



**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

BEFORE:

THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)

CO 1409 of 2026

**The Kolkata Municipal Corporation
Vs.
Bengal Shelter Housing Development Ltd.**

For the Petitioner : Mr. Kishor Datta, Sr. Adv.
Mr. Altamash Alim, Adv.
Mr. Sumit Biswas, Adv.

For the Opposite Party : Mr. Suman Kr. Dutt, Sr. Adv.
Ms. Jayati Chowdhury, Adv.
Ms. Rashmi Singhee, Adv.
Ms. Priya Malakar, Adv.

Judgment reserved on : 14.07.2026

Judgment delivered on : 10.08.2026

SHAMPA DUTT (PAUL), J.:-

1. The revisional application has been preferred challenging an order dated April 6, 2026, passed by the learned sole Arbitrator in **arbitration proceedings between Bengal Shelter Housing Development Limited vs. The Kolkata Municipal Corporation and Others.**
2. Vide the impugned order, the learned arbitrator considered the following preliminary objections raised by the petitioner herein:-

“.....Mr. Altamash Alim, Learned Advocate for the respondent, before commencement of the deposition of the



first witness of the Claimant, raises two preliminary objections. His first objection is that the claimant before start of the examination should disclose whether they will adduce evidence of any other witness. According to Mr. Alim, if no other witness is brought, then there is no problem. Otherwise, according to Mr. Alim, this Tribunal should not commence the examination and cross-examination of the witness so long all the proposed witnesses of the Claimant simultaneously file their Affidavits of evidence. In support of such contention, Mr. Alim relies upon the provision contained in Order XVIII Rule 4(1A), 4(1B) and 4(1C) of the Code of Civil Procedure as introduced by the amending Act of 2015 which is applicable to the trial of commercial suits.

The further objection of Mr. Alim is that is that some new documents have been introduced in this affidavit of evidence which have no foundation in the pleadings of the claimant. Therefore, those should be deleted. Mr. Alim also submits that before commencement of the examination and cross-examination his client should be given further opportunity of filing statement of admission and denial of the alleged documents which have no foundation in the Statement of Claim.”

3. But the learned Tribunal held:-

“10. This Tribunal reiterates the answers already given through the above email. This Tribunal repeats and reiterates that if any such documents have been really included which has no foundation in the Statement of Claim, such objection can be again raised by the Learned Advocate for the respondent while cross-examining the witness and the same will be dealt with at the time of



hearing of the arguments. The preliminary objections raised by Mr. Alim are thus devoid of any merit.”

4. In respect of objection of the petitioner herein before the learned Arbitrator that some new documents have been introduced in the affidavit of evidence, which have no foundation in the pleadings of the claimant and therefore, those should be deleted, and also in respect of the petitioners prayer that before commencement of the examination and cross-examination, the petitioner should be given further opportunity of filing statement of admission and denial of the alleged documents which have no foundation in the Statement of Claim.

5. On the said issue, the learned Arbitrator held:-

“10. This Tribunal reiterates the answers already given through the above email. This Tribunal repeats and reiterates that if any such documents have been really included which has no foundation in the Statement of Claim, such objection can be again raised by the Learned Advocate for the respondent while cross-examining the witness and the same will be dealt with at the time of hearing of the arguments. The preliminary objections raised by Mr. Alim are thus devoid of any merit.”

6. Mr. Kishor Dutta, learned Senior Counsel appearing for the petitioner herein has relied upon the following judgments:-

i) Bhatia International v. Bulk Trading S.A. & Anr. reported at (2002) 4 SCC 105 para 26.



ii) SBP & Co. v. Patel Engineering Ltd. & Anr. reported at (2005) 8 SCC 618 para 2 and 45.

iii) Srei Infrastructure Finance Limited v. Tuff Drilling Private Limited reported at (2018) 11 SCC 470.

iv) Surya Food and Agro Limited v. Om Traders and Anr. reported at 2023 SCC Online Del 265 para 49 and 50.

