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

% ***Judgment reserved on: 07.05.2026***
***Judgment pronounced on: 01.07.2026***

\+ ARB. A. (COMM.) 35/2026, CAV 212/2026, I.A. 12734/2026 (Stay), I.A. 12735/2026 (For lengthy list of dates) & I.A. 12736/2026 (Seeking permission to file arbitration documents in a compact disc or pen drive)

INDIA INTERNATIONAL CONVENTION AND EXHIBITION CENTRE LIMITED .....Petitioner

Through: Mr. N. Venkatraman, ASG along with Mr. K.R. Sasiprabhu, Mr. Debesh Panda, Mr. Vinayak Maini, Mr. Tushar Bhardwaj and Ms. Vidhatri Deoli, Advocates.

versus

LARSEN AND TOUBRO LIMITED .....Respondent

Through: Dr. Abhishek Manu Singhvi, Mr. Akhil Sibal and Mr. Kunal Tandon, Senior Advocates along with Mr. Avishkar Singhvi, Ms. Anuradha Mukherjee, Mr. Ajay Sawhney, Mr. Kapil Arora, Mr. Manmeet Singh, Ms. Palak Nagar, Mr. Aviral Singhal, Mr. Kartik Sharma, Ms. Priyansha, Ms. Sugandh Shahi and Ms. Divya Prabha Singh, Advocates.

**CORAM:**
**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR**

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

1. With the consent of the learned counsel appearing for the parties, the present Appeal was taken up for final hearing at the stage of admission itself. Having heard the parties extensively, the Appeal is being finally disposed of by this judgment.

2. The present Appeal has been preferred under Section 37(2)(b) of the **Arbitration and Conciliation Act, 1996**[1], assailing the **Order dated 03.04.2026**[2], passed by the learned **Majority Arbitral Tribunal**[3] in an Application preferred under Section 17 of the A&C Act during the pendency of Arbitral proceedings between the Appellant, **India International Convention and Exhibition Centre Limited**[4], and the Respondent, **Larsen & Toubro Limited**[5].

3. Learned Majority Arbitral Tribunal, by the Impugned Order, directed the Appellant to release amounts aggregating to approximately Rs. 227,18,46,552/- in favour of the Respondent within a period of six weeks in respect of Stage Payments SP-69 and SP-70 as an interim measure, while declining certain other reliefs sought in the said application. It is further noted that one of the learned Members of the Arbitral Tribunal rendered a dissenting opinion, taking a contrary view with respect to the grant of interim monetary relief.

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[1] A&C Act
[2] Impugned Order
[3] Majority Arbitral Tribunal
[4] IICECL
[5] L&T

4. Aggrieved by the Impugned Order, the Appellant has preferred the present Appeal, contending, *inter alia*, that the learned Majority Arbitral Tribunal has, at an interim stage, granted substantive monetary relief in favour of the Respondent notwithstanding the fact that the underlying disputes remain contested and are yet to be finally adjudicated upon.

5. Before proceeding further, this Court deems it appropriate to take note of the reliefs sought by the Respondent herein, who was the Claimant before the learned Arbitral Tribunal, in its application filed under Section 17 of the A&C Act. The said application formed the subject matter of adjudication in the Impugned Order. It is pertinent to note that the prayers originally sought in the said application were subsequently amended. Such an amendment was carried out after the learned Arbitral Tribunal had already conducted a partial hearing on the application in its original form. The amended prayers, as ultimately pressed and considered by the learned Arbitral Tribunal, read as under:

> "i. Injunct the Respondent from acting upon letter dated **October 26, 2024 bearing no. 1938** issued by the Respondent's Engineer recommending release of 'NIL' payment on account of alleged negative (disputed) variations;
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> ii. Injunct the Respondent from withholding and/or appropriating certified lawful dues upto **SP 70** to the tune of **INR 438,95,64,957.69 (Indian Rupees Four Hundred Thirty Eight Crores Ninety Five Lakhs Sixty Four Thousand Nine Hundred Fifty Seven and Sixty Nine Paise only)** contrary to the provisions of the Contract and direct a release **INR 438,95,64,957.69 (Indian Rupees Four Hundred Thirty Eight Crores Ninety Five Lakhs Sixty Four Thousand Nine Hundred Fifty Seven and Sixty Nine Paise only)** to the Claimant;
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> iii. Direct the Respondent to follow the terms of the Contract and certify Stage Payments to the tune of **INR 126,09,58,087.31**

pending certification upto SP 70 which values are carried forward in SP 71;

iv. After certification of **INR 126,09,58,087.31**, the Respondent be directed to release the payment in accordance with the terms of the Contract;

v. Direct the Respondent to refrain from unilaterally deducting a sum of **INR 6,27,47,890/- (Indian Rupees Six Crores Twenty Seven Lakhs Forty Seven Thousand Eight Hundred Ninety Only) from SP 68** towards alleged negative variations;

vi. Any other order or direction that this Hon'ble Tribunal may deem fit in the interest of justice."

***BRIEF FACTS:***

6. Shorn of unnecessary details, the facts germane to the institution of the present Appeal are as follows:

(a) The Appellant is a Special Purpose Vehicle constituted under the aegis of the Government of India for the development and management of the **India International Convention and Expo Centre Project at Dwarka, New Delhi**[6].

(b) It is noted that the Delhi Mumbai Industrial Corridor Development Corporation Limited, a company established by the Government of India, had issued a **Request for Qualification-cum-Proposal on 16.10.2017**[7] for the selection of **Engineering, Procurement and Construction**[8] contractors for detailed design, construction, testing and commissioning of the Project on an EPC basis.

(c) Pursuant to the RFQ&P issued for execution of the Project on an EPC basis, the Respondent, an EPC contractor engaged in execution of large-scale infrastructure projects, emerged as the

[6] Project
[7] RFQ&P
[8] EPC

successful bidder and, consequently, a **Contract dated 30.01.2018**[9] came to be executed between the parties.

(d) Under the said Contract, the Respondent was entrusted with the detailed design, construction, testing and commissioning of Phase-I works of the Project on a lump-sum basis.

(e) The contractual arrangement contemplated stage-wise payments to be released upon certification by an independent Engineer appointed under the Contract, *namely*, **AECOM India Pvt. Ltd.**[10], through **Interim Payment Certificates**[11] and stage-wise payments upon verification and certification of work executed by the Respondent.

(f) During the course of execution of the Project, disputes arose between the parties concerning various aspects of contractual performance, including change in scope of work, delay in completion of the Project and extension of time, withholding of payments, GST-related claims and costs allegedly incurred on account of *force majeure* events.

(g) A principal dispute also arose with respect to certain works which, according to the Appellant, formed part of the Respondent's original contractual scope but remained unexecuted, resulting in adjustments towards negative variations under the Contract. The Respondent, however, disputed the same and contended that such works did not form part of its original contractual obligations and were beyond the agreed scope of work.

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[9] Contract
[10] AECOM
[11] IPC

(h) In an attempt to resolve the disputes relating to the alleged negative variations and scope of work, the parties entered into conciliation proceedings on multiple occasions. However, the same did not fructify, and the disputes between the parties remained unresolved.

(i) Consequently, Arbitration came to be invoked, wherein the Respondent raised claims aggregating approximately Rs. 3000 crores against the Appellant.

(j) The Appellant contested the said claims and, in turn, raised counterclaims aggregating approximately Rs. 1056 crores, *inter alia*, on account of negative change in scope and liquidated/delay damages.

(k) During the pendency of the arbitral proceedings, disputes further arose concerning the release of payments under stage-wise payments, *namely*, SP-68, SP-69 and SP-70.

(l) The Appellant maintained that adjustments and withholding of amounts under the said certifications were contractually permissible on account of alleged negative variations and unexecuted works, whereas the Respondent contended that the certified amounts could not be withheld. Though certain amounts stood certified under the said stage payments, their release remained subject to reconciliation and adjustments arising out of the disputes between the parties.

(m) In the aforesaid backdrop, the Respondent preferred an Application under Section 17 of the A&C Act before the learned Arbitral Tribunal seeking interim reliefs, *inter alia*, for release of certified amounts, restraint against withholding and

deductions, and consequential interim directions concerning the disputed stage payments.

(n) The said Application was subsequently amended to include subsequent certifications and developments during the arbitral proceedings.

(o) The learned Majority Arbitral Tribunal, by way of the Impugned Order, partly allowed the Application and directed the release of amounts aggregating to approximately Rs. 227,18,46,552/- in respect of SP-69 and SP-70, while declining reliefs in respect of certain other stage payments. The learned Minority Member also rendered a dissenting opinion.

(p) Aggrieved by the said directions, the Appellant has preferred the present Appeal under Section 37(2)(b) of the A&C Act against the Impugned Order passed by the learned Majority Arbitral Tribunal.

***SUBMISSIONS ON BEHALF OF THE PARTIES:***

7. Learned **Additional Solicitor General**[12] appearing on behalf of the Appellant would, at the outset, submit that the Impugned Order suffers from a fundamental jurisdictional error since the learned Majority Arbitral Tribunal, while exercising jurisdiction under Section 17 of the A&C Act, has granted substantive monetary relief under the guise of an interim protective measure.

8. It would be contended that the jurisdiction under Section 17 of the A&C Act is essentially preservative and protective in nature and

[12] ASG

cannot be exercised in a manner that effectively results in a determination of disputed monetary claims.

9. Learned ASG would place his reliance upon ***Khurana Educational Society (Regd.) v. Smt. Shashi Bala***[13] and ***RCCIVL-RKIPL LLP v. RCC Infraventures Ltd. & Ors.***[14] to contend that the jurisdiction under Section 17 thereof cannot be employed to prejudge contentious issues or fasten substantive monetary liability where the underlying entitlement itself remains seriously disputed.

10. Learned ASG would submit that the learned Majority Arbitral Tribunal, by directing release of approximately Rs. 227.18 crores in favour of the Respondent, has effectively granted a portion of the very monetary relief claimed in the Arbitration, despite pleadings not being complete and evidence yet to be led.

11. It would be contended that the disputes between the parties involve serious questions of fact and contractual interpretation concerning the effect of Engineer certifications, the treatment of alleged negative variations, the scope of obligations under the Contract and the permissibility of withholding and adjustments, all of which require adjudication upon a full-fledged consideration of pleadings and evidence. He would submit that the Impugned Order thus partakes the character of a partial final adjudication and renders the trial on those issues substantially academic. It would further be contended that if any direction for payment of disputed monetary claims could at all be passed prior to final adjudication, the same

[13] 2026 SCC OnLine Del 1986
[14] 2025 SCC OnLine Del 7306

could only be by way of an interim award under Section 31(6) of the A&C Act and not under Section 17 thereof.

12. He would submit that such an exercise itself presupposes a clear and unequivocal admission on the standard analogous to Order XII Rule 6 of the **Code of Civil Procedure, 1908**[15], which is wholly absent in the present case. Reliance in this regard would be placed upon ***Evergreen Land Mark (P) Ltd. v. John Tinson & Co. (P) Ltd.***[16] to contend that where liability itself remains seriously disputed, no order directing payment or deposit can be granted as an interim measure.

13. Learned ASG would further submit that the Impugned Order grants, in substance, a mandatory direction for payment and therefore attracts a higher threshold than an ordinary interim injunction. It would be contended that ***Samir Narain Bhojwani v. Aurora Properties and Investments***[17] recognises that such relief requires the establishment of a strong case for trial and not merely an arguable *prima facie* case.

14. Learned ASG would further submit that the Respondent had failed to establish any urgency warranting the exercise of jurisdiction under Section 17 of the A&C Act. Learned ASG would further contend that the Impugned Order proceeds upon an erroneous understanding of the requirement of irreparable injury. It would be submitted that the Respondent seeks relief purely monetary in character and any eventual prejudice suffered by it is adequately compensable by damages and contractual interest.

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[15] CPC
[16] (2022) 7 SCC 757
[17] (2018) 17 SCC 203

15. It would further be submitted that the Respondent itself has asserted completion of the Project and therefore the plea that non-release of the disputed amounts would adversely impact cash flows or execution of works is inherently inconsistent.

16. He would, while placing reliance upon ***Dalpat Kumar v. Prahlad Singh***[18] and ***Bharat Heavy Electricals Ltd. v. DPC Engineering Project Pvt. Ltd.***[19], contend that financial inconvenience or business hardship cannot by itself constitute irreparable injury so as to justify the grant of interim relief.

17. Learned ASG would submit that the Impugned Order effectively rewrites the contractual framework agreed between the parties. It would be contended that under the Contract, the Engineer functions as an independent authority for the purposes of certification and determination of stage payments. According to the Appellant, the Engineer had certified no net payable amount in favour of the Respondent under Stage Payments SP-68, SP-69, SP-70 and SP-71, and revised SP-68 itself reflected a negative value of approximately Rs. 621 crores. It would be submitted that the Engineer's certifications constituted the contractual basis for adjustment and withholding of amounts and continued to remain operative at all material times.

18. Learned ASG would further submit that the learned Majority Arbitral Tribunal, while directing payment under SP-69 and SP-70, selectively relied upon portions of the underlying certifications while disregarding the express qualifications and caveats forming part thereof. It would be submitted that the said certifications were

[18] (1992) 1 SCC 719
[19] 2011 SCC OnLine Del 4378

expressly made subject to reconciliation and adjustments arising out of negative variations and contractual determinations. However, despite such qualifications, the learned Majority Arbitral Tribunal has treated the same as creating an unconditional obligation to make payment.

19. It would further be submitted that the learned Majority Arbitral Tribunal has not stayed or suspended the operation of the underlying Stage Payment Certificates, particularly SP-68 and SP-71, which continue to remain operative, and therefore, the directions issued by the learned Majority Arbitral Tribunal effectively alter the contractual mechanism agreed between the parties.

20. Learned ASG would further submit that the Respondent itself had acknowledged the possibility of adjustments under the contractual framework, and reference in this regard is made to the **Minutes of Meeting dated 17.02.2024**[20]. It would be contended that the Respondent cannot now contend that the amounts reflected in SP-69 and SP-70 stood completely insulated from any reconciliation or set-off exercise.

21. Learned ASG would further contend that the findings recorded by the learned Majority Arbitral Tribunal suffer from inherent inconsistencies and a lack of reasoning. It would be submitted that while the learned Majority Arbitral Tribunal found no *prima facie* case in respect of SP-68 and SP-71, it simultaneously proceeded to hold that a *prima facie* case existed in relation to SP-69 and SP-70 without assigning any cogent basis for such distinction, therefore, it would be contended that the said findings are irreconcilable,

[20] MoM

particularly when SP-69 and SP-70 derive their effect from and are intrinsically linked with revised SP-68.

22. Learned ASG would further submit that the learned Majority Arbitral Tribunal has failed to appropriately consider the Appellant's case on the balance of convenience. It would be contended that the Respondent has already received substantial payments under the Contract and, on the Appellant's own case, has in fact received amounts in excess of what is contractually payable. Learned ASG would submit that the risk of irreversible prejudice to the Appellant in the event the disputed sums are released and the Appellant ultimately succeeds in arbitration has not been examined at all.

