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

% *Date of Decision: 28.04.2025*

\+ W.P.(C) 5403/2025 and CM APPLs. 24660/2025, 24661/2025, 24662/2025

(97) M S INDO SPIRITS .....Petitioner

Through: Mr. Darpan Wadhwa, Sr. Adv. alongwith Ms. Divita Das, Mr. Amer Vaid, Mr. Srijan Sinha, Mr. Himanshu, Advocates.

versus

PERNOD RICARD INDIA PVT LTD. .....Respondent

Through: Mr. Sushil Dutt, Sr. Adv. alongwith Mr. Raj Kamal, Mr. Karan Khanuja, Ms. Aprajita Tyagi, Advocates.

\+ W.P.(C) 5408/2025, and CM APPLs. 24673/2025, 24674/2025, 24675/2025

(98) INDOSPIRIT DISTRIBUTION LIMITED .....Petitioner

Through: Mr. Darpan Wadhwa, Sr. Adv. alongwith Ms. Divita Das, Mr. Amer Vaid, Mr. Srijan Sinha, Mr. Himanshu, Advocates.

versus

PERNOD RICARD INDIA PVT LTD .....Respondent

Through: Mr. Sushil Dutt, Sr. Adv. alongwith Mr. Raj Kamal, Mr. Karan Khanuja, Ms. Aprajita Tyagi, Advocates.

\+ W.P.(C) 5410/2025, and CM APPLs. 24677/2025, 24678/2025, 24679/2025

(99) SAMEER MAHANDRU .....Petitioner

Through: Mr. Darpan Wadhwa, Sr. Adv. alongwith Ms. Divita Das, Mr. Amer Vaid, Mr. Srijan Sinha, Mr. Himanshu, Advocates.

versus

PERNOD RICARD INDIA PVT LTD. & ANR. .....Respondent

Through: Mr. Sushil Dutt, Sr. Adv. alongwith Mr. Raj Kamal, Mr. Karan Khanuja, Ms. Aprajita Tyagi, Advocates.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (ORAL)

1. The present petitions assail an order dated 10.04.2025 passed by an Arbitral Tribunal comprising of a Sole Arbitrator in Case No(s). DIAC/9136/08-2024 and DIAC/9176/08-2024.

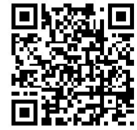
2. It is the contention of the petitioners that in the process of adjudicating certain deletion applications, the learned Sole Arbitrator has also effectively dismissed the petitioner's applications filed under Section 16 of the Arbitration and Conciliation Act, 1996 (hereinafter *"the A&C Act"*).

3. According to the petitioners, this is on account of the fact that the impugned order dismisses a Section 16 application filed by Indospirit Distribution Limited (hereinafter *"IDL"*) i.e. respondent no.3 and respondent no.1 in Case No(s). DIAC/9176/08-2024 and DIAC/9136/08-2024 respectively.

4. It is submitted on behalf of the petitioner that:

(i) The dismissal of IDL's applications under Section 16 of the A&C Act is without affording an opportunity of hearing and without any arguments being addressed thereon;

(ii) That the above effectively seals the fate of the other Section 16 applications, pending before the learned Sole Arbitrator.



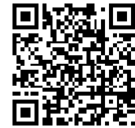
5. Concededly, the Section 16 application filed on behalf of Mr. Sameer Mahandru [respondent no.2 in DIAC No.9136/08-24 and DIAC No. 9176/08-24] and M/s Indo Spirits [respondent no.1 in DIAC No. 9176/08-24] have not yet been decided by the learned Sole Arbitrator.

6. This Court find no basis for the apprehension that the pending applications under Section 16 of the A&C Act shall not be decided by the learned Arbitrator in accordance with law, after affording an adequate opportunity of hearing to the parties. In case the applicant/s therein seek to agitate any factual or legal aspect, having a bearing on the pending application/s under Section 16, and which has not been dealt with by the learned sole arbitrator while deciding the Section 16 application filed by IDL, the said applicant/s are not precluded from moving an appropriate application and/ or make appropriate submissions in this regard before the learned Sole Arbitrator. Necessarily, the same would be considered and dealt with by the learned Sole Arbitrator in accordance with law.

7. Likewise, if IDL seeks to found its objections regarding jurisdiction/ arbitrability, on any legal or factual aspect/s which has allegedly not been taken care of by the learned Sole Arbitrator in the impugned order, it is not precluded from making an application in this regard before the learned Arbitrator.

8. Even assuming that any Section 16 application has been erroneously rejected by the Arbitral Tribunal, Section 16(5) and Section 16(6) of the A&C Act specifically provides for this very contingency. The said Section 16(5) and Section 16(6) of the A&C Act is in the following terms:-

> *"(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*



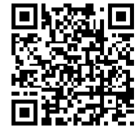
make an arbitral award.
(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34."

9. As such, the petitioners are not precluded from raising appropriate objections in this regard by way of an application under Section 34 of the A&C Act in accordance with law.

10. In the circumstances, this Court does not find it apposite to interfere with the impugned order in these proceedings. It has been repeatedly held in catena of judgments that the scope of jurisdiction while entertaining the petition under Article 226 and 227 against an order passed by the Arbitral Tribunal is extremely narrow and limited. In this regard reference may be made to ***SBP & CO. v. Patel Engineering Ltd. and Another***, 2005 SCC OnLine SC 1553 and ***Bhaven Construction v. Executive Engineer, Sardar Sarovar Narmada Nigam Limited And Another***, 2021 SCC OnLine SC 8.

11. In, ***SBP & CO. v. Patel Engineering Ltd. and Another*** (supra) the Apex Court has made the following observation –

> *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.***

12. In ***Bhaven Construction v. Executive Engineer, Sardar Sarovar Narmada Nigam Limited And Another*** (Supra), the Apex Court has observed as under -

11. Having heard both the parties and perusing the material available on record, the question which needs to be answered is whether the arbitral process could be interfered under Articles 226/227 of the Constitution, and under what circumstance?

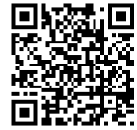
12. We need to note that the Arbitration Act is a code in itself. This phrase is not merely perfunctory, but has definite legal consequences. One such consequence is spelled out under Section 5 of the Arbitration Act, which reads as under

"**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.



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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

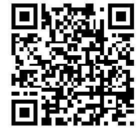
*"**34. Application for setting aside arbitral award**.—(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3)".*

(emphasis supplied)

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, 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*[6]. *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)

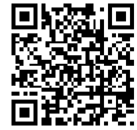
It is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear "bad faith" shown by one of the 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, 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.

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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 case[7], this Court observed as follows : (SCC p. 718, 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."***

(emphasis supplied)

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 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.

13. In the circumstances, this Court is not inclined to entertain the present petition/s. The same are, consequently, dismissed.

APRIL 28, 2025/*sv/at* **SACHIN DATTA, J**