

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 6910 of 2025****FOR APPROVAL AND SIGNATURE:****HONOURABLE MRS. JUSTICE MAUNA M. BHATT** **sd/-**

Approved for Reporting	Yes	No
	Yes	

GUJARAT POWER CORPORATION LIMITED

Versus

TATA POWER RENEWABLE ENERGY LIMITED

Appearance:

MR KAMAL TRIVEDI, LD.ADVOCATE GENERAL WITH MR ANAL S SHAH(3988), LD.ADVOCATE WITH MR VINAY BAIRAHRA, LD.ADVOCATE WITH MR PRANJAL BUCH, LD.ADVOCATE for the Petitioner.
 AAYOG Y DOSHI(8519) for the Petitioner.

MR MIHIR THAKORE, LD.SENIOR ADVOCATE WITH MR SHAAN M MUNSHAW(10825), LD.ADVOCATE WITH MR SHRYESHTH SHARMA, LD.ADVOCATE WITH MR AAKASH LAMBA, LD.ADVOCATE WITH MR KUNAL VEER, LD.ADVOCATE for the Respondent.

CORAM: HONOURABLE MRS. JUSTICE MAUNA M. BHATT**Date : 11/09/2025****ORAL JUDGMENT**

1. This petition is directed against the common order dated 25.04.2025 of Learned Arbitral Tribunal in Arbitration Case No.94 of 2023 to the extent that it has rejected the petitioner's application filed under Section 23(3) of the Arbitration and Conciliation Act, 1996 ("**the Act**" for short), whereby, the petitioner sought permission to amend its Statement of Defense. The petitioner herein is the original respondent in the arbitration proceedings and is referred to hereinafter as original

respondent/ GPCL whereas the respondent herein is the original claimant in the arbitration proceedings and is referred to hereinafter as original claimant/ TPREL.

2. Brief facts, as referred in the petition, are as under:

2.1 It is case of the original respondent that under Power Purchase Agreement dated 23.10.2019, the original claimant was required to install and commission 250 MW of power plant, with a Scheduled Commercial Operation dated 22.01.2021, which was later extended to 22.06.2021. At the same time, as per clause 7.3.3 of Implementation and Support Agreement dated 13.12.2019, the original claimant was supposed to lay down 33 KV power cables, connecting each of its 50 MW Power Plants (Total 250 MW) located at Plot Nos.P1, P2, P3, P4, P8 and P9, with Internal Pooling Station to be installed by the original respondent, whereby the power could be transmitted from Power Plants to Internal Pooling Station and thereafter to the Grid.

2.2 As against this, it is case of the original respondent, that unless and until 250 MW Power Plant is fully installed and commissioned and 33 KV power cables are laid by the original claimant, importance of Internal Pooling Station to be

established by the original respondent was secondary as compared to first two aspects as referred hereinabove. Therefore, there was no question of any loss caused to the original claimant until the completion of above two aspects.

2.3 However, arbitral proceedings were initiated at the instance of original claimant invoking Article 13.3 of the Implementation and Support Agreement (ISA) dated 13.12.2019 and 29.05.2020, alleging breach of contractual obligations on part of the original respondent under the said ISA. Accordingly, original claimant filed Arbitration Petition No.4 of 2023 before this Court under Section 11(5) and 11(6) of the Act seeking appointment of Sole Arbitrator to adjudicate the issue arising between the parties under ISA.

2.4 Pursuant to the order dated 29.09.2023 of this Court in Arbitration Petition No. 4 of 2023, the Arbitral Tribunal comprising of Hon'ble Ms. Justice Harsha N. Devani, Former Judge of High Court of Gujarat was constituted as the Sole Arbitrator. Pursuant to initiation of arbitral proceedings, original claimant filed its Statement of Claim (SOC) on 26.12.2023 seeking adjudication and award for damages to the tune of approximately Rs.150 Crores with interest.