7. **Both parties** have relied upon the following judgments in support of their argument, on the point of maintainability:-

a) Deep Industries Limited vs Oil and Natural Gas Corporation Limited & Anr., (2020) 15 SCC 706, petitioner relies upon Para 5, 22,37 and Opposite Party relies upon Para 16,17, 22.

b) Bhaven Construction vs Executive Engineer, Sardar Sarovar Narmada Nigam Limited & Anr., (2022) 1 SCC 75, petitioner relies upon Para 5,6,20 and Opposite Party relies upon Para 18.

8. Notes of argument has been placed by the opposite party herein, who initially has raised the point of maintainability relying upon Section 5, 34 and 37 of the Arbitration Act.

9. The **petitioner** herein has **relied** upon the judgment of this Court passed in **CO 1765 of 2021 dated 27.03.2026 in Pasari Multi Projects Private Limited v. Ahluwalia Contract (India) Limited.**



10. The said provisions relied upon by the opposite party, relate to **minimum judicial intervention, wherever an arbitration agreement exists.**
11. The opposite party in their written notes have also put in notes on the merit of the case. The petitioners in their written notes have not argued on the point of maintainability. But this Court holds that the revisional application is maintainable, as the issue here in does not relate to an arbitration agreement, but **challenge is to the procedure adopted by the learned arbitrator during the proceedings.** Judgments in *Deep Industries (Supra)* and *Bhaven Construction (Supra)* have also been taken into consideration.
12. In the present case also the issue before this Court is not related to an arbitration agreement, herein **the procedure adopted by the learned Arbitrator** has been challenged before this Court. As such in view *Pasari Multi Projects Private Limited (supra)* the present **civil revision is prima facie maintainable.**
13. It is the further case of the opposite party **on merit**, that for the first twenty sittings of the arbitral proceedings, the petitioner accepted without demur the procedural framework adopted by the Learned Sole Arbitrator under Section 19 of the Arbitration and Conciliation Act. No objection was ever raised to the Tribunal's procedural powers or to the agreed Rules of Procedure. The present objection has been raised only after the Respondent filed its Affidavit of Evidence. The challenge therefore relates **not to the Tribunal's jurisdiction to**



regulate procedure but merely to one particular exercise of that accepted procedural discretion.

14. The opposite party has relied upon the following judgment:-

i) SBP & Co. vs Patel Engineering Ltd. (2005) 8 SCC 618, (Paras 45, 46 & 142(vi), (viii).

ii) M/s. Tarini Prasad Mohanty vs M/s. Sunflag Iron & Steel Co. Ltd. 2026 LiveLaw (SC) 561, (Paras 12, 17-20).

15. On the issue of applicability of Order XVIII Rule 4(1A) of CPC as amended by Commercial Courts Act, **the learned Tribunal** analysed Section 19 of the Arbitration and Conciliation Act, 1996, the object and scheme of the Commercial Courts Act, 2015, the amendments introduced in Order XVIII Rule 4 of the Code of Civil Procedure, the Practice Directions framed by the Tribunal, with the consent of the parties, and the relevant decisions of the Hon'ble Supreme Court, before arriving at its conclusions. The impugned order is a detailed and reasoned procedural order. Importantly, the Civil Revision does not challenge any of the reasons recorded by the Learned Arbitrator. The Petition merely asserts that another procedural course ought to have been adopted.

16. It is further stated that the Learned Sole Arbitrator expressly recorded that every objection regarding admissibility, relevance, proof and evidentiary value of the documents would remain open during cross-examination as well as at the stage of final arguments. No objection of the Petitioner has therefore been foreclosed.



