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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL APPEAL (L) NO.14725 OF 2026

IN

COMMERCIAL EXECUTION APPLICATION NO. 43 OF 2025

WITH

INTERIM APPLICATION (L) NO.20301 OF 2026

WITH

INTERIM APPLICATION (L) NO.15662 OF 2026

IN

COMMERCIAL APPEAL (L) NO.14725 OF 2026

ALONGWITH

COMMERCIAL APPEAL (L) NO.15441 OF 2026

IN

COMMERCIAL EXECUTION APPLICATION NO. 44 OF 2025

WITH

INTERIM APPLICATION (L) NO.20335 OF 2026

WITH

INTERIM APPLICATION (L) NO.15725 OF 2026

IN

COMMERCIAL APPEAL (L) NO.15441 OF 2026

Reliance Asset Reconstruction Co.Ltd. ....Appellant

vs.

Hiroo Hotchand Advani ....Respondent

Mr.Ashish Kamat, Senior Advocate a/w Mr.Abhishek Kothari, Mr.Nikhil Rajani i/b V. Deshpande & Co. for the Appellant.

Mr.Akshay Patil a/w Mr.Joshua Dsouza, Mr.Asif Lampwala, Mr.

RAJSHREE KISHOR MORE Digitally signed by RAJSHREE KISHOR MORE Date: 2026.07.30 11:25:22 +0530

Saad Memon, Mr.Hriday Karia and Mr.Jash Gandhi i/b Bulwark Solicitors, for the Respondents.

CORAM : BHARATI DANGRE & MANJUSHA DESHPANDE, JJ

RESERVED ON : 13th JULY 2026
PRONOUNCED ON : 20th JULY 2026

JUDGMENT (PER BHARATI DANGRE, J) :

1 The two Commercial Appeals filed by Reliance Asset Reconstruction Co.Ltd. (Original Decree Holder) raise challenge to the common order dated 23/03/2026 passed by the learned Single Judge in two Chamber Summons filed in respective Commercial Execution Applications.

The impugned order, rejected both the Chamber Summons and marked the Awards dated 22/10/2012 as modified by orders dated 24/11/2018, as satisfied. The dismissal of the Chamber Summons also resulted in disposal of the Execution Applications.

2 The Commercial Appeals filed under Section 13 of the Commercial Courts Act, 2015 (for short 'the Act of 2015) raise challenge to the common order passed by the learned Single Judge dismissing Chamber Summons Nos.550/2019 and 552/2019 and the Appeals are filed on the ground that the impugned order by recognizing an uncertified, out of court payment considered it as 'complete satisfaction' of two Arbitral Awards, is in teeth of the express and mandatory bar contained in Order XXI Rule 2(3) of the Code of Civil Procedure, 1908 (for short "CPC")

It is the specific ground raised in the Appeals that neither the Appellant nor the Respondents at any stage applied under Order XXI Rule 1 or Order XXI Rule 2(1) or Rule 2(1) or Rule 2(2) and no payment had been certified or recorded by the Executing Court. The Appeals raise a specific ground that permitting the Executing Court to go beyond behind the Decree has denied the fruits of a final Award to the Appellant.

3 The present Appeals being filed under the Commercial Courts Act, 2015, the learned counsel Mr. Akshay Patil representing the Respondents would raise a preliminary objection about their maintainability under Section 13(1-A), by invoking the proviso appended thereto as he would contend that an Appeal shall lie under Section 13(1-A) only from such orders passed by the Commercial Division or Commercial Court that are specifically enumerated under Order XLIII of the CPC as amended by the Act of 2015 and Section 37 of the Arbitration & Conciliation Act, 1996 (for short 'the Act of 1996).

Since this preliminary objection warranted a consideration, we called upon the Appellant to respond and the learned senior counsel Mr.Ashish Kamat rendered his assistance in determining the said preliminary objection and during the course of the submissions advanced before us he dealt with the interplay between the two Statutes viz. the Arbitration & Conciliation Act 1996 and the Commercial Courts Act, 2015. We have also perused the authoritative pronouncements relied upon by the respective counsels to ascertain the scope of the proviso appended to Sub-section 1-A of Section 13.

4 The learned counsel Mr.Akshay Patil, representing the Respondents by inviting our attention to the scheme of the Act of 1996, would submit that the said Act is a Special Statute, governing the law relating to Domestic Arbitration as well as International Commercial Arbitration and for enforcement of Foreign Arbitral Awards, is based upon the United Nations Commission of International Trade Law, which has adopted the UNCITRAL Model Law on International Commercial Arbitration in 1985. According to him, the said Statute comprehensively cover International and Commercial Arbitration and Conciliation and also govern the Domestic Arbitration and Conciliation, by setting out specific provision for conduct of the arbitral process which is fair, efficient and capable of meeting needs of specific Arbitration.

Underlining the objective of the Bill which resulted into enactment of the Act of 1996, he would submit that one of its primary object was to minimise the supervisory role of the Courts in arbitral process and to provide sufficient mechanism for enforcement of the Final Arbitral Award in the manner as if it was a Decree of the Court.

Our attention is invited to Section 5 of the Act of 1996 which has minimised the scope of judicial intervention and also to the finality attached to the Arbitral Awards as provided in Chapter VIII of the Act of 1996.

