2026:AHC:239325

**AFR**

**Reserved on 15.10.2026**
**Delivered on 23.11.2026**

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**ARBITRATION AND CONCILI. APPL.U/S11(4) No. - 13 of 2025**

M/S Reliance Infrastructure Limited

.....Applicant(s)

Versus

Purvanchal Vidyut Vitran Nigam Ltd.

.....Opposite Party(s)

| | | |
|---|---|---|
| Counsel for Applicant(s) | : | Shobhit Chauhan |
| Counsel for Opposite Party(s) | : | Udit Chandra |

**Court No. - 53**

**HON'BLE VIKAS BUDHWAR, J.**

1. Shri Nikhil Chawla along with Shri Sameer Sharma and Shri Shobhit Chauhan, learned counsel for the applicant and Shri Udit Chandra along with Sri Nitesh Patel, learned counsel for the opposite party.

2. The counsel for the rival parties have made a joint statement that they do not propose to file any further affidavits, thus, with the consent of the parties, the application is being decided at the admission stage.

**Facts**

3. The case of the applicant as per the pleadings set-forth in the present application under Section 11(6) r/w Section 15(2) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'A&C Act, 1996') are that the applicant claims himself to be a company registered under the Companies Act, 2013 having its registered office at 'H' Block, 1st Floor, Dhirubhai Ambani Knowledge City, Navi Mumbai, 400710 and is engaged in the business of generation, transmission and distribution of electricity and execution of infrastructure and power projects as Engineering, Procurement and Constructions (EPC) Contractor. The opposite party, Purvanchal Vidyut Vitran Nigam Ltd. (a Government of Uttar Pradesh Underatking) (hereinafter referred to as 'Opposite Party') is a company incorporated under

the provisions of the Companies Act, 1956 engaged in power distribution.

4. The opposite party floated tenders for carrying out rural electrification works in seven districts, viz., Kaushambi, Fatehpur, Chandauli, Ghazipur, Sonbhadra, Sant Ravidas Nagar and Basti (comprising of four packages) of State of Uttar Pradesh under Government of India Scheme known as "Rajiv Gandhi Grameen Vidyutikaran Yojana (RGGVY)" - Tenth Plan. Under the said scheme, the Government of India aimed for electrification of one lakh villages and one crore households across the country. The details of the tenders are as under:

*"(i) Tender No. EAV/KSMFTP/REC/VE/04-05/11, dated 31.03.2005*

*(ii) Tender No. EAV/CNB-GZP/ REC/ VE/04-05/09, dated 31.03.2005*

*(iii) Tender No. EAV/SNB-SRN/REC/VE/04-05/10, dated 31.03.2005*

*(iv) Tender No. EAV/BST/REC/VE/04-05/06 dated 31.03.2005"*

5. The applicant along with the other prospective bidders applied in pursuance of the said tender and submitted bid proposals which are as under:

*"(i) ND-EPC-RE (PuVVNL)/2005-06/11.1/27/Kaushambi/Fatehpur, dated 24th May 2005*

*(ii) ND-EPC-RE (PuVVNL)/2005-06/11.1/25/Chandauli/Gazipur, dated 24th May 2005*

*(iii) ND-EPC-RE(PuVVNL)/2005-06/11.1/26Sonebhadra/Sant Ravidas Nagar dated 24th May 2005*

*(iv) NDEPC-RE (PuVVNL)/2005-06/11.1/22/Basti, dated 24th May 2005."*

6. The applicant emerged as a successful bidder and was awarded contracts on turn-key basis under rural electrification work (RGGVY) Tenth Plan covering seven districts (comprising of four packages of State of Uttar Pradesh) which included survey, design, erection, civil, testing and commissioning of various 33/11 KV works, namely:

*"(i) 33/11 KV New Substations;*

*(ii) 33/11 KV Augmentation Substations;*

*(iii) 33/11 KV Line for New Substations;*

*(iv) 33/11 KV Line Augmentation Work;*

*(v) 11 KV Main Line;*

*(vi) 11 KV Spur Line.*

*(vii) Distribution Sub-Stations;*

*(viii) LTAB Works; and*

*(ix) Service Connections to BPL Consumers."*

7. Thereafter, contract agreements came to be executed between the applicant and the opposite parties with respect to Kanpur and Fatehpur, Chandauli, Ghazipur, Sonbhadra, Sant Ravidas Nagar and Basti on 21.09.2005 and 05.08.2005. Letter of Award (Supply) was issued on:-

*"(i)792/PuVVNL/V/P-1/ EAV/ RGGVY/KSM-FTP/11/ Supply dated 21.09.2005*

*(ii)794/PuVVNL/V/P-1/ RGGVY/CND-GZP/09/ Supply dated 05.08.2005*

*(iii)796/PuVVNL/V/P-1/ RGGVY/SNB-SRN/10/ Supply dated 05.08.2005*

*(V)798/PuVVNL/V/P-1/ EAV/RGGVY/BST/06/ Supply dated 05.08.2005"*

8. And Letter of Award (Erection) was issued on:-

*"(i)793/PuVVNL/V/P-1/ EAV/RGGVY/KSM-FTP/11/ Erection dated 21.09.2005*

*(ii)795/PuVVNL/V/P-1/ RGGVY/CND-GZP/09/ Erection dated 05.08.2005*

*(iii)797/PuVVNL/V/P-1/ RGGVY/SNB-SRN/10/ Erection dated*

*05.08.2005*

*(iv)799/PuVVNL/V/P-1/EAV/RGGVY/BST/06/ Erection dated 05.08.2005"*

9. Since dispute and differences stood arisen between the parties so the applicant addressed several correspondences between November, 2015 to January, 2017 with regard to release of the outstanding sums that were due and liable to be paid. However, the same was in vain so the applicant had no option but to issue notice invoking arbitration on 31.01.2017 under Clause 20 of the LoA and Clause 38 of the GCC claiming principal amount of Rs. 13.44 crores together with an interest at the rate of 18% per annum cumulatively amounting to the accrued sum of Rs. 37.01 crores.

10. As the dispute and differences were arbitrable, so an arbitral tribunal was constituted to resolve the said dispute, which was terminated by the consent of the parties and thereafter with the consent of the parties, Justice V.K. Shukla, former Judge of this Court, was appointed as sole arbitrator to decide the said dispute. The sole arbitrator entered reference and preliminary hearing was held on 03.08.2018 wherein the applicant filed its statement of claim and the opposite party was granted six weeks' time to file its statement of defence. The pleadings stood completed on 25.02.2019 when the applicant filed its rejoinder and further *vide* order dated 05.07.2019, the erstwhile arbitrator fixed the matter for final hearing of the argument with the consent of the parties. Subsequently, the matter was taken up for hearing on 08.08.2019 when both the parties requested for extension of six months in addition to the period provided under sub-section (1) of Section 29A of the A&C Act, 1996. The said request of the parties was acceded to and the mandate of the arbitrator to decide the dispute was extended for a further period of six months in addition to the period prescribed under sub-section (1) of Section 29A of the A&C Act, 1996 while extending the mandate till 25.02.2020.

