IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.MANU

THURSDAY, THE 18TH DAY OF DECEMBER 2025 / 27TH AGRAHAYANA, 1947

AR NO. 131 OF 2025

04.01.2025 IN EP NO.1031 OF 2021 OF DISTRICT COURT & SESSIONS COURT, THIRUVANANTHAPURAM

PETITIONER/APPLICANT:

M/S. AGRO INDUS CREDITS LIMITED,
FORMERLY AGRO INDUS FINANCE AND LEASING INDIA LTD, THADIKKARAN CENTER PALARIVATTOM, COCHIN
REPRESENTED BY ITS LEGAL AND RECOVERY HEAD
MR.JOHN THITHEEMOS,
PIN – 682025.

BY ADVS.
SRI.V.S.THOSHIN
SMT.NAKSHATRA SHIKA

RESPONDENTS/RESPONDENTS:

1 **MANGALAN S @ JAGAN MANGALAN**
AGED 73 YEARS
S/O. SADASIVAN, SAROJA MANDIRAM, KADAKKAVOOR P.O, THIRUVANANTHAPURAM, PIN – 695306.

2 **LALITHA S**
AGED 69 YEARS
W/O. MANGALAN S, SAROJA MANDIRAM,
KADAKKAVOOR P.O,THIRUVANANTHAPURAM, PIN – 695306.

3 VIMAL M
AGED 42 YEARS
S/O. JAGAN MANGALAN, SAROJA MANDIRAM,
KADAKKAVOOR P.O, THIRUVANANTHAPURAM,
PIN – 695306.

BY ADVS.
SRI.K.SANEESH KUMAR
SMT.V.B.SANTHINI

THIS ARBITRATION REQUEST HAVING COME UP FOR ADMISSION ON 11.12.2025, ALONG WITH AR.138/2025, THE COURT ON 18.12.2025 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.MANU

THURSDAY, THE 18TH DAY OF DECEMBER 2025 / 27TH AGRAHAYANA, 1947

AR NO. 138 OF 2025

06.02.2024 IN EP NO.1046 OF 2021 OF DISTRICT COURT & SESSIONS COURT, THIRUVANANTHAPURAM

PETITIONER/APPLICANT:

M/S. AGRO INDUS CREDITS LIMITED
FORMERLY AGRO INDUS FINANCE AND LEASING INDIA LTD
THADIKKARAN CENTER PALARIVATTOM, COCHIN,
PIN – 682025.
REPRESENTED BY ITS LEGAL AND RECOVERY HEAD
MR.JOHN THITHEEMOS.

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BY ADVS.
SRI.K.SANEESH KUMAR
SMT.V.B.SANTHINI

THIS ARBITRATION REQUEST HAVING COME UP FOR ADMISSION ON 11.12.2025, ALONG WITH AR.131/2025, THE COURT ON 18.12.2025 PASSED THE FOLLOWING:

[CR]

S.MANU, J.

A.R.Nos.131 & 138 of 2025

Dated this the 18th day of December, 2025

ORDER

The legal question to be resolved in this arbitration request pertains to whether a new notice or request must be issued to the respondents to initiate a subsequent arbitral proceeding, in light of the fact that the previous arbitral award was annulled on the rationale that the appointment of the arbitrator was legally untenable.

2. Applicant is a non-banking finance company. The respondents availed two loans of Rs.95,00,000/- and Rs.55,00,000/- from the applicant. An agreement was executed on 17.7.2018 with respect to the loan of Rs.55,00,000/-. Another agreement was executed on 18.9.2018 for availing the loan of Rs.95,00,000/-. Respondents agreed to repay the loans

within a period of 36 months' time. It was also agreed to pay interest at the rate of 20% per annum with monthly rest agreeing to service interest at every month. For securing the loan, they executed demand promissory notes in favour of the applicant. They also executed security delivering letters in favour of the applicant. However, they allegedly failed to pay off the entire outstanding amounts even after expiry of 36 months. According to the applicant, though several requests were made, they did not care to repay the amounts.

