

W. P. (C) No. 311 of 2025

1. Rites Ltd. represented through its Chairman and Managing Director, having Registered office at SCOPE Minar, Laxmi Nagar, Delhi and Corporate Office at RITES Bhawan, Plot No.1, Sector 29, P.O & P.S.-Sector 29, Dist.-Gurgaon represented by Jeetendra Kumar Khan (JGM) RITES Ltd.
2. Damodar Valley Corporation, represented through its Chairman office at DVC Towers, VIP Road, Kolkata, P.O & P.S.-VIP Road, represented by Sangya Dash (Manager HR) DVC Ltd.

Versus

... Respondent

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Petitioners : Mr. M.S. Mittal, Sr. Advocate
Mr. Srijit Choudhary, Advocate
For the Respondent : Mr. Sumeet Gadodia, Advocate
Mrs. Shilpi Sandil Gadodia, Advocate
Mr. Prakhar Harit, Advocate
Mr. K. Hari, Advocate
Ms. Sanya, Advocate

Oral Order

1. This writ petition has been filed for quashing the order passed by learned sole Arbitrator on 06.10.2024 allowing the amendment petition filed by the claimant-respondent under Section 23 (3) of the Arbitration and Conciliation Act, 1996 (hereinafter called the Act, 1996 and under Order 6 Rule 17 of the Code of Civil Procedure, 1908.

2. The petitioners are the respondents in the arbitral proceeding, which is with respect to the dispute between the petitioners and the claimants pertaining to the contract dated 23.03.2015 regarding tender floated by Damodar Valley Corporation and construction of bridge on river Konar along with its approach road over bridge ROB on Gomoh – Barkakana railway line at BTPS.

3. The sitting of the sole arbitrator commenced on 06.11.2022 and the term of the arbitration proceeding is to expire on 17.02.2025.

4. The claimant has preferred the following claim against the respondent:

- i. To declare that the respondent was liable for fundamental breach of the contract dated 23.03.2015;
- ii. To declare that the claimant was entitled to payment of escalation and price variation on the basis of current price in indices for the remaining work done;
- iii. To admit the statement of claimant as being submitted by the claimant; and
- iv. To award amount towards all the claims along with past, *pendente lite* and future interest as claimed under Chapter- IV of the statement of claim; and
- v. To grant any other relief as it may deem fit and proper.

5. Interim order allowing the amendment petition has been assailed on the ground that the documents, which have been relied upon and brought on record by way of amendment petition, were available with the claimant and no reason has been assigned why it was not produced at the earlier stage. In the amendment application it has not even been stated that due diligence was exercised, and they failed to trace these documents. Specific objection in this regard was taken in this regard by the writ petitioners but the same has not been considered by the learned Arbitrator.

6. Order 6 Rule 17 of CPC is categorical in the sense that Court's jurisdiction to allow application for amendment is taken away unless the party establishes where it could not have raised the issue before the commencement of the trial despite due diligence. Further, under Section 23 (3) of the Act, 1996 such an amendment cannot be allowed unless the parties agreed thereto.

7. It is further argued that the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India is intended to meet a situation where a party is rendered remediless and since the arbitral proceeding was in its penultimate stage, therefore, the petitioners had no other remedy except to invoke the writ jurisdiction of this Court. Reliance is placed on in para 18 of (2022) 1 SCC 75 (Serosoft Solutions Private Ltd. Vs. Dexter Capital Advisors Pvt. Ltd.) wherein it has been held

“This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute of clear ‘bad faith’ shown by one of the parties. This high standard said by this Court is in terms of the legislative intention to make the arbitration fair and efficient.”