17. The opposite party thus states that the present revisional application therefore does not arise from any denial of hearing, violation of natural justice, jurisdictional error or failure to exercise jurisdiction. It arises solely because the Learned Arbitrator adopted one permissible procedural course in preference to another while regulating the conduct of evidence.
18. Thus, this is therefore not a case of arbitrary exercise of jurisdiction or failure to exercise jurisdiction. The impugned order demonstrates a conscious and reasoned exercise of the Tribunal's procedural powers under Section 19 of the Arbitration and Conciliation Act.
19. The respondent places reliance upon the following judgment:-
- i) SBP & Co. v. Patel Engineering Ltd. & Anr. reported at (2005) 8 SCC 618, Para 45, 46 142.***
20. The respondent further argues that the impugned order is a reasoned procedural order. This is therefore not a case of arbitrary exercise of jurisdiction or failure to exercise jurisdiction. The impugned order demonstrates a conscious and reasoned exercise of the Tribunal's procedural powers under Section 19 of the Arbitration and Conciliation Act.
21. It is further stated that there is no jurisdictional error, and no prejudice.
22. It is stated by the respondent in their written notes, that:-

“.....The Petition proceeds upon the erroneous assumption that the amendments introduced by the



Commercial Courts Act automatically govern arbitral proceedings. That assumption is contrary to the statutory scheme. The amendments to Order XVIII Rule 4 CPC regulate proceedings before Commercial Courts. Had Parliament intended those amendments to govern arbitral proceedings, Section 16 of the Commercial Courts Act would have expressly amended the Arbitration and Conciliation Act or made those procedural amendments applicable to arbitral tribunals. Parliament consciously did not do so. On the contrary, Section 19 of the Arbitration and Conciliation Act continues to confer procedural autonomy upon the Arbitral Tribunal. The Learned Sole Arbitrator therefore rightly held that the procedural amendments governing Commercial Courts cannot be mechanically imported into arbitration. Neither the Commercial Courts Act nor the Arbitration and Conciliation Act contains any provision making Order XVIII Rule 4(1A) CPC mandatory for arbitral proceedings. The Petitioner's submission therefore seeks to introduce into arbitration a procedural requirement which Parliament itself has not enacted.

The Civil Revision ultimately seeks a reconsideration of the procedural correctness of the impugned order. Such a challenge is appellate in substance though clothed as a petition under Article 227. The supervisory jurisdiction of this Hon'ble Court is not intended to substitute one permissible procedural view with another.

The Petition therefore discloses no patent lack of jurisdiction, perversity or exceptional circumstance warranting interference under Article 227 of the Constitution. The Revisional Application is accordingly liable to be dismissed.....”

- 23.** It is thus stated that the impugned order being in accordance with law is not to be interfered with as the Petition therefore discloses no patent lack of jurisdiction, perversity or exceptional circumstance warranting interference under Article 227 of the Constitution. The Revisional Application is accordingly liable to be dismissed.



24. Mr. Dutta, submits that the petitioner's case herein is that:-

- a)** The Learned Sole Arbitrator upon filing of the Affidavit of Admission and Denial directed the respondent being the claimant in the arbitration proceedings on August 10, 2025 to file the Affidavit of Evidence till August 18, 2025 upon prior service to the petitioner. However, the respondent was unable to file the Affidavit of Evidence on the given date and as such, a further time to file the Affidavit of Evidence was granted till August 21, 2025.
- b)** The respondent had filed its Affidavit of Evidence of CW1 affirmed on August 23, 2025 of Mr. Bireswar Dutta which had marked Exhibits from Exhibit 1 to Exhibit 81. Even in the Affidavit of Evidence of CW1, various documents have been included which were otherwise not part of the Admission Denial. However, on December 4, 2025, the respondent sought to withdraw the Affidavit of Evidence of Mr. Bireswar Dutta with liberty to replace with some other witness. Such liberty was granted on December 4, 2025 by the Learned Tribunal.
- c)** The respondent had served the petitioner with an Affidavit of Evidence of Mr. Sankalan Dutta affirmed on March 23, 2026 which now exhibited various documents from Exhibit 1 to Exhibit 186. It is pertinent to mention that various documents have been annexed which were not part of the Admission and



Denial and as such has been unilaterally included in the Affidavit of Evidence.

