2024:DHC:9486

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Reserved on: 03rd December, 2024*

*Date of Decision: 09th December, 2024*

\+ ARB. A. (COMM.) 63/2024 & I.As. 46995-96/2024

RAILTEL CORPORATION OF INDIA LIMITED .....Petitioner

Through: Mr. Manish Vashisht, Sr. Advocate with Mr. Alok Kumar Singh and Mr. Vedansh Vashisht, Advocates

versus

PRIMATEL FIBCOM LIMITED ..... Respondent

Through: Mr. Rohit Gandhi, Mr. Adhish Srivastva, Mr. Hargun Singh Kalra, Ms. Akshita Nigam, Mr. Navdeep Jain and Mr. Nirmit Bhalla, Advocates

**CORAM:**
**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

**J U D G M E N T**

**MANMEET PRITAM SINGH ARORA, J:**

1. The present appeal has been filed under Section 37(2)(a) of the Arbitration and Conciliation Act, 1996 ('the Act of 1996') impugning the 'procedural order no. 5' dated 18.11.2024 ('impugned order') passed by the learned Sole Arbitrator in Case Ref No. DIAC/8149/04-24.

2. In the impugned order the learned Sole Arbitrator dealt with two (2) applications filed by the Appellant herein (i.e., respondent in the arbitral proceedings) on 11.11.2024.

2.1 The first application was filed by the Appellant praying for fixation of a procedure and schedule to be followed by the parties. In this application, the Appellant prayed for leading oral evidence and stated that the issues cannot be decided on the basis of documents alone.

2.2 The second application was filed by the Appellant under Section 5 of the Limitation Act, 1963 for condonation of delay in filing its Counter-Claim and for taking on record the Counter-Claim filed along with the application.

2.3 The learned Sole Arbitrator disallowed the first application on the ground that the timeline of the proceedings to be followed by the parties has already been decided through various consent orders passed by him and that no new procedure can be established at the stage of final hearing. The rejection of the first application is not a subject matter of challenge in the present appeal.

2.4 The second application has been dismissed by the learned Sole Arbitrator on the ground that the Counter-Claim sought to be brought on record is filed at a belated stage when the Statement of Claim ('SOC'), Statement of Defence ('SOD') and Rejoinder has already been filed and the matter is listed for addressing final arguments. The operative portion of the impugned order reads as under:

> "1. Today the case was fixed for final arguments but Mr. Manish Vashisht, Sr. Ld. Counsel for the respondent is not available. However, he has sent his junior Mr. Jaivardhan Jeph, Advocate who came late by half an hour.
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> 2. The Ld. Counsel for the respondent Mr. Jaivardhan Jeph has drawn the attention to respondent's applications which were sent only on email and no hard copy was supplied.
> …

> 6. The second application moved by the Ld. Counsel for the respondent pertains to counter claim along with the prayer for condonation of delay.
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> **7. When the case is ripe for the final hearing after receiving the Statement of Claim, Statement of Defence and Rejoinder, so this belated application has no merit and dismissed.**
>
> 8. With the **consent of both the parties**, case is adjourned to 10.12.2024 to 13.12.2024 at 2.00 p.m. till 5.30 p.m. on all the dates physically at DIAC. On the request of Ld. Counsel for the Respondent, the dates fixed for 19th and 20th November, 2024 are hereby cancelled."
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> (Emphasis supplied)

***Brief facts leading to the initiation of the present proceedings***

3. With the execution of the 'definitive agreement' dated 27.02.2018 between the Appellant and the Respondent herein the Respondent was selected as a System Integrator and Implementation Partner under a back-to-back payment structure with 'M/S Raj COMP Info Services Limited (RISL)' i.e., the end customer on behalf of the Appellant.

3.1 The said end customer raised issues with respect to the deficiencies in the services rendered by the Respondent and consequently stopped payments towards invoices raised by the Appellant.

3.2 Thereafter the Respondent invoked the arbitration agreement and Dr. Justice Satish Chandra, former Judge of Allahabad High Court was appointed as the Sole Arbitrator by this Court vide order dated 14.03.2024 passed in ARB.P. 364/2024.

3.3 The learned Sole Arbitrator passed 'procedural order no. 1' dated 13.05.2024 whereby with the consent of the parties the date of filing of SOC[1],

[1] Statement of claim.

