IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION APPLICATION (L) NO.26333 OF 2025

Tata Motors Passenger Vehicles Ltd. & Anr. **...Applicants**

V/s.

Ghosh Brothers Automobiles & Ors **...Respondents**

WITH

COMMERCIAL ARBITRATION APPLICATION (L) NO.25611 OF 2025

Tata Motors Passenger Vehicles Ltd. & Anr. **...Applicants**

V/s.

Ghosh Brothers Automobiles & Ors. **...Respondents**

Mr. Vaibhav Charalwar with Ms. Tikshta Modi and Ms. Magdhi Pawar i/b M/s. Akhil Modi & Associate*s for the Applicants in CARAP(L) 26333/2025.*

Ms. Stephanie Pereira with Ms. Tikshta Modi i/b M/s. Akhil Modi & Associate*s for the Applicants in CARAP(L) 25611/2025***.**

Mr. Prashant Chande with Ms. Sejal Shah i/b Daru Shah *for Respondent Nos. 1 to 3 in CARAP(L) 26333/2025.*

Ms. Sejal Shah i/b Daru Shah *for Respondent Nos. 1 to 3 in CARAP(L) 25611/2025.*

CORAM: SANDEEP V. MARNE, J.

JUDG. RESD. ON: 29 JANUARY 2026
JUDG. PRON. ON: 12 FEBRUARY 2026

Judgment:

1) These Applications are filed by the Applicants under Section 11 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) for appointment of arbitrator in terms of Clause 43.2(a) of the Dealership Agreements dated 26 December 2012 and 9 July 2013 for adjudication of disputes and differences with the Respondents.

2) The issue involved in both the Applications is common. However, for the facility of reference, the facts involved in Commercial Arbitration Application (L) No. 26333 of 2025 are referred throughout the judgment.

3) Applicant No.1-Tata Motors Passenger Vehicles Ltd., which was formerly known as Tata Motors Ltd is engaged in the business of design, manufacturing, supply and sale of passenger vehicles and spare parts. Applicant No.2 is also an incorporated entity and is a successor to Tata Motors Distribution Company Ltd., which was engaged in the business of sale and distribution of commercial and passenger vehicles and spare parts manufactured by Applicant No.1.

4) By Dealership Agreement dated 26 December 2012, Respondent No.1 was appointed as non-exclusive authorised dealer of the Applicants for Guwahati and other territories. Respondent Nos.2 to 4 are directors of Respondent No.1, who have personally guaranteed the payment of outstanding amounts by Respondent No.1 under the Dealership Agreement. According to the Applicants, Respondents are liable to pay Rs.20,80,73,491.61/- towards the Applicants in respect of vehicles and spare parts sold to them by the Applicants. The Demand Notice dated 22 April 2015 was issued to the Respondents. According to the Applicants, the Respondents have admitted their liability vide letter dated 25 June 2015 by confirming sale and delivery of vehicles from time to time. However, since the outstanding amounts were not paid, the Applicant's predecessor issued letter dated 23 February 2016 to Bombay Chamber of Commerce & Industry (**BCCI**) intimating that dispute had arisen between the parties and invoking arbitration clause 43.2(b) of the Dealership Agreement. BCCI intimated to the Respondent on 5 October 2016 regarding invocation of arbitration. BCCI appointed Mr. Justice S.D. Pandit (retired) as sole arbitrator to adjudicate the disputes and differences between the parties. The learned Arbitrator commenced the arbitral proceedings on 4 July 2018 and continued until 29 April 2020. Mandate of the learned Arbitrator was extended by this Court by order dated 6 August 2019 by a period of 8 months and the same was to expire by 6 April 2020. On account of nationwide lockdown due to COVID-19 pandemic, the learned Arbitrator issued letter to both the parties on 18 March 2021 for withdrawal from the reference on account of his ill health.

5) After withdrawal of the learned Arbitrator from reference, Applicants issued letter dated 31 March 2021 to BCCI requesting for substitution of the Arbitrator. According to the Applicants, appointment was not done by BCCI due to Covid related restrictions. The Applicants once again approached the BCCI by letter dated 27 June 2023 for substitution of the Arbitral Tribunal. The Respondents issued reply dated 10 July 2023 contending that the Applicants could not seek any directions from the BCCI as arbitration mandate had expired. Parties thereafter exchanged correspondence in relation to substitution of Arbitrator and Respondents refused to give consent for appointment of substituted Arbitrator. After waiting for response from the BCCI, Applicants moved this Court by filing Application under Section 29A of the Arbitration Act for extension of mandate being Commercial Arbitration Petition No.10148 of 2025 on 28 March 2025 and Application under Section 15 read with Section 14(1) of the Arbitration Act being Commercial Arbitration Petition No.9693 of 2025 on 26 March 2025. By order dated 2 July 2025 , this Court observed that it would be appropriate to grant liberty to the Applicants to pursue remedy under Section 11 of the Arbitration Act. Accordingly, the Applications were disposed of by orders dated 2 July 2025. In pursuance of the liberty granted by this Court, the Applicants have filed the present Application for appointment of sole Arbitrator for adjudication of disputes and differences between the parties arising out of Dealership Agreement dated 26 December 2012 and 9 July 2013.

6) Respondents have appeared and have opposed the Application by filing their affidavit-in-reply. Since pleadings in the Application are complete, the same is taken up for hearing and disposal.