- d) The Advocates of the petitioner had on the first occasion after being in receipt of the Affidavit of Evidence as well as on perusal of the same raised objection regarding the introduction of new documents through the Affidavit of Evidence through his email dated March 30, 2026. However, such objection of the petitioner was turned down by the Learned Tribunal on March 31, 2026 and the Tribunal had kept the matter on April 6, 2026 for cross examination of the respondent's first witness.

25. The petitioner's advocate on April 6, 2026 before commencing the cross examination had raised the following issues for consideration by the Learned Arbitral Tribunal:-

a. Whether new documents could have been introduced through the Affidavit of Evidence after completion of the exercise of Discovery and Inspection and filing of Admission and Denial?

b. Whether the respondent should have filed all of its Affidavit of Evidence of the witnesses at once in view of the provision contained in Order XVIII Rule 4, Sub Rule 1(A) of the Code of Civil Procedure, 1908 as amended by the Commercial Courts Act, 2015?

26. The petitioner had duly argued that the witness action should be deferred till the new documents so disclosed should be discarded and



a direction upon the respondent to file all of its Affidavit of Evidence of the party giving evidence. However, the Learned Arbitral Tribunal had mechanically negated the contention of the petitioner.

- 27.** The principle argument, put forward by Mr. Dutta is the petitioner's contention in support of the issues raised above, concerns speedy disposal of the lis, reduce ad-hoc evidence and align trial practices in accordance and manner provided in the Commercial Courts Act, 2015. The applications filed by the respondent under Section 9 of the Arbitration and Conciliation Act, 2015 and Section 11 of the Arbitration and Conciliation Act, 2015 were under the Commercial Division of the Hon'ble High Court at Calcutta and as such the provisions made applicable to the Commercial Division will be squarely applicable to the proceedings in Arbitration before a Learned Arbitral Tribunal.
- 28.** It is further stated that the Learned Arbitral Tribunal erred in holding that the provisions as stated hereinabove were not applicable to arbitration proceedings governed under the Arbitration and Conciliation Act, 1996 without considering the fact that the procedural law in a commercial dispute will be applicable to an arbitration proceedings as well.
- 29.** It is also submitted that the Learned Arbitral Tribunal however took shelter under Section 19 of the Arbitration and Conciliation Act, 1996 to avoid applying the provision in the arbitration proceedings. While doing so, the Learned Arbitral Tribunal had wrongly distinguished the



judgment of the Hon'ble Supreme Court reported in (2018) 11 SCC 470 cited by the petitioner.

The judgment of the Hon'ble Supreme Court makes it abundantly clear that the Arbitral Tribunal is to draw sustenance from the provisions contained in the Code of Civil Procedure, 1908 as amended by the Commercial Courts Act, 2015.

30. The purpose behind such filing of all the Affidavit of Evidence is that the subsequent witness, if any, cannot be allowed to come and fill up the gaps so created by the first witness and make the case of the respondent better which, it otherwise does not have.

31. The applications filed by the respondent under Section 9 of the Arbitration and Conciliation Act, 2015 and Section 11 of the Arbitration and Conciliation Act, 2015 were under the Commercial Division of the Hon'ble High Court at Calcutta and as such the provisions made applicable to the Commercial Division will be squarely applicable to the proceedings in Arbitration before a Learned Arbitral Tribunal.

32. The appointment of Learned Sole Arbitrator was done by way of an order dated December 19, 2024 which was subsequently modified on January 20, 2025 passed in AP-COM/1045/2024 under Section 11 of the Arbitration and Conciliation Act, 1996 by the Hon'ble High Court at Calcutta in its Ordinary Original Civil Jurisdiction, Commercial Division. Copies of the orders dated December 19, 2024 and January



20, 2025 are annexed hereto and collectively marked as "Annexure A".

