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

Date of decision: 23rd JANUARY, 2026

IN THE MATTER OF:

\+ **I.A. 25230/2025 & I.A. 25279/2025**

IN

ARB.P. 853/2023

VEDANTA LIMITED .....Petitioner

Through: Mr Jayant Mehta, Sr. Advocate with Mr. Sulabh Rewari, Ms. Vasudha Sharma, Ms. Anwesha Singh and Mr. Shubhansh Thakur, Advs.

versus

GUJARAT STATE PETROLEUM CORPORATION LTD. .....Respondent

Through: Mr. Parag P. Tripathi, Sr. Advocate with Mr. Piyush Joshi, Ms. Sumiti Yadava, Ms. Meghna Sengupta, Ms. Vatsla Bhatia and Mr. Yagya Sharma, Mr. Aparajito Sen, Advs.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

I.A. 25279/2025

1. This Application is filed by the Respondent under Section 151 of the Code of Civil Procedure, 1908 seeking recall of the Judgment dated 28.07.2025. This Court, by the said Judgment, allowed the Petition filed by the Petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as '**the Arbitration Act**'*) and appointed the

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Nominee Arbitrator of the Respondent. Since the Petitioner had already appointed its Nominee Arbitrator, this Court directed the two Nominee Arbitrators to appoint the Presiding Arbitrator and constitute the Arbitral Tribunal for adjudicating the dispute which has arisen between the parties.

2. In the present Application, the principal contention of the Respondent is that this Court had no jurisdiction to entertain the Petition under Section 11 of the Arbitration Act as the Petitioner was operating the Oil & Gas Block in Barmer, Rajasthan i.e., RJ-ON-90/1 Block (*hereinafter referred to as "**the Gas Block**")* with a foreign company as part of its consortium. According to the Respondent, the Petitioner cleverly did not implead M/s Cairn Energy Hydrocarbons Limited (*hereinafter referred to as '**the CEHL***) and M/s Oil & Natural Gas Corporation Limited (*hereinafter referred to as '**the ONGC***) in the array of parties. It is stated that the joint venture to whom the Gas Block was awarded by the Government of India included the Petitioner herein, ONGC as well as CEHL, which is a foreign entity. For this reason, both ONGC and CEHL were necessary parties to the arbitration proceedings as well as to the Petition under Section 11 of the Arbitration Act. It is the contention of the Appellant that, since CEHL is a foreign entity, the dispute, in relation to which the Petitioner preferred the Petition under Section 11 of the Arbitration Act, was a subject matter of an international commercial arbitration and, therefore, only the Hon'ble Supreme Court had the jurisdiction to entertain the Petition under Section 11 and this Court ought to recall its Order dated 28.07.2025. It is stated that the Order dated 28.07.2025 is a nullity.

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3. Shorn of unnecessary details, the facts leading to the Petition under Section 11(6) of the Arbitration Act, are as under:

a) The **Gas Block**, was awarded by the Government of India to a Joint Venture comprising of various entities namely CEHL, ONGC and the Petitioner herein (collectively referred to as the "***Contractors***").

b) Thereafter, the Government of India entered into a Production Sharing Contract (*hereinafter referred to as "**the PSC**"*) with the Joint Venture for the Oil & Gas Block. It is stated that the Petitioner is the Operator of the Gas Block and is authorised to act on behalf of the Joint Venture.

c) On 28.12.2022, the Petitioner issued a Notice Inviting Offers along with the Request for Proposal ("RFP") and a Gas Sales Agreement (*hereinafter referred to as "**the GSA**"*), inviting offers from companies interested to offtake all or portion of gas volumes available for sale from the Gas Block. It is stated that the Clause 18 of the GSA contains an Arbitration Clause.

d) As per the requirement in the Bid Process on e-Tendering Portal i.e., Mjunction, the Respondent uploaded a signed copy of the GSA and the RFP on 12.01.2023. In addition to the above documents, the Respondent also uploaded signed Forms C1 & C6. It is pertinent to mention that the stand of the Respondent is that the Respondent only initialled the pages and did not sign the pages for a valid contract.

