



2025:DHC:10444



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

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Judgment reserved on: 21.11.2025

Judgment pronounced on: 26.11.2025

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CM(M) 2031/2025 & CM APPL. 65908/2025

NATIONAL HIGHWAYS AUTHORITY OF INDIAPetitioner

Through: Mr. Tushar Mehta, Solicitor General
of India with Mr. Nishant Awana, Ms.
Rini Badoni, Ms. Rebecca Mishra and
Ms. Ekta Kundu, Advocates.

versus

CFM ASSET RECONSTRUCTION PVT LTD & ANR.

.....Respondents

Through: Mr. Saurabh Kirpal, Senior Advocate
with Mr. Atul Shanker Mathur, Ms.
Priya Singh, Mr. Shubhankar, Mr.
Rajat Choudhary and Mr. Junaid,
Advocates.
Mr. Raunak Dhillion, Mr. Nihaad
Dewan, Mr. Akshay Gupta and Ms.
Isha Malik, Advocates for R2

CORAM:

HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T

1. This petition, brought under Article 227 of the Constitution of India assails order dated 01.10.2025, whereby the learned Arbitral Tribunal



dismissed the application of the present petitioner under Order XXII Rule 10 of the Code of Civil Procedure. I have heard learned Solicitor General on behalf of petitioner, learned Senior Counsel on behalf of respondent no.1 and learned counsel for respondent no.2.

2. Before the Arbitral Tribunal, the present petitioner is the solitary non-claimant, contesting the claim of the present respondent no.1, who is the solitary claimant. The present respondent no.2 is a stranger to the arbitration proceedings. Broadly speaking, circumstances culled out of record, to the extent relevant for present purposes are as follows.

2.1 For design, engineering, financing, procurement, construction, improvement, operation and maintenance of a portion of the National Highway 8B, the Infrastructure Leasing and Financial Services Ltd. (ILFS) being successful bidder was issued letter of acceptance dated 18.01.2005 by the present petitioner. For executing the subject project, ILFS incorporated the present respondent no.2, a special purpose vehicle and at request of ILFS, a Concession Agreement was executed between the present petitioner and the present respondent no.2 (*the Concessionaire*) for the purpose of executing the subject project. After completion of necessary documentation, the senior lenders according to the Common Loan Agreement dated 20.06.2005 provided the requisite funding to the concessionaire. The subject project having been commenced on 17.09.2005, was completed vide Completion Certificate dated 14.08.2008 issued in favour of the concessionaire, after which the operation and maintenance period of the



subject project commenced, and the same is scheduled to end by 17.09.2025.

2.2 Certain disputes having arisen, the petitioner issued Termination Notice dated 21.12.2021 to the concessionaire with a copy to the senior lenders, in accordance with Clause 32 of the Concession Agreement and the petitioner took possession of the entire project.

2.3 Feeling aggrieved by the Termination Notice, the concessionaire approached the National Company Law Appellate Tribunal (NCLAT), which restrained the petitioner from dispossessing the concessionaire from the subject project by way of interim order dated 23.12.2021, which order was vacated by NCLAT vide final order dated 16.03.2022 after hearing all parties including the senior lenders.

2.4 Thereafter, on 23.03.2022, the concessionaire filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (*the Act*) before this court, seeking an *ex-parte* ad-interim injunction on operation of the Termination Notice dated 21.12.2021 pending disposal of the arbitration proceedings, to be initiated, and for directions to the petitioner not to take steps to dispossess the concessionaire from the subject project during the pendency of the arbitration proceedings, to be initiated by the concessionaire.

2.5 Subsequently, on 28.03.2022, the senior lenders also filed a petition under Section 9 of the Act, seeking *ex-parte* ad-interim injunction on



operation of the Termination Notice dated 21.12.2021 issued by the petitioner, pending hearing and disposal of the arbitration proceedings, to be initiated by the senior lenders.

2.6 Both the said petitions under Section 9 of the Act were heard by a coordinate bench of this court and by way of order dated 30.03.2022, the parties were directed to first try to amicably resolve the issues through conciliation within 12 weeks and in case of failure of conciliation, the issues be referred to an arbitral tribunal consisting of three arbitrators.

2.7 In compliance, the petitioner issued letter dated 07.04.2022 to the senior lenders and the concessionaire requesting them to submit necessary claims, documents and details etc. to the Conciliation and Settlement Committee of Independent Experts-II (CCIE), which comprised of a Chairperson with two members. The petitioner as well as the concessionaire filed their respective Statement of Claims before CCIE, but the senior lenders assigned their outstanding debt along with underlying rights, title and interest in favour of the present respondent no.1 by way of Assignment Agreement dated 30.09.2022. According to the present petitioner, after a series of meetings and with necessary approval from National Company Law Tribunal, Mumbai Bench, all claims and counterclaims were settled, between the petitioner and the concessionaire, including claims, if any of the senior lenders; and all settlement proceeds received from amicable foreclosure of the Concession Agreement would ultimately be distributed to the creditors/stakeholders of the present respondent no.2.



