IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Before:
The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 3192 of 2026
M/s. Tribeni Construction Ltd.
Vs.
Damodar Valley Corporation

For the Petitioner : Mr. Shuvasish Sengupta
Mr. Sourajit Dasgupta
Mr. Soumyajit Mishra
Ms. Utsa Podder
..... advocates

For the DVC : Mr. Sabyasachi Chowdhury, Sr. Adv.
Mr. Deepan Sarkar
Mr. Prasun Mukherjee
Mr. Deepak AGarwal
...advocates

Heard on : 14.09.2026

Judgment on : 01.10.2026

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the claimant in an arbitration proceedings and is directed against the order being no. 1 dated September 10, 2026 passed by the learned Judge, Commercial Court at Alipore in Misc. Appeal (Com) No. 303 of 2026.

2. By the order impugned, the prayer for ex parte ad interim order of injunction stood rejected.

3. Facts giving rise to this civil revision application in a nutshell are as follows-

a) Disputes arose between the parties and the petitioner invoked the arbitration clause and filed an application under Section 11 of the Arbitration & Conciliation Act, 1996 (for short "the A&C Act") and by an order passed by this Hon'ble Court, a retired Hon'ble Judge of this Court was appointed as an arbitrator to adjudicate the disputes between the parties.

b) Petitioner filed an application under Section 17 of the A & C Act and the learned Arbitral Tribunal by an order dated 18.04.2026 directed that the opposite party shall carry out and complete the joint measurement within the period as stipulated in the said order.

c) Alleging that the opposite party failed and neglected to comply with the aforesaid order, petitioner filed the 2nd application under Section 17 of the A&C Act.

d) The learned Arbitral Tribunal disposed of the 1st and 2nd applications under Section 17 of the A&C Act by an order dated May 20, 2026.

e) During the pendency of the joint measurement, the opposite party floated a tender with respect to the balance construction work at the risk and cost of the petitioner.

f) The action of the opposite party in floating the said tender was challenged by the petitioner in a writ petition wherein no further order was passed taking note of the submission of the opposite party that the Envelope-3 will not be opened until the inspection is completed.

g) Pursuant to the order of the learned Arbitral Tribunal, the Joint Special Officers conducted the joint measurement and circulated a copy of the Joint Measurement Report dated July 28, 2026.

h) Petitioner filed the third application under Section 17 of the A&C Act before the learned Arbitral Tribunal *inter alia* praying for a direction upon the Joint Special Officers to complete the joint measurement in respect of the incomplete work at the project site.

4. The learned Arbitral Tribunal, by an order dated September 9, 2026 dismissed the 3rd application under Section 17 of A&C Act.

5. Challenging the aforesaid order dated September 9, 2026 petitioner preferred an appeal under Section 37 of the A&C Act before the Commercial Court being Misc. Appeal (Com) No. 303 of 2026 along with an application for stay.

6. By the order being No. 1 dated September 10, 2026 the learned Judge of the Commercial Court at Alipore refused to pass an ex parte ad interim order.

7. Being aggrieved, the claimant has approached this Court.

8. Mr. Sengupta, learned Advocate for the petitioner contended that the opposite party floated a tender with respect to the balance work of construction without first ascertaining the balance work. He submitted that the balance/incomplete work cannot be ascertained without an exercise of joint measurement being carried out at the site. In support of his contention that the balance work has not been measured, Mr. Sengupta placed reliance upon the Joint Measurement Report dated 28.07.2026. Mr. Sengupta contended that in view of the claims, counterclaims and the dispute between the parties over the quantity and value of the balance works, a measurement of the balance or incomplete works is to be done by the Joint Special Officers.

9. Mr. Chaudhury, learned Senior Advocate appearing for the opposite party raises an objection as to the entertainability of this civil revision application. He contended that the High Court should be very slow in interfering with an order refusing to pass an ad interim order in an appeal under Section 37 of A&C Act in exercise of powers under Article 227 of the Constitution of India. In support of such contention he placed reliance upon the decision in case of **Durgapur Freight Terminal Pvt. Ltd. vs. Titagarh Logistics Infrastructure Pvt. Ltd. & other** reported at **2025 SCC Online Cal 9551**. Mr. Chaudhury placed reliance upon the decision of the Hon'ble Delhi High Court in **Ashok Kumar Puri and another vs. S. Suncon Realtors Pvt. Ltd.**

& Anr. reported at **(2021) 4 HCC (Del) 201** in support of his contention that the scope of interference by the High Court in exercise of power under Article 227 of the Constitution of India against interlocutory order passed in commercial matter is very narrow. Mr. Chaudhury contended that it is not the job of the Joint Special Officers to ascertain and determine the exact quantity and value of the balance works and such issue shall be adjudicated by the Tribunal on the basis of evidence led by the parties.

