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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

\+ **O.M.P. (T) (COMM.) 122/2022**

INTERCODE SOLUTIONS PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT
112/115, RAVI INDUSTRIAL ESTATE,
MAHAKALI CAVES ROAD, ANDHERI (E),
MUMBAI- 400 093, MAHARASHTRA

MR. BHAVIN C. KOTHARI
DIRECTOR OF INTERCODE SOLUTIONS PRIVATE LIMITED
S/O CHANDRA KANT N KOTHARI
R/O 101, LANDMARK, CARMICHAEL ROAD,
MUMBAI - 400026, MAHARASHTRA .....PETITIONERS

(Through: Mr. Rajshekhar Rao, Sr. Advocate with Mr. Yashvardhan, Ms. Smita, Ms. Kritika Nagpal, Mr. Devesh Mohan, Mr. Gyanendra Shukla and Mr. Pranav Das, Advocates.)

VERSUS

ARMOR INDIA CODING AND
IMAGING SUPPLIES PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT
PLOT NO. 34A, B&C KIADB INDUSTRIAL AREA,
PHASE-1, SY. NO. 54, BIDADI
RAMANAGARA TALUK, BANGALORE RURAL
KARNATAKA- 562109

....RESPONDENT

(Through: Mr. Ashim Sood, Mr. Ekansh Gupta, Mr. Ankur Singhal and

Ms. Isha Khurana, Mr. Kartikeya Jaiswal and Mr. Prateek Singh Kundu, Advocates..)

% Reserved on: 16.12.2025
Pronounced on: 07.01.2026

JUDGMENT

"*Everything is theoretically impossible, until it is done*", is a remarkable statement by Robert A. Heinlein, an author of American science fiction. It holds some relevance in the present case, as it involves an order of termination of the arbitral proceedings on the ground that the continuation of the proceedings has become 'impossible'.

2. The present petition is filed under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as the 'Act'*) assailing the order dated 02.09.2022 passed by the Arbitral Tribunal, whereby, the Tribunal terminated the arbitral proceedings invoking Section 32(2)(c) of the Act. The impugned order has been challenged on various grounds, *inter alia*, that the statutory requirements of Section 32(2)(c) of the Act are not satisfied.

FACTUAL MATRIX

3. The dispute arises from a series of commercial arrangements between the parties culminating in a Business Transfer Agreement (*hereinafter referred to as 'BTA')* executed on 03.05.2019, under which the respondent agreed to acquire the petitioner's thermal transfer ribbon business for a total consideration of INR 35 crores. The transaction was preceded by a Secrecy

Agreement dated 21.11.2017 and a Letter of Intent issued on 11.12.2018 by Armor SAS, the parent company of the respondent.

4. Following the execution of the BTA and a mutually agreed extension of the closing date, the respondent, on 30.08.2019, paid INR 29.5 crores and took over the entire business undertaking, including all assets, records, and employees, in terms of Schedule H of the BTA. The petitioners assert that they fulfilled all pre-closing obligations as certified by the Closing Certificate under Schedule G of the BTA. Despite assuming full operational control of the business from the closing date, the respondent allegedly withheld the balance INR 5.5 crores.

5. Conversely, after the takeover, as per the facts stated by the respondent, PwC was engaged by the respondent to conduct a forensic audit of the transaction between the parties. Through correspondence exchanged between October and December 2019, PwC levelled allegations of fraud, misrepresentation, and breach of the BTA against the petitioner.

6. In the meantime, the petitioners sought interim protection by filing a petition under Section 9 of the Act, resulting in directions for disclosure of assets. On 09.03.2020, the petitioners formally invoked arbitration under Clause 9.6 of the BTA by filing an application to DIAC, but the respondent did not respond, prompting the petitioners to move a petition under Section 11(6) of the Act.

7. During the pendency of the Section 11 petition, the respondent, in its response to the petitioner's request for arbitration dated 09.03.2020 before DIAC, nominated its nominee arbitrator on 19.01.2021. Thereafter, a three-member Tribunal was constituted under the DIAC Rules, 2018.

8. Once the arbitral proceedings commenced, the respondent sought the joinder of several non-signatory parties under Rule 28.1 of the DIAC Rules, which the Tribunal rejected on 29.04.2021 while clarifying that the respondent was free to pursue remedies before a competent forum. The petitioners filed their Statement of Claim on 09.06.2021.

9. Shortly thereafter, and before filing its defence in arbitration, the respondent instituted CS(COMM) 376/2021 on 13.08.2021 before this Court against the petitioners and multiple non-signatories on the same underlying cause of action forming the basis of its proposed counterclaims. The following day, the respondent filed its Statement of Defence and Counterclaims before the Tribunal, allegedly without disclosing the pendency of the newly instituted civil suit.

10. Subsequent thereto, the petitioners challenged the maintainability of the counterclaims through an application under Section 16 of the Act, which the Tribunal dismissed on 12.02.2022. The parties then filed cross-applications under Section 32 of the Act. The petitioners sought termination confined to the counterclaims, while the respondent sought termination of the entire arbitral proceedings on the ground that the petitioners, by participating in the civil suit proceedings without invoking Section 8 of the Act, had elected the civil forum, thereby rendering continuation of arbitration impossible. After considering the rival submissions, the Tribunal, *vide* order dated 02.09.2022, allowed the respondent's application under Section 32(2)(c) of the Act and terminated the proceedings in their entirety, primarily citing multiplicity arising from the civil suit.

