

10.07.2025
Item No. 02.
Court No.37.
AB
(ID 266019)

**AO-COM 15 of 2025
With
CAN 1 of 2025
(not in file)**

**M/s. Krishi Infratech-Bangalore
Vs
Ministry of Railway**

Mr. Anirban Ray,
Mr. Raja Saha,
Mr. Anujit Mukherjee,
Mr. Prithish ChandraFor the Appellant.

Mr. Swatarup Banerjee,
Sk. Sariful HaqueFor the Respondent.

Dictated by Arijit Banerjee, J.

1. Our attention has been drawn by learned Counsel for the parties to an order passed by this Bench on 26.06.2025 in the case of ***Murshidabad Zilla Parishad Vs The Asian Health Care Development Private Limited & Others*** wherein it was held that an appeal under Section 37 of the Arbitration and Conciliation Act, 1996, other than an appeal under Section 37(1)(c) of the said Act, would require admission under Order XLI Rule 11 of the Code of Civil Procedure. However, learned advocates for the parties in unison say that such admission may or may not be required in a non-commercial matter. In a commercial matter, such admission may not be required and even if required, this is the only Bench, which can admit the matter

under Order XLI Rule 11 of the Code of Civil Procedure. In this connection, learned Counsel for the parties draw our attention to Rule 29 of the High Court at Calcutta Commercial Courts Practice Directions, 2021, which reads as follows:

“29. Procedure to be followed in regard to Appeals before the Commercial Appellate Courts and Commercial Appellate Division

- (1) All appeals before the Commercial Appellate Court from the decree or order of a Commercial Court below the Level of a District Judge shall follow the procedure laid down in Order XLI of the Code of Civil Procedure read with the West Bengal Civil Rules and Orders.*
- (2) All appeals before the Commercial Appellate Division of the High Court from the decree or order of a Commercial Court at the Level of a District Judge shall follow the procedure laid down in The Appellate Side Rules of the High Court at Calcutta read with Order XLI of the Code of Civil Procedure.*
- (3) All appeals before the Commercial Appellate Division of the High Court from the decree or order of the Commercial Division shall follow the procedure laid down in The Rules of the High Court at Calcutta (Original Side) read with Order XLI of the Code of Civil Procedure.”*

2. Prima facie, learned Counsel for the parties appear to be correct. This appeal will, therefore, be deemed to have been duly admitted.
3. Now coming to the question of interim order, the learned Trial Court had dismissed the appellant’s application under Section 9 of the 1996 Act for interim protection on the ground that an Arbitral Tribunal has already been constituted. A Coordinate Bench recorded in its

order dated 20.05.2025 that prima facie, the appellant has an arguable case inasmuch as constitution of an Arbitral Tribunal may not be a ground per se for not passing an interim protective order. Hence, the Bench passed an interim order on that date. That order continued till the end of June, 2025.

4. We confirm our prima facie view that mere constitution of an Arbitral Tribunal is not a ground for refusing to pass an order under Section 9 of the 1996 Act.
5. In this case, when the appellant applied under Section 9 of the 1996 Act before the learned Trial Court, the Arbitral Tribunal had not yet been constituted. Hence, that was the only course open to the appellant. The learned Trial Court initially did pass an interim order in favour of the appellant/petitioner.
6. However, during the pendency of the Section 9 application, on an application made by the appellant under Section 11 of the 1996 Act, an Arbitral Tribunal was constituted. When the learned Trial Court was apprised of this fact, on that ground alone, learned Court dismissed the application under Section 9 of the 1996 Act.
7. We are of the view that the learned Trial Court ought not to have done what it did. The proper course of action would have been to extend the

interim order for a limited period of time and relegate the issue of further interim order to the Arbitral Tribunal. We, accordingly, do so.

8. The interim order that was passed by the learned Trial Court and which a Coordinate Bench continued till the end of June, 2025, shall stand reinstated forthwith and shall continue for a period of eight weeks from date.
9. In the meantime, the appellant will be at liberty to make an appropriate application before the Arbitral Tribunal for extension of this interim order or further orders. If such application is made, the Arbitral Tribunal shall decide the same in accordance with law after hearing both sides without being influenced by anything in this order.
10. Since we have not called for affidavits, the allegations in the application filed in the appeal are deemed not to have been admitted by the respondent.
11. The appeal and the connected application stand disposed of.
12. All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Rai Chattopadhyay, J.)

(Arijit Banerjee, J.)