Case Citation: (2026) ibclaw.in 6225:DHC

2026:DHC:9243

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

% ***Judgment pronounced on: 16.10.2026***

\# **CNR No.DLHC010335432026**

\+ **O.M.P. (T) (COMM.) 83/2026**

PUNJAB NATIONAL BANK .....Petitioner

Through: Dr. Devashish Bharuka (Sr. Adv.) along with Mr. Anant Upadhyay, Advs.

versus

BANK OF INDIA .....Respondent

Through: Mr. Ashish Rana, Mr. Gaurav Raj, Mr. Amitabh Yash Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present petition has been filed by the petitioner under Section 15(2) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the A&C Act"), seeking the appointment of a substitute Sole Arbitrator to adjudicate the disputes between the parties arising out of and in connection with the Undertaking dated 28.03.2018 (hereinafter referred to as "the Undertaking") executed by the respondent in favour of the petitioner.

2. The petitioner and the respondent are both nationalised banks constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. The Undertaking came to be executed by the respondent in favour of the petitioner in connection with the settlement of inter-bank claims arising out of allegedly fraudulently issued Letters of

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Undertaking and Letters of Credit referable to the Gitanjali Group and the Nirav Modi Group entities. An unnumbered clause contained in the Undertaking incorporates the arbitration agreement between the parties, and reads as under:

> *"This undertaking shall be governed by and construed in accordance with the laws of India. Any dispute in relation to the rights and obligations contained herein or arising herefrom shall be subject to and resolved in accordance with the (Indian) Arbitration and Conciliation Act, 1996 and the venue of arbitration shall be [New Delhi]. Subject to the provisions of arbitration as set out above, competent courts in [New Delhi] will have exclusive jurisdiction."*

Disputes are stated to have arisen when the petitioner called upon the respondent to furnish documents pertaining to the Buyer's Credit availed by the said entities, and the respondent declined to accede to that request.

3. By an order dated 02.09.2022 passed by a coordinate bench of this Court in Arb. P. 243/2020, being a petition under Section 11(6) of the A&C Act, Hon'ble Mr. Justice Shiavax Vazifdar (Retd.), former Chief Justice of the High Court of Punjab and Haryana, came to be appointed as the Sole Arbitrator. Paragraph 11 of the said order stipulated that the learned Sole Arbitrator shall be entitled to fee in accordance with the Fourth Schedule to the A&C Act, or as may otherwise be agreed to between the parties and the learned Sole Arbitrator; and paragraph 13 thereof directed that the parties shall share the arbitrator's fee and arbitral costs equally.

4. The aforesaid reference did not get off the ground. At the preliminary meeting held on 03.10.2022, the learned Sole Arbitrator proposed a fee; the respondent declined to accede thereto and insisted that the fee be governed by the Fourth Schedule to the A&C Act. No consensus having been reached,

the learned Sole Arbitrator, by an e-mail dated 13.11.2022, conveyed that it would not be possible for him to act as an arbitrator in the disputes between the parties.

5. The petitioner thereupon approached this Court by way of O.M.P. (T) (COMM.) 72/2025. By an order dated 13.02.2026, a coordinate bench of this Court appointed Hon'ble Mr. Justice Rajiv Shakdher (Retd.), former Chief Justice of the High Court of Himachal Pradesh, as the substitute Sole Arbitrator. The said order records the joint submission of the parties that the arbitration be conducted under the aegis of the Delhi International Arbitration Centre, and that the learned Arbitrator shall be at liberty to fix his own fees in consultation with learned counsel for the parties; and stipulates, at paragraph 5(iv) thereof, that in case the parties are not able to agree on the aspect of fees, the same shall be governed by the Fourth Schedule to the A&C Act.

6. The said reference also did not proceed further. By Procedural Order No. 2 dated 19.03.2026, the learned Substitute Arbitrator recorded, *inter alia*, as under:

(i) that learned counsel for the petitioner/claimant had stated that since the claimant would be seeking from the respondent the requisite documents/production of documents under the Undertaking and incidental reliefs, it was unable to place a monetary value on its claims;

(ii) that learned counsel for the respondent had contended that, having regard to the fact that the relief likely to be sought concerns the production of documents, the fee payable ought to fall within "row 1" of the Fourth Schedule to the A&C Act, i.e., at the lowest slab rate;

(iii) at paragraph 4.2, that the respondent was nonetheless willing to

pay a lump sum amount of Rs.10,00,000/- towards arbitral fee; and

(iv) that the learned Substitute Arbitrator was unable to accept the contention that the case would fall within "row 1", since a party is required to arrive at an estimate of what the worth of the dispute would be; that although the dispute has commercial worth, the respondent did not wish to provide an estimate concerning the same; and that the petitioner had, on its part, also not estimated the worth of its claim.

7. In the aforesaid circumstances, the learned Substitute Arbitrator recorded that he was unable to proceed further in the matter, and that the arbitration proceedings stood closed at his end in terms of Section 14(1)(b) of the A&C Act, with liberty to the parties to take the next steps in the matter as per law.

8. Hence, the present petition.

9. Notice was issued in the present proceedings on 29.07.2026. A reply has since been filed on behalf of the respondent. In paragraph 1 thereof, the respondent states, in terms, that it has no objection to the appointment of a substitute arbitrator by this Court under Section 15(2) of the A&C Act. The stand of the respondent is that the fee of the arbitrator ought to be fixed in terms of the Fourth Schedule to the A&C Act.

10. Learned senior counsel for the petitioner submits that the appointment of a substitute arbitrator is not opposed, as is evident from paragraph 1 of the reply. He draws the attention of this Court to paragraph 4.2 of Procedural Order No. 2 dated 19.03.2026, whereby the respondent had itself expressed its willingness to pay a lump sum amount of Rs.10,00,000/- towards arbitral fee. He further submits that the documents sought from the respondent are themselves required before the petitioner can formulate and

quantify its claim, and that the relief presently sought in the arbitral reference is the production of documents and information, together with incidental reliefs.

