



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

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+ O.M.P. (T) (COMM.) 33/2026

M/S KAMAC SHIVA HARLALKA JV

.....Petitioner

versus

NATIONAL HIGHWAYS AND INFRASTRUCTURE

DEVELOPMENT CORPORATION LTD & ANR.Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Jatin Sehgal, Mr. Ashish Garg, Ms. Devna Soni, Mr. Arjun Gaur and Mr. Simran Bajaj, Advocates.

For the Respondents : Mr. K.K. Sharma, Senior Advocate with Mr. Abhinav Mishra, Ms. Arehisha Singh, Mr. Ram Prakash Rai, Mr. Raju, Mr. Priyanshu Singh, Mr. Hardik Dimania, Ms. Swati Srivastava, Ms. Ramani Juneja and Mr. Dilip Nagourna, Advocates for R-1.

Date of Decision: 21st July, 2026

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J. (ORAL)

1. This is the petition under Section 15(2) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to '*the Act*') filed on behalf of the petitioner M/s. Kamac Shiva Harlalka (JV) seeking appointment of a substitute sole arbitrator in place of the previous learned Sole Arbitrator.



2. Mr. Sehgal, learned counsel appearing for the petitioner draws attention of this Court to the order dated 23.02.2026 passed by the learned Arbitrator in the arbitration proceedings titled “*M/s. Kamac Shiva Harlalka JV vs. NHIDCL & Anr.*” bearing reference no.DIAC/8260/05-24, whereby the reference was returned to the Delhi International Arbitration Centre (hereinafter referred to as “*DIAC*”) for nomination of another arbitrator, and with a direction to continue the proceedings from the stage where it was at that point of time.

3. The learned counsel states that the learned Sole Arbitrator had rescued from deciding the reference and had also noted in the impugned order dated 23.02.2026 that the continuation of the proceedings had become impossible in terms of Section 32(1)(b) of the Act, however, the termination of the mandate of the arbitrator appears to have been under Section 14(1)(b) of the Act. He contends that if the impugned order is construed under the provisions of Section 14(1)(b) of the Act, this Court only needs to substitute the learned Sole Arbitrator in terms of Section 15(2) of the Act.

4. *Per Contra*, Mr. K.K. Sharma, learned senior counsel appearing for respondent no.1/NHIDC contends that the learned Arbitrator *vide* order impugned dated 23.02.2026 has clearly referred to Section 32(1)(b) of the Act making it clear the intention behind passing this order. He states that the Supreme Court in its judgment, namely, *Harshbir Singh Pannu and Another vs. Jaswinder Singh*, cited in *2025 SCC Online SC 2742*, particularly in para 415, has laid down the remedies available to the parties, if the Arbitrator undertakes any of the measures provided under Sections 25, 30, 32 and 38 of the Act.

5. According to the learned senior counsel, whenever the Arbitral Tribunal passes an order terminating the proceedings, the appropriate



remedy available to the parties would be to file an application for recall of such order before the Tribunal itself. He states that the Supreme Court had categorically held that the Arbitral Tribunal possess the inherent procedural power to recall an order terminating the proceedings.

6. Although, he admits that the Arbitral Tribunal has not terminated the proceedings itself, however, once the Supreme Court has laid down the law in respect of the procedure to be followed, it would be incumbent upon the petitioner first to approach the learned Sole Arbitrator seeking recall of the impugned order which is under challenge in the present proceedings. He states that this is the only procedure that is prescribed by the Supreme Court in such circumstances. Hence, this Court might as well relegate the petitioner first to approach the learned Sole Arbitrator seeking recall of the said decision.

7. This Court has heard the arguments of Mr. Sehgal, learned counsel for the petitioner as also Mr. K.K. Sharma, learned senior counsel appearing for the respondent. It would be relevant to extract the order dated 23.02.2026 passed by the learned sole arbitrator in its entirety. The same reads thus-

“1. Learned counsel for the parties were present and were heard. An application has been moved on behalf of the claimant which seeks to produce a large number of documents- running into over two thousand pages. The tribunal had previously dealt with and permitted the claimant to produce some additional documents, in its proceeding, dated 10.10.2025. The production of other documents was not permitted. In addition to the application (for production of further additional documents) the claimant seeks to withdraw its consent that the final hearing proceedings may take place, without either party leading oral evidence. The tribunal notes that it had previously recorded the parties' consent on 16.11.2025 that no oral evidence would be led by either party and that final hearing would be held on the basis of the existing record. The points of difference/dispute were framed on 31.10.2025.

