

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.66 OF 2025

Network Bulls Technologies Pvt. Ltd.	...	Petitioner
Vs.		
Ingram Micro India Pvt. Ltd.	...	Respondent

Mr. Akash Nagar (through VC) a/w. Mr. Kevin Gala and Ms. Akanksha Chouhan i/b. Mr. Kevin Gala for Petitioner.

Mr. Abhay Khandeparkar, Senior Advocate a/w. Mr. Kedar Wagle, Mr. Sagar Wagle, Mr. Kashyap Samant, Ms. Lisa Rasquinha and Ms. Vrunali Vilankar i/b. K & P Legal Combine LLP for Respondent.

CORAM : MANISH PITALE, J.
DATE : JUNE 17, 2025

P.C. :

1. Heard learned counsel for the parties.

2. By this petition filed under Article 227 of the Constitution of India, the petitioner has challenged order dated 04.10.2024 passed by a sole arbitrator. By the said order, *inter alia*, the learned arbitrator granted a prayer made by the original claimant (respondent herein) to make a representation before this Court under Section 27 of the Arbitration and Conciliation Act, 1996 (Arbitration Act) for initiation of contempt proceedings against the petitioner and its directors for willful breach / disobedience of an order dated 15.11.2023 passed by the learned arbitrator.

3. At the outset, the respondent has raised a preliminary objection with regard to maintainability of this petition. It is submitted that as per settled law, such a writ petition under Article 226 / 227 of the Constitution of India is not maintainable against the order of the learned arbitrator. It is specifically submitted that Section 27(5) of the

Arbitration Act has been interpreted by the Supreme Court in the case of *Alka Chandewar Vs. Shamshul Ishrar Khan*, **(2017) 16 SCC 119** to hold that although the marginal note of Section 27 uses the words ‘*Court assistance in taking evidence*’, sub-section (5) thereof has to be read to mean that a party claiming disobedience or breach of order of the arbitral tribunal by the other party should be able to raise a grievance before the Court. It is submitted that, therefore, the impugned order passed by the learned arbitrator is well within the jurisdiction and power provided under Section 27(5) of the Arbitration Act. In that light, the present petition ought not to be entertained.

4. Reliance is also placed on the order passed by the Supreme Court in the case of *Punjab State Power Corporation Limited Vs. Emta Coal Limited and another*, **(2020) 17 SCC 93**, wherein the Supreme Court has relied upon its earlier judgement and reiterated that it is only in a given case where the order passed by the arbitral tribunal is found to be patently lacking inherent jurisdiction that the narrow scope for exercising jurisdiction under Article 226 / 227 of the Constitution of India will be available.

5. It is further brought to the notice of this Court that in pursuance of the impugned order, Commercial Arbitration Petition (L) No.35364 of 2024 is already filed, wherein this Court has issued show cause notice to the petitioner. The order passed by this Court was challenged before the Supreme Court and the special leave petition was dismissed as not pressed. In such circumstances, it is submitted that this petition be held as not maintainable and accordingly be dismissed.

6. On the other hand, the petitioner, while opposing the preliminary objection, submits that the law laid down by the Supreme Court in the case of **Alka Chandewar Vs. Shamshul Ishrar Khan** (*supra*) would not apply to the facts of the present case. It is submitted that the case of

Alka Chandewar Vs. Shamshul Ishrar Khan (*supra*) is distinguishable on facts as in the said case, a specific interim order was passed by the arbitral tribunal restraining a party from disposing of flats. Such a direction was violated and in those circumstances, it was held that Section 27(5) of the Arbitration Act would be applicable. It was submitted that in the present case, the interim direction given is in the form of a money decree at an interim stage, which could always be put to execution and hence, the perversity of the exercise of jurisdiction by the learned arbitrator is evident in paragraph 23 of the impugned order. It was submitted that the Division Bench of this Court in the case of *Central Depositories Services (India) Limited Vs. Ketan Lalit Shah*, **2025 SCC OnLine Bom 682** has referred to a number of precedents and held that a writ petition under Article 226 / 227 of the Constitution of India against an order of arbitral tribunal would be maintainable in exceptional circumstances. It has been reiterated that when there is bad faith or perversity or complete lack of jurisdiction that a writ petition could be entertained. It was emphasized that each individual case would have to be appreciated on facts before reaching a conclusion regarding maintainability of such petition.

7. Thereupon, the learned counsel for the petitioner referred to the impugned order and submitted that the perversity was evident and that in any case, the respondent could institute appropriate execution proceedings and there was no question of initiation of any contempt proceedings in the facts and circumstances of the present case.

8. This Court has considered the rival submissions. It is a settled position of law that Writ Court is extremely slow in entertaining writ petitions under Article 226 / 227 of the Constitution of India, challenging orders passed by arbitral tribunals. The Supreme Court in its judgement in the case of *SBP & Co. Vs. Patel Engineering Limited &*

another, (2005) 8 SCC 618 has considered the said question and the position of law has been reiterated in a number of judgements including in the case of *M/s. Deep Industries Limited Vs. Oil and Natural Gas Corporation Limited*, (2019) SCC Online SC 1602. In the aforementioned order passed in the case of **Punjab State Power Corporation Limited Vs. Emta Coal Limited and another** (*supra*), the Supreme Court held as follows:-

“We are of the view that a foray to the writ Court from a section 16 application being dismissed by the Arbitrator can only be if the order passed is so perverse that the only possible conclusion is that there is a patent lack in inherent jurisdiction. A patent lack of inherent jurisdiction requires no argument whatsoever – it must be the perversity of the order that must stare one in the face.

