Form No. J(2)
WBCHCA0072792026

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CORAM: THE HON'BLE JUSTICE OM NARAYAN RAI

C.O. 577 OF 2026
WITH
CAN 1 OF 2026

AMR INDIA LIMITED **...PETITIONER**

-VERSUS-

PRATHYUSHA-AMR JOINT VENTURE & OTHERS **...OPPOSITE PARTIES**

Appearance:

For the Petitioner	: Mr. Joydeep Kar, Sr. Adv. Mr.Rohit Das, Adv. Mr. Aditya Mondal, Adv. Ms. Manavi Gupta, Adv.
For the Opposite Party No.1	: Mr. Ranjan Bachawat, Sr. Adv., Mr. Shourjyo Mukherjee, Adv. Mr. Sourojit Dasgupta, Adv. Mr. Vishwarup Acharyya, Adv.
For the Opposite Party No.2	: Ms. Iram Hassan, Adv. Ms. Yukti Agarwal, Adv.
Reserved on	: September 03, 2026
Judgment on	: October 01, 2026

OM NARAYAN RAI, J.: -

1. This revisional application under Article 227 of the Constitution of India takes exception to an order dated January 21, 2026 passed by the Learned Sole Arbitrator at the 31st Sitting of the arbitral reference between the opposite party no. 1 – i.e. 'Prathyusha-AMR Joint Venture' and the opposite party no. 2 whereby the petitioner's application under Section 32(2) read with Section 19 of the Arbitration and Conciliation Act, 1996[1] was dismissed with costs of Rs. 51,000/-. By the said

[1] **Hereafter 'the 1996 Act'**

application, the petitioner had sought for leave to intervene in the arbitral proceedings and withdraw the claims made on behalf of the JV and also prayed for termination of the arbitral proceeding.

FACTUAL MATRIX:

2. Shorn of meticulous details, the facts relevant for adjudication of the present application, as may be gathered from the material on record, are as follows:-

a. The National Highways Authority of India[2] had invited bids for executing the work of *"Four/Two Laning of Rimuli-Roxy-Rajamunda Section of NH 215 from Km.210.900 to Km. 259.453 in the State of Orissa Section of NHDP-III"*, on *'Build Operate and Transfer'* basis.

b. SREI Infrastructure Finance Limited and MBL participated in the biding-process jointly on the basis of a joint bidding agreement and emerged successful.

c. Thereafter, the opposite party no.2 was incorporated for executing the works. The opposite party no.2 entered into an agreement called the 'Concession Agreement' with the NHAI for executing the aforesaid works.

d. While only a part of the aforesaid work had been executed, the petitioner and the opposite party no.3 (which is presently in liquidation) expressed their interest to execute the balance part of the work as an EPC contractor, which was agreed to by the opposite party no.3.

e. Accordingly, on or about July 26, 2013, the petitioner and the opposite party no.3 (which is presently in liquidation) entered into a Joint Venture Agreement and thereby constituted 'Prathyusha-AMR Joint Venture'[3] –for executing the balance part of the EPC work of the *"Four/Two Laning of Rimuli-Roxy-Rjamunda Section of NH 215 from Km.210.900 to Km. 259.453 in the Stet of Orissa Section of NHDP-III".*

f. On July 30, 2013 the JV executed a power of attorney (POA-1) in favour of one Mr. R. Ravisundar.

g. Upon constitution of the said JV, the opposite party no.2 entered into a contract with the said JV for carrying out the said works.

h. While the JV was executing the works, NHAI closed the project and terminated the Concession Agreement.

i. NHAI and the opposite party no.2 fought an arbitral battle where an award was passed on March 31, 2019 in favour of the opposite party no.2. The same was

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[2] Hereafter 'NHAI'

[3] Hereafter 'JV'

communicated by the opposite party no.2 to the opposite party no.1 on May 09, 2019.

j. Thereafter, the opposite party no.1 invoked the arbitration clause by issuing a notice dated September 30, 2019. Subsequently, on an application filed by the State Bank of India under Section 7 of the Insolvency and Bankruptcy Code, 2016[4] the opposite party no.3 was admitted into the corporate insolvency resolution process[5] by the National Company Law Tribunal[6], Amravati Bench.

k. The CIRP failed and as such the NCLT ordered liquidation of the opposite party no.3. The opposite party no.4 was appointed as the liquidator.

l. Thereafter the constituted attorney of the JV-Mr. R. Ravisundar executed a power of attorney in favour of the liquidator thereby authorising the liquidator to act on behalf of the JV.

m. Upon being appointed as the liquidator of the opposite party no. 3 who is the major stake holder in the JV, the liquidator representing the JV, on the strength of the power of attorney, filed an application under Section 11 of the 1996 Act before this Court praying for appointment of an Arbitrator to adjudicate upon the disputes between the JV and the opposite party no. 2. Such application was allowed on September 27, 2023.

n. During arbitration, the petitioner filed an application seeking intervention and praying *inter alia* for dismissal of the claims lodged by the JV. The said application was dismissed by the arbitrator by the order impugned.

o. Feeling aggrieved thereby, the petitioner has approached this Court by way of the present revisional application.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. A brief summary of the submissions made on behalf of the petitioner, is as follows:-

a. The impugned order is impeached on four principal grounds:-

i) The Arbitral Tribunal disclaimed jurisdiction over the question raised by the petitioner but nevertheless decided that question on merits;

ii) The authority conferred by Power of Attorney -1[7] did not permit delegation of the powers under Clauses 10 and 11, and the POA-1 was subsequently revoked;

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[4] Hereafter the 'IBC'
[5] Hereafter 'CIRP'
[6] Hereafter 'NCLT'
[7] Hereafter 'POA-1'

iii) Section 35(1)(d) and (k) of the Insolvency and Bankruptcy Code, 2016 authorises the liquidator to act for the corporate debtor and not for the JV or the petitioner; and

iv) The petitioner was excluded from the arbitral proceedings despite being a constituent of the JV and having no efficacious remedy under Section 34 of the Arbitration Act.

b. The impugned order is vitiated on grounds that go well beyond a mere re-appreciation of the merits, and squarely attract this Court's supervisory jurisdiction under Article 227 of the Constitution of India.

c. The Tribunal expressly recorded that it had no jurisdiction to decide whether the opposite party no. 3, invoked arbitration on behalf of the JV without the petitioner's consent, treating the matter as a dispute between the two constituents of the JV governed by Clause 20.3 of the Joint Venture Agreement.

d. The issue raised by the petitioner, however, is not a dispute between the petitioner and the opposite party no. 3. It is whether the opposite party no. 4, i.e. the liquidator of the opposite party no.3, has authority to represent the petitioner and, consequently, the opposite party no. 1.

e. No arbitration agreement or privity of contract exists between the petitioner and the opposite party no. 4. The authority of a person purporting to represent and sign pleadings on behalf of a company, partnership, or joint venture must be determined in the legal proceeding or arbitration in which that authority is asserted.

f. More surprisingly, having held that the Learned Sole Arbitrator does not have the jurisdiction to decide the issue, and having further noted that the same issues had already been "dealt with" when raised by the opposite party no. 2 not the petitioner - in the opposite party no. 2's own application under Section 16 of the 1996 Act, a proceeding to which the petitioner was never a party the Tribunal nonetheless proceeded, to decide that self-same issue on merits and dismiss the petitioner's application with costs.

