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

COMMERCIAL ARBITRATION APPLICATION NO.245 OF 2026

Tecpro Systems Limited (In Liquidation) .. Applicant
Vs
Reliance Infrastructure Limited .. Respondent

Mr. Akash Loya a/w Mr. Vishal N. Nevshe, Mr. Abhishek Bhaduri, for Applicant
Mr. Tushad Kakalia a/w Mr. Kartik Hede i/by Mr. Shivshankar Prajapati for Respondent.

CORAM : ARUN R. PEDNEKER, J.
DATE : 22nd July 2026.

JUDGMENT :

1. Heard the learned counsel for the parties.

2. The present application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 ("**A&C Act**"), seeking the appointment of an Arbitrator in terms of the Purchase Order (the "Agreement") dated 17th January 2018 executed between the parties. The Agreement contains an arbitration clause providing for reference of disputes to arbitration arising out of or in connection with the supply of goods under the agreement.

3. The relevant Clause 17 of the Purchase Order dated 17th January 2018 (Arbitration Agreement) is reproduced below for ease of reference:

> "17.0 **Settlements of Disputes and Arbitration**
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> Any dispute or difference arising out of this Supply Contract shall be discussed between the Purchaser and Contractor. Both shall endeavor to reach an amicable settlement within a period of fifteen (15) days. If an agreement could not be reached within this period then the dispute shall be referred to arbitration under the Indian Arbitration and Conciliation Act, 1996, as may be amended from time to time. The venue of arbitration shall be Mumbai.
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> The award shall be a reasoned award and shall be final and binding on both the parties and shall not be subjected to appeal. Subject arbitration, the Courts at Mumbai shall have exclusive jurisdiction over all matters arising under this Purchase Order. During pendency of arbitration, the parties shall continue to perform respective obligation under this Supply Contract."

4. It is stated that the Applicant Company is under liquidation and the Liquidator of the Applicant-Company issued a notice dated 10th March 2022 to the Respondent invoking arbitration clause under Section 21 of the Arbitration and Conciliation Act, 1996.

5. The invocation notice dated 10th March 2022 was not replied to by the Respondent. In these circumstances, the present application is filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking the appointment of an Arbitrator.

6. The Respondent opposes the arbitration application and submits that, the Hon’ble National Company Law Tribunal ("**NCLT**"), New Delhi, passed an order dtd. 16th January 2020 directing liquidation of the Applicant and appointed a Liquidator to administer the liquidation proceedings.

7. On 10th March 2022, the Applicant, through the Liquidator, issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996, invoking arbitration against the Respondent. Thereafter, on 23rd December 2022, the Hon'ble National Company Law Tribunal ("NCLT") granted post facto approval under Section 33(5) of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") for the initiation of arbitration proceedings against the Respondent. Subsequently, the present application under Section 11 of the Arbitration and Conciliation Act, 1996 was filed on 10th January 2024.

8. Learned Counsel, **Mr. Tushad Kakalia**, appearing for the Respondent submits that, upon the passing of a liquidation order, no legal proceedings can be instituted by or on behalf of the Corporate Debtor in liquidation except by the Liquidator with the prior approval of the National Company Law Tribunal ("NCLT"), as mandated by the proviso to Section 33(5) of the Insolvency and Bankruptcy Code, 2016 ("IBC"). It is contended that the requirement of obtaining prior approval is mandatory and not merely directory.

9. It is further submitted that arbitral proceedings commence upon the issuance of a notice invoking arbitration under Section 21 of the Arbitration and Conciliation Act, 1996 ("A&C Act"). In the present case, the Liquidator issued the notice invoking arbitration on 10th March 2022, whereas the approval of the NCLT was obtained only on 23rd December 2022. Consequently, the notice invoking arbitration was issued without the requisite prior approval and was therefore incompetent and void *ab initio*. As a result, no valid arbitral proceedings ever came into existence. Accordingly, the mandatory precondition for maintaining an application under Section 11 of the A&C Act has not been satisfied, and the present application is liable to be rejected.

10. It is respectfully submitted that the Liquidator failed to obtain the prior approval of the Adjudicating Authority, as mandated under Section 33(5) of the Insolvency and Bankruptcy Code, before issuing the notice under Section 21 of the Arbitration Act. Consequently, the initiation of arbitral proceedings by the Liquidator, without such prior approval, is unauthorized, incompetent, and contrary to the statutory mandate. Any approval obtained subsequently cannot cure this fundamental defect or be construed as compliance with Section 33(5). Accordingly, the proceedings

initiated pursuant to such notice are without jurisdiction and are liable to be declared void.

