



2026:DHC:2486



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 3440/2026 & CM APPL. 16516/2026, CM APPL. 16517/2026 & CM APPL. 16518/2026**Date of Decision: **18.03.2026****IN THE MATTER OF:****SAMSUNG INDIA ELECTRONICS PRIVATE LIMITED**

.....Petitioner

Through: Ms. Shyel Trehan, Sr. Advocate, with
Mr. Nikhil Varshney, Ms. Kritika
Angirish, Ms. Sakshi Malhotra, Mr.
Ishu Gupta, Ms. Kajal Andhiwal, Mr.
Devansh Dixit, Mr. Rohan Poddar,
Ms. Vidhi Jain, Advs.

versus

DELHI INTERNATIONAL ARBITRATION CENTRE & ANR.

.....Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV****J U D G E M E N T****PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

1. The petition is for setting aside the order dated 16.02.2026, passed by the Co-ordinator, Delhi International Arbitration Centre (DIAC), whereby, the claim and counter claim under arbitration proceedings between the petitioner and respondent no. 2 have been directed to be separately assessed for the purpose of computation of arbitrators' fees. The petitioner assails the

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impugned order on the ground that the same is contrary to the Schedule of the Delhi International Arbitration Centre (Administrative Costs & Arbitrators' Fees) Rules, 2018 (Fees Rules) and in contravention of the principles laid by this Court in the case of *Jivanlal Joitaram Patel v. National Highways Authority of India*.¹

2. Rule 3 of the Fees Rules, which governs the computation of arbitrators' fees, is extracted below, for reference:

“3. Arbitrator's Fee

(i) The fees payable to the Arbitrators shall be determined in accordance with the scales specified in Schedules 'B, C, D, E & F' to these rules.

(ii) The fee shall be determined and assessed on the aggregate amount of the Claim(s) and Counter Claim(s):

Provided that in the event of failure of party to arbitration to pay its share as determined by the Centre, on the aggregation of Claim(s) and Counter Claim(s), the Centre may assess the Claim(s) and Counter Claim(s) separately and demand the same from the parties concerned:

Provided further that for the purposes of valuation or quantification of the Claims, the Centre shall be governed by the laws of India, and the principles governing the valuation of claims before the Courts of Civil Jurisdiction:

Provided also that in case of undervaluation or where the value is not determinable in pecuniary terms, the Co-ordinator would be entitled to assess and demand the revised fee on the basis of assessment and to decide the objections, if any, relating to the quantification or valuation.”

(Emphasis supplied)

3. The Court has considered the submissions made by learned senior counsel, and finds that Rule 3 (i) of the Fees Rules provides that the fees payable to the Arbitrators shall be determined in accordance with the scales specified in Schedules 'B, C, D, E and F'. Rule 3(ii) of the Fees Rules

¹ FAO (OS) (COMM) 70/2017



provides that the fee shall be determined and assessed on the aggregate amount of the claim and the counter claim.

4. To this extent, Ms. Trehan is right in her contention that generally the fees of the arbitrator must be determined and assessed on the aggregate amount of the claim and counter claim.

5. The aforesaid Rule however, would not be applicable in the present case. Instead, the proviso to Sub-Rule (ii), which provides that in the event of failure of any of the parties to pay its share of the fees as determined by the DIAC on the aggregate amount, would apply.