23. Learned ASG would further submit that the learned Majority Arbitral Tribunal has undertaken an impermissible exercise akin to a mini-trial at an interlocutory stage by entering into issues concerning the interpretation of contractual provisions, Engineer certifications and competing claims of entitlement and in view thereof, it would be submitted that such an exercise transgresses the limited scope of jurisdiction under Section 17 of the A&C Act, and effectively prejudges issues which properly fall for final adjudication in arbitration.

24. Learned ASG would also submit that the Impugned Order suffers from serious procedural irregularities since several preliminary objections raised by the Appellant, including objections concerning the maintainability of the proceedings under Section 17 of the A&C Act, have neither been appropriately considered nor adjudicated. It would be contended that several contractual provisions, documentary

material and submissions advanced on behalf of the Appellant have either remained unaddressed or have been selectively considered.

25. Learned ASG would further submit that the process leading to the pronouncement of the Impugned Order demonstrates a complete lack of collegiality amongst learned members of the Arbitral Tribunal.

26. It would be contended that despite the dissenting member having recorded substantial disagreement with the proposed reasoning, the learned Majority Arbitral Tribunal proceeded without adequately addressing the concerns reflected therein. Learned ASG would submit that ***Muthu Construction - Salem v. Union of India***[21] and ***R. Venkataramaiah v. Southern Railway***[22] recognise that once parties consciously submit themselves to adjudication by an Arbitral Tribunal, meaningful deliberation amongst all members forms an integral component of a fair adjudicatory process and any departure therefrom impacts the principles of equality of arms and natural justice.

27. In view of the aforesaid, learned ASG would submit that the Impugned Order suffers from jurisdictional excess, procedural irregularity, perversity and patent inconsistencies and therefore warrants interference by this Court in exercise of appellate jurisdiction under Section 37 of the A&C Act and is liable to be set aside.

28. ***Per contra***, the learned Senior Counsel appearing on behalf of the Respondent would submit that the present Appeal proceeds on an erroneous understanding of both the nature of the Impugned Order and the scope of appellate jurisdiction under Section 37 of the A&C Act. It

[21] 2026 SCC OnLine Mad 524
[22] 2021 SCC OnLine Mad 2036

would be contended that the Impugned Order has been passed under Section 17 of the A&C Act and is merely interlocutory in nature, being subject to variation, modification and final adjudication by the learned Arbitral Tribunal itself.

29. Learned Senior Counsel would submit that, as recognised in ***Worldwindow Infrastructure Pvt. Ltd. v. Central Warehousing Corporation***[23] and ***RK Associates Hoteliers v. NHAI***[24], the scope of interference under Section 37 of the A&C Act remains limited, and this Court would not substitute its own view merely because another interpretation may be possible.

30. Learned Senior Counsel would further submit that the principal premise of the Appellant's challenge proceeds on an incorrect assumption that the amounts directed to be released by the learned Majority Arbitral Tribunal constitute disputed amounts. It would be contended that the amounts directed to be released under SP-69 and SP-70 are stage-wise payments which had already undergone the contractual certification mechanism and stood admitted and payable under the Contract. It would be submitted that under Clause 19.3.3 of the Contract, once payments stand certified, deductions arising out of changes in scope or withdrawal of works do not affect stage payments unrelated thereto and therefore such admitted amounts cannot be withheld by setting them off against disputed claims and counterclaims pending adjudication.

31. Learned Senior Counsel would submit that under the contractual framework, AECOM functions as an independent

[23] 2021 SCC OnLine Del 5099
[24] 2026 SCC OnLine Del 212

Engineer and the amounts under SP-69 and SP-70 had already undergone verification and certification before being recommended for release.

32. It would be contended that the recommendations made by the Engineer were unconditional insofar as release of payment was concerned, and the caveat attached thereto merely contemplated future accounting adjustments depending upon the eventual adjudication of disputes and did not qualify the recommendation for release itself. It would further be submitted that the Impugned Order itself, while discussing the contractual framework and the stage payment mechanism, records a similar understanding at Paragraph 112 thereof.

33. Learned Senior Counsel would further submit that the disputes concerning negative variations themselves form the principal dispute pending adjudication before the learned Arbitral Tribunal and continue to remain seriously contested between the parties. It would be contended that the Appellant seeks to equate admitted liabilities with unadjudicated counterclaims and thereby justify withholding of payments otherwise found payable under the Contract.

34. Learned Senior Counsel would submit that unadjudicated claims and counterclaims cannot be placed at par with admitted liabilities and therefore the Appellant cannot unilaterally determine liability and adjust disputed claims against amounts already certified and payable.

35. Learned Senior Counsel would further submit that assurances had also been furnished on behalf of the Appellant before the learned Arbitral Tribunal regarding the release of certified payments. In support thereof, reliance would be placed upon the Procedural Order

dated 15.05.2024, wherein the learned Arbitral Tribunal records the statement made on behalf of the Appellant that steps would be taken to ensure that running account bills pending for certification are processed and that payments certified as due to the Respondent are released.

36. It would be contended that the certifications under SP-69 and SP-70 arose in the backdrop of the aforesaid assurance, and therefore, the Appellant cannot now justify the continued withholding of the same amounts. It would further be submitted that the Respondent had never furnished any assurance or affirmation permitting the Appellant to release lesser amounts after effecting unilateral set-offs, as sought to be contended on the basis of the MoM.

37. Learned Senior Counsel would further contend that the Appellant's submission that interim monetary relief cannot be granted under Section 17 of the A&C Act is contrary to settled principles.

38. It would be submitted that Section 17(1)(ii)(e) of the A&C Act itself empowers the learned Arbitral Tribunal to pass such interim measures as may appear just and convenient, and ***Brace Iron and Steel Private Limited v. Tata Steel BSL Limited***[25] and ***Supertrack Hotels Pvt. Ltd. v. Friends Motel Pvt. Ltd.***[26] recognise that directions involving payment of money are not alien to the jurisdiction under Section 17 thereof where entitlement or admission stands sufficiently crystallised.

39. Learned Senior Counsel would also submit that the learned Majority Arbitral Tribunal has not finally adjudicated disputed claims

[25] 2020 SCC OnLine Del 3975
[26] 2017 SCC OnLine Del 11662

but has merely directed release of amounts already admitted and certified under the contractual framework.

40. Learned Senior Counsel would further submit that the learned Majority Arbitral Tribunal, after an exhaustive consideration of the pleadings, contractual provisions and rival contentions, has arrived at a finding that the balance of convenience lies in favour of the Respondent and has extensively considered the question as to whether interim monetary relief could be granted under Section 17 of the A&C Act.

41. It would be contended that the learned Majority Arbitral Tribunal has rightly observed that the consequences flowing from continued withholding of the amounts assume significance, and therefore the exercise of discretion by the learned Arbitral Tribunal cannot be interfered with merely because another view may also be possible.

42. Learned Senior Counsel would further seek to distinguish the judgments relied upon by the Appellant by contending that ***RCCIVL-RKIPL LLP*** *(supra)* concerned amounts which themselves formed part of disputed claims, unlike the present case, where the sums directed to be released had already crystallised through the contractual certification mechanism.

43. It would further be submitted that ***Khurana Educational Society*** *(supra)* arose in the context of *mesne* profits and therefore has no application to the present controversy, whereas ***Dalpat Kumar*** *(supra)* was rendered in a different statutory context and cannot be mechanically applied to the present proceedings, as all the judgments relied upon by the appellant are distinguishable as *chalk and cheese*.

44. Learned Senior Counsel would further submit that the Appellant's challenge on the ground of absence of collegiality amongst learned members of the Arbitral Tribunal is misconceived. It would be contended that the learned Majority Arbitral Tribunal had engaged in deliberative consultation and had shared draft opinions with the dissenting member, pursuant to which discussions and meetings were also held.

45. Learned Senior Counsel would submit that the allegation of absence of consultation is therefore contrary to the record. It would be further submitted that the dissenting member had not merely expressed disagreement with the ultimate decision of the learned Majority Arbitral Tribunal but had proceeded to make observations regarding the functioning of the Majority itself, and therefore, the Appellant cannot rely upon the dissenting opinion to contend that the adjudicatory process itself stood vitiated.

46. In view of the aforesaid, learned Senior Counsel would submit that the learned Majority Arbitral Tribunal has merely directed the release of admitted and certified amounts and has not finally adjudicated disputed claims or determined the rights of parties. Accordingly, it would be contended that no case for interference under Section 37 of the A&C Act is made out and the present Appeal is liable to be dismissed.

***ANALYSIS:***

47. This Court has heard learned counsel for the parties and, with their assistance, carefully perused the record of the present Appeal, including the pleadings and the Impugned Order passed by the learned Majority Arbitral Tribunal.

48. This Court considers it apposite, at the outset, to delineate the scope and ambit of appellate jurisdiction under Section 37 of the A&C Act, particularly in the context of interference with interlocutory orders rendered by an Arbitral Tribunal under Section 17 of the A&C Act. The contours of such jurisdiction are necessarily circumscribed, for the legislative scheme underlying the A&C Act evinces a clear intent to accord primacy to the autonomy of the arbitral process and to minimise judicial intervention, save in narrowly tailored situations expressly contemplated by statute.

49. A plain reading of Section 37 of the A&C Act reveals that the provision merely enumerates the categories of orders that are amenable to appellate scrutiny; it does not, in express terms, define the breadth or intensity of such scrutiny. Equally, the statute is conspicuously silent as to the parameters governing the Court's exercise of appellate power while examining an order passed by the Arbitral Tribunal under Section 17 of the A&C Act. This legislative silence is neither accidental nor inconsequential; rather, it signifies that the appellate jurisdiction is intended to be supervisory and corrective in nature, and not an avenue for rehearing the matter on the merits or substituting the discretionary determination of the Arbitral Tribunal with that of the Court. For the sake of completeness, Section 37 of the A&C Act is reproduced hereunder:

> **"Section 37. Appealable orders**. — (1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:
> (a) refusing to refer the parties to arbitration under section 8;
> (b) granting or refusing to grant any measure under section 9;

(c) setting aside or refusing to set aside an arbitral award under section 34.

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

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

(b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

***(emphasis supplied)***

50. At this juncture, this Court finds it apposite to delineate the contours and ambit of the jurisdiction exercisable under Section 37 of the A&C Act, as expounded by this Court in ***Indo Spirits v. Pernod Ricard India Pvt Ltd and Ors***[27], which reads as follows:

"**16**. At the outset, this Court notes that it is fully conscious of the limited scope of appellate jurisdiction under Section 37(2)(b) of the A&C Act. The legislative intent underlying Section 5 of the A&C Act mandates minimal judicial interference in arbitral proceedings. **17.** A Coordinate Bench of this Court in NHAI v. HK Toll Road (P) Ltd. has reiterated that an appellate court does not ordinarily interfere with discretionary orders passed by an Arbitral Tribunal. Interference is justified only where such discretion has been exercised arbitrarily, perversely, or in disregard of settled principles governing the grant or refusal of interim relief. The appellate court is not expected to substitute its own view merely because another view is possible; rather, it must confine itself to examining whether the Arbitral Tribunal adhered to settled legal principles. The relevant portion of the said judgment reads as follows:

"**56.** A perusal of the aforesaid judgments show that the appellate court while exercising powers/jurisdiction under Section 37 of the 1996 Act and more particularly under Section 37(2)(*b*) of the 1996 Act has to keep in mind the limited scope of judicial interference as prescribed under Section 5 of the 1996 Act. Section 5 of the 1996 Act clearly reflects the legislative intent to minmize judicial interference in the arbitration process. Unlike the appeals under other statutes, the appeals under the 1996 Act against the orders passed by the Arbitral Tribunal are subject to strict and narrow grounds. The 1996 Act aims at

[27] 2026 SCC OnLine Del 674

minimal court involvement, thereby to uphold the autonomy and efficiency of the arbitration process. (Reference: paras 64, 66, 68-70 of *Dinesh Gupta case*[13]).

**57.** The appellate court is not required to substitute its views with the view taken by the Arbitral Tribunal which is a reasonable or a plausible view except where the discretion is exercised arbitrarily or where the AT has ignored the settled principles of law. In fact, the whole purpose to bring the 1996 Act is to give supremacy to the discretion exercised by the AT. The appellate court is not required to interfere in the arbitral orders especially a decision taken is at an interlocutory stage. The appellate court is only required to see the whether the AT has adhered to the settled principles of law rather than reassessing the merits of the AT's reasoning.

**58.** A coordinate Bench of this Court in ***Tahal Consulting Engineers India (P) Ltd***. [2023 SCC OnLine Del 2069] *case* has observed as under: (SCC OnLine Del paras 36 and 38)

> "***36.*** L&T Finance lays emphasis on the need of the appellate court to bear in mind the basic and foundational principles of the Act and that being of judicial intervention being kept at the minimal. It also correctly finds that the power conferred by Section 37(2)(*b*) is not to be understood as being at par with the appellate jurisdiction which may otherwise be exercised by courts in exercise of their ordinary civil jurisdiction. This clearly flows from the foundational construct of the Act which proscribes intervention by courts in the arbitral process being kept at bay except in situations clearly contemplated under the Act or where the orders passed by the Arbitral Tribunal may be found to suffer from an evident perversity or patent illegality.
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> ***
>
> ***38.*** It would thus appear to be well settled that the powers under Section 37(2)(*b*) is to be exercised and wielded with due circumspection and restraint. An appellate court would clearly be transgressing its jurisdiction if it were to interfere with a discretionary order made by the Arbitral Tribunal merely on the ground of another possible view being tenable or upon a wholesome review of the facts the appellate court substituting its own independent opinion in place of the one expressed by the Arbitral Tribunal. The order of the Arbitral Tribunal would thus be liable to be tested on the limited grounds of

perversity, arbitrariness and a manifest illegality only."

**59.** To sum up, it is clear that in view of the limited judicial interference, the appellate court has to exercise its power only if the arbitral order suffers from perversity, arbitrariness and a manifest illegality."

**18.** A similar exposition of law is found in ***World Window Infrastructure (P) Ltd. v. Central Warehousing Corpn***, wherein it has been held that the scope of interference under Section 37 of the A&C Act against orders passed under Section 17 is extremely limited. The Co-ordinate Bench emphasized that Interlocutory Orders of an Arbitral Tribunal are inherently tentative and protective in nature, subject to modification at the stage of final award. Judicial restraint operates with even greater vigour at the interlocutory stage, as unwarranted interference may impede the arbitral process itself. The relevant portion of the said judgment reads as follows:

"**66.** The scope of interference, in appeal, against orders passed by arbitrators on applications under Section 17 of the 1996 Act is limited. This Court has already opined in ***Dinesh Gupta* v. *Anand Gupta*, 2020 SCC OnLine Del 2099, *Augmont Gold (P) Ltd.* v. *One97 Communication Ltd.*, (2021) 4 HCC (Del) 642]** and ***Sanjay Arora* v. *Rajan Chadha*, (2021) 3 HCC (Del) 654,** that the restraints which apply on the court while examining a challenge to a final award under Section 34 equally apply to a challenge to an interlocutory order under Section 37(*ii*)(*b*). In either case, the court has to be alive to the fact that, by its very nature, the 1996 Act frowns upon interference, by courts, with the arbitral process or decisions taken by the arbitrator. This restraint, if anything, operates more strictly at an interlocutory stage than at the final stage, as interference with interlocutory orders could interference with the arbitral process while it is ongoing, which may frustrate, or impede, the arbitral proceedings.