11. However, in the meantime, the nation was confronted with the pandemic pertaining to COVID-19, resulting to the fact that the activities came to a standstill and noticing the same, the Hon'ble Apex Court in ***In Re: Cognizance for Extension of Limitation*** reported in **(*2022) 3 SCC 117*** opined that the period from 15.03.2020 to till 28.02.2022 shall be excluded

in computing the period of limitation, resulting to the fact that the arbitration proceedings stood continued unequivocally. In terms of the order of the Hon'ble Apex Court as referred to above, the period of 163 days which was accumulated between 15.03.2020 to 25.08.2020 was excluded for the calculation of the limitation period and thereafter the mandate of the sole arbitrator was extended and subsequently it came to be terminated on 11.08.2022. Since necessity arose for the parties to get concluded the arbitral proceedings while pronouncing an award so the applicant on 21.10.2022 filed an application under sub-section (5) of Section 29A of the A&C Act, 1996 before the Commercial Court, Varanasi seeking an extension of the mandate of the arbitrator for a period of one year. During the pendency of the aforesaid proceedings, learned sole arbitrator, Hon'ble Justice V.K. Shukla, retired judge of this Court, unfortunately passed away on 29.06.2024.

12. Constrained with the said situation, the applicant *vide* letter dated 22.08.2024 sought substitution of the arbitrator while proposing the names of the proposed arbitrator before the opposite party. The opposite party vide letter dated 30.09.2024 gave its reply, showing its inability on the ground that the letter dated 22.08.2024 was not clear and further showed their willingness to settle and / or compromise the dispute in that regard requiring the applicant to issue a communication to the office of the Chief Engineer (Planning) Purvanchal Vidyut Vitran Nigam Limited. Since the request for appointment of the arbitrator was not acceded to, so the applicant instituted the present proceedings under Section 11(6) r/w Section 15(2) of the A&C Act, 1996 for appointment of an independent arbitrator.

13. This Court entertained the application on 13.03.2026 requiring the opposite party to file its response.

14. A short counter affidavit has been filed by the opposite party sworn by Executive Engineer(RDS), Purvanchal Vidyut Vitran Nigam Ltd., Bhikharipur, Varanasi on 23.03.2026 to which the applicant has filed a short rejoinder affidavit dated 21.04.2026.

15. Written arguments have also been filed by the rival parties which are available on record.

**Submission of learned counsel for the applicant**

16. Learned counsel(s) for the applicant has sought to argue that inaction on the part of the opposite party is not appointing the sole arbitrator in terms of the agreement between the parties cannot be sustained even for a single moment. Elaborating the said submission, it is contended that in terms of Clause 38 of the GCC read with Clause 20 of the Letter of Award (LoA), the dispute is arbitrable and that is why with the consent of the parties, under Section 11(2) of the A&C Act, 1996, the sole arbitrator came to be appointed. However, on account of his unfortunate demise, now a substitute arbitrator is to be appointed. Submission is that though an application seeking extension of the mandate of the arbitrator for a period of one year came to be filed before the Commercial Court on 21.10.2022 under sub-section (5) of Section 29A of the A&C Act but the said application has become infructuous, particularly, when the arbitral tribunal is not in existence and thus the only recourse available to the applicant is to approach this Court for the appointment of the arbitrator. Thus, it is prayed that this Court may issue an appropriate direction appointing an arbitrator in terms of the GCC and LoA.

**Arguments of the learned counsel for the opposite party**

17. Countering the submissions so submitted by learned counsel for the applicant, Shri Udit Chandra along with Shri Nitesh Patel who appear for the opposite party have submitted that none of the contentions raised on behalf of the applicant has any legs to stand. Submission is that though the issue was arbitrable, consequent thereto, Justice V.K. Shukla, former Judge of this Court, was appointed as the arbitrator, however, the arbitral proceedings could not be concluded by pronouncing the award within the time so stipulated under Section 29A of the A&C Act, and an application under sub-section (5) of Section 29A of the A&C Act came to be preferred by the applicant on 21.10.2022 seeking an extension of the mandate of the erstwhile arbitrator for a period of one year. However, in the meantime, the erstwhile sole arbitrator expired on 29.06.2024 and the said application seeking extension of the mandate under sub-section (5) of Section 29A of the A&C Act, 1996 came to be dismissed for non-prosecution on 18.11.2024. Thus, the present application seeking appointment of the arbitrator under Section 11(6) r/w Section 15(2) of the A&C Act is not

maintainable, particularly, when the mandate of the arbitrator stands terminated, and until and unless, the application under sub-section (5) of Section 29A of the A&C Act is restored and allowed and an order for extension of the mandate is passed, the present application seeking appointment of the arbitrator is not maintainable. Contention is that the only recourse available to the applicant is to take appropriate proceedings for extension of the mandate and till the existence of the order dated 18.11.2024 dismissing the application for extension of the mandate, no relief can be accorded to the applicant.

18. Lastly, it has been argued that the applicant is flogging a dead horse, particularly, when the mandate of the arbitrator stood terminated by virtue of the dismissal of the application dated 21.10.2022 on 18.11.2024 and until and unless the order dated 18.11.2024 is recalled or set aside, no exception can be carved out. In order to buttress the said submissions, reliance has been placed upon the judgment of the Hon'ble Apex Court in ***Jagdeep Chowgule v. Sheela Chowgule & Ors., 2026 INSC 92; Mohan Lal Fatehpuria vs M/S Bharat Textiles, 2025 INSC 1409; Viva Highways Limited v. Madhya Pradesh Road Development Corporation Limited; 2026 (1) Apex Court Judgments (SC) 737; Bharat Sanchar Nigam Limited (BSNL) v. M/s Nortel Networks India Pvt. Ltd., 2021 (5) SCC 738; NTPC Ltd. v. M/s SPML Infra Ltd., 2023 (9) SCC 385; Rohan Builders (India) Private Limited v. Berger Paints India Limited, 2024 INSC 686; C. Velusamy v. K. Indhera (2026) 5 SCC 340***.

**Statutory Provisions**

19. To begin with, the Legislature enacted the Act by the name and the nomenclature of the Arbitration and Conciliation Act, 1996. The relevant extracts of the provisions are quoted hereinbelow:

> "***Section 2(1)(e)***- *“Court” means—*
>
> *(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter*

*of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;*

*(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;*

***11. Appointment of arbitrators.-***

*(1) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.*

*(2) Subject to sub-section (6), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.*

*(3) Failing any agreement referred to in sub-section (2), in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.*

*(3A) [The Supreme Court and the High Court shall have the power to designate, arbitral institutions, from time to time, which have been graded by the Council under section 43-1, for the purposes of this Act:*

*Provided that in respect of those High Court jurisdictions, where no graded arbitral institution are available, then, the Chief Justice of the concerned High Court may maintain a panel of arbitrators for discharging the functions and duties of arbitral institution and any reference to the arbitrator shall be deemed to be an arbitral institution for the purposes of this section and the arbitrator appointed by a party shall be entitled to such fee at the rate as specified in the Fourth Schedule:*

*Provided further that the Chief Justice of the concerned High Court may, from time to time, review the panel of arbitrators.]*

*(4) If the appointment procedure in sub-section (3) applies and*

*(a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or*

*(b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment, [the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be]*

