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

Judgment reserved on: 28.07.2025

Judgment pronounced on: 31.10.2025

+ **ARB A. (COMM) 25/2021, I.A. 7034/2021, I.A. 7035/2021,**
I.A. 11893/2021, I.A. 7036/2021

RCCIVL-RKIPL LLP

.....Appellant

Through: Mr. Dayan Krishnan, Sr.
Advocate with Mr. Siddharth
Khattar, Mr. Divij Andley and Mr.
Sanket Kumar Advs.

versus

RCC Infraventures Ltd & Ors.

....Respondents

Through: Ms. Amrita Panda, Mr.
Ruchir Joshi, Advs.

Ms. Geeta Luthra, Sr. Adv. with Ms.
Shivani Luthra Lohiya, Mr. Nitin
Saluja, Mr. Manas Agrawal, Ms.
Kamakshi Gupta, Ms. Prashansika
Thankur & Ms. Janvi Desai, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

1. The present appeal filed under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 ("*the Act*") has been preferred by the appellant, RCCIVL-RKIPL LLP, assailing the orders dated 25.01.2021 and 08.04.2021 passed by the learned Arbitrator, in



the arbitration proceedings pending between the appellant and the respondent Nos. 1- 5.

FACTUAL BACKGROUND

2. The appellant (Respondent No. 2 in the Arbitration Proceedings) was incorporated as a Limited Liability Partnership on 13.07.2018 for undertaking works as a sub-contractor of Corsan Corviam Construction SA in relation to the project for four-laning of the Haridwar–Nagina Section of National Highway No. 74, from Km 0.00 to Km 71.614 in the State of Uttarakhand and U.P under NHDP Phase IV.
3. The respondent No. 1, RCC Infraventures Ltd., (“*RCCIVL*”) was a partner in the appellant LLP and retired pursuant to a Deed of Reconstitution dated 05.01.2020. Respondent No. 2, RCC Eco-Build Systems Ltd., (“*RKIPL*”) is the sister concern of respondent No. 1. Respondent No. 3 is the Managing Director of respondent No. 1; respondent No. 4 is the Managing Director of respondent No. 2; and respondent No. 5, DMI Finance Pvt. Ltd., is the financier of the appellant and was respondent No. 1 in the arbitration proceedings. Respondent Nos. 1 – 4 were Claimants in the arbitration proceedings.
4. On 05.01.2020, a Memorandum of Understanding (“*MoU*”) was executed between the appellant and the respondents recording their mutual obligations and setting out the mechanism for disbursement of amounts due and payable to vendors, suppliers, and employees. Under the said MoU, the appellant undertook to pay a maximum amount of Rs. 45 crores to the vendors and employees of respondent No. 1, subject to verification of their



dues. A Deed of Reconstitution of the LLP was also executed on the same date, whereby the management and control of the firm were restructured and Respondent No. 1 retired from the Appellant.

5. Disputes subsequently arose between the parties and respondent No. 1 instituted a civil suit, being CS (OS) No. 190 of 2020, before this Court. The said suit was dismissed as withdrawn on 24.07.2020, in view of the existence of an arbitration clause in the MoU. Thereafter, respondent No. 1 filed a petition under Section 9 of the Act, being OMP (I) (COMM.) 249 of 2020. By order dated 02.11.2020, this Court disposed of the petition, appointing an arbitrator granting liberty to the respondent Nos. 1-4 to move an application under Section 17 of the Act before the learned Arbitrator.
6. The respondent Nos. 1 - 4 thereafter filed an application under Section 17 of the Act, seeking, directions restraining the appellant from taking any steps prejudicial to their interest and for release of Rs. 45 crores in their favour towards payment to vendors. In the alternative, the respondent Nos. 1-4 sought directions for remittance of Rs. 19.77 crores, representing the unpaid balance after adjusting amounts allegedly already disbursed by the appellant, as well as for production of documents verifying such payments.
7. The appellant opposed the Section 17 application, contending that the reliefs sought were in the nature of final reliefs and that no verified or admitted amount was payable. It was further



contended that the MoU itself was under dispute and could not form the basis of any interim monetary order.

8. The learned Arbitrator, by order dated 25.01.2021, allowed the Section 17 application in part and directed the appellant to disburse a sum of Rs. 7.5 crores to the vendors of respondent Nos. 1 - 4 by 25.04.2021. The learned Arbitrator observed that such disbursement was necessary to protect the interests of vendors and maintain the business operations pending adjudication of the dispute.
9. On the following day, i.e., 26.01.2021, the respondent Nos. 1 - 4 filed their Statement of Claim before the learned Arbitrator. In a significant departure from their earlier position, respondent Nos. 1-4 themselves challenged the validity of the MoU and the Deed of Reconstitution dated 05.01.2020, asserting that the same were vitiated by coercion, undue influence, and duress. The respondent Nos. 1-4 sought, declarations that (i) the contractual arrangement to the extent executed under undue influence and coercion was non-est; (ii) no rights flowed from the Reconstitution Deed; and (iii) the claimants could not have been divested of their partnership rights in the appellant LLP. In the alternative, the respondent Nos. 1-4 sought restitution and compensation to achieve *restitutio in integrum*. It is pertinent to mention that till filing of the SOC the consistent stand of the respondent Nos. 1-4 had been that the Appellant be directed to adhere to terms of the MOU dated 05.01.2020.



10. Upon filing of the Statement of Claim, the appellant filed an application before the learned Arbitrator seeking review of the order dated 25.01.2021.
11. The learned Arbitrator, by order dated 08.04.2021, dismissed the review application, holding that it had no power to review its own orders. The learned Arbitrator noted, however, that while the respondent Nos. 1-4 had indeed taken a different stand in their Statement of Claim, such conduct could not form the basis for review, as the power to review was not available under the Arbitration and Conciliation Act, 1996.
12. Aggrieved thereby, the appellant filed the present appeal under Section 37(2)(b) of the Act, inter alia contending that the order dated 25.01.2021 was not in aid of arbitration proceedings but amounted to a grant of final relief, and that the learned Arbitrator had erred in directing disbursement of sums relying upon a disputed MoU.
13. When the matter came up before this Court on 01.06.2021, it was observed that since the respondents themselves had challenged the validity of the MoU, an order directing disbursement of funds in furtherance of its terms might not be apposite. Accordingly, this Court stayed the effect and operation of the impugned order dated 25.01.2021. The interim protection has continued by subsequent orders of this Court.
14. The appeal is thus directed against the orders dated 25.01.2021 and 08.04.2021 passed by the learned Arbitrator, challenging the legality and propriety of the interim directions issued under Section 17 of the Act.



