



2026:DHC:5742



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

Date of decision: 16th JULY, 2026

IN THE MATTER OF:

+ **ARB.P. 293/2026 & I.A. 4036/2026**

COSMO RETAIL SOLUTIONS PRIVATE LIMITEDPetitioner

Through: Mr. Navin Kumar, Ms. Prakriti Priya,
Ms. Nitika, Advocates.

versus

SUMANT AGARWAL & ORS.Respondents

Through: Mr. Satyajit Sarna, Mr. Sudev Singh
Juneja and Ms. Rukmani Banka, Mr.
Ritk Raj, Advocates for Respondent
Nos.1, 2 and 3.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as “the A&C Act”*) by the Petitioner seeking appointment of an Arbitrator.
2. Shorn of unnecessary details, the facts leading to the filing of the present petition are that the Respondents are the allottees of Flat bearing No.A-1201, 12th Floor, Tower A, having Super Built up Area admeasuring approx. 1950 Sq. Ft. and Plot No.B-45, having area admeasuring approx. 223 Sq. yard which was allotted in a project called “Gold Souk Golf Links” which was being developed in Sohna, Haryana.
3. It is the case of the Petitioner that the Respondents induced the Petitioner to purchase rights, title and interest in their disputed flats being



Flat bearing No.A-1201, 12th Floor, Tower A, having Super Built up Area admeasuring approx. 1950 Sq. Ft., provisionally allotted to Respondent No.2 and Plot No.B-45, having area measuring approx. 223 Sq. yard, provisionally allotted to Respondent No.3. It is stated that substantial amount of money have been parted with by the Petitioner to the Respondents on the promise that the Respondents shall sign an Agreement to Sell in favour of the Petitioner and hand over the original allotment papers of the aforesaid immovable properties after receiving the full payment. It is stated that even though the entire payment has been made, the requisite documents have not been executed by the Respondents in favour of the Petitioner.

4. This Court is not going further into facts which are not germane to issue of the appointment of an Arbitrator. Suffice it to say that the Agreement to Sell entered into between the Petitioner and the Respondent contains an arbitration clause, being Clause 11, which reads as under:

“11. That in case of any dispute(s) and/or difference(s) arising between the parties in relation to this Agreement to sell, then, the matter shall be referred to the sole arbitrator appointed by the both parties agreement. The arbitration proceedings shall be held at Delhi and shall be governed by the Arbitration and Conciliation Act, 1996. Any disputes referred to arbitration under this clause shall be decided according to the relevant India law. The Courts/Tribunals/Commission of Delhi shall have the exclusive jurisdiction to try and entertain the Arbitration Proceedings.”

5. It is stated that disputes arose between the Petitioner and the Respondents and a notice under Section 21 of the A&C Act invoking



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arbitration was issued by the Petitioner to the Respondents on 27.02.2024 relying upon the aforementioned Clause 11 of the Agreement to Sell.

6. Material on record indicates that the Petitioner had unilaterally appointed an Arbitrator. The arbitration proceedings culminated in an Award dated 13.02.2025. The said Award was a subject matter of challenge before the District Judge (Commercial Courts)-03, South-West District, Dwarka Courts, New Delhi and the said Award was set aside vide Order dated 05.01.2026 on the ground that Arbitrator had been appointed unilaterally by the Petitioner which is contrary to the settled law laid down by the Apex Court in Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Limited, (2020) 20 SCC 760 and a Division Bench of this Court in Mahavir Prasad Gupta & Sons v. State (NCT of Delhi), 2025 SCC OnLine Del 4241.

7. The Petitioner has, therefore, approached this Court by filing the present petition seeking the appointment of an Arbitrator to recommence the adjudication of the dispute that have arisen between the parties

8. A preliminary objection has been raised by the learned Counsel for the Respondents by stating that the present petition under Section 11 of the A&C Act, is not maintainable in the absence of a fresh notice under Section 21 of the A&C Act.

9. Learned Counsel appearing for the Petitioner states that a notice under Section 21 of the A&C Act had been issued to the Respondents. Arbitrator was appointed, Award was pronounced, and the same has been set aside. He states that the purport of Section 21 notice is only to commence the arbitration and once the arbitration is commenced then the fact that the Award which was passed by the Arbitrator has been set aside does not mean



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that a fresh dispute has arisen between the parties which would require issuance of a second or fresh notice under Section 21 of the A&C Act, 1996.

