

**IN THE HIGH COURT AT CALCUTTA
(COMMERCIAL DIVISION)
ORIGINAL SIDE**

**RESERVED ON: 17.12.2025
DELIVERED ON: 15.01.2026**

**PRESENT:
HON'BLE JUSTICE GAURANG KANTH**

AP-COM 913 OF 2025

**ZILLION INFRAPROJECTS PRIVATE LIMITED
VERSUS
BRIDGE AND ROOF COMPANY INDIA LIMITED**

Appearance:

***Mr. Kishore Datta, Sr. Adv.
Mr. Soumen Das, Adv.
Ms. Aseyaa Chowdhury, Adv.
Mr. Altamas Alim, Adv.***

..... for the petitioner

***Mr. Shounak Mukhopadhyay, Adv.
Mr. Amit Mehria, Adv.
Ms. Paramita Banerjee, Adv.
Mr. Rohan Raj, Adv.
Mr. Yash Mahmia, Adv.***

..... for the respondent

JUDGMENT

Gaurang Kanth, J.:-

- 1.** The Petitioner, by way of the present Petition under Section 34 of the Arbitration and Conciliation Act, 1996 ("the Act"), has assailed the interim arbitral award dated 28.08.2025 passed by the learned Sole Arbitrator, whereby Claim Nos. 2 to 9 raised by the Petitioner were held to be barred by limitation.
- 2.** At the outset, learned counsel appearing for the Respondent raised a preliminary objection with regard to the maintainability of the present petition. Accordingly, the present judgment is confined solely to the adjudication of the said preliminary objection.

3. The material facts necessary for the disposal of the preliminary objection raised by the Respondent are set out hereinafter.
4. The present petition arises out of a tender issued for the structural works in respect of the Alumina Refinery Project of Utkal Alumina International Limited (UAIL) at Rayagada, Odisha. UAIL awarded the structural and pipeline works to the Respondent, who, in turn, subcontracted the said works to the Petitioner. The total contractual value of the subcontract works was Rs. 11,82,90,150/-. There was a delay of 419 days in the completion of the works, which, according to the Petitioner, was occasioned by defaults attributable to the Respondent. Due to the non-payment of the outstanding dues, the Petitioner invoked the arbitration clause. Upon a petition filed by the Petitioner under Section 11 of the Act, this Court constituted the Arbitral Tribunal. The Petitioner thereafter filed its Statement of Claim seeking an award of Rs. 3,01,78,450/- under nine distinct heads.
5. The Respondent filed an application under Section 16 of the Act, contending that Claim Nos. 2 to 9 raised by the Petitioner in the Statement of Claim were barred by limitation.
6. By an interim award dated 28.08.2025, the Arbitral Tribunal allowed the said application and held that Claim Nos. 2 to 9 raised by the Petitioner were barred by limitation.
7. Aggrieved by the interim award dated 28.08.2025, the Petitioner has preferred the present petition under Section 34 of the Act, assailing the said interim arbitral award.

Submission on behalf of the Respondent

8. Mr. Shounak Mukhopadhyay, learned senior counsel for the Respondent contended that, by the impugned interim award, the learned Sole Arbitrator

allowed the Respondent's application under Section 16 read with Section 17 of the Arbitration and Conciliation Act, 1996, and rejected Claim Nos. 2 to 9 of the Petitioner on the ground of limitation. It was submitted that such determination constitutes a jurisdictional ruling within the meaning of Section 16 of the Act. Consequently, according to the Respondent, the statutory remedy available to the Petitioner lies by way of an appeal under Section 37(2) of the Act, and not by invocation of Section 34 of the Act. In support of this contention, reliance was placed on the judgments of the Hon'ble Supreme Court in **Deep Industries Ltd. v. ONGC** reported as **(2020) 15 SCC 706**, **Uttarakhand Purva Sainik Kalyan Nigam Limited v. Northern Coalfields Limited**, reported as **(2020) 2 SCC 455**, as well as the decision of the Hon'ble Division Bench of this Court in **Board of Trustees for the Shyama Prasad Mukharjee Port v. Marincraft Engineers Pvt. Ltd.**, APO 60 of 2022.

