IN THE HIGH COURT FOR THE STATE OF TELANGANA

AT HYDERABAD

THE HON'BLE JUSTICE B.R.MADHUSUDHAN RAO

CIVIL REVISION PETITION.NO.2302 OF 2023

Dated: 14th JULY, 2026

BETWEEN :

The Singareni Collieries Company Limited,

... Petitioner-
Applicant-respondent

AND

M/s JMS Mining Private Limited,
(A company within the meaning of the Companies Act, 2013)
Having its Registered Office at : Dong Fang Electric Building,
3rd Floor, Premises No.16, MAR – 1111, Action Area – 1A,
New Town, Kolkata – 700 156.

...Respondent
Respondent - Claimant

ORDER

1. This Memorandum of Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order passed by the learned Arbitrator on 04.07.2023 in IA.No.1 of 2023 in Arbitration Case No.5 of 2022.

2. Registry has returned the bundle on 31.07.2023 which reads as under:

> "Please clarify as to how the CRP SR is entertainable against the order in IA No.1 of 2023 in Arbitration Case No.5 of 2022 on the file of the Arbitration Tribunal without availing alternative remedy before concerned District Court for further scrutiny".

3.1. Learned counsel for the petitioner has resubmitted the bundle on 02.08.2023 which reads as under:

> "As per the Supreme Court Judgments reported in (2020) 15 SCC 706 - Deep Industries Limited Vs ONGC and (2022) 1 SCC 75 - Bhaven Construction Vs Executive Engineer, Sardar Sarovar Narmada Nigam Ltd., Revision under Article 227 is maintainable against an order of Rejection of S.16 application under Arbitration and Conciliation Act, 1996. Hence, objections may be overruled and CRP may be numbered else may be placed before Court if not satisfied".

3.2. Registry has numbered the CRP and assigned the number.

3.3. For the sake of convenience, parties will be hereinafter referred to as petitioner-respondent, respondent-claimant.

4. Petitioner-respondent has filed IA.No.1 of 2023 under Section 16 (2 and 3) of the Arbitration and Conciliation Act, 1996 before the sole arbitrator stating that claims based on the disputes are barred by timelines provided in Clause 32 of the subject contract and that some of the claims are not arbitrable.

> 1. It is stated in the application that "arbitration agreement" in the subject contract, is provided at clause 32 and that the claimant (respondent herein) is not entitled to seek the remedy

of arbitration after 120 days from the date of dispute. In fact the claims convassed in the arbitration are from the disputes which are cropped up long prior to 29.07.2020 on which date arbitration notice is received by this applicant (petitioner herein). Therefore the applicant-SCCL has categorically taken objection that the disputes raised by the claimant-JMS Mining Private Limited is not arbitrable and the arbitration tribunal has no jurisdiction to decide the subject disputes and that the claimant-JMS Mining Private Limited is to be directed to approach the Civil Court, if so advised.

2. It is further stated in the application that whenever an objection is raised as per section 16 of the A&C ACT, the Tribunal has to necessarily decide the said objection before proceeding to hear the matter on merits of the case as preliminary issue. In fact at para 9 of statement of defence this applicant-SCCL has requested the Tribunal to decide the maintainability of arbitration i.e., lack of jurisdiction to Tribunal as preliminary issue before undertaking the hearing of the case on merits.

3. It is further stated in the application that in the rejoinder filed by the claimant (respondent herein) at para 6, it is stated that the cause of action in each of the claims raised by the claimant is continuing in nature and therefore clause 32(d) of the purchase order/contract is not applicable.

4. Clause 32(d) categorically stated that whenever a dispute is not settled by mutual agreement within 120 days from the date of dispute/cause of action, dehors to the fact whether the discussions are continuing, if the party intend to get remedy through arbitration mechanism, it is necessarily to refer such dispute to arbitration. For any reason if such dispute is not referred during course of time including the reasons that matter is in discussion it can only be done after 120 days by

getting the said timelines of 120 days extended as per sec 43(3) of A&C ACT.

5. The counter filed by the respondent in arbitration application No.08/2021, the applicant herein in their counter at para 11 has clearly referred clause 32 of the subject contract. Arbitration should be viewed as exception to Court System. Claim towards compensation for suspension of work is not arbitrable unless such notice is given within 30 days of the end of such suspension of work (clause 25.2 of PO).

6. The application further states that claimant (respondent herein) did not give such notice within 30 days of the end of such alleged suspension of work. Cause of action arose prior to 29.07.2017 as such the claims/disputes are barred by law. As per clause 9 last sub para, and under clause 16.1 and 16.2 of general terms of the contract it is specified that the decision of the GM, PO of the Adriyala Longwall Project shall be binding on the contractor. Substantial claims made by the claimants is towards additional works in respect of stone cutting and bolting works. Although such disputes arose in the initial days of contract itself, the claimant did not choose to refer the matter to arbitration within 120 days. As per clause 2 and 3 of chapter VI of general terms of contract the contention of the claimant-JMS Mining Pvt. Ltd. that Section 43(3) of Arbitration Act is not applicable, is incorrect and unsustainable and prayed to allow the I.A.

5. Respondent-claimant has filed his objection to the application filed by the petitioner-respondent.

6. Learned Arbitrator after hearing both sides has dismissed IA.No.1 of 2023 in Arbitration Case No.5 of 2022 *vide* order dated 04.07.2023 which is impugned in the CRP.

7.1. Learned Senior Counsel for the petitioner submits that the impugned order dated 04.07.2023 is contrary to law as well as facts and circumstances of the case. The petitioner-respondent raised objection as to the lack of jurisdiction of arbitration tribunal on the grounds that the claims are time barred in view as provided in clause 32 of the contract (Arbitration Clause), and the claims are not within the ambit of terms of the contract. The Arbitration Tribunal ought to have considered the material evidence (Admitted documents) available on record in respect of each of the claim, but the learned Arbitrator failed to consider the same as to the date of dispute with reference to either to the date of arbitration reference notice which are not referred in such notice or the date of submission of claims, with reference to the date of statement of claim, and consequently miserably failed to discharge its functions under Section 16 of Arbitration and Conciliation Act, 1996.

7.2. The Arbitration Tribunal failed to consider the admitted facts that although part Claim No.1 was already paid and other part is already resolved between the parties which fact is very much evidenced by minutes of 6th Corporate Management Committee (CMC) meeting dated 26.12.2019. The learned Tribunal failed to give any finding on the said admitted facts.

7.3. The Tribunal ought to have considered the terms of chapter-IV and chapter VI of the contract which expressly prohibits for any claim beyond quoted rates for execution of additional cable bolting work, and additional bolting works within the limit of 10% of the Bill Of Quantities (herein after referred to as 'BOQ') of contract volumes of respective items of contract dated 28.11.2015. Claim No.2 is made for additional cost beyond quoted rates for execution of additional cable bolting work and additional bolting work (claim No.3). The Tribunal failed to apply its mind on such important fact/material from the contract, consequently the impugned order suffers with perversity and patent illegality on the face of record.

7.4. The arbitration Tribunal failed to consider the clause 25.2 of the contract which governs the claim towards suspension of work where in it provides condition precedent requiring that there need to be a direction by SCCL to invoke such claim, and that in spite of the fact that there is no material to show that the petitioner-SCCL has not directed the respondent-JMS to suspend the work and that 45 days period of suspension due to such direction was not expired and that contract period is still not expired and consequently such claim is not arbitrable.

7.5. The Tribunal failed to consider that the claim Nos.5 & 6 being the claims made for payment of wages as per the High Power Committee (herein after referred to as 'HPC') agreement rates which are not contemplated in the contract and such claim is being contrary to clause 22.6 of contract which disentitles the respondent-JMS to make such claim.

7.6. The Tribunal ought to have given finding that in respect of claim No.7 the same was already resolved by paying Rs.88,47,090/- on 23.02.2023 as per the invoice made by respondent-JMS as such evidence was placed on record through a Memo dated 06.05.2023 and that respondent-JMS did not dispute said payment, the arbitration tribunal has no jurisdiction to entertain such claim.

7.7. The Tribunal failed to consider clause 13.1(v) of the contract where under in respect of damage or loss to the equipment of contractor-JMS, the petitioner-SCCL is not liable to make good of the same. The respondent-JMS has already recovered major part of its claim from the insurance company and such material is clearly admitted by respondent-JMS. The Tribunal failed to consider the terms of the contract wherein there is absolutely no stipulation to make the SCCL liable for interest for delayed payments.

7.8. The Arbitration Tribunal failed to consider the fact that in respect of the claim for release of retention money of Rs.4.11 cr. which is already paid *vide* cheques dated 20.02.2023, 21.02.2023 and 24.03.2023 during pendency of arbitration and consequently this claim is since resolved except the part of claim towards interest and in respect of such interest claim there is no stipulation in the contract making the petitioner-SCCL liable to pay such interest and thus arbitration tribunal has no jurisdiction to entertain the claim.

7.9. The arbitration tribunal failed to consider the material evidence through document R-84 dated 04.06.2021 rejecting the claim towards loss of drivage due to inadequate ventilation, and the claim of respondent-claimant is hit by time bar condition of 120 days from the said rejection and they need to approach Civil Court for redressal. And this claim was part of arbitration reference notice dated 28.07.2020 but made for the first time through SOC dated 30.09.2022. The claim of refund of Liquidated Damages (herein after referred to as 'LD') on the ground of non-consideration of alleged deemed drivage, when such deemed drivage is contrary to the terms of the contract in particular chapter VI, but the arbitration tribunal failed to give any finding on that aspect but held that objection to jurisdiction is rejected.

7.10. The arbitration tribunal failed to consider that the claim for already recovered LD amount is connected with resolution of second part of claim No.1 and such resolution by mutual agreement of both parties and consequently this claim is not to be adjudicated again by the arbitration tribunal, but the arbitration tribunal failed to give any finding on such aspect.

7.11. The claim towards loss of time consumed in reaching the working place alleged to be beyond NIT area. The same was refuted in 9th CMC meeting dated 31.05.2022 and without any reference in arbitration notice, for the first time made claim after 122 days through SOC. The arbitration tribunal made a finding contrary to the said material evidence on record.

7.12. The arbitration tribunal failed to consider section 43(3) of Arbitration and Conciliation Act that any condition required to be followed in specified time prior to seeking arbitration, and if such condition is not taken in specified time but made reference to arbitration, without seeking extension of such time in Civil Court, the same results into lack of jurisdiction to the arbitration tribunal.

7.13. The arbitration tribunal ignored the settled law that whenever the terms of contract prohibits the claim of the contractor by using the phrases "no claim shall be made" and "not

entitled for any claim" etc. The arbitrator has no jurisdiction to entertain such claims and need to be rejected at the threshold without under taking the drill of leading evidence etc., on merits.

