

**IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
ORIGINAL SIDE**

**Before:**

**The Hon'ble Justice Arijit Banerjee  
And  
The Hon'ble Justice Om Narayan Rai**

**R.V.W.O. 19 of 2025  
IA No: GA 1 of 2025**

**Marine Craft Engineers Private Limited  
Vs.  
Garden Reach Shipbuilders and Engineers Limited**

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| For the Petitioner | : Mr. Sabyasachi Chowdhury, Sr. Adv.<br>Mr. S.E. Huda, Adv.<br>Mr. Shounak Mukhopadhyay, Adv.<br>Mr. Shreyaan Bhattacharyya, Adv.<br>Ms. Anwesha Guha Ray, Adv.<br>Mr. Abhijit Guha Ray, Adv. |
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| For Respondent | : Mr. Debnath Ghosh, Sr. Adv.<br>Mr. Biswaroop Mukherjee, Adv.<br>Mr. Debsoumya Basak, Adv. |
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| Hearing Concluded on | : 27.08.2025 |
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| Judgment on | : 25.09.2025 |
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**Om Narayan Rai, J.:-**

- 1.** This is an application seeking review of the judgment and order dated July 23, 2025 passed by this Court thereby disposing of A.P.O. 84 of 2023 - being an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereafter "the said Act of 1996").

2. The said appeal had been filed by the respondent herein (i.e. hereafter “Garden Reach” ) assailing an order dated April 5, 2023 passed in A.P. 831 of 2018 which was an application under Section 34 of the said Act of 1996.
3. A.P. 831 of 2018 had been filed by the review-applicant (hereafter “Marine Craft”) laying challenge to an arbitral award made and published on September 23, 2018.
4. The said application being A.P. 831 of 2018 had been allowed by the said order dated April 5, 2023 thereby setting aside an arbitral award made and published on September 23, 2018.
5. The said order dated April 5, 2023 (whereby A.P. 831 of 2018 had been allowed) was set aside by the order dated July 23, 2025, which is now under review, upon holding that the order dated April 5, 2023 had been passed by the Hon’ble Judge who did not have determination (and hence jurisdiction) to hear the said application under Section 34 of the said Act of 1996 since the same pertained to a commercial dispute and the determination to hear commercial arbitration matters was not there with the Hon’ble Judge.
6. The arbitral award that was challenged by Marine Craft by filing A.P. 831 of 2018 had been passed by a sole arbitrator appointed by Garden Reach upon disputes having arisen between Marine Craft and Garden Reach *qua* certain works done by Marine Craft in terms of a letter of intent and purchase order issued by Garden Reach to Marine Craft.
7. Before proceeding further, the background in which the said order under review i.e. the order dated July 23, 2025 was passed, which is recorded in the said order itself, may be noticed. The same would be evident from the submissions made on behalf of Garden Reach and Marine Craft and our

deliberations thereon insofar as the same are relevant to the present context:-

#### Submissions Made On Behalf Of Garden Reach

*“5. He further submitted that in any case, since the matter pertained to the Commercial Division of this Court, the application under Section 34 of the said Act of 1996 being A.P. 831 of 2018 ought to have been decided by the Commercial Court and not by the Court exercising ordinary original civil jurisdiction. He took us to Section 2(1)(c)(vi) and 2(1)(xviii) as well as Section 15 of the Commercial Courts Act, 2015 to demonstrate that A.P. 831 of 2018 ought to have been decided by the Courts sitting in Commercial Division and not by the Court exercising ordinary original civil jurisdiction.*

*6. It was submitted by Mr. Ghosh that since the aforesaid petition has been decided by a Court exercising ordinary original civil jurisdiction and not a commercial Court therefore the order passed by the said Court is one without jurisdiction and should be treated as a nullity. It was further submitted that there being no provision for transfer of a proceeding on the ordinary original civil jurisdiction to the Commercial Division of this Court, even otherwise, the arbitration petition being A.P. 831 of 2018 could not have been transferred from the ordinary original civil jurisdiction to the Commercial Division.”*

