2025:DHC:4217

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

\+ **ARB.P. 90/2025**

Date of Decision: 14.05.2025

IN THE MATTER OF:

M/S KLA CONST TECHNOLOGIES PVT LTD
REGIST OFF AT: 2, GROUND FLOOR,
MAIN KALKAJI ROAD SHAMBHU DATAL BAGH
DELHI 110020
THROUGH
SHRI ASHOK KUMAR
ITS AUTHORIZED REPRESENTATIVE .....PETITIONER

(*Through: Dr. Amit George, Mr. Krishna Kumar Shukla, Mr. Kartickay Mathur, Ms. Ibansara, Ms. Suparna Jain, Mr. Adhishwar Suri, Mr. Dushyant K. Kaul and Mr. Arkaneil Bhaumik, Advs.*)

Versus

M/S GULSHAN HOMZ PRIVATE LIMITED
REGISTERED OFFICE AT:
FLAT NO. 7, 3RD FLOOR, PLOT NO. 4,
DAYANAND VIHAR DELHI - 11 0092

CORPORATE OFFICE AT: -

GULSHAN ONE29 MALL, 7th FLOOR
PLOT NO. C3 E1, SECTOR 129,
NOIDA UTTAR PRADESH 201301 .....RESPONDENT

(*Through: Mr. Aviral Kapoor, Mr. Rahul Raj, Ms. Sonal, Mr. Sarthak Anand and Ms. Tanvi Mahajan, Advs.*)

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G E M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The instant petition has been filed seeking following reliefs:

> "*(i) To appoint an independent and impartial Sole Arbitrator to take up the arbitration proceedings, and to adjudicate the disputes between the petitioner and the respondent.*
> *(ii) Cost of this petition be allowed to the petitioner.*
> *(iii) Pass any other order this Hon'ble Court finds appropriate in the facts and circumstances of the case, in favour of the petitioner and against the respondent*."

2. The facts of the case would indicate that on 29.07.2023, the respondent, i.e., M/s Gulshan Homz Private Limited, issued a Letter of Intent to the petitioner, i.e., M/s KLA Const. Technologies Pvt. Ltd., for carrying out civil and structural works for the Gulshan Dynasty Moradabad Project. The total contract value is stated to be Rs. 101.8 Crores and a formal Agreement was executed on 06.09.2023.

3. It is the case of the petitioner that despite mobilizing necessary resources and commencing execution of the work in accordance with the contract, delays occurred solely due to the respondent's failure to fulfill its contractual obligations. These included not providing timely access to work fronts, failing to furnish complete escalation details, making unapproved changes in the Bill of Quantities (BOQ), and not ensuring regular supply of water and electricity. The petitioner also contends that the respondent did not make timely payments against Running Account bills and failed to compensate for additional work executed by the petitioner.

4. The facts would further indicate that in August, 2024, the respondent

informed the petitioner of project discontinuation due to poor market response. Further, a mutually agreed final work bill of Rs. 9.64 Crores was recorded in the minutes of the meetings dated 09.09.2024 and 17.09.2024, with a balance of Rs. 2 Crore.

5. Thereafter, it is also contended that the respondent issued a termination notice on 06.11.2024 under Clause 33 of the Agreement without serving the mandatory 7-day prior notice as required under the said Clause. Subsequently, the petitioner invoked the arbitration Clause through a notice dated 13.11.2024 and proposed the appointment of a Sole Arbitrator; however, the respondent did not respond to the said proposal. In view of this, the petitioner has claimed an outstanding amount of Rs. 14,50,09,587/- as on the date of the notice and has accordingly instituted the present petition.

6. Upon notice being issued, the respondent appeared through counsel and filed a reply.

7. The respondent primarily raised an objection with respect to territorial jurisdiction of this Court to entertain the instant petition.

