IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

****

CR-6014-2025 (O&M)
Date of Decision: 06.11.2025

Jalandhar Improvement Trust and others .... Petitioners

Versus

Shourya Towers Private Limited ..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Dr. Anmol Rattan Sidhu, Senior Advocate assisted by
Ms. Mandeep Kaur, Advocate,
Ms. Sandhya Gaur, Advocate,
Mr. Raghav Gulati, Advocate,
for the petitioners.

Mr. Chetan Mittal, Senior Advocate assisted by
Mr. Himanshu Gupta, Advocate &
Ms. Sehej Sandhawalia, Advocate,
Mr. Avichal Sharma, Advocate,
for the respondent.

****

JASGURPREET SINGH PURI, J. (ORAL)

1. The present is a Civil Revision Petition filed under Article 227 of the Constitution of India seeking quashing of the order dated 09.04.2025 (Annexure P-11) passed by learned Sole Arbitrator whereby the right to file the statement of defence as well as the counter claim of the petitioner has been struck off by invoking the provisions of Section 25(b) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Arbitration Act'). Further prayer has been made for setting aside of the impugned order dated 12.08.2025 (Annexure P-18) passed by learned Sole Arbitrator whereby the application filed by the petitioner for recalling of the aforesaid order dated 09.04.2025 has been rejected.

FACTUAL MATRIX

2. Brief facts of the present case are that there was an Agreement between petitioner No.1 i.e. Jalandhar Improvement Trust and the respondent-Contractor pertaining to construction of towers and thereafter, a dispute arose between the parties. Since there was a valid arbitration clause in the aforesaid Agreement and the mechanism for appointment of an Arbitrator had failed, the respondent-Contractor filed an application before this Court for appointment of an Arbitrator under the provisions of Section 11(6) of the Arbitration Act which was allowed by a Co-ordinate Bench of this Court vide order dated 30.08.2024 (Annexure P-3) and a former Judge of this Court was appointed as a Sole Arbitrator by way of the aforesaid order.

3. Learned Sole Arbitrator initiated the proceedings vide Annexure P-4 on 27.09.2024 and on that date, it was directed that the Power of Attorneys on behalf of the parties be filed by the next date of hearing and the counsel for the claimant (who is the respondent in the present petition) appeared and one Inderpal Singh, Trust Engineer along with Mandeep, Assistant, Trust Engineer also appeared and stated before the learned Arbitrator that Executive Officer of Trust will represent all the respondents in the matter. In the aforesaid first sitting of the learned Arbitrator, the procedure to be followed during the course of arbitration proceedings was also recorded in consultation with both the parties and in this way, a procedure was formulated which is also attached vide Annexure-I of Annexure P-4 in the present petition. The aforesaid order (Annexure P-4) is reproduced as under:-

"*Annexure P-4*

BEFORE THE ARBITRAL TRIBUNAL COMPRISING OF SOLE ARBITRATOR MR. JUSTICE RAJIV SHARMA (RETD.)

Arbitration Case No. 269 of 2020

In the matter of Arbitration:

BETWEEN

Shourya Towers Pvt. Ltd. Registered Office at B-111. Sector 5, Noida, UP through its authorized representative Sh. Mohit Garg.

....Claimant

AND

1. *Jalandhar Improvement Trust, Jalandhar.*
2. *Chairman, Jalandhar Improvement Trust.*
3. *Punjab Local Body Government, Government of Punjab,Plot No.3, Dakshin Marg, Sector 35-A, Chandigarh*
4. *Director, Punjab Local Body Government, Government of Punjab, Plot No.3, Dakshin Marg, Sector 35-A, Chandigarh*

...Respondents

Present: Mr. Himanshu Gupta, Advocate with
Mr. Ankur Jain, Director, Shourya Towers Pvt. Ltd.
for the claimant.

Mr. Inderpal Singh, Trust Engineer,
Mr. Mandeep, Assistant, Trust Engineer
for the respondents

Chandigarh.
Dated: 27th September, 2024

ORDER:

1. Power of Attorneys on behalf of the parties be filed by the next date of hearing. Mr. Inderpal Singh, Trust Engineer submits that Executive Officer of Trust will represent all the respondents in the matter.

2. The parties in consultation with the Arbitral Tribunal have agreed to the procedure to be followed during the course of arbitration proceedings, the copy whereof is annexed as Annexure A-1.

3. Declaration under Section 12 of the Arbitration and Conciliation Act, 1996, as amended upto-date, is annexed as Annexure-2.

4. Claim petition be filed within six weeks.

5. As agreed by the parties, the fee structure will be

determined on the next date of hearing.

6. With the consent of the parties, list on ***14.11.2024*** *at 02.00 P.M. at* ***Chandigarh Arbitration Centre (CAC), Old District Court Building, Sector-17, Chandigarh-160 017****.*

7. Both the parties are directed to deposit Rs. 24,000/- each as administrative expenses (Rs.15,000/- each) and sitting charges (Rs.9,000/- for six sittings) of the Chandigarh Arbitration Centre by way of cash/cheque/demand draft in the name of Registrar, Punjab and Haryana, High Court, Chandigarh within 15 days from today.

Sd/-
Justice Rajiv Sharma (Retd.)
Arbitrator

Chandigarh
Dated: 27th September, 2024"

4. One of the headings of the aforesaid procedure in Annexure -I was pertaining to 'Adjournment' at Para No.10 which provided that normally no adjournment shall be granted but on showing sufficient cause adjournment may be granted by the Tribunal to the party in extreme situation. The aforesaid Para 10 of the procedure so formulated by the learned Arbitrator in consultation with both the parties is reproduced as under:-

> *"10. Normally no adjournment shall be granted. However, on showing sufficient cause adjournment may be granted by the Tribunal to the party in extreme situation but party seeking adjournment shall have to bear the expenses of the hearing adjourned."*

5. On 14.11.2024, second sitting of the learned Arbitral Tribunal was held vide Annexure P-5 in which counsel for the claimant had appeared but nobody had appeared on behalf of the present petitioners. By way of the aforesaid order, two weeks' time was granted to the claimant to file the

statement of the claim, which is reproduced as under:-

"*Annexure P-5*

Present: Ms. Sehej Sandhawalia, Advocate for
Mr. Himanshu Gupta, Advocate,
for the claimant.

None for the respondent.

Proceedings of the 2nd Sitting of the Arbitral Tribunal held on November 14, 2024 at 02.00 PM at the Arbitration Centre, Sector 17, Chandigarh.

ORDER

Ms. Sehaj Sandhawalia, Advocate prays for and is granted two weeks time to file the statement of claim.

List on 03.12.2024 at 02.00 P.M. in the Chandigarh Arbitration Centre, Sector 17, Chandigarh.

Both the parties are directed to deposit Rs.24,000/- each as administrative expenses (Rs.15,000/-) and sitting charges (Rs.9,000/- for six sittings) of the Chandigarh Arbitration Centre by way of cash/cheque/demand draft in the name of Registrar, Punjab and Haryana, High Court, Chandigarh on or before the next date of hearing.

Sd/-
Justice Rajiv Sharma (Retd.)
Sole Arbitrator

Chandigarh
Dated: 14th November, 2024"

6. On 03.12.2024, third sitting of the learned Arbitral Tribunal was held vide Annexure P-6 in which the claimant had filed the statement of claim. Counsel for the claimant as well as the counsel for the petitioner-Improvement Trust along with the Executive Officer and the Trust Engineer were also marked present and the learned counsel for the petitioner-Improvement Trust prayed for and was granted four weeks' time to file the statement of defence and counter-claim, if any. The order passed vide Annexure P-6) is reproduced as under:-

"*Annexure P-6*

Present: Ms. Sehej Sandhawalia, Advocate with
Mr. Ankur Jain, Director and
Mr. Mohit Garg, Authorized Representative,
for the claimant.

Ms. Kavita Arora, Advocate with
Mr. Parminder Singh, Executive Officer
Mr. Inderpal Singh, Trust Engineer
for the respondent.

Proceedings of the 3rd Sitting of the Arbitral Tribunal held on December 03, 2024 at 02.00 PM at the Arbitration Centre, Sector 17, Chandigarh.

ORDER

Ms. Sehaj Sandhawalia, Advocate has filed statement of claim. Ms. Kavita Arora prays for and is granted four weeks' time to file the statement of defence and counter-claim, if any.

List on 07.01.2025 at 02.00 P.M. in the Chandigarh Arbitration Centre, Sector 17, Chandigarh.

Both the parties have deposited Rs. 24,000/- each towards fee of the Chandigarh Arbitration Centre today.

Sd/-
Justice Rajiv Sharma (Retd.)
Sole Arbitrator

Chandigarh
Dated: 3rd December, 2024"

7. Next sitting of the learned Arbitral Tribunal took place on 07.01.2025 vide Annexure P-7, in which, counsel for the claimant was present and the aforesaid Inderpal Singh, Trust Engineer was also present, who prayed for four weeks' more time to file the statement of defence and counter-claim, if any and this prayer was not opposed to by the counsel for the claimant. Although four weeks' time was granted but the matter was adjourned for 01.02.2025, which was little short of four weeks because in fact 24 days were granted. The order dated 07.01.2025 (Annexure P-7) is reproduced as under:-

"Annexure P-7

Present: Mr. Avichal Sharma, Advocate
for the claimant.