g. A Tribunal that disclaims jurisdiction over an issue cannot, in the same breath, adjudicate and penalise a party on the merits of that issue, still less by recycling findings from a proceeding the affected party never participated in.

h. The petitioner's case is that the opposite party no. 4, i.e. the NCLT-appointed liquidator of the opposite party no. 3, never possessed valid authority to invoke or continue the arbitration against the opposite party no. 2 on behalf of the

opposite party no. 1 without the petitioner's consent, the petitioner being the JV's other and only solvent constituent.

i. The Section 21 Notice was issued on September 30, 2019 but was not pursued by Mr. Ravisundar, and the arbitration remained abandoned until the liquidator sought to revive it in December 2022, after the opposite party no.3 entered liquidation. The liquidator's asserted authority rested on Power of Attorney-2[8], delegated by Mr. Ravisundar, although POA-1 did not authorise delegation of the powers to represent the JV in legal proceedings or arbitration.

j. Clause 10 of the POA-1 authorised Mr. R. Ravisundar to represent the JV in Court proceedings and arbitrations, sign pleadings, Vakalatnamas etc. and appoint Advocates on behalf of the JV. Clause 9 of the said POA-1, which comes before and above Clauses 10 and 11 of the said POA-1, states as follows:-

"9. To delegate the powers vested in him above to any person by execution of Power of Attorney on behalf of the PRATHYUSHA-AMR(JV)."

k. Thus, under Clause 9 of POA-1, Mr. R. Ravisundar was authorised to delegate only the powers vested in him "above", namely, the powers under Clauses 1 to 8. He was not authorised to delegate the powers "below" conferred by Clauses 10 and 11. Accordingly, the purported delegation under Clause 8 of POA-2, in favour of the opposite party no. 4, Mr. K. Sivalingam, of the power to represent the JV in legal proceedings and arbitration is illegal, contrary to the Contract Act, 1872, void ab initio, and non-est in law.

l. Even assuming, without admitting, that the opposite party no. 4 had any authority under POA-2, POA-1 was expressly revocable by notice. Upon the petitioner's issuance of the Revocation Notice, the opposite party no. 4 could claim no continuing authority to represent the petitioner or the JV under POA-2, which, according to the petitioner, stood terminated under Section 210 read with Section 201 of the Contract Act, 1872.

m. At Paragraph 9 of the impugned order, the Ld. Tribunal holds only that "there is no inconsistency or conflict between the delegation of power under [Clause 8] and Clause 9 of POA-1" and that Mr. Ravisundar "was authorised to delegate the power without vested in him on the basis of POA-1" generally addressing the petitioner's specific textual submission that Clause 9's reference to powers "vested in him above" excludes Clauses 10 and 11, which follow rather than precede it. Whether there is "inconsistency" between Clauses 8 and 9 is a

[8] **Hereafter 'POA-2'**

different question from whether Clause 9, properly construed, reaches Clauses 10-11 at all; the impugned order answers the former and never engages the latter.

n. The Tribunal being faced with the insurmountable obstacle of the power to represent the JV in legal proceedings being non-delegable under the POA-1 and the POA-1 having now been expressly revoked by the Revocation Notice thus also automatically terminating the POA-2, side-stepped the entire issue and held that Mr. Sivalingam's authority to invoke and continue the arbitration on the JV's behalf survives independently of POA-1/POA-2 by virtue of Section 35(1)(d) & (k) of the IBC. This reasoning is perverse and erroneous on the face of the record as it conflates the opposite party no. 3 the "Corporate Debtor" with the two-member JV as a whole.

o. Section 35(1)(d) & (k) of the IBC which is confined, by its own terms, to the assets, properties, and legal proceedings of the "Corporate Debtor" (the opposite party no. 3) cannot furnish the opposite party no. 4 liquidator with authority to invoke and continue arbitration on behalf of the two-member JV as a whole, where the petitioner, the JV's other constituent, is a distinct, solvent, non-liquidated entity holding rights jointly with the opposite party no. 3 under the EPC Contract.

p. Section 35(1)(d) of the IBC empowers the liquidator to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary. The alleged claims which are the subject matter of the instant arbitration are not the assets and properties of the corporate debtor i.e. the opposite party no.3, but the assets and properties of the JV, and the opposite party no.3 is merely a constituent member thereof.

q. So far as Section 35(1)(k) of the IBC is concerned, it empowers the opposite party no. 4, liquidator to institute or defend any suit, prosecution or other legal proceedings, civil or criminal in the name of or on behalf of the corporate debtor. The opposite party no. 1 is not the corporate debtor in the instant case.

r. The petitioner has not challenged the right of the opposite party no. 4, to represent the opposite party no.3 as the duly appointed liquidator thereof. However, merely because the opposite party no. 4 has the right to represent the opposite party no. 3, does not mean that the opposite party no. 4 ipso facto has the right to represent the opposite party no. 1 which is a consortium in which the petitioner is also a constituent/member/partner.

s. The reasoning of the Tribunal, by an exercise in *ejusdem generis* and a "trustee-beneficiary" construction of the words "on behalf of", that the liquidator may invoke arbitration "in the name of the JV while the opposite party no. 3, enjoys the "benefit" as "beneficiary" is contrary to the plain ordinary meaning of Sections 35(1)(d) and (k) of the IBC and also contrary to the express provisions of Clause 22 of the JV Agreement itself which disclaims any fiduciary relationship between the parties.

t. The Tribunal failed to appreciate that being the lead partner did not entitle the opposite party no.3, or any person claiming through it, individually to pursue arbitration on behalf of the opposite party no. 1 or to represent the JV.

u. A judgment of the Hon'ble Bombay High Court in the case of ***Maharashtra State Electricity Distribution Company Limited (MSEDCL) vs. Godrej and Boyce Manufacturing Company Limited***[9], was relied on for the proposition that a consortium agreement authorising the lead member, through its authorised signatory, to represent the consortium before the employer does not ipso facto authorise that member, even as lead member, separately to invoke the arbitration agreement.

v. Further, under Section 19(2)(a) of the Partnership Act, in the absence of any usage or custom of trade to the contrary, a partner's implied authority does not extend to submitting a dispute relating to the firm's business to arbitration; express authority of all partners is necessary. A decision of the Hon'ble Delhi High Court in the case of ***Consulting Engineers Group Limited vs. National Highways Authority of India (NHAI)***[10] was cited to contend that where the agreement is with a consortium, one consortium member cannot separately invoke the arbitration agreement unless the agreement expresses a contrary intention.

w. The express arrangement provided for amounts awarded on account of the opposite party no. 1 in the arbitration between the opposite party no. 2 and NHAI to be passed on to the JV on a back-to-back basis. No amount attributable to the works undertaken by the opposite party no. 1 was awarded in that arbitration. The petitioner therefore maintains that pursuing the claims against the opposite party no. 2 would unnecessarily damage its future business prospects by impairing the possibility of receiving contracts in other projects of the opposite party no. 2, which is also a shareholder and investor in

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[9] **2019 SCC OnLine Bom 3920**
[10] **2022 SCC OnLine Del 3253**

the petitioner. That position is rational, bona fide, and founded on commercial prudence rather than mala fides or collusion. The pre-liquidation management of the opposite party no. 3 accepted the same position, as shown by the fact that, although Mr. R. Ravisundar caused the Section 21 Notice to be issued on September 30, 2019, he neither acted upon it nor took steps to appoint an Arbitrator and thereby abandoned the arbitration and the claims of the opposite party no. 1 JV.