#### Submissions Made On Behalf Of Marine Craft

*“14. Mr. Chowdhury, learned Advocate appearing for the respondent submitted that at the relevant point of time when the arbitration petition was filed, the Court presided over by the same Hon’ble Judge had the jurisdiction/determination in respect of both types of matters i.e. matters pertaining to the ordinary original civil jurisdiction as well as commercial matters and, therefore, the contention that A.P. 831 of 2018 had been decided by the Court while exercising ordinary original civil jurisdiction would not be a case of lack of determination or inherent lack of jurisdiction. It was at best an error of description of jurisdiction which was/is corrigible”.*

#### Court’s Deliberation

*“31. Since a challenge has been thrown to the jurisdiction of the Court that passed the order impugned in the present appeal, the same needs to be decided first. It had been contended by the appellant that the order should have been passed by a Commercial Court and not a Court exercising ordinary original civil jurisdiction*

inasmuch as the dispute between the parties is a commercial dispute. Mr. Chowdhury appearing for the respondent had submitted that the same Court which was exercising ordinary original civil jurisdiction was also exercising the jurisdiction under the Commercial Division on the relevant date when the matter was heard and decided and as such the order impugned even if expressed to have been passed by the Court in exercise of its ordinary original civil jurisdiction, could not be said to have been passed without jurisdiction. Since there was no opposition to the aforesaid submission made by Mr. Chowdhury, we proceeded to hear the matter on merits as well.

32. However, while dictating the judgment we thought it prudent to check up the orders passed in the matter from time to time and get satisfied as regards the determination of the Hon'ble Judge who had passed the order impugned at the material point of time.

33. Upon checking up we found that the first of the several orders passed by the Hon'ble Judge who disposed of A.P. 831 of 2018 is one dated December 05, 2019. We also found that the matter was marked heard in part by the said Hon'ble Judge on December 13, 2019 upon consent of the parties and thereafter the same continued to be taken by the same Hon'ble Judge till it was disposed of by the order impugned. As on December 05, 2019 and December 13, 2019 both of which dates are relevant for the purpose, the determination roster applicable to the Hon'ble Judges of this Court was one dated November 18, 2019. In terms of the said roster, the determination that rested with the Hon'ble Judge who has passed the order impugned was as follows:

**"Determination O/S (i.e. Original Side)**

Hearing of Applications under Section 34 of the Arbitration & Conciliation Act, 1996, including applications connected thereto filed upto 2018.

**Commercial Appellate Division & Commercial Division, Calcutta High Court**

Will hear all Suits pertaining to commercial disputes not assigned to any other Bench."

34. Another Hon'ble Judge had the following determination apropos arbitration matters under the commercial division of this Court:

**"Commercial Appellate Division & Commercial Division, Calcutta High Court**

Will hear all Suits and applications of the nature of commercial disputes relating to Admiralty and Maritime Law and Arbitration matters specified under Section 10 of Act 4 of 2016."

35. Since section 10 of the Commercial Court's Act, 2015 has been referred in the abovementioned determination roster the same may be noticed. The same reads thus:

***“Section 10: Jurisdiction in respect of arbitration matters.***

10. Where the subject-matter of an arbitration is a commercial dispute of a Specified Value and–

(1) If such arbitration is an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed in a High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(2) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(3) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted.”

36. It is therefore clear that on both the aforesaid dates i.e. when the said Hon'ble Judge (who has passed the order impugned) took up the matter for adjudication for the first time and when the matter was marked heard in part by the said Hon'ble Judge, the said Hon'ble Judge had determination only over such applications under Section 34 of the said Act of 1996 which did not pertain/relate to commercial matters. Determination in respect of all arbitration applications including those under Section 34 of the said Act of 1996 (as spelt out in Section 10 of the Commercial Courts Act, 2015 extracted hereinabove) rested with another Hon'ble Judge of this Court in terms of the roster dated November 14, 2019.

