2026:AHC-LKO:34678

HIGH COURT OF JUDICATURE AT ALLAHABAD LUCKNOW

CIVIL MISC. ARBITRATION APPLICATION No. - 91 of 2024

M/S Transrail Lighting Ltd. Through Vikas Kumar, Authorised Representative .....Applicant(s)

Versus

Madhyanchal Vidyut Vitran Nigam Ltd., Through Its Managing Director, And Another .....Opposite Party(s)

Counsel for Applicant(s)	:	Abhinav Kumar Mathur, Siddhartha Kumar
Counsel for Opposite Party(s)	:	Manish Jauhari

A.F.R.
Reserved on : 27.04.2026
Delivered on : 14.05.2026

Court No. - 8

HON'BLE JASPREET SINGH, J.

(IA No.3 of 2025 and IA No.4 of 2025)

1. The instant application for recall has been moved by the petitioner along with an application seeking condonation of delay, whereby the petitioner prayed that after condoning the delay the order dated 17.07.2025 and 07.08.2025 be recalled and its consequence would be that the mandate of nominee arbitrator appointed by this Court, on behalf of the respondents, in terms of Section 11(4) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996') would be terminated.

2. Notices were issued on the aforesaid application on 26.11.2025 and in furtherance thereof the respondents have filed their objections on 12.03.2026.

3. Shri Abhinav Kumar Mathur and Ms. Sushmita Mukharjee, learned counsel for the petitioner submitted that the petitioner had preferred a petition under Section 11(6) of the Act of 1996 and the Court while exercising its power under Section 11(4) of the Act appointed a nominee arbitrator on behalf of the respondents.

4. It was submitted that the parties had entered in a contract which contained an arbitration clause. However, special conditions of contract prescribed appointment of a Sole Arbitrator for all disputes and claims which were valued upto Rs.25.00 Crores. It was further submitted that special conditions of contract could not be referred by the petitioner or by the respondent during the course of submissions and no specific reference was made to it in the pleadings of the petition under Section 11(6) of the Act of 1996. Thus, the said fact could not be brought to the notice of the Court and the appointment of the nominee arbitrator in terms of Section 11(4) of the Act of 1996 was made in terms of the general conditions of the contract, which stood novated by the special conditions of contract.

5. The Court while hearing the petition under Section 11(6) of the Act of 1996 and considering the submissions of the parties vide order dated 17.07.2025, found that the parties had entered into a contract which contained an arbitration clause. The Court also found that the disputes had occurred and the petitioner had invoked the arbitration clause appropriately and it had also nominated its arbitrator. Since, the respondents did not nominate its arbitrator, hence, the Court after receiving the consent from the proposed arbitrator appointed a nominated arbitrator on behalf of the respondents vide order dated 07.08.2025.

6. It was further submitted that the nomination of the respondents' party arbitrator was against special conditions of contract, which novated and superseded the arbitration clause contained in Clause 39 of the general conditions of contract.

7. It was also submitted that the aforesaid discrepancy could not be noticed and later the said fact came to the notice of the petitioner while undertaking a detailed examination of the contract documents. Immediately thereafter, acting with due diligence, this application for recall was moved and it was prayed that any delay in moving the said application be condoned, as the delay if any, was neither intentional nor deliberate. Thus, the orders dated 17.07.2025 and 07.08.2025 deserves to be recalled and a Sole Arbitrator in terms of Section 11(6) of the Act of 1996 be appointed.

8. Shri Manish Jauhari, learned counsel for the respondents very fairly did not contest the issue of delay but while pressing his objection on merits has urged that the application for review/recall is not maintainable in law.

9. It was urged that since the order was passed on merits after hearing the parties, hence, there can be no occasion for recalling the said orders and if the petitioner was aggrieved by the said orders, it had a remedy available to assail the orders before the Apex Court, but an application for recall was not maintainable.

10. Shri Jauhari further urged that even otherwise the orders impugned cannot be reviewed as they were passed on merits after considering the submissions and material on record. In the garb of review, the petitioner cannot be permitted a second chance and re-hearing to make submissions on merits. For the aforesaid reasons, the application termed as recall is actually a review petition, hence, it deserves to be dismissed.

11. It was further pointed out by the learned counsel for the respondents that after the orders were passed by this Court, the party nominated arbitrator of the petitioner and the party nominated arbitrator of the respondents (which was appointed by this Court by means of the orders impugned) with mutual consultations appointed the Presiding Arbitrator.