7.14. The arbitration tribunal ignored the fundamentals of arbitration law that the arbitration disputes between the parties should be within four contours of terms of contract, to exercise its jurisdiction. The arbitration tribunal has no jurisdiction to re write the terms of contract to consider the claims. The arbitration tribunal ignored the settled position of law more particularly the provisions of sec 16 (3) of the Act to give its finding as to lack of jurisdiction. The Arbitration Tribunal ignored several grounds on which objection of lack of jurisdiction to arbitration is canvassed, but gave evasive and cryptic finding only on the aspect of time bar condition which is contrary to Section 43(3) of A&C Act. Learned Senior Counsel in support of his contentions has relied on the decisions in the cases of (1) Raj International Vs. Tripura Jute Mills Ltd.,[1] (2) Surender Kumar Singhal & Others Vs. Arun Kumar Bhalotia & Others[2] (3) Kvaerner Cementation India Limited Vs. Bajranglal Agarwal & Another[3] (4) Oil & Natural Gas Corporation

[1] 2008 SCC OnLine Gau 333
[2] 2021 SCC OnLine Del 3708
[3] (2012) 5 SCC 214

Vs. Wig Brothers Builders and Engineers Private Limited[4] (5) Union of India and Others Vs. Bharat Enterprise[5] (6) State of Gujarat Vs. Kothari and Associates[6] (7) Garg Builders Vs. Bharat Heavy Electricals Limited[7] (8) Indian Oil Corporation Limited Vs. NCC Limited[8] (9) Wellington Associates Ltd. Vs. Kirit Mehta[9] (10) BGM and M-RPL-JMCT (JV) Vs. Eastern Coalfields Limited[10] (11) State of Jharkhand Vs. Indian Builders Jamshedpur[11] (12) Bhadra International (India) Pvt. Ltd. & Ors. Vs. Airports Authority of India[12] (13) Central Organisation for Railway Electrification Vs. ECI-SPIC-SMO-MCML (JV) A joint Venture Company[13].

8. Learned counsel for the respondent-claimant contended that CRP is not maintainable under Article 227 of the Constitution of India, in case if the Court comes to a conclusion that the CRP is maintainable even otherwise the grounds alleged in the CRP do not find any merit and the learned Arbitrator has rightly rejected the application filed by the petitioner in IA.No.1 of 2023. No

[4] (2010) 13 SCC 377
[5] 2023 SCC OnLine SC 369
[6] (2016) 14 SCC 761
[7] (2022) 11 SCC OnLine SC 697
[8] (2023) 2 SCC 539
[9] (2000) 4 SCC 272
[10] MANU/SC/0939/2025
[11] 2025 SCC OnLine SC 2717
[12] 2026 INSC 6
[13] 2024 SCC OnLine SC 3219

interference is called for, counsel in support of his contention has relied on the decisions in the cases of (1) Deep Industries Limited Vs. Oil & Natural Gas Corptn. Limited and Anr.[14] (2) Bhaven Construction Vs. Executive Engineer, Sardar Sarovar Narmada Nigam Limited and Another[15] (3) S.Madhan Vs. A.Venkateshwaran and Others[16] (4) BGR Energy Systems Ltd. Vs. Tandex Engineering & Services Pvt. Ltd. and Anr.[17] (5) The State of Madhya Pradesh Vs. T.R.G. Industries Private Limited[18] (6) Oriel Financial Solutions Pvt. Ltd. Vs. Bestech Advisors Pvt. Ltd.[19] (7) M/s. V.K.S. Constructions Vs. The State of Telangana[20] (8) Maharshi Dayanand University and Anr. Vs. Anand Coop. Society Ltd. and Anr.[21] (9) Roshan Lal Gupta Vs. Parasram Holdings Pvt. Ltd. and Anr.[22] (10) Glencore International AG Vs. Indian Potash Limited and Anr.[23] (11) Surender Kumar Singhal Vs. Arun Kumar Bhalotia[24] (12) Panchu Gopal Bose Vs. Board of Trustees for Port of Calcutta[25] (13) State of Orissa and Anr. Vs. Damodar Das[26] (14) Major (Retd.) Inder Singh Rekhi Vs. Delhi Development Authority[27] (15) S.Rajan

[14] (2020) 15 SCC 706
[15] (2022) 1 SCC 75
[16] CRP No.2996/2022 (Mad HC), dated 03.11.2022
[17] CRP (NPD) No.1232 of 2021 MHC, dated 01.02.2022
[18] WP No.12871/2024 (MPHC), dated 24.08.2024
[19] 2024 SCC OnLine Del 2221
[20] WP No.956/2025 (Tel HC) dated 09.06.2025
[21] (2007) 5 SCC 295
[22] 2009 (109) DRJ 101 (Del HC)
[23] 2019 SCC OnLine Del 9591
[24] 2021 SCC OnLine Del 3708
[25] (1993) 4 SCC 338
[26] (1996) 2 SCC 216
[27] (1988) 2 SCC 338

Vs. State of Kerala and Anr[28] (16) Vishwanath Sood Vs. Union of India (UOI) and Others[29] (17) State of Goa Vs. Praveen Enterprises[30] (18) Ministry of Youth Affairs & Sports Vs. Agility Logistics Pvt. Ltd.,[31].

9. Learned Senior Counsel for the petitioner-respondent and counsel for the respondent-claimant have filed their written submissions in support of their contentions.

10. Heard both sides, perused the material on record.

11. Now the points for consideration are:

1. Whether CRP is maintainable against the orders in IA.No.1 of 2023 filed under Section 16(2 & 3) of Arbitration and Conciliation Act in Arb.Case No.5 of 2022 under Article 227 of the Constitution of India? If so?

2. Whether the order passed by the learned Arbitrator suffers from any perversity or illegality? If so, does it require interference of this Court?

12. Before answering the point it is apt to refer Sections 16, 34, 37 and 43(3) of the Arbitration and Conciliation Act :

"**16. Competence of arbitral tribunal to rule on its jurisdiction :**

[28] (1992) 3 SCC 608
[29] MANU/SC/0646/1989
[30] (2012) 12 SCC 581
[31] OMP (COMM) 95/2019 (Del HC) dated 07.04.2022

(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section *(2)* or sub-section *(3)*, admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section *(2)* or sub-section *(3)* and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.

34. Application for setting aside arbitral award.—

(1) Recourse to a Court against an arbitral awardmay be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application establishes on the basis of the record of the arbitral tribunal that :-

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or,

failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

3[(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.]

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.]

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 authorized by law to hear appeals from original decrees of the Court passing the order, namely:—

3[(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) 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; or

(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 takeaway any right to appeal to the Supreme Court.

Section 43 Limitations :

(1) -------

(2) -------

(3) Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the

time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

13. Important Clauses of the Contract are 13.1(v), 22.6, 25.2, 32, 34 which reads as under:

13.1. Plant, temporary works & Materials :

(v) Company not liable for damage to plant etc.

The company shall not at any time be liable for the loss of, theft or damage to any of the said installation works/construction works/temporary works or materials during this period of contract, for which the responsibility shall lie entirely on the Contractor, save as mentioned in clause 22.1 and 28.0 hereof.

22.6. Statutory Rules :

(a) The Contractor shall comply with all applicable Rules, Regulations, Acts and permissions etc. issued from time to time for carrying out the subject work viz. Coal Mines Regulations, Mines Rules, Mines Act, Indian Electricity Rules, DGMS permission conditions, Minimum Wages Act, Workmen Compensation Act, Coal Mines Provident Fund Act, Insurance Act, Explosives Act and Environment Act etc. and obtain all statutory licenses, for the safety and welfare of the employees engaged by him to carry out the subject work.

25. Cancellation, Termination and Suspension of Contract :

25.2. Suspension of Work :

The Company, through the GM, Adriyala Project Area or Project Officer, Adriyala Longwall Project shall have power, to direct the Contractor, in writing, to suspend the work or any part thereof, for such period and in such manner as may be specified therein, on account of any default on the part of the Contractor, or for want of proper execution of the work for reasons other than any default on the part of the Contractor, or on ground of safety of the work.

.....
.....
.....

Provided that the Contractor shall not be entitled to claim any such extra cost unless he gives a notice in writing, of his intention to claim to the GM, Adriyala Project Area within 30 days of the GM, Adriyala Project Area or Project Officer, Adriyala Longwall Project's order. The GM, Adriyala Project Area shall determine and settle such extra payment to be made to the Contractor in respect of such claim as shall, in the opinion of the GM, Adriyala Project Area, be fair and reasonable.

32. ARBITRATION:

Normally all disputes should be settled by negotiations between the Company and the concerned parties.

In case any dispute/difference is not settled through negotiations, the respective parties can seek remedy by Arbitration by invoking the same within 120 days of dispute.

(a) The Arbitrator(s) will be appointed to resolve the disputes between the parties. The Chairman & M.D. of the S.C.Co.Ltd., is having absolute power to appoint a single Arbitrator or more than one Arbitrator or to refer the dispute to the Institutional Arbitration at his discretion and his decision is final and binding on the parties. The appointed Arbitrator(s)/ Institutional Arbitration should pass a reasoned award.

(b) If any of the Arbitrators appointed by the Chairman & M.D. of the S.C.Co.Ltd., is unable to continue as an Arbitrator for any reasons whatsoever or if the Chairman & M.D. of the S.C.Co.Ltd., for the reasons to be recorded in writing thinks fit for appointment of a new Arbitrator in the place of existing Arbitrator, he is having a power to do so. If such a new Arbitrator is appointed, he can either continue the arbitration proceedings from the stage where the earlier Arbitrator discontinued his proceedings or alternatively the new Arbitrator may start proceedings de novo if the circumstances warrant him to do so.

(c) The parties should bear the costs of the Arbitration equally.

(d) Failing to invoke Arbitration clause within 120 days of dispute the matter is to be decided by Civil Courts at Khammam, karimnagar Districts in TELANGANA state alone and not at any other place)"

34. JURISDICTION:

The Courts at Khammam, Karimnagar districts in the state of TELANGANA only shall have jurisdiction to deal with and decide any legal matter or dispute whatsoever arising out of this contract including disputes arising on encashment of Bank Guarantees.

POINT Nos.1 & 2:

14. Respondent-claimant has filed claim in the month of September, 2022 before the Arbitrator that the petitioner-respondent be ordered and directed to pay the claimant(respondent herein) a sum of Rs.6,53,39,70,640/- only as per the particulars of claim with interest *pendente lite* and interest upon awarded @ 18% per annum till realization of the awarded sum. In alternative, the learned Sole Arbitrator be pleased to direct an enquiry into the payments that the claimant is entitled to receive from the respondent (petitioner herein) in terms of the contractual provisions, and accordingly pass an award in favour of the claimant (respondent herein) for payment of such sums that may be found to be due and payable.

15. Statement of claim of respondent - claimant is as under:

Client : M/s Singareni Collieries Company Limited (Adriyala Project)
STATEMENT OF CLAIM OF JMS MINING PVT. LTD.
CLAIM CALCULATION DATE : 31st August, 2022.

Claim No.	Claim Description	Claim Amount (a)	Interest Amount (b)	Total Amount (a+b)
1	Additional Cable bolting	1,74,36,93,358/-	75,68,77,282	2,50,05,70,640
2	Excess Stone Cutting	1,61,33,23,877	49,21,56,451	2,10,54,80,328
3	Inadequate ventilation-Loss due to reduced efficiency of men & machinery	1,35,05,035	-	1,35,05,035
4	Roadheader Inundation Loss	37,81,83,717	14,05,48,130	51,87,31,847
5	Suspension of work	32,13,00,000	6,37,24,700	38,50,24,700
6	Roof bolting (gate + trunk roadways) in excess of PO condition	23,40,79,274	11,40,21,937	34,81,01,211
7	HPC vs Minimum wages	10,89,08,177	5,05,23,802	15,94,31,979
8	Escalation based on HPC	14,50,66,861	5,83,85,242	20,34,52,102
9	Work done beyond NIT Designated Area	2,67,25,372	-	2,67,25,372
10	Refund of LD/Payment of Bonus	6,61,62,091	4,03,20,569	10,64,82,660
	Refund of LD/Payment of Bonus – Stone cutting	3,81,83,310	2,67,39,531	6,49,22,841
11	Retention release on ICC	4,27,49,156	89,69,845	5,17,19,001
12	2nd pass of Face rise drivage	2,01,17,965	83,02,231	2,84,20,196
13	Delayed release of bills	51,14,821	1,62,87,905	2,14,02,727
14	Pendente lite and other interest	-	-	-
15	Litigation charges	-	-	-
	Total	4,75,71,13,014	1,77,68,57,626	6,53,39,70,640

16.1. Petitioner-respondent has filed his statement of defence claim wise on 09.12.2022 which reads as under:

16.2. In Para 6(B), it is stated that Clause 32(d) is very clear to the effect that failing to invoke arbitration clause within 120 days of dispute, the matter is to be decided by Civil Courts at Khammam, Karimnagar District. As such, it is very clear that even if it is under negotiation process, the party wants to resolve dispute through arbitration mechanism, such party need to invoke within (120) days of the dispute.