37. The matter was finally disposed of by the Hon'ble Judge by an order dated April 05, 2023 after reserving judgment on March 31, 2023. It may be mentioned that on and from September 01, 2022 the said Hon'ble Judge continued to have the same determination till April 05, 2023. To wit, the determination of the said Hon'ble Judge published in the Combined Monthly List for the month of September 2022, (published on September 05, 2022) was as follows:

*“FROM 1ST SEPTEMBER, 2022 (THURSDAY)-MATTERS (MOTION AND HEARING) UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA RELATING TO RESIDUARY UNDER GROUP-IX INCLUDING APPLICATIONS CONNECTED THERETO (2017 ONWARDS) (EXCLUDING MATTERS RELATING TO POLICE (INCLUDING C.B.I & CENTRAL AGENCIES), ESSENTIAL SERVICES).”*

38. *On the date of reserving judgment i.e. March 31, 2023 as also on the date of delivery of judgment i.e. April 05, 2023 the said Hon’ble Judge had the following determination in respect of the original side matters:*

*“MATTERS (MOTION AND HEARING) UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA RELATING TO RESIDUARY UNDER GROUP-IX INCLUDING APPLICATIONS CONNECTED THERETO (2017 ONWARDS) (EXCLUDING MATTERS RELATING TO POLICE (INCLUDING C.B.I & CENTRAL AGENCIES), ESSENTIAL SERVICES).”*

39. *In such view of the matter, Mr. Ghosh's contention that the order dated April 05, 2023 is a nullity becomes irrefutable. We are conscious that both the parties had agreed for the matter to be marked as heard in part but unfortunately since on that date too when the matter was so marked, the Hon’ble Judge did not have determination over commercial matters as already indicated hereinabove, therefore, the defect of jurisdiction cripples the order impugned incurably.”*

8. Upon perusal of the aforequoted portions of the order dated July 23, 2025 passed by us, it will be evident that the question that fell for our consideration was whether the Hon’ble Judge who decided the subject application under Section 34 of the said Act of 1996 had the determination to do so or not. Upon checking up the determination roster of the relevant time we found that on the relevant dates when the said application was heard and decided, the Hon’ble Judge had determination only over such applications under Section 34 of the said Act of 1996 which did not pertain/relate to commercial matters. In such view of the matter, we set aside the order dated April 5, 2023 passed in A.P. 831 of 2018 and remanded the matter back for being placed before the appropriate Bench under the Commercial Division of this Court having jurisdiction over

arbitration petition pertaining to commercial matter for a fresh hearing. The said order is now under review.

**ARGUMENTS ON BEHALF OF THE APPLICANT:-**

9. Mr. Chowdhury, learned Senior Advocate appearing for the review applicant i.e. Marine Craft has submitted that the order dated July 23, 2025 suffers from an error apparent on the face of the record inasmuch as the same has been passed without taking into consideration the fact that at the relevant point of time when the application under Section 34 of the said Act of 1996 had been filed by Marine Craft, the pecuniary limit of the Commercial Division of this Court was specified to be Rupees One Crore and above. In order to buttress his contention, he relied on a Notification dated November 15, 2018 whereby the pecuniary jurisdiction of the Commercial Courts in West Bengal had been specified. It was submitted that since the relevant application under Section 34 of the said Act of 1996 (A.P. 831 of 2018) had been filed on December 6, 2018, therefore, the said Notification dated November 15, 2018 was clearly applicable.
10. He then invited our attention to another Notification dated March 20, 2020 whereby the pecuniary jurisdiction of Commercial Courts of West Bengal was revised and the pecuniary jurisdiction of the Commercial Division of High Court at Calcutta was specified to be “*an amount exceeding rupees ten lakh*”. It was submitted that prior to the said Notification dated March 20, 2020 taking effect the matter had already been heard by the Hon’ble Single Judge on December 13, 2019 and had been marked as one “*heard in part*”. It was, therefore, submitted that on the date when A.P. 831 of 2018 had been filed as well as the date when the same had marked as

*“heard in part”* the Commercial Court under the Commercial Division of this Court did not have pecuniary jurisdiction to hear the said application and as such the same had been rightly heard and decided by the Hon’ble Single Judge.

