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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

REVIEW PETITION (L) NO. 18565 OF 2025

IN

COMMERCIAL ARBITRATION PETITION NO. 219 OF 2025

Airports Authority of India

...Petitioner

Versus

Satyavan Vishnu Agate,
Sole Proprietor of M/s Vision Enterprises

...Respondent

WITH

REVIEW PETITION (L) NO. 18611 OF 2025

WITH

REVIEW PETITION (L) NO. 18641 OF 2025

Airports Authority of India

...Petitioner

Versus

Sanjay Surendrakumar Raval

...Respondent

WITH

REVIEW PETITION (L) NO. 18612 OF 2025

WITH

REVIEW PETITION (L) NO. 18647 OF 2025

Airports Authority of India

...Petitioner

Versus

Zen Media LLP

...Respondent

**WITH
COMMERCIAL ARBITRATION PETITION (L) NO. 33803 OF 2025**

Sanjay Surendrakumar Rava

...Petitioner

Versus

Airports Authority of India

...Respondent

Mr. Pravin Samdani, Senior Advocate *a/w* Ms. Shilpa Kapil *a/w* Adv. Chidanand Kapil, Adv. Darshit Jain, Adv. Shruti Bhatt, Adv. Aishwarya Mall, Adv. Vishwabharati Devkhile, for Airports Authority of India.

Mr. Samit Shukla *a/w* Vaibhavi Bhalerao *i/b* Trilegal, for the Respondent in RPCD(L)/18565/2025.

Mr. Karl Tamboly, for the Respondents.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : APRIL 16, 2026.

JUDGEMENT:

Context and Factual Background:

1. The captioned Review Petitions seek a review and recall of the orders dated March 25, 2025, March 26, 2025, April 9, 2025 and April 24, 2025 (***“Orders under Review”***), passed in various petitions filed under Section 9 of the Arbitration and Conciliation Act, 1996 (***“Arbitration Act”***). Commercial Arbitration Petition No. 219 of 2025 is taken up as the lead matter and the outcome in this judgement would apply to all the other captioned

Review Petitions and the Section 9 Petitions in the same manner since the issues that arise are common and identical across all proceedings.

2. The core ground of review sought in these Review Petitions is that Chapter-VA of the Airports Authority of India Act, 1994 (**“AAI Act”**) contains a full-fledged statutory procedure for eviction of persons in “unauthorised occupation” of “airport premises”. It is contended that although the Learned Additional Solicitor General had been given instructions by Airports Authority of India (**“AAI”**) to consent to the reference of the matters to arbitration, with the only request from AAI having been for appointment of a different individual arbitrator in each of the matters, the matters covered by these proceedings are not at all arbitrable as a matter of statutory stipulation, and therefore jurisdiction could not have been conferred on any Arbitral Tribunal by consent.

3. Towards this end, Mr. Pravin Samdani, Learned Senior Advocate on behalf of the Review Petitioner, AAI, relies on Chapter-VA of the AAI Act read with Clause 27 of the General Terms of Contract appended to the licence agreements containing the arbitration clause. He would submit that the disputes pertain squarely to eviction of unauthorised occupants and entail an ouster of jurisdiction of all Courts in respect of consideration of such matters. As regards the explicit consent granted and recorded by the learned law officer

under instructions, Mr. Samdani's submission is that the grant of consent for the appointment of an arbitrator cannot operate as estoppel against a statutory position.

4. The Review Petitioner contends that merely because the Review Petitioner agreed to keep the termination notices that were the subject matter of the Section 9 Petition in abeyance, and agreed to refer the parties to arbitration, the statutory hurdle posed by Chapter-VA of the AAI Act cannot be overcome. The contention is that by operation of Section 28B of the AAI Act, the disputes would squarely fall in the domain of the Eviction Officer, to the exclusion of all other forums.

5. Mr. Karl Tamboly, Learned Advocate leading all the Learned Advocates for various parties in the original Section 9 Petitions, would submit that the issue being raised by the Review Petitioner is a subject matter of jurisdiction of the Arbitral Tribunal already constituted by consent. Under Section 16 of the Act, the Arbitral Tribunal is statutorily empowered to rule on its own jurisdiction. Therefore, he would contend, the issue should be left to the Arbitral Tribunal. Mr. Tamboly would update the Court that based on AAI's behaviour with the Arbitral Tribunal that had been appointed, the Learned Sole Arbitrator resigned leaving the Arbitral Tribunal un-manned.

Therefore, the course of action to be taken, he would submit, is that such arbitrator needs to be substituted under the Arbitration Act.

Analysis and Findings:

6. Having heard the parties and upon examination of their contentions, what falls for consideration is the objection on the grounds of inherent lack of jurisdiction for formation of an Arbitral Tribunal in disposal of Section 9 Petitions.