11. The petitioners, assailing the aforesaid order, filed the present petition seeking setting aside of the impugned order and restoration of the arbitral proceedings for adjudication of their claims under the BTA.

SUBMISSIONS

12. Mr. Rajshekhar Rao, learned counsel for the petitioners, has made the following submissions: -

i) The present petition under Section 14 of the Act is maintainable in light of precedents, *inter alia*, ***Lalitkumar V. Sanghavi (Dead) through LRs. v. Dharamdas V. Sanghavi & Ors.***[1]***P***, and ***CL Suncon v. National Highways Authority of India***[2], which recognize that termination of mandate under Section 32(2)(c) of the Act may be examined under Section 14 of the Act.

ii) The impugned order is contrary to the principle of party autonomy and the statutory framework of the Act, as the Tribunal, despite acknowledging a valid arbitration agreement, directed the petitioners to seek a remedy before a Civil Court, contrary to dicta of the Supreme Court in ***Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.***[3], ***Centrotrade Minerals & Metal Inc. v. Hindustan Copper Ltd.,***[4]and ***ONGC Ltd. v. Afcons Gunanusa JV***[5]

[1] (2014) 7 SCC 255
[2] 2021 SCC OnLine Del 313
[3] (2016) 4 SCC 126
[4] (2017) 2 SCC 228,
[5] 2022 SCC OnLine SC 1122

iii) The Arbitral Tribunal failed to appreciate that claims and counterclaims are distinct proceedings and erred in holding that an application under Section 8 of the Act before the Civil Court was necessary, despite arbitration already having been invoked.

iv) The conduct of the respondent constitutes forum shopping and abuse of process. Such conduct is impermissible in view of the decision in ***Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd.***[6], and ***A. Ayyasamy v. A. Paramasivam***.[7]

v) The Tribunal erred in invoking the absence of non-signatory parties as a ground for termination, particularly when the joinder request had already been rejected by Procedural Order dated 29.04.2021 under Rule 28.1 of the DIAC Rules, which had attained finality.

13. *Per contra*, Mr. Ashim Sood, learned counsel for the respondent, supporting the impugned order, made the following submissions: -

i) The petitioners, by their consistent conduct, have waived their right to invoke arbitration. It is a trite law that where a party initiates or participates in civil proceedings without insisting on arbitration, the arbitration agreement becomes inoperative as a result of election.

ii) A party cannot selectively rely upon the arbitration clause for certain claims while simultaneously pursuing civil remedies for

[6] (2021) 4 SCC 713
[7] (2016) 10 SCC 386

others. The principles of election and approbation reprobation preclude a party from taking inconsistent stands and prevent a party from approbating the contract for benefit while repudiating it when convenient.

iii) A party seeking to enforce an arbitration clause must demonstrate an unequivocal intention to be bound by arbitration. Any participation in a civil suit without such assertion amounts to abandonment of the right to arbitrate. The petitioner, knowingly, did not file any application under Section 8 of the Act before the Civil Court, and this fact has been duly recorded and relied upon by the Tribunal.

iv) Once parties have engaged in parallel litigation or invoked multiple Court proceedings, the arbitration clause stands rendered inoperative, and compelling arbitration thereafter defeats the legislative purpose of efficiency and finality.

v) The respondent relied upon equitable doctrines, including waiver, estoppel, election, and the principle that no party may "blow hot and cold" or "sail in two boats at the same time." Reference was made to the decision of the Supreme Court in ***Food Corporation of India v. Yadav Engineer & Contractor,***[8] to submit that once a party elects a forum and derives advantage from it, it cannot subsequently rely upon the arbitration clause.

[8] (1982) 2 SCC 499

vi) The termination of arbitral proceedings under Section 32(2)(c) of the Act was justified as the petitioners, themselves, rendered continuation of the proceedings impossible by their contradictory conduct. A party guilty of such conduct cannot seek revival of the arbitral mandate under Section 14 of the Act.

vii) Reliance is placed on the decisions of the Supreme Court in ***Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya*** and ***Thomas Cook (India) Ltd. v. Beach Ark Hotels (P) Ltd***, to assert that neither bifurcation of causes of action nor splitting of parties is permissible under the scheme of the Act. Reliance is further placed on ***Shri Chand Construction v. Tata Capital***[3], ***Tata Capital v. Shri Chand Construction***[4], ***Onyx Musicabsolute v. Yash Raj Films***[5], ***Rachappa Gurudappa Bijapur v. Gurudiddappa***[6], ***Food Corporation of India v. Yadav Engineer & Contractor***[7], ***Ramasamy Athappan v. ICC***[8] **and** ***Union of India v. N. Murugesan***[9].

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

15. At this stage, it is apposite to note that after hearing the parties at length, judgment in the matter was reserved on 13.11.2025. However, in the *interregnum*, the Supreme Court authoritatively settled the legal position concerning the remedy available against an order of termination under Section 32 of the Act, holding in ***Harshbir Singh Pannu and Anr. v.***

Jaswinder Singh [9] that the appropriate remedy is to approach a tribunal in a review and then the Courts under Section 14 of the Act. In view of the said pronouncement, the parties were re-notified and afforded an opportunity to address further submissions on the issue, including as to whether the petitioners intended to seek recourse by way of review. However, Mr. Rao, placing reliance on the principles articulated by the Supreme Court in paragraph no. 415 of the aforenoted decision, contended that the Arbitral Tribunal has brought the proceedings to an end by adjudicating the matter on merits, and consequently, the impugned action cannot be characterised as falling within the limited ambit of a procedural correction or review. This position was fairly conceded by Mr. Sood. In view thereof, the matter was again reserved for consideration.

