pertaining to the earlier orders dated 03.07.2024, 31.07.2024, and 21.08.2024.

(b) The learned Arbitral Tribunal rejected the Petitioner's contention that it had not received notice of the proceedings through the aforesaid email addresses, holding that the said contention lacked merit.

(c) The learned Arbitral Tribunal held that it does possess the power to recall an order proceeding *ex parte*, referring to Section 25(b) of the A&C Act, which permits continuation of proceedings in case of failure by the Petitioner herein to file or





pursue its defence.

(d) However, the learned Arbitral Tribunal noted that the arbitral proceedings had not been closed and the Statement of Defence filed by the Petitioner herein remained on record, meaning that the Petitioner herein could still participate in the proceedings notwithstanding the *ex parte* order.

(e) The learned Arbitral Tribunal concluded that the Petitioner herein had proper notice of the hearings dated 31.07.2024 and 21.08.2024, since its counsel had appeared earlier on 03.07.2024 and the subsequent orders had been circulated to the Petitioner's official email addresses.

(f) The learned Arbitral Tribunal further held that the Principles of Natural Justice had been duly followed prior to proceeding *ex parte* against the Petitioner herein.

(g) With respect to the counterclaim, the learned Arbitral Tribunal observed that although a formal award dismissing the counterclaim for non-prosecution could have been passed, the rejection of the counterclaim effectively amounted to its dismissal.

(h) The learned Arbitral Tribunal held that it lacked jurisdiction to set aside its own award or interim award, including the rejection of the counterclaim, observing that such orders could only be challenged before the appropriate court.

(i) Accordingly, the learned Arbitral Tribunal concluded that the application seeking the recall of the *ex parte* proceedings and restoration of the counterclaim lacked merit.

41. A sequential reading of the Impugned Orders reveals that in the

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Impugned Order I, the learned Arbitrator unequivocally recorded that "*in the circumstances, the Respondent is proceeded ex parte*" and went on to reject the counterclaim as follows, "*Hence, the Counter Claim is rejected*."

42. In the Impugned Order II, the learned Arbitrator observed that the arbitral proceedings had not been formally concluded and that the Petitioner's Statement of Defence continued to remain on record. It was, therefore, held that despite having been proceeded *ex parte*, the Petitioner would remain entitled to participate in the ongoing proceedings. The learned Arbitrator ultimately found no merit in the application seeking recall of the *ex parte* order, thereby maintaining its earlier decision.

43. On the specific issue of the counterclaim, the learned Arbitrator further observed that although a formal award dismissing the counterclaim for non-prosecution could have been rendered, the rejection already recorded effectively amounted to such dismissal. Proceeding on this premise, the learned Arbitrator held that it lacked jurisdiction to set aside or recall its own award, including any interim award, and that such a determination could only be assailed before a competent court. Consequently, the learned Arbitrator declined to recall the order insofar as it pertained to the rejection of the counterclaim.

44. In substance, the rejection of the Petitioner's counterclaim was treated as having the character of an interim award, on the footing that it constituted a final determination of those claims, thereby rendering the learned Arbitral Tribunal *functus officio* in respect thereof. Simultaneously, in relation to the claims of the Respondent, the





learned Arbitrator declined to recall the *ex parte* order and directed that the arbitral proceedings should continue and the Petitioner was entitled to participate in those proceedings.

45. The consequences emanating from the Impugned Order I operate across two distinct and independent facets.

46. *First*, insofar as the Respondent's claims before the learned Arbitral Tribunal are concerned, the learned Arbitrator proceeded *ex parte*.

47. *Second*, and more significantly, in relation to the Petitioner's counterclaims, the learned Arbitral Tribunal declined to entertain the counterclaims altogether, thereby resulting in a complete denial of the Petitioner's substantive right to have those claims adjudicated.

48. This Court, in ***H.S. Nag and Ors vs. Asian Hotel (North) Ltd***[17], had the occasion to examine the nature and characteristics of an order that would qualify as an interim award under the A&C Act. Upon a consideration of the relevant statutory provisions, as well as the judgment of the Hon'ble Supreme Court in ***IFFCO*** *(supra)* and other binding precedents, the Court undertook a detailed analysis of the scope of interference under Section 34 of the A&C Act in relation to arbitral awards, including interim awards. The Court further delineated the distinction between a purely procedural order and an interim award, and articulated the governing test for determining when an order assumes the character of an interim award. The relevant extract from the judgment in ***H.S. Nag and Ors.*** *(supra)* is reproduced hereunder:

> **54.** The Respondent asserts that the Impugned Orders are in the

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nature of procedural directions, which do not attract the interference of this Court under Section 34 of the Act. The Petitioners, on the other hand, contend that though coloured as procedural, the Impugned Orders operate with finality, affecting their substantial rights, thereby assuming the character of interim awards.