7) Mr. Charalwar, the learned counsel appearing for the Applicants would submit that the present Application is filed essentially for substitution of the Arbitrator. That reference to arbitration between the parties has already been made and even though the previous Arbitrator has withdrawn, only the Arbitrator's mandate has ended under Section 14 of the Arbitration Act and the arbitration proceedings are not terminated under Section 32 of the Arbitration Act. In support, he relies on judgment of this Court in ***Kifayatullah Haji Gulam Rasool and Ors. vs. Bilkish Ismail Mehsania and Ors.***[1] and of the Apex Court in ***Dani Wooltex Corporation and others vs. Sheil Properties Private Limited and Anr***[2]**.** That mere termination of mandate of Arbitrator under Section 14 does not automatically result into termination of arbitral proceedings under Section 32. That since reference continues, a substituted arbitrator needs to be appointed for assisting the arbitral tribunal in taking the arbitral proceedings to logical conclusion.

8) Mr. Charalwar would further submit that no period of limitation applies for seeking substitution of arbitrator in a composite application filed under Section 11 r/w. Sections 14 and 15 of the

1 2000 (4) Mh. L.J. 341
2 (2024) 7 SCC 1

Arbitration Act. That there is a marked difference between seeking reference for constitution of Arbitral Tribunal under Section 11(6) of the Arbitration Act, for which the application may have to be filed within the prescribed period of limitation from the date of invocation and mere substitution of Arbitrator in a live reference, for which no period of limitation would be applicable since arbitral reference continues.

9) Mr. Charalwar would further submit that on resignation of the Arbitrator and on termination of his mandate, the arbitral proceedings continue and only the seat of the Arbitrator becomes vacant. That when Application under Section 15(2) of the Arbitration Act is made, the Court is duty-bound to appoint Arbitrator for assisting continuation and conclusion of the arbitral proceedings. In support, he relies on judgment of the Apex Court in ***Shailesh Dhairyawan vs. Mohan Balkrishna Lulla***[3]**.** That present application is also in the nature of continuing the Arbitral Tribunal already constituted. That for each day that the Arbitral Tribunal lies vacant, cause of action continues. That therefore period of limitation provided under the Limitation Act, 1963 (**Limitation Act**) does not apply to an application, which is filed under Section 11 r/w Sections 14 and 15 of the Arbitration Act. Such application is merely administrative in nature to which period of limitation does not apply.

10) Mr. Charalwar would further submit that Section 29A operates in a different sphere which provides for extension of mandate

[3] (2016) 3 SCC 619

of Arbitrator, who has not rendered the Award in the stipulated period. That Section 29A of the Arbitration Act is not applicable to a situation where the Arbitrator has resigned and where arbitral reference continues.

11) Without prejudice, Mr. Charalwar would submit that in the event this Court finds that provision of Limitation Act applies even to Application under Section 11 r/w Sections 14 and 15 of the Arbitration Act, the delay in filing the application can still be condoned in accordance with provisions of Section 5 of the Limitation Act. In support, he relies on judgment of the Apex Court in ***HPCL Bio-Fuels Ltd. V/s. Shahaji Bhanudas Bhad***[4]**.** He would submit that in the said judgment, the Apex Court has held that filing of a formal application for condonation of delay is not necessary. He further submits that even if cause of action is taken as 31 March 2021, limitation was excluded by virtue of order passed by the Apex Court in ***RE: Cognizance for Extension of Limitation***[5] and the limitation would start running only from 1 March 2022. That the previous application under Section 29-A was filed on 26 March 2022, after disposal of which the present application is filed with delay of 26 days, which deserves to be condoned even in absence of formal application for condonation of delay. Mr. Charalwar prays for appointment of an Arbitrator in the light of existence of arbitration agreement between the parties.

4 2024 SCC OnLine SC 3190
5 (2022) 1 SCC (L&S) 501

12) The Application is opposed by Mr. Chande, the learned counsel appearing for the Respondents. He submits that the same is grossly time-barred. That the Applicants failed to take any steps after resignation by the previous learned Arbitrator on 18 March 2021. He relies on judgment of the Apex Court in ***M/s Arif Azim Co. Ltd. V/s. M/s Aptech Ltd.***[6] in support of his contention that limitation period of three years is applicable even for filing application under Section 11(6) of the Arbitration Act. He would submit that the present Application is filed under Section 11(6) of the Arbitration Act and that the same is not filed either under Section 14 or under Section 15 of the Arbitration Act. That even if 31 March 2021 (date of fresh invocation) is taken as cause of action, the limitation ended on 31 March 2024. That even if benefit of judgment of the Apex Court in ***RE: Cognizance for Extension of Limitation*** (supra) is extended to the Petitioner, still limitation period started on 1 March 2022 and ended on 1 March 2025. He relies on provisions of Section 43 of the Arbitration Act in support of his contention that provisions of Limitation Act are applicable and that Article 137 thereof provides for limitation of only three years.

13) Mr. Chande, would further submit that Applicants have withdrawn Application filed under Sections 14 and 15 of the Arbitration Act on 9 June 2025 and they cannot contend that the present Application should also be treated as one filed under Sections 14 and 15. He would further submit that even application filed under Section 29A of the Arbitration Act seeking extension of mandate is withdrawn by the Applicants. That therefore, Application under Section 11(6) of

[6] Arbitration Petition No.29 of 2023 decided on 1 March 2024

the Arbitration Act filed for appointment of new Arbitrator is clearly not maintainable. He also relies on order of this Court in ***Fedbank Financial Service Ltd. V/s. Narendra H. Shelar***[7] in support of his contention that dismissal of Section 29A Petition results in termination of mandate of the Arbitral Tribunal. In support of his contention that mere correspondence does not extend the period of limitation, he relies on judgment of Delhi High Court in ***C. P. Kapur vs. The Chairman and Ors***[8]**.**

14) Mr. Chande also raises objection about maintainability of present Application contending that the Applicants are not signatories to the Dealership Agreement. He submits that Section 11 of the Arbitration Act can be invoked only by parties to arbitration. He would accordingly pray for dismissal of the Application.