ANALYSIS

16. At the threshold, it is pertinent to note the scope and ambit of the jurisdiction of the Court under Section 14 of the Act. Section 14(1)(a) of the Act envisages termination of the mandate of the Arbitrator when the Arbitrator either becomes *de jure* or *de facto* incapable of functioning as an Arbitrator.

17. In the context of termination of proceedings, the Supreme Court in ***Harshbir Singh Pannu*** has now clarified that Section 14(2) of the Act, and in particular the expression used therein "*the Court to decide on the termination of the mandate,*" must receive a purposive and expansive construction so as to encompass a challenge to an order simpliciter terminating arbitral proceedings. The Supreme Court reasoned that termination of arbitral proceedings, in substance and effect, results in the

[9] 2025 INSC 1400

arbitrator being discharged of the obligation to conduct and administer the arbitration. In view of this consequence, and until the legislative *lacuna* in the Act is addressed, the Court has held that a party aggrieved by an order terminating arbitral proceedings must be afforded a remedy by permitting a challenge to such an order before the Court under Section 14(2) of the Act.

18. Herein, the fundamental controversy pertains to the invocation of the provision under Section 32(2)(c) of the Act. The petitioners assert that the preconditions of Section 32(2)(c) of the Act were not satisfied and that the Tribunal's decision amounted to a misapplication of law resulting in frustration of party autonomy and arbitral process, whereas, the respondent avers that the petitioners' conduct in pursuing parallel proceedings and failing to seek recourse under Section 8 of the Act resulted in waiver, abandonment, and rendering the arbitration agreement inoperative.

19. Accordingly, the primary question that arises for consideration is whether the continuation of arbitration was rendered 'impossible' or 'unnecessary' in view of the provisions of Section 32(2)(c) of the Act. The consequential issue is whether the termination of the arbitral proceeding was justified and sustainable in the eyes of law?

20. *In limine*, it is noted that the statutory text and scheme envisaged in Section 32(2) of the Act, confers upon an arbitral tribunal a narrow, residual power to terminate proceedings only in instances where (a) a claimant withdraws his claim, (b) the parties agree to termination, or (c) the tribunal finds that continuation of the proceedings has for any other reason become 'unnecessary' or 'impossible'.

21. The Supreme Court in ***Srei Infrastructure Finance Ltd. v. Tuff Drilling (P) Ltd.***,[10] expounded that Section 32(2)(c) of the Act contemplates termination of arbitral proceedings only in narrowly circumscribed contingencies expressly enumerated in said provision, and that the grounds under Section 32(2)(c) of the Act operate in a domain wholly distinct from the scheme of Section 25(a) of the Act, which governs termination for default of the claimant. The Court, in the factual matrix therein, held that the expressions 'unnecessary' or 'impossible' cannot be conflated with or expanded to include situations of non-prosecution or absence of the claimant, as such defaults fall squarely within Section 25(a) of the Act. Accordingly, the Court also held that the scope of Section 32(2)(c) of the Act is confined to circumstances where the arbitral process cannot proceed for reasons extraneous to party default, and cannot be invoked as a substitute for the relevant procedure prescribed under the Act.

22. In an almost similar factual matrix as ***Srei Infrastructure Finance Ltd.***, the Supreme Court in ***Dani Wooltex Corpn. v. Sheil Properties (P) Ltd.,***[11] held that Section 32(2)(c) of the Act sets out an exhaustive framework governing the termination of arbitral proceedings, which may occur only upon the rendering of a final award or in the limited circumstances expressly enumerated in Section 32(2)(c) of the Act. Specifically, the Court emphasised that the grounds under Section 32(2)(a) and (b) are confined to withdrawal by the claimant and consensual termination by the parties, whereas, clause (c) operates as a residuary

[10] (2018) 11 SCC 470
[11] (2024) 7 SCC 1

provision applicable only when the continuation of the proceedings has, for reasons independent of party default, become 'unnecessary' or 'impossible.'

23. More importantly, the Bombay High Court in ***Maharashtra State Electricity Board v. Datar Switchgear***[12], recognised that clause (c) to sub-section 2 of Section 32 of the Act vests a residuary but exceptional power in an arbitral tribunal to terminate the mandate, where continuation is rendered infructuous or impossible.

24. Pertinently, it was also observed that a party that has engaged in contumacious conduct cannot be permitted to derive advantage from such conduct so as to seek termination of arbitral proceedings. The Court further noted that it is neither feasible nor advisable to exhaustively enumerate the circumstances in which an arbitral tribunal may conclude that continuation of the proceedings has become unnecessary or impossible. Such determinations, the Court noted, must depend on the facts and equities of each case, guided by the overarching principle that a party cannot profit from its own wrongful acts. The relevant extract of the aforenoted decision reads as under: -

> *46. Section 32 is entitled "Termination of proceedings" and sub-section (1) provides that the arbitral proceedings shall be terminated by the final Arbitral Award or by an order of the Arbitral Tribunal under sub-section (2). Sub-section (2) of section 32 is important for the purposes of the present proceedings and provides as follows:*
>
> *"32(2) The Arbitral Tribunal shall issue an order for the termination of the arbitral proceedings where-*
>
> *(a) the claimant withdraws his claim, unless the respondent objects to the order and the Arbitral Tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,*

[12] 2002 SCC OnLine Bom 983

(b) the parties agree on the termination of the proceedings, or.