2. In the course of the hearing today counsel for the claimant argued rather strenuously that it is absolutely necessary to lead oral evidence and cross examine the respondent. He also made grievance with respect to non-availability of the local commissioner's report [which was furnished on



09.01.2026 to the parties] , after inspection of the record. It was further submitted that there is a need to cross examine the local commissioner.

3. The tribunal had suggested that the application for additional documents may be allowed subject to just exceptions provided the respondent is given some time to admit or deny the documents having regard to the late stage of the arbitration. It was also suggested that the claimant may file its objection to the expert's report (as the technical expert was called, and not the local commissioner). This course was not acceptable to the claimant counsel who repeatedly emphasised that he needs to cross examine the respondent's witness.

4. The manner in which the tribunal was addressed and the conduct of proceedings, on behalf of the claimant left much to be desired. Counsel for the claimant - it must be stated, apologized and stated that he did not mean any disrespect.

5. The entire proceeding, held today leads me to conclude that the claimant harbours acrimony, and I would not be able to preside over the reference. The tribunal hereby finds that the continuation of the proceedings has for any other reason become impossible, in terms of Section 32 (1) (b) of the Arbitration and Conciliation Act, 1996. The reference is hereby returned to the Delhi International Arbitration Centre (DIAC) for appropriate nomination of another arbitrator, to continue with the proceedings, from the stage where it is at present.”

8. From a holistic reading of the said order, it is clear that due to certain reasons, which compelled the learned Sole Arbitrator, the learned Arbitrator was of the opinion that he would be unable to preside over the reference. It was further observed that the Tribunal also found the continuance of proceedings has become impossible in terms of Section 32(1)(b) of the Act and hence, as a consequence returned the reference to the DIAC for appropriate nomination of another arbitrator and had also observed that the proceedings may continue from the stage where it was at that point in time.

(Emphasis supplied)

9. The Act, as observed by this Court contemplates two different situations: (i) which may arise out of the provisions contained in Section 14(1) of the Act; and (ii) which is provided in the other Section of the Act.



While under the provisions of Section 14 of the Act, it is the mandate of the arbitrator itself which would be terminated while under Section 32, the arbitral proceedings themselves would be terminated. The fundamental difference between both is that under Section 14 of the Act, while the arbitrator has no mandate further to continue, however, the proceedings themselves do not get terminated and resume once another arbitrator is substituted by the authority. Whereas under Section 32 of the Act, the proceedings themselves stand terminated. It would be appropriate to extract Sections 14 and 32 of the Act. The same read thus –

“Section 14: Failure or impossibility to act.

14. (1) [The mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, if]—

- (a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and*
- (b) he withdraws from his office or the parties agree to the termination of his mandate.*

(2) If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate.

(3) If, under this section or sub-section (3) of section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of section 12.”

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“Section 32: Termination of proceedings.

32. (1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—

- (a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,*



(b) the parties agree on the termination of the proceedings, or

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.”

10. It is clear from the above that the provisions of Section 32 of the Act contemplate termination of the arbitral proceedings, attaching finality to the same, while as per Section 14, only the mandate of the arbitrator is terminated while the proceedings still survive. The learned senior counsel has extensively relied upon the ratio laid down by the Supreme Court in **Harshbir Singh Pannu (supra)**, particularly sub-para 7 & 8 of para 415 of the said judgment. For clarity, the said para 415 in its entirety is extracted hereunder:

“415. A conspectus of our legal discussion is as under: -

(I) Section 32 of the Act, 1996 is exhaustive and covers all cases of termination of arbitral proceedings under the Act, 1996. The power of the arbitral tribunal to pass an order to terminate the proceedings under the scheme of the Act, 1996 lies only in Section 32(2).