ARGUMENTS ON BEHALF OF THE APPELLANT

15. Mr. Dayan Krishnan, learned Senior Counsel appearing for the appellant, has assailed the impugned orders dated 25.01.2021 and 08.04.2021 passed by the learned Arbitrator, primarily on the following grounds:
16. First, it is submitted that the learned Arbitrator erred in granting final relief at the interim stage, effectively executing an Award that has not been passed. Further, interim relief can only be granted in aid of final relief. A plain reading of the Statement of Claim filed by Respondents No. 1 - 4 reveals that they are not seeking enforcement of the MOU or the Reconstitution Deed but, in fact, seek to have the same declared null and void. Hence, the interim directions are inconsistent with the final reliefs sought. Reliance is placed on *Cotton Corporation of India v. United Industrial Bank, 1983 SCC (4) 625*.
17. Second, it is submitted that the learned Arbitrator erred in granting mandatory reliefs under prayers B and C of the Section 17 application, as they effectively direct payment of money. Mandatory injunctions are granted only in exceptional circumstances, which are absent here. The Arbitrator exceeded the scope of granting attachment before judgment by ordering payment despite there being no Award. Neither a prima facie case nor the balance of convenience favours respondents No. 1- 4, who would suffer no irreparable loss if relief is denied, whereas directing payment of disputed sums would seriously prejudice the appellant, particularly given the respondent Nos. 1-4 financial condition. Reliance is placed on *Hammad Ahmed v. Abdul Majeed, (2019) 14 SCC 1*.



18. Third, it is submitted that Respondents No. 1 - 4 have committed fraud upon both the appellant and the learned Arbitrator by seeking contradictory reliefs in their Section 17 application and Statement of Claim, thereby disentitling them to any equitable relief. Further, it is stated that despite acknowledging in its order dated 08.04.2021 that the interim reliefs sought were inconsistent with their pleadings, the learned Arbitrator erroneously declined to recall the earlier order dated 25.01.2021 on the ground of lacking power. It is contended that the Arbitrator possessed inherent authority to recall an order obtained by fraud, as fraud vitiates all proceedings. Reliance is placed on *Lambadi Pedda Bhadru v. Mohd. Ali Hassan, (2003) SCC OnLine AP 621*, and *United India Insurance Co. Ltd. v. Rajender Singh, SLP No. 8479 of 1999*.
19. Fourth, Mr. Krishnan, learned Senior Counsel further contends that the Arbitrator, in its Order dated 08.04.2021, justified the interim directions by referring to the interests of small vendors. However, it is submitted that the small vendors have already been paid, and only a sum of around Rs. 36,00,000 remains due to vendors below Rs. 5,00,000, and Rs. 6,91,316 to vendors between Rs. 5,00,000 and Rs. 10,00,000, which also is subject to verification.
20. Lastly, it is submitted that the personal guarantees furnished by respondents No. 3 and 4 and the corporate guarantee of respondent No. 1 are of no practical value. It is pointed out that respondent No. 1 is already facing insolvency proceedings and respondents No. 3 and 4 do not possess any unencumbered



movable or immovable assets. Moreover, the corporate guarantee is furnished to respondent No. 5 and not to the appellant.

ARGUMENTS ON BEHALF OF THE RESPONDENTS 1- 4

21. Per contra, Ms. Panda, learned counsel for the respondent Nos. 1-4 contends that the present appeal, insofar as it seeks to challenge the learned Arbitrator's Order dated 08.04.2021, is not maintainable under Section 37 of the Act. Section 37 circumscribes the appellate jurisdiction of the Court to specific categories of orders namely, those under Section 16(2) or (3) and Section 17 of the Act. The said order, being a rejection of a review application, does not fall within the ambit of these provisions. Accordingly, the appeal to that extent is liable to be dismissed at the threshold for want of jurisdiction.
22. Without prejudice to the preliminary objection on maintainability, it is argued that even assuming the appeal is maintainable, the scope of judicial intervention under Section 37(2)(b) of the Act is extremely limited. Reliance is placed on the decision in *GLS Foils Products (P) Ltd. v. FWS Turnit Logistic Park, 2023 SCC OnLine Del 3904*.
23. It is further submitted that the learned Arbitrator, by its order dated 25.01.2021, passed a well-reasoned interim order after balancing the equities between the parties. The learned Arbitrator noted that pending arbitration, the interests of vendors particularly small vendors required protection and accordingly directed disbursement of Rs. 7.5 crores (approximately 50% of the outstanding amount) to them.



24. With regard to mischaracterization of pleadings, it is submitted that the appellant's narrative that the respondents gained substantial benefit under Clause 1.3 of the MoU dated 5 January 2020, is wholly misconceived. It is argued that Clause 1.3 merely reflects a commercially prudent understanding between the parties that payments to vendors of the NHAI project would be made out of project proceeds, not from the personal funds of any party. The respondent Nos. 1-4 clarify that this clause does not confer any benefit upon them but simply recognizes that the entity operating the project would be responsible for discharging vendor liabilities from funds generated through project operations.
25. It is submitted that the MoU, including the provisions by which the appellant and respondent No. 5 took over the LLP, was executed under coercion and undue influence, in a manner contrary to the public policy of India. These issues have been specifically pleaded in the respondent Nos. 1-4's Statement of Claim, and the determination of coercion or violation of public policy is a matter of trial, to be decided by the learned Arbitrator based on evidence. The clauses of the MOU which are outcome of coercion, duress need to be struck out.
26. Hence, the respondent Nos. 1-4's conduct in asserting these grounds in their Statement of Claim cannot be viewed as an inconsistent stand but as an assertion of their legal position consistent with the statutory mandate.
27. Ms. Panda further states that the appellant LLP was formed in July 2018 for the said project, with respondent No. 5 acting as the financier. Pursuant to the MoU dated 5 January 2020, the



respondent Nos. 1-4 were removed as partners, and control of the LLP was taken over by Instacon Real Estates Pvt. Ltd. and Mr. Praveen Sethia at the behest of respondent No. 5. It is contended that such takeover, effected under the guise of the MoU, is contrary to the public policy of India.

28. It is urged that the said arrangement now amounts to a lender, taking over the control and management of the borrower, which is impermissible under the established public policy reflected in legislations such as the RDDBFI Act, 1993, SARFAESI Act, 2002, and the Insolvency and Bankruptcy Code, 2016 (“*IBC*”). It is stated that while these enactments safeguard the lender’s financial interests, none permit the lender to usurp management of the borrower. The IBC, in particular, vests such control only in an independent resolution professional under judicial watch.
29. As regards the impugned order dated 25.01.2021, learned Counsel submits that the direction to release Rs. 7.5 crores to the vendors does not confer any benefit upon the respondent Nos. 1-4, as the vendors are operational creditors who must necessarily be paid from project revenues. The payment merely ensures continuity of the NHAI project and protection of third-party interests. Hence, it is submitted that the impugned order, being equitable and consistent with the statutory framework, calls for no interference under Section 37(2)(b) of the Act.
30. Even though not stated in the reply or in the written submissions while arguing Ms. Panda invoked the blue pencil doctrine to state that that MOU and Reconstitution Deed are severable and therefore inconsistent stands are not being taken.