10. Learned Counsel for the Petitioner places reliance upon a judgment passed by a Single Bench of the Karnataka High Court in M/s Re Sustainability Healthcare Solutions Limited v. Bruhat Bengaluru Mahanagara Palike, **2026:KHC:1929** wherein a specific question i.e., whether a fresh notice under Section 21 of the A&C Act is required for recommencement of arbitration was answered in the following manner.

***“14.7. Insofar as the requirement of issuance of a notice under Section 21 of the Act is concerned, a notice under Section 21 serves the limited purpose of formally invoking the arbitral process. Once an arbitral award has been set aside and the disputes stand revived, the initiation of fresh arbitral proceedings cannot be rendered impermissible on the ground that an award had earlier been passed. The setting aside of the award restores the parties to the position as if no adjudication had taken place. In such circumstances, the requirement of a fresh notice under Section 21 is procedural and cannot be elevated to a jurisdictional bar so as to defeat the substantive right of a party to seek arbitration, particularly when the opposite party is already fully aware of the disputes and has previously participated in arbitral proceedings.*”**

14.8. As regards limitation, the period during which the arbitral proceedings and the proceedings under Section 34 were pending is liable to be excluded while computing limitation for the purpose of initiating fresh arbitral proceedings. A party which has bona fide pursued its remedies under the Act cannot be non-suited on the ground of limitation once the award is set aside and the disputes are revived. To hold otherwise



would render the statutory remedy under Section 34 illusory and defeat the very object of the Act.

14.9. Accordingly, I answer Point No.2 by holding that the passing of an arbitral award which has subsequently been set aside in proceedings under Section 34 does not operate as *res judicata*. The disputes stand revived, and the parties are entitled to seek resolution through fresh arbitral proceedings in accordance with law, subject to limitation and the terms of the arbitration agreement, as recognised by the decisions of the Hon'ble Supreme Court in *Nortel Networks*, *Steel Authority of India*, and *Associated Construction*.”

(emphasis supplied)

11. *Per contra*, learned Counsel appearing on behalf of the Respondents contends that Section 32(1) of the A&C Act provides that the arbitration proceedings initiated by issuance of notice under Section 21 of the A&C Act terminates after the issuance of the final arbitral award, that is to say that the arbitral tribunal becomes functus officio and if the award is set aside, then for recommencement of arbitration, a notice under Section 21 of the A&C Act is mandatory. Unless the notice under Section 21 is issued, arbitration proceedings cannot be commenced afresh. Reliance is placed on a judgment of the Division Bench of the Bombay High Court in Harkisandas Tulsidas Pabari and Another v. Rajendra Anandrao Acharya, (2025) SCC OnLine Bom 2697. Relevant paragraphs of the said judgment is being reproduced as under:-

“20. There is yet another reason why the learned arbitrator could not have resumed the arbitration proceedings. The learned Single Judge, while granting liberty to the parties to “move afresh”, specifically directed that the intervening period would be saved by



virtue of provisions of Section 43(4) of the Arbitration Act. Section 43(4) of the Arbitration Act provides thus:

“43. (4) Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963 (36 of 1963), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted.”

21. Thus, under provisions of sub-section (4) of Section 43 of the Arbitration Act, where the Arbitral award is set aside, the period between commencement of arbitration and the date of the order of the Court needs to be excluded in computing the time prescribed by the Limitation Act for “commencement” of the proceedings. Thus Section 43(4) of the Arbitration Act applies only when arbitration proceedings are to be freshly commenced. Therefore reference made by this Court while setting aside the award to provisions of Section 43(4) of the Act again makes the position clear that what was contemplated was commencement of fresh proceedings and not remand of proceedings to the same arbitrator.

22. When it comes to “commencement” of proceedings under Section 43(4) of the Act, provisions of Section 21 become relevant. Section 21 of the Arbitration Act provides thus:

“21. Commencement of arbitral proceedings.—Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.”



Thus for “commencement” of the arbitral proceedings after setting aside of the award by taking benefit of limitation under Section 43(4) of the Arbitration Act, the procedure under Section 21 becomes mandatory.

23. In our view therefore, the order passed by this Court on 28-9-1998 [Rajendra A. Acharya v. Harkishandas T. Pabari, Arbitration Petition No. 225 of 1998, order dt. 28-9-1998 (Bom)] setting aside the previous Arbitral award dated 1-4-1998 warranted commencement of arbitral proceedings afresh and not resumption of the arbitration proceedings by the same arbitrator.