*(5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree [the appointment shall be made on an application of the party in accordance with the provisions contained in sub-section (4).]*

*(6) Where, under an appointment procedure agreed upon by the parties.*

*(a) a party fails to act as required under that procedure; or*

*(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or*

*(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure, a [the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be] [Substituted by Act No. 33 of 2019, dated 9.8.2019.] to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.*

*(6A) [The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of*

*any Court, confine to the examination of the existence of an arbitration agreement.]*

*(6B) [The designation of any person or institution by the Supreme Court or, as the case may be, the High Court, for the purposes of this section shall not be regarded as a delegation of judicial power by the Supreme Court or the High Court.]*

*(7) [A decision on a matter entrusted by sub-section (4) or sub-section (5) or sub-section (6) to the Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court is final and no appeal including Letters Patent Appeal shall lie against such decision]*

*(8) [[The arbitral institution referred to in sub-sections (4), (5) and (6)] [Substituted by Act No. 3 of 2016 dated 31.12.2015.], before appointing an arbitrator, shall seek a disclosure in writing from the prospective arbitrator in terms of sub-section (1) of section 12, and have due regard to-*

*(a) any qualifications required for the arbitrator by the agreement of the parties; and*

*(b) the contents of the disclosure and other considerations as are likely to secure the appointment of an independent and impartial arbitrator.]*

*(9) In the case of appointment of sole or third arbitrator in an international commercial arbitration, [the arbitral institution designated by the Supreme Court] [Substituted 'the Supreme Court or the person or institution designated by that Court' by Act No. 33 of 2019, dated 9.8.2019.] may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.*

*(10) [The Supreme Court or, as the case may be, the High Court, may make such scheme as the said Court may deem appropriate for dealing with matters entrusted by sub-section (4) or sub-section (5) or sub-section (6), to it.]*

*(11) [Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) to different arbitral institutions, the arbitral institution to which the request has been first made under the relevant sub-section shall be competent to appoint.]*

*(12) Where the matter referred to in sub-sections (4), (5), (6) and (8) arise in an international commercial arbitration or any other arbitration, the reference to the arbitral institution in those sub-sections shall be construed as a reference to the arbitral institution designated under sub-section (3A).*

*(13) An application made under this section for appointment of an arbitrator or arbitrators shall be disposed of by the arbitral institution within a period of thirty days from the date of service of notice on the opposite party.*

*(14) The arbitral institution shall determine the fees of the arbitral tribunal and the manner of its payment to the arbitral tribunal subject to the rates specified in the Fourth Schedule.*

***Section 13. Challenge procedure.-***

*(1) Subject to sub-section (4), the parties are free to agree on a procedure for challenging an arbitrator.*

*(2) Failing any agreement referred to in sub-section (1), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in sub-section (3) of section 12, send a written statement of the reasons for the challenge to the arbitral tribunal.*

*(3) Unless the arbitrator challenged under sub-section (2) withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.*

*(4) If a challenge under any procedure agreed upon by the parties or under the procedure under sub-section (2) is not successful, the arbitral*

*tribunal shall continue the arbitral proceedings and make an arbitral award.*

*(5) Where an arbitral award is made under sub-section (4), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with section 34.*

*(6) Where an arbitral award is set aside on an application made under sub-section (5), the Court may decide as to whether the arbitrator who is challenged is entitled to any fees.*

***Section 14. Failure or impossibility to act.-***

*[(1) The mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, if]*

*(a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and*

*(b) he withdraws from his office or the parties agree to the termination of his mandate.*

*(2) If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate.*

*(3) If, under this section or sub-section (3) of section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of section 12.*

***Section 15. Termination of mandate and substitution of arbitrator.***

*(1) In addition to the circumstances referred to in section 13 or section 14, the mandate of an arbitrator shall terminate -*

*(a) where he withdraws from office for any reason; or*

*(b) by or pursuant to agreement of the parties.*

*(2) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.*

*(3) Unless otherwise agreed by the parties, where an arbitrator is replaced under sub-section (2), any hearings previously held may be repeated at the discretion of the arbitral tribunal.*

*(4) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section shall not be invalid solely because there has been a change in the composition of the arbitral tribunal.*

***Section 29A. Time limit for arbitral award-*** *[(1) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.*

*Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavour may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.]*

*(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.*

*(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.*

*(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period:*

*Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons*

*attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator (s) by not exceeding five per cent. for each month of such delay.*

*[Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:*

*Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.]*

*(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.*

*(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.*

*(7) In the event of arbitrator (s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.*

*(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.*

*(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.*

***Section 32. Termination of proceedings.-***

*(1) The arbitral proceedings shall be terminated by the final arbitral*

*award or by an order of the arbitral tribunal under sub-section (2).*

*(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where-*

*(a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,*

*(b) the parties agree on the termination of the proceedings, or*

*(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.*

*(3) Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.*

***Section 42. Jurisdiction.-***

*Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court."*

**Analysis**

20. I have heard the submissions so made across the bar and perused the record carefully.

21. Facts are not in issue. It is not in dispute that tenders came to be floated by the opposite party for supply and erection pursuant whereto the applicant along with others applied and the applicant was awarded tenders and agreement came to be executed on 05.08.2005 and 21.09.2005, followed by Letter of Appointment. As per the LoA (Letter of Appointment) and GCC, there happened to be an arbitration clause with respect to resolution of the disputes. Clause 38 of the GCC as well as Clause 20 of the LoA pertaining to Settlement of Disputes and Arbitration is being quoted

hereinunder:

> *"**38**. "If any dispute, difference or controversy shall at any time arise between the contractor on the one hand and the U.P. Power Corporation Ltd. and the Engineer of the Contract on the other touching the contract, or as to the true contruction, mea.ning and intent of any part of condition of the same, or as to the manner of execution, or as to the quality or description of, or payment for the same, or as to the true intent, meaning interpretation, construction or effect of the clauses of the contract, specifications or drawings or any of them, or as to anything to be done, omitted or suffered in pursuance of the contract or specifications, or as to the mode of carrying the contract into effect, or as to the breach or alleged breach of the contract, or as to any claims on account of such breach or alleged breach, or as to obviating or compensating for the commission of any such breach, or as to any other matter or thing whatsoever connected with of arising out of the contract, and whether before or during the progress or after the completion of the contract, such question, difference or dispute shall be referred for adjudication to the Chairman & Managing Director, U.P. Power Corporation Ltd. or to any other person nomination by him in this behalf and his decision in writing shall be final, binding and conclusive. This submission shall be deemed to be a submission to arbitration within the meaning of the Indian Arbitration Act, 1940 or any statutory modification thereof. The arbitrator may from time to time with consent of the parties enlarge the time for making and publishing award."*
>
> ***20.0 SETTLEMENT OF DISPUTES AND ARBITRATION***
>
> *20.1 All the difference or disputes arising out of this Contract shall be settled through the process of "Settlement of Dispute" and "Arbitration" as per Clause 38 of the "Form- A" and clause 2.18 of General Requirements of Specification Vol-I of the Bidding Documents. The provision of Arbitration and Reconciliation Act, 1996 as amended from time to time, shall apply.*
>
> ***20.2 The local court of Varanasi, High Court of Allahabad & Supreme Court of Delhi alone shall have the exclusive jurisdiction in all matters***