15) Rival contentions raised on behalf of the parties now fall for my consideration.

16) It would be necessary to first deal with the objection raised by Mr. Chande to the maintainability of the present Applications on the ground that the Applicant No. 1 is not signatory to the arbitration agreement. The objection is baseless as paras-1, 2 and 3 of the Application depict the manner in which Tata Motors Passenger Vehicles Ltd. has amalgamated/merged with Tata Motors Ltd. It would

[7] Arbitration Application No.34 of 2020 decided on 24 February 2020
[8] CS (OS) 2678/2012 decided on 17 October 2012

be apposite to extract paras-1 to 3 of the Application for facility of reference :

> 1. The Applicant No.1, Tata Motors Passenger Vehicle Limited is a company formed and registered under Companies Act 2013, having its registered office at the address mentioned in the cause title. Applicant No.1 is engaged in the business of design, manufacture, supply and sale of passenger vehicle and spare parts. The Applicant No.1 has succeeded to the passenger vehicles business of Tata Motors Ltd. (TML) under a Scheme of Arrangement duly approved by the Mumbai Bench of Hon'ble National Company Law Tribunal and is thus entitled to file the present application. Applicant No.1 herein refers to both the Applicant No.1 as well as its predecessor TML.
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> 2. The Hon'ble National Company Law Tribunal, Mumbai Bench, by order dated 24 August 2021 passed in C.P.(CAA)/58/MB-IV/2021 connected with C.A. (CAA)/1142/MB-IV/2020, approved a Scheme of Arrangement between TML and TML Business Analytics Ltd., whereunder the passenger vehicle business of TML (PV Business), including among other arbitration proceedings initiated by TML against the Respondents herein, stood transferred to and vested in TML Business Analytics Services Ltd. Under the said Scheme of Arrangement, TML Business Analytics Services Ltd. got the right to continue legal proceedings initiated by TML, including the arbitration proceedings, as if the same were instituted by TML Business Analytics Services Ltd.
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> 3. The name of TML Business Analytics Services Ltd. was changed to Tata Motors Passenger Vehicles Ltd., Applicant No.2 herein and the Registrar of Companies, Maharashtra State issued a fresh Certificate of Incorporation dated 17 September 2022 to that effect. The Applicant craves liberty of this Hon'ble Court to produce the copy of the relevant Scheme of Arrangement and Certificate of Incorporation which are publicly available documents, as and when required.

Therefore, the objection to the maintainability of the Application is misplaced and liable to be rejected.

17) The disputes and differences between the parties have arisen out of the Dealership Agreement dated 26 December 2012 executed between the predecessor of Applicant No.1 (TML) and Respondent No.1, under which dealership for sale of vehicles, spare parts, accessories as well as after-sales service of passenger vehicles

manufactured by Applicant No.1 was granted to Respondent No.1. There is no dispute to the position that the Dealership Agreement contains arbitration clause No. 43.2 (b) and 43.2 (f) which read thus :

> 43.2 (b) All disputes or differences whatsoever arising between the parties out of or relating to the construction, meaning or operation or effect of this contract/agreement or breach thereof shall be settled by arbitration in accordance with the Rules of Arbitration and Conciliation of the Bombay Chamber of Commerce & Industry and the Award made in pursuance thereof shall be binding on the parties.
>
> 43.2 (f) The seat of arbitration shall be in Mumbai.

18) *While* Respondents do not dispute existence of arbitration agreement, they have opposed the present applications on the ground of limitation.

19) Clause 43.2(b) provides for dispute resolution in accordance with Rules of Arbitration and Conciliation of the BCCI. According to the Applicants, there are outstanding amounts due from the Respondents. After the initial correspondence demanding outstanding amount, the arbitration clause was invoked by notice dated 23 February 2016. Applicants approached BCCI, which was the institute agreed in the clause. BCCI appointed Mr. Justice S.D. Pandit (Retd) as the arbitrator. The learned Arbitrator conducted arbitration proceedings and conducted number of meetings. However, by letter dated 18 March 2021, the learned Arbitrator withdrew from the reference. Thus, the mandate of the Arbitrator came to an end under Section 14 of the Arbitration Act, which provides thus:

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.

20) Section 15 of the Arbitration Act also provides for two additional eventualities, under which also the mandate of the arbitrator terminates. After the mandate of the arbitrator terminates under Section 14 or 15, the reference still continues and what occurs is a vacancy in the chair of the arbitrator. That vacancy needs to be filled up by a substitute arbitrator in accordance with provisions of Section 15(2) of the Arbitration Act. Section 15 of the Act provides thus:

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 maybe 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.

21) However, there is difference between the concepts of termination of mandate of arbitrator and termination of arbitral proceedings. Mere termination of mandate of arbitrator does not automatically result in termination of arbitral proceedings, and in such an event the reference continues and merely a vacancy occurs in the chair of the arbitrator, which can be filled up under Section 15(2) of the Arbitration Act. However, the distinct concept of termination of arbitral proceedings is dealt with under Section 32 of the Arbitration Act which provides thus:

> **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.

