NEUTRAL CITATION
2025:GUJHC:63383

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 12579 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MRS. JUSTICE MAUNA M. BHATT sd/-

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Approved for Reporting	Yes	No
	YES	

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NIRAV SHIRISH BHOW
Versus
RAJENDRA RASIKALL MEHTA

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Appearance:
MR.PARTH CONTRACTOR(7150) for the Petitioner(s) No. 1
MR NM KAPADIA(394) for the Respondent(s) No. 1

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CORAM:HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 06/11/2025

ORAL JUDGMENT

1. Rule returnable forthwith. Learned advocate Mr. N. M. Kapadia for the petitioner waives service of notice of rule on behalf of respondent.

2. This petition is directed against the order dated 07.06.2023 in Arbitration Case No. 72 of 2022; whereby, an application of the petitioner (original respondent) filed under Section 16 of the Arbitration and Conciliation Act, 1996 (for

NEUTRAL CITATION
2025:GUJHC:63383

short 'A&C Act, 1996') has been rejected.

3. Heard learned advocate Mr. Parth Contractor for the petitioner – original respondent and learned advocate Mr. N. M. Kapadia for respondent – original claimant.

4. Learned advocate Mr. Parth Contractor for the petitioner – original respondent submitted that appointment of learned Arbitrator was done pursuant to the petition filed by respondent – original claimant under Section 11 of the A&C Act, and consented by petitioner, resultantly allowed vide order dated 19.06.2022. Thereafter, upon appointment of learned Arbitrator, Statement of Claim (SOC) was filed on 31.10.2022 seeking (i) dissolution of partnership firm and (ii) distribution of assets of partnership firm along with other related prayers. Having received SOC, the petitioner – original respondent immediately moved an application dated 16.11.2022 under Section 16 of the A&C Act, 1996 challenging the jurisdiction of learned Arbitral Tribunal to entertain the arbitration case on the ground that subject matter of arbitration case is dissolution of partnership firm and its assets, wherein the partnership between partners is 'at Will'. Earlier, notice dated 01.05.2019, was issued by respondent - original claimant, informing discontinuation of business of partnership firm w.e.f. 30.06.2018, and its dissolution. Therefore, the

NEUTRAL CITATION
2025:GUJHC:63383

partnership firm which was 'at will' got dissolved upon service of notice. Upon dissolution of firm, provisions of The Indian Partnership Act 1932 would be applicable and as per the provisions of The Indian Partnership Act, winding up proceedings may have to be followed. Learned Advocate for the petitioner relied upon Sections 43 and 46 of The Indian Partnership Act and submitted that for winding up proceedings, Learned Arbitral Tribunal has no jurisdiction. Therefore, the application of the petitioner, under Section 16 of A&C Act ought to have been allowed by the learned Arbitral Tribunal.

4.1 By placing reliance on Clause No. 12 and 13 of the partnership deed, Mr. Contractor submitted that in view of the said clauses, the proceeding under provisions of the A&C Act, 1996 ought not to have been initiated. Even in SOC, respondent – original claimant has sought for distribution of assets amongst original claimant and original respondent in relation to M/s B D. Engineers-a partnership firm 'at Will' originally constituted and dissolved vide notice dated 04.05.2018. The notice dated 04.05.2018, was signed by both the partners and refers to closure of business w.e.f 30.06.2018 and consequential dissolution. The notice states that all employees will be considered as relieved and their dues will be cleared. Thus, because of closure of business by petitioner and respondent w.e.f. 30.06.2018 and the firm being dissolved,

NEUTRAL CITATION
2025:GUJHC:63383

Clause 12 of partnership deed would not apply, rather Clause 13 would apply. Clause 12 of the partnership deed, applies for the dispute either relating to the business of partnership firm or terms and conditions of deed of partnership which refers to applicability of the A&C Act. Whereas Clause 13 of the deed, would apply to the matters other than those relating to partnership business or construction of deed, governing provisions of Indian Partnership Act. In this case with the firm being dissolved, the issues raised in statement of claim cannot be said to be a dispute relating to business of partnership firm, and therefore Clause 12 being not applicable, matter ought not to have been referred to Arbitral Tribunal.