***out of this Contract. (Emphasis Added)***"

22. Since dispute and differences arose between the applicant and the opposite party, arbitration was invoked and as per the rival parties, Justice V.K. Shukla, former Judge of the Hon'ble Allahabad High Court, was appointed as the sole arbitrator. Statement of claim was submitted to which statement of defence was also filed but the award could not be pronounced within the time stipulated therein and in the meantime COVID-19 came into existence and as per the direction of the Hon'ble Court, the period from 15.03.2020 till 28.02.2022 was excluded from computing the period of limitation. However, the mandate of the erstwhile arbitrator came to be terminated on 11.08.2022 and an application came to be preferred on 21.10.2022 by the applicant seeking extension of the mandate for a period of one year before the Commercial Court. During the pendency of the same, the sole arbitrator, Hon'ble Justice V.K. Shukla, former Judge of this Court, expired on 29.06.2024. On 22.08.2024 an application came to be preferred by the applicant addressed to the opposite party seeking to propose the name of the arbitrator which was replied on 30.09.2024 that in case the applicant was willing to settle or to compromise, the applicant is to issue a letter to the Chief Engineer (Planning) of the Purvanchal Vidyut Vitran Nigam. On 18.11.2024, the application seeking to extend the mandate under sub-section (5) of the Section 29-A of the Act came to be dismissed for non-prosecution.

23. The bone of contention between the rival parties is whether the present proceedings under Section 11(6) r/w Section 15(2) of the A&C Act, 1996 would be maintainable, particularly, when the application under sub-section (5) of the Section 29-A of the Act came to be dismissed on 18.11.2024 for non-prosecution and the mandate which stood terminated, consequent to the death of the arbitrator.

24. For the ready reference, the communication dated 22.08.2024 of the applicant addressed to the opposite party is quoted hereinunder:

*"Subject: Appointment of Substitute Arbitrator in Pending Arbitration.*

*Sir,*

*1. This is in reference to the captioned arbitration proceedings invoked by the Claimant vide letter dated 31.01.2017 for resolution of disputes*

*between the parties.*

*2. It is stated that the arbitration proceedings were at the stage of evidence followed by final arguments by the respective parties. It is to be noted that owing to expiry of the mandate of Ld. Sole Arbitrator on 11.08.2022, RInfra filed the application of extension of mandate of Hon'ble Mr. Justice V.K. Shukla (Retd.), the Ld. Sole Arbitrator, on 20.10.2022 before the Commercial Court, Varanasi and the same is pending.*

*3. However, Hon'ble Mr. Justice V.K. Shukla (Retd.), the Ld. Sole Arbitrator in the present matter, unfortunately passed away during the pendency of the present arbitration proceedings. Moreover, the application for extension of mandate of the Ld. Sole Arbitrator pending before the Commercial Court, Varanasi has now become infructuous and irrelevant.*

*4. It is stated that since the parties had mutually appointed Hon'ble Mr. Justice V.K. Shukla as the Ld. Sole Arbitrator in the present proceedings vide letter dated 11.07.2018, and 'first hearing was conducted on 03.08.2018, it would be fair that the parties mutually decide to appoint a substitute arbitrator in light of the unfortunate demise of the Ld. Sole Arbitrator.*

*5. In view of the same, the Claimant is suggesting the following names to the Respondent for consideration;*

*a. Hon'ble Mr. Justice (Retd.) Dilip Bhonsle, Former Chief Justice, Allahabad High Court.*

*b. Hon'ble Mr. Justice (Retd.) Raghvendra Singh Chauhan, Former Chief Justice Uttarakhand High Court.*

*c. Hon'ble Mr. Justice (Retd.) Shailendra Saxena, Former Judge, Allahabad High Court.*

*d. Hon'ble Mr. Justice (Retd.) Zaki Ullah Khan, Former Judge Allahabad High Court*

*6. The Respondent may consider the same and provide its confirmation on either of the names suggested by the Claimant for appointment of a Ld. Sole Arbitrator so as to adjudicate the claims/disputes between the parties at the earliest.*

*7. Also, in view of the unfortunate development in the captioned arbitration proceedings, the claimant without prejudice to its rights and*

*contentions is willing to settle the matter amicably. In this regard the Respondent may also treat this as proposal for settlement amicably as mentioned above. kindly let us know so that steps can be taken in that regard."*

25. The communication dated 30.09.2024 of the Chief Engineer, Project of Purvanchal Vidyut Vitaran Nigam Limited is quoted hereinunder:

"**विषयः राजीव गांधी ग्रामीण विद्युतीकरण योजना-10वीं योजना से सम्बन्धित आप द्वारा प्रेषित पत्र *Ref No: RInfra/PuVVNL/2024-25/01,* दिनाक 22.08.2024 के सम्बन्ध में।**

मेसर्स रिलायन्स इन्फ्रास्ट्रक्चर प्रा०लि०,

रिलायन्स सेन्टर, निचला तल, 19,

वालचन्द हीराचन्द मार्ग, बलार्ड स्टेट

मुम्बई-400001

कृपया उपरोक्त विषयक मेसर्स रिलायन्स इन्फ्रास्ट्रक्चर प्रा० लि० के कार्यालय पत्रांक *Ref No: RInfra/PuVVNL/2024-25/01* दिनांक 22.08.2024 का सन्दर्भ ग्रहण करने का कष्ट करें। उक्त पत्र के माध्यम से सम्बन्धित प्रकरण में मध्यस्थों के नाम सुझाये गये हैं, परन्तु उक्त पत्र में हस्ताक्षर करने वाले पदाधिकारी का नाम एवं पद स्पष्ट नहीं है।

उक्त के सम्बन्ध में यदि आप समझौते के माध्यम से प्रकरण का निस्तारण करना चाहतें है तो इस सम्बन्ध में अपना प्रस्ताव इस कार्यालय को प्रेषित कर सकते हैं।"

26. In order to address the said issue, what would be relevant, would be a brief survey of the statutory provisions governing the field.

27. Section 2(1)(e) defines "Court", ordinary civil jurisdiction which means the Principal Civil Court of original jurisdiction in a district and includes the High Court in exercise of its ordinary original civil jurisdiction.

28. Section 11 talks about appointment of the arbitrator and sub-section (2) of Section 11 further provides that subject to sub-section (6), the parties are free to agree on a procedure for appointment of the arbitrator or arbitrators and sub-section (6) also provides that where, under an appointment procedure agreed upon by the parties, a party fails to act as required under that procedure or the parties or the two appointed arbitrators fail to reach an

agreement expected of them under that procedure or a person, including an institution, fails to perform any function entrusted to him or under that procedure, then the appointment shall be made on an application of the party by the arbitral institution designated by the Supreme Court in case of international commercial arbitration or by the High Court in case of arbitration other than International Commercial Arbitration.

29. Section 13 provides for challenge procedure and Section 14 further provides for failure or impossibility to act, whereby the mandate of the arbitrator stands terminated and he is to be substituted by another arbitrator if he becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay and he withdraws from the office or the parties agree to terminate his mandate.