33. In *Bhatia International vs Bulk Trading S.A. and Anr.*, (2002) 4

SCC 105, decided on March 13, 2002, the Supreme Court held:-

“26. Mr Sen had also submitted that Part II, which deals with enforcement of foreign awards does not contain any provision similar to Section 9 or Section 17. As indicated earlier, Mr Sen had submitted that this indicated the intention of the legislature not to apply Sections 9 and 17 to arbitrations, like the present, which are taking place in a foreign country. The said Act is one consolidated and integrated Act. General provisions applicable to all arbitrations will not be repeated in all Chapters or Parts. The general provisions will apply to all Chapters or Parts unless the statute expressly states that they are not to apply or where, in respect of a matter, there is a separate provision in a separate Chapter or Part.....”

34. In *SREI Infrastructure Finance Limited vs Tuff Drilling Private*

Limited (Supra), held:-

*“26. There cannot be a dispute that the power exercised by the Arbitral Tribunal is quasi-judicial. In view of the provisions of the 1996 Act, which confers various statutory powers and obligations on the Arbitral Tribunal, we do not find any such distinction between the statutory tribunal constituted under the statutory provisions or Constitution insofar as the power of procedural review is concerned. We have already noticed that Section 19 provides that the Arbitral Tribunal shall not be bound by the rules of procedure as contained in the Civil Procedure Code. Section 19 cannot be read to mean that the Arbitral Tribunal is incapacitated in drawing sustenance from any provisions of the Code of Civil Procedure. This was clearly laid down in *Nahar Industrial Enterprises Ltd. v. Hong Kong and Shanghai Banking Corpn.* [*Nahar Industrial Enterprises Ltd. v. Hong**



Kong and Shanghai Banking Corpn., (2009) 8 SCC 646 : (2009) 3 SCC (Civ) 481] . In para 98(n), the following was stated: (SCC p. 693)

“(n) It is not bound by the procedure laid down under the Code. It may however be noticed in this regard that just because the Tribunal is not bound by the Code, it does not mean that it would not have jurisdiction to exercise powers of a court as contained in the Code. “Rather, the Tribunal can travel beyond the Code of Civil Procedure and the only fetter that is put on its powers is to observe the principles of natural justice.” (See ICICI LTD. v. Grapco Industries Ltd. [ICICI LTD. v. Grapco Industries Ltd., (1999) 4 SCC 710])

34. *In the present case, the Arbitral Tribunal has rejected the application of the claimant by order dated 26-4-2012 taking the view that after an order is passed by it terminating the proceedings, it cannot pass the order recommencing the arbitration proceedings. In view of the above discussions, we are of the view that the Arbitral Tribunal committed an error in holding that it has no jurisdiction to recall an order terminating the proceedings under Section 25(a). The Arbitral Tribunal having not considered the cause shown by the claimant in its application, it is in the ends of justice that the Arbitral Tribunal be asked to consider the application filed by the claimant dated 20-1-2012 praying for recall of the order dated 12-12-2011 and to grant extension for filing the statement of claim.”*

35. In ***Surya Food and Agro Limited vs OM Traders and Anr., (2023)***

7 High Court Cases (Del) 350, decided on January 20, 2023, the

Court held:-

“49. *In terms of sub-section (2) of Section 16 of the Commercial Courts Act, the commercial divisions and commercial courts are required to follow the provisions of the CPC as amended by the Commercial Courts Act,*



2015. Sub-section (3) of Section 16 of the Commercial Courts Act expressly provides that the provisions of the CPC, as amended by the Commercial Courts Act, would prevail in case there is any conflict between the provisions of any rule of the jurisdictional High Court or any amendment to the CPC by the State Government. The Commercial Courts Act is a special enactment and the same would prevail in case of any conflict with the 2018 Rules.

50. In *HPL (India) Ltd. v. QRG Enterprises* [HPL (India) Ltd. v. QRG Enterprises, 2017 SCC OnLine Del 6955], this Court had referred to the provisions of Section 16 of the Commercial Courts Act and held that if there was any conflict with the provisions of the said Act and the provisions contained in any other law for the time being in force, the Commercial Courts Act would have an overriding effect. In *Indian Style Wrestling Assn. of India v. Wrestling Federation of India* [Indian Style Wrestling Assn. of India v. Wrestling Federation of India, 2019 SCC OnLine Del 9902], this Court had expressly held that the provisions of Commercial Courts Act would prevail in case of any conflict with the provisions of the 2018 Rules.”