3. The applicant invoked the arbitration clauses in the loan agreements and an Arbitrator was appointed. The respondents raised objection, disagreeing with the appointment of an inhouse arbitrator. The Arbitrator however proceeded further and passed awards on 30.12.2019. Applicant filed E.P.Nos.1046/2021 and 1031/2021 in the Commercial Court, Thiruvananthapuram for executing the awards. The respondents approached the Commercial Court, Ernakulam in AOP

Nos.11/2021 and 116/2021 challenging the awards. The Commercial Court, Ernakulam found that the appointment of the Arbitrator itself was bad and the entire arbitration proceedings were null and void as the appointment of the Arbitrator was unilateral. The awards were declared as nullity. AOPs were allowed by setting aside the awards. Thus, the first round of arbitration proceedings failed to yield any results as far as the applicant is concerned. Hence, the applicant filed the above Arbitration Requests for appointment of an Arbitrator by this Court to determine the disputes between the applicant and the respondents.

4. Respondents entered appearance through counsel and raised objection regarding the maintainability of the arbitration request. They contended that no notice as contemplated under Section 21 of the Arbitration and Conciliation Act, 1996 (henceforth mentioned as 'the Act'] was issued before filing the instant Arbitration Request and therefore

the requirements under Section 11 of the Act are not satisfied for invoking the jurisdiction of this Court. They contended that the said issue may be considered before proceeding further.

5. Heard Sri.Thoshin.V.S., learned counsel for the petitioners and Sri.K.Saneesh Kumar, learned counsel for the respondents.

6. Sri.Thoshin submitted that this is the second round of proceedings and in the first round of arbitral proceedings, notice was issued under Section 21 of the Act, an Arbitrator was appointed and awards were passed. Respondents challenged the awards by approaching the Commercial Court and the court set aside the awards only for the reason that the appointment of the Arbitrator was unilateral. He contended that since the arbitral proceedings commenced as provided under Section 21 of the Act when the respondents received the initial notice, no fresh notice is required. The learned counsel relied on a judgment of a learned Single Judge of the Bombay High Court in

support of his contention. He pointed out that the same issue was considered by the Bombay High Court and it was held that an application under Section 11(6) of the Act need not be preceded by a fresh notice under Section 21 when the first award was set aside. He hence submitted that there is no merit in the objection raised by the respondents and the Arbitration Requests may be allowed.

7. Sri.K.Saneesh Kumar, the learned counsel for the respondents submitted that the statutory scheme of Arbitration Act contains specific provisions regarding commencement of arbitral proceedings and also termination of arbitral proceedings. He submitted that Section 21 of the Act provides that arbitral proceedings in respect of a particular dispute commences on the date on which a request for that dispute to be referred to arbitration is received by the respondents. He referred to Section 32 of the Act which deals with termination of proceedings. He pointed out that various situations under which

the arbitral proceedings can be considered as terminated are mentioned in Section 32. He submitted that in view of Section 32(1), the arbitral proceedings shall be terminated by the final arbitral award or by an order of the Tribunal under sub-section (2). He pointed out that in these cases, in the previous round, final awards were passed by the Arbitrator. He hence submitted that with the passing of the final awards, the arbitral proceedings commenced with receipt of notice by his parties were terminated. The learned counsel hence submitted that under such circumstances issuing fresh notices was essential for commencement of the arbitral proceedings anew. The learned counsel further submitted that a comprehensive reading of the provisions of the Arbitration Act makes it clear that the point of time of commencement of the arbitral proceedings as well as the culmination are statutorily provided. Once the arbitral proceedings are terminated, in order to initiate a second round of proceedings, issuing fresh notices is unavoidable. The learned

counsel hence submitted that these Arbitration Requests are not liable to be entertained for want of notices under Section 21 of the Act. He pointed out that the power of High Court under Section 11 of the Act cannot be exercised unless there was a request from the applicant to the respondent for appointment of Arbitrator to resolve the dispute. He submitted that the provisions of Section 32 of the Act as also the Scheme of the Act were not pointed out to the Bombay High Court in **Kirloskar Pneumatic Company Ltd v. Kataria Sales Corporation** [2024 SCC OnLine Bom 941] and hence the suppositions in the said judgment may not be followed.

8. Reference to the relevant provisions of the Act is essential. Section 21 of the Act reads as under:-

> "**21. Commencement of arbitral proceedings.**—Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent."

9. Section 32 of the Act is extracted hereunder:-

> "**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."

10. Sections 11(4) and (5) of the Act are extracted hereunder:-

> "**11. Appointment of arbitrators.**
> ……
> (4) If the appointment procedure in sub-section (3) applies and—
>
> (a) a party fails to appoint an arbitrator within thirty days from the receipt of a

> request to do so from the other party; or
> (b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment, the appointment shall be made, upon request of a party, by the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court;
>
> (5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made, upon request of a party, by the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court."