**11.** Mr. Chowdhury next took us through the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018 (hereafter “the said Amendment Act of 2018”) and placed Sections 6 and 19 thereof. Laying strong emphasis on the words *“the provisions of this Act shall apply only to cases relating to commercial disputes filed on or after the date of commencement of this Act”* appearing in Section 19 of the said Amendment Act of 2018 he contended that a meaningful reading thereof made it clear that the Legislature intended to attach prime importance to the date of filing of the proceeding and that the provisions of the said Amendment Act of 2018 or the amendments effected thereby to the Commercial Courts Act, 2015 would apply only to cases relating to commercial disputes filed on or after the date of commencement of the said Amendment Act of 2018. In support of his submissions, Mr. Chowdhury relied on a judgment of the Delhi High Court in the case of **Satyanarain Khandelwal vs. Prem Arora**<sup>1</sup>.

**12.** Mr. Chowdhury submitted that since the application under Section 34 of the said Act of 1996 had been filed at a time when the Commercial Division of this Court had pecuniary jurisdiction for matters valued at Rupees One Crore and above, A.P. 831 of 2018 could not have been filed before any Court under the Commercial Division of this Court and, therefore, the same

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<sup>1</sup> 2022 SCC OnLine Del 2142

could not have been decided also by such Court under the Commercial Division of this Court.

- 13.** It was further submitted by Mr. Chowdhury that in terms of the provisions of direction no. 4 (or Clause 4) of the High Court at Calcutta Commercial Courts Practice Directions, 2021 even the provision for transfer of a commercial matter that had been filed before the Court exercising only Ordinary Original Civil Jurisdiction was not possible after the date of issuance of the appropriate Notification of the pecuniary value in terms of Section 3(1A) of the Commercial Courts Act, 2015.
- 14.** Mr. Chowdhury then submitted that in the present case the question as to whether the dispute is commercial or not would have to be determined on the basis of the value of the claim lodged before the Arbitrator in terms of Section 12(2) of the Commercial Courts Act, 2015 (hereafter “the said Act of 2015”). It was submitted that in the instant case the claim before the Arbitrator was way short of Rupees One Crore which was the pecuniary threshold that had been specified for the Commercial Division of this Court at the time when Marine Craft had filed its application under Section 34 of the said Act of 1996.
- 15.** It was, submitted by Mr. Chowdhury that in view of the aforesaid situation, A.P. 831 of 2018 had rightly been filed and entertained by the Hon’ble Judge in exercise of ordinary original civil jurisdiction and that being so the order dated April 5, 2023 could not have been set aside on the ground of lack of determination (and hence jurisdiction). Mr. Chowdhury urged that since the order dated July 23, 2025 had been passed by us

without noticing a material statutory provision, the same should be reviewed.

**ARGUMENTS ON BEHALF OF THE RESPONDENT :-**

- 16.** Mr. Ghosh, learned Senior Advocate appearing for the respondent submitted that the application should not be entertained at all inasmuch as there was no error apparent on the face of the record. It was submitted that it is settled law that an application for review should not be an appeal in disguise and that even a change in law or subsequent decision/judgment of coordinate bench or larger bench by itself cannot be regarded as a ground for review. In support of his contention, he relied on the judgment of the Hon'ble Supreme Court in the case of **Sanjay Kumar Agarwal vs. State Tax Officer (1) & Anr.**<sup>2</sup>. Mr. Ghosh placed paragraph 15 of the said judgment in particular, to assert that the grounds for exercising the jurisdiction of review of an order were not made out in the present case.
- 17.** He then submitted that even if the provisions of the Notification dated November 15, 2018 whereby the pecuniary jurisdiction of the Commercial Division of the High Court at Calcutta was specified to be "*not less than Rupees One Crore*" is applied to the facts of the present case, A.P. 831 of 2018 i.e. the application filed by Marine Craft under Section 34 of the said Act of 1996 ought to have been decided by a Court exercising jurisdiction under the Commercial Division only. Inviting our attention to Section 12(2) of the Commercial Courts Act, 2015, it was submitted that it was not only the value of claim but the aggregate value of the claims and counter claims

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<sup>2</sup> (2024) 2 SCC 362

that were required to be considered for determining the value of the subject matter of dispute.

**18.** Mr. Ghosh then submitted that prayers (a) and b) of the statement of claim filed by Garden Reach indicated that the total value of its claim was Rs.30,24,849/-. It was submitted that Marine Craft had lodged a counter claim as well and the same was to the tune of Rs.85,71,229/-. Mr. Ghosh asserted that aggregate of the aforesaid two figures came to Rs.1,15,96,078/- which was clearly in excess of Rupees One Crore being the threshold pecuniary limit for attracting jurisdiction of the Commercial Division of this Court.