55. In this backdrop, before embarking upon an examination of the merits, this Court deems it apposite to first address the preliminary objection as to the maintainability, since the adjudication upon the merits of the present Petitions necessarily hinges upon whether the Impugned Orders are amenable to challenge under Section 34 of the Act.

56. In view of the apparent divergence in approach, discernible from various precedents and the consequent uncertainty surrounding the question as to what constitutes an "interim award", this Court deems it apposite to examine the statutory scheme, the governing jurisprudence as established by various judicial precedents, with some degree of clarity.

57. Accordingly, the discussion that follows is organised along three distinct yet interrelated facets, viz., first, the scope and limits of judicial interference permissible under Section 34 of the Act vis-à-vis an Order passed in the course of arbitral proceedings; second, the legal contours and attributes of what constitutes an "Interim Award"; and third, whether the Impugned Orders, when examined on the touchstone of the settled principles, satisfy the parameters so as to fall within the ambit of an "Interim Award" amenable to challenge under Section 34 of the Act.

Interference under Section 34 of the Act extends to an Arbitral Award, including an 'Interim Award'

58. It is well settled that the jurisdiction under Section 34 of the Act is neither appellate nor supervisory in the conventional sense. The Court does not sit in appeal over the findings of the Arbitral Tribunal, nor does it re-appreciate evidence or correct errors of fact or law, save where such errors fall within the narrowly tailored grounds statutorily prescribed. The provision thus reflects a conscious legislative departure from expansive judicial review and is rooted in the principle of party autonomy and finality of arbitral adjudication.

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60. Further, Section 2(1)(c) of the Act defines the expression "Arbitral award", which expressly includes interim awards. Section 2 of the Act is reproduced herein under for the sake of clarity:

> "2. Definitions. — (1) In this Part, unless the context otherwise requires, —
> (c) "arbitral award" includes an interim award;"

61. A conjoint reading of Section 2(1)(c) and Section 34 of the Act





makes it abundantly clear that the jurisdiction of the Court under Section 34 extends to the setting aside of an interim award as well, provided such interim award satisfies the statutory requirements and falls within the limited grounds expressly enumerated under Section 34 of the Act and their consistent interpretations by the Courts.

62. To complete the scheme of the Act, Section 31(6) of the Act is also material. It empowers an Arbitral Tribunal to render an interim award at any stage of the arbitral proceedings, prior to the pronouncement of the final award, in respect of any matter on which it may make a final determination. The same is reproduced herein under for the sake of completeness:

> "**31. Form and contents of arbitral award. —**
> *****
> (6) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award."

63. A holistic reading of the aforesaid statutory provisions leads to two clear and inescapable conclusions. First, that an Arbitral Tribunal is vested with the authority to render an interim award during the pendency of the arbitral proceedings, prior to the culmination of final adjudication. Second, that such interim awards, being statutorily subsumed within the definition of an arbitral award, are amenable to judicial scrutiny under Section 34 of the Act, subject to the same limited and well-settled grounds on which a final arbitral award may be interfered with.

64. At the same time, it must be underscored that though the statute includes an "interim award" within the ambit of an arbitral award, it does not follow that every interlocutory or procedural order passed during arbitral proceedings partakes such character.

65. However, this statutory inclusion does not efface the fundamental distinction between a determination that conclusively adjudicates an issue and, a direction that merely regulates the conduct of proceedings. It is this nuanced yet decisive distinction that now warrants closer judicial scrutiny.

Distinction between a Procedural Order and an Interim Award passed by an Arbitral Tribunal

66. Having thus established that the jurisdiction of this Court under Section 34 of the Act extends, in principle, to an interim arbitral award, the enquiry must now turn to the equally significant question, namely, what, in law, qualifies as an "interim award".

67. Further, since the Act does not expressly define what constitutes an "interim award", this Court deems it necessary to advert to the judicially evolved principles which illuminate its nature, attributes and legal contours. The classification of an order cannot depend upon nomenclature alone but must be determined by

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its substance and legal effect.