16.3. In Para 6(E), it is stated that as per the correspondence referred by the claimant with their S.O.C., it is clear that all such disputes/claims were raised long back and the respondent did not accept the same and paid monies restricting to the part of undisputed bills. Although, the claimant went on making correspondence reiterating its claim with reference to the said disputes, such correspondence does not stop the limitation once begun.

16.4. In Para 6(F), it is stated that since the claimant did not exercise its right to seek extension of time, as contemplated under Section 43(3) of Arbitration and Conciliation Act, the disputes referred to in the notice dated 28.07.2020 are not arbitrable for the reason that all those disputes were raised more than (120) days prior to receiving the said notice by the respondent and therefore those disputes together with claims raised thereon are not arbitrable.

16.5. In Para 6(H), it is stated that the disputes which are stated in the letter dated 28.07.2020 were initially raised during the period from 2017 to 2019 and were not accepted by time to time by the respondent. As such, all those claims are not arbitrable because of effect of said time bar clause, and as per clause 32(d) of the work

order dated 28.11.2015, the claimant is at liberty to get the same resolved through Civil Court.

16.6. In Para 6(I), it is stated that in view of clause 32(d) of the agreement, the disputes raised are separate items, needs to be resolved time to time though execution of contract work is continuing. Further to submit that very fact of claim of interest by the claimant from different dates, way back to 2017 in respect of some of the claims, confirm that those are separate items, and gives rise separate cause of action. Therefore, in respect of every dispute/claim made during the period prior to 2020, gives separate cause of action on this aspect.

16.7. Para 7 of the statement of defence further states that the claims are hit by time bar clause and thus the Hon'ble Tribunal has no jurisdiction to entertain the said disputes and deserves to be rejected as non-arbitrable, since barred by limitation.

(a) It is further submitted that in respect of claims/disputes that are canvassed for the first time in the statement of claim dated 30.09.2022 is concerned, as stated above the S.O.C. ought to have confined to claims referred to in arbitration notice dated 28.07.2020 and later would have made supplementary claim, subject to the conditions and permission that would be granted by this Hon'ble Tribunal under Section 23(3) of Arbitration and Conciliation Act. Be that as it may, the respondent submits that primarily the claimant miserably failed to

demonstrate as to how any of those claims are not hit by time bar clause.

16.8. Para 8(a) of the statement of defence states the clauses of contract wherein "no claim by contractor" is incorporated:

(i) Sub para 7 of clause 9 of General terms and conditions of contract as to deviations/variations on quantities and pricing.
(ii) Sub para 3 of Clause 16.2 as to measurements in general terms of contract.

16.9. Para 9 of the statement of defence states that without prejudice to the aforesaid contention that all disputes/claims canvassed by the claimant are not arbitrable on the grounds that those are:

i) not referred to arbitration within 120 days of the dispute as contemplated in clause 32a of the contract, and
ii) that some of the disputes are also being excepted matters on the ground that no claim shall be raised by the contractor as per the terms of contract, and that the
iii) claim towards compensation for suspension of work is not arbitrable for the reason that no such notice within 30 days of end of the suspension of work as contemplated in contract is given with an intent to claim compensation, the respondent submits following reply on merits of several claims. As per section 16 of A & C Act the issue of effect of time bar clause and consequential non maintainability of arbitration may be decided as preliminary issues before undertaking the consideration of the case on merits.

17. Respondent-claimant has filed rejoinder to the statement of defence.

18. The learned Arbitrator Tribunal has framed issues on 28.03.2023 which reads as under:

1. Whether the disputes giving rise to the claims made in statement of claims are non-arbitrable by virtue of limitation contained in Clause. 32 (d) of Contract agreement and thus the Arbitral Tribunal have no jurisdiction, to adjudicate any of the claims?
2. Whether the claimant or the respondent, has committed the breach of the terms of the contract?
3. Whether the claim no:2 and 10 are not arbitrable by the Arbitral Tribunal, as the same fall under the excepted matters under the terms of the contract agreement?
4. Whether the claimant is entitled for Rs.210,54,80,328/- or part of it, along with interest, towards excess stone cutting, for the entire period up to 31.08.2022?
5. Whether the claimant is entitle for Rs.250,05,70,640/- or part of it, along with interest, towards excess or additional cable bolting done, beyond the scope of the Contract Agreement, for the entire period up to 31.08.2022?
6. Whether the claimant is entitled for Rs.34,81,01,211/- or part of it, along with escalation and interest, towards roof bolting done in excess of the purchase order, for the entire period up to 31.08.2022?
7. Whether the claimant is entitled for Rs.38,50,24,700/- or part of it, along with interest, towards the suspension of work during the entire period up to 31.08.2022?
8. Whether the claimant is entitled for Rs.15,94,31,979/- or a part of it, along with interest, towards the reimbursement of HPC wages and Rs.20,34,52,102/- towards escalation of HPC wages, for the entire period up to 31.08.2022?

9. Whether the claimant is entitled for Rs.2,84,20,196/- or part of it, along with interest, towards the work for the second pass of Face Rise Drivage?
10. Whether the claimant is entitled for Rs.51,87,31,847/- or a part of it, along with interest, towards Road Header inundation costs incurred by the claimant, during the entire period up to 31.08.2022?
11. Whether the claimant is entitled for Rs.2,14,02,727/- or a part of it, along with interest, for the delayed release of bills by the respondent, during the entire period up to 31.08.2022?
12. Whether the claimant is entitled for Rs.5,17,19,001/- or a part of it, along with interest, towards retention release on ICC, during entire period up to 31.08.2022?
13. Whether the claimant is entitled for Rs.1,35,05,035/- or a part of it, along with interest, towards loss incurred, for the periods, due to inadequate ventilation, up to 31.08.2022?
14. Whether the claimant is entitled for Rs.10,64,82,660/- or a part of it, along with interest, towards the payment for bonus and refund of illegal Liquidated Damages collected by the respondent up to 31.08.2022?
15. Whether the claimant is entitled for Rs.6,49,22,841/- or a part of it, along with interest, payable on account of refund of LD and bonus, withheld or collected, on the basis of reduction in target drivage, though the same was on account of excess stone cutting, up to 31.08.2022?
16. Whether the claimant is entitled for Rs.2,67,25,372/- or a part of it, along with interest, towards the cost incurred for the work done beyond the area stipulated in the contract, till 31.08.2022?
17. Whether the claimant is entitled to interest *pendente lite*, on all the claims and if so, at what rate and for what period?

18. Whether the claimant or the respondent is entitle for the costs of the Arbitration proceedings?
19. To what relief, if any, the parties are entitled?

19. Learned Senior Counsel for the petitioner-respondent has filed Notes showing the claims made by the respondent-claimant as time barred in a tabular form which reads as under:

CLAIM NO.1 – EXCESS STONE CUTTING
[Rs.210,54,80,328/-]

Date of Dispute	26.12.2019 Event: 6th CMC Meeting (Ref. S.No.1) – Pg.1/Compilation
120th Day from Date of Dispute	24.04.2020
Date of Invocation	28.07.2020 **Event**: Notice of Invocation of Arbitration
No.of Days delay	95 days

CLAIM NO.2 – ADDITIONAL CABLE BOLTING
[Rs.250,05,70,640/-]

Date of Dispute	28.02.2019 Event: 4th CMC Meeting (Ref. S.No.5)
120th Day from Date of Dispute	28.06.2019
Date of Invocation	28.07.2020 **Event**: Notice of Invocation of Arbitration
No.of Days delay	396 days

CLAIM NO.3 – ROOF BOLTING IN EXCESS OF CONTRACT
[Rs.34,81,01,211/-]

Date of Dispute	05.03.2020 Event: AMC Meeting (Ref. S.No.12)
120th Day from Date of Dispute	03.07.2020
Date of Invocation	28.07.2020 **Event**: Notice of Invocation of Arbitration
No.of Days delay	25 days

CLAIM NO.4 – SUSPENSION OF WORK
[Rs.38,50,24,700/-]

Date of Dispute	06.08.2020 Event: Reply letter issued by the Petitioner reg. Poor ventilation and high temperature
120th Day from Date of Dispute	04.12.2020
Date of Invocation	30.09.2022 **Event**: Date of filing of SoC
No.of Days delay	664 days

CLAIM NO.5 – HPC v. Minimum
[Rs.15,94,31,979/-]

CLAIM NO.6 – Escalation based on HPC
[Rs.20,34,52,102/-]

Date of Dispute	14.02.2020 Event: Reply letter issued by the Petitioner reg. Clarification on applicable minimum wages
120th Day from Date of Dispute	13.06.2020
Date of Invocation	28.07.2020 **Event**: Notice of Invocation of Arbitration
No.of Days delay	45 days

CLAIM NO.7 – 2nd Pass of Face Rise Drivage
[Rs.2,84,20,196/-]
Disputed amounts were paid on 23.02.2023

CLAIM NO.8 – Road Header Inundation Loss
[Rs.51,87,31,847/-]

Date of Dispute	31.05.2022 Event: 9th CMC Meeting (Ref.S.No.8)
120th Day from Date of Dispute	28.09.2022
Date of Invocation	30.09.2022 **Event**: Date of filing of SoC - Pg.111/CRP
No.of Days delay	2 days

CLAIM NO.9 – Delayed release of bills
[Rs.2,14,02,727/-]

Date of Dispute	19.07.2018 Event: 2nd CMC Meeting (Ref.S.No.8)
120th Day from Date of Dispute	16.11.2018
Date of Invocation	28.07.2020 **Event**: Notice of Invocation of Arbitration
No.of Days delay	620 days

CLAIM NO.10 – Release of retention money on ICC
[Rs.5,17,19,001/-]
Disputed amounts were paid

CLAIM NO.11 – Loss incurred due to reduced efficiency on account of inadequate ventilation
[Rs.1,35,05,035/-]

Date of Dispute	15.05.2022 Event: Reply letter issued by the Petitioner reg. Ventilation
120th Day from Date of Dispute	12.09.2022
Date of Invocation	30.09.2022 **Event**: Date of filing of SoC
No.of Days delay	18 days

CLAIM NO.12 – Refund of LD/Payment of Bonus
[Rs.10,64,82,660/-]

CLAIM NO.13 – Refund of LD/Payment of Bonus – Excess Stone Cutting
[Rs.6,49,22,841/-]
Claim form parts of Claim No.1 – Excess Stone Cutting

CLAIM NO.14 – Work done beyond designated area
[Rs.2,67,25,372/-]

Date of Dispute	31.05.2022 Event: 9th CMC Meeting (Ref.S.No.6)
120th Day from Date of Dispute	28.09.2022
Date of Invocation	30.09.2022 **Event**: Date of filing of SoC
No.of Days delay	2 days

20. Learned counsel for the respondent-claimant submits that notice invoking arbitration (herein after referred to as NIA) dated 28.07.2020 wherein the respondent - claimant while setting out their claims have drawn specific reference to certain letters which are essentially outlined the claims made by the respondent which were never repudiated by the petitioner - respondent as was necessary under clause 32 (d) of the purchase order of the PO. All the letters were issued within the period of 120 days prior to the date of issuance of NIA and they are not barred by clause 32 (d) of the PO. The letters are as under:

1. Claim towards excess stone cutting letter reference No.JMS/HO/SCCL/Ady/2020/1144, dated 22.04.2020.
2. Claim towards Additional Cable Bolting letter reference No.JMS/HO/SCCL/Ady/2020/1141, dated 20.04.2020.
3. Claim towards Face Rise Drivage letter reference No.JMS/HO/SCCL/Adriyala/2020/1142, dated 20.04.2020.
4. Claim towards Payment of HPC Wages letter reference No.JMS/HO/SCCL/Ady/2020/1143, dated 20.04.2020.
5. Claim towards Face Rise Drivage letter reference No.JMS/Ady/20-21/06, dated 07.04.2020.
6. Claim towards Abnormal delay in releasing payments letter reference No.JMS/HO/SCCL/Adriyala/2020/1138, dated 10.04.2020.