24. As observed above, the arbitral proceedings would commence after passing of order dated 28-9-1998 [Rajendra A. Acharya v. Harkishandas T. Pabari, Arbitration Petition No. 225 of 1998, order dt. 28-9-1998 (Bom)] only in accordance with provisions of Section 21 of the Arbitration Act, under which it was mandatory for the claimants to make a request to the respondents for reference of the dispute for arbitration. The fact that this Court envisaged application of provisions of Section 43(4) of the Arbitration Act would itself indicate that the fresh arbitration proceedings were required to be commenced. **If arbitration proceedings were merely required to be resumed by the same arbitrator there would have been no question of application of period of limitation. The fact that this Court envisaged that limitation will have to be computed, it clearly meant commencement of fresh arbitral proceedings after setting aside of the award.**

25. The contention raised on behalf of the appellants that the award was not challenged on the ground of failure to issue notice under Section 21 of the Arbitration Act, does not any ice. Failure to serve



notice under Section 21 of the Arbitration Act is merely an additional defect as the very act of the arbitrator in recommencing the proceedings is found to be erroneous. One of the respondents had clearly raised an objection to continuation of arbitration proceedings by the same learned arbitrator, both before the arbitrator as well as in the petition filed under Section 34 of the Arbitration Act.

26. In our view therefore, the learned Single Judge has rightly held the award to be vitiated on account of improper constitution of the Arbitral Tribunal.

D-2. Non-compliance with provisions of Section 21

27. Coming to the aspect of non-fulfilment of requirements of Section 21 of the Arbitration Act, it is an admitted position that the appellants never requested respondents to refer the disputes to arbitration after passing of order dated 28-9-1998 [Rajendra A. Acharya v. Harkishandas T. Pabari, Arbitration Petition No. 225 of 1998, order dt. 28-9-1998 (Bom)] . The appellants unilaterally wrote to the arbitrator on 12-10-1998 for resumption of the arbitral proceedings by representing to the arbitrator that “... but the High Court refused to grant the request of the said Rajendra A. Acharya and Nandkishore A. Acharya of not referring back the said matter to you once again, but on the contrary the High Court by sending back the original records to you clearly indicated and clearly expressed that the parties or any of them should move you the arbitrator afresh”. The arbitrator acted on this representation made by the Appellant and straightaway proceeded to fix a date of hearing of the arbitral proceedings by issuing letter to the respondents. On account of fundamental flaw in comprehension of the order passed by this Court and by erroneously



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presuming that this Court directed remission of proceedings to the same arbitrator, the appellants failed to follow the procedure prescribed in Section 21 of the Act.

28. Both the above aspects have been correctly appreciated by the learned Single Judge while setting aside the impugned award. Even if the requirement provided under Section 21 of the Arbitration Act is held to be Directory, still the impugned award did not pass the muster of authorization for the Arbitral Tribunal to resume the arbitration proceedings.”
(emphasis supplied)

12. Learned Counsel for the Respondents also draw attention of this Court to a judgment passed by the learned Single Judge of the Kerala High Court in Agro Indus Credits Limited v. Mangalan S and Others, (2025) SCC **Online Ker 14437**, wherein the Kerala High Court has observed as under:-

“19. Thus, it is settled law that the arbitral tribunal will no longer have any authority or function under the Act, 1996, with the exception of exercising the limited powers granted to it by Sections 33 and 34(4), respectively, upon the conclusion of the arbitral proceedings, either by a final award or an order to that effect, as the case may be. After the proceedings are terminated, the arbitral tribunal loses all other authority and jurisdiction over the issue. Arbitral proceedings may end for a variety of reasons, but the outcome is always the same : the arbitral reference is closed and the tribunal's authority is extinguished subject to the restricted powers granted to it by Sections 33 and 34(4).

20. Section 43(4) of the Act deals with exclusion of the period between the commencement of arbitration and the date of the order of the court when an arbitral



award is set aside by the court, in computing the time prescribed by the Limitation Act, for the 'commencement of the proceedings' with respect to the dispute. The words employed - 'commencement of the proceedings' in Section 43(4) has great significance. As held by Hon'ble Supreme Court in *Adavya Projects Pvt. Ltd. (supra)*, prime object of the request contemplated under Section 21 of the Act is to mark a point of time for calculation of limitation. As provided under Section 43(4) of the Act, exclusion of the period spent in an arbitral proceeding culminated with an award which was set aside is for computing the time prescribed by the Limitation Act for the commencement of the *de novo* proceedings. Therefore, marking the point of time of commencement of the subsequent arbitral proceedings is absolutely necessary. Hence, conjoint appraisal and analysis of the provisions of Sections 21, 32 and 43(4) of the Act shows that issuing a fresh notice/making another request is indispensable to initiate fresh arbitral proceedings, once an award is set aside by the court.

