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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 12863/2025, CM APPL.52561/2025**

MS KALTHIA ENGINEERING AND CONSTRUCTION LIMITED

.....Petitioner

Through: Mr. Rahul Sagar Sahay, Mr. Suvir Sharma, Ms. Anushka Nayyar, Mr. Raghav Rajmalani and Mr. Pratham Arora, Advs.

versus

CHIEF ENGINEER NATIONAL HIGHWAYS

DIVISION PUBLIC WORKS DEPARTMENT MAHARASHTRA

.....Respondent

Through: Advocate (Appearance not given).

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

% **25.08.2025**

CM APPL.52562/2025 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. The petitioner in the present petition seeks the following prayers:

"A. Set aside the order dated 01.07.2025 passed by the Hon'ble Arbitral Tribunal in Case No. ARB/AAI-T-15/DK-101; and

B. Pass an order staying the arbitral proceedings on the Respondent's counter-claims till the disposal of the present writ petition

C. Pass any other order in the interest of justice, equity and good conscience as this Hon'ble High Court may deem fit."

4. The primary grievance of the petitioner is that the Arbitral Tribunal



permitted the respondent to place on record its counter-claim/s belatedly *vide* order dated 01.07.2025, even after the conclusion of the final arguments by the petitioner.

5. Learned counsel for the petitioner submits that on 09.02.2025, the petitioner concluded its final arguments; thereafter, the respondent on 11.06.2025 sought to file their counter-claim. The petitioner promptly raised objections as to the maintainability of such counter-claim/s after conclusion of the final arguments.

6. Upon hearing both parties, the learned Arbitral Tribunal, by the aforesaid order, allowed the application filed by the respondent and directed that the counter-claim be taken on record.

7. The learned counsel for the petitioner apprises that the Arbitral Tribunal has the powers to entertain the counter-claim as per law laid down in ***Ashok Kumar Kalra vs. Wing CDR. Surendra Agnihotri and others, (2020) 2 SCC 394***, but only in exceptional circumstances, whereby entertaining the counter-claim is a discretionary power but such powers can only be exercised till the stage of commencement of recording of evidence. The relevant portion of the aforesaid judgment reads as under:

“Having considered the previous judgments of this Court on counterclaims, (the language employed in the rules related thereto, as well as the intention of the legislature, I conclude that it is not mandatory for a counterclaim to be filed along with the written statement. The court, in its discretion, may allow a counterclaim to be filed after the filing of the written statement, in view of the considerations mentioned in the preceding paragraph. However, propriety requires that such discretion should ordinarily be exercised to allow the filing of a counterclaim till the framing of issues for trial. To this extent, I concur with the conclusion reached by my learned Brothers. However, for the reasons stated above, I am of the view that in exceptional circumstances, a counterclaim may be permitted to be filed after a written statement till the stage of commencement of recording of the evidence on behalf of the plaintiff.”



8. Given the extremely narrow limits of the jurisdiction of this Court under Article 226 of the Constitution of India *qua* arbitral proceedings, this Court is not inclined to interdict with any order passed by the learned arbitral tribunal or interfere with the conduct of arbitral proceedings.¹ This is especially since the petitioner would be at liberty to avail appropriate statutory remedies as prescribed in the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*'), including taking recourse to moving an application under Section 16 of the A&C Act, and/or filing a petition under Section 34 of the A&C Act, at the appropriate stage.

9. In the circumstances, this Court is not inclined to entertain the present petition. The same is, consequently, dismissed. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the case of the parties in arbitration proceedings.

10. Pending application also stands disposed of.

SACHIN DATTA, J

AUGUST 25, 2025/ys

¹ *Bhaven Constructions vs Executive Engineer, Sardar Sarovar Narmada Nigam Limited and Anr.*, (2022) 1 SCC 75; *Sadbhav Engineering Ltd. vs Micro and Small Enterprises Facilitation Council and Ors.*, 2025 SCC OnLine Del 319; *Surender Kumar Singhal and Ors. vs Arun Kumar Bhalotia and Ors.*, 2021 SCC OnLine Del 3708.