**19.** Mr. Ghosh submitted that in view of the aforesaid, the order under review required no interference, inasmuch as even if the date of filing of the proceeding under Section 34 of the said Act of 1996 is taken to be the relevant date as submitted by Mr. Chowdhury, then also the specified value of the subject matter of the commercial dispute was well beyond the threshold pecuniary limit of the Commercial Division of this Court on the date when the Section 34 application being A.P. 831 of 2018 was filed by Marine Craft. He also relied on a judgment in the case **National Seeds Corporation Ltd. & Anr. vs. Ram Avtar Gupta**<sup>3</sup> and relied on paragraph 4 thereof as a part of his submission. Mr. Ghosh also submitted that in terms of the said judgment the portion of interest claimed till the date of invocation of arbitration would also have to be taken into consideration for determining the aggregate value of claim under Section 12(2) of the said Act of 2015.

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<sup>3</sup> 2021 SCC OnLine Del 5428

**REPLY ON BEHALF OF THE APPLICANT:-**

**20.** Mr. Chowdhury, in reply, submitted that although there was a mention of counter-claim in the statement of defence filed by the review applicant before the arbitrator yet the same was not a counter-claim in the true sense of the term. It was submitted that the counter-claim that had been lodged by Marine Craft was just indicative in nature inasmuch as Marine Craft had challenged the very jurisdiction of the arbitrator. He referred to the backdrop of the said arbitral proceeding and submitted that at the very inception of the arbitral proceeding, Marine Craft had assailed the arbitrator's jurisdiction by filing an application under Section 16 of the said Act of 1996 which had been rejected. It was submitted that upon rejection of the said application under Section 16 of the said Act of 1996, Marine Craft had no option but to participate in the arbitral proceeding inasmuch as the earliest avenue of challenge to an order of rejection of an application under Section 16 of the said Act of 1996 is under Section 34 of the said Act of 1996 and not before that. Mr. Chowdhury then referred to the pleadings in the statement of defence/counter statement cum counter claim filed by Marine Craft, and indicated that Marine Craft had clarified in its pleadings before the arbitrator that the said counter-claim was without prejudice to Marine Craft's challenge to the jurisdiction of the arbitrator.

**21.** Mr. Chowdhury also referred to the application under Section 34 of the said Act of 1996 filed by Marine Craft and sought to demonstrate that no ground had been urged on merits as regards the rejection of Marine Craft's counter claim by the arbitrator.

**COURT'S ANALYSIS AND DECISION:-**

- 22.** We have heard the learned Advocates for the respective parties and considered the material on record.
- 23.** Since an argument as regards the maintainability of the review application has been advanced, the same needs to be dealt with first. Mr. Ghosh submitted that as there is no error apparent on the face of the record therefore the instant application cannot be entertained. We are unable to agree with him. Marine Craft has filed the present application contending that this Court has passed the order impugned in ignorance of the provision pertaining to the pecuniary floor limit of the Commercial Division of this Court at the relevant point of time. It is now well settled that any order passed in ignorance of the applicable law would be reviewable. [See: ***Girdhari Lal Gupta vs. D. H. Mehta & Anr.***<sup>4</sup>; ***Deo Narain Singh vs. Daddan Singh & Ors.***<sup>5</sup>; ***Yashwant Sinha & Ors. vs. CBI***<sup>6</sup>; ***Commissioner of Customs vs. Canon (India) (P) Ltd.***<sup>7</sup>]
- 24.** In such view of the matter, the instant application is entertained and is decided on merits. We now have to see whether application of the provisions which Marine Craft asserts that we have missed out would change the ultimate result.
- 25.** It is not in dispute that at the time when A.P. 831 of 2018 had been filed by Marine Craft the pecuniary threshold of the Commercial Division of this Court was “*not less than Rupees One Crore*” in view of the Notification bearing No.254-JL dated November 15, 2018 which provides thus:-

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<sup>4</sup> (1971) 3 SCC 189

