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

% Judgment reserved on : **03.11.2026**
Judgment delivered on: **18.11.2026**

CNR No. DLHC010220082026

\+ ARB. A. (COMM.) 39/2026 & I.A. 13700/2026

WAPCOS LIMITED .....Petitioner

versus

M P KHAITAN & ANR. .....Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Tushar Sannu, Standing Counsel alongwith Ms. Ankita Bhadouria, Mr. Hardik Saxena and Ms. Shafun Bhadana, Advocates and Mr. A. Majumder Reddy, Engineer.

For the Respondents : Mr. Rajat Joneja, Mr. Anmol Kumar, Mr. Yatharth Chugh, Mr. Aakshat Khetarpal and Ms. Cheshta Dalal, Advocates for R-1.
Mr. Chiranjiv Kumar, Mr. Mukesh Sachdeva, Mr. Durgesh Bharti and Mr. Jitesh, Advocates for UOI/R-2.

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G E M E N T

TUSHAR RAO GEDELA, J.

1. The present appeal has been filed under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as *"the Act"*) assailing the interim order dated 16.04.2026 passed by the learned Sole Arbitrator, whereby the application filed on behalf of the respondent

Signature Not Verified
Digitally Signed
By:YASHRAJ
Signing Date:18.11.2026
18:27:00

no.1 under Section 17 of the Act has been allowed.

BRIEF FACTS:

2. The Ministry of Tourism, *i.e.* respondent no.2 appointed WAPCOS, *i.e.,* the appellant as the executing agency for the work, *"Development of Convention Centre and other associated Infrastructure at Aizwal, Mizoram",* by issuing a Letter dated 31.03.2021.

3. Pursuant to the Letter dated 31.03.2021, the appellant issued a Notice Inviting Tender (hereinafter referred to as *"the NIT"*) on 26.11.2021, with a Corrigendum dated 05.01.2022, for the 'C*onstruction of Convention Centre and associated structures in Aizwal, Mizoram*' (hereinafter referred to as "*the Project"*). Respondent no.1 emerged as the successful bidder with a bid value of Rs.29,99,99,501, with the appellant issuing a Letter of Award dated 10.03.2022 in favour of respondent no.1. The appellant and respondent no.1 entered into an Agreement dated 13.04.2022 for the Project which included, *inter alia,* the General conditions of Contract (hereinafter referred to as *"the GCC"*) and Special Conditions of Contract (hereinafter referred to as *"the SCC"*), with the deadline for completion of the Project being 15 months from 24.03.2022, *i.e.* 24.06.2023.

4. About ninety percent of the Project was completed by respondent no.1 after grant of three extensions of times, with the final extension being till 31.08.2024. During the currency of the works, disputes arose between the appellant and respondent no.1 with respect to, *inter alia,* payments against running account bills. Despite exchange of several correspondences, the disputes persisted and respondent no.1 suspended work on the Project from 27.08.2024.

5. The respondent no.1 moved this Court under Section 9 of the Act in O.M.P.(I)(COMM) 538/2025, arraying respondent no.1 herein as the sole

Signature Not Verified
Digitally Signed
By:YASHRAJ
Signing Date:18.11.2026
18:27:00

respondent, seeking, *inter alia,* issuance of foreclosure certificate from the appellant herein, taking over possession of the Project site from respondent no.1 herein and joint measurement of the Project. The said petition was disposed of *vide* order dated 24.12.2025, whereby: (i) the parties were referred to arbitration; (ii) the learned Arbitral Tribunal was directed to consider the said petition as an application under Section 17 of the Act; (iii) the respondent no.2 was impleaded as a party on oral request and; (iv) the appellant herein and WAPCOS/respondent no.1 were directed to take joint measurement of the Project.

6. The appellant and respondent no.1 conducted joint measurement of the Project from 10.01.2026 to 12.01.2026.

7. After the constitution of the learned Arbitral Tribunal and completion of pleadings in the application under Section 17, the learned Arbitral Tribunal allowed the said application *vide* the impugned order dated 16.04.2026 whereby: (i) the respondent no.2 was deleted from the array of parties as it was not a necessary party; (ii) the reply of respondent no.2 was only to be considered *qua* prayer (a) and (b); (iii) respondent no.2 was to issue a foreclosure certificate for the Project to respondent no.1 and take over possession of the Project site and; (iv) the respondent no.1 was permitted to remove its plant and machinery lying at the Project site.

8. Aggrieved by the impugned order, the appellant has preferred the present appeal under Section 37(2)(b) of the Act.

CONTENTIONS OF THE APPELLANT

9. Mr. Tushar Sannu, learned Standing Counsel for the appellant adumbrated the background facts leading to the present appeal.

10. Principally, the appellant is aggrieved by the direction of the learned Arbitral Tribunal to the appellant to issue a Foreclosure Certificate and

Signature Not Verified
Digitally Signed
By:YASHRAJ
Signing Date:18.11.2026
18:27:00

simultaneously to take over the project. Mr Sannu would vociferously contend that there is no provision enabling the respondent no.1/contractor to either Foreclose the Project/contract or even to the appellant to take over the Project.

11. He would invite attention to para 12 of the impugned interim award to submit that there is no reason or justification provided by the learned Arbitral Tribunal to support such direction. By inviting attention to Clause 13 of the GCC, learned counsel would forcefully submit that it is the appellant alone which has the right and authority to foreclose the contract on events specified in the said clause. There is, according to learned counsel, no clause which enables the respondent no.1/contractor to exercise any such option. As per him, the impugned award needs to be set aside for ignoring and overlooking the contractual clause.