(c) the Arbitral Tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible."

(emphasis supplied).

47. Sub-section (2), therefore, contemplates three situations where the Arbitral Tribunal is vested with the power to terminate the arbitral proceedings, namely, (i) when the claimant withdraws his claim, (ii) when the parties agree and (iii) when the Tribunal finds that continuation of the proceedings has for any other reason become unnecessary or impossible. The mandate of the Arbitral Tribunal terminates with the termination of the arbitral proceedings. (Sub-section (3) of section 32). Clause (c) of sub-section (2) of section 32 has vested a residuary power in the Arbitral Tribunal to terminate the proceedings where it finds that a continuation thereof has for any other reason become unnecessary or impossible. The legislature has advisedly left it to the Tribunal to determine as to when the continuation of the proceedings has become unnecessary or impossible. The expression "unnecessary" may for instance involve a situation where proceedings are rendered infructuous. A situation may have arisen as a result of which an adjudication into the dispute has become unnecessary either as a result of the fact that the dispute does not survive or for any other valid reason. Situations may also arise where a continuation of proceedings is rendered impossible. Impossibility is not merely to be viewed from the point of view of a physical impossibility of an adjudication, but may conceivably encompass a situation where a party by a consistent course of conduct renders the very continuation of the arbitral proceedings impossible. Then again a party which has been guilty of contumacious conduct cannot be heard to seek the benefit of its conduct to seek termination. It is impossible to catalogue the circumstances in which the Arbitral Tribunal may hold that it is either unnecessary or impossible to continue the arbitral proceedings."

25. Thus, by deploying the words in Section 32(2)(c) of the Act, the legislature has created a narrowly circumscribed gateway for premature termination of arbitral proceedings.

26. Elaborating more on the legal position explicated in ***Datar Switchgear Ltd***, it is apposite to observe that the terms 'unnecessary' and 'impossible' are elastic and they must, in the context that they are used, resist rigid, one-size-fits-all definitions. Depending on the factual matrix and

equities of each case, ‘unnecessary’ may encompass instances where the arbitral process no longer serves any meaningful adjudicatory purpose; but what is ‘unnecessary’ in one dispute may not be so in another. The tribunal must therefore assess, in light of the circumstances before it, whether further proceedings would be otiose.

27. Similarly, ‘impossible’ should not be confined to a narrow conception of physical inability alone. It may include circumstances that strike at the tribunal’s ability to adjudicate. How and when such circumstances amount to ‘impossibility’ will depend on the particular facts and on reasoned findings by the tribunal.

28. Moreover, in order to protect the sanctity of the arbitral proceedings, the power to terminate under Section 32(2)(c) of the Act may ordinarily be treated as a measure of last resort. Before taking this step, a tribunal may consider whether reasonably proportionate and practicable alternatives exist. For example, staying proceedings, proceeding on narrowed issues in stages, or impleading a necessary party and whether those alternatives can preserve the tribunal’s ability to render effective relief.

29. Also, where a party’s own contumacious or obstructive conduct has materially contributed to the impediment alleged, the tribunal must take that conduct into account and be cautious about permitting that party to obtain advantage from such conduct.[13] Whether such conduct disentitles a party from seeking termination is a matter to be determined on the facts and the equities of the case.

30. In short, an order of termination may be appropriate where the record, taken as a whole, supports a reasoned conclusion that continuation has

become either ‘unnecessary’ or ‘impossible’. But the precise contours of these conclusions will vary with the facts.

31. It is, therefore, neither feasible nor desirable to attempt an exhaustive catalogue of circumstances in which Section 32(2)(c) of the Act will apply. Each application of the provision is fact-driven and must be guided by the tribunal’s careful appraisal of the surrounding circumstances, the interests of justice, and the principle that a party should not profit from its own wrongful acts.

32. The statutory architecture of the Act, as consistently reiterated by the Supreme Court, reflects the legislature’s unwavering commitment to party autonomy and the principle of minimal judicial intervention. These foundational pillars are embedded throughout the Act’s language and structure. Any interpretation of Section 32(2)(c) of the Act should also undoubtedly exemplify this commitment and, therefore, restricts the scope of termination of proceedings in an agreed forum.

33. Turning to the facts of the instant case, it becomes apparent that the reasons referred to by the Tribunal, particularly those articulated in paragraph No. 32 of the impugned order and germane to the issues at hand, may be categorised as follows:

(i) In view of the pending suit, there exists a clear likelihood of conflicting decisions and a resultant multiplicity of proceedings.

(ii) Such multiplicity of proceedings, coupled with the potential for inconsistent outcomes, runs contrary to the principles of public policy.

(iii) The continuation of the arbitral proceedings in respect of the

[13] *Reference to* ***Datar switchgear ltd***

claims under reference, despite the pendency of the suit, does not offer an efficacious or workable remedy.

(iv) It is, therefore, legally impossible to allow the arbitration to continue in these circumstances

34. For the sake of clarity, paragraph no.32 of the award is extracted as under: -

> *32. As discussed hereinabove, the continuation of the present arbitration proceeding, in the face of the suit, has resulted in multiplicity of proceedings with the likelihood of conflicting decisions in contravention of the rule of public policy. The termination of the proceedings qua the claims in the reference, in the face of the suit, does not remedy the situation. lt is therefore, legally impermissible to continue arbitration proceedings in the singular facts and circumstances. In other words, continuation of the instant arbitration proceeding has become impossible, warranting the invocation of Section 32(2)(c) of the Act. The present arbitration proceeding is therefore terminated as a whole under Section 32(2)(c) of the Act. The application under Section 32(2}(c) filed by the Petitioner is rejected and that filed by the Respondent is allowed"*

35. Insofar as the discussion contained in paragraphs no. 31 and 33 of the impugned order is concerned, it pertains to distinct aspects arising under Sections 32, 25A, and 38(2) of Act.