8. Mr. Aviral Kapoor, learned counsel appearing for the respondent, submits that Clauses 37(a) and 37(b) of the Agreement dated 06.09.2023 clearly indicate that the Courts at Noida/New Delhi are designated as the seat/venue of arbitration. However, he explains that, when these Clauses are read in conjunction with Clause 92.10 of the General Conditions of Contract (GCC), it becomes evident that the venue of arbitration is exclusively at Noida.

9. Learned counsel for the respondent then places reliance on a decision of the Supreme Court in the case of ***Radha Sunder Dutta V. Mohd.***

Jahadur Rahim[1]***, South East Asia Marine Engg. & Contructions Ltd. (SEAMEC LTD.) v. Oil India Ltd.***[2]**,** and the decision of this Court in the case of ***Axalta Coating Systems India (P) Ltd. V. Madhuban Motors (P) Ltd.***[3].

10. The aforesaid contentions are strongly refuted by Dr. Amit George, learned counsel for the applicant. He draws the Court's attention to Clauses 37(a) and 37(b) of the Agreement, as well as Clause 91.2 of the GCC, and re-emphasizes that even if Clauses 37(a) and 37(b) are read in conjunction with the Clauses of the GCC, Clause 91.2 unequivocally states that the Courts at New Delhi alone shall have exclusive jurisdiction over any matter, claim, or dispute arising out of or in relation to the contract.

11. He relies on the decision of the Supreme Court in ***Ramkishorelal & Anr. v. Kamal Narayan***[4], and on the decisions of this Court in ***My Preferred Transformation v. Sumithra Inn***[5], ***Inder Mohan Bhambri v. Landmark Apartments Pvt. Ltd***[6]**.,** and ***Vedanta Limited v. Shreeji Shipping***[7], to submit that where an arbitration Clause contemplates multiple prospective seats, the jurisdiction of the Courts at any of the defined seats can be invoked.

12. He further contends that the applicant rightly invoked the jurisdiction of this Court for the appointment of an arbitrator. Learned counsel maintains that, in any case, Clause 37(b) allows sufficient scope for Clauses 37(a) and 37(b) to operate independently. According to him, both Clauses apply within their respective spheres and do not encroach upon each other.

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[1] 1958 SSC OnLine SC 38
[2] (2020) 5 SCC 164
[3] 2024 SCC OnLine Del 9303
[4] (1962) SCC OnLine SC 113
[5] (2021) SCC OnLine Del 1536
[6] (2024) SCC OnLine Del 8208

13. I have heard the parties and pursued the record

14. The solitary question that arises for this Court's consideration is whether this Court can entertain petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 'AC Act').

15. In order to understand the entire gambit of the controversy canvassed herein, this Court takes into consideration the relevant Clauses which has been referred by concerned parties.

16. The Clause 37 (a) and (b) of the Agreement dated 06.09.2023 reads as under:

> *"37. ARBITRATION AND JURISDICTION*
> *a) All dispute or difference arising between the Parties touching or concerning this Deed or otherwise touching the subject matter of this Deed shall be referred to arbitration by a sole arbitrator to be appointed by the Parties mutually. The arbitration shall be in accordance with the Arbitration and Conciliation Act 1996. The award so made by the Arbitrator shall be final and binding on the parties. The Seat and venue of such Arbitration shall be Noida/ Delhi (State of U.P./ Delhi)*
> *b) This Deed and all other matter arises thereto shall be governed and constructed in accordance with the laws of India. Subject to arbitration Clause as defined in sub-Clause (a) above. District Court of Noida (Uttar Pradesh) and High Court of Allahabad shall have exclusive jurisdiction of all or any of disputes."*

17. Clause 91 of the GCC reads as under:

> *"91.0 LAWS GOVERNING THE CONTRACT:*
> *91. 1 The Contract shall be governed by the Indian Laws for the time being in force and till the period of satisfactory performance of the Contract.*
> *91.2 The Courts of New Delhi alone shall have exclusive jurisdiction in respect of any matter, claim or dispute arising*

[7] (2024) SCC OnLine Del 4871

out of or in relation to this Contract."