22) The position that mere termination of mandate of the arbitrator does not result in automatic termination of arbitral proceedings is well settled and reference in this regard can be made to the judgment of the Apex Court in ***Dani Wooltex Corporation*** (supra) in which the Apex Court has held in Paras-12 to 14 as under:

> **12. The Arbitration Act has two provisions for terminating an arbitrator's mandate. Sections 14 and 15 are the relevant sections. The arbitrator is empowered to withdraw from his office, which terminates his mandate. However, the arbitral proceedings continue by the arbitrator's substitution.**
>
> 13. The order of termination passed by the learned arbitrator, in this case, gives an impression that he was of the view that unless parties move the Arbitral Tribunal with a request to fix a meeting or a date for the hearing, the Tribunal was under no obligation to fix a meeting or a date for hearing. The appointment of the Arbitral Tribunal is made with the object of adjudicating upon the dispute covered by the arbitration clause in the agreement between the parties. By agreement, the parties can appoint an arbitrator or Arbitral Tribunal. Otherwise, the Court can do so under Section 11 of the Arbitration Act. An arbitrator does not do pro bono work. For him, it is a professional assignment. A duty is vested in the learned arbitrator or the Arbitral Tribunal to adjudicate upon the dispute and to make an award. The object of the Arbitration Act is to provide for an efficient dispute resolution process. An arbitrator who has accepted his appointment cannot say that he will not fix a meeting to conduct arbitral proceedings or a hearing date unless the parties request him to do so. It is the duty of the Arbitral Tribunal to do so. If the claimant fails to file his statement of claim in accordance with Section 23, in view of clause (a) of Section 25, the learned arbitrator is bound to terminate the proceedings. If the respondent to the proceedings fails to file a statement of defence in accordance with Section 23, in the

> light of clause (b) of Section 25, the learned arbitrator is bound to proceed further with the arbitral proceedings. Even if the claimant, after filing a statement of claim, fails to appear at an oral hearing or fails to produce documentary evidence, the learned arbitrator is expected to continue the proceedings as provided in clause (c) of Section 25. Thus, he can proceed to make an award in such a case.
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> 14. On a conjoint reading of Sections 14 and 15, it is apparent that an arbitrator always has the option to withdraw for any reason. Therefore, he can withdraw because of the parties' non-cooperation in the proceedings. **But in such a case, his mandate will be terminated, not the arbitral proceedings**.
>
> *(emphasis supplied)*

23) Similarly, this Court in ***Kifayatullah Haji Gulam Rasool*** (supra) has held in paras-11, 12, 16 and 17 as under:

> 11. Section 14 specifies the grounds for terminating the mandate of an arbitrator and method of doing so. The grounds for terminating the mandate are : (i) the arbitrator becomes *de jure* or *de facto* unable to perform his function or (ii) for some other reasons fails to act without undue delay or (iii) the arbitrator withdraws from his office or (iv) the parties agree to the termination of his authority as an arbitrator; whereas three methods can be employed for terminating the mandate of the arbitrator. They are (a) by withdrawal of the arbitrator from his office (b) by agreement of parties and (c) by decision by the Court.
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> 12. Section 15 provides for additional grounds for termination of the mandate and for appointment of substitute arbitrator. The additional grounds provided are (a) where he withdraws from office for any reason or (b) by or pursuant to the agreement of the parties. Though sub-section (1) purports to state additional grounds for termination of authority of an arbitrator but one of the grounds mentioned therein is covered by the grounds set out in clause (b) of sub-section (1) of section 14. On the authority of the arbitrator being terminated, a substitute arbitrator in place of arbitrator whose authority is terminated has to be appointed and such appointment, as per sub-section (2) is required to be made by following the same procedure as followed while appointing the arbitrator who is being substituted.
>
> 16. On the above backdrop let us consider the legal provisions providing for commencement and termination of the arbitration proceedings.

(a) Section 21 of the Act provides for commencement of the arbitral proceedings. This section provides that in the absence of an agreement between the parties to the reference, the arbitral dispute in respect of a particular dispute shall commence on the date on which a request for that dispute to be referred to the Arbitration is received by other party. If in the arbitral agreement parties provide any other mode for commencement of the arbitral proceedings, the arbitral proceedings will commence in accordance therewith.

(b) Section 25 incorporates the course of action arbitral Tribunal may adopt in the event of party committing any of the three defaults mentioned in this section. The provision of section 25 is intended to enable the arbitral tribunal not to allow any proceedings to drag on at the instance of one or the other party. What is contemplated in this section is an order passed by arbitral Tribunal terminating arbitral proceedings. No such order has been passed by the arbitral tribunal in this case as such even provision of section 25 is not available to the petitioners. The said provision cannot be invoked before this Court. However, the petitioners are at liberty to obtain appropriate orders in this behalf from the arbitral Tribunal but not from this Court.

(c) Section 32 of the Act makes provision for termination of the arbitral proceedings. Under this section it is provided, that the arbitral proceedings shall automatically stand terminated when final award is made. Hence, for automatic termination of the arbitral proceedings, arbitral award has to be final. Reading of section 32 unequivocally provides that only 'final award' shall terminate the arbitral proceedings. The final award is one which decides or completes decision of claims presented.

The arbitral proceedings can also be terminated by an order of the arbitral Tribunal which order can only be passed when claimant withdraws the claim or when the parties to the reference agree on the termination of the proceeding, or the arbitral Tribunal finds that continuation of the arbitral proceeding has become unnecessary or impossible. As per clause (b) of sub-section (2) of section 32 the parties to the agreement have also been given liberty to terminate arbitral proceedings but such a request must be made to the arbitral tribunal by the parties to the proceedings and it must be accepted by the arbitral Tribunal by an order passed in that behalf. As per sub-section (3) the mandate of the arbitral tribunal, can also be brought to an end with termination of arbitral proceedings subject to section 33 and sub-section (4) of section 34 of the Act.

17. In the above premises, the Act makes specific provision for commencement and termination of the arbitral proceedings. In the instant case, none of the events as contemplated under section 32 of the Act have taken place. No final award has been passed. No joint request depicting agreement of parties have been made to the arbitral tribunal to terminate proceedings. No orders have been passed by the Arbitral Tribunal as contemplated under sub-section (2) of section 32 of the Act. Therefore, it cannot be said that the arbitral proceeding have come to an end. I, therefore,

hold that the arbitral proceedings have not come to an end even though the mandate of the arbitrators have come to an end.

