

Manash Kamal Bezboruah Vs. M/s. Bokahola Tea Company Pvt. Ltd. & Ors.

Civil Appeal Nos. _____ of 2026 arising out of SLP (Civil) Nos. 7233-7234 of 2026 · Supreme Court of India · 2026-07-14 · K.V. Viswanathan · Vijay Bishnoi · F2J-C-1019

Full judgment text

Manash Kamal Bezboruah Vs. M/s. Bokahola Tea Company Pvt. Ltd. & Ors.

[Civil Appeal Nos. _____ of 2026 arising out of SLP (Civil) Nos. 7233-7234 of 2026]

Vijay Bishnoi, J.

1. Leave Granted.

2. The present appeals have been preferred by the Appellant challenging the interim order dated 02.09.2025 and order dated 28.01.2026 in CRP/120/2025, passed by the High Court of Gauhati at Guwahati (hereinafter referred to as "High Court"), wherein the High Court vide interim order dated 02.09.2025 stayed the notice issued by the Arbitral Tribunal (hereinafter referred to as "the Tribunal") to Respondent Nos. 1 to 3 and further, vide order dated 28.01.2026, rejected the preliminary objection raised by the Appellant regarding the maintainability of a Revision Petition filed under Article 227 of the Constitution of India.

FACTUAL MATRIX

3. On 19.09.1948, M/s Boloma Tea Company (Respondent No. 5 herein) was constituted as a partnership firm by Late Ram Kamal Bezboruah, Late Dr. Nil Kamal Bezboruah, Late Indra Kamal Bezboruah and Shri Dharendra Nath Bezboruah, each holding a share of 25%. A fresh partnership deed was subsequently executed on 28.12.1951 with effect from 01.01.1951, under which Late Indra Kamal Bezboruah, the Appellant's father, continued to hold a 25% share in the firm.

In 1967, M/s Bokahola Tea Company Pvt. Ltd. (Respondent No. 1 herein) and M/s Kasojan Tea Company Pvt. Ltd. (Respondent No. 2 herein) were incorporated under the Companies Act, 1956. Following the demise of Late Indra Kamal Bezboruah on 09.04.1967, a fresh partnership deed was executed on 28.12.1967 with effect from 10.04.1967, under which the remaining three partners held equal shares of 33.33% each in the partnership firm.

4. In 1974, the Appellant, being an IAS Officer, obtained permission from the Government of India to become a sleeping partner in the partnership firm. A fresh partnership deed dated 16.11.1976 was executed whereby, Late Dr. Nil Kamal Bezboruah, Late Ram Kamal Bezboruah and the Appellant were allotted 25% share each; and Shri Dharendra Nath Bezboruah and Late Smt. Kamala Bezboruah were allotted 12.5% share each. Clause 5 of the partnership deed contained an arbitration clause, providing that disputes or differences among partners would first be referred to the other partners and, if unresolved, would be referred to arbitration before a mutually agreed third party.

5. Late Ram Kamal Bezboruah passed away on 07.08.1989, whose Legal Representatives are Respondent No. 12 to Respondent No. 15 herein. Thereafter, on 15.03.1992, Late Smt. Kamala Bezboruah died and after her death, Late Dr. Amala Bezboruah was inducted as her Legal Representative in Respondent No. 5- Company. Later, M/s Bokahola Investment Pvt. Ltd. (Respondent No. 3 herein) was incorporated on 09.06.1995.

6. In July 2012, the Appellant instituted Title Suit No. 38 of 2012 before the Court of Civil Judge (Senior Division), Jorhat (hereinafter referred to as "Trial Court"), seeking various reliefs including rendition of accounts relating to the affairs of Respondent companies and reserving a right to claim losses and damages arising out of alleged mismanagement and financial irregularities.

During the pendency of the suit, an application under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") was filed by Respondent No. 7 seeking reference of disputes to arbitration. Subsequently, vide order dated 07.08.2014, the Trial Court rejected the application filed by Respondent No. 7 under Section 8 of the Act, observing inter alia that reliefs had been sought against all defendants and that several defendants (including Respondent Nos. 1 to 3)

were not parties to the partnership deed.

The Trial Court further relying on this Court's judgment in *Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya And Another*, reported in (2003) 5 SCC 531, held that the suit cannot be split up as some defendants were non-signatories to the arbitration agreement but were necessary parties to the suit. Hence, the Trial Court held that the suit could not be referred to arbitration under Section 8 of the Act, as all the defendants were non-signatories to the arbitration agreement contained in the partnership deed.