e) On 18.01.2023, the bidding was closed. The Respondent emerged as one of the successful bidders and was allocated the single highest

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quantity of gas. On the very same day, the Respondent was sent an email by Mjunction on behalf of the Petitioner, intimating the Respondent about the results of the bidding process and informing the Respondent about the quantity of Gas allocated to the Respondent as determined in terms of Clause 4.2 of the RFP.

f) Subsequently an email dated 19.01.2023 was sent by the Petitioner to the Respondent wherein a fresh copy of the filled up and signed GSA was attached for formal signing in terms of Clause 1.3.3 of the RFP. Several reminder emails dated 20.01.2023, 27.01.2023, 01.02.2023, 10.02.2023, 17.02.2023 and 22.02.2023 were also sent to the Respondents regarding the same. However, no response or objection was raised by the Respondent.

g) On 27.02.2023, a Letter bearing No. COM/RJ/GSPC/2023/12 was sent by the Petitioner to the Respondent, stating that the Respondent has emerged as the largest buyer of Gas from the Gas Block in the Auction Process and was allocated the gas volume of 1,907,543 scm/day. It is further stated that both the parties reached an agreement regarding the terms and conditions as laid in the GSA, after which the Petitioner shared a signed copy of the Final GSA on 27.01.2023, while the countersigned scanned GSA was awaited from the Respondent.

h) Vide email dated 27.02.2023 sent by the Respondent, the Petitioner was informed that on account of unforeseeable and adverse material changes in the natural gas market due to continuous fall in gas prices, it was not feasible for the Respondent to market this gas to

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downstream customers at the current bid price. It was further stated that the Respondent is continuously making efforts to sell the gas to downstream customers and would revert to the Petitioner.

i) The Petitioner, in response to the aforementioned email, sent an email dated 28.02.2023 stating that the contract between the parties stood concluded when the Petitioner accepted the Respondent's bid for allocation of gas and were only waiting for the Respondent to countersign the final signed GSA, which was sent to the Respondent vide email dated 27.01.2023.

j) Vide a Letter dated 07.03.2023 bearing No. COM/RJ/DGH/2023/14, the Petitioner wrote to the Ministry of Petroleum & Natural Gas, informing about the whole auction process that has taken place for the Gas Block and further apprising them of the fact that the GSA was not signed by the Respondent. The Petitioner, through this Letter, requested the Ministry to ensure that the Respondent signs the GSA expeditiously as possible.

k) It is stated that it was only on 21.03.2023, that the Respondents vide a Letter bearing No. GSPCL/COMM/2023 stated that they are not in agreement with the allocation as communicated by the Petitioner and also stated that there is no valid GSA and no binding agreement in existence between the Parties. The Petitioner replied to the aforesaid letter vide Letter dated 22.03.2023 bearing No. COM/RJ/GSPC/2023/19, denying all the allegations made by the Respondent.

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l) *Vide* email dated 30.03.2023, the Respondent proposed an alternative interim arrangement, which was accepted by the Petitioner on a 'without prejudice' basis to avoid loss. It is further stated that the parties also agreed to go by the standard terms of the GSA.

m) The Petitioner *vide* Letter dated 07.07.2023, after going through the settlement talks in terms of Clause 18.1 of the GSA, which failed, sent a notice invoking arbitration under Section 21 of the Arbitration Act in terms of Clause 18 of the GSA and appointed its nominee Arbitrator.

n) The Petitioner also filed a Petition under Section 9 of the Arbitration Act before this Court which was withdrawn vide Order dated 07.07.2023, as the Petitioner already invoked Arbitration.

o) The Respondent *vide* Letter dated 04.08.2023, replying to the notice invoking Arbitration stated that arbitration cannot be invoked as there was never a valid arbitration agreement, let alone any agreement between the Parties which contained an Arbitration Clause.

p) Thereafter, the Petitioner approached this Court under Section 11(6) for appointment of the Nominee Arbitrator on behalf of the Respondent, so that the proceedings under the Arbitration Act can commence for adjudication of the disputes between the parties. The Petitioner had appointed Justice L. Nageshwar Rao, former Judge of the Supreme Court of India, as its nominee Arbitrator.