12. In the aforesaid context, learned counsel would also contend that the reliance of respondent no.1/contractor on sections 51, 53, 54 and 55 of the Contract Act, 1872 is concerned, the need to consider the same would arise only if the contract was silent on this issue. According to him, when there is a specific clause provided in the GCC vesting and conferring the authority of foreclosure only upon the appellant, by necessary implication, the respondent no.1 is proscribed from exercising any such option. Thus, he would contend that not only is the learned Arbitral Tribunal completely wrong in its opinion but has also committed an error in directing the appellant to issue a Foreclosure Certificate as there is no such provision in the NIT, GCC or even the SCC. Thus, under what provision of the contract is the appellant required to furnish a foreclosure certificate is not referred to. In such circumstances, according to him, the interim award is unsustainable in passing such directions.

Signature Not Verified
Digitally Signed
By:YASHRAJ
Signing Date:18.11.2026
18:27:00

13. One of the grievances of Mr Sannu is that the learned Arbitral Tribunal had deleted the respondent no.2/Ministry of Tourism, Union of India (hereinafter referred to as *'MoT'*) from the array of parties on the incorrect premise that it being a non signatory neither had any privity with the claimant of the appellant nor was a necessary or proper party.

14. He invited attention to order dated 24.12.2025, passed by this Court in a petition under section 9 filed by the respondent no.1, whereby on the consent of both parties, *i.e.*, the respondent no.1, who was the claimant and the appellant which was the respondent before the learned Arbitral Tribunal, the respondent no.2/MoT was impleaded as party which was required to be included in the arbitral proceedings. In such circumstances, according to him, there was neither any occasion nor any justifiable reason why respondent no.2 was deleted. According to him, this deletion is required to be set aside as MoT is a necessary party.

15. Learned counsel read relevant paragraphs of the impugned interim award to submit that the analysis and conclusion reached by the learned Arbitral Tribunal to direct deletion of respondent no.2/MoT from the array of parties is erroneous and by ignoring the contractual clauses. He would invite attention to various clauses of the SCC regarding the payments to be released to respondent no.1. He would submit that as per the NIT the "Principal Employer"/"Owner" of the Project is the respondent no.2/MoT; it is the respondent no.2 alone on whose behalf the appellant is executing the Project; the ultimate beneficiary is the Department of Tourism, Aizwal; the contractual amounts to be disbursed to the respondent no.1 are, and have been released by respondent no.2 alone, while the appellant is only the disbursing agency; clause 2(6) of the Additional Conditions of the SCC require handing over of the completed Project by respondent no.1 to

Signature Not Verified
Digitally Signed
By:YASHRAJ
Signing Date:18.11.2026
18:27:00

respondent no.2 directly without any reference to the appellant. He would also contend that in case any direction or award for payment of monies is passed, necessarily it is the respondent no.2 alone which is required to comply with such execution since the appellant is only a Consultant. In this background, learned counsel would stoutly contend that respondent no.2 is not only a proper party but also a necessary party.

16. It is contended by learned counsel that despite referring to clause 2(6) of the Additional Conditions of the SCC, learned Arbitral Tribunal misinterpreted the said clause and proceeded to delete respondent no.2 from the array of parties, albeit, erroneously. He would pray that the said observation and conclusion be set aside.

17. Apart from the above, learned counsel also argued that the direction to the appellant to take over the Project from the respondent no.1 directly, is contrary to the contractual terms which cannot be sustained. He would refer to Clause 2(6) of the Additional Conditions of the SCC and contend that there is neither any provision nor any contractual condition providing or requiring the appellant to take over the project directly from the respondent no.1/contractor. According to him, the learned Arbitral Tribunal ought to have considered the said clause in the correct perspective and rejected such prayer of the respondent no.1/contractor. Thus, according to him, this direction being clearly beyond the scope and ambit of the contract, no such direction could have been passed or is sustainable.

CONTENTIONS ON BEHALF OF THE RESPONDENT NO.1:

18. Mr. Rajat Joneja, learned counsel appearing for the respondent no.1 draws attention of this Court to the order dated 24.12.2025 passed by this Court in the petition under Section 9 of the Act preferred by the petitioner, wherein the respondent no.2 was impleaded as party. He submitted that this

Signature Not Verified
Digitally Signed
By:YASHRAJ
Signing Date:18.11.2026
18:27:00

Court may only note that when the Ministry of Tourism was impleaded as the respondent no.2, it was not represented by any counsel in the Section 9 petition. Thus, according to him, it was the prerogative of the learned Tribunal to decide the issue afresh.

19. Mr. Joneja, learned counsel for the respondent no.1, at the outset, submitted that so far as the objections/ contentions raised by the appellant in respect of deletion of respondent no.2 as party-respondent to the arbitration proceeding is concerned, the respondent no.1 would have no particular response to the same. He would submit that the said issue may be decided by the Court after hearing the appellant and the respondent no.2.

20. So far as the main contention of the appellant on foreclosure for the project directed by learned Arbitral Tribunal is concerned, he would submit that there are a variety of reasons as to why foreclosure was required to be sought. He submitted that the respondent no.1 had completed the project work and only 4% of the work was left. He would submit that payments for almost two years were pending and not released by the appellant. In support thereof, learned counsel refers to documents filed by the respondent no.1, particularly to the letter dated 20.07.2024, wherein the respondent no.1, apart from demanding the outstanding dues of Rs.2,65,72,565.06/-, intimated that the respondent no.1 is considering foreclosure of the contract/ work with immediate effect.