68. The Hon'ble Supreme Court in ***IFFCO*** (supra), while authoritatively interpreting the expression "interim award", held that an Arbitral Tribunal is empowered under Section 31(6) of the Act to render an interim award on any matter in respect of which it is competent to make a final award. The Court clarified that the expression "any matter" is of wide import and encompasses any point of dispute between the parties that calls for a definitive adjudication.

69. At the same time, the decision underscores that such a determination must possess the element of finality in respect of the issue decided, so as to qualify as an interim award within the statutory framework. The relevant observations of ***IFFCO*** (supra) are extracted herein under for ready reference:

> "**8.** The language of Section 31(6) is advisedly wide in nature. A reading of the said sub-section makes it clear that the jurisdiction to make an interim arbitral award is left to the good sense of the arbitral tribunal, and that it extends to "any matter" with respect to which it may make a final arbitral award. The expression "matter" is wide in nature, and subsumes issues at which the parties are in dispute. It is clear, therefore, that any point of dispute between the parties which has to be answered by the arbitral tribunal can be the subject matter of an interim arbitral award. However, it is important to add a note of caution. In an appropriate case, the issue of more than one award may be necessitated on the facts of that case. However, by dealing with the matter in a piecemeal fashion, what must be borne in mind is that the resolution of the dispute as a whole will be delayed and parties will be put to additional expense. The arbitral tribunal should, therefore, consider whether there is any real advantage in delivering interim awards or in proceeding with the matter as a whole and delivering one final award, bearing in mind the avoidance of delay and additional expense. Ultimately, a fair means for resolution of all disputes should be uppermost in the mind of the arbitral tribunal.
>
> **9.** To complete the scheme of the Act, Section 32(1) is also material. This section goes on to state that the arbitral proceedings would be terminated only by the final arbitral award, as opposed to an interim award, thus making it clear that there can be one or more interim awards, prior to a final award, which conclusively determine some of the issues between the parties, culminating in a final arbitral award which ultimately decides all remaining issues between the parties."

70. The Hon'ble Supreme Court, in the aforesaid judgment,

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underscored that although arbitral proceedings culminate only upon the pronouncement of the final award, the statutory scheme unmistakably contemplates rendering of one or more interim awards during their pendency. Such interim awards are not mere procedural directions, rather they are determinations that finally and conclusively adjudicate specific issues or claims between the parties. The interim orders decisively settle the discrete facets of the dispute, and thus, progressively narrow the field of controversy and pave the way toward the final award.

*****

75. The common thread running through the aforesaid decisions is that the twin pillars of 'finality' and 'substantive issue determination' form the bedrock of the test. An order that merely regulates procedure, even if it affects a valuable right, does not cross the statutory threshold unless it conclusively determines a substantive component of the arbitral reference.

76. In view of the foregoing discussion, it stands well settled that an interim award must bear the hallmark of finality in respect of the issue it addresses. The determinative consideration is whether the arbitral tribunal has conclusively adjudicated a substantive component of the dispute and rendered itself functus officio qua that issue. If nothing further remains to be decided on that aspect within the arbitral proceedings, such a determination would fall within the ambit of an interim award and would be amenable to challenge under Section 34 of the Act, notwithstanding that the arbitration continues in respect of other matters.

77. Therefore, the question as to whether an order constitutes an "interim award" is no longer res integra. The determination does not hinge upon the nomenclature employed by the Arbitral Tribunal, but upon the substance, effect, and legal consequences of the order in question. The Court must examine whether the order conclusively adjudicates a substantive issue between the parties at an intermediate stage of the proceedings, thereby leaving nothing further to be decided on that issue.

Nature of the Impugned Orders: Procedural or Interim Award

78. Having delineated the statutory framework and crystallised the principles as to what constitutes an "interim award" within the meaning of Sections 2(1)(c) and 31(6) of the Act, this Court now proceeds to examine whether the Impugned Orders, in substance and effect, meet the settled parameters so as to attract the jurisdiction of this Court under Section 34 of the Act.

*****

104. The judicial precedents cited and analysed hereinabove yield a clear and consistent position in law, i.e., an order disposing of an application for amendment of pleadings does not, by that circumstance alone, acquire the status of an interim award. The determinative consideration is not the nature of the application, but

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the legal effect of its rejection.