24) Therefore, mere withdrawal by the learned Arbitrator from the arbitral proceedings vide letter dated 18 March 2021 has not resulted in termination of arbitral proceedings under Section 32 of the Arbitration Act. The reference continued notwithstanding the withdrawal by the learned Arbitrator.

25) As observed above, after the termination of mandate of arbitrator on withdrawal by the learned Arbitrator from the arbitral proceedings, it becomes necessary to fill up the vacancy under Section 15 of the Arbitration Act. Under Section 15, the expression used is *'shall be appointed'* meaning thereby that either the parties or the Court must necessarily appoint arbitrator after the termination of mandate of the previous arbitrator. Section 15 also uses the expression *'according to the rules that were applicable to the appointment of arbitrator'*. This essentially would mean that same rules which applied to appointment of original arbitrator would also apply to the appointment of the substitute arbitrator. In the present case, parties have agreed to Rules of Arbitration of BCCI. Therefore it was necessary for the Applicants to move BCCI for appointment of substitute arbitrator. The Applicants have twice approached BCCI after withdrawal by the Arbitrator on 31 March 2021 and 27 June 2023. However, BCCI has failed to appoint the arbitrator. Accordingly, the Applicants have filed application under Section 29A of Arbitration Act for extension of mandate as well as separate application under Sections 14 and 15 of the Arbitration Act for

appointment of substitute arbitrator. However, this Court expressed vide order dated 2 July 2025 that it would be appropriate that the Applicants pursue remedy under Section 11 of the Arbitration Act. This was possibly on account of failure of agreed procedure. The order dated 2 July 2025 reads thus:

> 1. It is apparent that the last arbitral hearing took place in April 2020 and the mandate had already expired on April 6, 2020. Even factually, it would mean that the extension of time line granted by the Supreme Court to accommodate Covid-19 pandemic had also lapsed. These Petitions have been filed with an inordinate delay in 2025.
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> 2. Learned Counsel for the Petitioner submits that it was the Bombay Chamber of Commerce and Industry which was required to substitute the Arbitrator since the Learned Sole Arbitrator had passed away and she would attribute the delay to the institution.
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> **3. In these circumstances, rather than dealing with the hopelessly delayed Petitions under Section 29-A of the Arbitration and Conciliation Act, 1996 ("the Act"), it would be appropriate to grant liberty to the Petitioner to pursue the remedy available under Section 11 of the Act.**
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> 4. Needless to say, nothing contained herein is an expression of an opinion on merits of the matter and the delay, if any, in filing the Section 11 Application would be dealt with in accordance with law. The Petitioner may take up such proceedings as advised instead of pursuing these Petitions under Section 29-A of the Act. **Suffice it to say that the arbitration agreement between the parties would not come to an end with the expiry of the Learned Sole Arbitrator – it would subsist.**
>
> 5. The parties to pursue their rights as available in law and as advised.
>
> 6. Both these Petitions stand finally disposed of with liberty as aforesaid.
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> 7. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.
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> *(emphasis supplied)*

26) Thus in Order dated 2 July 2025, this Court has clarified that the arbitration agreement between the parties has not come to an end and that the same continues. Accordingly, the Applicants have filed the present Application under Section 11 of the Arbitration Act.

27) Reliance by Mr. Chande on Order of this Court in ***Fedbank*** (supra) does not assist the case of the Respondents. The case before this Court involved termination of the mandate of arbitration under Section 29A of the Arbitration Act on account of this Court dismissing the Petition for extension of mandate. This Court has made an observation that the Tribunal's mandate itself was terminated and that therefore there was no question of reviving and bringing back to life the arbitral proceedings by appointment of new arbitrator under Section 11. This is clear from following observations in the Order:

> 2. The Petitioner invoked arbitration under a Facility or Loan Agreement dated 21st June 2013. That had an arbitration clause. The Petitioner invoked arbitration by its letter of 22nd March 2018, a copy of which is at 'Exhibit C' to the Petition. By this letter, the Petitioner nominated a sole arbitrator.
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> 3. The learned Sole Arbitrator entered upon the reference to his arbitration on 4th April 2018.
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> 4. It seems that there was a statement of claim and a statement of defence and then nothing at all happened.
>
> 5. The Respondent then fled an application for closure of the proceedings saying that they had not been concluded within one year. On this the learned sole arbitrator made an application that since time had not been extended, there being no application by the Petitioner under Section 29-A of the Arbitration and Conciliation Act, the arbitration proceeding was closed with the mandate terminated. Parties were set at liberty to take appropriate steps in accordance with law. This order passed by the learned sole arbitrator was on 18th July 2019.

> 6. **Ms Bhogale cannot dispute the fact that the Petitioner was late in fling a Section 29-A Petition. It did file that Petition, Arbitration Petition No. 1271 of 2019. I dismissed it on 9th January 2020.**
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> 7. The situation therefore is that an arbitration previously invoked with a nomination agreed by the Respondent has now come to an end. **The Arbitral tribunal mandate has been terminated. There is no extension of time**.
>
> 8. What the Petitioner now seeks is to start the process all over again by presenting this application under Section 11. This is a second go-around for the same arbitration.
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> *(emphasis and underlining added)*

Thus in ***Fedbank*** , the application filed by the applicant therein under Section 29A of the Arbitration Act was dismissed and thereafter fresh application was filed under Section 11 for appointment of arbitrator. The case also did not involve withdrawal by the Arbitrator from the reference. The mandate of arbitration ended on account of claimant's failure to seek extension under Section 29A of the Act. The Order in ***Fedbank*** therefore does not have application to the facts of the present case.

