

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

RESERVED ON: 04.02.2026
DELIVERED ON: 01.04.2026

PRESENT:

THE HON'BLE MR. JUSTICE GAURANG KANTH

APOT 259 OF 2025
GA-COM 2 OF 2025

SALTEE INFRASTRUCTURE LIMITED
VS
M/S. SHIVAM INDUSTRIAL PARKS AND ESTATES LTD.

Appearance: -

Mr. Sakya Sen, Sr. Adv.
Mr. Amritam Mandal, Adv.
Ms. Swati Agarwal, Adv.

..... **for the appellant**

Mr. Jishnu Chowdhury, Sr. Adv.
Ms. Ujjaini Chatterjee, Adv.
Ms. Rekha Dey, Adv.

..... **for the respondent**

JUDGMENT

Gaurang Kanth, J. :-

1. The Appellant has preferred the present Arbitration Petition under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996, challenging the interim award dated 16.05.2025 passed by the learned Sole Arbitrator in the arbitral proceedings arising between the parties.
2. The facts relevant for adjudication of the present petition are briefly noted below.
3. The Respondent is the owner of land measuring 91.5 decimals (55 cottahs) situated at Municipal Holding No. 148, Block-A, Gopalpur, Jagardanga Main Road, Rajarhat Six Lane Expressway, Kolkata. By a Development Agreement dated 07.04.2014, the Appellant was appointed as the

developer in respect of the said property, while the Respondent remained the landowner. In furtherance thereof, a registered Power of Attorney was executed by the Respondent in favour of two representatives of the Appellant to facilitate implementation of the development project.

4. Under the terms of the Development Agreement, the Respondent's obligation was limited to contributing the land, whereas the Appellant was responsible for undertaking and financing the development of the project, including construction and marketing.
5. On 20.03.2018, the Appellant obtained building sanction for construction of two blocks, namely: (i) Basement + Ground + 7 floors, and (ii) Ground + 5 floors. The first block (B+G+7), forming part of the project known as "Saltee Splendora", was completed in 2019, following which construction of the second phase commenced.
6. In terms of the agreed sharing arrangement, the Appellant handed over four flats with car parking spaces and four shops to the Respondent, which were duly accepted. The Appellant also offered seven additional flats to the Respondent; however, the Respondent declined to accept the same and disputes arose between the parties in relation to deductions towards marketing charges, incidental expenses and 10% additional proceeds in respect of the increased saleable area.
7. On 21.12.2022, the Respondent issued a notice terminating the Development Agreement on the ground of delay in completion of the project. Disputes having arisen between the parties in relation to the project and their respective rights and obligations under the Development Agreement, the Respondent invoked the arbitration clause contained therein and the disputes were referred to arbitration.

- 8.** Prior to commencement of the arbitral proceedings, the Respondent filed Misc. Case No. 32 of 2023 under Section 9 of the Arbitration and Conciliation Act, 1996 before the Commercial Court at Rajarhat. By an order passed therein, it was directed that any prospective sale of flats or shops in the project would be executed with the Respondent as a confirming party, and that the Respondent would be entitled to 40% of the sale proceeds, pending disposal of the application. Upon constitution of the Arbitral Tribunal, the said arrangement was continued by the Tribunal.
- 9.** During the arbitral proceedings, both parties filed applications under Section 17 of the Arbitration and Conciliation Act, 1996. By an order dated 16.08.2023, the learned Arbitrator modified the earlier interim order and restrained the Appellant from entering into fresh agreements for sale or creating third party rights in respect of the remaining unsold flats.
- 10.** Thereafter, upon further applications filed by the Respondent, the Arbitral Tribunal, by an order dated 26.02.2024, directed the parties to maintain status quo, restrained the Appellant from creating any encumbrance in respect of the title deeds, and further directed the Appellant to deposit the admitted amount of Rs. 11,54,09,382/- in a nationalised bank, subject to the final outcome of the arbitral proceedings.
- 11.** The Appellant challenged the said order dated 26.02.2024 by filing Misc. Appeal (Commercial) No. 3 of 2024 under Section 37 of the Arbitration and Conciliation Act, 1996 before the Commercial Court at Rajarhat. By an order dated 08.07.2024, the said appeal was dismissed.
- 12.** On 02.03.2024, the Respondent filed a further application under Section 17 alleging non compliance with the order dated 26.02.2024. By an order

dated 24.04.2024, the Arbitral Tribunal appointed Shri Sarbananda Sanyal, Advocate, as Receiver with directions to take possession of the unsold flats and parking spaces, sell the same and distribute the proceeds in accordance with the terms of the Development Agreement. The Receiver was also authorised to execute supplementary agreements in the event of failure on the part of the Appellant to do so.