105. The position may thus be summarised as first, not every order passed by an Arbitral Tribunal qualifies as an interim award; second, there exists no straight-jacket rule that an order rejecting an amendment application necessarily constitutes an interim award; and third, it is the element of finality in respect of a substantive issue, resulting in crystallisation of a right, that determines whether an order crosses the threshold into the domain of an interim award.

Governing Test for determining what constitutes an "Interim Award"

106. In light of the foregoing discussion and the judicial precedents noticed hereinabove, the governing test for determining whether an order qualifies as an "interim award" may now be articulated.

(a) Whether the Order finally adjudicates a substantive dispute or claims between the parties;

(b) Whether such adjudication attains finality and has a binding effect insofar as that issue is concerned; and

(c) Whether, upon such determination, the Arbitral Tribunal becomes *functus officio* qua that issue and retains no further adjudicatory discretion thereon.

107. Therefore, if an order answers to all the aforesaid three elements in affirmative, the order transcends the realm of a mere procedural order and assumes the character of an Interim Award within the meaning of Sections 2(1)(c) and 31(6) of the Act, and consequently becomes susceptible to scrutiny under Section 34, subject to its limited and circumscribed scope.

108. Tested on this anvil, this Court is of the considered view that the Impugned Orders do not satisfy the essential indicia of an interim award. It would be observed as under:

(a). *First*, the rejection of the amendment applications does not decide any substantive dispute or independent claim between the parties, it merely preserves the pleadings in the form in which they already stood.

(b). *Second*, the determination lacks finality in respect of any issue forming part of the arbitral reference, inasmuch as the Points of Determination framed by the learned Arbitral Tribunal expressly leave open the questions of entitlement, quantum, rate and period of compensation to be adjudicated on the basis of evidence.

(c). *Third*, the Arbitral Tribunal has not rendered itself functus officio in respect of any such issue, nor has it exhausted its adjudicatory discretion thereon."

49. Thus, in the aforesaid judgment, this Court, *inter alia*, held that the governing test for determining whether an order qualifies as an

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"*interim award*" rests upon three essential elements. *First*, whether the order finally adjudicates a substantive dispute or claim between the parties; *second*, whether such adjudication attains finality and has a binding effect in respect of the issue so determined; and *third*, whether, consequent upon such determination, the arbitral tribunal becomes *functus officio qua* that issue, thereby retaining no further adjudicatory discretion in relation thereto.

50. Applying the aforesaid triple test to the Impugned Order I, insofar as it pertains to the Respondent's claims, *namely*, the order directing that the Petitioner be proceeded against *ex parte*, it becomes evident that the said order does not satisfy the parameters necessary to qualify as an interim award under the A&C Act. An order directing that proceedings continue *ex parte* is essentially procedural in nature and is intended to regulate the conduct and progression of arbitral proceedings. An order, by itself, neither adjudicates the substantive disputes between the parties nor determines any rights or liabilities finally and conclusively.

51. An order proceeding *ex parte* does not extinguish the rights of the defaulting party, nor does it conclusively determine the claims pending before the arbitral tribunal. The claims themselves remain subject to adjudication on the merits. Such a procedural direction merely enables the arbitral tribunal to ensure discipline in the conduct of proceedings and to advance the objective of expeditious disposal underlying the arbitral framework.

52. In appropriate circumstances, arbitral tribunals may be constrained to invoke such procedural powers in order to prevent obstruction or delay in the proceedings. Equally, however, the arbitral





tribunal retains the authority to revisit, recall, or set aside such an order if sufficient cause or appropriate circumstances are subsequently demonstrated. Any grievance arising from such a procedural order may ordinarily be urged at the stage of challenge to the final award and, in exceptional circumstances, may also be amenable to scrutiny in exercise of the extraordinary jurisdiction of the Constitutional Courts.

53. In the present case, although the Impugned Order I may have a bearing on the Petitioner's ability to effectively participate in the proceedings, particularly in relation to leading evidence and advancing its defence, it does not finally adjudicate or conclusively determine the Respondent's claims. The adjudicatory process in respect of those claims continues.

