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

\# **CNR No. DLHC010511802026**

\+ CM(M) 2326/2026, CM APPL. 73585/2026 & CM APPL. 73586/2026

M/S SHANKAR ENTERPRISES & ANR. .....Petitioners

Through: Mr. Nikhil Rajput, Adv.

versus

M/S BIHANI MANUFACTURING PRIVATE LIMITED & ANR. .....Respondents

Through: Mr. Nabab Singh, Adv. for R-1.

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\# **CNR No. DLHC010511812026**

\+ CM(M) 2327/2026, CM APPL. 73587/2026 & CM APPL. 73588/2026

M/S JAGDISH ENTERPRISES & ANR. .....Petitioners

Through: Mr. Nikhil Rajput, Adv.

versus

M/S BIHANI MANUFACTURING PRIVATE LIMITED .....Respondent

Through: Mr. Nabab Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE AJAY DIGPAUL

O R D E R

% 27.10.2026

1. Through the present petitions, the petitioners are assailing the orders dated 03.10.2026 and 09.10.2026 passed by the learned Sole Arbitrator in

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Case Ref. No. DIAC/11605/09-25 titled 'M/s Bihani Manufacturing Pvt. Ltd. v. M/s Shankar Enterprise & Anr.', and in Case No. 1/2026 titled *'M/s Bihani Manufacturing Pvt. Ltd. v. M/s Jagdish Enterprise & Anr.'*, whereby the costs of Rs. 50,000 and Rs.70,000 were imposed on the petitioners, payable to the learned Tribunal.

2. Succinctly put, it is the case of the petitioners that they are the defendants in both of the underlying proceedings pending before the learned Arbitral Tribunal.

3. In view thereof, they moved two applications before the learned Arbitral Tribunal in both proceedings:

(i) The first application was moved under Section 18 and 19 of the Arbitration and Conciliation Act, 1996 *("the Arbitration Act)* read with Section 151 of the Code of Civil Procedure, 1908 *("CPC")*, seeking recall/modification of the order dated 29.08.2026, and 24.08.2026 whereby their right to file the statement of defense was foreclosed.

(ii) The second application was moved under Section 43,18 and 19 of the Arbitration Act read with Section 151 CPC seeking condonation of delay of six days in transmission/filing of the statement of defense.

4. The learned Arbitral Tribunal *vide* impugned orders dated 03.10.2026, and 09.10.2026, in the interest of justice, allowed the applications moved by the petitioners under Section 18 and 19 of the Arbitration Act, subject to the costs of Rs. 25,000/- and Rs.35,000/- respectively, payable to the learned Tribunal. It further directed the petitioners herein to file their statement of defense within a period of one week, failing which their right to the same shall be closed. As regards the applications moved by the petitioners under

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Section 43, 18 and 19 of the Arbitration Act, the learned Tribunal recorded that although no explanation was provided for the said delay, the same ought to be condoned in the interest of justice and equality. Accordingly, these applications were allowed subject to the costs of Rs.25,000/-, and Rs. 35,000/- respectively, payable to the learned Tribunal. The aforesaid costs were directed to be deposited before the learned Tribunal within a period of three weeks from the date of the orders.

5. Learned counsel appearing on behalf of the petitioners submits that the costs imposed upon the petitioners *vide* impugned orders, are contrary to the provision of Section 31A of the Arbitration Act. It is further submitted that the provision allows the arbitral tribunal to act upon its discretion to determine whether the costs are payable, and the manner in which the costs ought to be paid, by one party to another.

6. It is contended that the scheme of Section 31A does not empower the arbitral tribunal to impose costs which are payable to the tribunal itself. Reliance is placed on the judgment of the High Court of Bombay, passed in '***Modi Dairy v. Alfa Laval (India) Ltd., Arbitration Petition No. 104/2018'***, wherein it was held that an arbitrator, apart from charging the fees, cannot direct any party to pay costs to the arbitrator itself on any ground, including the ground that the pleadings have not been filed within time by the parties, or for granting extension to file pleadings.

7. Having heard the learned counsel appearing for the petitioners, it is *prima facie* observed that the aspect of imposition of costs upon the petitioners, which are required to be deposited before the learned Arbitral Tribunal *vide* impugned orders dated 03.10.2026, and 09.10.2026, warrants consideration by this Court.

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8. In view of the aforesaid, this Court deems it appropriate to stay the operation of the impugned orders dated 03.10.2026 and 09.10.2026, passed by the learned Sole Arbitrator in Case Ref. No. DIAC/11605/09-25, and in Case No. 1/2026, to the extent where it directs the petitioners to deposit the costs imposed upon them, to the learned Arbitral Tribunal within a period of three weeks, till the next date of hearing.

9. It is clarified that the proceedings pending before the learned Arbitral Tribunal shall proceed further in accordance with law.

10. Issue notice to the respondents.

11. Mr. Nabab Singh, learned counsel, accepts notice on behalf of respondent no.1.

12. List on 25.11.2026.

AJAY DIGPAUL, J

OCTOBER 27, 2026/*AS/os*

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