2026:DHC:9574

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 30.09.2026
Date of Decision: 29.10.2026
Date of Uploading: 29.10.2026

\+ CM(M) 474/2025 & CM APPL. 69889/2025

DAYANAND PAL .....Petitioner

Through: Mr. Siddhartha Yadav, Ms. Ishita Yadav and Mr. Deepak Kumar Mishra, Advs.

versus

MR. DHARMENDRA KUMAR BHATI & ORS.

....Respondents

Through: Ms. Nandni Sahni, Adv. for R-1&2.

CORAM:
HON'BLE MR. JUSTICE AJAY DIGPAUL

J U D G M E N T

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1. Through the present petition, the petitioner is assailing the order dated 28.10.2024 passed by the learned District Judge (Commercial Court-02), Patiala House Courts, New Delhi[1] in OMP (COMM.) No. 18/2024 titled as *'Dharmendra Kumar Bhati & Anr. v. Dayanand Pal & Anr.'*, whereby respondents no. 1 & 2's appeal, filed under Section 37(2)(b) of the Indian Arbitration & Conciliation Act, 1996[2], challenging the order dated 06.09.2022, passed by the learned Sole Arbitrator in Arbitration Reference No. DIAC/2653/12-19 titled *'Dayanand Pal v. Dharmender Kumar Bhati & Ors.'*, came to be

[1] hereinafter "the learned Appellate Court"

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partly allowed.

2. The relevant facts which led to filing of the present petition are that respondents no. 1 & 2's appeal arose from a partnership dispute concerning M/s Alwin DMD Pharmaceuticals. The petitioner, and respondents no. 1 & 2 entered into a partnership agreement dated 05.04.2013 for manufacturing, and trading of human/animal health-related goods. Soon thereafter, respondent no. 3 entered into a partnership agreement with the aforesaid parties through a supplementary partnership deed dated 11.07.2017.

3. It is the case of the respondents that during the course of business, the petitioner purportedly, *inter alia*, misappropriated Rs. 38,00,000/- from the firm for personal gain, and committed breach of the terms of the partnership deed dated 05.04.2013, by starting a competing proprietorship, namely M/s Jai Maa Pharma on 23.08.2016. It is also stated that *vide* notice dated 21.12.2017, the petitioner sought to retire from the partnership in view of the differences that had arisen with the respondents.

4. The petitioner, however, contested the aforesaid position taken by the respondents, and stated that the respondents through a forged and fabricated letter dated 09.02.2018, illegally expelled the petitioner from the partnership firm. It is the stand of the petitioner neither did the petitioner resign from the partnership firm, nor was he expelled by the respondents *vide* letter dated 09.02.2018, or any other date thereafter.

5. As the aforesaid disputes arose between the parties, the petitioner invoked the arbitration clauses i.e., Clause 19 of the

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[2] hereinafter " the Arbitration Act"

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partnership deed dated 05.04.2013, and Clauses 17 and 22 of the supplementary partnership deed dated 11.07.2017 *vide* notice dated 05.04.2019, which was replied to by the respondents no. 1 & 2 on 24.04.2019.

6. Thereafter, the petitioner approached this Court for appointment of arbitrator by way of filing an application under Section 11(6) of the Arbitration Act, bearing A.R.B.P No. 632/2019 titled as *'Dayanand Pal v. Dharmender Kumar Bhat & Ors.'*, which came to be allowed *vide* order dated 29.11.2019.

7. Subsequently, the petitioner filed the statement of claim dated 28.01.2020, seeking, *inter alia*, permanent injunction to restrain respondents no. 1 and 2 from manufacturing or producing any products in the name of the partnership firm, declaration that the alleged expulsion of the petitioner from the partnership firm by the respondents was illegal and that the petitioner continues to be partner in the firm, dissolution of the partnership firm, and payment of his due share on settlement of accounts, along with 18 % interest *per annum*, against the respondents no. 1 & 2, who subsequently addressed their rival contentions by filing the written statement dated 22.02.2020.

8. In the *interregnum*, the petitioner preferred an application under Section 17 of the Arbitration Act read with Rule 15(1) of the DIAC (Arbitration Proceeding Rules), 2018 before the learned Sole Arbitrator, seeking *ad-interim ex-parte* injunction to restrain respondents no. 1 & 2 from manufacturing or selling any products in the name of Alwin DMD Pharmaceuticals, and using or exploiting the goodwill of the said firm, till the final disposal of the arbitration proceedings.