6. If the impugned order is considered in the context of the proviso to Rule 3(ii) of the Fees Rules, it would indicate that in the instant case, one of the parties, i.e., respondent no.2 herein, refused to pay fees with respect to the main claim. Paragraph no.6 of the impugned order is extracted below, for reference:

"6. The undersigned has heard the learned counsel for both the parties and has perused the record with their able assistance. Rule 33.5 of the DIAC (Arbitration Proceedings) Rules, 2023 provides that in the event of failure of a party to deposit the fee within 30 days of its being due, the Centre/Tribunal may terminate the arbitration with respect to the claim or counter claim, as the case may be. Therefore, it is evident that in the event of termination of the claim of the claimant, the respondent will be entitled to pursue its counter claim. Similarly, in the event of termination of the counter claim on account of nonpayment of fee, the claimant will be entitled to prosecute its claim. The Centre cannot enforce its demand regarding deposit of fee by a party. It can only terminate the respective claim of a party, as aforementioned. The respondent has expressed unwillingness to deposit its share of fee in respect of the claim raised by the claimant. However, it has undertaken to deposit the fee computed on its counter claim. Therefore, it is considered expedient that the claim and counter claim are assessed separately for the purposes of payment of fee. The claimant is at liberty to deposit the share of fee payable by the respondent. The respondent is called upon to deposit the entire fee payable in respect of its counter claim. It is pertinent to mention that the indicative split of fee, computed by the respondent on a prorata basis, in

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its email dated 14.02.2026 is contrary to the scheme of the DIAC (Administrative Costs and Arbitrators' Fees) Rules, 2018. The fee payable by the respondent in terms of DIAC (Administrative Costs and Arbitrators' Fees) Rules, 2018 be communicated to it at the earliest."

(Emphasis supplied)

7. The consequences of non-payment of fees payable on the claim by respondent no. 2 will have to be considered appropriately during the course of the arbitration proceedings or in the final award by the learned arbitrator.
8. In view thereof, the Court finds that the Co-ordinator, DIAC has rightly exercised his authority under the Fees Rules to assess the claim and the counter claim separately.
9. The reliance placed on behalf of the petitioner on the decision in ***Jivanlal Joitaram Patel*** is misplaced. Paragraph no.14 of the decision, which is extracted below would clearly indicate that the proviso to Rule 3 of the Fees Rules kicks in when the party fails to pay its shares of the aggregate amount of claim and counter claim.

"14. There is no ambiguity in the aforesaid Rule. The arbitral fee has to be determined on the basis of aggregate amount of claim and counter claim. The proviso to Rule 3 of the DIAC Rules kicks in only when the party fails to pay its share of the aggregate amount of claim and counter claim. Thus, in such cases, DIAC has the discretion to assess the claim and counter claim separately and demand the same from the parties. The proviso does not deal with the aspect of computation of the arbitral fee. To read rule 3(ii) as "The fee shall be determined and assessed on the amount of the claim(s) and counter claim(s) and aggregated", would do violence to the plain and ordinary grammatical meaning of the said Rule. The parties agreed to appointment of the Sole Arbitrator and to his fee being fixed in accordance with the Fourth Schedule of the Act on the clear understanding of inter alia, Rule 3(ii) to mean that the fee of the Sole Arbitrator shall be fixed on the aggregate of the claim(s) and counter claim(s). To now call upon them to pay separate fee for the claim(s) and counter claim(s) would not be fair to them, and is bound to cause them embarrassment. If the interpretation proposed by the Ld. Sole Arbitrator was known to them, they – or one of them, may not have agreed to the appointment of the Sole Arbitrator. Similarly, the Tribunal was conscious, when it accepted and embarked upon the reference of the

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intent of fee that would be payable, and the limitations on it. Having chosen to accept the assignment, the fee cannot be enhanced by a process of interpretation of the Rules, not in consonance with the interpretation already adopted.”

(Emphasis supplied)

10. Furthermore, the facts in the case of ***Jivanlal Joitaram Patel*** the facts and circumstances were not similar. There, the arbitrator had directed the computation of fees separately and there is no indication in the judgment that either of the parties had refused to pay fees on the aggregate amount. Therefore, the Court did not have occasion to deal with the aspect of ‘failure of any party to pay fees’.

11. In view thereof, the Court does not find any reason to interfere with the impugned order and the petition stands dismissed.

12. The petition, hereby, stands dismissed.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

MARCH 18, 2026/P.

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