12. It was urged that after the Arbitral Tribunal was constituted, the petitioner had moved an application before the Arbitral Tribunal raising the same issue as raised before this Court. The Arbitral Tribunal has kept the proceedings in abeyance on the request of the petitioner and it also observed that the claimant may also seek extension of time for the Tribunal.

13. It was thus, urged that the petitioner could have raised the aforesaid issue before the Tribunal in terms of Section 16 of the Act of 1996 or could have challenged the orders passed by this Court before the Apex Court, but the ground on which the instant application for recall/review has been moved, the same cannot be entertained. Furthermore, after passing of the orders in exercise of powers under Section 11 of the Act of 1996, the Court becomes functus officio and for all the aforesaid reasons, the applications deserve to be dismissed.

14. Shri Mathur and Ms. Mukharjee, learned counsel for the respondents while responding to the aforesaid objections submitted that even if the application for recall may not be maintainable yet the said application can be treated as an application for review. Since, the orders have been passed by the High Court and even though the Act of 1996 may not have specifically conferred powers of review yet the High Court being a 'Court of Record', it has inherent powers in terms of Article 215 of the Constitution of India to review its orders for meeting ends of justice and to avoid any miscarriage of justice. In support of the submissions, the learned counsel for the petitioner relied upon the decision of the Apex Court in **Municipal Corporation of Greater Mumbai and others v. Pratibha Industries Ltd. : (2019) 3 SCC 203**, **Hindustan Construction Company Ltd. v. Bihar Rajya Pul Nirman Nigam Limited and others : 2025 INSC 1365** and a decision of the Bombay High Court in **Adani Enterprises Limited v. Antikeros Shipping Corporation : MANU/MH/0482/2019** which is based on the proposition as laid down by the Apex Court in **Kapra Mazdoor Ekta Union v. Management of Birla Cotton Spinning and Weaving Mills Ltd. and others : (2005) 13 SCC 777**.

15. The Court has heard learned counsel for the parties and also perused the material on record.

16. Primarily, the issue which requires consideration of this Court is:-

> (i) Whether the High Court in exercise of its powers under Section 11(6) of the Act of 1996 can review its order which may have the impact of terminating the mandate of the Arbitral Tribunal.

17. At the outset, it may be noted that the Act of 1996 is a Central Legislation and is a Code in itself. There is no dispute that the Court or the High Court in terms of Section 11 of the Act of 1996 have not been conferred with the powers of review. In this backdrop, where the powers of review has not been conferred on the Court then whether the High Court in exercise of powers under Section 11 of the Act of 1996 can review its orders.

18. Delving into the said question, a little deeper, it would reveal that the Act of 1996 has defined the word 'Court' to mean as under:-

> *"**2(e) "Court"** means—*
>
> *(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;*
>
> *(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;]"*

19. This would necessarily mean that wherever the word 'Court' occurs in Sections 9, 13, 14, 29-A, 34, 36 and 37 of the Act of 1996 in Part-I of the Act of 1996, it would contextually refer to the definition of Court as noticed above. This word 'Court' used in Section 9 and other sections of the Act of 1996 noticed above, if seen in context with Section 11 of the Act of 1996, would reveal that the powers to appoint an Arbitrator has been conferred on the High Court and the Hon'ble Supreme Court respectively. Here, in Section 11 of the Act of 1996, the word 'Court' has not been used rather it uses the word 'High Court' or the Hon'ble 'Supreme Court', as the case may, which is designated to exercise the powers of appointment of an arbitrator as given under the Scheme of the Act of 1996.

20. From the perusal of the Act of 1996, it would reveal that the said Act does not confer power of review on the Court. Thus, per-se, the Court defined in Section 2(e) cannot exercise the power of review. However, the same may not be true for the High Court or the Hon'ble Supreme Court, which are 'Courts of Record'. It may be correct to say that the High Court

while exercising its powers under Section 11 of the Act of 1996 may not review its orders but the inherent powers invested in the High Court or the Supreme Court by virtue of being a Court of Record can be invoked to correct the record or undo a serious error which if remained unaddressed, may occasion failure of justice. To suggest that the High Court or the Hon'ble Supreme Court would be denuded of its powers and may not be in a position to review its order, would be contrary to the ethos of the Constitutional principles enshrined in Article 129 and Article 215 of the Constitution of India, relating to Hon'ble Supreme Court and the High Court, as the case may be.