Inviting our attention to Chapter IX providing for Appeals under Section 37, it is the submission of Mr.Patil that the scope of the power of Appeal was further constricted by amending the said Section and adding the 'non-obstante clause' and it is only against the orders which are enumerated under Section 37 that an Appeal would lie, and from no other order. Mr. Patil would place reliance upon the decision of the Apex Court in ***BGS SGS Soma JV vs. NHPC Limited***[1] and he would rely upon the enunciation of the law by the Court upon Section 13 of the Act of 2015 being juxtaposed against Section 37 of the Act of 1996 when the Court noticed the interplay between them as set out in the Judgment in case of ***Kandla Export Corporation & Another vs. OCI Corporation & Anr.***[2]

He would also invite our attention to Para 13 of the said Law Report which has recorded thus :-

> "13. Given the fact that there is no independent right of appeal under Section 13(1) of the Commercial Courts Act, 2015, which merely provides the forum of filing appeals, it is the parameters of Section 37 of the Arbitration Act, 1996 alone which have to be looked at in order to determine whether the present appeals were maintainable. Section 37(1) makes it clear that appeals shall only lie from the orders set out in sub-clauses (a), (b) and (c) and from no others. The pigeonhole that the High Court in the impugned judgment has chosen to say that the appeals in the present cases were maintainable in sub-clause (c). According to the High Court, even where a Section 34 application is ordered to be returned to the appropriate court, such order would amount to an order "refusing to set aside an arbitral award under Section 34".

5 The ratio of the decision in Kandla Export Corporation (supra) is also heavily relied upon and according to Mr.Patil, their Lordships of the Apex Court focussed themselves upon Section 21 of the Act of 2015 , which give an overriding effect to the provisions of the said Act, in case of any inconsistency contained therein with any other Law for the time being in force

1 (2020) 4 SCC 234
2 (2018) 14 SCC 715

or any instrument having effect by virtue of any Law for the time being in force other than the said Act.

Inviting our attention to the amendment in Section 37 of the Act of 1996, by inserting the words "Notwithstanding anything contained in any other law for the time being in force, an appeal" substituted by Act 33 of 2019, it is the submission of Mr.Patil that now the new provision has an overriding effect over Section 21 of the Act of 2015 and according to him, the said wording is introduced to cure the mischief that was perceived in the wake of enactment of the Commercial Courts Act in the year 2015, with an overriding effect. He has placed before us Bill XXI of 2019 amending several provisions in the Act of 1996 which included the Amendment in Section 37.

Mr. Patil has also placed before us the Statements of Objects and Reasons (SOR) of the said Amendment Bill, 2019 , pursuant to the report being submitted by a High Level Committee , constituted for examining the effectiveness of existing arbitration mechanism by studying the functioning and performance of Arbitral Institutions in India and to devise a roadmap to promote Institutional Arbitration Mechanism in India as well as to evolve an effective and efficient arbitration ecosystem for commercial dispute resolution and suggest reforms in the Act of 1996. The Committee was specifically constituted to examine the specific issues affecting the Indian arbitration landscape and provide a roadmap to make India a robust center for institutional arbitration on domestic and international levels and was chaired by Justice B.N. Srikrishna, former Judge of the Supreme Court.

The report of the High Level Committee which was forwarded to the Ministry of Law and Justice, Government of India, New Delhi on 30/07/2017 contain a specific reference to the amendment in Section 37 and Section 50 and by relying upon the said recommendation, it is submitted by Mr.Patil that the Amendment in Section 37 was a consorted effort to finally tune the aforesaid provision of Appeal as against the provision of the Act of 2015 and in specific in the wake of it being granted precedence by virtue of Section 21 of the Act of 2015.

He would submit that the mischief that existed in the wake of the provisions of the Act of 2015, being given overriding effect over any other provision of the Act to the extent of inconsistency, and since Section 13(1) already contained a proviso, restricting the Appeals only to those enumerated under Order XLIII of the CPC and Section 37 of the Act of 1996 and in case of any inconsistency, the provisions of the Act of 2015 would prevail , making the order appealable under Section 13 (1) of the Act of 2015 despite the fact that it was not covered within the framework of Section 37 of the Act of 1996, stood corrected.

Mr.Patil would also invoke the principal of law laid down by the Division Bench of this Court in the case of Usha Kakade vs. Vistra ITCL (India) Ltd. (Commercial Appeal No.542/2019) decided on 14/12/2024, where the discussion revolved around Section 13(1-A) of the Act of 2015 and he would draw our attention to the very specific observation in the said Law Report to the effect that an Appeal is a right given by Statute and this right must be conferred in clear words and no interpretative process would carve out a right of Appeal when the Law do not provide for the same.

6 Opposing the preliminary objection, the learned senior counsel Mr.Ashish Kamat, has urged before us that the Act of 2015 shall prevail over the Act of 1996 and he would lay his emphasis upon Section 21 of the said Act which clearly prescribe that the provisions of the Act shall have effect notwithstandng anything inconsistent herein contained in any law for the time being in force or any instrument having effect by virtue of any law for the time being in force.

