2025:DHC:9326

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

Date of decision: 14.10.2025

\+ **O.M.P. (T) (COMM.) 38/2025 & I.A. 12346/2025**

MECWEL CONSTRUCTIONS PVT. LTD. ....Petitioner

Through: Dr. Amit George, Adv , Mr. Shashwat Kabi, Adv , Ms. Ibansara Syiemlieh. Adv, Mr. Adhishwar Suri Adv and Mr. Vaibhav Gandhi Adv and Mr. Kartikay Puneesh Adv

versus

GE POWER SYSTEMS INDIA PVT. LTD. .....Respondent

Through: Mr. Akshay Sapre, Mr. Abhijeet Swaroop, Mr. Vinam Gupta, Ms. Shivani Karmakar, Advs.

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\+ **O.M.P. (T) (COMM.) 39/2025 &I.A. 12348/2025**

MECWEL CONSTRUCTIONS PVT. LTD. .....Petitioner

Through: Dr. Amit George, Adv , Mr. Shashwat Kabi, Adv , Ms. Ibansara Syiemlieh. Adv, Mr. Adhishwar Suri Adv and Mr. Vaibhav Gandhi Adv and Mr. Kartikay Puneesh Adv

versus

GE POWER SYSTEMS INDIA PVT. LTD. .....Respondent

Through: Mr. Akshay Sapre, Mr. Abhijeet Swaroop, Mr. Vinam Gupta, Ms. Shivani Karmakar, Advs.

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\+ **O.M.P. (T) (COMM.) 40/2025 & I.A. 12350/2025**

MECWEL CONSTRUCTIONS PVT. LTD. .....Petitioner

Through: Dr. Amit George, Adv , Mr.

2025:DHC:9326

Shashwat Kabi, Adv , Ms. Ibansara Syiemlieh. Adv, Mr. Adhishwar Suri Adv and Mr. Vaibhav Gandhi Adv and Mr. Kartikay Puneesh Adv

versus

GE POWER SYSTEMS INDIA PVT. LTD. .....Respondent

Through: Mr. Akshay Sapre, Mr. Abhijeet Swaroop, Mr. Vinam Gupta, Ms. Shivani Karmakar, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J *(ORAL)***

1. These are petitions filed under Section 14 and 15 of the Arbitration and Conciliation Act, 1996 seeking the seeking substitution and/or appointment of an Arbitrator and/ or pass an order enabling the Arbitrator to continue proceedings.
2. The brief facts are that the projects relating to erection, testing, commissioning and handover of steam turbine & generator auxiliaries for various Thermal Power Projects were awarded to GE Power Systems India Pvt. Ltd. ("***respondent***").
3. The respondent then further invited bids for subcontracting of Erection. and Commissioning of Mechanical & Erection Packages for the said projects. The petitioner submitted its bid which was thereby accepted by the respondent herein *vide* a Letter of Award. Accordingly, the work was subcontracted to the petitioner herein and the respondent herein issued a purchase order in favour of the petitioner dated 07.08.2020, 10.06.2019, 02.04.2019 respectively.

4. Since there were delays in completion of work, a notice of termination issued by the respondent dated 29.08.2022, 26.07.2022, 06.03.2023. The petitioner initially filed petitions under Section 9 of 1996 Act at District Court in *Vijaywada* and subsequently before this Court being OMP(I)(COMM) 6/2024, OMP(I)(COMM) 7/2024 and OMP(I)(COMM) 8/2024 seeking a direction to restrain the respondents from encashing the subject bank guarantees.

5. Subsequently, this Court *vide* Order dated 08.01.2024, disposed the said petitions with the direction that the respondent shall be entitled to receive pay outs by way of invocation of the bank guarantees but keep the amounts in FDRs and was further pleased to appoint the Arbitrator to adjudicate the disputes between the parties. The Arbitrator entered reference.

6. The Arbitrator *vide* Order 18.11.2024, was pleased to close the arbitration proceedings, since the petitioner had not filed its statement of claims and not paid portion of the arbitral fee under Section 25(a) of the Arbitration and Conciliation Act, 1996. The said Order is the genesis of the present petition. The operative portion reads as under:-

> *"7. The Arbitrator has duly considered the matter. In absence of SOC for such long time and in absence of compliance of direction regarding fee, the Arbitrator is unable to proceed and is constrained to close the proceedings subject to window of opportunity for compliance being availed. The fee already paid (total Rs. 15 lacs by both the parties) stands appropriated towards fee for the proceedings so far in four sittings.*