<sup>5</sup> 1986 Supp SCC 530

<sup>6</sup> (2020) 2 SCC 338

<sup>7</sup> (2025) 4 SCC 509

***“10. Pecuniary jurisdiction of Commercial Courts in West Bengal  
No. 254-JL., dated 15<sup>th</sup> November, 2018***

***NOTIFICATION***

*In exercise of the powers conferred by sub-section (1A) of section 3 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (4 of 206), as subsequently amended, (hereinafter referred to as the said Act), the Governor, after consultation with the High Court at Calcutta, vide Memo No. 3599-RG dated the 30<sup>th</sup> August, 2018, is pleased hereby to specify the pecuniary jurisdiction, in respect of the value of the commercial disputes of, -*

*i) the Commercial Courts at Siliguri, Asansol, Alipore and Rajarhat to be not less than Rupees Seventy-Five lakhs; and*

*ii) the Commercial Division of the High Court, Calcutta to be not less than Rupees One Crore,*

*for the purpose of exercising the jurisdiction and powers conferred on those Commercial Courts and the Commercial Division under the said Act.*

*By order of the Governor,  
Joint Secy. To the Govt. of West Bengal”*

**26.** It was also not contested before us that the dispute between the parties was a commercial one. Therefore, the only question that exercises the minds of the Court and the parties before it is whether the arbitration petition under Section 34 of the said Act of 1996 was required to be filed before the Commercial Division of this Court or before the Court having ordinary original civil jurisdiction based on the specified value of the subject matter of the commercial dispute.

**27.** We therefore first need to find the specified value of the subject matter of the commercial dispute. The method of determination therefor is provided in Section 12 of the said Act of 2015. Section 12 therefore needs to be noticed. The same is extracted hereinbelow:-

***“12. Determination of Specified Value.***

*(1) The Specified Value of the subject-matter of the commercial dispute in a suit, appeal or application shall be determined in the following manner:–*

*(a) where the relief sought in a suit or application is for recovery of money, the money sought to be recovered in the suit or application inclusive of interest, if any, computed up to the date of filing of the suit or application, as the case may be, shall be taken into account for determining such Specified Value;*

*(b) where the relief sought in a suit, appeal or application relates to movable property or to a right therein, the market value of the movable property as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining such Specified Value;*

*(c) where the relief sought in a suit, appeal or application relates to immovable property or to a right therein, the market value of the immovable property, as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining Specified Value;*

*(d) where the relief sought in a suit, appeal or application relates to any other intangible right, the market value of the said rights as estimated by the plaintiff shall be taken into account for determining Specified Value;*

*(2) The aggregate value of the claim and counterclaim, if any as set out in the statement of claim and the counterclaim, if any, in an arbitration of a commercial dispute shall be the basis for determining whether such arbitration is subject to the jurisdiction of a Commercial Division, Commercial Appellate Division or Commercial Court, as the case may be.*

*(3) No appeal or civil revision application under section 115 of the Code of Civil Procedure, 1908 (5 of 1908), as the case may be, shall lie from an order of a Commercial Division or Commercial Court finding that it has jurisdiction to hear a commercial dispute under this Act.”*

**28.** Section 12(2) of the said Act of 2015 is relevant for the present purpose.

The same clearly mandates that the aggregate value of the claim and counterclaim as set out in the statement of claim and the counterclaim in an arbitration of a commercial dispute shall be the basis for determining

whether such arbitration is subject to the jurisdiction of a Commercial Division or not.

**29.** In the case at hand, we find that the claim of Garden Reach was to the tune of Rs.30,24,849/-. The counter-claim lodged by Marine Craft was to the tune of Rs.85,71,229/-. In terms of the provisions of Section 12(2) of the said Act of 2015, since the aggregate value of the claim and counterclaim as set out in the statement of claim and the counter-claim should be taken as the basis for determination of the specified value, therefore, the straightforward way would be to add the aforesaid two figures (i.e. Rs.85,71,229/- + Rs.30,24,849/- = Rs.1,15,96,078/-). If that be the case, Marine Craft's application under Section 34 of the said Act of 1996 should have been filed before the Commercial Division of this Court since the same surpasses the threshold pecuniary limit that was operating for the Commercial Division of this Court at the material point of time.