x. The Tribunal further failed to appreciate on the other hand, that the opposite party no. 3 is in liquidation and the opposite party no. 4 liquidator's statutory duty runs only to maximising the value of the opposite party no. 3's own insolvency estate, not to safeguarding the JV's, or the petitioner's, long-term commercial interests or its long-standing business relationship with the opposite party no. 2 (in which the petitioner is itself an investor and shareholder).

y. The petitioner and the pre-liquidation management of the opposite party no. 3 being the constituents of the opposite party no. 1 remain, the parties best placed to judge whether pursuing this claim serves the JV's interest, and not the opposite party no. 4, a liquidator appointed years later who has no personal knowledge of the project or the works executed by the opposite party no. 1 but is purporting to proceed merely on the basis of stray correspondence and information as available from the opposite party no. 3's records. The impugned order never engages with this fundamental divergence of commercial interest at all.

z. Even assuming, without admitting, that the petitioner's prayer to withdraw the claims and terminate the arbitral proceedings could not be considered at that stage, the Tribunal ought at least to have allowed the first prayer and permitted the petitioner to intervene, participate in the arbitral proceedings, and present its case. In ***HLS Asia Limited vs. Geopetrol International Inc. & Others***[11], the Hon'ble Delhi High Court held that individual consortium members, though not parties to the contract containing the arbitration clause, may be necessary the arbitral proceedings because of the parties interrelationship among consortium members.

aa. ***Andhra Pradesh Power Generation Corporation Limited (APGENCO) vs. Tecpro Systems Limited & Others***[12], was cited to contend that the Hon'ble

[11] **2012 SCC OnLine Del 5833**
[12] **2025 SCC OnLine SC 2851**

Supreme Court had held that the legislative policy of minimal judicial intervention at the Section 11 referral stage does not yield a uniform answer to whether an individual consortium member may invoke arbitration. That question depends on the principal contract, the consortium agreement, the parties to those agreements, and the rights and obligations created by them. At the referral stage under Section 11 of the Arbitration Act, the Court is confined to a prima facie assessment of whether the consortium member qualifies as a party to the arbitration agreement; the Arbitral Tribunal must thereafter determine in detail whether the member is in fact a veritable party. The Hon'ble Supreme Court further held that questions concerning individual invocation, the continued existence of the consortium, the necessity of the other consortium partners' consent, and the maintainability of claims after liquidation may legitimately be raised, contested, and determined before the Arbitral Tribunal. Accordingly, the Ld. Tribunal had jurisdiction to decide the questions raised by the petitioner and ought to have conducted that enquiry in the arbitration proceedings after affording the petitioner an opportunity to be heard and file its pleadings, documents and evidence.

bb. Each of the foregoing infirmities in the Order concerns a jurisdictional error, a impugned misapplication of statute, a violation of the principles of natural justice, or a perversity apparent on the face of the record. These are not invitations to re-appreciate evidence; they are errors of the kind that attract this Hon'ble Court's supervisory jurisdiction under Article 227, including in relation to orders passed during arbitral proceedings.

cc. In the circumstances, the petitioner prays that this Hon'ble Court may be pleased to quash and set aside the impugned order dated January 21, 2026 passed by the Learned Sole Arbitrator and pass such further order or orders as this Hon'ble Court may deem fit and proper.

SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:

4. A brief summary of the submissions made on behalf of the opposite party no.1, is as follows:-

a. The 1996 Act is a complete Code by itself. ***Kandla Export Corporation & Another vs. OCI Corporation & Another***[13] was cited in support of the said proposition.

b. The said Act does not provide for any appeal from an order dismissing an application under Section 16 thereof.

[13] **(2018) 14 SCC 715**

c. Thus, the petitioner cannot challenge the Section 16 order in the garb of the present revisional application. A remedy which is not provided under the Complete Code cannot be invoked in an indirect manner.

d. In any event, the Civil Revisional Application cannot be entertained in view of Sections 5 and 8 of the 1996 Act, which provides for minimum interference by the Courts in arbitration.

e. The Court, exercising jurisdiction under Article 227 of the Constitution of India ought not entertain any challenge to a Section 16 order passed by an Arbitral Tribunal. In this context, reliance is placed on the following decisions:-

(i) ***Tarini Prasad Mohanty vs. Sunflag Iron and Steel Company Limited***[14]

(ii) ***Manash Kamal Bezboruah vs. Bokahola Tea Company Private Limited & Others***[15]

f. This Court could have entertained the application under Article 227 of the Constitution of India, if the order impugned suffered from patent lack of inherent jurisdiction. However, the petitioner itself had filed the application under Section 16 of the said Act before the Learned Arbitrator. In fact, the petitioner prayed for dismissal of the Statement of Claim. Hence, the Learned Arbitrator had the jurisdiction to decide the said application.

g. The Learned Arbitrator has passed a well-reasoned order. The Learned Arbitrator has not ignored any of the contentions of the petitioner. Despite holding that the petitioner is not a party, and hence, cannot raise any issue, the Learned Arbitrator has proceeded to deal with each and every contention of the petitioner. Therefore, even otherwise, the Learned Arbitrator's reasonings and findings can also not be interfered by this Hon'ble Court.

h. Hence, no case of patent lack of inherent jurisdiction exists in the facts of the present case. Therefore, the present application is not maintainable.

i. The petitioner had sought to contend that the opposite party no. 1 cannot proceed with the arbitration or present any claim without the presence of the petitioner, since the petitioner is a partner of the JV. In this context, the petitioner has placed reliance on ***HLS Asia Limited*** (supra) and ***Consulting Engineers Group Limited*** (supra).

j. However, the most important aspect that has been lost sight of by the petitioner is that the arbitration clause was invoked by the JV itself, being the opposite party no. 1. The said arbitration clause was not invoked by one

[14] **2026 SCC OnLine SC 973**
[15] **2026 SCC OnLine SC 1330**

partner of the JV. Similarly, the POA-2 which is the subject matter of challenge by the petitioner, was also granted by the JV itself, and not by one partner of the JV.

k. All the decisions relied upon by the petitioner deal with cases where one partner, and majorly the non-lead partner of a Joint Venture or a Consortium proceeded with arbitration without consent of the others. Hence, the said decisions are not applicable.

l. In the present case, not only did the JV (i.e. opposite party no. 1) invoked the arbitration clause, but also notified the same to the petitioner repeatedly. Since 2023, the petitioner was aware of the arbitral proceedings initiated by opposite party no. 1 against opposite party no. 2, as evidenced by the communication dated April 06, 2023

m. Even after appointment of the Learned Arbitrator, the same was notified to the petitioner. No dispute was ever raised in any manner whatsoever.

n. The petitioner's prolonged and unexplained silence, despite repeated and express knowledge of the relevant developments, is wholly inconsistent with its present challenge. The chronology demonstrates that the objections now raised are neither contemporaneous nor bona fide, but constitute a belated and strategic attempt to challenge proceedings to which the petitioner had acquiesced for years.

o. The petitioner, being a part of the Joint Venture cannot take a contrary stand or a stance which is adverse to the interest of the Joint Venture itself. In the event the Joint Venture succeeds in obtaining an award, the proceeds will have to be distributed between the petitioner and the Opposite Party no. 3, which is now in liquidation. Hence, the petitioner would stand to gain from the entire reference.

p. Hence, the belated attempt to jeopardise the arbitral reference is nothing but mala fide and a product of afterthought. The same cannot be permitted.