28) Coming back to the issue of limitation, the Apex Court in its recent judgment in ***M/s. Arif Azim Co. Ltd.*** (supra) has considered and decided the issue as to whether provisions of Limitation Act are applicable to an application for appointment of arbitrator under Section 11(6) of the Arbitration Act. The Apex Court held in paras-45, 46 and 50 as under :

> 45. The plain reading of Section 11(6) of the Act, 1996, which provides for the appointment of arbitrators, indicates that no time-limit has been prescribed for filing an application under the said section. However, Section 43 of the Act, 1996 provides that the Limitation Act, 1963 would apply to arbitrations

as it applies to proceedings in court. The aforesaid section is reproduced hereinbelow:

> "43. Limitations.—(1) The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to proceedings in court.
> (2) For the purposes of this section and the Limitation Act, 1963 (36 of 1963), an arbitration shall be deemed to have commenced on the date referred to in section 21.
> (3) Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.
> (4) Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963 (36 of 1963), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted."

46. Since none of the Articles in the Schedule to the Limitation Act, 1963 provide a time period for filing an application under Section 11(6) of the Act, 1996, it would be covered by Article 137 of the Limitation Act, 1963 which is the residual provision and reads as under:

	Description of Application	Period of limitation	Time from which period begins to run
137.	Any other application for which no period of limitation is provided elsewhere in this Division	Three years	When the right to apply accrues.

50. Having traversed the statutory framework and case law, we are of the clear view that there is no doubt as to the applicability of the Limitation Act, 1963 to arbitration proceedings in general and that of Article 137 of the Limitation Act, 1963 to a petition under Section 11(6) of the Act, 1996 in particular. Having held thus, the next question that falls for our determination is whether the present petition seeking appointment of an arbitrator is barred by limitation.

29) Thus, the Apex Court has held that the limitation prescribed under Article 137 of the Limitation Act would apply to a

petition under Section 11(6) of the Arbitration Act. The Apex Court thereafter considered the issue as to when the right to apply under Section 11(6) accrues. The Apex Court has held in paras-56 and 62 as under :

> 56. The other way of ascertaining the relevant point in time when the limitation period for making a Section 11(6) application would begin is by making use of the Hohfeld's analysis of jural relations. It is a settled position of law that the limitation period under Article 137 of the Limitation Act, 1963 will commence only after the right to apply has accrued in favour of the applicant. As Page 31 of 58 per Hohfeld's scheme of jural relations, conferring of a right on one entity must entail the vesting of a corresponding duty in another. When an application under Section 11(6) of the Act, 1996 is made before this Court without exhausting the mechanism prescribed under the said sub-section, including that of invoking arbitration by issuance of a formal notice to the other party, this Court is not duty bound to appoint an arbitrator and can reject the application for being premature and non-compliant with the statutory mandate. However, once the procedure laid down under Section 11(6) of the Act, 1996 is exhausted by the applicant and the application passes all other tests of limited judicial scrutiny as have been evolved by this Court over the years, this Court becomes duty-bound to appoint an arbitrator and refer the matter to an arbitral tribunal. Thus, the "right to apply" of the Applicant can be said to have as its jural corelative the "duty to appoint" of this Court only after all the steps required to be completed before instituting a Section 11(6) application have been duly completed. Thus, the limitation period for filing a petition under Section 11(6) of the Act, 1996 can only commence once a valid notice invoking arbitration has been sent by the applicant to the other party, and there has been a failure or refusal on part of that other party in complying with the requirements mentioned in such notice.
>
> 62. A perusal of the above shows that the request for appointment of an arbitrator was first made by the petitioner vide notice dated 24.11.2022 and a time of one month from the date of receipt of notice was given to the respondent to comply with the said notice. The notice was delivered to the respondent on 29.11.2022. Hence, the said period of one month from the date of receipt came to an end on 28.12.2022. Thus, it is only from this day that the clock of limitation for filing the present petition would start to tick. The present petition was filed by the petitioner on 19.04.2023, which is well within the time period of 3 years provided by Article 137 of the Limitation Act, 1963. Thus, the present petition under Section 11(6) of the Act, 1996 cannot be said to be barred by limitation.

30) Thus, the application under Section 11(6) of the Arbitration Act needs to be filed within a period of 3 years from the date of delivery of notice invoking arbitration under Section 21 of the Act.

31) Mr. Charalwar has strenuously submitted that the principle of application of limitation under Article 137 of the Limitation Act to an application filed under Section 11(6) of the Arbitration Act cannot be applied in a case where a party files a composite application under Section 11, 14 and 15 of the Arbitration Act. I am unable to agree. This is because Section 15 of the Arbitration Act provides that 'same rules' as are applicable for appointment of arbitrator would apply even to an appointment of substitute arbitrator. Therefore, when a composite application is filed under Section 11, 14 and 15 of the Arbitration Act, all rigours of Section 11 would apply even for substitute arbitrator including the period of limitation. It is otherwise incomprehensible that an application for appointment of substitute arbitrator can be filed at any point of time without any restriction of limitation. Since same rules applicable to appointment of earlier arbitrator also apply for appointment of substitute arbitrator under Section 15(2), the period of limitation for appointment of arbitrator under Section 11(6) would equally apply when a composite application is presented for appointment of substitute arbitrator under Section 11, 14 and 15 of the Arbitration Act.