Mr. Inderpal Singh, Trust Engineer
for the respondents.

ORDER

Mr. Inderpal Singh, Trust Engineer appearing on behalf of respondents prays for four weeks' time to file the statement of defence and counter-claim, if any. Prayer not opposed by opposite counsel.

List on 01.02.2025 at 02.00 P.M. in the Chandigarh Arbitration Centre, Sector 17, Chandigarh.

Sd/-
Justice Rajiv Sharma (Retd.)
Sole Arbitrator

Chandigarh
Dated: 07th January, 2025"

8. On the next sitting of the learned Arbitral Tribunal, an order was passed vide Annexure P-8 on 01.02.2025, in which counsel for the claimant appeared but nobody had appeared on behalf of the petitioner-Improvement Trust and the learned Arbitral Tribunal again granted two weeks' time to the petitioner-Improvement Trust to file the statement of defence and the matter was adjourned for 17.02.2025. The aforesaid order (Annexure P-8) is reproduced as under:-

"Annexure P-8

"Through Video Conferencing"

Present: Mr. Avichal Sharma Advocate, with Mr. Ankur
Jain, Director for the claimant.

None for the respondents.

Shimla:
Dated: 01st February, 2025

ORDER*:*

1. Respondents are granted two weeks time to file statement of defence.

*2. List on **17.02.2025** at 03.00 P.M. at Chandigarh Arbitration Centre Sector-17 Chandigarh.*

Sd/-
Justice Rajiv Sharma (Retd.)
Arbitrator

Shimla:
Dated: 01st February, 2025"

9. On 17.02.2025, learned counsel for the claimant as well as the aforesaid Parminder Singh, Executive Officer and Inderpal Singh, Trust Engineer had also appeared and it was so observed by learned Arbitral Tribunal vide Annexure P-9 that Mr. Parminder Singh, Executive Officer has prayed for and is granted three weeks' time to file the statement of defence and counter-claim, if any, by way of last opportunity. It was made clear by learned Arbitral Tribunal that by way of an abundant precaution, in case, the statement of defence is not filed, then the defence will be struck off and in this way, three weeks' more time was granted to the petitioner-Improvement Trust and the matter was adjourned by the learned Arbitral Tribunal for 11.03.2025. The order dated 17.02.2025 (Annexure P-9) is reproduced as under:-

"Annexure P-9

Present: Mr. Avichal Sharma, Advocate
Mr. Ankur Jain, Director and
Mr. Mohit Garg, Authorized Representative,
for the claimant.

Mr. Parminder Singh, Executive Officer
Mr. Inderpal Singh, Trust Engineer
for the respondents.

ORDER

Mr. Parminder Singh, Executive Officer, prays for and granted three weeks time to file the statement of defence and counter-claim, if any by way of last opportunity. It is made clear by way of abundant precaution that in case the statement of defence is not filed, the defence would be struck off.

> *The claimant has claimed a sum of Rs.905,80,58,000/- (Rs. Nine hundred and five crores, eighty lacs and fifty eight thousand only). The Arbitral fee as per the Schedule IV of the Arbitration and Conciliation Act, 1996 would be Rs.37,50,000/-. The claimant is directed to deposit Rs. 18,75,000/-. The respondent is also directed to deposit its share of Rs. 18,75,000/-. The Arbitral fee shall be deposited on or before the next date of hearing.*
>
> *List on 11.03.2025 at 02.00 P.M. at Chandigarh Arbitration Centre, Sector 17, Chandigarh.*
>
> *Sd/-*
> ***Justice Rajiv Sharma (Retd.)***
> ***Sole Arbitrator***
>
> ***Chandigarh***
> ***Dated: 17th February, 2025***"

10. On 11.03.2025, learned counsel for the claimant had appeared and learned Senior Advocate had also appeared on behalf of the petitioner-Improvement Trust and submitted that the statement of defence could not be filed due to non-engagement of an Advocate by the respondents. Learned Arbitral Tribunal had so observed that though the Tribunal had made it clear that in the eventuality of the statement of defence not being filed, the defence would be struck off but in the spirit of the Arbitration and Conciliation Act, 1996, an opportunity is granted to file the statement of defence or counter claim, if any, subject to costs of ₹10,000/- within four weeks in the interest of justice. In this way, another four weeks' time was granted to the petitioner-Improvement Trust. Thereafter, the matter was adjourned to 09.04.2025. This order passed vide Annexure P-10 is reproduced as under:-

> *"Annexure P-10*
>
> *Present: Mr. Avichal Sharma, Advocate*
> *Mr. Ankur Jain, Director and*
> *Mr. Mohit Garg, Authorized Representative,*
> *for the claimant.*

Dr. Anmol Rattan Sidhu, Senior Advocate along with
Ms. Mandeep Kaur, Advocate
Mr. Raghav Gulati, Advocate
Mr. Kamal Gupta, Advocate
for the respondents.

Proceedings of the 4th Sitting of the Arbitral Tribunal held on March 11, 2025 at 02.00 PM at the Chandigarh Arbitration Centre.

ORDER

Dr. Anmol Rattan Sidhu, Senior Advocate submits by way of an oral application that the statement of defence could not be filed due to non-engagement of Advocate by the respondents. Though, the Tribunal had made it clear that in the eventuality of the statement of defence not being filed, the defence would be struck off. However, in the spirit of the Arbitration and Conciliation Act, 1996 opportunity is granted to file the statement of defence or counter claim, if any, subject to costs of Rs. 10,000/- within 4 weeks, in the interest of justice. The costs would be paid to the learned counsel for the claimant before the next date of hearing.

The claimant has deposited its share of Arbitral fee. The respondents have not deposited their respective share of Arbitral fee. The respondents are directed to deposit their share of the Arbitral fee on or before the next date of hearing.

List on ***09.04.2025 at 02.00*** *P.M. at Chandigarh Arbitration Centre, Sector 17, Chandigarh for filing the statement of defence and counter-claim, if any.*

Sd/-
Justice Rajiv Sharma (Retd.)
Sole Arbitrator

Chandigarh
Dated: 11th March, 2025"

11. On 09.04.2025, again the learned counsel for the claimant as well as the learned Senior Counsel for the petitioner Improvement Trust appeared and an order was passed vide Annexure P-11, which is impugned in the present revision petition. It was so observed by the learned Arbitral Tribunal that despite the previous order i.e. dated 11.03.2025 vide which

four weeks' time was granted to the petitioner-Improvement Trust to file the statement of defence and the counter-claim but neither the statement of defence nor the counter-claim was filed by the respondents (who are the Petitioners in the present petition). While referring to the earlier orders, learned Arbitral Tribunal declined the prayer made by learned Senior Counsel for the Petitioner-Improvement Trust for one week's more time to file the statement of defence and counter-claim. It was also observed in the impugned order (Annexure P-11) that five opportunities have been granted to the respondents (who are the Petitioners in the present petition) and according to Section 23 of the Arbitration Act, the pleadings are to be completed within a period of six months. It was also further observed by the learned Arbitral Tribunal that surprisingly, even an application for enlargement of time has not been filed and since the Improvement Trust has not filed the statement of defence and counter-claim, their right to file the same as per Section 25(b) of the Arbitration Act stands forfeited/closed. The petitioner-Improvement Trust was however permitted to admit/deny the documents filed by the claimant with the statement of claim within a period of three weeks. The aforesaid impugned order (Annexure P-11) is reproduced as under:-

"Annexure P-11

BEFORE THE ARBITRAL TRIBUNAL COMPRISING OF SOLE ARBITRATOR JUSTICE RAJIV SHARMA (RETD.)

Arbitration Case No. 269 of 2020

In the matter of Arbitration:

BETWEEN

Shourya Towers Private Limited

....Claimant

AND

Jalandhar Improvement Trust and ors.

...Respondents

Present: Mr. Himanshu Gupta, Advocate
Mr. Avichal Sharma, Advocate and
Mr. Ankur Jain, Director
for the claimant.

Ms. Anu Chatrath, Senior Advocate
Mr. Ratik Chatrath, Advocate
Mr. Parminder Singh Gill, Executive Officer
Mr. Inderpal Singh, Executive Engineer
for the respondents.

Proceedings of the 5th Sitting of the Arbitral Tribunal held on April 09, 2025 at 01:30 PM (Room No. 5) at Chandigarh Arbitration Centre, Sector 17, Chandigarh.