He would place reliance upon the decision of the Apex Court in case of **Jaycee Housing Private Limited & Ors. vs. Registrar (General), Orissa High Court, Cuttack & Ors.**[3] in support of his submission on the law point to the following effect :-

> "24. Thus, the Objects and Reasons of the Commercial Courts Act, 2015 is to provide for speedy disposal of the commercial disputes which includes the arbitration proceedings. To achieve the said Objects, the legislature in its wisdom has specifically conferred the jurisdiction in respect of arbitration matters as per Section 10 of the 2015 Act. At this stage, it is required to be noted that the 2015 Act is the Act later in time and therefore when the 2015 Act has been enacted, more particularly Sections 3 & 10, there was already a provision contained in Section 2(1)(e) of the 1996 Act. As per settled position of law. it is to be presumed that while enacting the subsequent law, the legislature is conscious of the provisions of the Act prior in time and therefore the later Act shall prevail."
>
> 25. It is also required also to be noted that even as per Section 15 of the 2015 Act, all suits and applications including applications under the 1996 Act, relating to a commercial dispute of specified value shall have to be transferred to the Commercial Court. Even as per Section 21 of the 2015 Act, the 2015 Act, shall have overriding effect. It provides that save as otherwise provided, the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

3 (2023) 1 SCC 549

> 26. Therefore, considering the aforestated provisions of the 2015 Act and the Objects and Reasons for which the 2015 Act has been enacted and the Commercial Courts, Commercial Division and Commercial Appellate Division in the High Courts are established for speedy disposal of the commercial disputes including the arbitration disputes, Sections 3 & 10 of the 2015 Act shall prevail and all applications or appeals arising out of arbitration under the provisions of the 1996 Act, other than international commercial arbitration, shall be filed in and heard and disposed of by the Commercial Courts, exercising the territorial jurisdiction over such arbitration where such Commercial Courts have been constituted."

Mr. Kamat would also rely upon the **Dhulabhai vs. State of Madhya Pradesh & Anr.**[4].

7 According to the learned senior counsel, Section 13 of the Act of 2015 has a limited scope as it offers a solution of the forum where the remedy would lie. According to him, it is a well settled position in law that ouster of jurisdiction is always to be avoided and the Courts shall make an attempt to confer the jurisdiction and preserve it once the same is conferred with a wider perspective.

According to Mr. Kamat, Sub-section (1-A) of Section 13 has conferred a right of Appeal, whereas, sub-section (2) has clarified that when there is a substantive right of Appeal being conferred, the Appeal shall lie only in that manner. Thus, when a substantive right of Appeal is created under sub-section (1-A) of Section 13, according to him it cannot be restricted by the proviso, which provide that an Appeal shall lie only from such orders passed by the Commercial Division or Commercial Court that are enumerated under Order XLIII of the CPC and Section 37 of the Act of 1996.

4 (1968) 22 STC 416

It is the submission of Mr.Kamat that the incongruous effect of the provision would deprive the statutory right of Appeal and though by virtue of sub-section (1) and (1-A) a remedy of Appeal is provided, it is attempted to be constricted by restricting it to only the Appeals which are permitted to be filed under Section 37 of the Act of 1996.

8 The learned senior counsel would place reliance upon the decision of the Apex Court in case of ***Adhunik Steels Ltd. vs. Orissa Manganese & Minerals (P) Ltd.***[5] in support of his submission that when the provisions of the Act of 1996 are actually implemented and since there is no separate procedure prescribed for the procedure to be followed in various provisions like exercise of power under Section 9 which is akin to a power of the Civil Court to grant injunction and in several scenarios like for execution of the Award, the Act of 1996 necessarily turns to the provisions of the CPC and then the procedure prescribed thereunder shall be followed.

Heavy reliance is placed by Mr.Kamat upon the decision of the Apex Court in ***MITC Rolling Mills Private Limited & Anr. vs. Renuka Realtors & Ors.***[6] and also the decision of this Court in ***Vishal Prafulsingh Solanke & Anr. vs. Controller of Patent and Designs & Ors.*** (Commercial Appeal (L) No.13430/2025) decided on 09/03/2026.

9 According to Mr.Kamat, the present Appeals are maintainable as the impugned orders are passed by the learned

5 (2007) 7 SCC 125
6 2025 SCC ONLine SC 2375

Single Judge exercising the powers under Section 16 of the Act of 2015 read with Order XXI Rule 2 of CPC and hence it satisfy the requirement of being a "Judgment or Order of a Commercial Court" as contemplated under Section 13(1-A) of the Act of 2015. The proviso appended to the Section in no manner hinders the maintainability of the Appeals, is his specific submission.

10 Before we appreciate the rival contentions advanced about maintainability of the Appeals under Section 13(1) of the Act of 2015, we deem it appropriate to reproduce the said provision:-

> "13. Appeals from decrees of Commercial Courts and Commercial Divisions.[(1) Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order.
> (1-A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order:
> Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]
> (2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act."

What is pertinent to note is that no Appeal shall lie from any Order or Decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of the Act.

Before the amendment, the original Section 13 read thus :-

> Section 13 : Appeals from decrees of Commercial Courts and Commercial Divisions -
> (1) Any person aggrieved by the decision of a Commercial Court or

> Commercial Division of a High Court may appeal to the Commercial division of that High Court within a period of sixty days from the date of judgment or order, as the case may be. Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Civil Procedure Code, 1908 as amended by this Act and Section 37 of the Arbitration and Conciliation Act, 1996".
> (2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act."

