

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

**INTERIM APPLICATION NO. 3231 OF 2025
IN
COMMERCIAL ARBITRATION PETITION NO. 537 OF 2025**

Gannon Dunkerley and Co. Ltd. ... Applicant
Versus
Prism Johnson Ltd. ... Respondent

**WITH
COMMERCIAL ARBITRATION PETITION NO. 537 OF 2025**

Mr. Rajiv Kumar, Senior Advocate, a/w Vyom Shah, Solicitor, Virendra Pareira, Jimish Shah, Rahil Jhaveri, Khushan Kumar, Anand Iyer i/by Divya Shah Associates for the Applicant/Petitioner. Mr. Snehal Shah, Senior Advocate, a/w Mr. Aditya Mehta, Mr. Pradeep Bakhru, Mr. Kaizad Dalal, M. Ashwarya Patwa i/by Wadia Ghandy & Co. for Respondent.

**CORAM : MANISH PITALE, J.
DATE : 5th DECEMBER 2025**

P.C. :

. Heard Mr. Rajiv Kumar, learned senior counsel for the applicant, as also Mr. Snehal Shah, learned senior counsel appearing for the respondent in this application, seeking interim stay of the impugned interim award passed by the arbitral tribunal.

2. The arbitration petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Arbitration Act' for short), challenges an award of the arbitral tribunal, termed by the arbitral tribunal itself as interim (final) award, dated 14th March 2025.

3. It is undisputed that rival parties agreed before the arbitral tribunal that the arbitral proceedings would be conducted in two phases. The first phase would determine as to whether the petitioner could be held at all liable for the claims raised by the respondent and if the conclusion in the first phase was to be in favour of the respondent, the second phase for determining the actual quantum of amounts to be paid by the petitioner, would be undertaken on the basis of evidence that would be led by the parties.

4. By the impugned interim (final) award, the arbitral tribunal *inter alia* has held that the petitioner is liable to the extent of 80% of the claims raised by the respondent and accordingly, the second phase of arbitral proceedings has commenced.

5. Mr. Kumar, learned senior counsel appearing for the applicant (petitioner) made submissions in support of the present application and in the process, he referred to the contents of the impugned interim (final) award to impress upon this Court that the arbitral tribunal had rendered, at places, findings in favour of the applicant and yet, arbitrarily concluded that the applicant was liable to the extent of 80% of the claims made by the respondent. It was submitted that an adverse finding was rendered against the respondent for non-production of original design and yet, final conclusion was rendered against the applicant.

6. It is further submitted that the arbitral tribunal itself took note of two aspects of the claims made by the respondent. One

pertaining to the loss suffered due to collapse of a silo constructed by the applicant, including damage to the plant and machinery, the expenses required for construction of new silo with expenses incurred by the respondent for making alternative arrangement during the time when the new silo was constructed, as also for loss of profit and business, during the aforesaid period. It was submitted that a specific contention was raised on behalf of the applicant that the respondent could not claim both reliefs at the same time. Despite taking note of the said specific contention of the applicant, there is no finding rendered in the impugned interim (final) award, thereby further demonstrating the error committed by the arbitral tribunal and the strong *prima facie* case made out by the applicant in its favour.

7. It was submitted that in these circumstances, continuation of the arbitral proceedings for the second phase of arbitration proceedings would entail unnecessary expenses for the parties and it would be in the interest of justice that the impugned interim (final) award as well as the further proceedings before the arbitral tribunal are stayed till the accompanying petition filed under Section 34 of the Arbitration Act is finally heard and decided.

8. On the other hand, Mr. Shah, learned senior counsel appearing for the respondent submitted that the arbitral tribunal took into consideration the detailed pleadings, material and evidence produced by the rival parties on the specific questions for consideration and thereupon, reached its conclusions against the applicant. It is submitted that holding the applicant responsible

only to the extent of 80% of liability was in fact a penalty of 20% imposed upon the respondent for not being able to produce the original design. It was submitted that the reasons why the original design could not be produced, were placed before the arbitral tribunal, but on an overall appreciation of the material on record, the arbitral tribunal came to specific conclusion in the impugned interim (final) award. It was submitted that the detailed discussion in the impugned interim (final) award indicates the application of mind on the part of the arbitral tribunal to all the aspects of the matter and on cogent reasons, it was concluded that the applicant was liable for 80% of the claims made by the respondent.