21. The Bombay High Court in *Kirloskar Pneumatic Company Ltd. (supra)* held as under;

"15. In the sequence of events mentioned above, when the arbitration mechanism is already triggered and the proceedings have commenced upon the issuance of the notice by the petitioner to the respondent on 30/10/2018, and therefore when the petitioner now seek appointment of an independent and impartial arbitrator, through the mechanism of sub-section (6) of Section 11, I do not deem it necessary that it should be preceded by a fresh notice under Section 21, though the respondent preferred to call it as 'invocation notice', as the arbitration proceedings are already commenced and the respondent is aware



about the existence of a dispute and also of the fact, that this dispute in terms of the agreement between the parties deserve to be resolved through an independent arbitrator.

For the above, the submission of Mr. Dalal do not deserve any consideration and is rejected.”

However impact of S. 32 and also of S. 43 (4) in the scheme of the Act was not brought to the notice of the Court. Hence, I respectfully refrain from following the above judgment of the Bombay High Court.

22. In these cases, arbitral awards were passed, though they were subsequently set aside and declared as nullity. Once an order is declared by a competent court as nullity, it has no effect in the eye of law. A doubt may arise as to whether passing of such an award would amount to termination of the arbitral proceedings. But, in the scheme of the Act, as held by the Hon'ble Supreme Court in Harshbir Singh Pannu (*supra*), with the passing of an award the arbitrator ceases to have jurisdiction over the dispute. He can act further in the matter only in the limited circumstances delineated under the Act. That being so, when an award was passed and the arbitral tribunal ceased to have jurisdiction, whether the award was subsequently set aside or declared as nullity is immaterial in the context of Section 32 of the Act. Passing of the award by the Arbitral Tribunal is the vital aspect. **Hence, the arbitral proceedings, as far as these cases are concerned, were undoubtedly terminated with the passing of awards. Therefore, to commence fresh arbitral proceedings, making fresh requests were required. I therefore hold that these arbitration requests are premature for want of any request for**



fresh arbitration from the applicant, addressed to the respondents.

In conclusion, these Arbitration Requests are rejected as premature. Nonetheless, the rejection would not preclude the applicant from approaching this Court again after complying with the requirement of issuing notice to the respondents.”

(emphasis supplied)

13. Heard learned Counsels for the Parties.

14. A short but an interesting question which arises for consideration before this Court is when an arbitral award is set aside, then is it necessary to issue a fresh notice under Section 21 of the A&C Act before filing a petition under Section 11 of the A&C Act?

15. Section 21 of the A&C Act on which reliance is placed is reproduced as under:

“Section 21: Commencement of arbitral proceedings.

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

16. It is now well settled that no arbitration proceedings can commence without a notice under Section 21 of the A&C Act. The Apex Court in Adavya Projects Pvt. Ltd. v. M/s Vishal Structurals Pvt. Ltd., (2025) SCC OnLine SC 806 has, in fact, settled this issue. The relevant paragraphs of the said judgment are being reproduced as under:-

“45. The decision in Alupro Building Systems [Alupro Building Systems (P) Ltd. v. Ozone Overseas



(P) Ltd., 2017 SCC OnLine Del 7228] has been relied on by the High Court in its impugned order [Adavya Projects (P) Ltd. v. Vishal Structurals (P) Ltd., 2024 SCC OnLine Del 4817] to hold that the notice under Section 21 is a mandatory requirement before a person can be made party to arbitral proceedings.

46. While we agree with the decision in *Alupro Building Systems [Alupro Building Systems (P) Ltd. v. Ozone Overseas (P) Ltd., 2017 SCC OnLine Del 7228]* insofar as holding that the notice under Section 21 is mandatory, unless the contract provides otherwise, we do not agree with the conclusion that non-service of such notice on a party nullifies the Arbitral Tribunal's jurisdiction over him. The purpose of the Section 21 notice is clear — by fixing the date of commencement of arbitration, it enables the calculation of limitation and it is a necessary precondition for filing an application under Section 11 ACA. The other purposes served by such notice — of informing the respondent about the claims, giving the respondent an opportunity to admit and contest claims and raise counterclaims, and to object to proposed arbitrators — are only incidental and secondary. We have already held that the contents of the notice do not restrict the claims, and any objections regarding limitation and maintainability can be raised before the Arbitral Tribunal, and the ACA provides mechanisms for challenging the appointment of arbitrators on various grounds. Hence, while a Section 21 notice may perform these functions, it is not the primary or only mechanism envisaged by the ACA.

