

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL APPELLATE JURISDICTION
COMMERCIAL DIVISION
ORIGINAL SIDE

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

IA NO. GA-COM 2 of 2026

APOT 320 of 2025

National Insurance Company Limited

Vs.

Tirupati Food Products

For the Appellant : Mr. Shib Shankar Banerjee, Adv.
 Ms. Dolan Dasgupta, Adv.
 Mr. Partha Pratim Das, Adv.
 Mr. Siddhartha Chamria, Adv.

For the Respondent : Mr. Varun Kothari, Adv.

Hearing Concluded on : January 28, 2026
 Judgement on : February 09, 2026

DEBANGSU BASAK, J.:-

- 1.** Appellant has assailed the order dated November 10, 2025 passed in AP COM 697 of 2025.
- 2.** By the impugned order, learned Single Judge has disposed of a petition under Section 36(2) of the Arbitration and Conciliation Act, 1996 by granting stay of an award which was the subject matter of challenge under Section 34 of the Act of 1996 in AP COM 361 of 2024 on the condition that the appellant deposits the entire awarded amount along with awarded interest with the Registrar, Original

Side. Learned Single Judge has directed the Registrar, Original Side to invest such amount in interest bearing auto renewal fixed deposit account in any nationalized bank and retain the same till disposal of AP COM 361 of 2024.

3. Learned advocate appearing for the appellant has contended that, the appellant is an insurance company. He has contended that, directing deposit of the entire awarded amount is prejudicial to the financial health of the appellant. Appellant has substantial assets including immovable property which can be taken as security. The appellant can also furnish a bank guarantee if directed by the Court to secure the arbitral amount.

4. On the aspect of right of appeal, learned advocate appearing for the appellant has contended that, Section 13(1A) of the Commercial Courts Act, 2015, creates an independent and substantive right. In support of such contention, he has relied upon ***AIR 1957 Supreme Court 540 (Garikapati Veeraya vs. N. Subbiah Choudhry and Other)***, and ***AIR 2015 Supreme Court 1042 (Videocon International Ltd. vs. Securities and Exchange Board of India)***.

5. Learned advocate appearing for the appellant has contended that, proviso to Section 13(1A) cannot override the main provision. In

support of such contention, he has relied upon **1985 Volume 1 Supreme Court Cases 591 (S. Sundaram Pillai vs. V. R. Pattabiraman)** and **2013 Volume 5 Supreme Court Cases 427 (Rajasthan State Industrial Development and Investment Corporation Vs. Subhash Sindhi Co-operative Housing Society Jaipur and Ors.)**.

6. Relying upon **2017 SCC OnLine Del 6955 (HPL (India) Ltd. vs. QRG Enterprises)** Learned advocate for the appellant has contended that Commercial appellate jurisdiction should not be constricted beyond legislative intent.

7. Relying upon **2016 SCC OnLine Bom 9019 (Hubtown Ltd. vs. Idbi Trusteeship Services Ltd.)** learned advocate appearing for the appellant has contended that, Section 13 of the Act of 2015 must be interpreted so as to allow the appeal against an order under Section 36 of the Act of 1996 as the impugned order qualifies as a judgment within the meaning of Section 13 of the Act of 2015.

8. Learned advocate appearing for the appellant has contended that, orders under Section 36 of the Act of 1996 are adjudicatory in nature. In support of such contention he has relied upon **2018 Volume 6 Supreme Court Cases 287 (Board of Control for Cricket in India vs. Kochi Cricket Pvt. Ltd.)**, and **2019 Volume 8**

Supreme Court Cases 112 (Pam Developments Pvt. Ltd. vs. State of West Bengal).

9. Relying upon ***2020 Volume 15 Supreme Court Cases 585 (Ambalal Sarabhai Enterprises Ltd. Vs. K.S. Infraspace LLP)***

learned advocate appearing for the appellant has contended that, the provisions of the Act of 2015 do not intend to abolish a scrutiny by the Appeal Court.

10. Learned advocate appearing for the respondent has contended that, the appeal is not maintainable under Section 13 of the Act of 2015. In support of such contention he has relied upon ***2018 Volume 14 Supreme Court Cases 715 (Kandla Export Corporation & Anr. Vs. OCI Corporation & Anr.)*** and ***2023 CHC – OS: 5125 (Super Smelters Ltd. vs. Predominant Engineers and Contractors Pvt. Ltd.)***. He has pointed out that, a Special Leave Petition directed against the decision of the Co-ordinate Bench in ***Super Smelters Limited (supra)*** was dismissed.

