Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Biswaroop Chowdhury

FMAT No. 130 of 2026
+
CAN 1 of 2026
+
CAN 2 of 2026
With
FMAT No. 170 of 2026

Group General Manager of Indian Railways
Catering and Tourism Corporation Ltd.
and another
Vs.
Araha Hospitality Pvt. Ltd.

For the appellants	:	Mr. Arijit Bardhan, Mr. Sarosij Dasgupta, Mr. Sabyasachi De, Ms. Afreen Begum, Advs.
For the respondent	:	Mr. Chayan Gupta, Mr. Meghnath Dutta, Ms. Srijani Mukherjee, Mr. Lalratan Mandal, Ms. Puja Mondal, Advs.
Heard on	:	May 21, 2026.
Judgment on	:	May 21, 2026.

<u>Sabyasachi Bhattacharyya, J.</u>:

1. At the outset, learned counsel for the respondent raises an objection as to this court having determination to take up the matter, since it is an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to 'the 1996 Act') against an order passed under Section 9 of the said Act.

2. Learned counsel for the respondent points out that a different Coordinate Bench has blanket determination in respect of appeals under the 1996 Act, including applications connected thereto.

3. Learned counsel for the appellants, on the other hand, refers to Rule 17 of Chapter-V of the Appellate Side Rules of this Court.

4. In Clause (a) thereof, it has been contemplated that an application preferred against orders setting aside arbitral awards under Section 34 of the 1996 Act would be treated as a first appeal against a deemed decree whereas under Clause (b), all appeals under Section 37 of the 1996 Act, except appeals against orders setting aside an arbitral award under Section 34, would have to be posted for hearing under Order XLI Rule 11 of the Code of Civil Procedure.

5. A conundrum arises since while so stipulating, both the said Clauses refer to Section 37(1)(b) of the 1996 Act instead of Section 37(1)(c) of the 1996 Act, the latter pertaining to appeals against orders setting aside or refusing to set aside an arbitral award under Section 34 whereas Clause (b) refers to appeals against Section 9 orders.

6. Learned counsel appearing for the appellants, however, cites a judgment of a coordinate Bench of this court, rendered in *Murshidabad Zilla Parishad vs The Asian Health Care Development Private Limited & Ors.* passed in *FMA 816 of 2025*, where such conundrum was clarified.

7. In the said judgment, the coordinate Bench observed that Clause (a) of Rule 17 of the Appellate Side Rules enumerates the categories/classes of appeals which do not require admission under Order XLI Rule 11 of the Code of Civil Procedure whereas Clause (b) indicates appeals which require admission.

8. In the reading of the coordinate Bench, an appeal under the Arbitration and Conciliation Act, 1996 excepting an appeal under Section 37(1)(b) [which is now Section 37(1)(c)] from an order setting aside an arbitral award requires admission.

9. Accordingly, the coordinate Bench, despite having determination to take up arbitration appeals, released the matter to be placed before the Bench having determination to hear appeals under Order XLI Rule 11 of the Code of Civil Procedure.

10. Simultaneously, the coordinate Bench observed that the Hon'ble the Chief Justice may consider amendment of Rule 17 of Chapter V of the Appellate Side Rules, to the effect that Section 37(1)(b) needs to be replaced by Section 37(1)(c) of the 1996 Act and as to why, where a statute provides for an appeal as a matter of right, such appeal should require to be admitted under Order XLI Rule 11 of the Code of Civil Procedure.

11. Even independently of the coordinate Bench judgment, we find that determinations have been allocated by the Hon'ble the Chief Justice to separate Benches for taking up appeals pertaining to the 1996 Act and for taking up order XLI Rule 11 hearings respectively.

12. A purposive and harmonious reading of Rule 17 of Chapter V of the Appellate Side Rules clearly indicates that it has been enumerated in words that only appeals under Section 37 of the 1996 Act which are preferred against orders setting aside arbitral awards under Section 34 of the said Act are to be treated as first appeals, not requiring any admission under Order XLI Rule 11 of the Code, whereas it is just the reverse in case of other appeals under Section 37 of the 1996 Act.

13. Thus, Clause (b) of Rule 17 clearly applies in the present case, mandating the present appeal under Section 37 of the 1996 Act, which has been preferred against an order passed under Section 9 of the said

Act, to be placed before the Bench taking up appeals for hearing under Order XLI Rule 11 of the Code, in other words, admission hearings.