ARGUMENTS ON BEHALF OF THE RESPONDENT NO. 5



31. The submissions advanced on behalf of Respondent No. 5 are *pari materia* with those urged by the Appellant in respect of material contradictions and are, therefore, not being reproduced herein for the sake of brevity.
32. With regard to blue pencil doctrine, Ms. Geeta Luthra, learned Senior Counsel for Respondent No. 5 submits that Clause 1.1.1 of the MOU dated 05.01.2020 expressly contemplates execution of a Reconstitution Deed for recording the induction of new partners and resignation of Respondent No. 1 and Respondent No. 2 from the LLP, along with all necessary filings and compliances before statutory authorities. The execution of the Reconstitution Deed, therefore, constitutes the principal operative act and the very foundation of the MOU, rendering both documents inextricably linked and interdependent.
33. It is further submitted that the Blue Pencil Doctrine, which permits severance only of distinct and non-essential terms, has no application in the present case since no part of the MOU can stand independently of the Reconstitution Deed. The plea of severability is an afterthought, raised merely to overcome earlier contradictory positions, and was never invoked in any prior proceedings, including the earlier civil suit, Section 9 petition, Section 17 application, or the Statement of Claim before the learned Arbitrator.

ANALYSIS AND FINDINGS

34. I have heard the learned counsel for the parties and perused the material on record.

Scope of interference under Section 37(2) of the Act



35. Before dealing with the present case, it is important to set out the scope of interference under Section 37(2) of the Act. Section 37(2) of the Act reads as under:

“37. Appealable orders.—

...

(2) Appeal shall also lie to a court from an order of the arbitral tribunal— (a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or

(b) granting or refusing to grant an interim measure under section 17.”

36. In ***World Window Infrastructure (P) Ltd. v. Central Warehousing Corpn., (2021) 3 HCC (Del) 731***, it was observed by a Coordinate Bench of this Court as under:

*“66. The scope of interference, in appeal, against orders passed by arbitrators on applications under Section 17 of the 1996 Act is limited. This court has already opined in *Dinesh Gupta v. Anand Gupta, Augmont Gold Pvt. Ltd. v. One 97 Communication Ltd. and Sanjay Arora v. Rajan Chadha* that the restraints which apply on the court while examining a challenge to a final award under Section 34 equally apply to a challenge to an interlocutory order under Section 37(ii)(b). In either case, the court has to be alive to the fact that, by its very nature, the 1996 Act frowns upon interference, by courts, with the arbitral process or decisions taken by the arbitrator. This restraint, if anything, operates more strictly at an interlocutory*



stage than at the final stage, as interference with interlocutory orders could interfere with the arbitral process while it is ongoing, which may frustrate, or impede, the arbitral proceedings.

67. Views expressed by arbitrators while deciding applications under Section 17 are interlocutory views. They are not final expressions of opinion on the merits of the case between the parties. They are always subject to modification or review at the stage of final award. They do not, therefore, in most cases, irreparably prejudice either party to the arbitration. Section 17-like Section 9-is intended to be a protective measure, to preserve the sanctity of the arbitral process. The preeminent consideration, which should weigh with the arbitrator while examining a Section 17 application, is the necessity to preserve the arbitral process and ensure that the parties before it are placed on an equitable scale. The interlocutory nature of the order passed under Section 17, therefore, must necessarily inform the court seized with an appeal against such a decision, under Section 37. Additionally, the considerations which apply to Section 34 would also apply to Section 37(ii)(b).”

37. Similarly, in *NHAI v. HK Toll Road (P) Ltd., 2025 SCC OnLine Del 2376*, I had observed as under:

“57. The Appellate Court is not required to substitute its views with the view taken by the Arbitral Tribunal which is a reasonable or a plausible view except where



the discretion is exercised arbitrarily or where the AT has ignored the settled principles of law. In fact, the whole purpose to bring the 1996 Act is to give supremacy to the discretion exercised by the AT. The Appellate Court is not required to interfere in the arbitral orders especially a decision taken is at an interlocutory stage. The Appellate Court is only required to see the whether the AT has adhered to the settled principles of law rather than re-assessing the merits of the AT's reasoning.”

- 38.** In light of the above, interference under Section 37(2)(b) of the Act is only warranted when the order of the Tribunal suffers from perversity or patent illegality; is arbitrary or contrary to law; the Tribunal has exceeded or failed to exercise its jurisdiction; it results in a miscarriage of justice.
- 39.** Having delineated the scope of interference permissible under Section 37 of the Act, I now proceed to examine the rival contentions. At the outset, it is pertinent to note that on the date when the order under Section 17 of the Act was pronounced, the Statement of Claim had not yet been filed. Consequently, the validity of the Section 17 order must be assessed in that context. Thereafter, a review application was moved, which came to be decided on 08.04.2021, wherein the learned Arbitrator observed that it lacked the power to recall or review the earlier order. However, since this Court is now seized of the entire matter under Section 37 of the Act, and the genesis of the dispute stems from the order dated 25.01.2021, it is appropriate to first examine the validity of the said order.



Scope of Section 17 of the Act

40. In *Indian Railway Catering & Tourism Corpn. Ltd. v. Sujata Hotel (P) Ltd.*, 2022 SCC OnLine Del 4478 a coordinate bench of this Court while dealing with scope of Section 17 of the Act held as under:

“21. The aforesaid provision confers powers akin to those vested upon the Court by virtue of Section 9 except that in case of the latter, the Court stands vested with the authority to direct interim measures being taken before, during or for that matter even after the Arbitral proceedings have come to a close and culminated in the making of an award. As would be evident from a reading of Section 17, the interim measures are concerned with the preservation of goods which may form the subject matter of arbitration, securing any amounts which may be in dispute, the detention, preservation or inspection of property, the appointment of a receiver and directing such other interim measures of protection as may appear to the Arbitral Tribunal to be just and convenient.

22. As would be evident from the decisions on which reliance was placed by the claimant itself, the power conferred by Section 17 upon the Arbitral Tribunal is essentially akin to the powers vesting in a court to grant an interim prohibitory or mandatory injunction. Section 17 in any case cannot be construed as either conferring a power on the Arbitral Tribunal to either render an interim award or to grant one of the final



reliefs which may be sought by a claimant. One of the principal considerations which courts and tribunals weigh in mind while considering the question of grant of interim protection, is to be wary of passing orders which amount to the grant of final reliefs that may be claimed by parties. However, and as would be manifest from the aforesaid recital of facts as well as the direction which was ultimately framed by the Arbitral Tribunal in the present case, it is exactly that basic and underlying principle governing the grant of interim injunction which has been evidently ignored and violated by the Arbitral Tribunal.”

(emphasis added)

41. Having set out the scope of Section 17 of the Act, I shall now deal with the contentions of the appellant.
 - A. Whether the ingredients of granting interim mandatory injunction were met?
 - B. Whether in light of contradictory stand taken by the Respondents 1-4, the interim relief granted by the learned Arbitrator can be sustained?

A. Ingredients of Mandatory Injunction not met

42. The foremost issue that arises for consideration is whether the interim direction issued by the learned Arbitrator on 25.01.2021, directing disbursement of Rs. 7.5 crores to the vendors, is in the nature of a mandatory injunction without fulfilling the trinity test and therefore beyond the permissible ambit of Section 17 of the Act.