36. A perusal of the reasons underlying the termination of the mandate indicates that while the Tribunal's exposition of the legal position in the preceding paragraphs is, in principle, unimpeachable, its application of the law to the facts of the present case is wholly impermissible. At its foundation, the principal basis for the invocation of the power of termination is, as per the Tribunal, the impossibility of the arbitral proceeding in view of the legal bar attracted due to the pendency of the civil suit.

37. At this stage, it is pertinent to compare the prayers made in the statement of claim and the suit filed in the Court, so as to examine the aspect

of multiplicity of proceedings, which forms the basis of the conclusion reached by the Tribunal. The comparison is depicted in the table below: -

RELIEF SOUGHT IN MATTER OF ARBITRATION DAC/2764D/03-2020	***RELIEF SOUGHT IN CS(COMM) NO. 376/2021***
• *Pass an award in favour of the Claimant No. 1 directing the Respondent to pay a sum of Rs. 6,81,04,278/- (Rupees Six Crores Eighty-One Lakhs Four Thousand Two Hundred Seventy-Eight Only) towards the balance consideration under the Business Transfer Agreement dated 03.05.2019;* • *Pass an award in favour of the Claimant No.1 directing the Respondent to pay a sum of Rs. Rs. 2,04,11,887/- (Rupees Two Crore Four Lakh Eleven Thousand Eight Hundred Eighty-Seven only) towards the amounts paid to the foreign creditors appearing in Schedule E of the Business Transfer Agreement dated 03.05.2019 on behalf of the Respondent; 253* • *Pass an award in favour of the Claimant No.1 directing the Respondent to pay a sum of Rs. 1,04,35,468/- (Rupees One Crore Four Lakhs Thirty-Five Thousand Four Hundred Sixty-Eight only) towards the amounts to be paid to the foreign creditors appearing in Schedule E of the Business Transfer Agreement dated 03.05.2019 on behalf of the Respondent;* • *In the alternative to Prayer (c) above, pass an award in favour of the Claimant No.1 directing the Respondent to pay a sum of Rs.*	• *Order and decree the Defendants to, jointly and severally, pay to the Plaintiffs an amount of INR 19,02,91 ,000 (Rupees Nineteen Crores Two Lakh Ninety-One Thousand) or such other amounts as may be deemed appropriate by this Hon'ble Court, together with interest, as compensation for damages and losses suffered by the Plaintiffs;* • *Direct Defendant No. 6 to refund the amount of INR 2, 77,57,825 (Rupees Two Crore Seventy-Seven Lakh Fifty-Seven Thousand Eight Hundred and Twenty-Five) received by it from various customers of the Undertaking as on July 20, 2021, and such further or other amounts as may be collected by it thereafter;* • *Direct the Defendants to deliver to Plaintiff No. 1 any and all confidential and other commercial information relating to the Undertaking that is in their possession, including those parts of the parts of the Undertaking not transferred by Defendant No. 6 to Plaintiff No. 1;* • *Award costs of the proceedings in favour of the Plaintiffs; and* *Pass any further or other order(s)/ directions as this Hon'ble Court may deem*

1,04,35,468/- (Rupees One Crore Four Lakhs Thirty-Five Thousand Four Hundred Sixty-Eight only) directly to the foreign creditors; • *Pass an award in favour of the Claimant No.1 directing the Respondent to pay to a sum of USD 30,000 towards cancellation of Purchase Order no. DLS 2018050402 dated 04 May 2018 in terms of Clause 3.1.2 of the BTA in the designated bank account of the Claimant No.1 i.e.* ***Bank Name*** *Kotak Mahindra Bank* ***Account Type*** *CC* ***Address*** *Mira Bhayander Branch* ***Account Number*** *3911186009* ***IFSC Code*** *KKBK0000649* • *Pass an award in favour of the Claimant No.1 directing the Respondent to pay pendente lite and future interest @ 18% p.a. on the amounts claimed under Claims No. 1-5 above, till the date of actual realization;* • *Pass an award in favour of the Claimant No.1 directing the Respondent to pay the cost of the present arbitration proceedings; and* *Pass an award in favour of the Claimants and against the Respondent for such other or further reliefs or amount(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case.*	*fit and proper in the facts and circumstances of the case*

38. The above comparison would indicate that there may indeed be certain overlapping issues between the arbitration proceedings and the civil suit. However, the Court is of the opinion that the mere existence of such overlap cannot, by itself, justify the Tribunal terminating the proceedings midway under Section 32(2)(c) of the Act, on the apprehension that conflicting decisions may arise.