2.5 The original respondent filed its Statement of Defense (SOD) on 15.03.2024, denying the allegations and disputing the claim in toto. In response to the Statement of Defense, the original claimant filed Affidavit in Rejoinder on 15.04.2024. Terms of reference for settlement of dispute were framed. Both the parties were directed by the Learned Arbitral Tribunal to file Affidavits in lieu of Examination-in-Chief of their respective witnesses. The original claimant filed Affidavit in lieu of Examination-in-Chief of its Witness No.1- Mr. Ajay Sheth (CW-1) on 29.08.2024 and Witness No.2- Mr. Bhaskar Kamath (CW-2) on 29.08.2024, whereas the original respondent also filed the Affidavit in lieu of Examination-in-Chief of its sole witness Mr. Rajendra Mistry on 28.08.2024.

2.6 In a nutshell, it is the case of original claimant in the arbitration proceedings that its 250 MW power plant was fully installed and operational as on 21.06.2021. However, on account of fault on part of the original respondent, the original claimant could not sell power, as the power evacuation infrastructure to be provided by the original respondent was not available as on that date, which has resulted into losses caused to the tune of Rs. 146.13 Crores between the period from 22.06.2021 to 27.03.2022. Therefore, adjudication of alleged losses suffered by the original claimant revolves around

whether 250 MW power plant was fully commissioned and 33 KV power cables were laid as on 21.06.2021 or not.

2.7 While the arbitration proceedings were in progress, cross examination of CW-1 and CW-2 was initially scheduled on 23.10.2024 and 24.10.2024 respectively, however on 21.10.2024, the original claimant filed an application seeking permission to place on record revised corrected evidence by way of affidavit of CW-2 along with additional documents. The original respondent opposed the said application. However, the Learned Arbitral Tribunal after hearing the parties, allowed the said application by an order dated 30.11.2024 permitting the original claimant to place on record revised affidavit and documents.

2.8 It is case of the original respondent that thereafter on 21.03.2025, it made an application before the Learned Arbitral Tribunal to file Additional Affidavit in lieu of Examination-in-Chief of RW-1 – Mr. Rajendra Mistry along with certain additional documents. Pending adjudication of this application, the cross-examination of CW-1 and CW-2 was conducted on 25.03.2025 and 26.03.2025 respectively.

2.9 During the cross-examination, *inter-alia*, the following

questions were posed to the respective witnesses with their answers being quoted below:

CW-1

“Q. 117 Is it true that till 21.6.2021, TPREL did not complete the laying of the 33 KV power evacuation cables?”

A. No. It was completed on 21.6.2021.”

CW-2

“Q. 35 Do you know as to when 33 KV power cables were led by TPREL to connect 250 MW solar plant to the internal Polling Station of the Dholera Solar Plant?”

A. I do not know the exact date.

Q. 36 Do you know the month?”

A. Before CEIG inspection.”

2.10 It is the original respondent's case that owing to these specific answers given by CW-1 and CW-2, the original respondent felt the need to check its veracity and in pursuance thereof, they addressed a letter dated 02.04.2025 to the Chief Electrical Inspector General (“CEIG”) requesting for details

regarding the applications submitted by the original claimant for inspection and approval of their 250 MW power plant and certificates of initial inspection.

2.11 In response to the letter addressed by the original respondent, CEIG under letter dated 02.04.2025 supplied the details as well as copies of the communications dated 27.12.2021 (Page 263 of petition) and 16.03.2022 (Page 268 of petition) which *inter alia* suggest that the power evacuation from the proposed 250 MW power plant of the original claimant was not possible till 15.03.2022, which is when the original claimant completed laying down of the underground 33 KV power cables upto the point of Internal Pooling Substation of the original respondent.

2.12 Owing to the fact that these two documents, even though in possession of the original claimant, were suppressed in the SOC, the original respondent filed an application under Section 23(3) of the Act seeking to amend its SOD in order to bring on record the newly discovered material facts, which demonstrated that the 250 MW power plant of the original claimant was not ready by 21.06.2021, thereby clearly suggesting that the original claimant could not have asked for any amount by way of alleged loss on the ground that the power plant was ready

by 21.06.2021. The original respondent also contended that the original claimant had made incorrect statements on oath in the SOC to the effect that as per Certificate dated 21.06.2021 (page-147 of paper-book) issued by CEIG, 250 MW power plant was fully installed and ready for commercial operational on 21.06.2021. The original respondent further stated that it had believed the statement made by the original claimant in the SOC and therefore had not questioned or inquired into this aspect of the matter. However, by virtue of the newly discovered material documents which went to the root of the matter, the application seeking amendment of SOD was necessitated.

