

2026:PHHC:098421



CNR NO: PHHC010721182026

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-13133-2026 (O&M)
Reserved on: 26.05.2026
Pronounced on: 20.07.2026
Uploaded on: 21.07.2026

State of Punjab

.....Petitioner

Versus

Wipro Limited and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Argued by: Mr. Maninderjit Singh Bedi, Senior Advocate,
Advocate General, Punjab with
Mr. Sangam Garg, Advocate, &
Ms. Kavita Joshi, Advocate, for the petitioner.

Mr. Puneet Bali, Senior Advocate, with
Ms. Pragya Chauhan, Advocate,
Mr. Rohit Khanna, Advocate &
Mr. Saurabh Gautam, Advocate,
for respondent No.1.

VIKRAM AGGARWAL, J

The petitioner (State of Punjab) has instituted the instant writ petition under Article 226/227 of the Constitution of India seeking the issuance of a writ of Certiorari quashing the order dated 19.03.2026 (Annexure P.26) passed by the learned Sole Arbitrator, vide which the decision on the application preferred by the petitioner under Section 16 of the Arbitration

and Conciliation Act, 1996 (for short `the 1996 Act'), has been deferred to the final stage i.e. the stage of passing of the Award.

2. Shorn of unnecessary details, the facts as, emanating from the petition are that on 16.02.2011, a Master Services Agreement (for short `the MSA') (Annexure P.1) was executed between respondent No.1 (Wipro Limited) and respondent No.2 (Excise and Taxation Technical Services Agency). Respondent No.2 was desirous of getting the project of e-Governance in its department implemented. Thereafter, pursuant to it having been notified by way of the tendering process, the MSA was executed.

2.1 Since as per respondent No.2, respondent No.1 failed to complete the project within the stipulated contractual timeline, a termination notice dated 11.01.2017 (Annexure P.2) was issued to respondent No.1. This led to the filing of CWP-COM-4-2017 by respondent No.1. During the pendency of the same, the MSA was terminated pursuant to which, CWP-COM-11-2017 was instituted by respondent No.1.

2.2 Vide order dated 24.01.2017 (Annexure P.4), both writ petitions were dismissed in view of the remedy of arbitration being available.

2.3 Aggrieved by the aforesaid decisions, appeals were filed by respondent No.1, which were later withdrawn on 12.09.2018.

2.4 Subsequently, a petition under Section 9 of the 1996 Act was also instituted by respondent No.1, which was dismissed, leading to the filing of FAO-3978-2018 in this Court.

It is the case of the petitioner that in all these cases, the petitioner was not impleaded as a party.

2.5 Eventually, upon an application under Section 11 of the 1996 Act having been filed, Hon'ble Mr. Justice V.N. Khare, former Chief Justice of India, was appointed as a Sole Arbitrator vide order dated 08.02.2019 (Annexure P.9). Pursuant to the same, respondent No.1 filed its Statement of Claim in which, apart from respondent No.2, the present petitioner was also impleaded as a party.

2.6 As a result, the petitioner instituted an application under Section 16 of the 1996 Act (Annexure P.10) seeking deletion of its name on the ground that no contractual relationship existed between the petitioner and respondent No.1 and the same existed only between respondent No.1 and respondent No.2.

2.7 The said application was opposed by way of a reply (Annexure P.11) followed by a rejoinder (Annexure P.12).

2.8 An application under Section 24 of the 1996 Act (Annexure P.14) was also instituted by respondent No.1, seeking permission to lead oral evidence and requesting that the deletion application be deferred to the final stage of the proceedings. Reply to the application was filed by the petitioner.

2.9 Vide order dated 09.01.2021 (Annexure P.16), learned Arbitral Tribunal, allowed the application for deletion and rejected the application under Section 24 of the 1996 Act. An appeal was preferred against the said order, which was dismissed by the Court of Additional District Judge, Patiala on 17.02.2022 (Annexure P.17). Aggrieved by the same, respondent

No.1 filed SLP(C) 11386-2022. The said application was disposed of vide order dated 11.12.2024 (Annexure P.18) with the consent of learned counsel for the parties and the matter was remitted to the learned Arbitral Tribunal, for reconsideration of the deletion application. The application under Section 24 of the 1996 Act was also revived and it was ordered that the said application would also be decided by the learned Tribunal.