7. Aggrieved by the order of the Trial Court dated 07.08.2014, Respondent No. 7 preferred Civil Revision Petition No. CRP/185/2015 before the High Court. By judgment and order dated 01.11.2021, the High Court dismissed the revision petition and affirmed the Trial Court's decision, holding that, having regard to the nature of the reliefs claimed in the suit, the application under Section 8 of the Act had been rightly rejected. Consequently, Respondent No. 7 filed SLP(C) No. 10445 of 2022 before this Court which was later numbered as Civil Appeal No. 13188 of 2024, wherein this court vide order dated 21.11.2024, with the consent of the parties, referred the disputes to be decided through arbitration and further, appointed Justice (Retd.) B.P. Katakey, former Judge of the Gauhati High Court, as Sole Arbitrator to adjudicate the disputes between the parties. The order dated 21.11.2024 passed by this court in Civil Appeal No. 13188 of 2024, is as follows:

"1. Leave granted.

2. The instant appeal is directed against an order dated 01.11.2021, passed by the Gauhati High Court, whereby the High Court upheld the order dated 07.08.2014, passed by the learned Civil Judge at Jorhat in Title Suit No.38/2012, rejecting the application under Section 8 of the Arbitration and Conciliation Act, 1996, whereby the dispute between the parties was sought to be referred to arbitration as per the Arbitration Agreement, and thus dismissed the Revision Petition filed by the appellants herein.

3. On the joint request made by learned counsel for the parties, vide order dated 19.09.2022, the dispute raised in the instant appeal was referred to the Supreme Court Mediation Centre to get it resolved amicably.

4. As per the Mediation Report dated 11.01.2024, in spite of comprehensive mediation sessions between the parties on different occasions, the parties are not agreeable to arrive at an amicable settlement.

5. On 08.04.2024, learned counsel for the parties submitted that they would take further instructions as to whether any resolution is possible for mediation. In the meantime, learned counsel for the parties were directed to file brief written submissions. In deference to the said order, respondent No.1 has filed written submission.

6. Heard learned counsel for the parties and carefully perused the material placed on record.

7. Both sides seek appointment of a Sole Arbitrator in terms of Clause 5 of the Partnership Deed dated 16.11.1976, executed between the parties, which reads as follows:

"5. That R.K. Bezbaruah and N.K. Bezbaruah two of the partners shall jointly manage the financial affairs and bank accounts of the firm. Any dispute or difference unless otherwise agreed, shall be referred to the other partners in the first instance and if not resolved shall be referred to the arbitration of mutually agreed third party."

8. On a perusal of the aforesaid Clause, we find that the parties agreed to arbitrate their dispute or differences as the Partnership Deed clearly stipulates that any dispute or difference unless otherwise agreed, shall be referred to the other partners in the first instance and if not resolved shall be referred to the arbitration of mutually agreed third party.

9. We, accordingly, with the consent of learned counsel for the rival parties, consider it just and appropriate to appoint Justice (Retd.) B.P. Katakey, a former Judge of the Gauhati High Court, as the Sole Arbitrator to adjudicate the dispute between the parties. The Arbitrator appointed by us, will proceed with the matter, after complying with the provisions of Section 12 of the Arbitration and Conciliation Act, 1996.

10. Needless to mention, that the fee of the Arbitrator shall be fixed, in terms of the Fourth Schedule of the Arbitration and Conciliation Act, 1996 [as amended by the Arbitration and Conciliation

(Amendment) Act, 2015.]

11. Keeping in view the age of respondent No.1, who is stated to be a 80 year old pensioner, we request the learned Arbitrator to permit him to appear through virtual mode in the arbitral proceedings.

12. The Registry is directed to communicate the instant order to the learned Arbitrator.

13. The appeal stands disposed of in the above terms.

14. As a result, the pending interlocutory applications also stand disposed of."

It is pertinent to note here that Respondent Nos. 1 to 3 were parties to Civil Appeal No. 13188 of 2024 and were served notices but they did not contest the same.

8. Pursuant, to the consent order of this Court dated 21.11.2024, notices were issued to all the parties and the schedule of arbitration proceedings was fixed by the Tribunal vide order dated 23.01.2025. Subsequently, the Appellant filed his statement of Claims and the Respondent No. 5 to Respondent No. 7 filed their Statement of Defence before the Tribunal on 09.03.2025 and 05.05.2025 respectively. Thereafter, Respondent Nos. 1 to 3 filed separate applications under Order VII Rule 11 read with Order I Rule 10(2) and Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") before the Tribunal seeking deletion of their names from the array of parties.

