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

Date of decision: 24th FEBRUARY, 2026

IN THE MATTER OF:

\+ **O.M.P.(I) (COMM.) 15/2026, I.A. 867/2026, I.A. 868/2026, I.A.3030/2026**

MINTELLECTUALS LLP .....Petitioner

Through: Mr. Samrat Nigam, Sr. Advocate with Mr. Pranav Jain, Ms. Arpita Rawat, Mr. TanishManuja, Advs.

versus

LAVA INTERNATIONAL LIMITED .....Respondent

Through: Mr. Dayan Krishnan, Sr. Advocate with Mr. Abhay Raj Varma and Mr. Arjun Rekhi, Advs.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present Petition under Section 9 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as* "***the Arbitration Act***") has been filed by the Petitioner, seeking urgent interim measures for securing the amounts awarded to it under the Arbitral Award dated 26.01.2025, passed by the learned Arbitral Tribunal in arbitration proceedings titled as "Mintellectuals LLP v. Lava International Ltd." (*hereinafter referred to as* "***the Arbitral Award***")

2. Shorn of unnecessary details, the facts necessary for adjudication of the present Petition are that a Research and Collaboration Agreement dated 01.07.2017 (*hereinafter referred to as "**the Agreement**"*) was executed

between the Petitioner and the Respondent with Nokia Technologies OY (*hereinafter referred to as "**the Nokia**"*) as Acknowledging Party. It is stated that two Arbitration proceedings were initiated, the first one was initiated between July-September, 2018 (*hereinafter referred to as "**the First Arbitration**"*) wherein the Respondent had invoked arbitration for disputes and differences on interpretation of rights& obligations under the Agreement. In November, 2019 the Petitioner herein invoked arbitration (*hereinafter referred to as "**the Second Arbitration**"*) in respect of Claims for sales commencing 01.10.2018 onwards.

3. The First Arbitration culminated in the Award dated 15.07.2020 wherein the claims for sales between 01.07.2017 to 30.09.2018 were adjudicated in favour of the Petitioner. The said Award was a subject matter of challenge in OMP (COMM.)473/2020 before this Court. A Co-ordinate Bench of this Court *vide* Order dated 15.01.2021, directed the Respondent herein to furnish a bank guarantee for 100% of the awarded amount, while rejecting the Respondent's argument that a 50% payment of the awarded sum would be sufficient.

4. In the Second Arbitration proceedings, the Petitioner herein filed an Application under Section 17 of the Arbitration Act before the Arbitral Tribunal for securing the amounts in favour of the Petitioner. While disposing of this Application, the Arbitral Tribunal *vide* Order dated 26.05.2024 directed the Respondents to secure a sum of Rs. 62.145 crores. It is pertinent to mention here that the offer of the Respondent to furnish an unencumbered asset as security was rejected by the Arbitral Tribunal and the

Respondent was instead directed to furnish a bank guarantee for Rs.62.145 crores.

5. Thereafter, *vide* Order dated 03.08.2024, the Arbitral Tribunal rejected the offer of the Respondent to give a cheque and an undertaking as a security and instead directed the Respondent to produce the bank guarantee for Rs.62.145 crores. The said Order dated 03.08.2024 was challenged by the Respondent before this Court by filing ARB. A. (COMM) 48/2024 under Section 37 of the Arbitration Act, which was dismissed by this Court *vide* Order dated 04.10.2024, upholding the decision of the Arbitral Tribunal and rejecting the contention of the Respondent that the conditions under Order XXXVIII Rule 5 of the CPC for attachment before judgment are not satisfied. The said Order was also challenged by the Respondent by filing Special Leave Petition (C) No. 30168/2024 before the Apex Court, wherein notably, one of the ground of challenge raised by the Respondent was financial hardship. The said SLP was dismissed by the Apex Court *vide* Order dated 19.12.2024.

6. It is pertinent to mention that the Respondent filed another application before the Arbitral Tribunal for modification of the requirement of the Bank Guarantee, which was again rejected by the Arbitral Tribunal.

7. Since the Orders passed by the Arbitral Tribunal while disposing of the Applications under Section 17 of the Arbitration Act were not complied with, the Petitioner approached this Court by filing OMP (ENF.) (COMM) 147/2024. In the said Execution Petition, Applications were filed by the Petitioner for issuance of warrants of attachments in respect of the bank accounts of the Respondent as well as for attachment of the trade-marks of

the Respondent, in favour of the Petitioner. These Applications were disposed of by this Court *vide* Order dated 02.12.2024, directing the attachment of the bank accounts and trade-marks of the Respondent in favour of the Petitioner. Relevant portions of the said Order reads as under:

> "*16. Material on record indicates that pursuant to the order passed by this Court on 26.09.2019 in a petition under Section 9 of the Arbitration & Conciliation Act wherein the Judgment Debtor undertook to furnish a cheque of Rs. 11,31,09,035.38/- which was upheld. Applications were filed under Section 17 of the Arbitration & Conciliation Act seeking directions to the Judgment Debtor to furnish security for subsequent quarters, i.e., Quarter 12 to Quarter 20.*
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> *17. The Tribunal after hearing both sides came to the conclusion that security in the form of banker's cheque would not serve the purpose of securing the arbitral award. The Tribunal held that there is a substantial drop in the liquidity available with the Judgment Debtor and that the Judgment Debtor has already suffered a consent award which is going to be huge liability.*
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> *18. Despite that, the Tribunal did not direct the Judgment Debtor to furnish a bank guarantee and directed the Judgment Debtor to first offer suitable security of the amounts which were directed in the Order dated 26.05.2024. However, the security was not offered within 15 days from the date of the order and the Judgment Debtor has to furnish a bank guarantee within four weeks.*

19. Material on record reveals that the Judgment Debtor has neither furnished security nor has it furnished the bank guarantee as directed vide Order dated 26.05.2024.

20. Material on record also indicates that apart from suffering a consent award of a substantial amount, the bank accounts of the Judgment Debtor have also been attached, meaning thereby, there is a severe liquidity crunch and even the amounts in the bank accounts can be frittered away by the Judgment Debtor. In view of this scenario, this Court is of the opinion that the prayer sought for by the Decree Holder for attaching the bank accounts and the trademarks of the Judgment Debtor in favour of the Decree Holder cannot be said to be unreasonable.