2.13 Under the impugned order dated 25.04.2025, the Learned Sole Arbitrator allowed the application filed by the original respondent dated 25.03.2025 i.e. seeking to file Additional Affidavit in lieu of Examination-in-Chief of RW-1 but has rejected the application dated 04.04.2025 seeking amendment of SOD under Section 23(3) of the Act, thereby leading to filing of the present petition.

3. Heard learned Advocate General Mr.Kamal Trivedi assisted by learned advocates Mr.Anal S Shah, Mr.Vinay Bairahra and Mr.Pranjal Buch for the Petitioner and learned

Senior Advocate Mr.Mihir Thakore assisted by learned advocated Mr.Shaan M Munshaw, Mr.Shryeshth Sharma, Mr.Aakash Lamba and Mr.Kunal Veer for the respondent.

4. Learned Advocate General Mr.Kamal Trivedi for the petitioner- original respondent, submitted that the order dated 25.04.2025 qua rejection of application filed under Section 23(3) of A&C Act is erroneous and deserves to be quashed and set aside on the following grounds:

4.1 There was malafide intention on the part of the original claimant in making an incorrect submission on oath that certificate dated 21.06.2021 was issued by CEIG that 250 MW power plant was fully commissioned and ready for commercial operational on 21.06.2021.

4.2 The original respondent was under a bonafide belief that no mis-statement on oath would be made by the original claimant after having produced the certificate dated 21.06.2021. However, the correct facts came to the knowledge of the original respondent upon inquiry made with CEIG, that too after completion of cross-examination of CW-1 and CW-2.

4.3 From the reply dated 02.04.2025 of CEIG wherein the

communications/ certificate dated 27.12.2021 (Page 263 of petition) and 16.03.2022 (Page 268 of petition) were provided for the first time to the original respondent, it came to light that the power evacuation from the proposed 250 MW power plant of the original claimant was not possible till 15.03.2022, which is when the original claimant completed laying down of the underground 33 KV power cables up to the point of Internal Pooling Sub-station of the original respondent. Therefore, the original claimant had put up an incorrect case before the Learned Arbitral Tribunal, which required that correct facts be brought on record and hence, the application was preferred under Section 23(3) of the Act.

4.4 The action of the original claimant amounts to playing fraud, for which no explanation was provided by the original claimant. In support of this submission, Learned Advocate General relied upon the judgment of the Apex Court in the case of *S.P. Chengalvaraya Naidu v. Jagannath* reported in (1994) 1 SCC 1.

4.5 Learned Advocate General further submitted that the original respondent had been extremely prompt in its action of filing an appropriate application under Section 23(3) of the Act on 04.04.2025, which is two days after coming to know about

existence of communications/ certificate dated 27.12.2021 and 16.03.2022 under CEIG's reply dated 02.04.2025. Hence, the original respondent cannot be said to have committed any delay in filing this application.

4.6 Learned Advocate General further submitted that the Learned Arbitral Tribunal has misdirected itself by placing reliance on provisions of Order 6 Rule 17 of CPC more so when Section 23 of the Act specifically provides for substantive provision for effecting amendment. It was submitted that the wordings used in Section 23(3) of the Act suggest a wider interpretation and scope for amendment as compared to Order 6 Rule 17 CPC which restricts the amendment after commencement of trial. Therefore, the Learned Arbitral Tribunal ought not to have taken recourse of Order 6 Rule 17 CPC. In support of this submission, reliance was placed on the decision in case *Essar House Pvt. Ltd. v. Arcelor Mittal Nippon Steel India Ltd.* reported in (2022) 20 SCC 178, where the Apex Court held that the technicalities of CPC cannot prevent the court from securing the ends of justice and the power of the Court to grant relief is not curtailed by the rigours of every procedural provision in CPC. Few other judgments were also referred to canvass this point i.e. Judgment dated 22.05.2025 of the Hon'ble Calcutta High Court in case of *Steel*

Authority of India Ltd. v. H.R. Construction Pvt. Ltd., Judgment dated 22.01.2025 of the Hon'ble Jharkhand High Court in case of ***Rites Ltd. & Ors. v. Supreme BKB*** and Judgment passed in the case of ***SREI Infrastructure Finance Limited v. Tuff Drilling Private Limited*** reported in (2018) 11 SCC 470.