54. Importantly, the learned Arbitral Tribunal has not rendered itself *functus officio* in relation to the Respondent's claims; rather, it continues to remain in *seisin* of the issues raised before it and to examine the evidence, assess the merits, and render a final determination thereof. The learned Arbitral Tribunal also retains the discretion to regulate and, if necessary, revisit procedural aspects of the proceedings, as is evident from the Impugned Order II. The ultimate determination of rights and liabilities, which alone would attain finality and binding effect, is yet to be rendered.

55. In this backdrop, the continuation of arbitral proceedings on an *ex parte* basis, *qua* the Petitioner, cannot be construed as a final or substantive adjudication of rights. The Impugned Order I, to the extent that it merely directs continuation of proceedings *ex parte* in relation to the Respondent's claims, does not partake the character of an

interim award within the meaning of the A&C Act. Consequently, the said procedural direction is not amenable to challenge under Section 34 of the A&C Act at this stage. This Court, therefore, lacks jurisdiction under the limited statutory framework of Section 34 of the A&C Act to examine the validity of the said procedural order independently of the final award.

56. However, the position stands on an entirely different footing insofar as the Petitioner's counterclaims are concerned. Applying the same governing test, this Court finds that the triple test as set out in ***H.S. Nag and Ors*** (*supra*) is entirely fulfilled in the present case. The rejection of the counterclaim by the Impugned Order I effectively results in a final determination of the Petitioner's counterclaims, leaving no scope for their further consideration by the learned Arbitral Tribunal. The order thus possesses the essential attributes of finality and binding effect in respect of the counterclaims. Significantly, the learned Arbitrator thereafter proceeded on the basis that he lacked jurisdiction to revisit or recall the said determination, thereby treating himself as *functus officio*, *qua* the counterclaims. Consequently, the Impugned Order I, to this limited respect, would constitute an interim award.

57. In the present case, it is not in dispute that the Petitioner had filed its counterclaims pursuant to the liberty granted by the learned Arbitrator during the course of the arbitral proceedings. By the Impugned Order I, those counterclaims came to be rejected. Thereafter, by the Impugned Order II, the learned Arbitrator declined to set aside or recall such rejection, holding that the learned Arbitral Tribunal lacked jurisdiction to revisit what was treated as an interim award. In these

circumstances, this Court is of the considered view that the Impugned Orders, taken in conjunction, insofar as they relate to the Petitioner's counterclaims, constitute an interim award and would be amenable to challenge under Section 34 of the A&C Act.

58. The only issue that now remains for consideration is whether the Interim Award, insofar as it relates to the Petitioner's counterclaims and being amenable to challenge under Section 34 of the A&C Act, falls within the narrow and well-defined grounds for judicial interference under the said provision, and consequently, whether the impugned determination can be sustained on that touchstone.

59. In order to appreciate this aspect in its proper perspective, it becomes necessary to advert to the earlier orders passed during the course of the arbitral proceedings, prior to the issuance of the Impugned Order I, particularly the orders dated 03.07.2024 and 31.07.2024. For the sake of completeness, the order dated 03.07.2024 is reproduced hereunder:

> "**ARBITRATION PROCEEDING DATED 03.07.2024 (THROUGH VIDEO CONFERENCING)**
>
> **Present:**
> For the Claimant: Mr. V. Siddharth, Advocate
> Email Ids: siddharth@circlepartners.in
> ishan@circlepartners.in
> Mob. No: 8800473474
> Ms. Gunjan Arora, Advocate
> For the Respondent: Ms. Saumya Bajpai, Adv. for Respondent
> Mob: 8826576220, Email:
> saumya@daswanianddaswani.com
> Delhi@daswanianddasweni.com
> For the DIAC: Ms. Parina Katyal, Deputy Counsel
>
> **ORDER**

> The Claimant made available a physical copy of the Statement of Claim alongwith the true copies of the documents etc. I received it yesterday at about 08:00 PM. The soft copy was sent at my email id on 06.05.2024.
> The Counsel for the Respondent has submitted that the Respondent has already received the copy of the Statement of Claim etc. A reply to the Claim petition and any other application/ Counter Claim, if any, have not yet been received by me. The Counsel for the Respondent has submitted that the soft copy of the application and the Statement of Claim was sent at my email id. The Counsel for the Respondent has again noted down my residential address to send the reply to the Statement of Defence etc. within one week from today. In case, the Respondent filed the Counter Claim and the Claimant may file Rejoinder/Reply to the Counter Claim before the next date of hearing.
> The DIAC to assess the Arbitration fee etc. and intimate the same to the Counsel for the parties to deposit the same so that Arbitration proceedings can commence.
> Now to come up on 31.07.2024 at 03:00 PM through VC. Copy of the order be made available to the Counsel for the parties."