> *8. Accordingly, proceedings will stand closed under section 25(a) of the Arbitration and Conciliation Act, 1996 subject to the window of further opportunity for compliance in next one month. If compliance is done in terms of deposit of fee and filing of SOC, date for further hearing will be fixed."*

7. Thereafter, the Arbitrator passed another dated 18.12.2024, where the Arbitrator was pleased to observe that the Arbitrator was open to hearing the parties in case they promptly comply with the earlier directions. The operative portion reads as under:-

> *"4. The Arbitrator has today received two Emails from Mr. Prasada Rao P, on behalf of Mecwel. In first, he has stated that he would deposit fee by 20.12.24 and file requisite pleadings by 25.01.25. On that basis, prayer is that proceedings be continued and date be fixed. Second email forwards SOC in one of the cases (in other two SOCs have already been filed) and other documents in other two cases.*
>
> *5. Considering the above, the Arbitrator is open to consider the matter further, after hearing the parties, if the parties promptly comply with the earlier directions for taking steps for arbitration. However, since one month period granted has already expired, in absence of compliance and in view of expiry of one year after the High Court order, it is not possible to straightaway fix a date and revive the proceedings. The matter will now be taken up depending on prompt steps for compliance in terms of deposit of fee (which according to claimant is proposed to be deposited by 20.12.2024) and*

taking other steps, failing which no further date can be fixed, as sought. However, date will be fixed if deposit is made and other steps taken.

6. The letters/emails filed by the representative of the claimant stands disposed of accordingly."

8. Thereafter, *vide* Order dated 24.02.2025, the Arbitrator was of the view that since the Arbitrator had passed the order dated 18.11.2024, the Arbitrator may not be in a position to revive the proceedings. The Arbitrator observed that the proceedings stood terminated. The operative portion reads as under:-

"ORDER DATED 24.02.2025

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4. On 17.02.2025, the Arbitrator received mail from the respondent seeking fixing of date of hearing to consider prayer for passing a formal order terminating the proceedings, allowing Counter claims in respect of Obra and Jawaharpur projects to be withdrawn with liberty to take remedies in future and permitting FDR filed before the High Court to be withdrawn. The Arbitrator fixed the matter for today with the observation that it may be difficult to pass further order in a matter where proceedings already stand terminated.

5. In above background, the matter has been taken up. The claimant has also filed a response by email opposing the prayer of the respondent and seeking further time to deposit fee by 10.03.2025. The respondent submits that it will seek

order of the High Court and move the Arbitrator in the light of such order.

6. In view of above, no further order is being passed but if any order is filed by the parties enabling the Arbitrator to proceed, the matter may be taken up in compliance of such order."

9. Mr. Sapre, learned counsel for the respondent states that the order dated 18.11.2024 is an Award and the only remedy available to the petitioner is to file a Section 34 petition challenging the Award dated 18.11.2024.

10. He relies upon the judgment of ***Awasthi Construction Co. vs. Govt. of NCT of Delhi & Anr. (2012) SCC OnLine Del 5443*** and more particularly paragraphs 19 and 20 which read as under:-

"19. Before parting with the said line of reasoning, the consequences of the arbitral tribunal entertaining such procedural review may also be discussed. If the Arbitral Tribunal finds sufficient cause and restores the arbitral proceedings, the challenge to such order of restoration would lie along with challenge to the award itself if against such aggrieved party. However, if the arbitral tribunal does not accept as sufficient, the cause furnished for default, the arbitral tribunal would necessarily give reasons therefor within the meaning of Section 31 and such order of the Arbitral Tribunal would definitely constitute an award remedy where against would be available under Section 34 of the Act. The definition in Section 2(1)(c) of the Act of an "arbitral

award" is an inclusive one i.e. of the same including an interim award; else an arbitration award is not defined. However, sub-Section (1) of Section 32 provides for termination of arbitral proceedings either by an arbitral award or by an order of the arbitral tribunal under sub-Section (2) of Section 32. An order of dismissal of an application for review/recall of an order under Section 25(a) does not fall under any of the clauses in sub-Section (2) of Section 32. The same thus has to necessarily fall within the meaning of award.

