



2026:DHC:8128



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of Decision: September 21st, 2026**# **CNR No. DLHC010450692026**+ **W.P.(C) 13882/2026, CM APPL. 64916/2026 & CM APPL. 64917/2026****RAJESH KUMAR**

.....Petitioner

Through: Mr. Rahul Sagar Sahay, Mr.
Pratham Arora & Mr. Raghav
Rajmalani, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Ms. Urvashi Basak, GP for
UOI.
Ms. Purnima Jain & Mr.
Madhur, Advs. for R-
2/GNCTD.# **CNR No. DLHC010450722026**+ **W.P.(C) 13884/2026, CM APPL. 64925/2026 & CM APPL. 64926/2026****M/S SRI EXPORT CO.**

.....Petitioner

Through: Mr. Rahul Sagar Sahay, Mr.
Pratham Arora & Mr. Raghav
Rajmalani, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Brijesh K. Tamber, CGSC,
Mr. Rahul Yadav, GP, Ms.
Chanchala Kumari & Mr.
Vinay Singh Bist, Advs.
Ms. Purnima Jain & Mr.
Madhur, Advs. for R-
2/GNCTD.**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**



1. W.P.(C) 13882/2026 is filed seeking the following prayers:

“(i) Issue appropriate writ and/or directions to set aside the Impugned Order dated 14.04.2026, 46

(ii) Issue a writ of mandamus and/or direct the Respondent No.3 to waive off the deposit of the Petitioner’s share of arbitrator’s fees and DIAC administrative charges in arbitration proceedings bearing Case Ref. No. DIAC/10617/03-25, or in the alternative, direct that the requirement of deposit of the Petitioner’s share of arbitral fees be deferred until the conclusion of the arbitral proceedings, with liberty to the Arbitral Tribunal to determine the final allocation of costs in the award

(iii) Issue a writ of mandamus directing the Respondent No. 1 2, and/ or 3 to incorporate appropriate suggestion as mentioned in paragraph Y or frame appropriate rules and guidelines for providing financial and/or structural support for indigent claimants/ counter-claimants in the arbitration proceedings.;

(iv) Pass any other order(s) as this Hon’ble Court may deem fit in the interest of justice.”

2. W.P.(C) 13884/2026 is filed seeking the following prayers:

“(i) Issue appropriate writ and/or directions to set aside the Impugned Order dated 29.05.2026,

(ii) Issue a writ of mandamus and/or direct the Respondent No.3 to waive off the deposit of the Petitioner’s share of arbitrator’s fees and DIAS administrative charges in arbitration proceedings bearing Case Ref. No. DIAC/12090/12-25, or in the alternative, direct that the requirement of deposit of the Petitioner’s share of arbitral fees be deferred until the conclusion of the arbitral proceedings, with liberty to the Arbitral Tribunal to determine the final allocation of costs in the award

(iii) Issue a writ of mandamus directing the Respondent No. 1 2, and/ or 3 to incorporate appropriate suggestion as mentioned in paragraph V or frame appropriate rules and guidelines for providing 48 financial and/or structural support for indigent claimants/ counter-claimants in the arbitration proceedings;

(iv) Pass any other order(s) as this Hon’ble Court may deem fit in the interest of justice.”

3. Briefly stated, the petitioner in W.P.(C) 13882/2026 initially filed a suit for possession and recovery of sums before the learned Commercial Court, South District, Saket Courts, Delhi, however, the



same was rejected on account of an application under Section 8 of the Arbitration and Conciliation Act, 1996 being filed by the respondent. Thereafter, the petitioner filed an application under Section 11 of the Arbitration and Conciliation Act, 1996 before this Court, and pursuant to the same, this Court *vide* order dated 18.03.2025 appointed an arbitrator under the aegis of the Delhi International Arbitration Centre ('DIAC'). The arbitral proceedings, however, stood terminated on account of the petitioner being unable to pay the fees of the arbitral institution, i.e., DIAC *vide* order dated 14.04.2026.

4. The petitioner in W.P.(C) 13884/2026 is the respondent in a separate arbitration proceedings before the DIAC wherein their counter claim was dropped by the learned Arbitrator *vide* order dated 29.05.2026 on account of the petitioner being unable to pay its share of Fee and expenses of the arbitration.

5. The learned counsel for the petitioners submits that the petitioners have been left effectively remediless because they can neither pursue their remedies before a Civil/ Commercial Court due to an arbitration clause in the agreements between the parties nor can they pursue their claims in arbitration due to their inability to pay the fees of the arbitral institution, i.e., DIAC.