ORDER

Despite the previous order dated 11.03.2025 also the Statement of Defence has not been filed. The respondents were granted four weeks' time to file the statement of defence and counter-claim, if any, on 03.12.2024. The respondents were granted four weeks further time to file the statement of defence and counter-claim, if any, on 07.01.2025. Neither the statement of defence nor counter-claim was filed by the respondents. The respondents were granted two weeks time to file statement of defence on 01.02.2025. Mr. Parminder Singh, Executive Officer prayed for and was granted three weeks' time to file the statement of defence on 17.02.2025. It was also made clear that in case the statement of defence is not filed, the defence would be struck of. However, in the spirit of the Arbitration and Conciliation Act, 1996, opportunity to be granted to the respondents to file the statement of defence and counter-claim subject to payment of Rs. 10,000/- as cost. The statement of defence/counter-claim was not filed as noticed hereinabove despite order dated 11.03.2025. The cost has not been deposited by the respondents as per statement of Sh. Avichal Sharma, Advocate for the claimant. Ms. Anu Chatrath, Senior Advocate has vehemently argued that one week's time be granted to file statement of defence and counter-claim, if any. In view of the previous orders quoted hereinabove, the prayer is declined. The parties are to be treated fairly as per Section 18 of the Arbitration and conciliation Act, 1996. Five opportunities have been granted to the respondents to file statement of defence and counter-claim. According to Section 23 of the Act, 1996, the pleadings are to be completed within a period of six months. Surprisingly, even an application for enlargement of time has not heen filed. Since the respondents have not filed the statement of defence and counter-claim, their right to file the same

as per Section 25(b) stands forfeited/closed. The respondents are permitted to admit/deny the documents filed by the claimant with the statement of claim within three weeks.

List on ***01.05.2025 at 1:15 P.M.*** *at the Chandigarh Arbitration.*

Sd/-
Justice Rajiv Sharma (Retd.)
Sole Arbitrator

Chandigarh
Dated: 9th April, 2025"

12. Thereafter, the petitioner-Improvement Trust against whom the aforesaid impugned order dated 09.04.2025 was passed by the learned Arbitral Tribunal filed an application for recalling of the aforesaid order vide Annexure P-15 by taking up various grounds for recalling of the order particularly that an Advocate could not be engaged in time because of cumbersome procedure for appointment of an Advocate for defending the cases of high value and the procedure which was to be adopted by the Petitioner-Improvement Trust for the purpose of engagement of a Counsel was also mentioned in Para No.6 of the aforesaid application. In Para No.7, it was also stated by the petitioner-Improvement Trust that when the matter was received in the office of the Improvement Trust, the aforesaid procedure for assigning/appointment of an Advocate was set into motion and during this time, the petitioner-Improvement Trust was appearing through its concerned Officers before the Arbitral Tribunal and seeking time so that the Advocate may be appointed at the earliest. Another ground was taken in Para No.8 that there was a change of the earlier Chairman of the Jalandhar Improvement Trust, who was replaced by new Chairman on 26.02.2025, who took charge on 19.03.2025 and in the interregnum period, the appointment process was on hold. The respondent/claimant filed reply to the

aforesaid application vide Annexure P-16. This application was ultimately considered and decided by the learned Arbitral Tribunal and vide Annexure P-18, it was dismissed on 12.08.2025. In the present revision petition, both the impugned orders (Annexure P-11 & P-18) have been impugned by the petitioner-Improvement Trust.

SUBMISSIONS BY LEARNED SENIOR COUNSEL FOR PETITIONERS

13. Dr. Anmol Rattan Sidhu, learned Senior Counsel for the petitioner assisted by Ms. Mandeep Kaur, Advocate, Ms. Sandhya Gaur, Advocate and Mr. Raghav Gulati, Advocate submitted that the petitioner is an instrumentality of the State and had acted in a *bona fide* manner while appearing and discharging its duties for defending the interest of the Improvement Trust. He further submitted that when on the first sitting of the learned Arbitral Tribunal dated 27.09.2024, two officers of the Improvement Trust had appeared before learned Arbitral Tribunal, they made a statement before learned Arbitral Tribunal that they will represent the respondents but in fact they were in collusion with the claimant/respondent because they did not apprise the higher officers with regard to the pendency of the proceedings before the learned Arbitral Tribunal and in this way, they committed a fraud upon their own Improvement Trust by not pursuing the aforesaid matter. He also submitted that there is no dispute that on the very first date of hearing before learned Arbitral Tribunal, the procedure which is to be followed during the course of arbitration proceedings was settled in consultation with the parties but the aforesaid two officers, who are the Trust Engineer and the Assistant, Trust Engineer were never authorized to appear and represent the Improvement Trust and it cannot be disputed that in the aforesaid procedure that was to be adopted, there was a Clause pertaining to

Adjournment that adjournment can be granted only by showing sufficient cause.

14. Learned Senior Counsel further submitted that on the next date of sitting of learned Arbitral Tribunal, nobody had appeared on behalf of the Trust but when on the third sitting dated 03.12.2024, an Advocate had appeared along with the aforesaid two officers, namely, Parminder Singh, Executive Officer and Inderpal Singh, Trust Engineer and the attendance of the aforesaid Advocate and officers had been recorded by learned Arbitral Tribunal but in fact the factual position was that the aforesaid Advocate was never authorized by the Improvement Trust to appear although in the proceedings, learned Arbitral Tribunal has so observed that the learned counsel for the Improvement Trust has prayed for and is granted four weeks' time to file the statement of defence and counter-claim, if any. Learned Senior Counsel submitted that on the next date i.e. 07.01.2025, again the aforesaid Inderpal Singh, Trust Engineer had appeared and prayed for four weeks' time to file the statement of defence and counter-claim, if any, but these officers were acting in collusion with the claimant/respondent. Thereafter, again on 17.02.2025, the aforesaid Inderpal Singh, Trust Engineer and Parminder Singh, Executive Officer had appeared and again time was granted but they were playing at the hands of the claimant/respondent.

15. Learned Senior Counsel further submitted that after adopting a procedure for appointment of an Advocate to defend the claim on behalf of the Improvement Trust before learned Arbitral Tribunal in a high value case, he was appointed as an Advocate to defend the case on 12.05.2025. However, on 11.03.2025, he had appeared on oral instructions without the

assistance of any officer of the Improvement Trust and had also prayed for some time to file the statement of defence and counter-claim and four weeks' time was granted to him for the same. Thereafter, on 09.04.2025, when the impugned order was passed vide Annexure P-11, another learned Senior Advocate had appeared on behalf of the petitioner-Improvement Trust, who sought just one week's more time to file the statement of defence and counter-claim, if any, but the same was declined by learned Arbitral Tribunal by way of the aforesaid impugned order. He submitted that in this way, technically the counsel was appointed by the Petitioner-Improvement Trust after passing of the impugned order vide Annexure P-11 dated 09.04.2025 and although the presence of the learned Senior Counsel for the Improvement Trust was recorded in the impugned order dated 09.04.2025 as well as in the order dated 11.03.2025, who was appearing on oral instructions but written order for appointment was passed on 12.05.2025 and because of this difficulty there had been a delay in filing of the statement of defence and counter-claim.

16. Learned Senior Counsel also submitted that from the aforesaid circumstances, it is very clear that the delay which has occurred in filing of the statement of defence and counter-claim was not intentional. The two basic reasons for delay in filing of the statement of defence and counter-claim are that firstly, when the earlier officers including Executive Officer of the Improvement Trust had appeared for number of times, they were acting in collusion with the respondent/claimant and when on 03.12.2024, one Counsel had appeared, she was not authorised to appear on their behalf and thereafter, when on the last two dates he and another Senior Counsel had appeared on behalf of the Petitioner-Improvement Trust, they had appeared

on oral instructions and the appointment of an Advocate by the Improvement Trust had taken place even after the passing of the impugned order (Annexure P-11). The cumbersome procedure for appointment of an Advocate in high value cases by the petitioner-Improvement Trust was also so contained in the application for recalling of the aforesaid impugned order whereby the procedure starts at the clerical level and goes up till the level of concerned Minister and that was the precise reason as to why the delay had occurred in the entire proceedings.

17. Learned Senior Counsel further submitted that when the petitioner-Improvement Trust had filed an application for recalling the aforesaid order (Annexure P-11) under Section 19 of the Arbitration Act, then the grounds so taken as aforesaid were not properly appreciated by learned Arbitral Tribunal, who declined the application by referring to various judgments of Hon'ble Supreme Court and to the provisions of Section 23 and Section 25(b) of the Arbitration Act and therefore, both the impugned orders (Annexure P-11 and P-18) are liable to be set aside.