14. We ought to go by the words of Rule 17 of Chapter V of the Appellate Side Rules of this Court instead of the wrong enumeration of Section, which was rightly recognized by the coordinate Bench in the matter of *Murshidabad Zilla Parishad vs The Asian Health Care Development Private Limited & Ors.* passed in *FMA 816 of 2025*.

15. Accordingly, since this Bench has exclusive determination to hear appeals under Order XLI Rule 11 of the Code for the purpose of admission, in consonance with the ratio of *Murshidabad Zilla Parishad* (supra), we hold that this court has determination to take up the appeal for admission hearing and accordingly proceed to hear the same under the said provision and connected applications.

16. FMAT No. 130 of 2026 has been preferred against a parent order whereby *ad interim* injunction was granted under Section 9 of the Arbitration and Conciliation Act, 1996.

17. The delay in filing the appeal is of about twenty-two days.

18. Learned counsel appearing for the appellants argues that initially, under the impression that the appellants would get immediate relief, an application in the nature of one under Order XXXIX Rule 4, for vacating the *ad interim* order passed in the Section 9 application, was filed before the Section 9 Court.

19. However, the said application was kept pending for long and has not yet been decided, due to no fault of the appellants.

20. Learned counsel seeks to rely on the order sheets of the proceeding in support of such contention.

21. Thus, it is argued that having failed to obtain such relief, the appellants were compelled to file the present appeal against the initial order of ad interim injunction.

22. Another trigger for filing such appeal was that subsequently the ad interim order granted originally was extended, which has also been assailed in a different appeal which is also pending before us now.

23. Learned counsel for the respondent opposes the prayer for condonation of delay and submits that the pendency of a vacating application cannot suffice as justification for preferring an appeal late against the parent order.

24. It is argued that it was well available before the appellants simply to move an application for expeditious disposal of the vacating application before the appropriate Bench of this court or, otherwise, to canvass its points in the vacating application itself instead of preferring the present appeal.

25. Moreover, it is contended that a vacating application operates on a different footing as the appeal and cannot provide a justification for delay in preferring the appeal.

26. At the first blush, it is evident that the scopes of adjudication in an application for vacating, having the trappings of Order XXXIX Rule 4 of the Code of Civil Procedure, and a regular appeal against the *ad interim* order are different.

27. Whereas a vacating application is limited to the tests as stipulated in Order XXXIX Rule 4 of the Code, an appeal is in a sense wider in scope and all questions pertaining to the validity of the impugned order can be raised therein.

28. Thus, mere pendency of an application under Order XXXIX Rule 4 of the Code might not be a sufficient justification for not preferring an appeal, which could be preferred simultaneously along with the Order XXXIX Rule 4 application; the remedies being different in nature.

29. However, there are two factors which prompt us to hold otherwise.

30. First, in the present case, the application for vacating does not strictly come within the ambit of Order XXXIX Rule 4 of the Code, the Code being not directly applicable to the paradigm of the Arbitration and Conciliation Act, 1996.

31. As such, although certain identical factors may be considered by the court in a vacating application in respect of a Section 9, 1996 Act application, the Order XXXIX Rule 4 tests are not strictly applicable.

32. Thus, there is more commonality between a vacating application and an appeal against the *ad interim* order if both are under the 1996 Act than between an application under Order XXXIX Rule 4 and an appeal under Order XLIII, both of the Code of Civil Procedure.

33. Since a Section 9 application is not a regular suit, nor a proceeding under the Code of Civil Procedure, the rigours of the Code do not apply *per se* and as such, the sharp lines of distinction drawn between the parameters of an Order XXXIX Rule 4 application and an Order XLIII appeal under the Code may not be applicable to an arbitral proceeding or applications/appeals arising therefrom.

34. Secondly, in the present case, the ends which would be achieved by the appellants either if the vacating application is allowed or if the present appeal is admitted and allowed would be the same, being the vacating/modification/variation of the initial *ad interim* order.

35. Hence, although the means are different, the end is the same.

36. Thus, some justification can be attributed to the appellants waiting for their vacating application to be concluded first and thereafter, when they saw that instead of the vacating application being decided, the original *ad interim* order was again extended, being prompted to prefer an appeal against the extension order as well as the parent order which is precisely what the appellants have done in the present case.

37. That apart, the delay of twenty-two days is not much and as such a lenient approach ought to be adopted in such cases.