3. Pursuant thereto, the matter was considered by the learned Arbitral Tribunal and vide order dated 19.03.2026 (Annexure P.26), the learned Arbitral Tribunal deferred the decision on the application under Section 16 of the 1996 Act to the final stage and called upon the petitioner to file its statement of defence, whereafter evidence would be led.

4. Aggrieved by the aforesaid decision, the instant writ petition has been instituted.

5. Learned Advocate General, Punjab and Shri Puneet Bali, learned Senior counsel representing respondent No.1-caveator, were heard.

5.1 It was strenuously urged by learned Advocate General, Punjab that the learned Arbitral Tribunal has gravely erred in deferring the decision on the application to the final stage. Referring to the order dated 11.12.2024 passed by the Apex Court, he submitted that the direction of the Apex Court was to decide the application and not to defer the same till the final stage. Learned Advocate General, Punjab, also referred to Article 229 of the Constitution of India and submitted that in any case, the State of Punjab could not have been impleaded as a party.

5.2 Learned Advocate General, Punjab, also referred to the chronology of events, starting from the execution of the MSA and submitted that the State of Punjab had no role to play and, therefore, the learned Arbitral Tribunal erred in not considering that there was no occasion for the petitioner to participate in the entire arbitral proceedings and that a decision on the application under Section 16 of the Act, should have been taken.

5.3 In support of his contentions, learned Advocate General placed reliance upon the judgments of the Apex Court in **Bihar Eastern Gangetic Fishermen Co-operative Society Limited Vs. Sipahi Singh and others, (1977)4 SCC 145; State of Punjab and others Vs. M/s Om Parkash Baldev Krishan, 1988 (Supp) SCC 722; Bhikraj Jaipuria Vs. Union of India, AIR 1962 SC 113; Mulamchand Vs. State of Madhya Pradesh, (1968)3 SCR 214; K.P. Chowdhry Vs. State of Madhya Pradesh, (1996)3 SCR 919; State of Punjab and others Vs. Dhanjit Singh Sadhu, (2014) 15 SCC 144; Bhaven Construction through Authorised Signatory Premjibhai K. Shah Vs. Executive Engineer, Sardar Sarovar Narmada Nigam Limited and another, (2022)1 SCC 75; Punjab State Power Corporation Limited Vs. Emta Coal Limited and another, (2020)17 SCC 93 and Deep Industries Limited Vs. Oil and Natural Gas Corporation Limited and another, (2020)15 SCC 706** and the judgments of the Bombay High Court in **Sudhir Joshi Vs. Rajesh Khandelwal and others, MANU/MH/8738/2025** and **Shri Guru Gobind Singhji Institute of Engineering and Technology Vs. M/s Kay Vee Enterprises, 2024:BHC-AUG:28934** and Delhi High Court in

Surender Kumar Singhal & others Vs. Arun Kumar Bhalotia & Others, 2021 SCC OnLine Del 3708.

6. Shri Puneet Bali, learned Senior counsel representing respondent No.1 submitted that there is no illegality in the impugned order. It was submitted that the State of Punjab cannot contend that it is in no way concerned with respondent No.1. Reference was made to the MSA, wherein it has been recorded that respondent No.2 is a Government of Punjab Undertaking. He further submitted that the learned Arbitral Tribunal has not rejected the application and has only deferred its decision to the final stage to ascertain the issue as extensive evidence would have to be led. It was submitted that the decision of the learned Arbitral Tribunal is in accordance with the law laid down by the Apex Court in **Cox and Kings Ltd. Vs. SAP India Pvt. Ltd. and another, (2025)1 SCC 611.**

6.1 Learned Senior counsel also referred to various other clauses of the MSA and submitted that the State of Punjab would be a necessary party.

6.2 Learned Senior counsel also submitted that the order passed by the Arbitral Tribunal could not be challenged under Article 226 or 227 of the Constitution of India in view of the provisions of Section 5 of the 1996 Act and the law on the subject.

