2026:DHC:9246

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

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

\# **CNR No.DLHC010039722026**

\+ **ARB.P. 241/2026**

NATIONAL HIGHWAYS AUTHORITY OF INDIA .....Petitioner

Through: Mr. Ankur Mittal, Sr. Adv., Mr. Abhay Gupta, Mr. Ankur Saboo, Ms. Ipshita Dutta and Mr. Aviraj Pandey, Advs.

versus

M S IRB WESTCOAST TOLLWAY LTD & ORS .....Respondents

Through: Mr. Atul Nanda, Sr. Adv., Ms. Rameeza Hakim, Ms. Devika Mohan, Mr. Uday Khanna, Mr. Aalam Bir Singh Nijar, Mr. Annamaya Nanda and Mr. Pratyush Srivastava, Advs.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present petition has been filed by the petitioner, National Highways Authority of India (hereinafter referred to as "NHAI") under Section 11(6) of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as "A&C Act"), seeking appointment of a presiding arbitrator so as to complete the constitution of the Arbitral Tribunal for adjudication of the disputes between the parties under a Concession Agreement dated 25.03.2013 (hereinafter referred to as "CA").

2. The parties have already nominated their respective nominee

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arbitrators. The only vacancy remaining is that of the presiding arbitrator. The respondents resist the petition on a single ground. It is contended that the petition is not maintainable because the arbitral proceedings before the Arbitral Tribunal originally constituted in October 2024 (erstwhile Arbitral Tribunal) stood terminated by the Procedural Order No. 6 dated 16.07.2025, circulated *via* email dated 21.07.2025 (hereinafter referred to as 'Procedural Order No. 6 dated 16.07.2025'), whereby all three members of that Tribunal recused themselves. It is contended that the same tantamounts to termination under Section 32(2)(c) of the A&C Act and that in terms of the judgment of the Supreme Court in ***Harshbir Singh Pannu & Anr. v. Jaswinder Singh***, 2025 SCC OnLine SC 2742, the only remedy of a party aggrieved by an order of termination is to seek recall of that order before the same Tribunal and failing that, to approach the Court under Section 14(2) of the A&C Act.

3. As such, it is submitted by the Respondents that a fresh petition under Section 11 is barred.

4. The question that arises is, therefore, as follows: "when the Members of an arbitral tribunal recuse themselves from a reference on account of a disagreement with one of the parties as to the quantum of their fees, without passing any order under Section 32 of the A&C Act, would the reference itself stand terminated [so as to attract the consequences set out in ***Harshbir Singh Pannu*** (supra)] or would the same merely occasion a vacancy in the office of each arbitrator, to be filled in by substitution under Section 15(2) of the A&C Act."

5. For the reasons that follow, this Court is of the view that, in this factual context, the dicta laid down in ***Harshbir Singh Pannu*** (supra)**,** will not apply and that the vacancy in the Arbitral Tribunal is to be supplied by

taking recourse to Section 15(2) of the A&C Act.

FACTUAL BACKGROUND

6. On 25.03.2013, the CA was entered into between the petitioner and respondent no.1, IRB Westcoast Tollway Ltd., a Special Purpose Vehicle (hereinafter referred to as "the Concessionaire"), for "Four Laning of Goa/Karnataka Border to Kundapur Section of NH-66 (formerly NH-17) from Km 93.700 to Km 283.300 in the State of Karnataka under NHDP Phase IV on a Design, Build, Finance, Operate and Transfer (DBFOT) Toll Basis" (hereinafter referred to as "the Project Highway"). Respondent no.2, IRB Infrastructure Trust, is the current promoter of the Concessionaire, and respondent no.3, IRB Infrastructure Developers Ltd., is its erstwhile promoter and was the successful bidder for the project. Respondent nos.2 and 3 are not signatories to the CA.

7. The Arbitration Clause is contained in Article 44.3 of the CA. The same reads as under:

> **44.3 Arbitration**
>
> 44.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 44.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 44.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**"), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be Delhi, and the language of arbitration proceedings shall be English.
>
> 44.3.2 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the

appointment shall be made in accordance with the Rules.

44.3.3 The arbitrators shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to this Article 44 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

44.3.4 The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.

44.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

8. On 08.01.2024, the Concessionaire raised claims upon the petitioner described as "interim claims of compensation for Damages and Losses on account of Overstay at Site beyond Schedule Four Laning Date" (the First Set of Claims), aggregating approximately to Rs. 2987.45 Crores.

9. On 21.06.2024, the Concessionaire issued the first notice of arbitration, *inter alia*, stating as follows:

> *"Hence, now this notice invoking arbitration agreement is being served.*
>
> *We are nominating Hon'ble Justice P. N. Deshmukh, Retd. Judge of the Hon'ble Bombay High Court as our nominated arbitrator. (Email: pradeepdeshmukh02@gmail.com. Postal address: Flat No. 2201, A wing, Lotus Enpar Residency, Shankarrao Narm Marg, Lower Parel, Mumbai – 400013)*
>
> *We are calling upon the Authority to nominate its arbitrator in accordance with the arbitration agreement, so that a Three Member Arbitral Tribunal can be expeditiously constituted as per agreed procedure for expeditious resolution of all these disputes and differences".*

10. In response to this letter, the petitioner nominated Hon'ble Mr. Justice (Retd.) V. Ramasubramanian, former Judge of the Supreme Court of India, as its nominee arbitrator *vide* its communication dated 23.07.2024. On

19.08.2024, the petitioner issued a suspension notice-cum-order consequent to the collapse of the old Kaali Bridge on 07.08.2024, which was disputed by the Concessionaire by a letter dated 26.08.2024.

11. On 11.09.2024, the petitioner issued a Show Cause Notice to the Concessionaire as well as to respondent nos.2 and 3, and on 12.09.2024 the suspension notice-cum-order dated 19.08.2024 was withdrawn. On 27.09.2024, the Concessionaire issued a further notice invoking arbitration, addressed to the petitioner as well as to respondent nos.2 and 3, in respect of the disputes concerning the old Kaali Bridge (the second set of claims).

12. The communication dated 27.09.2024, *inter alia*, reads as under:

> Vide our letter dated 21.06.2024, we have nominated Hon'ble Justice (Retd.) P.N Deshmukh and the NHAI vide letter dated 23.07.2024 has nominated Hon'ble Justice (Retd.) V. Ramasubramanium, and the third Arbitrator is likely to be appointed by them ("**Arbitral Tribunal**") in connection with the disputes arising from and incidental to the Concession Agreement dated 25.03.2013.
>
> For the sake of brevity the contents of these communications referred hereinabove are not reproduced herein, but the same may please be treated as part and parcel of this Notice.
>
> The conciliation invoked by us vide letter dated 26.08.2024 to NHAI pertaining to the further issues, disputes and claims arising, inter-alia, in regard to old Kali Bridge, has failed. Subject to dispute resolution as stated in the above referred communications, during pendency we had agreed to demolition of remains of old Kali Bridge, and construction of new Bridge, with financial support of Noticee no. 2 and 3.
>
> From the contents of the communications referred hereinabove, it is clear that various further contractual disputes and differences have arisen between the parties to the said Concession Agreement dated 25.03.2013 on scope of the provisions, discharge of responsibilities and liabilities thereunder by the Concessionaire / Bidder Promoter / current Promoter / NHAI, disputes and claims arising therefrom and incidental thereto, which are arbitrable under the arbitration agreement in Clause 44.3.
>
> For adjudication of other disputes under the aforesaid Concession Agreement dated 25.03.2013, arbitration was already invoked. Subsequent to the nomination of Arbitrators by us and NHAI, these further serious disputes and claims have arisen, which could not be resolved by conciliation. The same are thus required to be resolved by arbitration in terms of the Dispute Resolution mechanism envisaged under Article 44.3 of the Concession Agreement.

As such all Noticees are essential parties to ensure that all disputes / claims can be holistically considered and decided in these arbitral proceedings.