36. Section 19 of the Arbitration and Conciliation Act, 1996 being relevant is reproduced herein:-

“19. Determination of rules of procedure.—(1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).

(2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.

(3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.



(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.”

37. Section 16 of the Commercial Court’s Act, 1908 notes the amendment to the Code of Civil Procedure, 1908 in its application to commercial disputes.

38. Thus, Amendment of Order XVIII Rule 4, after sub-rules (1), the following sub rules have been added:-

“(1-A) The affidavits of evidence of all witnesses whose evidence is proposed to be led by a party shall be filed simultaneously by that party at the time directed in the first Case Management Hearing.

(1-B) A party shall not lead additional evidence by the affidavit of any witness (including of a witness who has already filed an affidavit) unless sufficient cause is made out in an application for that purpose and an order, giving reasons, permitting such additional affidavit is passed by the Court.

(1-C) A party shall however have the right to withdraw any of the affidavits so filed at any time prior to commencement of cross-examination of that witness, without any adverse inference being drawn based on such withdrawal:

Provided that any other party shall be entitled to tender as evidence and rely upon any admission made in such withdrawn affidavit.”.

39. This is the amendment to the CPC, which the petitioners wish to avail, on the principle ground:-



“The applications filed by the respondent under Section 9 of the Arbitration and Conciliation Act, 2015 and Section 11 of the Arbitration and Conciliation Act, 2015 were under the Commercial Division of the Hon'ble High Court at Calcutta and as such the provisions made applicable to the Commercial Division will be squarely applicable to the proceedings in Arbitration before a Learned Arbitral Tribunal.”

40. The said contention of the petitioners herein has been rejected by the learned Arbitrator as per Section 19(1) and (4) of the Arbitration and Conciliation Act 1996.

41. The learned Arbitrator, while referring to the judgment of the Hon'ble Apex Court in ***Srei Infrastructure Finance Ltd. (Supra)*** was of the following view:-

*“.....Therefore, the decision in the case of **Srei Infrastructure Finance Ltd** (supra), relied upon by Mr. Alim applies only to an Arbitration Proceeding where the Code of Civil Procedure referred to in Section 19 of the Arbitration Act applies but taking reliance upon the above decision, Mr. Alim cannot ask an Arbitral Tribunal to follow the principles of **provisions contained Rules 4(1A), 4(1B) and 4(1C) of Order XVIII contained in the Code which is applicable only for the trial of a commercial suit within the meaning of Commercial Court Act, 2015.** In the Commercial Court Act, 2015, Section 10 is the only provision relating to Arbitration which has nothing to do with the proceeding before an Arbitrator but relates to jurisdiction in respect of arbitration matters. Section 10 is quoted below:*

"10. Jurisdiction in respect of arbitration matters. - Where the subject-matter of an arbitration is a commercial dispute of a specified value and-



(1) If such arbitration is an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed in a High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(2) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(3) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted.”

*Thus, an Arbitrator dealing with an arbitration proceeding has no scope of taking sustenance from any of the provisions of the code of civil procedure **which are applicable to trial of commercial suit in a commercial court.....”***

42. On considering the materials on record including the impugned order and the respective arguments of the parties herein along with judgments relied upon, this Court shall now make all endeavour simplify the total case as made out by the parties and also tribunal.