Since the said applications are jurisdictional objections filed by Respondent No. 1 to 3 before the Tribunal and hence, should be treated as applications filed under section 16 of the Act. 9. Later, the Tribunal Vide order dated 09.06.2025 after considering the Statement of Claim and Statement of Defence filed by the parties, framed issues for determination in the arbitration proceedings which included the issue of maintainability of the proceedings against non-signatories including Respondent Nos. 1 to 3. The relevant extract of the order dated 09.06.2025 is as follows:

"1. Heard the learned counsel appearing for the claimant and the Respondent Nos. 1, 2, 3 and 4 on the framing of issues.

2. The Arbitral Tribunal, upon hearing the learned counsel appearing for the claimant as well as the learned counsel appearing for the Respondent Nos. 1, 2, 3 and 4, and upon consideration of the pleadings of the parties in the Statement of Claim and the Statement of Defence filed, framed the following issues for determination:

(a) Whether the Respondent No. 2 is a partnership registered under the Indian Partnership Act, 1932? If not, whether the claims of the claimant are barred under Section 69 of the said Act?

(b) Whether the claims of the claimant are barred by the law of limitation?

(c) Whether the arbitration proceedings against the Respondent Nos. 5 to 15 are maintainable, they being non-signatories and not parties to the partnership deed?

(d) Whether the arbitration clause in Clause 5 of the partnership deed is valid and binding and the disputes raised by the claimant fall within its scope, as against the Respondent Nos. 5, 6, 7, 8 and 9?

(e) Whether the Respondent No. 3 has the authority to file the Statement of Defence on behalf of the Respondent Nos. 2 and 4?

(f) Whether the Respondent No. 2 partnership firm stood automatically dissolved on 01.08.2009 on the death of Late Dr. Nil Kamal Bezboruah, there being no other partners other than the claimant? If so, whether the claimant became the sole owner of the partnership business to the exclusion of other legal heirs of Dr. Nil Kamal Bezboruah?

(g) Whether the claimant is the sole successor to the 25% share of Late Indra Kamal Bezboruah in the Respondent No. 2 partnership firm? If not, whether the other legal heirs of Indra Kamal Bezboruah, including his daughters, are necessary parties and entitled to share therein?

(h) Whether the claimant, a partner of the Respondent No. 2 partnership firm, is entitled to rendition of accounts and the comprehensive audit of the assets, accounts and functioning of Respondent No. 2 as well as of Respondent Nos. 5, 6 and 7?

(i) Whether the claims of oppression and mismanagement against Respondent Nos. 5, 6 and 7 are beyond the scope of arbitration and whether such claims lie exclusively before the statutory forums

under the Companies Act, 2013?

(j) Whether the claimant could prove the allegations including but not limited to the allegations of oppression, mismanagement, fraud, misappropriation, suppression of accounts, diversion of profits, etc. against the concerned respondents, as alleged in the Statement of Claim? If so, whether the claimant is entitled to an award?

(k) Whether the claims of the claimant relating to alleged mismanagement, suppression of accounts and diversion of profits, etc. are barred by waiver or acquiescence because of the delay and the past conduct of the claimant?

(l) Whether Respondent Nos. 3 and 4 fraudulently and mala fide violated the Status Quo Order dated 03.08.2012 and are jointly and severally liable to return the amount of Rs. 1,83,32,000/- with interest, withdrawn in violation of the Status Quo Order dated 03.08.2012 passed in Misc. Case No. 25 of 2012 in T.S. No. 38 of 2012?

(m) Whether Respondent Nos. 8 and 9 have failed in their duty as professional Chartered Accountants and auditors functioning on behalf of the claimant and other partners/shareholders and not only for Late Dr. Nil Kamal Bezboruah and Respondent Nos. 3 and 4, and have assisted and facilitated Late Dr. Nil Kamal Bezboruah and Respondent Nos. 3 to 7 in the manipulation of accounts and in conducting fraud on Respondent No. 2?

(n) Whether the parties are entitled to interest and cost as prayed for?

(o) To what relief(s) the parties are entitled to?."