18. Learned Senior Counsel referred to various judgments of Hon'ble Supreme Court and High Courts to substantiate his arguments. He referred to judgment passed by Hon'ble Supreme Court in "***Srei Infrastructure Finance Limited Vs. Tuff Drilling Private Limited***", ***(2018) 11 SCC 470*** to contend that a petition under Article 227 of the Constitution of India is maintainable and can be entertained in the facts and circumstances of each and every case and the jurisdiction of the High Court to exercise its powers under Article 227 of the Constitution of India cannot be ousted by the *non obstante clause* provided under Section 5 of the Arbitration Act. He also referred to a judgment passed by the Delhi High

Court in ***CM(M) No.424 of 2021*** titled as "***Union of India Vs. Indian Agro Marketing Co. Operative Limited***", **decided on 02.05.2022** and also a Division Bench judgment passed by the High Court of Gujarat in ***Letters Patent Appeal No.308 of 2020*** titled as "***Narmada Clean-Tech & Ors. Vs. Indian Council of Arbitration and others***" **decided on 30.07.2020** wherein it was so held that a petition under Articles 226 & 227 of the Constitution of India is certainly maintainable even against an order passed by an Arbitrator and submitted that in that case, the order under challenge before Hon'ble Division Bench of Gujarat High Court was against an order passed under Section 16 of the Arbitration Act which was held to be maintainable in the eyes of law. The relevant portion of the aforesaid judgment is reproduced as under:-

> *"**39.** Thus, our understanding of the ratio of the Supreme Court decision in SBP and company (supra) is that the High Court should not interfere with each and every order passed by the Arbitral Tribunal and judicial intervention should be minimal. We find it difficult to take the view interpreting the SBP and company (supra) that the High Court has no power at all to intervene either in exercise of its writ jurisdiction or supervisory jurisdiction under Article 227 of the Constitution of India with any of the orders that may be passed by the Arbitral Tribunal or the Arbitrator.*
>
> *xx xx xx xx*
>
> ***41.** In the aforenoted paragraph, the Supreme Court has emphatically laid down that any restriction on the power of the High Court under Article 226 of the Constitution, can be recognised only if it is incorporated in any of the provisions of the Constitution itself. In view of the above decision of the*

Constitution Bench of the Supreme Court, it is clear that unless the jurisdiction of this Court under Article 226 of the Constitution stands curtailed by any other provision of the Constitution, it cannot be said that a Petition under Article 226 of the Constitution does not lie or this Court has no jurisdiction to interfere in arbitration matters. The principle laid down by the Supreme Court is that in respect of election matters, unless an extraordinary case is made out in a given case, a petition under Article 226 of the Constitution should not be entertained. This clearly means that a petition under Article 226 of the Constitution challenging the legality of actions taken or orders made in the course of an election to a local authority or any other body on the ground of violation of law, is maintainable but should not be entertained by the High Court unless the violation of law made out is such as would justify the interference under Article 226 of the Constitution immediately to prevent abuse of power and waste of public time and money and the alternative remedy by way of Election Petition after the elections is not an efficacious remedy. The same principle of law should apply even to the arbitration matters.

42. *In the Union of India v. Varindera Constructions Ltd., (2018) 7 SCC 794, the Supreme Court held:-*

> *"12. The primary object of the arbitration is to reach a final disposition in a speedy, effective, inexpensive and expeditious manner. In order to regulate the law regarding arbitration, legislature came up with legislation which is known as Arbitration and Conciliation Act, 1996. In order to make arbitration process more effective, the legislature restricted the role of courts in case where matter is subject to the arbitration. Section 5 of the Act specifically*

> *restricted the interference of the courts to some extent. In other words, it is only in exceptional circumstances, as provided by this Act, the court is entitled to intervene in the dispute which is the subject- matter of arbitration. Such intervention may be before, at or after the arbitration proceeding, as the case may be. In short, court shall not intervene with the subject-matter of arbitration unless injustice is caused to either of the parties."*
>
> ***43**. The aforesaid observations of the Supreme Court have been quoted with approval in a recent pronouncement of the Supreme Court in the case of M/s. ICOMM Tele Ltd. vs. Punjab State Water Supply and Sewarage Board and another [Civil Appeal No.2713 of 2019 decided on 11th March 2019].*"

19. It was further submitted by learned Senior Counsel that high value claim is involved in the present case and the petitioner is an instrumentality of State being an Improvement Trust, prejudice will be caused in case the impugned order is sustained.

SUBMISSIONS BY LEARNED SENIOR COUNSEL FOR RESPONDENT

20. On the other hand, Mr. Chetan Mittal, learned Senior Counsel for the respondent assisted by Mr. Himanshu Gupta, Advocate and Ms. Sehej Sandhawalia, Advocate has vehemently opposed the present revision petition not only on 'maintainability' but also on 'entertainability' of the present petition on merits. While advancing the arguments, learned Senior Counsel has submitted that the present petition which is in the nature of a Revision Petition under Article 227 of the Constitution of India is not entertainable by this Court because the same is against an interlocutory order which has been passed by learned Arbitral Tribunal and it is not a case where the petitioner is left remediless. He submitted that the petitioner has

the remedy of challenging the award at the relevant stage under the provisions of Section 34 of the Arbitration Act. He further contended that the sole recourse available for challenging a procedural/interlocutory order passed by learned Arbitrator is by invoking Section 37 of the Arbitration and Conciliation Act, subject to the limitation that such challenge must fall within the parameters prescribed under the said provision. However, the present procedural order cannot be challenged under the provisions of Section 37 of the Arbitration Act because the order passed under Section 25(b) of the Arbitration Act does not find mention in Section 37 of the Arbitration Act.

21. Learned Senior Counsel further submitted that it is a settled law that the Arbitration Act is a self-contained code and although the proceedings of learned Arbitral Tribunal are *quasi judicial* in nature but an Arbitrator is appointed in pursuance of a contract between the parties and the only method available for challenging interlocutory/procedural orders passed by learned Arbitral Tribunal can be either under Section 34 once the award is passed or Section 37 of the Arbitration Act as the case may be when it is specifically provided therein. Recourse to invoking extraordinary jurisdiction of the High Court under Article 226/227 of the Constitution of India is permissible only when there is lack of jurisdiction proved on record or at the most in the rare circumstances but not in the ordinary course and therefore, the present petition is liable to be dismissed on the ground of being not entertainable.

22. Learned Senior Counsel also submitted that there is no dispute with regard to the proposition of law that Article 227 of the Constitution of India provides for a Constitutional mandate and powers of the High Court

cannot be curtailed by any statutory provision but at the same time when the petitioner is not able to show any inherent defect in jurisdiction of the Arbitral Tribunal then the other statutory provisions governing the parties will come into play and therefore, in the present case, the provisions of Section 5 of the Arbitration Act will come into play.

23. He further submitted that in any event, the present revision petition is not sustainable. It was pointed out that when the petitioner filed the application (Annexure P-15) seeking recall of the order dated 09.04.2025 (Annexure P-11), it was specifically averred in Para No.7 thereof that the process for appointment of advocates had already been initiated upon receipt of notice by the Improvement Trust. During this period, the Improvement Trust continued to appear before the learned Arbitral Tribunal through its concerned officers and sought adjournments, as they believed that the appointment of counsel would be effected shortly. Learned Senior Counsel heavily relied upon the aforesaid Para No.7 of the application which was filed by the petitioner itself, which is reproduced as under:-

> *"7. It is submitted that once the matter was received at the office of Respondent No.1, the above-mentioned procedure was set into motion for appointment of advocates. During this time, the Respondent was appearing through its concerned officers before the Hon'ble Arbitral Tribunal and seeking time as it expected the appointment of advocates to take place at the earliest."*

24. Learned Senior Counsel submitted that by way of the categorical averment made by the petitioner-Improvement Trust itself in its own application that it was appearing through its officers and awaiting the appointment of advocates, the Improvement Trust cannot now take an

inconsistent stand by submitting that the officers, who had appeared, were in collusion with the claimant/respondent and that they were not authorized to appear. He also submitted that not only this, the aforesaid stand taken by the learned Senior Counsel for the petitioner that the aforesaid officers, who had been appearing on the earlier dates, were not authorized to appear, was never taken before learned Arbitral Tribunal at the time of filing of the application under Section 19 of the Arbitration Act for recalling the impugned order and it has only been taken for the first time in the present Revision Petition before this Court. Therefore, the revision petition otherwise also would not be sustainable because the scope of a revision petition is very limited and it only lies when the High Court finds any perversity or lack of jurisdiction or a defect or error in the impugned order that a revision petition can be entertained, whereas in the present case on the one hand in the application under Section 19 of the Arbitration Act, the Improvement Trust had taken a stand that its officers had been appearing whereas on the other hand at the time of filing of the present revision petition, an inconsistent stand has been taken that the officers committed a fraud and they are in collusion with the claimant which cannot be entertained in a revisional jurisdiction and therefore, on this ground as well, the present revision petition is liable to be dismissed.

25. He further submitted that another ground which has been taken in the application was with regard to change of the Chairman also cannot become a ground for seeking a window for challenging the order passed by learned Arbitral Tribunal straight away by filing a revision petition before this Court.

26. Learned Senior Counsel further submitted that by way of the

impugned order (Annexure P-11), a right of filing of the statement of defence and counter-claim has been forfeited rightly under Section 25(b) read with Section 23(4) of the Arbitration Act. He submitted that the aforesaid Section 23(4) of the Arbitration Act was incorporated by way of amendment No.33 of 2019 w.e.f. 30.08.2019 whereby a time-line which is mandatory in nature has been set to be maximum six months from the date of receipt of notice of appointment by learned Arbitrator. He further submitted that in the present case, the total time-line prescribed has been exceeded and even the difference between the date of first sitting which was held on 27.09.2024 by learned Arbitral Tribunal and the date of passing of the impugned order (Annexure P-11) is 09.04.2025 when the defence was struck off is itself beyond the statutory limit of 6 months, being a duration of approx. 6 months and 13 days. He submitted that learned Arbitrator had issued a notice to the parties on 07.09.2024 which would therefore mean that learned Arbitrator had received the notice of his appointment much prior to that and in this regard, he has produced a photocopy of the notice dated 07.09.2024 so issued by the learned Arbitrator before this Court and a copy of the same has also been supplied to learned Senior Counsel for the petitioner. This notice which was sent by learned Arbitrator to all the parties is hereby taken on record as Mark ‘X’. Registry is directed to tag the same at an appropriate place in the file and also paginate the same.