21. This aspect of the matter was considered by the Apex Court in **Pratibha Industries Ltd.** (supra) where the Apex Court noticed the aforesaid proposition and held that the High Court as the Court of record exercises plenary jurisdiction and has inherent powers to recall its order to prevent miscarriage of justice. The relevant portion of the aforesaid report reads as under:-

> *"10. Insofar as the High Courts' jurisdiction to recall its own order is concerned, the High Courts are courts of record, set up under Article 215 of the Constitution of India. Article 215 of the Constitution of India reads as under:*
>
> *"215. High Courts to be courts of record.—Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself."*
>
> *It is clear that these constitutional courts, being courts of record, the jurisdiction to recall their own orders is inherent by virtue of the fact that they are superior courts of record. This has been recognised in several of our judgments.*
>
> *11. In National Sewing Thread Co. Ltd. v. James Chadwick and Bros. Ltd. [National Sewing Thread Co. Ltd. v. James Chadwick and Bros. Ltd., (1953) 1 SCC 794 : 1953 SCR 1028 : AIR 1953 SC 357] , this Court has held as under: (AIR pp. 359-60, para 7)*
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> *"7. ... The Trade Marks Act does not provide or lay down any procedure*

for the future conduct or career of that appeal in the High Court, indeed Section 77 of the Act provides that the High Court can, if it likes, make rules in the matter. Obviously after the appeal had reached the High Court it has to be determined according to the rules of practice and procedure of that Court and in accordance with the provisions of the charter under which that Court is constituted and which confers on it power in respect to the method and manner of exercising that jurisdiction. The rule is well settled that when a statute directs that an appeal shall lie to a Court already established, then that appeal must be regulated by the practice and procedure of that Court. This rule was very succinctly stated by Viscount Haldane, L.C. in National Telephone Co. Ltd. v. Postmaster General [National Telephone Co. Ltd. v. Postmaster General, 1913 AC 546 (HL)] , in these terms:

'When a question is stated to be referred to an established court without more, it in my opinion, imports that the ordinary incidents of the procedure of that court are to attach, and also that any general right of appeal from its decision likewise attaches.'

The same view was expressed by their Lordships of the Privy Council in R.M.A.R.A. Adaikappa Chettiar v. R. Chandrasekhara Thevar [R.M.A.R.A. Adaikappa Chettiar v. R. Chandrasekhara Thevar, 1947 SCC OnLine PC 53 : (1946-47) 74 IA 264] , wherein it was said: (SCC OnLine PC)

'Where a legal right is in dispute and the ordinary courts of the country are seized of such dispute the courts are governed by the ordinary rules of procedure, applicable thereto and an appeal lies if authorised by such rules, notwithstanding that the legal right claimed arises under a special statute which does not, in terms confer a right of appeal.'

Again in Secy. of State for India v. Chellikani Rama Rao [Secy. of State for India v. Chellikani Rama Rao, 1916 SCC OnLine PC 42 : (1915-16) 43 IA 192 : ILR (1916) 39 Mad 617] , when dealing with the case under the Madras Forest Act their Lordships observed as follows: (SCC OnLine PC)

'It was contended on behalf of the appellant that all further proceedings

in courts in India or by way of appeal were incompetent, these being excluded by the terms of the statute just quoted. In their Lordships' opinion, this objection is not well founded. Their view is that when proceedings of this character reach the District Court, that court is appealed to as one of the ordinary courts of the country, with regard to whose procedure, orders and decrees the ordinary rules of the Civil Procedure Code apply.'

Though the facts of the cases laying down the above rule were not exactly similar to the facts of the present case, the principle enunciated therein is one of general application and has an apposite application to the facts and circumstances of the present case. Section 76 of the Trade Marks Act confers a right of appeal to the High Court and says nothing more about it. That being so, the High Court being seized as such of the appellate jurisdiction conferred by Section 76 it has to exercise that jurisdiction in the same manner as it exercises its other appellate jurisdiction and when such jurisdiction is exercised by a Single Judge, his judgment becomes subject to appeal under Clause 15 of the Letters Patent there being nothing to the contrary in the Trade Marks Act."

12. To similar effect is our judgment in Shivdev Singh v. State of Punjab [Shivdev Singh v. State of Punjab, AIR 1963 SC 1909] , wherein this Court has stated as under: (AIR p. 1911, para 8)

"8. ... It is sufficient to say that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it."