11. In view of Section 11(4)(a) and 11(5) of the Act, the Hon'ble Supreme Court or as the case may be the High Court or any person or institution designated by such Courts shall make necessary measure for securing the appointment of Arbitrator if the parties fail to agree on the Arbitrator within 30 days from the receipt of a request by the one party from the other party. Hence, to invoke the jurisdiction of courts under Section 11 of the Act, it is indispensable to make a request. In view of Section

21 of the Act, on receipt of the request by the respondents, the arbitral proceedings would be deemed to have commenced.

12. Importance of making the request/issuing notice has been explained by the Hon'ble Supreme Court in **Bharat Sanchar Nigam Limited and Another v. Nortel Networks India Private Limited** [(2021) 5 SCC 738], the Hon'ble Supreme Court held as follows;

> "51. The period of limitation for issuing notice of arbitration would not get extended by mere exchange of letters, [S.S. Rathore v. State of M.P., (1989) 4 SCC 582 : 1990 SCC (L&S) 50; Union of India v. Har Dayal, (2010) 1 SCC 394; CLP (India) (P) Ltd. v. Gujarat Urja Vikas Nigam Ltd., (2020) 5 SCC 185] or mere settlement discussions, where a final bill is rejected by making deductions or otherwise. Sections 5 to 20 of the Limitation Act do not exclude the time taken on account of settlement discussions. Section 9 of the Limitation Act makes it clear that:"where once the time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it." <u>There must be a clear notice invoking arbitration setting out the "particular dispute" (including claims/amounts) which must be received by the other party within a period of 3 years from the rejection of a final bill, failing which, the time bar would prevail."</u>
>
> [Emphasis added]

13. In **Adavya Projects Pvt. Ltd. v. Vishal Structurals Pvt. Ltd. and Others** [2025 SCC OnLine SC 806], it was held thus:

> "46.....
> The purpose of the Section 21 notice is clear — by fixing the date of commencement of arbitration, it enables the calculation of limitation and it is a necessary precondition for filing an application under Section 11 ACA. The other purposes served by such notice — of informing the respondent about the claims, giving the respondent an opportunity to admit and contest claims and raise counterclaims, and to object to proposed arbitrators — are only incidental and secondary. We have already held that the contents of the notice do not restrict the claims, and any objections regarding limitation and maintainability can be raised before the Arbitral Tribunal, and the ACA provides mechanisms for challenging the appointment of arbitrators on various grounds. Hence, while a Section 21 notice may perform these functions, it is not the primary or only mechanism envisaged by the ACA."
>
> [Emphasis added]

14. In **ASF Buildtech Private Limited v. Shapoorji Pallonji and Company Private Limited** [(2025) 9 SCC 76], the Hon'ble Supreme Court held as follows;

"165. ……..... Unlike Section 23, Section 21 does not require any articulation of the relief sought or the framing of issues — its sole purpose is to indicate when arbitration is deemed to have commenced, for the limited purpose of computing the limitation period.

166. This is further fortified from the fact that nowhere does the 1996 Act lay down any specific format or form of notice under Section 21 of the 1996 Act, or any strict requirement of the contents to be stipulated therein. This was noticed by this Court in Milkfood Ltd. v. GMC Ice Cream (P) Ltd. [(2004) 7 SCC 288 : (2004) 121 Comp Cas 581], wherein it was held that Section 21 of the 1996 Act must be construed in tune with its analogous counterpart provisions of Article 21 of the Uncitral Model Law read with Article 3 of the Uncitral Arbitration Rules and Section 14 of the English Arbitration Act, 1996 wherein at least the form of notice and strict adherence thereto has become redundant due to the absence of any specific form or requirement of such notice.

……..