21. Resultantly, the bank accounts as revealed by the Judgment Debtor in Document No.22 attached to its reply to the execution petition and the trademarks of the Judgment Debtor as reflected in Document No.23 of the reply filed by the Respondent stands attached."

8. An Application being EX.APPL.(OS) 2096/2024 was filed by the Respondent herein in OMP (ENF.) (COMM.) 147/2024, seeking modification and clarification of Paragraph 21 of the abovementioned Order dated 02.12.2024. The said Application was disposed of by this Court *vide* Order dated 24.12.2024 by which the Court modified its earlier Order dated 02.12.2024, recalling the attachment order in respect of the Bank Accounts of the Respondent and permitting them to operate all its bank accounts, except the Union Bank of India account. The Respondent was allowed to operate the Union Bank account only to the extent of the balance exceeding

Rs. 62.154 crores, and was directed that the attachment shall continue to that extent of Rs. 62.154 crores. The request of the Respondent herein for release of attachment on its trademarks was rejected. Relevant portions of the Order dated 24.12.2024 reads as under:

> "*20. Accordingly, the order dated 02.12.2024 is hereby modified to direct that the Judgment Debtor will be free to operate all its remaining bank accounts held with Banks except the account held with Union Bank of India i.e., current account no. 412101010000580. The order of attachment issued vide order dated 02.12.2024 qua the remaining accounts of Judgment Debtor stand recalled.*
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> *21. The order dated 02.12.2024 is modified to direct that Judgment Debtor's Union Bank of India account no. 412101010000580 will be permitted to be operated by the Judgment Debtor to the extent of balance, which is in excess of INR 62.154 crores. Union Bank of India will not permit any transaction if the balance fall to INR 62.154 crores. The attachment order issued vide order dated 02.12.2024 qua this account shall operate to the extent of INR 62.154 crores.*
>
> *22. All other direction in the order dated 02.12.2024 shall apply to the operation of this account.*
>
> *23. The plea of the Judgment Debtor for release of attachment on its trademarks is declined and to this extent the submission at paragraph 3 of the application is not acceded to."*

9. It is pertinent to mention that a subsequent Order was also passed by the Arbitral Tribunal on 04.01.2025, directing the Respondent to file additional bank guarantee of Rs.22,62,18,070/-. The said Order was challenged by the Respondent by filing ARB.A. (COMM) 6/2025. Pending

the said Appeal, the Respondent filed another Application before the Arbitral Tribunal seeking modification of the Order dated 04.01.2025, which was rejected by the Arbitral Tribunal *vide* Order dated 30.05.2025. The said Order was challenged by the Respondent by filing ARB.A.(COMM) 35/2025.

10. *Vide* Order dated 11.08.2025, both the above appeals preferred by the Respondent herein, being ARB.A. (COMM) 6/2025 & ARB.A.(COMM) 35/2025 were dismissed by this Court directing the Respondent to secure Rs.22,62,18,070/- through lien, which was directed to be kept in the safe custody of the Registrar General of this Court so that the amount was readily available, if need be.

11. *Vide* the Arbitral Award dated 26.12.2025, the Arbitral Tribunal awarded the following amounts in favour of the Petitioner:

Total Amount payable forthwith on 26.12.2025 includes	**Amount (INR)**	**Reference**
(Claim A) - Amount Due on Sales	1,27,85,60,000	Para 250 [***Pg. 227***]
(Claim C) - interest @ 12% p.a. From due date (90 days) till 26.12.2025	75,82,06,225	Para 265 [***Pg. 233***]
Costs	2,41,65,750	Para 268 [***Pg. 234***]
Awarded Sum Payable on 26.12.2025	**2,06,09,31,975**	Para 24 [***Pg. 36***]

12. Now, the present Petition has been filed by the Petitioner under Section 9 of the Arbitration Act, for securing the above amount awarded to it by the Arbitral Tribunal in the Second Arbitration.

13. It is the case of the Petitioner, that looking at the dwindling financial condition of the Respondent, there is a likelihood that the Arbitral Award will be rendered illusory. To buttress this contention, it is brought to light that the Respondent is facing prosecution for offences under the Prevention of Money Laundering Act, 2002 (*hereinafter referred to as "**the PMLA**"*)and the assets of the Respondent are at risk of being attached under the PMLA. It is further contended that the Ministry of Corporate Affairs has adjudicated that the financial statements of the Respondent suppressed liability of over USD 23 Millions, thereby exaggerating the net assets of the Respondent.

14. It is argued by the learned Senior Counsel for the Petitioner, that the accounts of the Respondent from 01.04.2024 have not been audited and more importantly, the Auditor of the Respondent resigned on 10.12.2025citing lack of records for verification of unaudited books and data. It is further submitted that from 31.03.2022 to 31.03.2024, the Retained Earnings of the Respondent has dropped by over 96% from Rs. 1,347 crores to Rs. 46.58 crores.

15. Learned Senior Counsel for the Petitioner further submits that the dwindling financial condition of the Respondent is not opaque at all, since the Respondent has not been able to satisfy even the first Arbitral Award dated 08.09.2021. Attention of this Court is drawn to the previous proceedings between the parties, wherein the Arbitral Tribunal had discussed the financial position of the Respondent. He points out that the Arbitral Tribunal had rejected the contention of the Respondent that it has sufficient funds and a robust framework and on these observations only, the

Arbitral Tribunal has passed the Orders securing various amounts – which orders were upheld not only by this Court but also the Apex Court.

16. Attention of this Court is also drawn to reasons given by the Respondent, while seeking modification of various Orders citing financial distress and hardship. He, therefore, contends that it is possible that the Arbitral Award becomes a mere 'paper award' and therefore, this Court, while exercising its jurisdiction under Section 9 of the Arbitration Act, should pass orders securing the awarded amount under the Arbitral Award. Learned Senior Counsel appearing for the Petitioner has drawn the attention of this Court to balance sheets and various financial statements of the Respondent to buttress his arguments.