10. Heard the learned advocates for the parties and perused the materials placed.

11. The learned Tribunal disposed of the 1st and 2nd application under Section 17 of A&C Act by an order dated 20.05.2026 with the following direction.

> *"6. a.i) Mr Debendra Narayan Chowdhury, Former Chief Manager Civil, BCCL, Club Town Gardens, Block-3, Flat 4D, 12 M. M. Feeder Road, Kamarhati (M), Kolkata - 700057 and the person to be nominated by DVC by 22nd May 2026 (5 p.m.) are appointed joint special officers for taking the measurements as per prayers (g) & (h) and for doing the certification work as per prayer (i) of the application.*
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> *ii) The joint special officers shall complete their measurement and certification works by 30th June 2026 (5 p.m.); shall immediately circulate their joint report to the parties; and shall submit their joint report with all relevant documents to the tribunal within seven days from the date of completion of the measurement and certification works.*
>
> *iii) TCL shall pay remuneration that may be charged by Mr. Chowdhury and DVC shall pay remuneration that may be charged by its nominee special officer.*
>
> *iv) As to prayer (a), there shall be no interim order. As to prayers (b) & (c), DVC's undertaking is recorded that until the special officers complete the measurement works, DVC will not induct anyone in any part of the properties whose measurement is the subject matter."*
>
> (emphasis supplied)

12. Prayer (g) and (h) of the application under Section 17 of the A&C Act dated 17.04.2026 is set out hereunder for better appreciation.

> *"7. Prayers (g) & (h) of TCL's said s.17 application dated 17th April 2026 were these:-*

"g) A fit and proper person be appointed as Special Officer/Receiver under whose supervision the joint measurement be conducted in respect of the complete/incomplete work done by the petitioner of Integrated Township (Phase I) at RTPS, Raghunathpur, DVC, Purulia, West Bengal;

i) In alternative, the respondent be directed to complete the joint measurement in presence of the petitioner's representative in respect of complete/incomplete work done by the petitioner of Integrated Township (Phase I) at RTPS, Raghunathpur, DVC, Purulia, West Bengal within 7 days or within such time as this Hon'ble Tribunal may deem fit and proper,"

(emphasis supplied)

13. The learned Tribunal after noting that the words "done by the petitioner" qualify the words "complete/incomplete work" held that partially completed work is the incomplete work. The learned Tribunal held that the incomplete work done by TCL at the project site could not and cannot mean anything other than the work that TCL started at the project site but could not finish due to DVC's termination of the contract.

14. It is not the case of the petitioner that the Joint Special Officers have not taken measurements of all the finished and unfinished works i.e., all complete and incomplete works done by the petitioner.

15. The learned Tribunal after noting that the Joint Special Officers have submitted their report discharged them.

16. Petitioner prayed for stay of operation of the Order of the Tribunal dated 09.09.2026 which is the subject matter of appeal under Section 37.

17. The learned Judge of the Commercial Court after noting the observations made by the learned Tribunal in the order dated 09.09.2026 was right in holding that steps taken by the opposite party by publishing a notice dated 09.09.2026 expressing that price bid would be opened on 10.09.2026 cannot be a ground for passing an ex parte ad interim order of injunction.

18. The Joint Special Officers were appointed by the learned Tribunal for the purpose of measuring the complete and incomplete works done by the

petitioner at the project site until the date of termination of the contract. This Court is of the *prima facie* view that ascertainment of the quantity and value of the unexecuted balance work of the project is the matter of adjudication by the Tribunal on the basis of evidence that may be led by the parties.

19. When the Joint Special Officers have been discharged by the Arbitral Tribunal by an order dated 09.09.2026, there was no scope to pass an ex parte ad interim order without hearing the other side.

20. It is now well settled that the High Court would be extremely circumspect in interfering with the order passed in an appeal under Section 37 of the A&C Act under Article 227 of the Constitution of India. In **Durgapur Freight Terminal Pvt. Ltd.** (supra) it has been held that the application under Article 227 of the Constitution of India can be entertained if the issue of jurisdiction is raised. In the case on hand, no jurisdictional issue has been raised by the petitioner warranting interference under Article 227 of the Constitution of India.

21. In **Ashok Kumar Puri** (supra) it has been held that the scope of interference by the High Court in exercise of jurisdiction under Article 227 of the Constitution of India is extremely narrow and limited only in respect of orders that are patently without jurisdiction.

22. The order impugned cannot be said to be patently without jurisdiction.

23. There is no infirmity in the order impugned.

24. CO No. 3192 of 2026 stands dismissed. There shall be, however, no order as to costs.

25. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)