21. He would submit that in response to the said communication, the appellant, by its communication dated 26.07.2024 admitted its liability, however, stated that the outstanding amount is not being released as the Ministry of Tourism/ respondent no.2 has not released any funds. The said letter, according to the learned counsel, not only admitted its dues and its failure to pay, however, also simultaneously requested for one month to

Signature Not Verified
Digitally Signed
By:YASHRAJ
Signing Date:18.11.2026
18:27:00

address the situation failing which the appellant assured that it would, by itself, issue foreclosure. Similarly, he referred to communication dated 09.05.2025 and 23.05.2025, whereby similar assurances were extended, however, no payments were cleared at all. He submitted that it is only on such failure that the respondent no.1 had preferred the arbitration.

22. The arguments of the appellant that the right and authority to foreclosure the project is solely with the appellant in terms of the Clause 13 of the GCC, is yet again untenable. He would contend that though the said clause is an enabling clause in favour of the appellant, however, does not bar or prohibit the respondent no.1 from foreclosing the project in the situation which has arisen in the present case. Thus, he emphasised that the impugned Award while directing foreclosure of the project has considered the various facts which have been submitted above as also Sections 51, 53, 54 and 55 of the Indian Contract Act, 1872.

23. In the context of Clause 2(6) of the Additional Conditions of the SCC, he would contend that the respondent no.2 is not a party to the contract and thus the submission of the appellant that the project cannot be directed to be taken over by appellant instead of the respondent no.2 cannot be countenanced being contrary to the contractual provisions, is erroneous. He would contend that so far as the respondent no.1 is concerned, the handing over of the project to the appellant, particularly having regard to the fact that partial handing over of works is not considered as handing over in terms of Clause 2(6) of the Additional Conditions of the SCC, is the only logical corollary to foreclosure of the project.

24. He would submit that since the project undoubtedly is incomplete, coupled with the fact that the appellant is the consultant for the said project, the handing over of the project to the appellant as sought by the respondent

Signature Not Verified
Digitally Signed
By:YASHRAJ
Signing Date:18.11.2026
18:27:00

no.1 and directed by the learned Arbitral Tribunal under the interim Award is the only recourse, which is justifiable in the facts which arise in the present case. He, thus, submits that the present appeal be dismissed.

CONTENTIONS ON BEHALF OF THE RESPONDENT NO.2:

25. Learned counsel appearing for the respondent no.2 submitted that it is an admitted case of the parties that the contract agreement has been executed between the appellant and the respondent no.1, and the respondent no.2 is not a signatory to the said contract. He would submit that the respondent no.2 has no privity contract with the appellant or the respondent no.1.

26. Inviting attention to the reply filed by the respondent no.2 to the application under Section 17 of the Act, learned counsel would submit that it was the emphasis of the respondent no.2 to demonstrate before the learned Tribunal that the *inter se* disputes between the appellant and the respondent no.1 do not require presence of the respondent no.2 for adjudication. He would submit that the respondent no.1 is neither an appropriate nor a necessary party to the arbitration proceedings.

27. So far as the issue of handing over or taking over of the project by the respondent no.2 is concerned, he would contend that the respondent no.2 not being a signatory to the contract, Clause 2(6) of the Additional Conditions appended to the SCC are clearly not binding upon the respondent no.2.

28. Additionally, he would submit that in the reply itself, the respondent no.2 clearly and categorically requested, in view of the background facts, the learned Tribunal to delete the respondent no.2 as a party respondent. He would submit that in the given circumstances and having regard to the background facts as stated in its reply, the reasons and analysis as to why

Signature Not Verified
Digitally Signed
By:YASHRAJ
Signing Date:18.11.2026
18:27:00

learned Arbitral Tribunal has deleted respondent no.2 from the array of parties is clearly justifiable and sustainable.

ANALYSIS AND CONCLUSIONS:

29. This Court has heard the arguments of learned counsel for the parties and perused the records.

30. Since the present appeal is preferred under section 37(2)(b) of the Act, it would be apposite to appreciate the scope and width of such examination. In this context the recent judgement of this Court in ***Nikhil Kumar Anand vs. Hridey Vikram Bhatia & Ors.***, *2026 SCC Online Del 1089,* delivered on 24.02.2026 needs to be considered. The relevant paragraphs of ***Nikhil Kumar Anand*** (*supra*) are extracted hereunder:

> *"39. This Court in Perfect Diesel Sales and Service v. Power HF India (P) Ltd., 2025 SCC OnLine Del 916 while dealing with the power of the Court under Section 37(2)(b) placed reliance on the judgment of the Co-ordinate Bench of this Court in World Window Infrastructure (P) Ltd. v. Central Warehousing Corporation, (2021) 3 HCC (Del) 731 and observed as under:*
>
> > *"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 [Dinesh Gupta v. Anand Gupta, 2020 SCC OnLine Del 2099], Augmont Gold (P) Ltd. v. One97 Communication Ltd. [Augmont Gold (P) Ltd. v. One97 Communication Ltd., (2021) 4 HCC (Del) 642] and Sanjay Arora v. Rajan Chadha [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.*

Signature Not Verified
Digitally Signed
By:YASHRAJ
Signing Date:18.11.2026
18:27:00

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)."

40. Another Co-ordinate Bench in Lava International Limited v. Mintellectuals LLP, 2024 SCC OnLine Del 6908 has laid the law with regards to scope of interference under Section 37(2)(b) and has observed as under:

"(i) Scope of interference under Section 37(2)(b)

12. Before dealing with these contentions, it may be noticed that the scope of interference with orders passed under Section 17 of the Act is limited. This Court has had occasion to examine the width of the appellate jurisdiction under Section 37(2)(b) of the Act, and held that a discretionary interim order of an Arbitral Tribunal ought to be interdicted only if it is perverse or manifestly arbitrary. These conclusions rest both on the overarching principles of party autonomy and minimal curial intervention, which inform interpretation of the Act, and upon general principles governing the exercise of appellate power against discretionary orders, as explained by the Supreme Court in Wander Ltd. v. Antox India (P) Ltd.