18. Clause 92.10 of the GCC reads as under:

"92.1 The venue of arbitration shall be Naida."

19. Before proceeding to the facts of the present case, it is pertinent to examine the decision relied upon by the learned counsel for the petitioner ***Ramkishorelal***, wherein this Court held that, in order to ascertain the intention of the parties, the terms of the contract must be read as a whole and in a harmonious manner. The relevant paragraph from the said judgment is reproduced below:

> ***"12.*** *The golden Rule of construction, it has been said, is to ascertain the intention of the parties to the instrument after considering all the words, in their ordinary, natural sense. To ascertain this intention the Court had to consider the relevant portion of the document as a whole and also to take into account the circumstances under which the particular words were used. Very often the status and the training of the parties using the words have to be taken into consideration. It has to be borne in mind that very many words are used in more than one sense and that sense differs in different circumstances. Again, even where a particular word has to a trained conveyancer a clear and definite significance and one can be sure about the sense in which such conveyancer would use it, it may not be reasonable and proper to give the same strict interpretation of the word when used by one who is not so equally skilled in the art of convincing. Sometimes it happens in the case of documents as regards disposition of properties, whether they are testamentary or non-testamentary instruments, that there is a clear conflict between what is said in one part of the document and in another. A familiar instance of this is where in an earlier part of the document some property is given absolutely to one person but later on, other directions about the same property are given which conflict with and take away from the absolute title given in the earlier portion. What is to be done where this happens? It is well settled that in case of such a conflict the earlier disposition of absolute title should prevail and the later directions of disposition should be disregarded as unsuccessful attempts to restrict the title already given. (See Sahebzada Mohd. Kamgar Shah v. Jagdish Chandra Deo Dhabal Deo) [(1960)(3) SCR 604 at p. 611] . It is clear, however, that an attempt should always be made to read the two parts of the document harmoniously, if possible; it is only when this is not possible, e.g., where an absolute title is given*

is in clear and unambiguous terms and the later provisions trench on the same, that the later provisions have to be held to be void."

20. Moreover, this Court, in ***Devyani International Ltd. v. Siddhivinayak Builders and Developers***[8], therein held that when Clause 11 of the Agreement designated New Delhi as the seat of arbitration, but Clause 12 conferred exclusive jurisdiction on the Courts at Mumbai, primacy must be given to the seat. The Court held that once the seat has been designated, only the Courts at the seat would have jurisdiction to entertain applications arising out of the arbitration Agreement. Relevant paragraphs affirming the aforesaid is reproduced below:

> ***"8.*** *In view of the Clause 11.1 above, it is obvious that the seat of arbitration is Delhi. In this context reference may be had to the judgment of the Supreme Court in Indus Mobile Distribution Private Ltd. v. Datawind Innovations Pvt. Ltd., (2017) 7 SCC 678, the Supreme Court held as follows:*
>
> > *"19. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction Clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai courts. Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to "seat" is a concept by which a neutral venue can be chosen by the parties to an arbitration Clause. The neutral venue may not in the classical sense have jurisdiction-that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Section 16 to 21 of the Code of Civil Procedure be attracted. In arbitration law however, as has been held above, the moment "seat" is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties."*
> >
> > ***9.*** *In the light of the above legal position, it is manifest that the Agreement records that the seat of arbitration shall be Delhi. In view of the above legal position the courts at Delhi would have exclusive jurisdiction to adjudicate the dispute between the parties. The reliance*

[8] 2017 SCC OnLine Del 11156

of the learned counsel for the respondent on Clause 12 of the agreement is misplaced due to the clear terminology used in Clause 11.1 of the agreement, i.e. "seat of arbitration shall be Delhi.""