38. In such view of the matter, CAN 2 of 2026 is allowed, thereby condoning the delay in preferring FMAT 130 of 2026.

39. There will be no order as to costs.

Re: <u>FMAT No. 130 of 2026.</u>

40. The said appeal is now taken up for hearing under Order XLI Rule 11 of the Code of Civil Procedure.

41. The present challenge has been preferred against an order whereby an ad interim injunction was granted in an application filed by the respondent under Section 9 of the Arbitration and Conciliation Act, 1996, (in short "the 1996 Act"), whereby the appellants herein and their men, agents and associates were restrained from taking any further steps in respect of a new tender that was alleged to have been opened on April 15, 2024, when the "licence" awarded to the petitioner/respondent on an earlier occasion was in force.

42. Learned counsel appearing for the appellants-authorities submits that the tender is in respect of catering services for the Railways.

43. In the application under Section 9 of the 1996 Act, the cause of action espoused by the petitioner/respondent was apparently seeking an extension of the contract in that regard awarded to the petitioner/respondent for the period calculated on the basis of cancelled round trips of trains.

44. Learned counsel argues at the outset that the initial contract awarded to the present respondent was renewed once and finally expired on June 6, 2024.

45. However, thereafter, taking into consideration the restrictions during the Covid-19 Pandemic period, a dies-non agreement was entered into, whereby the contract was further renewed till February 19, 2026.

46. Immediately prior to the expiry of the said extended period, the present respondent wrote to the appellant authorities on January 29, 2026 seeking an extension of the tenure of the contract, which was not granted, giving rise to dispute which is the premise of the Section 9 application.

47. Learned counsel for the appellants argues that the tender was admittedly opened on April 15, 2024, but the respondent waited for two long years and immediately prior to the expiry of the extended dies-non period, came up with the said claim.

48. Thus, equities are balanced against the respondent.

49. Secondly, the petitioner/respondent participated in the fresh tender floated in anticipation of the expiry of the original contractual period, that is, June 6, 2024.

50. It is submitted that although on paper, the said fresh tender was floated prior to the expiry of such period, the same was not given effect to during subsistence of the contract with the respondent. However, the entire tender process was concluded upon opening the tender on April 15, 2024.

51. The respondent, having participated and turned out to be unsuccessful in the fresh tender, cannot be permitted to reopen the said chapter after two years.

52. Learned counsel then places reliance on the documents annexed to the Section 9 application, including a letter dated January 29, 2026, from which, it is argued, it appears that there is an overlap of an extensive period covered by the Covid-19 Pandemic, the benefit of which was already given to the respondent by the dies-non agreement, the cancellation of train trips during which period has also been made as a premise of the claim of cancellation. Such double benefit, it is argued, cannot be claimed by the respondent by citing the Covid-19 restrictions.

53. It is next argued by the appellants that the contract is determinable by nature, which appears from its various clauses and as such, the remedy for the respondent, if any, lies in damages and not injunction or extension of the contract period.

54. It is also contended that valuable rights have already accrued in favour of the successful tenderer upon opening the bids in the fresh tender on April 15, 2024, which cannot now be taken away by the respondent.

55. Learned counsel also submits that the agreement between the parties does not contemplate any extension of the contract period on the ground of cancellation of trains.

56. By relying on Clauses 19.1 and 19.2 of the original contract, it is argued that at best the relief of the respondent on such count lies in compensation/damages and not an extension of the contract.

57. Thus, it is submitted that the learned Judge taking up the Section 9 application erred in law and in fact in passing the impugned ad interim order of injunction.

58. Learned counsel appearing for the petitioner/respondent contends that the gap of two years, stressed on so much by the appellants is a non issue, since by dint of the extension given through the dies-non agreement, the contract was due to expire on February 17, 2026, immediately prior to which the claim has been made.

59. It is argued that, as per the provisions of Clauses 19.1 and 19.2, if there was a cancellation of the agreement, the respondent would be entitled to refund of licence fees. However, the said clauses do not speak of any compensation for mere cancellation of trains, without any such termination.

60. Learned counsel appearing for the respondent further submits, by placing reliance on the annexures to the letter dated January 29, 2026 issued by it, that the period for which the claim has been made is post Covid-19 Pandemic. As such, there is no overlap between dies-non agreement tenure and the claim period.

61. The extensive list of cancellations annexed to the Section 9 application was merely a document furnished by the Railways Authorities themselves for the entire period, covering the Covi-19 Pandemic period as well as the subsequent period till recently.

62. However, the claim of the respondent was restricted to the excel sheets relied on by it in its letter, which are confined to the post Covid-19 Pandemic period.