q. The real reason for applying for dismissal of claim by the petitioner is different. The intention of the petitioner is to dismiss the arbitral reference, so that all the money lying secured before the Hon'ble Delhi High Court can be enjoyed by the opposite party no. 2.

r. The petitioner being a 22% promoter shareholder of the opposite party no. 2 intends to enjoy the entire money secured before the Hon'ble Delhi High Court. Therefore, it wants dismissal of the claim. The said attempt cannot be permitted, particularly at the expense of the Joint Venture.

s. Furthermore, previously, the opposite party no. 2 had also filed a similar Section 16 application, which was dismissed. No challenge to the said order has been made. Previous attempts of the petitioner to join the arbitral reference through the opposite party no. 2 was also disallowed by the Learned Arbitrator.

t. Hence, the petitioner's belated attempt to somehow getting the claim dismissed cannot be entertained by this Hon'ble Court. The same was sensed by the Learned Arbitrator, who has also delved and discussed about the issue of collusion between the opposite party no. 2 and the petitioner.

u. In any event, shorn of all the factual disputes, the insolvency of the opposite party no. 3 does not invalidate the Power of Attorney at all.

v. Pursuant to the initiation of the Corporate Insolvency Resolution Process, all duties, powers, acts etc of the company has vested in the opposite party no. 3, by virtue of Section 35(1)(k) of the Insolvency and Bankruptcy Code 2016. Under the said provision, the opposite party no. 3 has the power to institute or defend or continue with any proceedings for and on behalf of the company. In any event, in the present case, the principal, being the JV, has not been declared as an insolvent.

w. Furthermore, the powers of the principal have been exercised partly by the opposite party no. 3 as well. Hence, under Section 204 of the Indian Contract Act 1872, once the agent has exercised the powers partly, the said agency cannot be revoked. Therefore, the petitioner's attempt to revoke the Power of Attorney is not permissible in law.

x. The application under Article 227 of the Constitution of India, accordingly, deserves to be dismissed with exemplary costs.

REJOINDER OF THE PETITIONER:

5. Mr. Das, learned Advocate appearing for the petitioner made the following rejoinder submissions:-

a. The contention of the opposite party no. 4 that, since the same issues were previously decided by the Tribunal in an order under Section 16 of the 1996 Act, therefore the petitioner should await the final Award and challenge it under Section 34 of the 1996 Act, overlooks that the petitioner, having been expressly debarred from participating in the arbitration at the 3rd Sitting, was neither a party to the opposite party no. 2's Section 16 application nor heard before the order passed at the 7th Sitting.

b. An application under Section 34 may be made only by a "party" within Section 2(1)(h) of the 1996 Act. Since the petitioner's application to intervene was

rejected, the petitioner would not receive a signed copy of the final award under Section 31(5) of the said Act and would have no right to apply under Section 34 thereof. The petitioner therefore has no alternative or equally efficacious remedy and must invoke this Hon'ble Court's jurisdiction under Article 227 of the Constitution of India.

c. The effect of the impugned order is that an integral constituent of the opposite party no. 1, and its only solvent member, would stand excluded entirely from the arbitral proceedings. The opposite party no. 4 has further invoked Section 42A of the 1996 Act concerning confidentiality to deny the petitioner access to information and pleadings relating to those proceedings. The combined effect is that the petitioner remains bound to the consequences asserted on behalf of the JV while being denied participation in, and access to, the very proceedings said to produce those consequences.

ANALYSIS & DECISION:

6. Heard the learned Advocates appearing for the respective parties and considered the material on record.

7. It need not be overemphasised that although the plenary constitutional supervisory authority of the High Courts under Article 227 of the Constitution of India remain uncurtailed by any legislation, the Hon'ble Supreme Court has time and again cautioned that while dealing with cases pertaining to the 1996 Act, such extraordinary power must be exercised only in exceptional cases where a patent lack of inherent jurisdiction is manifest on the face of the record.

8. ***Manash Kamal Bezboruah*** (supra) appears to be the latest addition to the long list of authoritative dicta by the Hon'ble Supreme Court that firm up the contours of the supervisory jurisdiction under Article 227 of the Constitution of India in the context of arbitral matters. In said case, the Hon'ble Supreme Court after taking note of several judgments on the point, including ***Tarini Prasad Mohanty*** (supra), made the following observations which deserve notice:-

> *"**21.** Having considered the rival submissions advanced by both sides and the material available on record, the sole question that arises for our consideration in the present appeals is whether the High Court was justified in passing the impugned order holding that a revision petition under Article 227 of the Constitution of India is maintainable against an order of the Arbitral Tribunal.*
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> ***22.** Before adverting to the legal positioning present case, it is imperative to outline the statutory scheme and object of the Act. The Act is a Code in itself. This phrase is not merely perfunctory, but has definite legal consequences. One such consequence is stated under the non-obstante clause given in Section 5 of the Act, which limits the extent of judicial intervention unless explicitly contemplated under the Act. This provision was included to uphold the intention of the legislature to adopt the UNCITRAL Model Law and*

Rules to reduce excessive judicial interference. Further, Section 16 of the Act gives effect to the doctrine of kompetenz-kompetenz, empowering the Arbitral Tribunal to rule on its own jurisdiction. In the usual course of an arbitral proceeding, the Act provides for a mechanism to challenge an Arbitral Award under Section 34 of the Act.

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25. *Ordinarily, the power of the High Courts under Article 227 of the Constitution of India to exercise supervisory jurisdiction over all courts and tribunals within their territorial jurisdiction forms part of the basic structure of the Constitution and cannot be abrogated or excluded by legislation. Consequently, although Section 5 of the Act restricts judicial intervention, except as expressly provided under the Act, such restriction cannot curtail or oust the constitutional jurisdiction of the High Courts under Article 227 of the Constitution of India. At the same time, it is imperative to note that the Act was enacted with the objective of ensuring the expeditious resolution of disputes through arbitration, with minimal judicial interference and without the supervisory involvement of traditional courts, except to the limited extent expressly contemplated under the Act.*

26. *The Constitution Bench in SBP & Co. v. Patel Engineering Ltd., (2005) 8 SCC 618 : (2005) 128 Comp Cas 465, stating that the Act mandates minimal judicial intervention, has explicitly disapproved the approach of High Courts correcting orders of an Arbitral Tribunal under Article 226 or 227 of the Constitution of India during the pendency of arbitral proceedings. The relevant portion of the said judgment is extracted hereinbelow:*

> ***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. 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.*
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> ***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.*

27. *Furthermore, this Court in the case of Deep Industries (supra), has held that the High Court under article 227 can only deal with orders of the Tribunal wherein there is patent lack of inherent jurisdiction. The relevant portion of the said judgment is extracted hereinbelow:*

> *"**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."