21. Minutes of the 2nd Management Company Meeting is held on 19.07.2018 between the petitioner - respondent and the respondent - claimant on the issues for Mechanised drivage of Trunk & Gate Roadways at ALP Area. Eight issues are discussed and minutes were passed accordingly. Issue No.8 is relevant which is as under:

S.No.	The Firm's representation	SCCL's response
8.	Delay in payment of Invoices: The Firm states that there have been inordinate delays in making payment of Invoices. As per clause 17.3 of chapter GTC of Order, payment shall be made by SCCL within 30 days after submission of the bills. Till date none of the payments have been made within the stipultated 30 days. The average payment period for 25 Invoices raised so far, is 71 days against Order requirement of 30 days (236% delay)	SCCL stated that the Payment is up to date till May 18 and they will ensure timely payment.

22. 4th Management Committee Meeting is held on 28.02.2019 which is attended by the representatives of M/s. SCCL and representatives of M/s. JMS Mining Private Limited. Relevant representations are at Sl.No.4 & 5 which reads as under:

S.No.	SCCL's representation	JMS's response
4.	Since cutting involved higher proportion of stone in the field against the standard mining conditions as provided in the order, JMS requested SCCL to revise the drivage target per month and finalise drivage rate per meter based on the quantum of stone cut and strength of stone in the field as per the order, terms and conditions.	The response of SCCL is that as per 2nd CMC meeting held on 19.07.2018, SCCL replied that suitable formulae would be worked out within the framework of order for payment towards stone cutting beyond 0.9m in the face based on the ordered rate per metre. SCCL also replied that target per month shall also be revised as per the order, terms and conditions.

5.	JMS requested to consider the time consumed by Bolter Miner towards cable bolting as Force Majeure period which would be excluded for the purpose of calculation of the penalties.	SCCL replied that to open the cut throughs it is mandatory to fix cable, bolts as precautionary measure for preventing the deteriation of roof, for this purpose, BM shall be deployed invariably. The time taken for fixing the cable bolts at cut throughs junctions/other areas where there is no bad roof has to be considered as force majeure period except at face dips.

23. 6th Corporate Management Committee meeting is held on 26.12.2019. Query No.1 reads as under:

S.No.	M/s JMS Query	SCCL's Query
1.	"Hence, JMS requested SCCL to finalize the rate of excess stone cutting with BM per cu.mtr as we are incurring huge loss due to excess stone cutting which led to more consumption of spares with very less MTBF (mean time between failures) and lesser progress thereby levying of penalties.	For working out the suitable formula, the weighted average compressive strength of coal and stone submitted by the NIRM is taken into account.

After prolonged discussion, following formula is agreed by both the parties M/s JMS and SCCL for making payment for the excess stone cutting.

The clause No.4.0 of Chapter-VI which reads as follows. "The parameters of Trunk, Gate roadways and inter connections may vary within 10% of the parameters given in the Order. In case of variation beyond 10% whether on Plus side or Minus side, the payment of rates will be decided by the Management Committee and payments will be adjusted accordingly". Hence, it is agreed that payment shall be made only for the quantity exceeding 110% of the scheduled quantity in stone cutting".

24. Area Management Committee Meeting is held on 05.03.2020 between the petitioner-respondent and the respondent-claimant. In total, 16 items have been discussed and item No.12 is important which is as under:

S.No.	JMS Query	SCCL Reply
12.	Increased roof bolting (10 nos. in a row in 8m gallery i.e., 20 bolts/m and 11 nos in a row in 9m gallery i.e., 22 bolts in a meter) in Face rise. Rate for this additional work is to be decided accordingly. Also time taken for making such holes to be treated as Hindrance in SCCL scope. SCCL should agree on this before commencement of Face Rise drivage.	SCCL informed that as the machine is designed for simultaneous cutting and bolting, it is not agreed by SCCL to consider the roof bolting activity as hindrance on account of SCCL".

25. Petitioner - respondent has addressed a letter to the respondent - claimant on 06.08.2020 with regard to poor ventilation and abnormally high temperatures at BM working panel and in the last Para, it is stated that "it is to inform once again that, the period mentioned by *vide* letter No.JMS/HO/SCCL/Adriyala/2020-1214, dated 30.07.2020 from 22.06.2020 to 06.07.2020 can be treated only as hindrance and not as suspension of work, as it was clearly mentioned in the order, in clause 25.2 "suspension of work" in standard mining conditions of Appendix-II.

26. Petitioner - respondent has addressed a letter to the Director, JMS Mining Private Limited on 17.09.2020 *vide* reference No.APA/GMO/E19/570 wherein they stated that SCCL Management held one round of meeting through video conference on 19.08.2020, wherein "all the claims mentioned by you were discussed. SCCL seeks one more month time in order to put up a detailed reply on all the issues raised, based on which appropriate action from your end can be taken".

27. Petitioner - respondent has also addressed another letter to the Project Manager, M/s JMS Mining Private Limited on 21.09.2022 *vide* reference No.APA/POALP/ALP 77B/1554 wherein they have enclosed signed copy of Minutes of 9th Corporate Management Committee (CMC meeting) held on 31.05.2022 at Kothagudem between SCCL and M/s JMS Mining Private Limited regarding Bolter Miner and Road header working at Adriyala Longwall Project Mine, APA. A tabular form is prepared and the minutes of the meeting held on 31.05.2022 raising JMS issues and SCCL response is as under:

S.No.	JMS Issues	Resolution
1.	Deduction of Additional LD by SCCL.	Both parties agreed that (a) No LD penalty to be imposed on RH progress and already deducted amount shall be refunded to JMS as it is additional equipment deployed for removal of Force Majeure condition of fault negotiation to the scope of SCCL (b) No LD to be imposed on additional supports and already deducted amount shall be refunded to JMS.
2.	Non-payment of excess stone as per 6th CMC and Non-revision of Target Drivage.	After discussions it was resolved and agreed to follow the 6th CMC MOM dated 26.12.2019, and approval from competent authority will be taken after joint re-survey at disputed locations.
3.	Non-payment of 2nd pass in Face Dip.	It is resolved that both parties agreed for payment of 2nd pass as per volumetric survey and settle the issue immediately.
4.	Escalation of Road Header (RH) Drivage.	It was resolved that after detailed deliberations, SCCL not agreed to pay escalation on road header drivage.

5.	Wrong treatment of "Suspension of Work" as Hindrance/Force Majeure. -	It was resolved that it was advised to discuss this matter in Area level.
6.	Working of Bolter Miner (BM) Outside Designated Area of PO. -	It is resolved that prolonged deliberations could not yield any outcome or firm decision in this regard. The matter shall be discussed in next CMC again.
7.	Refund of retention money against interim completion certificate (ICC).	After detailed deliberations, SCCL agreed to refund the retention money towards pending ICCs after their internal approval.
8.	Re-imbursement of drowing cost of RH –	RESPONSE
	JMS represented that The Road Header and connected equipments got drowned twice on 24.05.2020 & 30.05.2021 due to successive failure of sump pumps and overflow of sump water within a period of one year. Machine got recovered, valuable components replaced and re-commissioned, JMS spent approximately 3 Crores to re-commission the machine, set aside the production loss.	SCCL stated that the rate of progress of Road Header drivage was very slow and the machine was idle few days for want of spares. If JMS could have produced at faster rate, machine would not be drowned
	JMS requested to settle this claim at the earliest.	RESOLUTION :
	JMS did not agree and stated that there was ready stock of spares and the slow progress is due to unavailability of out-bye systems including ventilation at SCCL part. There is significant variation in standard mining conditions also. So, it was the successive failure of sump pump and no natural sumpage at the mine which resulted the drowning twice and put JMS in huge financial strain	SCCL disagreed to reimburse the drowning cost and refused the claim.
		RESOLUTION :
9.	Inadequacy of ventilation. -	It was resolved that SCCL assured to improve ventilation and meet the PO and statutory requirements.
10.	Extension of Man riding system.	It was resolved that SCCL agreed to extend the man riding system along 91LN/N5D and JMS will provide manpower assistance for installation and dismantling.

28. Petitioner – respondent has addressed a letter dated 19.10.2022 to GM, APA submitting the bill of the respondent-claimant for Drivage of Trunk and Gate road ways (2nd Pass Face Rise). The total amount is Rs.7,497,534/-.

29. Learned Senior Counsel for the petitioner - respondent submits that claim Nos.1, 7 and 10 has been resolved between the parties and nothing remains. Per contra, learned counsel for the respondent - claimant contended that certain amounts indeed have been paid by the petitioner in respect of claim Nos.1, 7 and 10. Post filing the statement of claim on 30.09.2022. Counsel further submits that petitioner - respondent failed to discharge their liability in its entirety and the balance amount vis-a-vis each of the three claims continue to remain due and payable and the claims made by the respondent - claimant are not barred under the contract.

Decisions cited by Petitioner Counsel:

Maintainability of the petition:

30.1. In **Raj International**[1], the High Court of Gauhati has laid down the following principles :

1. When a party raises a preliminary objection regarding the arbitration jurisdiction or the existence and validity of the arbitration agreement, the arbitrator has a statutory duty to decide with issue themselves.
2. The Arbitrator is not an agent of an appointing authority.
3. The Arbitrator must rule on the plea of jurisdiction before making the final arbitral award, they cannot simply igonore the plea or proceed with the arbitration without a formal decision of their own authority.

4. Revision petition under Article 227 of the Constitution of India is maintainable against an order where an Arbitrator fails to exercise the jurisdiction vested in him. Even though the Arbitration and Conciliation Act limits interlocutory appeals, the High Court may intervene in exercise of its jurisdiction to prevent failure of justice.

30.2. In **Surender Kumar Singhal**[2], the Delhi High Court has laid down the following principles:

1. In Commercial suits, the plaintiff must file all documents in their power, position, control or custody at the time of filing the plaint. Any documents filed thereafter cannot be relied upon later without the leave of the Court.
2. An Arbitral Tribunal is a Tribunal against which petition under Articles 226/227 would be maintainable.
3. Though interference is permissible, unless and until the order is so perverse that it is patently lacking in inherent jurisdiction, the writ court would not interfere.
4. Interference is permissible only if the order is completely perverse i.e., that the perversity must stare in the face.