8. Learned counsel for the claimant-respondent has raised a preliminary objection to the maintainability of the instant writ petition against the interim order passed by the sole arbitrator. The interim objection in I.A. No. 617 of 2025 proceeds on the ground that challenge to an interim order is against the scheme of the Arbitration and Conciliation Act. Specific reference is made to Section 5, which passed the jurisdiction of the Court to intervene except where so provided in the Act, 1996 which is a complete code in itself. It is submitted that it is not legally correct that the writ petitioners are remediless against the interim order. The challenge to said order can also be one of the grounds in an appeal under Section 34 of the Act, 1996. Reliance is placed on (2005) 8 SCC 618 (paras 45 and 46) wherein it has been held that under Section 37 makes certain orders of the arbitral tribunal appealable. Under Section 34 the aggrieved party has an avenue for ventilating its grievance against the award, including any, in-between orders that might have been passed by the arbitral tribunal acting under Section 16 of the Act. The party aggrieved by an order of arbitral tribunal, unless as a right of appeal under Section 37 of the Act, has to wait until the award is passed by the tribunal. This appears to be the scheme of the Act. It has further been held in this case that the object of minimizing judicial

intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 or under Article 226 of the Constitution against every order made by the arbitral tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the arbitral tribunal, parties have to wait until the award is pronounced unless, of course, right of appeal is available to them under Section 37 of the Act, 1996 even at early stage. It has been thus held that the High Court could not interfere with the order passed by the arbitrator or the arbitral tribunal during the course of arbitration proceeding and the parties would approach the Court only in terms of Section 37 of the Act or in terms of Section 34 of the Act. This view has been reiterated in 2025 SCC Online (SC) 22 (para 14).

9. On facts of the case, it is submitted that the occasion for bringing the amendment application before the arbitrator was the judgment of the Hon'ble Apex Court delivered on 21.09.2023, during the pendency of the arbitral case in Batliboi Environmental Engineers Ltd. Vs. Hindustan Petroleum Corporation Limited & Anr. reported in (2024) 2 SCC 379 wherein it was held that Hardson formula was couched on three assumptions:

- i. contractor is not habitually or otherwise underestimating the cost when pricing;
- ii. the profit element was realistic at the time; and
- iii. there was no fluctuation in the market condition and the work of the same general level of profitability.

10. In order to bring martial facts in the light of the ratio laid down by the Hon'ble Apex Court, the amendment was brought which did not seek to amend the pleadings but only to bring certain facts on record supplementing its claim.

11. Having heard the submissions advanced on behalf of both sides and considering the materials on record, I find force in the argument advanced on behalf of the respondent in view of the ratio

laid down by the Hon'ble Apex Court in (2022) 1 SCC 75 that the power under Articles 226 and 227 of the Constitution can be invoked for interfering with an interim order only in exceptional rarity. Nevertheless, the power exists and in exceptional circumstance the said power can be invoked. However, an aperture and avenue for interference is a limited one.

12. Present case does not justify interference with the interim order in exercise of extraordinary writ jurisdiction of this Court for the following reasons:

Firstly, nature of amendment was necessitated in view of the Judgment of the Apex Court in (2024) 2 SCC 379, during the pendency of the arbitral proceeding to bring certain facts on record for consideration by the sole arbitrator.

Secondly, Arbitral Tribunals are not bound by the strict rigors of CPC. Even otherwise amendment is permissible at any stage of the proceeding for the purpose of determining the real question in controversy between the parties. It has been held in **2022 SCC On Line SC 1128 Life Insurance Corporation Ltd Vs Sanjeev Builders Pvt Ltd**

“19. It is well settled that the court must be extremely liberal in granting the prayer for amendment, if the court is of the view that if such amendment is not allowed, a party, who has prayed for such an amendment, shall suffer irreparable loss and injury”.

Thirdly, nature of amendment does not introduce a new cause of action or change the nature of *lis* between the parties, but are to enable the learned Arbitrator to determine the real question in controversy between the parties.

Writ Petition accordingly stands dismissed.

Pending I.A., if any, stands disposed of.

(Gautam Kumar Choudhary, J.)

AKT/Satendra