27. In order to substantiate his arguments, he submitted that on 07.09.2024 learned Arbitrator had sent notices through Speed Post to all the parties which would clearly mean that he received notice from the Court vide which he was appointed as Arbitrator prior to that and in this way even assumingly as per Section 23(4) of the Arbitration Act, the period is to be

reckoned from 07.09.2024 still it comes out to be 7 months and 3 days. In any eventuality the period exceeded 6 months because the time period between the first procedural order dated 27.09.2024 and the impugned order dated 09.04.2025 itself exceeded 6 months. He thereafter referred to the provisions of Section 23(4) of the Arbitration Act to contend that the aforesaid provision is mandatory in nature and provides that the statement of claim and defence under Section 23(4) of the Arbitration Act shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, receive notice, in writing, of their appointment and no time can be extended in contradistinction with the provision of Section 29(A) of the Arbitration Act because under the provision of Section 29(A) of the Arbitration Act when the time-line for learned Arbitral Tribunal is to be extended then a window for extension has been provided by the legislature itself whereas such a window has not been provided by legislature under Section 23(4) of the Arbitration Act and therefore, there was neither any scope of further extension nor any such application was filed by the petitioner before learned Arbitral Tribunal for the extension or enlargement of time which is so recorded in the impugned order itself. He further submitted that Section 25(b) of the Arbitration Act under which learned Arbitral Tribunal has forfeited the right to file statement of defence and counter-claim provides that unless otherwise agreed by the parties, where, without showing sufficient cause, the respondent fails to communicate his statement of defence in accordance with sub-section (1) of Section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant [and shall have the discretion to treat the right of

the respondent to file such statement of defence as having been forfeited]. He submitted that the expression '*sufficient cause'* can be shown only when the total period is less than six months but when the total period itself has exceeded six months, then the provisions of Section 23(4) of the Arbitration Act will come into play and therefore, a statutory bar is created and in this way, the learned Arbitrator has rightly forfeited the claim. He also submitted that not only this, five opportunities were granted by learned Arbitral Tribunal as per the aforesaid procedural orders which have been reproduced above and after the expiry of the aforesaid period of six months, learned Arbitral Tribunal has rightly struck off the right to file the statement of defence and counter-claim. He also submitted that the aforesaid provision of Section 23(4) of the Arbitration Act is mandatory. In this regard, learned Senior Counsel has referred to the judgment passed by a Division Bench of Madras High Court in ***A.R.B. O.P. (Com. Div.) No.185 of 2023*** titled as "***N. Ramaswamy Vs. R. Bhojan***", **decided on 14.07.2023**.

28. Learned Senior Counsel also submitted that assumingly even for the sake of arguments that on sufficient cause being shown under Section 25 of the Arbitration Act, the time limit can be enlarged, still the petitioner does not satisfy the aforesaid expression '*sufficient cause'* because the sufficient cause as so projected by the petitioner is of non-engagement of advocates and allegation of collusion of their own officers with the respondent/claimant and such a ground taken either before learned Arbitral Tribunal or in the present revision petition cannot constitute a sufficient cause within the meaning of the expression '*sufficient cause'* under Section 25 of the Arbitration Act.

29. Learned Senior Counsel also relied upon various judgments of

Hon'ble Supreme Court and High Courts to substantiate his arguments. He referred to a judgment passed by a Seven-Judge Constitution Bench of Hon'ble Supreme Court in "***M/s SBP & Co. Vs. Patel Engineering Ltd. & Another***" ***(2005) 8 SCC 618,*** to contend that although Hon'ble Supreme Court was dealing with the issue pertaining to Section 11 of the Arbitration Act and whether such orders are judicial or administrative in nature, but at the same time, it was also observed by Hon'ble Supreme Court that once the matter reaches Arbitral Tribunal or Sole Arbitrator, the High Court would not interfere with the orders passed by Arbitral Tribunal or the Arbitrator during the course of arbitration proceedings and the parties could approach the Court only in terms of Section 34 once the award is passed or under Section 37 of the Arbitration Act. He further referred to other judgments passed by Hon'ble Supreme Court in "***M/s Deep Industries Limited Vs. Oil and Natural Gas Corporation Limited and another***", ***2020(15) SCC 706*** and "***Bhaven Construction through Authorized Signatory Premji Bhai K. Shah Vs. Executive Engineers, Sardar Sarovar Narmada Nigam Limited and another***" ***(2022) 1 SCC 75*** wherein it was held that only in exceptional rarity when the parties are left remediless or there is a clear bad faith then such an indulgence can be granted but in the present case, there was neither any exceptional rarity nor the parties were left remediless nor there was a clear bad faith although there was an allegation pertaining to the officers, who had earlier appeared to represent the Improvement Trust. He further submitted that the aforesaid element of bad faith was taken for the first time before this Court in a revision petition but was never raised before learned Arbitral Tribunal at the time of filing the application for recalling the order and therefore, even that ground is not available to the petitioner.

ANALYSIS OF SUBMISSIONS

30. I have heard the learned counsels for the parties at length.

31. The aforesaid dates and the facts pertaining to passing of the orders by learned Arbitral Tribunal are not in dispute. Before proceeding further, it will be just and proper to refer to the provisions of law and also the case law on this subject. Sections 5, 23 and 25 of the Arbitration Act are reproduced as under:-

> ***5. Extent of judicial intervention.****-Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.*
>
> *xx xx xx xx*
>
> ***23. Statements of claim and defence.-***
>
> *(1) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.*
>
> *(2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.*
>
> *1[(2A) The respondent, in support of his case, may also submit a counterclaim or plead a set-off, which shall be adjudicated upon by the arbitral tribunal, if such counterclaim or set-off falls within the scope of the arbitration agreement.] 1. Ins. by Act 3 of 2016, s. 11 (w.e.f.*

23-10-2015).

(3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

[(4) The statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing of their appointment.]

xx xx xx xx

25. Default of a party.- *Unless otherwise agreed by the parties, where, without showing sufficient cause,-*

(a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant 3[and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited].

(c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it."

32. Section 5 of the Arbitration Act provides for a *non obstante clause* giving the extent of judicial intervention and provides that notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part. The aforesaid provision therefore clearly provides that a judicial authority will not intervene unless it is so provided in this part. Section 23 of the Arbitration Act provides for 'Statement of claim and defence'. Section 23(4) of the Arbitration Act was inserted by way of an amendment in the year 2019 w.e.f. 30.08.2019 which provides for a time framework that the statement of claim and defence under section 23 shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing of their appointment. The factual position with regard to time period which exceeded six months is not in dispute. From the date when learned Arbitrator sent notice vide Mark 'X' dated 07.09.2024, the total days till the time of passing of the impugned order dated 09.04.2025 (Annexure P-11) is 7 months and 3 days and from the date on which the first procedural order was passed on 27.09.2024 and 09.04.2025 when the impugned order was passed, the total difference between the days is 6 months and 13 days.

33. Section 25 of the Arbitration Act provides for consequence of default of parties and Clause (b) of Section 25 provides that if the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited. In the present case,

learned Arbitral Tribunal after the expiry of six months while referring to the earlier orders forfeited the right of the petitioner-Improvement Trust to file the statement of defence and the counter-claim under Section 25(b) which would also have to be read along with Section 23(4) of the Arbitration Act because the time-framework had exceeded.

34. The case law on the subject as so referred to by the learned Senior Counsels for the parties has to be discussed at this stage. A Seven Judges Constitution Bench of Hon'ble Supreme Court in ***M/s SBP & Company Vs. Patel Engineering Ltd. & Another's case (Supra)*** was dealing with the nature of the orders passed under Section 11 of the Arbitration Act. In Paras No.45, 46 & 47(iv) the scope of judicial intervention was also discussed. It was so observed that Arbitral Tribunal is a creation of an Agreement between the parties even though it is constituted on the basis of order passed by the Chief Justice/High Court if any occasion arises but the parties submit themselves to the Arbitrator on the basis of Agreement between the parties which is therefore contractual in nature. Rationale and objective of minimising the judicial intervention was also discussed. In the concluding part, it was so observed that once the matter reaches Arbitral Tribunal or Sole Arbitrator then the High Court would not interfere with the order passed by Arbitrator or Arbitral Tribunal during the course of the arbitration proceedings and the parties could approach the Court only in terms of Section 37 of the Arbitration Act or in terms of Section 34 of the Arbitration Act. Para Nos.45, 46 & 47(iv) are reproduced as under:-

> *"**45.** It is seen that some High Courts have proceeded on the basis that any order passed by an Arbitral Tribunal*

during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution. We see no warrant for such an approach. Section 37 makes certain orders of the Arbitral Tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating its grievances against the award including any in-between orders that might have been passed by the Arbitral Tribunal acting under Section 16 of the Act. The party aggrieved by any order of the Arbitral Tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The Arbitral Tribunal is, after all, a creature of a contract between the parties, the arbitration agreement, even though, if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the Arbitral Tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the Arbitral Tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution. Such an intervention by the High Courts is not permissible.