30. Section 15 of the A&C Act provides for termination of the mandate and substitution of the arbitrator, according to which, in addition to the circumstances referred to in Section 13 and 14, the mandate of the arbitrator is to terminate when he withdraws from the office from any reason or pursuant to agreement of the parties then sub-section (2) of Section 15 comes into play, according to which, where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

31. Section 29-A came to be inserted by Act No. 3 of 2016 w.e.f. 25.10.2015 providing for time limit for arbitral award. Sub-section (1) of Section 29-A provides that in the case of awards other than international commercial arbitration, it shall be made within a period of twelve months from the date of completion of pleadings under sub-section (4) of Section 23, according to which, the statement of claim and the statement of defence shall be completed within a period of six months from the date, the arbitrator or all the arbitrators, as the case may be, receive notice in writing of their appointment.

32. Sub-section (2) of Section 29-A stipulates that if the award is not made within six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree. Sub-section (3) further provides that the parties may, by consent, extend the period specified in sub-section (1) for

making the award for a further period not exceeding six months. Sub-section (4) of Section 29-A stipulates that if the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrators shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period. Second proviso to the same to sub-section (4) stipulates that where an application under sub-section (3) is pending, the mandate of the arbitrator shall continue till the disposal of the said application. Sub-section (5) further provides that the extension of the period referred to under sub-section (4) may be on the application of any of the parties and may be granted only for sufficient reasons and on such terms and condition as may be imposed by the Court and sub- section (6) further provides that while extending the period under sub- section (4), it shall be open to the court to substitute one or all the arbitrators and if one or all of the arbitrators are substituted, therefore it shall continue from the stage already reached and the basis of the evidence and materials already on record and the arbitrators appointed under the section shall be deemed to have been received the said evidence and material.

33. The objection of the learned counsel for the opposite party to the extent that once an arbitrator came to be appointed with the consent of the parties under Section 11(2) of the A&C Act, 1996 and post termination of the mandate, no direction can be issued for appointment of substitute arbitrator under Section 11(6) read with Section 15(2) of the A&C Act, 1996 is attractive as the first blush but it is not liable to be accepted as such. Pertinently sub-section (2) of Section 11 provides for appointment of the arbitrator without intervention of the court with the consent of the parties, whereas sub-section 11(6) applies in those contingencies when the parties are not in agreement and they do not give their consent for appointment of the arbitrator and on the insistence of the parties, the courts intervenes and appoints an arbitrator. Thus there are two modes of appointment of the arbitrator one with the consent of the parties and other with the intervention of the court.

34. Now a question arises as to what recourse is available to a party to get appointed a substitute arbitrator, in case, the erstwhile arbitrators mandate comes to an end. For that very purpose, the answer is sub- section (2) of Section 15 of the A&C Act, 1996, according to which, when the mandate of

the arbitrator terminates then the substitute arbitrator is to be appointed according to the rules which were applicable to the appointment of the arbitrator being replaced. Meaning thereby that the same procedure which was adopted for appointment of the erstwhile arbitrator is to be again resorted to. There would be no difficulty in the event when the arbitrator came to be appointed with the intervention of the court under Section 11(6) as in that contingency, the parties can again approach the Court for appointment of the arbitrator under Section 11(6), however, in the case of appointment of the erstwhile arbitrator was with the consent of the parties under Section 11(2) of the A&C Act, 1996 and once on the request of one of the parties, the other party does not appoint the arbitrator then the only recourse available would be Section 11(6) as nobody can be remedyless. Logically also the procedure for appointment of the arbitrator is applicable to the appointment of the arbitrator being replaced stands accomplished which was by way of offering the proposal for appointment of the arbitrator and once the same did not materialise for whatever reasons then a stage comes wherein the Courts intervene while appointing the arbitrator under Section 11(6) of the A&C Act, 1996.

35. Moreover, in the present case, itself the applicant had invoked the provisions under Section 11(2) for appointment of an arbitrator while addressing a communication dated 22.08.2024 proposing the names of the arbitrator but the opposite party did not appoint arbitrator, thus, it can be safely said that the procedure so envisaged for appointment of the substitute arbitrator according to the rules which were applicable to the appointment of the arbitrator being replaced stood resorted to and once the opposite party did not honour the same while appointing the arbitrator then it is the Court under Section 11(6) read with Section 15(2) which has the jurisdiction to appoint the substitute arbitrator.

36. The said issue is no more *res integra* as the Hon'ble Apex Court in ***Yashwith Constructions (P) Ltd. v. Simplex Concrete Piles India Ltd. and Another, (2006) 6 SCC 204***, had the occasion to consider the said aspect and the following was observed as under:

> *"4. In our view, the learned Chief Justice and the Division Bench have rightly understood the scope of Section 15 of the Act. When the arbitrator*

*originally appointed in terms of the arbitration agreement withdrew for health reasons, the Managing Director, as authorized originally by the arbitration agreement, promptly appointed a substitute arbitrator. It is true that in the arbitration agreement there is no specific provision authorizing the Managing Director to appoint a substitute arbitrator if the original appointment terminates or if the originally appointed arbitrator withdraws from the arbitration. But, this so called omission in the arbitration agreement is made up by the specific provision contained in Section 15(2) of the Act. The withdrawal of an arbitrator from the office for any reason is within the purview of Section 15(1)(a) of the Act. Obviously, therefore Section 15(2) would be attracted and a substitute arbitrator has to be appointed according to the rules that are applicable for the appointment of the arbitrator to be replaced. Therefore, what Section 15(2) contemplates is an appointment of the substituted arbitrator or the replacing of the arbitrator by another according to the rules that were applicable to the appointment of the original arbitrator who was being replaced. The term "rules" in Section 15(2) obviously referred to the provision for appointment, contained in the arbitration agreement or any Rules of any Institution under which the disputes were referred to arbitration. There was no failure on the part of the concerned party as per the arbitration agreement, to fulfil his obligation in terms of Section 11 of the Act so as to attract the jurisdiction of the Chief Justice under Section 11(6) of the Act for appointing a substitute arbitrator. Obviously, Section 11(6) of the Act has application only when a party or the concerned person had failed to act in terms of the arbitration agreement. When Section 15(2) says that a substitute arbitrator can be appointed according to the rules that were applicable for the appointment of the arbitrator originally, it is not confined to an appointment under any statutory rule or rule framed under the Act or under the Scheme. It only means that the appointment of the substitute arbitrator must be done according to the original agreement or provision applicable to the appointment of the arbitrator at the initial stage. We are not in a position to agree with the contrary view taken by some of the High Courts."*

37. In ***San-A Tradubg Co. Ltd. v. I.C. Textiles Ltd.;*** **2012 (7) SCC 192**, the Hon'ble Apex Court observed as under -

*"17. The submission of the learned counsel for the respondent that as the named arbitrator has refused to act as an arbitrator, the arbitration agreement itself comes to an end, cannot be accepted because Section 15 provides for a remedy for appointment of another arbitrator when the arbitrator appointed by the parties as provided in the agreement refuses to act an arbitrator. Settlement of dispute between the parties through medium of an independent person in whom both parties repose confidence is the basic foundation on which the law of arbitration stands and is founded.*