SOD[2]/Counter Claim and Rejoinder was fixed as 15.06.2024, 14.07.2024 and 21.07.2024 respectively.

3.4 On the next date of hearing i.e., 30.07.2024 counsel for the Appellant herein sought further time of three (3) weeks to file SOD/Counter Claim since the time for filing the same expired on 14.07.2024. The learned Sole Arbitrator acceding to the said request vide 'procedural order no. 2' extended the time to file SOD/Counter Claim till 20.08.2024. The time to file rejoinder was also thereby extended till 09.09.2024 and the matter was listed for final arguments on 26.09.2024 at 02.00 p.m., 27.09.2024 from 11.00 a.m. to 05.00 p.m., 30.09.2024 from 02.00 p.m. to 05.00 p.m., 01.10.2024 from 11.00 a.m. to 05.00 p.m. and 03.10.2024 at 11.00 a.m.

3.5 The Respondent herein thereafter moved an application seeking additional documents from the Appellant. The Appellant on the other hand moved an application apprising the learned Sole Arbitrator that a Special Leave Petition (SLP) has been filed by the Appellant for consolidation of the three (3) different arbitrations which were pending between the parties and sought an adjournment on this ground. These applications were taken up by the learned Sole Arbitrator on the first day scheduled for final arguments i.e., 26.09.2024. The learned Sole Arbitrator adjourned the matter for hearing final arguments to 16.10.2024 and vide 'procedural order no. 3' observed that the Tribunal will continue to function till any order is passed by the Supreme Court to the contrary.

3.6 The Appellant at hearing scheduled on 16.10.2024 again raised the plea that the matter is before the Supreme Court in SLP and the tribunal should not

[2] Statement of defence.

move ahead with the arbitration proceedings in wake of the said SLP. The said argument was once again rejected by the learned Sole Arbitrator vide 'procedural order no. 4' and the matter was yet again listed for 18.11.2024 for final hearing.

3.7 At this stage, when the hearing was scheduled for final arguments on 18.11.2024, the Appellant thereafter moved two (2) applications as mentioned in para 2 above and the impugned order was passed rejecting, dismissing both the said applications.

3.8 The present appeal under Section 37(2)(a) of the Act of 1996 has been filed challenging the said impugned order. The Appellant admits that it is the rejection of the second application, which has been impugned in the present appeal under Section 37(2)(a) of the Act of 1996. The rejection of the second application pertains to condonation of delay in filing the Counter-Claim. Thus, all references to impugned order in this judgment is only with respect to the dismissal of the second application pertaining to condonation of delay in filing the Counter-Claim.

3.9 At the outset the learned counsel for the Respondent has raised objection with regards to the maintainability of the present appeal against the impugned order under Section 37(2)(a) of the Act of 1996.

3.10 Learned counsels for both the parties have addressed arguments on the said issue of maintainability and the same have been dealt with in this judgment below.

***Arguments of the Appellant i.e., the original respondent in the arbitral proceedings***

4. The learned Senior Counsel for the Appellant contended that the impugned order is patently illegal and the same is apparent on the face of record.

4.1 He stated that the learned Sole Arbitrator had neither fixed any procedure as mandated under Section 19 of the Act of 1996 or the Delhi International Arbitration Centre ('DIAC') Rules, nor had the learned Sole Arbitrator followed any fixed procedure as is done in accordance with the governing law. He stated that the proceedings were being conducted at the whims and fancies of the learned Sole Arbitrator.

4.2 He stated that while declining to condone the delay and take the Counter-Claim of the Appellant on record, the learned Sole Arbitrator has declined to exercise Jurisdiction as per Section 16 of the Act of 1996 and therefore the impugned order is amenable to challenge/Appeal under Section 37(2)(a) of the Act of 1996. He relied upon the judgment of the Supreme Court in **National Thermal Power Corpn. Ltd. v. Siemens Atkeingesekkschaft[3].**

4.3 He stated that the learned Sole Arbitrator has not passed the impugned order deciding the Counter-Claim on merits and the same has not resulted in the final determination of the Counter-Claim. He states that thus, the impugned order does not fall within the definition of an 'Award' or an 'Interim award' as per Section 2(1)(c) of the Act of 1996 and, therefore, a petition under Section 34 of the Act of 1996 would not be maintainable. He also relied upon the judgment of the Bombay High Court in **Harinarayan G. Bajaj v. Sharedeal Financial Conssultants Pvt. Ltd**.[4] to contend that the impugned order does not qualify as an interim award

4.4 He stated that the only remedy which the Appellant has is the present appeal filed under Section 37(2)(a) of the Act of 1996.

