IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.26940 OF 2023

Hindustan Petroleum Corporation Limited
(A Government of India Enterprise)
having its registered office address situated at:
17, Jamshedji Tata Road, Mumbai-4000020.
Through its Authorized Representative
Shri Gangandeep Singh Sodhi, R/o India. ...Petitioner

Versus

1. Om Construction,
Through its Sole Proprietor Mr. Satya
Pal Yadav
KAIL Babrala, Sambhal (Dist.)
Uttar Pradesh-243751

2. Nice Projects Limited,
Through its Resolution Professional
Mr. Anil Tayal
(IBBI/IPA-001/IP-PO1118/2018-2019/11818)
CIN No. U45201DL2004PLC126075
Having its registered office address as
per the Ministry of Corporate Affairs Records:
C-56A, Kalkaji, New Delhi,
Delhi -110019.
And
Address of the Resolution Professional,
Mr. Anil Tayal
201, Sagar Plaza, District centre,
Laxmi Nagar, New Delhi,
National Capital Territory of Delhi-110092
cirp.niceprojectsltd@gmail.com

3. Mr. Sartaj Ali
Suspended director of Respondent No.2
N-25/2, Batla House, Sailing Club Lane-

II, Okhla, New Delhi-25
ali.sartaj@yahoo.com

4. Mr. Shiraz Ali
Suspended director of Respondent No.2
N- 7, Sailing Club Road, Batla House,
Jamia Nagar, Okhla, New Friends Colony
S.O., South Delhi. Delhi -110025
shiraz.ali@niceppl.com

5. Mr. Ramu Lakshmi Munis
Suspended director of Respondent No.2
140 AS2 Citadel Rangoli Flats, Ram
Nagar 5th Street Valachery Chennai,
Tamil Nadu-600042
munishraamu@gmail.com ...Respondents

Mr. Zubin Behramkamdin a/w. Mr. Vijay Purohit, Mr. Pratik Jhaveri, Mr. Faizan M. Mithaiwalla & Mr. Samkit Jain i/b. P & A Law Offices, for the Petitioner.
Mr. Siddhesh Bhole a/w. Mr. Yakshay Chheda, Mr. Apoorva Kulkarni i/b. SSB Legal & Advisory, for Respondent No.1.

CORAM : SUNIL B. SHUKRE, J. &
FIRDOSH P. POONIWALLA, JJ.
RESERVED ON : 7th OCTOBER 2023
PRONOUNCED ON : 17th OCTOBER 2023

JUDGEMENT (Per Firdosh P. Pooniwalla, J.) :-

1. In the present Writ Petition, the Petitioner challenges an Order dated 16th September 2023 passed by the Arbitrator under the provisions of Section 16 of the Arbitration and Conciliation Act, 1996,

("the Arbitration Act") and an Order dated 12th December 2022 passed by an Hon'ble Judge of this Court under Section 11 of the Arbitration Act. The Petitioner has pressed only prayers (a) and (b) of the Petition, which read as under:-

> *"a) To issue an appropriate writ, order or direction in the nature of Certiorari setting aside the Impugned Order dated 16th September 2023, passed by the Sole Arbitrator;*
>
> *b) To issue an appropriate writ, order or direction in the nature of Certiorari setting aside the Appointment Order dated 12th December 2022, passed by this Hon'ble Court;"*

2. In the Petition, the case of the Petitioner is as under:-

A. Respondent No.2 was incorporated on 27th April 2004. By an Order dated 12th February 2021, the National Company Law Tribunal ("NCLT") admitted Respondent No.2 into the Corporate Insolvency Resolution Process ("CIRP") under Section 9 (5) of the Insolvency and Bankruptcy Code, 2016, ("IBC") and declared Moratorium under Section 14 of the IBC. This was prior to the Tender floated by the Petitioner. The Certificate dated 16th February 2021 given by Rajesh K. Jetley and Company, Chartered Accountants, for the purpose of tendering, did not mention the fact that Respondent No.2 had been admitted into CIRP under Section 9(5) of the IBC.

B. By an Order dated 24th February 2021, the NCLT appointed one Anil Tayal as the Interim Resolution Professional ("IRP") in the CIRP of Respondent No.2.

C. On 30th April 2021, the Petitioner published a Tender for civil and structural jobs, including RCC jobs, for its 2G Ethanol Bio-Refinery at Bhatinda ("the Tender").

D. Respondent Nos.1 and 2 entered into a Joint Venture/Consortium Agreement dated 31st May 2021, as Respondent No.1, by itself, did not possess the operational and financial capacity to bid for the project of the Petitioner. On 1st June 2021, the Joint Venture of Respondent Nos.1 and 2 ("the said Joint Venture") submitted its bid for the Tender floated by the Petitioner along with the requisite documents as prescribed in the Tender. It was agreed between Respondent Nos.1 and 2 that Respondent No.2 would be the lead partner for the project.

E. On 11th June 2021, Respondent No.2 gave a false declaration that it was not undergoing Insolvency Resolution Process or Liquidation or Bankruptcy Proceedings as on that date.

F. On 15th July 2021, the Petitioner accepted the bid of the said Joint Venture for the project and issued a Letter of Award. The Petitioner then issued a Purchase Order in the name of the said Joint Venture, which was subsequently revised five times for various reasons.

