2026:DHC:4500

$~97

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

\+ **W.P.(C) 6019/2026 and CM APPL. 29682/2026**

Date of decision: **04.05.2026**

IN THE MATTER OF:

SUNIL WALIA .....Petitioner

Through: Mr Bharat Bhushan Bhatia, Advocate.

versus

DELHI INTERNATIONAL ARBITRATION CENTRE & ANR.
.....Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G E M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

CM APPL. 29683/2026 (for exemption)

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

W.P.(C) 6019/2026 and CM APPL. 29682/2026

1. The petitioner, in the instant writ petition, has prayed for the following reliefs: -

> *"a) Issue an order/direction quashing the impugned order dated 11.04.2026 passed by the Ld. Arbitrator in Case Ref. No. DAC/1664/04-17 as being passed by without any reasoning/inheritance jurisdiction.*
>
> *b) Issue an order/direction for setting aside the letter/communication dated 04.01.2018 issued by DIAC, whereby the Arbitral Tribunal was*

unlawfully constituted in total derogation of the judgment/order dated 23.03.2017 passed in OMP No. 254 of 2015

c) Declare the entire arbitration proceeding in case reference No.DAC/1664/04-17 are void ab-initio and dehors the mandate of the arbitration and conciliation act, 1996 for lack of valid notice of invocation under Section 21.

d) direction be issued to restraining respondent no. 2 for further proceeding with the arbitration Case Ref. No. DAC/1664/04-17

e) Pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The facts of the case would reveal that the arbitral proceedings emanate from disputes relating to a partnership firm carrying on business under the name and style of M/s Jason Enterprises, constituted under a partnership deed dated 29.12.2004**.** The dispute primarily concerns the rights, liabilities and obligations flowing from the aforesaid partnership arrangement between the parties.

3. It is the case of the petitioner that certain disputes and differences arose between the petitioner and respondent no. 2 in or around the year 2010. Pursuant thereto, the petitioner issued a notice of dissolution of the partnership to respondent no. 2 and further intimated the concerned banks regarding dissolution of the partnership firm and discontinuance of joint operation of the accounts maintained in the name of the partnership firm.

4. The petitioner further avers that respondent no. 2 invoked arbitral proceedings before the Delhi International Arbitration Centre [**"DIAC"]** under Reference No. ARB.P.04/2011, by filing a statement of claim. The petitioner also filed its statement of defence along with a counter-claim.

5. It is also the case of the petitioner that the aforesaid arbitral proceedings culminated in an arbitral award dated 18.11.2014**,** passed by the Arbitral Tribunal. Assailing the validity and legality of the said arbitral award, respondent no. 2 instituted proceedings before this Court under the provisions of the Arbitration and Conciliation Act, 1996**, ["Act of 1996"]** in the case titled ***Prakash Chand Goyal (HUF) v. Sunil Walia***[1]. This Court, while observing that the Arbitral Tribunal had rejected the claims of respondent no. 2 on the ground that the partnership firm was unregistered and, therefore, barred under Section 69 of the Partnership Act, 1932, proceeded to set aside the arbitral award dated 18.11.2014 *vide* order dated 23.03.2017, while granting liberty to the parties to initiate fresh arbitration proceedings in accordance with law.

6. For the sake of clarity, paragraph nos. 2 & 3 of the said order is extracted as under:-

> *"2. The legal position now stands changed in view of the judgment of the Supreme Court in Umesh Gael v. Himachal Pradesh Cooperative Group Housing Society Limited (2016) 11 SCC 313 where it has been categorically held as under:*
>
> > *"37……Having regard to our conclusion that Arbitral Proceedings will not come under the expression "other proceedings" of Section 69(3) of the Partnership Act, the ban imposed under the said Section 69 can have no application to Arbitral proceedings as well as the Arbitration Award."*
>
> *3. In that view of the matter the impugned Award is set aside. However, it will be open to the parties to go in for the fresh arbitration in accordance with law and for which purpose the benefit of Section 43(4)."*

[1] OMP No. 254 of 2015; dated 23.03.2017

7. It is further the case of the petitioner that pursuant to the order dated 23.03.2017 passed by this Court, DIAC issued a communication dated 04.01.2018**,** appointing a sole arbitrator, and the arbitral proceedings were continued under case reference No. DIAC/1664/04-17**.** According to the petitioner, the manner in which the disputes were once again referred to arbitration by DIAC is not discernible from the record.