43. The relevant paragraphs from the judgment in **Srei Infrastructure**

Finance Ltd. (Supra) are reproduced herein:-

*“26. There cannot be a dispute that the power exercised by the Arbitral Tribunal is quasi-judicial. In view of the provisions of the 1996 Act, which confers various statutory powers and obligations on the Arbitral Tribunal, we do not find any such distinction between the statutory tribunal constituted under the statutory provisions or Constitution insofar as the power of procedural review is concerned. **We have already noticed that Section 19 provides that the Arbitral Tribunal shall not be bound by the rules of procedure as contained in the Civil Procedure Code.** Section 19 cannot be read to mean that the Arbitral Tribunal is incapacitated in drawing sustenance from any provisions of the Code of Civil Procedure. **This was clearly laid down in Nahar Industrial Enterprises Ltd. v. Hong Kong and Shanghai Banking Corpn. [Nahar Industrial Enterprises Ltd. v. Hong Kong and Shanghai Banking Corpn., (2009) 8 SCC 646 : (2009) 3 SCC (Civ) 481] . In para 98(n), the following was stated: (SCC p. 693)***

*“(n) It is not bound by the procedure laid down under the Code. It may however be noticed in this regard that **just because the Tribunal is not bound by the Code, it does not mean that it would not have jurisdiction to exercise powers of a court as contained in the Code.** “Rather, the Tribunal can travel beyond the Code of Civil Procedure and the only fetter that is put on its powers **is to observe the principles of natural justice.**” (See ICICI LTD. v. Grapco Industries Ltd. [ICICI LTD. v. Grapco Industries Ltd., (1999) 4 SCC 710])*

29. The Delhi High Court in *Awasthi Construction Co. v. State (NCT of Delhi)* [Awasthi Construction Co. v. State (NCT of Delhi), 2012 SCC OnLine Del



5443 : (2013) 1 Arb LR 70] has elaborately considered this issue. In paras 17 and 18, the following has been held: (SCC OnLine Del)

“17. We may in this regard also notice that the legislature, in Section 25, has not provided for termination of proceedings automatically on default by a party but has vested the discretion in the Arbitral Tribunal to, on sufficient cause being shown condone such default. We are of the view that no distinction ought to be drawn between showing such sufficient cause before the proceedings are terminated and after the proceedings are terminated. If the Arbitral Tribunal is empowered to condone default on sufficient cause being shown, it matters not when the same is shown. It may well-nigh be possible that the sufficient cause itself is such which prevented the party concerned from showing it before the proceedings terminated. It would be a pedantic reading of the provision to hold that the Arbitral Tribunal in such cases also stands denuded. Once the legislature has vested the Arbitral Tribunal with such power, an order of termination cannot be allowed to come in the way of exercise thereof.

18. There is another reason for us to hold so. The emphasis of the Arbitration Act is to provide an alternative dispute resolution mechanism. The provisions of the Act ought to be interpreted in a manner that would make such adjudication effective and not in a manner that would make arbitration proceedings cumbersome. A view that the Arbitral Tribunal is precluded, even where sufficient cause exists, from reviving the arbitral proceedings and the only remedy available to a party is a writ petition and which remedy is available only in the High Court often situated at a distance from the place where the parties are located, would be a deterrent to arbitration. It is also worth mentioning that Section 19(2) of the Act permits the parties to agree on the procedure to be



followed by the Arbitral Tribunal. The parties may, while so laying down the procedure, provide for the remedy of review/revival of arbitral proceedings and which agreement would be binding on the Arbitral Tribunal. If the Arbitral Tribunal in such a situation would be empowered to, on sufficient cause being shown, revive the arbitral proceedings, we see no reason to, in the absence of such an agreement hold the Arbitral Tribunal to be not empowered to do so. If it were to be held that such power of review/recall is not available to an Arbitral Tribunal, the Arbitral Tribunal would not be competent to set aside an order under Section 25(b) also, compelling the respondent against whom proceedings have been continued, to file a writ petition, making the continuation of proceedings before the Arbitral Tribunal a useless exercise.

