PURTI PRASAD PARAB
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION NO. 777 OF 2024
ALONGWITH
INTERIM APPLICATION NO. 3682 OF 2024

Master Drilling India Private Limited ...Petitioner

Versus

Sarel Drill & Engineering Equipment India Private Limited ...Respondent

Mr. Sharan Jagtiani, Senior Advocate *a/w Ms.Anuradha Mukherjee, Mr.Aviral Sahai, Ms.Shreya Som, Mr.Sushil Jethmalani, Mr.Soumya Dasgupta, Mr. Shivam Tiwari, Ms.Aanya Anvesha i/b Cyril Amarchand Mangaldas for Petitioner.*

Mr. Rashmin Khandekar *a/w Mr. Chirag M. Bhatia, and Mr.Rakesh K. Taneja i/b Mr. A.R. Shaikh for Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : NOVEMBER 12, 2025

JUDGEMENT :

Context and Factual Background:

1. This Petition is purported to have been filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("***the Act***"). The Petition challenges an order dated May 10, 2024 (***"Impugned Order"***) passed by the Learned Arbitral Tribunal in disposal of an Application filed by the Petitioner invoking Section 31(6) read with Section 32(2)(c) of the Act,

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essentially repelling the contentions of the Petitioner that the very conduct of the arbitration proceedings is untenable.

2. The arbitral proceedings relate to a Business Transfer Agreement dated September 3, 2018 (***"Agreement"***) executed between the Petitioner, Master Drilling India Private Limited (***"Master Drilling"***) and the Respondent, Sarel Drill & Engineering Equipment India Private Limited (***"Sarel Drill"***). In terms of the Agreement, the business and assets of Sarel Drill were sold to Master Drilling. According to Sarel Drill, the Agreement lapsed owing to conditions precedent not being met due to breach attributable to Master Drilling, which has resulted in wrongful loss being caused to Sarel Drill. Therefore, the arbitral proceedings relate to claims by Sarel Drill for Master Drilling to effect payment of damages, return of machinery and rental payments.

3. Master Drilling took a stand that the very invocation and pursuit of arbitral proceedings was untenable on account of Sarel Drill lacking a validly constituted Board of Directors when arbitration was invoked and when an application under Section 11 of the Act was filed. According to Master Drilling, without at least two directors on its Board of Directors, Sarel Drill was incapable of taking any decision to initiate and pursue the underlying arbitration proceedings.

This Judgment has been modified by Speaking to Minutes of Order dated 20/11/2025. Purti Parab

4. The Learned Arbitral Tribunal dismissed Master Drilling's contentions in this regard taking a *prima facie* view that the Master Drilling's contentions could well be considered later in the course of the arbitral proceedings. The Learned Arbitral Tribunal took the view that the arbitral proceedings ought not to be brought to an end outright. This view of the Learned Arbitral Tribunal is sought to be treated as an interim award to access the jurisdiction of this Court under Section 34 of the Act.

5. The challenge by Master Drilling is based on the premise that the absence of at least two Directors on the Board of Directors at the threshold of initiation of arbitration constitutes a foundational defect that renders Sarel Drill incapable of taking any corporate decision whatsoever. Master Drilling would contend that this is an incurable infirmity rather than a procedural defect. It is Master Drilling's case that Sarel Drill was incapable of taking any corporate decision whatsoever and this incapacity would preclude the ability to take any decision to commence arbitration.

6. Therefore, according to Master Drilling, the commencement of arbitration was "*non est*" – non existent in the eyes of law. The decision is incapable of subsequent ratification by a validly constituted

This Judgment has been modified by Speaking to Minutes of Order dated 20/11/2025. Purti Parab

Board of Directors that becomes available. In a nutshell, the contention is that an action that was incapable of being validly undertaken in the first place cannot even be ratified.

7. Against the aforesaid backdrop, a few relevant facts would be noteworthy :

(a) Sarel Drill was originally incorporated with its Board of Directors having three Directors, one Mr. Raghav Sehgal; and two non-resident Directors Mr. Sarel J. Smit and Mr. Morne Smit;

(b) In May 2017, Mr. Raghav Sehgal resigned leaving the Board with the remaining two non-resident Directors.

(c) On March 20, 2018, Mr. Morne Smit passed away leaving only Mr. Sarel J. Smit as the sole Director on the Board.