The original sub-section (1), therefore, had word 'decision' which is now substituted by the expression 'Judgment or Order' and Appeal was provided only against the 'decision' of a Commercial Court. The proviso which now follow sub-section (1-A) continued to exist in the original provision, but it is now shifted after sub-section (1-A) and as normally a proviso does, it has carved out an exception to the main provision by providing that an Appeal shall lie from such orders passed by Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of CPC as amended by the Act and Section 37 of the Act of 1996.

11 In ***MITC Rolling Mills Private Limited*** (supra), the Division Bench was dealing with an Appeal filed against the final Judgment and order passed by the High Court of Bombay in Commercial First Appeal , whereby, the High Court disposed of the Appeal holding that the same is not maintainable under Section 13 (1-A) of the Act of 2015.

On consideration of the controversy hinging around the question as to whether an order rejecting a Plaint under Order VII Rule 11 of the CPC is appealable under Section 13(1-A) of the

Act of 2015, the Apex Court noted that there can be no two views on the aspect that an Order rejecting Plaint decides the lis finally and would tantamount to a Decree within the meaning of Section 2(2) of CPC. It is, in this background, their Lordships of the Apex Court observed thus :-

> "17. Section 13(1A) of the CCA, 2015, is in two distinct parts. The main provision contemplates appeal against 'judgments' and 'orders' of the Commercial Court to the Commercial Appellate Division of the High Court. The proviso, operating as an exception, must be construed harmoniously with the main provision and not in derogation thereof. Where the language of the main provision is plain and unambiguous, the proviso cannot be invoked to curtail or whittle down the scope of the principal enactment, save and except where such exclusion is clearly and expressly contemplated. The proviso merely restricts appeals against interlocutory orders to those specifically enumerated under Order XLIII CPC and Section 37 of the Arbitration and Conciliation Act, 1996. Consequently, only such interlocutory orders as are expressly specified therein would be amenable to an appeal under the proviso; orders not so enumerated would not fall within the restricted fold of the proviso."

12 We have taken note of the said decision and in fact we have followed the same in case of ***Vishal Prafulsingh Solanke*** (supra) when the same was cited before us and the following inference was drawn:-

> "In MITC Rolling Mills (Supra), it is observed by the Apex Court that Section 13(1-A) is in two distinct parts; the main provision contemplating appeals against 'Judgments' and 'Orders' in the Commercial Appellate Division of the High Court and the proviso, operating as an exception, must be construed harmoniously with the main provision and not in derogation, and the same is interpreted in the following words:
> "17.....Where the language of the main provision is plain and unambiguous, the proviso cannot be invoked to curtail or whittle down the scope of the principal enactment, save and except where such exclusion is clearly and expressly contemplated. The proviso merely restricts appeals against interlocutory orders to those specifically enumerated under Order XLIII of CPC and Section 37 of the Arbitration and Conciliation Act, 1996. Consequently, only such interlocutory orders as are expressly specified therein would be amenable to an

> appeal under the proviso; orders not so enumerated would not fall within the restricted fold of the proviso'. In the facts of the case, which involved a challenge to an order rejecting application(s) under Order VII Rule 10 and Order VII Rule 11 (d) of CPC, which orders are not enumerated under Order XLIII of CPC, it was held that such orders would not be amenable to the appeal under Section 13(1-A) of the Act of 2015, and rather are permitted to be challenged by filing revision or a petition/application under Article 227 of the Constitution of India."

13 However, we must record that the principle laid down therein will not *ipso facto* apply to the Appeals under Section 37 of the Act of 1996, though a serious attempt is made to canvass before us that by applying the ratio in ***MITC Rolling*** (supra) the effect of the word 'Order' in the proviso shall not be restricted only to those which are enumerated under Order XLIII of the CPC and Section 37 of the Act of 1996, but since it do not have the effect of restricting the scope of the main provision, any Judgment or Order which has the effect of putting an end to the lis between the parties must be appealable.

We do not, however, feel ourselves persuaded to accept the said submission, as we find that in MITC Rolling (supra), it was otherwise noted that an 'Order' rejecting the Plaint concludes the lis between the parties and that order is in any case an appealable order, and, therefore, even if it would not fall within the scope of Order XLIII of the CPC, it made no difference and the observations of the Apex Court in Para 17 will have to be read with reference to the controversy which was placed before the Court. However, in our view, the position as regards Section 37 of the Act of 1996 is distinct when the said provision has to be read in light of the Scheme of the enactment of a special Statute, which has carved out the extent of judicial intervention by virtue of Section 5. The remedies which are open under the said Act can be availed only when and in those circumstances which are specifically set out in the Statute itself.

14 Section 37 of the Arbitration & Conciliation Act, 1996 reads thus :-

> 37. Appealable orders.-(1) [Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely: -
> [(a) refusing to refer the parties to arbitration under section 8;
> (b) granting or refusing to grant any measure under section 9;
> (c) setting aside or refusing to set aside an arbitral award under section 34.]
> (2) An appeal shall also lie to a Court from an order of the arbitral tribunal-
> (a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; of
> (b) granting or refusing to grant an interim measure under section 17.
> (3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

What is the most relevant aspect of the aforesaid provision is the non obstante clause "Notwithstanding anything contained in any other law for the time being in force, an appeal" which is inserted by Act 33 of 2019 with effect from 30/08/2019 and before the said insertion, the provision simply read as "an Appeal shall lie........".