4.7 It was further submitted that in terms of Section 19(1) of the Act, the Learned Arbitral Tribunal is not bound by the provisions of CPC and hence, on a cumulative reading of Sections 19(1) and 23 of the Act, the Learned Arbitral Tribunal grossly erred in applying the provisions of Order 6 Rule 17 of CPC and thereby dismissing the amendment application of the original respondent.

4.8 Notwithstanding the aforesaid and irrespective of applicability of Order 6 Rule 17 of CPC, the Learned Advocate General contended that the application deserved to be allowed even if the trial has commenced, because the original respondent sought to produce on record documents/ certificates which go to the root of the matter. This is because the sole argument of the original claimant revolves around its so-called readiness as on 21.06.2021. Therefore, the question of determining as to whether the original claimant was completely

ready to sell the power as on 21.06.2021 and whether it could not sell the power till 15.03.2022 only on account of the non-readiness on the part of the original respondent, cannot be decided / adjudicated without the above referred certificates, which are sought to be placed on record by way of the amendment application. In respect of this, reliance was placed on a judgment of the Hon'ble Supreme Court rendered in the case of *Dinesh Goyal v. Suman Agarwal* reported in 2024 SCC OnLine SC 2615 confirming the judgment of the Hon'ble Madhya Pradesh High Court reported in 2019 SCC Online MP 7181, where the Apex Court allowed the amendment application, though the same was filed after the commencement of trial, belatedly and that too, without any due diligence.

4.9 Further, it was submitted that even if the amendment application is allowed, the same would not cause any prejudice to the original claimant, as it would be open for the original claimant to assail the relevance and veracity of the said documents in accordance with law, specifically when time limit for completion of the arbitration proceedings is to expire on 15.10.2025, which can further be extended as provided under Section 29A(3) of the Act. As compared to this, severe prejudice would be caused to the original respondent. In

addition to this, the Learned Advocate General contended that it is nobody's case that the amendment application is mala fide. In this behalf, reliance is placed on the judgment of the Hon'ble Supreme Court in the case of ***M. Revanna v. Anjanamma*** reported in (2019) 4 SCC 332, where it has been observed that though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the Court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money.

4.10 Learned Advocate General next submitted that the original respondent does not have any other remedy available. By placing reliance on the wordings of Section 2(1)(c) and Section 34 of the Act, he contended that the impugned order cannot be categorized as an "interim award" and hence, is not amenable to challenge under Section 34 of the Act. As regards the contention of the original claimant that the original respondent always has an opportunity to raise this ground in case the award is rendered against the original respondent and it decides to file an application under Section 34 of the Act, the Learned Advocate General submitted that the Section 34

court would only check the perversity in the final award on the basis of the documents available on record. Whereas, by virtue of the impugned order, the aforesaid certificates which are proposed to be placed on record would not form part of the record and thereby, the said aspect would remain undecided and could not be raised at the stage of Section 34.

4.11 Lastly, in order to satisfy that a writ petition under Article 226/ 227 of the Constitution of India can be entertained by this Court against various types of orders passed by the Arbitral Tribunal, the Learned Advocate General relied upon the decisions namely: ***Narmada Clean-Tech and Anr. v. Indian Council of Arbitration*** reported in 2020 (4) GLH 364; ***Bhaven Construction v. Executive Engineer, Sardar Sarovar Narmada Nigam Limited*** reported in (2022) 1 SCC 75; ***Municipal Committee, Hoshiarpur v. Punjab State Electricity Board & Ors.*** reported in (2010) 13 SCC 216; ***Life Insurance Corporation of India v. Sanjeev Builders*** reported in (2022) 16 SCC 1; ***Dinesh Goyal alias Pappu v. Suman Agarwal (Bindal) and Ors.*** reported in 2024 SCC OnLine SC 2615 and ***Serosoft Solutions Pvt. Ltd. v. Dexter Capital Advisors Pvt. Ltd.*** reported in 2025 SCC OnLine SC 22. He contended that the underlying principle of all these judgments is to ensure that a party is not rendered remediless and that interference is required in cases where the