*18. When the agreement provides for reference of a dispute to a particular individual and such agreed arbitrator refuses to act, the next appointment could be made as agreed by the parties, but where no such procedure is prescribed authorizing appointment of another arbitrator then the agreement clause cannot operate. It, therefore, follows that in case where the arbitration clause provides for appointment of a sole arbitrator and he had refused to act, then the agreement clause stands exhausted and then the provisions of Section 15 would be attracted and it would be for the Court under Section 11(6) to appoint an arbitrator on the procedure laid down in Section 11(6) being followed unless there is an agreement in the contract where the parties specifically debar appointment of any other arbitrator in case the named arbitrator refuses to act.*

*19. In the present case, I do not find any such stipulation in the contract entered into between the parties whereunder the parties have specifically debarred appointment of a fresh arbitrator if the named arbitrator refuses to act and perform his function as arbitrator. In the absence of any specific condition debarring appointment of a fresh arbitrator, it cannot be said that the arbitration clause in the contract agreement stands obliterated on the named arbitrator's refusal to perform his function."*

38. In ***ACC Limited (Formerly Associated Cement Company Limited) v. Global Cements Ltd., (2012) 7 SCC 71,*** the Hon'ble Apex Court observed as under -

*"15. The existence of an agreement is not in dispute, the question is about*

*its enforceability on the death of the named arbitrators. The facts clearly indicate that the parties in this case have contemplated that if any question or difference or dispute arises between them, in relation to or with respect to the meaning or effect of the contract or with respect to their rights and liabilities, the same would be referred to one of the two named arbitrators named in the arbitration clause. The question is whether Clause 21 would outlive the lives of the named arbitrators.*

*16. Section 14 of the Arbitration and Conciliation Act, 1996 provides for the circumstances in which the mandate of an arbitrator is to terminate. It says that the mandate of an arbitrator will end when it becomes impossible for him to perform his functions de facto or de jure or for some other reasons he fails to act without undue delay or withdraws from office or the parties agree to terminate his mandate.*

*17. Section 15(2) of the Act provides that where a substitute arbitrator has to be appointed due to termination of the mandate of the previous arbitrator, the appointment must be made according to the rules that were applicable to the appointment of the arbitrator being replaced. No further application for appointment of an independent arbitrator under Section 11 will lie where there has been compliance with the procedure for appointment of a substitute arbitrator. On appointment of the substitute arbitrator in the same manner as the first, no application for appointment of independent arbitrator under Section 11 could be filed. Of course, the procedure agreed upon by the parties for the appointment of the original arbitrator is equally applicable to the appointment of a substitute arbitrator, even if the agreement does not specifically say so. Reference may be made to the judgment of this Court in Yashwith Constructions (P) Ltd. v. Simplex Concrete Piles India Ltd.*

*18. Sections 14 and 15 provide the grounds for termination of the mandate of the arbitrator on the ground of incapability of the arbitrator to act or if he withdraws from his office or when the parties agree to the termination of the mandate of the arbitrator. Section 15(2) states that a substitute arbitrator shall be appointed as per the rules that were applicable to the appointment of the arbitrator being replaced. Section 15(2), therefore, has to be given a liberal interpretation so as to apply to all possible circumstances under which the mandate may be terminated."*

39. In ***Huawei Technologies Co. Ltd. v. Sterlite Technologies Ltd.;*****(2016) 1 SCC 721,** the Hon'ble Apex Court observed as under -

> *"6. Under Section 15(2) of the Act in a situation where the mandate of an arbitrator terminates, a substitute arbitrator is required to be appointed according to the rules that were applicable to the appointment of the arbitrator who is replaced. In Yashwith Constructions (P) Ltd. v. Simplex concrete Piles India Ltd. [(2006) 6 SCC 204], the term 'rules' appearing in Section 15(2) of the Act has been understood to be referring to the provisions for appointment contained in the arbitration agreement or any rules of any institution under which the disputes are to be referred to arbitration. In the present case, admittedly, there are no institutional rules under which the disputes between the parties are to be referred to arbitration and, therefore, the expression "rules" appearing in Section 15(2) of the Act will have to be understood with reference to the provisions for appointment contained in the Supply Contract."*

40. In ***Shailesh Dhairyawan v. Mohan Balkrishna Lulla, 2016 (3) SCC 619*** , the Hon'ble Apex Court observed as under -

> *"17. Thus, it will be seen that in the Yashwith Constructions case this Court construed Section 15(2) liberally and held that the expression "the rules" that were applicable to the appointment of the arbitrator would include the arbitration clause or agreement itself, apart from any institutional rules or other rules which may apply. Since it was clear that the Managing Director in the aforesaid case was the appointing authority for a particular arbitrator, in case the said arbitrator appointed refuses to act, the Managing Director was stated to be the authority under the arbitration agreement that could always appoint a substitute arbitrator in terms of Section 15(2). Similar is the case in the ACC Ltd. judgment where this Court held that despite two named arbitrators having died, substitute arbitrators could be appointed in terms of the said clause unless there is a clear prohibition or debarment that could be read on a true construction of the arbitration agreement. It found that the expression "at any time" clearly showed that the arbitration clause had no nexus with the lifetime of the named arbitrator and therefore no such prohibition could be read. It also held that the procedure agreed upon by*

*the parties for the appointment of the original arbitrator is equally applicable to the appointment of a substitute arbitrator, even if the agreement does not specifically say so, as this is the mandate of Section 15(2) of the Act."*

41. In ***Hindustan Construction Company Ltd vs Bihar Rajya Pul Nirman Nigam Limited, 2025 INSC 1365***, the Hon'ble Apex Court held as under -

*"17. Sections 15(1) and 15(2) clearly provide that an arbitrator's mandate terminates upon withdrawal or by agreement of the parties, and that a substitute arbitrator must be appointed following the same procedure as the original appointment. The judgments in Yashwith Constructions (P) Ltd v. Simplex Concrete Piles (India) Ltd. and another36, ACC Ltd v. Global Cements Ltd.37, and Union of India v. Pradeep Vinod Construction Company 38, reaffirm that such substitution preserves continuity, and prior proceedings remain valid unless either party objects. In light of the same, the High Court's decision to suspend the arbitration altogether, instead of ordering substitution, was contrary to settled law. The exercise of jurisdiction therefore calls for correction under Article 136 of the Constitution. Accordingly, the impugned judgment and order of the High Court is set aside."*

42. In ***Ankhim Holdings Pvt. Ltd. v. Zaveri Construction Pvt. Ltd.; AIR 2026 SC 1042***, the Hon'ble Apex Court observed as under -

*"29. Section 15(2) states that when mandate of an arbitrator is terminated under Section 14, a substitute arbitrator has to be appointed. It further states that such an appointment must be made according to the rules that were made applicable to the appointment of the arbitrator being replaced.*

*32. At this stage, we must look into the dictum as laid by this Court in Yashwith Constructions Pvt. Ltd. (supra). In the said case, this Court held that under Section 15(2) of the Act, 1996, the appointment of the substitute Arbitrator must be in accordance with the original agreement or provision applicable to the appointment of the Arbitrator at the initial stage.*