**67.** Views expressed by arbitrators while deciding applications under Section 17 are interlocutory views. They are not final expressions of opinion on the merits of the case between the parties. They are always subject to modification or review at the stage of final award. They do not, therefore, in most cases, irreparably prejudice either party to the arbitration. Section 17 like Section 9 is intended to be a protective measure, to preserve the sanctity of the arbitral process. The pre-eminent consideration, which should weigh with the arbitrator while examining a Section 17 application, is the necessity

> to preserve the arbitral process and ensure that the parties before it are placed on an equitable scale. The interlocutory nature of the order passed under Section 17, therefore, must necessarily inform the court seized with an appeal against such a decision, under Section 37. Additionally, the considerations which apply to Section 34 would also apply to Section 37(*ii*)(*b*)."
>
> ***(emphasis supplied)***

51. To augment the aforesaid position, it is apposite to refer to the decision of a Co-Ordinate Bench in ***Dinesh Gupta and Others v Anand Gupta and Others***[28], wherein the scope of appellate interference under the A&C Act has been succinctly delineated as follows:

> "**71.** Section 37 is, in a sense, a somewhat peculiar provision as, against the decision of the arbitrator, it provides for a first appeal, as well as a second appeal, to the High Court. Sub-section (1) provides for an appeal, to the High Court, from the decision of the Section 34 Court, before which the final award has, in the first instance, been tested. Sub -section (2), on the other hand, provides for a first appeal, against interlocutory orders of the arbitral tribunal under Section 16 or Section 17. There is, necessarily, a qualitative difference between these two challenges, though both would lie to the High Court. The challenge under Section 37(1), which is directed against a final award of the arbitrator/arbitral tribunal, is akin to a second appeal, as was observed by this Court in ***M.T.N.L. v. Fujitsu India Pvt. Ltd***.. The challenge under Section 37(2), on the other hand, is directed against the decision of the arbitral tribunal and has therefore, in my opinion, necessarily to conform to the discipline enforced by Section 5. It would, therefore, be improper for a Court to treat an appeal, under Section 37(2) of the 1996 Act, as akin to an appeal under the CPC, or as understood in ordinary - or extraordinary - civil law. An appeal against an order by an arbitrator, or by an arbitral tribunal, is an appeal sui generis, and interference, by the Court, in such appeals, has to be necessarily cautious and circumspect.
>
> **72.** This position would stand especially underscored where the order, under challenge, is discretionary in nature. Orders of arbitrators, or Arbitral Tribunals, which are amenable to appeal, under Section 37 (2), have, statutorily, to have been issued either under Section 16(2) or (3) or under Section 17. Section 16(2) and

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> 16(3), essentially, deal with rulings on the jurisdiction and authority of the arbitral tribunal, to arbitrate. Any order, passed under either, or both, of these provisions has, therefore, necessarily to partake of a purely legal character. Such an order would not, ordinarily, be discretionary in nature."
>
> ***(emphasis added)***

52. Having outlined the limited scope of interference under Section 37(2)(b) of the A&C Act, this Court also deems it apposite to briefly advert to the nature and ambit of the jurisdiction exercisable by an Arbitral Tribunal under Section 17 of the A&C Act. The contours of such power, being interlocutory and equitable in character, warrant consideration before this Court proceeds to examine the rival submissions on merits. The law in this regard has been succinctly enunciated by the Co-Ordinate Bench in ***Dinesh Gupta and Others*** *(supra),* wherein the scope and ambit of the jurisdiction exercisable under Section 17 of the A&C Act were examined in detail.

53. The said judgment clarifies that the power of an Arbitral Tribunal to grant interim measures under Section 17(1) is analogous and co-extensive with that of a civil court while exercising jurisdiction under Section 9 of the A&C Act, and consequently, the well-established principles governing the grant of interim injunctions, including those embodied in Order XXXIX of the CPC, would equally guide the exercise of such power. The relevant observations as made in ***Dinesh Gupta and Others*** *(supra)* are reproduced hereunder:

> "Section 17(1), and applicability of Order XXXIX, CPC, thereto
>
> **73.** As against this, orders which are appealable under Section 37(2)(b) are orders granting, or refusing to grant, interim measures under Section 17. Section 17(1), for its part, reads thus:
>
> "**17. Interim measures ordered by arbitral tribunal**.-
>
> (1) A party may, during the arbitral proceedings, apply to

> the arbitral tribunal – (i) for the appointment of a guardian for minor or person of unsound mind for the purposes of arbitral proceedings; or
> (ii) for an interim measure of protection in respect of any of the following matters, namely:—
> (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
> (b) securing the amount in dispute in the arbitration;
> (c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorizing for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, authorizing any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence; (d) interim injunction or the appointment of a receiver;
> (e) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient,
> and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it."

**74.** The concluding caveat, in Section 17(1), makes it abundantly clear that the power of an arbitrator, to grant interim measures, under Section 17(1), is analogous and equivalent to the power of a Court, to pass such orders. Section 9 of the 1996 Act grants co-equal jurisdiction, worded in identical terms, on the Court, to pass interim orders, concluding with a parallel caveat, to the effect that "the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it".

**75.** The scope and ambit of Section 9, especially in the light of this concluding caveat, was examined by the Supreme Court in ***Arvind Constructions Co. (P) Ltd. v. Kalinga Mining Corporation*** and ***Adhunik Steels Ltd. v. Orissa Manganese and Minerals (P) Ltd.***. In Arvind Constructions Co. (P) Ltd.29, it was held thus (in para 15 of the report):

> "The argument that the power under Section 9 of the Act is independent of the Specific Relief Act or that the restrictions placed by the Specific Relief Act cannot control the exercise of power under Section 9 of the Act cannot prima facie be accepted. The reliance placed on Firm Ashok Traders v. Gurumukh Das Saluja, (2004) 3 SCC 155 in that behalf does not also help much, since this Court in that case did not answer that question finally but prima facie felt that the objection based on

> Section 69(3) of the Partnership Act may not stand in the way of a party to an arbitration agreement moving the court under Section 9 of the Act. The power under Section 9 is conferred on the District Court. No special procedure is prescribed by the Act in that behalf. It is also clarified that the court entertaining an application under Section 9 of the Act shall have the same power for making orders as it has for the purpose and in relation to any proceedings before it. Prima facie, it appears that the general rules that governed the court while considering the grant of an interim injunction at the threshold are attracted even while dealing with an application under Section 9 of the Act. There is also the principle that when a power is conferred under a special statute and it is conferred on an ordinary court of the land, without laying down any special condition for exercise of that power, the general rules of procedure of that court would apply. The Act does not prima facie purport to keep out the provisions of the Specific Relief Act from consideration. … we may indicate that we are prima facie inclined to the view that exercise of power under Section 9 of the Act must be based on well-recognized principles governing the grant of interim injunctions and other orders of interim protection or the appointment of a Receiver."
>
> *(Emphasis supplied)*
>
> **76.** In ***Adhunik Steels Ltd., P.K. Balasubramanyan***, J. (who had also authored Arvind Constructions Co. (P) Ltd.), after a somewhat longer and more detailed discussion, reiterated the position that "it would not be correct to say that the power under Section 9 of the Act is totally independent of the well known principles governing the grant of interim injunction that generally governed the courts in this connection".
>
> **77.** The principles governing Order XXXIX of the CPC have, therefore, also to guide the Court, while granting interim protection under Section 9(1), or the arbitrator, while granting such protection under Section 17(1), of the 1996 Act."
>
> ***(emphasis supplied)***

54. The scope of Section 17 of the A&C Act has also been discussed by a Co-Ordinate Bench in ***Indian Railway Catering & Tourism Corpn. Ltd. v. Sujata Hotel (P) Ltd.***[29], which reads as under:

> "**21.** The aforesaid provision confers powers akin to those vested

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upon the Court by virtue of Section 9 except that in case of the latter, the Court stands vested with the authority to direct interim measures being taken before, during or for that matter even after the Arbitral proceedings have come to a close and culminated in the making of an award. As would be evident from a reading of Section 17, the interim measures are concerned with the preservation of goods which may form the subject matter of arbitration, securing any amounts which may be in dispute, the detention, preservation or inspection of property, the appointment of a receiver and directing such other interim measures of protection as may appear to the Arbitral Tribunal to be just and convenient.

**22.** As would be evident from the decisions on which reliance was placed by the claimant itself, the power conferred by Section 17 upon the Arbitral Tribunal is essentially akin to the powers vesting in a court to grant an interim prohibitory or mandatory injunction. Section 17 in any case cannot be construed as either conferring a power on the Arbitral Tribunal to either render an interim award or to grant one of the final reliefs which may be sought by a claimant. One of the principal considerations which courts and tribunals weigh in mind while considering the question of grant of interim protection, is to be wary of passing orders which amount to the grant of final reliefs that may be claimed by parties. However, and as would be manifest from the aforesaid recital of facts as well as the direction which was ultimately framed by the Arbitral Tribunal in the present case, it is exactly that basic and underlying principle governing the grant of interim injunction which has been evidently ignored and violated by the Arbitral Tribunal."

***(emphasis added)***

55. Having outlined the scope and ambit of interference under Section 37 of the A&C Act, as well as the nature and extent of the jurisdiction exercisable by an Arbitral Tribunal under Section 17 thereof, this Court deems it apposite, at this stage, to reproduce the relevant findings and reasoning recorded by the learned Majority Arbitral Tribunal in the Impugned Order while granting the reliefs in question. Since the validity and correctness of the said findings lie at the heart of the present challenge, it is considered necessary to set out the material portions of the Impugned Order to facilitate a proper appreciation of the issues arising for consideration and for the sake of

ready reference. The relevant extracts from the Impugned Order are reproduced hereunder:

> "**FINDINGS OF THE TRIBUNAL:**
>
> **80.** This Tribunal has heard the matter in detail and perused the pleadings made by the parties, documents filed and judicial precedents relied upon in their support.
>
> *****
>
> **82.** It is the case of the Respondent that the reliefs sought for by the Claimant cannot be given by way of an interim injunction by Arbitral Tribunal under Section 17. It is for the reasons that if the Arbitral Tribunal allows the application and directs the Respondent to make payment of amount certified in the Interim Payment Certificates as claimed by the Claimant, the Arbitral Tribunal would inevitably and finally be deciding the issues/disputed sums which form part of the counter claim of the Respondent.
>
> *****
>
> **84.** Since, the prayer remains the same even in the Amended Application except revising the figures of certified & uncertified dues, the Respondent states, that relief sought for can only be granted by the Arbitral Tribunal if it decides the issue and passes an 'interim award' U/Sec. 31(6) of the Act and not otherwise. Further, the Respondent submitted that even under Sec. 31(6) an 'interim award' directing the Respondent to make payment of amounts certified under the Interim Payment Certificates, can only be passed if the Arbitral Tribunal finds that there is an unqualified, unequivocal 'admission' made by the Respondent of the nature as contemplated under Order XII Rule 6 of the CPC.
>
> *****
>
> **87.** Having carefully considered the submission made by the Respondent in light of the prayer made by the Claimant, this Tribunal is of the view that the Respondent's preliminary objection regarding maintainability of application U/Sec.17 cannot be accepted and deserves to be rejected for the following reasons:
>
> i. The distinction & difference, which the Respondent has tried to make, on the powers of the Tribunal while exercising jurisdiction under Section 17 and Section 31, is not supported by the language of both the Sections, which is clear, in as much as existence of power to pass an *"interim award"* U /Sec. 31, does not take away the power of the Tribunal to order any *"interim measure"* U/sec. 1 7. The power U/Sec. 17 has neither been made subject to provisions of Section 31 or any other provision of the Act.
> ii. As evident from its title, Section 31 deals with *"Form and Contents"* of Arbitral award and prescribes *"How, Where and When"* of passing of arbitral awards. It does not deal

with *"Power"* or *"Authority"* or *"Jurisdiction"* of the Tribunal to pass or not pass any award or order. Whereas, Section 17 deals with power of Tribunal to pass an order of interim measure of protection, either in form of an *"injunction"* or in any other form as may appear to be *"just and convenient",* if the party so applies and the Tribunal so finds.

iii. In this way, the two Sections i.e. Section 31 and Section 17 operate in different fields, without there being any overlapping. The fact that under Section 31 the Tribunal is empowered to make an interim award on matter in respect of which it may make a final award, does not in any manner, curtail or whittle down the power of the Tribunal to pass an order of interim measure of protection, either as injunction or otherwise, on a matter in respect of which it may make a final award.

iv. There appears to be no reason to hold that *"interim measures"* shall not pertain to matters which are capable of being dealt with by the Tribunal either by passing *"interim award"* or *"final award".* If it is so held, then the liberty given to the parties to apply to the Tribunal for an interim measure of protection and consequent power of Tribunal to pass such an order would be taken away and Section 17 will be left completely redundant.

v. Further, an important difference between the two sections is that, while an *interim measure* U /sec. 17 may be modified, cease to operate or be vacated at any time before passing of the final award, an "interim award" issued U /Sec. 31 (6) on the other hand, attains finality vis-à-vis the subject matter of dispute and cannot be revisited by the Tribunal at the time of passing final award. It may simply subsume in the final award and becomes part of it unless set aside by a superior court.

*****

**89.** Whether the present case warrants issuance of an interim measure of protection u/Sec. 17 and whether the facts and circumstances of this case justify passing of such an order directing payment of amount under the Interim Payment Certificates by the Respondent to the Claimant is a separate issue, which shall be dealt with independently by this Tribunal on the merits of this Application. But that is not to say that this Tribunal cannot examine this issue and pass an order U /Sec. 17 of the Act.

**90.** Section 17 uses the phrase *"interim measures of protection"* and includes, both, *"interim injunction"* U/Sec. 17(1)(ii)(d) and *"such other interim measure of protection as may appear to the Tribunal to be just and convenient"* u/Sec. 17(1)(ii)(e), thereby making it clear that powers of the Tribunal are not restricted to issuing

injunctions, but also extend to any other interim measures if it appears to be just and convenient to the Tribunal.

**91.** Therefore, the Claimant's application for interim relief U / Sec. 17, the case of the Claimant can be examined from both points of view i.e. Section 17(1)(ii)(d) to issue *'interim injunction'* and/or Section 17(l)(ii)(e) to issue *'any other interim measure of protection if it appears to be just and convenient'* to the Tribunal.