Accordingly, we are hereby invoking Arbitration under Article 44.3 of the Concession Agreement dated 25.03.2013 to refer the further disputes and claims relating to the same Project Highway by the Arbitral Tribunal for holistic and composite adjudication, in the interest of justice, in terms of the agreed dispute resolution mechanism.

Hence, this further notice invoking arbitration in terms of Section 21 of the Arbitration & Conciliation Act, 1996, for raising further disputes before the Arbitral Tribunal, in furtherance to our earlier Notice dated 21.06.2024.

It is stated that the present Notice is without prejudice to our rights, remedies, contentions, that are available to us under law & equity and under the Concession Agreement and other related documents/correspondence referred hereinabove and mentioned therein. We reserve our rights to claim such other and further relief and remedies that are available to us under applicable laws, including but not limited to claims for additional costs, expense, damages and injuries.

Thanking you and assuring you our best services.

For IRB Westcoast Tollway Ltd.

13. On 17.10.2024, Hon'ble Mr. Justice (Retd.) Krishna Murari, former Judge of the Supreme Court of India, communicated his consent to act as the Presiding Arbitrator along with his disclosure under the Sixth Schedule, whereupon the erstwhile Arbitral Tribunal stood constituted. Around the same time, the Concessionaire and respondent nos.2 and 3 had filed O.M.P.(I)(COMM) 355/2024 under Section 9 of the A&C Act, seeking, *inter alia*, stay of the Show Cause Notice dated 11.09.2024.

14. By order dated 18.10.2024, a coordinate Bench of this Court directed that the said petition should be treated as an application under Section 17 of the A&C Act. It was, *inter alia*, directed as under:

> 3. In view of the above, at this juncture, this Court is not inclined to entertain the present petition, however, the Tribunal is requested to start the proceedings at the earliest and treat the present petition as one for a petition filed under Section 17 and proceed further, subject to the objections of the Respondent regarding maintainability and other legal objections available to the Respondent in accordance with law.
>
> 4. The petition is disposed of, along with pending application(s), if any.

PROCEEDINGS BEFORE THE ERSTWHILE ARBITRAL TRIBUNAL:

15. By procedural Order No. 1 dated 20.10.2024, the erstwhile Arbitral Tribunal fixed the Section 17 application for hearing on 26.10.2024. By procedural Order No. 2 recording the hearing held on 26.10.2024 (as revised on 27.10.2024), the erstwhile Arbitral Tribunal, *inter alia*, directed as under:

> 4. The parties are directed to deposit an amount of Rs. 10 Lakh per arbitrator towards arbitral fee for hearing of the section 17 application. The amount to be deposited shall be shared in equal proportion by both sides.

16. By procedural Order No. 3 dated 12.11.2024, the erstwhile Arbitral Tribunal, after hearing the parties on the Section 17 application, reserved orders and, *inter alia*, further directed as under:

> 5. Lastly, both the parties are granted 7 days' time to comply to the directions issued under the *Procedural Order No. 2* concerning payment of the Tribunal's fees for the Section 17 application hearing.

17. By order dated 24.12.2024, the erstwhile Arbitral Tribunal allowed the Section 17 application and, held that respondent no.2 and 3 were veritable parties to the contract and the arbitration proceedings. It was, *inter alia*, held as under:

> 35. Therefore, from the above discussion, it can be seen that the other two applicants, even if not signatories, do fall under the definition of third party beneficiaries and thus are also veritable parties to the contract, and the

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present arbitration proceedings.

36. Now, since Applicants No.2 and 3, in the context of this application are at parity with Applicant No.1, the blacklisting proceedings qua the Applicants No.2 & 3 are liable to not proceed.

37. Accordingly, the proceedings for blacklisting of the applicants arising out of Show Cause Notice dated 11.09.2024 issued against the applicants is stayed in as much as and to the extent it seeks to prejudge the issues arising out of subject matter seized before this Tribunal. The application in the terms abovesaid is disposed of.

18. The aforesaid order has been challenged by the petitioner in ARB. A. (COMM) No. 16/2025 under Section 37(2)(b) of the A&C Act, which is pending. It appears that the petitioner raised no objection to the fixation of ad-hoc fee either before the order dated 24.12.2024 was passed or in the Memorandum of appeal.

19. On 13.01.2025, the petitioner issued a cure-period notice requiring replacement/rehabilitation of old structures, giving rise to a third set of disputes (third set of claims) which were referred to conciliation. Following its failure, the Concessionaire issued a third notice of arbitration dated 03.05.2025.

20. By procedural Order No. 4 dated 25.03.2025, the erstwhile Arbitral Tribunal fixed the schedule for pleadings and directed as under:

4. Both the parties are further directed to submit a statement of account for the deposit made by them towards Arbitral Fee for hearing(s) on the Section-17 application as directed vide Procedural Order No.2 dated 27.10.2024, through email within a period of 3 days from today. In case of any shortfall towards the said deposit by either of the parties, the same shall be made good within a period of 10 days from today.

5. Further, the parties shall deposit another sum of Rs.10 lakhs per Arbitrator towards Ad-hoc Arbitral Fee, with an additional 10% for the Presiding Arbitrator towards administrative charges within a period of three weeks from today. This amount to be deposited shall be shared in equal proportion by both the parties.

6. The Arbitral fee payable to the Tribunal shall be decided once the pleadings are completed.

7. The Tribunal shall now assemble on **01.07.2025 at 5.00 PM** by way of virtual mode to decide further steps. Necessary arrangement for the video conferencing shall be made by the Claimant, the details of which shall be communicated to all concerned well in advance.

21. On 02.04.2025, i.e. more than three months after the order dated 24.12.2024, the petitioner filed before the erstwhile Arbitral Tribunal an application seeking recall of the Procedural Order no. 2 (as revised on 27.10.2024) to the extent it fixed the fee of Rs.10,00,000/- per arbitrator for adjudication of the Section 17 application.

22. The ground taken was that the rules of arbitration of International Centre for Alternative Dispute Resolution (ICADR) to which Article 44.3.1 of the CA refers, do not provide for a separate fee for interim application. It was, *inter alia*, averred as under:

9. It is submitted that the parties have given their assent to be bound by the provisions of the Arbitration and Conciliation Act, 1996 & the ICADR rules, as such, fee of this Hon'ble Tribunal would also be governed by such Rules which does not stipulate any separate fee for adjudicating an interim application. As such, the order dated 27.10.2024 by way of which this Hon'ble Arbitral Tribunal had fixed separate fee for Section 17 is in derogation of the 4th Schedule of the Act and the Schedule I of the ICADR rules. Relevant portion of the ICADR rules is reproduced herein under for ready reference:

xxx xxx xxx

> 11. It is submitted that neither the Arbitration act nor the ICADR rules provide for a separate fee to be charged for adjudication of a S.17 application. S.17 adjudication is an intrinsic step in the process of dispute resolution and is covered under the scope of total fee chargeable for final adjudication of the dispute. Hence, it is most humbly submitted that this Hon'ble Tribunal may consider recalling the order dated 27.10.2025 to the extent that it has fixed its fee at INR 10,00,000/- (Rupees Ten Lakhs Only) per arbitrator i.e., INR 30,00,000/- in toto for the Hon'ble Arbitral Tribunal for adjudicating upon the Application filed under S.17 of the Arbitration & Conciliation Act, 1996.