G. By it's Notice dated 26th August 2022, issued to the Joint Venture, the Petitioner terminated the Purchase Order for gross delay and breaches of the contract and called upon the said Joint Venture to hand over all the materials, drawings, records, documents etc. related to the project.

H. By a letter dated 7th September, 2022, the said Joint Venture invoked the Arbitration Clause, being Clause 14 of the General Terms and Conditions of Contract.

I. Respondent No.1 filed an Application, under Section 11 of the Arbitration Act, before this Court, being Commercial Arbitration Application (L) No.33837 of 2022. It did so by suppressing material facts and by playing a fraud on this Court.

J. By an Order dated 12th December 2022, passed in the said Application filed by Respondent No.1, an Hon'ble Judge of this Court appointed an Arbitrator to decide the disputes and differences between the parties. It is the case of the Petitioner that Respondent No.1 misled this Court that Respondent No.1 was the leading partner and also did not disclose that the CIRP of Respondent No.2 had started in February 2021.

K. On 21st March 2023, Respondent No.1 filed Respondent No.2's NOC which purportedly permitted Respondent No.1 to be the Sole Claimant in the Arbitration and represent Respondent No.2 in the Arbitration.

L. From 11th January 2023 till August 2023, the Petitioner participated in the Arbitration Proceedings before the Arbitrator.

M. In August 2023, the Petitioner discovered that Respondent No.2 was undergoing CIRP under IBC prior to the publication of the Tender by the Petitioner and hence discovered the fraud and misrepresentation of the said Joint Venture.

N. The Petitioner, by an e-mail dated 1st September 2023 addressed to the Arbitrator, pointed out the said fraud played by the said Joint Venture and submitted that, in view of the same, the Purchase Order awarded to the said Joint Venture was void as it has been obtained fraudulently and, therefore, the arbitration agreement contained therein was void. The Petitioner further submitted that the Arbitration Proceedings before the Arbitrator could not proceed further. The Petitioner submitted that it was in the process of initiating appropriate legal proceedings against all parties who had committed the said fraud, and, in view of the foregoing, requested the Arbitrator not to pass any further directions in the matter.

O. By an e-mail dated 7th September 2023, Respondent No.1 responded to the said e-mail dated 1st September 2023 of the Petitioner. It is the case of the Petitioner that, in its said response, for the first time, Respondent No.1 disclosed the purported NOC of the IRP of Respondent No.2 granting permission to Respondent No.1 to pursue the Arbitration before the Arbitrator.

P. Thereafter, the Petitioner filed an Application dated 13th September 2023 before the Arbitrator under the provisions of Section 16 of the

Arbitration Act. In the said Application, the Petitioner submitted that the Arbitrator had no jurisdiction to proceed with the matter in view of the fraud committed by Respondent No.1 and that the Arbitration Proceedings should be terminated under Section 32 (2) (c) of the Arbitration Act.

Q. On 13th September 2023, the Arbitrator heard both the parties on the said Application and by an Order dated 16th September 2023, which is challenged in the present Writ Petition, rejected the Applications dated 1st September 2023 and 13th September 2023 filed by the Petitioner.

R. In these circumstances, the Petitioner filed the present Writ Petition.

3. We have set out the case of the Petitioner in the Petition as the same would have to be considered while deciding the maintainability of the present Writ Petition. Respondent No.1 has filed an Affidavit-in-Reply dated 3rd October 2023, wherein it has challenged the maintainability of the present Petition on various grounds, which have been considered by us hereinafter.

4. We have heard the parties only on the preliminary objection of maintainability raised by Respondent No.1 and not on the merits of the Petition.

5. Mr. Siddhesh Bhole, the learned Counsel appearing on behalf of Respondent No.1, raised preliminary objections to the maintainability of the present Writ Petition. As far as prayer (b) of the Petition, which challenges the said Order dated 12th December 2022 passed by an Hon'ble Judge of this Court under Section 11 of the Arbitration Act, is concerned, Mr. Bhole submitted that any order passed under Section 11 of the Arbitration Act can only be assailed by way of a Special Leave Petition ("SLP") filed before the Hon'ble Supreme Court, under Article 136 of the Constitution of India, and that this Court did not have the requisite jurisdiction to entertain any challenge to the said Order dated 12th December 2022. This Court cannot and ought not to set aside the appointment of the Arbitrator under its writ jurisdiction. Mr. Bhole submitted that the said Application under Section 11 of the Arbitration Act was filed only by Respondent No.1, and, in paragraph 31 of the said Application, it was disclosed that Respondent No.2 was not empowered to represent in any legal affairs and that presently it was under CIRP.

Therefore, before the passing of the said Order dated 12th December 2022 in the said Section 11 Application, the Petitioner was aware that Respondent No.2 was under CIRP and that only Respondent No.1 would be participating in the arbitration proceedings. Despite the same, the Petitioner did not oppose the appointment of an Arbitrator by the said Order dated 12th December 2022. Thus, the Arbitral Tribunal was constituted with the Petitioner having knowledge of the fact that Respondent No.2 was under CIRP and only Respondent No.1 would take part in the Arbitration Proceedings. The only dispute between the parties was restricted to nomination/appointment of an Arbitrator, which this Court resolved after full participation of the Petitioner by allowing the said Application filed by Respondent No.1 and appointing the Arbitrator by the said Order dated 12th December 2022. He further submitted that the Petitioner had accepted the appointment of the Arbitrator and had in fact participated in the Arbitration Proceedings, and, therefore, was estopped from challenging the said Order dated 12th December 2022.