43. The legislative purpose of Section 17, post the 2015 Amendment, is to empower Arbitral Tribunals to grant interim measures of protection which preserve the subject matter of arbitration or secure the efficacy of the arbitral process. Section 17(1)(ii)(e) of the Act authorizes the Tribunal to issue “such other interim measure of protection as may appear to be just and convenient.” While this confers wide discretion, such discretion must be exercised to preserve rights pending arbitration not to adjudicate or enforce the substantive relief itself. The measure must be towards preserving the subject matter of arbitral dispute.
44. In *Hammad Ahmed v. Abdul Majeed*, (*supra*) it was held as under:

“58. The ad interim mandatory injunction, is to be granted not at the asking but on strong circumstance so that to protect the rights and interest of the parties so as not to frustrate their rights regarding mandatory injunction. In Deoraj vs. State of Maharashtra and Others, this Court held that Court would grant such an interim relief only if it is satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the Court would not be able to vindicate the cause of justice. Therefore, in appropriate case, ad-interim injunction in mandatory form can be granted...”

(emphasis added)

45. Similarly, in *Dorab Cawasji Warden v. Coomi Sorab Warden* (1990) 2 SCC 117 the Court laid down the essential conditions



for the grant of mandatory injunction. The relevant portion reads as under:

“16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.



17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion.”

(emphasis added)

46. Thus, the position that emerges is that for grant of mandatory injunction when (i) a strong prima facie case (of a higher degree than required for prohibitory injunction) exists, (ii) balance of convenience favouring the applicant, and (iii) irreparable injury would result from denial.
47. Further, the Appellant has also contended the direction of payment of money is 2 steps ahead of an order of attachment. Therefore, it is apposite to deal with the law on granting an order of attachment prior to a judgment.
48. In *Tahal Consulting Engineers India (P) Ltd. v. Promax Power Ltd.*, 2023 SCC OnLine Del 2069 while dealing with the power of attachment the Court held as under:

“39. Turning then to the powers of the Arbitral Tribunal to pass an order of attachment before the Award is rendered or framing directions for securitising the claim that may be laid before it, the



Court notes that it is now well settled that while the Arbitral Tribunal may not be strictly bound by the principles which inform Order XXXVIII Rule 5 of the Code, it could adopt principles analogous to those comprised in that provision. Courts have repeatedly held that while the power to attach before Award may not have been specifically set out in Sections 9 and 17 of the Act, such an order could be made if circumstances so warrant. Indubitably, while the Arbitral Tribunal or for that matter the Court under Section 9 may not be strictly bound by the rigidity of the discretion vested upon a court by the Code, at the same time when it does choose to exercise that power it must do so guided by the principles accepted as relevant and germane for that power being wielded.

40. The power of attachment before judgment has always been understood and described to be one which is harsh and severe in character. That power, as has been repeatedly held, is not liable to be invoked merely upon a claimant being found upon a prima facie evaluation to have a just or valid claim. Apart from establishing the existence of a strong prima facie case, it would also be obligatory upon the claimant to establish that the defendant before the Tribunal is indulging in activities aimed at dissipation of assets or seeking to remove assets with an intent to defeat the Award that may ultimately be rendered. It has been pertinently observed that the power of attachment



before judgment is not liable to be exercised to secure a debt which is yet to be established before the Tribunal. The power of attachment before judgment would thus be liable to be exercised where the Tribunal is convinced that the claimant has made out a strong prima facie case, is likely to ultimately succeed and that in case emergent steps were not to be taken, the respondent would be able to remove its assets from the control of the Tribunal and thus deny the claimant the fruits of the award that may ultimately be pronounced. It is the aforementioned twin tests which must be satisfied before such an order being justifiably made.

41. The Court deems it necessary to underscore the fact that the utilisation of assets in the ordinary course of business, deployment of resources in connection with a running business or operating losses would not be sufficient to invoke that power. The power to attach even before judgment is rendered would have to be founded upon material which would establish or indicate the party taking steps to disperse or dispose of its assets with an intent to defeat any judgment that may be ultimately passed. This could be exhibited by transfers and disposal of assets in bad faith and with an intent to deceive or even where the position of a party is found to be so financially precarious that emergency measures are warranted.”

(emphasis added)



49. Further even in *Vivek Jain v. Prepladder (P) Ltd., 2023 SCC OnLine Del 6370*, the Court while dealing with the deposit of amount which was alleged to be admitted, as in the present case, held as under:

“31. The recordal of submissions hereinbefore would evidence that the petitioner has firstly sought the framing of a direction requiring the respondent to deposit the amount which it asserts to be undisputed. In the course of submissions, however, Mr. Mehta had further urged the Court to frame a positive direction requiring the respondent to disburse the amounts which are claimed to be admitted. The Court would thus be required to consider the submissions aforementioned bearing in mind the dual prayers which are addressed on behalf of the petitioner.

*32. Undisputedly, the power of a Court under Section 9 of the Act to frame orders for attachment or require deposits being made have drawn sustenance broadly from the principles which have been enunciated by Courts while dealing with the scope and extent of Order XXXVIII Rule 5 of the Code. The aforesaid position stands reiterated by the Supreme Court in *Essar House*. *Essar House*, while dealing with the aforesaid subject had held that an order securing the amount in dispute could be made where the petitioner is found to have a good prima facie case, the balance of convenience operates in its favour and the petitioner has approached the concerned court with reasonable*



dispatch. It was pertinently observed that while considering the framing of a direction for securing the amount in dispute, the Section 9 court would not withhold relief on the mere technicality of absence of averments or grounds akin to those which must be made when a prayer for attachment before judgment in terms of Order XXXVIII Rule 5 of the Code comes to be made. Essar House further extends the scope of the Section 9 power by observing that the petitioner need not prove actual attempts to deal with, remove or dispose of property. The Supreme Court observed that even a strong possibility of diminution of assets would suffice.

...

41. These and other issues which are raised by the respondent clearly go beyond the realm of an admitted or undisputed position. More fundamentally, the petitioner has woefully failed to either aver or establish that the respondent is likely to dissipate its assets or is in the process of removing them so as to avoid any liability that may ultimately come to be raised upon it once an Award is rendered. The Court would have been obliged to require the respondent to affect such a deposit provided it had established that factors akin to those which inform the exercise of a power to attach before judgment existed. Mr. Krishnan, clearly appears to be correct in his submission when he contended that no such foundation has been laid by the petitioner.



43... Even the residual clause of Section 9 of the Act and which empowers a Court to frame such interim measure of protection as may be considered just and convenient cannot be read as justifying the framing of an order for attachment before judgment even though the foundational grounds for the issuance of such directions be found to be totally absent. The Court thus finds no justification to require the respondent to deposit or secure the amount which is claimed by the petitioner.”

- 50.** A perusal of the above judgments shows that even for framing an order of attachment before a judgment is rendered it is important that the Conditions of Order 38 Rule 5 of CPC are satisfied and additionally there is a strong possibility of diminution of assets.
- 51.** The Arbitrator was cognizant of the above principles as evident from the issues framed in paragraph 19. The relevant portion reads as under:

“19...I have also carefully considered the contentions of both the parties and material on record and gone through various documents and the judgments relied upon by both sides. The following points arise for consideration: –

(i) Whether the Applicants–Claimants have proved prima facie case?

(ii) Whether the Applicants–Claimants are entitled to relief of interim directions for deposit of amount of Rs. 45 crores in the alternative for deposit of Rs.