39. At this stage, it is pertinent to extract the discussion of the Tribunal while terminating the proceedings. The said extract is reproduced hereinunder: -

> *18. As the pleadings in the reference and the suit demonstrate, the Claimants' defence in the suit is their claims in the reference and the Respondent's claims in the suit are premised on its defence to the Claimants' claims in the present proceedings. To reiterate, the Tribunal and the Hon'ble High Court would have to examine the same facts and issues. However, the adjudication in the suit would be more comprehensive, having regard to the involvement of additional parties and the cause of action pertaining to them. As indicated hereinabove, the Claimants in their written statement have adequately elaborated the facts on which their claims in the reference are founded and have also set out their claims in details. The necessary foundational facts to pursue their claims in the suit have thus been furnished in their written statement. As such, the Claimants would not be rendered remediless, if the present proceedings are terminated as a whole, and they would be in a position to raise counterclaims in the suitor file a cross suit. Indeed, it has not been argued on behalf of the Claimants that their remedies in the suit are barred by limitation, their only cavil being of delay in adjudication and denial of their right to pursue the present proceedings in terms of the BTA.*
>
> *19. The scope and purport of Section 8 of the Act prior to its amendment vide Arbitration and Conciliation (Amdt.) Act 2015 came to be examined by the Hon'ble Apex Court in Sukanya Holdings (P) Ltd. (Supra). The appellant therein had filed an application under Section 8 of the Act in a suit filed by the Respondent No.1, to refer the parties to arbitration. The application was resisted by the Respondent No.1 contending that the subject matter of the suit was not between the contracting parties and the reliefs claimed were not only against the*

contracting parties but also against other parties/defendants. The jurisdictional High Court before which the application had been filed, rejected the same. The Hon'ble Apex Court observed that there was no provision that when the subject matter of the suit includes subject matter of the arbitration agreement as well as other disputes, the matter is required to be referred to arbitration. Further, there was no provision as well for splitting the cause of action or parties and referring the subject matter of the suit to arbitration. Having regard to the text of Section 8 as it stood then, it was held that the matter in the suit ought to be one which comes within the ambit of the arbitration agreement and which the parties have agreed to refer to arbitration. It was ruled consequently that, where a suit is as to a matter which lies outside the arbitration agreement and is also1064between some of the parties who are not parties to the arbitration agreement, Section 8 would have no application. With reference to the poser whether a dispute can be partly referred to arbitration, their Lordships held the view that no interpretation of Section 8 is possible, permitting bifurcation of the subject matter or the cause of action or the parties.

20. In Emaar MGF Land Limited (Supra), the Hon'ble Apex Court in the context of the amended language of Section 8, consequent upon the 2015amendment of the Act, held that the same limits the intervention by the judicial authority to the scrutiny of only one aspect i.e the prima facie existence of a valid arbitration agreement. It was held that the words 'notwithstanding any judgement, decree or order of the Supreme Court or any court' added by the amendment were to give effect to the legislative intendment of minimizing the intervention of the judicial authority in the context of an arbitration agreement, registering a departure from the determinations made inter-alia in Sukanya Holdings(P) Ltd. (Supra).

21. Having regard to the imputations made in the suit and reiterated by the Respondent in its statement of defence in the reference, about the involvement of the Claimants and the other Defendants in the alleged conspiracy and their liability for the fraud and the deceit said to have been perpetrated by them, the Tribunal would be rendered unable to adjudicate1065thereon in absence of the additional parties. The adjudication in the reference in this context, would result in bifurcation of the parties and the cause of action, which does not meet judicial approval. On the other hand, these imputations having been pleaded, are required to be adjudicated comprehensively in presence of all the Defendants, in the suit.

22. To restate, adjudication of the claims in the reference, would involve examination of the statement of defence and likewise, adjudication of the claims in the suit would warrant assessment of the defence of the Claimants, resulting in mutual evaluation of common facts, leading to multiplicity of the proceedings with the possibility of

conflicting decisions. The cause of action for the suit though different from that of the claims in the reference to begin with, would essentially get interknit at the time of adjudication, as common facts and issues would be involved. There would be bifurcation of parties and cause of action in course of adjudication in the reference in absence of the additional parties and to that extent, the adjudication in the reference would be incomplete, being limited to the parties and the cause of action before the Tribunal. In this extraordinary fact situation, the arbitration agreement has to yield to the consideration of public policy, as the continuation of the reference in the attendant facts and circumstances would result in multiplicity of the proceedings and likelihood of conflicting decisions.

23. In Aloys Wobben (Supra), Prem Kalia and Daryanani (Supra), Mangilal Rungta (Supra), Kirtika Mukesh Bura (Supra), Vishnu B. Mayekar (Supra)and Debashis Singha Roy (Supra), it has been consistently underlined that the rule of public policy and justice warrants avoidance of multiplicity of judicial proceedings requiring the Court to decide again in respect of the same subject matter resulting in conflicting decisions on the same point.

24. The Hon'ble Apex Court in Vidya Drolia (Supra), propounded that an arbitrator, like the Court is bound to resolve and decide disputes in accordance with the public policy of the law. This decision is to drive home the point, that this Tribunal ought to avoid multiplicity of proceedings, which is opposed to the rule of public policy.

25. In re the contention of the Claimants, that as in terms of Clause 9.3 of the BTA, the Claimants are liable to indemnify the Respondent, for the losses suffered by it due to their (Claimants) fraud, willful misconduct and gross negligence, the Respondent ought to have acted as per the BTA, if it had any grievance in that regard instead of instituting the suit, suffice it to state that Clause 9.3.2 of the BTA limits such claims resulting directly from the fraud, willful misconduct or gross negligence by the Claimant No.1 and not by the additional parties in the suit as alleged. The indemnity clause of the BTA thus does not include third parties who are not parties to the BTA but are allegedly active participants to the fraud and deceit. The1067claims in the suit against the additional parties, imputing fraud and deceit by them therefore, do not come within the purview of the BTA. The suit, in this factual premise, cannot be faulted to have been instituted in breach of the BTA. The plea of the Claimants to the contrary, is rejected.

