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

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*Judgment reserved on: 16.09.2026**Judgment pronounced on: 28.09.2026**Judgment uploaded on: 28.09.2026*# **CNR No. DLHC010368972026**+ **FAO (COMM) 231/2026 and CM APPL. 53142/2026****M/S AIRPORT HANDLING SERVICES** .....Appellant

Through: Mr. Jawahar Raja, Mr. Anirudh  
Ramanathan, Ms. Sonali Shelar,  
Ms. Tamanna Pankaj, Mr.  
Sumit Wadhva, Ms. Priya Vats,  
Mr. Anoop George, Mr. Nitai  
Hinduja, Mr. Ishaan Goel,  
Adv.

versus

**INDIAN INSTITUTE OF TECHNOLOGY, KANPUR**

.....Respondent

Through: Mr. Manish Paliwal, Adv.

**CORAM:****HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MS. JUSTICE SHAIL JAIN****J U D G M E N T****ANIL KSHETARPAL, J.:**

1. The present Appeal under Section 37<sup>1</sup> of the Arbitration and Conciliation Act, 1996<sup>2</sup>, read with Section 13 of the Commercial Courts Act, 2015, assails the judgment dated 19.05.2026<sup>3</sup> passed by the learned District Judge (Commercial Courts)-03, Central District, Tis Hazari Courts, Delhi in O.M.P.(COMM.) No.44/2024, whereby

<sup>1</sup> Hereinafter referred to as 'Section 37'

<sup>2</sup> Hereinafter referred to as 'A&C Act'

<sup>3</sup> Hereinafter referred to as 'Impugned Judgment'



the learned District Judge allowed the petition<sup>4</sup> under Section 34<sup>5</sup> of the A&C Act and set aside the arbitral award dated 28.02.2024<sup>6</sup> passed by the learned Sole Arbitrator, Hon'ble Ms. Justice (Retd.) Sangita Dhingra Sehgal.

2. The challenge raised by the Appellant is confined to the finding of the learned District Judge that the learned Sole Arbitrator was *de jure* unable to act as an arbitrator by virtue of Rule 11(3)<sup>7</sup> of the Consumer Protection (Conditions of Service of President and Members of the State Commission or District Commission) Model Rules, 2020<sup>8</sup>. It is contended that Rule 11(3), even if construed as creating a disability upon the learned Sole Arbitrator, is a condition of service and cannot be equated with the ineligibility contemplated under Section 12(5)<sup>9</sup> read with the Seventh Schedule<sup>10</sup> to the A&C Act. The Appellant further contends that the learned District Judge erred in treating the absence of an express written waiver under the proviso to Section 12(5) as determinative of the validity of the Award.

3. The controversy, therefore, essentially concerns the effect of Rule 11(3) upon the mandate of an arbitrator, the distinction between *de jure* inability under Section 14(1)(a)<sup>11</sup> of the A&C Act and *de jure* ineligibility under Section 12(5) read with the Seventh Schedule, and whether the absence of an express written waiver under the proviso to

<sup>4</sup> Hereinafter referred to as 'Section 34 Petition'

<sup>5</sup> Hereinafter referred to as 'Section 34'

<sup>6</sup> Hereinafter referred to as 'Award'

<sup>7</sup> Hereinafter referred to as 'Rule 11(3)'

<sup>8</sup> Hereinafter referred to as 'Service Rules'

<sup>9</sup> Hereinafter referred to as 'Section 12(5)'

<sup>10</sup> Hereinafter referred to as 'Seventh Schedule'

<sup>11</sup> Hereinafter referred to as 'Section 12(1)(a)'



Section 12(5) could invalidate the Award in the facts of the present case.

**FACTUAL MATRIX:**

4. The relevant facts, necessary for adjudication of the present Appeal, may be briefly noticed.

5. The Appellant is a partnership firm engaged in the business of customs clearance, shipping and freight forwarding services. The Appellant obtained registration as a Micro, Small and Medium Enterprise ('MSME') under the Micro, Small and Medium Enterprises Development Act, 2006<sup>12</sup> on 29.08.2012. The Respondent is the Indian Institute of Technology, Kanpur, an autonomous institution of national importance constituted under the Institute of Technology Act, 1961.