8. Learned counsel appearing on behalf of the petitioner submitted that, subsequent to the setting aside of the earlier arbitral award, neither was any fresh notice invoking arbitration in terms of Section 21 of the Act of 1996 ever issued by respondent no. 2, nor was any notice issued to the petitioner by DIAC prior to referring the disputes to the sole arbitrator. It was further stressed that, in the absence of a valid invocation of arbitration in accordance with law, the very initiation and continuation of the subsequent arbitral proceedings is wholly without jurisdiction and *void ab initio*.

9. It is further submitted that despite the petitioner's repeated objections with respect to the jurisdiction of the Arbitral Tribunal and the maintainability of the arbitral proceedings, including objections raised under Section 16 of the Act of 1996, the sole arbitrator continued with the proceedings. It was further submitted that the sole arbitrator, *vide* the impugned order dated 11.04.2016, proceeded to dismiss the petitioner's application filed under Section 16 of the Act of 1996.

10. I have heard learned counsel appearing on behalf of the parties and perused the record.

11. To begin with, it is noteworthy that pursuant to the order dated 23.03.2017 passed by this Court, DIAC, *vide* communication dated 04.12.2018, proceeded to constitute the Arbitral Tribunal and, pursuant thereto, arbitral proceedings continued under the aegis of DIAC. However, it appears from the record that no fresh notice under Section 21 of the Act of 1996 was issued to petitioner.

12. The primary grievance of the petitioner is non-issuance of a notice under Section 21 of the Act of 1996, this itself, according to him renders the arbitral proceedings *void ab initio*. Therefore, the short question which arises for consideration before this Court at this juncture is whether non-issuance of a fresh notice, once liberty had been granted to the parties to initiate fresh arbitral proceedings with respect to the same dispute, would be fatal to render the arbitral proceedings vitiated.

13. A perusal of the impugned order dated 11.04.2026 would show that the Arbitral Tribunal has observed that despite the matter being pending at the stage of final arguments, the petitioner had once again moved an application under Section 16 of the Act of 1996, though an earlier application under the said provision preferred on 16.01.2019 had already been dismissed *vide* order dated 11.02.2019, which order was never impugned by either of the parties. The Arbitral Tribunal further observed that the subsequent application appeared to have been preferred only with the object of delaying the arbitral proceedings, particularly when the mandate granted for conclusion of the proceedings was expiring on 30.06.2026.

2026:DHC:4500

14. Insofar as the objection raised by the petitioner with respect to the alleged non-issuance of notice under Section 21 of the Act of 1996 is concerned, the law in this regard is well settled. The recent decision of the Supreme Court in ***Bhagheeratha Engineering Ltd. v. State of Kerala***[2] reiterates the legal position with respect to the scope and purport of Section 21 of the Act of 1996. The Court has clearly held that non-issuance of a notice under Section 21 of the Act of 1996 would not, by itself, be fatal to the arbitral proceedings, provided the dispute is arbitrable and the claim is otherwise valid.

15. In the said decision, the Supreme Court took the view that the Act of 1996 does not stipulate issuance of a notice under Section 21 as a mandatory precondition for commencement of arbitration. The requirement of such notice may, however, be relevant for assisting the parties and the arbitrator in determining limitation for the claim.

16. The relevant paragraphs of the decision in ***Bhagheeratha Engineering Ltd.*** are reproduced as under:

> ***"16.*** *Secondly, the object of Section 21 of Act of 1996, is only for the purpose of commencement of arbitral proceedings is also well settled. Section 21 is concerned only with determining the commencement of the dispute for the purpose of reckoning limitation. There is no mandatory prerequisite for issuance of a Section 21 notice prior to the commencement of Arbitration. Issuance of a Section 21 notice may come to the aid of parties and the arbitrator in determining the limitation for the claim. Failure to issue a Section 21 notice would not be fatal to a party in Arbitration if the claim is otherwise valid and the disputes arbitrable. In ASF Buildtech Private Limited v. Shapoorji Pallonji & Company Private Limited*[3]*, one of us, J.B. Pardiwala J., felicitously put the principle thus:—*