order passed suffers from bad faith, is passed ignoring or excluding relevant material or are orders which defy logic as suffering from the vice of irrationality. Placing reliance on these judgments, it was contended that the order dated 25.04.2025 is perverse and hence, the present petition may be allowed and consequentially the impugned order be quashed and set aside, directing the Learned Arbitral Tribunal to accept the amendment application filed by the original respondent seeking to amend its Statement of Defense.

5. Strenuously opposing the present petition, learned Senior Advocate Mr.Mihir Thakore appearing for the respondent herein- original claimant raised a preliminary objection in respect of entertainability of the present petition under Article 226/ 227 of the Constitution of India. He contended that a petition under Article 226/ 227 may not be entertained, since it has been invoked as parallel supervisory mechanism to circumvent the legislative safeguards provided under the Act in the form of Section 34 and 37. Reliance was placed on the decision of ***SBP and Company v. Patel Engineering Ltd.*** reported in (2005) 8 SCC 618, in this regard.

5.1 In addition to the aforesaid judgment, Mr. Thakore relied on the following judgments to persuade this Court to refrain

from entertaining the present petition:

- (a) ***Bhaven Construction v. Executive Engineer, Sardar Sarovar Narmada Nigam Ltd.*** reported in (2022) 1 SCC 75
- (b) ***GTPL Hathway Ltd. v. Strategic***; reported in 2020 SCC Online Guj 3640
- (d) ***Conart Engineers Limited v. The Arbitrator, GCCI-ADRC, Shri Ambica Mills***; R/Special Civil Application No. 9924 of 2023
- (e) ***Hindustan Alloys Pvt. Ltd. v. Maa Sheetla Ventures Limited***; WP (C) No. 10561 of 2024
- (f) ***Easy Trip Planners Ltd. v. One97 Communications Ltd.*** reported in 2022 SCC Online Del 2186
- (g) ***Mohd. Yunus v. Mohd. Mustaqim & Ors.*** reported in (1983) 4 SCC 566
- (h) ***Rushika Food Products Pvt. Ltd. v. Gujarat Agro Industries Corporation***; Special Civil Application No. 10942 of 2024.
- (I) ***ONGC Petro Additional Ltd. v. Technimont SPA & Anr.***; OMP (COMM) 196/2019.

5.2 Without prejudice to entertainability of the petition, Mr. Mihir Thakore, Learned Senior Advocate supported the order dated 25.04.2025 primarily on the ground that the Learned

Arbitral Tribunal had correctly come to a conclusion that there was gross delay in filing the amendment application and also that the original respondent had not exercised due diligence in the matter and hence, should not be permitted to take advantage of its mistake at such a belated stage of the proceedings.

5.3 Learned Senior Counsel Mr. Mihir Thakore submitted that firstly, the principles of CPC can be used by the Learned Arbitral Tribunal as a guiding factor. Reliance was placed on *SREI Infrastructure Finance Ltd. v. Tuff Drilling Pvt. Ltd.*, reported in (2018) 11 SCC 470 to submit that Section 19(2) permits the Tribunal to adopt CPC principles when the parties have not agreed to the different procedure. Merely section 19 would not absolve the Arbitral Tribunal to follow the procedure as prescribed under CPC. As a matter of fact, the original respondent's other application was allowed after placing reliance on provisions of CPC and hence, it would not be appropriate for the original respondent to divest itself from applicability of CPC.

5.4 By virtue of CPC provisions being applicable to arbitral proceedings, Order 6 Rule 17 CPC principles have to be read in conjunction with Section 23 of the Act and the latter cannot

be read in isolation. He submitted that even though it is true that Section 23(3) permits amendment of pleadings during arbitration, the said amendments are not automatic. This was because while considering the amendments under Section 23(3) of the Act, the Learned Arbitral Tribunal was required to consider the stage of proceedings, whether any inordinate delay had occurred and crucially, whether the party seeking amendment had acted with due diligence.