9. The learned Sole Arbitrator *vide* order dated 06.09.2022, disposed of petitioner's aforesaid application, and held that the interim reliefs sought by the petitioner can only be adjudicated at the appropriate stage after appreciating the evidence led by the parties. However, in order to protect the interest of the petitioner in the partnership business, and in the event the reliefs claimed by the petitioner in his statement of claim dated 28.01.2020 are subsequently granted after adjudication on the merits of the case, the learned Sole Arbitrator issued the following direction to respondents no. 1 & 2:

> "In the circumstances and in order to secure the partnership interest of the Claimant, it is hereby directed that the Respondents No. 1&2 shall file on record by way of affidavits, the business transactions carried out by them along with document in support of the same, for alleged continuous use of name of the firm, new firm or proprietorship concern using the firm name as Alwin DMD Pharmaceuticals and profits earned therefrom with effect from 14.11.17 till the date of this decision by 10.10.22 and continue to file the record of the said transactions on 10th day of every subsequent month, tiil the disposal of these arbitration proceedings and if the 10th day happens to be a holiday or leave then on the following day. It is clarified 'Business transactions' regarding which affidavits are to be filed, include transactions in the bank accounts in the name of the said firm and also the profit and loss account of the firm submitted with the Tax Authorities.
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> If the Respondent No. 1 & 2 fail to file the said affidavits as directed above, they may be restrained from using the said firm name in any manner whatsoever and in any capacity such as continuing firm, new firm or proprietorship concern, by an appropriate order to be passed in this regard."

10. Aggrieved by the order dated 06.09.2022, respondents no. 1 & 2 preferred the underlying appeal under Section 37(2)(b) of the Arbitration Act before the learned Appellate Court.





11. The learned Appellate Court, *vide* the impugned order dated 28.10.2024, recorded the submissions made on behalf of the parties and partially allowed the aforesaid appeal. It upheld the findings of the learned Sole Arbitrator insofar as it required respondents no. 1 & 2 to disclose, by way of an affidavit, business transactions and relevant records up to 05.04.2019 i.e., the period preceding the petitioner's invocation of the arbitration clauses *vide* notice dated 05.04.2019. However, the learned Appellate Court set aside the direction requiring respondents no. 1 & 2 to file affidavits for the period from 06.04.2019 onwards, on the ground that a direction to disclose documents for the period during the subsistence of the arbitral proceedings exceeded the scope of relief sought by the petitioner, who had not himself sought rendition of accounts till the final disposal of the arbitral proceedings, and was accordingly, beyond the jurisdiction of the learned Sole Arbitrator.

12. Aggrieved by the impugned order dated 28.10.2024, the petitioner has invoked the supervisory jurisdiction of this Court by filing the present petition under Article 277 of the Constitution of India.

13. Learned counsel appearing on behalf of the petitioner submits that the learned Appellate Court erred in holding that the direction requiring disclosure of business transactions from 06.04.2019 onwards was passed by the learned Sole Arbitrator in excess of its jurisdiction. It is submitted that the learned Appellate Court failed to appreciate that the petitioner had categorically sought rendition of accounts and production of the partnership firm's account books, among other reliefs, by way of the prayers (f) and (g) of his statement of claims





dated 28.01.2020. The aforesaid prayers are produced herein below:

> "(f) pass an award in favour of the claimant and against the respondent nos. 1 & 2 thereby directing them to render accounts and produce all accounts books, Order, vouchers, export documents and all other ddcuments of the Partnership Firm namely 'Alwin DMD Pharmaceuticals';
>
> (g) pass an award in favour of the claimant and against the respondent nos. 1 & 2 thereby directing them to render accounts and produce all accounts books, Order, vouchers, export documents of the firm(s) created by them later on pursuant to 14/11/2017 by executing partnership deeds dated 24/01/2018, 23/04/2018 and/or other deeds bearing identical name i.e. 'Alwin DMD Pharmaceuticals';"

14. It is further submitted that the learned Appellate Court, although itself observed that the learned Sole Arbitrator is vested with ample power under Section 17 of the Arbitration Act to pass interim directions, nonetheless interfered with a well-reasoned interim measure granted by the learned Sole Arbitrator *vide* order dated 06.09.2022. It is argued that such intervention is contrary to the settled position of law, as laid down by the judgment of this Court in ***'Dinesh Gupta and Ors. v. Anand Gupta and Ors.'*** [3], wherein it was held that the appellate court exercising jurisdiction under Section 37 of the Arbitration Act, does not ordinarily disturb the interim measures granted by the Arbitral Tribunal in exercise of its own discretionary powers. The relevant portion of the said judgment reads thus:

> "**84.** Having said that, it is indisputable that the exercise of jurisdiction, by the arbitrator, under Section 17, is fundamentally discretionary in nature-as contrasted with Section 16(2) and (3).