13. Also, in M.M. Thomas v. State of Kerala [M.M. Thomas v. State of Kerala, (2000) 1 SCC 666] , this Court has held as follows: (SCC pp. 672-73, para 14)

"14. The High Court as a court of record, as envisaged in Article 215 of the Constitution, must have inherent powers to correct the records. A court of record envelops all such powers whose acts and proceedings are to be enrolled in a perpetual memorial and testimony. A court of record is

undoubtedly a superior court which is itself competent to determine the scope of its jurisdiction. The High Court, as a court of record, has a duty to itself to keep all its records correctly and in accordance with law. Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it, the High Court has not only power, but a duty to correct it. The High Court's power in that regard is plenary. In Naresh Shridhar Mirajkar v. State of Maharashtra [Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1 : (1966) 3 SCR 744] , a nine-Judge Bench of this Court has recognised the aforesaid superior status of the High Court as a court of plenary jurisdiction being a court of record."

22. However, the Apex Court while considering the power of the High Court to review its order passed in exercise of powers under Section 11 of the Act of 1996 in **Bihar Rajya Pul Nirman Nigam Limited** (supra) by referring to the earlier decision in **Pratibha Industries Ltd.** (supra) observed that there is a narrow window available to a Court under Section 11 of the Act of 1996 to review the order only if it is based on procedural lapses and not where there is re-hearing on a question of law nor any findings returned can be revisited after interpretation of the arbitration agreement. The Apex Court also cautioned that once an order passed under Section 11 of the Act of 1996 has attained finality, the only remedy available is to approach the Hon'ble Supreme Court under Article 136 of the Constitution of India or to raise objections under Section 16 of the Act of 1996. The Court must resist an attempt to re-enter the controversy through the backdoor where the statute has already shut the front door. It was also observed that Section 11 of the Act of 1996 is intended to trigger arbitration and not to create multiple stages of judicial reconsideration. The relevant portion of the aforesaid report reads as under:-

"39. Thus, the entire scheme of the Act strongly discourages any mid-way judicial intervention, especially by way of review, as it would run contrary to both the text and the spirit of the statute.

40. Although the power exercised by the High Court under Section 11 is judicial in nature post-SBP & Co. case [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618 : (2005) 128 Comp Cas 465] , its scope remains narrow. Once an arbitrator is appointed, the arbitral process must

proceed unhindered. There is no statutory provision for review or appeal from an order under Section 11, which reflects a conscious legislative choice.

41. While the High Courts, as courts of record, do possess a limited power of review, such power is extremely circumscribed in matters governed by the Arbitration Act. It may be exercised only to correct an error apparent on the face of the record or to address a material fact that was overlooked. It cannot be used to revisit findings of law or reappreciate issues already decided.

* * *

45. The decisions such as Municipal Corpn. of Greater Mumbai v. Pratibha Industries Ltd. [Municipal Corpn. of Greater Mumbai v. Pratibha Industries Ltd., (2019) 3 SCC 203 : (2019) 2 SCC (Civ) 28] , and Mohd. Anwar v. Pushpalata Jain [Mohd. Anwar v. Pushpalata Jain, (2025) 14 SCC 785 : 2021 SCC OnLine SC 3760] , illustrate this narrow window, where review was permitted only because the earlier orders had been passed in ignorance of fundamental facts. These cases are confined to procedural lapses, not to re-examining matters of law.

46. By contrast, in the present case, the High Court reopened the issue of interpretation of the arbitration clause based solely on a subsequent judgment. Such an exercise falls squarely outside the scope of review jurisdiction. Even assuming that a review was maintainable, it was filed after an unexplained delay of nearly three years and was not founded on any error apparent on the face of the record or any suppression of material fact.

47. Once the Section 11 order had attained finality, the only remedies available to the respondents were to approach this Court under Article 136 or to raise objections under Section 16 before the Arbitral Tribunal. Having chosen neither route, and having participated in the arbitral proceedings, including joint applications under Section 29-A, they were estopped from reopening the matter through review. A later judgment cannot revive a concluded cause of action.

48. As emphasized in BSNL v. Nortel Networks (India) (P) Ltd. [BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738 : (2021) 3 SCC (Civ) 352] , courts must resist "attempts to re-enter through the back door what the statute has shut through the front door". Section 11 is intended to trigger arbitration, not to create multiple stages of judicial reconsideration.