6. The parties had entered into various Service Agreements during the period from 2003 to 2011 and thereafter from 2014 to 2017. In pursuance thereof, the Appellant raised invoices during the period from 2004 to 2018 aggregating to approximately Rs.21,29,57,915/-. Against the said invoices, payments aggregating to approximately Rs.21,16,64,706/- were made by the Respondent. The last payments of Rs.2,200/- and Rs.5,035.83/- were made on 03.05.2018.

7. The Appellant thereafter addressed reminders dated 11.07.2018, 05.11.2019 and 11.11.2019 seeking payment of the

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<sup>12</sup> Hereinafter referred to as 'MSMED Act'



outstanding amount. A legal notice was also issued by the Appellant on 29.03.2022.

8. The Appellant filed its claim before the Micro and Small Enterprises Facilitation Council ('MSEFC') on 06.05.2022. Since the conciliation proceedings did not result in a settlement, the dispute was referred to the Delhi Arbitration Centre ('DAC') on 08.06.2023 under Section 18(3) of the MSMED Act.

9. The DAC, *vide* communication dated 07.07.2023, appointed the Sole Arbitrator. The learned Sole Arbitrator submitted the declaration contemplated under Section 12 of the A&C Act on 11.07.2023. The Appellant thereafter filed its Statement of Claim on 31.07.2023. The Respondent filed its Statement of Defence on 19.08.2023. No objection to the jurisdiction or competence of the Arbitral Tribunal was raised under Section 16(2) of the A&C Act. The parties thereafter participated in the arbitral proceedings and filed their respective evidence affidavits. The Award came to be rendered on 28.02.2024, whereby the learned Sole Arbitrator awarded a sum of Rs.27,76,996/- inclusive of interest on the principal amount in favour of the Appellant.

10. Aggrieved by the Award, the Respondent preferred a Section 34 Petition on 31.05.2024. The learned District Judge, during the course of those proceedings, directed deposit of 75% of the amount awarded in terms of Section 19 of the MSMED Act. The Appellant deposited a sum of Rs.20,82,747/- on 16.09.2024.

11. The Respondent, in its original Section 34 Petition, did not challenge the competence or eligibility of the learned Sole Arbitrator



on the ground subsequently urged with reference to Rule 11(3). The said objection was raised for the first time in the Rejoinder dated 21.01.2025. The Appellant objected to the said plea by way of its Sur-rejoinder dated 03.02.2025.

12. The learned District Judge, *vide* the Impugned Judgment, rejected the other grounds raised by the Respondent in the Section 34 Petition. However, on the objection relating to the competence of the learned Sole Arbitrator, the learned District Judge held that Rule 11(3) operated as a legal bar against the learned Sole Arbitrator undertaking arbitral work while holding the office of President of the Delhi State Consumer Disputes Redressal Commission ('SCDRC'). The learned District Judge consequently held that the learned Sole Arbitrator was *de jure* unable to act and, on this ground, set aside the Award.

13. It is against the aforesaid finding, which was the sole ground on which the Award came to be set aside, that the present Appeal has been preferred.

### **CONTENTIONS OF THE PARTIES:**

14. Heard learned counsel representing the parties and, with their able assistance, perused the record.

15. Learned counsel representing the Appellant has made the following submissions:

- i. The learned District Judge erred in setting aside the Award on the ground that Rule 11(3) disabled the learned Sole Arbitrator from acting as an arbitrator. According to the Appellant, the said Rule is a condition governing the service of the President of the



Delhi SCRDC and does not constitute a statutory ineligibility under Section 12(5) read with the Seventh Schedule.

ii. The distinction between *de jure* inability under Section 14(1)(a) and *de jure* ineligibility under Section 12(5) has been authoritatively recognised by the Supreme Court in ***Bhadra International (India) Pvt. Ltd. v. Airports Authority of India***<sup>13</sup>. It is contended that while a statutory provision may render an arbitrator *de jure* unable to continue, every such inability does not attract Section 12(5), which is specifically confined to the categories enumerated in the Seventh Schedule.