(d) A Board resolution dated April 18, 2018 is said to have been passed to appoint Mrs. Louisa Smit as a Director. This is one of the contested facts in the arbitral proceedings. According to Master Drilling, there is no Director Identification Number (***"DIN"***) allotted in the name of Mrs.

Louisa Smit and her name does not reflect in the master data of the Ministry of Corporate Affairs;

(e) The initiation of a dispute for reference to arbitration and the invocation of arbitration under Section 21 of the Act by a notice dated August 12, 2021 is purported to be backed by a Board Resolution passed on July 29, 2021;

(f) In view of the absence of response on the part of Master Drilling, Sarel Drill filed a Section 11 Application on December 9, 2021, which led to a Sole Arbitrator being appointed by a Learned Single Judge of this Court on November 19, 2022.

(g) When arbitration was underway, on February 28, 2023, Master Drilling filed an Application invoking Section 32(2)(c) of the Act seeking termination of the arbitral proceedings on the premise that continuation of the proceedings is rendered impossible, hoping to get an interim award under Section 31 of the Act;

(h) On August 4, 2023, Sarel Drill inducted Mr. Yogesh Sharma as an additional Director to the Board of Directors

This Judgment has been modified by Speaking to Minutes of Order dated 20/11/2025. Purti Parab

and on August 28, 2023, the Board authorized Mr. Yogesh Sharma to undertake all actions with respect to the arbitration proceedings; and

(i) On September 21, 2023, Sarel Drill passed a Shareholders' Resolution regularizing the appointment of Mr. Yogesh Sharma and ratifying all the actions taken until then.

Contentions of the Parties :

8. Mr. Sharan Jagtiani, Learned Senior Advocate on behalf of Master Drilling, would contend that since Sarel Drill had only one Director left upon demise of Mr. Morne Smit, the remaining Director Mr. Sarel Smit could have done nothing except to induct another director. No decision whatsoever regarding initiation of arbitral proceedings could validly be taken by or on behalf of Sarel Drill. Without a Board of Directors of more than one Director, Mr. Jagtiani would contend that Sarel Drill could never have issued instructions to Advocates; or invoked arbitration; or filed a Section 11 Application; or authorised the filing of a Statement of Claim. Therefore, he would contend, under Section 32, it would not be possible to continue with the

This Judgment has been modified by Speaking to Minutes of Order dated 20/11/2025. Purti Parab

arbitration and the Learned Arbitral Tribunal ought to have terminated the proceedings.

9. The dismissal of such an Application by Master Drilling, he would contend, constitutes an arbitral award, enabling Master Drilling to file the challenge under Section 34 of the Act. The core submission by Master Drilling is that the absence of the minimum number of two Directors means the absence of inherent capacity due to absence of a corporate "mind" for Sarel Drill. According to Mr. Jagtiani, even a subsequently staffed Board of Directors cannot ratify something that could have never been done.

10. The Impugned Order is also challenged on the premise that vital provisions of the Companies Act, 2013 (***"Companies Act"***) have been ignored or misread, resulting in patent illegality and perversity in the contents of the Impugned Order. Purporting to characterise the Impugned Order as an Arbitral Award, it is contended by Mr. Jagtiani that the jurisdiction of Section 34 to quash and set aside an Arbitral Award that is in conflict with the fundamental policy of India should inexorably lead to a finding that the Learned Arbitral Tribunal was wrong and the arbitral proceedings can simply not be continued.

This Judgment has been modified by Speaking to Minutes of Order dated 20/11/2025. Purti Parab

11. In sharp contrast, Mr. Rashmin Khandekar, Learned Advocate on behalf of Sarel Drill, would submit that at the threshold the Impugned Order could never be regarded as an Arbitral Award inasmuch as it has merely refused to terminate the arbitral proceedings by rejecting Master Drilling's Section 32 Application, keeping all rights and contentions on merits including the purported incapacity, open for consideration at a later stage. This, Mr. Khandekar would submit is merely an interim view holding that it would be inappropriate to non-suit Sarel Drill outright by holding that the arbitration could never have been commenced.

12. Mr. Khandekar would submit that Master Drilling's view that Mrs. Louisa Smit could not be regarded as a Director for not holding a valid DIN is also something the Learned Arbitral Tribunal will consider eventually. Master Drilling having adopted the approach of invoking the provisions of the Companies Act governing quorum of Board of Directors, inexplicably, contentions are now being made beyond the scope of quorum and on the premise of substantial incapacity. Mr.Khandekar would point to numerous observations in the Impugned Order, clearly indicating that there is no final ruling in the matter, which can only point to the Impugned Order simply not constituting an Arbitral Award for this Court to have jurisdiction to intervene.