46. *The object of minimising judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 or under Article 226 of the Constitution against every order made by the Arbitral Tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the Arbitral Tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage.*

> ***47.*** *We, therefore, sum up our conclusions as follows:*
>
> *(i) to (v) xx xx xx xx*
>
> ***(vi)*** *Once the matter reaches the Arbitral Tribunal or the sole arbitrator, the High Court would not interfere with the orders passed by the arbitrator or the Arbitral Tribunal during the course of the arbitration proceedings and the parties could approach the Court only in terms of Section 37 of the Act or in terms of Section 34 of the Act.*
>
> *(vii) to (xii) xx xx xx xx"*

35. In ***M/s Deep Industries Limited's case (Supra)*** order passed by the learned Arbitral Tribunal under Section 17 of the Arbitration Act for staying the black-listing order was challenged before the learned City Civil Court which dismissed the appeal under Section 37 of the Arbitration Act. This order under Section 37 of the Arbitration Act was challenged under Article 227 of the Constitution of India and it was allowed by the High Court and the order of the City Civil Court was set aside. Thereafter, the Contractor assailed the same before Hon'ble Supreme Court in the aforesaid judgment. Argument was raised regarding the maintainability of filing the said petition under Article 227 of the Constitution of India by referring to Section 5 of the Arbitration Act as well as the judgment of Hon'ble Supreme Court in ***M/s SBP & Company Vs. Patel Engineering Ltd. & Another's case (Supra)***. Another argument was also raised by the appellant that it was not a case of lack of jurisdiction. Hon'ble Supreme Court held that against the order of Section 37 of the Arbitration Act, no petition under Article 226 & 227 of the Constitution of India can be filed. It was further held that although Article 227 of the Constitution of India remained untouched by the provisions of Section 5 of the Arbitration Act but it is only when the orders

that lack patent inherent jurisdiction that the provisions of Article 227 of the Constitution of India can be invoked. It was also discussed that the legislative policy pertaining to general revisional jurisdiction under Section 115 of the Code of Civil Procedure that revision under Section 115 of the Code of Civil Procedure lies only against the final order and not against the interlocutory orders, is also relevant. In the present petition as well, the impugned orders are not the final orders and are only interlocutory or procedural orders. Para Nos.16, 17 & 24 are reproduced as under:-

> "***16.*** *Most significant of all is the non-obstante clause contained in Section 5 which states that notwithstanding anything contained in any other law, in matters that arise under Part I of the Arbitration Act, no judicial authority shall intervene except where so provided in this Part. Section 37 grants a constricted right of first appeal against certain judgments and orders and no others. Further, the statutory mandate also provides for one bite at the cherry, and interdicts a second appeal being filed (See Section 37(2) of the Act)*
>
> ***17.*** *This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non-obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in*

interfering with the same, taking into account the statutory policy as adumbrated by us herein above so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction.

xx xx xx xx

***24**. Mr Rohatgi is also correct in pointing out that the legislative policy qua the general revisional jurisdiction that is contained by the amendments made to Section 115 CPC should also be kept in mind when the High Courts dispose of petitions filed under Article 227. The legislative policy is that no revision lies if an alternative remedy of appeal is available. Further, even when a revision does lie, it lies only against a final disposal of the entire matter and not against interlocutory orders. These amendments were considered in Tek Singh v. Shashi Verma 18 in which this Court adverted to these amendments and then stated: (SCC p. 681, paras 5-6)*

"5. ……A reading of this proviso will show that, after 1999, revision petitions filed under Section 115 CPC are not maintainable against interlocutory orders.

6. …..Even otherwise, it is well settled that the revisional jurisdiction under Section 115 CPC is to be exercised to correct jurisdictional errors only. This is well settled. In DLF Housing & Construction Co. (P) Ltd. v. Sarup Singh 19 this Court held: (SCC pp. 811-12, para 5)

"5. …The position thus seems to be firmly established that while exercising the jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the

dispute itself. Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present case. It was not contended, as indeed it was not possible to contend, that the learned Additional District Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him, in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) also does not seem to apply to the case in hand. The words "illegally" and "with material irregularity" as used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision. and not to errors either of fact or of law, after the prescribed formalities have been complied with. The High Court does not seem to have adverted to the limitation imposed on its power under Section 115 of the Code. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision under Section 115 of the Code when there was no illegality or material irregularity committed by the learned Additional District Judge in his manner of dealing with this question. It seems to us that in this matter the High Court treated the

revision virtually as if it was an appeal."

36. In ***Bhaven Construction's case (Supra)*** an application was filed before learned Arbitrator under Section 16 of the Arbitration Act disputing the appointment of Sole Arbitrator. Against the aforesaid order in the application of Section 16 of the Arbitration Act, a petition under Articles 226/227 of the Constitution of India was filed in the High Court and the learned Single Judge dismissed the same. However, on assailing the same by filing a Letter Patent Appeal, it was allowed and in this way an SLP was filed. It was held that in exceptional rarity when a party is left remediless under a statute or there is a clear bad faith then the provisions of Articles 226/227 of the Constitution of India can be resorted. Para Nos.11, 12, 13, 14, 18, 19 & 20 are reproduced as under:-

> *"**11**. Having heard both the parties and perusing the material available on record, the question which needs to be answered is whether the arbitral process could be interfered under Articles 226/227 of the Constitution, and under what circumstance?*
>
> ***12**. We need to note that the Arbitration Act is a code in itself. This phrase is not merely perfunctory, but has definite legal consequences. One such consequence is spelled out under section 5 of the Arbitration Act, which reads as under*
>
> > *"**5. Extent of judicial intervention.-** Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."*
> >
> > *(emphasis supplied)*
>
> *The non-obstante clause is provided to uphold the intention of the legislature as provided in the Preamble to adopt UNCITRAL Model Law and Rules, to reduce excessive judicial interference which is not*

contemplated under the Arbitration Act.

***13**. The Arbitration Act itself gives various procedures and forums to challenge the appointment of an arbitrator. The framework clearly portrays an intention to address most of the issues within the ambit of the Act itself, without there being scope for any extra statutory mechanism to provide just and fair solutions.*

***14**. Any party can enter into an arbitration agreement for resolving any disputes capable of being arbitrable. Parties, while entering into such agreements, need to fulfil the basic ingredients provided under Section 7 of the Arbitration Act. Arbitration being a creature of contract, gives a flexible framework for the parties to agree for their own procedure with minimalistic stipulations under the Arbitration Act.*

xx xx xx xx

***18**. In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a Constitutional right. In Nivedita Sharma v. Cellular Operators Association of India, (2011) 14 SCC 337, this Court referred to several judgments and held:*

> *"11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation - L. Chandra Kumar*

v. Union of India, (1997) 3 SCC 261. However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

(emphasis supplied)

It is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear 'bad faith' shown by one of the parties. This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient.

***19**. In this context we may observe Deep Industries Ltd. v. ONGC wherein interplay of Section 5 of the Arbitration Act and Article 227 of the Constitution was analysed as under: (SCC p. 714, paras 16-17)*

"16. Most significant of all is the non obstante clause contained in Section 5 which states that notwithstanding anything contained in any other law, in matters that arise under Part I of the Arbitration Act, no judicial authority shall intervene except where so provided in this Part. Section 37 grants a constricted right of first appeal against certain judgments and orders and no others. Further, the statutory mandate also provides for one bite at the cherry, and interdicts a second appeal being filed [see Section 37(2) of the Act].

17. This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us hereinabove so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction."

(emphasis supplied)

> ***20***. *In the instant case, Respondent 1 has not been able to show exceptional circumstance or "bad faith" on the part of the appellant, to invoke the remedy under Article 227 of the Constitution. No doubt the ambit of Article 227 is broad and pervasive, however, the High Court should not have used its inherent power to interject the arbitral process at this stage. It is brought to our notice that subsequent to the impugned order of the sole arbitrator, a final award was rendered by him on merits, which is challenged by Respondent 1 in a separate Section 34 application, which is pending."*

37. The relevant paragraphs i.e. Para No.9.5, 9.6, 9.8 & 9.9 of the judgment passed by a Division Bench of Madras High Court in ***N. Ramaswamy's Case (Supra)*** which pertains to discussion on Section 23(4) of the Arbitration Act are also reproduced as under:-

> *"**9.5**. Learned counsel, thereafter, pressed into service, National Thermal Power Corporation Ltd. v. Siemens Atkeingesellischaft, (2007) 4 SCC 451. We are of the considered view that Siemens would also not come to the aid of appellant as it was rendered prior to 23.10.2015. To be noted, Siemens was rendered by Hon'ble Supreme Court on 28.02.2007. Prior to 23.10.2015, there was no Section 29A in the A & C Act. Section 29A of A & C Act puts in place a timeline for Arbitral Tribunals and makes it very clear that Arbitral Tribunals (Domestic Arbitration's) should make awards within a period of twelve months from the date of completion of pleadings, ie., 'completion of pleadings within the meaning of sub-section (4) of Section 23 of A & C Act.*
>
> ***9.6**. As regards Section 29A of A & C Act, about which, there is allusion supra, if an Arbitral Tribunal*

does not make an award within a period of twelve months from the date of completion of pleadings under sub-section (4) of Section 23, the mandate of Arbitral Tribunal snaps. Therefore, an Arhitral Tribunal is under a statutory compulsion ie., a statutory mandate, to render the award within this 12 months timeline. We are acutely conscious that this 12 months is extendable by another six months, but, that is by consent of the parties and we are also acutely conscious that the mandate that snaps can be resuscitated, but, that can be only by way of a judicial order to be made by a Court under Section 29A(4) of A & C Act, but the bottom line is, an Arbitral Tribunal should make an award within twelve months from the date of completion of pleadings within the meaning of Section 23(4) and this is the position before AT on the date of impugned order. It has not changed today either. Parties consenting for extending timeline by six months, resuscitation by judicial order (post such six months or parties not consenting for such extension as the case may be) were/are all in the nature of windows and venturing into the same tantamount to venturing into the realm of surmises and conjectures.