10. Subsequently, the Tribunal Vide order dated 04.08.2025, while deciding the maintainability of arbitration proceedings against non-signatories to the partnership deed, rejected the applications filed by Respondent Nos. 1 to 3, seeking deletion of their names. The Tribunal held that the Supreme Court referring all the parties to dispute to arbitration left no scope for the Tribunal to reconsider whether non-signatories could be subjected to arbitration. The relevant extract of the order dated 04.08.2025 passed by the Tribunal is as follows:

"16. Law relating to the application of the doctrine of 'Group of Companies' is, therefore, no longer res integra. There cannot be two opinions that a non-signatory company can be impleaded to single composite arbitration by invoking the 'Group of Companies' doctrine on certain circumstances. It is always not necessary that a company for being impleaded in an arbitration proceeding has to be a signatory to an arbitration agreement between the claimant and other respondents in such arbitration proceeding.

As discussed above, the respondent Nos. 5, 6 and 7 did not contest the plea taken by Sri Krishore Kamal Bezboruah, respondent No. 4, in the SLP filed before the Hon'ble Supreme Court for invoking the doctrine of 'Group of Companies'. By the aforesaid order passed by the Hon'ble Supreme Court, it was not left to the Arbitral Tribunal to decide whether the non-signatory is bound by the arbitration agreement. The contention that the respondent Nos. 5, 6 and 7 are also subjected to the Civil Suit at the same time, is not acceptable in view of the aforesaid order passed by the Hon'ble Supreme Court referring all the disputes or differences for arbitration."

11. Aggrieved by the order passed by the Tribunal, Respondent Nos. 1 to 3 filed a Civil Revision Petition bearing CRP/120/2025, under Article 227 of the Constitution of India before the High Court. The High Court passed an interim impugned order dated 02.09.2025, stayed the notices issued to the Respondent Nos. 1 to 3. The relevant extract of the impugned interim impugned order is as follows:

"After going through the materials available in the case record, at this stage, this Court is of the opinion that the notice issued to M/s Bokahola Tea Company Private Limited, M/s Kasojan Tea Company Private Limited and M/s Bokahola Investment Private Limited needs to be stayed.

Accordingly, the notice issued to the petitioners shall be stayed till returnable date.

The further proceeding before the learned Arbitrator shall continue.

List after 4 (four) weeks."

12. Furthermore, the High Court Vide impugned order dated 28.01.2026, rejected the Appellant's preliminary objection regarding maintainability of the revision petition. The High Court observed that the Tribunal had wrongly passed the order dated 04.08.2025 as the Apex Court's order did not discuss

anything regarding invoking the "Group of Companies" doctrine to bring the non-signatory parties within the ambit of the arbitral proceedings.

Further, the High Court placing reliance on this Court's judgments in *Deep Industries Ltd. v. Oil and Natural Gas Corporation Ltd.* and *Another* reported in (2020) 15 SCC 706, and *Punjab State Power Corporation Limited v. Emta Coal Limited and Another* reported in (2020) 17 SCC 93, held that where the Tribunal's rejection order suffers from a "patent lack of inherent jurisdiction", the supervisory jurisdiction of the High Court under Article 227 of the Constitution cannot be ousted. The relevant extract of impugned order is as follows:

"23. The petitioners have impugned the order passed by the arbitral tribunal on the ground of lack of inherent jurisdiction as well as on the ground of alleged perversity in the impugned order to the extent that the tribunal has observed that by the order of the Apex Court, passed in the Special Leave Petition (Civil) No. 10445/2022, it has left nothing for the arbitral tribunal to decide as to whether a non-signatory is bound by arbitration agreement or not.

However, since the petitioners have raised the plea that the Apex Court has referred only those parties who had appeared before it in the aforesaid SLP and had consented to referring the matter to the arbitration and since prima facie, it appears that in the order of the Apex Court, it has not discussed anything regarding invoking the doctrine of group of companies to bring the petitioners within the ambit of the arbitral proceeding, hence, this Court, in the light of the observations made by the Apex Court in its judgments discussed in paragraphs 21 and 22 of this order, is of considered opinion that it does not lack jurisdiction, under Article 227 of the Constitution of India, to examine the contention raised by the petitioners as to whether the dismissal of the prayer regarding jurisdiction of the arbitral tribunal to subject the petitioners to the arbitral proceeding suffers from a patent lack of inherent jurisdiction or not, or whether it is perverse or not.