6. As far as prayer (a) of the Petition is concerned, Mr. Bhole submitted that the said Order dated 16th September 2023 passed by the Arbitrator, rejecting the contention of the Petitioner that he had no

jurisdiction to continue further with the Arbitration Proceedings, can be challenged by the Petitioner at the stage of challenging the Award under the provisions of Section 34 of the Arbitration Act. He submitted that, therefore, the Petitioner had an efficacious alternate remedy under the provisions of 34 of the Arbitration Act to challenge the said Order dated 16th September 2023, and, for this reason also, the present Writ Petition is not maintainable.

7. In support of his submissions Mr. Bhole relied upon the following judgements and orders:-

i. **S.B.P. and Co. Vs. Patel Engineering Ltd. and Another**[1].

ii. **Suchitra Chavan Vs. Axis Bank Asset Sales Centre**[2].

iii. **Tagus Engineering Private Limited & Ors. Vs. Reserve Bank of India & Anr.** passed by this Court in Writ Petition No.3957 of 2021 with Writ Petition No. 7348 of 2021.

8. Further, in all fairness, Mr. Bhole also referred to the Judgements of the Hon'ble Supreme in **Deep Industries Limited Vs. Oil and Natural Gas Corporation Limited & Anr**.[3] And **Bhaven Construction**

1 2005 8 SCC 618
2 2018 SCC Online Bom 2854
3 (2020) 15 Supreme Court Cases 706

Vs. Executive Engineer & Anr.[4] to point out that, in these Judgements, the Hon'ble Supreme Court has laid down three exceptions wherein, in exceptionally rare circumstances, in arbitration matters, writ jurisdiction can be exercised by the High Court, namely, patent lack of inherent jurisdiction, a party being left without any remedy or a clear "bad faith" shown by one of the parties. Mr. Bhole submitted that the Petitioner's case did not fall within any of these exceptions. He submitted that, as the Arbitrator had been appointed under Section 11 of the Arbitration Act, it could not be said that the Arbitrator lacked jurisdiction. He further submitted that the remedy against the said Order dated 12th December 2022, passed under Section 11 of the Arbitration Act, was the filing of an SLP before the Hon'ble Supreme Court and the remedy against the said Order dated 16th September 2023 passed by the Arbitrator, under Section 16 of the Arbitration Act, was to challenge the same whilst challenging the award under Section 34 of the Arbitration Act. Therefore, this was not a case where the Petitioner was left without a remedy. He further submitted that, in the light of what had been submitted by him, there was no "bad faith" shown by Respondent No.1.

4 (2022) 1 Supreme Court Cases 75

9. Mr. Behramkamdin, the learned Senior Advocate appearing on behalf of the Petitioner, vehemently submitted that, in the facts and circumstances of the present case, the present Writ Petition is maintainable. In addition to the judgements in **Deep Industries** (supra) and **Bhaven Construction** (supra) referred to by Mr. Bhole, Mr. Behramkamdin also referred to a Judgement of the Delhi High Court in **IDFC First Bank Limited Vs. Hitachi MGRM Net Limited**[5] and submitted that a Writ Court could interfere under Articles 226 and 227 of the Constitution of India, even in a case where an order passed by the Arbitrator is completely perverse, i.e, that the perversity must stare in the face.

10. Mr. Behramkamdin submitted that, during the hearing of the Section 11 Application and in the pleadings of the Section 11 Application, Respondent No.1 failed to disclose the complete information regarding the initiation and commencement of CIRP in respect of Respondent No.2. He submitted that Respondent No.1 had only disclosed in the Section 11 Application that Respondent No.2 was "presently under CIRP" without disclosing that Respondent No.2 had been under CIRP since 12th February

5 2023 SCC Online Del 4052

2021, i.e., before the execution of the Joint Venture Agreement and before the submission of the bid for the Tender floated by the Petitioner. He submitted that, in these circumstances, Respondent No.1 had played a fraud on the Petitioner and had dishonestly induced this Court to pass an Order appointing an Arbitrator under Section 11 of the Arbitration Act.

11. He submitted that, therefore, the present case fell within the exceptions laid down by the aforesaid judgements and this Hon'ble Court could entertain the present Writ Petition challenging the said Order dated 12th December 2022 passed under Section 11 of the Arbitration Act.