20. We are further of the view that the proceedings under the Arbitration Act cannot at all times be viewed through the prism of CPC. The Act equates the award to a 'decree' only for the purposes of the enforcement thereof under Section 36 and our concepts and terminology of a suit cannot otherwise be applied to arbitration proceedings. The Supreme Court in Paramjeet Singh Patheja v. ICDS Ltd. (2006) 13 SCC 322 held that the legal fiction of equating the award to a decree is for the limited purpose of enforcement and not intended to make an award a decree for all purposes. Ordinarily even the default termination order under Section 25(a) would be an award, with the remedy however available to the party of approaching the arbitral tribunal with sufficient cause for setting aside of the default termination order. We may in this regard notice that Section 34 allows an arbitral award to be set aside when a party was under some incapacity or when

proper notice of the arbitral proceedings was not served or when the party was otherwise unable to present his case. The said grounds for setting aside would be invoked only if orders as under Section 25(a) were to be an award and there would have been no occasion for the legislature to provide such grounds under Section 34 if default orders were not to be an award. The same also follows from sub-Section (4) of Section 34 whereunder, upon challenge under Section 34 being made to such termination, the Court has been empowered to relegate the parties to the arbitral tribunal. We see no reason to not hold an order under Section 25(a) to be an award merely because the remedy of appeal against orders of terminations under Section 16(2) & (3) has been provided. Further, the order under Section 25(a), stating default on the part of the party, would satisfy the requirement of the award to contain reasons. Moreover, merely because the arbitral tribunal fails to give any reasons cannot be a ground for making its orders unassailable under Section 34."

11. He further relies upon the judgment of ***The India Trading Company vs. Hindustan Petroleum Corporation Ltd. (2016) SCC OnLine Cal 479*** and more particularly paragraphs 10 to 14 which read as under:-

"10. On a conjoint reading of Section 25A with Section 32 and the definition of arbitral award in Section 2(1)(c), it is patently clear that, except for an order for the termination of the arbitration proceedings on grounds stipulated in Section

32(2) of the 1996 Act, and save and except ministerial directions, any other decision of the Arbitral Tribunal is an award.

11. Arbitral proceedings are terminated by the final arbitral award or by an order of the arbitral tribunal under Sub-section (2) i.e. an order of termination, where the claimant withdraws his claim, where the parties agree on the termination of the proceedings or the tribunal finds the continuation of the proceedings has, for any reason, become unnecessary or impossible.

12. Termination of proceedings under Section 25(a) is a final decision which puts an end to the arbitral proceedings. The decision amounts to rejection of the claim, even though there is no adjudication on merits. It is, akin to dismissal of a suit on a technical ground, may be, non prosecution.

13. There is a difference between a decision which puts an end to the arbitral proceedings and a decision whereby the arbitrator withdraws from the proceedings. Where the arbitrator withdraws from the proceedings, a substitute arbitrator may be appointed in accordance with the procedure, applicable to the appointment of the arbitrator who is replaced, but where the arbitrator puts an end to the arbitral proceedings, the claimant cannot pursue his claim.

14. The decision of the arbitral tribunal to put an end to the proceedings is a final award which can only challenged by way of an application for setting aside under Section 34 Sub-

section (2) of the 1996 Act. Once the arbitral proceedings are terminated, the claimant cannot re-agitate the same claim by initiation of fresh proceedings since the claim would be hit by principles of constructive res judicata."

12. He also relies upon the judgment of ***Angelique International Limited vs. SSJV Projects Private Limited & Anr. (2018) SCC OnLine Del 8287*** and more particularly paragraphs 30 to 38 which read as under:-

"30. Counsel for the respondents has rightly contended that in the present case as the Arbitrator has terminated the proceedings with respect to the claim filed by the petitioner, it would in fact, amount to an Arbitral Award which can be challenged only by way of a petition under Section 34 of the Act. He places reliance on the judgment of this Court in The India Trading Company v. Hindustan Petroleum Corporation Ltd., 2016 SCC OnLine Cal 479, wherein the Division Bench of this Court held as under:—

"13. There is a difference between a decision which puts an end to the arbitral proceedings and a decision whereby the arbitrator withdraws from the proceedings. Where the arbitrator withdraws from the proceedings, a substitute arbitrator may be appointed in accordance with the procedure, applicable to the appointment of the arbitrator who is replaced, but where the arbitrator puts an end to the arbitral proceedings, the claimant cannot pursue his claim.

14. The decision of the arbitral tribunal to put an end

to the proceedings is a final award which can only challenged by way of an application for settling aside under Section 34 Sub-section (2) of the 1996 Act. Once the arbitral proceedings are terminated, the claimant cannot re-agitate the same claim by initiation of fresh proceedings since the claim would be hit by principles of constructive res judicata."

31. In Joginder Singh Dhaiya v. M.A. Tarde Thr LRs, 2017 SCC OnLine Del 12559, this Court while dealing with an award dismissing the claim filed by the claimant on the ground of the proceeding having abated, rejected the contention that the order of abatement would not be an award within the meaning of Section 2(1)(c) and Section 31 of the Act.