19,77,87,783/- and other relief as prayed for in the application filed under Section 17 of the Act?

20. Section 17 of the Act as amended, confers wider powers on the Arbitral Tribunal than before the amendment. After the 2015 Amendment, the power of the Arbitral Tribunal is akin or similar to power of the court under Section 9 of the Act. After the 2015 Amendment to the Act, the interim order granted by the Arbitral Tribunal under Section 17 shall be deemed to be an order of the court for all purposes and shall be enforceable under the Code of Civil Procedure in the same manner as if it were an order of the court. But to grant interim direction directing the Respondents to deposit the money Rs. 45.00 crores or in the alternative to deposit Rs. 19.77 crores, the Claimants are to prove prima facie case. The Claimant further seeks direction to Respondents that they have implemented the terms of Understanding dated 05.01.2020 specifically Clause 1.1.8, 1.2 and 1.3 etc. The prayer sought for the Claimants in the application filed under Section 17 i.e., direction to deposit money and other reliefs are almost like final order. Hence, it is to be considered whether Claimants have proved prima facie case and balance of convenience justifying grant of interim direction to Respondents to deposit the amount and other directions of Rs. 45.00 crores or in the alternative to deposit a sum of Rs. 19,77,87,783/-.

...



47. As pointed out earlier, Respondent No. 2 has already made payments of Rs. 29.91 crores to Vendors which is inclusive of the monies paid to the employees and monies paid to Vendors not included in the Schedule 3 and monies paid outside the scope of the MOU. Therefore, it cannot be said that Respondent No. 2 had no inclination to make the payment. Claimants have not made out a prima facie case to pass the interim order directing Respondent No. 2 to deposit Rs. 45.00 Crores.

...

53. The Claimants are having liquidity crunch. Additionally, the Claimants are facing number of proceedings for recovery of the amount and also insolvency proceedings and number of proceedings under Section 138 of NI Act. As per Clause 1.3.2 of the MoU the amount is payable to the vendors mentioned in Schedule 3 of the MoU after verification. If the amount is directed to be paid to the Claimants there is every possibility that the amounts may be spent or diverted for purposes other than the purpose mentioned in Clause 1.3.2 of the MoU. It is an admitted position that out of Rs. 49,32,45,136 (total amount as per Schedule 3) the Respondent No. 2 had to pay maximum Rs. 45.00 Crores which is inclusive of the amounts payable to the Vendors and Rs. 2,69,54,238/- due to the Employees as per Schedule 3 the MoU. Out of this, the Respondent No. 2 has paid



Rs. 29.91 crores has been paid to the vendors which is inclusive of the salaries paid to the employees. The Claimants have failed to show as to how much money it has paid to the Vendors after 05.01.2020 over and above the amount paid by Respondent No. 2. It is not known whether any money has been paid by Claimants to the Vendors after the MoU dated 05.01.2020.

54. Further, this Tribunal is considering the Application filed under Section 17 of the Act. In terms of Clause 1.3.2 of the MoU and when the amounts are payable to the vendors mentioned in Schedule 3, this Tribunal finds no exceptional circumstances to direct payment of the amount to the Claimants. Any such direction will be in deviation from Clause 1.3.2 of the MoU which the parties have agreed upon. Hence, the prayer of the Claimant to direct the payment of Rs. 45.00 crores or the alternative prayer to deposit Rs. 19.77 crores in the bank accounts of Claimant No. 1 - RCCIVL cannot be ordered. The prayer of the Claimant made in (b) and (c) is declined.

...

58... Considering the tenor of Clause 1.3.2 of the MOU, it is clear that the monies are payable to the vendors listed in Schedule 3 of the MOU. A balance has to be struck between the claims made by the parties and the interest of the vendors. The Tribunal is of the view that neither the Claimants can seek for direction



to deposit the money to their Bank Account nor can the Respondent No.2 retain the amount. In terms of Clause 1.3.2 of the MOU and as per the terms of settlement between the parties, the amount is payable to the vendors listed in Schedule 3 of the MOU. There are about 263 vendors stated in schedule 3 of the MOU and the amount payable to them varies. For many of the vendors, amount is ranging from thousands to few lakhs. As per the MoU since the amount is payable to the vendors, the interest of the vendors is to be protected which will only be in consonance with the terms of the MOU. Therefore, this Tribunal is of the view that pending Arbitration Proceedings the vendors are to be paid the money due to them and vendors interest is to be protected. Considering the interest of the vendors, pending Arbitration proceedings, Respondent No.2—RCCIVL-RKIVL-LLP is directed to pay further Rs.7.50 crore within a period of two weeks from today for disbursement to the vendors. The Claimants are directed to furnish list of vendors enumerated in Schedule 3 of the MOU to whom the money is payable.”

(emphasis added)

52. A cumulative reading of the above findings makes it abundantly clear that the learned Tribunal itself recorded the absence of a *prima facie case* in favour of respondent Nos. 1- 4. It found that the Appellant had already disbursed substantial sums amounting to ₹29.91 crores towards vendor and employee payments,



including amounts beyond those listed in Schedule 3 of the MoU. The Tribunal further noted that respondent Nos. 1-4 were facing severe liquidity constraints, were subject to recovery and insolvency proceedings, and had not demonstrated having made any further vendor payments post 05.01.2020. Despite these categorical findings negating both the *prima facie case* and financial capability of the Respondent Nos. 1-4, the learned Arbitrator inexplicably proceeded to direct the Appellant to disburse ₹7.5 crores to the vendors.

- 53.** This direction fails to satisfy the settled trinity test governing the grant of interim mandatory injunctions. Firstly, there was no *strong prima facie case* or presence of any exceptional situation as held in paragraphs 47 and 54, the Tribunal's own reasoning shows the respondent Nos. 1-4 claims to be disputed and unproven. Secondly, the *balance of convenience* was squarely in favour of the Appellant, which had already made significant payments and faced the risk of irretrievable loss if compelled to disburse further funds which were subject to verification and were conditional in nature as evident from paragraph 56 of the Order. Thirdly, there was no demonstration of *irreparable injury* to the respondent Nos. 1-4. Any dues to vendors, if ultimately found payable, are compensable in monetary terms upon final adjudication. On the contrary, the order inflicted irreparable prejudice on the Appellant by mandating payment of sums that are yet to be adjudicated as due.
- 54.** The impugned direction thus amounts to a clear case of perversity and being contrary to settled position of law. Rather than preserving the subject matter of the arbitration, the Tribunal



effectively granted substantive relief enforcing a disputed contractual obligation under the MoU dated 05.01.2020 prior to any determination of its validity or enforceability. Such an order not only alters the status quo but compels a party to perform an affirmative act which is yet to be adjudicated. This runs contrary to the legislative intent of Section 17 of the Act, which is confined to protective measures, and goes against the well-settled principles enunciated in *Hammad Ahmed (supra)* and *Dorab Cawasji (supra)*.