The following factors can be borne in mind while objections are raised under Section 16 of the Act :

1. If the issue of the jurisdiction can be decided on the basis of admitted documents on record then the Tribunal ought to proceed to hear the matter/objections under Section 16 of the Act at the inception itself.
2. If the Tribunal is of the opinion that the objections under Section 16 of the Act cannot be decided at the inception and it would further require enquiry into the matter, the

Tribunal must consider framing a preliminary issue and decide as soon as possible.

3. If the Tribunal is of the opinion that objections under Section 16 would require evidence to be led then the Tribunal could direct limited evidence to be led on the said issue and adjudicate the same.
4. If the Tribunal is of the opinion that detailed evidence needs to be led both written and oral, then after the evidence is concluded, the objections under Section 16 would have to be adjudicated first before proceeding to passing of the award.

Powers of Arbitral tribunal while adjudicating a petition under Section 16 :

30.3. In **Bajranglal Agarwal**[3], the Supreme Court observed at Para Nos.3 to 5 as under:

"3. There cannot be any dispute that in the absence of any arbitration clause in the agreement, no dispute could be referred for arbitration to an Arbitral Tribunal. But, bearing in mind the very object with which the Arbitration and Conciliation Act, 1996 has been enacted and the provisions thereof contained in Section 16 conferring the power on the Arbitral Tribunal to rule on its own jurisdiction, including ruling on any objection with respect to existence or validity of the arbitration agreement, we have no doubt in our mind that the civil court cannot have jurisdiction to go into that question.

4. A bare reading of Section 16 makes it explicitly clear that the Arbitral Tribunal has the power to rule on its own jurisdiction even when any objection with respect to existence or validity of the arbitration agreement is raised,

and a conjoint reading of sub-sections (2), (4) and (6) of Section 16 would make it clear that such a decision would be amenable to be assailed within the ambit of Section 34 of the Act".

5. In this view of the matter, we see no infirmity in the impugned order so as to be interfered with by this Court. The petitioner, who is a party to the arbitral proceedings may raise the question of jurisdiction of the arbitrator as well as the objection on the ground of non-existence of any arbitration agreement in the so-called dispute in question, and on such an objection being raised, the arbitrator would do well in disposing of the same as a preliminary issue so that it may not be necessary to go into the entire gamut of arbitration proceedings".

Arbitrator bound to adjudicate disputes within the terms of the contract:

30.4. In **Oil and Natural Gas Corporation**[4], the Supreme Court has laid down the following principles:

1. The arbitrator power derives solely from the agreement between the parties.
2. If an arbitrator ignores or acts contrary to a specific bar contained in the contract, it is considered as jurisdictional error.
3. If a contract contains a "no damage clause", the arbitrator cannot award damages for prolongation of the contract even if the employer is responsible for the delay. Awarding damages despite the contractual bar, the Arbitrator would be exceeding his jurisdiction.

30.5. In **Bharat Enterprise**[5], the Supreme Court has laid down the following principles:

1. Arbitrator is bound by the terms of the contract, however if a contract is capable of multiple interpretations, the arbitrator's choice of one plausible interpretation is final and binding.
2. If there are any claims left after the submission of the final bill, the parties have agreed that they shall stand waived.
3. Going against the terms of Clauses 65 and 65A would indeed render the Award vulnerable on the basis that it is illegal being contrary to the contract and therefore without jurisdiction.

Issue of Limitation:

30.6. In **Kothari and Associates**, the Supreme Court has laid down the following principles:

1. Section 3 of the Limitation Act, 1963 is peremptory and mandatory in nature, it mandates that every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, even if limitation has not been set up as a defence by the opposing party.
2. Since limitation goes to the root of the Courts jurisdiction to entertain the matter, the issue can be raised at any stage of the proceeding including for the first time in appeal or even before the Supreme Court.
3. The Trial Court must satisfy itself that the suit is within the prescribed period of limitation before proceeding to the merits, failure to do so constitutes a legal error that can be corrected by the higher Court.

Interest cannot be awarded if barred by the contract :

30.7. In **Garg Builders**, the Supreme Court observed at Para Nos.11 and 12 which reads as under:

> "11. Section 31(7)(a) of the 1996 Act which deals with the payment of interest is as under:
>
> "31. (7)(a) Unless otherwise agreed by the parties, where and insofar as an arbitral award is for the payment of money, the Arbitral Tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made."
>
> 12. It is clear from the above provision that if the contract prohibits pre-reference and *pendente lite* interest, the arbitrator cannot award interest for the said period. In the present case, clause barring interest is very clear and categorical. It uses the expression "any moneys due to the contractor" by the employer which includes the amount awarded by the arbitrator".

Jurisdiction of the arbitral tribunal and arbitrability of claims :

30.8. In **Indian Oil Corporation Limited**, the Supreme Court observed at Para No.102.1 which reads as under:

> "102.1. However, it is observed that the learned arbitrator shall first decide the aspect with regard to "accord and satisfaction" of the claims and arbitrability of the disputes with regard to such claims by deciding an application under Section 16 of the Arbitration Act, which is reported to be pending. The learned arbitrator shall first decide the jurisdiction of the

Arbitral Tribunal and the arbitrability of the claims within a period of three months from the date of first sitting which shall be within a period of one month from today. All the contentions and/or defences which may be available to the respective parties are kept open to be considered by the learned arbitrator in accordance with law and on its own merits and considering the relevant clauses of the contract and the material on record".

Determination of a valid arbitration clause :

30.9. In **Kirit Mehta**, the Supreme Court observed at para Nos.21 and 22 which reads as under:

"21. Does clause 5 amount to an arbitration clause as defined in Section 2(b) read with Section 7? I may here state that in most arbitration clauses, the words normally used are that "disputes shall be referred to arbitration". But in the case before me, the words used are "may be referred".

22. It is contended for the petitioner that the word "may" in clause 5 has to be construed as "shall". According to the petitioner's counsel, that is the true intention of the parties. The question then is as to what is the intention of the parties. The parties, in my view, used the words "may" not without reason. If one looks at the fact that clause 4 precedes clause 5, one can see that under clause 4 parties desired that in case of disputes, the civil courts at Bombay are to be approached by way of a suit. Then follows clause 5 with the words "it is also agreed" that the dispute "may" be referred to arbitration implying that parties need not necessarily go to the civil court by way of suit but can also go before an arbitrator. Thus, clause 5 is merely an enabling provision as contended by the

respondents. I may also state that in cases where there is a sole arbitration clause couched in mandatory language, it is not preceded by a clause like clause 4 which discloses a general intention of the parties to go before a civil court by way of suit. Thus, reading clause 4 and clause 5 together, I am of the view that it is not the intention of the parties that arbitration is to be the sole remedy. It appears that the parties agreed that they can "also" go to arbitration in case the aggrieved party does not wish to go to a civil court by way of a suit. But in that event, obviously, fresh consent to go to arbitration is necessary. Further, in the present case, the same clause 5, so far as the venue of arbitration is concerned, uses the word "shall". The parties, in my view, must be deemed to have used the words "may" and "shall" at different places, after due deliberation".

30.10. In **BGM and M-RPL – JMCT(JV)**, the Supreme Court laid down the following principles:

For a "clause to be considered an arbitration agreement, it must show a clear *consensus ad idem* (meeting of minds) to refer disputes to a Private Tribunal for adjudication. The ingredients are :

(i) a written agreement;

(ii) an intention of the parties to refer present or future disputes to arbitration;

(iii) the decision of the Tribunal must be binding on the parties;

(iv) the words "may be sought through arbitration" indicate that at the stage of entering into the contract, the parties were not *ad idem* that their *inter se* disputes shall be resolved through arbitration, therefore the said clause would not constitute an arbitration agreement".

Question of Law and Principles in Bharat Drilling & Foundation Treatment Pvt. Ltd. Vs. State of Jharkhand, (2009) 16 SCC 705 requires reconsideration :

30.11. In **Indian Builders Jamshedpur**, the supreme Court held at Para Nos.11 and 12 as under:

> "11. As issues relating to payment of interest arising under Section 31(7) of the Act stand on a different footing from that of contractual clauses excepting or prohibiting certain claims, we are of the opinion that the judgment in Bharat Drilling (supra), relying on the judgment of this Court in Port of Calcutta (supra), dealing with the principle of grant of interest pendente lite, is not appropriate. Further, we are also of the opinion that the approach adopted in Bharat Drilling (supra) is not in tune with the principles laid down by this Court in the recent decisions of Cox and Kings Ltd. v. SAP India Private Ltd., (2024) 4 SCC 1, CORE (supra) and In Re: Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, 2023 SCC OnLine 1666.
>
> 12. In view of the above discussion and in order to ensure clarity and consistency, we are of the opinion that the ratio of Bharat Drilling requires to be reconsidered. In this view of the matter, we direct the registry to place our judgment and order before the Hon'ble Chief Justice for appropriate orders for placing the matter before a larger bench of appropriate strength".

Challenge to ineligibility of the Arbitrator at any stage of the proceedings:

30.12. In **Bhadra International India Pvt. Ltd.,**, the Supreme Court observed at Para Nos.120, 121 and 122 which reads as under:

> "120. All that we are trying to convey is that, in civil law, the law itself confers subject-matter jurisdiction on specific courts. For instance, a suit seeking a declaration on the validity of marriage before the Civil Court is not maintainable, as such disputes fall within the exclusive jurisdiction of the Family Court. Similarly, in arbitration, the consent of parties confers subject-matter jurisdiction, i.e., the authority to decide the dispute. When an arbitral tribunal is unilaterally constituted, such consent is absent, thereby divesting the tribunal of subject-matter jurisdiction. The Act, 1996, does not recognize the conferral of jurisdiction on an arbitral tribunal without the consent of the parties. By entering into an express agreement in writing as per the proviso to Section 12(5), the parties not only waive the ineligibility of the proposed arbitrator but also consent to his appointment.
>
> 121. Before we part, we deem it fit to observe that an arbitrator is better equipped with the position of law on appointments, more particularly, unilateral appointments. Therefore, it becomes incumbent upon the arbitrator that upon entering reference and at the very first hearing, to ensure from the parties that they are willing to participate in the proceedings and to insist upon a written agreement waiving the requirement of Section 12(5) of the Act, 1996.
>
> 122. Further, in such circumstances referred to above, if any party does not appear despite receipt of notice, the arbitrator shall not proceed further and shall immediately withdraw from the arbitral proceedings. The arbitrator must, along with the

waiver agreement, record the minutes even when the parties are cooperating. This would certainly save time and avoid multiplicity of proceedings".

Obligation of the parties to the Arbitration Agreement to constitute an independent and an impartial Arbitral Tribunal :

30.13. In **Central Organisation for Railway Electrification**, the Judgment authored by Justice P.S.Narasimha, the Supreme Court observed at Para Nos.15 to 17 are as under:

"15. Through the doctrine of unconscionability, this Court in Brojo Nath Ganguly introduced inequality of bargaining power as a ground to refuse enforcement of unreasonable and unfair contracts that shock the conscience of the court. It has envisaged for this principle to apply in cases where the weaker party does not exercise meaningful choice and must agree to a standard form of contract. However, the Court has also circumscribed the applicability of unconscionability and held that it will not apply when parties have equal or almost equal bargaining power, such as in commercial transactions and contracts between businessmen. The inapplicability of 'unconscionability' to commercial contracts has been reiterated by this Court in the context of arbitration agreements. In view of the settled position, I cannot accept the submissions of Mr.Banerji on this issue.

16. Section 28 of the Contract Act and Access to Justice. Access to justice is a constitutional principle. It provides remedies for redressal of grievances arising out of violation of rights and dereliction of duties. The remedies through ordinary civil courts and tribunals comprise credibility, efficiency, objectivity, expeditious disposal, comprehensiveness as well as

financial viability. Prohibiting restraint from aceessing these remedies is a public policy.