2.8 Thereafter, claiming damages against the present petitioner on account of certain violations, the present respondent no.1 filed its Statement of Claim before the learned Arbitral Tribunal. In those arbitral proceedings, the present petitioner (*non-claimant*) filed an application under Order XXII Rule 10 of the Code, seeking its discharge from the arbitral proceedings after its substitution with the present respondent no.2, which application was dismissed by the learned Arbitral Tribunal by way of order impugned in these proceedings.

2.9 Before the learned Arbitral Tribunal, the present petitioner contended that in view of Settlement Agreement dated 01.07.2022 which has been approved by the NCLT, the present petitioner ceases to be a necessary or a proper party and is liable to be substituted with the concessionaire in view of the settled legal position that assignees can join as parties to the arbitral proceedings. On the other hand, the present respondent no.1 opposed the said application claiming that their entire claim was against the present petitioner; that no notice had been given to the senior lenders by the present petitioner before issuing Termination Notice dated 21.12.2021; that CCIE did not address claims of the senior lenders/the present respondent no.1, who did not participate in the conciliation proceedings, so are not bound by the same; and that an assignee can be joined as a party to the proceedings only if there is some benefit accrued to the assignee, in the sense that obligations cannot be transferred without consent of the assignee.



2.10 After hearing both sides, learned Arbitral Tribunal dismissed the application under Order XXII Rule 10 of the Code by way of order impugned in the present proceedings. The learned Arbitral Tribunal based their decision on the reasons that the claimant (*the present respondent no.1*) was not a party to the Settlement Agreement between the non-claimant (*the present petitioner*) and the concessionaire, so not bound by the same; that the major grievance of the present respondent no.1 before the Arbitral Tribunal is that no notice was given by the present petitioner to the senior lenders before issuing Termination Notice, and had such notice been issued, the present respondent no.1 would have appointed its selectee to contribute and complete the project; that the dispute cannot be adjudicated in the absence of the present petitioner; and that an assignee can certainly be joined as a party to the arbitration proceedings but in the present case, the concessionaire is not an assignee under the Substitution Agreement.

3. Hence, the present petition.

3.1 During arguments before this court, learned Solicitor General appearing on behalf of petitioner, after making elaborate reference to the documents on record pertaining to the above mentioned matrix, contended that the impugned order of the learned Arbitral Tribunal is not sustainable in the eyes of law. Learned Solicitor General argued that under the Settlement Agreement, the liability of the present petitioner stood transferred to the present respondent no.2 and if the present petitioner is held liable to continue with the arbitration proceedings it would damage the sanctity of



conciliation process. It was argued that since the present petitioner has paid all dues to the present respondent no.2, there is no reason not to substitute the present petitioner with the present respondent no.2 in the arbitration proceedings. It was also argued on behalf of petitioner that the impugned order is based on arguments, which would be matter of merits of the dispute after the present respondent no.2 is brought on array of parties, and the same cannot be kept in consideration while deciding the application under Order XXII Rule 10 of the Code. Learned Solicitor General placed reliance on the judgments in the cases titled: ***Bhaven Construction vs Sardar Sarovar Narmada Nigam Ltd.***, (2022) 1 SCC 75 and ***Shri Guru Gobind Singhji Institute of Engineering and Technology vs Kay Vee Enterprises***, 2024 SCC OnLine Bom 3808 in support of his contention *qua* maintainability of the present petition to assail an order passed by the Arbitral Tribunal since the present petitioner has no other remedy against the impugned order.

3.2 On the other hand, learned Senior Counsel for respondent no.1, referring to same judicial pronouncements as cited on behalf of petitioner, supported the impugned order and contended that the present petition is not sustainable. Learned Senior Counsel for respondent no.1 argued that according to the settled legal position, the scope of interference under Article 227 of the Constitution of India is extremely limited, which gets further narrowed down while dealing with the orders passed by an Arbitral Tribunal. It was argued on behalf of respondent no.1 that the remedy is certainly available to the present petitioner insofar as if the award is passed by the Arbitral Tribunal, the present petitioner would be able to challenge



the same under Section 34 of the Act and till that stage, the present petitioner must wait. It was argued that the arbitration before the Arbitral Tribunal arose out of the Concession Agreement and not Substitution Agreement, so the application was liable to be rejected. It was argued that the concept of substitution of parties does not apply to arbitration proceedings, because the same are based on arbitration agreement. Learned Senior Counsel for respondent no.1 argued that one can assign only the benefits and not the liabilities. It was argued that if the present respondent no.2 retracts and repudiates liability, dropping of the present petitioner would cause colossal loss to the public money.

