



2026 INSC 1044

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. _____ OF 2026
@ SLP (CIVIL) NO. 33087 OF 2026**

UNION OF INDIA & OTHERS

....APPELLANT(S)

VERSUS

HARIOM PROJECTS PVT. LTD.

...RESPONDENT (S)

ORDER

1. Heard. Leave Granted.
2. Short point of law that arises for our consideration in the present matter is
“Whether the High Court, while exercising statutory appellate jurisdiction under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996 against rejection of an application under Section 9 can by consent of the parties, remit the appellate proceedings to the

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RASHI GUPTA
Date: 2025.09.24
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subsequently constituted Arbitral Tribunal and direct the Tribunal to treat such proceedings as an application under Section 17 of the Act?”

3. Before adjudicating upon the said point, facts shorn of unnecessary details are noted hereinbelow:

3.1. The Respondent Company was awarded a contract by the Appellant for the provision of Administrative and Training Infrastructure (Phase-I) at NDA Khadakwasla. During the execution of the contract, disputes arose between the parties concerning adjustments, payment calculations and design issues. The Respondent filed Writ Petition No. 17686 of 2024 seeking a direction to the Appellant to constitute a Dispute Resolution Board (“DRB”). The said Writ Petition came to be allowed by order dated 12.02.2025, directing the respondent therein to constitute DRB to adjudicate the Respondent’s claims on merits. Thereafter, by order dated 26.04.2025, the DRB so constituted rejected all the claims of the Respondent.

3.2. The Respondent invoked the Arbitration Clause and sought for appointment of a Sole Arbitrator by notice dated 06.05.2025. The Appellants thereafter issued a Show Cause Notice dated 18.05.2025 to the Respondent, alleging deficiencies in the performance of its contractual obligations, followed by a demand for recovery of Rs.1,46,40,147.32/- on

21.07.2025, contending that the said amount had been overpaid on the basis of the corrected escalation formula.

3.3. Seeking interim relief, the Respondent filed Misc. C.A. No. 878 of 2025 under Section 9 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as 'the Act'*), before the District Judge, Pune, **inter alia, seeking an injunction restraining the Appellants from cancelling, terminating or repudiating the contract**, along with other interim reliefs. The Appellants filed their reply to the said application, which came to be dismissed by order dated 15.10.2025.

3.4. Being aggrieved by the said order, the Respondent filed ***Arbitration Appeal No. 35 of 2025*** under Section 37 of the Act and also filed ***Commercial Arbitration Petition (ST) No. 35541 of 2025*** under Section 11 of the Act seeking appointment of an Arbitrator. Thereafter, on 03.01.2026, the Appellants terminated the Work Order on the ground of unsatisfactory performance, which came to be stayed by the High Court by order dated 05.01.2026. By order dated 12.01.2026, the High Court, after hearing the parties, permitted the Appellants to file an affidavit in reply dealing with the contentions raised regarding the quality of workmanship and continued the status quo arrangement then obtaining until the next date of hearing. After the order was dictated, the High Court suggested that the parties consider proceeding forthwith before an

Arbitrator so that the Arbitrator could examine the factual aspects of the matter and evolve an appropriate working arrangement between the parties. The learned Advocates for the parties thereupon stated that they would arrive at a consensus on the identity of the Arbitrator by the following morning, i.e., 13.01.2026.

4. The High Court vide impugned order dated: 13.01.2026, while appointing Maj. Gen. R.K. Mattu as an Arbitrator, passed the following order:

2. The status quo arrangement obtaining as of today shall continue for a period of two more weeks. The parties shall approach the Learned Sole Arbitrator no later than January 17, 2026 at 12:00 noon, who shall then give instructions to the parties on how to proceed further. It shall be open to the Arbitral Tribunal to extend, vary or modify interlocutory arrangements obtaining as of today

3. The proceedings before this Court shall be remitted to the Learned Arbitral Tribunal to be treated as an application under Section 17 of the Act.

(Emphasis supplied)

5. Challenging the above direction, the Union of India is before this Court, Shri. Kanakamedla Ravindra Kumar, Learned Additional Solicitor General, for the Union contended as follows:

- 5.1. The Appellants contended that they were not challenging the appointment of Maj. Gen. R.K. Mattu as the Sole Arbitrator; their challenge was confined to the direction of the High Court remitting the proceedings

instituted under Section 37 to the Arbitral Tribunal to be treated as an application under Section 17 of the Act.

5.2.It was contended that an order passed by the competent Court under Section 9 could be challenged only by way of a statutory appeal under Section 37(1)(b) and such appellate jurisdiction vested exclusively in the Court. Therefore, an Arbitral Tribunal could neither entertain nor adjudicate the issues pending in Section 37 appeal.