32. I must of course while referring to the above judgments also mention that the Supreme Court in Srei Infrastructure Finance Ltd. v. Tuff Drilling Pvt. Ltd., 2017 SCC OnLine SC 1210, has held that where the Arbitrator terminates the proceedings due to failure of the claimant to file his Statement of Claim, the aggrieved party can approach the Arbitral Tribunal and on sufficient cause been shown, the Arbitral Tribunal can recall the order and recommence the proceedings. The Supreme Court, however, did not answer the issue as to whether the order passed under Section 25(a) of the Act terminating the proceedings is an award under the 1996 Act so as to be amenable to the remedy under Section 34 of the Act. In the present case, though Section 25(a) of the Act would

not apply, a reading of the impugned order shows that the Arbitrator has terminated the proceedings with respect to the claims of the petitioner on the ground that the petitioner is not proceeding with the arbitration proceeding. Such order would be akin to the dismissal of a suit, on a technical ground may be, of non-prosecution and, therefore, could have been challenged only in an application under Section 34 of the Act and can be assailed only on the limited grounds that are available to the aggrieved party under the said provision.

33. Reliance of the petitioner on the judgment of the Supreme Court in Lalit Kumar V. Sanghavi (D) Th. LRs Neeta Lalit Kumar Sanghavi v. Dharamdas V. Sanghavi, (2014) 7 SCC 255, is ill-founded. In the said case, the Supreme Court, was dealing with a situation where the Arbitrator had terminated the arbitration proceedings due to non-payment of fees. The aggrieved party had even moved an application before the Arbitral Tribunal seeking recall of the said order and thereafter, filed an application under Section 11 of the Act before the High Court, seeking appointment of an Arbitral Tribunal. The said application was dismissed holding that the remedy of the applicant was by way of filing of a Writ Petition and not an application under Section 11 of the Act. The Supreme Court, in the above judgment, held that neither Section 11 of the Act nor a petition under Article 226 of the Constitution of India was maintainable against the order passed by the Arbitral Tribunal. The Supreme Court held that

the order passed by the Arbitral Tribunal would in fact fall under Section 32(2)(c) of the Act and the remedy of the aggrieved party would be under Section 14(2) of the Act. In the present case, the Arbitrator has not terminated the proceedings due to non-payment of fee by the petitioner but for the reason that the petitioner has not been proceeding with diligence in the arbitration proceedings and, its conduct clearly showed that it is not interested in the continuation of the arbitration proceedings at all.

34. Recently, in Indian Farmers Fertilizer Cooperative Limited v. Bhadra Products, (2018) 2 SCC 534, the Supreme Court, has held that an order dismissing the claim of the Claimant on the ground of limitation is an Award and can be challenged only under Section 34 of the Act and not under Section 37(2)(a) of the Act.

35. In my view, therefore, the present application under Section 14 and 15 of the Act would not be maintainable where the challenge is to an order passed by the Arbitrator terminating the arbitration proceedings due to the Claimant not prosecuting its claims.

36. In spite of my above findings on the maintainability of the petition, I shall also deal with the contentions of the petitioner on merit. Counsel for the petitioner has sought to contend that the Arbitrator has failed to act without undue delay in the conduct of the arbitral proceedings and, therefore, even otherwise, the application under Section 14 of the Act would

be maintainable and the mandate of the Arbitrator would be deemed to be terminated and such Arbitrator should be substituted by this Court. I am unable to accept the above argument of the counsel for the petitioner.

37. A perusal of the various orders passed by the Arbitrator in the conduct of the Arbitral proceedings shows that the Arbitrator has been proceeding with the reference with expedition. In fact, it is the petitioner who is making repeated applications one after another before the Arbitrator, which consequently caused delay in making of the Arbitral Award. As noted above, the petitioner in fact, moved applications requesting the Arbitrator not to proceed with the reference and to await the outcome of the civil suit filed by the petitioner. Certainly, the petitioner cannot, therefore, claim that it is the Arbitrator who has failed to act without undue delay in the reference.

38. Section 15 of the Act, would also not have any application in the present case as the Arbitrator has neither withdrawn from the office nor have the parties agreed to the termination of his mandate."