11. Learned counsel appearing for the respondent is unable to refute that the respondent had itself offered to pay a lump sum amount of Rs.10,00,000/- towards arbitral fee (as recorded at paragraph 4.2[1] of Procedural Order No. 2 dated 19.03.2026); counsel is also unable to dispute that the present reference has, on two successive occasions, been rendered infructuous solely on account of the inability of the parties to arrive at a consensus on the fee payable. While reiterating that, according to the respondent, the fee of the learned Sole Arbitrator ought to be governed by the Fourth Schedule to the A&C Act, he fairly submits that the said contention may be recorded and that an appropriate fee may be quantified by this Court.

12. I have heard the learned counsel for the parties and perused the record.

13. Two aspects are relevant. The first is that there is no contest whatsoever as to the necessity of appointing a substitute arbitrator; that much is common ground between the parties. The second, is that this reference (which arises out of an arbitration agreement of the year 2018, and in respect of which this Court first constituted an arbitral tribunal as far back as on 02.09.2022) has twice floundered at the very threshold, on each occasion for no reason other than the inability of the parties to arrive at a consensus upon the fee payable. The first reference failed because no

[1] 4.2 That said, Mr. Ashish Rana states that the Respondent/Bank of India is willing to pay a lump sum amount of Rs 10,00,000/- towards arbitral fee.

consensus could be reached upon the fee proposed by the learned Sole Arbitrator. The second failed because the parties could not agree upon how the Fourth Schedule was to operate in a reference in which the petitioner makes no monetary claim. In consequence, the disputes between the parties remain wholly unadjudicated.

14. In the circumstances, it is imperative for this Court to consider the quantification of the fee payable to the arbitral tribunal.

15. The Fourth Schedule to the A&C Act proceeds upon the basis of a "sum in dispute". The petitioner presently seeks non-monetary relief, and states that its claim cannot be quantified until the documents sought are produced. The respondent nevertheless maintains that the lowest slab of the Fourth Schedule ought to apply. It is that very disagreement which brought the second reference to an end. To leave the question of fee unresolved for a third time would serve no useful purpose.

16. It is well settled that an arbitral tribunal cannot unilaterally issue a binding determination as to its own fee. In ***Oil and Natural Gas Corporation Ltd. v. Afcons Gunanusa JV***, (2024) 4 SCC 481, the Supreme Court observed that *"a unilateral determination of fees"* by an arbitral tribunal *"violates the principles of party autonomy and the doctrine of the prohibition of in rem suam decisions i.e. the arbitrators cannot be a judge of their own private claim against the parties regarding their remuneration"*. The Supreme Court emphasised that the fee of the arbitral tribunal ought to be fixed at the inception of the proceedings, and proceeded to lay down certain guidelines for the conduct of *ad hoc* arbitrations in India. Paragraph 128 of the judgment, insofar as it is relevant, reads as under:

> *"128. We believe that the directives proposed by the Amicus*

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> *Curiae, with suitable modifications, would be useful in structuring how these preliminary hearings are to be conducted. Exercising our powers conferred under Article 142 of the Constitution, we direct the adoption of the following guidelines for the conduct of ad hoc arbitrations in India:*
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> > *……5. In cases where the arbitrator(s) are appointed by the Court, the order of the Court should expressly stipulate the fee that the Arbitral Tribunal would be entitled to charge. However, where the Court leaves this determination to the Arbitral Tribunal in its appointment order, the Arbitral Tribunal and the parties should agree upon the Terms of Reference as specified in the manner set out in draft practice direction (1) above."*

17. The power of this Court to fix the fee of the arbitral tribunal at the stage of appointment itself is not in doubt and not disputed. Guideline 5 extracted above is also illustrative in this regard.

18. As such, given the peculiar facts of the present case, it would be an exercise in futility to appoint a substitute arbitrator on the same lines as on the previous occasion/s, and to leave the fee to be settled *inter se* for a third time. This Court accordingly considers it appropriate to stipulate the fee at the inception of the fresh appointment. In doing so, this Court has had regard to the nature and scope of the reference, to the history of the proceedings noticed hereinabove. Most importantly, this Court has considered that the respondent had itself indicated before the learned Substitute Arbitrator its willingness to pay a lump sum amount of Rs.10,00,000/- as its share of arbitral fee. Learned senior counsel for the petitioner has categorically stated, on instructions, that the petitioner is agreeable to pay the same amount as its share of arbitral fees.

19. In view of the above, there is no impediment in appointing an independent Sole Arbitrator to adjudicate the disputes between the parties.

20. Accordingly, Ms. Justice (Retd.) Deepa Sharma, former Judge, Delhi High Court (Mobile No.: +91 9910384631) is appointed as the substitute Sole Arbitrator to adjudicate the disputes between the parties.

21. The learned Sole Arbitrator may proceed with the arbitral proceedings subject to furnishing to the parties the requisite disclosure as required under Section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, or in the event the learned Sole Arbitrator is unable to accept the reference upon the fee hereby fixed, the parties are given liberty to file an appropriate application in this Court.

22. The fee of the learned Sole Arbitrator is fixed at a consolidated sum of Rs.20,00,000/-, to be borne by the parties in equal shares, i.e., Rs.10,00,000/- each.

23. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Sole Arbitrator on their merits, in accordance with law.

24. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the contentions of the parties.

25. The present petition stands disposed of in the above terms. Pending application(s), if any, also stand disposed of.

SACHIN DATTA, J

OCTOBER 16, 2026*/sd*

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