13. The sheer number of times the Learned Arbitral Tribunal has made it clear to indicate that the views in the Impugned Order are *prima facie* in nature, left no manner of doubt, Mr. Khandekar would submit, that the Impugned Order can never be said to have the trappings of an Arbitral Award under Section 2(1)(c) of the Act read with Section 34 of the Act.

14. The Arbitral Tribunal has rightly held, he would submit, that the Board resolution of July 29, 2021 being passed without the requisite quorum is *prima facie*, an irregularity that is capable of rectification and ratification. That apart, Mr. Khandekar would submit that Master Drilling's Application was filed invoking Section 32(2)(c) of the Act and even in this Petition purportedly filed under Section 34, Master Drilling has itself shown that it is conscious that the Learned Arbitral Tribunal has intended to lead evidence, conduct trial and has even called upon Sarel Drill to demonstrate the ratification in the course of the final hearing.

15. Without prejudice to all the aforesaid contentions, Mr.Khandekar would submit that even under Section 34 of the Act, the scope of jurisdiction of the Court would only extend to situations where the view of the Arbitral Tribunal is implausible and there cannot be a

This Judgment has been modified by Speaking to Minutes of Order dated 20/11/2025. Purti Parab

light interference with an Arbitral Award that is not facially perverse. He would submit that the scope of interference at an interlocutory stage, is even narrower than the scope available under Section 34 of the Act and the Learned Arbitral Tribunal must be given a reasonable play in the joints to determine the issue identified by it as necessary for examination in the course of final adjudication.

16. Finally, even the evidentiary value, admissibility, legality and validity of the actions and documents disputed by Master Drilling have been left open for adjudication at a later stage. Invoking Section 19 of the Act, Mr. Khandekar would submit that Learned Arbitral Tribunal is free to conduct arbitral proceedings in the manner it considers appropriate.

Analysis and Findings:

17. Having heard the parties at length and having examined the material on record with the benefit of their verbal submissions as well as detailed written notes of arguments with reference to the material on record, at the threshold, the question to be considered is whether the Impugned Order could at all be regarded as an Arbitral Award, for the jurisdiction under Section 34 to be available.

Scope of Court Intervention:

18. At the threshold, the provisions of Section 5 must be noticed, and are extracted below:

> ***Extent of judicial intervention.***
> *Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part,* ***no judicial authority shall intervene except where so provided in this Part****.*
>
> ***[Emphasis Supplied]***

19. The provisions of Section 19 must also be noticed, and are extracted below:

> ***Determination of rules of procedure.***
>
> *(1)* ***The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908*** *(5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).*
>
> *(2)* ***Subject to this Part, the parties are free to agree on the procedure*** *to be followed by the arbitral tribunal in conducting its proceedings.*
>
> *(3)* ***Failing any agreement*** *referred to in sub-section (2),* ***the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate****.*
>
> *(4)* ***The power of the arbitral tribunal*** *under sub-section (3)* ***includes the power to determine the admissibility, relevance, materiality and weight of any evidence****.*
>
> ***[Emphasis Supplied]***

20. Section 19 is an important and vital element in the legislative scheme of the Act. This is the statutory basis of the well-known principle laid down in innumerable judgements that the Arbitral Tribunal is the best judge of the quality and quantity of evidence and is the master of the arbitral proceedings. Such exercise of power by the Arbitral Tribunal is protected by the scheme of Section 5, to ensure that the Courts play a hands-off approach and refrain from intervention. The interference that Courts may effect is restricted to what is provided for in Part I of the Act.

21. Part I of the Act provides for an intervention in relation to an arbitral award (which can be an interim award or a final award) under Section 34 of the Act. The other means of approaching the Court before an award is made and during the course of arbitration, is contained in Section 37 which creates an appellate jurisdiction in specific situations. Even here, the only scope for an intervention during pendency of arbitral proceedings is a decision taken on an interlocutory arrangement that the Arbitral Tribunal has chosen to make.

22. The other avenue for invoking Section 37 in relation to a decision by an Arbitral Tribunal is when the Arbitral Tribunal has ruled under Section 16 that it has no jurisdiction to conduct arbitration.