24. Since the petitioners have raised the plea of lack of inherent jurisdiction, as well as of perversity on the part of arbitral tribunal in passing the impugned order and since same cannot be totally negated at this stage, the jurisdiction of this Court under Article 227 of the Constitution of India to examine the said issues is not ousted.

25. In view of the discussion made and reasons stated in the foregoing paragraphs, the objection raised by the respondent No. 1 regarding maintainability of the instant civil revision petition is rejected."

13. Aggrieved, the Appellant preferred the instant appeals before this Court. During the pendency of the present appeals, this Court, by order dated 16.02.2026, issued notice and condoned the delay in filing. This Court further stayed the operation of the interim impugned order as well as the impugned order passed by the High Court, and also stayed all further proceedings before the High Court. The relevant portion is reproduced hereinunder:

"1. Delay condoned.

2. Issue notice, returnable on 20.04.2026.

3. Dasti service, in addition, is permitted.

4. In the meantime, the orders of the High Court dated 02.09.2025 and 28.01.2026 shall remain stayed. There shall be a stay of further proceedings in the High Court."

14. Furthermore, Respondent Nos. 1 to 3 filed I.A. No. 76430 of 2026 seeking exemption from participating in the arbitral proceedings. This Hon'ble Court, by order dated 19.03.2026, allowed the said application and directed the parties to approach the Arbitral Tribunal for adjournment of the proceedings beyond 20.04.2026. This Court further directed the learned Arbitrator to consider such a request for adjournment. The relevant portion is reproduced hereinunder:

"4. Having heard the learned counsel appearing for the parties, we are of the view that parties shall make a request to the learned Arbitrator to adjourn the proceedings beyond 20.04.2026.

5. If any such request is made, the learned Arbitrator shall take the same into consideration.

6. The Interlocutory Application No. 76430/2026 stands allowed accordingly."

SUBMISSIONS ON BEHALF OF APPELLANT

15. Mr. Abir Phukan, the learned counsel appearing for the Appellant submitted that the Respondent No. 1 to 3 are veritable parties to the disputes evidenced by the inter-party relations, commonality in subject matter and their incorporation being through borrowings from the partnership firm (Respondent No. 5). Further relying on the Constitution Bench judgment in Cox and Kings Ltd. v. SAP India Pvt. Ltd. and Another, reported in 2024 (4) SCC 1, the counsel argued that non-signatories can be referred to arbitration when there is a direct relationship, commonality of subject matter, composite transactions, and conduct demonstrating an intention to bind them.

16. The learned counsel for the Appellant submitted that the Respondent No. 1 to 3, are estopped from challenging the arbitral reference made via this Court's consent order dated 21.11.2024. The Respondent No. 1 to 3 chose not to appear or object despite being served on multiple occasions. Further, the learned counsel for the Appellant submitted that the High Court's interference under Article 227 of the Constitution to stay the arbitral proceedings constitutes an abuse of process. Relying on the 101st Report of the Law Commission of India, the counsel noted that allowing appeals against the rejection of a Section 16 of the Act, jurisdictional challenge defeats the statutory scheme, as the proper remedy is to apply for setting aside of the award under Section 34 of the Act.

It is further argued that no perversity existed in the Arbitral Tribunal's order to warrant interference; and in support of the same, the learned counsel cited Associate Builders v. Delhi Development Authority, reported in (2015) 3 SCC 49 and Punjab State Power Corpn. Ltd. (supra) to emphasize that patent lack of inherent jurisdiction must "stare one in the face". Additionally, M/s Tarini Prasad Mohanty v. M/s Sunflag Iron and Steel Company Limited, reported in 2026 INSC 566, was cited to argue that minimal interference in writ jurisdiction at an interim stage is imperative.

17. The learned counsel for the Appellant further argued that the High Court without giving any specific reasoning as to perversity or inherent lack of jurisdiction in the order dated 04.08.2025 of the Tribunal, mechanically decided the maintainability of the Revision Petition filed under Article 227 of the Constitution. In addition to this he also highlighted that the Tribunal has already framed the issues for determination of the proceedings which are pending adjudication. The learned Counsel for the appellant after apprising relevant facts of the case and legal position has prayed for setting aside the interim order dated 02.09.2025 and order dated 28.01.2026 passed by the High Court.

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 1 TO 3.