4.2. Further, in this case the dispute raised in the claim statement is in relation to distribution of assets of firm upon dissolution. The distribution of assets is only possible after discharging the liability of firm, if it remains on the date of dissolution. The said distribution is only possible upon initiation of winding up proceedings as provided under Section 46 of Indian Partnership Act 1932, and the winding up proceedings being proceedings in rem, learned Arbitral Tribunal has no jurisdiction.

4.3 It was also further submitted that the limited scope of Section 11 of the A&C Act, 1996 does not preclude the

NEUTRAL CITATION
2025:GUJHC:63383

jurisdictional challenge wherein reliance has been placed on the decision of Constitutional Bench of Hon'ble Supreme Court in the case of **Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899** reported in **2023 INSC 1066** to submit that after year 2015 amendment all that Courts need to see under Section 11 of the A&C Act, 1996 is, whether an Arbitration Agreement exists, nothing more nothing less. However, this limited review at the appointment stage does not preclude subsequent challenges to jurisdiction on the ground of non-arbitrability. Further, as held by Hon'ble Supreme Court in the case of **Vidhya Drolia [supra]** the question of non-arbitrability can be examined by the Courts at the reference stage (Section 11 of A&C Act, 1996) to protect parties from being forced to arbitrate when it was demonstrably non-arbitrable and to cut off the deadwood. In this case, on account of dissolution of partnership firm and on account of the winding up proceedings to be initiated there is an inherent lack of jurisdiction by the Arbitral Tribunal and therefore the petition deserves to be allowed.

4.4 Moreover, in view of Section 16 (2) and (3) of the A&C Act, 1996, the petitioner herein had immediately raised a plea of jurisdiction without filing Statement of Defense at the first available date and therefore, the present order deserves to be

NEUTRAL CITATION
2025:GUJHC:63383

quashed and set aside whereby the order dated 07.06.2023 passed on an application of the petitioner under Section 16 of the A&C Act, 1996 deserves to be quashed and set aside.

4.5 In support of his submissions, learned advocate for the petitioner relied upon the following decisions: -

- **Indian Oil Corporation Limited v.s NCC Limited reported in 2023 (2) SCC 539;**
- **Indian Oil Corporation Limited v.s Shree Ganesh Petroleum Rajgurunagar** reported in **2022 (4) SCC 463;**
- **Vidhya Drolia and Ors. v.s. Durga Trading Corporation reported in (2021) 2 SCC**
- **Narmada Clean-tech v.s. Indian Council of Arbitration reported in 2021 (1) GLR 821;**
- **A. Ayyasami v.s. Paramasivam and Ors reported in (2016) 10 SCC 386;**
- **Booz Allen and Hamilton Inc. v.s SBI Home Finance Limited and Ors** reported in **2011 (5) SCC 532**;
- **Haryana Telecom Limited v.s Sterlite Industries (India) Ltd.** reported in **1999 (5) SCC 688**;
- **Oil & Natural Gas Corporation (Indai) Limited v.s. Enviro Engineers passed by this Court in First Appeal No. 1804 of 2016 dated 27.03.2023;**
- **Yashang Navinbhai Patel v.s. Dilipbhai Prabhubhai Patel**

NEUTRAL CITATION
2025:GUJHC:63383

reported passed by this Court in Arbitration Petition No. 116 of 2021 decided on 21.04.2023;

- **Hemendra Babulal Shah HUF through Manager and Karta v.s Dilipkumar Babulal Shah reported in 2006 (3) GLR 2582;**
- **Mohanlal Sajandas and Anr v.s Haresh kumar Narandas and Ors** reported in **2001 (4) GLR 3168;**
- **T. A. Kadeeja v.s. R. K. Manjusha** reported in **2018 Ker 12022;**
- **R Subbulakshmi and Ors v.s. R Venkitapathy and Ors** reported in **2023 MHC 3634**;

4.6 On the aspect of maintainability, learned advocate for the petitioner relied upon decision in the case of **Narmada Clean-tech [supra]** to submit that in above referred decision, exception has been carved out that if the Arbitral Tribunal has no jurisdiction; therefore, rejection of petition on the ground of alternative remedy would not be appropriate. Moreover, as held by the Hon'ble Supreme Court in the case of **SBP & Co. v.s. Patel Engineering Ltd. and Anr reported in (2005) 8 SCC 618** as well as **Deep Industries Limited v.s. Oil and Natural Gas Corporation Ltd. reported in (2020) 15 SCC 706,** learned Arbitral Tribunal has no jurisdiction to conduct any winding up proceedings or to act as a liquidator to liquidate and distribute the assets of dissolved firm.