This Judgment has been modified by Speaking to Minutes of Order dated 20/11/2025. Purti Parab

Where the Arbitral Tribunal holds that it indeed has jurisdiction when faced with a challenge to its jurisdiction, care has been taken to ensure that such decision can only be challenged when the Arbitral Award has been made and should the need arise for the person aggrieved by the dismissal of the Section 16 Application to also challenge the Arbitral Award.

23. Any jurisdiction to challenge or to appeal a decision, being a specific creation of statute, one has to strictly conform to the permissible scope for any such challenge or appeal. It is an admitted ground that Section 37 on its own, gives no room for a challenge to a decision of an Arbitral Tribunal under Section 32 that it is indeed possible to continue with the arbitration. Indeed, a decision of an Arbitral Tribunal under Section 32 that it is indeed possible to continue with the arbitration is not covered by the scope of the appellate jurisdiction under Section 37 of the Act.

24. This is why it is vital for Master Drilling to demonstrate that the Impugned Award is a *final* adjudication of at least a part of the cause of action before it, to constitute, at the least, a partial or interim award; or a final adjudication of the entire cause of action before it, to constitute a final award. If Master Drilling's case that the Impugned

Order is indeed an Arbitral Award is accepted, the next stage would be to examine if such Arbitral Award renders a view that is so implausible and perverse that the perversity cuts to the root of the matter. It is only in such event that the Section 34 Court may exercise its jurisdiction to interfere with, displace and set aside the Arbitral Award.

25. In my opinion, by reason of Section 5 read with Section 19, this Court ought not to interfere with the interim and prima facie views expressed by the Learned Arbitral Tribunal in relation to Master Drilling's contentions on the proceedings being *non est* and impossible to continue. In the instant case, as a matter of fact (*de facto*), the arbitral proceedings are not impossible to be continued. It is Master Drilling's case that as a matter of law (*de jure*), the arbitral proceedings cannot continue because when they were initiated, the Board of Directors had been denuded of any power to take any decision except to appoint another director.

26. Section 19 gives the Learned Arbitral Tribunal full power to decide on how to go about adjudicating such issues. It is not for this Court to direct, monitor or oversee such exercise of power by the Learned Arbitral Tribunal in conducting arbitration. The power under Section 19 includes the power to determine the admissibility, relevance,

materiality and weight of any evidence presented to the Learned Arbitral Tribunal, and the stage at which such consideration must be undertaken.

Section 174 of Companies Act:

27. Master Drilling pressed into service before the Learned Arbitral Tribunal, the provisions of Section 174(2) of the Companies Act, which is a sub-section of a provision dealing with quorum for a Board Meeting. Section 174 of the Companies Act reads as follows:-

> ***Quorum for meetings of Board***
>
> *1) The **quorum for a meeting** of the Board of Directors of a company **shall be one-third of its total strength or two directors, whichever is higher**, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.*
>
> *2) The **continuing directors may act notwithstanding any vacancy in the Board**; but, **if and so long as their number is reduced below the quorum fixed by the Act for a meeting** of the Board, **the continuing directors or director may act for the purpose of increasing the number of directors** to that fixed for the quorum, **or of summoning a general meeting** of the company **and for no other purpose**.*
>
> *3) Where at any time the number of interested directors exceeds or is equal to two-thirds of the total strength of the Board*

> *of Directors, the number of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum during such time.*
>
> *4)* ***Where a meeting of the Board could not be held for want of quorum, then, unless the articles of the company otherwise provide, the meeting shall automatically stand adjourned to the same day at the same time and place in the next week*** *or if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place.*
>
> ***[Emphasis Supplied]***

28. Evidently, the provision deals with quorum for a meeting. At a meeting, directors may leave mid-course and what began as a quorate meeting could become non-quorate. Equally even before a meeting could be held, the Board strength may fall to below the statutory minimum necessary for a quorum. In the running of a company, a Board Meeting may be a statutory requirement or a requirement that the company's shareholders or its Board of Directors have voluntarily stipulated as a best practice. Where the Companies Act or the Articles of Association of a company stipulate that a certain decision can only be taken by the Board of Directors, the requirement for a Board Meeting would be a statutory one. Where there is no such statutory stipulation, the Board Meeting may be a commemorative one and not a fundamental requirement of law. All these facets present mixed questions of fact and

law. It is for the Arbitral Tribunal to decide how to go about examining these questions and when and at which stage, it would be most appropriate to examine such issues.