iii. The learned District Judge erred in relying upon the absence of an express written waiver under the proviso to Section 12(5). The requirement of an express agreement in writing arises only where Section 12(5) is attracted. Since no relationship or circumstance falling within the Seventh Schedule has been identified in the present case, the proviso to Section 12(5) has no application.

iv. The Appellant further relies upon the judgment of this Court in ***Delhi Integrated Multi Modal Transit Systems Ltd. v. Delhi Jal Board***<sup>14</sup>, wherein, in the context of an identical objection based upon the conditions of service applicable to a member of a Consumer Forum, this Court held that even if acting as an arbitrator was in violation of the conditions of service, the consequence for such violation would follow, but that did not

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<sup>13</sup> 2026 SCC OnLine SC 7

<sup>14</sup> (O.M.P.)(T)(COMM.) 16/2021



mean that the mandate of the arbitrator stood automatically terminated.

v. The arbitration in the present case was a statutory arbitration arising under Section 18 of the MSMED Act and was conducted through the DAC. The appointment was made by the DAC pursuant to the statutory reference and the DAC Arbitration Rules, 2023 specifically recognise statutory arbitrations as a distinct category.

vi. The Respondent participated in the arbitral proceedings without raising any objection to the competence of the learned Sole Arbitrator under Section 16 of the A&C Act or seeking determination of the alleged *de jure* inability under Section 14(1)(a). The objection founded upon Rule 11(3) was introduced for the first time by way of Rejoinder in the Section 34 proceedings and could not be permitted to furnish a new ground for setting aside the Award.

16. *Per contra*, learned counsel representing the Respondent has supported the Impugned Judgment and has contended that Rule 11(3) imposed an absolute restriction upon the learned Sole Arbitrator from undertaking arbitral work while holding office as President of the SCDRC. It is contended that the learned Sole Arbitrator was, therefore, legally incapable of acting as an arbitrator and that the Award rendered by her could not be sustained.

17. Learned Counsel representing the Respondent has further relied upon the judgment of the Supreme Court in ***Bhadra International*** (*supra*) to contend that a person who is legally



ineligible to act as an arbitrator becomes *de jure* unable to continue under Section 14(1)(a). It is submitted that the absence of an express written waiver by the Respondent is consequently fatal to the continuation of the learned Sole Arbitrator.

18. Reliance has also been placed upon the judgment of the Allahabad High Court in ***Lucknow Development Authority Through Vice Chairman v. Sudhanshu Rastogi***<sup>15</sup>, in support of the proposition that a person holding the office of a Consumer Commission cannot simultaneously undertake arbitral assignments contrary to the applicable Service Rules.

19. No other submissions have been advanced by learned counsel representing the parties.

### **ANALYSIS AND FINDINGS:**

20. The principal question which arises for consideration in the present Appeal is whether the prohibition contained in Rule 11(3), assuming the same to be applicable to the learned Sole Arbitrator, rendered her *de jure* ineligible under Section 12(5) or *de jure* unable under Section 14(1)(a) so as to invalidate the Award.

21. At the outset, it is necessary to notice the distinction between the aforementioned two provisions of the A&C Act. For the sake of convenience, Sections 12(5) and 14(1)(a) are reproduced hereinbelow:

***“12. Grounds for challenge.-***

...

*(5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of*

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<sup>15</sup> 2023:AHC-LKO:2097



the dispute, falls under any of the categories specified in the Seventh Schedule shall be **ineligible to be appointed as an arbitrator**:

*Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing.*

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**14. Failure or impossibility to act.-** (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

... ”

**(Emphasis supplied.)**

22. Section 12(5) provides that, notwithstanding any prior agreement to the contrary, a person whose relationship with the parties, counsel or the subject matter of the dispute falls within any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator. The proviso permits the parties, subsequent to disputes having arisen, to waive the applicability of the said provision by an express agreement in writing.

23. Section 14(1)(a), on the other hand, contemplates termination of the mandate where an arbitrator becomes *de jure* or *de facto* unable to perform his or her functions. The expression “*de jure inability*” is thus not confined, by the language of Section 14(1)(a), only to circumstances arising under Section 12(5) or the Seventh Schedule.