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[3] (2007) 4 SCC 451 at para 18.
[4] 2003 (2) ARBI LR 359 at para 7.

4.5 He stated that a Counter-Claim will survive for independent adjudication even if the claim is dismissed or withdrawn and the respondent to a claim would be entitled to pursue their Counter-Claim regardless of the pursuit of or the decision on the Claim and, therefore, the impugned order of the learned Sole Arbitrator is liable to be set aside being untenable in law as the Appellant has the right to pursue his Counter-Claim which has been dismissed by the learned Sole Arbitrator in a cursory manner.

***Arguments of the Respondent i.e., the original claimant in the arbitral proceedings***

5. In reply, the learned counsel for the Respondent, at the outset, stated that the present appeal is not maintainable under Section 37(2)(a) of the Act of 1996 against the impugned order.

5.1 He stated that an appeal under Section 37(2)(a) of the Act of 1996 would only be maintainable against the order of the Arbitral Tribunal which is passed accepting the pleas raised by a party under Section 16(2) and 16(3) of the Act of 1996. He stated that Section 37 of the Act of 1996 grants a limited right of appeal, only against such orders which are specified and listed in the statute and the impugned order clearly does not fall in the said category as specified under Section 16 of the Act of 1996.

5.2 He stated that the said dismissal of the first application is not in contravention of the law as it is well settled that the Arbitral Tribunal has powers to device its own procedures and parties submitting to the jurisdiction of the Arbitral Tribunal are bound by law to follow the said procedure.

5.3 He stated that in the impugned order learned Sole Arbitrator has exercised his jurisdiction and dismissed the second application for condonation of delay after exercising the said jurisdiction.

5.4 He stated that the said adjudication by the learned Sole Arbitrator qua the dismissal of the second application is not an adjudication on the merits of the Counter-Claim raised by the Appellant and the Tribunal has rightly denied to take on record the Counter-Claim, which was filed belatedly on the date when the matter was listed for final arguments.

5.5 He stated that since the impugned order has not decided whether the Appellant is entitled to the Counter-Claim or not, said order cannot be termed as an 'Interim Award' and, therefore, an appeal under Section 34 of the Act of 1996 will not be maintainable and to this extent he agrees with the counsel for the Appellant. He relied on the following judgments in support of his submissions: **Vil Rohtak Jind Highway Pvt. Ltd. v. NHAI**[5], **Container Corporation of India Ltd. v. Texmaco Ltd.**[6] and **Future Retail Ltd. v. Amazon.Com NV Investment Holdings LCC & Ors.**[7]

5.6 He stated that by way of the present appeal the Appellant is challenging two (2) orders in essence one of which is with respect to the procedure fixed by the learned Sole Arbitrator. He stated that there is catena of judgments of this Court and Supreme Court which holds that the procedural discretion exercised by the Arbitrator under Section 19 of the Act of 1996 cannot be interfered by the Courts. He stated that the if the present appeal of the Appellant is allowed this would frustrate the whole purpose and scheme of the Act of 1996 which is speedy and expeditious disposal. He stated that the objection raised by the Appellant that the procedure was not fixed by the Arbitrator is untenable as the previous two counsels representing the

[5] 2022 SCC OnLine Del 4670 at paras 1, 15, 16 and 21.
[6] 2009 SCC OnLine Del 1594 at paras 3, 4, 5 and 6.
[7] 2022 SCC OnLine Del 13 at paras 24-26, 28 and 30.

Appellant herein before the learned Sole Arbitrator had consented to the schedule which was fixed by the learned Sole Arbitrator on various dates. He stated that both the applications were filed after the counsel was changed for the third time and the process adopted by the Appellant is prejudicial.

5.7 He stated that therefore, the remedy which is available to the Appellant against the dismissal of the second application is to either await the final award and challenge the same in accordance with law under Section 34 or to initiate independent arbitration proceeding under Section 11 qua its claim, which was sought to be raised by the Counter-Claim and seek a fresh reference.

***Analysis and Findings***

6. This Court has heard the learned Senior Counsel for the Appellant and the learned counsel for the Respondent and perused the record.