- 13.** By further directions issued on 24.04.2024, the Tribunal directed the Appellant to hand over the original title deeds to the Receiver and authorised the Receiver to take possession of 42 car parking spaces.
- 14.** It appears from the record that, pursuant to the supplementary agreement executed by the Receiver, the Respondent was authorised to sell four flats together with four car parking spaces and four shops, the aggregate value of which has been admitted to be Rs. 6,61,01,000/-.
- 15.** The Arbitral Tribunal thereafter recommended initiation of contempt proceedings against the Appellant for alleged non compliance with the direction to deposit the amount of Rs. 11,54,09,382/-. On the basis of the said recommendation, the Respondent initiated contempt proceedings before the Commercial Court at Rajarhat. In view of the Judgment dated 08.12.2025 passed by this Court, the Respondent withdrew the said contempt petition from the Commercial Court at Rajarhat and filed the same before this Court, where the matter is presently pending.
- 16.** In the meantime, the Appellant filed an application before the Arbitral Tribunal seeking modification of the order dated 26.02.2024, particularly the direction requiring deposit of Rs. 11,54,09,382/-, in view of the subsequent developments including the realisation of Rs. 6,61,01,000/- and the Receiver having taken possession of the remaining unsold units.

By the impugned order dated 16.05.2025, the Tribunal rejected the said application.

- 17.** Aggrieved by the said order dated 16.05.2025, the Appellant has preferred the present petition under Section 37(2) of the Arbitration and Conciliation Act, 1996.
- 18.** At the outset, the Respondent raised an objection as to the maintainability of the present petition on the ground of territorial jurisdiction. By a Judgment dated 08.12.2025, this Court held that it is the Court within the meaning of Section 2(1)(e) of the Arbitration and Conciliation Act, 1996 for the purpose of the present matter.

Submission on behalf of the Appellant

- 19.** Mr. Sakya Sen, learned senior Counsel appearing on behalf of the Appellant, submits that the Arbitral Tribunal passed the order dated 16.05.2025 without taking into consideration the subsequent developments and changed circumstances. It is submitted that pursuant to the supplementary agreement executed by the Receiver, the Respondent was authorised to sell four flats together with four car parking spaces and four shops, the aggregate value whereof has been admitted to be Rs. 6,61,01,000/-. Learned Counsel further submits that the Receiver was appointed by order dated 24.04.2024 and has since taken possession of 13 unsold flats. According to the Appellant, the value of the said flats, calculated on the basis of the base rate of the last sold unit, works out to Rs. 15,64,61,500/-, out of which the Appellant's share would be Rs. 10,35,05,300/-. It is further submitted that, as per the Statement of Claim, the total claim of the Respondent is Rs. 14,73,58,358/-. In view of the aforesaid developments, learned Counsel contends that the

Respondent's claim already stands sufficiently secured. It is therefore submitted that directing the Appellant to furnish an additional security of Rs. 11,54,09,382/- would result in the Respondent's claim being secured far in excess of the amount claimed.

- 20.** Learned Senior Counsel for the Appellant further submits that the Respondent's claim already stands secured in several ways. First, the Respondent has been authorised to sell four flats together with four car parking spaces and four shops, valued at Rs. 6,61,01,000/-. Secondly, a sum of Rs. 1,50,00,000/- is stated to be lying with the Respondent as security. Thirdly, the Appellant's share in the 13 unsold flats presently in the custody of the Receiver is valued at Rs. 10,35,05,300/-.
- 21.** Learned Senior Counsel appearing for the Appellant submits that, as per the Statement of Claim, the total value of the Respondent's claim is Rs. 14,73,58,358/-. However, the learned Sole Arbitrator, while passing the impugned order, erroneously proceeded on the basis that the claim amount was Rs. 20,39,25,591/-.
- 22.** It is further submitted that, while adjudicating the application under Section 17 of the Arbitration and Conciliation Act, 1996, the learned Arbitrator ought not to have been influenced by the alleged past conduct of the Appellant, including the alleged non compliance with earlier directions of the Arbitral Tribunal. According to learned Senior Counsel, the relevant consideration under Section 17 is confined to ensuring that the claim amount in the arbitral proceedings is adequately secured, and not to penalise a party for past instances of non compliance. Accordingly, it is contended that the direction requiring the Appellant to furnish security ought to have been determined solely with reference to the extent