12. As far as the said Order dated 16th September 2023 passed by the Arbitrator is concerned, Mr. Behramkamdin submitted that the facts, as narrated in the present Petition (which have been set out by us hereinabove), clearly show that the Petitioner was induced to enter into an agreement with the said Joint Venture by playing a fraud upon it. In this context, Mr. Behramkamdin submitted that the Arbitrator had wide powers and jurisdiction under Section 16 of the Arbitration Act. If the constitution of the Arbitral Tribunal was procured by fraud or misrepresentation, the Arbitral Tribunal had the jurisdiction to rule that

there existed no arbitration agreement itself as it is vitiated by fraud and the Arbitration Proceedings would have to be terminated on account of the same. In this context, Mr. Behramkamdin took us through some of the documents which are mentioned above whilst setting out the case of the Petitioner in the Petition. Mr. Behramkamdin also referred to the Tender documents, and, in particular, to Clauses 2, 3 and 10 (f) of the Invitation for Bid, Clause 26.8 of the Instruction to Bidders and Clauses 2.1, 2.6, 14.1 and 14.2 of the General Conditions of Contract. Mr. Behramkamdin submitted that, from the terms of the Tender, it was very clear that the party, which was under CIRP, could not have bid for the Tender, and, since, Respondent No.2, which was one of the parties to the Joint Venture, was under CIRP, the Joint Venture could not have bid for the Tender. Mr. Behramkamdin submitted that these terms of the Tender also show that Respondent Nos.1 and 2 had induced the Petitioner to enter into an agreement with them by playing fraud upon the Petitioner.

13. Mr. Behramkamdin submitted that, in these circumstances, and for all the aforesaid reasons, the Arbitrator ought to have held that he has no jurisdiction to continue with the Arbitration Proceedings.

14. Finally, Mr. Behramkamdin referred to the said Order dated 16th September 2023 passed by the Arbitrator and, in particular, to the following paragraphs thereof:-

> *"3. The aforesaid applications filed by the Respondent are not accepted for following reasons :*
> *3.1 The bidder in the present contract, ie. joint venture (JV) namely 'OM Construction-Nice Projects Ltd', which as per documents placed on record, is an independent legal entity, has an independent PAN, bank account and GST registration. The Respondent entered into Contract with an entity 'JV' and not with 'Nice Projects' alone.*
> *3.2 It was respondent's responsibility to verify credentials of the bidders before entering into the contract. Notwithstanding the fact that the aforesaid application filed by respondent are not related to the bidder JV, the contractual term vide document 7 on which respondent relied, provides him only two options in case of allegation of 'fraud'; one being that of rejecting the bid and the second being that of terminating the contract on such ground. Respondent admitted that none of these is the case. The Respondent could not cite any other provision of contract which stipulates that contract is viodable if one party is found to be a defaulter. Tribunal cannot travel beyond the terms of contract.*
> *3.3 It is well settled law by H'ble Supreme Court that a defaulter cannot take advantage of his own defalut.*
> *3.4 Respondent had already raised similar preliminary issue on 3.2.23, which was dismissed. It was directed vide PO-6 that, no further preliminary issues shall be entertained and those shall be included in SOD, due to time deadline stipulated in 'Arbitration Act'. Respondent failed to include the present issue in SOD.*
> *3.5 Respondent filed his SOD and counterclaims unconditionally on 31.7.23, which completed the pleadings. Hence, it is his deemed acceptance to continue and complete the arbitration proceedings and waiver of his right under Sec-4 of the 'Arbitration Act' to press new issues.*
> *3.6 Respondent for moving his application under section-16 / Sec 32 has relied on the third-party disputes of 'Varun Shuttering Store' and 'Nice Projects' who are not independently the parties in the present arbitration of the contract.*
> *3.7 Respondent failed to establish that there exists any CIRP*

proceedings on the joint venture and the present agreement. The issues of consequent 'Fraud" and "void contract" if any, are criminal matters and are to be decided by a competent Court. Any discussion/decision on those is beyond the jurisdiction of this forum.

3.8 While the Claimant vide Para-31 of his Sec 11 petition before H'ble BHC mentioned the fact that his JV associate is under CIRP, the Respondent cannot be allowed to claim ignorance at this stage of arguments.

3.9 The present arbitration proceedings is initiated consequent to H'ble Bombay High Court order. There is no 'Stay' order from any competent court.

3.10 It is well settled law by H'ble Supreme Court that in terminated contracts, arbitration clause survives and disputes are arbitrable.

In view of the above, both the applications of respondent are sans merit and are dismissed .

The arbitration proceedings therefore shall continue."

15. Mr. Behramkamdin submitted that the findings of the Arbitrator in the said paragraphs are clearly perverse, meriting interference under Articles 226 and 227 of the Constitution of India Mr. Behramkamdin submitted that, therefore, the present Writ Petition is clearly maintainable.

16. Before we deal with the rival contentions of the parties on the maintainability of the present Petition, it would be appropriate to set out the relevant parts the judgements on this point cited by the parties.

17. Paragraphs 26, 45, 46 and 47 of the Judgement of the Hon'ble Supreme Court in **S.B.P. and Co.** (Supra) are relevant and read as

under:-

> *"26. It is also some what incongruous to permit the order of the Chief Justice under Section 11(6) of the Act being subjected to scrutiny under Article 226 of the Constitution at the hands of another Judge of the High Court. In the absence of conferment of an appellate power, it may not be possible to say that a certiorori would lie against the decision of the High Court in the very same High Court. Even in the case of an international arbitration, the decision of the Chief Justice of India would be amendable to challenge under Article 226 of the Constitution before a High Court. While construing the scope of power under Section 11(6), it will not the out of place for the Court to bear this aspect in mind, since after all, the Courts follow or attempt to follow certain judicial norms and precludes such challenges (see Naresh Shridhar Mirajkar v. State of Maharashtra and Rupa Ashok Hurra v. Ashok Hurra.)*
>
> *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 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 his 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, the 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) The power exercised by the Chief Justice of the High Court or the Chief Justice of India under Section 11(6) of the Act is not an administrative power. It is a judicial power.

ii) The power under Section 11(6) of the Act, in its entirety, could be delegated, by the Chief Justice of the High Court only to another Judge of that Court and by the Chief Justice of India to another Judge of the Supreme Court.