28. *Subsequently, a three Judge Bench of this Court in the case of Punjab State Power Corpn. Ltd. (supra) clarified as to what would be categorised as 'Patent lack in inherent jurisdiction'. The primary parameter is that the Order passed should be so perverse that the only possible conclusion is that there is a patent lack in inherent jurisdiction. A patent lack requires no argument whatsoever, it must be the perversity of the Order that must stare one in the face. Further, while addressing the misuse of Article 227 of the Constitution of India petitions in arbitral proceedings, this Court directed that High Courts, upon considering the objections raised, should promptly dismiss petitions under Article 227 wherever no patent lack of inherent jurisdiction is made out. The relevant portion of the said judgment is extracted hereinbelow:*

*"**4.** We are of the view that a foray to the writ court from a Section 16 application being dismissed by the arbitrator can only be if the order passed is so perverse that the only possible conclusion is that there is a patent lack in inherent jurisdiction. A patent lack of inherent jurisdiction requires no argument whatsoever — it must be the perversity of the order that must stare one in the face.*

***5.** Unfortunately, the parties are using this expression which is in our judgment in Deep Industries Ltd. [Deep Industries Ltd. v. ONGC, (2020) 15 SCC 706], to go to the Article 227 Court in matters which do not suffer from a patent lack of inherent jurisdiction. This is one of them. Instead of dismissing the writ petition on the ground stated, the High Court would have done well to have referred to our judgment in Deep Industries Ltd. [Deep Industries Ltd. v. ONGC, (2020) 15 SCC 706] and dismiss the Article 227 petition on the ground that there is no such perversity in the order which leads to a patent lack of inherent jurisdiction. The High Court ought to have discouraged similar litigation by imposing heavy costs. The High Court did not choose to do either of these two things."*

29. *Recently, this Court in Tarini Prasad Mohanty (supra), has emphasized that while exercising writ jurisdiction under Articles 226 and 227 of the Constitution of India, courts must strictly keep in mind the statutory scheme of the Arbitration Act. Specifically, since the Act already provides for a final statutory remedy under Section 34 and clearly mandates minimal judicial interference while arbitral proceedings are still ongoing, courts must respect this legislative intent and limit their intervention accordingly.*

"22. Besides the well settled parameters to be borne in mind while exercising jurisdiction under Articles 226 and 227 of the Constitution, it is also necessary to be mindful of the statutory scheme of the concerned enactment from which the impugned order arises. If the enactment besides providing for a statutory remedy [herein, Section 34] also expects minimal judicial interference prior to the culmination of the arbitral proceedings [herein, Section 5], the said factor would be of relevance while considering the exercise of jurisdiction. In other words the threshold to be satisfied before exercising discretion under Articles 226 and 227 of the Constitution in the light of such legislative intent would be higher. As held in Re: Interplay (supra), the non-obstante clause in Section 5 of the A and C Act must take precedence over any other law for the time being in force. It would have to be demonstrated that notwithstanding the availability of an

alternate remedy at the conclusion of the proceedings, such challenge cannot await the final adjudication of the proceedings and despite the Civil Appeal arising out of SLP (C) No. 27534 of 2025 Page 33 of 39 statutory expectation of minimal interference, intervention in exercise of writ jurisdiction at an interim stage is imperative. We may clarify that our observations are as regards the 'entertainability' of a writ petition under Articles 226 and 227 of the Constitution and not with regard to its 'maintainability'. This Court in Godrej Sara Lee Ltd. v. The Excise and Taxation Officer-cum-Assessing Authority has succinctly explained these concepts as under:—

"4 …In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest….""

***30.** Therefore, this is a settled position of law that the High Court must exercise extreme circumspection while invoking its supervisory jurisdiction under Article 227 of the Constitution of India in matters challenging an Arbitral Tribunal's rejection of an application under Section 16 of the Act. In the absence of such a manifest jurisdictional defect, judicial interference at the interlocutory stage would be unwarranted and contrary to the legislative policy of minimal court intervention in arbitral proceedings. Orders passed by the Tribunal on an application under Section 16 of the Act are ordinarily amenable to challenge only under Section 34 of the Act upon the conclusion of the arbitral proceedings and the passing of the final award. It is always safe for the High Courts that, before entertaining revision petitions under Article 227 of the Constitution of India against the Orders passed by the Arbitral Tribunal, while exercising powers under Section 16 of the Act, it should record a prima facie finding regarding the patent lack of inherent jurisdiction and that too after providing an opportunity of hearing to the rival party/parties."*

9. In the light of the instructive guidelines laid down by the Hon'ble Supreme Court, it must first be ascertained as to whether the order impugned suffers from a "*manifest jurisdictional defect*".

10. It is not in dispute that the agreement between the JV and the opposite party no.2 contains an arbitration clause. It is also undisputed that the arbitration was invoked on behalf of the JV by issuing a notice dated September 30, 2019 and that such notice had been issued by the person who was duly authorised to act on behalf of the JV.

11. In terms of Section 21 of the 1996 Act - *"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."*

12. That being the legal position and since no contrary agreement between the parties (i.e., nothing otherwise agreed by the parties) has been placed before this Court, the arbitral proceedings in this case would be deemed to have commenced on the date when the opposite party no.2 received the invocation notice dated September 30, 2019.

13. Although the records before this Court do not reveal the exact date on which the said notice was received by the opposite party no.2, yet, the order dated September 27, 2023 passed by this Court whereby the JV's application under Section 11 of the 1996 Act was disposed of, reveals that the opposite party no.2 had replied to the JV's notice under Section 21 of the 1996 Act by a letter dated November 18, 2019.

14. Thus, going by the provisions of Section 21 of the 1996 Act, which states that arbitral proceedings commence on the date the respondent receives the notice requesting arbitration, even if November 18, 2019 is taken as that date, the arbitral proceedings commenced no later than November 18, 2019.

15. The aforesaid facts crystallise two points – (a) that a dispute (or disputes) had arisen between the JV and the opposite party no.2 and (b) that the arbitral proceedings had commenced by consent of both the constituents of the JV.

16. In such view of the matter, the Learned Sole Arbitrator appointed by this Court on the application under Section 11 of the Court filed on behalf of the JV would have the subject matter jurisdiction to decide the reference.

17. This Court is conscious of the petitioner's contention that the said application could not have been filed by the JV since the person who represented it before this Court lacked authority to do so. However, the decision as to whether or not the JV was properly represented would have to be ultimately taken by the Arbitral Tribunal only in terms of the judgment of the Hon'ble Supreme Court in the case of ***Andhra Pradesh Power Generation Corporation Limited*** (supra). In such context, the following observations of the Hon'ble Court deserve notice:-

> *"**15.** It is certainly a matter of institutional discipline for the referral courts to enable "parties" to identify and exercise alternative remedies, particularly that of arbitration, with clarity and consistency. The question whether a member of a consortium can itself invoke Section 11 of the 1996 Act is not one that admits of a monolithic or a uniform answer. Answer to that question will necessarily depend on enquiry into the terms of the principal contract, as well as the Consortium agreement. The specific terms of the Consortium agreement, parties to that agreement, and the nature of the rights and mutual obligations that the agreement creates will have to be examined in detail. The Reference Court will, however, confine its enquiry only to a prima facie satisfaction as to whether a member of a consortium qualifies as a "party" to the arbitration agreement. This prima facie satisfaction is sufficient for the referral court to constitute and refer the dispute to the AT.*
>
> ***16.** Thereafter, it is for the AT to undertake the detailed enquiry as to whether a member of the consortium is in fact a veritable party to the arbitration agreement or not.*

This is exactly the limited enquiry permitted and prescribed in Cox & Kings [Cox & Kings Ltd. v. SAP India (P) Ltd., (2024) 4 SCC 1 : (2024) 2 SCC (Civ) 1 : (2024) 251 Comp Cas 680] , the relevant portion of which is as under: (SCC pp. 76 & 90-91, paras 126, 169 & 170.12)

"126. Evaluating the involvement of the non-signatory party in the negotiation, performance, or termination of a contract is an important factor for a number of reasons. First, by being actively involved in the performance of a contract, a non-signatory may create an appearance that it is a veritable party to the contract containing the arbitration agreement; second, the conduct of the non-signatory may be in harmony with the conduct of the other members of the group, leading the other party to legitimately believe that the non-signatory was a veritable party to the contract; and third, the other party has legitimate reasons to rely on the appearance created by the non-signatory party so as to bind it to the arbitration agreement.