60. The arbitral record unequivocally reflects that there is no dispute on behalf of the Respondent that, insofar as its claims were concerned, the Petitioner had already filed its Statement of Defence concerning the Respondent's claim, prior to the relevant date. On that occasion, when learned counsel for the Petitioner was present, the principal direction issued by the learned Arbitrator was confined to permitting the Petitioner to file its counterclaim before the next date of hearing, with a corresponding liberty granted to the Respondent to file its reply thereto thereafter.

61. It is also an admitted and undisputed position that, in compliance with the aforesaid direction, the Petitioner duly filed its counterclaim within the stipulated time, *i.e.*, on 10.07.2024.

62. The controversy assumes significance when the subsequent Order dated 31.07.2024 is examined. For the sake of ready reference, the said order is reproduced hereunder:

"**ARBITRATION PROCEEDING DATED 31.07.2024 (THROUGH VIDEO CONFERENCING)**

Present:

For the Claimant: Mr. V. Siddharth, Advocate
Email Ids: siddharth@circlepartners.in
ishan@circlepartners.in
Mob. No: 8800473474
Ms. Gunjan Arora, Advocate

For the Respondent: None.

For the DIAC: Ms. Parina Katyal, Deputy Counsel

ORDER

The Deputy Counsel DIAC has contacted the Counsel Saumya Bajpai,
Advocate, on her mobile. The Counsel has told the Deputy Counsel that she is no more the Counsel for the Respondent and as such she will not appear today.

None has appeared for the Respondent-Company.

The Counsel for the Claimant earlier had sent an email to seek two weeks' time to file reply to the Counter-Claim and rejoinder to Statement of Defence. The same request has been reiterated today.

In the circumstances, the matter is adjourned. Put up on 21.08.2024 at 03:00 Pm through VC.

The order be circulated to the Counsels for the parties, including the Counsel who filed the Statement of Defence as well as Counter-Claim on behalf of the Defendant. The order be also sent to the Respondent at its official email id."

(emphasis supplied)

63. A perusal of the said order indicates that, although none appeared on behalf of the Petitioner on that date, the material circumstance is that the Respondent itself sought time to file its reply to the counterclaim. The request for adjournment was reiterated before the learned Arbitrator and was acceded to, resulting in the matter being adjourned to 21.08.2024.

64. Significantly, therefore, the adjournment on 31.07.2024 was not occasioned solely on account of the absence of the Petitioner. On the contrary, it was, in substantial measure, attributable to the request made by the Respondent itself for time to complete its pleadings.





65. In this light, it becomes evident that although the Petitioner may not have been represented on that particular date, no meaningful delay in the progress of the arbitral proceedings can be attributed exclusively to the Petitioner. Rather, the record demonstrates that the Respondent itself sought time to respond to the counterclaim.

66. The matter was accordingly adjourned to 21.08.2024. On that date, the learned Arbitrator proceeded to pass the *ex parte* order, noting that the Petitioner had been informed of the previous order through its official email addresses and that none had appeared on its behalf. On that basis, the learned Arbitrator recorded that the Petitioner be proceeded *ex parte* and, in the same breath, rejected the counterclaim.

67. However, in adopting this course, the learned Arbitrator appears not to have taken into account the material circumstance that, on the immediately preceding date, *i.e.*, 31.07.2024, the adjournment had been sought by the Respondent itself. Consequently, the delay at that stage could not have been attributed solely to the Petitioner.

68. Furthermore, the learned Arbitrator failed to appreciate that the proceedings, insofar as the Petitioner's counterclaim was concerned, were still at the stage of completion of pleadings. There is also no indication in the Impugned Order I as to whether such pleadings *qua* counterclaim had, in fact, been filed in the *interregnum*, which was the very purpose for which the adjournment had been granted.

69. This Court further takes note of the fact that the learned Arbitral Tribunal premises the rejection of the counterclaim on the party being proceeded against *ex parte*. This Court is of the considered view that the learned Arbitrator, while proceeding *ex parte* against the Petitioner, erred in rejecting the counterclaim on that basis. Even considering non-





appearance on behalf of the Petitioner on 21.08.2024, the rejection of a duly filed counterclaim, without regard to the stage of proceedings and the surrounding circumstances, cannot be sustained.