17. Section 28 of the Contract Act secures access to justice by declaring that agreements in restraint of public law remedies are void. Section 28 is extracted herein below for ready reference;

> "**28. Agreements in restraint of legal proceedings, void.**-
>
> Every agreement, -
>
> (a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or
>
> (b) which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to the extent. or
>
> Exception 1.-**Saving of contract to refer to arbitration dispute that may arise**. This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.
>
> Exception 2.-**Saving of contract to refer questions that have already arisen**.- Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or

affect any provision of any law in force for the time being as to references to arbitration."

Limitations on agreements which restrain access is necessary to secure the constitutional mandate of justice to all by providing access to public law and ordinary civil/criminal remedies from being void. Exceptions 1 and 2 to Section 28 are arbitration agreements and enable substituted dispute resolution, fostering an environment conducive to expeditious and amicable resolution".

Decisions cited by respondent counsel :

Scope of interference of Writ Court is limited under Article 227 of the Constitution of India :

31.1. In **Deep Industries Limited**[14], the Supreme Court observed at Para Nos.16 and 17 as under:

"**16.** Most significant of all is the non obstante clause contained in Section 5 which states that notwithstanding anything contained in any other law, in matters that arise under Part I of the Arbitration Act, no judicial authority shall intervene except where so provided in this Part. Section 37 grants a constricted right of first appeal against certain judgments and orders and no others. Further, the statutory mandate also provides for one bite at the cherry, and interdicts a second appeal being filed [see Section 37(2) of the Act].

17. This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we

cannot forget that Article 227 is a constitutional provision which remains untouched by the non obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us hereinabove so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction".

31.2. In **Bhaven construction**[15], the Supreme Court observed in para Nos.16 to 19, 26 and 27 as under:

"16. In this context, we may state that the appellant acted in accordance with the procedure laid down under the agreement to unilaterally appoint a sole arbitrator, without Respondent 1 mounting a judicial challenge at that stage. Respondent 1 then appeared before the sole arbitrator and challenged the jurisdiction of the sole arbitrator, in terms of Section 16(2) of the Arbitration Act.

17. Thereafter, Respondent 1 chose to impugn the order passed by the arbitrator under Section 16(2) of the Arbitration Act through a petition under Articles 226/227 of the Indian Constitution. In the usual course, the Arbitration Act provides for a mechanism of challenge under Section 34. The opening phase of Section 34 reads as

"**34. Application for setting aside arbitral award**.-(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3)".

The use of term "only" as occurring under the provision serves two purposes of making the enactment a complete code and lay down the procedure.

18. In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a constitutional right. In Nivedita Sharma v. COAI, (2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947, this Court referred to several judgments and held: (SCC p.343, para 11)

> "11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S)577. However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/ or its agency/instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

It is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear "bad faith" shown by one of the parties. This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient.

19. In this context we may observe Deep Industries Ltd. v. ONGC, (2020) 15 SCC 706, wherein interplay of Section 5 of the

Arbitration Act and Article 227 of the Constitution was analysed as under: (SCC p. 714, paras 16-17)

> "16. Most significant of all is the non obstante clause contained in Section 5 which states that notwithstanding anything contained in any other law, in matters that arise under Part I of the Arbitration Act, no judicial authority shall intervene except where so provided in this Part. Section 37 grants a constricted right of first appeal against certain judgments and orders and no others. Further, the statutory mandate also provides for one bite at the cherry, and interdicts a second appeal being filed [see Section 37(2) of the Act].
>
> 17. This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us hereinabove so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction."

26. It must be noted that Section 16 of the Arbitration Act, necessarily mandates that the issue of jurisdiction must be dealt first by the tribunal, before the court examines the same under Section 34. Respondent 1 is therefore not left remediless, and has statutorily been provided a chance of appeal. In Deep Industries

Ltd. Vs. ONGC, (2020) 15 SCC 706, this Court observed as follows: (para 22)

> "22. One other feature of this case is of some importance. As stated hereinabove, on 9-5-2018, a Section 16 application had been dismissed by the learned arbitrator in which substantially the same contention which found favour with the High Court was taken up. The drill of Section 16 of the Act is that where a Section 16 application is dismissed, no appeal is provided and the challenge to the Section 16 application being dismissed must await the passing of a final award at which stage it may be raised under Section 34."

27. In view of the above reasoning, we are of the considered opinion that the High Court erred in utilising its discretionary power available under Articles 226 and 227 of the Constitution herein. Thus, the appeal is allowed and the impugned order (Sardar Sarovar Narmada Nigam Vs. Bhaven Construction, 2012 SCC OnLine Guj 6499 of the High Court is set aside. There shall be no order as to costs. Before we part, we make it clear that Respondent 1 herein is at liberty to raise any legally permissible objections regarding the jurisdictional question in the pending Section 34 proceedings.

31.3. In **S.Madhan**[16], the High Court of Madras observed at Para Nos.9, 10, 12, 17 and 18 as under:

> "**9.** The close scrutiny of the above Section would make it clear that an objection to the jurisdiction of the Arbitral Tribunal shall be raised not later BC than to the submissions of the defence, subject to the exception under Sub-Section 4 of the Section 16. The Sub-Section 5 of Section 16 of the said Act, declares that if the Arbitral Tribunal takes a decision rejecting the plea, it shall

continue with the arbitral proceedings and make an arbitral award. The next Sub-Section 6 of Section 16 of the said Act, talks about the remedy available to the aggrieved party against the decision of the Arbitral Tribunal rejecting his plea opposing jurisdiction.

10. The reading of Sub-Section 6 of Section 16 of the said Act, would make it clear that any party aggrieved by such an arbitral award, may make an application to set aside the same under Section 34. Therefore, it is clear that the Arbitral Tribunal after rejecting the plea opposing its jurisdiction shall continue with the arbitral proceedings and make an arbitral award. Any party aggrieved by such an award is entitled to question it only under Section 34 of the said Act. Therefore, the party aggrieved by an order rejecting his plea opposing the jurisdiction of arbitral tribunal can very well canvass the same while challenging the main award".

12. The reading of above decision of the Hon'ble Apex Court would make it clear that the power under Article 227 of the Constitution of India can be exercised to interdict the arbitral process only in exceptional cases and rarest of rare cases. The interference is permissible only in cases where the order of the Arbitral Tribunal is so perverse and patently illegal and the illegality perpectuated by such other is incapable of being corrected at latter point of time. The object is to facilitate completion of arbitration proceedings at the earliest.

17. In the case on hand, the Arbitrator came to the conclusion that the plea of forgery raised by the petitioner has to be decided based on the evidence adduced by both the parties. The conclusion reached by the Arbitrator is not

so perverse warrenting interference to this Court under Article 227 of the Constitution of India.

18. It has been held by the Hon'ble Apex Court in Deep Industries Limited v. Oil and Natural Gas Corporation Limited reported in (2020) 15 SCC 706 where an application filed under Section 16 of the Act is dismissed, no appeal is provided to challenge said order of dismissal. The aggrieved party must await for the passing of a final award and while challenging award under Section 34, we can raise the question. The relevant observations of Apex Court is as follows:-

"22. One other feature of this case is of some importance. As stated hereinabove, on 09.05.2018, a Section 16 application had been dismissed by the learned Arbitrator in which substantially the same contention which found favour with the High Court was taken up. The drill of Section 16 of the Act is that where a Section 16 application is dismissed, no appeal is provided and the challenge to the Section 16 application being dismissed must await the passing of a final award at which stage it may be raised under Section 34. ..."

31.4. In **BGR Energy Systems Ltd.**[17], the Madras High Court observed at Para Nos.17 to 19 as under:

"**17.** It is pertinent here to refer to certain provisions of the Arbitration and Conciliation Act, 1996. Section 7 deals with the arbitration agreement. As per Section 7 (2), an arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. Admittedly, in this case, there is no dispute with regard to the fact that there is an arbitration agreement between the parties. Only grievance of the petitioner is that arbitration proceedings was initiated without any arbitral issue and

without any prior notice. Section 5 restricts the scope of judicial intervention in matters governed by part I. It is made clear that no judicial authority shall intervene except provided in part I. We are concerned about Section 16 in this case. This Section deals with jurisdiction of Arbitral Tribunals. The Arbitral Tribunal may rule on its own jurisdiction, including ruling on any objections with regard to the existence or validity of the arbitration agreement. If a plea is raised with regard to the jurisdiction of the Arbitral Tribunal, the Arbitral Tribunal may take a decision rejecting the plea and continue with the arbitral proceedings and make an arbitral award. The party aggrieved by such an arbitral award may make an application for setting aside such award in accordance with Section 34. This is a statutory remedy provided when a question of jurisdiction of Arbitral Tribunal is raised and that was rejected and an arbitral award is passed. In the case before hand, the petitioner instead of filing an application for setting aside, the interim award of Arbitral Tribunal under Section 34 of of the Act, filed a petition under Article 227 of the Constitution of India. The reading of the judgments relied by both, especially judgment reported in 2021 SCC Online SC 8 shows that "power of judicial interference needs to be exercised in exceptional rarity, wherein one party is left remedyless under the statute or clear bad faith shown by one of the parties. If the petitions are filed under Article 226/227 of the Constitution of India against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not give frutition for many years". It is clear from this judgment, that the judicial interference under Article 227 of the Constitution of India is

permitted only in exceptional cases and when statutory remedy is not provided under the Act.

18. As pointed out by the learned counsel for the respondent, Arbitration and Conciliation Act, 1996 is a self contained Act, it has provisions to meet every situation. If the petitioner is aggrieved against the interim award passed by the Arbitral Tribunal, it has to file an application only under Section 34 and it cannot file a petition, under Article 227 of Constitution of India.

19. In this view of the matter, this Court finds that petitioner has to go through the process of arbitration before the Arbitral Tribunal. This petition filed under Article 227 of the Constitution of India by passing the remedy provided in Section 34 of the Arbitration and Conciliation Act, is not maintainable. Thus, this Civil Revision Petition is dismissed with the costs of the respondent. Consequently, connected miscellaneous petitions stand closed".

31.5. In **TRG Industries Pvt. Ltd.,**, the High Court of Madhya Pradesh observed at Para Nos.10, 11 and 12 are as under:

"**10.** We may also note that petitioners have sought to impugn an order passed by the Arbitral Tribunal dated 18.04.2024 rejecting an application under Section 16 of the Act of 1996 and remedy of the aggrieved party, if any, would have been under Section 34 of the Act of 1996 and not by way of a writ petition.

11. Reference may be had to the judgment of the Supreme Court in Bhavan Construction vs. Executive Engineer, Sardar Sarovar Narmada Nigam Limited, (2022) 1 SCC 75, wherein Supreme Court has held that interpretation of contracts are generally not to be done in

writ jurisdiction. Further, Supreme Court has held that the plea of jurisdiction has to be first raised in an application under Section 16 of the Arbitration Act and if aggrieved by the decision of Section 16 party must await for rendering of the award and then impugn the same under Section 34 of the Act of 1996.

12. As noticed hereinabove, the contract is not between the petitioner before us i.e. State of Madhya Pradesh but between the Ministry of Road Transport and Highways, Government of India and TRG Industries Private Limited. Clearly the Adhiniyam of 1983 is not applicable to the contract between the parties. The Tribunal while rejecting the application under Section on 16 of the Act of 1996 has rightly held that the objection raised by the Ministry of Road Transport and Highways was not sustainable".