13. Reference may be made to the judgment of this Court in Dinesh Gupta v. Anand Gupta, wherein this Court considered the matter with reference to Section 5 of the Act, and the generally limited nature of the Court's power in relation to arbitration proceedings, to conclude as follows:

"60. In the opinion of this Court, another important, and peculiar, feature of the 1996 Act, which must necessarily inform the approach of the High Court, is

Signature Not Verified
Digitally Signed
By:YASHRAJ
Signing Date:18.11.2026
18:27:00

that the 1996 Act provides for an appeal against interlocutory orders, whereas the final award is not amenable to any appeal, but only to objections under Section 34. If the submission of Mr Nayar, as advanced, were to be accepted, it would imply that the jurisdiction of the Court, over the interlocutory decision of the arbitrator, would be much wider than the jurisdiction against the final award. Though, jurisprudential, perhaps, such a position may not be objectionable, it does appear incongruous, and opposed to the well settled principle that the scope of interference with interim orders, is, ordinarily much more restricted than the scope of interference with the final judgment.

xxx

64. There can be no gainsaying the proposition, therefore, that, while exercising any kind of jurisdiction, over arbitral orders, or arbitral awards, whether interim or final, or with the arbitral process itself, the Court is required to maintain an extremely circumspect approach. It is always required to be borne, in mind, that arbitration is intended to be an avenue for "alternative dispute resolution", and not a means to multiply, or foster, further disputes. Where, therefore, the arbitrator resolves the dispute, that resolution is entitled to due respect and, save and except for the reasons explicitly set out in the body of the 1996 Act, is, ordinarily immune from judicial interference.

xxxx xxxx xxxx

66. In my opinion, this principle has to guide, strongly, the approach of this Court, while dealing with a challenge such as the present, which is directed against an order which, at an interlocutory stage, merely directing furnishing of security, by one of the parties to the dispute. The power, of the learned Sole arbitrator, to direct furnishing of security, is not under question; indeed, in view of sub-clause (b) of Section 17(1)(ii) of the 1996 Act, it cannot. The arbitrator is, under the said sub-clause, entirely within his jurisdiction in securing the amount in dispute in the arbitration. Whether, in exercising such jurisdiction, the arbitrator has acted in accordance with law, or not, can, of course, always be questioned. While examining such

Signature Not Verified
Digitally Signed
By:YASHRAJ
Signing Date:18.11.2026
18:27:00

a challenge, however, the Court has to be mindful of its limitations, in interfering with the decision of the arbitrator, especially a decision taken at the discretionary level, and at an interlocutory stage.

14. In Sanjay Arora v. Rajan Chadha, the Court went on to hold as follows:

> *"19. This Court has already opined, in Dinesh Gupta v. Anand Gupta (Supra) and Augmont Gold (P) Ltd. v. One97 Communication Ltd. (Supra). that the considerations guiding exercise of appellate jurisdiction under Section 37(2)(b) are, fundamentally, not really different from those which govern exercise of jurisdiction under Section 34 of the 1996 Act.*
>
> *20. It is only, therefore, where the order suffers from patent illegality or perversity that the court would interfere with the order of the learned Arbitral Tribunal, under Section 37(2)(b). This is because, unlike appeals under other statutes or under the CPC, appeals against orders of Arbitral Tribunal are subject to the overarching limitations contained in Section 5 of the 1996 Act, read with the Preamble thereto, which proscribes interference, by courts, with the arbitral process, or with orders passed by learned Arbitral Tribunal, save and except on the limited grounds envisaged in the 1996 Act itself."*

41. Further reliance can be placed on a judgment of the Co-ordinate Bench in R.K. Associates and Hoteliers Pvt. Ltd. v. Indian Railway Catering and Tourism Corporation Limited (IRCTC), 2026 SCC OnLine Del 212 which observed as under:

> *"6. At the outset, this Court notes the settled position of law that in case the view taken by the Arbitral Tribunal is plausible and free from perversity, interference under Section 37(2)(b) of the Arbitration Act, is not warranted. The scheme of the Arbitration Act emphasizes minimal judicial intervention and Courts do not substitute their opinions for that of the Arbitral Tribunal, limiting the interference of the Court only in cases where the impugned order is perverse, patently illegal or suffers from jurisdictional infirmity. Thus, this Court in the case of Databit Technologies Pvt. Ltd. v. Red Fort Finance Company Pvt. Ltd., ARB. A. (COMM.) No. 1 of 2026, order dated 6-1-2026 (Del), held as follows:*

Signature Not Verified
Digitally Signed
By:YASHRAJ
Signing Date:18.11.2026
18:27:00

"xxx xxx xxx

7. It is well settled that the scope of interference under Section 37 is limited. The appellate court does not act as a court of first instance and cannot re-appreciate evidence or substitute its own discretion over that of the Arbitral Tribunal. Interference is warranted only where the impugned order is perverse, patently illegal, or suffers from a jurisdictional infirmity. Mere disagreement with the view taken by the Tribunal or the possibility of an alternative view is not a ground for interference. The power exercised by the Arbitral Tribunal under Section 17 is discretionary and is guided by settled principles governing grant of interim measures, namely, the existence of a prima facie case, balance of convenience, and likelihood of irreparable prejudice.