**30.** However, Mr. Chowdhury insists that in the facts of the present case, the amount/value of counter-claim should not be counted for the purpose of the calculating the specified value of the subject matter of dispute inasmuch as Marine Craft's counter-claim was merely symbolic of its existence before the arbitrator since the arbitrator's jurisdiction was under challenge and furthermore since Marine Craft had already lodged its claim before the MSME Council.

**31.** The submission is undoubtedly attractive but the same does not stand the test of law. The method of determination of specified value of a commercial dispute described in Section 12(2) has actually nothing to do with the legality or merit of either the claim or the counter-claim lodged. Any of the

same may or may not be granted. In a given case both may be allowed in part and in another case one of them may be allowed in full while dismissing the other. No matter what; if there are both a claim as well as a counter-claim on record, the statute mandates the same to be aggregated for arriving at the specified value of the dispute. The reason is simple that the dispute involves both the said fiscal components.

**32.** It is not the case of Marine Craft that it does not have any claim at all against Garden Reach. Its case is that it would get its claim adjudicated before some other forum. Be that as it may, but one aspect gets firmly established in such a scenario – that the dispute involves claims of both the parties (i.e. claim from one and counter-claim from another) and if that be so then in such case, the statute mandates that the worth of such dispute should be found by adding claims of both the parties.

**33.** We have noticed the statement of defence cum counter-claim filed by Marine Craft. Indeed, it begins with a statement that the same was being filed without prejudice to its contention that the arbitrator had no jurisdiction to adjudicate upon the dispute between the parties.

**34.** Paragraphs 36 and 74 thereof need to be noted. The same read thus:-

*“36. In view of the facts narrated above, the respondent states and contends that the statement of claim is liable to be rejected with exemplary costs and the counter claim of the respondent be allowed by this Learned Tribunal. The said counter claim is being made without prejudice to the contention of the respondent with regard to the jurisdiction of the tribunal and nothing herein should be construed as submission to the jurisdiction of this Tribunal.*

*74. In the facts and circumstances as narrated hereinabove, the statement of claim is liable to be dismissed with exemplary costs and the respondent is entitled to its counter claim to the tune of Rs.85,71,229/- along with interest payable thereon*

*@rates under the MSME Act, till actual payment thereof without prejudice to the issue of jurisdiction already raised above.”*

- 35.** It is evident from the above that there was a counter-claim on record. Whether the same could be legally entertained or not by the arbitrator is not relevant. What is relevant is whether any counter-claim was there or not.
- 36.** We are therefore inclined to agree with the submission of Mr. Ghosh that the aggregate value of the claim and counterclaim as set out in the statement of claim and the counterclaim should be added in the case at hand as well, in terms of Section 12(2) of the said Act of 2015.
- 37.** In such a situation, Marine Craft could not have filed its arbitration petition under Section 34 of the said Act of 1996 (being A.P. 831 of 2018) before the Court exercising ordinary original civil jurisdiction even in the wake of the provisions of the Notification dated November 15, 2018. The same should have been filed before the Commercial Division of this Court and should have been decided by a Court exercising jurisdiction under the Commercial Division of this Court.
- 38.** As regards the judgement in the case of **Satyanarain Khandelwal** (supra), cited on behalf of Marine Craft, the same elucidates the effect of the said Amendment Act of 2018 and clarifies that the same would not have retrospective effect.
- 39.** As regards the judgment of the Hon'ble Supreme Court in the case of **Sanjay Kumar Agarwal** (supra), cited on behalf of Garden Reach, the same has reiterates the principles governing exercise of review jurisdiction by a Court. We have respectfully followed the said principles in the instant case while dealing with the present application.

- 40.** The judgment in the case of ***National Seeds Corporation Ltd.*** (supra), clarifies that interest claimed till the date of invocation of arbitration would also have to be taken into consideration for determining the aggregate value of claim under Section 12(2) of the said Act of 2015.
- 41.** We therefore do not find any reason to review the order dated July 23, 2025 passed in A.P.O. 84 of 2023. R.V.W.O. 19 of 2025 stands dismissed along with the connected application. No costs
- 42.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all formalities.

**I agree.**

**(Arijit Banerjee, J.)**

**(Om Narayan Rai, J.)**