21. Similarly, in ***NJ Construction v. Ayursundra Health Care (P) Ltd.***[9], although the Agreement therein conferred exclusive jurisdiction on the Courts at Guwahati, the seat of arbitration was New Delhi. This Court ruled that only the Courts at the seat New Delhi, would have jurisdiction, rejecting the claim of jurisdiction by Courts at Guwahati. Several other coordinate Benches of this Court have consistently followed this line of reasoning, reaffirming that the designation of a seat of arbitration carries with it exclusive supervisory jurisdiction, overriding any contrary Clause on Court's jurisdiction.

22. If Clauses 37(a) and 37(b) are considered in the correct perspective, then, what emerges from Clause 37(a) is that all disputes and differences arising between the parties, whether touching or concerning this Deed or otherwise relating to its subject matter, shall be referred to arbitration by a sole arbitrator to be mutually appointed by the parties. The Clause further provides that the arbitration shall be conducted in accordance with the AC Act. It unequivocally states that the seat and venue of such arbitration shall be Noida/Delhi (State of U.P./Delhi). Thus, it is evident that there is no conflict regarding the seat and venue of arbitration, which may be either Noida or Delhi.

23. With regard to Clause 37(b), which confers exclusive jurisdiction upon the District Courts of Noida, Uttar Pradesh, and the High Court of Judicature at Allahabad, it is evident that this Clause itself is made "subject to" the arbitration Clause in Clause 37(a), which, apparently, confers

jurisdiction in the Courts at Delhi.

24. The aforesaid explanation is strengthened by the decision relied upon in ***Inder Mohan***, wherein it was held that when an exclusive jurisdiction Clause is expressly made "subject to" the arbitration Clause and the arbitration Clause specifies a different territorial location as the seat of arbitration, then the arbitration Clause, including the stipulation regarding the seat, shall prevail over the exclusive jurisdiction Clause. The relevant paragraph affirming this position is reproduced below:

> ***"8.*** *It is apparent and undisputed that the above Clause contemplates that the arbitral proceedings shall take place in Delhi and that Delhi is the seat of arbitration. The prescription that Courts at Gurgaon shall have exclusive jurisdiction has been specifically made "subject to the arbitration Clause". As such, the said stipulation does not militate against or serve as contrary indicia to Delhi being the seat of arbitration. This position is apparent from judgment of the Supreme Court in BGS SGS SOMA v. NHPC Ltd., (2020) 4 SCC 234 and judgments of this Court in Reliance Infrastructure Limited v. Madhyanchal Vidyut Vitran Nigam Limited, 2023 SCC OnLine Del 4894 and Yassh Deep Builders LLP v. Sushil Kumar Singh, 2024 SCC OnLine Del 5871. As such, this Court has jurisdiction to entertain the present petition."*

25. The above interpretation is further supported by the very judgments relied upon by the learned counsel for the respondent, particularly as reflected in paragraph 11 of the ***Radha Sundar Dutta*** case. Paragraph 11 is reproduced below:

> *"11. Now, it is a settled rule of interpretation that if there be admissible two constructions of a document, one of which will give effect to all the Clauses therein while the other will render one or more of them nugatory, it is the former that should be adopted on the principle expressed in the maxim 'ut res magis valeat quam pereat". What has to be considered therefore is*

[9] 2018 SCC OnLine Del 7009

whether it is possible to give effect to the Clause in question, which can only be by construing Exhibit B as creating a separate Patni, and the same time reconcile the last two Clauses with that construction. Taking first the provision that if there be other persons entitled to the Patni of lot Adhiyapur they are to have the same rights in the land comprised in Exhibit B, that no doubt posits the continuance in those persons of the title under the original Patni. But the true purpose of this Clause is, in our opinion, not so much to declare the rights of those other persons which rest on statutory recognition, but to provide that the grantees under the document should take subject to those rights. That that is the purpose of the Clause is clear from the provision for indemnity which is contained therein. Moreover, if on an interpretation of the other Clauses in the grant, the correct conclusion to come to is that it creates a new Patni in favour of the grantees thereunder, it is difficult to see how the reservation of the rights of the other Patnidars of lot Adhiyapur, should such there be, affects that conclusion. We are unable to see anything in the Clause under discussion, which militates against the conclusion that Exhibit B creates a new Patni. "

26. Similarly, in the other decisions relied upon by the learned counsel for the respondent, there is no contrary proposition. The Clauses in ***Axalta Coating Systems India (P) Ltd***. are conspicuously different from those under consideration in the present case. Therefore, that decision does not assist the respondent.

