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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
CNR No. DLHC010029432025
+ **ARB.P. 196/2025**
SOUTHERN ALLOYS FOUNDRIES PVT. LTDPetitioner
Through: **Mr. Sunil Kr. Tiwari and Mr.**
Anshuman Tiwari, Advs.

versus

UNION OF INDIARespondent
Through: **Ms. Shivani Luthra Lohiya, Mr.**
Nitin Saluja, Mr. Manas
Agarwal, Ms. Garima Singh
and Mr. Kwan Jaggi, Advs.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT(ORAL)

% **05.08.2026**

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996¹ seeking appointment of a sole Arbitrator to adjudicate the disputes between the parties.

2. The respondent has raised an objection in its reply that the present Section 11 petition is said to be premature and not maintainable because the Petitioner did not issue a fresh notice under Section 21 of the Arbitration and Conciliation Act before seeking appointment of a new arbitrator.

3. According to the Respondent, once the earlier award dated 11.08.2018 was set aside by the Commercial Court on 10.07.2024 and the earlier arbitral proceedings were held to be vitiated/void because of unilateral appointment, those proceedings came to an end.

¹ "the Act", hereinafter



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4. Therefore, if the Petitioner wanted to commence arbitration again, it had to first re-invoke the arbitration agreement by issuing a fresh Section 21 notice, and only thereafter could it approach the High Court under Section 1.

5. In view of this court, the Respondent's objection that the petition is premature for want of a fresh Section 21 notice, is rejected in light of the judgment of this court in ***Cosmo Retail Solutions Pvt. Ltd. v. Sumant Agarwal & Ors.***,²

6. This Court in ***Cosmo Retail Solutions Pvt. Ltd. v. Sumant Agarwal & Ors*** held that where a Section 21 notice had already been issued and the disputes had already commenced, the same dispute does not need to be recommenced merely because the award was subsequently set aside. Thus, once the respondent has been notified of the dispute and limitation has been arrested through the original invocation, the purpose of Section 21 stands fulfilled. The relevant paras of the judgment are reproduced below:

20. In light of the judgments of the Apex Court in M/s Bhaghreeratha Engineering Ltd (supra) and Adavya Projects Pvt. Ltd. (supra), the Petitioner had already issued a notice under Section 21, and the dispute stood commenced.

21. The award has been set aside on the grounds of unilateral appointment of the arbitrator. In the opinion of this Court, once the disputes stands commenced, there is no need to recommence the same dispute again just because the Award has been set aside. The purport of notice under Section 21 is to intimate one party that there are disputes between the parties and the matter has been referred to arbitration. Simultaneously, the purport of notice under Section 21 of the A&C Act is also to freeze the period of limitation. Once this mandate of Section 21 has been achieved, in the opinion of this Court, the requirement of a fresh notice under

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Section 21 of the A&C Act is not necessary merely because the award has been set aside.

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24. The purport of Section 43(4) is to exclude the time spent from the commencement of the arbitration to setting aside of the Award. Section 43(4) indicates that when an Award is set aside then the period between the commencement of the arbitration i.e., the date on which the notice under Section 21 of the A&C Act is received by the Respondent and the date of the order of the Court, is to be excluded in computing the time prescribed by Limitation Act, 1963 for commencement of proceedings, including arbitration. The words “including arbitration” is of significance. Section 43(4) does not prescribe that the fresh proceedings should only be an arbitration proceeding. It could well be a Suit or any other proceeding. Section 43(4) cannot be read to understand that the effect of Section 43(4) is that once an Award is set aside then there has to be a re-initiation of arbitration proceedings. Also there can be instances where an award is set aside on the ground that the disputes between the parties were not arbitrable at all and a party would have to resort to filing the suit before the competent court. It is also possible that the parties have decided to approach an arbitral institution in which case, the parties only have to go back to the arbitral institution for appointment of an Arbitrator in which case, a notice under Section 21 of the A&C Act is not required. The Court can also decide to send the matter back to the very same Arbitrator where again a fresh notice under Section 21 of the A&C Act is not required. It cannot be then said that if a new Arbitrator is to be appointed then a notice under Section 21 of the A&C Act would be required again. In the opinion of this Court, the words in Section 43 of the A&C Act i.e., “commencement of proceedings”, does not mean fresh proceedings which alone would require a notice under Section 21 of the A&C Act. This Court is not repeating the purpose of Section 21 of the A&C Act which has been explained by the Apex Court in Adavya Projects Pvt. Ltd. (supra) and M/s Bhaghreeratha Engineering Ltd (supra). The purpose of Section 21 of the A&C Act is only to give a notice to the other side for commencing fresh proceedings.

25. In view of the above, this Court is not inclined to accept the objections raised by the learned Counsel for the Respondents.

7. In view of the observation made in the aforesaid judgment, the present petition is allowed.



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8. Accordingly, Mr. Hari Vishnu, Advocate, (Mob. No. 9833055620) is appointed as a learned Sole Arbitrator to adjudicate the disputes arisen between the parties. The learned Sole Arbitrator shall enter upon the reference within two weeks from today.

9. The learned Sole Arbitrator will proceed to the arbitration proceedings subject to furnishing requisite disclosures as required under Section 12(2) of the Act within two weeks of entering reference.

10. The arbitration shall be carried under the rules and aegis of Delhi International Arbitration Centre (“DIAC”). The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

11. It shall be open to the parties to raise all pleas, including objection as to arbitrability and jurisdiction, before the learned Sole Arbitrator who shall decide the same in accordance with law.

12. It is clarified that the observations made herein are only for the purpose of deciding the present petition under Section 11(6) of the Act. The learned Sole Arbitrator shall adjudicate the disputes independently and on their own merits, uninfluenced by any observations contained in the present order.

13. The Registry is directed to send a receipt of this order to Mr. Hari Vishnu, learned Arbitrator through all permissible modes including email.



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14. Accordingly, the present petition is disposed of in the above terms.

OM PRAKASH SHUKLA, J

AUGUST 5, 2026/gunn