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4. In reply to the Petition under Section 11(6) of the Arbitration Act, the Respondent raised a preliminary objection regarding non-joinder of CEHL and ONGC, who were parties to the Joint Venture. It was stated in the reply that since there is an issue of non-joinder of necessary parties, the Petition under Section 11 of the Arbitration Act was not maintainable.

5. In rejoinder, the Petitioner stated that under Clause 4.5.3 of the Joint Operation Agreement (*hereinafter referred to as '**the JOA**'*), and in terms of the GSA, the Petitioner was authorised to represent itself as well as the other two partners, i.e. CEHL and ONGC, before all the courts in relation to the petroleum operations and for performance of all other acts of similar nature. In the rejoinder, the Petitioner also contended that in line with the JOA, the standard GSA that was signed and uploaded by the Respondent on 12.01.2023, also expressly provides that ONGC and CEHL has agreed to appoint the Petitioner as its authorized representative for the purposes set out in the Agreement. It was also stated that CEHL, on its letterhead, confirmed that the Petitioner is to operate the Gas Block on its behalf and was also authorized to represent CEHL before various forums.

6. This Court *vide* Judgment dated 28.07.2025 allowed the Petition under Section 11 of the Arbitration Act and appointed Justice Ravinder P. Bhatt, former Judge of the Supreme Court of India, as the nominee Arbitrator of the Respondent and the nominee Arbitrators were requested to appoint the Presiding Arbitrator so that an Arbitral Tribunal can be constituted.

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7. Material on record indicates that an Arbitral Tribunal was constituted and Justice Deepak Gupta, former Judge of the Supreme Court of India was appointed as the Presiding Arbitrator.

8. It is also pertinent to mention that the Respondent herein approached the Apex Court by filing Special Leave to Appeal (C) No.22924/2025, challenging the Judgment dated 28.07.2025, which was disposed of *vide* Order dated 22.08.2025, by holding as under:

> "*1. Having regard to the provisions of sub-section (6A) of Section 11 of the Arbitration and Conciliation Act, 1996 and the Constitution Bench decision of this Court in RE: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899 (2023 INSC 1066), where it has been held that at the stage of the appointment of an arbitrator, the Court appointing an arbitrator or referring the matter for arbitration is required only to examine whether, prima facie, an arbitration agreement exists and nothing more, and the opinion of the referral Court is not binding on the arbitrator as well as the Court dealing with a challenge to the award at subsequent stage(s), we do not find it a fit case to interfere with the Order impugned.*
>
> *2. We, however, make it clear that the question of arbitrability / existence of an arbitration agreement may also be raised by the petitioner before the arbitral tribunal, in addition to all other contentions which have been left open to be raised before the arbitral tribunal as per paragraph 35 of the impugned Order.*

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> *3. Subject to above, the special leave petition and pending application (s), if any, shall stand disposed of.*"

9. The Petitioner also filed an Application before the learned Arbitral Tribunal for joinder of CEHL and ONGC in the Arbitration proceedings. Relevant paragraph of the said Application reads as under:

> "*6. While Claimant, as Operator of the RJ Gas Block, is entitled to pursue the claims under the GSA on behalf of the Proposed Claimants in the present arbitration proceeding, the joinder of the Proposed Claimants is being sought in order to obviate the technical objections that were taken by the Respondent in the Section 11 proceedings:*
>
> *a. that "the necessary parties to any initiation of arbitration proceedings should include Cairn and ONGC" [para 15.1.2, Respondent's Reply filed in S. 11 proceedings];*
>
> *b. that "arbitration is an in personam proceeding... requires that they be all made parties" [15.1.8, Respondent's Reply filed in S. 11 proceedings); and nor been duly arrayed as parties, and in the absence of the joinder of the that " ONGC and Cairn, being necessary parties as the "Sellers" have necessary parties, no effective proceedings can take place in the proceedings herein" [para 15.1.13, Respondent's Reply filed in S. 11 proceedings]."*

10. Now, the present Application has been filed by the Respondent stating that since CEHL is a foreign entity, the arbitration takes the character of an international commercial arbitration and this Court ought not to have entertained the Petition under Section 11 of the Arbitration Act as only the Hon'ble Supreme Court has the jurisdiction to entertain an application for

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appointment of an arbitrator in an international commercial arbitration under Section 11(9) of the Arbitration Act.