**92.** In this quest, while the Tribunal analyses whether the Claimant's case justifies passing of an "interim injunction", the Tribunal is required to bear in mind the underlying principles of passing an 'interim injunction' which guide the Courts while exercising similar power U / Sec. 9, such as the provisions of Order XXXVIII & Order XXXIX and not Order XII Rule 6.

**93.** As regards, the reliance placed by the Respondent on the decision of *Zenit Metaplast (2009) 10 SCC 388* and *Samir Narain Bhojwani (2018) 17 SCC 203,* these decisions lay down a general proposition that an order of mandatory injunction at interlocutory stage should be passed only upon satisfaction of all essential factors such as *prima fade* case, balance of convenience and irreparable harm, so as to preserve a *status quo* or restore *status quo* if altered.

**94.** While this Tribunal agrees with the principle laid down by these judgments; the prayer made by the Claimant calls for issuing both mandatory as well as prohibitory injunction and this Tribunal cannot accept the submission of the Respondent that if this Tribunal injuncts the Respondent from adjusting/withholding the certified dues under interim payment certificates on account of re-conciliation of contract price due to negative variations, then it will not be restoring a *status quo* which existed when this arbitration began.

**95.** Therefore, this Tribunal deems it fit to proceed to examine the application made by the Claimant on both Section l 7(l)(ii)(d) to issue *'interim injunction'* and/or Section l 7(l)(ii)(e) to issue *'any other interim measure of protection if it appears to be just and convenient'* to the Tribunal. While examining the merits of the application from the point of view of an interim injunction, the Tribunal would examine the case of the Claimant on the following aspects.

**WHETHER IT IS A PRIMA FACIE CASE**

**96.** The Claimant has submitted that the facts and circumstances surrounding the present matter, satisfies the threshold of a *'prima facie'* case. For this purpose, the Claimant has relied upon the provisions of the Contract, the conduct of the Respondent, as evinced by some letters & correspondences exchanged between them and the conduct of the Respondent before this Tribunal. The Claimant also draws support from some judicial precedents which

have held that disputed sums cannot be permitted to be adjusted/withheld from admitted amount liable to be paid by one party of the contract to the other.

**97.** The Respondent has on the other hand negatived the submission made by the Claimant by submitting that a *prima facie* case can only be said to be made out, if it does not involve detailed interpretation of the contract to determine the rights & liabilities of the parties and when there appears to be an unambiguous, unqualified and uncontested admission or acknowledgment of the claim by the Respondent.

**98.** It is thus submitted by the Respondent, that in the facts and circumstances of the present case, the Respondent has acted purely in terms of the Contract which permits the Respondent to adjust/withhold payments liable to be made to the Claimant under IPCs and that the IPCs have been specifically caveated/ subjected to right of the Respondent to seek reconciliation of the overall contract price. In this way, the Respondent pleads that there is no admission and no prima facie case either.

**99.** Additionally1 the Respondent states that the adjudication of the claims raised by the Claimant in this application is intricately connected with Respondent's Counter-Claims and therefore it cannot be considered as a prima facie case established by the Claimant, unless the counter-claims are first adjudicated and rejected by the Tribunal. It is the submission of the Respondent that an adjudication of the claims made in this application is only possible with the help of evidence at the stage of trial and that this Tribunal must not endeavor to do so at this stage.

**100.** In examining whether a case 1s *prima facie* or not, the Tribunal is required to take a view on such facts which do not require to be proved by the Claimant/ Applicant, with the help of any evidence. Such facts may be in the form of provisions of contract between the parties, the communications exchanged between the parties or the conduct of the parties before the Tribunal.

**101.** While this Tribunal agrees with the precedents relied upon by the Respondent that an exercise which would require the Tribunal to draw an interpretation of the terms of contract or derive meaning out of correspondences between the parties, should ideally be not done at the stage of determining whether it is a *prima facie* case or not and that such an exercise would be required to be done at the trial of the suit/ claim, with the help of evidence.

**102.** However, at the same time, it must be appreciated that a Tribunal cannot take any view, leave aside *prima facie* view, without referring to the relevant provisions of Contract or to the correspondences between the parties. The line between what is and what is not, a *prima facie* case, is not easily discernible and to

arrive at either conclusion, the Tribunal cannot be prohibited from looking at the contract or correspondences between the parties.

**103.** The Tribunal does not agree with the submission made by the Respondent that order of "interim injunction" U /Sec. 17(1)(ii)(d), can only be passed if there is a unqualified clear "admission" on the part of the Respondent. None of the judicial precedents relied upon by the Respondent have held that an 'interim measure of protection in the form of interim injunction' can be passed by the Tribunal only on an 'admission'.

**104.** To restrict itself in looking for an "admission or "acknowledgment", whether unequivocal/unambiguous in the correspondences or conduct of the Respondent, would amount to taking a restricted view of *prima facie case.* Therefore, there may be cases, wherein without there being any 'admission' on part of the Respondent, the Claimant may still display a prima facie case for grant of interim injunction.

**105.** Keeping the aforesaid in mind, since the parties are asserting rights and liabilities *qua* each other based on the provisions of the Contract, it is pertinent to refer to the relevant provisions of the Contract. From a bare reading of the provisions of the Contract the following appears:

i. The Contact stipulates a fixed Price for the Scope of work stipulated therein; however, it also permits any Change in of Scope of the Contract (modification, addition or deletion) **(Clause 13.1)** and lays down that one of a Change of Scope can be brought about is when directed to be done by the Employer by giving a notice to Contractor **(Clause 13.2.1).**

ii. Consequently, such Change of Scope (negative or positive) results in a change of Contract Price (decrease or increase) if the parties mutually agree to the valuation of such Change in Scope **(Clause 13.2.2).**

iii. If the parties don't agree to valuation of any Change in Scope, Employer can direct the Contractor to proceed to perform the works under Change of Scope order at the rates & valuation done by it, till the matter of valuation is resolved in accordance with dispute resolution clause **(Clause 13.2.4).** In any case, total value of all Change of Scope orders cannot exceed ten percent of Contract Price **(Clause 13.4.2).**

iv. As regards payment to be made to the Contractor, the contract provides a mechanism **(Clause 19.3)** for release of payment to the Contractor in stages, on basis of a statement to be submitted by the Contractor g1v1ng details of the work done and amount payable thereof **(Clause 19.4).**

v. Within 7 days of receipt of stage payment statement from the Contractor, the Engineer is required to make a broad valuation of such stage payment statement and recommend release of 75% of such broad value determined by it, as 'part payment', till the time the Engineer issues an 'Interim Payment Certificate'. **(Clause 19.5.1)**

vi. Within 28 days of receipt of stage payment statement from the Contractor, the Engineer is required to determine and deliver the 'Interim Payment Certificate', certifying the amount due and payable to Contractor, after adjusting payment already released to Contractor against the said statement. **(Clause 19.5.2) Here the Engineer shall specify if any amount is deducted from the stage payment statement and the reasons thereof**

vii. The grounds on which the Engineer may make a deduction from the stage payment is specified in **Clause 19.5.4.,** which gives 4 grounds for enabling Engineer to withhold from payment such amount. These grounds are: **(a)** value of work which contractor failed to perform in accordance with Agreement and the Engineer had notified to the Contractor **(b)** cost of rectification work, if not done in accordance with contract **(c)** non-compliance or non-conformances and **(d)** deduction due to safety score as per Audit rating. In either case, the Engineer is required to records its reasons for doing so. The format of Interim Payment Certificate, which the Engineer has been issuing, has specifically provided for such grounds and reasons in support thereof.

viii. However, the Contract provides that any reduction in overall contract price due to negative change in scope brought about in the manner stipulated in the Contract., shall not affect the amount payable to contactor for any stage which is not affected by such change of scope **(Clause 19.3.3).**

ix. In case of difference of opinion as to valuation of any stage, the Engineer's view prevails and interim payment shall be made to the Contractor on this basis, without prejudice to right of Contractor to raise a dispute on the certified amount **(Clause 19.5.3).** Therefore, the receipt of certified payment by a Contractor does not indicate the acceptance of valuation to stage payment done by Engineer.

x. Similarly, any payment made by Employer to Contractor in accordance with the direction of the Engineer, shall not be deemed to indicate the acceptance, approval, consent or

satisfaction of the Employer, with the work performed by the Contractor. **(Clause 19.5.5).**

xi. Regardless, the Employer shall pay to Contractor any amount due under any payment certificate, within 35 days from the date when the Contractor submitted statement to Engineer. If the Engineer does not issue an IPC within time, the Employer is liable to make payment to Contractor as per the Statement submitted by Contractor to Engineer. **(Clause 19.9.1)** and in event failure of Employer to make payment an interest is required to be paid **(Clause 19.9.2).**

xii. Although, the Employer's Engineer has the power to make a correction or modification to any previous interim payment certificate which may have been issued by it. **(Clause 19.18)** However, a failure to issue an Interim Payment Certificate by the Engineer within 60 days after receiving the Stage Payment Statement from the Contractor has been deemed to be a default on the part of the Employer **(Clause 23.2.1.)** giving a right to the Contractor to terminate the Contract.

xiii. As regards, claims of the Employer against the Contractor, the Contract provides that if the Employer considers itself as entitled to any payment from Contractor under any Clause of this Agreement, the **Employer shall give a notice of its intention. to the** Contractor 20 days before making the recovery and the Employer shall take into consideration the representation made by the Contactor before making any recovery. **(Clause 19.19)**

xiv. Clause 12 titled as "Completion Certificate", provides for "Set-off of Contactor's Liabilities" wherein it mentions that the Employer shall have right to deduct or set-off the expenses incurred or likely to be incurred by it or any claim under this Agreement, from or against any amount payable to contractor under this agreement including retention money and proceeds of performance guarantee. **(Clause 12. 7)**

**106.** This being the mechanism stipulated in the contract for determining contract price, change of scope and stage payments, this Tribunal prima facie finds that the following can be understood from the bare perusal of the Contract:

i. The Contract provides for a Change of Scope Notice followed by an order of Change of Scope, so as to make any reduction/ addition in the Contract Price. If the parties, do not agree, the Employer can even issue a Change of Scope order and direct the Contractor to undertake the work at the rate stipulated therein. However, the

cumulative value of all the Change of Scope orders cannot exceed 10% of Contract Price.

ii. While a payment made by the Employer to the Contractor doesn't indicate acceptance, approval, consent or satisfaction of the Employer with the work performed by the Contractor. However, the Employer does not have a right to withhold the stage payment for such work, when once the stage payment statement is certified by the Engineer.

iii. Similarly, receipt of certified payment by the Contractor doesn't indicate the acceptance of the Claimant to the valuation made by the Engineer. However, since the Engineer's valuation is binding on both parties, the only right which the Contractor has is to raise a dispute as to valuation and get the same resolved in accordance with dispute resolution clause.

iv. The Engineer's authority to make 'adjustment' to the amount recommended in the interim payment certificate is only to the extent of the amount of money already paid to Contractor pertaining to the said interim stage payment statement, however, if any deduction is made from the IPC, the reasons for deduction shall be provided in the IPC.

v. That the Engineer has a right to make 'deductions' from the Stage Payment certificate on the grounds of failure of contractor to execute items of work in accordance with the Contract under Clause 19.5.4. However, "reconciliation of contract price on account of items of negative variations" is not one of the grounds which is contemplated by Clause 19.5.4.

vi. "Re-conciliation of contract price by taking into negative variations", is not specifically deal with by the Contract. It can either be done on basis of Change of Scope Orders or eventually at the time of final payment.

vii. The process of Change in Scope and reduction in Contract Price have been kept separate from the process of Interim Payment, as can be seen from Clause 19.3.3 which states that the payment for any stage shall not be affected by an overall reduction in Contract price, if the reasons for such reduction does not affect such stage.

**107.** In view of the aforesaid, it cannot be said that the Respondent has right to deny the amount of certified stage payment on basis of any dispute which is not pertaining to works perforn1ed under the relevant stage. The increase, decrease in contract price, resulting from a change in scope order, can only impact payment for such stages, which are affected by the change in scope and not otherwise.

**108.** Most importantly, it is not yet established by the Respondent whether the items of work referred in letter dated 10.04.2024 are indeed negative variations or not. In fact, the Respondent has pleaded that the withholding/ adjustment sought to be done is on the grounds of "breach of contractual" obligations done by the Claimant. Whereas the interim payment certificates and the letter accompanying the certificates mention that withholding/ adjustment is due to 'reconciliation of contract price by taking into account negative variation to scope of contract.

**109.** In the Counter Claim filed by the Respondent as well as in the Reply to the Claimant's Application, the Respondent has pleaded that 82 items of work, the non-performance/refusal of which amounts to negative variations, will have an effect of reduction in contract price. The same is evident from the following pleadings made by the Respondent in its reply to the Claimant's Application U /Sec. 17:

i. *"Counter claims towards the Change in Scope Orders with negative cost variation in the SOD & CC have been filed under Clause 13.2 of the Contract."* **(See Para 60, Page 32 of Reply to Application U/Sec. 17 filed by Respondent)**

ii. *"...L&T has time and again opted to wriggle out of its clear specifications under the Contract by either not doing the work as specified in the Contract or by refusing to submit necessary documents for IICC to process appropriate Change of Scope order with negative cost variations to L&T. "* **(See Para 56, Page 31 of Reply to Application U /Sec. 17 filed by Respondent)**

**110.** Whereas, at the same time the Respondent has also pleaded that the 82 items of work on account of which the Engineer has recommended withholding/ deduction/ set-off from Stage payment under Clause 19.5.4. amount to "breach of contractual obligations" by the Claimant. The same is evident from the following averments made by the Respondent in the reply filed by the Respondent to the Claimant's Application U /Sec. 17:

1. " *... have been rightfully withheld on account of breaches committed by L&T in the performance of the obligation under the Contract".* **(See Para 15, Page 10 of Reply to Application U/Sec. 17 filed by the Respondent)**

2. *" ... For reasons* set *out elaborately in the SOD* & CC, *IICC reiterates that L&T failed to complete the works under the Contract as per the scheduled completion dates and remained in continued breach by not completing the work even as per the extended timelines. »* **(See Para 19, Page 11 of Reply to Application U/Sec. 17 filed by the Respondent)**

3. "As is *evident from a plain reading of Clause 12. 7 and Clause 19. 5. 4 above, IICC has a contractual right to set off amounts, whether they have already been incurred or whether they shall accrue to the account of IICC. The only requirement for the right to set-off to be triggered* is *that the costs/ expenses that have been incurred or are likely to incur are a direct result of the breaches of L&T, which in this case, is beyond dispute."* **(See Para 32, Page 30 of Reply to Application U /Sec. 17 filed by the Respondent)**
4. *"..that L&T was in breach of Contract, and IICC has a right to retain, recover and set-off the amounts accruing* as *a result of such breach."* **(See Para 52. Page 29 of Reply to Application U/Sec. 17 filed by the Respondent)**
5. *"Therefore, IICC states that interim relief, the grant of which is discretionary, ought not to be granted to a party which is in* ***breach*** *of the Contract"* ***(See Para 57, Page 31 of Reply to Application U /Sec. 17 filed by Respondent)***
6. *"IICC states that L&T has been in* ***breach*** *of Contract by repeatedly failing to adhere to the timelines set out under the Contract and by not adhering to the scope of work under the Contract."* ***(See Para 81, Page 42 of Reply to Application U/Sec. 17 filed by IICC)***

**111.** Therefore, whether the items of work on account of which the Respondent denies the entitlement of Claimant are negative variations to the Contract resulting in reduction in contract price or breach of contract resulting in claim for damages, is itself not made clear by the Respondent. In fact, the issue of negative variations to contract price is a part of counter-claim by Respondent which has not yet been adjudicated.