8. It is equally well settled that interlocutory orders are, by their very nature, discretionary and the scope of interference, in judicial review, with discretionary orders is limited. *Where the discretion exercised is towards direction for a deposit, the court has to be additionally circumspect, as the issue of whether a deposit ought, or ought not, to be directed, so as to secure the sanctity of the arbitral proceedings and ensure that they proceed to fruition, is essentially a matter to be assessed by the learned Arbitral Tribunal. Unless such assessment is perverse or suffers from manifest illegality, the approach of the court, ordinarily, should be one of restraint [refer: Dinesh Gupta v. Bechu Singh, (2021) 3 HCC (Del) 763 : 2021 DHC 4400].*

xxx xxx xxx"
(Emphasis Supplied)

7. Likewise, holding that scope of interference in appeal against orders passed by arbitrators on applications under Section 17 of the Arbitration Act, is limited and the restraints which apply on the Court while examining the challenge to a final award under Section 34 of the Arbitration Act, equally apply to a challenge under Section 37(2)(b) of the Arbitration Act, this Court in the case of World Window Infrastructure (P) Ltd. v. Central Warehousing Corporation, (2021) 3 HCC (Del) 731, held as follows:

Signature Not Verified
Digitally Signed
By:YASHRAJ
Signing Date:18.11.2026
18:27:00

"xxx xxx xxx

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 [Dinesh Gupta v. Anand Gupta, 2020 SCC OnLine Del 2099], Augmont Gold (P) Ltd. v. One97 Communication Ltd. [Augmont Gold (P) Ltd. v. One97 Communication Ltd., (2021) 4 HCC (Del) 642] and Sanjay Arora v. Rajan Chadha [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 preeminent 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).

Signature Not Verified
Digitally Signed
By:YASHRAJ
Signing Date:18.11.2026
18:27:00

xxx *xxx* *xxx*

> *82. That the province of Section 9 jurisdiction of the court, and of Section 17 jurisdiction of the arbitrator, are co-equal, stands settled by the recent decision of the Supreme Court in Arcelor Mittal Nippon Steel India Ltd. v. Essar Bulk Terminal Ltd. [Arcelor Mittal Nippon Steel India Ltd. v. Essar Bulk Terminal Ltd., (2022) 1 SCC 712 : AIR 2021 SC 4350]*
>
> *xxx* *xxx* *xxx"*
> *(Emphasis Supplied)*
>
> *8. Similar view has been taken by this Court in the cases of GLS Foils Products Pvt. Ltd. v. FWS Turnit Logistic Park LLP, 2023 SCC OnLine Del 3904 and Dinesh Gupta v. Anand Gupta, 2020 SCC OnLine Del 2099.*
>
> *9. Thus, the position of law is clear that the Court is possessed with the power of only limited interference under Section 37(2)(b) of the Arbitration Act, only in cases where the impugned order passed by the Arbitral Tribunal suffers from patent illegality or perversity."*

31. *Ex facie*, it is abundantly clear that the Court exercising jurisdiction under section 37(2)(b) of the Act may interfere with interlocutory orders only when it is found to be (i) perverse, (ii) patently illegal or (iii) suffering from jurisdictional infirmity. It is on this touchstone that the appellant's contentions have to be tested and examined.

32. Learned counsel for the appellant had vociferously argued that the right and authority to foreclose the contract/Project lay solely with the appellant in terms of Clause 13 of the GCC. And that no such right or authority having been contractually conferred upon the respondent no.1, foreclosure at its instance or behest was fundamentally contrary to the contractual provisions and thus, the impugned interim award to that extent has to be eschewed or expunged.

33. Though the said argument appears to be attractive, however, does not

Signature Not Verified
Digitally Signed
By:YASHRAJ
Signing Date:18.11.2026
18:27:00

appeal to this Court. This is for the reason that the learned Arbitral Tribunal has clearly examined the correspondences and communications exchanged between the parties before concluding that the foreclosure sought by the respondent no.1 was justified in the facts and circumstances of the case. Such communications were also brought to the notice of this Court. For clarity the correspondences referred to are extracted hereunder:

i) Letter dated 20.07.2024 from respondent no.1 to the appellant:

*"**By mail***

MPK/KOL/24-25/136A/0188

Dated 20th July 2024

To Chairman Cum Managing Director
Wapcos Limited,
Sector-18
Guru gram-122 015 (Haryana)

Name of work : *Construction of Convention Centre and associated Infrastructure at Aizwal, Mizoram*

LOA No. : *WAP/ropeways/LOA/2021-22/03-03 dt. 10.03.2022.*

Dear Sir,

1) *Please refer the following correspondence entered into between us and Wapcos in respect of above referred subject work:*

   a) *Our letter No.MPK/KOL/24-25/ 136A/0124 dated 20th Jun ' 24 addressed to The Chief Scientist, Wapcos Limited (Copy attached Annexure-1) under which we have requested Wapcos for granting financial approval of the deviations/ extra works executed by us at site as per the directions of Wapcos.*

   b) *Our letter No.MPK/KOL/24-25/ 136A/0153 dated 3 rct Jul' 24 addressed to The Chief Scientist, Wapcos Limited and copy endorsed to your good-self and The Chief Engineer, Wapcos Limited (Copy attached **Annexure-II**) . In our letter under reference, we have again requested Wapcos for clearing our long outstanding dues to the tune of*

Signature Not Verified
Digitally Signed
By:YASHRAJ
Signing Date:18.11.2026
18:27:00

Rs.2,65,72,565/60 (The amount under reference is due to us on account of balance payment against RA bills, on account of reimbursement of GST and towards release of retention withheld by Wapcos against submission of BGB of equivalent amount strictly in compliance with contract provisions).

c) *Our letter No.MPK/KOL/24-25/ 136A/0159 dt.Sth July 24 addressed to your good-self and copy endorsed to The Chief Scientist, Wapcos Limited and the Chief Engineer, Wapcos Limited (Copy attached **Annexure-III**) under which we have again requested Wapcos for granting financial approval of the deviations / extra works executed by us on ground as per the directions of Wapcos.*