6.3 In support of his contentions, learned Senior counsel placed reliance upon the judgments of the Apex Court in **Deep Industries Limited Vs. Oil and Natural Gas Corporation Limited, (2020) 15 SCC 706; Punjab State Power Corporation Limited Vs. EMTA Coal Limited, (2020)17 SCC 93; Bhaven**

Construction through Authorised Signatory Premjibhai K. Shah Vs. Executive Engineer, Sardar Sarovar Narmada Nigam Limited, (2022)1 SCC 75; Serosoft Solutions Pvt. Ltd. Vs. Dexter Capital Advisors Pvt. Ltd., 2025 SCC OnLine SC 22; Cox and Kings Ltd. Vs. SAP India Pvt. Ltd. and another, (2025)1 SCC 611; ASF Buildtech Pvt. Ltd. Vs. Shapoorji Pallonji & Co. Pvt. Ltd., (2025)9 SCC 76; Maharshi Dayanand University and others Vs. Anand Cooperative Society Ltd., (2007)5 SCC 295 and Cox and Kings Limited Vs. SAP India Private Limited and another, (2024)4 SCC 1 and the judgments of Delhi High Court in **Steel Authority of India Ltd. and others Vs. Indian Council of Arbitration and others, MANU/DE/4181/2013; Meera Goyal Vs. Priti Saraf, MANU/DE/0607/2020 and Shri Pankaj Arora Vs. AVV Hospitality LLP & others, (OMP(T) (COMM.)32/2020 decided on 20.07.2020) and the judgment of the High Court of Orissa at Cuttack in **Mahanadi Coalfields Limited and another Vs. Shri Ram Construction, Phularitand, Kharkharee, Dhanbad, Jharkhand (ARBA No. 1 of 2006 decided on 02.02.2023).****

7. I have considered the submissions made by learned Advocate General, Punjab and learned Senior counsel for respondent No.1.

8. When the matter reached the Apex Court, it was disposed of with the consent of both parties vide order dated 11.12.2024 (Annexure P.18);

“Leave granted.

2. The appellant/claimant and the first respondent is engaged in arbitration proceedings. The genesis of the controversy in this case arises from an application filed by the State of Punjab seeking its deletion from the array of

parties as respondent No.2 in the Statement of Claim filed by the appellant/claimant. By the said application, the State of Punjab prayed that its name be struck off by the Arbitral Tribunal as it is not a party to the Arbitration Agreement or even otherwise in anyway concerned with the arbitration. 3. By the order of the learned sole Arbitrator dated 09.01.2021, the application filed by the State of Punjab was allowed and deletion of its name from the array of parties in the Statement of Claim was permitted. Consequently, the name of State of Punjab arrayed as respondent No.2 in the Claim Petition was struck off from the array of parties. As a result, another application filed by the claimant under Section 24 of the Arbitration and Conciliation Act was disposed of as being otiose. The said order was assailed by the appellant herein before the Court of District Judge, Patiala in Arbitration Case No.41/2021 under Section 37(2)(a) of the Arbitration and Conciliation Act, 1996. The said appeal was considered by the learned District Judge, Patiala and by judgment dated 17.02.2022, the appeal was dismissed, sustaining the order of the learned Arbitrator dated 09.01.2021. Being aggrieved by the aforesaid two orders, this appeal has been preferred before this Court.

4. We have heard learned senior counsel, Mr. Parag P. Tripathi for the appellant and learned AAG/Sr. Advocate, Mr. Shadan Farasat for second respondent-State and learned counsel, Mr. Pradyuman Sewar for respondent No.1 and perused the material on record.

5. During the course of submissions, it was brought to our notice that the earlier decision of judgment of this Court in Chloro Controls India (P) Ltd. vs. Severn Trent Water Purification Inc. (2013) 1 SCC 641 (“Chloro Controls India (P) Ltd.”) was reconsidered by a Constitution Bench of five learned Judges in Cox and Kings Limited vs. SAP India Private Limited & Another, (2024) 4 SCC 1 (“Cox and Kings Limited”). The conclusions in the aforesaid judgment are at ‘paragraph 170’ which is extracted herein for immediate reference:

“170. In view of the discussion above, we arrive at the following conclusions:

170.1. The definition of “parties” under Section 2(1)(h) read with Section 7 of the Arbitration Act includes both the signatory as well as non-signatory parties;

170.2. Conduct of the non-signatory parties could be an indicator of their consent to be bound by the arbitration agreement;

170.3. The requirement of a written arbitration agreement under Section 7 does not exclude the possibility of binding non-signatory parties;

170.4. Under the Arbitration Act, the concept of a “party” is distinct and different from the concept of “persons claiming through or under” a party to the arbitration agreement;