11 It is submitted that where a statute expressly mandates prior approval for the performance of a particular act, such a requirement cannot be validated by obtaining post facto approval. In support of this proposition, reliance is placed on the judgments of the Hon'ble Supreme Court in **Bajaj Hindustan Limited v. State of Uttar Pradesh & Ors**[1]. and **Union of India v. Vinod Kumar**[2]. It is, therefore, contended by the learned counsel that, in the absence of a valid notice under Section 21 of the Arbitration and Conciliation Act, 1996, the present application under Section 11 of the said Act is not maintainable. Accordingly, the learned counsel prays for dismissal of the application.

12. In response to the objection raised by the learned counsel appearing for the Respondent, the learned counsel, **Mr. Akash Loya**, appearing for the Applicant submits that a proper construction of Section 33(5) would indicate that a notice issued under Section 21 would be deemed to remain ineffective until the requisite approval is granted. It is further submitted that the proceedings would be deemed to have been instituted only on the date on which such approval is granted.

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1 (2016) 12 SCC 613
2 (1996) 10 SCC 78

13. It is submitted that the proceedings initiated without obtaining the prior approval of the Hon'ble NCLT are merely ineffective and do not attain legal efficacy. Such proceedings shall become effective and shall be deemed to have been instituted only from the date on which the requisite leave/approval is granted by the Hon'ble Tribunal. The aforesaid distinction is further fortified by the provisions of Section 28 of the Insolvency and Bankruptcy Code, 2016, wherein any action undertaken by the Resolution Professional without the prior approval of the Committee of Creditors, as mandated under the said provision, is rendered null and void under Section 28(4).

14. The learned counsel places reliance upon the following judgments in support of the aforesaid submissions:

1. **Erach Boman Khavar V. Tukaram Shridhar Bhat & Anr.**[3]'
2. **Slimline Realty Pvt,. Ltd. Vs. Mr. Jigar Bhatt**[4].

15 Learned Counsel for the Applicant submits that approval under Section 33(5) of the Insolvency and Bankruptcy Code, 2016 was granted by the Hon'ble NCLT on 23rd December 2022. Accordingly, the notice issued under Section 21 ought to be deemed to have been issued on the date of grant of such approval, i.e., on 23rd December 2022. Consequently, the

3 (2013) 15 SCC 655

4 (2024) SCC OnLine NCLAT 6895 (Co. Appeal (AT) (Insolvency) No.690 of 2024

application under Section 11 would be maintainable. It is further submitted that the interpretation and construction of Section 33(5) of the IBC must be aligned with the underlying object and purpose of the liquidation process, namely, the maximisation of the liquidation value of the corporate debtor. Such maximisation can be achieved only by enabling the liquidator to pursue and realise recoveries arising out of the claims and receivables of the company under liquidation.

16. Having considered the rival submissions, the issues that arise for consideration are : (i) Whether proviso to Section 33(5) of the IBC is mandatory i.e. prior approval of the Adjudicating Authority is mandatory to institute any legal proceedings on behalf of the corporate debtor? (ii) If prior approval is mandatory, what is the effect of post facto approval by the Adjudicating Authority on proceedings already instituted without approval of the Authority?

17. The relevant Sections of the I.B. Code and the Arbitration Act are noted below.

> "**28**. Approval of committee of creditors for certain actions. —(1) Notwithstanding anything contained in any other law for the time being in force, the resolution professional, **during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors namely**:—

(a) raise any interim finance in excess of the amount as may be decided by the committee of creditors in their meeting;

(b) create any security interest over the assets of the corporate debtor;

(c) change the capital structure of the corporate debtor, including by way of issuance of additional securities, creating a new class of securities or buying back or redemption of issued securities in case the corporate debtor is a company;

(d) record any change in the ownership interest of the corporate debtor;

(e) give instructions to financial institutions maintaining accounts of the corporate debtor for a debit transaction from any such accounts in excess of the amount as may be decided by the committee of creditors in their meeting;

(f) undertake any related party transaction

(g) amend any constitutional documents of the corporate debtor;
(h) delegate its authority to any other person;
(i) dispose of or permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties;

(j) make any change in the management of the corporate debtor or its subsidiary;

(k) transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business;

(l) make changes in the appointment or terms of contract of such personnel as specified by the committee of creditors; or

(m) make changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor.