49. For the reasons discussed above, this Court is of the considered view that the High Court did not have the jurisdiction to reopen or review its earlier order passed under Section 11(6) of the A&C Act. Once the appointment was made, the court became functus officio and could not sit in judgment over the very issue it had already settled. The review order cuts against the grain of the Act, undermines the principle of minimal judicial interference, and effectively converts the review into an appeal in disguise. Such an exercise cannot stand. Accordingly, this issue is answered in the negative."

23. Before proceeding any further, at this stage and only for the purpose of reference, assuming if the power of review was conferred under the Act of 1996 then, whether the ground which has been raised by the petitioner would fall within the ambit of a review. A review lies where there is an error apparent on the face of record or new material discovered which could not be known despite due diligence or could not have been in the knowledge of the person seeking review or some other like sufficient reason. The Apex Court in **Ram Sahu and others v. Vinod Kumar Rawat and others, 2020 SCC OnLine SC 896** had the occasion to consider the scope of review. Again in **Sanjay Kumar Agarwal v. Sale Tax Officer (1), and another : (2024) 2 SCC 362**, the Apex Court in Para-16 noticed the scope and grounds upon which a review can be considered which reads as under:-

"16. The gist of the aforestated decisions is that:

16.1. A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.

16.2. A judgment pronounced by the court is final, and departure from that principle is justified only when circumstances of a substantial and

compelling character make it necessary to do so.

16.3. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review.

16.4. In exercise of the jurisdiction under Order 47 Rule 1CPC, it is not permissible for an erroneous decision to be "reheard and corrected".

16.5. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise".

16.6. Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.

16.7. An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

16.8. Even the change in law or subsequent decision/judgment of a coordinate or larger Bench by itself cannot be regarded as a ground for review."

24. Now having considered the dictum as made by the Apex Court, it can clearly be stated that even though the High Court under Section 11 of the Act of 1996 may not have powers to review but the High Court being a Court of Record by virtue of Article 215 of the Constitution of India has inherent powers to review/recall an order but the scope thereof is very narrow. Hence, the grounds upon which the High Court may exercise its constitutional powers to review must be on higher and elevated pedestal than the grounds of review as noticed in Para-16 of **Sanjay Kumar Agarwal** (supra).

25. Now, in this context, if the case of **Pratibha Industries Ltd.** (supra) is seen, it would reveal that the Hon'ble Apex Court had made the observations that a High Court being a Court of record has inherent powers in terms of Article 215 of the Constitution of India to prevent the

failure of justice, this was due to the fact that in the said case it was found that there was no arbitration clause between the parties. In absence of the arbitration clause, which was a fundamental prerequisite for invoking the powers under Section 11 of the Act of 1996 to appoint an Arbitrator, there could be no appointment of an Arbitrator. Hence, it is in these circumstances the Apex Court made the said observations. Admittedly, in the instant case, the parties agree that there is an arbitration clause, which was invoked and the Arbitrator was appointed. Accordingly, the said decision of **Pratibha Industries Ltd.** (supra) cannot be invoked by the petitioner to its aid.

26. Similarly, in **Bihar Rajya Pul Nirman Nigam Limited** (supra), though the Apex Court recognized that there is no power of review and further also observed that the High Court being the Court of record cannot be denuded on its inherent powers but the said inherent powers cannot be invoked to enter and reconsider the controversy through the backdoor when the statute has shut the front door.

27. It is now well settled that what cannot be done directly cannot be done indirectly either. Thus tempting the Court to entertain a review/recall as suggested by the learned counsel for the petitioner, on the basis of the decision of the Apex Court **Pratibha Industries Ltd.** (supra) and **Bihar Rajya Pul Nirman Nigam Limited** (supra) cannot be countenanced as the grounds for exercise of this power under Article 215 of the Constitution of India is narrow and the ratio of the aforesaid cases cannot be stretched to fit in the facts of the instant case.

28. Thus, the upshot of the above discussion is that though the High Court may exercise its inherent powers under Article 215 of the Constitution of India to review/recall but that too can only be done in such cases, where a serious error in an order if allowed to stand would result in miscarriage of justice or any such other like ground, which is on a higher pedestal than the established grounds upon which generally a review is entertained.

29. Having held as aforesaid, now lets examine whether the grounds pleaded for review in the instant case can be considered to be a serious error in the order which if allowed to stand will result in miscarriage of

justice and is on an elevated pedestal than the grounds upon which a review is generally entertained.