23. On 21.05.2025, in response to the third notice of arbitration dated 03.05.2025, the petitioner addressed a letter to the Concessionaire stating, *inter alia*, as under:

> **19.** Accordingly, NHAI disputes the reference of these fresh disputes to the existing Arbitral Tribunal.
>
> **20.** Without prejudice and reserving all rights, NHAI hereby conveys its intent to appoint its Nominee Arbitrator in accordance with the provisions of the Concession Agreement and the Arbitration and Conciliation Act, 1996 for adjudication of the fresh disputes that have arisen only between Concessionaire i.e., IRB Westcoast Tollway Ltd. and NHAI.
>
> **21.** In light of the foregoing, NHAI reiterates that the disputes concerning reconstruction or replacement of retained structures and the associated financial liabilities are distinct and independent from the disputes pending before the current Arbitral Tribunal. These fresh disputes must therefore be referred to a separately constituted Arbitral Tribunal in accordance with the Concession Agreement and the Applicable Laws.
>
> **22.** The Authority accordingly proceeds to appoint **Hon'ble Justice (Retd.), Sh. Shailendra Saxena** as its Nominee Arbitrator to adjudicate the fresh disputes referred by the Concessionaire i.e., IRB Westcoast Tollway Ltd. Please note that the Authority do not agree or concur to any suggestion by the Concessionaire to the effect that the disputes, if any, between Concessionaire and its Promoters is arbitrable under the provisions of the Concession Agreement.

24. On the same day i.e. 21.05.2025, the Concessionaire issued a fourth notice of arbitration in respect of disputes concerning deemed modification of the concession period under Article 29 of the CA. It was, *inter alia*, stated as under:

You are already aware that various other disputes arising under and /or incidental to the same CA dated 25.03.2013, are already the subject matter of arbitration by a duly constituted Tribunal comprising of Hon'ble Shri Justice (Retd) Krishna Murari, Hon'ble Justice (Retd.) V. Ramasubramanium, and Hon'ble Shri Justice (Retd.) P.N. Deshmukh ("**Arbitral Tribunal**"). Subsequent to the constitution of the Hon'ble Arbitral Tribunal, the Further Disputes, have arisen inter se the Parties. The conciliation process having failed, the Further Disputes are required to be resolved by arbitration by the Hon'ble Arbitral Tribunal in terms of the Dispute Resolution mechanism envisaged under Article 44.3 of the Concession Agreement.

Accordingly, we hereby invoke Arbitration under Article 44.3 of the Concession Agreement dated 25.03.2013 to refer the Further Disputes and claims relating to the same Project Highway by the Arbitral Tribunal for holistic and composite adjudication, in the interest of justice, in terms of the agreed dispute resolution mechanism.

Hence, this further notice invoking arbitration in terms of Section 21 of the Arbitration & Conciliation Act, 1996, for raising the Further Disputes before the Arbitral Tribunal, in furtherance to our earlier Notices dated 21.06.2024, 27.09.2024 and 03.05.2025.

25. On 16.06.2025, the Concessionaire and respondent nos. 2 and 3 filed before the erstwhile Arbitral Tribunal a consolidated statement of claim covering all four sets of claims in stated compliance with the decision of this Court in ***Gammon India Ltd. Vs. NHAI***, 2020 SCC OnLine Del 659. The consolidated statement of claims, with annexures ran into more than 1,38,000 pages and the aggregate value of the claims was stated to be approximately Rs. 3515 Crores.

26. By procedural Order No. 5 dated 01.07.2025, the erstwhile Arbitral Tribunal recorded as under:

1. In pursuance to *Procedural Order No.4* dated 01.07.2025, the Tribunal assembled today through virtual mode.
2. Ld. Counsel for the Claimant has informed that they have filed the Statement of Claims. The same is taken on record.
3. Further, he informed that they have made complete payment of their share in the ad-hoc arbitral fee as directed by the Tribunal, and submitted a statement of accounts vide e-mail dated 01.07.2025.
4. Ld. Counsel for the Respondent has prayed for one weeks' time to seek instructions regarding the balance fee payment.
5. The Tribunal shall now assemble on **16.07.2025 at 4.00 PM** by way of virtual mode to decide further steps. Necessary arrangement for the video conferencing shall be made by the Claimant, the details of which shall be communicated to all concerned well in advance.

THE RECUSAL:

27. At the hearing held on 16.07.2025, the erstwhile Arbitral Tribunal passed the Procedural Order No. 6, which was circulated on 21.07.2025 and reads as follows:

1. In pursuance to *Procedural Order No.5* dated 01.07.2025, the Tribunal assembled today through virtual mode.
2. During the course of the hearing, owing to the voluminous nature of the record, particularly the Statement of Claims comprising more than 1,38,000 pages with annexures and the valuation being nearly Rs. 3515 Cr. (Three Thousand Five Hundred Fifteen Crores only), the Arbitral Tribunal suggested that its fee may be finalised in consultation with the parties.
3. However, the Respondent objected to this and requested that the fee may be fixed strictly as per the Fourth Schedule of the Arbitration and Conciliation Act, 1996.
4. In view of the above circumstances, the Presiding Arbitrator, along with the Co-Arbitrators, have decided to recuse themselves from further proceedings in the matter under the provisions of the Arbitration and Conciliation Act,1996

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STEPS TAKEN BY THE PARTIES CONSEQUENT UPON THE RECUSAL

28. On 19.07.2025, the petitioner addressed a communication purporting to nominate another nominee arbitrator, in view of recusal of all Members of the Arbitral Tribunal on 16.07.2025. However, the concerned nominee expressed her inability to accept the assignment. On 21.07.2025, the petitioner addressed a communication nominating Hon'ble Mr. Justice (Retd.) Uday U. Lalit, former Chief Justice of India, as its nominee arbitrator, who conveyed his consent on the same day. On 17.08.2025, the Concessionaire sought to nominate Hon'ble (Retd.) Justice Virendrasingh Gyansingh Bisht, former Judge of the Bombay High Court as its nominee arbitrator. He furnished his consent on 22.08.2025.

29. On 10.09.2025, Hon'ble Mr. Justice (Retd.) Uday U. Lalit recused himself from acting as an arbitrator, which was communicated to the parties *vide* email dated 11.09.2025 from Hon'ble (Retd.) Justice Virendrasingh Gyansingh Bisht. On 29.09.2025, the petitioner nominated Hon'ble Mr. Justice (Retd.) Sakha Ram Singh, former Judge of the High Court of Allahabad as its nominee arbitrator who furnished his acceptance/consent on 02.10.2025.

30. In the meantime, the respondents had filed W.P.(C) 12165/2025 before this Court seeking, *inter alia*, permission to re-approach the erstwhile Arbitral Tribunal for re-fixation of the arbitral fee separately for each set of claims in terms of the Fourth Schedule of the A&C Act, and a declaration that the petitioner's letters dated 19.07.2025 and 21.07.2025 nominating a new nominee arbitrator were illegal. By judgment dated 09.10.2025, this Court dismissed W.P.(C) 12165/2025. The said judgment, *inter alia*, holds

as under:

> 13. The scope of jurisdiction of this Court in the context of arbitral proceedings is extremely circumscribed as held in the catena of cases[1] and in the context of the relief, as framed in the present petition, the same is clearly precluded.
>
> 14. Further, considering that the members of the Arbitral Tribunal have already recused themselves, the controversy regarding fixation of fees in the present case has also become moot.
>
> 15. The re-constitution of the Arbitral Tribunal is necessarily required to be in consonance with the provisions of the A&C Act, which provides a statutory mechanism for the said purpose. The parties are at liberty to take steps in this regard.
>
> 16. Consequently, the present petition is dismissed. Pending application also stands disposed of.

ARB.P. NO. 1862/2025 FILED BY THE RESPONDENTS FOR APPOINTMENT OF PRESIDING ARBITRATOR THEREIN:

31. On 30.10.2025, Hon'ble Mr. Justice (Retd.) Sakha Ram Singh, informed the parties through email, i*nter alia*, stating as under:

> Since, till date there is no agreement between the Arbitrators nominated by the Parties for appointment of the Presiding Arbitrator in the matter of Arbitration between M/s. IRB West Coast Tollway Pvt. Ltd. and NHAI and the period of 30 days for appointment of the Presiding Arbitrator has already expired on 28.10.2025.
>
> Therefore, the parties are at liberty to take necessary action for appointment of the Presiding Arbitrator in terms of the Concessionaire Agreement.