3.3 Learned counsel for respondent no.2 also supported the impugned order and the arguments advanced on behalf of respondent no.1. Learned counsel for respondent no.2, opposing the present petition contended that the Settlement Agreement dated 21.07.2025 does not contemplate that if the present petitioner commits any breach, the liability will fall on the present respondent no.2. Further, it was argued that the Settlement Agreement explicitly mentions about the pendency of the arbitration proceedings but is totally silent as regards any contemplation on the part of the present petitioner to get itself substituted by the present respondent no.2.

3.4 In rebuttal, learned Solicitor General reiterated his above submissions and contended that the stand taken by the present respondent no.2 in the present proceedings clearly shows its “bad faith”, which itself is a ground for sustaining a petition under Article 227 of the Constitution of India.



4. Thence, the present petition is resisted by both respondents on merits as well as maintainability, the latter being the major plank. At this stage, it would be apposite to briefly traverse through the legal position as regards maintainability of the present petition to assail the order passed by the Arbitral Tribunal dismissing the application filed under Order XXII Rule 10 of the Code, whereby the present petitioner had claimed that it cannot be proceeded against in the subject arbitral proceedings and should be substituted with the present respondent no.2.

4.1 To begin with, whenever faced with a challenge to any order passed during arbitration proceedings, the court must keep in backdrop the crimson pulse of the Arbitration and Conciliation Act. It is Section 5 of the Act that renders vitality to the enactment. Section 5, commencing with a *non obstante* clause stipulates that in the matters governed by Part I (*arbitration*), no judicial authority shall intervene except where so provided in the said Part, notwithstanding anything contained in any other law. It is Section 5, which gives the Act a living existence to encourage arbitration over adjudication by a judicial authority. Any interpretation to any provision of law that would dilute the scope of Section 5 of the Act has to be eschewed.

4.2 Section 37 of the Act stipulates that an appeal shall lie from only the specific orders and from no others. The orders which can be scrutinized under appellate jurisdiction by the court are refusal to refer the parties to



arbitration under Section 8 of the Act; grant or refusal of any relief under Section 9 of the Act; and setting aside an arbitral award or refusing to do so under Section 34 of the Act. The sub-Section (2) of Section 37 of the Act also permits an appeal against an order passed by the Arbitral Tribunal, whereby a plea referred to in Section 16(2) or Section 16(3) is accepted; or whereby interim measure under Section 17 of the Act is granted or denied.

4.3 Section 16 of the Act (*which, apropos the present case, rests at the foundation of the application under Order XXII Rule 10 of the Code*), deals with competence of the Arbitral Tribunal to rule on its jurisdiction.

4.4 It would be significant to note that an order passed under Section 16 of the Act is appealable, if the plea raised is upheld and the arbitral proceedings are terminated. In a case where the challenge raised under Section 16 of the Act is rejected and the arbitral proceedings are continued, the order rejecting the challenge would not be amenable to scrutiny under appellate jurisdiction. The legislature clearly intended that where the Arbitral Tribunal opines that it has jurisdiction to proceed with the reference, such order be not taken to a judicial authority by way of appeal. One must be conscious that where the Arbitral Tribunal decides to continue with the arbitral proceedings, it is not that the non-claimant is left without remedy; it is just that the party concerned must wait till a final award is passed and challenged under Section 34 of the Act.

4.5 In view of the above legal position, the parties suffering rejection of



applications under Section 16 of the Act started seeking invocation of supervisory jurisdiction of High Courts under Article 227 of the Constitution of India and that led to evolution of law pertaining to the scope of interference by the High Courts in the arbitral proceedings.

5. It would be germane also to briefly work through some of the judicial pronouncements dealing with the scope of interference by the High Courts with the orders rejecting an application under Section 16 of the Act.

5.1 The jurisdiction under Article 227 of the Constitution of India can be invoked by this court against dismissal of an application under Section 16 of the Act where there is a patent lack of jurisdiction, or a manifest miscarriage of justice, or where the order under scrutiny is completely perverse and illegal order. A “perverse order” is an order or decision which is so illogical or contrary to evidence that no reasonable person would have arrived at the same. The jurisdiction under Article 227 is not meant to correct a simple mistake of fact or law and must be exercised with extreme circumspection to avoid damage to the goal stipulated by the Act of minimum judicial intervention. A liberal exercise of power under Article 227 in interfering with arbitral proceedings would undermine the finality of the arbitral decisions. The order of dismissal of the application under Order XXII Rule 10 of the Code, presently impugned must be tested on the anvil of similar judicially sanctified tenets.