170.5. The underlying basis for the application of the Group of Companies doctrine rests on maintaining the corporate separateness of the group companies while determining the common intention of the parties to bind the non-signatory party to the arbitration agreement;

170.6. The principle of alter ego or piercing the corporate veil cannot be the basis for the application of the Group of Companies doctrine;

170.7. The Group of Companies doctrine has an independent existence as a principle of law which stems from a harmonious reading of Section 2(1)(h) along with Section 7 of the Arbitration Act;

170.8. To apply the Group of Companies doctrine, the Courts or tribunals, as the case may be, have to consider all the cumulative factors laid down in Discovery Enterprises [ONGC Ltd. v. Discovery Enterprises (P) Ltd., (2022) 8 SCC 42 : (2022) 4 SCC (Civ) 80] . Resultantly, the principle of single economic unit cannot be the sole basis for invoking the Group of Companies doctrine;

170.9. The persons “claiming through or under” can only assert a right in a derivative capacity;

170.10. The approach of this Court in Chloro Controls [Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689] to the extent that it traced the Group of Companies doctrine to the phrase “claiming through or under” is erroneous and against the well-established principles of contract law and corporate law;

170.11. The Group of Companies doctrine should be retained in the Indian arbitration jurisprudence considering its utility in determining the intention of the parties in the context of complex transactions involving multiple parties and multiple agreements;

170.12. At the referral stage, the referral court should leave it for the Arbitral Tribunal to decide whether the non-signatory is bound by the arbitration agreement; and

170.13. In the course of this judgment, any authoritative determination given by this Court pertaining to the Group of Companies doctrine should not be interpreted to exclude the application of other doctrines and principles for binding non-signatories to the arbitration agreement.”

6. One of the submissions advanced at the bar was that since the impugned order of the learned Arbitrator was during the regime of the dictum of this Court in Chloro Controls India (P) Ltd. and now in Cox and Kings Limited,

there has been a crystallization of the law, therefore, the matter could be remanded to the learned Arbitrator for reconsideration of the application filed by the second respondent-State of Punjab vis a-vis its deletion from the array of parties in the claim made by the appellant herein.

7. Learned AAG appearing for the second respondent-State of Punjab submitted that without going into the merits of the issue if the matter is to be reconsidered by the learned Arbitrator possibly the State of Punjab may not have any serious objection in that regard.

8. Learned counsel for the first respondent who is a party to the arbitration proceeding also submitted that appropriate orders may be made in the matter.

9. Consequently, we find that interest of justice would be sub-served if the matter is remanded to the learned arbitrator to reconsider the application filed by the second respondent State of Punjab vis-a-vis its deletion from the array of parties in the Claim Petition filed by the appellant herein in light of the judgments of this Court including the latest judgment of this Court in Cox and Kings Limited. As a consequence of the aforesaid directions, the impugned order passed by the learned Additional District Judge, Patiala, Punjab in Arbitration Case No.41/2021 dated 17.02.2022 as well as the order dated 09.01.2021 passed by the learned Sole Arbitrator, are set-aside with a request to reconsider the said application having regard to the dicta of this Court and in accordance with law.

10. We say that we have not expressed anything on the merits of the application filed by the second respondent seeking deletion from the array of parties in the Claim Statement. All contentions on both sides are left open.

11. Consequently, the application filed by the appellant herein under Section 24 of the Arbitration and Conciliation Act also stands revived and to be disposed of along with the application filed by the State of Punjab, in accordance with law.

This appeal is disposed of in the aforesaid terms.

No costs.

Pending application(s), if any, shall stand disposed of.”

9. Pursuant to the order of the Apex Court, the Arbitral Tribunal held as under:-

“4.14 In these circumstances, the Tribunal is satisfied, given the complexity involved in determination of Respondent No.2's role in the facts of the present arbitral matter, that it would be appropriate to allow the parties to lead their respective evidence before taking up the issue of deletion of Respondent No.2 from the array of parties. This aspect is also strengthened by the Supreme Court Order by way of which the Claimant's Application for leading evidence has been revived by the Supreme Court.

4.15 The submission of the Ld. Advocate General that permitting evidence to be led would amount to subjecting a non-signatory to prolonged arbitral proceedings also requires consideration. It is true that jurisdictional objections ought not to be rendered illusory. However, as noticed above, the Supreme Court itself has contemplated that such objections may, in appropriate cases, require evidentiary examination.