30. At this stage, it will be relevant to notice that the contention of the petitioner was that the general condition of contract was novated by special conditions of contract which provided, that claims upto Rs.25.00 crores would be considered by the Sole Arbitrator and since the valuation of the claims of the petitioner were under the said limit, hence, the Sole Arbitrator should decide the disputes between the parties and this is a serious error as by the order impugned a three Member Arbitral Tribunal has been constituted which is against the terms of the contract.

31. The aforesaid submission of the learned counsel for the petitioner cannot be accepted for more than one reason.

(i) First, in the petition preferred by the petitioner under Section 11(6) of the Act of 1996 in Para-3 it quoted and referred that the disputes were to be resolved by a Tribunal of three Members, one each to be nominated by the contractor and the employee and the third to be appointed by the two party nominated Arbitrators. In para-11 of the petition, the petitioner did refer to the special conditions of the contract, however, what is relevant to notice, is that the petitioner in Para-30 of the petition specifically stated that the petitioner requested for a formation of a panel of Arbitrators vide its notice dated 18.01.2024. The petitioner went on to state that the petitioner had nominated its Arbitrator, a former Judge of this Court and requested the respondents to nominate their Arbitrator. For the sake of reference, Para-31 of the petition is being reproduced hereinafter:-

> *"31. That when no reply was given within 30 days to the notice dated 18.01.2024, the Applicant vide letter dated 22.02.2024 bearing Ref No.TLL/MVVNL/38356, nominated Mrs. Poonam Srivastava, Former Judge, Allahabad High Court, Lucknow Bench, as an Arbitrator and requested for nomination of Arbitrator by the Respondent as per clause 39.2 of GCC (Vol.1 section IV). A copy of the letter dated 22.02.2024 bearing Ref No.TLL/MVVNL/38356 is annexed herewith as Annexure No.23."*

In Para-38, the petitioner pleaded that since the respondents did not

nominate its party Arbitrator, hence, the nominee arbitrator of the petitioner may be treated as a Sole Arbitrator. The prayer made by the petitioner in the petition also specifically stated as such which is reproduced hereinafter:-

> "i. Refer the dispute between the parties arising out of an agreement dated 17.05.2018, to the Nominee arbitrator of the Claimant to act as Sole Aribrator, to be appointed by this Hon'ble Court."

(ii) Apparently, in the petition, the petitioner also recognized that the dispute had to be resolved by a panel of Arbitrators. Vide letter dated 20.02.2024, the petitioner nominated its Arbitrator in terms of Clause 39.2 of GCC and required the respondents to appoint its Arbitrator.

Thus, at all given time, the petitioner continued to proceed on the premise that the disputes had to be resolved by a panel of Arbitrators and it had clearly appointed its own nominated Arbitrator and required the respondents to appoint its own.

(iii) Second, when the matter came up before the Court, then in exercise of powers under Section 11(4) of the Act of 1996, this Court nominated an Arbitrator on behalf of the respondents vide order dated 07.08.2025.

(iv) Both the party nominated Arbitrators consulted and mutually appointed the Presiding Arbitrator. This would indicate that both the parties continued to proceed on the premise that the disputes had to be resolved by a panel of Arbitrators. This would further show that the formation of the Tribunal comprising of a three Members was with the consent of the parties (including consent on the number of Arbitrators).

(v) At this stage, it will be relevant to notice Section 10 of the Act of 1996 which clearly states that the parties are free to determine the number of Arbitrators, provided that such number shall not be an even number. Thus, the composition of the Arbitral Tribunal of three Members cannot be said to be in violation of any provisions of law.

(vi) Third, there is another way of looking at this issue and that is that the

Act is based on two important principles (i) Party Autonomy and (ii) the Principles of Kompetenz - Kompetenz. Under the Act of 1996, the parties have been given utmost freedom to choose the number of Arbitrators, which finds reflection in Section 10 of the Act of 1996. Simultaneously, if Section 4 of the Act of 1996 is seen, it would reveal that it recognizes the right of a party to waive a right to object. For ready reference, Section 4 of the Act of 1996 is being reproduced hereinafter for better appreciation:-

> *"**4. Waiver of right to object.**—A party who knows that—(a) any provision of this Part from which the parties may derogate, or*
>
> *(b) any requirement under the arbitration agreement,*
>
> *has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object."*

(vii) Applying the provisions of Section 4 of the Act of 1996 to the facts of the instant case, it would reveal that the parties were aware of all the facts when they entered into the contract. All such facts were also in the notice of the parties when the petitioner escalated the disputes for the purposes of resolving the disputes through the mode as prescribed in the said agreement. Even while filing the petition, reference was made to the conditions of contract but the petitioner and the respondents, both proceeded on the premise that the disputes were to be resolved by a panel of three Arbitrators.