(II) Sections 25, 30 and 38 of the Act, 1996 respectively, only denote the circumstances in which the tribunal would be empowered to take recourse to Section 32(2) and thereby, terminate the proceedings.

(III) The use of the expression “the mandate of the Arbitral Tribunal shall terminate” in Section 32 of the Act, 1996 and its omission in Section(s) 25, 30 and 38 of the said Act, cannot be construed to mean that the nature of termination under Section 32(2) is distinct from a termination under the other aforesaid provisions of the Act, 1996.

(IV) The expression “mandate of the Arbitral Tribunal” is merely descriptive of the function entrusted to the tribunal, namely, the authority and duty to adjudicate the disputes before it. It refers to the obligation of the arbitral tribunal to administer the arbitration by conducting the proceedings in order to adjudicate upon the disputes referred to it.



(V) *Irrespective of whether the proceedings are terminated on account of the passing of a final award, or by the withdrawal of claims, or on account of default by the claimant, or the intervention of any impossibility in the continuation of the proceedings, the legal effect remains the same, inasmuch as the arbitral tribunal thereafter stands divested of its authority to act in the reference.*

(VI) *The common thread that runs across Sections 25, 30 32 and 38 of the Act, 1996 respectively is that although the arbitral proceedings may get terminated for varied reasons, yet the consequence of such termination remains the same i.e., the arbitral reference stands concluded and the authority of the tribunal stands extinguished.*

(VII) *There is a clear distinction between a procedural review and a review on merits. The arbitral tribunal possesses the inherent procedural power to recall an order terminating the proceedings as such power is merely to correct an error apparent on the face of the record or to address a material fact that was overlooked. It does not tantamount to revisiting the findings of law or reappreciating the substantive issues already decided.*

(VIII) *Where an arbitral tribunal passes an order for terminating the proceedings under the Act, 1996, the appropriate remedy available to the parties would be to first file an application for recall of such order before the arbitral tribunal itself. The arbitral tribunal would then in turn be required to examine whether the order does or does not deserve to be recalled.*

(IX) *If a favourable order is passed for recommencing arbitration proceedings, the only option available to a party aggrieved therefrom, would be to participate in the proceedings and thereafter, challenge the final award under Section 34 of the Act, 1996.*

(X) *If, however, the recall application is dismissed, the party aggrieved therefrom, would be empowered to approach the court under Section 14(2) of the Act, 1996. The court would then in turn examine whether the mandate of the arbitrator stood legally terminated or not. If it finds that the proceedings were not terminated in accordance with the law, it would be empowered to either set-aside the order of termination of proceedings and remand the matter to the arbitral tribunal, or, if the circumstances so require, proceed to appoint a substitute arbitrator in terms of Section 15 of the Act, 1996.”*

11. Before advertng to and addressing the guiding principles laid down by the Supreme Court in the said judgment, it would be more appropriate to



first examine sub-para (v) of para 109 of the said judgment. The same is extracted hereunder:

“(v) Fifthly, Section 32 sub-section (1) of the Act, 1996, stipulates that the arbitral proceedings shall be terminated by the final award or by an order under sub-section (2) thereof. Subsection (2) contemplates three situations where the tribunal is vested with the power to the arbitral proceedings, namely, (i) when the claimant withdraws his claim, (ii) when the parties agree and (iii) when the Tribunal finds that continuation of the proceedings has for any other reason become unnecessary or impossible. The termination of proceedings results in the termination of the mandate of the tribunal. The relevant observations read as under:-

“46. Section 32 is entitled “Termination of proceedings” and sub-section (1) provides that the arbitral proceedings shall be terminated by the final Arbitral Award or by an order of the Arbitral Tribunal under sub-section (2). Sub-section (2) of section 32 is important for the purposes of the present proceedings [...]

“47. Sub-section (2), therefore, contemplates three situations where the Arbitral Tribunal is vested with the power to terminate the arbitral proceedings, namely, (i) when the claimant withdraws his claim, (ii) when the parties agree and (iii) when the Tribunal finds that continuation of the proceedings has for any other reason become unnecessary or impossible. The mandate of the Arbitral Tribunal terminates with the termination of the arbitral proceedings. (Sub-section (3) of section 32). [...]