Doctrine of Necessity:

29. Faced with this proposition, Master Drilling would pitch the case even higher by contending that a company without more than one director would cease to have any capacity to act in any manner whatsoever. According to Mr. Jagtiani, the Board of Directors is the "corporate mind" and once denuded of a quorate Board strength, a company would be paralysed without any capacity to do anything, with the only action that the company could take is to get its Board back to quorate strength. I am afraid this extreme proposition does not appeal to me, even as it is not for this Court to rule on this at this stage of the proceedings.

30. Suffice it to say the doctrine of necessity would answer such a proposition. One of the core legislative objectives of the Companies Act is to enable a company to be well governed for the best welfare of all its stakeholders and shareholders. The proposition that even for matters that do not need a Board decision, a company would stand paralysed would have far-reaching and counterproductive consequences that

This Judgment has been modified by Speaking to Minutes of Order dated 20/11/2025. Purti Parab

cannot be lightly inferred merely because a counterparty to a disputed contract seeks to blow off arbitral proceedings that have been well underway.

31. Some examples would make this clear. If the proposition that the company must necessarily be paralysed is accepted, the company (purportedly without a corporate mind) would never be able to file tax returns, enter into a contract, renew an existing contract, terminate a contract, and even employ any person or taken to its logical length, sign any cheque, whether for a routine payment (say pay cheques of employees) or a non-routine payment (say purchase of vital spare parts or of replacement machinery). Such an approach would harm the company's stakeholders for whose protection the quorum stipulations for the Board of Directors has been legislated.

32. This is precisely where the doctrine of necessity would come in – a doctrine often adopted in connection with appointment of persons in governance structures. The Learned Arbitral Tribunal may choose to examine this doctrine at an appropriate time. In ***Presidential Poll, In re***[1], the Supreme Court ruled that the mandatory character of a legal requirement would not get denuded and yet, the law would accept as a

[1] *(1974) 2 SCC 33*

valid excuse, the impossibility of performing the obligation, if circumstances so arise, in the following words:

> *15.* ***The impossibility of the completion of the election to fill the vacancy in the office of the President before the expiration of the term of office in the case of death of a candidate as may appear from Section 7 of the 1952 Act does not rob Article 62(1) of its mandatory character.*** *The maxim of law impotentia excusal legem is intimately connected with another maxim of law lex non cogit ad impossibilia.* ***Impotentia excusat legem is that when there is a necessary or invincible disability to perform the mandatory part of the law that impotentia excuses, The law does not compel one to do that which one cannot possibly perform****. "Where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over it, there the law will in general excuse him."* ***Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like the act of God, the circumstances will be taken as a valid excuse. Where the act of God prevents the compliance of the words of a statute, the statutory provision is not denuded of its mandatory character because of supervening impossibility caused by the act of God****. (Sec Broom's Legal Maxims 10th Edition at pp. 1962-63 and Craies on Statute Law 6th Ed. p. 268).*
>
> ***[Emphasis Supplied]***

33. The doctrine of necessity has been explained by the Supreme Court in ***Lalit Modi***[2], where it dealt with a committee functioning without its President and held as follows:

> *38.* ***The doctrine of necessity is a common law doctrine, and is applied to tide over the situations where there are difficulties. Law does not contemplate a vacuum, and a solution has to be found out rather than allowing the problem to boil over****. Otherwise, as proposed by Shri Jethmalani* ***one will have to wait for one more year for a new President to be elected, which submission cannot be accepted****.*
>
> ***[Emphasis Supplied]***

34. Noticing the doctrine of necessity, the Supreme Court in the case of ***Dey vs. Dey***[3], held as follows:

> *We have to bear in mind two maxims of equity which are well settled, namely, "ACTUS CURIAE NEMINEM GRAVABIT"- An act of the Court shall prejudice no man. In Broom's Legal Maxims. 10th edition, 1939 at page 73 this maxim is explained that this maxim was founded upon justice and good sense; and afforded a safe and certain guide for the administration of the law. The above maxim should, however, be applied with caution.* ***The other maxim is "LEX NON COGIT AD lMPOSSIBILIA" (Broom's Legal Maxims-P. 162)****-The law does not compel a man to do that which he cannot possibly perform.* ***The law itself and the administration of it, said Sir W. Scott, with reference to***

[2] *Lalit Kumar Modi v. Board of Control for Cricket in India – (2011) 10 SCC 106*
[3] *Raj Kumar Dey vs Tarapada Dey – (1987) 4 SCC 398*