15 In the wake of insertion of 'non-obstante clause' to the aforesaid effect, the remedy of appeal available under Section 37 of Act of 1996 is now constricted to the contingency set out therein and this restriction shall operate, notwithstanding

anything contained in any other law for the time being in force which include the Commercial Courts Act, 2015 and necessarily the proviso appended to sub-section (1-A) of Section 13 of the Act of 2015.

The Act of 1996 being a special Statute with the limited scope for judicial intervention and the Statute specifically providing the remedies to challenge the Award as well as a provision like Section 37 which has provided remedy of appeal only from the orders prescribed therein and from no others, it is evidently clear that the legislature intended to restrict the challenge to an arbitral award under Chapter VII by attaching finality to the same under Chapter VIII. In this Scheme, Chapter IX which contains a provision like Section 37 providing a remedy of appeal, by restricting it only to those orders which are set out under sub section (1) and (2) of Section 37 with a specific embargo that no second appeal shall lie from an order passed in an Appeal under the said Section though the right to file an Appeal to the Supreme Court has remained unfettered.

The High Level Committee constituted by the Central Government under the Chairmanship of Justice B.N. Srikrishna, former Judge of the Supreme Court, in order to identify the roadblocks to the development of institutional arbitration and examining specific issues affecting the Indian arbitration landscape and the Committee recommended certain amendments to the Act with a view to make India a Hub of institutional arbitration for both, domestic and international arbitration.

16 The report of the Committee upon due deliberations and

consultations with the stake holders for strengthening the arbitration process recommended amendment in Section 37 of the Act of 1996 as well as in Section 50 of the Act of 1996, by introducing the words 'notwithstanding anything contained in any other law'. Evidently the intention was to constrict the scope of Appeals under Section 37 and Section 50, the former being a part of domestic arbitration, whereas, the later being included in Part II of the Act pertaining to enforcement of Foreign Awards.

The legislature is expected to be conscious of the existence of the Act of 2015 when this amendment was introduced and in order to avoid any inconsistency emerging, in the wake of the proviso appended to Section 13 (1-A) and under the remedy of Appeal provided under Section 37 , Section 37 itself is amended by giving an overriding effect over the provisions of the Commercial Courts Act, 2015.

17 An attempt on part of the learned counsel for the Appellant to urge that the word 'order' will bring within its fold any Judgment or Order which has finally determined the lis between the Parties and the submission that the proviso shall not control the main provision of Section 13 fail to persuade us. In the wake of the settled position that there is no independent right of appeal under Section 13(1) of the Act of 2015, but the said provision only provides the forum for filing Appeal, with the substantive remedy of appeal being available only under Section 37 of the Act of 1996, the observation of the Apex Court in ***BGS SGS Soma JV (supra)*** is of great significance, where the Apex Court observed that Section 37(1) of the Act of 1996 made it clear that Appeals

shall only lie from orders set out in sub clause (a), (b) and (c) and from no others and the High Court held that even where a Section 34 Application is ordered to be returned to the appropriate Court, such order would amount to an order 'refusing to set aside an arbitral award under Section 34'.

By referring to the proviso appended to Section 13 (1) (1-A) of the Act of 2015, where there is a reference of Order XLIII, it was noted that the said provision is conspicuous by its absence in Section 37 of the Act of 1996, which alone can be looked at for the purpose of filing Appeals against order setting aside or refusing to set aside Awards under Section 34. Pertinently it was noted that the High Court had missed the words " under Section 34" and thus a refusal to set aside an arbitral Award must be under Section 34 i.e. after the grounds set out in Section 34 have been applied to the Arbitral Award in question and after the Court has turned down such grounds. Recording that on the facts of the case when there was no adjudication under Section 34 of the Act of 1996, all that was done was that the Special Commercial Court can allow Application filed under Section 151 read with Order VII Rule 10, determining that the Special Commercial Court had no jurisdiction to proceed further with Section 34 and, therefore, such Application would have to be returned to the competent Court situated at New Delhi. It is, in this context, it was held that the Appeals filed in the present case being not filed under Section 37 of the Act of 1996, are therefore, not maintainable.

18 ***In Kandla Export Corporation*** (supra), the Apex Court took note of the interplay between the two Statutes viz. the

Commercial Courts Act, 2015 and Arbitration and Conciliation Act, 1996 and noted that the Act of 1996 is an exhaustive self-contained code and the implication that follow therefrom viz. a negative import that only such acts as are mentioned in the Act are permissible to be done and acts or things not mentioned therein are not permissible to be done and in light of the statutory Scheme the question which arose for determination, whether an Appeal, not maintainable under Section 50 of the Act of 1996, is maintainable under Section 13(1) of the Act of 2015. This question received an answer in the negative, by analysing the provision in form of Section 13(1) with an exception carved out by the proviso.