**112.** Tribunal is of the prima fade view, that regardless of whether they are negative variations resulting in reduction in contract price or they are breach of contractual obligations resulting in claim for damages, it is clear that what the Respondent is seeking to do is to adjust/withhold/ set-off its unadjudicated claims, from the certified stage payments which the Claimant is otherwise fully entitled to receive in the scheme of the Contract.

**113.** The Tribunal has further examined the correspondences and letters exchanged between the parties, which is prima facie display of their conduct, so as to examine whether it can be said that a prima facie case has been established by the Claimant.

**114.** The Claimant pleads that it has a strong case for grant of interim relief on the basis of the following documents:

i. Stage Payment Certificate 68 *(towards work done by the Claimant from 0 1 Nov 2023 to 30th April 2024)* issued by the Engineer certifying a value of work done as Rs.

142,91,11,212/-. The SP-68 was however issued along with a letter dated 26.10.2024 by which the Engineer recommended the Respondent to release 'NIL' payment to Claimant under Clause 19.5.2. of the Contract, due to pending re-conciliation of contract price after taking into account the amount of negative variation notified to Contractor by Respondent vide its letter dated 10.04.2024.

ii. Stage Payment Certificate 69 *(towards work done by the Claimant from 01st May 2024 to 10th July 2024)* issued by the Engineer certifying a value of work done as Rs. 51,42,98,785/-. This SP-69 was however issued along with a letter dated 15.01.2025 by which the Engineer recommended the Respondent to release payment of Rs. 51,42,98,785/- to Claimant under Clause 19.5.2. of the Contract, subject to re-conciliation of contract price after taking into account amount of negative variation notified to Contractor by Respondent vide its letter dated 10.04.2024.

iii. Stage Payment Certificate 70 *(towards work done by the Claimant from 11th July 2024 to 31st Jan 2025)* issued by the Engineer certifying a value of Rs. 179, 17,95, 170 / -. This SP-70 was however issued with a letter dated 28.03.2025 by which the Engineer recommended the Respondent to release payment of Rs. 179,17,95,170/- to Claimant under Clause 19.5.2. of the Contract, subject to re-conciliation of contract price after taking into account amount of negative variation notified to Contractor by Respondent vide its letter dated 10.04.2024.

**115.** At this stage it is also pertinent to note that, the SP-68 which was initially issued by the Engineer on 26.10.2024, has subsequently been revised. The revised SP-68 was issued with a letter dated 15.01.2025, but served on the Claimant only on 09.04.2025. In the revised SP-68, the Engineer has certified the stage with a negative value of Rs. - 621,57,64,619/- after considering all items resulting in negative change of scope till 15.11.2024 *(i.e. till date of filing of Statement of Defence & Counter-Claim by Respondent).* In that way, SP-68 earlier certified for work done at Rs. 142,91,11,212/- was completely wiped out of existence.

**116.** Although this Tribunal would rather work out the rights of parties on the basis of provisions of the contract and the documents contemplated by the contract such as stage payment certificates and not mere correspondences. However, it will be too rash to ignore the letters accompanying the certificates which convey the intention of the parties and hence this Tribunal deems it fit to proceed to analyze the effect of the Stage Payment Certificates in

reference with the letters accompanying them and the provisions of the Contract.

**117.** As regards the SP- 68 initially issued by the Engineer (*at Page 69 to 72 of the Application dated 14.11.2024 filed by the Claimant),* while the Engineer certified an amount of Rs. 142, 91, 11,212/ - to be payable to Claimant for works done under that stage, the certificate itself did not bear any caveat or note qualifying the release of such payment. It was only in the letter dated 26.10.2024, when the Engineer mentioned that the payment against certified amount is subject to reconciliation of contract price after taking into account amount of negative variation notified to Contractor by Respondent vide its letter dated 10.04.2024. The Engineer consequently recommended 'NIL' for release of balance payments under Clause 19. 5. 2. of the Contract.

**118.** Therefore, while the work done by the Claimant pertaining to that stage is not denied or disputed by the Engineer, the sole reason for recommending release of 'NIL' payment is the reduction in contract price by negative variations to scope of contract. In the subsequently revised certificate for SP-68, the Engineer has gone one step ahead and valued the negative variations to the contract, resulting in a negative value of stage at Rs. 621,57,64,619/-.

**119.** Such action by the Engineer will need to be justified on the basis of the Contract existing between the Claimant and the Respondent. Considering the scheme of the contract between the parties, as stipulated by Clause 19. 3.3, a reduction in contract price will have no bearing on a stage payment, unless the stage is directly impacted by a reduction in scope of the contract. Further, in the present case, the Tribunal notes that the Respondent has neither issued any order for Change of Scope nor demonstrated why it has particularly chosen SP-68 only for giving effect to reduction in contract price by all items of negative variations.

**120.** It is a fact that from Stage Payment 1 to Stage Payment 68, the Respondent did not reduce the contract price by any item of negative variations and all stage payments were duly paid by the Respondent. It is also a fact that the dispute regarding items of negative variations and whether the scope of contract can be reduced on their account first arose between the parties in 2019 and from 2019 to 26.10.2024 none of stage payments were withheld/ adjusted by the Engineer /Respondent on account of such items of negative variations.

**121.** From perusal of letters, starting from 10.01.2024 upto 19.04.2025, as filed by the Claimant itself *(i.e. Annexure 1 to 13 of the Application dated 14.11.2024 and Annexure 1 to 10 of the Amendment Application dated 30.04.2025)* it is apparent that the issue of adjustment/withholding of further payment to Claimant was being disputed and had undergone several rounds of discussions and conciliation right from the year 2020. Therefore

although the Respondent had agitated or disputed the right of the Claimant to receive payment under certified stage payment certificates, it had never done so earlier and it has done so for the first time at the time of certified stage payment 68 onwards.

**122.** It thus appears abnormal and inexplicable to us as to why the Respondent suddenly chose SP-68 for giving effect to all items of negative variations, especially, when there was no consensus between the parties and when the same was already a subject matter of dispute which is presently pending arbitration before this Tribunal.

**123.** The Tribunal further finds that the adjustment/withholding has been done by the Respondent unilaterally at this stage, when admittedly the contract is still ongoing and has not been terminated. In terms of the Contract, a re-conciliation of contract price by taking into account effect of negative variations in scope of contract, if any, should be an exercise which should be done either by issuing necessary change of scope orders or eventually at the time of Final Payment under Clause 19.13.1, after taking into account any excess interim payment(s) which according to the Respondent, it 'Was not liable to make but has still made. This Tribunal therefore holds that such an exercise by the Engineer at the stage of interim payments is pre-mature and prima facie arbitrary.

**124.** Further, in contradiction to its own earlier approach, the Engineer has certified SP 69 & 70 (*at Page. 16 & Pg. 54 of the Amendment Application dated 29.04.2025 filed by the Claimant respectively)* with an amount of Rs. 51,42,98,785/- and Rs. 179, 17,95, 170/- respectively. Here, although the Engineer has caveated the certificate by mentioning that the payment against certification is subject to re-conciliation of contract price after taking into account amount of negative variation notified to Contractor by Employer vide its letter dated 10.04.2024, however the letters accompanying the SP 69 & SP 70 dated 16.01.2025 & 28.03.2025 respectively, do not recommended any withholding or adjustment or release of NIL balance payment. Rather the letters recommend the release of certified amounts of Rs. 51,42,98,785/- in SP 69 and Rs. 179,17,95,170 / - in SP 70.

**125.** It was in these circumstances therefore, the Claimant in its Application for Amendment dated 29.04.2025, sought to amend the prayer made by it in the original Application dated 14.11.2024. In the amended application, the Claimant stated that by virtue of certification of SP-69 by Respondent or.:. 15.01.2025 & SP-70 on 28.03.2025, an amount of Rs. 236,19,59,081/- has been certified by the Respondent cumulatively (Rs.48,00,51,352/ - for SP 69+Rs. 188,19,07,729/- for SP-70) which can be released to Claimant.

**126.** However, this Tribunal also notes that at Para 15 of its Amendment Application, the Claimant stated that there are some

discrepancies in SP-69 & SP-70 leading to **"higher certified value in favour of Claimant"** , and that the Claimant is relying only on **"admitted certified dues".** The Claimant however has not specified as to what were the discrepancies, what was its effect on the certified value and the correct certified dues to which it was entitled to.

**127.** Upon a closer look, this Tribunal finds that a higher certified value was only in SP-69 where the Engineer has certified Rs. 51,42,98,785/- whereas, the claimed amount was only Rs. 48,00,51,352/-. As regards, SP-70, while the claimed amount was Rs. 188,19.07.729/-. the Engineer has certified only Rs. 179,17,95,170/-. Thus, seen the statements made by the Claimant in Para, 4, 10 and 15 of its amendment application regarding the quantum of certified amounts, are partly true. Resultantly, the total certified amount after considering SP-69 & SP-70 cumulatively should be **Rs. 227,18,46,522/-** (i.e. Rs. 48,00,51,352 for SP-69 + Rs. 179,17,95,170/- for SP-70) and not Rs. 236,19,59,081/- as sought for by the Claimant.

**128.** We thus find that the Claimant's prayer that the amount of **"certified dues"** would need to be increased by the amount 236 Crores i.e. from 202 Crore to 438 Crore and the amount of **"uncertified dues"** would consequently stand reduced from 362 Crore to 126 Crore, is factually incorrect.

**129.** Another aspect which is noteworthy is as follows. In its Amendment Application, the Claimant has not accounted for the effect which the revised SP-68 dated 15.01.2025 (received by Claimant on 09.04.2025), would have on the overall amounts of uncertified/ certified dues.

**130.** It is important for the reasons that, the earlier SP -68 dated 26.10.2024 had certified a positive value of Rs. 142,91,11,212/-, although recommended release of 'NIL', whereas, the revised SP 68 dated 15.01.2025 has certified a negative value of (negative) Rs.621,57,64,619/-. Therefore, the prayer made by the Claimant seeking relief on basis of the earlier certified SP-68 for the value of Rs. 142,91,11,212/-is wrong because of substitution of SP-68 with the revised one with a negative value of Rs. 621,57,64,619/-.

**131.** It is noteworthy, that neither the Claimant nor the Respondent has not put forth any submission regarding the revision of SP 68 and its overall impact on figures of certified and uncertified dues mentioned in the prayer of the amendment application. The Claimant has only stated that the revision to SP-68 has been done by Respondent to belatedly improve upon their case and as an afterthought consequent to 1st Tranche of hearings of this Arbitral Tribunal (between 31.03.2025, 01.04.2025 and 02.04.2025).

**132.** Having gone through the correspondences and the provisions of the Contract, this Tribunal is convinced that the Claimant has a *prima facie* case in its favour.

**WHETHER THERE IS BALANCE OF CONVENIENCE**

**133.** While analyzing the case of the Claimant from the point of view of convenience which may be caused to Claimant by grant of injunction against Respondent or conversely the inconvenience which may be caused to Claimant by withholding injunction against Respondent, this Tribunal deems it fit to examine the case on aspects of nature of contract between the parties, current status of work under the contract and the payments made so far.

**134.** As regards the nature of contract, the Tribunal notes that Contract between the parties is a 'lumpsum' contract where on the basis of scope of project, a valuation of time and cost is done by the contractor and a bid is submitted.

**135.** In the scheme of a lump-sum contract, the contractor bears a heavier financial risk than the Employer, in terms of time value of money i.e. if the contractor finishes work early, the contract price will have more time value than if the contractor finishes work in delay. Therefore in a lump-sum contract which stipulates a mechanism of payment in stages after certification of each stage by an Engineer, the payment of stage payments within time assumes vital importance as compared to any other form of contract.

**136.** Keeping this in mind, when this Tribunal examines the facts from the point of view of progress of the work done by the Claimant under the Contract, it finds that the project was inaugurated and handed over to the Respondent on 17.09.2023 and has since then hosted several big national and international events. It is the case, of the Respondent that there are several items of work (snag items/punchlist items) which are yet to be completed without which it cannot be considered that the Project is fully complete and therefore a Completion Certificate has not yet been granted to the Claimant.

**137.** Although the Claimant admits that there are certain works (snag items/punchlist items) which are yet to be completed, however such works are minor as per the Claimant. Therefore, the fact remains that the Claimant has already gathered necessary resources and is ready and willing to perform the incomplete works (snag items/punchlist items) and the project is functional to the extent that it can host events. The Claimant is thus awaiting a Completion Certificate from the Respondent.

**138.** It is also relevant to note here that although the Respondent was contemplating the withholding/reduction/ set-off of values of items of negative variations from the IPCs since 2019-20, the Responde11t admittedly did not do so until SP-68 on 26.10.2024. Therefore, in the scheme of the contract is almost sudden and arbitrary, because the Claimant's IPCs till SP-65 were never withheld on account of alleged negative variations resulting in overall reduction in contract price.

**139.** In terms of the payment made so far, this Tribunal finds that the Original Contact Price of 2791 Crore underwent an overall increase by around 153-167 Crore and resultantly, the Contract price stood increased to 2950-2958 Crore. Out of the admitted revised Contract Price, an amount of around 2354- 2383 Crore has been paid to the Claimant till date. Meaning thereby that around 80% of the Contract Price has been paid to the Claimant and the around 20% remains to be paid.

**140.** At this stage even if this Tribunal ignores the fact that by virtue of the Claims made by the Claimant and Counter-Claims made by the Respondent in the present arbitration proceedings, the Contract price is likely to increase or decrease by around 700 to 800 Crores, it is clear that the Claimant remains underpaid even the admitted Contract price.

**141.** Therefore, on an overall consideration of the nature of contract, the status of completion of project vis-à-vis the amount of payment done to the Claimant and the Claims and Counter-Claims present pending adjudication of this Tribunal, this Tribunal is of the view that the balance of convenience lies in favour of granting the interim relief to the Claimant.

**WHETHER THERE IS IRREPARABLE INJURY /HARM**

**142.** As regards, the aspect of Irreparable Harm, the Respondent submitted that an order of interim protection cannot be issued in case wherein the only harm or injury contemplated by the Applicant is monetary loss. The Claimant submitted, that this cannot be accepted as a general proposition in all cases. The Claimant submitted that Order XXXIX Rule 10 itself contemplates a direction for payment of money by one party to the other and therefore there may be circumstances, wherein an interim injunction directing payment of money by one party to other may be necessary and that there cannot be a straightjacket formula for considering irreparable loss.