4.16 It is to be highlighted at this stage that if after evidence is led and the matter is finally heard, the Tribunal concludes that Respondent No.2 is required to be deleted from the array of parties, appropriate orders as to costs can be passed so as to compensate Respondent No.2 for any inconvenience or expense occasioned by its participation in the proceedings. The Act vests the Tribunal with sufficient discretion in this regard.

4.17 On the other hand, to decide the Application for Deletion at this stage without first permitting the parties to adduce evidence, especially in a matter where the Supreme Court has itself emphasised the complexity of the nature of the inquiry, may not be consistent with the approach laid down in Cox & Kings. The Tribunal is of the considered view that such an approach would not be consistent with the spirit of the remand order.

4.18 It is clarified that after evidence is led on all issues, including the issue of deletion, the Tribunal shall while rendering the final award, first determine the objection of Respondent No.2 relating to its jurisdiction and status as a non-signatory. Only thereafter, the Tribunal would proceed to adjudicate upon the merits of the claims and counterclaims in accordance with the principle enunciated in Maharshi Dayanand University.

4.19 The Tribunal is also mindful of the submission made on behalf of Ld. AG that, having regard to Article 299 of the Constitution of India, the Spate of Punjab cannot in

law be treated as a party to the MSA or the arbitration agreement. The said contention raises important legal issues. However, whether the Constitutional requirements were satisfied, whether Respondent No.1 acted with the requisite authority, and what legal consequences, if any, arise from the conduct alleged by the Claimant, cannot be determined in isolation from the factual record. At this stage, the Tribunal does not consider it appropriate to express any view on the merits of that contention, which shall remain open for consideration at the stage of final determination.

4.20 In view of the above discussion, and having regard to (i) the absence of any statutory mandate requiring immediate adjudication of the Application for Deletion; (i) the procedural autonomy of the Tribunal under Section 19 of the Act; (ii) the complex nature of inquiry contemplated under Cox & Kings; and (iv) the availability of compensatory costs as a safeguard against prejudice, the Tribunal is of the considered view that the Application for Deletion need not be decided as a preliminary issue at this stage and may appropriately be determined after the parties have led evidence on all their claims and counter - claims.

4.21 Needless to state, nothing contained in this order would be tantamount to any finding that Respondent No.2 is bound by the arbitration agreement. Its objection to jurisdiction remains open in its entirety. The present order is confined to the limited issue taken up with the consent of the parties as to the stage at which the issue of deletion is to be decided.

5. In view of the analysis and reasoning above, the Tribunal directs that the Application for Deletion filed by Respondent No.2 would be taken up at the stage of rendering the final award after the parties have led evidence in this arbitral matter. The Application for leading evidence filed by the Claimant stands disposed of in the terms above.

5.1 Resultantly, it is directed that Respondent No.2 shall file, provisionally, its Statement of Defence and Counter - Claim, if any, within a period of 4 weeks from the date of pronouncement of this order. The Claimant shall file its reply within 3 weeks thereafter. Rejoinder, if any, may be filed within 2 weeks thereafter.”

10. In **Cox and Kings (2) (supra)**, the Apex Court, held as under:-

"34. Further, on the issue of impleadment of Respondent 2, which is not a signatory to the arbitration agreement, elaborate submissions have been made on both the sides, placing reliance on terms of the agreements, email exchanges, etc. In view of the complexity involved in the determination of the question as to whether Respondent 2 is a party to the arbitration agreement or not, we are of the view that it would be appropriate for the Arbitral Tribunal to take a call on the question after taking into consideration the evidence adduced before it by the parties and the application of the legal doctrine as elaborated in the decision in **Cox & Kings**."

11. Still further, in the case of **ASF Buildtech (supra)**, it was held by the Apex Court as under:-

"115. This hands-off approach of Referral Courts in relation to the question of whether a non-signatory is a veritable party to the arbitration agreement or not was reiterated in **Cox & Kings (2)**, wherein one of us, (J.B. Pardiwala, J.), observed that once an Arbitral Tribunal stands constituted, it becomes automatically open to all parties to raise any preliminary objections, including preliminary objections touching upon the jurisdiction of such tribunal, and to seek an early determination thereof. Consequently, the issue of impleadment of a non-signatory was deliberately left for the Arbitral Tribunal to decide, after taking into consideration the evidence adduced before it by the parties and the principles enunciated under **Cox & Kings (I)**.