13. I have heard learned counsel for the parties.

14. As regards the 2 judgments i.e. ***"The India Trading Company"*** (supra) and ***"Angelique International Limited"*** (supra) are concerned, the same have been considered by the Coordinate Bench of this Court in "***PCL Suncon vs. National Highway Authority of India***" (2021) SCC OnLine Del 313 and more particularly in paragraphs 33 to 42 which

read as under:-

> *"33. In The India Trading Company (supra), the Division Bench of the Calcutta High Court had held that an order terminating the arbitral proceedings under Section 25(a) of the A&C Act is an award since it is a final decision, which puts an end to the arbitral proceedings. The court proceeded on the basis that the same would be sufficient to constitute the said order as an award, which can be challenged under Section 34 of the A&C Act. The relevant extract of the said decision is as under:*
>
> > *"12. Termination of proceedings under Section 25(a) is a final decision which puts an end to the arbitral proceedings. The decision amounts to rejection of the claim, even though there is no adjudication on merits. It is, akin to dismissal of a suit on a technical ground, may be, non prosecution.*
> >
> > *13. There is a difference between a decision which puts an end to the arbitral proceedings and a decision whereby the arbitrator withdraws from the proceedings. Where the arbitrator withdraws from the proceedings, a substitute arbitrator may be appointed in accordance with the procedure, applicable to the appointment of the arbitrator who is replaced, but where the arbitrator puts an end to the arbitral proceedings, the claimant cannot pursue his claim.*
> >
> > *14. The decision of the arbitral tribunal to put an end to*

the proceedings is a final award which can only challenged by way of an application for setting aside under Section 34 Sub-section (2) of the 1996 Act. Once the arbitral proceedings are terminated, the claimant cannot re-agitate the same claim by initiation of fresh proceedings since the claim would be hit by principles of constructive res judicata."

34. In Joginder Singh Dhaiya v. M.A. Tarde Thr. LRs : O.M.P. 370 of 2014, decided on 27.12.2014, a Coordinate Bench of this Court took a similar view. In that case, the Arbitral Tribunal had rejected the application of the petitioner for substitution of the legal representatives as being barred by limitation. The arbitration proceedings had consequently abated. The said decision of the Arbitral Tribunal was impugned as an award by filing an application under Section 34 of the A&C Act. The court reasoned that since the arbitrator had held that the arbitration proceedings stand abated, the same had the effect of bringing about an end to the litigation and the claims raised therein. The court also noted that the impugned award had an effect of debarring the petitioner from instituting fresh proceedings on the same cause of action and therefore, would be an arbitral award in terms of Section 2(1)(c) of the A&C Act. A similar reasoning is also found in Angelique International Limited (supra).

35. The said reasoning runs contrary to the decision of the Supreme Court in Indian Farmers Fertilizer Cooperative

Limited (supra). As noticed above, in that case, the Supreme Court had held that an award must finally decide a point at which the parties are at issue in arbitration. Thus, the award (whether final or interim) must finally decide an issue for which the parties are in arbitration.

36. It is also difficult to reconcile the said reasoning in The India Trading Company (supra) and Joginder Singh Dhaiya (supra) with the view of the Supreme Court in Lalit Kumar v. Sanghvi (Dead) through LRs (supra). In that case, the Supreme Court was concerned with an order passed by Arbitral Tribunal terminating the arbitral proceedings, which read as under:

> *"The matter is pending since June 2003 and though the meeting was called in between June 2004 and 11-4-2007, the claimant took no interest in the matter. Even the fees directed to be given is not paid. In these circumstances please note that the arbitration proceedings stand terminated. All interim orders passed by the Tribunal stand vacated."*

37. The Supreme Court held the said order to be one terminating the arbitral proceedings under Section 32(2)(c) of the A&C Act as the said order would not qualify as an order under Clauses (a) or (b) of Section 32(2) of the A&C Act. The court proceeded on the basis that Section 32 of the A&C Act is exhaustive and covers all cases of termination of arbitral proceedings. This is implicit in paragraphs nos. 11 and 12 of

the said decision, which read as under:

> *"11. Section 32 of the Act on the other hand deals with the termination of arbitral proceedings. From the language of Section 32, it can be seen that arbitral proceedings get terminated either in the making of the final arbitral award or by an order of the Arbitral Tribunal under sub-section (2). Sub-section (2) provides that the Arbitral Tribunal shall issue an order for the termination of the arbitral proceedings in the three contingencies mentioned in clauses (a) to (c) thereof.*
>
> *12. On the facts of the present case, the applicability of clauses (a) and (b) of Section 32(2) is clearly ruled out and we are of the opinion that the order dated 29-10-2007 by which the Tribunal terminated the arbitral proceedings could only fall within the scope of Section 32, sub-section (2), clause (c) i.e. the continuation of the proceedings has become impossible. By virtue of Section 32(3), on the termination of the arbitral proceedings, the mandate of the Arbitral Tribunal also comes to an end. Having regard to the scheme of the Act and more particularly on a cumulative reading of Section 32 and Section 14, the question whether the mandate of the arbitrator stood legally terminated or not can be examined by the court "as provided under Section 14(2)".*