31.6. In **Oriel Financial Solutions Pvt. Ltd.**[19], the High Court of Delhi observed at para Nos.3, 4, 5 and 7 as under :

"**3.** The scope of interference while exercising jurisdiction under Article 227 of the Constitution of India under the Arbitration and Conciliation Act is well settled. The power of the High Court for exercising its jurisdiction under Article 227 of the Constitution of India has been succinctly explained by the Apex Court in Estralla Rubber v. Dass Estate Private Limited, (2001) 8 SCC 97, has observed as under:

"6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior

courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.

7. This Court in Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand [(1972) 1 SCC 898: AIR 1972 SC 1598] in AIR para 12 has stated that the power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and, not for correcting mere errors. Reference also has been made in this regard to the case Waryam Singh v. Amarnath [(1954) 1 SCC 51: AIR 1954 SC 215: 1954 SCR 565]. This Court in Bathutmal Raichand Oswal v. Laxmibai R. Tarte [(1975) 1 SCC 858: AIR 1975 SC 1297] has observed that the power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal and that the High Court in exercising its jurisdiction under Article 227 cannot convert itself into a court of appeal when

the legislature has not conferred a right of appeal. Judged by these pronounced principles, the High Court clearly exceeded its jurisdiction under Article 227 in passing the impugned order."

4. While dealing with the scope of a petition under Article 227 of the Constitution of India filed against an order passed by an Arbitral Tribunal the Apex Court in SBP & Company v. Patel Engineering Limited, (2005) 8 SCC 618, has observed as under: -

"**45.** It is seen that some High Courts have proceeded on the basis that any order passed by an Arbitral Tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution. We see no warrant for such an approach. Section 37 makes certain orders of the Arbitral Tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating its grievances against the award including any in-between orders that might have been passed by the Arbitral Tribunal acting under Section 16 of the Act. The party aggrieved by any order of the Arbitral Tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The Arbitral Tribunal is, after all, a creature of a contract between the parties, the arbitration agreement, even though, if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the Arbitral Tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the Arbitral Tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution. Such an intervention by the High Courts is not permissible.

46. The object of minimising judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under

Article 227 or under Article 226 of the Constitution against every order made by the Arbitral Tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the Arbitral Tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage."

5. The said judgment was distinguished by the Apex Court in Punjab Agro Industries Corporation Limited v. Kewal Singh Dhillon, (2008) 10 SCC 128, wherein the Apex Court has observed as under: -

"9. We have already noticed that though the order under Section 11(4) is a judicial order, having regard to Section 11(7) relating to finality of such orders and the absence of any provision for appeal, the order of the Civil Judge was open to challenge in a writ petition under Article 227 of the Constitution. The decision in SBP [(2005) 8 SCC 618] does not bar such a writ petition. The observations of this Court in SBP [(2005) 8 SCC 618] that against an order under Section 11 of the Act, only an appeal under Article 136 of the Constitution would lie, is with reference to the orders made by the Chief Justice of a High Court or by the designate Judge of that High Court. The said observations do not apply to a subordinate court functioning as designate of the Chief Justice."

7. In view of the fact that the Order passed by the Arbitrator is no so perverse so as to shock the conscious of this Court, this Court is not inclined to interfere with the impugned Order".

31.7. In **M/s. V.K.S. Constructions**[20], the High Court of Telangana observed at Para No.17 as under:

"**17.** In Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd., (2022) 1 SCC 75, the Supreme Court has held that an order passed under Section 16 of the Act, 1996 cannot be challenged under Article 226 of the Constitution of India.

Further, the Apex Court held that the question whether a particular contract is a works contract or not cannot be decided under writ jurisdiction. The relevant paragraph of the said judgments is extracted below:

> 25. The Gujarat Act was enacted in 1992 with the object to provide for the constitution of a tribunal to arbitrate disputes particularly arising from works contract to which the State Government or a public undertaking is a party. A works contract is defined under Section 2(k) of the Gujarat Act. The definition includes within itself a contract for supply of goods relating to the execution of any of the works specified under the section. However, a plain reading of the contract between the parties indicates that it was for both manufacturing as well as supply of bricks. Importantly, a contract for manufacture simpliciter is not a works contract under the definition provided under Section 2(k). The pertinent question therefore is whether the present contract, which is composite in nature, falls within the ambit of a works contract under Section 2(k) of the Gujarat Act. This is a question that requires contractual interpretation, and is a matter of evidence, especially when both parties have taken contradictory stands regarding this issue. It is a settled law that the interpretation of contracts in such cases shall generally not be done in the writ jurisdiction. Further, the mere fact that the Gujarat Act might apply may not be sufficient for the writ courts to entertain the plea of Respondent 1 to challenge the ruling of the arbitrator under Section 16 of the Arbitration Act".

Section 16 of Arbitration Act need not be passed at preliminary stage :

31.8. In **Maharshi Dayanand University**[21], the Supreme Court observed at Para No.13 as under:

> "13. But we make it clear that the arbitrator, in the first instance, has to decide whether the existence of an

arbitration agreement in terms of Section 7 of the Act is established and also to decide whether the claim now made is a claim that comes within the purview of clause 25-A of the tender conditions in case it is found to be an agreement within the meaning of Section 7 of the Act. Only on deciding these two aspects can the arbitrator go into the merits of the claim made by the respondent. But we clarify that it does not mean, that he should treat these two aspects as preliminary issues and decide them first; but only that he must decide them without fail while proceeding to finally pronounce his award".

31.9. In **Roshan Lal Gupta**[22]**,** the High Court of Delhi observed at Para No.39 as under:

"**39.** The next plea is that the arbitrator failed to decide first the challenge to the arbitration proceedings. This contention is also not tenable in law. Under Section 16 of the Act upon a challenge being made to the jurisdiction of the arbitrator, the arbitral tribunal though is required to adjudicate the same but there is nothing to show that the arbitrator is to first adjudicate the same and can thereafter only proceed to adjudicate on the merits of the claim. The arbitral tribunal in its jurisdiction is entitled to decide the said challenge either as a preliminary issue or together with the entire matter. It is significant that even in the event of the arbitrator deciding against the challenge, no remedy therefore is provided and the challenge to such finding can be made only after the arbitral award in accordance with Section 34 of the Act. Thus, it cannot be said that any illegality has been committed by the arbitrator in not

deciding the challenge as a preliminary issue as sought for by the petitioner/appellant".

31.10. In **Glencore International AG**[23], the High Court of Delhi observed at Para No.65 as under :

"**65.** Sub-rule (2) goes on to state where issues both of law and fact arise in the same suit and the court is of the opinion that the case or any part thereof maybe disposed of on an issue of law only, it may try that issue first if it relates to jurisdiction of the court or a bar to the suit created by any law for the time being in force. It is in these circumstances that the Court if it thinks fit may postpone the settlement of other issues until after that issue has been determined. The crucial aspect is that the issue of jurisdiction or bar to the suit created by law should be one that can be disposed of as an issue of law only. In other words it is a mixed question of fact and law the Court would ordinarily deal with such preliminary issues at the final stage of the matter".

31.11. In **Surender Kumar Singhal**[24]**,** the High Court of Delhi observed at Para Nos.25 and 31: See Para No.30.2 supra.

Right of Action is distinguishable from a right to seek arbitration in a dispute :

31.12. In **Panchu Gopal Bose**[25], the Supreme Court observed at Para No.13 as under:

"13. The Law of Arbitration by Justice Bachawat in Chapter 37 at p. 549 it is stated that just as in the case of actions the claim is not to be brought after the expiration of

a specified number of years from the date when the claim accrues, so also in the case of arbitrations, the claim is not to be put forward after the expiration of a specified number of years from the date when the claim accrues. For the purpose of Section 37(1) 'action' and 'cause of action' in the Limitation Act should be construed as arbitration and cause of arbitration. The cause of arbitration, therefore, arises when the claimant becomes entitled to raise the question, i.e. when the claimant acquires the right to require arbitration. The limitation would run from the date when cause of arbitration would have accrued, but for the agreement"

31.13. In **Damodar Das**[26], the Supreme Court observed as under:

"The period of limitation for commencing an arbitration runs from the date on which the "cause of arbitration" accrued, that is to say, from the date when the claimant first acquired either a right of action or a right to require that an arbitration take place upon the dispute concerned. Just as in the case of actions the claim is not to be brought after the expiration of a specified number of years from the date when the cause of action accrues, so in the case of arbitrations the claim is not to be put forward after the expiration of a specified number of years from the date when the claim accrues. For the purpose of Section 37(1) "action" and "cause of arbitration" should be construed as arbitration and cause of arbitration. The cause of arbitration arises when the claimant becomes entitled to raise the question, that is, when the claimant acquires the right to require arbitration. An application under Section 20 is governed by Article 137 of the schedule to the Limitation Act, 1963 and must be made within 3 years from the date

when the right to apply first accrues. There is no right to apply until there is a clear and unequivocal denial of that right by the respondent. Therefore, the claim for arbitration must be raised as soon as the cause for arbitration arises as in the case of cause of action arising in a civil action. Even if the arbitration clause contains a provision that no cause of action shall accrue in respect of any matter agreed to be referred to until an award is made, time still runs from the normal date when the cause of action would have accrued if there had been no arbitration clause".

Mere failure or inaction to pay does not lead to the inference of the existence of the dispute but rather there has to be categorical repudiation of a claim for there to be a dispute :

31.14. In **Major (Retd.) Inder Singh Rekhi**[27], the Supreme Court observed at Para No.4 as under:

"4. Therefore, in order to be entitled to order of reference under Section 20, it is necessary that there should be an arbitration agreement and secondly, difference must arise to which this agreement applied. In this case, there is no dispute that there was an arbitration agreement. There has been an assertion of claim by the appellant and silence as well as refusal in respect of the same by respondent. Therefore, a dispute has arisen regarding non-payment of the alleged dues of the appellant. The question is for the present case when did such dispute arise. The High Court proceeded on the basis that the work was completed in 1980 and, therefore, the appellant became entitled to the payment from that date and the cause of action under Article 137 arose from that date. But in order to be entitled

to ask for a reference under Section 20 of the Act there must not only be an entitlement to money but there must be a difference or dispute must arise. It is true that on completion of the work a right to get payment would normally arise but where the final bills as in this case have not been prepared as appears from the record and when the assertion of the claim was made on February 28, 1983 and there was non-payment, the cause of action arose from that date, that is to say, February 28, 1983. It is also true that a party cannot postpone the accrual of cause of action by writing reminders or sending reminders but where the bill had not been finally prepared, the claim made by a claimant is the accrual of the cause of action. A dispute arises where there is a claim and a denial and repudiation of the claim. The existence of dispute is essential for appointment of an arbitrator under Section 8 or a reference under Section 20 of the Act. See Law of Arbitration by R. S. Bachawat, first edition, page 354. There should be dispute and there can only be a dispute when a claim is asserted by one party and denied by the other on whatever grounds. Mere failure or inaction to pay does not lead to the inference of the existence of dispute. Dispute entails a positive element and assertion of denying, not merely inaction to accede to a claim or a request. Whether in a particular case a dispute has arisen or not has to be found out from the facts and circumstances of the case".