necessary to secure the claim amount. In order to substantiate this point, the learned counsel for the Appellant relies upon the Judgment of Delhi High Court in **World Window Infrastructure Pvt Ltd Vs Central Warehousing Corporation** reported as **2021(3) High court Cases (Del) 731**, and Judgment of the Calcutta High Court in **Shivananda Pandey Vs Bhagwandas Harlalka** reported as **1999 SCC Online Cal 246**,

- 23.** It is contended that the object of granting interim protection under Section 17 of the Arbitration and Conciliation Act, 1996 is only to secure the claim amount during the pendency of the arbitral proceedings. According to the Appellant, there is no requirement in law to secure an amount in excess of the claim made in the Statement of Claim. In the present case, since the Respondent's claim of Rs. 14,73,58,358/- already stands adequately secured, the learned Arbitral Tribunal ought to have modified the earlier direction requiring the Appellant to deposit Rs. 11,54,09,382/-, particularly in view of the subsequent developments.

Submission on behalf of the Respondent

- 24.** Mr. Jishnu Chowdhury, learned Senior Counsel appearing on behalf of the Respondent, at the outset submits that it is not correct to contend that the Respondent's claim before the Arbitral Tribunal is confined to Rs. 14,73,58,358/-. According to him, the said amount represented only a partial quantification of the claim at the relevant point of time. Learned Senior Counsel submits that from the very beginning the Appellant has failed to disclose the actual sale consideration received from the prospective purchasers of the units, with the result that the Respondent was kept in the dark regarding the true sale value of the units sold by the Appellant.

- 25.** It is submitted that the Respondent had initially quantified its claim at Rs. 14,73,58,358/- on the basis of the disclosures made by the Appellant at that stage. However, during the course of the arbitral proceedings, the Respondent obtained copies of several registered sale deeds, from which the actual consideration received by the Appellant came to light. On the basis of the said materials, the Respondent contends that the value of its claim stands enhanced. Learned Senior Counsel submits that the Respondent is entitled to 40% of the sale consideration in terms of the Development Agreement and that the final quantification of the claim would ultimately be determined by the Arbitral Tribunal at the time of the final award. At present, based on the documents available on record, the Respondent estimates its claim to be approximately Rs. 20,39,25,591/-, which, according to him, ought to be secured.
- 26.** Learned Senior Counsel for the Respondent further submits that the conduct of the Appellant throughout the proceedings demonstrates a lack of bona fides. According to him, the Appellant has repeatedly failed to comply with the directions passed by the Arbitral Tribunal. In such circumstances, it is submitted that the conduct of the Appellant does not inspire confidence and that, in the event an award is ultimately passed in favour of the Respondent, there is a serious apprehension that the Respondent may not be able to realise the awarded amount, thereby rendering the award a mere paper award.
- 27.** Learned Senior Counsel for the Respondent, however, fairly submits that certain amounts have already been received by the Respondent. According to him, the Respondent has received Rs. 3,73,48,976/- from the Appellant, Rs. 6,61,13,820/- towards eight units, and Rs. 1,50,00,000/- towards a

security deposit. It is submitted that the security deposit of Rs. 1,50,00,000/- has already been refunded and therefore cannot be adjusted towards the Respondent's claim.

28. Learned Senior Counsel submits that, even if the aforesaid amounts are taken into account, the total amount presently secured would be Rs. 11,84,62,976/-, whereas the Respondent's claim, based on the presently available materials, is approximately Rs. 20,39,25,591/-, leaving a balance of about Rs. 8,54,62,795/- unsecured. It is further submitted that the amount of Rs. 6,61,13,820/- calculated towards eight units cannot be treated as entirely belonging to the Respondent, since under the Development Agreement only 40% thereof represents the Respondent's share, while 60% belongs to the Appellant. Consequently, the said amount cannot be taken into account in a manner so as to suggest that the Respondent's claim is fully secured.
29. Learned Counsel further submits that the order under challenge is a discretionary order passed by the learned Arbitrator in exercise of powers under Section 17 of the Arbitration and Conciliation Act, 1996. The scope of interference by this Court with such an order is extremely limited and would arise only in cases of patent illegality or manifest arbitrariness. Reliance is placed on the judgments of the Hon'ble Supreme Court in **C & C Constructions Ltd. v. Ircon International Ltd.** reported as **2025 (4) SCC 234** and **Somdutt Builders NCC-NEC (JV) v. National Highways Authority of India** reported as **2025 (6) SCC 757**.
30. In the aforesaid circumstances, learned Senior Counsel for the Respondent contends that the Arbitral Tribunal rightly rejected the Appellant's application seeking modification of the earlier order and directed the