5.5 Learned Senior Advocate Mr. Thakore submitted that in the present case, taking into consideration the belated / advanced stage of proceedings, delayed application of the original respondent to place on record documents, though discovered on 02.04.2025, but which they could have procured had they exercised due diligence after the date of filing the SOC i.e. 26.12.2023, would not allow the original respondent to file such an amendment application claiming it to be bonafide.

5.6 Mr. Thakore submitted that whenever an amendment was sought to be introduced after the trial had already begun, the true test of “due diligence” as referred in proviso to Order 6 Rule 17 was a settled standard test for evaluating belated amendments in order to prevent abuse of process, protect

procedural efficiency and to avoid shifting factual matrices at mid-trial.

5.7 Learned Senior Advocate submitted that in this case, since the trial had begun, proviso to Order 6 Rule 17 would be squarely applicable and if this proviso of Order 6 Rule 17 was read in consonance with sub-section (3) of section 23 of the Act, the Learned Arbitral Tribunal has rightly rejected the amendment application on the ground of original respondent having failed to act with due diligence.

5.8 In respect of due diligence, Learned Senior Advocate submitted that the original respondent had thoroughly failed in proving that it had exercised due diligence since the original respondent had not explained why these pleas were not taken earlier, despite being aware of the same set of facts since filing of SOC. Moreover, the claim of original respondent that the need to procure documents dated 27.12.2021 and 16.03.2022 arose only from responses to Questions 117, 35, and 36 by CW-1 and CW-2 appeared to be misplaced since basis the original claimant's submissions as pleaded in the SOC, the necessity to procure these documents was not contingent on the witnesses' answers and the original respondent could have obtained them independently and earlier. Moreover, the

certificate dated 21.06.2021 which is now sought to be doubted by the original respondent was in their knowledge since the date of filing the SOC and hence, only because the original respondent chose to now wake up and check its veracity would be no ground to permit the amendment, specifically when the basis of the SOD is sought to be amended.

5.9 In response to the submission that there was a necessity of the amendment for adjudication of the real controversy or absence of prejudice to original claimant, Mr. Thakore submitted that these considerations weigh in only at the stage of pre-trial and have no application once the trial has begun. Reliance was placed on the decision of ***Gurpreet Singh v. Guru Ravidas Ayurved University & Anr.***, reported 2025 SCC Online P&H 1647 to contend the same.

5.10 Mr. Thakore had sought to distinguish the judgment of ***Dinesh Goyal (supra)*** by contending that the amendment was permitted in the said case only in the peculiar facts of the matter. The decision turned on the fact that the Suit for Partition could not be decided without first determining the genuineness of the Will. As the Defendant bore the onus of proving the Will (it being the propounder of the same), its

application for amendment could not be rejected, especially since issues on that aspect had not yet been framed and the Plaintiff's cross-examination had not commenced. Further, since the burden of proving the will was on the Defendant therein, its application to lead evidence on the said aspect was also accepted by the Hon'ble High Court as well as the Supreme Court. In contrast thereto, in the present case since trial had commenced, it was the duty of the original respondent to prove that it had acted with due diligence.

5.11 Mr. Thakore next submitted that the original respondent's contention of the original claimant having suppressed material documents or having played fraud with the Learned Arbitral Tribunal does not merit acceptance since the original claimant had produced the CEIG Certificate dated 21.06.2021 along with all necessary details, interpretation of contractual provisions, establishing that the internal evacuation system of original respondent was not ready ,which is not denied by original respondent till date, communications as exchanged between the parties and other state agencies which clearly reflect delay on part of original respondent.

5.12 Lastly, Mr. Thakore distinguished the judgments relied on by the original respondent in respect of maintainability /

entertainability of petition on the ground that the present is not a case which would fall within the category of “rarest of rare” or a decision which is marred with perversity, thereby prompting judicial interference. Therefore, Learned Senior Advocate submitted that barring all contentions, the order dated 25.04.2025 is a reasoned order which is passed after due application of mind and therefore, when the subjective satisfaction has been arrived by the Learned Arbitral Tribunal, this is not a case where substitution of subjective satisfaction is required by interference of this court and hence the order dated 25.04.2025 may be upheld and the present petition be dismissed.