27. Furthermore, if the decisions passed by this Court in the case of ***Vendanta Limited*** is considered, it indicates that under almost similar circumstances, the Court held that when an arbitration Clause provides for multiple jurisdictional seats, the jurisdiction of the Courts at any of the defined seats can be invoked.

28. Therefore, Clause 92.10 must be read in the context of Clause 91.2.

To reiterate, Clause 91.2 unequivocally states that the Courts at New Delhi shall have exclusive jurisdiction over any matter, claim, or dispute arising out of or in relation to the contract. Furthermore, Clause 37(b) must be construed as being **"**subject to" Clause 37(a), in order to uphold the express hierarchy and intent embedded in the Agreement. Any other construction would defeat the clear intent and express mandate of the Agreement. The interpretation outlined herein is the only way to harmoniously construe the relevant Clauses and give meaningful effect to every word used therein.

29. It appears that the parties agreed to a clear arrangement: if a dispute is amenable to resolution by arbitration, the seat/venue shall be New Delhi; whereas, any dispute falling outside the scope of arbitration shall be subject to the jurisdiction of the Courts at Noida, Uttar Pradesh.

30. In view of the aforesaid, the Court finds that this Court has jurisdiction to adjudicate the instant petition.

31. The law with respect to the scope and standard of judicial scrutiny under Section 11(6) of the 1996 Act has been fairly well settled. This Court as well in the order dated 24.04.2025 in case of ARB.P. 145/2025 titled as ***Pradhaan Air Express Pvt Ltd v. Air Works India Engineering Pvt Ltd*** has extensively dealt with the scope of interference at the stage of Section 11. The Court held as under:-

> *"9. The law with respect to the scope and standard of judicial scrutiny under Section 11(6) of the 1996 Act has been fairly well settled. The Supreme Court in the case of* ***SBI General Insurance Co. Ltd. v. Krish Spinning,*** *while considering all earlier pronouncements including the Constitutional Bench decision of seven judges in the case of* ***Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899****,* ***In re*** [10] *has held that scope of inquiry at the stage of appointment of an Arbitrator is limited to the*

[10] 2023 SCC OnLine SC 1666.

extent of prima facie existence of the arbitration Agreement and nothing else.

10. It has unequivocally been held in paragraph no.114 in the case of ***SBI General Insurance Co. Ltd*** *that observations made in* ***Vidya Drolia v. Durga Trading Corpn.,*** *and adopted in* ***NTPC Ltd. v. SPML Infra Ltd.,***[11] *that the jurisdiction of the referral Court when dealing with the issue of "accord and satisfaction" under Section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would not apply after the decision of* ***Re: Interplay****. The abovenoted paragraph no.114 in the case of* ***SBI General Insurance Co. Ltd*** *reads as under:-*

> *"114. In view of the observations made by this Court in In Re: Interplay (supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration Agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in Vidya Drolia (supra) and adopted in NTPC v. SPML (supra) that the jurisdiction of the referral Court when dealing with the issue of "accord and satisfaction" under Section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in In Re: Interplay (supra)."*

11. Ex-facie frivolity and dishonesty are the issues, which have been held to be within the scope of the Arbitral Tribunal which is equally capable of deciding upon the appreciation of evidence adduced by the parties. While considering the aforesaid pronouncements of the Supreme Court, the Supreme Court in the case of ***Goqii Technologies (P) Ltd. v. Sokrati Technologies (P) Ltd.,*** *however, has held that the referral Courts under Section 11 must not be misused by one party in order to force other parties to the arbitration Agreement to participate in a time-consuming and costly arbitration process. Few instances have been delineated such as, the adjudication of a non-existent and malafide claim through arbitration. The Court, however, in order to balance the limited scope of judicial interference of the referral Court with the interest of the parties who might be constrained to participate in the arbitration proceedings, has held that the Arbitral Tribunal eventually may direct that the costs of the arbitration shall be borne by the party which the Arbitral Tribunal finds to have abused the process of law and caused unnecessary harassment to the other parties to the arbitration.*