17. *Per contra*, learned Senior Counsel appearing for the Respondent states that the Petitioner has not been able to establish the *prima facie* case in its favour. He states that for passing an Order under Section 9 of the Arbitration Act, the Petitioner has to first make out a case under Order XXXVIII Rule 5 of the CPC. He contends that the provisional unaudited balance-sheet dated 31.03.2025 shows that the Respondent's total assets on 31.03.2025 are to the tune of Rs.1,522 crores. He states that the Respondent has already generated Rs.1627 crores of revenue for the period 01.04.2025 to 31.12.2025 and the expected revenue for the year 2025-2026 is expected to go up to Rs.2169 crores. He states that this shows that the financial health of the Respondent is robust and the allegations regarding precarious financial condition of the Respondent are totally misconceived. He places reliance on the Judgment dated 18.10.2024, passed by a Co-ordinate Bench of this Court in **OMP(I)(COMM) 172/2024** titled as National Highways

Authority of India vs. M/s IRB Ahmedabad Vadodara Super Express Toll Ways Pvt. Ltd., wherein it has been held that before passing an Order under Section 9 of the Arbitration Act at the post-award stage, the Courts must be very circumspect. He states that the said Order was upheld by the Apex Court in SLP(C) No.25334/2024, wherein the Apex Court *vide* Order dated 24.02.2025, has held that in order to establish a case under Section 9 of the Arbitration Act, the conditions mentioned in Order XXXVIII Rule 5 of the CPC must be established.

18. Learned Senior Counsel for the Respondent also places reliance on the Judgment of the Division Bench of the High Court of Gujarat at Ahmedabad in **First Appeal No.2861/2014**, titled as Essar Oil Ltd. Vs. United India Insurance Company Ltd., wherein it was held that when the Court exercises powers under Section 9 of the Arbitration Act either at the pre-award or post-award stage, the Court has to be guided by the provisions of the CPC such as Order XXXVIII Rule 5, Order XXXIX Rule 1 & 2 of the CPC and other provisions of the CPC; and the powers under Section 9 of the Arbitration Act cannot be said to un-fettered or unguided. He states that the same principle was accorded by the Apex Court in Sanghi Industries Ltd. v. Ravin Cables Ltd., **2022 SCC OnLine SC 1329**.

19. After the Orders were reserved in the present Petition on 30.01.2026, the Respondent filed an Application under Section 33 of the Arbitration Act before the Arbitral Tribunal on that day itself, i.e. 30.01.2026, pointing out the arithmetic errors in the Arbitral Award. Having come to know the same, an application being I.A. 3030/2026 was filed by the Respondent before this Court on 02.02.2026, for placing on record the subsequent developments in the case.

20. When I.A. 3030/2026 was taken up for hearing, the learned Senior Counsel for the Respondent argued that since notice has been issued by the Arbitral Tribunal in the Section 33 Application filed by the Respondent, it would be in the fitness of things that the decision of the present Petition is deferred till that application is not decided by the Arbitral Tribunal.

21. Learned Senior Counsel for the Respondent states that the amounts of Rs.62.145 crores and Rs. 22.62 crores already stand secured and if the calculation of the Respondent is accepted then this amount which has already been secured will be much more than what has been awarded by the Arbitral Tribunal. He, therefore, states that since the Section 33 Application is under consideration and the amount has yet not been crystallized, the present Petition cannot be held to be maintainable at this juncture.

22. While opposing the relief prayed by the Respondent under I.A. No. 3030/2026, it is stated by the learned Senior Counsel for the Petitioner that the Arbitral Award was passed on 26.12.2025 and Section 33 of the Arbitration Act postulates only 30 days to file an Application under the said provision, unless otherwise agreed upon by mutual consent of both the parties. He places reliance on the Judgment of a Co-ordinate Bench of this Court in S.P.S. Rana v. MTNL, **2010 SCC OnLine Del 136,** to contend that there is no provision to condone the delay in filing an Application under Section 33 of the Arbitration Act after the stipulated 30 days and, therefore, the Application filed by the Respondent before the Arbitral Tribunal is not maintainable.

23. *Per contra*, in rejoinder, learned Senior Counsel for the Respondent places reliance on the Judgment passed by the Division Bench of this Court in Institute of Human Behaviour and Allied Sciences (IHBAS) v. MI2C

Securities and Facilities Pvt. Ltd.,**2025 SCC OnLine Del 10638**, wherein the Division Bench of this Court has taken a contrary view.

24. Heard the learned Senior Counsels for the parties and perused the material on record.

25. O.M.P.(I) (COMM.) 15/2026, I.A. 867/2026& I.A. 868/2026 were heard and reserved on 30.01.2026, while I.A. 3030/2026 was heard and reserved on 12.02.2026. By this Judgment, all the Applications as well as the Petition are being disposed of.

26. Material on record discloses that during the pendency of the arbitral proceedings, the Arbitral Tribunal has passed several orders securing certain amounts. In its Order dated 26.05.2024, the Arbitral Tribunal has observed as under:

> "*25) From the materials placed on record, the Tribunal finds that security in the form of Banker's cheque may not serve the purpose.* ***There is a drop in the liquidity available with the Respondent even if it is not to the extent of 94% as contended by the Claimant. Moreover, the Respondent has suffered the Consent Award in the matter of Telefonaktiebolaget L.M. Ericsson v. Lava International Ltd (supra.) which is going to be a huge liability on the Respondent.*** *At the same time, the Tribunal is not straightaway directing the Respondent to furnish the security by means of Bank Guarantee as the Respondent claims that it has sufficient assets and robust financial framework, the Tribunal gives a chance to the Respondent to offer suitable security of the amount directed in this order which should adequately protect the interest of the Claimant. This security should be offered within 15 (fifteen) days from the date of this Order and in that event, the Tribunal would take a call as to whether the security so offered*

> *is suitable and sufficient. In case the Respondent fails to offer any security within 15 (fifteen) days, in the event, the aforesaid direction of the Tribunal be substituted with the direction of furnishing a Bank Guarantee that shall have to be furnished by the Respondent within four weeks from today i.e., within two weeks after the expiry of two weeks granted to the Respondent to furnish some suitable and solvent security."*
>
> (emphasis supplied)

27. The above finding has not been upset by this Court in ARB.A.(COMM.) 48/2024.

28. Furthermore, *vide* Order dated 03.08.2024, the Arbitral Tribunal, while rejecting the Application of the Respondent for giving security in lieu of Bank Guarantee and commenting on the contention of the Respondent that it has robust financial framework, the Arbitral Tribunal held as under:

> "***11***. *The Respondent has again offered security in the form of a cheque along with 'Positive Pay Confirmation' even when kind of security has already been rejected by the Tribunal in its Order dated 26.05.2024. No doubt, it is accompanied with an Undertaking Affidavit whereby the Respondent ensures that sufficient funds would be available to pay the amount that is found payable under the Award. It is also stated that the Respondent is ready to offer security in the form of a Corporate Guarantee. However, for the reasons stated in the Order dated 26.05.2024, the Tribunal is of the opinion that security furnished in the aforesaid form would not serve the purpose, more so keeping in view the financial position of the Respondent. It is stated at the cost of repetition that in the Order dated 26.05.2024, the Tribunal directed the Respondent to furnish security in the form of some asset as the Respondent has claimed it has*

sufficient assets to meet the eventual liability, if any. The Tribunal, therefore, rejects the security offered by the Claimant.