171. Remarkably, Milkfood [Milkfood Ltd. v. GMC Ice Cream (P) Ltd., (2004) 7 SCC 288 : (2004) 121 Comp Cas 581] observes that both under Article 21 of the Uncitral Model Law and by extension Section 21 of the 1996 Act, what is necessary in a notice or request under the said provision, is the indication that the claimant seeks arbitration of the dispute. This Court consciously did not hold that such indication must be of what all disputes is sought to be referred to arbitration. The relevant observations read as under: (SCC pp. 301-302, para 27)

> "27. Article 21 of the Model Law which was modelled on Article 3 of the Uncitral Arbitration Rules had been adopted for the purpose of drafting Section 21 of the 1996 Act. Section 3 of the 1996 Act provides for as to when a request can be said to have been received by the respondent. Thus, whether for the purpose of applying the provisions of Chapter II of the 1940 Act or for the purpose of Section 21 of the 1996 Act, what is necessary is to issue/serve a request/notice to the respondent indicating that the claimant seeks arbitration of the dispute."

15. Hence, the receipt of the request by the respondent is a crucial step in the arbitral proceedings. It is undoubtedly indispensable. Question arising in this case is as to whether the requests made initially can be considered as sufficient for invoking the jurisdiction under Section 11 of the Act despite passing of awards in the earlier round of proceedings and subsequent judgments of the Commercial Court declaring them as nullity.

16. Section 43 (4) of the Act reads as under;

> "**43. Limitations.**
> ……
> (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."

The above provision makes it abundantly clear that fresh arbitral proceedings, after an award passed in the earlier proceedings is set aside, is permissible in arbitration law.

17. The Hon'ble Supreme Court in **IN RE Interplay Between Arbitration Agreements Under Arbitration And Conciliation Act, 1996 And Stamp Act, 1899** [(2024) 6 SCC 1], held that the Arbitration and Conciliation Act is a complete code. Hence, the scheme of the Act and provisions are to be understood, keeping in mind that the same provides for a comprehensive and complete statutory framework. Section 21 of the Act is encompassed in Chapter V dealing with conduct of arbitral proceedings. The point of time of commencement of the arbitral proceedings is marked by receipt of the request from the applicant to refer the particular dispute for arbitration by the

respondent. Section 32 of the Act is in Chapter VI, dealing with making of arbitral award and termination of proceedings. Provisions in Chapter V deals with various aspects including the rules of procedure to be followed, place of arbitration, language to be used in the proceedings, pleadings, hearing, adducing evidence, etc. Provisions in Chapter VI deal with substantive law to be followed, decision making, time limits, settlement, form and content of the award, costs, correction and interpretation of the award, passing of additional award, etc. The next Chapter deals with recourse against arbitral award which contains only Section 34 of the Act providing for application for setting aside arbitral award. Hence, a provision regarding commencement of arbitral proceedings has been incorporated in Chapter V and another regarding termination of proceedings has been included in Chapter VI of the Act. These provisions are therefore to be considered as to have been consciously incorporated in the statute so as to have clarity regarding the commencement of

the arbitral proceedings as well as culmination of the same. The arbitral proceedings get terminated by passing of the final arbitral award in view of Section 32(1) of the Act.

18. The Hon'ble Supreme Court recently considered various provisions of the Act dealing with termination of arbitral proceedings in **Harshbir Singh Pannu and Another v. Jaswinder Singh** [2025 SCC OnLine SC 2742]. The following paragraphs of the judgment are pertinent in the context of the issue arising for debate in this case;

> "95. A bare perusal of the aforesaid provision, particularly, Section 32 sub-section (1), reveals that, the termination of arbitral proceedings under the Act, 1996, may occur in two distinct ways; **first**, through the passing of the final award, or **secondly** by an order of the arbitral tribunal under sub-section (2), thereof.
>
> 96. Section 32 sub-section (2) of the Act, 1996 warrants a careful examination. The said provision sets out the three situations in which an arbitral tribunal may, without rendering the final award, terminate the arbitral proceedings by passing an order to that effect.
>
> **(i) First**, as per sub-clause (a), if the claimant withdraws his claim, and the respondent has no objection to the withdrawal. However, if the respondent raises an objection to the withdrawal, on the ground that it may impede the dispute from being finally resolved, the arbitral tribunal may refuse to

terminate the proceedings. What is sought to be conveyed by the phrase "the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute" used in sub-clause (a) is that, the objection to the withdrawal by the respondent, must be founded upon a genuine interest on his part, in having the dispute resolved. Where such objections are motivated by any extraneous considerations, such as an intent to either delay or protract the dispute or to vexatiously harass the claimant through the continuation of the proceedings, the arbitral tribunal may decline to entertain such objections., and proceed to order a termination of the proceedings.