55. By directing payment of money that is yet to be adjudicated, the Tribunal travelled beyond the limits of its interim jurisdiction and rendered an order which is perverse and unsustainable in law.
56. In *Evergreen Land Mark (P) Ltd. v. John Tinson & Co. (P) Ltd.*, (2022) 7 SCC 757, the Hon'ble Supreme Court held that the Arbitral Tribunal could not have directed deposit of rental amounts by way of interim measure under Section 17 when liability itself was disputed and subject to adjudication. It was observed that "no order could have been passed by the Tribunal by way of interim measure in a case where there is a serious dispute with respect to liability, which can only be adjudicated after evidence."
57. In *Bharat Heavy Electricals Ltd. v. Dpc Engineering Project Pvt. Ltd.* 2011 SCC Online Del 4378, the Court highlighted the issue whether an injunction which effectively directs payment can be issued by the Court although disputes concerning that issue are pending, the question which arises in the present dispute as well in the context of Tribunal. While the Court did not deal



with this issue at length, it gave some key observation which are relevant to the present case and read as under:

“14. ... There are various reasons why possibly such an injunction may not be permissible. The first reason is that in order to claim an amount if a person is allowed to seek an injunction instead of filing a suit for recovery then no suit for recovery need ever have to be filed. Every suit of recovery will be filed as a suit for injunction directing payment. The effect will be that no ad valorem court fees will be required to be paid and the relief of injunction will suffice irrespective of the monetary value of the relief claimed. Such a relief of injunction is also impermissible by virtue of Section 41(h) of Specific Relief Act,1963 which provides that when equally efficacious relief can be obtained by any other usual mode, the relief of injunction cannot be granted. It is trite that when no final injunction can be granted surely an interim injunction also cannot be granted. What cannot be finally claimed cannot also be claimed by an interim order. What cannot be directly done cannot indirectly be got done. I may note that whereas an entitlement of a money which is decreed in a suit for recovery of money will be by a final judgment/adjudication, if by an interim injunction amounts are directed to be paid, then the effect will be that an interim order for payment of moneys can be passed in a suit for recovery of money, although there are vexed questions of facts which can only be decided



after trial at the stage of final judgment in a suit. To claim payment by an interim injunction would be that there is an entitlement to recovery of monies although there is no final decree of recovery of money merely on the ground that a prima facie case exists for recovery of money. This possibly may not be legally permissible. Further another consequence is that an interim injunction effectively directing payment will have an effect similar to recovery of money in execution proceedings although there is no final money decree capable of execution.

...

Finally, I may add that the spirit of the decision in M/s. H.M. Kamaluddin Ansari & Co. (supra) was basically to prevent an injunction, effect of which is to allow payment of money by interim orders. This spirit and ratio of the Supreme Court in the case of M/s. H.M. Kamaluddin Ansari & Co. (supra) in no manner can be said to have been whittled down and diluted by the wide language Section 9 of the new Arbitration Act, 1996 inasmuch so far as the final relief of injunction is concerned, the Courts are still governed by the provision of Section 41(h) of the Specific Relief Act, 1963 whereby there cannot be granted injunction when a suit for recovery of moneys has to be filed. Maybe in an appropriate case, these aspects will be examined.”



58. I am in agreement with the observations of the Court in *Bharat Heavy Electricals Ltd., (supra)* that permitting payment or deposit orders where liability is seriously disputed would amount to pre-judging the claim, and would, in effect, convert interim proceedings into execution of a non-existent money decree. The law does not allow by an interim injunction what can only be achieved after final adjudication. Section 41(h) of the Specific Relief Act, 1963, further reinforces this bar by prohibiting injunctive relief where an equally efficacious remedy such as a claim for recovery exists.
59. The finding of the Order dated 25.01.2021 clearly shows that the liability with respect to payment under Clause 1.3.2 and Schedule 3 of MOU is yet to be adjudicated and the issue will be decided after the parties have led evidence. The relevant findings read as under:

“37. The Counsel for the Claimant, however, admits that there have been some omissions in the list of the amounts payable to the vendors and pleads that the same is attributable to the large number of outstanding liabilities that had to be compiled. Detailed arguments were advanced on the alleged discrepancies / inconsistencies on the amounts mentioned in the ARB A. (COMM) 25/2021 Page 33 of 73 Schedule 3 of the MOU, which have been elaborated in detail. The alleged discrepancies/differences in the list of vendors and the amount payable to them could be gone into only at the stage when the matter is heard at the final hearing and arguments are advanced based on the



evidence and materials. Parties may have to reconcile the accounts with reference to vouchers/invoices raised by the Vendors and this contentious point can be considered only after such reconciliation and at the stage of final hearing.

...

40. Clause 1.3.2 was incorporated in the MOU to safeguard the interest of the Respondents as a check and balance from siphoning off the funds from the project in question by the Claimants. Respondents have admitted that maximum Rs.45.00 crore had to be paid as per the MOU by the Respondent No.2 to the Claimant No.1; but the same was subject to verification as is apparent from Clause 1.3.2 of the MOU. It is seen that prima-facie, most of the payments were made to the vendors with the consent/ request of the Claimants. At the same time, it is to be pointed out that Rs.1.90 crore has been paid to the vendors not included in Schedule 3 of the MOU (Annexure R-8). It is also stated that extra payment of Rs.1.17 crores has been paid to the vendor mentioned in the MOU. That is a total of about Rs.3.07 crore has been paid by Respondent No.2:- (i) as extra payment to the vendors and; (ii) to the parties who are not mentioned in Schedule 3 of the MOU or outside the scope of Schedule 3 of the MOU. Whether Respondent No.2 are right or justified in making such extra payments to the vendors mentioned in the MOU and payments to



Vendors not included in the Schedule 3 and payments outside the scope of MOU like Insurance Company and others could be gone into only at the time of final hearing.”

(emphasis added)

60. Further even the Order dated 08.04.2021 *vide* which the Arbitrator rejected review states that the Respondent Nos. 1-4 have taken a complete U-turn from the case which was pleaded at Section 17 stage and the validity of their claim could only be gone at the stage of final hearing.
61. Despite the above findings, the Tribunal proceeded to direct the appellant to disburse Rs. 7.5 crores, purportedly “to protect the interest of vendors.” This approach is legally untenable. Once the learned Arbitrator acknowledged that verification and reconciliation of payments remained disputed, any monetary direction founded on the same MoU amounted to granting substantive relief at an interim stage. In the case of *Tahal Consulting (supra)* the Court clearly held that commercial hardship is not a ground for granting attachment of property.
62. Therefore, commercial requirement cannot be a ground to direct payment of money, verification of which is yet to be done and other allied issues such as over payment or payment to vendors outside Schedule C are to be adjudicated at the final stage, especially when the ingredients of Order 38 Rule 5 of CPC are not met.
63. The reliance placed by respondent Nos. 1 - 4 on the judgment of *Essar House (P) Ltd. v. Arcellor Mittal Nippon Steel (India)*



Ltd., (2022) 20 SCC 178, is wholly misplaced. The said judgment itself categorically observes as under:

“49. If a strong prima facie case is made out and the balance of convenience is in favour of interim relief being granted, the Court exercising power under Section 9 of the Arbitration Act should not withhold relief on the mere technicality of absence of averments incorporating the grounds for attachment before judgment under Order 38 Rule 5 CPC.”