(Emphasis supplied)”

12. It is clear from the aforesaid paragraph that the Supreme Court was conscious of the fact that the provisions of Section 14 and 32 of the Act, which are subject matter of the present order, contemplate two different situations in that, first, (i) where the termination of the mandate of the arbitrator is contemplated and (ii) where the termination of the arbitral proceedings themselves are contemplated. In the former situation, it is only the arbitrator who withdraws from arbitral office while permitting the appointment of a substitute arbitrator to continue the proceedings, whereas in the latter situation, the arbitral proceedings themselves would collapse,



meaning thereby, it attaches finality to the arbitral proceedings.

13. As to what was the controversy before the Supreme Court in ***Harshbir Singh Pannu (supra)***, it would be appropriate to consider the observations in para 247 which is extracted hereunder:

“247. The aforesaid may be looked at from one another angle. The omission of the expression “the mandate of the Arbitral Tribunal shall terminate” in Sections 25, 30 and 38 of the Act, 1996 respectively, is for the simple reason that the said provisions do not pertain to the manner in which the arbitral proceedings come to an end, rather only prescribe the circumstances in which the proceedings may be terminated. Section 32 of the Act, 1996 on the other hand, explicitly relates to the termination of proceedings, and thus, the legislature in order to provide certainty as regards the consequences of such termination, incorporated the aforesaid expression.”

14. The aforesaid paragraph explicitly makes it clear that invocation of Section 32 of the Act would result in termination of the proceedings and attach finality to such action. It is in that context that the Supreme Court in para 415 laid down the guiding principles as to what a party is mandated to comply with in case the actions under Section 32 of the Act has been undertaken by the Arbitral Tribunal.

15. However, in the present case, it is clear that though the learned Sole Arbitrator has referred to Section 32(1)(b) of the Act in the order, to the mind of this Court, it appears that the reference was actually to provisions of Section 14(1)(b) of the Act. The mere fact that the learned Sole Arbitrator has noted that he would be unable to preside over the reference, coupled with the fact that the reference has been returned to DIAC for nomination of an appropriate arbitrator and to continue the proceedings wherefrom it had culminated as on that date, by itself makes it clear that the action proposed by the learned Sole Arbitrator falls squarely within the provisions of Section 14(1)(b) of the Act.



16. Mr. K.K. Sharma, learned senior counsel appearing for the respondent has also relied upon the judgment of the Coordinate Bench of this Court in *Bhavin C. Kothari vs. Armor India Coding and Imaging Supplies Private Limited*, cited in *2026 SCC OnLine Del 101*, particularly paras 48, 49, 50 & 51 in support of his contentions. This Court has perused the said judgment and does not find that the same would be relatable to the issues which have arisen here. This is for the reason the Coordinate Bench in that case was considering an issue which had arisen out of the provisions of Section 32(2)(c) of the Act and not Section 14 of the Act.

17. As noted above, it is clear that the provisions of Section 32 of the Act, if invoked by the arbitrator, would culminate into termination of the arbitral proceedings themselves, whereas, under the provisions of Section 14 of the Act, it is only the mandate of the arbitrator which stands terminated and not the arbitral proceedings. That being the factual situation in the present case, the said judgment would not be applicable.

18. In the overall circumstances, this Court is of the considered opinion that the petition under Section 15(2) of the Act should succeed.

19. In that view of the matter, this Court appoints Justice (Retd.) Kurian Joseph as the Sole Arbitrator in terms of the order dated 25.04.2024 in O.M.P.(I) COMM 119/2024 between the parties.

20. Needless to observe, and as also noted by the learned Sole Arbitrator in the penultimate paragraphs of the order dated 23.02.2026, that the arbitral proceedings shall continue from the stage where it was, as on 23.02.2026.

21. In view of the above, this petition is disposed of accordingly.

**TUSHAR RAO GEDELA
(JUDGE)**

JULY 21, 2026/kct