> ***an alleged infraction of the revenue laws, must yield to that to which everything must bend, to necessity; the law, in its most positive and peremptory injunctions, is understood to disclaim, as it does in its general aphorisms, all intention of compelling impossibilities****, and the* ***administration of laws must adopt that general exception in the consideration of all particular cases****.*
>
> ***[Emphasis Supplied]***

35. The absolute and unconditional proposition that a company would need to come to a grinding halt would fall in the realm of compelling an impossibility and contemplating a vacuum, which would only undermine the welfare of the very company whose governance is subject matter of protection under Section 174 of the Act.

Application to Facts of the Case:

36. All the aforesaid analysis is only to indicate that the Learned Arbitral Tribunal has wisely refused to non-suit Sarel Drill outright at the mere invocation of the claim of an absence of corporate mind. A close examination of the Impugned Order would show that the Learned Arbitral Tribunal has indeed made it abundantly clear that the contentions being raised by Master Drilling present mixed questions of fact and law and the Learned Arbitral Tribunal would need to examine

evidence and determine the admissibility, relevance, materiality and weight of such evidence sought to be presented.

37. The Learned Arbitral Tribunal may desire to adjudicate as to whether the absence of a DIN for Ms. Louisa Smit is a process irregularity or if it means she could never have been a director. The Learned Arbitral Tribunal may feel the need to examine and rule on provisions of the Companies Act and its scheme to see which provisions that need to be considered present mandatory obligations, and which provisions stipulate directory requirements, and even more, which provisions would yield to the doctrine of necessity as a solution.

38. The Learned Arbitral Tribunal may even consider if a Board Meeting was at all necessary in the first place to initiate arbitration and whether the proceedings were initiated based on any power already vested in the individuals who took the steps to initiate arbitration. The Learned Arbitral Tribunal may wish to examine whether a Board Resolution would be of commemorative character, or if it is foundational in character. The Learned Arbitral Tribunal would indeed need to examine whether even if the Board of Directors was not quorate, whether a decision of a Board without quorum could be validated with retrospective effect once a quorate Board is available, with the

consequence of a breach of Section 174(2) being a sanction of some nature rather than the blanket invalidation of everything that was done during the purported absence of "corporate mind". As stated earlier, the view would have implications for every single movement of every corporate muscle to take any step in any direction.

39. Therefore, multiple nuances are involved and all of this would need a detailed examination. The Learned Arbitral Tribunal has wisely taken a view that the absolutist proposition canvassed by Master Drilling does not lend itself to an outright non-suiting of Sarel Drill at the threshold on the premise of Section 32 of the Act. I see no reason to ignore the multiple iterations of the Learned Arbitral Tribunal in explaining its approach of having taken a *prima facie* view in the matter and not accepting the unconditional definitive and inexorable characterisation that Master Drilling has sought to paint on the facts at hand. Clever drafting of a purported challenge under Section 34 cannot convert what is not an Arbitral Award into an arbitral award.

40. Master Drilling is not relying on any provision that explicitly and expressly stipulates that every action initiated by a company when it could not have held a Board Meeting is *non est*. Master Drilling seeks to draw an inference from Section 174(2) of the Companies Act. Surely,

this presents a question of law or even multiple mixed questions of law and fact, which is squarely for the Learned Arbitral Tribunal to decide on as to when and how it wants to decide. Should Parliament have felt it necessary to stipulate the *non est* nature of every step taken by a company during the period when it did not have a quorate Board, the legislation would have stipulated so. Potentially, precisely because of the chaotic circumstances that would emerge, some of which are explained above, the Companies Act does not so stipulate this consequence canvassed by Master Drilling.

41. Therefore, during the course of arbitration, which is not impossible to be continued, the Learned Arbitral Tribunal would decide on the issues articulated above. The Learned Arbitral Tribunal should be left to its devices on handling the arbitration without interference from the Court.

Palmview Investments:

42. It is in this context that the Learned Arbitral Tribunal has dealt with the ruling by a Learned Division Bench of this Court in ***Palmview Investments***[4], a judgement pressed into service by each side. The Learned Division Bench was dealing with an interim award

[4] *Palmview Investments Overseas Ltd. v. Ravi Arya - (2023) 1 HCC (Bom) 259*

returning firm findings on a defect in the authority of the person who had initiated proceedings and had affirmed pleadings but also gave the party an opportunity to cure the defect. The interim award came up for challenge on identical terms – it does not escape attention that the strategy in the matter in hand follows the same template as that deployed in the arbitration underlying ***Palmview Investments***.