32. In November, 2025, the respondents filed ARB. P. NO. 1862/2025 under Section 11(6) of the A&C Act, seeking appointment of a presiding arbitrator. The said petition came to be disposed of *vide* order dated 01.12.2025. The same reads as under:

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1. The instant petition is for the following relief:

> *"a) Appoint a Presiding Arbitrator in accordance with Section 11 (6) of the Arbitration and Conciliation Act, 1996 to adjudicate the disputes between the parties arising out of or in connection with the Concession Agreement dated 25.03.2013 (Document - 1)."*

2. It appears that a dispute has arisen between the parties with respect to the Concession Agreement dated 25.03.2013 for a highway project.

3. An arbitral tribunal had previously been constituted, but it recused itself on 16.07.2025 due to a disagreement regarding the tribunal's fee.

4. Following the recusal, both the parties nominated their respective nominee arbitrators. The nominee arbitrators could not arrive at a consensus for presiding arbitrator. The petitioner, therefore, has approached this Court for appointment of presiding arbitrator.

5. During the course of hearing, both the parties have suggested their respective names for appointment of the presiding arbitrator.

6. The Court, however, appoints Hon'ble Mr. Justice B.R. Gavai, former Chief Justice of India (Mobile No. +91 9310524404/ 9911263230 Email no. pstojusticegavai@gmail.com) to be the presiding arbitrator.

7. Under the facts of the case and with the consent of the parties, the Court leaves it open for them and the Arbitral Tribunal to arrive at any practical fee schedule to be adhered to for arbitration.

8. With respect to petitioner nos.2 and 3, this order shall remain subject to pending proceedings in Arb. Appeal (COMM) 16/2025.

9. The petition, along with pending applications stand disposed of.

33. The presiding arbitrator, who was appointed, eventually came to address a letter dated 05.01.2026 recusing himself from the arbitration proceedings and requested the parties "to take necessary steps for appointing the substitute Presiding Arbitrator".

PRESENT PETITION AND THE RESPONDENT'S RECALL APPLICATION:

34. The present petition came up for hearing on 05.02.2026, on which date notice was issued. On 04.02.2026, the respondents filed before the erstwhile Arbitral Tribunal an "Application seeking recall of Procedural Order No. 6 dated 16.07.2025". The reliefs sought therein were as under:

> (i) Recall the Procedural Order No. 6 dated 16.07.2025 passed by the Hon'ble Arbitral Tribunal by which the arbitral proceedings were terminated, and to proceed further in the arbitral proceedings, in view of and in accordance with the judgement of the Hon'ble Supreme Court in C.A. No. 14630 of 2025 titled as Harshbir Singh Pannu & Anr. V. Jaswinder Singh & Anr.;
>
> (ii) Fix and communicate a date for hearing of the present application and to consider refixation of Arbitral Fee in terms of the subsequent consent of the Respondent (NHAI) in this regard, as recorded in order dated 01.12.2025 passed by the Hon'ble Delhi High Court in Arb. P. 1862/2025;
>
> (iii) Pass such other or further order/s which this Hon'ble Court may deem fit and proper in the interest of justice.

35. The following averments in the application are material:

> 2. It is humbly submitted that that the present application is preferred in the context of the Order dated 16.07.2025, by which the Hon'ble Tribunal was pleased to recuse itself from the arbitral proceedings thereby terminating the arbitral proceedings. The said order reads as under :
>
> > *"1. In pursuance to Procedural Order No.5 dated 01.07.2025, the Tribunal assembled today through virtual mode.*
> > *2. During the course of the hearing, owing to the voluminous nature of the record, particularly the Statement of Claims comprising more than 1,38,000 pages with annexures and the valuation being nearly Rs. 3515 Cr. (Three Thousand Five Hundred Fifteen Crores only), the Arbitral Tribunal suggested that its fee may be finalised in consultation with the parties.*
> > *3. However, the Respondent objected to this and requested that the fee may be fixed strictly as per the Fourth Schedule of the Arbitration and Conciliation Act, 1996.*
> > *4. In view of the above circumstances, the Presiding Arbitrator, along with the Co-Arbitrators, have decided to recuse themselves from further proceedings in the matter under the provisions of the Arbitration and Conciliation Act,1996."*

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A copy of the order dated 16.07.2025 passed by this Hon'ble Tribunal is annexed hereto as **ANNEXURE A – 1**.

3. It is submitted that whereas the Respondent was aware that there were multiple references and the volume of the claims had ballooned since the time the Tribunal had entered into reference, the Respondent was insistent that it was unwilling to accept any arbitral fee proposal beyond the IVth Schedule for the entire arbitration. It was proposed by the applicant herein that the entire arbitral fee be paid by it subject to any order of costs at the end of the proceedings. However, the said proposal was also unfairly rejected by the Respondent. Given the same, the Arbitral Tribunal was forced into a situation, wherein the three arbitrators chose to recuse themselves in the matter.

4. As such on passing of the Order dated 16.07.2025, the arbitral proceedings were *de jure* and *de facto* terminated along with the mandate of the Arbitral Tribunal in terms of Section 32 (2) (c) read with Section 38 (2) of the Arbitration & Conciliation Act, 1996.

5. Post such termination of the arbitral proceedings the constitution of Tribunal remains pending. Post the termination of the arbitral proceedings, by way of abundant caution, the applicant was constrained to nominate a fresh arbitrator. Whereas, NHAI has also nominated an arbitrator, the appointment of the Presiding Arbitrator has remained pending. The Applicant herein craves leave to put on record, further events and developments, subsequent to the order dated 16.07.2025, including amongst others a fresh section 11 petition filed by NHAI before the Hon'ble High Court, on or before the hearing of the present application.

36. It is in the aforesaid factual conspectus that this Court has considered the matter.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

37. Mr. Ankur Mittal, learned senior counsel for the petitioner submitted that the entire edifice of the respondents' objections rests on a





mischaracterisation of the procedural Order No. 6 dated 16.07.2025. That Order records that members of the erstwhile Arbitral Tribunal "have decided to recuse themselves from further proceedings in the matter". It does not purport to terminate the arbitral proceedings; nor does it refer to Section 32 or 38 of the A&C Act. Further, the same records no finding that the continuation of the proceedings has become 'unnecessary or impossible'. It is, thus, submitted that the same is in substance and in form, a withdrawal of the arbitrators from office, which contingency has been addressed by Section 15(1)(a) of the A&C Act.

38. It is submitted that the A&C Act draws a clear and deliberate distinction between the termination of mandate of an arbitrator (Sections 13, 14 and 15) and the termination of arbitral proceedings (Section 32). The former results in substitution under Section 15(2); the latter brings the reference to an end.

39. It is further submitted that Sections 15(3) and 15(4) make it clear that upon substitution the proceedings continue and the prior orders/rulings are preserved. It is submitted that a recusal by the arbitrators whether by one member or by all the three members, results only in termination of their respective mandates. The same does not terminate the reference.

40. It is emphasised that the procedural Order No. 6 dated 16.07.2025 did not even purport to terminate the proceedings. Learned counsel submits that the judgment of the Supreme Court in ***Harshbir Singh Pannu*** (supra), is wholly distinguishable. In that case, the sole arbitrator having fixed his fee in terms of the Fourth Schedule with the consent of the parties, terminated the proceedings by an express order under Section 38 of the A&C Act, on account of non-payment of his fees.





41. It is submitted that the same is in stark contrast to the facts of the present case, where there is no order terminating the arbitral proceedings. It is submitted that the remedial route discussed in ***Harshbir Singh Pannu*** (supra), namely, an application for recall before the Arbitral Tribunal and, if the same is dismissed, an application before the Court under Section 14(2) of the A&C Act, pre-supposes both a termination order capable of recall and a Tribunal capable of considering it.