11. Learned Senior Counsel appearing for the Respondent contends that the Judgment dated 28.7.2025 was passed by this Court due to conscious non-disclosure of a fundamental jurisdictional fact by the Petitioner, that CEHL, which is a foreign entity being a company incorporated in Scotland, would also be a party to the arbitration. He states that since a foreign entity is involved, the resulting arbitration would be an international commercial arbitration within the meaning of Section 2(1)(f) Arbitration Act. It is further submitted that the result of this conscious non-disclosure by the Petitioner was that though the exclusive jurisdiction to appoint an arbitrator in an international commercial vests only with the Apex Court, yet the Petitioner has obtained the Judgment dated 28.7.2025 from this Court, which does not have the jurisdiction to entertain the Petition. It is stated that the Judgment dated 28.7.2025 has been passed by a Court not having the jurisdiction and, therefore, the same ought to be recalled, owing to the deception played on this Court by the Petitioner.

12. It is further stated by the learned Senior Counsel for the Respondent that the Petitioner ought to have presented the Section 11 Petition as one seeking appointment of an arbitrator in an international commercial arbitration and not as a camouflaged domestic arbitration petition, as has been done in the present case. He states that the Petitioner ought to have stated in the Petition that CEHL was a party to the arbitration agreement which was subject matter of the Section 11(6) proceedings and, had that statement been made by the Petitioner herein, there would have been no

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doubt that the Section 11(6) proceedings before this Court were without jurisdiction. He states that since the issue of jurisdiction goes to the root of the matter and can be raised at any stage, the Judgment dated 28.07.2025 ought to be recalled as this Court lacked jurisdiction to entertain the Petition.

13. Learned Senior Counsel for the Respondent places reliance on the Judgment of this Court in Always Remember Properties (P) Ltd. v. Reliance Home Finance Limited and Another, **2022 SCC OnLine Del 4479**, which specifically observes that if an Order passed under Section 11 of the Arbitration Act is a nullity and based on wrong facts, then the same can be recalled.

14. Learned Senior Counsel for the Respondent has also placed strong reliance on the Judgment passed by a learned Single Judge of the Bombay High Court in Roptonal Ltd v. Anees Bazmee, **2016 SCC OnLine Bom 3555**, wherein the Order passed by a co-ordinate Bench of that Court, appointing an Arbitrator in an international commercial arbitration matter was recalled, by holding that the power to appoint an arbitrator in an international commercial arbitration vests only with Hon'ble the Chief Justice of India as per Section 11(9) of the Arbitration Act and even such an Order passed by a designate Hon'ble the Chief Justice of India would not confer the jurisdiction on the learned arbitrator notwithstanding the parties to the arbitration petition having not raised any objection as to the maintainability thereof.

15. Learned Senior Counsel for the Respondent further states that in the challenge to the said Order before the Apex Court, the Apex Court did not set aside the said Judgment but disposed of the SLP by accepting the consent

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of the parties to refer the matter to the very same Arbitral Tribunal in view of the advanced stage of proceedings.

16. Learned Senior Counsel for the Respondent has also placed reliance on the judgment passed by a co-ordinate Bench of this Court in Hala Kamel Zabal v. Arya Trading Limited, **2024 SCC Online Del 5604**.

17. *Per contra*, learned Senior Counsel for the Petitioner contends that the present Application is a review under the garb of recall. He states that there is no error apparent on the face of the record in the Judgment dated 28.07.2025. He contends that the Application, as framed, is not maintainable as a challenge to the validity of the appointment of the Arbitral Tribunal, if any, ought to be raised before the Arbitral Tribunal itself under Section 16(1) of the Arbitration Act.