11. Appellant before us suffered an award dated April 28, 2023. By the award dated April 28, 2023, the learned sole arbitrator had awarded Rs.1,76,74,396/- in favour of the respondent and directed that in the event of failure to pay the same within a period of three months, the amount awarded shall carry interest at the rate of 6

percent per annum to be calculated from the date of default till realization.

12. Appellant had assailed such award under Section 34 of the Act of 1996 which was registered as AP COM 36 of 2024. The respondent had put the award into execution by way of an execution proceeding registered as EC COM 434 of 2024.

13. It is at this stage that, the appellant had filed an application under Section 36(2) of the Act of 1996 seeking an order restraining the implementation and operation of the award dated April 28, 2023.

14. The appellant had filed its challenge to the arbitral award dated April 28, 2023 under Section 34 of the Act of 1996 in the Commercial Division of this Hon'ble Court. The petition under Section 36 of the Act of 1996 which has resulted in the impugned order was filed in the Commercial Division of the High Court.

15. The disputes amongst the parties that were referred to the arbitration involved a commercial dispute and has been acknowledged to be so by the appellant by its conduct. Disputes and differences between the parties which were referred to arbitration, arose out of a Standard Fire and Special Perils (Stock) Insurance Policy. The appellant had settled one claim arising out of

cyclone Fani and partly repudiated the second claim relating to the cyclone Amphan.

16. Since an issue of maintainability of the appeal has been raised, the same requires consideration. On such issue the parties have largely referred to and relied upon Section 13 of the Act of 2015 which is as follows:-

“13. Appeals from decrees of Commercial Courts and Commercial Divisions.—

(1) Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order.

(1A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).

(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.”

17. On the aspect of right of appeal and the proviso in Section 13 of the Act of 2015, parties have relied upon various authorities.

18. *Garikapati Veeraya (supra)* has held that, the right of appeal is not a mere matter of procedure but a substantive right. This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.

19. *Videocon International Ltd. (supra)* has held that, the right of appeal being a vested right, the appeal package, as was available at the commencement of the proceedings, would continue to vest in the parties engaged in the lis, until the eventual culmination of the proceedings. It has also recognised that, such right of appeal would be subject to an amendment, expressly or impliedly, providing to the contrary.

20. In the context of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, *S. Sundaram Pillai (supra)* has observed that, normally a proviso is meant to be an exception to something within the main enactment or to qualify something enacted. It has held that, a proviso cannot be torn apart from the main enactment nor can it be used to nullify or set at naught the real object of the main enactment. It has held that, a proviso may serve four different purposes, namely:-

- (i) Qualifying or accepting certain provision from the main enactment.
- (ii) It may entirely change the very concept or the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable.
- (iii) It may be so embedded in the Act itself as to become an integral part of the enactment and thus, acquire the tenor and colour of the substantive enactment itself and,
- (iv) It may be used mainly to act as an optional addendum to the enactment with the sole object of explaining the real intendment of the statutory provision.

21. The Delhi High Court in ***HPL (India) Ltd. (supra)*** has considered the maintainability of an appeal under Section 13 of the Act of 2015 and held that, an appeal against an order of the Commercial Court allowing new documents to be filed along with the affidavit by way of Examination-in-Chief of a witness of the plaintiff to be taken on record is not appealable since, an appeal from such an order is not provided under Section 13 of the Act of 2015.

22. The Bombay High Court in ***Hubtown Limited. (supra)*** has held that, an appeal under Section 13(1) of the Act of 2015 is maintainable as against any order being a judgment within the

meaning of the Code of Civil Procedure, 1908. It has also held that, original procedure as provided under Order 37 of the Code of Civil Procedure, 1908 shall be applicable to the summary suits which were filed prior to the commencement of the Act of 2015 and subsequently transferred thereunder. It has observed that, the Commercial Division Judge is required to follow the original Code of Civil Procedure, 1908 with regard to such suits.

23. The Co-ordinate Bench in ***Super Smelters Ltd. (supra)*** has considered an appeal assailing an order passed by the Commercial Division of the High Court under Section 36(2) of the Act of 1996. With regard to the issue of maintainability of such an appeal, it has noticed Section 13 of the Act of 2015 as also Clause 15 of the Letters Patent, 1865. It has held that, an appeal against an order passed under Section 36(2) of the Act of 1996 is not maintainable in view of Section 37 of the Act of 1996.

24. ***Rajasthan State Industrial Development and Investment Corporation (supra)*** has considered the provisions of the Land Acquisition Act, 1894. It has held that, any notice, circular, guidelines which run contrary to statutory laws cannot be enforced.