6. Considered the submissions and the decisions relied upon. Both sides have raised multiple submissions, however considering that a preliminary objection is raised by the original claimant in respect of entertainability of the present petition, I deem it fit to address this issue first.

6.1 The law in respect of whether a writ petition can be entertained if filed under Article 226 or Article 227 of Constitution of India to challenge orders passed by the Arbitral Tribunal, be it procedural or substantive, is by far well-settled. In this context, the principles as summarized by the Apex

Court in the case of *Serosoft Solutions (supra)* would be relevant to note:

“14. ...Certain conditions for exercising jurisdiction under Articles 226/227 are mentioned in the judgment. Conditions (v) and (vi) of the said judgment could have sufficient guidance for the High Court to consider whether interference is warranted or not. The relevant portion of the said order is as under:-

v) Interference is permissible only if the order is completely perverse i.e. that the perversity must stare in the face.

(vi) High Courts ought to discourage litigation which necessarily interfere with the arbitral process.

(vii) Excessive judicial interference in the arbitral process is not encouraged.

(viii) It is prudent not to exercise jurisdiction under Articles 226/227.

(ix) The power should be exercised in 'exceptional rarity or if there is 'bad faith which is shown.

(x) Efficiency of the arbitral process ought not to be allowed to diminish and hence interdicting the arbitral process should be completely avoided.”

6.2 Apart from the aforesaid judgment, the judgments relied on by Mr. Mihir Thakore, Learned Senior Advocate referred above provide an exhaustive overview of the judicial trend followed in respect of entertaining petitions to interfere with arbitration processes. The catch-words that have been propounded are that the order in question has to be “completely perverse”, order in question has to be marred with “bad faith”, or that the order should be so gross that it

can be interfered with in “exceptional” or “rarest of the rare circumstances”.

6.3 Taking note of the law laid down in the judgments cited by either side in respect of entertainability of the petition, I am of the opinion that the impugned order does not pass the litmus test of being either “perverse” or passed in “bad faith” so as to warrant judicial interference of this Court. Apart from the order being a plausible view of the Learned Arbitral Tribunal, the same can by no stretch of imagination be termed as an order that is so “exceptional” or “rare” that it would shock the conscience of a reasonable person.

6.4 At this stage, it is necessary to deal with the argument canvassed by the Learned Advocate General that as per the decision rendered in *Bhaven Construction (supra)*, the Apex Court has under Paragraph 18 stated that “*this power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute..*”. It is his submission that by virtue of the impugned order not being categorized as an “interim award”, the original respondent cannot challenge the same at this stage under Section 34 of the Act and also since these documents would not come on record of the case, the Section 34 court would not look into these documents at the

relevant point in time. To this, I draw benefit from the decision rendered in the case of *ONGC Petro (supra)* wherein in context of an international commercial arbitration, a marginally similar issue arose for consideration before the Delhi High Court to ascertain whether the order passed by the Arbitrator rejecting an application filed by the original respondent in arbitration under Section 19 of the Act for placing additional documents and evidence on record was correct or not. In the context, the Court held:

“13. ... Dr. Singhvi also argued that the Courts should always step in to advance the cause of justice. He submitted that there may not be any case law directly dealing with identical or similar facts but that should not prevent the Court to adopt an incremental progressive attitude towards development of law. The argument is outwardly attractive and enchanting but, I feel that there are no milestones that the Court has to accomplish. The role of the Court is to interpret the law and apply it to the facts of the case. Imagine the scenario, where the Court’s perspective on growth in law runs counter to the legislative intention that is in sync with the modern trends. If the Act does not permit a challenge at this stage, the Court would not take upon itself the burden to adopt an approach that is perceived to be a rational one. The Court has the bounden duty to apply the law as it exists and not interpret it merely because it appears to be a more satisfactory view. I cannot create an opening, if the door is tightly shut. If the law permits an entry, only then the Court can decide the extent for opening the door. The Courts may advance development of law, but that cannot be achieved by assuming the role of a legislator. Such move should be well guarded and well considered. It is critical that Courts do not go beyond the legislative intent. The Courts would also not remove the deficiencies, if such are shown to exist in a legislation. It is for the legislature to make amends. Heavy weight

of the claims does not allow the Court to lift the bar or bend it to suit a particular view. I also have reservations to say that permitting a challenge to final decisions on procedural aspects would be a progressive approach. Under the current scheme of the Act, the intent is clear that such matters be left for the Arbitral Tribunal to decide.”