7. The issues which arise for consideration before this Court are:

(a) Whether the impugned order qua the second application can be challenged under Section 37(2)(a) of the Act of 1996 in present appeal?;

(b) Whether the order dismissing the Counter-Claim of the Appellant on the ground of it being filed after delay at a belated stage in the arbitral proceedings is a procedural order or the said dismissal constitutes to be an 'Interim Award' in terms of Section 2(1)(c) of the Act of 1996 making it amenable to challenge under Section 34 of the Act of 1996?;

(c) What is the remedy available to the Appellant against the said order of dismissal?.

***Issue No. (a)***

8.1 Mr. Vashist, learned Senior Counsel for the Appellant contended that since the learned Sole Arbitrator did not adjudicate the Counter-Claim of the Appellant, the Tribunal in essence has declined to exercise the jurisdiction which was vested with and, therefore, such denial would fall under Section 16 of the Act of 1996. He further contended that thus, such an order would be subject to challenge under Section 37 (2) (a) of the Act of 1996. He relied on the judgment of **National Thermal Power Corpn. Ltd. v. Siemens Atkeingesekkschaft** (Supra) and particularly para 18 of the said judgment to contend that once the tribunal has declined to exercise jurisdiction and appeal under Section 37 (2) would lie, the said para reads as under:

> "18. The **expression "jurisdiction" is a word of many hues**. **Its colour is to be discerned from the setting in which it is used.** When we look at Section 16 of the Act, we find that the said provision is one, which deals with the competence of the Arbitral Tribunal to rule on its own jurisdiction. SBP & Co. v. Patel Engg. Ltd. [(2005) 8 SCC 618] in a sense confined the operation of Section 16 to cases where the Arbitral Tribunal was constituted at the instance of the parties to the contract without reference to the Chief Justice under Section 11(6) of the Act. In a case where the parties had thus constituted the Arbitral Tribunal without recourse to Section 11(6) of the Act, they still have the right to question the jurisdiction of the Arbitral Tribunal including the right to invite a ruling on any objection with respect to the existence or validity of the arbitration agreement. It could therefore rule that there existed no arbitration agreement, that the arbitration agreement was not valid, or that the arbitration agreement did not confer jurisdiction on the Tribunal to adjudicate upon the particular claim that is put forward before it. Under sub-section (5), it has the obligation to decide the plea and where it rejects the plea, it could continue with the arbitral proceedings and make the award. Under sub-section (6), a party aggrieved by such an arbitral award may make an application for setting aside such arbitral award in accordance with Section 34. In other words, in the challenge to the award, the party aggrieved could raise the contention that the Tribunal had no

> jurisdiction to pass it or that it had exceeded its authority, in passing it. This happens when the Tribunal proceeds to pass an award. It is in the context of the various sub-sections of Section 16 that one has to understand the content of the expression "jurisdiction" and the scope of the appeal provision. In a case where the Arbitral Tribunal proceeds to pass an award **after overruling the objection relating to jurisdiction**, it is clear from sub-section (6) of Section 16 that the parties have to resort to Section 34 of the Act to get rid of that award, if possible. But, if the Tribunal **declines jurisdiction** or declines to pass an award **and dismisses the arbitral proceedings**, the party aggrieved is **not without a remedy**. **Section 37(2) deals with such a situation.** Where the **plea of absence of jurisdiction** or **a claim being in excess of jurisdiction is accepted by the Arbitral Tribunal and it refuses to go into the merits of the claim by declining jurisdiction**, **a direct appeal is provided.** In the context of Section 16 and the specific wording of Section 37(2)(a) of the Act, it would be appropriate to hold that what is made directly appealable by Section 37(2)(a) of the Act is **only an acceptance of a plea of absence of jurisdiction**, or of **excessive exercise of jurisdiction** and **the refusal to proceed further either wholly or partly**."
>
> (Emphasis supplied)

8.2 On the other hand, Mr. Gandhi, learned Counsel for the Respondent contended that the learned Sole Arbitrator has instead exercised its power and jurisdiction under Section 19 of the Act and dismissed the Counter-Claim of the Appellant because of the fact that it was filed at a belated stage when the matter was set down for final hearing and allowing such Counter-Claim to be taken on record would have caused impediment in achieving expeditious disposal of the matter before the learned Sole Arbitrator.