(iii) In case of designation of a Judge of the High Court or of the Supreme Court, the power that is exercised by the designated, Judge would be that of the Chief Justice as conferred by the statute.

(iv) The Chief Justice or the designated Judge will have the right to decide the preliminary aspects as indicated in the earlier part of this judgment. These will be, his own jurisdiction, to entertain the request, the existence of a valid arbitration agreement, the existence or otherwise of a live claim, the existence of the condition for the exercise of his power and on the qualifications of the arbitrator or arbitrators. The Chief Justice or the designated Judge would be entitled to seek the opinion of an institution in the matter of nominating an arbitrator qualified in terms of Section 11(8) of the Act if the need arises but the order appointing the arbitrator could only be that of the Chief Justice or the designated Judge.

(v) Designation of a District Judge as the authority under Section 11(6) of the Act by the Chief Justice of the High Court is not warranted on the scheme of the Act.

(vi) Once the matter reaches the Arbitral Tribunal or the sole arbitrator, the High Court would not interfere with 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) Since an order passed by the Chief Justice of the High Court or by the designated Judge of that Court is a judicial order, an appeal will lie against that order only under Article 136 of the Constitution of India to the Supreme Court.

(viii) There can be no appeal against an order of the Chief Justice of India or a Judge of the Supreme Court designated by him while entertaining an application under Section 11(6) of the Act.

(ix) In a case where an Arbitral Tribunal has been constituted by the parties without having recourse to Section 11(6) of the Act, the Arbitral Tribunal will have the jurisdiction to decide all matters as contemplated by Section 16 of the Act.

(x) Since all were guided by the decision of this Court in Konkan Rly Corpn. Ltd v. Rani Constructions (P) Ltd. and orders under Section 11(6) of the Act have been made based on the position adopted in that decision, we clarify that appointments of arbitrators or Arbitral Tribunals thus far made, are to be treated as valid, all objections being left to be decided under Section 16 of the Act. As and from this date, the position as adopted in this judgment will govern even pending applications under Section 11(6) of the Act.

(xi) Where District Judges had been designated by the Chief Justice of the High Court under Section 11(6) of the Act, the appointment orders thus far made by them will be treated as valid; but applications if any pending before them as on this date will stand transferred, to be dealt with by the Chief Justice of the High Court concerned or a Judge of that Court designated by the Chief Justice.

(xii) The decision in Konkan Rly Corpn. Ltd v. Rani Constructions (P) Ltd. is overruled."

18. Paragraphs 7 to 9 of the Judgement of this Court in **Suchitra Chavan** (Supra) are relevant and read as under:-

"7. It will be relevant to refer to paragraphs 45 and 46 of the Hon'ble Apex Court judgment in SBP & Co. (supra):-

"45. It is seen that some High Courts have proceeded on the basis that any order passed 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 occasioned 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 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 unless the Award is pronounced unless, of course, a right of appeal is available to them under Section 37 of the Act even at the earlier stage."

8. *Perusal of the judgment would reveal that the Hon'ble Apex Court has clearly held that once the arbitration proceedings have commenced the parties will have to wait until the Award is pronounced unless, the right of the Appeal is available under Section 37 of the Act at the earlier stage.*

9. *The Hon'ble Apex Court has clearly held that this Court while it exercising its power under Section 226 or 227 of the Constitution of India will not entertain any Petition challenging the interlocutory order passed in the arbitration proceedings. In that view of the matter, we find that preliminary objections need to be upheld the Petition is*

therefore rejected in the view of law laid down by the Hon'ble Apex Court in the case of SBP & Co. (supra)."

19. Paragraphs 4 to 7 of the Judgement of this Court in **Tagus Engineering Private Limited** (Supra) are relevant and read as under:-

"4. We believe it is wholly impermissible for this Court to exercise its jurisdiction under Article 226 of the Constitution of India even on questions of jurisdictional competence except perhaps where the arbitral tribunal is itself a statutory tribunal i.e. one created by a statute. The decision of the Supreme Court in Deep Industries Ltd v Oil And Natural Gas Corporation Ltd & Another is unambiguous. In paragraph 19, the Supreme Court referred to SBP & Co v Patel Engineering Ltd and reaffirmed paragraph 14 of that decision. Paragraph 19 of Deep Industries reads thus:

"19. In SBP & Co., this Court while considering interference with an order passed by an Arbitral Tribunal under Articles 226/227 of the Constitution laid down as follows: (SCC p.663, paras 45-46)

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. If 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 as 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 dismissing 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."