116. Similarly, in **Ajay Madhusudan** it was held that since a detailed examination of numerous disputed questions of fact was required for determining whether the non-signatory is a veritable party to the arbitration agreement, the same cannot be examined in the limited jurisdiction under Section 11 of the 1996 Act as it would tantamount to a mini trial. Accordingly, the Arbitral Tribunal was found to be the appropriate forum for deciding the said issue on the basis of the evidence that may be adduced by the parties.

117. This approach is necessitated by the inherent complexity involved in determining whether a non-signatory qualifies as a veritable party to the arbitration

agreement, a determination that hinges upon a multiplicity of factual aspects and demands a high threshold of satisfaction based on a cumulative and holistic evaluation of the entire factual matrix. Such an intricate and evidence driven exercise makes the Arbitral Tribunal the most appropriate forum to adjudicate the matter, as it possesses the institutional advantage of conducting a comprehensive scrutiny of all evidences and materials adduced by the parties.”

12. If one examines the matter in its entirety, it emerges that it was previously held that while deciding the application under Section 11 of the 1996 Act, the Referral Court should not decide about the issue as to whether a non signatory to an arbitral agreement could be or could not be considered a veritable party and the said exercise would have to be conducted by the Arbitral Tribunal since evidence was required to be led on the said issue.

13. Recently, the Apex Court, after considering the judgments in **Cox and Kings and ASF Buildtech** (supra), held in the case of **Hindustan Petroleum Corporation Ltd. Vs. BCL Secure Premises Pvt. Ltd., (2026)3 SCC 711**, that where on the face of it, the issue could be considered by the Referral Court, it cannot be said that such issue should not be decided by the Referral Court:-

“34. In fact, ASF Buildtech (Supra) expressly notices the holding in Para 169 of Cox & Kings (Supra) to conclude that the Referral Court was required to prima facie rule on the existence of the arbitration agreement and whether the non signatory was a veritable party. All that it holds further in reiteration of the earlier line of judgments is that even if the Court holds that prima facie a party is a veritable party that will not foreclose the Arbitral Tribunal from concluding to the contrary after an intensive inquiry.

35. This does not mean that where the Referral Court finds prima facie a party is not a veritable party still the matter is left to the Arbitral Tribunal. To hold so, would relegate the Referral Court to the status of a monotonous automation. Further, to countenance such an extreme proposition would lead to disastrous consequences, where absolute strangers could walk into the Referral Court and contend that the matter has to perforce go to the Arbitral Tribunal for a decision on the veritable nature of the party. We are not prepared to accept such an extreme proposition.”

14. Before advertng to the merits of the issue, it is worthwhile to notice that there has been a debate as to whether the decisions of the Arbitral Tribunal are amenable to challenge under Article 226/227 of the Constitution of India. There is one line of decisions in which it has categorically been held that no such challenge is possible. Reference may be made to the judgments of the Apex Court in the cases of **Deep Industries Limited (supra)** and **Bhaven Construction (supra)**. Yet another view is that the supervisory jurisdiction of the High Court under Article 227 of the Constitution of India, cannot be curtailed and that a decision of an Arbitral Tribunal which is also a Tribunal, would be amenable to challenge under Article 226/227 of the Constitution of India. It was also held that the non-obstante clause in Section 5 of the 1996 Act, does not apply in respect of exercise of powers under Article 227 of the Constitution of India, which is a Constitutional provision. It was further held that for interference under Article 226/227 of the Constitution of India, there have to be exceptional circumstances. One such view was taken by the High Court of

Delhi in the case of **Surender Kumar Singhal's case** (supra), wherein it was held as under:-

“25. A perusal of the above-mentioned decisions, shows that the following principles are well settled, in respect of the scope of interference under Article 226/227 in challenges to orders by an arbitral tribunal including orders passed under Section 16 of the Act.