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169. In case of joinder of non-signatory parties to an arbitration agreement, the following two scenarios will prominently emerge: first, where a signatory party to an arbitration agreement seeks joinder of a non-signatory party to the arbitration agreement; and second, where a non-signatory party itself seeks invocation of an arbitration agreement. In both the scenarios, the referral court will be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory is a veritable party to the arbitration agreement. In view of the complexity of such a determination, the referral court should leave it for the Arbitral Tribunal to decide whether the non-signatory party is indeed a party to the arbitration agreement on the basis of the factual evidence and application of legal doctrine. The Tribunal can delve into the factual, circumstantial, and legal aspects of the matter to decide whether its jurisdiction extends to the non-signatory party. In the process, the Tribunal should comply with the requirements of principles of natural justice such as giving opportunity to the non-signatory to raise objections with regard to the jurisdiction of the Arbitral Tribunal. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of determination of true parties to an arbitration agreement to be decided by the Arbitral Tribunal under Section 16."

(Emphasis supplied)

18. This Court is alive to the fact that in ***Andhra Pradesh Power Generation Corporation Limited*** (supra) one of the members of the consortium had approached the Section 11 Court in its own name and not on behalf of the consortium and an Arbitrator had been appointed. However, it is also noteworthy that although in the said case the arbitration clause was invoked by a single member only and not by the consortium yet the Hon'ble Supreme Court did not invalidate the appointment and left the matter to be decided by the Arbitral Tribunal while observing as follows:-

*"**20.** Whether the first respondent has validly invoked arbitration individually, whether the Consortium continues to exist, whether consent of other Consortium partners was necessary, and whether claims are maintainable after commencement of liquidation, are all matters which may legitimately be raised, contested and determined before the AT under Section 16. Entertaining these questions here would amount to conducting a mini trial at the Section 11 stage, contrary to the settled principles of minimal judicial intervention and kompetenz-kompetenz."*

19. The legal position would not be any different in the facts of the present case as well. The case at hand rests on a comparatively better factual premise. In this case the arbitration clause was invoked on behalf of the JV (a fact that is undisputed) and the Section 11 petition had also been filed by the JV through the liquidator (which according to the petitioner was done without authority). If in a case where a non-signatory to an arbitration agreement initiates arbitration and the Arbitral Tribunal has competence to decide and rule on its jurisdiction, then in the present case where the arbitration clause has been invoked by the signatory, there is no reason why the Arbitral Tribunal would not have the jurisdiction to decide whether the arbitral reference initiated by the JV can be continued and pressed in its name by the liquidator or not.

20. In the instant case the existence of the arbitration agreement and its invocation are undisputed. The dispute is with regard to the authority to represent the JV. Therefore, the present case is not one of *patent lack of inherent jurisdiction* of the Learned Arbitrator and the order passed by the Learned Arbitrator cannot be said to suffer from a *manifest jurisdictional defect*. Intervention under Article 227 on such score thus stands ruled out.

21. It was submitted by the petitioner that being a constituent of the JV it would be bound by the award that may be passed in the arbitral proceeding but since its application for intervention has been rejected it would not be entitled to challenge the same under Section 34 of the 1996 Act. It was, therefore, contended that the petitioner has no alternative or equally efficacious remedy and must invoke this Court's jurisdiction under Article 227 of the Constitution of India.

22. Simply put the argument is that the petitioner would be left remediless if this Court does not interfere at this stage. Although the petitioner’s arguments appear to be compelling on the surface, they fail to bear the weight of the stark facts of the case.

23. CAN 1 of 2026, being an application for recalling of the interim order passed in the revisional application, filed by the opposite party no.1/JV, reveals that a letter dated April 06, 2023 had been issued by the liquidator to the petitioner in the context of a letter dated March 28, 2023 written by the petitioner to the opposite party no.2. By the letter dated March 28, 2023 the petitioner had informed the opposite party no.2 that the petitioner had not given any authority to the liquidator to act on behalf of the JV. The said letter dated March 28, 2023 was forwarded to the liquidator by the opposite party no.2 under the cover of its letter dated March 30, 2023.

24. The letter dated April 06, 2023 written by the liquidator details the manner in which the liquidator derived authority to represent the JV. Some of the concluding paragraphs thereof deserve notice:-

"10. On this basis, kindly note that the Liquidator of PRIPL has acted in accordance with the powers and rights granted to him in terms of the provisions of POA 1 and POA 2, in the present case. Furthermore, there can be no room for doubt that AMR has in fact accorded the requisite rights and powers to the Liquidator of PRIPL (by way of the POA 1 and POA 2) to act on behalf of the PRIPL JV, in the present case.

11. In this regard, kindly note that the PRIPL JV issued the NIA dated 30th September 2019 to OSEPL, at ref. (4) above, seeking to institute arbitration proceedings against OSEPL, for recovery of amounts lawfully due by OSEPL to the PRIPL JV. Thereafter, given that OSEPL failed to respond to the PRIPL JV's NIA dated 30th September 2019 at ref. (4) above, it became imperative for PRIPL JV to file an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("Act") for the appointment of an Arbitrator on behalf of OSEPL ("Section 11 Proceedings"). The petition is listed before Hon'ble Calcutta High Court as AP 82/2023 and is pending adjudication.

12. We, therefore, reiterate to your kind selves, that not only was the Liquidator of PRIPL, duly authorised to act on behalf of the PRIPL JV, in terms of the provisions of the JVA read with the POA 1 and POA 2, but also, that the actions of the Liquidator of PRIPL, in acting as the authorised representative of the PRIPL JV for instituting the Section 11 Proceedings, was also necessary, for the PRIPL JV to effect the recovery of amounts lawfully due to it by OSEPL.

13. For this reason, it is our stand that your statement to OSEPL, that the Liquidator of PRIPL has not been authorised to act on behalf of the PRIPL JV, is manifestly incorrect. In fact, it would have been much appreciated had your office reached out to PRIPL on receipt of any communication from OSEPL for necessary clarification.

14. In this regard, we also wish to understand whether your kind selves wish to share the costs incurred by the PRIPL JV towards the Section 11 Proceedings, the ensuing arbitration proceedings, and any other proceedings instituted by the PRIPL JV in this regard, since the said proceedings are sought to be instituted solely to recover the amounts lawfully due to the PRIPL JV from OSEPL, in relation to which, your kind selves also have an interest.

15. Further, you are requested to share all available information maintained by your office with regard to the PRIPL JV and the Contract (JV accounting records, bank statements, copies of correspondence to/from OSEPL etc) to enable the undersigned as authorized attorney to effectively represent the JV in the pending/proposed proceedings against OSEPL.

16. Kindly note that OSEPL, by way of its letter dated 30th March 2023 at ref. (8) above (by way of which, your letter dated 28th March 2023 was shared with us), has called upon the Liquidator of PRIPL to "cease and desist from acting in any manner and / or purporting to act in any manner on behalf of the PRATHYUSHA-AMR Joint Venture".