38. As noticed above, Section 32 of the A&C Act makes a

clear distinction between an award and an order under Sub-section (2) of Section 32 of the A&C Act. Indisputably, an order under Sub-Section (2) of Section 32 of the A&C Act is not an award. It is relevant to note that that this position is accepted in The India Trading Company (supra) as well. In paragraph 8 of the said decision, the court has held in unambiguous terms that "an order under Section 32(2) would not be an award."

39. An order terminating the proceedings on failure of the claimant to file its Statement of Claims within the stipulated time, is also in the nature of an order under Sub-section (2) of Section 32 of the A&C Act and not an arbitral award because such an order does not decide any of the points on which the parties are in issue in the arbitration.

40. In Neeta Lalitkumar Sanghavi v. Bakulaben Dharmadas Sanghavi: 2019 SCC OnLine Bom 250, the Bombay High Court considered the challenge to an order passed by Arbitral Tribunal rejecting the application filed by the petitioners for substitution as the legal heirs of the original claimant, under Section 14 of the A&C Act. It was contended on behalf of the respondents that the petition under Section 14 of the A&C Act was not maintainable as such an order would constitute an arbitral award. The respondents relied upon the decision of the Coordinate Bench of this Court in Joginder Singh Dhaiya (supra), wherein the court had held a similar order to be an award. However, the Bombay High Court, did

not accept the said view and found the same to be inconsistent with the decision in the case of Lalitkumar v. Sangahvi (supra). The relevant extract of the said decision is set out below:

> *"24. To counter this argument, Mr. Dave submitted that the impugned order passed by the sole Arbitrator was in the nature of an Award and therefore could only be challenged under Section 34 of the Act. I am unable to agree with this submission. To my mind, an Award is passed by the Arbitral Tribunal, interim or final, when it decides the lis between the parties. There has to be some adjudication on the merits of the claim or part thereof (which may include limitation) for the order passed by the Tribunal to be termed as an Award. It is not as if every order passed by the Tribunal and which terminates the Arbitral proceedings can be termed as an Award. This is quite clear on reading Section 32 itself which contemplates that the arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2) of Section 32. This would clearly indicate that merely because the arbitral proceedings are terminated by an order of the Arbitral Tribunal would not necessarily make it an award. It would partake the character of an award if the lis between the parties on any issue is finally decided by the Arbitral Tribunal. In the facts of the present case,*

admittedly, the lis between the parties has not been decided at all. In fact, as mentioned from the narration of facts set out earlier, this litigation has a very checkered history. The impugned order rejected the application of the claimant to be formally brought on record. Having passed such an order, naturally the sole Arbitrator could not proceed any further with the arbitral proceedings, especially considering that the original claimant had expired on 7th August, 2012 and his heirs were not brought on record. There was no one to prosecute the arbitral proceedings. This order can never be termed as an arbitral award as understood under Section 34 of the Act. I must mention that the Delhi High Court in the case of Joginder Singh Dhaiya (supra) appears to have taken a view that where the arbitrator holds that the proceedings have abated because of not bringing the legal heirs on record, the same would amount to an arbitral award which can be challenged under Section 34 of the Act. With great respect, I am unable to agree with the reasons of the learned Single Judge of the Delhi High Court. Though the decision of the Supreme Court in the case of Lalitkumar v. Sanghavi (supra) was brought to the attention of the Delhi High Court, it was sought to be distinguished by stating that in the facts of that case the Tribunal had terminated the arbitration proceedings as the claimant had taken no interest in the matter and it is

in these circumstances that the Supreme Court held that such an order would be falling under Section 14 and 32(2)(c) of the Act and hence the remedy would be under Section 14(2). The Delhi High Court proceeded on the basis that the apparent distinction between an order and an award lies in the fact whether the decision of the Arbitral Tribunal affects the rights of the parties, concluding the dispute as to the specific issue and has finality attached to the same. The Delhi High Court held that since the order of the Tribunal had resulted in termination of the arbitration proceedings and would bar the petitioners from re-agitating the same in any other proceedings, the said order would partake the character of an award since it has finality attached to it and determined the vital rights of the parties. I am unable to agree with the reasoning given by the Delhi High Court for the simple reason that Section 32 of the Act provides for the termination of arbitral proceedings. It provides that the arbitral proceedings shall stand terminated by pronouncement of the final arbitral award or by an order of the arbitrator under sub-section (2) of Section 32. In the facts of the present case, the Arbitral Tribunal has terminated the proceedings by virtue of not bringing the petitioners on record in the arbitral proceedings. There is no pronouncement of a final arbitral award in the facts of the present case as stipulated under Section 32(1). Every

order of the Tribunal terminating the arbitral proceedings can never be terms as an award. This is clear from an ex-facie reading of section 32.