***12**. In the circumstances, the Tribunal gives one final chance to the Respondent to furnish security in the form of some robust Movable/ Immovable asset(s) of the value of INR 62.154 crore within 15 (fifteen) days from today.*

***13**. In case security of the kind ordered herein is not furnished within fifteen days, the Respondent shall have to give the security in the form of a Bank Guarantee as already directed in the Order dated 26.05.2024."*

29. Thereafter, on 04.01.2025, while considering another Application of the Petitioner under Section 17 of the Arbitration Act, for a direction to the Respondent to secure Rs.22.62 crores and while dealing with the issue as to whether the Petitioner has satisfied the condition of Order XXXVIII Rule 5 of the CPC, the Arbitral Tribunal has held as under:

"*24. At the outset, the Tribunal would like to point out that orders for furnishing the security for Quarters 6 to 11 have already been passed and at this juncture, the Respondent cannot re-argue the matter invoking the provisions of Order XXXVIII Rule 5 CPC. The questions to be considered are only about the enhancement of the security for the period and the form of security.*

25. Reverting to the issue of enhancement of security, Order dated 02.03.2020 would reveal that it was passed on the basis of the parties agreeing to continue the Interim Order dated 26.09.2019 of the Hon'ble High Court passed in Application under Section 9 of the Act. This is clear from the following part of the

order:

> *"During the arguments, ld. Counsel for both the parties, on instruction from their respective clients, agreed for continuation of the interim order dated 26.09.2019 till the passing of the final award by the Tribunal. It was, however, submitted by the learned counsel for the Claimant that the cheque be now issued in favour of the Claimant and not the Registrar General of the High Court, since the matter is now before the Arbitral Tribunal and there are no proceedings in respect of subject matter which are pending before the Hon'ble High Court at present. This request of the Claimant appears to be reasonable."*

26. It is a matter of record that against this Order, the Claimant had filed appeal before the Hon'ble High Court. Records shows that in the said Appeal, the plea of the Claimant was confined to the issue whether amount of security ordered i.e., INR 11,31,09,035.38 covered one quarter or three quarters. The Tribunal is of the view that simply because Order dated 26.05.2024 passed for enhancement of the security for later period is no reason to re-visit the earlier Orders dated 02.03.2020 and 10.01.2021, particularly going by the circumstances in which those orders were made at that time. After all, these are only interim orders and not a final determination of the amount payable for these quarters by the Respondent to the Claimant.

27. With this, the Tribunal adverts to the issue of form of security. Here, the Tribunal finds that the position has substantially changed which is recorded in the Order dated 26.05.2024. No doubt, in the said Order, the Tribunal straightaway passed the orders for furnishing security by means of Bank Guarantee and had given a chance to the Respondent to offer suitable

security of the amount as the security in the form of a Banker's cheque was not found suitable in view of the financial position of the Respondent as reflected in their Annual Financial Statements as well as liability under the Consent Award against the Respondent. This Order has been upheld by the Hon'ble High Court. Not only that, on the failure of the Respondent to furnish suitable security, the alternate direction of the Tribunal in the Order dated 26.05.2024 for furnishing Bank Guarantee has kicked in. On that basis, the High Court has itself, in the execution proceedings, attached the Bank accounts of the Respondent for failure to furnish the Bank Guarantees.

28. The Tribunal also finds that in so far as form of security is concerned, subsequent developments which are noted in the Tribunal's Order dated 26.05.2024 have persuaded the High Court to permit the Claimant to approach the Tribunal 'for such further direction as it considers necessary'. This can be found in para 13 of the Order dated 12.07.2024 passed by the High Court in ARB.A.(COMM) 76/2021, which is extracted hereinbelow:

> ***"13. On the form of security applicable to the previous quarters also, it is Mr. Nigam's contention that the subsequent developments, which have been alluded to in the order dated 26.05.2024, make that security, ineffective. As this plea is based on subsequent developments and appears, prima facie, to have found favour with the Tribunal in respect of subsequent quarters, I am of the view that the proper course would be for the appellant to approach the Tribunal for such further directions as it considers necessary. Mr. Varma states that the respondent has, by a communication dated 12.06.2024, offered security in some form,***

without prejudice to the order dated 26.05.2024. This is a matter for the Tribunal to consider."

29. After consideration of the entire matter, the Tribunal is of the view that it would be reasonable and justifiable to direct the Respondents to furnish Bank Guarantees in the sum of INR 11,31,09,035.38 for Quarters 6 to 8 and in the sum of INR 11,31,09,035.38 for the Quarters 9 to 11 instead of Banker's cheques already given as Banker's cheques would not serve any purpose. The Respondent shall, accordingly, furnish Bank Guarantees of the aforesaid amounts within three weeks.

30. Application is disposed of on these terms."

(emphasis supplied)

30. All these Orders have been upheld by this Court and therefore, this Court is not in a position to accept the unaudited statement produced by the Respondent, showing its financial health, more so when there is no rebuttal to the specific contention of the learned Senior Counsel for the Petitioner, that the Charter Accountant of the Respondent has resigned due to complete non-cooperation on part of the Respondent.

31. Moreover, on the argument advanced by the Respondent that the conditions under Order XXXVIII Rule 5 of the CPC must be satisfied, reference is made to the judgment of the Apex Court in Essar House (P) Ltd. v. Arcellor Mittal Nippon Steel (India) Ltd., **(2022) 20 SCC 178**, wherein the Apex Court has observed as under:

"***47****. Section 9 of the Arbitration Act confers wide power on the Court to pass orders securing the amount in dispute in arbitration, whether before the commencement of the arbitral proceedings, during the*

arbitral proceedings or at any time after making of the arbitral award, but before its enforcement in accordance with Section 36 of the Arbitration Act. All that the Court is required to see is, whether the applicant for interim measure has a good prima facie case, whether the balance of convenience is in favour of interim relief as prayed for being granted and whether the applicant has approached the court with reasonable expedition.

