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

Date of Decision : 16.04.2026

+ ARB. A. (COMM.) 62/2024, I.A. 46927/2024 (Stay), I.A. 46929/2024 (Ex. From filing certified copy of arbitral record), I.A. 46930/2024 (Seeking permission to file lengthy list of dates) & I.A. 22649/2025 (Delay of 17 days in filing the reply)

M/S OCEAN VIEW PROPERTIES LLPPetitioner

Through: Mr. Abhishek Malhotra, Senior Advocate with Mr. Pranay Ranjan and Mr. Youkteshwari Prasad, Advocates

versus

BALESHWAR SHARMA & ORS.Respondents

Through: Mr. Tushar Jarwal, Mr. Bilal Ikram & Mr. Faraahat Ashar Shahab, Advs. for R-1.
Mr. Parth Shekhar and Mr. Shubham Singh, Advs. for R-3 & 4

**CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

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JUDGEMENT (ORAL)

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Appeal, filed under Section 37(2)(b) of the **Arbitration and Conciliation Act, 1996¹**, seeks to assail the **Order dated 17.09.2024²** passed by the learned Arbitral Tribunal, whereby the Appellant has been impleaded as a party to the arbitral proceedings, notwithstanding that the Appellant was not a signatory to

¹ Act



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the Arbitration Agreement in question.

2. At the outset, learned counsel for the Respondents raises a preliminary objection to the maintainability of the present Appeal, on the ground that though the Appeal has been preferred under Section 37(2)(b) of the Act, the Impugned Order is not one granting or refusing an interim measure under Section 17, but is, in substance, referable to the exercise of jurisdiction by the Arbitral Tribunal under Section 16 of the Act.

3. He draws the attention of this Court to the Judgement passed by the Hon'ble Supreme Court in *ASF Buildtech (P) Ltd. v. Shapoorji Pallonji & Co.*³, and in particular Paragraph no.109 thereof which reads as under;

“109. From the above exposition of law, it can be seen that there is nothing within the scheme of the Act, 1996, which prohibits or restrains an arbitral tribunal from impleading a non-signatory to the arbitration proceedings on its own accord. So long as such impleadment is undertaken upon a consideration of the applicable legal principles — including, but not limited to, the doctrines of ‘group of companies’, ‘alter ego’, ‘composite transaction’, and the like — the arbitral tribunal is fully empowered to summon the non-signatory to participate in the arbitration. This autonomy stems from the broad jurisdiction conferred upon arbitral tribunals under the Act, 1996 to rule upon their own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement, as enshrined under Section 16. The impleadment of a non-signatory, being fundamentally a question of jurisdiction and consent, falls squarely within the province of the tribunal’s powers, free from any statutory prohibition.”

4. In pursuance thereof, he submits that the Hon'ble Supreme Court in *ASF Buildtech (P) Ltd. (supra)* has held that the power to add a non-signatory to an arbitration agreement in arbitral proceedings draws sustenance from the broad jurisdiction conferred upon the

² Impugned Order

³ 2025 SCC OnLine SC 1016



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learned Arbitral Tribunal under Section 16 of the Act.

5. He further submits that in view of the statutory provisions, as set out, and in particular, Section 16(5) read with Section 16(2) of the Act, the challenge mounted to the Impugned Order is only permissible at the stage of conclusion of the proceedings. Section 16(5) of the Act is reproduced for ready reference hereinunder;

“16. Competence of arbitral tribunal to rule on its jurisdiction.—

(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.

(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.”

(emphasis added)

6. This Court has heard the submissions of the parties and is of the view that the preliminary objection as raised by the learned counsel for the Respondent is cogent and valid.

7. A plain reading of Paragraph no. 109 of *ASF Buildtech (P) Ltd.* (*supra*) makes it apparent that the power to add a non-signatory as a party to an arbitration agreement is traceable to the broad jurisdiction conferred upon the learned Arbitral Tribunal under Section 16 of the



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Act.

8. Further, the statutory mandate necessitates that any challenge mounted to an order passed in exercise of powers relatable to Section 16 must remain circumscribed by Section 16(5) of the Act, and any challenge thereto would be permissible only at the stage contemplated therein.

9. In view of the aforesaid, the present Appeal, being not maintainable under Section 37(2)(b) of the Act, stands dismissed.

10. The present petition, along with pending application(s), if any, is disposed of in the above terms.

HARISH VAIDYANATHAN SHANKAR, J.
APRIL 16, 2026/va/kr/sg