42. It is emphasised that ***Harshbir Singh Pannu*** (supra), is authority for what happens after a Tribunal passes an order of termination; the same is not applicable to a situation where arbitrators withdraw from office. It is further submitted that respondents' own conduct, belies their present stance. It is pointed out that the respondents have themselves, proceeded to nominate their fresh nominee arbitrator pursuant to the recusal of their previous nominee arbitrator. It is further pointed out that thereafter, the respondents themselves went ahead and invoked Section 11(6) by filing ARB. P. No. 1862/2025, pursuant to which, a presiding arbitrator was appointed by this Court *vide* order dated 01.12.2025.

43. It is submitted that, having participated in the reconstitution of the Arbitral Tribunal and having filed ARB. P. No. 1862/2025 for the said purpose, the respondents cannot be heard to object to the maintainability of the present petition which has been filed simply to supply the vacancy of presiding arbitrator.

44. In the amended written submissions filed on behalf of the petitioner, it has further been submitted that the Presiding Arbitrator was appointed by this Court under Section 11(6) of the A&C Act vide order dated 01.12.2025. Upon his recusal, Section 15(2) of the A&C Act requires the substitute





arbitrator to be appointed in accordance with the same mechanism, and the present petition is, therefore, in accordance with the statutory mandate. It has also been submitted that the respondents' contention, that the said Presiding Arbitrator never entered upon the reference and merely furnished a conditional declaration under Section 12 of the A&C Act on 22.12.2025, is misconceived, since the A&C Act does not contemplate any such "conditional" declaration. In any event, the Arbitral Tribunal stood duly constituted upon the passing of the order dated 01.12.2025 by this Court under Section 11 of the A&C Act.

45. In the written submissions filed on behalf of the petitioner, the judgment in ***Harshbir Singh Pannu*** (supra), has been sought to be distinguished in the following terms:

> *"18. Harshbir Singh Pannu (Supra) deal with sections 25, 30, 38 and consequences of termination u/s 32 and does not deal with substitution as provided u/s 15 of A&C, Act, 1996. A passing reference of termination of mandate tribunal and termination of AT is given in paras 268-269 of the judgment.*
>
> *19. Further, the judgment deals with a materially different factual situation, whereby, the sole arbitrator had fixed fees under the Fourth Schedule; the parties failed to deposit the fees and the arbitrator expressly terminated the arbitral proceedings. The issue was whether, following such termination, a fresh reference could be commenced.*
>
> *20. Here, there is (i) no order terminating the arbitral proceedings, (ii) no invocation of Sections 25, 30, 38 and 32 (2) for termination, (iii) no refusal by the Petitioner to pay fees under the Fourth Schedule, (iv) no attempt by the Petitioner to restart a claim; the Respondents' consolidated Statement of Claim is already on record and (v) only completion of the AT is sought, with both party already appointed their respective nominees.*
>
> *21. Respondents rely on para 251, 415 (IV) & (V) of Harshbir Singh Pannu (Supra) to say that any varied reason would constitute termination u/s 32. It is submitted that, if Section 32 is exhaustive and termination can occur only through Section 32(2), recusal cannot*

terminate the proceedings, and no Section 32(2) order exists here. The remedial route discussed in Harshbir Singh Pannu (Supra) under Section 14(2) of the Act, presupposes both a termination order capable of recall and a tribunal capable of considering it. Neither exists in the present case. All members of the erstwhile AT recused, their mandates terminated under Section 15(1)(a) of the Act. The above has already been held by this Hon'ble Court in term2026-2176-183102025(1)-21, P.1034-1038). The Respondents application dated 04.02.2026 (1-2, Pg.176-183 of Reply) is therefore addressed to a forum that no longer exists."

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

46. Mr. Atul Nanda, learned senior counsel for the respondents submitted that the present petition is not maintainable. He submitted that the procedural Order No. 6 dated 16.07.2025 is in substance an order terminating arbitral proceedings under Section 32(2)(c) of the A&C Act. It is submitted that the termination of the Arbitral Tribunal is referable only to Section 32 of the A&C Act; other provisions such as Section 25, 30 and 38 of the A&C Act merely enumerate circumstances in which termination may be taken recourse to.

47. Reliance was placed on ***Harshbir Singh Pannu*** (supra), particularly paras 209-213, 253-262, 310-316 and 415 thereof, for the proposition that: (i) Section 32 of the A&C Act is exhaustive of the modes of termination; (ii) the arbitral reference is "singular, not perpetual" and once the Arbitral Tribunal is seized of a dispute, the mechanism of the A&C Act cannot be re-invoked to refer the same dispute to another tribunal; (iii) the remedy of a party aggrieved by an order of termination is to first seek recall before the same Tribunal and if the same is refused, to approach the Court under Section 14(2) of the A&C Act.

48. It is further submitted that Section 14(1)(b) and Section 15(1)(a)





contemplate the withdrawal of an individual arbitrator from an Arbitral Tribunal and not collective withdrawal of the Arbitral Tribunal as a whole. It is submitted that recusal of the entire Arbitral Tribunal is nothing but a termination of proceedings.

49. Mr. Nanda, also submits that the procedural Order No. 6 dated 16.07.2025 was occasioned solely by the petitioners' unreasonable stand on arbitral fees. He further submitted that the judgment/order dated 09.10.2025 in W.P.(C) 12165/2025, does not bar the respondent's objection. It is submitted that the said judgment preceded ***Harshbir Singh Pannu*** (supra), and merely holds that the relief could not be granted in the writ jurisdiction. It is submitted that ***Harshbir Singh Pannu*** (supra) has since clarified the proper remedy, pursuant to which the respondents have filed an application dated 04.02.2026 before the erstwhile Arbitral Tribunal seeking recall of procedural Order No.6 dated 16.07.2025.

50. As regards filing of ARB. P. 1862/2025 by the respondents themselves, and the order dated 01.12.2025 passed therein, it is submitted that the same preceded the judgment of the Supreme Court in ***Harshbir Singh Pannu*** (supra).

REASONING & CONCLUSION:

51. At the outset, it is necessary to take note of the scheme of the A&C Act, particularly the following features thereof:

(i) Section 15(1)(a)[1] contemplates that an arbitrator may

[1] 15. Termination of mandate and substitution of arbitrator.—(1) In addition to the circumstances referred to in Section 13 or Section 14, the mandate of an arbitrator shall terminate—

(*a*) where he withdraws from office for any reason; or





withdraw from office for any reason and such withdrawal is a complete self-sufficient event, resulting in termination of the mandate of the arbitrator. In such a scenario, Section 15(2) contemplates that "a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced".

Thus, the consequence prescribed by the legislature in the event of withdrawal from office, is "substitution". It is also relevant to note that under the scheme of the A&C Act, an arbitrator is not required to justify his/her withdrawal. It is also not envisaged that a withdrawal may be "recalled". The authority of an arbitrator flows entirely from his mandate; upon the arbitrator's withdrawal, that mandate terminates by operation of Section 15(1)(a) itself, and Section 15(2) is attracted. This has been authoritatively explained by the Supreme Court in ***Yashwith Constructions (P) Ltd. v. Simplex Concrete Piles India Ltd.***, (2006) 6 SCC 204, in the following terms:

> *"4. … The withdrawal of an arbitrator from the office for any reason is within the purview of Section 15(1)(a) of the Act. Obviously, therefore, Section 15(2) would be attracted and a substitute arbitrator has to be appointed according to the rules that are applicable for the appointment of the arbitrator to be replaced. Therefore, what Section 15(2) contemplates is an appointment of the substituted arbitrator or the replacing of the arbitrator by another according to the rules that were applicable to the appointment of the original arbitrator who was being replaced. …"*

An arbitrator who has withdrawn from office, therefore, retains no authority in relation to that reference; whatever authority subsists





vests in the substitute arbitrator.

(ii) it is also relevant to note that Section 15(3) of the A&C Act provides that any hearing previously held (prior to substitution) may be repeated at the discretion of the Arbitral Tribunal. The same necessarily implies that the arbitral proceedings are not obliterated by the substitution. Further, Section 15(4) of the Act makes it clear that prior orders or rulings "shall not be invalid solely because there has been a change in the composition of the arbitral tribunal".