***48**. 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 5CPC.*

***49**. Proof of actual attempts to deal with, remove or dispose of the property with a view to defeat or delay the realisation of an impending arbitral award is not imperative for grant of relief under Section 9 of the Arbitration Act. A strong possibility of diminution of assets would suffice. To assess the balance of convenience, the Court is required to examine and weigh the consequences of refusal of interim relief to the applicant for interim relief in case of success in the proceedings, against the consequence of grant of the interim relief to the opponent in case the proceedings should ultimately fail."*

32. The judgment of the Apex Court in Essar House (P) Ltd. v. Arcellor Mittal Nippon Steel (India) Ltd. (supra) is very clear in observing that the Court while 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

XXXVIII Rule 5 of the CPC. In any event, it is pertinent to mention that identical arguments were raised by the Respondent in the appeal challenging the Orders under Section 17 of the Arbitration Act passed by the Arbitral Tribunal. The reliefs prayed in the Section 17 Applications were akin to those under Section 9 of the Arbitration Act. In the said appeal before this Court, arguments that the requirements under Order XXXVIII Rule 5 of the CPC have not been established were raised by the Respondent herein. These arguments were rejected by this Court. The Apex Court also did not deem it fit to interfere with the findings while exercising its jurisdiction under Article 136 of the Constitution of India. This Court on perusal of the various orders of the learned Arbitral Tribunal, which had commented adversely on the financial position of the Respondent and thereby directed securing of the money. At the time when the Orders under Section 17 of the Arbitration Act were passed, the amount due to the Petitioner was not finalized and despite that, the Respondent was directed to secure certain amounts. The Petitioner is now in a better position. The Arbitral Award stands finalized. However, only empty averments stating that there is no deterioration in the Respondent's financial health have been advanced, and to substantiate the same, merely an unaudited balance sheet has been filed by the Respondent. There is no answer to the question as to why the Chartered Accountant resigned, which the record, shows was because of the non-cooperation of the Respondent in giving information. Since the arguments regarding Order XXXVIII Rule 5 raised by the Respondent were rejected once and there is nothing concrete to show the financial position has anyway improved or not, this Court is not inclined to accept the same arguments raised by the Respondent at this stage.

33. This Court also takes note of the fact that the Respondent did not comply with the Orders passed by the Arbitral Tribunal in the first instance but has repeatedly approached this Court challenging those Orders while simultaneously applying for modification of the Orders before the Arbitral Tribunal. What is further noteworthy is that in the SLP(C) 30168/2024 filed by the Respondent against the Order dated 04.10.2024 in ARB. A. (COMM) 48/2024, the Respondent itself had taken the ground of financial distress and hardship. After pleading financial distress and hardship in the Apex Court, it does not lie in mouth of the Respondent to state that it is now in the pink of the health, without showing an unaudited balance sheet.

34. Now, adverting to the second issue regarding filing of an Application under Section 33 of the Arbitration Act by the Respondent before the Arbitral Tribunal. Before proceeding ahead, it is pertinent to reproduce Section 33 of the Arbitration Act and the same reads as under:

> "***Section 33. Correction and interpretation of award; additional award.***
>
> ***(1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties—***
>
> > ***(a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;***
> >
> > ***(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.***

(2) If the arbitral tribunal considers the request made under sub-section (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to in clause (a) of sub-section (1), on its own initiative, within thirty days from the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (2) or sub-section (5).

(7) Section 31 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section."

(emphasis supplied)

35. The Division Bench of this Court in S.P.S. Rana (supra) has observed as under:

"*9. Section 33 of the Act does not use the words "but*

not thereafter" However, the period of 30 days is subject to "unless another period of time has been agreed upon by the parties" In our view the said expression has to be read in the same manner as the expression "but not thereafter" was interpreted in M/s Popular Construction Co. (supra). Also, Section 32 inter alia provides for termination of the arbitral proceedings by the final award. Section 32(3) lays down that the mandate of the Arbitral Tribunal shall terminate with the termination of the arbitral proceedings, subject inter alia to Section 33. It will thus be seen that unless a case is covered by Section 33, the mandate of the Arbitral Tribunal is terminated. Thus, unless an application/petition under Section 33(1) of the Act is preferred within 30 days of the making of the award, the mandate of the Arbitral Tribunal terminates. Once the mandate of the Arbitral Tribunal terminates, it is not possible to file the application/petition under Section 33 of the Act.

10. The Supreme Court recently in Commissioner of Customs & Central Excise v. Hongo India (P) Ltd., (2009) 5 SCC 791 has held that it is well settled that it is the duty of the Court to respect the legislative intent and further that by giving liberal interpretation, limitation cannot be extended by invoking the provisions of Section 5 of the Limitation Act. It was further held that the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act (with which the court was concerned in that case) relating to filing of reference application in the High Court. Similarly in Katari Suryanarayana v. KoppisettiSubba Rao, (2009) 11 SCC 183, it was held that the extent or degree of leniency to be shown by a court depends on the nature of the application and the facts and circumstances of the case. One of the main purposes for the re-

enactment of the arbitration law was to allow adjudication of disputes by arbitration expeditiously. Seen in this light, it will be found that the period of 30 days provided for preferring the application under Section 33 of the Act is not extendable inasmuch as unless the application is so preferred, there is no Arbitrator thereafter. We find that the same conclusion has been reached in UOI v. Saboo Minerals Pvt. Ltd., (2003) 106 DLT 92 and in Ircon International Ltd. v. Budhraja Mining & Constructions Ltd., 2007 SCC OnLine Del 1311 by Single Judges of this Court.

11. That being the position, the petition purportedly preferred by the petitioner under Section 33 of the Act was in fact no petition. Thus the order dated 18th December, 2007 of the Arbitrator holding the petition under Section 33 preferred after 30 days to be not maintainable and the Arbitrator having become functus officio cannot be said to have disposed of the said application. The said order has to be read as an order only intimating that the application did not lie, the Arbitrator having become functus officio. The petitioner is thus not entitled to the benefit of the part of Section 34(3) providing for commencement of the period of three months for applying for setting aside of the order from the date of disposal of the application under Section 33; as such disposal has to be on an application preferred within 30 days provided under Section 33(1) of the Act. If the application under Section 33 is preferred after 30 days, the order of the Arbitral Tribunal to the effect that it cannot entertain the application, being functus officio, is not a "disposal" from which a fresh period of limitation would accrue. If such an interpretation were to be given, it will easily permit the unscrupulous litigants to, notwithstanding the expiry of the period of three months prescribed under Section 34(3) apply for setting aside of the award at any stage by merely prior

thereto filing a application under Section 33 of the Act."