5. *This view was even more emphatically reasserted by the Supreme Court in Bhaven Construction Through Authorised Signatory Premjibhai K Shah v Executive Engineer Sardar Sarovar Narmada Nigam Ltd & Anr. Some of the observations in this context are important and we quote paragraphs 18 to 23, 26 and 27 of Bhaven Construction.*

"18. In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a constitutional right. In Nivedita Sharma v COAI [(2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947] , this Court referred to several judgments and held: (SCC p. 343, para 11)

"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 : 1997 SCC (L&S) 577]. 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 [Deep Industries Ltd. v. ONGC, (2020) 15 SCC 706],
wherein interplay of Section 5 of the Arbitration Act and Article 227 of the Constitution was analysed as under:
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"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."

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.
21. Viewed from a different perspective, the arbitral process is strictly conditioned upon time limitation and modelled on the "principle of unbreakability". This Court in P Radha Bai v P Ashok Kumar, (2019) 13 SCC 445 : (2018) 5 SCC (Civ) 773] , observed:
"36.3. Third, Section 34(3) reflects the principle of unbreakability. Dr Peter Binder in International Commercial Arbitration and Conciliation in UNCITRAL Model Law Jurisdictions, 2nd Edn., observed:
"An application for setting aside an award can only be made during the three months following the date on which the party making the application has received the award. Only if a party has made a request for correction or interpretation of the award under Article 33 does the time-limit of three months begin after the tribunal has disposed of the request. This exception from the three month time-limit was subject to criticism in the working group due to fears that it could be used as a delaying tactics. However, although "an unbreakable time- limit for applications for setting aside" was sought as being desirable for the sake of "certainty and expediency" the prevailing view was that the words ought to be retained "since they presented the reasonable consequence of Article 33."

According to this "unbreakability" of time-limit and true to the "certainty and expediency" of the arbitral awards, any grounds for setting aside the award that emerge after the three month time-limit has expired cannot be raised.

37. Extending Section 17 of the Limitation Act would go contrary to the principle of "unbreakability" enshrined under Section

4(3) of the Arbitration Act."

(emphasis supplied)

21. If the courts are allowed to interfere with the arbitral process beyond the ambit of the enactment, then the efficiency of the process will be diminished.

22. The High Court did not appreciate the limitations under Articles 226 and 227 of the Constitution and reasoned that the appellant had undertaken to appoint an arbitrator unilaterally, thereby rendering Respondent 1 remediless. However, a plain reading of the arbitration agreement points to the fact that the appellant herein had actually acted in accordance with the procedure laid down without any mala fides.

23. Respondent 1 did not take legal recourse against the appointment of the sole arbitrator, and rather submitted themselves before the tribunal to adjudicate on the jurisdiction issue as well as on the merits. In this situation, Respondent 1 has to endure the natural consequences of submitting themselves to the jurisdiction of the sole arbitrator, which can be challenged, through an application under Section 34. It may be noted that in the present case, the award has already been passed during the pendency of this appeal, and Respondent 1 has already preferred a challenge under Section 34 to the same. Respondent 1 has not been able to show any exceptional circumstance, which mandates the exercise of jurisdiction under Articles 226 and 227 of the Constitution.

26. It must be noted that Section 16 of the Arbitration Act, necessarily mandates that the issue of jurisdiction must be dealt first by the tribunal, before the court examines the same under Section 34. Respondent 1 is therefore not left remediless, and has statutorily been provided a chance of appeal. In Deep Industries case [Deep Industries Ltd. v. ONGC, (2020) 15 SCC 706] , this Court observed as follows : (SCC p. 718, para 22)

"22. One other feature of this case is of some importance. As stated hereinabove, on 9-5-2018, a Section 16

application had been dismissed by the learned arbitrator in which substantially the same contention which found favour with the High Court was taken up. The drill of Section 16 of the Act is that where a Section 16 application is dismissed, no appeal is provided and the challenge to the Section 16 application being dismissed must await the passing of a final award at which stage it may be raised under Section 34."

(emphasis supplied)

27. In view of the above reasoning, we are of the considered opinion that the High Court erred in utilizing its discretionary power available under Article 226 and 227 of the Constitution herein. Thus, the appeal is allowed and the impugned Order of the High Court is set aside. There shall be no order as to costs. Before we part, we make it clear that Respondent No. 1 herein is at liberty to raise any legally permissible objections regarding the jurisdictional question in the pending Section 34 proceedings."

(Emphasis added)

6. *According Mr Doctor for the Petitioner in the IDFC First Bank Limited petition, there are exceptional circumstances. Specifically, the arbitration is contrary to the law laid down by the Supreme Court in Vidya Drolia & Ors v Durga Trading Corporation, as it forbids a recourse to arbitration where one of the parties has remedies under the SARFAESI Act, RDDBI Act and DRT law. But this is not, in our view, "an exceptional circumstance." What the argument overlooks is that the intent and purpose of arbitration law, and our Arbitration & Conciliation Act, 1996 is to limit the scope for judicial interference, and to provide a quick mechanism for dispute resolution, extending through enforcement. The Arbitration Act*
specifically recognizes the possibility of jurisdictional challenges and bars, and has an in-built mechanism to address those, inter alia under Section 16 of that Act. There is no doubt that in both cases the Petitioners have filed applications questioning jurisdiction under Section 16 of the Arbitration Act. They may not like the outcome of those applications. But their remedies against those Section 16 orders lie elsewhere and not in mounting Writ Petitions claiming 'exceptional circumstances'