2) *We are very sorry and feeling extremely regretful to inform you that till date **NO** financial approval of the extra works/ deviations already executed at site by us could be accorded by Wapcos Limited yet . As a result, we are not in a position to claim the amount due to us on account of deviations/extra works already executed by us at site in our RA Bills. In addition to above, Wapcos have also failed to clear our long outstanding dues to the tune of **Rs.2,65,72,565/60** for the reasons best known to Wapcos as elaborated in our letter annexed to our present letter i.e. **Annexure II**.*

3) *Considering the factual situation narrated above, we don't find any option at present but to seek "FORECLOSURE" of this contract I work with immediate effect in terms of Section 51, 53, 54 and 55 of Indian Contract Act, 1872.*

4) *In view of the above, it may please be considered a **Notice** to Wapcos from our end under the legal powers/ authority vested in us in terms of Section 51, 53, 54 and 55 of Indian Contract Act, 1872 to consider FORECLOSURE OF ABOVE REFERRED CONTRACT with immediate effect after lapse of 15 (fifteen days) from the receipt of this letter without any further notice by us to Wapcos in case our outstanding dues are not cleared and the financial approvals with respect of deviations/ extra items of works are accorded by Wapcos within next fifteen days from the date of receipt of the letter.*

5) *Please also note in case eventuality as per Para 3 and 4 above arises, we shall be stopping all ongoing construction activities in connection with above work at the site and would demobilize all our labor and the resources deployed by us at the site. In*

Signature Not Verified
Digitally Signed
By:YASHRAJ
Signing Date:18.11.2026
18:27:00

addition, we would be submitting our final bill for this work to Wapcos along with all our claims arising in this contract as per prevailing law of the land. Further, we would not hesitate to revoke Arbitration clause forming part of our contract in case amount due to us in the final bill submitted by us including our claims are not finalized and paid to us by Wapcos within six months from the date of submission of the final bill by us.

6) ***It is without any prejudice.***

Thanking you,

Yours faithfully,
For M/s M.P. Khaitan

(Sanjay Khaitan)

Encl: As stated above"

ii) Letter dated 26.07.2024 from the appellant to respondent no.1:

"No: WAP/Ropeways/Mimzoram/2024-25,07/07 Dated: 26/07/2024

To,
M/s M.P. Khaitan,
15, Ganesh chandra Avenue 7 Floor,
Kolkata-700013

Subject: Construction of Convention Centre and associated infra-structure at Aizawl, Mizoram. - Regarding withdrawal of"FORECLOSURE" Notice.

LOA No.: WAP/ropeways/LOA/2021-22/03-03 dated 10th March 2022 & Agreement dated 13.04.2022
Ref: 1. Your letter No: MPK/24--25/136A/0188 dated 20/07/2024

Sir,

In reference to your above-mentioned letter, we appreciate your issues and assure you that WAPCOS is working on them. The issue related to deviation is already being communicated with higher competent authorities, and we are confident that it will be resolved very soon within Contract provisions, as applicable.

Secondly, regarding payment clearance, WAPCOS has already

Signature Not Verified
Digitally Signed
By:YASHRAJ
Signing Date:18.11.2026
18:27:00

approved your bill, which is currently with the accounts section. However, due to a lack of funds to be received from the Ministry of Tourism, Government of India, we are not in a position to clear your payments.

We have requested Ministry of Tourism, Government of India, to release the balance funds, which is delayed inordinately, however as soon as funds are received in the WAPCOS account, we assure that your payments will be cleared immediately. A meeting with Ministry of Tourism, Government of India, in this regard is also scheduled on 30.07.2024.

Regarding your request of foreclosure of the contract (letter referred at S.No.1), we kindly request your trust and patience as we work to resolve these issues. We require at least one month from the date of issuance of this letter to address the situation. If we fail to meet your requirements within this timeframe, we will issue the foreclosure recommendation ourselves. You are therefore requested to bear with us as per provisions of Clause No New Clause 7A, page no 86, SECTION IV, SPECIAL CONDITION OF CONTRACT of the contract. We also would like to apprise you that, in view of the new clause 7A, the provisions of section 51, 53-55 are not applicable in the present contract.

Considering the overall progress, which is nearly 90%, you are fervently requested to proceed with the completion of balance work as per the Contract Provisions without any further delays and withdraw the "FORECLOSURE" Notice.

As you may be aware that, any delay in completion of the work will adversely affect the project timeline and budget. You are therefore requested to work with full dedication to ensure immediate completion of the work.

Thanks and regards

Sincerely Yours
Prabhakar Sati
Chief Scientist-II
WAPCOS Limited, Gurugram"

[emphasis supplied]

34. Apart from the above letters, there are other similar letters/communications dated 09.05.2025 and 23.05.2025 emanating from

Signature Not Verified
Digitally Signed
By:YASHRAJ
Signing Date:18.11.2026
18:27:00

the appellant to the respondent no.1 following the above correspondences. For the sake of brevity, the letters are not extracted herein. Suffice it to note that the subsequent communications are also in the same vein. It is manifest that the appellant had admitted to the outstanding payment to the tune of Rs.2,65,72,565.06 payable to respondent no.1. It had also categorically admitted that it did not have any funds on account of funds not having been released to it by respondent no.2. In fact, it was the appellant which had categorically sought for some time to release the outstanding dues, failing which it had assured the respondent no.1 of foreclosing the Project/contract by itself. It is also not denied that till date no outstanding amounts have been released. It was in these peculiar and onerous financial deprivation of requisite funds that the learned Arbitral Tribunal took a plausible view and passed the interim award.