36. A similar view has been taken by a Co-ordinate Bench of this Court in Ircon International Ltd. v. Budhraja Mining and Construction, **2007 SCC OnLine Del 1311**, wherein it has been observed as under:

6. xxx xxx xxx

xxx

A plain reading of the aforesaid provisions indicates that, unless another period of time has been agreed upon by the parties, an application for correction of any computational errors or typographical errors has to be made to the arbitral tribunal within 30 days from the receipt of the arbitral award. It is also necessary to observe that the application has to be made with notice to the other party. Sub-section (3) of Section 33 also empowers the arbitral tribunal to make such corrections on its own initiative within 30 days from the date of the arbitral award. Sub-section (2) of Section 33 stipulates that the arbitral tribunal, if it considers the request for corrections to be justified, shall make the corrections within 30 days from the receipt of the request and the same shall form part of the arbitral award. It is, therefore, clear that there are three different sets of periods of limitation prescribed under the said provisions. The first is the period of 30 days of receipt of the award by a party during which the said party can request the arbitral tribunal to correct any computational or typographical errors in the award. The second period is a period of 30 days for the arbitral tribunal to make the correction. The third period prescribed is in the case where the arbitral tribunal seeks to make a correction on its own initiative. The period prescribed is 30 days from the date of the arbitral award. Since the arbitral tribunal makes a correction under this provision, on its own

initiative, the date of the receipt of the arbitral award is not relevant and the clock starts running from the date of the arbitral award itself. In the present case this provision is not in issue but it brings out the nature of the limitation periods prescribed for making corrections of computational errors/typographical errors. The nature being that it is strictly time bound and cannot be extendable unless provided in the statute itself. The provision for extension of time has been made in sub-section (6) of Section 33 and it only pertains to the time during which the tribunal may make a correction under sub-section (2) or sub-section (5) of the said Section 33. In other words, there is a specific provision for extending the time within which the tribunal makes the correction after a request is received by it. There is, however, no provision enabling the tribunal to extend the time for receiving the request from a party to make corrections of computational and/or typographical errors. This is sufficient indication of the fact that the legislature permitted extension of time to the arbitral tribunal to decide on the question of corrections but did not permit extension of time by the arbitral tribunal for receiving an application whereby a party makes a request for carrying out corrections. It is in this context that sub-section (3) of Section 33 also gains importance. As pointed out above that provision enables the arbitral tribunal to make a correction on its own initiative and only 30 days time was granted for doing so and that too from the date of the arbitral award. There is no provision like Section 33(6) which enables the arbitral tribunal to correct an error on its own initiative beyond 30 days from the date of the arbitral award. The position, therefore, is very clear that where the legislature permitted extension of time it did so expressly. In these circumstances, the inescapable conclusion would be that the legislative intent was that the delay, if any, in filing of an application under

Section 33(1)(a) of the said Act could not be condoned by invoking the provisions of Section 5 of the Limitation Act. This is so because of the provisions of Section 29(2) of the Limitation Act read in the light of the Supreme Court decisions in the case of Hukumdev and Popular Construction.

7. Section 29(2) of the Limitation Act, 1963 reads as under:

> *"29. Savings—*
>
> *(1) xxx xxx xxx*
>
> *(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law."*

A plain reading of the said provision indicates that where a special or local law prescribes a period of limitation different from that provided under the Limitation Act, 1963, then the provisions contained in Sections 4 to 24 would apply only insofar as and to the extent to which they are not expressly excluded by such special or local law. The question that arises is whether the provisions of Section 33(1), (2) and (6) of the said Act indicate that the provisions of Section 5 are expressly excluded from operation. While construing the expression "expressly excluded", the

Supreme Court in Hukumdev observed that what has to be seen is whether the scheme of the special law and the nature of the remedy provided therein are such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. It was further observed that if on an examination of the relevant provisions it is clear that the provisions of the Limitation Act, 1963 are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the special Act. The Supreme Court further held:

> *"In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent the nature of those provisions or the nature of the subject matter and scheme of the special law exclude their operation."*

8. In Union of India v. Popular Construction Company (supra) the Supreme Court noted that the said Act was a special law and that Section 34 thereof provided for a period of limitation different from that prescribed under the Limitation Act. The question before the court was whether the exclusion in Section 34 of the said Act was expressed or not. The provisions of Section 34 are slightly different inasmuch as the proviso thereto specifically indicates that if the court is satisfied that the applicant was prevented by sufficient cause from making the application within the stipulated period of three months, it may entertain the application within a further period of 30 days, "but not thereafter". This was construed by the Supreme Court as amounting to an expressed exclusion in the following words:

> *"12. As far as the language of Section 34 of the*

> *1996 Act is concerned, the crucial words are 'but not thereafter' used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would, therefore, bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase 'but not there-after' wholly otiose. No principle of interpretation would justify such a result."*

After so concluding, the Supreme Court, following the decision in the case of Hukumdev observed as under:

> *"13. Apart from the language, 'express exclusion' may follow from the scheme and object of the special or local law. Even in a case, where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent the nature of those provisions or the nature of the subject matter and scheme of the special law exclude their operation."*

Thereafter, the Supreme Court went into the history and scheme of the said Act to support the conclusion that the time limit prescribed under Section 34 to challenge an award was absolute and unextendable by court under Section 5 of the Limitation Act. After referring to various sections including Section 5 of the Limitation Act the Supreme Court observed (para 16 of Arb. LR):

> *"If there were any residual doubt on the interpretation of the language used in Section 34,*

the scheme of the 1996 Act would resolve the issue in favour of curtailment of the court's powers by the exclusion of the operation of Section 5 of the Limitation Act."

Thus, the decision arrived at by the Supreme Court in the case of Popular Construction Company was not merely on the language used in Section 34 but based on the entire scheme of the said Act. The latter portion is equally applicable in the present case. As regards the language employed in Section 33, I have already indicated above that the legislative intent appears to be that the delay, if any, in filing of an application under Section 33(1)(a) of the said Act could not be condoned by invoking the provisions of Section 5 of the Limitation Act. This is so because the intention appears to be clear that the stipulated time period was absolute.