64. It is thus evident that even *Essar House (supra)* emphasizes that the grant of interim protection under Section 9 is contingent upon the existence of a strong prima facie case and the balance of convenience being in favour of the applicant which is missing in the present case.
65. Even reliance on *Supertech Ltd. v. B.E. Billimoria & Co. Ltd.*, (2021) 2 HCC (Del) 231 to state that Arbitrator can pass a mandatory injunction is misplaced as Billimoria had fulfilled the trinity test for granting mandatory injunction. It is a settled law that Arbitrator can grant mandatory injunction subject to the trinity test as explained above, which is not fulfilled in the present case.
66. Similarly, reliance placed on *National Shipping Company of Saudi Arabia v. Sentrans Industries Limited*, 2004 SCC OnLine Bom 25, is equally misconceived. The said judgment clearly holds as follows:

“10. ...While dealing with an application seeking a direction to the other party to deposit the security of the amount in dispute in arbitration, the Court has to



keep in mind the drastic nature of such an order. Unless a clear case is made out not only on the merits of the claim but also on the aspect that denial of such an order would result in grave injustice to the party seeking protection, such relief cannot be granted. The obstructive conduct of the opposite party may be a relevant consideration for the Court while exercising powers under Section 9(ii)(b). The applicant must ordinarily place some material before the Court, besides the merits of the claim, to demonstrate that such an order is eminently needed as there is a likelihood or attempt to defeat the award, though the provisions of Order 38 Rule 5 CPC need not be strictly satisfied.”

67. The aforesaid judgment also states that an order directing deposit or securing of money is drastic in nature and should be granted only upon the applicant establishing a clear and compelling case on merits, coupled with a real apprehension that the award may otherwise be rendered infructuous. In the present case, the issue pertaining to payments to vendors is pending adjudication and necessarily requires adducing of evidence. Therefore, no such *prima facie case* exists warranting the exercise of discretionary relief.
68. Likewise, reliance on *Jagdish Ahuja v. Cupino Ltd., 2020 SCC OnLine Bom 849*, by respondent Nos. 1 - 4 is also misplaced. The said judgment itself states as under:

“6...As held by our Courts, the scope of Section 9 of the Act is very broad; the Court has discretion to grant



a wide range of interim measures of protection ‘as may appear to the Court to be just and convenient’, though such discretion must be exercised judiciously and not arbitrarily. The Court is, no doubt, guided by the principles which civil courts ordinarily employ for considering interim relief, particularly Order 39 Rules 1 and 2 and Order 38 Rule 5; however, the Court is not unduly bound by their texts.”

69. The above observation, far from supporting the case of respondent Nos. 1 - 4, reiterates that the discretion vested in the Court under Section 9 of the Act is to be guided by the principles of Order 38 Rule 5 of CPC and Order 39 rule 1 and 2 CPC. Both the ingredients are missing in the present case.
70. Accordingly, the Arbitrator’s direction for disbursal of Rs. 7.5 crores, in the absence of any material showing that the appellant was dissipating assets or acting with intent to defeat an award, is contrary to law and without jurisdiction. The measure does not preserve the subject matter of arbitration; instead, it adjudicates liability prematurely, thereby transgressing the permissible limits of Section 17 of the Act.
71. Thus, even before the contradictory stand was taken by the respondent Nos. 1-4, the order dated 25.01.2021 cannot be sustained as explained above. However, since through SOC the Respondent Nos. 1-4 have taken a different stand it becomes imperative to deal with it as interim relief has to be in aid of final relief.

B. Effect of Contradictory Stand and Inconsistent Pleadings



72. The second limb of challenge concerns the conduct of respondent Nos. 1- 4 in taking inconsistent and mutually destructive pleas before the learned Arbitral Tribunal.
73. The record reveals that in their Section 17 application, the respondent Nos. 1-4 invoked and relied upon the MoU dated 05.01.2020 as the source of their rights, seeking directions for disbursal of funds thereunder.
74. The prayer of the Section 17 application reads as under:

“a) Direct the Respondents to not take any further steps without prior leave of this Tribunal which would have the potential to precipitate the controversy between the parties;

b) Direct the Respondents, to forthwith remit a sum of Rs. 45 Crores to Claimants at the Bank A/c bearing No. 02808470000092 in the name of RCC Infraventures Ltd., maintained with HDFC Bank, First India Palace branch, Gurgaon;

c) In the alternative assuming without admitting that the Respondents have paid Rs. 25,22,12,217/- to the vendors, direct the Respondents to forthwith remit a sum of Rs. 19,77,87,783/- to Claimants at the Bank A/c bearing No. 02808470000092 in the name of RCC Infraventures Ltd., maintained with HDFC Bank, First India Palace branch, Gurgaon;

d) In the alternative assuming without admitting that the Respondents have paid Rs. 25,22,12,217/- to the



vendors, direct the Respondents to produce such documents from the vendors as they may have in their possession to satisfy this Hon'ble Tribunal that dues / claims of vendors / sub-contractors /suppliers already stand extinguished by way of a full and final settlement to the extent claimed in their email dated October 23, 2020;

e) Direct the Respondents to produce such material as would satisfy this Hon'ble Tribunal that they have fully implemented the terms of the Memorandum of Understanding dated January 5, 2020, specifically Clauses 1.1.8, 1.2 and 1.3 thereof;

... ”

(emphasis added)

75. Even the averments in the section 17 application show that the Respondent Nos. 1- 4 were essentially seeking performance of the MOU as evident from paragraph 22 which has been reproduced below.

“22. That the method and modality of payments being made to vendors / sub-contractors / suppliers specified in Schedule 3 had been stipulated under Clause 1.3 of the MoU precisely to avoid a mischief like this. Since vendors had contractual relations with Claimant No. 1 Company, parties to the MoU had agreed that payments to vendors would be made by Claimant No. 1 itself and the said monies would be extended by the



Respondents to Claimant No. 1 with a cap of Rs. 45 crores towards vendor payments, upon retirement of Claimant No. 1 from the partnership of the LLP and induction of the new partners into the LLP. However, after Claimants fulfilled their obligations and retired from the LLP handing over the LLP to the newly inducted partners, the Respondents herein failed to discharge any of their obligations under the MoU.”

(emphasis added)

76. However, immediately thereafter, in the Statement of Claim filed on 26.01.2021, the respondent Nos. 1-4 took a complete U turn and challenged the same MoU and the Deed of Reconstitution as void and inoperative on grounds of coercion, undue influence, and duress. The relevant portion reads as under:

“a) Declare that the contractual arrangement between the parties to the extent is the outcome of undue influence, coercion and duress, is non-est including without limitation a declaration that Claimants could not have been divested as partner in the Respondent No. 2 LLP;

b) Declare that Claimants could not have been divested of the Respondent No. 2 LLP and the arrangement in which it has been done, is contrary to law and public policy;



c) Declare that no rights flow to any party from the Reconstitution Deed purported to have been executed on January 5, 2020;

...”