The clear implication is that a reference in which the arbitrator has been substituted is, therefore, the same reference and not a new one. The same is, thus, inherently distinct from a situation where arbitral proceedings are "terminated".

(iii) Save where the arbitral proceedings culminate in a final award, termination of arbitral proceedings under Section 32 of the A&C Act is not an event that occurs by operation of law or by the conduct of the arbitrators. It requires an order of the Arbitral Tribunal under Section 32(2) and, in a situation covered by Section 32(2)(c) of the A&C Act, a finding of the Tribunal that the continuation of the proceedings "has for any other reason become unnecessary or impossible". The termination of the mandate of the Arbitral Tribunal under Section 32(3) is, in turn, a consequence of such an order.

The Supreme Court has explained in paragraphs 215-217[2] of

[2] ***Harshbir Singh Pannu & Anr. v. Jaswinder Singh***, 2025 SCC OnLine SC 2742, paragraph 215-217:

*"**215.** This is further evident from the discussions of the Working Group on the UNCITRAL Model Law, which decided to adopt Article 32 (corresponding Section 32 of the Act, 1996) in order to ensure that the arbitral proceedings should not terminate automatically unless an order to that effect is passed by the arbitral tribunal.*

***216.** At the time of preparation of the UNCITRAL Model, both the Articles 25 and 30 respectively, had*





the ***Harshbir Singh Pannu*** (supra) that Article 32 of the UNCITRAL Model Law from which Section 32 is drawn, was adopted precisely to "ensure that the arbitral proceedings should not terminate automatically unless an order to that effect is passed by the Arbitral Tribunal".

The Model Law, thus contains, as the Supreme Court notes in ***Harshbir Singh Pannu*** (supra), "a dedicated provision relating to termination of proceedings that would explicitly require an arbitral tribunal to issue a formal order to such effect in order to bring the arbitral proceedings to an end."

(iv) Thus, withdrawal by an arbitrator and substitution thereof (provided in Sections 12-15, which form part of Chapter III of the A&C Act), is quite distinct from termination of arbitral proceedings (provided for in Section 32, which forms part of the

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stipulated that the proceedings shall terminate if the claimant does not file its statement of claims or where the parties arrive at a settlement of the dispute, respectively. The Working Group was concerned that, there could be a situation where, even without the indulgence of the arbitral tribunal, the proceedings could simpliciter come to an end as soon as the conditions stipulated in Article(s) 25 and 30 were fulfilled.

217. *Accordingly, it decided to adopt a dedicated provision relating to termination of proceedings that would explicitly require an arbitral tribunal to issue a formal order to such effect in order to bring the arbitral proceedings to an end. It was with this view that Article 32 was incorporated in the UNCITRAL Model Law. At the cost of repetition, the relevant observations are once again reproduced below:—*

> *"38. The Working Group considered the question whether it would be appropriate to include in the model law a provision on termination of arbitral proceedings (on the basis of a note by the Secretariat, WP.4l, paras. 38-41 and draft article F).*
>
> *39. There was wide support in the Working Group for the view that the model law should contain a provision on termination of arbitral proceedings. Such a provision would be useful because it would provide certainty in respect of important consequences of the termination of arbitral proceedings.*
>
> *40. The prevailing view was that there should be no automatic termination of arbitral proceedings and that a procedural decision by the arbitral tribunal was needed for terminating the arbitral proceedings. […]"*
>
> (Emphasis supplied)"

Chapter VI which deals with the making of the arbitral award and termination of proceedings). The two events i.e. withdrawal from office and consequent substitution, and termination, are quite distinct.

(v) Section 2(1)(d) of the A&C Act defines an Arbitral Tribunal to mean a sole arbitrator or a panel of arbitrators. An Arbitral Tribunal comprising of three arbitrators is, therefore, nothing but an aggregate of three offices held by individual arbitrators, each appointed under the agreed procedure, and each capable of being vacant and filled independently of the others. When each of the three individuals withdraws from office, the legal consequences prescribed by Section 15 attach to each of them. Nothing in the A&C Act suggests that three withdrawals occurring simultaneously undergo a transmutation into a deemed order under Section 32(2)(c) of the A&C Act.

52. It may also be noted that Section 13(2) of the General Clauses Act, 1897 provides that in all Central Acts "words in the singular shall include the plural, and vice versa." There is nothing in the subject or context of Section 15 of the A&C Act that is repugnant to its application to more than one arbitrator at a time.

APPLICABILITY OF THE DICTA IN HARSHBIR SINGH PANNU (SUPRA) TO THE PRESENT CASE

53. Contrary to what has been urged on behalf of the respondents, in ***Harshbir Singh Pannu*** (supra), the Supreme Court has clearly recognised that the termination of mandate of an Arbitral Tribunal takes place by way of an express order under Section 32 of the A&C Act. In paragraph 109 of





Harshbir Singh Pannu (supra), the Supreme Court while citing with approval, the judgment of the Bombay High Court in ***Maharashtra State Electricity Board Vs. Datar Switchgear Ltd***., 2002 SCC OnLine Bom 981, has clearly observed that "The termination of a mandate of the arbitrator is not co-terminus with the termination of arbitral proceedings. In the former, the arbitrator merely withdraws from office, thereby permitting appointment of a substitute arbitrator to continue the proceedings. In the latter, however, the Arbitral Tribunal itself collapses." The Supreme Court took note of the illustration given by the High Court where the Tribunal under Section 16 of the A&C Act held that there is no valid arbitration agreement. Such a situation results in termination of the proceedings. The same cannot be equated with a situation where an arbitrator simply withdraws or recuses from office.

54. It is also relevant to note that in ***Harshbir Singh Pannu***[3] (supra), the Supreme Court has explicitly held that the termination of arbitral proceedings under the A&C Act can occur in only two ways, *viz*. either through passing of a final award or by an order of the Arbitral Tribunal under Section 32(2).

55. It has further been held that Section 25(a), 30 and 38 of the A&C Act, 1996 merely enumerate the different circumstances in which the Arbitral Tribunal would be empowered to pass an order for termination of proceedings under Section 32(2) of the A&C Act.[4] Thus, the Supreme Court

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[3] ***Harshbir Singh Pannu & Anr. v. Jaswinder Singh***, 2025 SCC OnLine SC 2742, paragraph 208:

"208. The aforesaid expression clearly stipulates that the termination of arbitral proceedings under the Act, 1996 can occur in only two ways. The arbitral proceedings come to an end either through the passing of the final award or by an order of the arbitral tribunal under sub-section (2) of Section 32".





is clear in that termination takes place only by virtue of an order; the Supreme Court does not hold that in the absence of such an order every event which brings the tribunal's functioning to a halt, must be deemed to bring about termination of proceedings. It is also relevant to note that withdrawal of an arbitrator under Section 15(1)(a) of the A&C Act is not among the circumstances enumerated in Section 25, 30, 32 and 38 or any other provisions of the A&C Act, so as to suggest, directly or indirectly, that the same would bring about termination of arbitral proceedings.

56. As noticed, Section 15 belongs to a different chapter of the Act and brings about a different consequence. Importantly, ***Harshbir Singh Pannu*** (supra), explicitly recognises this distinction in paragraphs 268 and 269 thereof, which read as under:

> *"268. It observed that where the mandate of the arbitrator terminates, either as a result of the arbitrator withdrawing from the office, or upon agreement of the parties, the Act, 1996 stipulates the recourse that would be available namely, to seek appointment of a substitute arbitrator in terms of Section 15 of the Act, 1996.*
>
> *269. However, in the event the arbitral proceedings are terminated and, in consequence thereof, the mandate of the arbitral tribunal also terminates, the Act, 1996 is completely silent on the remedy that may be availed against the same. None of the provisions in the Act, 1996 address the course of action that would be available to a party against an order terminating the arbitral proceedings."*

57. It is, thus, evident that ***Harshbir Singh Pannu*** (supra), far from supporting the inference sought to be derived by the respondents, explicitly holds/recognises that where the mandate of an arbitrator terminates, either as

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[4] ***Harshbir Singh Pannu & Anr. v. Jaswinder Singh***, 2025 SCC OnLine SC 2742, paragraph 213:

"213. The provisions of Section(s) 25(a), 30 and 38 of the Act, 1996, merely enumerate the different circumstances in which the arbitral tribunal would be empowered to pass an order for termination of proceedings under sub-section (2) of Section 32."





a result of the arbitrator withdrawing from office or upon agreement of the parties, the recourse available is to seek appointment of a substitute arbitrator in terms of Section 15 of the A&C Act, 1996.