*33. We quote the relevant observations made by this Court in Yashwith Constructions Pvt. Ltd. (supra):-*

*"4. In our view, the learned Chief Justice and the Division Bench have rightly understood the scope of Section 15 of the Act. When the arbitrator originally appointed in terms of the arbitration agreement withdrew for health reasons, the Managing Director, as authorised originally by the arbitration agreement, promptly appointed a substitute arbitrator. It is true that in the arbitration agreement there is no specific provision authorising the Managing Director to appoint a substitute arbitrator if the original appointment terminates or if the originally appointed arbitrator withdraws from the arbitration. But, this so-called omission in the arbitration agreement is made up by the specific provision contained in Section 15(2) of the Act. The withdrawal of an arbitrator from the office for any reason is within the purview of Section 15(1)(a) of the Act. Obviously, therefore, Section 15(2) would be attracted and a substitute arbitrator has to be appointed according to the rules that are applicable for the appointment of the arbitrator to be replaced. Therefore, what Section 15(2) contemplates is an appointment of the substituted arbitrator or the replacing of the arbitrator by another according to the rules that were applicable to the appointment of the original arbitrator who was being replaced. The term "rules" in Section 15(2) obviously referred to the provision for appointment contained in the arbitration agreement or any rules of any institution under which the disputes were referred to arbitration. There was no failure on the part of the party concerned as per the arbitration agreement, to fulfil his obligation in terms of Section 11 of the Act so as to attract the jurisdiction of the Chief Justice under Section 11(6) of the Act for appointing a substitute arbitrator. Obviously, Section 11(6) of the Act has application only when a party or the person concerned had failed to act in terms of the arbitration agreement. When Section 15(2) says that a substitute arbitrator can be appointed according to the rules that were applicable for the appointment of the arbitrator originally, it is not confined to an appointment under any statutory rule or rule framed under the Act or under the scheme. It only means that the appointment of the substitute arbitrator must be done according to the original agreement or provision applicable to the appointment of the arbitrator at the initial stage. We are not in a position to agree with the*

*contrary view taken by some of the High Courts."*

*(Emphasis supplied)*

*34. Since the appointment in the case at hand was made in terms of the Act, 1996, the original provision applicable to the appointment of the arbitrator would be Section 11 of the Act, 1996.*

*35. The position of law as regards Section 11 is well settled. It affords the Court with a very limited scope essentially requiring the Court only to make prima facie finding that an arbitration agreement exists.*

*39. We may refer to the decision in Hindustan Construction Co. Ltd. v. Bihar Rajya Pul Nirman Nigam Ltd., reported in 2025 SCC OnLine SC 2578, wherein while dealing with an application seeking review of appointment of arbitrator made after extending the mandate of the arbitrator twice, the High Court directed the arbitrator not to continue the arbitral proceedings. This was in view of the fact that the arbitrator was appointed as a President of the State Consumer Dispute Redressal Commission. The Court held that when an arbitrator is unable to act owing to recusal, the proper course would be to invoke Section 15(2) and appoint a substitute arbitrator to continue from the existing stage of the proceedings. The observations of the Court succinctly capture that substitution preserves continuity, and prior proceedings remain valid unless either party objects. The observations read thus:-*

*"16. Once the High Court had accepted the existence of a valid arbitration agreement and appointed an arbitrator, its later interference on the same question of the validity of Clause 25 amounted, in substance, to an appeal disguised as supervisory review. If the arbitrator had become unable to act owing to recusal or disqualification, the proper course was to invoke Section 15(2) and appoint a substitute arbitrator to continue from the existing stage of the proceedings.*

*17. Sections 15(1) and 15(2) clearly provide that an arbitrator's mandate terminates upon withdrawal or by agreement of the parties, and that a substitute arbitrator must be appointed following the same procedure as the original appointment. The judgments in Yashwith Constructions (P)*

*Ltd. v. Simplex Concrete Piles (India) Ltd., ACC Ltd. v. Global Cements Ltd.37, and Union of India v. Pradeep Vinod Construction Company38, reaffirm that such substitution preserves continuity, and prior proceedings remain valid unless either party objects. In light of the same, the High Court's decision to suspend the arbitration altogether, instead of ordering substitution, was contrary to settled law. The exercise of jurisdiction therefore calls for correction under Article 136 of the Constitution. Accordingly, the impugned judgment and order of the High Court is set aside."*

*(Emphasis supplied)"*

43. The High Court of Calcutta in ***Ramjee Power Construction Ltd. v. Damodar Valley Corporation, 2009 SCC OnLine Cal 321*** had the occasion to consider the said aspect of the matter and opined as under:

*"The language and tenor of Section 15(2) is significant. Legislature has, in its wisdom, very carefully used the expression "the substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced" instead of using the expression "the substitute arbitrator shall be appointed in accordance with the procedure for appointment laid down in the arbitration agreement executed between the parties."*

*If it were the legislative intention that a substitute arbitrator should always be appointed in accordance with the procedure agreed upon by the parties, irrespective of whether the arbitrator being replaced was appointed by the Chief Justice or His designate, the legislature would, perhaps, have not used the expression in accordance with the rules that were applicable to the appointment of the arbitrator being replaced.*

*In this case, the erstwhile arbitrator was appointed in accordance with Section 11(6) of the 1996 Act, read with the Rules framed by the Court and the Rules that have evolved with practice.*

*As observed above, the expression "rules that were applicable to the appointment of the arbitrator being replaced" in Section 15, have carefully been chosen. If the arbitrator being replaced was appointed by*

*the Chief Justice and/ or his designate in accordance with Section 11 of the 1996 Act read with the applicable rules, the substitute arbitrator would also have to be appointed by the Chief Justice and/or his designate in the same manner. It is immaterial that the respondent has appointed an arbitrator in the meanwhile. The appointment of the arbitrator by the respondent, after filing of this application, is of no consequence.*

*The application is, thus, allowed.*

*Let the application be placed before the Hon'ble Chief Justice and or his designate for naming a substitute arbitrator.*

*Urgent certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities."*

44. Applying the principles of law as laid down in the above noted decisions in the facts of the case in hand and the irresistible conclusion stands drawn that the rules which were applicable to the appointment of the erstwhile arbitrator was invoked but the arbitrator was not appointed and, thus, non-appointment of the arbitrator as per the said rules and procedure envisages a situation whereby the courts have to intervene under Section 11(4) or (6) and to appoint a substitute arbitrator.

45. As regards, the submissions raised by the counsel for the opposite party that once the mandate came to be terminated post death of the arbitrator and the dismissal of the applications seeking extension of the mandate on 18.11.2024, thus, no relief can be accorded, is concerned, the same is wholly misconceived besides being misplaced, for the simple reason that the proceedings under Section 29A (5) and (6) are different and distinct from the proceedings under Section 11(4)/11(6) r/w Section 15(2) of the A&C Act, 1996. Section 29(A) was inserted with a laudable object seeking fixation of the time limit for arbitral award. Sub-section (5) of Section 29A of the A&C Act, 1996 speaks about the extension of the period / mandate of the arbitrator beyond the permissible period and sub-section (6) provides that while extending the period / mandate, it shall be open to the Court to substitute one or all of the arbitrators.