24. The distinction assumes significance in view of the judgment of the Supreme Court in ***Bhadra International*** (*supra*). The Supreme Court, while examining the scheme of Sections 12(5) and 14(1)(a), has explained the distinction between *de jure* ineligibility and *de jure* inability. The relevant paragraphs are reproduced hereinbelow:



“61. In the aforesaid context, it would be apposite to briefly explain what constitutes as *de jure* ineligibility under Section 12(5). The expression *de jure* denotes a condition rooted in strict compliance with the requirements of law. *De jure* inability refers to a situation in which an arbitrator is legally incapable of performing his functions and is, by operation of law, barred from continuing in office. Such inability strikes at the very root of the arbitrator's authority to act, thereby affecting his inherent capacity to discharge his functions as an arbitrator. It is this legal incapacity, arising from statutory disqualifications, that results in the termination of the “mandate of an arbitrator” under Section 14(1)(a) of the Act, 1996.

62. *De jure* inability referred to under Section 14(1)(a) may arise from the provisions of the Act, 1996, or from any other existing law that renders an arbitrator legally incapable of performing his functions. As regards *de jure* ineligibility, it flows from sub-section (5) of Section 12 read with the Seventh Schedule, which disqualifies certain persons from being appointed or continuing as arbitrators.

63. In other words, the ineligibility under Section 12(5) precedes *de jure* inability under Section 14(1)(a). In other words, *de jure* ineligibility is the specie and *de jure* inability is the genus. To put this in context, *de jure* inability is determined when an aggrieved party is able to indicate that the circumstances under the Seventh Schedule have been met.”

(Emphasis supplied.)

25. Thus, while *de jure* inability refers to a legal incapacity to perform the functions of an arbitrator, which may arise under the A&C Act or any other existing law, *de jure* ineligibility specifically flows from Section 12(5) read with the Seventh Schedule. The Supreme Court has accordingly held that *de jure* ineligibility is a species of *de jure* inability, which is the genus. Thus, while a person falling within a category specified in the Seventh Schedule would necessarily be *de jure* unable to act as an arbitrator, every legal disability rendering a person incapable of acting as an arbitrator would not, by that fact alone, constitute an ineligibility under Section 12(5).

26. The same distinction is evident from the discussion of the Supreme Court and Madras High Court in **HRD Corporation (Marcus**



*Oil and Chemical Division) v. GAIL (India) Ltd.*<sup>16</sup> and *Clarke Energy India Pvt. Ltd. v. SAS EPC Solution Pvt. Ltd.*<sup>17</sup>, respectively. The Seventh Schedule identifies specific relationships and circumstances in which a person is statutorily rendered ineligible to act as an arbitrator. Such ineligibility, once established, results in the arbitrator being *de jure* unable to perform the functions of an arbitrator within the meaning of Section 14(1)(a). However, this does not mean that every case of *de jure* inability would necessarily fall under Section 12(5) and the Seventh Schedule.

27. In *Bhadra International (supra)*, the Supreme Court was concerned with a situation where the disqualification of the arbitrator arose from the specific circumstances enumerated in the Seventh Schedule. It was in that context that Section 12(5) was attracted and the requirement of an express agreement in writing under the proviso to Section 12(5) assumed significance.

28. The principle regarding waiver by an express agreement in writing, as explained by the Supreme Court in *Bharat Broadband Network Limited v. United Telecoms Ltd.*<sup>18</sup>, is consequently a consequence of Section 12(5). Where an arbitrator falls within one of the categories specified in the Seventh Schedule, the statutory prohibition under Section 12(5) operates notwithstanding any prior agreement to the contrary. A waiver of that prohibition can then be made only in the manner prescribed by the proviso, namely, by an express agreement in writing entered into after the disputes have arisen.

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<sup>16</sup> (2018) 22 SCC 471

<sup>17</sup> 2021 SCC OnLine Mad 6121

<sup>18</sup> (2019) 5 SCC 755



29. The question, therefore, in the present case is anterior to the question of waiver. It must first be determined whether Rule 11(3) brings the learned Sole Arbitrator within the statutory ineligibility contemplated under Section 12(5) read with the Seventh Schedule.

30. There is no finding in the Impugned Judgment, nor has any material been placed before this Court, to establish that the learned Sole Arbitrator had any relationship with the Appellant, the Respondent, the counsel representing either party or the subject matter of the dispute which falls within any of the categories specified in the Seventh Schedule. The objection to her appointment is founded entirely upon Rule 11(3).