25. ***Board of Control for Cricket in India (supra)*** has considered the provisions of Section 34 and 36 of the Act of 1996

both prior and subsequent to the amendment. It has held that, Section 36 of the Act of 1996 applies to pending application under Section 34 of the Act of 1996 even if the arbitration commenced prior to October 23, 2015 being the date when, the amendment to Section 36 of the Act of 1996 came into effect.

26. *Pam Developments Pvt. Ltd. (supra)* has considered Section 36(3) of the Act of 1996 as amended. It has held that, grant of stay of operation of the award is to be for reasons to be recorded in writing. It has held that, the Act of 1996 being a self-contained, the provisions of Code of Civil Procedure, 1908 will apply only insofar as the same are not inconsistent with the spirit and provisions of the Act of 1996.

27. *Ambalal Sarabhai Enterprises Ltd. (supra)* has held that, only such disputes which actually answered the definition of commercial dispute as provided under Section 2(1)(c) of the Act of 2015 can be entertained by the Commercial Courts. Therefore, a strict construction of the provisions of the Act of 2015 is required to be made in order to ensure that the object and purpose of the Act of 2015, speedy disposal of high value commercial dispute, are not defeated.

28. *Kandla Export Corporation & Anr. (supra)* has considered Section 37 and 50 of the Act of 1996. It has held that, no appeal is maintainable in arbitration matters governed by the Act of 1996 other than appeals expressly provided under Section 37 or 50 thereof. It has noted that, the Act of 1996 is a special statute and that it provides an exhaustive self-contained code. Therefore, it carries with it a negative import that only such acts as are mentioned in the Act of 1996 are permissible to be done. Acts or things not mentioned in the Act of 1996 are not permissible to be done. It has considered the provisions of the Act of 2015 also in relation to the Act of 1996. It has held that, even if, Section 50 of the Act of 1996 is not expressly mentioned in Section 13 of the Act of 2015, none the less, only those appeals which are mentioned in Section 37 or 50 of the Act of 1996 will be maintainable and none else.

29. Section 13 of the Act of 2015 has laid down the parameters of appeal against an order or judgment passed by the Commercial Court or Commercial Division of the High Court. Sub-Section (1) of Section 13 of the Act of 2015 has provided that any person aggrieved by the judgment or order of a Commercial Court may appeal to the Commercial Appellate Court while Sub-Section (1A) thereof has

provided that any person aggrieved by the judgment and order of a Commercial Court at a level of a District Judge exercising Original Civil Jurisdiction or the Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court. The proviso to Sub-Section (1A) has provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that is specifically enumerated under Order 43 of the Code of Civil Procedure, 1908 as amended by the Act of 2015 and Section 37 of the Act of 1996.

30. The proviso in Section 13 has, therefore, modulated both sub-Sections (1) and (1A) of Section 13. It has clarified the right of appeal that any person possesses against a judgment and order of a Commercial Court or a Commercial Division. It has, in fact, delineated the contours within which, an appeal shall lie from an order passed by the Commercial Division or a Commercial Court. In doing so, it has specified that, an appeal shall lie only from such orders which are specifically enumerated under Order 43 of the Code of Civil Procedure, 1908 as amended by the Act of 2015 and Section 37 of the Act of 1996.

31. Right of appeal being a vested right would normally continue to vest in the parties engaged in the lis as was available at the

commencement of the proceedings, unless, such right has been amended expressly or impliedly to the contrary. Section 13 of the Act of 2015 has laid down the contours under which, an appeal shall lie from an order or a judgment passed by the Commercial Court or the Commercial Division.

32. The Act of 2015 has amended various provisions of the Code of Civil Procedure, 1908. It has amended the procedure in the conduct of a suit which was filed prior to the Act of 2015 coming into effect as well as the suits filed subsequent to the Act of 2015, coming into effect.

33. Prior to the Act of 2015 coming into effect, an order or a judgment of a Single Judge of this High Court, exercising Ordinary Original Civil Jurisdiction, was appealable under Clause 15 of the Letters Patent, 1865. Clause 15 of the Letters Patent, 1865 recognises the substantive right of appeal and modulates it. This substantive right of appeal can be altered or regulated subsequently by an enactment as acknowledged in ***Garikapati Veeraya (supra)***. The Act of 2015, however, has curtailed that right of appeal to orders and judgments specifically enumerated under Order 43 of the Code of Civil Procedure, 1908 as amended by the Act of 2015, on the suit and proceeding being transferred to the Commercial Court or the

Commercial Division. On such transfer happening, the procedure is governed by the Act of 2015.