[2] 2026 SCC OnLine SC 5

163. The marginal note appended to Section 21 of the 1996 Act makes it abundantly clear that the notice to be issued thereunder is for the purpose of "commencement of arbitration proceedings". The substantive provision further makes it clear that the date on which a request/notice of invocation for referring a dispute is received by the respondent, would the date on which the arbitral proceedings in respect of a particular dispute commences. The words "particular dispute" assume significance in the interpretation of this provision and its underlying object. ***It indicates that the provision is concerned only with determining when arbitration is deemed to have commenced for the specific dispute mentioned in the notice. The language in which the said provision is couched is neither prohibitive or exhaustive insofar as reference of any other disputes which although not specified in the notice of invocation yet, nonetheless falls within the scope of the arbitration agreement. The term "particular dispute", does not mean all disputes, nor does it confine the jurisdiction of the Arbitral Tribunal which is said to be one emanating from the "arbitration agreement" to only those disputes mentioned in the notice of invocation, as it would tantamount to reading a restriction into the jurisdiction of the Arbitral Tribunal to the bounds of the notice of invocation instead of the arbitration agreement. Thus, there is no inhibition under Section 21 of the 1996 Act for raising any other dispute or claim which is covered under the arbitration agreement in the absence of any such notice. Section 21 is procedural rather than jurisdictional it does not serve to create or validate the arbitration agreement itself, nor is it a precondition for the existence of the Tribunal's jurisdiction, but merely operates as a statutory mechanism to ascertain the date of initiation for reckoning limitation.***

165. Section 23 sub-section (1) places an obligation upon the claimant to state the facts supporting his "claim", the points at issue and the relief or remedy sought by way of its statement of claim, before the Arbitral Tribunal. Notably, the legislature, in the first part of the said sub-section, has deliberately and consciously used the term "claim" as opposed to "particular dispute" employed in Section 21 of the 1996 Act. Although, it could be said that the term "particular dispute" under Section 21 connotes a larger umbrella within which the term "claim" under Section 23 would be subsumed, thereby suggesting that there is no scope to deviate from what was sought to be

referred by the notice of invocation, we do not think so. We say so because, the requirement for providing the points at issue and the relief or remedy sought that exists in sub-section (1) of Section 23 of the 1996 Act is patently absent in Section 21 of the 1996 Act, which clearly shows that the scope and object of these two provisions are at variance to each other. Further, this sub-section does not stipulate either explicitly or implicitly, that such "claim" must be the same or in tandem with the "particular dispute" in respect of which the notice of invocation was issued under Section 21 of the 1996 Act. This distinction in terminology is neither incidental nor redundant; rather, it reflects a conscious legislative design to demarcate the procedural objective of Section 21 from the substantive function sought or the framing of issues served by Section 23. Unlike Section 23, Section 21 does not require any articulation of the relief its sole purpose is to indicate when arbitration is deemed to have commenced, for the limited purpose of computing the limitation period.

169. Any restriction on the nature or content of claims, counterclaims, or set-offs in arbitration must be sourced solely from the express language of Section 23 and not from Section 21. Section(s) 21 and 23 of the 1996 Act although overlap in some aspects with each other in terms of the claims that would ordinarily be referred to the Tribunal more often than not tend to coincide, yet they are by no means tethered together in such a manner that neither of them can survive without one another. The latter serves only a procedural function and does not condition or limit the Tribunal's jurisdiction to adjudicate claims that may not have been specifically invoked at the threshold stage. To read such a limitation into the statutory scheme would run contrary to both the text and the object of the Act."

[Emphasis supplied]

More recently in Adavya Projects Private Limited v. Vishal Structurals Private Limited[4], this Court reiterating the purpose and significance of a notice under Section 21 had the following to observe:—

"24. At this point, it is important to note this Court's decision in State of Goa v. Praveen Enterprises [State of Goa v. Praveen Enterprises, (2012) 12 SCC 581] wherein it was held that the claims and disputes raised in the notice under Section 21 do not restrict and limit the claims that can be raised before the Arbitral Tribunal. The

consequence of not raising a claim in the notice is only that the limitation period for such claim that is raised before the Arbitral Tribunal for the first time will be calculated differently vis-à-vis claims raised in the notice. However, non-inclusion of certain disputes in the Section 21 notice does not preclude a claimant from raising them during the arbitration, as long as they are covered under the arbitration agreement. ***Further, merely because a respondent did not issue a notice raising counterclaims, he is not precluded from raising the same before the Arbitral Tribunal, as long as such counterclaims fall within the scope of the arbitration agreement.****"*

[Emphasis supplied]"

17. An even-handed assessment of the facts of the present case, including the record of the arbitral proceedings, would show that the petitioner has been participating in the proceedings before the Arbitral Tribunal. It is also seen that, *prima facie*, no objection with respect to the alleged absence of invocation or non-issuance of notice under Section 21 of the Act of 1996 was raised at the inception of the proceedings.