18. He further states that the Application filed by the Respondent seeking recall of the Judgment dated 28.07.2025 is *mala fide* and only an attempt to delay the arbitral proceedings as the Respondent was always aware that under the GSA, the Petitioner herein acted for itself as well as ONGC, and CEHL. He states that three entities together were the Sellers under the GSA, with the Petitioner herein as their authorized representative. He further states that no plea of the arbitration being an international commercial arbitration was raised by Respondent before this Court during the pendency of the Petition under Section 11 of the Arbitration Act. He further states that the Respondent in its Reply to the Petition had stated that the Petitioner's joint venture partners, i.e., ONGC and CEHL, ought to be added as necessary parties but it was never the stand of the Respondent in its reply that the arbitration would be an international commercial arbitration. He also

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reiterates the contentions raised by the Petitioner in the rejoinder, to state that the present arbitration is not an international commercial arbitration since the Petitioner is the representative of ONGC and CEHL and that the Petitioner's place of incorporation is determinative for deciding the place of arbitration.

19. Learned Senior Counsel for the Petitioner places reliance on the Judgment of the Apex Court in L&T-SCOMI v. MMRDA, **(2019) 2 SCC 271**, wherein the Apex Court has observed as under:

> "*18. This being the case, coupled with the fact, as correctly argued by Shri Divan, that the Indian company is the lead partner, and that the Supervisory Board constituted under the consortium agreement makes it clear that the lead partner really has the determining voice in that it appoints the Chairman of the said Board (undoubtedly, with the consent of other members); and the fact that the Consortium's office is in Wadala, Mumbai as also that the lead member shall lead the arbitration proceedings, would all point to the fact that the central management and control of this Consortium appears to be exercised in India and not in any foreign nation."*

20. Learned Senior Counsel for the Petitioner also states that the GSA itself evidences that the name of CEHL, along with its country of incorporation, finds express mention in the preamble where the contracting parties are described. He further states that the GSA further depicts that the Petitioner is appointed as the "Sellers Representative" as defined in Clause 1.1(00) of the GSA and, therefore, by virtue of being Sellers' Representative, the Petitioner was representing all the Sellers. He states that

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Clause 10.1 of the GSA shows that invoices for the sale of gas were to be issued by the Petitioner in its capacity as the Sellers' Representative. He states that Clause 20 of the GSA further provides that all notices and communications under the Agreement were to be addressed to Vedanta Limited, i.e., the Petitioner herein. Lastly, he states that the GSA was also executed and signed by the Petitioner on behalf of all Sellers, thereby binding each of them, whereas CEHL and ONGC were not to sign the GSA and, therefore, the Indian domicile of the Petitioner is determinative of the fact that the present arbitration would fall under domestic arbitration.

21. It is also submitted that the application filed by the Petitioner before the learned Arbitral Tribunal for joinder of CEHL and ONGC was moved by way of abundant caution, to obviate technical objections of non-joinder of parties taken by the Respondent in the present Petition. He submits that moving an application for joinder of parties would not change the nature and character of the arbitration.

22. Heard the learned Senior Counsels for the parties and perused the material on record.

23. While narrating the facts in the Judgment dated 28.07.2025, this Court had stated that the Gas Block was awarded by the Government of India to a Joint Venture comprising of various entities namely, the Petitioner herein, CEHL and ONGC. In reply, the Respondent took the objection of non-joinder of CEHL and ONGC. In the rejoinder thereto, the Petitioner stated as under:

> "***18***. *The Respondent's avennents that the Petitioner does not have locus standi to bring the present Petition*

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is false and inc01Tect. As pleaded in paras 1.1 and 2.1 of the Petition, the Petition has been filed by the Petitioner (acting on behalf of itself as well as its JV Partners). ***The Petitioner, as the Operator of the Gas Block, has been authorised under clause 4.5.3 of the JOA (relevant extract of which has been produced by the Respondent as Document No. R-1) along with its addenda, to inter alia represent itself and the other two N Partners i.e., Cairn Energy Hydrocarbons Limited ("CEHL") and Oil and Natural Gas Corporation Limited ("ONGC"), before all courts in relation to the petroleum operations and perform all other acts of a similar nature that are necessary or proper in connection to the same****. The filing of the present Petition is squarely covered by the said clause of the JOA.*