32) Mr. Charalwar has submitted that since exercise of power of appointment of substitute arbitrator under Section 15(2) is essentially to assist carriage of arbitral proceedings, limitation

applicable under Section 11(6) would not necessarily apply for appointment of substitute arbitrator. He has relied upon judgment of the Apex Court in ***Shailesh Dhairyawan*** (supra) in which the parties had named the arbitrator in the contract who refused to act as the arbitrator. The application for appointment of substitute arbitrator was resisted on the ground that the contract provided for appointment of only named arbitrator and that no one else could be appointed as the sole arbitrator. While deciding the issue, the Apex Court has discussed the scheme of Section 15(2) of the Arbitration Act and has held in paras-19 as under:

> 19. The scheme of Section 8 of the 1940 Act and the scheme of Section 15(2) of the 1996 Act now needs to be appreciated. Under Section 8(1)(b) read with Section 8(2) if a situation arises in which an arbitrator refuses to act, any party may serve the other parties or the arbitrators, as the case may be, with a written notice to concur in a fresh appointment, and if such appointment is not made within 15 clear days after service of notice, the Court steps in to appoint such fresh arbitrator who, by a deeming fiction, is to act as if he has been appointed by the consent of all parties. This can only be done where the arbitration agreement does not show that it was intended that the vacancy caused be not supplied. However, under Section 15(2), where the mandate of an arbitrator terminates, a substitute arbitrator "shall" be appointed. Had Section 15(2) ended there, it would be clear that in accordance with the object sought to be achieved by the Arbitration and Conciliation Act, 1996 in all cases and for whatever reason the mandate of an arbitrator terminates, a substitute arbitrator is mandatorily to be appointed. This Court, however, in the judgments noticed above, has interpreted the latter part of the Section as including a reference to the arbitration agreement or arbitration clause which would then be "the rules" applicable to the appointment of the arbitrator being replaced. It is in this manner that the scheme of the repealed Section 8 is resurrected while construing Section 15(2). The arbitration agreement between the parties has now to be seen, and it is for this reason that unless it is clear that an arbitration agreement on the facts of a particular case excludes either expressly or by necessary implication the substitution of an arbitrator, whether named or otherwise, such a substitution must take place. In fact, sub-sections (3) and (4) of Section 15 also throw considerable light on the correct construction of sub-section (2). Under sub-section (3), when an arbitrator is replaced, any hearings previously held by the replaced arbitrator may or may not be repeated at the discretion of the newly appointed

> Tribunal, unless parties have agreed otherwise. Equally, orders or rulings of the earlier arbitral Tribunal are not to be invalid only because there has been a change in the composition of the earlier Tribunal, subject, of course, to a contrary agreement by parties. This also indicates that the object of speedy resolution of disputes by arbitration would best be sub-served by a substitute arbitrator continuing at the point at which the earlier arbitrator has left off.

33) The above observations are made by the Apex Court in the light of the issue of substitution of arbitrator when the clause names an arbitrator. It is held that though there is statutory mandate for appointment of substitute arbitrator, since 'same rules' apply, one needs to have regard to the arbitration agreement. To this extent only the judgment would be relevant to the facts of the present case. However, for deciding the issue of application of period of limitation for appointment of substitute arbitrator, the judgment in ***Shailesh Dhairyawan*** (supra) does not assist the case of the Applicants in support of their contention that no period of limitation can be applied for deciding composite application under Sections 11, 14 and 15 of the Arbitration Act. In my view therefore, period of limitation would apply even for appointment of substitute arbitrator under Section 15(2) of the Act.

34) Before proceeding further, it must be noted that the present applications are filed under Section 11 of the Arbitration Act and these are not composite applications under Sections 11, 14 and 15 of the Act as sought to be contended by the Applicants. The Applications are filed under Section 11 only, possibly on account of order passed by this Court on 2 July 2025 when earlier application filed under Sections 14 and 15 of the Arbitration Act was withdrawn on

account of expression of opinion by the Court about Section 11 of the Arbitration Act being the correct remedy. The case involves peculiar circumstances where adjudication of claim of the Applicants is struck on twin counts of the previous arbitrator withdrawing from reference and the institute (BCCI) failing to appoint the substitute arbitrator. It is not that the Applicants have slept over the matter after withdrawal by the previous arbitrator. It immediately wrote to BCCI to nominate the substitute arbitrator. Upon BCCI's failure to do so, the Applicants filed applications under Section 29-A and under Sections 14 and 15 of the Arbitration Act. May be considering the peculiar facts of the case, the remedy exercised by the Applicants of seeking extension of the mandate under Section 29-A and for appointment of substitute arbitrator under Sections 14 and 15 of the Arbitration Act was the right remedy. However, this Court directed the Applicants to avail the remedy of Section 11 observing that the arbitration agreement continues. Applicants have accordingly filed the present Applications under Section 11 based on invocation vide Notice dated 31 March 2021. However what the Applicants ultimately seek is appointment of a substitute arbitrator. Considering these peculiar circumstances of the case, in my view, technicalities cannot be permitted to prevail by denial of adjudication of the reference. Considering the peculiar circumstances of the case, this Court could have even recalled the Order disposing of Section 29A and Section 14 and 15 Applications and could have considered and decided the same along with the present Applications. Ultimately, all efforts of the Applicants are towards ensuring that the vacancy in the reference is filled up and the arbitral

proceedings reach to its logical conclusion. Therefore considering the peculiar facts and circumstances of the case, I am of the view that the technical hurdles need to be surmounted and it needs to be ensured that the real objective for which the proceedings are instituted is ultimately achieved.