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> Judicial interference, with the exercise of discretionary power, is, classically, limited, and is even more circumscribed, where the authority exercising discretion is itself a judicial authority-as opposed to a purely administrative or executive functionary. (One uses the expression "judicial authority", here, to denote the nature rather than the status of the jurisdiction exercised by the Arbitrator, it having been settled, by the Supreme Court, in M.D., Army Welfare Housing Organisation v. Sumangal Services (P) Ltd. MANU/SC/0797/2003 : (2004) 9 SCC 619, that an arbitrator is not a "Court", and does not exercise judicial functions.) Discretionary orders passed by arbitral tribunals have, therefore, to be handled with kid gloves, and protected from injury by any over-zealous administration, by the court, of the law as it perceives it to be. If anything, therefore, the jurisdiction of the Court, under Section 37(2)(b), is even more limited than the jurisdiction that it exercises under Section 37(2)(a) or, for that matter, under Section 34. The discretionary jurisdiction, as exercised by the arbitrator, merits interference, under Section 37(2)(b), therefore, only where such exercise is palpably arbitrary or unconscionable."

15. Similarly, petitioner places reliance on the ratios of the judgments pronounced in ***Bluefire Infotax Consultancy Pvt. Ltd. & Ors. vs. ANS Infratech Pvt. Ltd.***[4], ***Databit Technologies Pvt. Ltd. & Ors. vs. Red Fort Capital Finance Company Pvt. Ltd.***[5], and ***AMR-BBB Consortium vs. Bharat Coking Coal Ltd.***[6], to reiterate that the power of the arbitral tribunal under Section 17 of the Arbitration Act is a discretionary one, exercised to balance the equities between the parties, and that an appellate court is not expected to substitute its own discretion for that of the arbitrator. It is contended that judicial interference with such an order is permissible only where the order is completely perverse, and the perversity is apparent on the face of the

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[3] **2020 SCC OnLine Del 2099**
[4] **2025:DHC:1571**
[5] **2026 SCC OnLine Del 284**
[6] **2024:DHC:8538**

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order.

16. It is therefore submitted that interference of this Court is warranted in the present case to set aside the impugned order dated 28.10.2024. Reliance is placed on ***'Deep Industries Ltd. v. Oil and Natural Gas Corporation Ltd. and another'***[7], wherein the Hon'ble Supreme Court while dealing with the question relating to High Courts exercising jurisdiction under Article 227 of the Constitution of India when it comes to matters that are decided under Arbitration Act, observed as follows:

> "**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].
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> **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."

[7] **(2020) 15 SCC 706**

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17. *Per contra*, learned counsel appearing on behalf of respondents no. 1 & 2, contends that the present petition ought to be dismissed on the ground of maintainability alone. It is submitted that the Arbitration Act is a self-contained code under which the Section 5 and Section 37(3) bar the right of second appeal. It is therefore contended that the present petition is not maintainable to question the impugned order dated 28.10.2024 of the learned Appellate Court, passed under Section 37(2)(b) of the Arbitration Act.

18. Learned counsel places reliance on the judgments of the Hon'ble Supreme Court in ***'SBP & Co. v. Patel Engineering Ltd.***[8], ***'Bhaven Construction v. Executive Engineer, Sardar Sarovar Narmada Nigam Ltd.***[9]**,** and ***'Lalit Kumar v. Sanghavi v. Dharamdas v. Sanghavi and Others'***[10], wherein it was held that the supervisory jurisdiction of this Court under Article 227 of the Constitution should not be invoked as a matter of course where the aggrieved party has an effective alternate remedy, and interference beyond the provisions of the Arbitration Act ought to be exercised only where the impugned order is demonstrably perverse, patently without jurisdiction, or offends the basic structure of the Constitution. It is submitted that the petitioner has failed to discharge this burden since no grounds have been pleaded to even demonstrate that the learned Appellate Court exceeded its jurisdiction, or committed an error, so apparent on the face of the record, while passing the impugned order dated 28.10.2024.