25. Furthermore, Section 34 of the Act provides for an application to be made to the Court for setting aside the arbitral award. The very heading of the above provision reflects that recourse to Section 34 is permissible only for setting aside the arbitral award on the grounds mentioned therein. It is not applicable where there is no award. As mentioned earlier, every order that terminates the arbitral proceedings would not amount to an award. There may be several situations and which are difficult to exhaustively set out, under which the Arbitral Tribunal may terminate the arbitration proceedings, as well as its mandate for reasons that this is impossible to continue with the arbitral proceedings. That would not mean that every such order would partake the character of an award. An award to my mind would be one which would decide the lis between the parties and which would have finality attached to it (subject, of course, to challenge under Section 34 of the Act). I am of the considered view, that the decision of the Supreme Court in the case of Lalitkumar v. Sanghavi (supra) would clearly cover the issue raised before me. I am therefore unable to agree with the reasoning of the Delhi High Court and therefore overrule the preliminary objection."

41. This court concurs with the aforesaid view. The decision in case of Joginder Singh Dhaiya (supra) is contrary to the decision of the Supreme Court in Lalitkumar v. Sanghavi (supra).

42. It is also relevant to note that in Angelique International Limited (supra), the court referred to the decision in The India Trading (supra) as a decision rendered by the Division Bench of this Court. However, the said decision was rendered by the Division Bench of Calcutta High Court. The said decision holding that an order terminating the arbitral proceedings under Section 25(a) of the A&C Act is an award, is also contrary to several decisions of this Court as noted hereinafter. In Bridge & Roof Co. (supra), a Coordinate Bench of this Court had held that an application under Section 34 of the A&C Act would not maintainable against an order terminating the proceedings on account of failure of the claimant to file the statement of claim in time. The court proceeded to convert the said application to one under Section 14 of the A&C Act. Similarly, in Puneet Kumar Jain (supra), a Coordinate Bench of this Court held that the remedy available to the petitioner to challenge an order terminating the arbitral proceedings on account of failure on the part of the claimant to appear at the hearings and produce documentary evidence, would be to challenge the same under Section 14 of the A&C Act and not under Section 34 of the A&C Act. In a later decision in Economic Transport Organisation (supra), this

Court had held that an order terminating the arbitral proceedings under Section 25(a) of the A&C Act was not an award and an application under Section 34 of the A&C Act to set aside the said order, is not, maintainable."

15. Even though the decision of the Division Bench in ***Awasthi Construction (supra)*** is not considered, I am of the view that the view of the decision of Coordinate Bench in ***PCL Suncon (supra)*** is the correct view. The finding of Division Bench in ***Awasthi Construction (supra)*** is contrary to the findings in ***Lalitkumar V. Sanghavi v. Dharamdas V. Sanghavi (2014) 7 SCC 255*** and ***Indian Farmers Fertilizer Cooperative Limited v. Bhadra Products (2018) 2 SCC 534***. The judgment of ***Awasthi Construction (supra)*** is prior to the judgement of both ***Lalitkumar V. Sanghavi (supra)*** and ***Indian Farmers Fertilizer Cooperative Limited (supra).***

16. The Award can only be considered to be an award once it adjudicates the rights of the parties. The order terminating the proceedings for non-filing of a statement of claim cannot be considered an award under Sub-section 2 of Section 32.

17. In this regard, the observations in ***Lalitkumar V. Sanghavi (supra)*** *are* also relevant and paragraphs 10 to 12 read as under:-

*"**10.** Chapter III of the Act deals with the appointment, challenge to the appointment and termination of the mandate and substitution of the arbitrator, etc.:*

***10.1.** Section 11 provides for the various modes of appointment of an arbitrator for the adjudication of the disputes which the parties agree to have resolved by*

arbitration. Broadly speaking, arbitrators could be appointed either by the agreement between the parties or by making an application to the Chief Justice of the High Court or the Chief Justice of India, as the case may be, as specified under Section 11 of the Act.