31. Rule 11(3), as relied upon by the Respondent, is a provision governing the conditions of service of the President and Members of the State Commission or District Commission. The prohibition contained therein may, depending upon its interpretation and applicability, regulate the conduct of a person holding such office and may have consequences under the law governing such office. However, a service-condition restriction cannot, without more, be transposed into an ineligibility under Section 12(5).

32. This distinction has also been recognised by this Court in ***Delhi Integrated Multi Modal Transit Systems Ltd.*** (*supra*), where an objection was raised to the continuation of an arbitrator on the ground that his appointment as a member of a Consumer Forum disabled him from undertaking arbitral work. This Court specifically observed in Paragraph No.36, as extracted hereinbelow:

*“36. It is not necessary to go into the question whether the conditions of service as applicable to the learned Arbitrator disabled*



him from taking any assignment as an arbitrator or continuing as such. This is for the reason that if acting as an arbitrator is in violation of the terms and conditions of his service as a member of the District Consumer Forum, the consequence for violating the said conditions of service would follow. However, that does not mean that the mandate of the learned Arbitrator stands automatically terminated.”

(Emphasis supplied.)

33. The aforesaid observation is of particular relevance to the controversy before this Court. A breach of a condition governing the office held by an arbitrator may entail consequences under the statutory or regulatory framework governing that office. Such consequence, however, cannot automatically be equated with termination of the arbitral mandate under Section 12(5), particularly when the alleged disability does not arise from any of the circumstances specified in the Seventh Schedule.

34. The reliance placed by the learned District Judge upon ***Bhadra International*** (*supra*) to hold that an express written waiver under the proviso to Section 12(5) was necessary, therefore, proceeds from a conflation of *de jure* inability with *de jure* ineligibility. The fact that a particular legal provision may, in an appropriate case, render an arbitrator *de jure* unable under Section 14(1)(a) does not mean that the arbitrator consequently falls within Section 12(5) unless the statutory requirements of that provision are independently satisfied.

35. Put differently, Section 14(1)(a) may encompass legal disabilities arising from sources other than the Seventh Schedule. But where the alleged disability is not one contemplated by Section 12(5), the proviso to Section 12(5) cannot be invoked to insist upon an



express written waiver as a condition for the validity of the arbitral mandate.

36. The judgment of the Allahabad High Court in ***Lucknow Development Authority (supra)***, relied upon by the Respondent, does not advance the case of the Respondent any further. The said decision arose in proceedings concerning appointment and substitution of an arbitrator under Sections 11(6) and 15(2) of the A&C Act, where the arbitrator had recused herself upon being appointed to the Uttarakhand SCDRC. The Court was thus concerned with the continuation and substitution of an arbitrator in the context of an *ad hoc* arbitration.

37. The present case stands on a materially different footing. The arbitration arose from a statutory reference under Section 18 of the MSMED Act. The MSEFC referred the dispute to the DAC under Section 18(3), and the learned Sole Arbitrator was appointed by the DAC pursuant to the said reference. The DAC Arbitration Rules, 2023 themselves recognise statutory arbitration as a distinct category and provide for appointment of a Sole Arbitrator by the Registrar in such cases.

38. More importantly, the question before us is not whether a person holding an office under the Consumer Protection framework should, as a matter of service discipline, undertake arbitral assignments. The question is whether such service restriction, by itself, renders the person ineligible under Section 12(5) and consequently requires an express written waiver under its proviso. For the reasons already noticed, the answer must be in the negative.



39. It is also material that the learned Sole Arbitrator had furnished the declaration contemplated under Section 12 before entering upon the reference. The Respondent thereafter filed its Statement of Defence and participated in the arbitral proceedings without raising any objection to the competence of the learned Sole Arbitrator. No objection under Section 16(2) was taken and no application was made during the arbitral proceedings seeking termination of the mandate on the ground subsequently urged before the learned District Judge.