> *7. In any case, as Bhaven Constructions points out, it was always open to the Petitioner to even invoke this point in its application under Section 16 of the Arbitration Act. If it has not done so it cannot invoke our jurisdiction under Article 226. If it has already done so, and not been successful in that endeavour, its remedy lies elsewhere."*

20. Paragraphs 16 and 17 of the Judgement of the Hon'ble Supreme Court in **Deep Industries Limited** (Supra) are relevant and read 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."*

21. Paragraph 18 of the Judgement of the Hon'ble Supreme

Court in **Bhaven Construction** (Supra) is relevant and reads as under:-"

> *18. In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtain a constitutional right. In Nivedita Sharma v. COAI, this Court referred to several judgments and held : (SCC p.343, para11)*
>
> > *'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. 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 alternate 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."*
>
> *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, where 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."*

22. Paragraphs 23 to 25 of the Judgement of the Delhi High Court in **IDFC First Bank Limited** (Supra) are relevant and reads as under:-

"23. While there is no doubt that a remedy under Articles 226 and 227 are available against the orders passed by the Arbitral Tribunal, such challenges are not to be entertained in each and every case and the court has to be 'extremely circumspect'.

24. Recently, in Surendra Kumar Singhal v. Arun Kumar Bhalotia, (2021) 279 DLT 636, this Court, after considering all the decisions, of the Supreme Court1 has laid down circumstances in which such petitions ought to be entertained. The relevant portion of the said judgment reads as under:

> *"24. 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."*
>
> *25. A perusal of the above would show that it is only under exceptional circumstances or when there is bad faith or perversity t*hat writ petitions ought to be entertained."

23. On a reading of the aforesaid Judgements, the law on this point is very clear, i.e, the High Court, in the exercise of its writ jurisdiction under Articles 226 and 227 of the Constitution of India, should not interfere in orders passed by Arbitral Tribunals or Courts in Arbitration Proceedings, except in the exceptional circumstances mentioned in the aforesaid Judgements. In our view, this is in keeping with the provisions of Section 5 of the Arbitration Act, which limits the interference of judicial authorities in arbitration matters.

24. In our view, keeping the aforesaid well settled position of law in mind, the present Petition, in so far as it challenges the said Order dated 12th December 2022 passed under Section 11 of the Arbitration Act, is not maintainable. As set out hereinabove, in the case of **S.B.P. and Co.**(Supra), the Hon'ble Supreme Court has frowned upon challenging an Order under Section 11 of the Arbitration Act by way of a Writ Petition under Article 226 of the Constitution of India. Further, the Hon'ble

Supreme Court has also held that an appeal against such an order would lie only to the Hon'ble Supreme Court by way of an SLP under Article 136 of the Constitution of India.

25. Further, Section 11 (7) of the Arbitration Act also provides that such an Order passed under Section 11 of the Arbitration by High Court, or by the Hon'ble Supreme Court, is final, and no appeal, including a letters patent appeal, shall lie against such a decision.

26. In our view, keeping in mind the aforesaid legal position, as also the well settled position in law that the remedy by way of a writ is a discretionary remedy, this Court should not exercise that discretion as a remedy is available to the Petitioner to challenge the said Order dated 12th December 2022 by filing an SLP before the Honb'le Supreme Court. It is the case of the Petitioner that it has subsequently discovered that the Respondents obtained the said Order fraudulently. Even if that case of the Petitioner is true, it is open to the Petitioner to file an SLP challenging the said Order dated 12th December 2022. The Petitioner is not left without a remedy. For this reason, we are of the view that we should not exercise our writ jurisdiction under Articles 226 and 227 of the Constitution of

India in respect of the challenge to the said Order dated 12th December 2022.

27. We are further of the view that, even otherwise, if this Court exercises its jurisdiction under Articles 226 and 227 of the Constitution of India, and starts entertaining Writ Petitions against Orders passed under Section 11 of the Arbitration Act, it will lead to opening the floodgates for such kind of litigation, which definitely needs to be avoided. Further, considering the nature of the case of the Petitioner, there may also be disputed questions of fact which cannot be appropriately examined by us in our writ jurisdiction.

28. For all these reasons, the present Petition, in so far as it challenges the said Order dated 12th December 2022, passed under Section 11 of the Arbitration Act, is not maintainable.

29. As far as the challenge by the Petitioner to the said Order dated 16th September 2023 passed by the Arbitrator, under the provisions of Section 16 of the Arbitration Act, is concerned, it is to be noted that, in the proceedings in the said Application under Section 11 of the

Arbitration Act, the Petitioner accepted the existence of an Arbitration Agreement. The same is recorded in paragraph 1 of the said Order dated 12th December 2022. The Petitioner also did not seriously dispute that disputes and differences had arisen between the parties that needed to be resolved by Arbitration. The Petitioner and Respondent No.1 were not agreeable as to whom to appoint as an Arbitrator and, therefore, by the said Order dated 12th December 2022, an Arbitrator was appointed by an Hon'ble Judge of this Court. Thereafter, admittedly, the Petitioner participated in the Arbitration Proceedings before the Arbitrator so appointed. The Petitioner did all this with full knowledge of the fact that Respondent No.2 was under CIRP and also the fact that only Respondent No.1 would be participating in the arbitration proceedings. It was only subsequently that the Petitioner filed Applications contending that the Agreement between the parties was obtained by fraud and was void, therefore, no agreement or arbitration agreement exists between the parties, and, therefore, the Arbitrator has no jurisdiction. In other words, the Petitioner was calling upon an Arbitrator, who had been appointed by an Hon'ble Judge of this Court, under Section 11 of the Arbitration Act, to hold that he had no jurisdiction as the Arbitration Clause under which he was appointed was *void ab-initio* and did not exist. For the reasons