10.2. *Section 12(3) provides for a challenge to the appointment of an arbitrator on two grounds. They are—*

> *(a) "that circumstances exist" which "give rise to justifiable doubts as to" the "independence or impartiality" of the arbitrator;*
>
> *(b) that the arbitrator does not "possess the qualification agreed to by the parties".*

10.3. *Section 14 declares that "the mandate of an arbitrator shall terminate" in the circumstances specified therein. They are—*

> *"**14. Failure or impossibility to act**.—(1) The mandate of an arbitrator shall terminate if—*
>
> *(a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and*
>
> *(b) he withdraws from his office or the parties agree to the termination of his mandate.*

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

Section 14(2) provides that if there is any controversy regarding the termination of the mandate of the arbitrator on any of the grounds referred to in clause (a) then an application may be made to the Court — "to decide on the termination of the mandate".

11. *Section 32 of the Act on the other hand deals with the termination of arbitral proceedings. From the language of Section 32, it can be seen that arbitral proceedings get terminated either in the making of the final arbitral award or by an order of the Arbitral Tribunal under sub-section (2). Sub-section (2) provides that the Arbitral Tribunal shall issue an order for the termination of the arbitral proceedings in the three contingencies mentioned in clauses (a) to (c) thereof.*

12. *On the facts of the present case, the applicability of clauses (a) and (b) of Section 32(2) is clearly ruled out and we are of the opinion that the order dated 29-10-2007 by which the Tribunal terminated the arbitral proceedings could only fall within the scope of Section 32, sub-section (2), clause (c) i.e. the continuation of the proceedings has become impossible. By virtue of Section 32(3), on the termination of the arbitral*

proceedings, the mandate of the Arbitral Tribunal also comes to an end. Having regard to the scheme of the Act and more particularly on a cumulative reading of Section 32 and Section 14, the question whether the mandate of the arbitrator stood legally terminated or not can be examined by the court "as provided under Section 14(2)".

18. In the judgment of ***"Gangotri Enterprises Limited vs. NTPC Tamil Nadu Energy Company Limited" 2017 SCC OnLine Del 6560***, this Court has considered the scope of Section 25(a) in paragraph 24 and 27:

> *"**24.** Having stated the above, Mr. Sangal's contention that the arbitrator's mandate has not terminated by the impugned order dated 28.04.2016 as the arbitral proceedings have not terminated, is erroneous. Clearly, the arbitral proceedings qua the disputes raised by GEL were terminated on account of its failure to file the statement of claims within the time as specified. Undisputedly, the effect of the order of 28.04.2016 is that arbitrator's mandate for deciding the claims intended to be raised by GEL stands terminated and he is de jure or de facto unable to act as an arbitrator qua such claims even though his mandate to continue the proceedings and adjudicate the counter claims has not come to an end.*
>
> ***xxxxxx***
>
> ***27.** Thus, the second question, whether the order dated 28.04.2016 closing the right of GEL to file its statement of*

claims and thereby terminating the proceedings qua such claims, is amenable to challenge under Section 14 of the Act, is answered in the affirmative. In cases where the arbitrator's mandate is terminated, a re-course to Section 14 (2) of the Act would be available provided a specific remedy is not provided under the Act. In the present case, the arbitrator's mandate to adjudicate any claims of GEL under the Agreement, stands terminated. Concededly, the order dated 28.04.2016 as also the final award that may be passed, in as much as it would not include GEL's claim, would not be amenable to challenge under Section 34 of the Act."

19. Hence, I am of the view that an order under Section 25(a) does not and cannot amount to an Award as it does not deal with the rights of the parties before the Arbitrator. Such an order merely terminates the arbitral proceedings on account of the claimant's default in filing the statement of claim and does not involve any adjudication or determination of the rights or obligations of the parties. For an order to qualify as an Award, it must decide, either finally or on an interim, an issue forming part of the dispute referred to arbitration. An order under Section 25(a), being procedural in nature and not addressing the substantive lis between the parties, lacks the essential attributes of an Arbitral Award.

20. Additionally, the judgments relied upon by the petitioner further show that the Court is to give primacy to the arbitration proceedings as the parties have invested considerable time, effort and resources.

21. Dr. George, learned counsel for the petitioner assures the Court that the

directions regarding the fee shall be complied with, immediately.

22. For the said reasons, the petitions are allowed and the arbitration shall continue before the Arbitrator appointed by this Court *vide* Order dated 08.01.2024.

JASMEET SINGH, J

OCTOBER 14, 2025 / (MS)
(Corrected and released on 23.10.2025)