35. Moreover, Clause 13 of GCC does empower the appellant to foreclose the contract/project, however there is no clause which specifically proscribes the respondent no.1 to take recourse to such action. Undoubtedly, the said clause is an enabling clause in favour of the appellant, however, having regard to sections 51, 53, 54 and 55 of the Indian Contract Act, 1872, in the background of the peculiar facts as noted above admitted in the correspondences, it can be construed that respondent no.1 was not completely precluded or disentitled from requiring foreclosure of the contract/Project.

36. From the records it is discernible that Clause 13 was neither referred to in the reply filed by the appellant to the application under section 17 of respondent no.1 nor was the attention of the learned Arbitral Tribunal invited. Thus, it appears that the said issue is being raised for the first time before this Court.

Signature Not Verified
Digitally Signed
By:YASHRAJ
Signing Date:18.11.2026
18:27:00

37. Having regard to the above opinion, the direction to issue Foreclosure Certificate, appears to be in consonance with and consequence of the direction to foreclose the Project/contract.

38. In any case, the view taken by the learned Arbitral Tribunal is plausible and clearly, this Court under Section 37(2)(b) of the Act, would surely not substitute its view for the one taken by the learned Arbitral Tribunal.

39. Another aspect which was hotly contested was the direction to the appellant to take over the project being contrary to the conditions of the contract. Learned counsel for the appellant had drawn attention to Clause 2(6) of the Additional Conditions of the SCC to submit that the condition prescribed handing over only to the "owner"/ "client". The appellant being neither, and only a Consultant, was contractually under no obligation or any mandate to take over the Project. In such circumstances, it was urged that the direction of the learned Arbitral Tribunal is clearly erroneous and beyond the contractual terms. Even otherwise, learned counsel contended that, the undeniable position under the contract is that the MoT/respondent no.2 is the "owner" and the "beneficiary" is the Department of Tourism, Aizwal, Mizoram. Thus, according to him, if at all the direction has to be implemented, it can only be *qua* the respondent no.2. Therefore, the appellant urged that the learned Arbitral Tribunal misdirected itself while requiring the appellant to take over possession of the project from respondent no.1.

40. Learned Arbitral Tribunal had considered the Clause 2(6) referred to above and rendered its prima facie opinion as under:

> *"5. Respondent no.2 was arrayed as a party to these proceedings at R1 Wapcos's insistence. The latter states that, in terms of Additional Conditions (p. 125 of its reply) that the claimant had agreed with R1*

Signature Not Verified
Digitally Signed
By:YASHRAJ
Signing Date:18.11.2026
18:27:00

that the completed project shall be handed over to Respondent no.2 - which is, the owner of the project. The said clause reads as under:

> *"6. Handing Over of the Project: Contractor will hand over the project to Owner /Client after successful completion of each component of the project along with submission of all the required documents i.e. As- built drawings, Inventory list, guarantee / warranty bonds, certificates & invoices of equipment, lock and key of each room and NoCs form various Departments with complete satisfaction and acceptance by WAPCOS/MoT. Contractor shall provide necessary Completion Certificate/NOC from all local Government/ Statuary Authorities including Fire, Forest, Electrical, Environment, Lift, DG Set, Complete inventory list, duly signed as-build drawings, required before handing over the project to the WAPCOS. The partial handing over of works components shall not be considered. Defect Liability period of Three (3) years will start from the date of successful completion of each component of the project and handing over to MoT/WAPCOS with all satisfaction & acceptance along with submission of all the required documents i.e. Asbuilt drawings, Inventory list, guarantee / warranty bonds, certificates & invoices of equipment, lock and key of each room and NoCs form various Departments.*

6. This clause is in an Agreement between only the Claimant and Wapcos/R1. R2 is not a party to it. Respondent no.1 has not been able to show as to how it can bind the Respondent no.2 to these conditions. Indeed, R2-Ministry of Tourism states that it is neither a necessary nor a relevant party to these proceedings because R1 was engaged as an specialized agency, for executing the project in terms of their letter dated 31.03.2021 which detailed the construction, completion and management aspects. It, inter alia requires Respondent no.1 / Wapcos to:

> *"3.WAPCOS shall setup a Monitoring Committee with a member from the Ministry of Tourism to monitor physical and financial progress of the sanctioned project and submit the progress report to the Government of India on quarterly basis.*
>
> *4. The second installment of 30% of CFA will be released based on tender cost of the project or the sanctioned cost, whichever is less and after considering the progress of the project and on receipt of utilization certificate for the amount already released to them. The final/third installments will be released after completion of the project and on receipt of Utilization Certificate, Completion Certificate, Management Agreement*

Signature Not Verified
Digitally Signed
By:YASHRAJ
Signing Date:18.11.2026
18:27:00

and Undertaking as per scheme guidelines.

5. WAPCOS shall make land for the project available free of cost and. also render all possible assistance for completion of the project on time i.e. within 24 months. No portion of the sanctioned project should be executed/implemented in land/property owned by private individual or trust.

6. WAPCOS would execute the project and shall have the work started immediately to ensure timely utilization of funds 45and to avoid escalation of cost. The project should be commissioned within 24 months and any cost escalation on account of delay etc. would be met by the WAPCOS/State Government.

7. The grants-in-aid will be utilized for the purpose for which the funds are released.

8. The WAPCOS would undertake the responsibility for operational and maintenance of facilities for which the funds are released and no reimbursement on account of losses incurred, if any, would be made to the WAPCOS The executing agency shall put in place the mandatory facilities for barrier free access physically disabled persons.

9. The WAPCOS has to put up a signage of the. Ministry of Tourism with the logo 'Incredible India' stating that the project has been funded by the Ministry of Tourism as per the guidelines para No:5 1 (vi).