18. Mrs. Madhavi Diwan, learned Senior Counsel appearing for the Respondents submitted that the Appellant's own prior stand belies any mutual intention to refer Respondent Nos. 1 to 3 to arbitration. In earlier civil proceedings, the Appellant had explicitly argued that these Respondents were not parties to the arbitration agreement. The learned Senior Counsel further highlighted that, in the earlier Civil Revision Petition preferred by Respondent No. 7, the High Court relying on the submission of the Appellant that Respondent No. 1 to 3 are not parties to the agreement and citing Sukanya Holdings (P) Ltd. (supra), dismissed the revision petition. Having secured favorable orders on this premise, the Appellant cannot now approbate and reprobate by claiming they are veritable parties.

19. The learned Senior Counsel submitted that Respondent Nos. 1 to 3 do not fulfill the test of a "veritable party" laid out in Cox and Kings (supra), nor did they show any mutual intention to be bound. Further, this Court's consent order dated 21.11.2024 was only intended to bind the parties who came forward and gave consent. It was argued that Respondent No. 7 had no authority or Board Resolution to consent on behalf of Respondent Nos. 1 to 3.

20. The learned Senior Counsel submitted that the Tribunal's assumption of jurisdiction over non-signatories based on mere non-appearance before the Supreme Court falls squarely within the "narrow band of perversity". To justify the High Court's interference under Article 227 due to a patent lack of inherent jurisdiction, the Senior Counsel relied on Deep Industries (supra), and Punjab State Power Corporation Ltd. (supra). In view of the above submissions the learned Senior Counsel has prayed that the Respondent Nos. 1 to 3 are not veritable parties and hence they should be removed from the arbitration proceedings.

ANALYSIS

21. Having considered the rival submissions advanced by both sides and the material available on record, the sole question that arises for our consideration in the present appeals is whether the High Court was justified in passing the impugned order holding that a revision petition under Article 227 of the Constitution of India is maintainable against an order of the Arbitral Tribunal.

22. Before adverting to the legal positioning present case, it is imperative to outline the statutory scheme and object of the Act. The Act is a Code in itself. This phrase is not merely perfunctory, but has definite legal consequences. One such consequence is stated under the non-obstante clause given in Section 5 of the Act, which limits the extent of judicial intervention unless explicitly contemplated under the Act. This provision was included to uphold the intention of the legislature to adopt the UNCITRAL Model Law and Rules to reduce excessive judicial interference. Further, Section 16 of the Act gives effect to the doctrine of kompetenz20 kompetenz, empowering the Arbitral Tribunal to rule on its own jurisdiction. In the usual course of an arbitral proceeding, the Act provides for a mechanism to challenge an Arbitral Award under Section 34 of the Act.

23. In the present case, initially a suit was instituted by the Appellant due to mismanagement of funds in Respondent No. 5, wherein Respondent No. 7 filed an application under section 8 of the Act seeking initiation of arbitration proceedings, which was rejected by the Trial Court and the rejection was further upheld by the High Court in revision petition. Subsequently, Respondent No. 7 approached this Court by filing Civil Appeal No. 13188 of 2024, wherein this court on the basis of the consent of the parties to arbitrate the disputes, appointed an arbitrator to decide the matter through arbitration. Respondent No. 1 to 3 were also parties to the said SLP but never contested the same. It is imperative to note here that, Respondent No. 1 to 3, never sought modification or review of the order passed by this Court at any point of time.

24. Thereafter, during arbitration proceedings, Respondent Nos. 1 to 3 filed applications under Order VII Rule 11 read with Order I Rule 10(2) and Section 151 of CPC before the Tribunal seeking deletion of their names from the array of parties. This application being in the nature of challenge to the jurisdiction of the Tribunal, should be treated as an application filed under Section 16 of the Act. The Tribunal in view of this Court's consent order dated 21.11.2024 passed in Civil Appeal No. 13188 of 2024, of referring the parties to arbitration, rejected the said applications.

The order was later challenged by Respondent Nos. 1 to 3 by filing an Revision Petition before the High Court under Article 227 of the Constitution of India, wherein the High Court while rejecting the objections filed by Appellant held that, the Revision Petition filed under Article 227 of the Constitution of India is maintainable. It is to be noted that while passing the impugned order dated 28.01.2026 the High court has not recorded any specific finding as to perversity or any patent lack of inherent jurisdiction in the order dated 04.08.2025 passed by the Tribunal

25. Ordinarily, the power of the High Courts under Article 227 of the Constitution of India to exercise supervisory jurisdiction over all courts and tribunals within their territorial jurisdiction forms part of the basic structure of the Constitution and cannot be abrogated or excluded by legislation. Consequently, although Section 5 of the Act restricts judicial intervention, except as expressly provided under the Act, such restriction cannot curtail or oust the constitutional jurisdiction of the High Courts under Article 227 of the Constitution of India. At the same time, it is imperative to note that the Act was enacted with the objective of ensuring the expeditious resolution of disputes through arbitration, with minimal judicial interference and without the supervisory involvement of traditional courts, except to the limited extent expressly contemplated under the Act.