7. A jurisdictional objection to arbitration can arise from the scope of the arbitration agreement, or also from the operation of any law that makes the dispute non-arbitrable. AAI would fairly concede that it indeed agreed to proceed to arbitration. AAI would also concede that its earlier stance was in fact, that each dispute should have a separate and distinct arbitrator. However, realisation having dawned on the AAI that such a stance was contrary to law, AAI would contend that regardless of how the situation looks, AAI could have never accorded consent to proceed to arbitration in view of Chapter VA of the AAI Act.

8. Ordinarily, and in particular, in the exercise of the jurisdiction under Section 11 of the Arbitration Act, when parties to a dispute agree to proceed to arbitration, and a formally executed arbitration agreement is *prima*

facie discernible, substantial existential questions about the arbitrability fall in the domain of the Arbitral Tribunal. Courts would accept the consent, leave all contentions open, and enable the parties to proceed to arbitration leaving the parties to their devices on how to present issues to the Arbitral Tribunal in accordance with law. Such issues can include objections to jurisdiction. Under Section 16 of the Arbitration Act, participation in constitution of the Arbitral Tribunal would not be a bar on raising objections on jurisdiction. Such situations typically arise in Section 11 proceedings but could also arise, as in this case, even under Section 9 of the Arbitration Act, where the parties agree that the Arbitral Tribunal would be best placed to consider what interlocutory arrangement would best preserve the subject matter of the arbitration agreement.

9. The peculiar situation in this case is that the appointment had been effected by consent of the parties in the Section 9 jurisdiction and not in the course of proceedings under Section 11 of the Arbitration Act. Moreover, the Arbitral Tribunal appointed by consent of the parties is currently vacant, with the Learned Sole Arbitrator having resigned from office. Therefore, there is no Arbitral Tribunal in place today to consider the jurisdictional objection. At such juncture, the Review Petitions have been filed.

10. Ordinarily, even if an arbitration agreement had exclusion or even in the absence of any arbitration agreement, parties to a dispute can always consent to proceed to arbitration, with such consent constituting the arbitration agreement. However, where there is a statutory bar, the question that would arise is whether the parties can at all agree to proceed to arbitration. This would be a neat question of jurisdiction. The question of jurisdiction would ordinarily lie before the Arbitral Tribunal but in Section 9 proceedings, the question of jurisdiction would be considered by the Section 9 Court.

11. In these circumstances, the question that emerges is whether consent for formation of the Arbitral Tribunal having been crystallised, the Arbitral Tribunal should be substituted leaving it to the Arbitral Tribunal to consider the jurisdictional objection under Section 16; or whether consent, now sought to be withdrawn, the validity of such consent necessitates adjudication.

12. Against this backdrop, the core ground for AAI demurring on the consent it granted earlier must be examined. The real issue is whether the dispute in question is non-arbitrable by operation of the AAI Act. The Arbitral Tribunal appointed earlier by consent also having vacated office, whether fresh consent would be necessary or whether substitution should be effected

without the need for any fresh consent is also to be considered. Conversely, whether the review of the consent order originally passed is warranted before any substitution is also to be considered.

13. Therefore, one has to examine the provisions of Section 28A, 28B and 28M of the AAI Act that are pressed into service, to see if there is at least a *prima facie* case made out about non-arbitrability leading to the consent granted under instructions to the Learned Additional Solicitor General being regarded as consent contrary to law.

14. The following provisions of the AAI Act are pressed into service:

“28A. Definitions.—In this Chapter, unless the context otherwise requires,—

*(a) “**airport premises**” means **any premises**—*

*(i) **belonging to airport**;*

(ii) taken on lease for the purposes of airport’

(iii) acquired for the Authority under the provisions of the Land Acquisition Act, 1894 (1 of 1894) or any other corresponding law for the time being in force.

Explanation.—For the removal of doubts, it is hereby declared that for the purposes of this clause, “airport” includes private airport;

*(b) “**eviction officer**” means an officer of the Authority **appointed as such by it under section 28B**;*

*(c) “**premises**” means any land or building or part of a building, and includes—*

(i) the garden, grounds and outhouses, if any, appertaining to such building or part of a building; and

(ii) any fittings affixed to such building or part of a building for more beneficial enjoyment thereof;

(f) “unauthorised occupation”, in relation to any airport premises, means the occupation by any person of the airport premises without authority for such occupation and includes the continuance in occupation by any person of the airport premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.”

“28B. Appointment of eviction officers.—The Authority may, by general or special order in writing, appoint such number of its officers, as it thinks fit, to be eviction officers for the purposes of this Chapter, and define the local limits within which, or the categories of airport premises in respect of which, the eviction officers shall exercise the powers conferred and perform the duties imposed, on eviction officers by or under this Chapter.”