12. It is thus seen that the Supreme Court has deferred the adjudication of aspects relating to frivolous, non-existent and malafide claims from

[11] (2023) 9 SCC 385.

the referral stage till the arbitration proceedings eventually come to an end. The relevant extracts of ***Goqii Technologies (P) Ltd.*** *reads as under:-*

> ***"20.*** *As observed in Krish Spg. [SBI General Insurance Co. Ltd. v. Krish Spg., (2024) 12 SCC 1 : 2024 SCC OnLine SC 1754 : 2024 INSC 532] , frivolity in litigation too is an aspect which the referral Court should not decide at the stage of Section 11 as the arbitrator is equally, if not more, competent to adjudicate the same.*
>
> ***21.*** *Before we conclude, we must clarify that the limited jurisdiction of the referral Courts under Section 11 must not be misused by parties in order to force other parties to the arbitration Agreement to participate in a time consuming and costly arbitration process. This is possible in instances, including but not limited to, where the claimant canvasses the adjudication of non-existent and mala fide claims through arbitration.*
>
> ***22.*** *With a view to balance the limited scope of judicial interference of the referral Courts with the interests of the parties who might be constrained to participate in the arbitration proceedings, the Arbitral Tribunal may direct that the costs of the arbitration shall be borne by the party which the Tribunal ultimately finds to have abused the process of law and caused unnecessary harassment to the other party to the arbitration. Having said that, it is clarified that the aforesaid is not to be construed as a determination of the merits of the matter before us, which the Arbitral Tribunal will rightfully be equipped to determine."*

13. In view of the aforesaid, the scope at the stage of Section 11 proceedings is akin to the eye of the needle test and is limited to the extent of finding a prima facie existence of the arbitration Agreement and nothing beyond it. The jurisdictional contours of the referral Court, as meticulously delineated under the 1996 Act and further crystallised through a consistent line of authoritative pronouncements by the Supreme Court, are unequivocally confined to a prima facie examination of the existence of an arbitration Agreement. These boundaries are not merely procedural safeguards but fundamental to upholding the autonomy of the arbitral process. Any transgression beyond this limited judicial threshold would not only contravene the legislative intent enshrined in Section 8 and Section 11 of the 1996 Act but also risk undermining the sanctity and efficiency of arbitration as a preferred

> *mode of dispute resolution. The referral Court must, therefore, exercise restraint and refrain from venturing into the merits of the dispute or adjudicating issues that fall squarely within the jurisdictional domain of the arbitral tribunal. It is thus seen that the scope of enquiry at the referral stage is conservative in nature. A similar view has also been expressed by the Supreme Court in the case of* ***Ajay Madhusudan Patel v. Jyotrindra S. Patel"****.*

32. In view of the fact that disputes have arisen between the parties and there is an arbitration Clause in the contract, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the parties.

33. Accordingly, Mr. Justice Adarsh Kumar Goel (Former Supreme Court Judge) (Mobile No- 9910213040, e-mail id- adarshkgoel@gmail.com) is appointed as the sole Arbitrator.

34. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

35. The learned arbitrator is also requested to file the requisite disclosure under Section 12 (2) of the AC Act within a week of entering on reference.

36. The registry is directed to send a receipt of this order to the learned arbitrator through all permissible modes, including through e-mail.

37. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

38. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy between the parties Let the copy of the said order be sent to the Arbitrator through the electronic mode as well.

39. Accordingly, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

MAY 14, 2025
aks/sph

Click here to check corrigendum, if any