26. The Constitution Bench in *SBP & Co. v. Patel Engineering Ltd. and Another*, reported in (2005) 8 SCC 618, stating that the Act mandates minimal judicial intervention, has explicitly disapproved the approach of High Courts correcting orders of an Arbitral Tribunal under Article 226 or 227 of the Constitution of India during the pendency of arbitral proceedings. The relevant portion of the said judgment is extracted hereinbelow: 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.

27. Furthermore, this Court in the case of Deep Industries (supra), has held that the High Court under article 227 can only deal with orders of the Tribunal wherein there is patent lack of inherent jurisdiction. The relevant portion of the said judgment is extracted hereinbelow:

"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."

28. Subsequently, a three Judge Bench of this Court in the case of Punjab State Power Corpn. Ltd. (supra) clarified as to what would be categorised as 'Patent lack in inherent jurisdiction'. The primary parameter is that the Order passed should be so perverse that the only possible conclusion is that there is a patent lack in inherent jurisdiction. A patent lack requires no argument whatsoever, it must be the perversity of the Order that must stare one in the face. Further, while addressing the misuse of Article 227 of the Constitution of India petitions in arbitral proceedings, this Court directed that High Courts, upon considering the objections raised, should promptly dismiss petitions under Article 227 wherever no patent lack of inherent jurisdiction is made out. The relevant portion of the said judgment is extracted hereinbelow:

"4. We are of the view that a foray to the writ court from a Section 16 application being dismissed by the arbitrator can only be if the order passed is so perverse that the only possible conclusion is that there is a patent lack in inherent jurisdiction. A patent lack of inherent jurisdiction requires no argument whatsoever - it must be the perversity of the order that must stare one in the face.

5. Unfortunately, the parties are using this expression which is in our judgment in Deep Industries Ltd. [Deep Industries Ltd. v. ONGC, (2020) 15 SCC 706], to go to the Article 227 Court in matters which do not suffer from a patent lack of inherent jurisdiction. This is one of them. Instead of dismissing the writ petition on the ground stated, the High Court would have done well to have referred to our judgment in Deep Industries Ltd. [Deep Industries Ltd. v. ONGC, (2020) 15 SCC 706] and dismiss the Article 227 petition on the ground that there is no such perversity in the order which leads to a patent lack of inherent jurisdiction. The High Court ought to have discouraged similar litigation by imposing heavy costs. The High Court did not choose to do either of these two things."

29. Recently, this Court in M/s Tarini Prasad Mohanty (supra), has emphasized that while exercising writ jurisdiction under Articles 226 and 227 of the Constitution of India, courts must strictly keep in mind the statutory scheme of the Arbitration Act. Specifically, since the Act already provides for a final statutory remedy under Section 34 and clearly mandates minimal judicial interference while arbitral proceedings are still ongoing, courts must respect this legislative intent and limit their intervention accordingly.

"22. Besides the well settled parameters to be borne in mind while exercising jurisdiction under Articles 226 and 227 of the Constitution, it is also necessary to be mindful of the statutory scheme of the concerned enactment from which the impugned order arises. If the enactment besides providing for a statutory remedy [herein, Section 34] also expects minimal judicial interference prior to the culmination of the arbitral proceedings [herein, Section 5], the said factor would be of relevance while

considering the exercise of jurisdiction. In other words the threshold to be satisfied before exercising discretion under Articles 226 and 227 of the Constitution in the light of such legislative intent would be higher. As held in *Re: Interplay* (supra), the non-obstante clause in Section 5 of the A and C Act must take precedence over any other law for the time being in force.

It would have to be demonstrated that notwithstanding the availability of an alternate remedy at the conclusion of the proceedings, such challenge cannot await the final adjudication of the proceedings and despite the Civil Appeal arising out of SLP (C) No.27534 of 2025 Page 33 of 39 statutory expectation of minimal interference, intervention in exercise of writ jurisdiction at an interim stage is imperative. We may clarify that our observations are as regards the 'entertainability' of a writ petition under Articles 226 and 227 of the Constitution and not with regard to its 'maintainability'. This Court in *M/s Godrej Sara Lee Ltd. Vs. The Excise and Taxation Officer-cum-Assessing Authority and others* has succinctly explained these concepts as under:-

"4. In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of.