(2) The resolution professional shall convene a meeting of the committee of creditors and seek the vote of the creditors prior to taking any of the actions under sub-section (1).

(3) No action under sub-section (1) shall be approved by the committee of creditors unless approved by a vote of 1[sixty-six] per cent. of the voting shares.

(4) **Where any action under sub-section (1) is taken by the resolution professional without seeking the approval of the committee of creditors in the manner as required in this section, such action shall be void**.

(5) The committee of creditors may report the actions of the resolution professional under sub-section (4) to the Board for taking necessary actions against him under this Code..

33. Initiation of liquidation.—(1) Where the Adjudicating Authority,—

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall—

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this
Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and (iii) require such order to be sent to the authority with which the corporate debtor is registered.

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, **with the prior approval of the Adjudicating Authority**..”

“**21**. Commencement of arbitral proceedings.—Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.”

18. A perusal of the proviso to Section 33(5) indicates that the provision employs the expression “prior approval.” Admittedly, in the present case, no prior approval was obtained before issuance of the notice. Therefore, the issue that arises for consideration is whether the notice issued without obtaining prior approval is rendered void *ab initio*, or ineffective and, what would be the legal consequence of the grant of post facto approval under Section 33(5) of the I.B. Act for initiation of the legal proceedings.

19. In the case of **Erach Boman Vs. Tukaram Bhat** (supra), the Hon’ble Supreme Court while considering the expression "leave of the Court" in paragraph nos. 19, 20, 21 and 22 has observed as follows :

“**19**. Reflecting on the said provision, this Court in Central Bank of India v. Elmot Engg. Co.11 has ruled that it aims at safeguarding the assets of a company in winding up against wasteful or expensive litigation as far as matters which could be expeditiously and cheaply decided by the Company Court are concerned. In granting leave under the said provision, the court always takes into consideration whether the company is likely to be exposed to unnecessary litigation and cost.

20. In Ammonia Supplies Corpn. (P) Ltd. V. Containers (P) Ltd. 12, while dealing with power under Section 446(1) of the 1956 Act, it has been observed that in the said sub-section the words used would indicate that the discretion to exercise such power is with the Company Court.

21. In State of J&K v. UCO Bank, while interpreting Section 446(1) of the 1956 Act, the Court opined that a suit cannot be instituted once a winding-up order is passed except by leave of the court. The two- Judge Bench referred to the earlier decision rendered in Bansidhar Shankarlal v. Mohd. Ibrahim14, wherein the leave had been obtained at the time of filing of the suit and the question was whether fresh leave ought to be obtained before proceeding under Section 446(1) of the 1956 Act before institution of execution proceedings. The Court considered the contrary views expressed by different High Courts on the effect and purport of Section 446(1) of the 1956 Act and came to **the conclusion that the view that failure to obtain leave prior to institution of suit would not debar the court from granting such leave subsequently and that the only consequence of the same would be that the proceedings would be regarded as having been instituted on the date on which the leave was obtained from the High Court**.

22. We have referred to the aforesaid decisions solely for two purposes. First, grant of leave of the court is not a condition precedent for initiation of a civil action or the legal proceedings. **It is because the section does not expressly provide for annulment of a proceeding that is undertaken without the leave of the court**. There can be no shadow of doubt that leave of the winding-up court can be obtained even after initiation of the proceeding. Second, the seminal object behind engrafting of the said provision is to see that the interest of the company is safeguarded so that it does not face deprivation of its right and claims are adjudicated without the knowledge of the Company Court and further the court has a discretion to see whether leave should be granted and, if so, with what conditions or no condition. That apart, the court may grant leave if it felt that the company should not enter into unnecessary litigation and incur avoidable expenditure."

20. From the aforesaid observations of the Supreme Court, it is apparent that, although prior leave of the Court is not obtained, the Court has held that such leave is not a condition precedent for initiating civil proceedings. The leave of the Court may, therefore, be obtained subsequently, even after the institution of the suit proceedings.