Unfortunately, parties are using this expression which is in our judgment in *Deep Industries Ltd.*, to go to the 227 Court in matters which do not suffer from a patent lack of inherent jurisdiction. This is one of them. Instead of dismissing the writ petition on the ground stated, the High Court would have done well to have referred to our judgment in *Deep Industries Ltd.* and dismiss the 227 petition on the ground that there is no such perversity in the order which leads to a patent lack of inherent jurisdiction. The High Court ought to have discouraged similar litigation by imposing heavy costs. The High Court did not choose to do either of these two things. In any case, now that Shri Vishwanathan has argued this matter and it is clear that this is not a case which falls under the extremely exceptional category, we dismiss this special leave petition with costs of Rs.50,000/- to be paid to the Supreme Court Legal Services Committee within two weeks. Pending applications stand disposed of.”

9. Even in the judgement of the Division Bench of this Court in the case of **Central Depositories Services (India) Limited Vs. Ketan Lalit Shah** (*supra*) although it has been recorded that such writ petitions would be maintainable, it has been reiterated that it would be in exceptional circumstances that such petitions are entertained and that the Court has to be extremely circumspect while considering such writ

petitions. The position of law was clarified and it was reiterated that the power has to be exercised in exceptional rarity where bad faith or perversity is writ large or that there is inherent lack of jurisdiction in passing orders that are made subject matter of challenge in such petitions.

10. On the touchstone of the aforesaid position of law and upon the facts of the present case being taken into consideration, this Court finds much force in the contention raised on behalf of the respondent with regard to the very maintainability of the present petition. There is substance in the contention raised on behalf of the respondent that the learned arbitrator, in the present case, indeed had jurisdiction to pass order under Section 27(5) of the Arbitration Act. In the case of **Alka Chandewar Vs. Shamshul Ishrar Khan** (*supra*), while discussing the scope and jurisdiction under Section 27(5) of the Arbitration Act, the Supreme Court held as follows:-

“7. If Section 27(5) is read literally, there is no difficulty in accepting the plea of learned senior advocate for the appellant, because persons failing to attend in accordance with the court process fall under a separate category from “any other default”. Further, the Section is not confined to a person being guilty of contempt only when failing to attend in accordance with such process. The Section specifically states that persons guilty of any contempt to the Arbitral Tribunal during the conduct of the Arbitral proceedings is within its ken. The aforesaid language is, in fact, in consonance with the Chapter heading of Chapter V, “Conduct of arbitral proceedings”. Further, it is well settled that a marginal note can be used as an internal aid to interpretation of statutes only in order to show what is the general drift of the section. It may also be resorted to when the plain meaning of the section is not clear. In the present case we must go by the plain meaning of sub-section (5). This being the case, we find it difficult to appreciate the reasoning of the High Court. Also, in consonance with the modern rule of interpretation of statutes, the entire object of providing that a party may approach the Arbitral Tribunal instead of the Court for interim reliefs would be stultified if interim orders passed by such Tribunal are toothless. It is to give teeth to such orders that an express provision is made in Section 27(5) of the Act.”

11. Thus, it cannot be contended on behalf of the petitioner that there was inherent lack of jurisdiction in the learned arbitrator in passing the impugned order and giving the direction contained in paragraph 23 thereof. This cannot even be said to be a case of bad faith or perversity to fit into the category of 'exceptional rarity' to justify maintainability of the present petition. The attempt on the part of the petitioner to go into the merits of the matter is impermissible, for the reason that while exercising jurisdiction validly, an authority / Court / tribunal may commit an error on merits but that in itself cannot be a ground to canvass maintainability of such petitions under Article 226 / 227 of the Constitution of India.

12. It is also a matter of record that in pursuance of the impugned order, the aforementioned arbitration petition i.e. Commercial Arbitration Petition (L) No.35364 of 2024 has been already filed. By order dated 26.03.2025, this Court recorded that the order of the tribunal dated 15.11.2023 passed under Section 17 of the Arbitration Act has not been complied with, which amounted to aggravated contempt. Thereupon, this Court granted last chance to the petitioner to purge its contempt. The petitioner challenged the said order before the Supreme Court by filing SLP (Civil) No.9985 of 2025. By order dated 09.04.2025, the Supreme Court recorded that after arguing the matter for some time, the learned counsel appearing for the petitioner sought permission to withdraw the petition and the petition was dismissed as not pressed. It is also a matter of record that by an order dated 09.04.2025, this Court in Commercial Arbitration Petition (L) No.35364 of 2024 has issued show cause notice to the petitioner as to why action of contempt would not lie for non-compliance of the order dated 15.11.2023 passed by the arbitral tribunal.

13. The contention sought to be raised on behalf of the petitioner, that

the respondent could very well seek execution of the said order and that contempt proceedings would not lie, is a contention that cannot be considered in this petition, which is in itself held to be not maintainable. Such a contention could obviously be raised along with other defences that may be available to the petitioner in the aforesaid Commercial Arbitration Petition (L) No.35364 of 2024, pending before this Court. It cannot be said that merely because the respondent could also seek execution of the said order of the learned arbitrator would, in any manner, assist the petitioner in convincing this Court that the impugned order passed by the learned arbitrator can be said to be inherently lacking jurisdiction or that it would be covered under the category of 'exceptional rarity'.

14. In view of the above, the preliminary objection raised by the respondent is found to be valid. Consequently, the instant petition is held as not maintainable and it is dismissed as such.

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(MANISH PITALE, J.)

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