9. This leaves only the discussion of the decision of the Supreme Court cited on behalf of the respondent. In Union of India v. Tecco Trichy Engineers &Contractors (supra), the short question that arose for decision was what is the effective date on which a party could have said to be delivered with and received the arbitral award as that would be the date from which limitation within the meaning of sub-section (3) of Section 34 was to be calculated. The question before the Supreme Court was different from the one that arises in the present case. The issue was with regard to the date of delivery of the arbitral award. In this context the Supreme Court observed that the delivery of an arbitral award under sub-section (5) of Section 31 was not a matter of mere formality and it was a matter of substance. It was further observed that delivery of an arbitral award to a party, to be effective, has to be "received" by the party. The court observed that unless and until the award was actually received,

it could not be construed that the award had been delivered and, therefore, the time period for making an application for setting aside the said award under Section 34 of the said Act would not start running until and unless the award is so delivered and/or received by the party who seeks to challenge the award. These observations, though on a different context, do not in anyway advance the case of the respondent. On the contrary, they tend to support the arguments advanced by the learned counsel for the petitioner. This is so because the learned arbitrator had clearly noted in the award that the applications dated 18.06.2002 were not received by him or by his office. In other words, there was no delivery of the application as contemplated in the said Supreme Court decision. Therefore, the finding of the learned arbitrator that the respondent had posted the applications on 18.06.2002 is of no consequence. What is relevant is that no request for making any corrections was received by the learned arbitrator within the period of 30 days prescribed under the said Act.

10. As a result of the discussion above, the answers to the questions posed in paragraph 3 are that the applications under Section 33 of the said Act were not filed within the period of 30 days stipulated therein. Secondly, the delay in filing the same could not be condoned by invoking the provisions of Section 5 of the Limitation Act, 1963. As such the impugned orders dated 11.08.2003 in both the petitions are liable to be set aside. The same are set aside. It would be open to the parties to challenge the awards dated 23.05.2002 if the law otherwise permits them to do so. These petitions stand allowed to this extent."

37. Reference is also made to the judgment of this Court in National Technical Research Organization (NTRO), **2018 SCC OnLine Del 12417**, wherein a Co-ordinate Bench of this Court has held as under:

> "*8. Applying the ratio of the above judgment to the facts of the present case, it has to be held that the application filed by the petitioner under Section 33 of the Act, being filed beyond the period of thirty days from the receipt of the copy of the Award, was no application in the eyes of law and therefore, the petitioner was not entitled to seek the benefit of extension of period of limitation under Section 34(3) of the Act on the basis of pendency of such application before the Arbitrator. Once this period is excluded, the delay in filing of the present petition would be beyond the period of thirty days from the expiry of three months from the day of receipt of the Arbitral Award by the petitioner and such delay cannot be condoned by this Court."*

38. This Court also recalls the judgment in Tantia Construction Limited v. International Ltd., **2021 SCC OnLine Del 2640**, wherein a Co-ordinate Bench of this Court has held as under:

> "*13. Section 33(1) prescribes a specific period of 30 days, from the receipt of the arbitral award, within which an application for correction or rectification thereof can be moved. Unlike Section 34, Section 33(1) does not contain any provision permitting condonation of the period of limitation stipulated therein.*
>
> *14. It is not possible for this Court to read, into Section 33(1), a power of condonation of delay, where none exists. The fact that delay cannot be automatically condoned by the Arbitral Tribunal, in the case of application under Section 33(1), also stands underscored by the stipulation contained by the words "unless another period of time has been agreed upon by the parties" in Section 33(1). Clearly, the intent of the legislature is that, the period of 30 days, stipulation in Section 33(1), is relaxable only if, ad idem, the parties agree to another period for filing the*

application thereunder. De hors any such mutual agreement between the parties, therefore, the period of 30 days in Section 33(1) is sacrosanct and is not relaxable. Per corollary, delay in preferring the application under Section 33(1) would not be condonable, either. The learned arbitrator, therefore, materially erred in condoning the delay on the part of the respondent, in filing the application under Section 33.

15. Besides, even otherwise, the period of limitation for filing the aforesaid period expired somewhere in mid-February, 2020. The Covid-2019 pandemic hit the nation only in March, 2020, which is why amnesty, in respect of periods of limitation under various statues, was extended even by the Supreme Court only from 15 March, 2020. There is no reasonable explanation for the respondent not having moved the arbitral tribunal within time.

16. There is yet a third reason why the decision, of the learned Arbitrator, to condone the delay in filing the Section 33(1) application cannot be sustained. The impugned supplementary award mechanically condones the delay, by the respondent, in moving the Section 33 application, without a word by way of reasoning. The expiry of statutorily prescribed period of limitation, results in crystallising of valuable rights in favour of the opposite party. Courts, tribunals and arbitrators cannot, therefore, mechanically condone statutorily sanctified periods of limitation, especially where the delay is inordinate, as in the present case. Cogent reasons, for doing so, must be apparent on the face of the order. There is clear non-application of mind, by the learned arbitrator, in his decision to condone the delay. Even on this ground, therefore, the decision of the learned arbitrator to condone the delay cannot sustain the scrutiny of law. This, of course, is

without prejudice to the initial finding, hereinabove, that, on the expiry of 30 days from the receipt of arbitral award by the respondent, the arbitral tribunal was rendered coram non judice and could not, therefore, have entertained the Section 33 application filed by the respondent at all."