(i) An arbitral tribunal is a tribunal against which a petition under Article 226/227 would be maintainable;

(ii) The non-obstante clause in Section 5 of the Act does not apply in respect of exercise of powers under Article 227 which is a Constitutional provision;

(iii) For interference under Article 226/227, there have to be 'exceptional circumstances';

(iv) Though interference is permissible, unless and until the order is so perverse that it is patently lacking in inherent jurisdiction, the writ court would not interfere;

(v) Interference is permissible only if the order is completely perverse i.e., that the perversity must stare in the face;

(vi) High Courts ought to discourage litigation which necessarily interfere with the arbitral process;

(vii) Excessive judicial interference in the arbitral process is not encouraged;

(viii) It is prudent not to exercise jurisdiction under Article 226/227;

(ix) The power should be exercised in 'exceptional rarity' or if there is 'bad faith' which is shown;

(x) Efficiency of the arbitral process ought not to be allowed to diminish and hence interdicting the arbitral process should be completely avoided.”

15. It was held in this judgment that the scheme of Section 16 of the 1996 Act envisages that issues of jurisdiction ought to be raised before the Arbitral Tribunal at the earliest and under Section 16(5) of the 1996 Act, the Tribunal is mandated to decide the said issues. Relying upon the decision in the case of **Mcdermott International Inc vs Burn Standard Co. Ltd. & Ors., (2006) 11 SCC 181**, it was held that the jurisdictional

question is to be decided as a preliminary ground and the same has to be decided at the earliest. The Delhi High Court went on to hold that there cannot be a hard and fast rule and depending upon the facts and circumstances of each case, the Tribunal ought to decide the objections under Section 16 of the 1996 Act as soon as possible as a preliminary ground. The Delhi High Court held as under:-

“31.The following factors can be borne in mind when objections are raised under Section 16 of the Act:

- i. If the issue of jurisdiction can be decided on the basis of admitted documents on record then the Tribunal ought to proceed to hear the matter/objections under Section 16 of the Act at the inception itself;**
- ii. If the Tribunal is of the opinion that the objections under Section 16 of the Act cannot be decided at the inception and would require further enquiry into the matter, the Tribunal could consider framing a preliminary issue and deciding the same as soon as possible.**
- iii. If the Tribunal is of the opinion that objections under Section 16 would require evidence to be led then the Tribunal could direct limited evidence to be led on the said issue and adjudicate the same.**
- iv. If the Tribunal is of the opinion that detailed evidence needs to be led both written and oral, then after the evidence is concluded, the objections under Section 16 would have to be adjudicated first before proceeding to passing of the award.”**

16. Special Leave to Appeal (C) No. 6171-2021 was preferred against the said decision of the Delhi High Court, which was dismissed by the Apex Court vide order dated 27.04.2021.

17. Reverting to the facts of the case, the Apex Court had, while remanding the matter to the learned Arbitral Tribunal, observed that the application filed by the petitioner vis-à-vis its deletion from the array of the parties, would be

reconsidered by the learned Arbitral Tribunal. Since extensive evidence was required to be led to decide the said issue, the learned Tribunal held that the application would be decided at the final stage.

18. However, what emerges from the impugned order is that the learned Arbitral Tribunal intends to decide the application moved by the petitioner along with the Award. It has clearly been stated that the application would be decided first, which would be followed by the Award.

19. In the considered opinion of this Court, keeping in view the nature of the matter and the decision of the Apex Court vide which it had remanded the matter to the learned Arbitral Tribunal, it would have been in the interest of justice and due compliance of the order of the Apex Court to decide the application before adjudicating on the merits of the case even if the entire evidence would have to be led for the said purpose.

20. This Court does not intend to and in fact, should not interfere in the decision that the application would be decided at the final stage. In fact, this Court finds no error in the said decision of the learned Arbitral Tribunal because extensive evidence, as per the learned Arbitral Tribunal, would be required to be led by both sides. The learned Tribunal also kept in mind, the power to award costs/expenses etc. to compensate the petitioner for any inconvenience caused or expenses occasioned by its participation in the proceedings.

21. Under the circumstances, the decision of the learned Tribunal that the application under Section 16 of the 1996 Act would be decided at the final stage, does not call for any

interference. However, keeping in mind the directions issued by the Apex Court while remitting the matter on 11.12.2024, this Court is of the considered opinion that in the first instance, after the evidence has been led, the application under Section 16 of the 1996 Act should be decided and thereafter, arguments can be heard on merits and Award can be passed. This would be due compliance of the directions of the Apex Court. This Court accordingly requests the learned Tribunal to proceed in the manner indicated above.

22. The writ petition is disposed of in the above terms.

Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

20.07.2026
ds

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No