43. The Learned Division Bench held that the language in Section 31(6) of the Act was extremely wide and permitted the Arbitral Tribunal to make any Interim Award at any time of the arbitral proceedings in respect to which it could make a final Arbitral Award. In that matter, there was no doubt that the instrument impugned was an interim award and there was no doubt that it returned clear and conclusive findings on the legal defect. Thereafter, importing from principles of the Code of Civil Procedure, 1908 ("***CPC***") the Arbitral Tribunal gave permission to cure the defect. This led to another round of litigation which wound its way to the Learned Division Bench.

44. The Learned Division Bench held that it could never be said that the Arbitral Tribunal would not have the power to cure the defect to ensure that injustice is not done. It was held that in a catena of decisions, proceedings filed by a company with a defective Board

resolution or even in situations where a Board resolution is not even available, the lacuna was held as not being fatal to the arbitral proceedings. In the instant case, the Learned Arbitral Tribunal has not even taken a firm and conclusive view to enable the Petitioner to treat the Impugned Order as an Arbitral Award. That apart, , the *prima facie* and preliminary view taken by the Learned Arbitral Tribunal cannot be faulted at all since all issues have been left open for consideration. In any case, in view of the law declared in ***Palmview Investments***, citing ***United Bank of India***[5] the *prima facie* view of the Learned Arbitral Tribunal cannot be faulted.

45. At the risk of adding to the length of this judgement, the following extracts are set out, since they summarise the point comprehensively:

> ***24. As held by the Supreme Court in Srei Infrastructure Finance Ltd. v. Tuff Drilling (P) Ltd. [Srei Infrastructure Finance Ltd. v. Tuff Drilling (P) Ltd., (2018) 11 SCC 470 : (2018) 5 SCC (Civ) 156] Section 19 cannot be read to mean that the Arbitral Tribunal is incapacitated in drawing sustenance from any provisions laid down under the CPC. Just because the Arbitral Tribunal is not bound by the CPC, it does not mean that it would not have jurisdiction to exercise powers of a court as contained in the CPC.***

[5] *United Bank of India vs. Naresh Kumar – (1996) 6 SCC 660*

***28. In United Bank of India case [United Bank of India v. Naresh Kumar, (1996) 6 SCC 660] the Supreme Court has held that letter of authority of an individual, who had signed the pleadings on behalf of the company can be cured by the company subsequently**. The court held that **where suits are instituted or defended on behalf of a public corporation, public interest should not be permitted to be defeated on a mere technicality**. Though appellant is not a public corporation, a litigant's interest should not be permitted to be defeated on a mere technicality. **Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the courts, under the Code of Civil Procedure, to ensure that injustice is not done to any party who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable**. The court also held that in the absence of a person expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual, **the company can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied**. Paras 8, 9, 10, 11 and 13 of United Bank of India case [United Bank of India v. Naresh Kumar, (1996) 6 SCC 660] read as under: (SCC pp. 663-665, paras 8-13)*

> *8. In this appeal, therefore, the only question which arises for consideration is **whether the plaint was duly signed and verified by a competent person**.*
>
> *9. In cases like the present where suits are instituted or defended on behalf of a public corporation, public interest should not be permitted to be defeated on a mere technicality. **Procedural de-***

fects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the courts, under the Code of Civil Procedure, to ensure that injustice is not done to any party who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable*.*

10. It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6 Rule 14 of the Code of Civil Procedure a pleading is required to be signed by the party and its pleader, if any. ***As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order 29 Rule 1 of the Code of Civil Procedure, therefore, provides that in a suit by against a corporation the secretary or any director or other principal officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company****. Reading Order 6 Rule 14 together with Order 29 Rule 1 of the Code of Civil Procedure* ***it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation.*** *In addition thereto and dehors Order 29 Rule 1 of the Code of Civil Procedure, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 of the Code of Civil Procedure.* ***A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being***

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executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a corporation can ratify the said action of its officer in signing the pleadings*. Such ratification can be express or implied.* ***The court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer.***