6.5 Therefore, I am not in agreement with the original respondent- petitioner herein that this is a fit case to be entertained under Article 226 / 227 of the Constitution of India. Moreover, the judgments cited by the Learned Advocate General apart from the ones dealt with hereinabove would not apply to the facts of the present case since neither is the impugned order passed in a manner not permitted by law, or where the arbitrator has failed to exercise jurisdiction or passed ignoring or excluding relevant material or passed considering irrelevant material. On the contrary, the impugned order is passed relying on provisions of Section 23 of the Act read with Order 6 Rule 17 CPC and after applying these provisions to the facts of the case, therefore it cannot be termed as an order leading to failure of justice.

6.6 At this stage, I also wish to shed some light on the circumstances mentioned in the case of *Bhaven Construction (supra)* for judicial interference. As can be seen, the Apex Court therein was dealing with a case where an order passed

under Section 16 of the Act was challenged by way of a writ petition. Section 16 of the Act deals with competence of arbitral tribunal to rule on its jurisdiction, which in my opinion is a substantive proceeding since the same can determine the jurisdiction of the arbitral tribunal itself. Even in such a higher threshold, the Apex Court has consciously deterred the High Courts from interfering in Writ Petitions. As compared to this, what is sought to be persuaded by the original respondent for this Court to do is to interfere in a procedural order passed by the Learned Arbitral Tribunal. In my opinion, if writ jurisdiction either under Article 226 or under Article 227 of Constitution of India is exercised to supervise or rectify procedural lapses of the arbitral tribunals, then it would open a pandora's box where each procedural order prejudicial to the aggrieved party would be challenged to somehow get it within the parameters set out by the Apex Court in the cases referred above [*SBP and Co. (supra)*, Paragraph 46 “*The object of minimalizing 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*”]. This was never and can never be the intention of the legislation propounded under the Arbitration and

Conciliation Act, which itself talks about limited court interference and speedy resolution of disputes.

6.7 In addition to the aforesaid, the principles of natural justice having been complied with, merely on the contention raised that Learned Arbitral Tribunal has given an erroneous finding, would not be the sole basis to discard an otherwise well-reasoned order.

6.8 In view of above, the contention raised on behalf of respondent- original claimant that the entertaining such petition would dismantle the efficiency and autonomy of arbitration, allowing every interim procedural order to be re-litigated in constitutional court, would defeat the very purpose of the Act and the law laid down by the Hon'ble Courts, including the Hon'ble Supreme Court, merits acceptance.

6.9 Before concluding, I am conscious that the original respondent has disputed applicability of provisions of CPC to the present case as well raised other issues of suppression in contrast of which the original claimant has contended that CPC does apply and also that the original respondent cannot be permitted to by-pass the threshold of due diligence. However, since I am not inclined to entertain the petition on a

preliminary ground itself, I refrain from making any observations thereto since the same may prejudice rights of either party in the pending arbitration proceedings.

7. In view of above discussion, the Court finds no merit in the petition and the same is dismissed as being not entertainable under Article 226 and 227 of Constitution of India. Since this court has rejected the petition on the ground of entertainability, other grounds raised by the respective parties are not considered and dealt with. Needless to say that the views expressed hereinabove shall not have any bearing on the merits of the claim or counter-claims, keeping rights and contentions of both the parties open, even with respect to challenge to the final award to be rendered by the Ld. Arbitral Tribunal. Parties to bear their own cost.

With this, the present petition is dismissed.

sd/-

(MAUNA M. BHATT,J)

DIPTI PATEL...