Where any objection has been raised by the respondent, the arbitral tribunal, before passing an order for termination of the proceedings, is required to make a finding, that the objections raised, are not bona-fide insofar as the resolution of the dispute is concerned.

Insofar, as the question when such a respondent could be said to have a legitimate interest in securing the final settlement of dispute is concerned, it is not possible to lay down any straitjacket formula or prescribe any exhaustive list. The answer must invariably turn upon the peculiar facts and attendant circumstances of each case. Each case would have to be assessed, keeping in mind the nature of the claims, the stage of the proceedings, the evidence on record, and the preliminary findings already made by the arbitral tribunal. We shall discuss this in more detail in the latter parts of this judgment.

(ii) Secondly, as per sub-clause (b), where both the parties agree to the termination of the arbitral proceedings, the arbitral tribunal shall pass an order to such effect.

> **(iii) Thirdly**, as per sub-clause (c), where the arbitral tribunal finds that the continuation of the proceedings has "for any other reason" become unnecessary or impossible, the arbitral proceedings shall pass an order terminating the proceedings.

97. We shall discuss sub-section (2) of Section 32, particularly, the scope and extent of the arbitral tribunal's authority to pass an order for termination of proceedings thereunder, in more detail in the subsequent parts of this judgment.

98. Lastly, sub-section (3) of Section 32 stipulates what would be the legal effect of the termination of arbitral proceedings under the Act, 1996. It provides that, subject to the provisions of Section(s) 33 and 34(4), the termination of the arbitral proceedings, shall in consequence also terminate the "mandate of the arbitral tribunal".

99. To put it simply, upon termination of the arbitral proceedings, either by way of a final award or an order to that effect, as the case may be, the arbitral tribunal, save and except the exercise of the limited powers conferred upon it by Section(s) 33 and 34(4) respectively, shall cease to have any further power or function, under the Act, 1996.

100. Thus, apart from the power to correct or interpret an award and eliminating the grounds for setting aside the arbitral award, in terms of Section(s) 33 and 34(4) respectively, the arbitral tribunal, upon the termination of the proceedings, is divested of all other powers, and no longer has any jurisdiction, in respect of the dispute.

….....

240. Thus, it is manifestly clear that the aforesaid expression has nothing to do with the nature of the

order for termination of proceedings. The provision only stipulates the circumstances in which it would be permissible for the arbitral tribunal to terminate the proceedings i.e., where the claimant fails to communicate its statement of claims within the specified period without any sufficient cause for such default.

241. The expression "the mandate of the Arbitral Tribunal shall terminate" is undoubtedly unique to the provision of Section 32 of the Act, 1996. However, the use of the said expression is in no manner intended to convey that the nature of termination under Section 32(2) is distinct from the termination of proceedings under the other provisions of the Act, 1996.

242. The expression "mandate of the Arbitral Tribunal" only refers to the obligation of the arbitral tribunal to administer the arbitration by conducting the proceedings in order to adjudicate upon the dispute referred to it. It is merely descriptive of the function entrusted to the tribunal, namely, the authority and duty to adjudicate the disputes before it.

243. As such, the termination of mandate of the arbitral tribunal signifies nothing more than the cessation of the authority of the tribunal to proceed further in the reference. It denotes an end to the tribunal's jurisdiction over the subject matter of the arbitration in that particular reference and cannot be construed as creating a specialised form of termination distinct from the other provisions of the Act, 1996.

244. Irrespective of whether the proceedings are terminated on account of the rendition of a final award, or by the withdrawal of claims, or on account of default by the claimant, or the intervention of any impossibility

> in the continuation of the proceedings, the legal effect remains the same, inasmuch as the arbitral tribunal thereafter stands divested of authority to act in the reference.
>
> ….....
>
> 253. Under the scheme of the Act, 1996, parties are empowered to refer their disputes to an arbitral tribunal. The arbitral tribunal which in turn is in seisin of the dispute, has a positive duty to adjudicate and resolve the dispute that has arisen between the parties.
>
> 254. This reference however, is singular, not perpetual. It ordains one arbitral process, not an indefinite series of retry attempts. Once the arbitral tribunal is seized of a dispute, the mechanism contemplated under the Act, 1996 cannot be again reinvoked to refer the same dispute to another tribunal.
>
> 255. Likewise, once the proceedings before the arbitral tribunal, come to an end, either by way of a final award or an order for termination of the proceedings in the situations envisaged under the Act, 1996, the reference also comes to an end, and attains finality.″

19. Thus, it is settled law that the arbitral tribunal will no longer have any authority or function under the Act, 1996, with the exception of exercising the limited powers granted to it by Sections 33 and 34(4), respectively, upon the conclusion of the arbitral proceedings, either by a final award or an order to that

effect, as the case may be. After the proceedings are terminated, the arbitral tribunal loses all other authority and jurisdiction over the issue. Arbitral proceedings may end for a variety of reasons, but the outcome is always the same: the arbitral reference is closed and the tribunal's authority is extinguished subject to the restricted powers granted to it by Sections 33 and 34(4).