19. Further, in line with the JOA, the standard GSA that was signed and uploaded by the Respondent on 12.01.2023 ***(as well as the filled in GSA dated 27.01.2023), also expressly provides that "ONGC and CEHL has agreed to appoint Vedanta as its authorized representative for the purposes of set out in this Agreement".*** *Therefore, the Petitioner is duly authorised to file the present Petition (as well as invoke arbitration proceedings and sign the GSA).*

20. Notwithstanding the above, and for abundant caution, true copies of letters confirming the Petitioner's authority to represent its N Partners in the present proceedings as issued by CEHL dated 17.08.2023 and ONGC dated 14.09.2023 are produced herewith as Document No. 25 (Colly.).

21. The presence of the other parties to the GSA is therefore neither necessary nor proper for the adjudication of the present Petition. Consequently, the Respondent's averments in relation to the Petitioner's

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authority and locus standi for c01mnencement of arbitration proceedings and filing the present petition are denied as inconect and misleading. These are, in any case, matters between the N Partners and of no concern to the Respondent.

22. Evidently, the objection is raised as an afterthought simply to delay the appointment of a Tribunal as no ground regarding the Petitioner's lack of authority or improper issuance of the Notice Invoking Arbitration dated 07.07.2023 (Document No. 23 produced along with the Petition) was taken by the Respondent in its reply to the same dated 04.08.2023 (Document No. 24 produced along with the Petition).

23. ***In light of the above, it is denied that the present Petition has been filed by the Petitioner in its individual capacity (and not acting on behalf of its JV Partners), that the Petitioner is not authorised to do so, that the presence of the JV Partners is necessary or proper for the appointment of an arbitrator or commencement of arbitration proceedings, that the present Petition ought to be rejected for their non-joinder, or that the present Petition is in any manner bad in law for not being signed by the other N Partners***." (emphasis supplied)

24. At this juncture it is also pertinent to reproduce the letter given by the CEHL to the Petitioner herein and the same reads as under:

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CAIRN ENERGY HYDROCARBONS LIMITED
Company Number: SC172470
272 Bath Street Glasgow
United Kingdom G2 4JR

17 August 2023

AUTHORITY LETTER
IN THE MATTER OF ARBITRATION PROCEEDINGS BETWEEN VEDANTA LIMITED AND GUJARAT STATE PETROLEUM CORPORATION LTD.

I, Hitesh Vaid, working as Director, authorised representative of Cairn Energy Hydrocarbons Limited ("**CEHL**") in the matter between Vedanta Limited and Gujarat State Petroleum Corporation Ltd. (GSPC) before the Hon'ble Delhi High Court ("**Court Matter**"), confirm that M/s Vedanta Limited is the Operator of the RJ-ON-90/1 Block, and was and remains authorised to initiate arbitration in the captioned matter and related court proceedings (including the Court Matter) on behalf of, and act as a representative of, CEHL in arbitration and related court proceedings relating to the RJ-ON-90/1 Block (including the Court Matter).

For abundant caution, it is further clarified that the pleadings and submissions made by M/s Keystone Partners on behalf of Vedanta in the Court Matter are being made on behalf of JV Partners.

Cairn Energy Hydrocarbons Limited

Hitesh Vaid
Director

25. All these documents were presented in the Court when the Judgment dated 28.07.2025 was passed. In addition, the SLP against the Judgment has already been disposed of by the Apex Court, by holding that the question of arbitrability/existence of an arbitration agreement are left open to be raised by the before the Arbitral Tribunal.

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26. The application of the Petitioner herein for joinder of CEHL and ONGC is still pending before the learned Arbitral Tribunal and a decision is yet to be taken as to whether CEHL and ONGC are necessary party to the arbitration proceedings or not. In case the learned Arbitral Tribunal rejects the said Application, then the entire issue that is now sought to be raised before this Court becomes redundant. Therefore, the present Application, at this juncture, seems to be premature.

27. In any event, in the opinion of this Court, all these questions can be raised by the Respondent before the learned Arbitral Tribunal by filing an application under Section 16(1) of the Arbitration Act and it would be for the Arbitral Tribunal to take a decision as to whether the dispute would fall under the category of an international commercial arbitration or not, which is line with the Judgment of a Co-ordinate Bench of this Court in Hala Kamel Zabal (supra).