10. The WAPCOS would take all necessary clearances from the concerned agencies, which are required as per prevailing rules and regulations before undertaking this project."

7. Nowhere in the said letter has R2 extended itself to overseeing the day to day progress or management of the project or that it would accept the completed project directly from a third party/the Claimant. The learned counsel for R2 rightly contends that the whole purpose of engaging an agency like Wapcos/R1 was that R2 would get a Convention Centre at Aizawl, duly completed in terms of the grant-in-aid provided for the project. R2 did not wish to be burdened regular monitoring or the minute details of the project, otherwise the very purpose of engaging R1 would be defeated.

8. R2's letter dated 31.03.2021 shows that Wapcos was to receive about 8% (Rs.2.959 crores) of the contract cost for its advisory services for construction/completion of the project, administrative charges and

Signature Not Verified
Digitally Signed
By:YASHRAJ
Signing Date:18.11.2026
18:27:00

agency charges. The objective and understanding being that the Government of India would be delivered the completed project.

9. Evidently, each of the aforementioned clauses specifically requires Wapcos to deliver and not any contractor that Wapcos may engage. Direct contract or contact between R12 and a contractor has been specifically obviated and avoided. There is no privity of contract of R2 apropos the document containing the above referred clause 6. It cannot bind R2. Not as single document is shown whereby Respondent no.2 has extended itself, ratified, signed or has otherwise agreed to any of the contractual terms or understating between the Claimant and R1. Therefore, Respondent no.1 seeking to implead Government of India is misdirected. R2 is not a necessary party and is deleted from the array of parties.

10. R2 has made some reply/comments on the merits of the case. The same cannot be taken cognizance of. Reply of only a party to the proceeding can be considered. The learned counsel for R2 states that the comments were the prejudice and abundant caution, just in case the impleadment of R2 was allowed. He submits that the reply the considered only with respect to prayer clauses (a) and (b) of the section 17 application. Accordingly, its reply/comments -- beyond it not being a necessary party, will be deemed non-est.

11. In view of the above, insofar as the Claimant has made out a prima facie case for handing over of the project to the Respondent in terms of the measurement."

41. Having regard to the sound reasoning and justification, this Court is of the considered opinion that the said reasons are neither perverse nor patently illegal or beyond the jurisdiction of the learned Arbitral Tribunal. This Court is satisfied of the justiciability of the direction which calls for no interference.

42. The only issue left for consideration as to whether the learned Tribunal was justified in deleting respondent no.2 from the array of parties before it.

43. In this context and to appreciate as to why the learned Tribunal formed an opinion that the respondent no.2 is neither a proper nor a necessary party to the proceedings, it is necessary to extract hereunder the

Signature Not Verified
Digitally Signed
By:YASHRAJ
Signing Date:18.11.2026
18:27:00

relevant paragraphs disclosing the consideration of facts as also the justifiable reasoning of the learned Tribunal :-

> *"7. Nowhere in the said letter has R2 extended itself to overseeing the day to day progress or management of the project or that it would accept the completed project directly from a third party/the Claimant. The learned counsel for R2 rightly contends that the whole purpose of engaging an agency like Wapcos/R1 was that R2 would get a Convention Centre at Aizawl, duly completed in terms of the grant-in-aid provided for the project. R2 did not wish to be burdened regular monitoring or the minute details of the project, otherwise the very purpose of engaging R1 would be defeated.*
>
> *8. R2's letter dated 31.03.2021 shows that Wapcos was to receive about 8% (Rs.2.959 crores) of the contract cost for its advisory services for construction/completion of the project, administrative charges and agency charges. The objective and understanding being that the Government of India would be delivered the completed project.*
>
> *9. Evidently, each of the aforementioned clauses specifically requires Wapcos to deliver and not any contractor that Wapcos may engage. Direct contract or contact between R2 and a contractor has been specifically obviated and avoided. There is no privity of contract of R2 apropos the document containing the above referred clause 6. It cannot bind R2. Not as single document is shown whereby Respondent no.2 has extended itself, ratified, signed or has otherwise agreed to any of the contractual terms or understating between the Claimant and R1. Therefore, Respondent no.1 seeking to implead Government of India is misdirected. R2 is not a necessary party and is deleted from the array of parties."*
>
> [emphasis supplied]

44. The reasoning of the learned Tribunal encapsulated in para 9 clearly demonstrates that the Tribunal found as a fact that there is no privity of contract of the respondent no.2 with the respondent no.1 so far as the contractual document before it is concerned. Undeniably, respondent no.2 is not a signatory to the contract executed between the respondent no.1 and the appellant. Except for Clause 2(6) of the Additional Conditions appended to the SCC, there is no responsibility, obligation or any

Signature Not Verified
Digitally Signed
By:YASHRAJ
Signing Date:18.11.2026
18:27:00

contractual term which would involve respondent no.2 with the contract. Whether Clause 2(6) of the Additional Conditions appended to SCC would bind a non-signatory like respondent no.2, *prima facie*, is doubtful.

45. The Learned Tribunal has given explicit reasons predicated on facts obtained before it. This Court does not find the said reasoning and findings on facts either perverse or patently illegal. It is not even the case of the appellant that the learned Tribunal while deleting the respondent no.2 from array of parties has exercised any jurisdiction not vested upon it. In that view of the matter, the argument of the appellant in regard to the deletion of respondent no.2 is unpersuasive and unmerited.

46. In view of the above, this Court is of the considered opinion that there is no merit in the appeal which is dismissed, however, without any costs.

TUSHAR RAO GEDELA
(JUDGE)

NOVEMBER 18, 2026
Kct/rl

Signature Not Verified
Digitally Signed
By:YASHRAJ
Signing Date:18.11.2026
18:27:00