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**144.** Therefore, all the aforementioned decisions relied upon by the Respondent are to be read in the light of the facts of those cases and none of them have laid down a law applicable in rem that in claims of money, a Court/Tribunal can never pass an order of interim injunction directing payment/part-payment of
money by one party to the other. The only factor laid down is if the loss can be compensated by way of damages, the loss/harm cannot be considered as irreparable.

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**146.** Therefore, this Tribunal is of the considered view that 'irreparability' of harm is not to be assessed from the point of view of the subject matter of dispute or claim i.e. monetary or non-monetary. Rather, it is to be assessed from the point of view of the

consequence which are likely to fall on the Claimant if the relief is denied in the circumstances of the case.

**147.** For a project like the one at hand, cash flow is not only a fundamentally critical requirement, but any breach of that obligation, cast upon the Respondent, has the potential of jeopardizing the completion of the project. This is evident from a plain reading of Clause 4.1.3 (d) of the Contract which mandates release of the payment due and certified by the Engineer for the work done by the Claimant. The said Clause 4.1.3(d) reads as under:

> *"4.1.3. The Employer shall provide to the Contractor:*
> ###
> *(d) Ensure release of timely payments, advances, extra item approvals."*

**148.** It is clear from the scheme of the Contractual provisions and the letter and spirit thereof, that any breach of the Respondent's obligation to release the amounts due and payable would not only be illegal but it could also have the effect of preventing the Claimant from completing the project in accordance with the terms of the Contract. There is no gainsaying that an irreparable injury on account of such a breach will be implicit in the consequences flowing from the same, especially when the breach will bring the project to a grinding halt and resultantly cause an irreparable injury to the Claimant, both, in terms of frustrating the contract itself and also in terms of loss of reputation and the ability of the Claimant to undertake other works. Superadded to all this is the fact that even when the Respondent has held as many as 258 events at the Project facility and has been taking commercial benefits of the works undertaken by the Claimant, it has not so far issued the completion certificate in favour of the Claimant.

**149.** This is apart from the fact that according to the Claimant it has been paid only 79.6% of the total contract value so far and the Claimant feels that it has spent an amount of around 4822 Crores upto now, as against the original contract price of 2791 Crores. The decisions of the Delhi High Court in Brace *Iron & Steels Case (Supra)* and *Supertrack Hotels Pvt. Ltd's Case (Supra)* clearly support the Claimant's contention that merely because the protection which the Claimant prays for is in the nature of direction for payment of a monetary sum due to it, does not mean that a refusal of any such direction cannot cause an irreparable injury to justify the issue of specific direction. Suffice it to say that refusal of payment of certified amounts in the peculiar facts and circumstances of the case, lead to an irreparable injury to the Claimant, warranting an appropriate direction to prevent any such injury and resultant miscarriage of justice on the Court.

**150.** While it may be a normal practice that injunctions are not granted where there is no irreparable injury to the party seeking

injunction in matters involving money, because, parties can always be compensated later on by awarding interest, including penal interest. However, it must be realized that this rule of practice is not meant to perpetrate injustice. Businesses, especially large ones require a constant flow of finances to keep projects going, once the flow is interrupted, it will certainly lead to an irreparable injury. Further, the dimensions of the Contract require the Claimant to depend upon third parties to undertake works and make necessary payments depending upon the payments received from the Respondent.

**151.** Therefore, in the specific circumstances of the present case, the likelihood of an irreparable injury cannot be denied and this Tribunal accordingly holds that the Claimant's case satisfied this aspect for grant of an interim relief.

**CONCLUSION**

**152.** Seen from the point of view of the power of this Tribunal to pass an order of interim injunction U /Sec. 17 (l)(ii)(d) of the Act, this Tribunal is of the view that although a *prima facie* case is made out in respect of some claims (SP-69 & SP-70), however at the same time a prima facie case is not made out in respect of other claim (SP-68 & SP-71). Therefore, even though this Tribunal has come to a conclusion that the balance of convenience lies in favour of Claimant and an irreparable injury is likely to occur if injunction is not granted, however, this Tribunal is of the view that all the relief s prayed for by the Claimant cannot be justified and therefore an order of injunction in terms of all the prayer is not warranted and thus the prayer made by the Claimant is denied.

**153.** We must make it clear that the aspect "balance of convenience" relates to the comparative convenience inter se the parties to the dispute and it is a judicially evolved principle on which the grant of an 'interim injunction' u/Sec. 17(1)(ii)(e) of the Act depends. However, it is not to be confused with the word "convenience" which appears in Section 17(1)(ii)(e).

**154.** The term "convenience" appearing in Section 17(l)(ii)(e) relates to the power of the Tribunal in the given facts and circumstances of a case, which gives the Tribunal a power to pass any order of interim relief, other than those stipulated in Sec. 17 (l)(ii)(a) to (d).

**155.** This Tribunal finds that m the specific facts and circumstances of this case, considering the fact that the progress of the project, which is iconic and of national importance, should not be impeded in any manner and at the same time the Claimant shouldn't suffer financial constraints in completing the said project, this Tribunal is required to pass an interim order of relief. Therefore, for protecting the interest of both the parties as well as the subject matter of

dispute, this Tribunal deems it "just and convenient" to pass the following interim orders U /Sec. 17(1)(ii)(e) of the Act:

i. The Application filed by the Claimant for amending its Application U / Sec. 17 of the Act, is allowed.

ii. The Respondent shall make payment of Rs. 48,00,51,352/- certified in SP 69 and Rs. 179,17,95,170/- certified in SP 70 to the Claimant within a period of 6 weeks from the date of this order.

ii. The dispute regarding impact of reduction 1n overall contract price by value of alleged negative variations *(whether principally agreed between the parties or not)* on certification of work in SP-68 at Rs. 142, 91, 11,212 /- or Rs. 621,57,64,619/-, will be decided by this Tribunal after the parties have lead their evidence.

**156.** We further make it clear, that the observations of this Tribunal while deciding this application U/ Sec.17 are taken on a *prima facie* view and will be subject to the findings after the evidence is finally heard."

56. A careful reading of the aforesaid extracts from the Impugned Order reveals that the learned Majority Arbitral Tribunal first addressed the Appellant's preliminary objection regarding the maintainability of the Respondent's application under Section 17 of the A&C Act. The Appellant had contended that the relief sought by the Respondent, *namely*, a direction for payment of amounts certified under the IPCs, could not be granted by way of an interim measure and would effectively amount to a final adjudication of disputed claims.

57. Rejecting the said objection, the learned Majority Arbitral Tribunal held that the power to grant interim measures under Section 17 of the A&C Act is independent of, and distinct from, the power to render an interim award under Section 31(6) of the A&C Act. Having held the application to be maintainable, the learned Majority Arbitral Tribunal proceeded to examine the Respondent's entitlement to

interim relief on merits by applying the well-settled principles governing the grant of interim protection.

58. Accordingly, the learned Majority Arbitral Tribunal undertook an elaborate examination of the existence of a *prima facie* case, the balance of convenience, and the likelihood of irreparable injury. Upon finding each of these requirements to be satisfied in favour of the Respondent, the learned Majority Arbitral Tribunal, by way of the Impugned Order, directed the Appellant to release an aggregate amount of approximately Rs. 227,18,46,522/- towards Stage Payments SP-69 and SP-70 within a period of six weeks as an interim measure of protection, while declining certain other reliefs claimed by the Respondent.

59. However, before examining the correctness, legality, and propriety of the aforesaid directions, and before considering whether the learned Majority Arbitral Tribunal could have exercised its jurisdiction under Section 17 of the A&C Act in the manner it did, this Court considers it necessary to closely scrutinise the reasoning adopted by the learned Majority Arbitral Tribunal while applying the aforesaid threefold test. Since the Impugned Order proceeds substantially on the basis of the learned Majority Arbitral Tribunal's findings regarding the existence of a *prima facie* case, the balance of convenience, and the likelihood of irreparable injury, it becomes necessary to independently assess the nature and extent of the learned Majority Arbitral Tribunal's examination on each of these aspects.

60. Such an exercise is essential not only for determining whether the conclusions ultimately arrived at by the learned Majority Arbitral Tribunal are sustainable in law, but also for evaluating whether the

relief granted under the guise of an interim measure remained within the permissible contours of Section 17 of the A&C Act.

61. While examining whether a *prima facie* case existed in favour of the Respondent herein, the learned Majority Arbitral Tribunal undertook a detailed examination of the relevant contractual provisions governing the relationship between the parties, the pleadings exchanged between them, the contemporaneous correspondence, and the overall factual matrix surrounding the dispute. Upon such consideration, the learned Majority Arbitral Tribunal concluded that no *prima facie* case was made out in respect of SP-68; however, a strong *prima facie* case existed in relation to SP-69 and SP-70. The underlying reasoning adopted by the learned Majority Arbitral Tribunal while arriving at the said conclusion, though not exhaustive, may be summarised as follows:

(a) A *prima facie* case does not require an unequivocal admission by the Appellant. The learned Majority Arbitral Tribunal rejected the argument that interim relief can only be granted where there is a clear acknowledgment of liability. A *prima facie* case may exist even in the absence of any admission if the contractual framework and surrounding circumstances indicate a probable entitlement.

(b) The Contract distinguishes between interim stage payments and disputes regarding overall contract price adjustments. The contractual scheme provides separate mechanisms for (*i*) certification and payment of stage-wise work executed and (*ii*) adjustments arising from changes in scope or reductions in contract price. These processes are not intended to be conflated.

(c) Certified stage payments cannot ordinarily be withheld for disputes unrelated to the particular stage of work certified. Once the Engineer certifies work executed under a stage payment certificate, the Employer's right to withhold payment is limited to the grounds specifically enumerated in the Contract.

(d) The grounds for deduction under Clause 19.5.4 of the Contract do not include reconciliation of contract price due to alleged negative variations. The Contract permits deductions only on specified grounds such as defective work, rectification costs, non-compliance, or safety-related issues. Adjustment on account of disputed negative variations is not expressly contemplated.

(e) Any reduction in contract price arising from changes in scope must ordinarily be implemented through the contractual change-of-scope mechanism or at the stage of final account settlement. The Appellant had not demonstrated compliance with this contractual process before withholding certified payments.

(f) The Appellant's position was internally inconsistent. At some places, it characterised the disputed items as "*negative variations*" leading to a reduction in contract price, while elsewhere it described them as breaches of contractual obligations giving rise to damages. The learned Majority Arbitral Tribunal found that even the basis of the withholding remained unclear and unadjudicated.

(g) The Appellant was effectively attempting to set off unadjudicated claims against certified amounts otherwise payable to the Respondent herein. Whether the alleged claims

were characterised as damages or reductions in scope, they had not yet been determined and therefore could not *prima facie* justify withholding certified payments.

(h) The Engineer's treatment of SP-68 appeared inconsistent with the contractual framework. Although the work executed under that stage was certified, payment was withheld solely on account of alleged negative variations, despite no corresponding change-of-scope orders having been issued.

(i) The Appellant's conduct departed from its own long-standing practice. For several years, despite disputes regarding negative variations, all prior stage payments had been processed and paid. The sudden decision to impose adjustments beginning with SP-68 appeared unusual and unexplained.

(j) The timing and manner of the withholding suggested arbitrariness. The Appellant sought to implement disputed reductions while the contract was still subsisting and before the underlying disputes had been adjudicated, even though such reconciliation could appropriately be undertaken through change-of-scope orders or at the final payment stage.

(k) The treatment of SP-69 and SP-70 further weakened the Appellant's case. While the Engineer attached caveats regarding future reconciliation, it nevertheless certified the amounts and recommended their release, indicating inconsistency in the Appellant's approach.

(l) The revised SP-68 raised serious questions that required adjudication at trial. The transformation of a previously certified positive amount into a substantial negative value

reinforced the existence of a live dispute rather than conclusively establishing the entitlement of the parties.

(m) Taken together, the contractual provisions, certified payment certificates, correspondence between the parties, and the Appellant's inconsistent conduct demonstrated a credible and arguable entitlement in favour of the Respondent herein.

(n) Accordingly, the learned Majority Arbitral Tribunal concluded in favour of the Respondent herein and held that it had established a sufficient *prima facie* case for the purposes of seeking interim protection.

62. Having arrived at the conclusion that a *prima facie* case existed in favour of the Respondent herein in respect of SP-69 and SP-70, the learned Majority Arbitral Tribunal proceeded to examine the second limb of the well-settled triple test, *namely*, whether the balance of convenience lay in favour of the grant of interim relief.

63. For this purpose, the learned Majority Arbitral Tribunal considered the nature of the contractual arrangement, the stage and status of completion of the project, the payment position between the parties, and the practical consequences likely to ensue from either granting or refusing the relief sought. Upon such consideration, the learned Majority Arbitral Tribunal held that the balance of convenience favoured the Respondent herein. The underlying reasoning adopted in this regard, though not exhaustive, may be summarised as follows:

(a) The learned Majority Arbitral Tribunal considered the nature of the contract, the status of completion of the project, and the

payment position between the parties to determine where the balance of convenience lay.

(b) Since the Contract is a lump-sum contract, the contractor bears substantial financial risk associated with delays and the time value of money. Consequently, the timely release of certified stage payments is of critical importance under the contractual framework.

(c) The project has already been substantially completed, inaugurated, and handed over to the Appellant, and has hosted several national and international events. This demonstrates that the project is functional and has achieved its intended commercial purpose.

(d) Although certain snag or punch-list items remain incomplete, the Respondent herein has acknowledged their existence, expressed readiness and willingness to complete them, and awaits issuance of the Completion Certificate. The remaining works are not of such a nature as to render the project non-functional.

(e) The Appellant had been aware of and raising concerns regarding alleged negative variations since 2019-2020, yet it continued to process and release payments under earlier IPCs. The decision to begin withholding payments only from SP-68 onwards appeared sudden, inconsistent, and *prima facie* arbitrary.

(f) A significant portion of the contract price has already been admitted and paid, with approximately 80% of the revised

contract value having been released. Nevertheless, around 20% of the admitted contract value remains unpaid.

(g) Even without considering the parties' competing claims and counterclaims, which may ultimately alter the contract value by several hundred crores, the Respondent herein appears to have not yet received the entirety of the admitted contract price.

(h) The withholding of certified payments, therefore, places a greater immediate financial burden on the Respondent herein, particularly in the context of a lump-sum contract where cash flow and timely payment are integral to the contractual bargain.

(i) On the other hand, the Appellant's interests remain protected because its claims and counterclaims are already pending adjudication before the learned Arbitral Tribunal and can be appropriately determined in the arbitral proceedings.

(j) Considering the advanced stage of project completion, the readiness of the Respondent herein to complete residual works, the substantial unpaid portion of the admitted contract price, and the pendency of the parties' competing claims, the learned Majority Arbitral Tribunal concluded that the balance of convenience favoured granting interim relief to the Respondent herein.