26. The fact that the Respondent had along with another, instituted the suit for realizing its counter claims in the reference, before filing its counterclaim in the present proceedings, per se does not merit an inference that it had waived its right to pursue the counter claims in the instant proceedings. The Claimants noticeably, did not file any application under Section 8 in the suit and instead filed their written

statement therein. The contention of the Claimants, that as at the time of institution of the suit and filing of the written statement, the disputes had already been referred to arbitration, such an application was inconsequential, lacks in persuasion. The pendency of the present reference notwithstanding, the Claimant sought to have filed such an application before the Hon'ble High Court, apprising it of the pendency of the reference and seeking appropriate orders from it, before filing its written statement. The stand of the Respondent that the parties by their conduct, thus indicated that they were willing to seek resolution of their disputes before the Hon'ble High Court, therefore cannot be lightly disregarded. The plea of the Claimants that they cannot be compelled to forego their remedies in the reference in terms of BTA, cannot be sustained in the exceptional facts and circumstances of the case as the continuation of the instant proceedings would signify multiplicity of proceedings with the possibility of conflicting decisions opposed to the rule of public policy.

27. In the context of Section 34 of the Arbitration Act 1940, relating to stay of legal proceedings, the Hon'ble High Court of Madras in Ramasamy Athappan (Supra), after a detailed survey of the renderings of the Hon'ble Apex Court amongst others in F.C.I Vs Yadav Engineer & Contractor,(1982) 2 SCC 499 and General Electric Company Vs Renusagar Power Company, (1987) 4 SCC 137, enunciated that the action of the defendant in filing a written statement or taking other steps in the legal proceedings would tantamount to abandonment of the right to seek arbitration. Their Lordships held that this principle would apply even to a case covered by the Act and if the defendant did not apply under Section 8 thereof, to refer the parties to arbitration, before submitting its first statement on the substance of the dispute, he would be guilty of abandonment of the right to seek arbitration.

28. The reservation expressed on behalf of the Claimants that the Respondent did not endeavour to seek the consent of the additional parties also does not merit acceptance. As per Rule 28.1 of the Rules, having regard to the stage at which the request was made by the Respondent for joinder of additional parties, such impleadment was not permissible unless all parties including the additional party agreed thereto in writing. Admittedly the Claimants, who are parties to the BTA, declined to give consent to such joinder. Rule 28.3 of the Rules enjoins that all parties to the arbitration agreement shall be required to give written consent to the joinder of parties in addition to the written consent of the party to be impleaded. In view of the refusal of the Claimants to give written consent to the joinder of the additional parties, sought for by the Respondent, asper the above provisions of the Rules, any consent by the additional party to be impleaded, would have been of no consequence."

40. A perusal of the aforesaid findings indicates that the Tribunal appears to have proceeded on the premise that the petitioner's objections to the respondent's counterclaims, arising from the overlap between the issues involved in the arbitration and civil suit, somehow rendered the arbitration, as a whole, as impossible. This expansion of a limited and issue-specific concern into a general impossibility of the arbitral proceeding seems to be unwarranted. The petitioner consistently maintained that their own contractual claims remained amenable to arbitral resolution and notably had not been carried to any other forum. The crux of the reasoning given by the Tribunal is the overlapping issues in the arbitration. However, this aspect has also not been subjected to any close scrutiny. The Tribunal appears to have accepted the same in a summary and cursory manner, and on mere assertions. Even if the Tribunal deemed such overlapping to have created any practical impossibility, it must have examined this aspect so as to demonstrate such impossibility. Suffice to note that such a discussion is conspicuously missing.

41. The Tribunal, however, relies on the decision of the Supreme Court in ***Sukanya Holdings***. The said decision has also been reiterated by Mr. Sood. However, such reliance is misplaced. The decision in ***Sukanya Holdings*** arose in the context of an application under Section 8 of the Act, as it stood prior to the 2015 amendment. The Supreme Court, therein, was concerned with the limited jurisdiction of a civil Court at the threshold stage of considering whether a dispute ought to be referred to arbitration. In that context, it was held that Section 8 did not permit bifurcation of causes of action or parties, and that where the subject matter of the suit was not fully referable to arbitration, a partial reference could not be ordered. However,

the facts of the instant case would indicate that reference to arbitration preceded the filing of the suit. In such facts, the impermissibility of bifurcation of the arbitrable disputes and non-arbitrable disputes at the stage of Section 8 of the Act would have no application.

42. The Tribunal further accepted the respondent's contention that the arbitration was incapable of meaningful continuation because additional parties, said to be necessary, could not be joined. This conflates procedural inconvenience with statutory impossibility. The Tribunal did not identify any legal or factual circumstance demonstrating that disputes between the signatories could not be adjudicated within the arbitral framework. Instead, it treated the civil suit as the more convenient and comprehensive platform and regarded this as a primary reason to terminate the arbitration. The termination of arbitral proceedings cannot rest on the Tribunal's assessment of which forum might be better placed to dispose of the entirety of the dispute, especially when the parties have already been *ad idem* as to the referability of arbitration for the disputes arising from the contract.

43. Equally untenable is the Tribunal's conclusion that the petitioner had waived arbitration by not invoking Section 8 of the Act in the civil suit and filing a written statement. A party's decision not to move a Section 8 application in a suit filed by the opposite party subsequent to the commencement of arbitration proceedings cannot be elevated into an abandonment of the arbitral process. Furthermore, the petitioner filed a written statement in the civil suit in response to allegations made by the respondent. In their written statement, they have explicitly reserved their right to pursue their remedies under the arbitration agreement.