xx xx xx xx

***9.8**. At this juncture, we deem it appropriate to write that timelines qua A & C Act have to be applied very rigidly. Comprehensive view of the eco-system of the statute, Le., A & C Act, will make it clear that timelines have been prescribed at every stage and therefore, timelines are sublime legal philosophy underlying the statute and are also salutary principles guiding A & C Act. To expatiate a little on this, we deem it appropriate to say that timelines have been*

prescribed for completion of pleadings, for award to be rendered by AT within a period of twelve months from the date of completion of pleadings (albeit with the option to extend it by six months by consent of parties and to resuscitate the mandate by a judicial order), a consequence of snapping of mandate is provided, if award is not made within twelve months. Thereafter, if the award is to be challenged under Section 34, the same has to be done within three months from the date on which the party making the Section 34 application, received the arbitral award or in cases where a request is made under Section 33, the date on which the request was disposed by the Arbitral Tribunal. Suffice to say, it is three months for the protagonist of a Section 34 petition. This is vide sub-Section (3) of Section 34. The proviso to sub-section (3) to Section 34 puts in a cap qua condonation of delay and the cap is of 'further 30 days. Therefore, beyond three months and 30 days from the date of receipt of award, a party cannot challenge an arbitral award. In this regard, we deem it appropriate to remind ourselves that Hon'ble Supreme Court, in Union of India v. Simplex Infrastructures Ltd., (2017) 14 SCC 225, has made it clear that even one day delay beyond three months and 30 days is not condonable. Thereafter, in a recent judgment in Government of Maharashtra v. Borse Brothers Engineers and Contractors Pvt. Ltd., (2021) 6 SCC 460, Hon'ble Supreme Court has extended this principle to the Section 37 Court also.

***9.9**. We find that the timeline under Section 29-A has a window for extension. As already alluded to supra, the 12 months timeline can be extended by a further period of six months by consent of parties and*

> *thereafter, the mandate of the AT which snaps, can be resuscitated by a judicial order of the Court under Section 29A(4), about which also, there is allusion in paragraph 9.6, supra but the point is, there is no such window as regards Section 23(4).”*

38. In ***Srei Infrastructure Finance Limited Vs. Tuff Drilling Private Limited’s case (Supra)*** as so relied upon by learned Senior Counsel for the petitioner, Hon’ble Supreme Court framed three issues in Para No.12.1. Firstly as to whether the Arbitral Tribunal which has terminated the proceeding under Section 25(a) due to non-filing of claim by the claimant has jurisdiction to consider the application for recall of the order terminating the proceedings on sufficient cause being shown by the claimant or not. Secondly, whether the order passed by Arbitral Tribunal under Section 25(a) terminating the proceeding is amenable to jurisdiction of the High Court under Article 227 of the Constitution of India or not and thirdly, whether the order passed under Section 25(a) terminating the proceeding is an award under the Arbitration Act so as to be amenable to the remedy under Section 34 of the Act or not. Hon’ble Supreme Court in the aforesaid judgment answered the first issue that recalling application is permissible under the law. So far as the remaining two issues as aforesaid are concerned, the same were not answered and it was so observed in view of the 1st issue being answered that Arbitral Tribunal has jurisdiction to consider an application for recalling of an order terminating the proceeding, it was not necessary to enter into issue number (ii) and (iii). In this way, the issue as to whether the order passed under Section 25(a) of the Arbitration Act terminating the proceeding is amenable to the jurisdiction of the High Court under Article

226 of the Constitution of India was not answered by Hon'ble Supreme Court in the aforesaid judgment. Para No.12.1, 12.2, 12.3 and 35 are reproduced as under:-

> *"**12**. We have considered the submissions of learned counsel for the appellant and learned amicus curiae and have perused the record. From the submissions, following issues arise for consideration in this Civil Appeal:-*
>
> *1) Whether arbitral tribunal which has terminated the proceeding under Section 25(a) due to non filing of claim by claimant has jurisdiction to consider the application for recall of the order terminating the proceedings on sufficient cause being shown by the claimant?*
>
> *2) Whether the order passed by the arbitral tribunal under Section 25(a)terminating the proceeding is amenable to jurisdiction of High Court under Article 227 of the Constitution of India?*
>
> *3) Whether the order passed under Section 25(a) terminating the proceeding is an award under the 1996 Act so as to amenable to the remedy under Section 34 of the Act?*
>
> *xx xx xx xx*
>
> ***35.** Coming to Issue No. 2 and 3, in view of what we have said regarding Issue No. 1 that arbitral tribunal has jurisdiction to consider an application for recall of order terminating the proceedings under Section 25(a), it is not necessary for us to enter into Issue No. 2 and 3 for purposes of this case. For deciding the present Civil Appeal, our answer to Issue No.1 is sufficient to dispose of the matter."*

39. A Division Bench of Delhi High Court in "***ATV Projects India***

Limited Vs. Indian Oil Corporation Ltd. And Another", ***2013 SCC Online Del 1669*** also dealt with this issue pertaining to whether a petition under Article 226/227 of the Constitution of India could be maintainable or not. The learned Single Judge intervened under the aforesaid provisions but on appeal before a Division Bench, the LPA was allowed and the order passed by learned Single Bench was set aside.

40. Recently, another Seven Judges Constitution Bench of Hon'ble Supreme Court in "***Interplay Between Arbitration Agreements Under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, in Re:***", ***(2024) 6 SCC 1*** again while largely dealing with provisions of Section 11 of the Arbitration Act also discussed the provision of Section 5 of the Arbitration Act. It was observed that one of the objectives of the Arbitration Act was to minimize the supervisory role of Courts in the arbitration proceedings. The principle of minimum judicial interference was also discussed and it was so observed that the principle of judicial non-interference in arbitration proceedings respects the autonomy of the parties to determine the arbitral procedures and this principle has also been incorporated in international instruments, including the New York Convention and the Model Law. Hon'ble Supreme Court observed that one of the main objectives of the Arbitration Act is to minimize the supervisory role of Courts in the arbitral process and party autonomy and settlement of disputes by an arbitral tribunal are the hallmarks of arbitration law. Section 5 gives effect to the true intention of the parties to have their disputes resolved through arbitration in a quick, efficient, and effective manner by minimizing judicial interference in the arbitral proceedings and the Parliament has enacted Section 5 to minimize the supervisory role of Courts in the arbitral

process to the bare minimum and only to the extent "so provided" under the Part-I of Arbitration Act. Para Nos.76, 81, 82 and 186 of the aforesaid judgment are reproduced as under:-

> "***76***. *The principle of judicial non-interference in arbitral proceedings is fundamental to both domestic as well as international commercial arbitration. The principle entails that the arbitral proceedings are carried out pursuant to the agreement of the parties or under the direction of the tribunal without unnecessary interference by the national courts.61 This principle serves to proscribe judicial interference in arbitral proceedings, which would undermine the objective of the parties in agreeing to arbitrate their disputes, their desire for less formal and more flexible procedures, and their desire for neutral and expert arbitral procedures.62 The principle of judicial non-interference in arbitral proceedings respects the autonomy of the parties to determine the arbitral procedures. This principle has also been incorporated in international instruments, including the New York Convention and the Model Law.*
>
> *xx xx xx xx*
>
> ***81***. *One of the main objectives of the Arbitration Act is to minimize the supervisory role of courts in the arbitral process. Party autonomy and settlement of disputes by an arbitral tribunal are the hallmarks of arbitration law. Section 5 gives effect to the true intention of the parties to have their disputes resolved through arbitration in a quick, efficient, and effective manner by minimizing judicial interference in the arbitral proceedings. Parliament enacted Section 5 to minimize the supervisory role of courts in the arbitral process to the bare minimum, and only to the extent*

"so provided" under the Part I of Arbitration. In doing so, the legislature did not altogether exclude the role of courts or judicial authorities in arbitral proceedings, but limited it to circumstances where the support of judicial authorities is required for the successful implementation and enforcement of the arbitral process. The Arbitration Act envisages the role of courts to "support arbitration process" by providing necessary aid and assistance when required by law in certain situations.