NEUTRAL CITATION
2025:GUJHC:63383

4.7 Heavy reliance is placed on the decision of Hon'ble Supreme Court in the case of **Booz Allen and Hamilton Inc. [supra],** to submit that winding up matters are action in rem and therefore they are non-arbitrable disputes. All the disputes relating to right in rem are required to be adjudicated by Courts and public Tribunal, being unsuited for private arbitration (Paragraph No. 36, 37 and 38). Further, the claims for winding up not withstanding any agreement between the parties cannot be referred to arbitration and Arbitrator will have no jurisdiction in this regard.

4.8 Reliance is also placed on the decision in the case of **Vidhya Drolia [supra]** to submit that the Hon'ble Supreme Court while upholding and confirming the decision of **Booz Allen [supra]** has held that winding up is non-arbitral and accordingly the Arbitral Tribunal has no jurisdiction in this regard. (Para 36 and 37).

4.9 Reliance is also placed on the decision in the case of **Haryana Telecom Limited [supra]** wherein also in a winding up proceedings' arbitration is prohibited. Similar view is taken in the decision in the case of **A. Ayyasami v.s. Paramasivam [supra].** In view of above, learned advocate submitted that the impugned order deserves to be quashed and set aside, holding

NEUTRAL CITATION
2025:GUJHC:63383

that the Arbitral Tribunal has no jurisdiction to decide because upon dissolution of firm, winding up proceedings need to be initiated.

4.10 Learned Advocate Mr. Contractor relied upon decision of Madras High Court in the case of **R Subbulakshmi [supra]**; to submit that similar issue has been considered where that court has held that in case of winding up proceedings, the Arbitral Tribunal has no jurisdiction.

5. Opposing the petition, learned advocate Mr. N. M. Kapadia for the respondent raised a preliminary objection with regard to maintainability of the petition to submit that this petition is not maintainable in view of an express bar by virtue of Section 5 of the A&C Act, 1996. The language of Section 5 of the A&C Act, 1996 is clear which restricts the intervention by judicial authority.

5.1 In support of his submissions, learned advocate has relied upon decision of Hon'ble Supreme Court in the case of **Premchand Garg v.s. Excise Commissioner** reported in **1962 SCC Online SC 37**. Reliance is also placed on the decision in the case of **Vidhya Drolia [supra]** to submit that on the contrary that judgment favors respondent because it is held that scheme of the Act empowers primarily the Arbitral

NEUTRAL CITATION
2025:GUJHC:63383

Tribunal to rule on the jurisdiction, subject to second look by the Court at the post award stage under Section 34 of the A&C Act, 1996 only. Learned advocate for respondent further submitted that, in **SBP & Co. [supra]** it is held that as per the scheme of the Act, the judicial interference is to be observed in rare cases, which is not the case here. With regard to the entertainability of the petition, learned advocate for respondent has further relied upon the following decisions: -

- **Deep Industries Limited v.s. Oil and Natural Gas Corporation Ltd.** reported in **(2020) 15 SCC 706**;
- **Bhaven Construction v.s. Executive Engineer, Sardar Sarovar Narmada Nigam Ltd.** reported in **(2022) 1 SCC 75**;

5.2 Distinguishing the decisions relied upon by the petitioner, of Hon'ble Supreme Court in the case of **Vidhya Drolia [supra]** and **Booz Allen [supra]**, Learned Advocate Mr. Kapadia for respondent submitted that, both these judgments do not put restriction for adjudication of the dispute by learned Arbitrator when order in the nature of winding up is not required. The distribution of assets upon dissolution is completely inter-se dispute, an action in personam. Further, it is also case of the petitioner that no dues are outstanding on the date of dissolution of the firm and involvement of third party is not

NEUTRAL CITATION
2025:GUJHC:63383

required. (Point No. H Page No. 46)

5.3 In relation of the decision of Madras High Court in the case of **R Subbulakshami [supra],** learned advocate for respondent submitted that the said decision is not binding to this Court and even otherwise also the same is distinguishable on the following aspects: -

A. The stage before the Madras High Court was an interim award wherein in this case, no award is passed.
B. It was a petition under Section 34 of the A&C Act, 1996 wherein maintainability of the writ petition in relation to the jurisdiction of learned Arbitral Tribunal was not examined.
C. In the decision before Madras High Court, the issues were framed wherein issue of dissolution was decided at the interim stage and the interim award was challenged before the Madras High Court.