40. The Respondent first raised the objection based upon Rule 11(3) in the Rejoinder filed in the Section 34 proceedings. While the timing of the objection is not, by itself, determinative of a question of statutory ineligibility as reiterated by the Supreme Court in ***Bhadra International*** (*supra*). However, the timing of the objection assumes significance when the Respondent seeks to characterise a service-condition restriction as an absolute statutory bar under Section 12(5), despite having participated throughout the arbitral proceedings without raising such an objection.

41. Section 4 of the A&C Act embodies the principle of waiver where a party, knowing that any requirement under the A&C Act from which the parties may derogate or any requirement under the arbitration agreement has not been complied with, proceeds with the arbitration without stating its objection without undue delay. The present case, however, does not require the Court to rest its conclusion solely upon waiver under Section 4. The more fundamental reason is that the alleged disability under Rule 11(3) has not been shown to



constitute an ineligibility under Section 12(5) read with the Seventh Schedule in the first place.

42. The challenge to the constitution of the Tribunal, therefore, cannot be sustained by importing into the present case the line of authorities dealing with unilateral appointment of arbitrators who were themselves rendered ineligible under Section 12(5) or were otherwise disqualified from making such appointments. The foundation upon which those decisions operate is materially absent in the present case.

43. The Respondent's objection, in substance, is that the learned Sole Arbitrator, while holding the office of President of the SCDRC, could not undertake arbitral work by reason of the Service Rules. Even assuming the correctness of that premise, the consequence of such violation would have to be determined under the law governing the office of the learned Sole Arbitrator. It does not follow that the Award is automatically rendered *void ab initio* under the A&C Act.

44. It is also significant that the Respondent has not alleged any actual bias, partiality or lack of independence on the part of the learned Sole Arbitrator. The objection is founded exclusively upon the alleged prohibition contained in the Service Rules. The issue, therefore, remains one of legal competence and cannot be converted into a challenge based upon the Fifth or Seventh Schedule in the absence of the factual foundation necessary for invoking either.

45. The Court is conscious that the object of the statutory provisions relating to independence and impartiality of arbitrators is to ensure the integrity of the arbitral process. However, the safeguards contained in Section 12(5) and the Seventh Schedule operate within



the framework specifically prescribed by the A&C Act. The Court cannot enlarge the categories of statutory ineligibility beyond those contemplated by the legislature merely because a separate statutory or regulatory provision may impose a restriction upon the person holding the office of an arbitrator.

46. The learned District Judge, therefore, fell into error in treating the alleged violation of Rule 11(3) as equivalent to an ineligibility under Section 12(5) and in consequently holding that the absence of a written waiver rendered the Award *void*.

47. It is also pertinent to note that the learned District Judge had considered the other grounds raised by the Respondent in the Section 34 Petition, including the objection relating to limitation, the objection concerning the period for which the claim could be entertained, and the challenge based on appreciation of evidence. The said grounds were rejected by the learned District Judge. No challenge to the findings recorded on these grounds has been raised by the Appellant in the present Appeal. The said findings, therefore, remain undisturbed.

48. Thus, the only ground on which the learned District Judge ultimately set aside the Award was the finding relating to the alleged *de jure* inability of the learned Sole Arbitrator under Rule 11(3) of the Service Rules. Having found the said finding to be unsustainable for the reasons set out hereinabove, there remains no other ground on which the Award stands set aside in the Impugned Judgment.

**CONCLUSION:**

49. In view of the foregoing discussion, the present Appeal is allowed. The finding of the learned District Judge that the learned Sole Arbitrator was *de jure* unable to act as an arbitrator on account of Rule 11(3) of the Service Rules is set aside. Consequently, the judgment dated 19.05.2026, insofar as it sets aside the Award dated 28.02.2024 on the aforesaid ground, is also set aside.

50. The findings recorded by the learned District Judge on the other grounds raised by the Respondent in the Section 34 Petition have not been assailed in the present Appeal and are, therefore, left undisturbed.

51. Since the aforesaid finding regarding the alleged *de jure* inability of the learned Sole Arbitrator was the only ground on which the Award came to be set aside, the Award dated 28.02.2024 passed by the learned Sole Arbitrator stands restored.

52. The pending application stands closed.

**ANIL KSHETARPAL, J.**

**SHAIL JAIN, J.**

**SEPTEMBER 28, 2026**

*jai/shah*