Submission on behalf of the Petitioner

9. Mr. Kishore Datta, learned Senior Counsel appearing for the Petitioner, however, controverted the aforesaid objection. It was submitted that, by virtue of the impugned award, the learned Sole Arbitrator has finally and conclusively rejected Claim Nos. 2 to 9 raised by the Petitioner. It was argued that, insofar as the said claims are concerned, the arbitral proceedings stand terminated, and the impugned order, to that extent, amounts to a final adjudication of the rights of the parties. Consequently, it was contended that the impugned order answers the description of an "interim award" within the meaning of Section 2(1)(c) of the Arbitration and Conciliation Act, 1996, and is, therefore, amenable to challenge under Section 34 of the Act. In support of the said contention, reliance was placed on the judgments of the Hon'ble

Supreme Court in **BSNL v. Nortel Networks India Pvt. Ltd.**, reported as **(2021) 5 SCC 738**, and **Indian Farmers Fertilizers Co-operative Ltd. v. Bhadra Products**, reported as **AIR 2018 SC 62**.

Legal Analysis

- 10.** This Court has considered the rival submissions advanced by the learned counsel for the parties on the issue of maintainability and has perused the judgments relied upon by them.
- 11.** The preliminary objection raised by the Respondent necessitates an examination of the true nature and legal character of the impugned order dated 28.08.2025, and, consequently, the determination of the appropriate statutory remedy available to the Petitioner under the scheme of the Act.
- 12.** At the outset, it is well settled that the nomenclature assigned to an order by the arbitral tribunal is not determinative; rather, it is the substance and effect of the order that governs the issue of maintainability. The Court must therefore ascertain whether the impugned determination is in the nature of a jurisdictional ruling under Section 16 of the Act, amenable to an appeal under Section 37(2), or whether it constitutes an interim award finally deciding certain claims, thereby attracting a challenge under Section 34.
- 13.** The Arbitral Tribunal while deciding the said application, held as under:

“It is clear to this Ld. Tribunal that since Claim No. 2 to 9 do not form part of the final and RA Bills pertaining to the Claim No. 1 and are separately distinguishable, the bar of limitation would apply, having expired three years, from the date of completion of the project on 30.10.2013, i.e, on and by 30.10.2016. Since the limitation expired much prior to the imposition of the Moratorium on 5th February, 2019, the Claim Nos 2 to 9 are precluded from obtaining the benefit of such Moratorium. This Tribunal is of the further view that Clause 35.1 of the GCC stating, inter alia, that the contract would be alive, would have arguably applied to Claim No. 2 to 9 if and only if (vide Table at paragraph B supra) comprising the totality of Claim No. 2 to 9 were not part of the Final Bill and RA Bills raised separately in this arbitration.”

- 14.** A plain reading of the aforesaid extract demonstrates that the Arbitral Tribunal has not merely returned a prima facie or procedural finding, but has undertaken a substantive adjudication on the issue of limitation, leading to the outright rejection of Claim Nos. 2 to 9. The Tribunal has recorded a definitive conclusion as to the commencement and expiry of the period of limitation, rejected the applicability of the moratorium, and further construed Clause 35.1 of the GCC to hold that the said claims stood excluded from its protective ambit. The consequence of such determination is that, insofar as Claim Nos. 2 to 9 are concerned, the rights of the parties stand finally determined, leaving nothing further to be adjudicated by the Tribunal in respect thereof.
- 15.** The Respondent has placed reliance on the decisions of the Hon'ble Supreme Court in **Deep Industries Ltd.** (*supra*) and **Uttarakhand Purva Sainik Kalyan Nigam Limited** (*supra*) to contend that judicial interference at an interlocutory stage of arbitral proceedings must be minimal and that orders passed under Section 16 are specifically appealable under Section 37, thereby impliedly excluding recourse under Section 34. In **Deep Industries Ltd.** (*supra*), the Hon'ble Supreme Court underscored the legislative intent of restricting court intervention during the pendency of arbitral proceedings and cautioned against entertaining challenges that would derail the arbitral process. Similarly, in **Uttarakhand Purva Sainik Kalyan Nigam Limited** (*supra*), the Hon'ble Supreme Court reiterated that a party aggrieved by a jurisdictional ruling of the arbitral tribunal must ordinarily avail the remedy prescribed under Section 37, and that courts ought not to bypass the statutory framework. Similarly, the decision of the Hon'ble Division Bench of

this Court in **Board of Trustees for the Shyama Prasad Mukharjee Port** (*supra*), reiterates that orders passed by the arbitral tribunal which do not finally determine the rights of the parties are ordinarily not amenable to challenge under Section 34 of the Act.