Appreciating that the function of the proviso is to qualify the generality of the main enactment by providing an exception and taking it out as it reads from the main enactment portion which, but for the proviso would fall within the main enactment, it was noted as below :-

> "14. The proviso goes on to state that an appeal shall lie from such orders passed by the Commercial Division of the High Court that are specifically enumerated under Order 43 of the Code of Civil Procedure Code, 1908, and Section 37 of the Arbitration Act. It will at once be noticed that orders that are not specifically enumerated under Order 43 CPC would, therefore, not be appealable, and appeals that are mentioned in Section 37 of the Arbitration Act alone are appeals that can be made to the Commercial Appellate Division of a High Court.
> 15. Thus, an order which refers parties to arbitration under Section 8, not being appealable under Section 37(1)(a), would not be appealable under Section 13(1) of the Commercial Courts Act. Similarly, an appeal rejecting a plea referred to in sub-sections (2) and (3) of Section 16 of the Arbitration Act would equally not be appealable under Section 37(2)(a) and, therefore, under Section 13(1) of the Commercial Courts Act."

19 The argument advanced that Section 50 of the Act of 1996 do not find mention in the proviso to Section 13(1) of the Act of

2015 and, therefore, notwithstanding that an Appeal would not lie under Section 50 of the Act of 1996, still it would lie under Section 13(1) of the Act of 2015, the said issue received an answer with reference to the Judgment in ***Fuerst Day Lawson Ltd. vs. Jindal Exports Ltd.***[7], when the question arose whether an order though not appealable under Section 50 of the Act of 1996, would be subject to Appeal under the Letters Patent of the High Court and it was categorically ruled that where a special Act set out a self-contained code and in that event the applicability of the general law procedure would be impliedly excluded and the express provision need not refer to use a word ' Letters Patent', but if on reading of the provision it is clear that all further Appeals are barred, then even a Letters Patent Appeal would be barred. The specific observation with reference to the said decision is to be found in para 20 and 21 of the said decision and it would be apposite to reproduce the same :-

> "20. Given the judgment of this Court in Fuerst Day Lawson, which Parliament is presumed to know when it enacted the Arbitration Amendment Act, 2015, and given the fact that no change was made in Section 50 of the Arbitration Act when the Commercial Courts Act was brought into force, it is clear that Section 50 is a provision contained in a self-contained code on matters pertaining to arbitration, and which is exhaustive in nature. It carries the negative import mentioned in para 89 of Fuerst Day Lawson that appeals which are not mentioned therein, are not permissible. This being the case, it is clear that Section 13(1) of the Commercial Courts Act, being a general provision vis-à-vis arbitration relating to appeals arising out of commercial disputes, would obviously not apply to cases covered by Section 50 of the Arbitration Act.
> 21. However, the question still arises as to why Section 37 of the Arbitration Act was expressly included in the proviso to Section 13(1) of the Commercial Courts Act, which is equally a special provision of appeal contained in a self-contained code, which in any case would be outside Section 13(1) of the Commercial Courts Act. One answer is that this was done ex abundanti cautela. Another answer may be that as

7 (2011) 8 SCC 333

> Section 37 itself was amended by the Arbitration Amendment Act, 2015, which came into force on the same day as the Commercial Courts Act, Parliament thought, in its wisdom, that it was necessary to emphasise that the amended Section 37 would have precedence over the general provision contained in Section 13(1) of the Commercial Courts Act. Incidentally, the amendment of 2015 introduced one more category into the category of appealable orders in the Arbitration Act, namely, a category where an order is made under Section 8 refusing to refer parties to arbitration. Parliament may have found it necessary to emphasise the fact that an order referring parties to arbitration under Section 8 is not appealable under Section 37(1)(a) and would, therefore, not be appealable under Section 13(1) of the Commercial Courts Act. Whatever may be the ultimate reason for including Section 37 of the Arbitration Act in the proviso to Section 13(1), the ratio decidendi of the judgment in Fuerst Day Lawson would apply, and this being so, appeals filed under Section 50 of the Arbitration Act would have to follow the drill of Section 50 alone."

20 In light of the aforesaid, it was concluded that in all arbitration cases of enforcement of Foreign Awards, Section 50 of the Act of 1996 alone provides an Appeal and having provided for an Appeal, the forum of Appeal is left 'to the Court authorized by law to hear Appeals from such orders'. The said provision, therefore, meaningfully read, would lead to an indisputable proposition that if an Appeal lies under the said provision, then alone would Section 13(1) of the Act of 2015 be attracted as laying down the forum which will hear and decide such Appeal.

Very pertinently, the argument of Section 21 of the Act of 2015 creating an overriding effect also received consideration from their Lordships of the Apex Court, when the contention advanced based on Section 21 of the Act of 2015, did not find favour and it was observed that Section 21 of the Act of 2015 would apply only if Section 13(1) was to apply and the genesis of the conclusion is worded in Para 27 :