5.4 Whereas in the case of recent decision in the case of **SBI General Insurance Co. Limited v.s. Krish Spinning** reported in **2024 INSC 532**, the Hon'ble Supreme Court has reiterated the principles of judicial non-interference in Arbitration Proceedings and held in Paragraph Nos. 96, 97 and 98 as under:

NEUTRAL CITATION
2025:GUJHC:63383

> "96. The principle of judicial non-interference permeates the scheme of the Act, 1996. The principle of competence-competence as contained in Section 16 of the Act, 1996 indicates that the arbitral tribunal enjoys sufficient autonomy from the national courts. The underlying principle behind arbitral autonomy and judicial non-interference is that when parties mutually decide to settle their disputes through arbitration, they surrender their right to agitate the same before the national courts.
>
> 97. Section 5 of the Act, 1996 also minimises the supervisory role that the courts may play in the arbitral process. There are two facets to Section 5 – positive and negative. The positive facet allows the judicial authorities to exercise jurisdiction over matters expressly permitted under the Act, 1996. The negative aspect, on the other hand, prohibits the judicial authorities from intervening in the arbitral proceedings in situations where the arbitral tribunal has been conferred with exclusive jurisdiction
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> 98. What follows from the negative facet of arbitral autonomy when applied in the context of Section 16 is that the national courts are prohibited from interfering in matters pertaining to the jurisdiction of the arbitral tribunal, as exclusive jurisdiction on those aspects vests with the arbitral tribunal. The legislative mandate of prima facie determination at the stage of Sections 8 and 11 respectively ensures that the referral courts do not end up venturing into what is intended by the legislature to be the exclusive domain of the arbitral tribunal."

5.5 Lastly, learned advocate for respondent submitted that apart from preliminary objections raised, case of the petitioner

NEUTRAL CITATION
2025:GUJHC:63383

does not require consideration on merits since in the documents referred in the table below shows status as partnership firm and not the dissolved firm.

Sr. No.	Annexures to the Reply	Particulars
1	R-1	Income Tax returns of the Assessment Year 2019-20 and GST Returns for the year 2018-19, 2022-23 and 2023-24
2	R-2	Bank Statements indicating payments for the business of the firms
3	R-3	Bank Guarantee extension dated 02.11.2018 and audit report dated 17.09.2019
4	R-4	Order dated 16.09.2022 in Arbitration Petition No. 39 of 2021 and the transcript of the hearing dated 16.09.2022
5	R-5	The documents relating to Technoflex setup by the petitioner doing same business of the partnership firm
6	R-6	Email dated 30.08.2018 from the petitioner Email dated 06.02.2023 alongwith settlement agreement Email dated 28.09.2018 from the petitioner and objection by the deponent Invoice dated 27.11.2018 by HM Marketing towards Commission Reply dated 24.05.2019 by the Advocate of the petitioner Bank Statement of the partnership firm with HDFC Bank Website of B. D. Engineers as on 29.12.2021 Cheque dated 03.08.2021 issued by the petitioner
7	R-7	Order dated 04.10.2022 by Commercial Court
8	R-8	Petition No. 39 of 2021 under Section 11 of the Arbitration Act

