$~89

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

% ***Date of Decision : 03.02.2025***

\+ **W.P.(C) 1347/2025**

GROSON ENGINEERS .....Petitioner

Through: Mr. Chetan Joshi, Advocate.

versus

M/S RAJIV AGGARWAL & ANR. .....Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

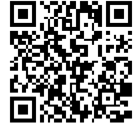
SACHIN DATTA, J. (*Oral*)

1. The present petition has been filed by the petitioner being aggrieved with the orders dated 09.05.2024 and 31.12.2024 passed by the learned Arbitrator, who is seized of the arbitral proceedings between the parties.

2. The arbitral proceedings are ongoing under the aegis of Delhi International Arbitration Centre (DIAC). The arbitral proceedings have been occasioned on account of non-payment/ non-clearance of the bills of the petitioner, raised upon the respondent.

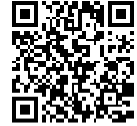
3. An order dated 09.05.2024 came to be passed by the learned Arbitrator dismissing the petitioner's application for "disclosure of documents in the possession of the respondent". *Vide* order dated 31.12.2024, the learned Arbitrator dismissed the petitioner's application seeking permission to call additional witness.

4. It is a settled law that courts under Article 226 of the Constitution of



India can interfere with the arbitral process only when the circumstances are exceptional or perverse. The Supreme Court in ***Bhaven Construction vs Executive Engineer, Sardar Sarovar Narmada Nigam Limited and Anr***., (2022) 1 SCC 75 while limiting judicial interference under Article 226 or 227 of the Constitution of India to 'exceptional rarity' held as under:

> *"12. We need to note that the Arbitration Act is a code in itself. This phrase is not merely perfunctory, but has definite legal consequences. One such consequence is spelled out under Section 5 of the Arbitration Act, which reads as under*
>
> > *"5. Extent of judicial intervention.—Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."*
> >
> > *(emphasis supplied)*
>
> *The non obstante clause is provided to uphold the intention of the legislature as provided in the Preamble to adopt Uncitral Model Law and Rules, to reduce excessive judicial interference which is not contemplated under the Arbitration Act.*
>
> *13. The Arbitration Act itself gives various procedures and forums to challenge the appointment of an arbitrator. The framework clearly portrays an intention to address most of the issues within the ambit of the Act itself, without there being scope for any extra statutory mechanism to provide just and fair solutions.*
>
> *xxx xxx xxx*
>
> *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 [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 [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."

(emphasis supplied)

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 [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

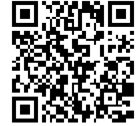
provision which remains untouched by the non obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would 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."

(emphasis supplied)

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 award was rendered by him on merits, which is challenged by Respondent 1 in a separate Section 34 application, which is pending."

5. A Division Bench of this Court in ***Sadbhav Engineering Ltd. vs Micro and Small Enterprises Facilitation Council and Ors***., 2025 SCC OnLine Del 319 has held that when an alternate efficacious remedy is available under Arbitration and Conciliation Act, 1996, courts shall not interfere and interdict such proceeding/s under Article 226 of the Constitution of India. The relevant portion of the said judgment reads as under:

"6…………..It is trite that once the proceedings under the Arbitration Act have commenced and are underway, Courts would not interfere and interdict such proceedings, particularly, when appropriate and efficacious remedies are indeed available under the Arbitration Act. In this context, it would be apposite to refer to the judgment of the Supreme Court in SBP & Co. v. Patel Engineering Limited, (2005) 8 SCC 618 and the same judgment has been followed by the Supreme Court in its recent judgment - Sterling Industries v. Jayprakash Associates Ltd., (2021) 18 SCC 367. The relevant paragraphs of Sterling Industries (supra) quoting the judgment of the Supreme Court in SBP & Co. (supra) reads thus:



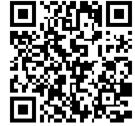
"3. This Court in SBP & Co. v. Patel Engg. Ltd. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] in para 45 held as follows:

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.

xxx xxx xxx

***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."*

7. That apart, as rightly and aptly observed by the learned single Judge, the Supreme Court in Bhaven Construction v. Executive Engineer, Sardar Sarovar, (2022) 1 SCC 75 has succinctly held that an order in exercise of powers under section 16 of the Arbitration Act can be assailed only by way of challenge to the final award under the provisions of section 34 of the said Arbitration Act. Thid would proscribe any other



remedy to the aggrieved party."

6. Further, this Court in ***Surender Kumar Singhal and Ors. vs Arun Kumar Bhalotia and Ors***., 2021 SCC OnLine 2708 laid down circumstances in respect to the scope and ambit of interference under Article 226 of the Constitution of India with order/s passed by the arbitral tribunal. The said circumstances read as under:

> ***"25.*** *A perusal of the above-mentioned decisions, shows that the following principles are well settled, in respect of the scope of interference under Article 226/227 in challenges to orders by an arbitral tribunal including orders passed under Section 16 of the Act.*
>
> *(i) An arbitral tribunal is a tribunal against which a petition under Article 226/227 would be maintainable;*
>
> *(ii) The non-obstante clause in section 5 of the Act does not apply in respect of exercise of powers under Article 227 which is a Constitutional provision;*
>
> *(iii) For interference under Article 226/227, there have to be 'exceptional circumstances';*
>
> *(iv) 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;*
>
> *(v) Interference is permissible only if the order is completely perverse i.e., that the perversity must stare in the face;*
>
> *(vi) High Courts ought to discourage litigation which necessarily interfere with the arbitral process;*
>
> *(vii) Excessive judicial interference in the arbitral process is not encouraged;*
>
> *(viii) It is prudent not to exercise jurisdiction under Article 226/227;*
>
> *(ix) The power should be exercised in 'exceptional rarity' or if there is 'bad faith' which is shown;*
>
> *(x) Efficiency of the arbitral process ought not to be allowed to diminish and hence interdicting the arbitral process should be completely avoided."*

7. Applying the aforesaid principles, this Court does not find any grounds to interfere with the ongoing arbitral proceedings or with the

interlocutory orders passed therein.

8. In case the petitioner is aggrieved by any order that is passed by the Arbitral Tribunal, or with the final arbitral award, the same is required to be assailed by the petitioner within the confines of, and as permitted under the Arbitration and Conciliation Act, 1996 (A&C Act). It is open for the petitioner to pursue appropriate remedies in this regard. Needless to say, all rights and contentions of the petitioner in this regard are expressly reserved.

9. In the circumstances, the present petition is dismissed.

SACHIN DATTA, J

FEBRUARY 3, 2025/*r, sl*