> "27. The matter can be looked at from a slightly different angle. Given the objects of both the statutes, it is clear that arbitration itself is

meant to be a speedy resolution of disputes between parties. Equally, enforcement of foreign awards should take place as soon as possible if India is to remain as an equal partner, commercially speaking, community. In point of fact, the raison d'être for the enactment of the Commercial Courts Act is that commercial disputes involving high amounts of money should be speedily decided. Given the objects of both the enactments, if we were to provide an additional appeal, when Section 50 does away with an appeal so as to speedily enforce foreign awards, we would be turning the Arbitration Act and the Commercial Courts Act on their heads. Admittedly, if the amount contained in a foreign award to be enforced in India were less than Rs 1 crore, and a Single Judge of a High Court were to enforce such award, no appeal would lie, in keeping with the object of speedy enforcement of foreign awards. However, if, in the same fact circumstance, a foreign award were to be for Rs 1 crore or more, if the appellants are correct, enforcement of such award would be further delayed by providing an appeal under Section 13(1) of the Commercial Courts Act. Any such interpretation would lead to absurdity, and would be directly contrary to the object sought to be achieved by the Commercial Courts Act viz. speedy resolution of disputes of a commercial nature involving a sum of Rs 1 crore and over. For this reason also, we feel that Section 13(1) of the Commercial Courts Act must be construed in accordance with the object sought to be achieved by the Act. Any construction of Section 13 of the Commercial Courts Act, which would lead to further delay, instead of an expeditious enforcement of a foreign award must, therefore, be eschewed. Even on applying the doctrine of harmonious construction of both statutes, it is clear that they are best harmonised by giving effect to the special statute i.e. the Arbitration Act, vis-à-vis the more general statute, namely, the Commercial Courts Act, being left to operate in spheres other than arbitration."

The aforesaid decision thus provides a clear answer to the argument raised by the learned senior counsel Mr.Kamat and more particularly in the wake of the amendment in Section 37 of the Act of 2015, by insertion of 'non-obstante clause' , creating an overriding effect over Section 21 of the Act of 2015 with effect from **30/08/2019**.

21 Heavy reliance is placed by Mr. Patil on the decision in case of ***Usha Kakade*** (supra) when a somewhat similar argument on interpretation of Section 13 or 13(1-A) of the Act of 2015 was

advanced and the Division Bench observed thus :-

> "74. The arguments based upon the interpretation of the provisions of Section 13 or 13 (1A) of the CCA or Order XLIII of the CPC fade into irrelevancy once it is clear that the maintainability of these appeals has to be adjudged by following the drill of Section 37 of the ACA. The provisions of the ACA determine the issue of appealability in such matters. The provisions of the CCA, or the CPC, can be examined only to determine the forum of appeal. The latter two enactments do not decide the substantive maintainability of the appeal. Thus, if the appeal is not maintainable under the ACA, then there is no question of referring to the forum provided by the CCA or the CPC and then holding that the appeals are nevertheless maintainable.
> 75. Similarly, the decisions in D & H India Ltd. (supra). Hubtown Limited (supra) and Sigmarq Technologies Pvt. Ltd. and others (supra) would not apply given the legal position that the issue of maintainability of these appeals must be determined by reference to the provisions of ACA and not the CCA or the CPC. In any event, another Coordinate Bench of this Court, in the case of Shailendra Bhadauria and others (supra), has expressly held that "the earlier view in Hubtown Limited (supra) and Sigmarq Technologies (supra) will have to give way and all the more after the judgments of the Hon'ble Supreme Court delivered in the case of Fuerst Day Lawson Limited v. Jindal Exports Limited and the authoritative and binding pronouncement in the case of Kandla Export Corporation (supra). The statute has to confer a right of appeal. That has to be conferred in clear words. We cannot, as suggested by Mr Andhyarujina, by an interpretative process carve out a right of appeal, when the law is not creating it.
> 76. Thus, the Coordinate Bench, in Shailendra Bhadauria and others (supra) upheld that the preliminary objection regarding maintainability of appeals against an order made by the learned Single Judge by this Court in an application for execution/enforcement of an arbitral award, inter alia on the ground that such an appeal was not maintainable under Section 37 of the ACA, and therefore, by tortious interpretation of the provisions of the CCA or the CPC, right of appeal against such orders could not be carved out by the Court."

22 As far as the decision in ***MITC Rolling*** (supra) is concerned, we have noted the observations in Para 17 thereof, which is a decision qua the restriction imposed in respect of orders specifically enumerated under Order XLIII of CPC and when the proviso, operating as an exception was pitched against an Appeal being filed being aggrieved by an order rejecting Plaint under

Order VII Rule 11 of CPC, it was held that the proviso must receive harmonious construction with the main provision and not in derogation thereof, as it restricted the Appeals against interlocutory orders to those enumerated under Order XLIII of CPC and the effect of it being only those interlocutory orders amenable to an Appeal under Order XLIII, would be maintainable and if the orders are not, then it would not fall within the restricted scope of the proviso in the background of the fact that the order passed on an Application filed under Order VII Rule 10 and Rule 11(d) is not enumerated in Order XLIII of CPC, but in any case it was an appealable order, the proviso was held not to constrict the scope of such an Appeal filed under Section 13(1-A).

In Para 19 it is specifically observed that the case involved the challenge to an order rejecting Application under Order VII Rule 10 and Order VII Rule 11(d) of CPC, which orders are not enlisted under Order XLIII of CPC, but there cannot be any quarrel with the proposition that such order would not be amenable to an Appeal under Section 13(1-A), but can be challenged by filing a Revision or a Petition/Application under Article 227 of the Constitution of India, as the case may be. Recording that the Plaintiff who is aggrieved by the order rejecting the Plaint cannot be made remediless or compelled to institute a fresh Suit availing such a challenge, the Appeal filed by the Appellant under Section 13(1-A) was held to be maintainable.