21. In the case of **Bajaj Hindustan Limited Vs. State of Uttar Pradesh** (supra), the Supreme Court at paragraph nos. 6 and 7 has held as under :

> "6. From the aforesaid facts, what emerges is that there is no evasion of any tax. The claim of the appellant that it had paid the tax at the time of removal of the bags from the godown is not disputed by the assessing authority. In fact, as mentioned above, while granting ex post facto approval, the assessing authority had satisfied itself about the due payment of the entire tax at the time of removal of the bags and that there was no evasion of tax. In these circumstances, we have to consider as to whether ex post facto approval amount to sufficient compliance with the proviso to sub-section (1) of Section 3-A of the Act. The issue is no more res integra and has been authoritatively determined by a series of judgments of this Court. It would be sufficient to refer to the judgment in Ashok Kumar Das v. University of Burdwan[2]. The discussion contained in paras 10 to 12 and 15 of the said judgment squarely applies to the present case and therefore, we reproduce the same: (SCC pp. 619-20)
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> > "10. The learned counsel for Respondents 1 to 3, on the other hand, submitted that Section 21(xiii)

used the expression "approval of the State Government" and not "prior approval of the State Government" and it has been held by this Court in U.P. Avas Evam Vikas Parishad v. Friends Coop. Housing Society Ltd.3 and High Court of Judicature of Rajasthan v. P.P. Singh that when an approval is required, an action holds good and only if it is disapproved it loses its force. He further submitted that promotions made on the basis of Resolution of the Executive Council of the University adopted on 26-6-1995, therefore, hold good and now that the State Government has approved the Resolution of the Executive Council of the University adopted on 26-6-1995 by Order dated 10-10-2002, the promotions made on the basis of the Resolution dated 26-6-1995 of the Executive Council of the University hold good and cannot be set aside by this Court.

11. In Black's Law Dictionary (5th Edn.), the word "approval" has been explained thus:

'Approval. The act of confirming, ratifying, assenting, sanctioning, or consenting to some act or thing done by another.

Hence, approval to an act or decision can also be subsequent to the act or decision.

12. In U.P. Avas Evam Vikas Parishad[3], this Court made the distinction between permission, prior approval and approval. Para 6 of the judgment is quoted hereinbelow: (SCC pp. 458-59)

'6. This Court in LIC v. Escorts Ltd.5, considering the distinction between "special permission" and "general permission", "previous approval" or "prior approval" in para 63 held that: (SCC p. 313).

> "63. we are conscious that the word "prior" or "previous" may be implied if the contextual situation or the object and design of the legislation demands it, we find no such compelling circumstances justifying reading any such implication into Section 29(1) [of the Act]".

Ordinarily, the difference between approval and permission is that in the first case the action holds good until it is disapproved, while in the other case it does not become effective until permission is obtained. But permission subsequently granted may validate the previous Act. As to the word "approval" in Section 32(2)(b) of the Industrial Disputes Act, it was stated in Lord Krishna Textile Mills v. Workmen, that the Management need not obtain the previous consent before taking any action. The requirement that the Management must obtain approval was distinguished from the requirement that it must obtain permission, of which mention is made in Section 33(1).

15. The words used in Section 21(xiii) are not "with the permission of the State Government" nor "with the prior approval of the State Government", but "with the approval of the State Government". If the words used were "with the permission of the State Government", then without the permission of the State Government the Executive Council of the University could not determine the terms and conditions of service of the non-teaching staff. Similarly, if the words used were "with the prior approval of the State Government", the Executive Council of the University could not determine the terms and conditions of service of the non-teaching b staff without first obtaining the approval of the State Government. But since the words used are "with the approval of the State Government", the Executive Council of the University could determine the terms and conditions of service of the non-teaching staff and obtain the approval of the State Government subsequently and in case the State Government did not grant approval subsequently, any action taken on the basis of the decision of the Executive Council of the University would be invalid

> and not otherwise."
>
> **7**. As is clear from the above, the dictionary meaning of the word "approval" includes ratifying of the action, ratification obviously can be given ex post facto approval. Another aspect which is highlighted is a difference between approval and permission by the assessing authority that in the case of approval, the action holds until it is disapproved while in other case until permission is obtained. In the instant case, the action was approved by the assessing authority. The Court also pointed out that if in those cases where prior approval is required, expression "prior" has to be in the particular provision. In the proviso to sub-section (1) of Section 3-A word "prior" is conspicuous. For all these reasons, it was not a case for levying any penalty upon the appellant. We, therefore, allow this appeal and set aside the impugned judgment[1] of the High Court as well as the penalty. No order as to costs. Civil Appeal No. 1468 of 2006.”.