44. Pertinent to also note herein that Section 8 of the Act provides a statutory option to a party to the arbitration agreement, or to any person claiming through or under such party, to apply before the judicial authority where a civil action is instituted. Mere failure of a party to invoke the option does not automatically confer jurisdiction upon the judicial authority. The non-exercise of the remedy under Section 8 of the Act would not deter the judicial authority, being this Court in the present case, from independently exercising its jurisdiction and inherent powers to examine whether the civil suit is barred under Section 9 of the Code of Civil Procedure, 1908 (CPC). Reference can be made to the decision of this Court in ***Master Abhishek Mehra & Ors. v. DLF Commercial Developers Ltd.***[14], wherein the Court examined the maintainability of the suit therein in view of the constitution of an Arbitral Tribunal and applied the bar under Section 5 of the Act and Section 9 of CPC.

45. Importantly, merely because the petitioner participated in a suit that involves some apparently overlapping issues, as only one of the defendants, it does not mean that the petitioners' own claim under the contract has been abandoned. A conclusion inviting such drastic consequences cannot be drawn in a cursory manner. If the arbitration is terminated on mere institution of the civil suit by the opposite party, it would effectively render the arbitration mechanism at the mercy of the other side. Moreover, the petitioner would be prohibited from seeking a fresh referral to arbitration, in light of the termination of the mandate of the Tribunal, despite the Arbitral Tribunal being the mutual forum of choice. And not to forget, the petitioner would invite all these consequences solely because the opposite party chose

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to institute a civil suit after subjecting itself to arbitration, thereby, frustrating the very intent of the arbitration clause in the contract governing the parties.

46. Moving on, the Tribunal further held that the pendency of parallel proceedings, the possibility of overlapping issues, or the interest of public policy justified termination under Section 32(2)(c) of the Act. In a robust legal system, there could be multiple avenues for a party to vindicate its rights, and more often than not, the law permits parallel proceedings when they are intended for different purposes. In such a scenario, mere pendency of parallel proceedings would not *ipso facto* render any proceeding as impossible unless it is affected by a legal bar. Reference can be made to the recent decision of this Court in ***Lata Yadav v. Shivakriti Agro Pvt. Ltd & Ors,***[15] wherein, upon a detailed examination of the impugned order passed by the Arbitral Tribunal therein, the Court reiterated the settled legal position that the mere pendency, existence, or progression of parallel criminal or statutory proceedings does not operate as a bar to the continuation of arbitral proceedings.

47. The Court in ***Lata Yadav*** recognized the settled principle that a single transaction or set of underlying facts may legitimately give rise to multiple proceedings, civil and criminal, which may proceed simultaneously and independently within their respective statutory and jurisdictional confines. It was categorically observed that to accept the pendency of criminal proceedings, including those under the Prevention of Money Laundering Act, 2002, as a ground for termination of arbitration would undermine the arbitral process and enable parties to routinely defeat arbitral jurisdiction by

initiating or relying upon parallel proceedings, irrespective of their ultimate outcome. The Court further relied upon the decision of the Supreme Court in ***Swiss Timing Ltd. v. Commonwealth Games 2010 Organising Committee***[16] to reaffirm that there is no rigid or inflexible rule mandating the stay of civil or arbitral proceedings merely because a criminal trial is pending, particularly since findings rendered by an arbitral tribunal are not binding on criminal Courts and, at best, may have only persuasive value. It is pertinent to note that parallel litigation involving overlapping issues could certainly be held as 'undesirable' or 'inconvenient', but it cannot be termed as 'impossible' without there being a prohibition of law against it or there being a clear demonstration of practical impossibility.

48. At this stage, it is also germane to note that the respondent's conduct also reveals an attempt to approbate and reprobate by first affirming the arbitral process and thereafter seeking to undermine it through the institution of a civil suit. Having participated in the arbitration and allowed the Tribunal to be constituted, the respondent cannot subsequently pivot to the civil forum and rely on the breadth of its own pleadings to contend that arbitration has lost efficacy. The respondent's assertion that the petitioner was "blowing hot and cold" goes against itself. It is the respondent who introduced the civil suit after arbitral proceedings were commenced. Notably, a party cannot resort to parallel forums and thereafter attempt to shift the allegation of inconsistency to the other side. Such conduct cannot be invoked to dilute or defeat the petitioner's legitimate invocation of arbitration under the contract.

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49. Thus, the Tribunal's reasoning falls short of the stringent standard mandated by Section 32(2)(c) of the Act. There is no identification of any factor that renders continuation of proceedings before the Arbitral Tribunal as impossible. Although the termination in question is based on impossibility, but for the clarity of reasoning and in terms of Section 32(2)(c) of the Act, it may also be noted that there is no demonstration that the adjudication of the petitioner's claims had become unnecessary. Even otherwise, the *lis* between the parties is wholly alive, and adjudication is indeed necessary for putting the respective rights and liabilities to rest.

50. What emerges, instead, is a preference for the civil forum in the interest of perceived comprehensiveness. As already reiterated hereinabove, this is insufficient to order termination under the provisions of Section 32(2)(c) of the Act.

51. The Tribunal's order, therefore, stands vitiated and is, hereby, set aside. Let further steps be taken by the parties in accordance with law. No order as to costs.

52. The instant petition stands disposed of.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

JANUARY, 7th 2026
Nc/mj