Appellant to deposit a sum of Rs. 11,54,09,382/-, the same being necessary to adequately secure the Respondent's claim during the pendency of the arbitral proceedings. In support of the said submissions, reliance is placed upon the judgments of the *Delhi High Court in Lava International Ltd. v. Mintellelectuals LLP*, reported as **2024 SCC OnLine Del 6908**, and *Shamlalji Expressway Pvt. Ltd. v. NHAI*, reported as **2024 SCC OnLine Del 7131**.

Legal Analysis

- 31.** This Court has considered the rival submissions advanced on behalf of the parties and has perused the materials placed on record.
- 32.** The present appeal has been filed under Section 37(2) of the Arbitration and Conciliation Act, 1996, challenging the order dated 16.05.2025 passed by the learned Arbitral Tribunal whereby the Appellant's application seeking modification of the earlier order directing deposit of Rs. 11,54,09,382/- came to be rejected.
- 33.** At the outset, it is necessary to note that the scope of interference under Section 37 of the Act is limited. An appellate court exercising jurisdiction under Section 37 does not sit in appeal over the merits of the interim order as a court of first instance. Interference is warranted only where the order impugned is shown to be arbitrary, perverse, or contrary to the settled principles governing the grant of interim measures.
- 34.** The impugned order arises from the exercise of powers by the Arbitral Tribunal under Section 17 of the Arbitration and Conciliation Act, 1996, which empowers the Tribunal to grant interim measures during the pendency of the arbitral proceedings, including directions for securing the amount in dispute in the arbitration. The purpose of such an order is

essentially protective, namely to ensure that the successful party is not left with an arbitral award which cannot be effectively enforced. At the same time, the power under Section 17 is not intended to operate as a penal measure, nor to direct security beyond what is reasonably necessary to safeguard the claim pending adjudication. The limited scope of judicial interference with such discretionary orders of the Arbitral Tribunal has been recognised by the Hon'ble Supreme Court and most recently in **C & C Constructions Ltd.** (*supra*) and **Somdutt Builders NCC-NEC (JV)** (*supra*).

35. The principal contention of the Appellant is that the Respondent's claim, as reflected in the Statement of Claim, was Rs. 14,73,58,358/-, and that subsequent developments have already secured the said claim. It is submitted that the Receiver appointed by the Arbitral Tribunal has taken possession of 13 unsold flats, the value of which, based on the base rate of the last sold unit, is stated to be Rs. 15,64,61,500/-, out of which the Appellant's share would be approximately Rs. 10,35,05,300/-. The Appellant also relies upon the admitted claim towards the sale of four flats together with four car parking spaces and four shops, amounting to Rs. 6,61,01,000/-, as well as other amounts received by the Respondent, to contend that the Respondent's claim already stands adequately secured. It is therefore argued that directing deposit of an additional amount of Rs. 11,54,09,382/- results in the claim being secured more than once over.
36. The Respondent disputes the aforesaid contention. According to the Respondent, the amount of Rs. 14,73,58,358/- mentioned in the Statement of Claim was only a provisional quantification based on the disclosures made by the Appellant at the relevant time. It is contended that the Appellant had failed to disclose the actual consideration received

from the purchasers of the units, and that during the arbitral proceedings the Respondent obtained copies of several registered sale deeds, which indicated that the sale consideration received was higher than what had been disclosed earlier. On the basis of the materials presently available, the Respondent asserts that its claim stands at approximately Rs. 20,39,25,591/-, subject to final determination by the Arbitral Tribunal. The Respondent has also emphasised the alleged non compliance by the Appellant with earlier directions of the Arbitral Tribunal, contending that the impugned order was necessary to ensure that the Respondent's claim does not remain unsecured.