(Emphasis added)

77. Even in the SOC it has been stated that the MoU was executed under financial duress after a series of prior contracts, as respondent Nos. 1-4 faced fund delays caused by respondent No. 5. It was effectively imposed by respondent No. 5, who allegedly misused its financial dominance to force inequitable terms, pressuring respondent Nos. 1-4 to sign despite their objections. The relevant paragraphs read as under:

“105. That in the meanwhile Claimants received a copy of the Reconstitution Deed and the Escrow Agreement from the consultants of the Respondent No. 1 as part of documents to be executed by Claimants in order to obtain sanction for additional funds as stated hereinabove from the Respondent No. 1. Upon perusal of the draft of the Reconstitution Deed sent to Claimants they expressed their surprise. The Reconstitution Deed contained terms which Claimants in their vast experience with taking finance from banks and non-banking entities over 35 years, had never witnessed. The Reconstitution Deed mandated retirement of the partners of the Respondent No. 2 LLP giving up all their rights to the partnership and



consequently giving up all their rights and claims arising out of the NHAI project to the new partners. This is a not just a one-sided onerous clause, rather it is a one of a kind clause which is usually not encountered while negotiating a finance deal. There are several other clauses in the Reconstitution Deed which any prudent borrower could not have accepted, however Claimants were compelled to accept even after expressly objecting to the same since they were in dire need of funds to work the NHAI project and to regularise the other projects that Claimants were executing which had also been adversely affected due to the acts and / or omissions of the Respondent No. 1.

...

140. That the MoU was therefore for all practical purposes the outcome of the sticky wicket that the Respondent No. 1 appeared to have itself not foreseen which was wholly and solely attributable to the delays in disbursement of funds that was otherwise receivable to the LLP under the Facility Agreements at a much earlier date.

...

168. That within a few days of the induction of Mr. Praveen Sethia and Mrs. Sunita Sethia the Respondent No. 1 contacted Claimants to pressurise them to execute the MoU forthwith...”



78. The appellant contends, and rightly so, that the respondent Nos. 1-4 cannot be permitted to both approbate and reprobate, affirming the contract to obtain interim benefit while simultaneously repudiating it on merits. Such conduct, it is argued, disentitles them to any equitable relief. Further, the appellant submits that interim relief must be in aid of and subservient to the final relief; hence, where the final relief is inconsistent with the interim prayer, the grant of interim measures becomes inherently unsustainable.

79. In *Cotton Corpn. of India Ltd. (supra)*, the Hon'ble Supreme Court held as under:

“10... It is indisputable that temporary injunction is granted during the pendency of the proceeding so that while granting final relief the court is not faced with a situation that the relief becomes infructuous or that during the pendency of the proceeding an unfair advantage is not taken by the party in default or against whom temporary injunction is sought. But power to grant temporary injunction was conferred in aid or as auxiliary to the final relief that may be granted. If the final relief cannot be granted in terms as prayed for, temporary relief in the same terms can hardly if ever be granted. In State of Orissa v. Madan Gopal Rungta [1951 SCC 1024 : AIR 1952 SC 12 : 1952 SCR 28 : 1951 SCJ 764] a Constitution Bench of this Court clearly spelt out the contours within which interim relief can be granted. The Court said that ‘an interim relief can be granted only in aid of, and as



ancillary to, the main relief which may be available to the party on final determination of his rights in a suit or proceeding'. If this be the purpose to achieve which power to grant temporary relief is conferred, it is inconceivable that where the final relief cannot be granted in the terms sought for because the statute bars granting such a relief ipso facto the temporary relief of the same nature cannot be granted...

...The interim relief can obviously be not granted also because the object behind granting interim relief is to maintain status quo ante so that the final relief can be appropriately moulded without the party's position being altered during the pendency of the proceedings."

(Emphasis added)

- 80.** A perusal of the above judgement makes it abundantly clear that the purpose of interim measure is to maintain the *status quo* and to safeguard the subject matter of arbitration from frustration. When a party seeks an interim order based on a contract it subsequently challenges, the relief ceases to be in aid of the final relief, it becomes contradictory to it.
- 81.** In the present case, the interim order directing disbursement of Rs. 7.5 crores was premised upon the MoU dated 05.01.2020. Once the respondent Nos. 1-4 themselves challenged the validity of that MoU in their Statement of Claim, the very foundation of the interim order now stands eroded.
- 82.** The doctrine of approbate and reprobate forbids a party from blowing hot and cold in the same breath applies with equal force to arbitral proceedings.



83. In *Bhau Ram v. Baijnath Singh, 1961 SCC OnLine SC 292*, the Court held as under:

*“7...The phrase "approbate and reprobate" is borrowed from Scotch Law where it is used to express the principle embodied in the English doctrine of election, namely, that no party can accept and reject the same instrument (per Scrutton, L. J., in *Verschures Creameries v. Hull and Netherlands Steamship, Co.*,(4). The House of Lords further pointed out in *Lissenden v. C. A. V. Bosch, Ltd.* (5) that the equitable doctrine of election applies only when an interest is conferred as an act of bounty by some instrument...”*

84. These principles apply squarely here, where Respondents Nos. 1-4 invoked the MoU to obtain interim relief and, having secured a favourable direction, immediately repudiated the same document in the main claim. The conduct of the respondents thus strikes at the root of the arbitral process. The learned Arbitrator’s Order dated 25.01.2021 was premised upon the existence and enforceability of the MoU. When that very document was impugned the next day, the factual and legal foundation of the interim order collapsed.

85. The respondent Nos. 1-4 contradictory stance renders the interim relief incongruent with the final relief. It is a settled principle that an interim measure must be *in aid of* the final relief and not inconsistent with it. When the respondent Nos. 1-4 final claim is for a declaration that the MoU is void and unenforceable, the interim relief directing performance under that same MoU cannot be said to aid the final relief; it is, in fact, antithetical to it. The



continuation of such an order would render the final adjudication otiose and create an anomalous situation where the learned Arbitrator enforces a contract at the interim stage while adjudicating its invalidity at the final stage.

86. With respect to Ms. Panda's argument that certain part of the MOU is severable under the blue pencil doctrine, I am of the view that the same shall be decided by the learned Arbitrator during the course of the proceedings as the same pertains to the merits of the matter which this Court under Section 37 of the Act cannot entertain.
87. In view of the above authorities, I additionally find that the respondent Nos. 1-4's inconsistent pleadings fatally undermine the interim order dated 25.01.2021. The impugned order, therefore, cannot be sustained.
88. At this juncture, it is pertinent to note that since the order dated 08.04.2021 arises from the order dated 25.01.2021, and as the latter has been set aside, this Court need not examine the merits of the order dated 08.04.2021.

CONCLUSION

89. I am of the view that the Order dated 25.01.2021 is perverse and contrary to law, warranting interference under Section 37(2)(b) of the Act. Consequently, the appeal succeeds, and the order dated 25.01.2021 is set aside. Since the order dated 08.04.2021 merely dismisses the review application and reiterates the order of 25.01.2021, which has now been set aside by this Court, the order dated 08.04.2021 is also set aside.



90. The parties shall be at liberty to urge all their respective claims and counterclaims before the learned Arbitrator in accordance with law.
91. Pending applications, if any, also stand disposed of.
92. The short note on behalf of respondent No. 5 is taken on record.

JASMEET SINGH, J

OCTOBER 31 , 2025/DE