47. In this light, and considering that in the facts of the present case a Section 21 notice was in fact issued to Respondent 1, we find it difficult to accept that the decision in Alupro Building Systems [Alupro Building Systems (P) Ltd. v. Ozone Overseas (P) Ltd.,



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2017 SCC OnLine Del 7228] can be relied on to entirely reject the Arbitral Tribunal's jurisdiction over Respondents 2 and 3.”

17. Attention of this Court is also drawn by the learned Counsel for the Petitioner to another judgment of the Apex Court in M/s Bhaghreeratha Engineering Ltd v. State of Kerala, **Civil Appeal No. 39/2026**, to contend that the notice under Section 21 of the A&C Act is not mandatory to commence the arbitration. The Apex Court in the said Judgment has observed as under:-

“16. Secondly, the object of Section 21 of A&C Act, is only for the purpose of commencement of arbitral proceedings is also well settled. Section 21 is concerned only with determining the commencement of the dispute for the purpose of reckoning limitation. There is no mandatory prerequisite for issuance of a Section 21 notice prior to the commencement of Arbitration. Issuance of a Section 21 notice may come to the aid of parties and the arbitrator in determining the limitation for the claim. Failure to issue a Section 21 notice would not be fatal to a party in Arbitration if the claim is otherwise valid and the disputes arbitrable. In ASF Buildtech Private Limited vs. Shapoorji Pallonji & Company Private Limited³, one of us, J.B. Pardiwala J., felicitously put the principle thus: -

163. The marginal note appended to Section 21 of the 1996 Act makes it abundantly clear that the notice to be issued thereunder is for the purpose of "commencement of arbitration proceedings". The substantive provision further makes it clear that the date on which a request/notice of invocation for referring a dispute is received by the respondent, would the date on which the arbitral proceedings in



respect of a particular dispute commences. The words "particular dispute" assume significance in the interpretation of this provision and its underlying object. It indicates that the provision is concerned only with determining when arbitration is deemed to have commenced for the specific dispute mentioned in the notice. The language in which the said provision is couched is neither prohibitive or exhaustive insofar as reference of any other disputes which although not specified in the notice of invocation yet, nonetheless falls within the scope of the arbitration agreement. The term "particular dispute", does not mean all disputes, nor does it confine the jurisdiction of the Arbitral Tribunal which is said to be one emanating from the "arbitration agreement" to only those disputes mentioned in the notice of invocation, as it would tantamount to reading a restriction into the jurisdiction of the Arbitral Tribunal to the bounds of the notice of invocation instead of the arbitration agreement. Thus, there is no inhibition under Section 21 of the 1996 Act for raising any other dispute or claim which is covered under the arbitration agreement in the absence of any such notice. Section 21 is procedural rather than jurisdictional it does not serve to create or validate the arbitration agreement itself, nor is it a precondition for the existence of the Tribunal's jurisdiction, but merely operates as a statutory mechanism to ascertain the date of initiation for reckoning limitation.

165. Section 23 sub-section (1) places an obligation upon the claimant to state the facts supporting his "claim", the points at issue and the relief or remedy sought by way of its statement of claim, before the Arbitral Tribunal. Notably, the legislature, in the first part of the said sub-section, has deliberately and consciously used the term "claim" as opposed to



"particular dispute" employed in Section 21 of the 1996 Act. Although, it could be said that the term "particular dispute" under Section 21 connotes a larger umbrella within which the term "claim" under Section 23 would be subsumed, thereby suggesting that there is no scope to deviate from what was sought to be referred by the notice of invocation, we do not think so. We say so because, the requirement for providing the points at issue and the relief or remedy sought that exists in sub-section (1) of Section 23 of the 1996 Act is patently absent in Section 21 of the 1996 Act, which clearly shows that the scope and object of these two provisions are at variance to each other. Further, this sub-section does not stipulate either explicitly or implicitly, that such "claim" must be the same or in tandem with the "particular dispute" in respect of which the notice of invocation was issued under Section 21 of the 1996 Act. This distinction in terminology is neither incidental nor redundant; rather, it reflects a conscious legislative design to demarcate the procedural objective of Section 21 from the substantive function sought or the framing of issues served by Section 23. Unlike Section 23, Section 21 does not require any articulation of the relief its sole purpose is to indicate when arbitration is deemed to have commenced, for the limited purpose of computing the limitation period.