8.3 He stated that since the impugned order has not been passed under Section 16 (2) and/or (3) of the Act of 1996 and thus, the present appeal filed under Section 37 (2) (a) is not maintainable. He relied on the judgment of **Vil**

**Rohtak Jind Highway Pvt. Ltd. v. NHAI** (Supra) and the relevant paragraph relied in this regard reads as under:

> "15. The crucial point is that the Arbitral Tribunal has not finally decided whether the Petitioner is entitled to Claim (b) - which was sought to be introduced by way of the amendment application. The impugned Order only denies the Petitioner an amendment of the SOC. Section 23(3) of the Act specifically deals with the power of the Tribunal to allow amendments. That exercise of power of the Tribunal is not amenable to challenge under Section 37 of the Act, which grants a constricted right of appeal-only against certain specified orders listed out in the statue. Therefore, indisputably and evidently, the impugned Order is not appealable under Section 37 of the Act. There is indeed sufficient case-law holding that only orders enumerated under Section 37 of the Act are appealable and the Court cannot exercise appellate jurisdiction over such orders under any other provision……."
>
> (Emphasis supplied)

8.4 In light of the said arguments this Court finds it necessary to reproduce the relevant provisions of Section 16 and 37 of the Act of 1996, which reads as under:

> "16. **Competence of arbitral tribunal to rule on its jurisdiction**.—(1) **The arbitral tribunal may rule on its own jurisdiction**, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,-
>
> …..
>
> (2) **A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence**; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.
>
> (3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings."
>
> (Emphasis supplied)

> "37. **Appealable orders.**—(1) An **appeal shall lie** from the following orders (**and from no others**) to the Court authorised by

law to hear appeals from original decrees of the Court passing the order, namely:—

…..

(2) Appeal shall also lie to a court from an order of the arbitral tribunal—

(a) **accepting the plea referred to in sub-section (2) or sub-section (3) of section 16**; or

…..”

(Emphasis supplied)

8.5 The submission of the Appellant that the learned Sole Arbitrator has declined to exercise its jurisdiction by dismissing the second application and not taking the Counter-Claim on record is factually incorrect.

8.6 In the facts of the present case the right of the Appellant to file the SOD/Counter-Claim was first expiring on 14.07.2024 and it was extended at its request till 20.08.2024. However, no Counter-Claim was filed by the Appellant within the extended time of its own volition. The matter was listed for final arguments on dates fixed in September, 2024, thereafter, in October, 2024 and lastly in November, 2024. In these facts, when the second application for placing on record the Counter-Claim was filed with a prayer for condoning the delay in filing the same, the learned Sole Arbitrator has rejected the prayer for condonation of delay. In the considered opinion of this Court, the order of the learned Sole Arbitrator rejecting the prayer for condonation of delay is in exercise of the jurisdiction vested in the Tribunal and this order cannot be said to be an order passed by the Tribunal declining to exercise jurisdiction or in excess of its jurisdiction. Thus, the submission of the Appellant that the impugned order falls within Section 16(2) or (3) is without any merit.

8.7 The judgment of Supreme Court in **National Thermal Power Corpn. Ltd. v. Siemens Atkeingesekkschaft** (Supra) relied upon by the Appellant

does not come to its aid, rather the said judgment holds that an appeal under Section 37 (2) (a) of the Act of 1996 is not maintainable against orders of a Tribunal holding that a claim is not maintainable before it for valid reasons. The relevant paragraph 19 of the judgment reads as under:

> "19. In a case where a counterclaim is referred to and dealt with and a plea that the counterclaim does not survive in view of the settlement of disputes between the parties earlier arrived at is accepted, it could not be held to be a case of refusal to exercise jurisdiction by the Arbitral Tribunal. Same is the position when an Arbitral Tribunal finds that a claim was dead and was not available to be made at the relevant time or that the claim was not maintainable for other valid reasons or that the claim was barred by limitation. They are all adjudications by the Tribunal on the merits of the claim and in such a case the aggrieved party can have recourse only to Section 34 of the Act and will have to succeed on establishing any of the grounds available under that provision. **It would not be open to that party to take up the position that by refusing to go into the merits of his claim, the Arbitral Tribunal had upheld a plea that it does not have jurisdiction to entertain the claim and hence the award or order made by it, comes within the purview of Section 16(2) of the Act and consequently is appealable under Section 37(2)(a) of the Act.**"
>
> (Emphasis supplied)