11. The courts below could have held that Sh. L.K. Rohatgi must have been empowered to sign the plaint on behalf of the appellant. In the alternative it would have been legitimate to hold that the manner in which the suit was conducted showed that the appellant Bank must have ratified the action of Sh. L.K. Rohatgi in signing the plaint. ***If, for any reason whatsoever, the courts below were still unable to come to this conclusion, then either of the appellate courts ought to have exercised their jurisdiction under Order 41 Rule 27(1)(b) of the Code of Civil Procedure and should have directed a proper power of attorney to be produced or they could have ordered Sh. L.K. Rohatgi or any other competent person to be examined as a witness in order to prove ratification or the authority of Sh. L.K. Rohatgi to sign the plaint. Such a power should be exercised by a court in order to ensure that injustice is not done by rejection of a genuine claim.***

*12. ****

13. The court had to be satisfied that Sh. L.K. Rohatgi could sign the plaint on behalf of the appellant. ***The suit had been filed in the name of the appellant Company; full amount of court fee had been paid by the appellant Bank; documentary as well as oral evidence had been led on behalf of the appellant and the***

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> ***trial of the suit before the Sub-Judge, Ambala, had continued for about two years. It is difficult, in these circumstances, even to presume that the suit had been filed and tried without the appellant having authorised the institution of the same.*** *The only reasonable conclusion which we can come to is that Sh. L.K. Rohatgi must have been authorised to sign the plaint and, in any case, it must be held that the appellant had ratified the action of Sh. L.K. Rohatgi in signing the plaint and thereafter it continued with the suit.*
>
> ***[Emphasis Supplied]***

46. It is apparent that this judgement is sought to be interpreted like a statute by Master Drilling, which contends that in the facts of this case the alleged absence of a "corporate mind" owing to absence of quorate Board of Directors could mean that this is not a procedural matter and that it goes to the root of the matter. ***United Bank of India*** too indicates that an officer otherwise authorised could take actions in litigation even without a Board Resolution. Mr. Sarel Smit's power to take such action on behalf of Sarel Drill is a question of fact to be examined. The Learned Arbitral Tribunal has decided to examine it later.

47. To overcome this position, the extreme contention is made that nothing a company can do until its Board becomes quorate for a

potential meeting would be valid in the absence of a corporate mind. I have dealt with that contention earlier in this judgement. In any case, the Learned Arbitral Tribunal's prima facie stand that Sarel Drilling cannot be non-suited without this issue being examined at an appropriate stage cannot be faulted. The Learned Arbitral Tribunal has the full power and discretion to choose when to consider these issues and cannot be dictated to by any party as to how to conduct the proceedings. Clearly this issue would require evidence to be examined. I have already discussed Section 19 of the Act. There is nothing arbitrary in the approach of the Learned Arbitral Tribunal in leaving this issue for later.

48. In these circumstances, in my opinion no case is made out for interference with the Impugned Order, which is in any case, not an arbitral award inasmuch as it is not a final adjudication of any issue which would lead to termination of the arbitral proceedings on such issue. Under Section 31 of the Act, the arbitral proceedings would terminate when an Arbitral Award is rendered, bringing to an end the adjudication of the disputes presented before the Arbitral Tribunal. In the instant case, far from bringing any dispute to an end on a final basis, the Learned Arbitral Tribunal has taken a decision that it would examine the matter at a later stage in the course of a final determination

that it would make as and when it adjudicates the proceedings in the manner that it chooses to conduct.

49. Therefore, the invocation of Section 34 of the Act is misconceived. The *prima facie* view of the Learned Arbitral Tribunal is validly made as an interlocutory assessment, and the decision not to non-suit Sarel Drill is not a final adjudication. Even if the negative conclusion were to be treated as a final adjudication on the issue, for the reasons set out above, the view expressed in the Impugned Order is an eminently plausible view that calls for no intervention.

50. In these circumstances, this Petition is ***dismissed***. Consequently, Interim Application No. 3682 of 2024 is also disposed of.

Costs:

51. Considering that this is a commercial dispute and taking into account the nature of the Petition and the intervention sought, which has impeded the smooth flow of arbitration, costs must follow the event. In my opinion, having regards to the facts of the case, even as a token, costs in the sum of Rs. 2 Lakhs shall be just and appropriate considering the incidence of costs that would have been incurred because of the detour effected, entailing significant length of time and resources which

could have been better deployed in furthering the arbitration. Such costs shall be paid by Master Drilling to Sarel Drill within a period of three weeks from the upload of this judgement on this Court's website.

52. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]

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