37. Having considered the rival submissions, it is evident that the controversy essentially concerns the extent to which the Respondent's claim presently stands secured, and whether the direction requiring the Appellant to deposit Rs. 11,54,09,382/- is disproportionate in light of the subsequent developments relied upon by the Appellant.
38. The materials on record indicate that the Receiver appointed by the Arbitral Tribunal has taken possession of certain unsold units. However, the precise valuation of the said units and the ultimate entitlement of the Respondent are matters that necessarily fall for final adjudication before the Arbitral Tribunal upon appreciation of the evidence. At this interlocutory stage, the Court is not required to undertake a detailed examination of the competing valuations or to finally determine the extent of the parties' respective entitlements.
39. Learned Senior Counsel for the Respondent relied upon the judgments of the Delhi High Court in **Lava International Ltd.** (*supra*) and **Shamlalji Expressway Pvt. Ltd.** (*supra*) to contend that the Arbitral Tribunal, while

exercising powers under Section 17 of the Arbitration and Conciliation Act, 1996, is empowered to direct furnishing of security so as to ensure that the successful party is not ultimately left with a mere paper award. On the other hand, learned Senior Counsel for the Appellant relied upon **World Window Infrastructure Pvt. Ltd.** (*supra*) and **Shivananda Pandey** (*supra*) to contend that an order directing furnishing of security ought not to result in securing an amount in excess of the claim as reflected in the Statement of Claim.

40. The legal principles enunciated in the aforesaid decisions are not in dispute, and this Court respectfully concurs with the propositions laid down therein. However, as also emphasized in the said judgments, the exercise of the power to grant interim protection must necessarily depend upon the facts and circumstances of each case, and any direction for securing the claim must bear a reasonable nexus with the claim sought to be protected. In the present case, the Respondent has contended that the amount reflected in the Statement of Claim represented only a provisional quantification based on the disclosures made by the Appellant at the relevant time, and that subsequent materials obtained during the course of the arbitral proceedings indicate that the claim amount may be higher. The final determination of the Respondent's entitlement and the precise quantification of the claim are matters that fall within the domain of the Arbitral Tribunal and would be adjudicated at the stage of the final award. In such circumstances, the applicability of the aforesaid decisions must necessarily be assessed in the context of the factual matrix of the present case.

- 41.** Upon considering the factual matrix in detail, the Arbitral Tribunal arrived at the conclusion that a sum of Rs. 11,54,09,382/- was required to be secured in order to protect the claims raised by the Respondent. The determination of the quantum of security to be furnished, in the context of an application under Section 17 of the Arbitration and Conciliation Act, 1996, squarely falls within the domain and discretion of the Arbitral Tribunal. It is also pertinent to note that the said amount has been directed to be deposited in a nationalised bank and would remain intact pending the final adjudication of the disputes between the parties. Upon the final determination of the claims, the amount would be released to the party found entitled thereto. In these circumstances, it cannot be said that the Arbitral Tribunal has exercised its discretion arbitrarily or unreasonably. This Court does not find any perversity or arbitrariness in the impugned order warranting interference in exercise of appellate jurisdiction under Section 37 of the Act.
- 42.** In view of the foregoing discussion, this Court is of the considered view that the impugned order dated 16.05.2025 passed by the learned Arbitral Tribunal does not warrant interference in exercise of appellate jurisdiction under Section 37 of the Arbitration and Conciliation Act, 1996. The order impugned is essentially an interim protective measure passed in exercise of powers under Section 17 of the Act with the object of securing the Respondent's claim pending adjudication of the arbitral proceedings.
- 43.** The discretion exercised by the Arbitral Tribunal does not suffer from any arbitrariness, perversity, or violation of settled principles governing interim measures, so as to justify interference by this Court in appeal.

- 44.** The exact quantification of the Respondent's claim and the respective entitlements of the parties are matters which fall within the domain of the Arbitral Tribunal and shall be determined on the basis of the evidence adduced before it at the stage of the final award. Any observations made in the present order are confined to the adjudication of the present appeal and shall not influence the Arbitral Tribunal while deciding the disputes on merits.
- 45.** The present appeal under Section 37(2) of the Arbitration and Conciliation Act, 1996 is accordingly dismissed. All pending applications, if any, also stand dismissed.

(Gaurang Kanth, J.)

SAKIL AMED (P.A)