70. It is also important to note that the mere fact that a party has been proceeded *ex parte*, as in the present case in relation to the counterclaims, does not, *ipso facto*, justify the striking off or rejection of counterclaims that have already been duly filed and form part of the record. Such counterclaims do not stand extinguished merely on account of the absence or non-participation of the party concerned. This Court is of the view that the rejection of the counterclaims solely on the ground that the learned Arbitral Tribunal had decided to proceed *ex parte* discloses no valid reason whatsoever. Consequently, the interim award rejecting the counterclaims is liable to be set aside.

71. As noted earlier, the Impugned Order I does not record any substantive default on the part of the Petitioner, apart from its non-appearance on that particular date. In the absence of any finding indicating deliberate delay, contumacious conduct, or any attempt to obstruct the proceedings, the decision to proceed *ex parte* in relation to the counterclaim, and contemporaneously rejecting the Petitioner's counterclaim, appears arbitrary and legally untenable. Such an approach is inconsistent with Section 18 of the A&C Act, which embodies the Principles of Natural Justice by mandating equal treatment of parties and ensuring that each party is afforded a full and fair opportunity to present its case. The said provision reads as follows:

> "**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."

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72. While it is undoubtedly true that an arbitral tribunal is vested with the discretion under Section 19 of the A&C Act to determine the procedure governing the proceedings, such discretion is not unfettered. It must be exercised in a manner consistent with the principles of fairness, equality, and natural justice embodied in Section 18 of the A&C Act. In the present case, the manner in which the proceedings were conducted in respect of the rejection of the Petitioner's counterclaim, as borne out from the record, falls short of these foundational requirements.

73. In this context, it also becomes necessary to examine the provisions of Section 25 of the A&C Act, which deal with the consequences of default by a party in arbitral proceedings. The said provision reads as follows:

> "**25. Default of a party.-** Unless otherwise agreed by the parties, where, without showing sufficient cause,-
> (a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;
> (b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited.
> (c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it."

74. A plain reading of the aforesaid provision makes it clear that Section 25 of the A&C Act is intended to regulate situations where a



party fails to participate in the arbitral proceedings in the manner contemplated under that Act.

75. Insofar as Section 25(a) of the A&C Act is concerned, it provides that where the claimant fails to file its statement of claim, the arbitral tribunal is empowered to terminate the proceedings, since in the absence of such a claim, there would be nothing to adjudicate. This principle would, by necessary implication, extend to a counterclaim as well, in a case where such a counterclaim is not filed at all.

76. However, the present case does not fall within the ambit of Section 25(a) of the A&C Act, as the Petitioner had duly filed its counterclaims on 10.07.2024, in compliance with the earlier directions issued by the learned Arbitrator. In any event, the statute contemplates termination of the proceedings and not rejection of the claims themselves.

77. Equally, Section 25(b) of the A&C Act, which deals with a failure on the part of the Respondent to file its Statement of Defence, has no application in the present factual matrix. The said provision permits the arbitral tribunal to proceed with the arbitration without treating such failure as an admission of the claimant's allegations. In the present case, it is not the case of any party that the Petitioner's alleged default falls within the scope of this provision, in any manner.

78. Section 25(c) of the A&C Act, on the other hand, contemplates a situation where a party fails to appear at an oral hearing or fails to produce documentary evidence. In such circumstances, the arbitral tribunal is empowered to continue the proceedings and render an award on the basis of the material available on record.



79. The underlying object of this provision is to ensure that arbitral proceedings are neither frustrated nor indefinitely delayed due to the non-participation of a party. Although the power to proceed *ex parte* may arguably be traceable to this provision, this Court is not called upon to adjudicate that issue in the present case. Significantly, however, the provision does not contemplate rejection or dismissal of a substantive claim solely on account of non-appearance. On the contrary, it mandates continuation of the proceedings and adjudication on merits on the basis of the material available before the arbitral tribunal.

80. In the present case, the non-appearance of counsel for the Petitioner on a particular date, especially on a date when no effective hearing could, in any event, have been undertaken since the proceedings concerning the counterclaims were still at the stage of completion of pleadings, could not have justified the imposition of a consequence as drastic as the outright rejection of the counterclaims themselves.