35) Now I proceed to examine whether the present Applications are filed within limitation. The learned Arbitrator withdrew himself on 18 March 2021 and Applicants wrote to BCCI for appointment of substitute arbitrator firstly on 31 March 2021. After writing to BCCI, the Applicants did not pursue the matter further and filed the successive application only on 27 June 2023. Filing of application dated 27 June 2023 is inconsequential as the limitation began running on 31 March 2021. However, on account of COVID pandemic restrictions, the period of limitation was excluded by the order of the Apex Court in ***RE: Cognizance for Extension of Limitation*** (supra). The exclusion of limitation ended on 28 February 2022. Therefore, the maximum period of limitation for filing the present application expired on 28 February 2025, by which time Applicants failed to file any proceedings for appointment of substitute arbitrator. It is only on 26 March 2025, Applicants filed applications under Section 29A of the Arbitration Act and under Sections 14 and 15 of the Arbitration Act. The Applicants will have to be granted the benefit under Section 14 of the Limitation Act in respect of the two applications filed by it under Section 29A and Sections 14 and 15 of the Arbitration Act, since this Court held the said two applications to be

incorrect remedies and relegated them to the present remedy under Section 11 of the Arbitration Act. Therefore, the period from 26 March 2025 till the said two applications were disposed of on 2 July 2025 needs to be excluded under Section 14 of the Limitation Act. The present Application has been filed by the Applicants on 21 August 2025. There is thus delay of about 76 days even after grant of benefit of exclusion on account of COVID-19 pandemic and benefit of bonafide prosecution of other proceedings under Section 14 of the Limitation Act. In Commercial Arbitration Application (L) No. 25611 of 2025, the delay is of 91 days

36) Mr. Charalwar has urged that the delay caused in filing of application under Section 11(6) of the Arbitration Act is otherwise condonable. He has relied upon judgment of the Apex Court in ***HPCL Bio-Fuels Ltd*** (supra) in which the Apex Court had formulated following questions for determination:

> i. Whether the benefit of condonation of delay under Section 5 of the Limitation Act is available in respect of an application for appointment of arbitrator under Section 11(6) of the Act, 1996?
>
> ii. Whether it is permissible for the courts to condone delay under Section 5 of the Limitation Act in the absence of any application seeking such condonation?
>
> iii. Whether the facts of the present case warrant the exercise of discretion in favour of the respondent to condone the delay in filing the second arbitration application?

37) The issue about the benefit of condonation of delay under Section 5 of the Limitation Act has been answered after considering various judgments in para-121 as under:

> 121. The position of law that emerges from the aforesaid discussion is that the benefit under Section 5 of the Limitation Act is available in respect of the applications filed for appointment of arbitrator under Section 11(6) of the Act, 1996. Further, the requirement of filing an application under Section 5 of the Limitation Act is not a mandatory prerequisite for a court to exercise its discretion under the said provision and condone the delay in institution of an application or appeal. Thus, the only question that remains to be considered is whether in the facts of the present case, the respondent could be said to have made out a case for condonation of delay in instituting the fresh Section 11(6) application.

38) Thus the Apex Court has ruled in ***HPCL Bio-Fuels*** (supra) that benefit under Section 5 of the Limitation Act is available in respect of the application filed for appointment of arbitrator under Section 11(6) of the Arbitration Act. The Apex Court has gone a step further and has held that the requirement of filing application under Section 5 of the Limitation Act is not a mandatory pre-requisite for a Court to exercise its discretion under the said provision and condone the delay in institution of the application. Thus, the delay in filing application under Section 11(6) can be condoned by the Court, in a given case, even in absence of a formal application for condonation of delay. In the present case, the delay is of 76 and 91 days. Considering the peculiar facts and circumstances of the case where appointment of substitute arbitrator is necessitated essentially for carriage of the reference and for its logical conclusion, in my view, delay of 76 and 91 days in filing the present application deserves to be condoned. The Applicants have been taking requisite steps for having the disputes adjudicated. The situation has arisen essentially on account of earlier arbitrator withdrawing from arbitral proceedings and the Institute (BCCI) failing to appoint the arbitrator despite repeated requests by the Applicants. It

is Applicants' case that the liability to pay the demanded amount is admitted by the Respondents. It is not necessary to delve deeper into that aspect at this stage. However, suffice it to observe that an opportunity needs to be granted to the Applicants to have their disputes adjudicated on merits. I am therefore inclined to condone the delay of about 76 and 91 days in filing the present Applications.

39) Mr. Chande has relied upon judgment of learned Single Judge of Delhi High Court in ***C.P. Kapur*** (supra) in support of the contention that mere correspondence does not extend the period of limitation. There can be no dispute about this proposition and correspondence made by the Applicants after 31 March 2021 has not been taken into consideration for extending the period of limitation. The judgment therefore has no application to the present case.

40) The Applications accordingly succeed, and I proceed to pass the following order :

(i) The delay in filing the Applications is condoned.

(ii) Mr. Justice R. Y. Ganoo, former Judge of this Court, is appointed as the substitute arbitrator in the reference for adjudication of disputes and differences between the parties arising out of Dealership Agreements dated 26 December 2012 and 9 July 2013. The contact details of the Learned Arbitrator are as under:

Office address: Unit No.2, 2nd Floor, Room No.26, Building No.32, Raja Bahadur Compound, Ambalal Doshi Marg,Fort, Mumbai – 400023

Telephone No.: 022-25272204/9920167959

(iii) A copy of this order be communicated to the learned sole Arbitrator by the Advocate for the Applicants within a period of one week from the date of uploading of this order. The Applicants shall provide the contact and communication particulars of the parties to the Arbitral Tribunal alongwith a copy of this order.

(iv) The learned sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of 2 weeks from receipt of a copy of this order.

(v) The parties shall appear before the learned sole Arbitrator on such date and at such place as indicated by her, to obtain appropriate direction with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc.

(vi) The fees of the learned sole Arbitrator shall be as prescribed under the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion

and shall be subject to the final Award that may be passed by the Tribunal.

37. All rights and contentions of the parties are expressly kept open to be adjudicated by the Arbitral Tribunal. With the above directions, the Applications are **allowed** and **disposed of**.

[SANDEEP V. MARNE, J.]