The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest.""

30. Therefore, this is a settled position of law that the High Court must exercise extreme circumspection while invoking its supervisory jurisdiction under Article 227 of the Constitution of India in matters challenging an Arbitral Tribunal's rejection of an application under Section 16 of the Act. In the absence of such a manifest jurisdictional defect, judicial interference at the interlocutory stage would be unwarranted and contrary to the legislative policy of minimal court intervention in arbitral proceedings.

Orders passed by the Tribunal on an application under Section 16 of the Act are ordinarily amenable to challenge only under Section 34 of the Act upon the conclusion of the arbitral proceedings and the passing of the final award. It is always safe for the High Courts that, before entertaining revision petitions under Article 227 of the Constitution of India against the Orders passed by the Arbitral Tribunal, while exercising powers under Section 16 of the Act, it should record a prima facie finding regarding the patent lack of inherent jurisdiction and that too after providing an opportunity of hearing to the rival party/parties.

31. In the present case, the Arbitral Tribunal, while considering the applications filed under Order VII Rule 11 read with Order I Rule 10(2) and Section 151 of CPC by Respondent Nos. 1 to 3 seeking deletion of their names from the array of parties on the ground that they are non-signatories to the arbitration agreement, the Tribunal referring to the consent order dated 21.11.2024, had rejected the application. The Constitutional Bench of this Court in *Cox and Kings Ltd. (supra)* has laid down that the determination of whether a non-signatory is a veritable party to an arbitration agreement is a complex inquiry involving factual, circumstantial, and legal aspects.

In cases involving the joinder of non-signatory parties, the referral court is only required to prima facie rule on the existence of the arbitration agreement, leaving the intricate determination of whether the non-signatory is indeed bound by the agreement to the Arbitral Tribunal. This interpretation gives true effect to the doctrine of kompetenz-kompetenz enshrined under Section 16 of the Act, which empowers the Arbitral Tribunal to rule on its own jurisdiction. Therefore, the Arbitral Tribunal possessed the absolute competence to decide the question as to whether Respondent Nos. 1 to 3 were veritable parties to the arbitration agreement, notwithstanding their non-signatory status and hence the order of the Tribunal in the present case ought not have been challenged by filing an Article 227 Petition before the High Court.

32. At the same time, it is also pertinent to mention that Respondent Nos. 1 to 3 were parties to the earlier Civil Appeal filed before this Court, but they did not contest the same. Even if they felt that there was any discrepancy in the order passed by this court which might cause prejudice as to parties to the proceedings, they ought to have filed for modification of the order or a review but they failed to do so. Respondent Nos. 1 to 3 cannot now come before us with a dispute which they could have been raised at an earlier occasion. This practice unnecessarily resulted in another round of litigation, which could have been avoided. These types of practices must be avoided by parties to an arbitration proceedings, as these multiple judicial interventions create unnecessary delay in proceedings, which ultimately destroys the object with which the Act was introduced.

CONCLUSION

33. In view of the detailed analysis above, we hold that the High Court was not justified in entertaining the challenge under Article 227 of the Constitution and staying the arbitral proceedings. The remedy against the rejection of a Section 16 of the Act application strictly lies under Section 34 of the Act after the pronouncement of the final award. Hence, we deem it appropriate to set aside both the impugned orders of the High Court and dismiss the revision petition before the High Court.

34. However, since the Tribunal had already framed relevant issues with respect to the jurisdictional objections raised by Respondent Nos. 1 to 3 regarding their non-signatory status, we deem it appropriate to direct the Tribunal to decide the status of Respondent Nos. 1 to 3 with respect to the arbitration proceedings independently uninfluenced by the decision of this Court and complete the arbitration proceedings expeditiously in accordance with law.

35. The appeals are disposed of in the above terms. Pending application(s), if any, shall also stand disposed of.

.....J. (K.V. Viswanathan)

.....J. (Vijay Bishnoi)

New Delhi;

July 14, 2026.

Source disclosure: Complete sanitized public judgment text retained for research; official-primary replacement remains pending.

Disclaimer: General information only. Verify the current legal position and obtain professional advice before acting.