***82**. Section 5 begins with the expression "notwithstanding anything contained in any other law for the time being in force." The non-obstante clause is Parliament's addition to the Article 5 of the Model Law. It is of a wide amplitude and sets forth the legislative intent of limiting judicial intervention during the arbitral process. In the context of Section 5, this means that the provisions contained in Part I of the Arbitration Act ought to be given full effect and operation irrespective of any other law for the time being in force. It is now an established proposition of law that the legislature uses non-obstante clauses to remove all obstructions which might arise out of the provisions of any other law, which stand in the way of the operation of the legislation which incorporates the non-obstante clause.*

xx xx xx xx

***186**. Section 5 is effectively rendered otiose by the interpretation given to it in N.N. Global (2)°. The Court failed to provide a reason for holding that Section 5 of the Arbitration Act does not have the effect of excluding the operation of Sections 33 and 35 of the Stamp Act in proceedings under Section 11 of the Arbitration Act. The non obstante clause in*

> *Section 5 does precisely this. In addition to the effect of the non obstante clause, the Arbitration Act is a special law. We must also be cognizant of the fact that one of objectives of the Arbitration Act was to minimise the supervisory role of Courts in the arbitral process."*

41. Now coming on the facts of the present case, the same can be considered in the light of the aforesaid statutory provisions and the law settled by Hon'ble Supreme Court. An argument was raised by learned Senior Counsel for the petitioner that there was no *mala fide* on the part of the petitioner-Improvement Trust for not having submitted the statement of defence and counter-claim in time. He explained as to how the delay has occurred. Firstly when on the first date of hearing before learned Arbitral Tribunal, two officers of the Trust had appeared who are alleged to be in collusion with the claimant/respondent but at the same time, they had been repeatedly appearing before the Arbitral Tribunal on the later dates as well. He also argued that the aforesaid officers never informed the higher officer with regard to pendency of the arbitration proceedings. At one point of time, even an Advocate had appeared, who was stated to be not authorized to appear and it was thereafter, on the last two dates and at the time of passing of the impugned order, Senior Advocates were engaged and on oral instructions they had appeared and sought more time to file statement of defence and the counter-claim. The method of appointment of an Advocate for the Improvement Trust was also so highlighted by the learned Senior Counsel for the petitioner that the cumbersome process for appointment of an Advocate to represent the Improvement Trust starts from the level of Clerk and goes till the level of concerned Minister and thereafter, an

Advocate is appointed and this caused delay in filing the statement of defence and counter-claim. It was also submitted by learned Senior Counsel for the petitioners that at the end only one week's more time was sought which was not granted. However, it was the case of learned Senior Counsel for the respondent that the Revision Petition itself is not entertainable because there is no lack of inherent jurisdiction in the impugned orders. Whereas on the other hand, rather no ground was made out in the Revision Petition because it was so specifically averred in the application for recalling by the petitioner-Improvement Trust itself that it was being represented by the officers and later on Advocates were engaged but now an inconsistent stand has been taken by the petitioner-Improvement Trust at the time of filing of the present revision petition.

42. Hon'ble Supreme Court in the aforesaid judgments has given large impetus to the provision of Section 5 of the Arbitration Act which provides for a *non obstante clause*. This is so clear from both the judgments passed by Seven-Judges Constitution Bench of Hon'ble Supreme Court in ***M/s SBP & Company Vs. Patel Engineering Ltd. & Another's case (Supra)*** and ***Interplay Between Arbitration Agreements Under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, in Re: (Supra)***. On the proposition of law with regard to the judicial interference, both the learned Senior Counsels for the parties have not disputed that the jurisdiction of the High Court under Article 226 and 227 of the Constitution of India cannot be taken away even if there is a contrary provision in any statute. However, it was the submission of the learned Senior Counsel for the respondent that it was not a case of maintainability of the present revision but it is a case of entertainability of the present petition in the facts and circumstances of the

present case because with the operation of the provisions of Section 23(4) of the Arbitration Act, the aforesaid right had to be forfeited by the operation of law and this was precisely what was done by learned Arbitral Tribunal.

43. In ***M/s Deep Industries Limited's case (Supra)*** which was referred to by both the learned Senior Counsels for the parties, it was a case of an order being passed under Section 17 of the Arbitration Act by the learned Arbitral Tribunal against which an appeal was filed under Section 37 of the Arbitration Act and that order under Section 37 of the Arbitration Act was challenged under Article 227 of the Constitution of India which was allowed by the High Court and the order of the City Civil Court was set aside. It was held by Hon'ble Supreme Court that Article 227 of the Constitution of India remained untouched by Section 5 of the Arbitration Act but the provision of Article 227 of the Constitution of India can be invoked only when there is patent lack of inherent jurisdiction. Similarly, in ***Bhaven Construction's case (Supra)***, again it was so held that it is only in exceptional rarity that the party is left remediless or there is clear bad faith only then intervention can be done under Article 227 of the Constitution of India.

CONCLUSION

44. Therefore, this Court will have to apply the aforesaid ratio to the facts and circumstances of the present case as to whether it is a case whereby the impugned order suffers from patent lack of inherent jurisdiction or it is a case of exceptional rarity or it is a case of clear bad faith. So far as the patent lack of inherent jurisdiction is concerned, the facts and circumstances of the present case suggests that it is not a case of a lack of inherent jurisdiction. The learned Arbitrator has acted within his jurisdiction

by passing of the impugned order (Annexure P-11) and the learned Arbitrator has been appointed by an order passed by a Co-ordinate Bench of this Court under Section 11(6) of the Arbitration Act and the petitioner-Improvement Trust has submitted to the jurisdiction of the Arbitrator and therefore, it is not a case of lack of inherent jurisdiction. So far as the ground of bad faith is concerned, the same also does not get substantiated in view of the fact that the aforesaid element of bad faith on the part of the officers of the Improvement Trust itself, the same has been taken in the present revision petition only and not in the application for recalling of the impugned order passed by the learned Arbitral Tribunal and rather as per Para No.7 which has been reproduced above, it was so averred by the petitioner-Improvement Trust itself in the recalling application that it is being represented by the officers and therefore, the aforesaid plea of bad faith is also not sustainable in the present case. So far as the plea of ground of exceptional rarity is concerned, the impugned order (Annexure P-11) has been passed by learned Arbitral Tribunal by invoking the provisions of Sections 23(4) and 25(b) of the Arbitration Act and as per Section 23(4) of the Arbitration Act, outer time-line of six months has been provided which admittedly has been exceeded. Besides that, five opportunities were earlier granted at different times by the learned Arbitrator but the statement of defence and counter-claim was not filed and therefore, this Court is of the considered view that it does not fall within the category of exceptional rarity.

45. So far as the other ground as to whether the party is left remediless or not is concerned, the same can be considered in the light of the aforesaid judgments of Hon’ble Supreme Court. Although against the impugned order, an appeal under Section 37 of the Arbitration Act may not

lie but the same can always be a subject matter of objections to be taken under Section 34 of the Arbitration Act within permissible parameters of law. As observed by Hon'ble Supreme Court in ***M/s SBP & Company Vs. Patel Engineering Ltd. & Another's case (Supra)*** that once arbitration commences, parties must await the final award before seeking judicial remedies unless the Arbitration Act specifically provides for an appeal under Section 37. Resorting to Articles 226 or 227 against every interim order is impermissible and contrary to the legislative intent of minimizing court interference in arbitral processes.

46. Reliance was placed by learned Senior Counsel for the petitioners on a judgment passed by a Division Bench of Gujarat High Court in ***Narmada Clean-Tech and others Case (Supra)***. In that judgment, the maintainability of a petition under Article 227 of the Constitution of India in exceptional circumstances was discussed. The scope of supervisory jurisdiction against the proceedings before the Arbitral Tribunal being a matter of legal doctrine as to whether it was maintainable in exceptional circumstances or not, was discussed. The very basis for intervention under Article 227 of the Constitution of India is restricted to patent error of jurisdiction, flagrant violation of natural justice or manifest miscarriage of justice and not for mere procedural irregularity or error of law in the conduct of arbitration proceedings. However, in the present case, the facts do not reveal any such exceptional circumstance which would justify exercise of supervisory jurisdiction, in fact repeated opportunities and procedural latitude were extended to the petitioner-Improvement Trust in accordance with the statutory provisions. There is no prejudice touching the very foundation of the arbitral process and fairness between the parties. Although

the proposition of law with regard to the inherent revisional jurisdiction of the High Court under Article 227 of the Constitution of India is well settled that the same cannot be curtailed and the same is maintainable but the same is not entertainable in the facts and circumstances of the present case.

47. So far as the argument raised by learned Senior Counsel for the petitioners with regard to the involvement of high value claim/public money being involved is concerned, it cannot become a ground for interference in view of the provision of Section 18 of the Arbitration Act which provides for equal treatment of the parties. The aforesaid provision of Section 18 of the Arbitration Act provides that the parties shall be treated with equality and each party shall be given a full opportunity to present his case. The facts and circumstances of the present case suggest that the petitioners were given five opportunities by the learned Arbitral Tribunal and after the period of six months had exceeded, the impugned order was passed vide which the right to file the statement of defence and counter-claim was forfeited under Sections 25(b) and 23(4) of the Arbitration Act and therefore, such a plea taken by the learned Senior Counsel for the petitioners is not sustainable.

48. In view of the aforesaid facts and circumstances, this Court is of the considered view that no ground is made out for entertaining the present Revision Petition although the same may be maintainable under Article 227 of the Constitution of India. Consequently, the present Revision Petition is hereby dismissed.

06.11.2025 **(JASGURPREET SINGH PURI)**
Bhumika **JUDGE**

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No