9. On the aspect of the reliefs claimed by the respondent before the arbitral tribunal, it is submitted that both sets of reliefs arose out of the factum of collapse of the silo, which was admittedly constructed by the applicant and which according to the respondent, collapsed due to the defective construction being undertaken by the applicant. Since the root cause was collapse of the silo, the contention raised on behalf of the applicant in the context of 'dual reliefs' claimed by the respondent and the necessity of choosing either of the reliefs, was misplaced and therefore, the applicant has failed to make out a *prima facie* case in its favour.

10. It is submitted that, in any case, the applicant cannot claim that it has absolutely no liability in the facts and circumstances of the present case and therefore, the second phase of arbitral proceedings for determining the quantum, ought to continue, even

if the petition under Section 34 of the Arbitration Act is to be heard and decided on merits.

11. It is to be noted that the learned senior counsel appearing for the applicant relied upon the judgment of the Hon'ble Supreme Court in the case of ***Kanchan Udyog Limited v/s. United Spirits Limited, (2017) 8 SCC 237***, to claim that the arbitral tribunal ought to have determined the question as to whether the respondent could pursue its claim for the dual reliefs referred to hereinabove.

12. The learned senior counsel appearing for the respondent sought to distinguish the said judgment and it is submitted that the same is not applicable to the facts of the present case.

13. Having considered the rival submissions, this Court is of the opinion that the detailed discussion in the impugned interim (final) award and the specific findings against the applicant do indicate that the applicant has failed to make out a strong *prima facie* case in its favour to contend that it cannot be held responsible for the liability at all, if the claims of the respondent are to be considered on merits and quantification. This is not a case where the material on record and the discussion and findings of the impugned interim (final) award indicate that the applicant has made out a *prima facie* case of zero liability.

14. As to whether the arbitral tribunal was justified in holding the applicant liable to the extent of 80% will have to be tested on merits when the petition under Section 34 of the Arbitration Act is

taken up for consideration. Assuming for the sake of arguments that the extent of liability of the applicant is to be re-worked in any manner on the challenge raised to the impugned interim (final) award, the second phase of the arbitral proceedings for determining the quantum cannot be interdicted at this stage. The progress of the second phase can continue, while the petition under Section 34 of the Arbitration Act is set down for final hearing by this Court.

15. As regards the aspect as to whether the respondent can claim 'dual reliefs' as indicated hereinabove, *prima facie* this Court is of the opinion that the claims of the respondent are rooted in the collapse of the silo, which according to the respondent happened because of the defective construction undertaken by the applicant. The reliefs pertaining to the loss of plant and machinery as well as the silo, the expenses for alternative arrangement and construction of the new silo, as also the loss of profit and business during such period, *prima facie*, all appear to be rooted in the factum of collapse of the silo.

16. In such a situation, the applicant is unable to convince this Court by relying upon the judgment of the Hon'ble Supreme Court in the case of *Kanchan Udyog Limited v/s. United Spirits Limited* (supra) that the impugned interim (final) award deserves to be stayed till the petition under Section 34 of the Arbitration Act is decided.

17. In view of the above, the application is dismissed.

18. The petition bearing Commercial Arbitration Petition No. 537 of 2025 shall now be taken up for final hearing/disposal, at the admission stage.

19. List the petition for final hearing/disposal on 29th January 2026 at 3:00 p.m.

20. The learned senior counsel appearing for the rival parties assured this Court that they would complete their submissions during the final hearing in one hour each.

21. In the meanwhile and within four weeks from today, the respondent can file reply affidavit to the commercial arbitration petition. Rejoinder, if any, be filed within two weeks thereafter.

MANISH PITALE, J.