63. Thus, it is argued that the learned trial Judge was justified in passing the ad interim order.

64. Upon perusal of the agreement between the parties, we do not find within the four corners of the same any provision of extension of the contractual period in the event of cancellation of trains.

65. At best, Clauses 19.1 and 19.2 of the contract may be interpreted, subject to being decided by the appropriate forum finally, to confer some right of compensation on the respondent.

66. However**,** there is no provision of extension of the contract in the contract itself.

67. Hence, in order to grant the claim made by the respondent in respect of extension of the contractual period for cancellation of trains, the contract would have to be rewritten by the court, which has been deprecated time and again by the Hon'ble Supreme Court and different High Courts of the country.

68. Even otherwise, the Court or the Arbitral Tribunal, if the matter goes to arbitration, cannot carve out a right which is absent in the specific terms of the contract between the parties.

69. Even otherwise, the effect of such an interpretation of the contract would be disastrous, since a single contractor would then perpetuate his services without any opportunity being given to others in a transparent and inclusive process of tender. We say so because there are frequent occasions of cancellation of trains for various purposes and if the same *per se* is deemed to vest a right on a contractor for extension of the contract of supply of food in trains, the contract would never end and would be perpetuated forever. It is obviously for such reason that no such clause has been incorporated in the contract between the parties.

70. Even otherwise, the effect of the impugned order would be that the valuable rights accrued in favour of a third party, that is, the successful bidder in the fresh tender, the bids in respect of which were opened on April 15, 2024, would be curtailed or taken away as an effect of the same.

71. Such rights have already accrued on April 15, 2024. The respondent had full knowledge of the same. Not only that, the respondent participated in such fresh tender process, thereby submitting itself to such process, and after turning out unsuccessful therein, cannot be permitted to challenge the outcome of the tender at this belated stage, whatever may be the ground of such challenge.

72. Although the tenure of the contract of the respondent was deemed to be extended by virtue of the dies-non agreement for two years, taking into consideration the Covid-19 restrictions, fact remains that the cause of action of the present challenge pertains to a tender which was opened on April 15, 2024, on which date the respondent became fully aware of the same. Thus, nothing prevented the respondent from making such a claim or assailing such tender at that juncture itself, contemporaneously, when the bid was opened. Since the respondent could not directly challenge the result of the fresh tender after having itself participated therein and becoming unsuccessful, it is now seeking to achieve such end indirectly.

73. There are certain other facets of the matter as well, such as the contract being by its very nature determinable, which also entitles the respondent at best to compensation and not to seek a perpetuation of the contact, on whatever ground.

74. In view of the above, this Court is of the opinion that the learned trial Judge erred in law and in fact in granting the injunction passed in the impugned order.

75. Accordingly, the said order cannot be sustained.

76. In view of the aforesaid findings, the moot questions involved in the appeals have virtually been adjudicated upon, leaving nothing to be decided in the final hearing. Thus, instead of unnecessarily relegating the parties to the Bench having determination to hear arbitration appeals merely to put a final seal to the fate of the appeals, the appeals themselves are being disposed of.

77. Hence, FMAT No. 130 of 2026 is admitted and allowed on contest, thereby setting aside the impugned order bearing Order no. 3 dated February 16, 2026 passed by the learned Judge, Tenth Bench, City Civil Court at Calcutta in Miscellaneous Case No. 1556 of 2026.

78. Consequentially, CAN 1 of 2026 is also disposed of.

79. It is made clear that all the above observations are tentative in nature. Neither the above findings nor the findings rendered by the learned trial Judge in the impugned order shall be treated to be conclusive at any further stage of the proceeding.

80. There will be no order as to costs.There will be no order as to costs.

Re: <u>FMAT No. 170 of 2026.</u>

81. In view of the judgment passed in FMAT No. 130 of 2026, FMAT No. 170 of 2026 is also disposed of and shall abide by the judgment passed in FMAT No. 130 of 2026.

82. The impugned order, that is Order no. 13 dated May 8, 2026 passed by the learned Judge, Tenth Bench, City Civil Court at Calcutta in Miscellaneous Case no. 1556 of 2026, is also set aside.

83. There will be no order as to costs.

84. Urgent Photostat certified copies, if applied for, be issued to the parties on compliance of due formalities.

I agree.

(**Sabyasachi Bhattacharyya, J**.)

(**Biswaroop Chowdhury, J**.)