34. The Arbitral Tribunal having not considered the cause shown by the claimant in its application, it is in the ends of justice that the Arbitral Tribunal be asked to consider the application filed by the claimant

- 44.** The Hon'ble Supreme Court in ***Srei Infrastructure (Supra)***, clearly held in a case deciding the power of an arbitral tribunal in procedural review, while taking into due consideration, Section 19 of the Arbitration and Conciliation Act, 1996, **categorically** stated as follows:-

“26. We have already noticed that Section 19 provides that the Arbitral Tribunal shall not be bound by the rules of procedure as contained in the Civil Procedure Code. Section 19 cannot be read to mean that the Arbitral Tribunal is incapacitated in drawing sustenance from any provisions of the Code of Civil Procedure. This was clearly laid down in *Nahar Industrial Enterprises Ltd. v. Hong Kong and Shanghai Banking Corpn.* [Nahar Industrial Enterprises Ltd. v. Hong Kong and Shanghai Banking



Corpn., (2009) 8 SCC 646 : (2009) 3 SCC (Civ) 481] . In para 98(n), the following was stated: (SCC p. 693)

“(n) It is not bound by the procedure laid down under the Code. It may however be noticed in this regard that just because the Tribunal is not bound by the Code, it does not mean that it would not have jurisdiction to exercise powers of a court as contained in the Code. “Rather, the Tribunal can travel beyond the Code of Civil Procedure and the only fetter that is put on its powers is to observe the principles of natural justice.”

27. We thus are of the view that principles underlying Order 9 Rule 9 can very well be invoked by the arbitrator.....”

45. The Court referring to the view taken by Delhi High Court in **Awasthi**

Construction Co. v. State (NCT of Delhi), held:-

“.....18. There is another reason for us to hold so. The emphasis of the Arbitration Act is to provide an alternative dispute resolution mechanism. The provisions of the Act ought to be interpreted in a manner that would make such adjudication effective and not in a manner that would make arbitration proceedings cumbersome.....”

46. And finally at Para 34:-

“34. The Arbitral Tribunal having not considered the cause shown by the claimant in its application, it is in the ends of justice that the Arbitral Tribunal be asked to consider the application filed by the claimant”

47. Para 26 of Srei Infrastructure (Supra) has cleared the path in case of any doubt in the mind of an arbitrator in arbitration proceedings, all in the “interest and ends of justice”, an



Arbitrator “can travel beyond the Code of Civil Procedure and the only fetter that is put on its powers is to observe the principles of natural justice”.

- 48.** In the given facts, considering the nature of evidence to be led, discharge of witness before the chief of next witness may prejudice one party. **Hence chief of all witnesses is to be done to prevent the possibility of covering lacuna of witness by subsequent witness, again in the interest of justice.**

Witness action should therefore take place by taking on record the chief of all witnesses before their respective cross examination takes place to prevent miscarriage of justice.

- 49.** The learned Arbitrator shall permit the petitioner’s prayer by directing the claimant to file all evidence in chief of the witnesses they wish to tender.
- 50.** Simultaneously as prayed for, the petitioner’s prayer for removal of the extra documents tendered by a witness, no more relied upon by the respondents, as a fresh new witness has been produced in place of the earlier witness, **be considered by the learned Arbitrator**, even if, learned tribunal’s view but not the Hon’ble Supreme Court’s view in ***Srei Infrastructure (Supra)***, being not bound by the rules of procedure as contained in the Civil Procedure Code and or the Commercial Courts’ Act, but **in the interest of justice, to meet the ends of justice.**



- 51. Finally the parties are at liberty/free to also invoke the provision of Section 19(2) of the Arbitration and Conciliation Act, once again also in the interest of justice, to avoid further delay.** The learned tribunal to permit the same, in the proceedings considering it's importance of early disposal.
- 52. The civil revision is thus allowed** on the order dated April 6, 2026 passed by the learned sole Arbitrator being **quashed and set aside.**
- 53. CO 1409 of 2026 is disposed of.**
- 54.** Applications, if any, connected thereto stand disposed of consequently.
- 55.** Interim order, if any, stands vacated.
- 56.** Photostat certified copy of this Judgment, if applied for, be given to the parties on priority basis upon compliance of all formalities.

(Shampa Dutt (Paul), J.)