39. Learned Senior Counsel for the Respondent has placed reliance on the Judgment of a co-ordinate Bench of this Court in IHBAS (supra), wherein it has been observed as under:

"*9. From a perusal of the pleadings on record, it cannot be disputed that the respondent had indeed filed its application on 02.04.2024 under Section 33(1)(a) of the Act, which is beyond a period of 30 days from the date of the award dated 26.02.2024. The arbitral tribunal, relying upon the provisions of Section 33(1)(a) of the Act, dismissed the said application on 13.05.2024. Though the application was indeed filed beyond a period of 30 days as prescribed in the said section, what we have to consider is whether such an application would be completely barred in respect of the relief sought by the respondent. In that context, it would be apposite to extract Section 33(1)(a) of the Act hereunder:*

> *"33. Correction and interpretation of award; additional award-(1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties-*
>
> *(a) A party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors, or any other errors of a similar nature occurring in the award;"(emphasis supplied)*

10. Having regard to the submissions made by learned counsel for the appellant, and the narration of facts encapsulated by the learned Single Judge in para 11 of the impugned order, we need to appreciate this conundrum by considering whether the passing of the award in the wrong name/title of the respondent would amount to a typographical error in the award at all. In our considered opinion, the said error occurred at the end of the arbitral tribunal, and as such could not be deemed to be an error in the award in the sense requiring correction by any of the parties. In fact, according to us, correction of the said error would fall within the Latin maxim "actus curiae neminemgravabit" which means an act of a Court can prejudice no one. Undoubtedly, right from the time of appointment of an arbitrator by this Court, as well as filing of the statement of the claim, and other pleadings up till the culmination of the arbitral proceedings, were in the name of MI2C Security and Facilities Pvt. Ltd. Additionally, learned counsel for the appellant fairly admitted that the contract, too, was awarded in the name of MI2C Security and Facilities Pvt. Ltd. It is very likely that all the payments before such disputes arose also must have been tendered into the account of MI2C Security and Facilities Pvt. Ltd.

11. In that view of the matter, in case while passing the final award, the arbitral tribunal committed a mistake or a typographical error in entering the correct name of the respondent, the said error would clearly fall within the aforesaid maxim. Applied on all fours, it is manifest that the respondent cannot be held responsible for the error committed by the arbitral tribunal. Thus, the argument of learned counsel for the appellant, to our mind, is hypertechnical and is unmerited. Only to buttress and substantiate as to how Courts have interpreted and applied the aforesaid maxim, we refer to the judgment of the Hon'ble

Supreme Court in Neeraj Kumar Sainy v. State of Uttar Pradesh, (2017) 14 SCC 136 and in particular to para 26, which is extracted hereunder:

> *"26. The seminal question that is required to be posed is whether the maxim actus curiae neminemgravabit would apply to such a case. In Jang Singh v. Brij Lal [Jang Singh v. Brij Lal, AIR 1966 SC 1631], a three-Judge Bench noted that there was error on the part of the court and the officers of the court had contributed to the said error. Appreciating the fact situation, the Court held: (AIR p. 1633, para 6)*
>
> > *"6. ... It is no doubt true that a litigant must be vigilant and take care but where a litigant goes to Court and asks for the assistance of the Court so that his obligations under a decree might be fulfilled by him strictly, it is incumbent on the Court, if it does not leave the litigant to his own devices, to ensure that the correct information is furnished. If the Court in supplying the information makes a mistake the responsibility of the litigant, though it does not altogether cease, is at least shared by the Court. If the litigant acts on the faith of that information the courts cannot hold him responsible for a mistake which it itself caused. There is no higher principle for the guidance of the Court than the one that no act of courts should harm a litigant and it is the bounden duty of courts to see that if a person is harmed by a mistake of the court he should be restored to the position he would have occupied but for that mistake. This is aptly summed up in the maxim: Actus curiae neminemgravabit."[emphasis supplied]*

> *12. Predicated on the analysis, and the observations made above, we are of the considered opinion that the emphasis of the learned counsel for the appellant on the 30-day time period prescribed in Section 33(1)(a) of the Act would not strictu senso bar the respondent from filing and maintaining an application for correction in the factual scenario noted by us. This is for the reason that the error appears to be clearly on the part of the arbitral tribunal and not attributable to any of the parties. It would be onerous and absurd to deprive a party of a lawful decree, and an entitlement to the benefits contained therein merely for the reason that the court or the arbitral tribunal itself has committed an error of such a nature. Even otherwise, the corrections sought have no nexus or correlation to the merits of the case. We are not laying down a proposition that in all cases the bar or limitation prescribed in Section 33(1) of the Act is to be relaxed or diluted, but that it may be only in exceptional circumstances like the one in the present case, that the rigors may be relaxed. Clearly, it would depend on a case to case basis."*

40. The Application under Section 33 of the Arbitration Act is pending before the Tribunal. This Court does not want to decide the issue at this juncture as to which of the Judgment would be applicable to the present case as it will make the Application infructuous. However, it is well settled that when there are two contrary and conflicting judgments, it is not necessary that the judgment which came at a later point of time will prevail. A Full Bench of the Punjab and Haryana High Court in Indo Swiss Time Limited v. Umrao, **1981 SCC OnLine P&H 45**, while dealing with a situation as to how a High Court must reconcile two conflicting Judgments passed co-equal benches, has held that the decision made in the later point of time will not

necessarily prevail over the later decision. Relevant extract of the said judgment are given below:

> "***32***. *Even though it is perhaps unconventional to quote a living authority, it deserves recalling that Mr. Seervai in his latest edition of his authoritative work on the Constitutional law of India has opined as follows:—*
>
> *"* * * But judgments of the Supreme Court, which cannot stand together, present a serious problem to the High Courts and to subordinate Courts. It is submitted that in such circumstances the correct thing is to follow that judgment which appears to the Court to state the law accurately or more accurately then the other conflicting judgment.""*

41. This Court has taken note of the subsequent events and does not find any impediment in proceeding further and disposing of the Application under Section 9 of the Arbitration Act and preserving the principal amount passed under the Award which is 127.856 crores. The amount of Rs.62.145 crores and Rs.22.62 crores already stands secured. The Respondent is directed to furnish bank guarantee for the balance amount, i.e., Rs. 43.091 crores to be deposited with the Registrar General of this Court.

42. This Court is aware that a Bench of three Judges in Hyder Consulting (UK) Ltd. v. State of Orissa, **(2015) 2 SCC 189**, has held that interest is a part of the Award, however, considering the facts of this case, this Court is inclined to only preserve the principal amount under the award at this juncture.

43. Needless to state, this Order is only limited to the adjudication on the Petitioner's Application under Section 9 of the Arbitration Act. If and when

the Arbitral Award is put to challenge under Section 34 of the Arbitration Act, it is always open for the Petitioner to contend that the entire amount under the Arbitral Award, including the interest, be protected.

44. With these observations, the Petition is disposed of, along with pending applications, if any.

45. It is made clear that this Court has not observed anything on the merits of the case and the same will be examined while considering an application under Section 34 of the Arbitration Act.

SUBRAMONIUM PRASAD, J

FEBRUARY 24, 2026
Rahul/AP