58. The remedial scheme set out in ***Harshbir Singh Pannu*** (supra), *viz*. filing of recall application followed by a petition under Section 14(2), if necessary, is only in the event of termination of arbitral proceedings brought about by virtue of an express order under Section 32 of the A&C Act.

59. The facts of ***Harshbir Singh Pannu*** (supra) involved a situation where on account of non-payment of arbitrator's fee, the sole arbitrator expressly invoked Section 38 of the A&C Act and passed an order terminating the arbitral proceedings.

60. The questions that were framed by the Supreme Court for consideration (in paragraph 31) were in the following terms:

> *"I) What meaning should be ascribed to the words "termination of the arbitral proceedings" figuring in the different provisions of the Act, 1996? Is the phrase susceptible to only one meaning?*
>
> *II) What is the meaning and effect of the termination of arbitral proceedings contemplated under Section 38 of the Act, 1996? Is it the same as the termination of arbitral proceedings it the contemplated under Section 32?*
>
> *III) What is the remedy available to a party aggrieved by an order passed by an arbitral tribunal terminating the proceedings?"*

61. Each of the aforesaid questions presupposes that an order terminating the arbitral proceedings has been passed by the Tribunal. It was in this context that the Supreme Court held that the party who has allowed the proceedings to be terminated by its own conduct, cannot set the mechanism





in motion again before another set of arbitrators. In paragraph(s) 310-316[5], the Court prescribed the remedial sequences *viz*. an application for recall before the Arbitral Tribunal that passed the termination order and in the event of refusal of application of recall, an application under Section 14(2) of the A&C Act. The judgment was therefore, directed at a situation where termination has been expressly brought about and in this situation recourse to a fresh petition under Section 11 of the A&C Act, 1996 was found to be unavailable.

62. The remedy prescribed in paragraph(s) 310-316 of the ***Harshbir***

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[5] ***Harshbir Singh Pannu & Anr. v. Jaswinder Singh***, 2025 SCC OnLine SC 2742, paragraph nos. 310-316:

"310. What emerges from the aforesaid is that 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.

311. It is no more res-integra that there is a clear distinction between a procedural review and a review on merits as held in Hindustan Construction Company (supra). When applied to the Act, 1996, the irresistible conclusion that can be reached is that the power of review is available to an arbitral tribunal to the limited extent of curing a patent or procedural error. Thus, an arbitral tribunal has the power to entertain an application for recall of an order terminating the proceedings passed by it.

312. Upon such application being preferred, the arbitral tribunal, as held in Bharat Heavy Electricals (supra), would then be required to examine whether the order does or does not deserve to be recalled.

313. 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.

314. If, however, the recall application were to be dismissed, as held in Lalitkumar V. Sanghvi (supra), the party aggrieved therefrom, would be empowered to approach the court under Section 14(2) of the Act, 1996.

315. 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 remit the matter back 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.

316. However, we make it abundantly clear that under no circumstances, can a party file a fresh application under Section 11 of the Act, 1996 and initiate a second round of arbitration."





Singh Pannu (supra), is against an order terminating the arbitral proceedings. Thus, the principles laid down in ***Harshbir Singh Pannu*** (supra), clearly pre-suppose an order under Section 32 which is capable of being recalled and the existence of an Arbitral Tribunal capable of recalling it.

63. The situation in the present case is at complete variance. As already noticed, no order terminating the proceedings has been passed. The reliance on ***Harshbir Singh Pannu*** (supra), is thus misconceived at the threshold. The respondents seek to apply, to a different event *viz*. withdrawal from office, the consequences which the Supreme Court has attached to an order of termination.

64. In short, ***Harshbir Singh Pannu*** (supra), answers the question "what follows when an Arbitral Tribunal terminates the proceedings?"; it does not answer the question "is the recusal a termination?".

65. There is a further difficulty with the respondents' submissions. The recall remedy in ***Harshbir Singh Pannu*** (supra), is grounded in the Arbitral Tribunal's inherent power of procedural review over its own orders. This has been noted in paragraph(s) 311-312 of ***Harshbir Singh Pannu*** (supra)[6]. Withdrawal from office is not an order of the Tribunal over which the Arbitral Tribunal retains the power of review; it is the relinquishment of the

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[6] ***Harshbir Singh Pannu & Anr. v. Jaswinder Singh***, 2025 SCC OnLine SC 2742, paragraph nos. 311-312:

"311. It is no more res-integra that there is a clear distinction between a procedural review and a review on merits as held in Hindustan Construction Company (supra). When applied to the Act, 1996, the irresistible conclusion that can be reached is that the power of review is available to an arbitral tribunal to the limited extent of curing a patent or procedural error. Thus, an arbitral tribunal has the power to entertain an application for recall of an order terminating the proceedings passed by it.

312. Upon such application being preferred, the arbitral tribunal, as held in Bharat Heavy Electricals (supra), would then be required to examine whether the order does or does not deserve to be recalled."





office from which any such power would be exercised.

66. Nor does the discussion in paragraphs 277 to 282 of ***Harshbir Singh Pannu (supra)***, of the decision of this Court in ***VAG Educational Services v. Aakash Educational Services Ltd.***, (2022) 6 HCC (Del) 249, advance the respondents' case. In ***VAG Educational Services (supra)***, the claimant had withdrawn its claims and the sole arbitrator had passed an order terminating the proceedings under Section 32(2)(a) of the A&C Act. The arbitrator thereafter entertained an application for recall and restored the proceedings. This Court set aside the order of restoration on the ground that the arbitrator, whose mandate had terminated under Section 32(3) with the termination of the proceedings, was *coram non judice*. The relevant observations have been taken note of in paragraphs 278 to 280 of ***Harshbir Singh Pannu (supra)***.

67. The case, therefore, was one in which there was an order of termination under Section 32(2), which is precisely what is absent in the present case.

68. Thus, the judgment of the Supreme Court in ***Harshbir Singh Pannu*** (supra) clearly supports the petitioner's contention that withdrawal of an arbitrator from office must lead to the appointment of a substitute under Section 15 of the A&C Act. It is only in the event of an order terminating the proceedings under Section 32, in 'consequence' of which the mandate of the Arbitral Tribunal terminates, that the remedial scheme fashioned in ***Harshbir Singh Pannu*** (supra) is directed.

69. It also makes no difference that all the three members of the Arbitral Tribunal recused simultaneously. The A&C Act nowhere contemplates that plurality of withdrawals produces a consequence different from a singular withdrawal. It is notable that the A&C Act defines Arbitral Tribunal to mean





"a sole arbitrator or a panel of arbitrators". The A&C Act contains no provision for "recall" of a recusal/withdrawal order and also no provision empowering a Court to compel an arbitrator who has withdrawn, to resume office. The same would also be wholly illogical. Thus, for instance, in a hypothetical situation where members of an arbitral tribunal recuse on account of being unequipped to deal with a particular/technical subject matter, it would be wholly incongruous if the parties were required to seek "recall", from the very arbitrators who had recused. The same is clearly not contemplated by the A&C Act. Moreover, there is no logic to treat simultaneous withdrawal of members of an arbitral tribunal any differently from an individual or sequential withdrawal of all its members. The use of the singular in Section 14(1) and 15(1) of the A&C Act reflects only that withdrawal is, inherently, an act of the individual arbitrator/s who choose to withdraw from office.