81. Having regard to the facts and circumstances of the present case, this Court is of the considered opinion that no occasion had arisen for the learned Arbitrator to visit the Petitioner with the extreme consequence of extinguishing its counterclaims. The statutory scheme of the A&C Act does not contemplate dismissal or rejection of substantive claims solely on account of non-appearance, particularly where the pleadings in relation to such claims had not even been completed. Consequently, the rejection of the counterclaims merely because the Petitioner was proceeded against *ex parte* cannot be sustained in law.

82. The Impugned Order I, insofar as it rejects the Petitioner's counterclaims, clearly possesses the attributes and characteristics of an interim award, since it conclusively determines and finally extinguishes the Petitioner's independent substantive claims. The said determination is, therefore, amenable to judicial scrutiny under Section 34 of the A&C Act on the same footing as a final arbitral award. Furthermore, in light of the detailed discussion and analysis undertaken in the preceding paragraphs, this Court is of the considered view that the said interim award is rendered unsustainable on multiple grounds contemplated under Section 34 of the A&C Act.

83. The impugned determination is vitiated by serious legal infirmities, including a manifest violation of the Principles of Natural Justice, thereby bringing the same within the ambit of "*conflict with the public policy of India*" under Section 34(2)(b)(ii) of the A&C Act. The approach adopted by the learned Arbitrator effectively denied the Petitioner any meaningful opportunity to have its counterclaims adjudicated on the merits, despite the same having already been duly filed and taken on record. Further, in the peculiar facts of the present case, the rejection of the counterclaims discloses clear elements of perversity and patent illegality apparent on the face of the record, thereby additionally attracting the ground for interference contemplated under Section 34(2A) of the A&C Act.

84. Furthermore, the facts and circumstances of the present case squarely attract the ground contained in Section 34(2)(a)(iii) of the A&C Act, inasmuch as the Petitioner can legitimately be said to have been "*otherwise unable to present his case*". The course adopted by the learned Arbitrator undermines the fundamental principles of





procedural fairness inherent in arbitral proceedings and has resulted in a manifest miscarriage of justice.

85. Consequently, the Impugned Orders, insofar as they reject the Petitioner's counterclaims and thereby partake the character of an interim award, cannot be sustained in law and are liable to be set aside. The decision of the learned Arbitrator to reject the counterclaims solely on the ground that the Petitioner had been proceeded against *ex parte* in relation to the Respondent's claims is particularly untenable, especially when the arbitral proceedings concerning the counterclaims had not progressed beyond the stage of pleadings. Significantly, as specifically recorded in the Order dated 31.07.2024, even the Respondent had admittedly not filed its reply to the counterclaims.

DECISION:

86. In view of the foregoing discussion, this Court is of the considered opinion that the present Petition under Section 34 of the A&C Act is allowed in part.

87. Accordingly, the Impugned Order dated 21.08.2024, *i.e.*, Impugned Award I, insofar as it proceeds *ex parte* as against the Petitioner and goes on to hold that as the reason for rejecting the counterclaims of the Petitioner, is set aside. The counterclaims are restored to their original position and the learned Arbitral Tribunal is directed to accord its consideration in accordance with law to the same.

88. Insofar as the direction contained in the Impugned Order dated 21.08.2024, *i.e.*, Impugned Award I, whereby the Petitioner was proceeded *ex parte* in respect of the claims advanced by the



Respondent before the learned Arbitral Tribunal, is concerned, this Court is of the considered view that the same is purely procedural in nature, and would not, therefore, qualify as an "*interim award*" making it vulnerable to challenge at this stage.

89. This position would equally extend to the non-interference with the learned Arbitral Tribunal in the subsequent Impugned Order dated 21.10.2024, *i.e.*, Impugned Order II, which, to that limited extent, also remains outside the scope of interference under Section 34 of the A&C Act.

90. It is, however, clarified that, in view of the absence of jurisdiction to examine such procedural directions, this Court has neither undertaken nor expressed any opinion on the sustainability or correctness of the Impugned Orders insofar as they pertain to the Respondent's claims. The adjudication herein is strictly confined to the rejection of the Petitioner's counterclaims. Accordingly, it shall remain open to the Petitioner to avail of such other remedies as may be available in law to redress its grievance in relation to the aforesaid procedural directions.

91. The present Petition, along with pending Application(s), if any, stands disposed of in the above terms.

92. No order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.

MAY 12, 2026/sm/dj