46. Recently, the High Court of Calcutta in ***Pasari Multi Projects Private***

***Limited v. Ahluwalia Contract (India) Limited;*** 2026 SCC OnLine Cal 3435 had the occasion to consider the said issue and it was opined as under:

> *"15. The opposite party states that the termination in this case took place as per Section 14 of the Act (death of learned Arbitrator), while an application under Section 29A of the Act was pending. In such circumstances, Section 15 of the Act comes into play, and the application under Section 29A becomes infructuous.*
>
> *23. Admittedly, extension Section 29(A)(4) of the Act was prayed for, when the previous Arbitrator was conducting the arbitration proceedings.*
>
> *24. On his death, the application became infructuous and was withdrawn.*
>
> *25. The petitioner contends that there was a conditional consent given for the extension, but not for a new Arbitrator being appointed.*
>
> *26. Admittedly, the petitioner had submitted to the earlier arbitration and also given consent for its extension. As such when the said mandate of the earlier arbitral tribunal has terminated as per Section 14 of the Act (on the death of the learned arbitrator), substitution takes place as per Section 15(2) of the Act, as in the present case."*

47. In the present case, at the time when the application under sub-section (5) of Section 29A came to be filed on 21.10.2022, the arbitrator was alive. However, post his death on 29.06.2024, the arbitral tribunal perished. Meaning thereby that there was no occasion even otherwise to extend the mandate while invoking the provisions under sub-section (5) of Section 29A of the Act. Thus, the pendency or dismissal for non-prosecution of the said application seeking extension of mandate would not be of much relevance.

48. Though heavy reliance has been placed upon the judgement of the Hon'ble Apex Court in ***Jagdeep Chowgule (supra)*** so as to contend that it is the civil court of the original jurisdiction before whom the proceedings under sub- section (5) of Section 29A are entertainable and would lie, there is no quarrel to the said proposition, however, there is a distinguishable feature in the present case at hand that here the applicant is not invoking the jurisdiction under sub- section (5) of Section 29A for extension of the mandate of the arbitrator, particularly, when here what is being prayed is

appointment of a substitute arbitrator in terms of sub- section (2) of Section 15 of the Act based upon the fact that the erstwhile arbitrator came to be appointed with the consent of the parties under Section 11(2) of the A & C Act 1996. Moreover Section 11(6) read with Section 15(2) on one hand and Section 29(A)(5) and (6) on the other hand operate on different fields, their role cannot be intermingled with each other. In case, the proposition so propounded by the counsel for the opposite party is taken into face value then it would create undesired results as then the very purpose of Section 15(2) read with Section 11(6) would stand redundant.

49. As regards, the judgment in the case of ***Rohan Builders (India) Private Limited (supra)***, the same is of no aid and assistance to the opposite party as in the said case, the Hon'ble Supreme Court was confronted with an issue relatable to the interpretation of the provisions contained under Section 29A(4), i.e. with regard to the employment of the word "terminate" and it was opined that since the word "terminate" is followed by connecting word "unless", thus it qualifies the first part with a subsequent limb of the section i.e. "unless the Court has, either prior to or after expiry of the period so specified, extended the period", holding that the Court has the power to extend the period for making an award at any time and before the mandated period. Likewise, the judgment in ***C. Velusamy (supra)*** also does not aid the opposite party as there is no quarrel to the proposition that the Court has the power to entertain an application under Section 29A(5) of the A&C Act, 1996 to extend the mandate of the arbitrator for making the award even after the award is rendered though after the expiry of the statutory time limit.

50. Reliance has also been placed upon the judgement in ***Viva Highways Limited (supra)*** so as to contend that it is not mandatory for the Court to substitute the arbitrator upon the expiration of the mandate under Section 29A(4) & (6), there is no dispute to the said proposition but here in the present case, there is a slight distinction that the proceedings so initiated is under Section 15(2) r/w 11(6) of the A&C Act whereby on account of certain eventualities beyond the control and the comprehension of the parties not even attributable to the applicant for any delay, the award could not be pronounced and the arbitrator expired, thus, substitution of arbitrator is being sought.

51. As regards, the argument relating to delay and latches in approaching

this Court for appointment of the arbitrator under Section 11(6) r/w 15(2) of the A&C Act denuding the applicant for any relief is concerned, the same is preposterous besides being out of context for the simple reason that post death of the arbitrator on 29.06.2024, a request was made by the applicant on 22.08.2024 proposing the name of arbitrator which was replied by the opposite parties on 30.09.2024 stating therein that the name and the position of the officers who issued the letter dated 22.08.2024 on behalf of the applicant was unclear and further, in case, the applicant was willing to settle and/ or compromise the dispute between the parties, the applicant was free to send a letter to the office of the Chief Engineer (Planning) Purvanchal Vidyut Vitran Nigam Limited and according to the applicant, nothing was done so the applicant approached this Court while filing the present petition which was presented in the office on 07.02.2025. The period from 29.06.2024 till the filing of the present application in the month of 07.02.2025 cannot be said to be an inordinate and unexplained delay when it is the allegation of the applicant that the opposite parties were keeping mum and it did not respond in that regard. Thus, the said objection is not liable to be entertained and is out-rightly rejected.

52. Viewing the case from the four corners of law, this Court finds that since at the initial stage, an independent arbitrator came to be appointed under Section 11(2) of the A&C Act, 1996 and post termination of the mandate for the reasons not attributable to the parties, a substitute arbitrator is to be appointed in terms of Section 11(6) read with 15(2) of the A&C Act, 1996. Nonetheless, it is not the case of the parties that the dispute is not arbitrable as on the earlier occasion with respect to the dispute and the difference as existing, an arbitrator came to be appointed. The question with respect to the legal and factual issues which may arise during the arbitral proceedings including limitation etc. can very well be raised before the arbitral tribunal in view of the judgement in the case of judgement in ***GOQII Technologies Pvt. Ltd. Vs. Sokrati Technologies Pvt. Ltd., (2025) 2 SCC 192.***

53. Accordingly, this Court appoints **Hon'ble Mr. Justice Devi Prasad Singh, Address- 31-B, Laxmanpuri Colony, Faizabad Road, Lucknow, Mob No.8005498811**, retired judge of this Court as the sole Arbitrator.

54. Let the consent of Hon'ble Mr. Justice Devi Prasad Singh (Rtd.) be obtained by the office in terms of the provisions contained in Section 11(8) read with the Section 12(1) of the Act by sending a letter to him.

55. The application stands **disposed of**.

56. In case, the proposed Arbitrator does not give his consent or make disclosure in terms of sub-section (1) of Section 12 of the Act, the application will be listed before this Court for limited purpose for proposing the name of the Arbitrator. The Arbitrator shall be entitled to fee and expenses as per IVth Schedule of the Act.

57. All legal questions including limitation are left open to be raised by the respective parties before the arbitrator.

**(Vikas Budhwar,J.)**

**November 23, 2026**
Ashu

Digitally signed by :-
ASHUTOSH KUMAR PRAJAPATI
High Court of Judicature at Allahabad