19. The learned counsel brought the notice of this Court towards the

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[8] **(2005) 8 SCC 618**
[9] **(2022) 1 SCC 75**
[10] **(2014) 7 SCC 255**

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following observations made in **Bhaven Construction *(supra)*** in paragraphs 18, 20 and 22:

> "**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, this Court referred to several judgments and held: *"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 warrant 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. 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.
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> **20.** In the instant case, Respondent 1 has not been able to show exceptional circumstance or "bad faith" on the part of the appellant, to invoke the remedy under Article 227 of the Constitution. No doubt the ambit of Article 227 is broad and pervasive, however, the High Court should not have used its inherent power to interject the arbitral process at this stage. It is brought to our notice that subsequent to the impugned order of the sole arbitrator, a final

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> award was rendered by him on merits, which is challenged by Respondent 1 in a separate Section 34 application, which is pending.
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> **22.** The High Court did not appreciate the limitations under Articles 226 and 227 of the Constitution and reasoned that the appellant had undertaken to appoint an arbitrator unilaterally, thereby rendering Respondent 1 remediless. However, a plain reading of the arbitration agreement points to the fact that the appellant herein had actually acted in accordance with the procedure laid down without any mala fides."

20. Heard. Perused the record.

21. At the outset, this Court is inclined to take up the objection regarding maintainability raised by the respondents no. 1 & 2 *qua* effect of the restriction imposed by Section 37(3) of the Arbitration Act upon the present petition, filed under Article 227 of the Constitution.

22. Section 37(3) of the Arbitration Act provides that no second appeal shall lie from an order passed in appeal under Section 37 of the Arbitration Act, but nothing in the said provision shall affect or take away the right to appeal to the Hon’ble Supreme Court by way of a Special Leave Petition under Article 136 of the Constitution. The restriction is thus directed against a second appeal. The question which arises for consideration is whether a petition under Article 227 of the Constitution, directed against an order passed in appeal under Section 37, partakes the character of such a second appeal.

23. In the considered view of this Court, the answer to the aforesaid question must be in the negative. The supervisory jurisdiction under Article 227 is a constitutional power which is distinct in its nature and scope from an appellate remedy. A court exercising the said

jurisdiction does not reappreciate the material on record, nor does it substitute its own view for that of the Court below. Its enquiry is confined to whether the court below has acted within the bounds of its authority, as prescribed under Section 37(2)(b) of the Arbitration Act.

24. The aforesaid position is no longer *res integra*, in **Deep Industries *(Supra)***, a Special Leave Petition was preferred before the Hon'ble Supreme Court challenging the maintainability of a petition filed under Article 227. The Article 227 writ was preferred against an order passed in appeal under Section 37 of the Arbitration Act, which in turn arose from an order of the Arbitral Tribunal under Section 17. The procedural posture of that case is thus identical to the present one. In paragraphs no. 16 and 17, extracted hereinabove, the Hon'ble Supreme Court acknowledged the legislative intent behind the non-obstante clause in Section 5 as well as the bar on a second appeal under Section 37. It nonetheless held that the supervisory jurisdiction exercised by courts under Article 227 remains unaffected by Section 5, and that petitions filed under Article 227 against any judgment allowing or dismissing a first appeal under Section 37, cannot be dismissed on the ground of maintainability alone. The concern raised therein was with regard to the extent of interference, and not with regard to the maintainability of the petition.

25. It follows that the objection, as framed by respondents no. 1 & 2, conflates the maintainability of the present petition with its entertainability. The former concerns the existence of jurisdiction, while the latter deals with the circumstances in which said jurisdiction ought to be exercised. The submissions advanced on behalf of respondents no. 1 & 2 are, in substance, addressed to the latter aspect.

The same shall be considered at the appropriate stage of examining whether the petitioner has made out a case for interference on merits.

26. The judgments relied upon by the respondents no. 1 & 2 do not advance their case any further on the question of maintainability. In **Patel Engineering *(Supra)***, the observations of the Hon'ble Supreme Court were directed against the practice of orders passed by the Arbitral Tribunal, during the course of arbitral proceedings, being directly challenged before the High Court under Article 226 or 227 of the Constitution. In **Bhaven Construction *(Supra)***, the order of the learned Sole Arbitrator rejecting an application under Section 16 of the Arbitration Act was assailed directly before the High Court under Article 226 and 227. It was in this context that the Hon'ble Supreme Court held that the High Court ought not to have interjected in the subsisting arbitral proceedings.

27. Similarly, in **Lalit Kumar *(Supra)***, the order of the Arbitral Tribunal terminating the arbitral proceedings was challenged directly by way of a writ petition, notwithstanding the remedies available under the Arbitration Act.