20. Section 43(4) of the Act deals with exclusion of the period between the commencement of arbitration and the date of the order of the court when an arbitral award is set aside by the court, in computing the time prescribed by the Limitation Act, for the 'commencement of the proceedings' with respect to the dispute. The words employed – '*commencement of the proceedings*' in Section 43(4) has great significance. As held by Hon'ble Supreme Court in **Adavya Projects Pvt. Ltd.** *(supra),* prime object of the request contemplated under Section 21 of the Act is to mark a point of time for calculation of limitation. As

provided under Section 43(4) of the Act, exclusion of the period spent in an arbitral proceeding culminated with an award which was set aside is for computing the time prescribed by the Limitation Act for the commencement of the de novo proceedings. Therefore, marking the point of time of commencement of the subsequent arbitral proceedings is absolutely necessary. Hence, conjoint appraisal and analysis of the provisions of Sections 21, 32 and 43(4) of the Act shows that issuing a fresh notice/making another request is indispensable to initiate fresh arbitral proceedings, once an award is set aside by the court.

21. The Bombay High Court in **Kirloskar Pneumatic Company Ltd.** (supra) held as under;

> "15. In the sequence of events mentioned above, when the arbitration mechanism is already triggered and the proceedings have commenced upon the issuance of the notice by the petitioner to the respondent on 30/10/2018, and therefore when the petitioner now seek appointment of an independent and impartial arbitrator, through the mechanism of sub-section (6) of Section

> 11, I do not deem it necessary that it should be preceded by a fresh notice under Section 21, though the respondent preferred to call it as 'invocation notice', as the arbitration proceedings are already commenced and the respondent is aware about the existence of a dispute and also of the fact, that this dispute in terms of the agreement between the parties deserve to be resolved through an independent arbitrator.
>
> For the above, the submission of Mr. Dalal do not deserve any consideration and is rejected."

However impact of S.32 and also of S.43 (4) in the scheme of the Act was not brought to the notice of the Court. Hence, I respectfully refrain from following the above judgment of the Bombay High Court.

22. In these cases, arbitral awards were passed, though they were subsequently set aside and declared as nullity. Once an order is declared by a competent court as nullity, it has no effect in the eye of law. A doubt may arise as to whether passing of such an award would amount to termination of the arbitral proceedings. But, in the scheme of the Act, as held by

the Hon'ble Supreme Court in **Harshbir Singh Pannu** (supra), with the passing of an award the arbitrator ceases to have jurisdiction over the dispute. He can act further in the matter only in the limited circumstances delineated under the Act. That being so, when an award was passed and the arbitral tribunal ceased to have jurisdiction, whether the award was subsequently set aside or declared as nullity is immaterial in the context of Section 32 of the Act. Passing of the award by the Arbitral Tribunal is the vital aspect. Hence, the arbitral proceedings, as far as these cases are concerned, were undoubtedly terminated with the passing of awards. Therefore, to commence fresh arbitral proceedings, making fresh requests were required. I therefore hold that these arbitration requests are premature for want of any request for fresh arbitration from the applicant, addressed to the respondents.

In conclusion, these Arbitration Requests are rejected as premature. Nonetheless, the rejection would not preclude the

applicant from approaching this Court again after complying with the requirement of issuing notice to the respondents.

Sd/-

S.MANU
JUDGE

skj

APPENDIX OF AR NO. 131 OF 2025

PETITIONER'S ANNEXURES

Annexure 1	**SECURED LOAN AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT IN FAVOUR OF THE APPLICANT DATED 18/09/2018.**

APPENDIX OF AR NO. 138 OF 2025

PETITIONER'S ANNEXURES

Annexure 1	**SECURED LOAN AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT IN FAVOUR OF THE APPLICANT DATED ON 17/07/2018**