5.3.It is contended that powers exercised by a Court under Sections 9 and 37 were fundamentally distinct from the powers of an Arbitral Tribunal under Section 17. An Arbitral Tribunal, being a creature of the contract, could not exercise appellate or supervisory jurisdiction vested by statute in the Courts, even by consent of the parties.

5.4.It was further contended that permitting the Tribunal to reconsider the very issues which had already been adjudicated and rejected by the District Court under Section 9, by treating the Section 37 proceedings as a Section 17 application, amounted to an impermissible delegation of the High Court's appellate function and same was contrary to the statutory scheme and judicial hierarchy under the Arbitration and Conciliation Act, 1996.

6. Shri Aditya Sondhi, learned Senior Counsel appearing for the Respondent, fairly submitted that the direction of the High Court requiring the Arbitral Tribunal to treat the proceedings pending before it under Section 37 as proceedings under Section 17 cannot be sustained, as the same is impermissible in law. However, he submitted that the direction for the constitution of the Arbitral Tribunal to resolve the disputes between the parties may be sustained, as the Arbitral Tribunal, after its constitution, has already commenced proceedings. Owing to its intervention, the parties have entered into a Supplementary Agreement dated 24.04.2026, under which the Union has permitted the Respondent to complete the work, considering that the project is of national importance. However, the remaining issues are still the subject matter of arbitration before the Arbitral Tribunal. As such, the constitution of the Arbitral Tribunal may not be set aside.
7. Having heard the Counsels appearing for the parties, we proceed to analyse the Point framed hereinabove.

ANALYSIS

8. The appeal under Section 37 of the Arbitration and Conciliation Act, 1996 arose from the order passed under Section 9 rejecting the Respondent-Claimant's application for interim reliefs, which included, inter alia, a

prayer for restraining the Appellants from cancelling, terminating or repudiating the contract/work order. During the pendency of the appeal under Section 37, the Appellants terminated the contract/work order on 03.01.2026. The effect and operation of the said termination were thereafter stayed by the High Court on 05.01.2026. In the connected proceedings under Section 11 of the Act, the Sole Arbitrator was appointed by consent of the parties, thereby the Arbitral Tribunal was constituted.

9. The direction contained in the impugned order remitting the proceedings pending before the High Court to the Arbitral Tribunal and requiring them to be treated as an application under Section 17 of the Act cannot, however, be sustained. The appellate jurisdiction under Section 37 is vested exclusively in the **“Court”** as contemplated under Section 2(1)(e) of the Act. An Arbitral Tribunal exercising powers under Section 17 does not exercise appellate jurisdiction over an order passed by a competent Court under Section 9. Consequently, the effect of the impugned direction would be to require the Arbitral Tribunal to examine the subject matter of a statutory appeal under Section 37 by treating the appellate proceedings as an application under Section 17. The nature and source of the powers exercised by an appellate Court under Section 37 are distinct from the powers conferred upon an Arbitral Tribunal under Section 17 and same

cannot be interchanged merely by transmitting or remitting the appellate proceedings to the Tribunal.

10. At the highest, upon constitution of the Arbitral Tribunal, the High Court could have granted liberty to the Respondent-Claimant to independently approach the Arbitral Tribunal under Section 17 of the Act for such interim measures as may be available in law. Further, insofar as the prayer sought under the application filed under Section 9 to restrain the Appellants from terminating the contract/work order had got spent itself, by virtue of termination of work order/ contract on 03.01.2026. Any further or consequential interim protection thereafter would necessarily have to be considered in the light of the subsequent events and the relief specifically sought by the Respondent-Claimant.

11. Accordingly, the impugned order cannot be sustained to the extent that it remits the proceedings under Section 37 to the Arbitral Tribunal and directs that they be treated as an application under Section 17 of the Act. The impugned order is, therefore, set aside to that limited extent.

12. Now, we have been informed by the learned counsel appearing for the parties that the Tribunal is seized of the matter concerning all the issues and has passed several orders, pursuant to which the parties have entered into a Supplementary Agreement dated 24.04.2026. Therefore, at this

stage, we are of the opinion that all other issues relating to the disputes between the parties shall be adjudicated by the Tribunal, and both the parties would be at liberty to raise all contentions as permissible in law.

We have passed this order only to clarify the position of law.

13. With the above modification, the present appeal stands disposed of.

Pending applications if any shall be consigned to record.

.....J.
[ARAVIND KUMAR]

.....J.
[PRASANNA B. VARALE]

**NEW DELHI;
SEPTEMBER 18th, 2026.**