NEUTRAL CITATION
2025:GUJHC:63383

6. Considered the submissions and the decisions relied upon. Admittedly, partnership Deed dated 20.04.1996 (Annexure-P2, page 19 to 23) was executed between petitioner and respondent. The partnership is 'at Will'. Thereafter, on account of dispute amongst the partners, they decided to close the business and to dissolve the firm and accordingly joint notice dated 04.05.2018 (Annexure-P3, page -34) was issued by both partners indicating closure of factory operations with effect from 30.06.2018. The respondent- original claimant for the purpose of dissolution of firm w.e.f. 30.06.2018 issued notice dated 01.05.2019 (Annexure-P4, page-38) and the petitioner responded by reply dated 24.05.2019 (Annexure-P5, page-43), disputing the claim in the notice dated 01.05.2019, however, confirmed discontinuation of business with zero outstanding liabilities. The reply by the petitioner indicates that the firm could not get dissolved on account of their inter-se dispute in relation to partner's claim and distribution of assets. One more notice dated 23.12.2020 (Annexure-P6, page-48), was issued by respondent for dissolution of firm, followed by filing of Arbitration petition under Section 11(6) of A&C Act, wherein appointment of learned arbitrator vide order dated 16.09.2022, was done with the consent of both the parties. Thus, appointment of Learned Arbitrator is by consent of parties and respects the fact of party autonomy is not in dispute. Be that as it may, however, it is case of the petitioner as per the

NEUTRAL CITATION
2025:GUJHC:63383

submissions referred herein above, that rejection of application of the petitioner filed under Section 16 of A&C Act is bad in law.

7. Since the respondent has raised preliminary objection with regard to entertainability of the petition, therefore I deem it fit to address the said issue first. In the opinion of this Court, the law in respect of whether a writ petition can be entertained if filed under Article 226 or 227 of the Constitution of India to challenge the order passed by learned Arbitral Tribunal, be it procedural or substantive is by far well settled.

7.1 At this stage, it would be apposite to refer to the decision of Hon'ble Supreme Court in the case of **Serosoft Solutions Pvt. Ltd. v.s. Dexter Capital Advisors Pvt. Ltd.** reported in **2025 SCC Online SC 22;** wherein it is held as under:-

> "14. …… Certain conditions for exercising jurisdiction under Articles 226/227 are mentioned in the judgment. Conditions (v) and (vi) of the said judgment could have provided sufficient guidance for the High Court to consider whether interference is warranted or not. The relevant portion of the said order is as under: -
>
> "(v) Interference is permissible only if the order is completely perverse i.e. that the perversity must stare on the face.

NEUTRAL CITATION
2025:GUJHC:63383

> (vi) High Courts ought to discourage litigation which necessarily interfere with the arbitral process.
> (vii) Excessive judicial interference in the arbitral process is not encouraged.
> (viii) It is prudent not to exercise jurisdiction under Articles 226/227.
> (ix) The power should be exercised in 'exceptional rarity' or if there is 'bad faith' which is shown.
> (x) Efficiency of the arbitral process ought not to be allowed to diminish and hence interdicting the arbitral process should be completely avoided."
>
> 15. It is evident from the above that even as per the quote hereinabove interference under Article 226/227 is 'permissible only if the order is completely perverse i.e. that the perversity must stare in the face.' Condition (vi) to (x) underscores the reason why High Courts ought not to interfere with orders passed by the Arbitral Tribunals for more than one reason."

In the above context, if the submission of the petitioner is considered, then it does not fall in any of the criteria.

7.2. Further, in the case of **Bhaven Construction [supra]** on which reliance has been placed by learned advocate for petitioner to carve out exception in relation to the entertainability of the petition, it is held as under.

> "11. Having heard both parties and perusing the material available on record, the question which needs to be answered is whether the arbitral

NEUTRAL CITATION
2025:GUJHC:63383

process could be interfered under Article 226/227 of the Constitution, and under what circumstance?

12. We need to note that the Arbitration Act is a code in itself. This phrase is not merely perfunctory, but has definite legal consequences. One such consequence is spelled out under Section 5 of the Arbitration Act, which reads as under: "Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part." The non-obstante clause is provided to uphold the intention of the legislature as provided in the Preamble to adopt UNCITRAL Model Law and Rules, to reduce excessive judicial interference which is not contemplated under the Arbitration Act.

13. The Arbitration Act itself gives various procedures and forums to challenge the appointment of an Arbitral Tribunal. The framework clearly portrays an intention to address most of the issues within the ambit of the Act itself, without there being scope for any extra statutory mechanism to provide just and fair solutions.