70. Had the erstwhile Arbitral Tribunal intended to terminate the proceedings on the ground that the continuation of arbitral proceedings had become impossible, it would have done so.

NATURE AND LANGUAGE OF THE PROCEDURAL ORDER NO. 6 DATED 16.07.2025

71. The following aspects are evident from the perusal of the Procedural Order No.6 dated 16.07.2025 (whereby the arbitrators recused themselves from the proceedings):

(i) The order does not use the word 'terminate' or 'termination' or any cognate expression, anywhere. The operative verb used in the said





order is "recuse". Black's Law Dictionary[7] defines "recusal" as the "Removal of oneself as judge or policy-maker in a particular matter, esp. because of a conflict of interest." Thus recusal, in the ordinary legal sense, is an act of an adjudicator withdrawing himself from the matter; it is directed to the adjudicator's own continuation in office and not to existence of the proceedings.

(ii) The order does not refer to Section 32 or any other provisions under which the proceedings could be terminated.

(iii) The order records no finding that continuation of the proceedings had become unnecessary or impossible.

(iv) The order records no default under Section 38 of the A&C Act. It is noted that Section 38(2) of the A&C Act is attracted where a party fails to pay the deposit which the Arbitral Tribunal has fixed. It is not attracted when the Tribunal and a party are unable to agree on what the fee should be.

72. Thus, on the face of it, the order dated 16.07.2025, cannot, by any stretch of interpretation, be characterised as an order under Section 32 of the A&C Act. The same merely brings about withdrawal from office, which falls clearly within the sweep of Section 15(1)(a). The legislature has expressly prescribed the consequence of the same *viz*. 'substitution'.

73. This Court, therefore, rejects the submissions on behalf of the respondents that procedural Order No.6 dated 16.07.2025 is 'in substance' an order of termination under Section 32(2)(c) of the A&C Act. On the contrary, it is in substance an informed withdrawal from office by each of the three-arbitrators within the meaning of Section 15(1)(a) of the A&C Act,

[7] Bryan A. Garner (ed.), Black's Law Dictionary (9th edn., West Publishing Co., 2009), p. 1390.

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the mandate of each of them terminated on that date, but the arbitral proceedings did not.

CONDUCT AND UNDERSTANDING OF THE RESPONDENTS

74. The conclusion reached above on the construction of the A&C Act and of the procedural Order No.6 dated 16.07.2025, is, in the view of the Court, sufficient to dispose of the objection of the respondents. However, it it is relevant to note the conduct and understanding of the respondents which places the matter beyond a shadow of a doubt.

75. The respondents' characterisation of the order dated 16.07.2025 as a termination, a conclusion which they claim to have arrived at after the pronouncement of the judgment in ***Harshbir Singh Pannu*** (supra), is in contradiction to the various steps taken by them. It is noted that the respondents filed W.P.(C) 12165/2025, in which judgment was reserved on 13.08.2025. The relief sought was permission to re-approach the erstwhile Arbitral Tribunal for re-fixation of the arbitral fee. It was nowhere the stand of the respondents that the arbitral proceedings have themselves been terminated.

76. Importantly, on 17.08.2025, the respondents themselves nominated their nominee arbitrator and the same was expressly done "in view of recusal of the members of the Arbitral Tribunal". This was an action of substitution under Section 15(2) read with Clause 44.3 of the CA. The same is inconsistent with the assertion that the arbitral proceedings had come to an end.

77. Most importantly, in November 2025, when two-party nominated arbitrators were unable to agree upon the presiding arbitrator, it was the

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respondents who invoked Section 11(6) of the A&C Act by filing ARB. P. No. 1862/2025. It was at the respondents instance that the coordinate Bench of this Court on 01.12.2025, appointed a presiding arbitrator to adjudicate the disputes between the parties.

78. The order itself records that the earlier Tribunal had recused itself on 16.07.2025 due to a disagreement regarding the Tribunal's fee and that following the recusal both parties nominated their respective nominee arbitrators. The relief which the respondents sought in that petition is in substance the very relief which the petitioner seeks in the present petition.

79. A party who has invoked the jurisdiction of this Court under Section 11(6) of the A&C Act and obtained an order appointing a presiding arbitrator on the footing that the reference subsists, cannot, when the other party invokes the same jurisdiction for the same purpose, be heard to contend that the reference does not subsist. The respondents' objection is, therefore, *ex-facie*, untenable.

CONCLUSION:

80. For the above reasons, this Court holds:

(i) the procedural Order No. 6 dated 16.07.2025 is not an order terminating arbitral proceedings under Section 32 of the A&C Act. It is a withdrawal from office by each of the three members of the erstwhile Arbitral Tribunal within the meaning of Section 15(1)(a) of the A&C Act;

(ii) the consequence provided by the Act for such withdrawal is 'substitution', according to the rules that were applicable to the appointment of arbitrators being replaced, namely Article 44.3.2 of

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CA. The parties have already substituted their respective nominee arbitrators. The office of the presiding arbitrator having been filled by the order dated 01.12.2025 in ARB. P. NO. 1862/2025 and having fallen vacant on 05.01.2026, is required to be filled again.

(iii) the judgment of the Supreme Court in ***Harshbir Singh Pannu*** (supra) supports the contention of the petitioner that a substitute presiding arbitrator is required to be appointed by this Court.

(iv) ***Harshbir Singh Pannu*** (supra), particularly paragraphs 268-269 thereof, support the proposition that where the mandate of an arbitrator terminates as a result of the arbitrator withdrawing from office, the recourse available is the appointment of a substitute arbitrator in terms of Section 15 of the A&C Act, 1996. Further, as elaborated hereinabove, the judgment in ***Harshbir Singh Pannu*** (supra) is an authority for the proposition that an order of termination of arbitral proceedings can be passed only under Section 32(2) of the A&C Act, 1996. No such order has been passed in the present case and as such, there is no occasion for the respondents to invoke the remedies prescribed in ***Harshbir Singh Pannu*** (supra). As such, the recall application filed by the respondents before the erstwhile Arbitral Tribunal, is thoroughly misconceived.

(v) the respondents having themselves treated the procedural Order No.6, dated 16.07.2025 as a recusal and having themselves previously invoked Section 11(6) of the A&C Act for appointment of a presiding arbitrator, cannot be permitted to contend to the contrary.

81. In the circumstances, it is incumbent on this Court to appoint a Presiding Arbitrator, thereby constituting the Arbitral Tribunal for

adjudication of the disputes between the parties under CA dated 25.03.2013.

82. Consequently, the present petition is allowed. Mr. Justice (Retd.) Rajesh Bindal, former Judge, Supreme Court of India (Mob. No.: +91 7347025001) is appointed as the Presiding Arbitrator along with Hon'ble Mr. Justice (Retd.) Sakha Ram Singh, former Judge of the High Court of Allahabad (nominee arbitrator of the petitioner) and Hon'ble (Retd.) Justice Virendrasingh Gyansingh Bisht, former Judge of the Bombay High Court (nominee arbitrator of the respondents), to adjudicate the disputes between the parties arising out of the CA dated 25.03.2013.

83. The aforesaid appointment shall be subject to the Presiding Arbitrator furnishing the requisite declaration under Section 12 of the A&C Act. The registry shall communicate a copy of this order to the substitute presiding Arbitrator appointed forthwith.

84. The arbitral proceedings shall commence from the stage at which they stood on 16.07.2025, subject to the discretion of the Arbitral Tribunal. Further, as directed vide order dated 01.12.2025, in ARB. P. NO. 1862/2025, this order, insofar as the respondent no(s). 2 and 3 are concerned remain subject to the outcome of the Arb. A (COMM) No. 16/2025.

85. Nothing in this order shall be construed as an expression of opinion of this Court on the merits of the claims, counterclaims or defences of the parties. The same are left open for adjudication by the Arbitral Tribunal in accordance with law.

SACHIN DATTA, J

OCTOBER 16, 2026
at/nb