169. Any restriction on the nature or content of claims, counterclaims, or set-offs in arbitration must be sourced solely from the express language of Section 23 and not from Section 21. Section(s) 21 and 23 of the 1996 Act although overlap in some aspects with each other in terms of the claims that would ordinarily be referred to the Tribunal more often than not tend to coincide, yet they are by no means tethered together in such a manner that neither of them can survive without one another. The latter serves only a procedural



function and does not condition or limit the Tribunal's jurisdiction to adjudicate claims that may not have been specifically invoked at the threshold stage. To read such a limitation into the statutory scheme would run contrary to both the text and the object of the Act.”
(Emphasis supplied)

More recently in Adavya Projects Private Limited v. Vishal Structurals Private Limited and others⁴, this Court reiterating the purpose and significance of a notice under Section 21 had the following to observe: -

“24. At this point, it is important to note this Court's decision in State of Goa v. Praveen Enterprises [State of Goa v. Praveen Enterprises, (2012) 12 SCC 581] wherein it was held that the claims and disputes raised in the notice under Section 21 do not restrict and limit the claims that can be raised before the Arbitral Tribunal. The consequence of not raising a claim in the notice is only that the limitation period for such claim that is raised before the Arbitral Tribunal for the first time will be calculated differently vis-à-vis claims raised in the notice. However, non-inclusion of certain disputes in the Section 21 notice does not preclude a claimant from raising them during the arbitration, as long as they are covered under the arbitration agreement. Further, merely because a respondent did not issue a notice raising counterclaims, he is not precluded from raising the same before the Arbitral Tribunal, as long as such counterclaims fall within the scope of the arbitration agreement.”

(Emphasis supplied)

18. It is pertinent to mention at this juncture that the issue which was raised in M/s Bhaghreeratha Engineering Ltd (*supra*) was whether a dispute



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which is not raised in a notice under Section 21 of the A&C Act, can be subsequently raised in arbitration proceedings or not. It is in that context that the abovementioned paragraph was mentioned. This question is definitely not *germane* to the controversy at hand.

19. It is also pertinent to mention that in the judgment passed by the Division Bench of the Bombay High Court, no notice under Section 21 was issued in the first instance and the judgment of the Division Bench is, therefore, to be read in that context. Unlike, in the present case, a notice under Section 21 of the A&C Act had been issued before appointing an Arbitrator on 27.02.2024 and the Award had been passed. It is pursuant to this notice that an Arbitral Tribunal was constituted and an award was rendered, which was subsequently set aside on grounds of unilateral appointment.

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

22. A lot of emphasis has been given by the learned Counsel for the Respondents on Section 43. Section 43 deals with limitation and Section 43(4) states that the period between the commencement of the arbitration i.e., the date on which notice under Section 21 is received by the Respondent and the date of the order of the Court is excluded for computing the time prescribed under the Limitation Act, 1963 for the commencement of proceedings including (arbitration). Learned Counsel for the Respondents contends that a notice under Section 21 of the A&C Act would be necessary to commence the arbitration and limitation has to be calculated depending upon the notice issued under Section 21 of the A&C Act.

23. Section 43 of the A&C Act reads as under:

Section 43: Limitations.

(1) The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to proceedings in court.

(2) For the purposes of this section and the Limitation Act, 1963 (36 of 1963), an arbitration shall be deemed to have commenced on the date referred to in section 21.

(3) Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may



on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

*(4) Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963 (36 of 1963), for the commencement of the proceedings **(including arbitration)** with respect to the dispute so submitted.”*

(emphasis supplied)

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.

26. Accordingly, Mr. Kapil Sankhla (Mob. No: 9810901009) is appointed as the Sole Arbitrator to adjudicate upon the disputes between the parties.

27. 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.

28. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the Arbitration Act within two weeks of entering on reference.



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29. 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.

30. Needless to state, nothing in this Order shall be construed as an expression of this Court on the merits of the contentions of the parties.

31. The Petition stands disposed of in the above terms, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

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Prateek/VG