5.2 In the case of ***SBP & Company vs Patel Engineering***, (2005) 8 SCC



618, a Seven Judge Bench of the Supreme Court expressed dissent over the judicial interference with the arbitral process and deprecated the practice of the High Courts allowing writ petitions, which challenged the orders of the arbitral tribunals. The Supreme Court took a view that the purpose behind the policy of minimum judicial interference is to ensure that the aggrieved party should take recourse to Section 34 of the Act to challenge not only the award but also the interim orders of the arbitral tribunal so that once arbitration commences, parties must await culmination thereof. It was held thus:

*“44. 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 of India. 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 his 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, the 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 of India. Such an intervention by the High Courts is not permissible.***

45. The object of minimizing 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 of the Constitution of India or under Article 226 of



the Constitution of India 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.”

(emphasis supplied)

5.3 In the case of **Deep Industries Ltd. vs ONGC Ltd.**, (2020) 15 SCC 706, the Supreme Court took a view that Article 227 being a constitutional provision does not get impacted with the *non obstante* clause of Section 5 of the Act, but the High Court dealing with the orders allowing or dismissing of the appeals under Section 37 of the Act would be extremely circumspect in interfering with the same, taking into account the statutory policy so that interference is restricted to orders that suffer patent lack of jurisdiction.

5.4 In the case of **Surinder Kumar Singhal vs Arun Kumar Bhalotia**, 2021 SCC OnLine Del 3708, this court after examining various judicial precedents held thus:

“24. 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."

5.5 In the case of **Bhaven Construction** (supra), relied upon by all parties in this case, the Supreme Court held thus:

"18. In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a Constitutional right. In *Nivedita Sharma v. Cellular Operators Association of India*, (2011) 14 SCC 337, 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 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. 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 quasijudicial 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.”

(emphasis supplied)

The Supreme Court in the said case held that the use of the word “only” in Section 34 of the Act serves two purposes of making the enactment a complete Code and laying down the procedure for challenge.

6. Falling back to the present case, it is the undisputed position that while dealing with the petitions under Section 9 of the Act, filed by the present respondent no.2 and the senior lenders against the present petitioner, this court directed the parties to first try for conciliation and thereafter in the event of failure to settle, refer the disputes to arbitration. It is nobody’s case that the subject disputes were mandatorily to be taken through conciliation first. It is also the admitted position that the present respondent no.1 was never a party to the conciliation proceedings before CCIE. That being so, the present respondent no.1 cannot be bound by the outcome of those settlement proceedings. Any agreement between the non-claimant (*the present petitioner*) and a stranger to the arbitration (*the present respondent no.2*) as regards transfer of liabilities cannot bind the claimant (*the present respondent no.1*) before the Arbitral Tribunal, unless it is that stranger (*the present respondent no.2*), who comes forward to be impleaded, taking charge to respond to the claims. It would be significant to note that what the present petitioner seeks is to be *substituted* by the present respondent no.2 and not merely to *implead* the present respondent no.2 as another party in the arbitral proceedings dealing with the claims of the present respondent no.1.



7. Further, I find substance in the submission of the present respondent no.1 that if the present petitioner is substituted with the present respondent no.2 after dropping the petitioner from array of parties before the Arbitral Tribunal, there could be a possibility of failure of claims of the present respondent no.1 before the Arbitral Tribunal in case the present respondent no.2 does not have disclosure of all claims and liabilities. That would frustrate the arbitral proceedings.

8. There is another aspect. In view of clear stand taken by the present respondent no.2 in opposing the substitution application, if the application is allowed, it would widen the scope of the dispute pending before the Arbitral Tribunal to cover not just the disputes pending between the present petitioner and the present respondent no.1, but also between the present petitioner and the present respondent no.2 as well.

9. I am unable to agree with the contention of learned Solicitor General that since the present respondent no.2 has opted not to support the present petitioner, it is a case of “bad faith”, for which this court would be justified to interfere with the impugned order. The “bad faith” doctrine propounded in ***Bhaven Construction*** (supra) contemplates the same in reference to the parties to the arbitral proceedings and not a stranger, who is sought to be brought in after dropping the non-claimant. Besides, there are no pleadings in that regard at any stage between the parties.



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10. In my considered opinion, the present case does not fall under any of the categories in which this court can justifiably interfere with the impugned order. Therefore, the petition and the accompanying application are dismissed.

**GIRISH KATHPALIA
(JUDGE)**

NOVEMBER 26, 2025/ry