28. In the aforesaid cases, the orders of the Arbitral Tribunal were itself the subject of challenge before the High Court, and the statutory remedy had not been availed. That is not the case in the present petition. The order of the learned Sole Arbitrator dated 06.09.2022 was appealed under Section 37(2)(b) of the Arbitration Act by respondents no. 1 & 2 themselves. It is the order of the learned Appellate Court that is under challenge before this Court. The matter at hand is thus governed by the ratio laid down in **Deep Industries *(Supra)***. In view of the foregoing, the objection to maintainability, as





raised by respondents no. 1 & 2, cannot be sustained, and is accordingly rejected.

29. However, it is evident that the Section 5 of the Arbitration Act, read with the principles enunciated in the abovementioned judgments, indicates that the supervisory jurisdiction of this Court in matters arising under Part I of the Arbitration Act is to be exercised with considerable circumspection. Interference is warranted only where the order under challenge suffers from a patent lack of inherent jurisdiction, or where the court below has exceeded the jurisdiction vested in it, or where an error is apparent on the face of the record. The present petition is required to be tested on the said parameters.

30. In the present case, the main contention of the petitioner is that the learned Appellate Court interfered excessively and unnecessarily with a discretionary interim measure during the pendency of the arbitral proceedings. This Court is unable to accept the said contention. The application preferred by the petitioner under Section 17 of the Arbitration Act sought to restrain respondents no. 1 & 2 from manufacturing or selling products in the name of Alwin DMD Pharmaceuticals, and from using or exploiting the goodwill of the said firm, till the disposal of the arbitral proceedings. The said application did not contain any prayer for rendition of accounts, or for disclosure of business transactions, during the pendency of the arbitral proceedings.

31. The learned Appellate Court sustained the direction of the learned Sole Arbitrator insofar as it related to the period up to 05.04.2019. However, it set aside the direction to the extent it operated for the period from 06.04.2019 onwards, on the reasoning that such a





direction travelled beyond the relief sought by the petitioner. Additionally, the learned Appellate Court reasoned that the petitioner's status as a partner in the firm remained disputed *inter se*. Since this issue had been kept open for adjudication by the learned Sole Arbitrator as a triable issue, it was held that the period for which accounts could be renditioned ought not to have extended beyond the disputed dates *qua* the petitioner's purported expulsion or retirement from the firm, or the date on which the petitioner sent the notice dated 05.04.2019 invoking arbitration.

32. It is not disputed that the legal proposition, as laid down in **Dinesh Gupta *(Supra)***, and other judgments relied upon by the petitioner, dictates that the discretion exercised by an Arbitral Tribunal under Section 17 is ordinarily not to be interfered with in appeal. The learned Appellate Court, however, has not substituted its own discretion in place of the learned Sole Arbitrator. It merely examined whether the direction was traceable to the relief sought by the petitioner, an enquiry which falls well within the bounds of the court exercising appellate jurisdiction under Section 37. The view so taken is a plausible one. Even if another view were possible, that by itself would not furnish a ground for interference by this Court under Article 227 of the Constitution of India, as held by the Hon'ble Supreme Court in **Deep Industries *(Supra)***.

33. The impugned order dated 28.10.2024 is a reasoned order, passed after affording sufficient opportunity of hearing to the petitioner as well as respondents no. 1 & 2. The petitioner has not been able to demonstrate that the learned Appellate Court lacked jurisdiction, or that the impugned order suffers from any error

apparent on the face of the record. In view of the aforesaid, no perversity is made out in the order dated 28.10.2024 passed in OMP (COMM.) No. 18/2024, appeal preferred by respondents no. 1 and 2 under Section 37(2)(b) of the Arbitration Act. This Court therefore finds no ground to interfere with the impugned order in the exercise of its supervisory jurisdiction under Article 227 of the Constitution of India, having regard to the principles laid down in **Deep Industries (*Supra*)**, and the judicial intent underlying Section 37(3) of the Arbitration Act.

34. It is clarified that the affirmation of the impugned order dated 28.10.2024, passed by the learned Appellate Court in OMP (COMM.) No. 18/2024 under Section 37(2)(b) of the Arbitration Act, shall not be construed as curtailing the substantive rights of any aggrieved party to avail the appropriate appellate remedies available under the Arbitration Act, in the manner prescribed therein. It is further clarified that the observations made hereinabove are confined to the controversy raised in the present petition. The same shall not be construed as an expression of opinion on the merits of the claims pending adjudication before the learned Sole Arbitrator or any other appropriate forum. All rights and contentions of the parties in that regard are left open.

35. The present petition is, accordingly, dismissed in the aforesaid terms. The pending application(s), if any, also stands dismissed.

36. The judgment be uploaded on the website forthwith.

AJAY DIGPAUL, J.

OCTOBER 29, 2026/gs/os

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