given by him in the said Order dated 16th September 2023, the Arbitrator has rejected the said contention of the Petitioner by holding *inter-alia* that he could not do so as he was appointed under Section 11 of the Arbitration Act. The Arbitrator has also given other reasons in the said Order dated 16th September 2023 for rejecting the contentions of the Petitioner, which have been set out above.

30. As is clear from the position of law set out by us hereinabove, a Writ Court, exercising its jurisdiction under Articles 226 and 227 of the Constitution of India, can entertain a Petition challenging an Order passed by an Arbitrator, under Section 16 of the Arbitration Act, rejecting the contention that he has no jurisdiction, only in exceptionally rare cases and for the few exceptions as mentioned above. We will therefore have to consider whether the case in the present Writ Petition is such an exceptional case which falls within one of the said exceptions.

31. As far as the exception of lack of inherent jurisdiction is concerned, it cannot be said that the Arbitrator did not have jurisdiction to pass the said Order dated 16th September 2023. As stated hereinabove, the Arbitrator was appointed by an Hon'ble Judge of this Court, under

the provisions of Section 11 of the Arbitration Act, by the said Order dated 12th December 2022. Having been so appointed, the Arbitrator definitely had jurisdiction to decide an Application under Section 16 of the Arbitration Act. In fact, the said Order dated 12th December 2022 appointing the Arbitrator also mentions that the Respondent would be at liberty to raise all questions of jurisdiction, under Section 16 of the Arbitration Act, before the Arbitrator, which necessarily means that the Arbitrator had jurisdiction to decide these questions of jurisdiction. Even otherwise, in the absence of the said Order dated 12th December 2022 being set aside, it could not be contended that the Arbitrator lacked inherent jurisdiction. In these circumstances, we are of the view that the exception of lack of inherent jurisdiction does not apply to the present case.

32. Further, the exception, of a party being left without a remedy, is also not applicable to the present case. In the present case, the Petitioner is not left without any remedy to challenge the said Order dated 16th September 2023 passed by the Arbitrator. It is settled law that, under the provisions of the Arbitration Act, the Petitioner can challenge the said Order dated 16th September 2023 whilst challenging the award

passed by the Arbitrator under the provisions of Section 34 of the Arbitration Act. Section 37 of the Arbitration Act consciously provides an Appeal against an order passed by an Arbitrator, under Section 16 of the Arbitration Act, accepting that he has no jurisdiction, and does not provide for an Appeal against an order passed by an Arbitrator, under Section 16 of the Arbitration Act, holding that he has jurisdiction. The obvious intention is non-interference of judicial authorities in arbitration proceedings so that arbitration proceedings can be expeditiously completed and that arbitration is an efficacious and speedy alternate dispute resolution mechanism. For this reason also, we are not inclined to exercise our writ jurisdiction to entertain the present Petition challenging the said Order dated 16th September 2023 passed under Section 16 of the Arbitration Act.

33. As far as the exception of a party acting in bad faith is concerned, the same cannot be decided at this stage in the writ jurisdiction of this Court. Further, whether, Respondent No.1, in invoking Arbitration, has acted in bad faith, is something which cannot be decided by a Writ Court, especially since the same would involve disputed questions of fact. For this reason also, we are not inclined to exercise our

writ jurisdiction.

34. Mr. Behramkamdin has also relied upon the exception of perversity and has submitted that this Court should exercise its writ jurisdiction as the Arbitrator's findings are totally perverse. In the case of **IDFC first Bank Ltd.** (supra), the Delhi High Court has held that interference under Articles 226 and 227 of the Constitution of India is permissible only if the order passed by the Arbitrator is completely perverse, i.e., that the perversity must stare in the face. In our view, the Arbitrator's finding that, since he was appointed as the Arbitrator under Section 11 of the Arbitration Act by an Order of an Hon'ble Judge of this Court, under the arbitration clause contained in the agreement between the parties, he cannot hold that he has no jurisdiction on the ground that the said agreement and the said Arbitration Clause are void, cannot be considered to be perverse so as to merit interference under Articles 226 or 227 of the Constitution of India.

35. For all the aforesaid reasons, we are of the view that the present case of the Petitioner is not one of those exceptionally rare cases where interference with an order passed under Section 16 of the of the

Arbitration Act is justified under Articles 226 and 227 of the Constitution of India. For all these reasons, we are not inclined to exercise our writ jurisdiction to entertain a challenge to the said Order dated 16th September 2023 passed by the Arbitrator under Section 16 of the Arbitration Act.

36. In the aforesaid circumstances, and for all the reasons stated above, the present Writ Petition is not maintainable and is therefore dismissed.

37. In the facts and circumstances of the case, there will be no order as to costs.

(FIRDOSH P POONIWALLA., J.) **(SUNIL B. SHUKRE, J.)**