(viii) It cannot be disputed that the freedom given to the parties to decide the number of Arbitrators is paramount and this power to choose the number of Arbitrators is not non-derogable. In other words, if the number of Arbitrators is decided by the parties at a stage then it is not as if the parties by consent cannot change or agree to a different strength of number of Arbitrators. The Apex Court considered this aspect of the matter in **Narayan Prasad Lohia v. Nikunj Kumar Lohia : (2002) 3 SCC 572** and it held as under:-

"14. We have heard the parties at length. We have considered the submissions. Undoubtedly, Section 10 provides that the number of arbitrators shall not be an even number. The question still remains whether Section 10 is a non-derogable provision. In our view the answer to this question would depend on the question as to whether, under the said Act, a party has a right to object to the composition of the Arbitral Tribunal, if such composition is not in accordance with the said Act, and if so, at what stage. It must be remembered that arbitration is a creature of an agreement. There can be no arbitration unless there is an arbitration agreement in writing between the parties.

15. In the said Act, provisions have been made in Sections 12, 13 and 16 for challenging the competence, impartiality and jurisdiction. Such challenge must however be before the Arbitral Tribunal itself.

16. It has been held by a Constitution Bench of this Court, in the case of Konkan Rly. Corpn. Ltd. v. Rani Construction (P) Ltd. [(2002) 2 SCC 388] that Section 16 enables the Arbitral Tribunal to rule on its own jurisdiction. It has been held that under Section 16 the Arbitral Tribunal can rule on any objection with respect to existence or validity of the arbitration agreement. It is held that the Arbitral Tribunal's authority under Section 16, is not confined to the width of its jurisdiction but goes also to the root of its jurisdiction. Not only this decision is binding on this Court, but we are in respectful agreement with the same. Thus it is no longer open to contend that, under Section 16, a party cannot challenge the composition of the Arbitral Tribunal before the Arbitral Tribunal itself. Such a challenge must be taken, under Section 16(2), not later than the submission of the statement of defence. Section 16(2) makes it clear that such a challenge can be taken even though the party may have participated in the appointment of the arbitrator and/or may have himself appointed the arbitrator. Needless to state a party would be free, if it so chooses, not to raise such a challenge. Thus a conjoint reading of Sections 10 and 16 shows that an objection to the composition of the Arbitral Tribunal is a matter which is derogable. It is derogable because a party is free not to object within the time prescribed in Section 16(2). If a party chooses not to so object there will be a deemed waiver under Section 4. Thus, we are unable to accept the submission that Section 10 is

a non-derogable provision. In our view Section 10 has to be read along with Section 16 and is, therefore, a derogable provision.

17. We are also unable to accept Mr Venugopal's argument that, as a matter of public policy, Section 10 should be held to be non-derogable. Even though the said Act is now an integrated law on the subject of arbitration, it cannot and does not provide for all contingencies. An arbitration being a creature of agreement between the parties, it would be impossible for the legislature to cover all aspects. Just by way of example Section 10 permits the parties to determine the number of arbitrators, provided that such number is not an even number. Section 11(2) permits parties to agree on a procedure for appointing the arbitrator or arbitrators. Section 11 then provides how arbitrators are to be appointed if the parties do not agree on a procedure or if there is failure of the agreed procedure. A reading of Section 11 would show that it only provides for appointments in cases where there is only one arbitrator or three arbitrators. By agreement parties may provide for appointment of 5 or 7 arbitrators. If they do not provide for a procedure for their appointment or there is failure of the agreed procedure, then Section 11 does not contain any provision for such a contingency. Can this be taken to mean that the agreement of the parties is invalid? The answer obviously has to be in the negative. Undoubtedly the procedure provided in Section 11 will mutatis mutandis apply for appointment of 5 or 7 or more arbitrators. Similarly, even if parties provide for appointment of only two arbitrators, that does not mean that the agreement becomes invalid. Under Section 11(3) the two arbitrators should then appoint a third arbitrator who shall act as the presiding arbitrator. Such an appointment should preferably be made at the beginning. However, we see no reason, why the two arbitrators cannot appoint a third arbitrator at a later stage i.e. if and when they differ. This would ensure that on a difference of opinion the arbitration proceedings are not frustrated. But if the two arbitrators agree and give a common award there is no frustration of the proceedings. In such a case their common opinion would have prevailed, even if the third arbitrator, presuming there was one, had differed. Thus we do not see how there would be waste of time, money and expense if a party, with open eyes, agrees to go to arbitration of two persons and then participates in the proceedings. On the contrary

there would be waste of time, money and energy if such a party is allowed to resile because the award is not to its liking. Allowing such a party to resile would not be in furtherance of any public policy and would be most inequitable."