31.15. In **S.Rajan**[28], the Supreme Court observed at Para No.11 as under:

"11. Reading Article 137 and sub-section (1) of Section 20 together, it must be said that the right to apply accrues when the difference arises or differences arise, as the case

may be, between the parties. It is thus a question of fact to be determined in each case having regard to the facts of that case. The question in the present case is when should the difference between the parties be said to have arisen. According to the High Court the date on which notice of demand under the Revenue Recovery Act was served upon the appellant namely May 30, 1974 is the date on which difference must be held to have arisen between the parties, if not earlier. Sri Poti, however, says that it is not so and that it must be held to have arisen only when the appellant applied to the Government to refer the disputes between them to the arbitrator in terms of the agreement and the Government refused to do so. We find it difficult to agree with the learned counsel. The agreement was entered into in 1966. It was terminated on December 19, 1968. The work was retendered and it was completed through another contractor. The State then worked out the loss suffered by it on account of the appellant's failure to carry out the work in accordance with the agreement and called upon the appellant to pay the same through the demand notice dated May 30, 1974. It is relevant to notice that this demand notice was questioned by the appellant by way of writ petition in the High Court of Kerala which was dismissed on November 25, 1978. Thus, the dispute had arisen in 1974 with the service of the demand notice. Only in the year 1983, did the appellant choose to request the Government to refer the dispute to the arbitrator in terms of the agreement which was rejected in the following year. Neither the arbitration clause nor a copy of the agreement is placed before us. Therefore, we cannot say whether the arbitration clause contemplates that a reference to arbitration can be made only by the Government and not by the appellant.

> Assuming that such was the requirement of the arbitration clause, even so it must be held that the very request in 1983 was very much belated and cannot, in any event, be treated as the date on which the right to apply accrued. The differences had already arisen between the parties following the service of the demand notice. The challenge to the said demand notice made by the appellant by filing a writ petition in the Kerala High Court is the demonstrable proof of the dispute. Accordingly, we agree with the High Court that May 30, 1974 is the date on which the right to apply accrued in terms of Article 137 read with Section 20(1) and that therefore the application filed in the year 1985 was clearly barred by limitation".

A Notice under Section 21 of the Act does not have to enumerate all the disputes and/or claims but can be merely illustrative :

31.16. In **Vishwantah Sood**[29], the Supreme Court observed at Para No.10 as under :

> "10. We may confess that we had some hesitation in coming to this conclusion. As pointed out by the Division Bench, the question of any negligence or default on the part of the contractor has may facts and to say that such an important aspect of the contract cannot be settled by arbitration but should be left to one of the contracting parties might appear to have far reaching effects. In fact, although the contractor in this case might object to the process of arbitration because it has gone against him, contractors generally might very well prefer to have the question of such compensation decided by the arbitrator rather than by the Superintending Engineer.

> But we should like to make it clear that our decision regarding non arbitrability is only on the question of any compensation which the Government might claim in terms of Clause 2 of the contract. We have already pointed out that this is a penalty clause introduced under the contract to ensure that the time schedule is strictly adhered to. It is something which the Engineer-in-charge enforces from time to time when he finds that the contractor is being recalcitrant, in order to ensure speedy and proper observance of the terms of the contract. This is not an undefined power. The amount of compensation is strictly limited to a maximum of 10% and with a wide margin of discretion to the Superintending Engineer, who might not only reduce the percentage but who, we think, can even reduce it to nil, if the circumstances so warrant. It is this power that is kept outside the scope of arbitration. We would like to clarify that this decision of ours will not have any application to the claims, if any, for loss or damage which it may be open to the Government to lay against the contractor, not in terms of Clause 2 but under the general law or under the Contract Act. As we have pointed out at the very outset so far as this case is concerned the claim of the Government has obviously proceeded in terms of Clause 2 and that is the way in which both the learned single judge as well as the Division Bench have also approached the question. Reading clauses 2 and 25 together we think that the conclusion is irresistible that the amount of compensation chargeable under Clause 2 is a matter which has to be adjudicated in accordance with that clause and which cannot be referred to arbitration under Clause 25".

31.17. In **Praveen Enterprises**[30], the Supreme Court observed at Para No.19 as under :

> "19. There can be claims by a claimant even without a notice seeking reference. Let us take an example where a notice is issued by a claimant raising disputes regarding

> Claims A and B and seeking reference thereof to arbitration. On appointment of the arbitrator, the claimant files a claim statement in regard to the said Claims A and B. Subsequently if the claimant amends the claim statement by adding Claim C [which is permitted under Section 23(3) of the Act] the additional Claim C would not be preceded by a notice seeking arbitration. The date of amendment by which Claim C was introduced, will become the relevant date for determining the limitation in regard to the said Claim C, whereas the date on which the notice seeking arbitration was served on the other party, will be the relevant date for deciding the limitation in regard to Claims A and B. Be that as it may".

31.18. In **Agility Logistics Pvt. Ltd.**[31]**,** the High Court of Delhi observed at Para Nos.40, 41 and 42 as under:

> "**40.** The next question to be addressed is whether the impugned award is beyond the jurisdiction of the Arbitral Tribunal inasmuch as the amount claimed by Agility in its Statement of Claims exceeded the amount/claims mentioned in the notice issued by it under Section 21 of the A&C Act.
>
> **41.** It is not necessary that a notice under Section 21 of the A&C Act quantifies the amounts claimed. It is required to set out the disputes. In the present case, it is not disputed that the Notice under Section 21 of the A&C Act clearly communicated the disputes between the parties. The Arbitral Tribunal had examined the said contention and found that the issue was covered by the decision of the Supreme Court in State of Goa v. Praveen Enterprises : 2011 SCC OnLine SC 860. The Arbitral Tribunal noted that it was not necessary for the claims to be specifically stated

in the notice under Section 21 of the A&C Act, and therefore, the same could not be rejected only on the ground that there was no mention of the same in the notice under Section 21 of the A&C Act.

42. In State of Goa v. Praveen Enterprises (supra), Supreme Court observed as under:

> "18... In view of Section 21 of the Act providing that the arbitration proceedings shall be deemed to commence on the date on which "a request for that dispute to be referred to arbitration is received by the respondent" the said confusion is cleared. Therefore, the purpose of Section 21 of the Act is to determine the date of commencement of the arbitration proceedings, relevant mainly for deciding whether the claims of the claimant are barred by limitation or not.
>
> 19. There can be claims by a claimant even without a notice seeking reference. Let us take an example where a notice is issued by a claimant raising disputes regarding Claims A and B and seeking reference thereof to arbitration. On appointment of the arbitrator, the claimant files a claim statement in regard to the said Claims A and B. Subsequently if the claimant amends the claim statement by adding Claim C [which is permitted under Section 23(3) of the Act] the additional Claim C would not be preceded by a notice seeking arbitration. The date of amendment by which Claim C was introduced, will become the relevant date for determining the limitation in regard to the said Claim C, whereas the date on which the notice seeking arbitration was served on the other party, will be the relevant date for deciding the limitation in regard to Claims A and B. Be that as it may."

32. Section 16 (5) of Arbitration and Conciliation Act mandates that if the Tribunal rejects a jurisdictional objection, it must

continue with the arbitral proceedings and proceed to pass the final arbitral award.

33. Section 16 (6) of the said Act explicitly states that the aggrieved parties only remedy is to wait for the final award and then challenge the rejection order along with the final award by filing an application under Section 34 of the Act.

34. There is no independent midway challenge to rejection of Section 16 application. The fundamental principle is that when an arbitrator rejects an objection regarding its jurisdiction under Sections 16(2) or 16(3), that order cannot be independently or immediately challenged before a Court. The arbitration proceedings must continue uninterrupted.

35. The Hon'ble Supreme Court in MCM Worldwide Private Limited vs. Construction Industry Development Council, 2026 SCC OnLine SC 717 held at Para Nos.13 to 15 are as under:

> **"13.** However, if an arbitrator deals with the very same issue of limitation on an application filed under Section 16 of the Arbitration Act, on the ground that the arbitrator lacks jurisdiction on that count, it would be traceable to Section 16(2) of the Arbitration Act and if the arbitrator rejects that plea, Sections 16(5) and Section 16(6) would apply. In that situation, there is no option for the party aggrieved by the decision of the arbitrator upon the application filed under Section 16 except to wait till the

conclusion of the arbitral proceedings and then raise that issue by way of an application under Section 34 against the final award.

14. Though the final award, even in this situation, would not focus upon the issue of limitation as it already stood decided by the rejection of the application filed under Section 16(2) of the Arbitration Act, the scheme of Section 16 and, more particularly, Sections 16(5) and 16(6), would keep the issue alive and enable the party aggrieved to challenge the validity of the rejection order under Section 16 at the final stage, even after the passing of the final award.

15. However, the scheme of Sections 16(5) and 16(6) would not apply if the arbitrator deals with limitation as a preliminary issue and makes a decision thereon in favour of the claimant. That is the reason why this Court observed that, in such a situation, the drill of Sections 16(5) and 16(6) would not have to be followed. This Court went on to observe that even such interim awards should be made amenable to challenge under Section 34 of the Arbitration Act after the passing of the final award, instead of going in for 'piecemeal' challenges".

36. The sole arbitrator has already framed issue No.1 with regard to the limitation contained in clause 32(d) of the Contract and also with regard to arbitral tribunal jurisdiction to adjudicate the claim.

37. The sole arbitrator has observed in the order dated 04.07.2023 at Para Nos.5 and 6 which reads as under:

5. ....Further, a reading of clause 32 shows, that all disputes should be settled by negotiations between the company and the concerned parties. In case any dispute/difference is not settled through

> negotiations, the respective parties can seek remedy by Arbitration by invoking the same within 120 days of the dispute. Therefore, from the context in which the arbitration is contemplated under clause 32 is only, when the disputes are not settled through negotiations but not otherwise *prima facie*. Hence at this stage the claims of the claimant cannot be rejected as barred by limitation.
>
> 6. Though both the counsel argued elaborately citing number judgments, as the matter is not being concluded, any finding on merits would prejudice either of the parties. Hence I decline consider other contentions advanced by both the counsel. Under the above circumstances the application filed under section 16(2) and (3) of the A&C Act 1996, is rejected, keeping all the contentions open to both parties, to be advanced at the time of final hearing of the arbitration case.

38. In **Bhaven Construction**, the Supreme Court has held that though petitions can be filed under Article 227 against the judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same.

The Supreme Court in Para 22 observed that on 09.05.2018 a Section 16 application had been dismissed by the learned Arbitrator in which substantially the same contention which found favour with the High Court was taken up. The drill of Section 16 of the Act is that where a Section 16 application is dismissed, no appeal is provided and the challenge to the Section 16 application being dismissed must await the passing of a final award at which stage it may be raised under Section 34."

39.1. The decisions cited by the learned Senior Counsel for the petitioner from Para Nos.30.1 to 30.13 are not applicable to the case on hand. The ratio laid down by the Supreme Court and the High Courts in the above said judgments are distinguishable from the facts of the present case and thus the ratio of those cases would not apply.

39.2. The decisions cited by the respondent's counsel from Para Nos.31.2 to 31.6 are applicable to the case on hand. In so far as the decisions from Para Nos.31.7 to 31.18 are not applicable to the facts of the case as the facts differ.

40. In view of the ratio laid down by the Supreme Court in MCM Worldwide Private Limited and the decision in Para Nos.31.1 to 31.6 CRP itself is not maintainable, even otherwise, this Court is of the view that there is no perversity or illegality in the orders passed by the learned sole arbitrator and the only course left to the petitioner - respondent is to participate in the proceedings or wait for the final award and then challenge the rejection order along with final award by filing an application under Section 34.

41. The observations of the learned arbitrator is justified and this Court is of the view that CRP itself is not maintainable, even

otherwise order passed by the learned arbitrator do not suffer from any perversity or illegality, no interference is called for. Hence, points are answered accordingly.

42. CRP is dismissed without costs.

Interim orders if any stands vacated, miscellaneous petition/petitions stands closed.

B.R.MADHUSUDHAN RAO, J

14th July, 2026
PLV