17. Kindly note that there is an urgent requirement for furnishing a response to OSEPL's letter dated 30th March 2023 at ref. (8) above. Therefore, we request you to kindly revert to the contents of this letter, within one week of receipt of the same, so as to enable us to evaluate our further course of action, and the possible response to OSEPL's allegations made by way of its letter dated 30th March 2023.

18. Please feel free reach out to the undersigned, at irp.pripl@ibcprofessionalsolutions.com, in the event that you may have any further clarifications / queries in relation to the proceedings instituted / sought to be instituted against OSEPL by the PRIPL JV, in the present case."

(Emphasis supplied)

25. The petitioner has admitted receipt of the said letter dated April 06, 2023 in paragraph 6(l) of its affidavit in opposition to the JV's recalling application.

26. There is nothing on record to show that any reply was issued by the petitioner to the said letter. Once the petitioner found that - steps adversely affecting its interests were being taken; that such action was being justified by the liquidator by assigning reasons, which may or may not have been valid and the petitioner was called upon by the liquidator to clarify its stance so that the liquidator could decide the future course of action as also formulate a response to be given to the opposite party no. 2, then at such critical juncture, the petitioner could no longer remain silent. Having been directly confronted with the liquidator's claim of authority, the petitioner had a distinct duty to speak; it could not sit idly by, await the result of the Section 11 application and subsequently seek intervention in the arbitral proceeding with a prayer fort termination of the arbitration under Section 32 on the ground of an incompetent reference. It is well settled that *a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had*[16] and that silence at a time when there is duty to speak may lead to forfeiture of contractual rights[17].

27. The petitioner's silence was not passive silence in an ordinary commercial setting; it occurred after an express demand for clarification concerning a matter on which the petitioner now asserts a decisive contractual right. Having failed to assert the same contractual veto (assuming that the petitioner had one) when it was specifically called upon to do so, the petitioner could not have sought to exercise that right later to the prejudice of the arbitral process.

28. There is another interesting aspect that cannot be missed. It would be evident from the letter dated April 06, 2023 written by the liquidator to the petitioner that the petitioner had by its letter dated March 28, 2023 intimated the opposite party no.2 that the petitioner had not granted any authority to the liquidator to act on behalf of the JV. Despite knowledge of the petitioner's stand, the opposite party did not raise such issue before the Section 11 Court on September 19, 2023 when JV's application under Section 11 of the 19967 Act was heard by this Court. The said application was disposed of on September 27, 2023.

29. The opposite party no.2 has however, filed an application for review (being RVW No.4 of 2024) before this Court seeking review and recall of the order dated September 27, 2023 on the exact same ground that the liquidator had no authority

[16] **State of Punjab vs. Dhanjit Singh Sandhu, (2014) 15 SCC 144**
[17] **Arosan Enterprises Ltd. vs. Union of India, (1999) 9 SCC 449**

to represent the JV as the petitioner had not authorised the liquidator therefor. The petitioner on the other hand has filed an application for intervention in the said application for review and prayed for setting aside and/or vacating the said order dated September 27, 2023. Copies of both the applications form part of the JV's recalling application.

30. When the an application for review could be filed by the opposite party no.2 before this Court seeking review and recall of the order dated September 27, 2023 and an application for intervention and setting aside the said order could be filed by the petitioner on the exact same ground that - the liquidator had no authority to represent the JV as the petitioner had not authorised the liquidator therefor – the reason for not taking the point earlier only smacks of an ulterior motive to delay and derail the arbitral proceedings.

31. The Learned Arbitrator has highlighted the petitioner's conduct in the impugned order in the following manner:-

> *"**12.** The Applicant Intervenor was also aware of the institution of arbitral proceedings by K. Sivalingam, the Liquidator of "Prathyusha" on behalf of the Claimant-JV from the letter dated March 12, 2023 addressed to "AMR" Applicant Intervenor by the respondent (Annexure C-52, page 16 of additional documents filed along with rejoinder). It is further evident from letter dated March 28, 2023 addressed to the respondent by "AMR" - Applicant Intervenor (Annexure C-53, page 17 of additional documents filed along with the rejoinder) that the Applicant Intervenor has not given any power in favour of K. Sivalingam to act on behalf of the Claimant-JV for invoking provision of Section 11 of the Arbitration Act, 1996 and provision of Section 9 of the Arbitration Act, 1996 before the Hon'ble High Court at Calcutta. No explanation is forthcoming before this Tribunal why Applicant Intervenor did not make any correspondence with K. Sivalingam, Liquidator of "Prathyusha" by objecting that he has no power and authority to act on behalf of the Claimant-JV to invoke the arbitral proceeding by moving applications u/s 9 and u/s 11 of the Arbitration Act, 1996 before the Hon'ble High Court at Calcutta. No explanation is also forthcoming before the Tribunal what prevented the Applicant Intervenor to intervene in the hearing of applications u/s 11 and u/s 9 of the Arbitration Act, 1996 (AP-863/2022 and AP-370/2023 heard on September 19, 2023 and judgment delivered on September 27, 2023 by Hon'ble Justice Moushumi Bhattacharya), when the Applicant Intervenor had full knowledge about the said proceedings before the Hon'ble High Court at Calcutta from the letter dated March 12, 2023 addressed to the Applicant Intervenor by the respondent (Annexure C-52, page 16 of additional documents filed along with the rejoinder). While the Applicant Intervenor remained silent without making any direct objection to the initiation of arbitral proceedings by K. Sivalingam on behalf of the Claimant-JV, the action and conduct of the Applicant Intervenor amounts to acquiescing the action of initiation of arbitral proceedings by K. Sivalingam on behalf of the Claimant-JV. Whatever objection is raised before the Hon'ble High Court is raised by the respondent on behalf of the Applicant Intervenor. The present stand of the Applicant Intervenor to stall the arbitral proceedings between the Claimant-JV and the respondent after conclusion of recording of evidence of both parties must be for some oblique motive and ulterior purpose and thereby there is want of bona fide on the part of the Applicant Intervenor in the filing the present application."*
>
> (Emphasis supplied)

32. The order passed by the learned Sole Arbitrator reveals that the petitioner was made aware of the fact that the liquidator was representing the JV by a letter dated March 12, 2023. Nothing contrary has been shown to the Court and there is no reason for this Court to disbelieve the recording of the learned Sole Arbitrator. In such factual background the petitioner's silence - after receipt of the liquidator's letter dated April 06, 2023 - speaks too loudly against the petitioner itself.