Relying upon the ratio flowing therefrom to the effect that when an order, though not enlisted in Order XLIII or Section 37 of the Act of 1996, but if it finally determine the lis between the parties, then it would amount to a Judgment or Order, as Judgment as per Section 2(9) is the statement given by the Judge on the grounds of a Decree or order and Decree being defined under Section 2(2), as a formal expression of an adjudication, which as regards the Code expressing it, conclusively determine the right of the parties with regard to the matters in controversy in the Suit.

Worth it to note that the definition of the term 'Decree' in CPC specifically provide that it shall be deemed to include the rejection of Plaint and, therefore, if rejection of a Plaint is a Decree, despite the fact that it do not fall within Order XLIII, an Appeal against the same would lie since it finally determines the lis between the parties.

However, this very logic which was applied in ***MITC Rolling*** (supra), cannot be made applicable to Section 37 of the Act of 1996, which is a provision in the special Statute, which has always intended to have judicial interference to the minimum and though Section 21 of the Act of 2015 gave an overriding effect over the provision of the said Act and the legislature perceiving that it could open a door for filing of Appeals by invoking Section 37 from orders other than the one specifically enumerated therein, by a timely action the legislature stepped in and amended Section 37 itself by adding a non-obstante clause and thereby constricting the scope of the proviso appended to Section 13(1-A) of the Act of 2015.

23 The submission of the learned senior counsel Mr.Kamat that the order of the learned Single Judge exercising the power under

Section 16 of the Act of 2015 read with Order XXI Rule 2 of CPC and it satisfy the requirement of being a 'Judgment or Order' as contemplated under Section 13(1-A) of the Act of 2015, in light of the interpretation of the said proviso in ***MITC Rolling***(supra) , in our view, is not applicable to Section 37 of the Act of 1996.

We must note that, as far as an Award under Section 36 of the Act of 1996 is concerned, it is equated to a Decree of the Court for the purposes of execution only and for all other purposes it definitely do not receive the same consideration as a 'Decree' of the Civil Court.

24 With reference to use of the word 'Judgment or Order' under Section 13(1-A) of the Act of 2015 and use of the word 'Orders passed by a Commercial Court' under the proviso, in reference to the Scheme of CPC, when Section 2(14) of the CPC define 'Order' as the formal expression of any decision of a Civil Court, which is not a Decree, whereas, Decree being defined 'to represent the formal expression of an 'adjudication' that conclusively determines the rights of the Parties regarding all or any matters in controversy in the Suit, it is a logical inference that determination which is not a Decree is necessarily an Order and every order inherently has a decision in it. A 'Judgment' is a reasoning behind that order and not a separately appealable decision , and the use of the word 'orders' in the proviso is not inclusive of the main provisions 'Judgment or Order' , but it has only coextensive effect. The order would thus bring with its fold everything that is not a Decree.

The Act of 1996 has only 'Awards or Orders', and orders can be both, interlocutory, procedural directives and final conclusive adjudications. In the context of arbitration jurisprudence this term do not strictly conform the definition as provided in Section 2(24) as a decision of the Civil Court which is not a Decree, but it is used an an umbrella nomenclature encompassing both, interlocutory as well as final conclusive adjudication between the parties.

By expressly including the final adjudication of Section 34 Petition, within the ambit of Section 37(1-C) as an appealable 'order', the Act of 1996 unequivocally demonstrate that the term 'Order' in Section 37 is not limited to an interim or interlocutory order and it would include final decisions too. In common parlance, the final decision under the CPC would be characterized as Judgments or Decree, but when the expression 'shall lie from the following orders (and from no others)' in Section 37 of the Act of 1996, it is indicative that all other decisions including Judgment of Commercial Courts are non appealable.

25 Thus, in our view, any attempt to draw an artificial semantic distinction between a 'Judgment' and an 'Order' under Section 13(1-A) of the Act of 2015, to bypass Section 37, would be a fundamentally erroneous approach in the wake of the limited scope of judicial intervention in the arbitration proceedings. A generic appellate provision under Section 13(1-A) of the Act of 2015 and it being amended in the year 2018 cannot be read to override an appellate provision under Section 37 in a special Statute and now moreso when Section 37 has inclusion of a 'non-obstante clause', the exhaustive Scheme for Appeals under

Section 37 leave no scope for an Appeal being preferred by invoking the proviso of Section 13(1-A) to the Act of 2015.

The main provision of Section 13(1-A) as far as the Act of 1996 is concerned, can not be read subject of the proviso and the Appeals will restrict themselves to the provision in the special Statue i.e. Section 37 and by the proviso appended to the said Section, a new route for filing Appeal against orders other than those covered under Section 37 cannot be opened.

In the wake of the aforesaid, we find that the objection raised by Mr.Patil about the Appeal being not maintainable under Section 13(1-A) of the Act of 2015 has sufficient merit and substance for the reasons which we have recorded above, and in any case, in our view, the order passed by the learned Single Judge being not one which fall within Section 37 of the Act of 1996, we are of the view that we cannot entertain an Appeal under Section 13(1-A) through the route of the proviso appended thereto.

26 Since the preliminary objection is raised as regards the maintainability of the appeal under Section 13(1-A) is sustained, we dismiss the Appeal as not maintainable under Section 13(1-A) of the Act of 2015. In the wake of above, pending Interim Applications also stand disposed of.

[MANJUSHA DESHPANDE, J.] **[BHARATI DANGRE, J.]**