18. It is further pertinent to note that, by way of the instant writ petition, the petitioner essentially seeks to assail an interlocutory order passed during the pendency of arbitral proceedings. The further question, therefore, which arises for consideration is whether this Court ought to exercise its supervisory jurisdiction under Article 227 of the Constitution of India to interdict such an order at an intermediate stage of the arbitral proceedings.

19. At the outset, it may be observed that there is no absolute bar on the exercise of jurisdiction under Article 227 of the Constitution of India in matters arising out of arbitral proceedings. However, the scope of such interference is extremely limited and falls within a razor-thin compass. The

said jurisdiction is required to be exercised sparingly, *ex debito justitiae*, and only in exceptional cases.

20. The legislative intent behind the enactment of the Act of 1996 clearly reflects that there ought to be minimal judicial interference in arbitral proceedings, save and except to the extent specifically contemplated under the statute itself. The aforesaid principle has been authoritatively expounded by the Supreme Court in ***S.B.P. & Co. v. Patel Engineering Ltd. & Anr***[3]**.,** wherein, in paragraph No. 46, the Court observed as under:

> ***"46.*** *The object of minimising judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 or under Article 226 of the Constitution against every order made by the Arbitral Tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the Arbitral Tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage."*

21. Additionally, the Supreme Court, in the said case, has also held that the scheme of the Act, 1996 does not provide any intermittent challenge to orders other than as per Section 37 and has expressly condemned writ petitions against the arbitral award holding that:

> *"It is seen that some High Courts have proceeded on the basis that any order passed by an Arbitral Tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution. We see no warrant for such an approach. Section 37 makes certain orders of the Arbitral Tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating its grievances against the award including any in-between orders that might have been passed by the Arbitral Tribunal acting under Section 16 of the Act. The party aggrieved by any order of the Arbitral Tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal."*

[3] (2005) 8 SCC 618

The aforesaid principle has also been reiterated by the Supreme Court in ***Sterling Industries v. Jayprakash Associates Ltd.***[4]

22. In this regard, reference can also be made to the decision passed by this Court in the case of ***Surender Kumar Singhal & Ors. vs. Arun Kumar Bhalotia & Ors.***[5]**,** where this Court has explained the following principles with respect to writ petitions challenging the orders passed by the Tribunal:

> *"(i) An arbitral tribunal is a tribunal against which a petition under Article 227 would be maintainable;*
> *(ii) The non-obstante clause in Section 5 of the Act does not apply in respect of exercise of powers under Article 227 which is a Constitutional provision;*
> *(iii) For interference under Article 227, there have to be exceptional circumstances;*
> *(iv) Though interference is permissible, unless the order is so perverse that it is patently lacking in inherent jurisdiction, the writ court would not interfere;*
> *(v) Interference is permissible only if the order is completely perverse, i.e., the perversity must stare in the face;*
> *(vi) High Courts ought to discourage litigation which necessarily interferes with the arbitral process."*

23. The aforesaid principles have also been approved by the Supreme Court in the case of ***Serosoft Solutions Pvt. Ltd. vs. Dexter Capital Advisors Pvt. Ltd.***[6] Regard must also be had to ***Deep Industries Ltd. v. Oil and Natural Gas Corporation Ltd. & Anr.***,[7] wherein, the Supreme Court held that High Courts must be extremely circumspect in interfering with orders passed under the Act, such interference being restricted to orders patently lacking in inherent jurisdiction.

---

[4] (2021) 18 SCC 367
[5] 2021 SCC OnLine Del 3708
[6] 2025 INSC 26
[7] (2020) 15 SCC 706

2026:DHC:4500

24. Considering the facts and circumstances of the present case, as also the discussion hereinabove, this Court does not find any ground warranting interference with the impugned order.

25. In view of the aforesaid discussion, and in the absence of any exceptional circumstance warranting exercise of supervisory jurisdiction under Article 227 of the Constitution of India, the writ petition is devoid of merit and is accordingly dismissed.

26. It is, however, clarified that liberty shall remain reserved in favour of the petitioner to raise all such pleas and contentions as may be available to him in law, if occasion so arises, in proceedings under Section 34 of the Act of 1996.

(PURUSHAINDRA KUMAR KAURAV)

JUDGE

MAY 4, 2026
Nc