64. The learned Majority Arbitral Tribunal thereafter proceeded to examine the third and final requirement governing the grant of interim relief, *namely*, whether denial of relief would result in irreparable injury to the Respondent herein.

65. While undertaking this exercise, the learned Majority Arbitral Tribunal distinguished the authorities relied upon by the Appellant

and substantially accepted the line of reasoning advanced on behalf of the Respondent herein. Upon an assessment of the contractual framework, the nature of the project, and the consequences of continued withholding of certified payments, the learned Majority Arbitral Tribunal concluded that the requirement of irreparable injury stood satisfied. The broad reasoning adopted by the learned Majority Arbitral Tribunal in this regard, though not exhaustive, may be summarised as follows:

(a) The learned Majority Arbitral Tribunal rejected the Appellant's contention that interim relief can never be granted in disputes involving monetary claims. It held that there is no absolute rule prohibiting interim directions for payment merely because the relief sought is monetary in nature.

(b) The correct test is not whether the underlying claim concerns money, but whether denial of relief would cause consequences that cannot be adequately remedied later through damages or interest.

(c) Judicial precedents relied upon by the Appellant only establish that where a loss is fully compensable by damages, the injury is not irreparable; they do not prohibit interim monetary relief in all circumstances.

(d) Irreparable harm must be assessed from the practical impact of withholding relief on the Respondent herein, rather than from the nature of the claim itself.

(e) In the context of a large infrastructure project, continuous cash flow is fundamental to the performance of the contract. Timely

payment is not merely a financial obligation but an essential contractual requirement necessary for completion of the project.

(f) The Contract itself recognises the critical importance of timely payments by expressly obligating the Respondent herein to ensure prompt release of certified amounts and approvals necessary for project execution.

(g) Failure to release certified payments has the potential to disrupt or halt project execution, thereby frustrating the contractual arrangement and causing consequences that cannot be fully compensated through a later monetary award.

(h) The learned Majority Arbitral Tribunal considered that withholding payments could adversely affect the Respondent's business operations, reputation, and capacity to undertake or complete ongoing and future projects, resulting in injury extending beyond mere financial loss.

(i) The Appellant had already derived substantial commercial benefit from the project, including hosting numerous events at the facility, while continuing to withhold payments and not issuing the Completion Certificate, thereby exacerbating the prejudice to the Respondent herein.

(j) The Respondent herein asserted that it had incurred expenditure substantially exceeding the original contract value while receiving only a portion of the amounts it claimed were due, demonstrating the serious financial impact of continued non-payment.

(k) The learned Majority Arbitral Tribunal accepted the principle that refusal to release certified and contractually payable

amounts, in the peculiar facts of the case, could itself result in irreparable injury, notwithstanding that the relief sought is monetary.

(l) While courts ordinarily avoid granting injunctions in money claims because delayed payments can often be compensated through interest, that principle is a rule of practice and cannot be applied mechanically where doing so would cause substantial injustice.

(m) Large commercial projects depend on uninterrupted funding and payments to contractors, subcontractors, and other third parties. Interruption of this financial flow may produce consequences that cannot later be cured merely by an award of damages or interest.

(n) Considering the scale of the project, the contractual obligation of timely payment, the Respondent's dependence on continuing cash flow, and the potential disruption to project completion and business reputation, the learned Majority Arbitral Tribunal concluded that denial of relief would likely cause irreparable injury to the Respondent herein.

(o) Accordingly, the learned Majority Arbitral Tribunal held that the requirement of irreparable harm was satisfied and that interim protection was warranted.

66. Having examined the three well-settled requirements governing the grant of interim relief, *namely*, the existence of a *prima facie* case, balance of convenience, and likelihood of irreparable injury, the learned Majority Arbitral Tribunal proceeded to determine the nature

and extent of relief that could appropriately be granted under Section 17 of the A&C Act.

67. The learned Majority Arbitral Tribunal concluded that although the Respondent herein had succeeded in establishing the aforesaid requirements in certain respects, such findings did not automatically justify the grant of all reliefs sought in the application.

68. The learned Majority Arbitral Tribunal observed that a distinction was required to be maintained between claims that stood *prima facie* established and claims that remained seriously disputed and would require adjudication upon evidence.

69. While the amounts certified under SP-69 and SP-70 were found to be *prima facie* payable and capable of forming the basis of an interim measure, the disputes pertaining to SP-68 and SP-71 involved contentious questions concerning alleged negative variations, revisions to certified values, and competing contractual interpretations, all of which could only be conclusively determined after the parties had led evidence. Consequently, the learned Majority Arbitral Tribunal declined to grant the entirety of the relief claimed by the Respondent herein.

70. At the same time, the learned Majority Arbitral Tribunal held that the circumstances of the case warranted the grant of an interim measure under Section 17(1)(ii)(e) of the A&C Act on the ground that such a course was "*just and convenient*". Taking into account the nature and national importance of the project, the need to ensure that its progress and completion remained unaffected, and the perceived financial prejudice likely to be caused to the Respondent herein on account of continued withholding of certified amounts, the learned

Majority Arbitral Tribunal fashioned what it considered to be a balanced interim arrangement.

71. Accordingly, the Appellant was directed to release the amounts certified under SP-69 and SP-70 within a period of six weeks, while the dispute relating to SP-68, including the impact of the alleged negative variations and reduction in the overall contract price, was expressly left open for determination after the parties had led evidence during the arbitral proceedings.

72. Upon a consideration of the reasoning adopted by the learned Majority Arbitral Tribunal, this Court is of the view that, quite apart from the correctness of the individual conclusions ultimately reached by the learned Majority Arbitral Tribunal, certain inherent inconsistencies appear to permeate the foundational parameters applied by it while granting the impugned reliefs.

73. This Court finds that there exists an apparent disconnect between some of the principles recognised by the learned Majority Arbitral Tribunal and the manner in which those principles were ultimately applied to the facts of the case. Certain findings recorded by the learned Majority Arbitral Tribunal also appear, at least *prima facie*, to be difficult to reconcile with one another. It is these broad inconsistencies in the reasoning process, rather than a mere disagreement with the conclusions reached, that warrant closer scrutiny by this Court in exercise of its appellate jurisdiction under Section 37 of the A&C Act.

74. This Court is conscious of the settled principle that an Arbitral Tribunal enjoys considerable procedural autonomy and discretion while conducting arbitral proceedings and while considering

applications seeking interim measures under Section 17 of the A&C Act. Equally, judicial interference with orders passed by an Arbitral Tribunal must remain limited and must not degenerate into a re-appreciation of the entire matter as if the Court were exercising original jurisdiction.

75. Nevertheless, the duty of this Court does not end with mere deference to the Tribunal's discretion. This Court is equally obligated to ensure that such discretion has been exercised upon sound legal principles and within the confines of the jurisdiction vested in the Tribunal by law. The intensity of judicial scrutiny may vary depending upon the nature of the jurisdiction being exercised.

76. While the scope of examination under Section 11 of the A&C Act operates in an altogether different sphere, and the jurisdiction under Section 34 of the A&C Act remains narrow and circumscribed, the appellate jurisdiction under Section 37 of the A&C Act permits a comparatively broader examination to the extent necessary to correct jurisdictional errors, legal infirmities, or manifestly erroneous approaches adopted by the Arbitral Tribunal.

77. It is equally well settled that the mere possibility of another view being taken on the same set of facts is not, by itself, a sufficient ground for interference even in proceedings under Section 37 of the A&C Act. However, having regard to the peculiar facts of the present case and the reasoning reflected in the Impugned Order, this Court is of the considered opinion that the learned Majority Arbitral Tribunal has, *ex facie*, travelled beyond the permissible limits governing the exercise of jurisdiction under Section 17 of the A&C Act and has committed errors which warrant examination by this Court.

78. At this stage, it is necessary to clarify that this Court is not required to undertake a threadbare analysis of every observation, finding, or factual determination recorded by the learned Majority Arbitral Tribunal. Nor is it expected to reassess the merits of the rival claims as would be undertaken at the stage of final adjudication.

79. The exercise before this Court is confined to examining whether the broad and determinative foundations upon which the impugned directions have been issued are legally sustainable and consistent with the nature of the jurisdiction exercised by the Tribunal while passing the Impugned Order. It is the legality of the underlying approach, rather than the correctness of each factual conclusion, that falls for consideration before this Court.

80. As noticed hereinabove, a Coordinate Bench of this Court in ***Dinesh Gupta and Others*** *(supra)* has explained that the concluding portion of Section 17(1) of the A&C Act makes it abundantly clear that the powers conferred upon an Arbitral Tribunal to grant interim measures are intended to be analogous to the powers exercisable by a civil court while granting similar reliefs. The said principle finds reflection in Section 9 of the A&C Act as well, which confers co-extensive powers upon courts to grant interim measures and concludes with an identical stipulation that the court shall possess the same powers as are available in relation to proceedings before it.

81. At the same time, this Court finds considerable force in the observations made by another Coordinate Bench in ***Indian Railway Catering & Tourism Corpn. Ltd.*** (*supra*), wherein it was held that although the powers under Section 17 of the A&C Act are akin to those exercised by courts while granting interim prohibitory or

mandatory injunctions, such powers cannot be construed as authorising an Arbitral Tribunal to render, under the guise of interim protection, what is in substance an interim award or a grant of final relief. One of the cardinal principles governing the grant of interim relief is that courts and tribunals must remain cautious against issuing directions which effectively confer upon a party the very substantive relief that is ultimately sought in the arbitral proceedings.

82. Similarly, while examining an order passed under Section 17 of the A&C Act directing payment of *mesne* profits in ***Khurana Educational Society*** *(supra)*, this Court emphasised that an Arbitral Tribunal must satisfy the settled triple test before granting any substantial interim relief. This Court also took note of the decision of the Hon'ble Supreme Court in ***Evergreen Land Mark Pvt. Ltd.*** (*supra*), wherein it was held that an Arbitral Tribunal cannot, under the guise of granting interim protection under Section 17 of the A&C Act, direct payment or deposit of disputed monetary amounts where the very liability to pay remains seriously contested and is yet to be adjudicated. The principles emerging from the aforesaid decisions necessarily guide the exercise of powers under Section 17 of the A&C Act and require the Tribunal to remain circumspect while dealing with disputed monetary claims. The relevant portions of ***Evergreen Land Mark Pvt. Ltd.*** (*supra*) are reproduced hereunder:

> "**10.** At the outset, it is required to be noted that the dispute is with respect to the rental amount for the period between March 2020 to December 2021, for which the Arbitral Tribunal has directed the appellant to deposit while passing the order by way of an interim measure on the applications under Section 17 of the Arbitration Act. The liability to pay the lease rental for the period between March 2020 to December 2021 is seriously disputed by the appellant by invoking the force majeure principle contained in

Clause 29 of the lease agreement.

**11.** It is the case on behalf of the appellant that for a substantial period there was a total closure due to lockdown and for the remaining period the appellant was allowed with 50% capacity and therefore, the force majeure principle contained in Clause 29 shall be applicable. When the same was submitted before the Arbitral Tribunal, no opinion, even a prima facie opinion on the aforesaid aspect was given by the Arbitral Tribunal. In para 39, it is observed that "it would not be fair at this stage of the proceedings, where evidence is yet to be adduced by the parties in support of their rival contentions on the issues that arise, to record any definitive opinion on the import and effect of the force majeure clause (Clause 29) contained in the lease deed". Therefore, applicability of the force majeure principle contained in Clause 29 is yet to be considered by the Arbitral Tribunal at the time of final adjudication.

**12.** Hence, the liability to pay the rentals for the period during lockdown is yet to be adjudicated upon and considered by the Tribunal. Therefore, no order could have been passed by the Tribunal by way of interim measure on the applications filed under Section 17 of the Arbitration Act in a case where there is a serious dispute with respect to the liability of the rental amounts to be paid, which is yet to be adjudicated upon and/or considered by the Arbitral Tribunal. Thus, no such order for deposit by way of an interim measure on applications under Section 17 of the Arbitration Act could have been passed by the Tribunal."

***(emphasis added)***

83. This Court is unable to accept any absolute proposition that an Arbitral Tribunal, while exercising powers under Section 17 of the A&C Act, can never grant interim relief involving payment of money. There may indeed be circumstances where the principles underlying Order XXXIX Rule 10 of the CPC become relevant.

84. The said provision contemplates a situation where the subject matter of the proceedings is money or some other property capable of delivery and a party admits that such money or property belongs or is due to another. In such circumstances, a court may direct the deposit or delivery of the admitted amount or property. The same principle

may, in an appropriate case, inform the exercise of powers by an Arbitral Tribunal under Section 17 of the A&C Act.

85. Thus, where the liability is admitted or where the entitlement is otherwise undisputed, the Tribunal may direct release or delivery of such amount as an interim measure.

86. However, it is equally important to recognise that neither a court nor an arbitral tribunal can undertake a detailed fact-finding exercise at the interim stage so as to effectively determine disputed questions that properly fall for adjudication at trial. The principles laid down by the Hon'ble Supreme Court in ***Evergreen Land Mark Pvt. Ltd.*** (*supra*) caution against precisely such an approach.

87. Where the very basis of liability remains seriously contested and requires examination of contractual provisions, evidence, rival factual assertions, and competing claims, interim proceedings cannot be converted into a mechanism for granting substantive monetary relief that effectively prejudges issues awaiting final determination.

88. In the present case, the learned Majority Arbitral Tribunal, after examining certain contractual clauses, correspondence exchanged between the parties, and the surrounding factual circumstances, concluded that no *prima facie* case existed in respect of SP-68, while holding that a *prima facie* case stood established in relation to SP-69 and SP-70.

89. However, a closer examination of the reasoning adopted in the Impugned Order reveals an apparent inconsistency. On the one hand, the learned Majority Arbitral Tribunal expressly acknowledged that the disputes arising from the revised SP-68, including the alleged negative variations and their impact upon the contract price, could

only be resolved after a full examination of evidence and therefore required adjudication at trial.

90. On the other hand, while recognising that the same dispute concerning negative variations formed the very basis of the Appellant's case, the learned Majority Arbitral Tribunal proceeded to hold that the amounts certified under SP-69 and SP-70 constituted dues that were *prima facie* payable and directed their release.

91. Whether the dispute relating to negative variations, reduction in contract price, and entitlement to set-off was severable from the certification and payment of SP-69 and SP-70, and whether the learned Majority Arbitral Tribunal could have directed payment of those amounts while simultaneously holding that the foundational dispute required adjudication upon evidence, is an aspect that falls for closer scrutiny by this Court.

92. This Court also takes note of the procedural background in which the application under Section 17 of the A&C Act came to be considered by the learned Majority Arbitral Tribunal. It is a matter of record that the Statement of Claim was filed by the Respondent before the learned Arbitral Tribunal in July 2024.

93. Thereafter, following the communication dated 26.10.2024 issued by the Engineer in relation to SP-68, the Respondent herein preferred an application under Section 17 of the A&C Act even before the Statement of Defence came to be filed by the Appellant. Subsequently, the Appellant filed its Statement of Defence, reply to the Section 17 application, and its Counter-Claim. Further pleadings were also exchanged by the parties in relation thereto, whereafter the learned Arbitral Tribunal proceeded to hear the said application.