6. He submits that Section 38(2) of the Arbitration and Conciliation Act, 1996 and Rule 33.5 of the Delhi International Arbitration Centre (DIAC) (Arbitration Proceedings) Rules 2023 ('DIAC Rules') make it mandatory to pay the arbitral fee for commencement of proceedings and further provides that if such fee is not paid, the Arbitral Tribunal may suspend or terminate the arbitral



proceedings in respect of such claims.

7. He submits that even though the petitioners fall under the category of indigent person as per Order XXXIII of the Code of Civil Procedure, 1908, they are unable to claim their indigency to seek waiver of depositing the arbitral fee and as such, Section 38(2) of the Arbitration and Conciliation Act, 1996 and Rule 33.5 of the DIAC Rules, act as a financial barrier in access to justice, which is violative of Article 14 and 21 of the Constitution of India.

8. The learned counsel for the respondents vehemently oppose the present petition.

9. At the outset, this Court finds it apposite to examine the provisions of Section 38 of the Arbitration and Conciliation Act, 1996, the same is reproduced as under:

“38. Deposits.—(1) The arbitral tribunal may fix the amount of the deposit or supplementary deposit, as the case may be, as an advance for the costs referred to in sub-section (8) of Section 31, which it expects will be incurred in respect of the claim submitted to it:

Provided that where, apart from the claim, a counter-claim has been submitted to the arbitral tribunal, it may fix separate amount of deposit for the claim and counter-claim.

(2) The deposit referred to in sub-section (1) shall be payable in equal shares by the parties:

Provided that where one party fails to pay his share of the deposit, the other party may pay that share:

Provided further that where the other party also does not pay the aforesaid share in respect of the claim or the counter-claim, the arbitral tribunal may suspend or terminate the arbitral proceedings in respect of such claim or counter-claim, as the case may be.

(3) Upon termination of the arbitral proceedings, the arbitral tribunal



shall render an accounting to the parties of the deposits received and shall return any unexpended balance to the party or parties, as the case may be.”

(emphasis supplied)

10. A perusal of Section 38 of the Arbitration and Conciliation Act, 1996 makes it evident that the provision contemplates the payment of deposits towards the costs of arbitration by the parties in equal shares. Where one party fails to pay its share of the deposit, the other party may pay such share. However, where the requisite deposit is not paid by either party, the Arbitral Tribunal may suspend or terminate the arbitral proceedings in respect of the claim or counter-claim, as the case may be. Thus, the Arbitration and Conciliation Act, 1996 itself expressly contemplates termination of arbitral proceedings in circumstances where the requisite deposit towards the costs of arbitration remains unpaid.

11. The statutory scheme, therefore, recognises that an Arbitral Tribunal cannot ordinarily be required to continue adjudicating upon a claim or counter-claim in the absence of the requisite deposit towards the costs of such proceedings.

12. The aforesaid position has also been considered by the Supreme Court in ***Harshbir Singh Pannu v. Jaswinder Singh* : 2025 SCC OnLine 2742**, wherein the Hon'ble Supreme Court has examined the consequence of non-payment of arbitral fees under Section 38 of the Arbitration and Conciliation Act, 1996. The Court has recognised that Section 38(2) empowers the Arbitral Tribunal to terminate proceedings where the requisite deposit has not been made by the parties.



13. The principal submission of learned counsel for the petitioners, however, is that an exception ought to be carved out in favour of a party which is unable to pay the requisite arbitral fees. It is submitted that such a party ought to be permitted to prosecute its claim or counter-claim notwithstanding its inability to make the requisite deposit. This Court is unable to accept the aforesaid submission. Section 38 of the Arbitration and Conciliation Act, 1996 does not contemplate any exception on the ground of financial incapacity of a party. Thus, no exceptions or waivers can be granted to the petitioners, as prayed for in the present petitions.

14. The petitioners have also sought a direction to Respondent Nos. 1,2 & 3 to incorporate appropriate suggestions or frame rules and guidelines for providing financial and/or structural support to indigent claimants and counter-claimants in arbitral proceedings. The same is a matter of policy and fall within the domain of the legislature. This Court, while exercising jurisdiction under Article 226 of the Constitution of India, cannot direct formulation of a policy or frame rules in the manner suggested by the petitioners.

15. It is also pertinent to note that the petitioners have not challenged the constitutional validity of Section 38 of the Arbitration and Conciliation Act, 1996. In the absence of any challenge to the *vires* of the aforesaid provision, no orders can be passed considering that the impugned order has been passed in accordance with the applicable provisions.

16. Accordingly, the present petitions are dismissed.

17. Pending applications (if any) also stand disposed of.



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18. A copy of the order passed today be kept in the connected matter.

SEPTEMBER 21, 2026
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AMIT MAHAJAN, J