16. There can be no quarrel with the aforesaid propositions. However, the said judgments proceed on the premise that the order under challenge is a pure jurisdictional ruling, whereby the arbitral tribunal either accepts or rejects its competence to adjudicate the dispute, without finally determining the substantive rights of the parties.

17. On the other hand, the Petitioner has relied upon the decisions of the Hon'ble Supreme Court in **Indian Farmers Fertilizers Co-operative Ltd.** (*supra*) and **Nortel Networks India Pvt. Ltd.** (*supra*), which elucidate the legal contours of an "interim award" under Section 2(1)(c) of the Act. In **Indian Farmers Fertilizers Co-operative Ltd.** (*supra*), the Hon'ble Supreme Court authoritatively held that a determination on limitation which finally disposes of a claim is not merely a procedural or interlocutory order, but partakes the character of an interim award, since it conclusively adjudicates the rights of the parties in respect of that claim. The Court observed that when an arbitral tribunal decides an issue of limitation in a manner that results in the rejection of claims, such determination is final insofar as those claims are concerned.

18. The aforesaid principle was further reinforced in **Nortel Networks India Pvt. Ltd.** (*supra*), wherein the Hon'ble Supreme Court held that a finding on limitation that results in the termination of arbitral proceedings with respect to certain claims constitutes an interim award amenable to challenge under Section 34. The Court clarified that the decisive test is whether the order

finally determines the rights of the parties with respect to the subject-matter of the claim, and not whether the arbitral proceedings continue in respect of the remaining claims.

- 19.** Applying the aforesaid principles to the facts of the present case, it is evident that the impugned interim award does not merely decide the competence of the arbitral tribunal in abstract terms. By allowing the Respondent's application and holding Claim Nos. 2 to 9 to be barred by limitation, the learned Sole Arbitrator has finally and conclusively rejected the said claims, resulting in the termination of arbitral proceedings insofar as those claims are concerned. No further adjudication survives in respect thereof.
- 20.** While it is true that the objection was raised under Section 16 of the Act, the mere invocation of Section 16 cannot be determinative of the nature of the order. Once the tribunal's determination transcends a threshold jurisdictional enquiry and culminates in the final disposal of substantive claims, the order ceases to be interlocutory in nature and assumes the character of an interim award within the meaning of Section 2(1)(c) of the Act.
- 21.** In such circumstances, the statutory appeal under Section 37(2) would not be an efficacious or appropriate remedy, as Section 37 is designed to address orders either accepting or rejecting jurisdiction at a preliminary stage, and not awards, whether interim or final, that conclusively determine claims. The Act expressly provides that an arbitral award, including an interim award, may be challenged only under Section 34, and no appeal is maintainable therefrom save as expressly provided.
- 22.** Accordingly, this Court is of the view that the judgments relied upon by the Respondent operate in a distinct factual and legal context, where the arbitral

tribunal had not finally adjudicated upon the claims themselves. In contrast, the ratio laid down in **Indian Farmers Fertilizers Co-operative Ltd.** (*supra*) and **Nortel Networks India Pvt. Ltd.** (*supra*) squarely applies to the present case, where the impugned order results in the irreversible extinguishment of Claim Nos. 2 to 9.

- 23.** In view thereof, this Court is of the considered view that the impugned order, to the extent it rejects Claim Nos. 2 to 9, partakes the character of an interim award and is amenable to challenge under Section 34 of the Arbitration and Conciliation Act, 1996. The preliminary objection raised by the Respondent as to the maintainability of the present petition is therefore rejected.
- 24.** Upon rejection of the preliminary objection, list the matter in the monthly list of March, for consideration on merits.
- 25.** Both parties are at liberty to file the additional documents which were part of the Arbitral Records.

(GAURANG KANTH, J.)