33. In fact paragraph 13 of the impugned order the learned Sole Arbitrator has returned a finding of collusion between the petitioner and the opposite party no.2. The same is extracted hereinbelow:

> *"**13.** What is the oblique motive and ulterior purpose of the Applicant Intervenor in filing the present application is evident from serious conflict of interest and collusion between the Applicant Intervenor and the respondent. The collusion between the Applicant Intervenor and the respondent is evident from the fact that the Applicant Intervenor "AMR" has 22.57% of share-holding in the respondent company, which has been disclosed in the audited financial statements by the respondent for the financial year 2021-22 and 2022-23 (Annexures C-58 and C-59, page 54 and 84 of additional documents filed by the claimant along with rejoinder). Since the respondent has already got the award of Rs.322,77,58,577/- against the National Highway Authority of India (NHAI) and the said amount was deposited with the Registrar of Delhi High Court by NHAI for the same project, Applicant Intervenor - "AMR" might have got assurance from the respondent about protection of its financial interest by the respondent due to admitted share-holding of 22.57% of the Applicant Intervenor in the respondent company. It is, thus, quite natural for the Applicant Intervenor to change the stand by taking all possible measures for termination of the present arbitral proceedings between the Claimant-JV and the respondent. The above observation leads me to hold that there is deep rooted collusion between the Applicant Intervenor and the respondent. The expectation of fulfillment of the financial interest of the Applicant Intervenor due to admitted share-holding of 22.57% of the Applicant Intervenor in the respondent company throws light on the oblique motive and ulterior purpose of the Applicant Intervenor in filing the present application."*

34. This Court finds no reason to disagree with the learned Arbitrator. It is undisputed that the petitioner has a shareholding of 22.57% in the opposite party no.2. Copies of the audited financial statements of the petitioner appended as Annexure P 24 to the recalling application filed by the JV indicate that the petitioner is one of the promoters of the opposite party no.2. The petitioner has been found to be actively communicating with and siding with the opposite party no.2 while maintaining stoic silence to the clarification sought for by the liquidator. All of these taken cumulatively denote bad- faith. In such view of the matter it was not far-fetched for the Learned Sole Arbitrator to conclude that petitioner's application had been filed with "*oblique motive and ulterior purpose*".

35. It also needs to be noted that the petitioner did not seek intervention in the arbitral proceedings to protect the interest of the JV but to seek dismissal of the JV's claims – which are - the same claims for which the arbitration agreement stood

validly invoked by the JV itself by issuing the letter dated September 30, 2019. If the petitioner sought dismissal of the JV's claim there is hardly anything that the petitioner might lose in the arbitral proceeding. If the arbitral proceeding ends with dismissal of the JV's claim on merits, the petitioner's prayers would stand answered. If the JV's claims are allowed, the petitioner may be entitled to its dues in terms of the JV agreement. If, the petitioner feels aggrieved by any anomaly as regards its share in the JV its option to enter into an arbitral battle with the opposite party no.3 is open in terms of the JV agreement itself.

36. There is one more way to look at the matter. In the present case, a major member of the JV has gone into liquidation. The liquidator has stepped into the shoes of that member to protect its assets. The petitioner cannot be permitted to use its status as the "only other member" to completely paralyze a pre-existing claim initiated by the JV, especially after failing to object when formally called upon to do so.

37. It is true that if a party is left remediless, , it would be a case of "*exceptional rarity"* and in terms of the guiding principles laid down by the Hon'ble Supreme Court in the case of ***Bhaven Construction vs. Executive Engineer, Sardar Sarovar Narmada Nigam Limited & Another***[18], the High Court would be justified in exercising its supervisory jurisdiction. However, the present case is certainly not so as would be evident from the discussion in the preceding paragraphs.

38. Power under Article 227 of the Constitution of India is supervisory in ambit, equitable in essence and discretionary in application. The Court will not exercise its extraordinary equitable jurisdiction under Article 227 to aid a member of a JV acting in bad faith and against the interest of the JV.

39. The petitioner's assertion that the learned Arbitrator has decided questions over which it had no authority or that the POA-2 conferred no authority on the liquidator and that the liquidator had no power under Section 35(1)(d) and (k) of the IBC to represent the JV do not impress this Court. The decision of the learned Sole Arbitrator has pronounced upon the liquidator's authority on the basis POA- 2 in the light of the JV agreement which he certainly had jurisdiction to do. Such decision does not qualify for a manifest jurisdictional defect. It can in any case be challenged before the Section 34 Court.

40. While on this, this Court is conscious that the petitioner has contended that it would not be able to challenge the award under Section 34 of the 1996 Act since it is not a party to the arbitral proceedings. In such context it needs to be noted that

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[18] **(2022) 1 SCC 75**

initially an application under Section 16 of the 1996 Act was filed by the opposite party no.2 taking the same grounds that the petitioner has taken in its application for intervention which was dismissed. The petitioner chose to intervene only thereafter when adduction of evidence in the arbitral proceeding was closed. This shows that the petitioner and the opposite party no.2 have been taking chances in turn and the petitioner has been sailing on the same boat as that of the opposite party no.2. The chance of the opposite party no.2 to challenge the award under Section 34 of the 1996 Act is clearly open.

41. In the case of ***Maharashtra State Electricity Distribution Company Limited (MSEDCL)*** (supra), the notice invoking arbitration agreement was issued individually by one of the constituents of the Joint Venture. Though the said notice was issued on behalf of the Joint Venture, there was no express authority to do so. It was in such context that it was held that since no express authority in favour of the notice issuing member had been granted in terms of Section 19(2)(a) of the Indian Partnership Act, 1932, to refer the dispute, arising out of the business relating to the Joint Venture, to arbitration, the said member could not legally represent the Joint Venture. The said case does not aid the petitioner for at least three reasons. Firstly, in the instant case the arbitration clause has been admittedly invoked by the JV. Secondly, the JV agreement itself clarifies in Clause 22 that the relationship between the constituents of the JV would be that of consortium and not partnership. Thirdly, it is noticed that the said judgment was passed on an application under Section 34 of the 1996 Act which stage is yet to arrive.

42. ***Consulting Engineers Group Limited*** (supra) has been rendered while relying on ***Maharashtra State Electricity Distribution Company Limited (MSEDCL)*** (supra) and as such the said judgment would also be of no avail to the petitioner for the same reason wherefor the earlier cited judgment failed to help the petitioner, as already indicated in the immediately preceding paragraph.

43. ***HLS Asia Limited*** (supra) had been cited to contend that it is necessary that each member of a consortium should be made a party to the arbitral proceedings. The said judgment turned on its own facts. It was held therein that making each member of the consortium party to the arbitral proceedings would obviate any subsequent plea that may be taken by any of the members that they are not bound by the award that may be passed by the Tribunal, since they were not made parties. The said judgment cannot further the cause of the petitioner in the facts of the present case where the petitioner evidently seeks to be added as a party to the

arbitral proceeding only for getting the claim of the JV dismissed. The petitioner's application for intervention was/is not aimed at either the enhancement or augmentation of the claim of the JV or for making its own claim. The petitioner's stoic silence and collusion as found by the arbitrator would render his addition detrimental to the arbitration proceedings against the JV. By asking the Learned Arbitrator to dismiss the arbitral claim entirely rather than asking to be properly joined or represented, the petitioner has actively attempted to kill the JV's financial claim to benefit a third party in whom the petitioner is clearly interested. Furthermore, the said judgment was also rendered on an appeal under Section 37 of the 1996 Act which stage too is yet to be reached.

44. ***Kandla Export Corporation & Another*** (supra) cited by the opposite party no.1 reiterates that the 1996 Act is a complete code in itself while referring to ***Fuerst day lawson Ltd. vs. Jindal Exports Ltd.*** [19]

45. It is also noted that the opposite party no. 2 has filed an affidavit in the present matter placing its case. It has clearly run the petitioner's case. The same would instantly lead one to believe that the petitioner's battle is already being actively fought by the opposite party no. 2.

46. For all the reasons aforesaid, this Court does not find any reason to interfere with the order impugned. C.O. 577 of 2026 stands dismissed. Since the main revisional application itself stands dismissed, the connected application, being CAN 1 of 2026, for recalling the interim order also stands disposed of accordingly. No costs.

47. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on urgent basis after completion of necessary formalities.

[OM NARAYAN RAI J.]

[19] **(2011) 8 SCC 333**