“28M. Finality of orders.— Subject to the provisions of this Act, every order made by an eviction officer under this Chapter shall be final and shall not be called in question in any suit, application, execution or other proceeding and no injunction shall be granted by any court or other authority in respect of any action taken or intended to be taken in pursuance of any power conferred by or under this Chapter.”

[Emphasis Supplied]

15. Clauses 27.1 and 27.10 of the General Terms and Conditions, annexed to the Licence Agreement too are relied upon, and read as follows:

GENERAL TERMS AND CONDITIONS

"(27) Dispute Resolution:

27.1 All disputes and differences arising out of or in any way touching or concerning this Agreement except those the decision whereof is otherwise herein before expressly provided for or to which the AAI Act, 1994 and the rules framed thereunder which are now enforce of which may hereafter come into force are applicable (the "Dispute ") shall be dealt as under"

27.10 No dispute shall be referred for resolution under this clause through arbitration in matters for which eviction & recovery procedure is provided under Chapter -VA of the Airports Authority of India Act, 1994 as amended by Act 2003."

[Emphasis Supplied]

16. The contractual provisions extracted above do not really need to detain this Court's attention since parties can amend contract by consent. However, the real issue is whether an apparent error has come about by operation of Chapter VA of the AAI Act. Whether AAI's consent was contrary to law (even if Clause 27.10 extracted above was not in existence) is to be considered

17. A plain reading of Section 28A(f) of the AAI Act would *prima facie* indicate that occupation of airport premises even if authorised earlier by AAI, would constitute unauthorised occupation if such authorisation is determined for any reason whatsoever. Whether the dispute involved is actually a dispute over premises or whether occupation is incidental to some other larger transaction is a mixed question of fact and law. Mr. Samdani would contend

that a determination of that question too is in the exclusive domain of the Eviction Officer by reason of the prohibition under Section 28M of the AAI Act, on any Court from granting any injunction on any application filed by any person in respect of any action intended to be taken by the Eviction Officer under Chapter VA of the AAI Act.

18. Mr. Tamboly would contend that it would be absurd to fragment and segregate the element of occupation from the real substance of the dispute, which is evidently subject matter of arbitration as is seen in Clause 27.1 of the General Terms and Conditions, extracted above. By characterising every dispute involving some use of airport premises as eviction proceedings, Mr. Tamboly would submit, the binding agreement to arbitrate ought not to be frustrated. This was AAI's own understanding, which is why it even consented to appointment of the Arbitral Tribunal in disposal of the Section 9 Petitions, he would submit, to contend that there is no apparent error that necessitates a review.

19. Had this Court been in a Section 11 jurisdiction, this Court's scope of review would have been confined to examination of the existence of a formally executed Arbitration Agreement, leaving arbitrability as a matter of existential substance to the Arbitral Tribunal, under Section 16 of the Arbitration Act. In the instant case, the issue arose under Section 9 of the

Arbitration Act and it was solely the consent of the parties accorded in Court that led to the formation of the Arbitral Tribunal, without any need for this Court to examine the issue of arbitrability.

20. That Arbitral Tribunal is now vacant. Meanwhile, the Review Petitions have been filed, with AAI demurring on the consent accorded earlier, on the ground that the consent was in conflict with binding provisions of the AAI Act. In fact, strangely, after according consent, the Review Petitioner challenged the orders before the Learned Division Bench of this Court under Section 37 of the Arbitration Act, which refused to entertain the challenge on the ground that a consent order was not amenable to appeal. However, the Learned Division Bench took on record the submission of the Review Petitioner that it intends to pursue a review. The Review Petitions are now under consideration on the ground that the consent to proceed to arbitration was in direct conflict with Section 28A(f) read with Section 28M of the AAI Act.

21. Since this Court had no occasion to consider the objections on ouster at that stage, AAI submits that the Review Petition needs consideration since the grant of consent contrary to law to constitute an Arbitral Tribunal is an apparent error of law. In contrast, the Respondents submit that the stop work notice issued by the AAI on December 31, 2024 had cited administrative

reasons which led to the Section 9 Petitions. It is during the pendency of the Section 9 Petitions, that termination was effected on March 22, 2025, without the issuance of any show cause notice.

22. The AAI contends that each and every License Agreement executed with the Original Petitioners was purportedly found to be entirely illegal without due internal authorisation to grant the licences. It was seen when considering the Section 9 Petitions that the License Agreements were an outcome of a process conducted entirely in the public domain, making it hard to believe that AAI was oblivious of an unauthorised grant of licenses. Against this backdrop, with AAI consenting to leave it to the Arbitral Tribunal to decide interlocutory measures, the Section 9 Petitions were disposed of by appointing an Arbitral Tribunal by consent of parties.