94. In the *interregnum*, further developments took place. Between January and March 2025, certifications in respect of SP-69 and SP-70 came to be issued by the Engineer, *albeit* accompanied by caveats to the effect that payment against the certified amounts was subject to reconciliation of the Contract Price. Thereafter, in May 2025, the Engineer revised SP-68 and reflected a negative value of Rs. 621,57,64,619/- on account of alleged negative variations.

95. In view of these subsequent developments, the Respondent amended its Section 17 application so as to incorporate claims pertaining to SP-69 and SP-70. The Appellant, in turn, filed its reply to the amended application and additional pleadings were exchanged between the parties.

96. It is also a matter of record that, after extensive hearings spanning several sittings, the learned Arbitral Tribunal reserved orders on the Section 17 application. Thereafter, by the Impugned Order dated 03.04.2026, the learned Majority Arbitral Tribunal granted substantial interim relief in favour of the Respondent in respect of SP-69 and SP-70.

97. It is further a matter of record that towards the end of 2025, the Respondent amended its Statement of Claim so as to incorporate subsequent developments that had occurred after the filing of the original Statement of Claim in July 2024. It is therefore significant to note that when the learned Arbitral Tribunal considered the claims relating to SP-69 and SP-70 in the context of the Section 17 application proceedings, there were admittedly no pleadings concerning those claims in the original Statement of Claim or the original Statement of Defence.

98. Consequently, the learned Majority Arbitral Tribunal proceeded to interpret the contractual provisions and determine the *prima facie* entitlement of the parties substantially on the basis of the pleadings exchanged in the Section 17 proceedings themselves. While declining to finally adjudicate upon the effect of the revised SP-68 and treating the same as an issue requiring trial and evidence, the learned Majority Arbitral Tribunal simultaneously concluded that the amounts reflected in SP-69 and SP-70 constituted *prima facie* payable sums.

99. This approach appears to give rise to an inherent inconsistency. While the revised SP-68, which reflected substantial negative variations and a corresponding reduction in the contract price, was held to involve disputed questions requiring adjudication upon evidence, the claims arising out of SP-69 and SP-70, despite having been certified subject to similar caveats concerning reconciliation of the Contract Price, were treated as constituting *prima facie* payable amounts capable of being directed to be released at the interim stage.

100. Without entering into the correctness of the contractual interpretation undertaken by the learned Majority Arbitral Tribunal while recording a *prima facie* finding in favour of the Respondent, this Court is, at the very least, of the view that the conclusion that there existed a selective *prima facie* admission in respect of SP-69 and SP-70, while simultaneously disregarding the implications of the revised SP-68 and the negative variation claims arising therefrom, was not warranted.

101. In the facts of the present case, the learned Majority Arbitral Tribunal could well have deferred consideration of all such interconnected Stage Payment Certificates to final adjudication,

particularly when they emanated from the same factual matrix and contractual framework.

102. Be that as it may, and even proceeding on a *demurrer* by accepting, for the purposes of the present discussion, the *prima facie* findings recorded by the learned Majority Arbitral Tribunal, this Court is nevertheless unable to concur with the conclusions arrived at by the learned Majority Arbitral Tribunal on the issues of balance of convenience and irreparable injury. In the considered opinion of this Court, the reasoning adopted by the learned Majority Arbitral Tribunal while examining these two essential requirements of interim relief does not withstand closer scrutiny and is not borne out by the factual matrix as recorded in the Impugned Order itself. Consequently, even assuming that the Respondent herein had succeeded in establishing a *prima facie* case, the findings returned by the learned Majority Arbitral Tribunal on the remaining two limbs of the well-settled triple test cannot be sustained.

103. Upon a careful examination of the Impugned Order, it appears that the observations recorded by the learned Majority Arbitral Tribunal on these two requirements are internally inconsistent and cannot comfortably coexist.

104. While examining the question of balance of convenience, the learned Majority Arbitral Tribunal observed that the Contract was a lump-sum contract under which the contractor bore substantial financial risks associated with delays and the time value of money, thereby rendering timely release of certified stage payments of critical importance. Simultaneously, however, the learned Majority Arbitral Tribunal also recorded that the Project had already been substantially

completed, inaugurated and handed over to the Appellant and had become operational. The learned Majority Arbitral Tribunal further noted that only certain residual snag or punch-list items remained to be completed and that the Respondent had expressed its readiness and willingness to complete the same. The learned Majority Arbitral Tribunal additionally observed that approximately 80% of the revised Contract Price had already been paid to the Respondent and that only the remaining portion remained outstanding. On these considerations, the learned Majority Arbitral Tribunal concluded that the balance of convenience lay in favour of granting interim relief to the Respondent.

105. In the opinion of this Court, the aforesaid reasoning does not appear to be entirely harmonious. On the one hand, the learned Majority Arbitral Tribunal recorded that the overwhelming portion of the work stood completed, the Project had already been inaugurated and operationalised, and a substantial portion of the Contract Price had already been released. On the other hand, it proceeded to hold that immediate release of the disputed amounts was necessary to preserve the cash flow required for completion of the Project.

106. This Court is unable to discern how, in such circumstances, the balance of convenience could be said to decisively favour the Respondent and not the Appellant, particularly when the Appellant's case was founded upon substantial claims arising from alleged negative variations, and when even the Engineer's certifications in respect of SP-69 and SP-70 were expressly made subject to reconciliation of the Contract Price. The Impugned Order does not adequately explain why, in the face of such disputed and unresolved

claims, the comparative inconvenience was considered to lie solely on one side.

107. It is well settled that the test of balance of convenience requires the Court or Tribunal to undertake a comparative assessment of the hardship, prejudice and inconvenience likely to be suffered by each party depending upon whether interim relief is granted or refused. The inquiry is not directed towards determining the ultimate merits of the dispute but towards identifying the course that would occasion the least injustice pending final adjudication. If the prejudice likely to be suffered by the applicant upon refusal of relief outweighs the prejudice likely to be caused to the respondent by its grant, the balance of convenience is said to lie in favour of the applicant. The underlying objective is to preserve fairness, maintain the *status quo* where appropriate, and protect the subject matter of the proceedings until the rights of the parties are finally determined.

108. However, in the present case, when the findings recorded in the Impugned Order are examined in their entirety, this Court finds that the conclusion reached by the learned Majority Arbitral Tribunal on the aspect of balance of convenience does not appear to be fully supported by the factual premises recorded by it.

109. Similarly, while examining the requirement of irreparable injury, the learned Majority Arbitral Tribunal rejected the contention of the Appellant that interim monetary relief can never be granted. It was observed that the authorities relied upon by the Appellant merely establish that where a loss is capable of being fully compensated by damages, such loss cannot be regarded as irreparable.

110. Proceeding further, the learned Majority Arbitral Tribunal held that in the context of a large infrastructure project, continuous cash flow is fundamental to the performance of the Contract and that timely payment constitutes an essential contractual obligation. It was further observed that non-release of certified payments had the potential to disrupt or halt execution of the Project, thereby frustrating the contractual arrangement and causing consequences incapable of being adequately compensated by a subsequent monetary award. The learned Majority Arbitral Tribunal additionally reasoned that continued withholding of payments could adversely affect the Respondent's business operations, commercial reputation and ability to undertake future projects. Similar reasoning permeates the learned Majority Arbitral Tribunal's analysis under the head of irreparable injury.

111. In the considered opinion of this Court, these findings do not sit comfortably with the observations recorded by the learned Majority Arbitral Tribunal while examining the balance of convenience. Having itself recorded that the Project had substantially been completed, that the facility had already been inaugurated and operationalised, and that nearly 80% of the Contract Price had already been released, it becomes difficult to reconcile the conclusion that withholding of the disputed amounts would jeopardise completion of the Project or result in irreparable consequences incapable of compensation.

112. It is trite that irreparable injury refers to a harm which cannot be adequately remedied, compensated or repaired by an award of damages, monetary compensation or any other legal remedy at a later

stage. The expression does not signify a loss that is literally incapable of repair; rather, it denotes a loss of such a nature that subsequent compensation would be insufficient to restore the aggrieved party to the position it would have occupied had the injury not occurred. Courts and Tribunals therefore examine the likely consequences of refusing interim relief and assess whether such consequences would result in prejudice incapable of effective redress after final adjudication, including loss of reputation, goodwill, business opportunities, disruption of operations, or frustration of the very purpose of the contractual relationship.

113. In the considered opinion of this Court, the reasoning adopted by the learned Majority Arbitral Tribunal, particularly on the issues of balance of convenience and irreparable injury, does not adequately satisfy the aforesaid principles in the facts and circumstances of the present case.

114. It is pertinent to note that the Impugned Order grants substantial monetary relief under Section 17(1)(ii)(e) of the A&C Act, *namely*, "*such other interim measure of protection as may appear to the Arbitral Tribunal to be just and convenient*".

115. The remaining provisions contained in Section 17(1)(i) and Section 17(1)(ii)(a) to (d) of the A&C Act are generally directed towards the preservation and protection of the subject matter of the arbitration through various means. Nevertheless, in the present case, the learned Majority Arbitral Tribunal invoked Section 17(1)(ii)(e) thereof to direct payment of substantial sums in favour of the Respondent.

116. In the considered opinion of this Court, and at the cost of repetition, it cannot be laid down as an absolute proposition that an Arbitral Tribunal is wholly denuded of the power to grant monetary relief while exercising jurisdiction under Section 17(1)(ii)(e) of the A&C Act. However, where such relief is granted, the Arbitral Tribunal must satisfy a considerably higher threshold than that ordinarily applicable to measures intended merely to preserve or protect the subject matter of the arbitration.

117. Section 17(1)(ii)(e) of the A&C Act is undoubtedly couched in broad language and may, in certain respects, confer powers wider than those traditionally exercised under Order XXXIX of the CPC. However, the width of the provision cannot justify its routine invocation for directing payment of disputed monetary claims. Such power must be exercised sparingly and only upon strict satisfaction of the requirements governing interim relief.

118. In the considered opinion of this Court, the learned Majority Arbitral Tribunal failed to satisfy that heightened threshold, more particularly in relation to the requirements of balance of convenience and irreparable injury.

119. The dispute in the present case arises out of a complex contractual matrix involving substantial claims, counterclaims, alleged negative variations, revisions of certified values, and competing interpretations of the contractual framework. Even the learned Majority Arbitral Tribunal itself acknowledged that the dispute concerning SP-68 could not be determined without a detailed examination of evidence. In such circumstances, and particularly bearing in mind the principle underlying the decision of the Hon'ble

Supreme Court in ***Evergreen Land Mark Pvt. Ltd.*** (*supra*), the grant of substantial monetary relief in respect of SP-69 and SP-70 at the interim stage was not warranted.

120. At this juncture, this Court considers it necessary to clarify that the controversy presently before it does not concern the ultimate contractual entitlement of either party. Whether the amounts reflected in SP-69 and SP-70 constitute admitted dues; whether the Appellant was entitled to effect deductions on account of alleged negative variations; whether the Minutes of Meetings support the Appellant's case; whether the Procedural Order dated 15.05.2024 operates in the manner suggested by the Respondent; and whether the Engineer's certifications bear the effect attributed to them by either side, are all issues that form part of the arbitral reference itself and require detailed examination on merits.

121. These issues remain pending adjudication before the learned Arbitral Tribunal. Any expression of opinion by this Court on the correctness of the rival contractual interpretations would inevitably trench upon matters reserved for final determination and may prejudice the arbitral proceedings themselves.

122. Consequently, as already noted hereinabove, this Court consciously refrains from entering into the merits of the rival contractual interpretations advanced by the parties. Nevertheless, this Court remains duty-bound to examine whether the findings recorded by the learned Majority Arbitral Tribunal are sustainable on the face of the record. Upon such examination, this Court is constrained to hold that the findings do not meet the threshold required for the grant of the monetary relief directed under the Impugned Order.

123. This Court reiterates that there can be no dispute with the proposition that the grant of monetary relief at an interim stage is not entirely alien to arbitral jurisdiction. Equally, however, the expression "*just and convenient*" appearing in Section 17(1)(ii)(e) of the A&C Act cannot be construed in isolation, divorced from the statutory context in which it occurs. The said expression derives its colour from the preceding words "*interim measure of protection*", and therefore, the width of the power remains intrinsically linked to preservation and protection pending adjudication. Where, as in the present case, the learned Majority Arbitral Tribunal chooses to grant substantial monetary relief instead of merely preserving or protecting the subject matter of the arbitration, the order must satisfy a correspondingly higher threshold of scrutiny.

124. It is not the Respondent's case that the relief sought was directed towards preservation of any specific subject matter of the arbitration or protection of any identifiable fund. The relief sought and granted was essentially monetary in nature. Such relief, as a general rule, requires greater caution, particularly where the underlying entitlement itself remains the subject matter of serious dispute.

125. This Court further notes that the question of urgency and irreparable prejudice, as emphasised by the Appellant through reliance upon ***Dalpat Kumar*** (*supra*) and ***Bharat Heavy Electricals Ltd.*** (*supra*), assumes considerable significance. While the Respondent has contended that continued withholding of amounts adversely affects its financial interests, the findings recorded in the Impugned Order itself indicate that the execution phase of the Project had substantially attained completion. In such circumstances, the degree of urgency

ordinarily justifying immediate interim intervention does not appear to emerge with sufficient force.

126. In order to sustain the Impugned Order, the Respondent has sought to place reliance upon various additional circumstances. However, in the considered opinion of this Court, such submissions do not materially assist the Respondent. For instance, reliance upon the Procedural Order dated 15.05.2024 appears misplaced, particularly when the said order preceded the issuance of SP-69 and SP-70 and does not even find substantive consideration in the Impugned Order itself. The correctness of an order, like in the present case, must stand or fall on the reasons contained therein. Consequently, subsequent attempts to justify the Impugned Order on grounds not forming part of its reasoning cannot cure the vulnerabilities inherent in the order itself.

***CONCLUSION:***

127. In view of the foregoing discussion, this Court is of the considered opinion that the Impugned Order passed by the learned Majority Arbitral Tribunal is unsustainable in law and is liable to be set aside.

128. Accordingly, the present Appeal is allowed, and the Impugned Order passed by the learned Majority Arbitral Tribunal is hereby set aside.

129. It is, however, clarified that the observations contained in the present judgment are confined solely to adjudication of the present Appeal and shall not be construed as any expression on the merits of the disputes pending before the learned Arbitral Tribunal, including the claims, counterclaims, issues relating to negative variations,

contractual entitlements, adjustments, certifications, or any other matter arising in the arbitral proceedings, all of which shall be decided independently and uninfluenced by any observations made herein.

130. The present Appeal, along with pending Application(s), if any, stands disposed of in the aforesaid terms.

131. No order as to Costs.

**HARISH VAIDYANATHAN SHANKAR, J.**

**JULY 01, 2026/sm/jk**