8.8 The Supreme Court in the said judgment at paragraph '18' has clearly observed that when a plea is raised by a party to the effect that the Arbitral Tribunal does not have the jurisdiction to decide the claim raised or that the claim raised is in excess of the jurisdiction of the Arbitral Tribunal and when such plea is considered and accepted by the Arbitral Tribunal, then the said order falls under Section 16 of the Act of 1996 and is therefore, appealable under Section 37 (2) of the Act. It is further observed by the Supreme Court that what is directly made appealable under Section 37(2) (a) of the Act of 1996 is 'only acceptance' of the plea raised of the absence of the jurisdiction or of 'excessive exercise' of jurisdiction.

8.9 In the facts of the present case no plea was ever raised by any party before the learned Sole Arbitrator that it does not have the jurisdiction to decide the Counter-Claim or that the Counter-Claim is in excess of the jurisdiction of learned Sole Arbitrator. In such eventuality of facts, no chance arose for the acceptance of such pleas by the learned Sole Arbitrator.

8.10 The learned Sole Arbitrator has simply declined to take on record the Counter-Claim which was filed at a belated stage at the juncture of final arguments and the said decision cannot be termed as 'decline of exercise of jurisdiction' by the learned Sole Arbitrator, giving it colors of Section 16(2) of the Act of 1996. Therefore, the contention of the Appellant is without any merits and it is hereby rejected. In the opinion of this Court the present appeal under Section 37(2)(a) of the Act of 1996 against the impugned order of the learned Sole Arbitrator is not maintainable.

8.11 The order of the learned Sole Arbitrator dismissing the first application would neither fall under Section 16(2) or Section 16(3) of the Act of 1996 and, therefore, no appeal against its dismissal would be maintainable under Section 37(2)(a) of the Act of 1996. The learned senior counsel for the Appellant fairly did not address any arguments on the maintainability of the appeal qua the said dismissal.

***Issue No. (b)***

9. Both Appellant and Respondent are ad-idem that the impugned order does not have the trappings of an interim award and is, therefore, not amendable to challenge under Section 34 of the Act of 1996. In this regard, the judgments of the Coordinate Bench of this Court in **Vil Rohtak Jind Highway Pvt. Ltd.** (supra) and **Container Corporation of India Ltd.** (supra) has been cited by the Respondent. In these judgments as well, the facts were similar and the respondent's prayer for taking counter-claim(s) on record

through amendment had been rejected; however, the Court declined to entertain the Section 34 petition against the said procedural order and held that the party would have to await the passing of the final award and challenge the procedural order under Section 34.

9.1 Thus, the impugned order passed by the learned Sole Arbitrator which declines to condone the delay in filing of the counter-claim for being beyond the period granted by the Tribunal falls within its jurisdiction under Section 23 of the Act of 1996 and such a procedural order is not amenable to interference at this interim stage under Section 34 and Appellant would have to await passing of the final award to challenge this procedural order.

***Issue No. (c)***

10. It has already been observed in the above two (2) issues that the Appellant herein does not have a remedy either under Section 37(2)(a) of the Act of 1996 or under Section 34 of the Act of 1996 against the impugned order.

10.1 It is well settled that a Counter-Claim stands on its own footing and is independent of a claim raised by a defending party in form of SOD.

10.2 In the facts of this case, the Counter-Claim has not been rejected on merits or on the grounds of limitation. There has thus, been no adjudication on the merits of the claim and the right of the Appellant to have the said Counter-Claim decided on merits has not been foreclosed by the impugned order.

10.3 The Respondent has fairly conceded that the Appellant would be entitled to initiate independent proceedings for appointment of an Arbitrator for adjudication of the Counter-Claims and the only effect of the procedural order is that the Appellant cannot insist on filing of the Counter-Claim at this

belated stage in the present arbitral proceedings which are at the stage of final arguments.

11. Therefore, this Court is of the opinion that the Appellant herein is at liberty to initiate proceedings for appointment of an independent Arbitrator in accordance with law for adjudication of its Counter-Claim.

12. In view of the aforesaid findings, the present appeal stands dismissed.

**MANMEET PRITAM SINGH ARORA**
**(JUDGE)**

**DECEMBER 09, 2024/**msh/sk