28. In view of the above, this Court is of the opinion that the present Application is not maintainable at this juncture and accordingly ought to be dismissed.

29. It is made clear that the observations made in this Application are entirely *prima facie* in nature.

I.A. 25230/2025

30. This Application under Section 151 of the CPC has been filed by the Petitioner seeking modification of Para 33 in the Judgment dated 28.07.2025. Relevant portions of the Judgment dated 28.07.2025 reads as under:

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> *"32. The Petitioner has already appointed Justice L. N. Rao, former Judge of the Supreme Court of India, as its nominee Arbitrator. This Court appoints Justice Ravinder P. Bhatt, former Judge of the Supreme Court of India, as the nominee Arbitrator of the Respondent. The nominee Arbitrators are requested to proceed further and appoint the Presiding Arbitrator.*
>
> *33. The learned Arbitrators shall be entitled to fees as per the Fourth Schedule of the Arbitration & Conciliation Act, 1996.*
>
> *34. The learned Arbitrators are also requested to file the requisite disclosure under Section 12(2) of the Arbitration & Conciliation Act, 1996 within a week of entering on reference."*

31. This Court *vide* Judgment dated 28.07.2025, appointed Justice Ravinder P. Bhatt, former Judge of the Supreme Court of India, as the nominee Arbitrator of the Respondent and the nominee Arbitrators were requested to appoint the Presiding Arbitrator so that an Arbitral Tribunal can be constituted. Material on record indicates that an Arbitral Tribunal was constituted and Justice Deepak Gupta, former Judge of the Supreme Court of India was appointed as the Presiding Arbitrator.

32. Material on record also discloses that the Respondent herein approached the Apex Court by filing Special Leave to Appeal (C) No.22924/2025, challenging the Judgment dated 28.07.2025, which came to be disposed of by the Apex Court *vide* Order dated 22.08.2025.

33. It is stated that the learned Arbitral Tribunal proposed and sought the Parties' consent to apply the fee schedule prescribed under the Schedule of the Delhi International Arbitration Centre (DIAC) (Administrative Cost and

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Arbitrators Fees) Rules 2018, instead of the fees set out under the Fourth Schedule of the Arbitration Act, as directed by this Court in Paragraph 33 of the Judgment dated 28.07.2025, wherein this Court has held that the learned Arbitrators shall be entitled to fees as per the Fourth Schedule of the Arbitration. It is further stated that while the Petitioner conveyed its willingness to comply with the DIAC Schedule, the Respondent sought three weeks' time to obtain instructions from the competent authority of the Respondent Company regarding such revision. It is stated that on the instructions of the competent authority, the Respondent declined the request of the learned Arbitral Tribunal in light of the specific directions of this Court in Paragraph No.33 of the Judgment dated 28.07.2025.

34. It is, therefore, the case of the Petitioner that the stand of the Respondent in declining the request of the learned Arbitral Tribunal is unfair, and unjustified. As such, the present Application is filed only to the extent of seeking modification of paragraph No.33 of the Judgment dated 28.07.2025.

35. Reply to the instant Application was filed by the Respondent, stating that moment this Court passed the Order appointing the Nominee Arbitrator of the Respondent, this Court became *functus officio*. It is stated in the reply that there is no error apparent on the face of the record and, therefore, the present Application is not maintainable. Reliance has been placed on the Judgment of the Apex Court in ONGC Ltd. v. Afcons Gunanusa JV, **(2024) 4 SCC 481.**

36. Heard the learned Senior Counsels for the parties and perused the material on record.

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37. The Apex Court in ONGC Ltd (supra) has observed as under:

> "***128***. *We believe that the directives proposed by the Amicus Curiae, with suitable modifications, would be useful in structuring how these preliminary hearings are to be conducted. Exercising our powers conferred under Article 142 of the Constitution, we direct the adoption of the following guidelines for the conduct of ad hoc arbitrations in India:*
>
> > *"**1. Upon the constitution of the Arbitral Tribunal, the parties and the Arbitral Tribunal shall hold preliminary hearings with a maximum cap of four hearings amongst themselves to finalise the terms of reference ("the Terms of Reference") of the Arbitral Tribunal. The Arbitral Tribunal must set out the components of its fee in the Terms of Reference which would serve as a tripartite agreement between the parties and the Arbitral Tribunal.***
> >
> > ***2. In cases where the arbitrator(s) are appointed by parties in the manner set out in the arbitration agreement, the fees payable to the arbitrators would be in accordance with the arbitration agreement. However, if the Arbitral Tribunal considers that the fee stipulated in the arbitration agreement is unacceptable, the fee proposed by the Arbitral Tribunal must be indicated with clarity in the course of the preliminary hearings in accordance with these directives. In the preliminary hearings, if all the parties and the Arbitral Tribunal agree to a revised fee, then that fee would be payable to the arbitrator(s). However, if any of the parties raises an objection to the fee proposed by the arbitrator(s) and no consensus can be arrived at between such a party and the tribunal or a***

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member of the tribunal, then the Tribunal or the member of the Tribunal should decline the assignment.

3. Once the Terms of Reference have been finalised and issued, it would not be open for the Arbitral Tribunal to vary either the fee fixed or the heads under which the fee may be charged.

4. The parties and the Arbitral Tribunal may make a carve out in the Terms of Reference during the preliminary hearings that the fee fixed therein may be revised upon completion of a specific number of sittings. The quantum of revision and the stage at which such revision would take place must be clearly specified. The parties and the Arbitral Tribunal may hold another meeting at the stage specified for revision to ascertain the additional number of sittings that may be required for the final adjudication of the dispute which number may then be incorporated in the Terms of Reference as an additional term.

5. In cases where the arbitrator(s) are appointed by the Court, the order of the Court should expressly stipulate the fee that the Arbitral Tribunal would be entitled to charge. However, where the Court leaves this determination to the Arbitral Tribunal in its appointment order, the Arbitral Tribunal and the parties should agree upon the Terms of Reference as specified in the manner set out in draft practice direction (1) above.

6. There can be no unilateral deviation from the Terms of Reference. The Terms of Reference being a tripartite agreement between the parties and the Arbitral Tribunal, any amendments,

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revisions, additions or modifications may only be made to them with the consent of the parties.

7. All High Courts shall frame the rules governing arbitrators' fees for the purposes of Section 11(14) of the Arbitration and Conciliation Act, 1996.

8. The Fourth Schedule was lastly revised in the year 2016. The fee structure contained in the Fourth Schedule cannot be static and deserves to be revised periodically. We, therefore, direct the Union of India to suitably modify the fee structure contained in the Fourth Schedule and continue to do so at least once in a period of three years.""

(emphasis supplied)

38. This Court is of the opinion that had the Respondent consented to the request of the learned Arbitral Tribunal, this Court could have modified Paragraph No.33 of the Judgment dated 28.07.2025, on mutual consent. However, for reasons best known to the Respondent, it is not willing to accede to the request of the learned Arbitral Tribunal to charge the fee as per the fee prescribed under the Schedule of the DIAC. Without the consent of the Respondent, this Court will not have the jurisdiction to alter Paragraph No.33 of the Judgment dated 28.07.2025. The Respondent is correct in stating that it cannot be said that there is any error apparent on the face of the record in the Judgment dated 28.07.2025.

39. Furthermore, this Court directed that the arbitration proceedings would be conducted under the aegis of DIAC, the learned Arbitrators would certainly have been entitled to the fee schedule fixed by the DIAC. However, since this Court held that the Arbitration will be ad-hoc and not an

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institution-based arbitration, the fee payable to the learned Arbitrators would be as per the Fourth Schedule of the Arbitration Act.

40. In view of the objection raised by the Respondent, this Court is not able to accede to the Petitioner's request of modification of the Judgment dated 28.07.2025, as prayed for by the Petitioner.

41. Accordingly, the Application is dismissed.

SUBRAMONIUM PRASAD, J

JANUARY 23, 2026
Rahul

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