23. Having considered the issue and the peculiar juncture that has arisen in this matter, I cannot ignore the fact that *prima facie*, the term “unauthorised occupation” brings within its sweep any occupation of any airport premises where the authorisation for occupation has been determined. The authorisation for occupation may have been under a commercial contract, but if that underlying authority to occupy premises has been determined, one would indeed have to consider if Section 28M of the AAI Act would be attracted. Had the Section 9 Petitions been contested in the normal course by

both sides when the proceedings came up originally, this issue would have been dealt with, since existence of arbitration agreement and arbitrability have to be considered when granting relief under Section 9 of the Arbitration Act. This was not a case of Section 11 jurisdiction, which explicitly confines the scope of jurisdiction to examination of whether a validly executed formal arbitration agreement exists.

24. Indeed, the Respondents present a nuanced counterview that also needs consideration under the Section 9 Petitions. None of these issues were considered since the AAI agreed not to disturb the *status quo* and also agreed to proceed to arbitration. The only request from AAI had been, inexplicably, that each License Agreement ought to have a separate Arbitral Tribunal.

25. The equities of the situation and the past conduct of AAI, however, cannot come in the way of a clear question of law that needs to be considered. Specifically, it ought to be considered if the License Agreements can be regarded as agreements that authorise occupation of airport premises and whether an application under Section 9 of the Arbitration Act would be prohibited by operation of Section 28M of the AAI Act. Moreover, there is no functional Arbitral Tribunal today since the Learned Arbitrator has vacated office. Even if the Respondents are right about the record indicating that the AAI's conduct led to the Arbitral Tribunal having resigned, it is arguable that

authorisation for occupation of airport premises duly executed by AAI with the Original Petitioners was revoked.

26. Clause 27.10 of the General Terms and Conditions explicitly excludes disputes and differences covered by Chapter-VA of the AAI Act. Therefore, whether or not termination of the Licence Agreement would automatically lead to the occupation by the licensees to constitute “unauthorised occupation” would present a mixed question of fact and law, which would warrant consideration, even under Section 9 of the Arbitration Act, consideration of which did not take place in view of the disposal of those Petitions by consent. A *prima facie* case of determination of authorisation can be discerned and indeed the circumstances presented by the Original Petitioners too warrant consideration under Section 9 of the Arbitration Act, under which the Orders under Review were passed.

27. Mr. Tamboly’s suggestion that this should be left to the Arbitral Tribunal would have been logical had the constitution of the Arbitral Tribunal been under Section 11 of the Act, but since the Arbitral Tribunal came to be appointed by consent under Section 9 of the Act, with no occasion for this Court to consider the issues now raised in the Review Petition, in my opinion, the ends of justice warrant a reconsideration of the original Section 9 Petitions afresh on merits, and a case for review on merits has been made out.

28. The issue of jurisdiction would have to be considered by the Section 9 Court afresh. However, in the interregnum, there has been a change in the roster and the jurisdiction under Section 9 of the Arbitration Act is no longer with this Bench. Therefore, it would be appropriate to restore the Original Section 9 Petitions and grant liberty to the parties to present their contentions to the appropriate Bench having the Section 9 jurisdiction in its roster for consideration of the Section 9 Petitions afresh on merits.

29. It is made clear that nothing contained in this judgement is meant to be a pronouncement on whether or not the disputes are arbitrable. This judgement is also not a decision on the matter of jurisdiction of the Section 9 Court one way or the other. All that is being done is that the Section 9 Petitions are restored since an arguable case for the consent accorded by AAI through the Learned Additional Solicitor General potentially being in conflict with Chapter VA of the AAI Act has been made out. How such argument must be adjudicated is subject matter of the Section 9 jurisdiction, which is not with this Bench today due to the change in roster.

30. Therefore, the ***Review Petitions are*** allowed, and the ***Section 9 Petitions are restored***, leaving all contentions open, enabling the parties to present afresh their submissions on merits as well as on jurisdiction, to the Section 9 Court.

31. It was the statement of AAI that it would not take further action on the termination notices that led to the status quo. There is no prohibition in law for AAI to make such a statement even under Section 28M of the AAI Act, pending consideration of the Section 9 Petitions that are revived. It would be a complete travesty if the termination notices were to be acted upon even before the Section 9 Court hears the original Section 9 Petitions afresh on jurisdiction and on merits. Therefore, until the Section 9 Court convenes to hear the restored Section 9 Petitions and passes appropriate orders, the position obtaining as of today shall continue. Mr. Samdani has also fairly stated that AAI has not acted further in deference to and in consonance with the commitments made earlier to this Court. Now that the Section 9 Petitions are being restored and will be considered afresh, it would be entirely for that Section 9 Bench to decide what arrangements to make pending consideration of the restored Section 9 Petitions.

32. It is clarified for the avoidance of doubt that all observations made in this judgement are only in furtherance of the need to consider whether the Section 9 Petitions deserve to be restored.

33. 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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