14. Any party can enter into an arbitration agreement for resolving any disputes capable of being arbitrable. Parties, while entering into such agreements, need to fulfill the basic ingredients provided under Section 7 of the Arbitration Act. Arbitration being a creature of contract, gives a flexible framework for the parties to agree for their own procedure with minimalistic stipulations under the Arbitration Act.

NEUTRAL CITATION
2025:GUJHC:63383

> 15. If parties fail to refer a matter to arbitration or to appoint an Arbitral Tribunal in accordance with the procedure agreed by them, then a party can take recourse for court assistance under Section 8 or 11 of the Arbitration Act.
>
> 18. ...
>
> **It is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear "bad faith" shown by one of the parties. This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient."**

8. Thus, in the opinion of this Court, the case on hand is not the one of exceptional rarity wherein one party is rendered remediless under the statute. In this case, the award passed after participation in the Arbitral proceedings is subject to challenge under Section 34 of the A&C Act, 1996 and therefore the contention that this is an arbitration without jurisdiction is not acceptable.

9. Moreover, Clause 12 and 13 of the Partnership Deed on which reliance is placed by Learned Advocate for the petitioner reads as under: -

NEUTRAL CITATION
2025:GUJHC:63383

> **"12. The dispute either relating to the business in partnership firm or to terms and conditions of the deed of the Partnership if arises the same shall be referred and settled as per provisions of Indian Arbitration Act as may be amended from time to time and no party will file a suit in Court of law.**
>
> 13. All matters other than those provided herein relating to the partnership business or construction of Deed, shall be governed by the Indian Partnership Act."

9.1 On perusal of the aforesaid clauses, it is borne out that even though the petitioner contends that the partnership firm has been dissolved, the contention as recorded hereinabove under Paragraph 5.5 of the respondent- original claimant seems to be otherwise, more so in view of the reply to the notices issued by the petitioner- original respondent. With there being a dichotomy with regard to whether the partnership firm has in fact been dissolved or not, this Court does not find merit in the submission of the petitioner that the Arbitral Tribunal does not have any jurisdiction.

10. Now, in relation to decision of Madras High Court in the case of **R Subbulakshami [supra]**, where heavy reliance is placed, it is true that it has persuasive value, however, in that decision challenged was with regard to the interim award passed by learned Arbitrator. Further, it was a petition under Section 34 of the A&C Act, 1996 where the issue of

NEUTRAL CITATION
2025:GUJHC:63383

entertainability of writ petition under Article 226 of Constitution of India was not under consideration. The dissolution of the firm was the issue which was already examined by the learned Arbitrator and that award was subject matter of challenge under Section 34 of the A&C Act, 1996 wherein certain observations were made. Therefore, in the opinion of this Court, the decision relied upon by the petitioner in the case of Madras High Court would not be squarely applicable as contended.

11. Moreover, this is not a case where there are allegations of breach of principles of natural justice. Merely, the order of learned Arbitral Tribunal is erroneous would not be the ground to challenge the same under Article 226 of the Constitution of India.

12. For the foregoing reasons, in the opinion of this Court, entertaining such petition would dismantle the efficiency and autonomy of arbitration. Allowing every interim order to be re-litigated in the Constitutional Court would defeat the very purpose of the Act as laid down by the Hon'ble Courts including the Hon'ble Supreme Court.

13. In view of above, this Court finds no merit in the petition and the same is dismissed as being not entertainable

NEUTRAL CITATION
2025:GUJHC:63383

under Article 226 and 227 of the Constitution of India. Since, this Court has rejected the petition on the ground of entertainability, other grounds raised by respective parties are not considered and dealt with. Needless to say, that the view expressed hereinabove, including the opinion expressed under Paragraph 9.1, shall not have any bearing on the merits of the claim or counter claim or the defense of the original respondent. All the rights and contentions of both the parties are kept open even with respect to challenge to final award to be rendered by learned Arbitral Tribunal including on the ground of jurisdiction.

14. With the above, the present petition is dismissed. Rule is discharged.

(MAUNA M. BHATT,J)

SHRIJIT PILLAI

FURTHER ORDER

15. After pronouncement of the judgement, learned advocate for the petitioner has requested for stay of the judgment and order dated 06.11.2025.

16. For the reasons stated in the judgment, the request is rejected. sd/-

(MAUNA M. BHATT,J)

SHRIJIT PILLAI