(ix) Thus, where both the parties proceeded for appointment of their party nominated Arbitrators and the two party nominated Arbitrators consulted and mutually appointed the Presiding Arbitrator. Thus, for all practical purposes upto the formation of the Arbitral Tribunal comprising of three Members, none of the parties had raised the issue regarding appointment of a Sole Arbitrator. The petitioner did not bring on record any material to indicate that the party nominated Arbitrator of the petitioner was ever informed of this issue or that the mandate of the petitioner's nominated Arbitrator was terminated. The petitioner has also not brought on record any material to indicate that the petitioner moved any application under Section 16 of the Act of 1996 before the Arbitral Tribunal, which could have been done but admittedly no such application was moved.

(x) Fourth, the apprehension of the petitioner as expressed herein, is mentioned in the order of the Arbitral Tribunal dated 12.10.2025, which has been brought on record by the respondents along with their objections and the relevant portion thereof reads as under:-

"The learned counsel submitted that in view of subsequent amendment in Special Condition of Contract (SCC) any party may raise objection regarding validity of constitution of Arbitral Tribunal under Section 34(2)(a)(v) of the Act. Her contention is that the present application is to avoid any such situation in future. She argued that in case parties give written consent or court make declaration to Arbitral jurisdiction, any situation in future would be avoided.

There is nothing in application to show that any amendment has been made in GCC, according to which three Members Arbitral Tribunal would have jurisdiction to adjudicate the dispute under contract. The present Arbitral Tribunal is in accordance with GCC.

However, in view of subsequent amendment as alleged in SCC, looking to the claimant's apprehension the proceedings in the arbitration matter are

kept in abeyance as prayed.

The claimant may have to seek order regarding extension of time also."

(xi) From the above quoted contention as recorded in the order of the Arbitral Tribunal, it would indicate that the apprehension appears to be more artificial than substantive. Even while filing the objections before this Court, the respondents did not support the aforesaid contention nor ever stated that the respondent did not agree to the nomination of the Arbitrator made by this Court on behalf of the respondent nor the said order was challenged by the respondent before the Apex Court or raise a challenge before the Arbitral Tribunal in terms of the Kompetenz - Kompetenz principles as incorporated in Section 16 of the Act of 1996.

(xii) Furthermore, at best, the respondents could have raised an objection which it did not either before the Arbitral Tribunal or before this Court, hence, the provisions of Section 4 of the Act of 1996 would equally operate against the respondents. Thus, the apprehension as expressed by the petitioner has no substance.

32. Thus, to sum up, here both parties proceeded on the premise of resolving the disputes by a panel of three Arbitrators and they consented and participated in formation of the Arbitral Tribunal and now when the Tribunal is proceeding with the matter, the petitioner has come up before this Court seeking review of the orders passed by this Court dated 17.07.2025 and 07.08.2025, upon an artificial apprehension, as noticed in above. This Court finds that the grounds upon which the petitioner has moved the instant application do not even fall within the established grounds, upon which a review could be entertained what to say of the requirement that the grounds must be on a higher pedestal than the general grounds of review. The grounds urged for review of the orders dated 17.07.2025 and 07.08.2025 in the instant case falls way short to persuade this Court to exercise its inherent powers to review/recall the orders impugned, moreso when the consequence would be to disband and terminate the mandate of a lawfully constituted Arbitral Tribunal, which is not legally permissible as it would amount to entering into the controversy through the backdoor while the front door remains shut.

33. For all the aforesaid reasons, this Court does not find that it is a fit case to exercise its inherent powers conferred under Article 215 of the Constitution of India to recall/review the orders dated 17.07.2025 and 07.08.2025. Accordingly, the applications are held to be devoid of merits and are **dismissed**. There shall be no order as to costs.

(Jaspreet Singh,J.)

May 14, 2026
Rakesh/-