34. The Act of 2015 has provided for transfer of pending suits or proceedings from the Non-Commercial Court or the Non-Commercial Division to the Commercial Court or the Commercial Division as the case may be, under Section 15 thereof. Section 16 of the Act of 2015 has amended the provisions of the Code of Civil Procedure, 1908 in its application to commercial disputes.

35. Section 16 of the Act of 2015 has provided that, the provisions of the Code of Civil Procedure, 1908 shall, in their application to any suit in respect of a commercial dispute of a Specified Value, shall stand amended in the manner as specified in the Schedule of the Act of 2015. Sub-Section (2) thereof has ordained that, the Commercial Division and the Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908 as amended by the Act of 2015, in the trial of a suit in respect of a commercial dispute of a Specified Value. Sub-Section (3) of Section 16 of the Act of 2015 has provided that, wherein a provision of any Rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908 made by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908 as amended by

the Act of 2015, then the provisions of the Code of Civil Procedure, 1908 as amended by the Act of 2015 shall prevail.

36. The provisions of Section 13 of the Act of 2015 has to be considered in light of Section 21 thereof. Section 21 of the Act of 2015 provides for the Act of 2015 to have overriding effect. It has specified that, save as otherwise provided, the provisions of the Act of 2015 shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law for the time being in force other than the Act of 2015.

37. In our view, the net effect of Sections 13, 15, 16 and 21 of the Act of 2015 is that, a pending suit or proceeding has to be transferred to the Commercial Court or the Commercial Division, as the case may be, in the event, the dispute involved in the pending suit or the proceeding, involves a commercial dispute of a Specified Value, within the meaning of the Act of 2015. On such transfer happening, the suit, or the proceeding, as the case may be, would then be governed by the Code of Civil Procedure, 1908 as has been amended by the Act of 2015, as also the Act of 2015.

38. Sections 13 and 21 of the Act of 2015, read together, curtail the right of appeal of a party involved in a suit concerning

commercial dispute of the Specified Value which is transferred to the Commercial Court or the Commercial Division as the case may be. In such a case the right of appeal has to conform with the parameters laid down in Section 13 of the Act of 2015. The proviso to Section 13(1) and (1A) of the Act of 2015 has circumscribed the arena of the appeal. The proviso has stipulated that, an appeal shall lie from such orders passed by the Commercial Division or the Commercial Court that is specifically enumerated under Order 43 of the Code of Civil Procedure, 1908 as amended by the Act of 2015 and under Section 37 of the Act of 1996. This prescription of the right of appeal has to be read in conjunction with Section 13(3) of the Act of 2015 and Section 21 thereof.

39. The appellant has sought to prefer an appeal passed against the impugned order which disposed of a petition under Section 36 (2) of the Act of 1996. Maintainability of the present appeal has to be adjudged primarily on the parameters of Section 37 of the Act of 1996 as Section 13 of the Act of 2015 refers to it.

40. Section 37(1) of the Act of 1996 has provided that, notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from an order refusing to refer the parties to arbitration under Section 8 or an order granting or

refusing to grant any measure under Section 9 or setting aside or refusing to set aside an arbitral award under Section 34, and from no others. Sub-section (2) of Section 37 of the Act of 1996 has provided that, and appeal shall lie to a Court from an order of the arbitral tribunal accepting the plea referred to in Section 16(2) or 16(3) or granting or refusing to grant an interim measure under Section 17.

41. The Act of 1996 is a self-contained code and therefore, the provisions of the Code of Civil Procedure, 1908 will apply only insofar as the same are not inconsistent with the spirit and provisions of the Act of 1996. This has been held to be so by ***Pam Developments Private Limited (supra)***. ***Board of Control for Cricket in India (supra)*** has held that, Section 36 of the Act of 1996 applies to pending application under Section 34 of the Act of 1996 even if the arbitration commenced prior to October 23, 2015.

42. ***Kandla Export Corporation and Another (supra)*** has laid down that, no appeal is maintainable in respect of matters governed by the Act of 1996 other than appeals expressly provided under Section 37 thereof. The impugned order as also the subject matter of the impugned order is governed by the Act of 1996.

43. The right of appeal, so far as the parties before us are concerned, being circumscribed by Section 37 of the Act of 1996, and Section 37 of the Act of 1996 not providing any right of appeal against an order disposing of a petition under Section 36 (2) of the Act of 1996, the instant appeal is held to be not maintainable.

44. APOT 320 of 2025 along with all connected applications are dismissed without any order as to costs.

[DEBANGSU BASAK, J.]

45. I agree.

[MD. SHABBAR RASHIDI, J.]