22. From the aforesaid judgments of the Hon'ble Supreme Court in **Erach Boman** and **Bajaj Hindustan** (supra), it is apparent that where the word "prior" is used in the statutory provision, the approval contemplated therein must be obtained before the proposed action is undertaken. Consequently, where the statute requires prior approval for initiating legal proceedings on behalf of the corporate debtor, such approval must necessarily precede the institution of those proceedings.

23. It is evident from the proviso to Section 33(5) that prior permission of the N.C.L.T. is mandatory before the Liquidator initiates any legal proceedings on behalf of the corporate debtor. The word ‘prior’ shows that

the approval has to be prior in point of time before initiating the proceedings. A notice issued for invocation of arbitration under Section 21 of the Arbitration and Conciliation Act, 1996 constitutes the commencement of arbitral proceedings. In the present case, it is an admitted position that the notice under Section 21 was issued without obtaining prior permission from the N.C.L.T. The record further indicates that such permission was subsequently granted before the filing of the application under Section 11 of the Arbitration and Conciliation Act, 1996.

24. The next issue that arises for consideration is the consequence on the legal proceedings instituted without obtaining prior permission of the Adjudicating Authority.

25. The question is whether the proceedings should be entirely set aside, thereby relegating the parties to initiate the process afresh, or whether the invocation should be treated as ineffective until the requisite permission is obtained.

26. Sections 28 of the IBC provides that where the Resolution Professional takes any action during the corporate insolvency resolution process without the prior approval of the Committee of Creditors, whenever such approval is required, the actions undertaken without such approval would be void under Section 28(4) of the IBC. However, Section 33 does not

expressly provide for any such consequence in respect of legal proceedings initiated by the Liquidator without the prior permission of the Adjudicating Authority.

27. This Court is, therefore, of the view that while prior permission under Section 33(5) is mandatory, the absence of such prior permission before the initiation of the legal proceedings, does not render the proceedings void *ab initio*. Instead, the commencement of such proceedings remains ineffective until the date on which the required permission is granted by the Adjudicating Authority.

28. Accordingly, in the present case, the notice issued for invocation of arbitration under Section 21 of the Arbitration and Conciliation Act would become effective only from the date on which permission under Section 33(5) is obtained. Any further steps in the proceedings can be taken only thereafter. Relegating the parties to issue a fresh notice would not serve the purpose of the proviso to Section 33(5), as it may also create issues relating to limitation on account of the time lost during the intervening period. A purposive interpretation of Section 33(5) requires that proceedings initiated without prior permission remain ineffective for all purposes until such permission is obtained, and that the proceedings shall be treated as having commenced from the date of grant of permission.

29. Therefore, if any further steps have already been taken pursuant to the notice under Section 21, those steps would also have to be undertaken afresh. The effective date of the Section 21 notice shall be the date on which the requisite permission is granted, and all subsequent procedural requirements shall follow from that date. This interpretation neither causes violence to the statutory provision nor amounts to rewriting the legislation. It merely postpones the effective date of invocation until the mandatory permission under Section 33(5) is obtained. In the present case, the notice issued under Section 21 of the Arbitration and Conciliation Act, 1996, would be deemed effective from 23rd December 2022. The present application has been filed on 10th January 2024. Accordingly, there is no legal impediment in allowing the present application.

30. Accordingly, this Court process to appoint an Arbitrator and pass following Order :

ORDER

(A) **Mr. Nitin Jamdar**, Former Chief Justice of Kerala High Court, is appointed as the sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above. The contact details of the Arbitrator are as under :-

Mobile No. : 9819829319
Email ID : nitinjamdar@gmail.com

(B) A copy of this order be communicated to the learned sole Arbitrator by the Advocates for the Applicant within a period of 1 week from the date of uploading of this order. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this order.

(C) Seat and venue of the arbitration would be governed by the provisions of the agreement executed between the parties.

(D) Learned sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the Advocates for the Applicant so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Application and a copy of the same shall be furnished by the Advocates for the Applicant to the Respondent.

(E) The parties shall appear before the learned sole Arbitrator on such date and at such place as indicated by him, to obtain appropriate direction with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers, if any, of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration.

(F) All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

31. All contentions of the parties are expressly kept open to be raised before the Arbitrator.

32. With the above directions, Arbitration Application stands disposed of accordingly.

(ARUN R. PEDNEKER, J.)