IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

RESERVED ON: 22.06.2026
DELIVERED ON: 28.07.2026

PRESENT:
THE HON'BLE MR. JUSTICE GAURANG KANTH

APOT 297 OF 2025

IA NO: GA-COM/1/2025, GA-COM/2/2025

M/S. HARSHA CONSTRUCTIONS AND ORS.
VS
VKM PROJECTS PRIVATE LIMITED AND ORS.

Appearance: -

Mr. Jishnu Choudhury, Sr. Adv.
Mr. Avijit Ghoshal, Adv.
Ms. Sreeja Mukherjee , Adv.
.... for the Appellants

Mr. Rachit Lakhmani, Adv.
Mr. Aditya Chakraborty, Adv.
Ms. Pooja Sah, Adv.
Mr. Siddharth Makkar, Adv.
.... for the Respondents

JUDGMENT

Gaurang Kanth, J. :-

1. The appellants have preferred the present appeal under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996, assailing the order dated 10.06.2025 passed by the learned Sole Arbitrator whereby an application filed by the respondents (claimants before the learned Arbitral Tribunal) under Section 17 of the Arbitration and Conciliation Act, 1996 was allowed, directing the appellants (respondents before the Arbitral Tribunal) to produce and disclose documents pertaining to a contract entered into between the appellants and a third party, M/s Rapiscan Systems Pvt. Ltd.

2. The appellants herein were the respondents before the learned Arbitral Tribunal, while the respondents herein were the claimants therein. The facts giving rise to the present appeal are set out hereinafter.

3. M/s Rapiscan Systems Private Limited had entered in to a principal contract with the Syama Prasad Mookherjee Port Trust, Kolkata, for the installation of an X-ray based Drive Through Container Scanner (DTCS). As per the said principal contract, M/s Rapiscan Systems Private Limited was permitted to engage sub contractors for carrying out various works associated with it.

4. A joint venture Agreement dated 06.09.2021, was executed between the appellants, and respondents (M/s VKM Projects Pvt. Ltd and Marketing Point, a partnership firm in which Respondent Nos. 2-3 are partners). Pursuant thereto, respondent no. 1, Marketing Point and appellant no. 1 agreed to collaborate for securing and executing civil and structural works associated with the delivery and installation of DTCS System at the Syama Prasad Mookherjee Port Trust, Kolkata in terms of its principal contract, with appellant no. 1 acting as the entity through which quotations would be submitted. On the same date, the parties also entered into a Supplementary Agreement recording, *inter alia*, that the sub-contract, if awarded, would stand in the name of appellant no. 1 and that respondent no. 1 and Marketing Point would receive remuneration for their marketing and consultancy services at the rate of 5% each of the value of every bill raised under the sub-contract, together with applicable taxes, payable upon receipt of payment by appellant no. 1.

5. Thereafter, on 16.09.2021, M/s Rapiscan Systems Private Limited issued a Notification of Award in favour of appellant no. 1. A formal Sub-Contractor

Contract was also executed on the same date between M/s Rapiscan Systems Private Limited and the appellants.

6. The respondents have averred that following the execution of the aforesaid agreements, they participated in various preparatory activities connected with the project, including establishment of the site office, obtaining requisite permissions and licences, deployment of security personnel and engagement of sub-contractors.

7. It is the case of the respondents before the learned Arbitral Tribunal that from October 2021 onwards, they were not provided with information concerning the progress and financial status of the project. The respondents addressed various communications to the appellants seeking information relating to the project, including particulars of payments allegedly received under the sub-contract. The parties, however, dispute the significance and effect of such communications.

8. Disputes having arisen between the parties in connection with the Joint Venture Agreement and the Supplementary Agreement dated 06.09.2021, arbitral proceedings were commenced before the learned Sole Arbitrator.

9. In the course of the arbitral proceedings, the respondents filed an application under Section 17 of the Arbitration and Conciliation Act, 1996 seeking, *inter alia*, directions upon the appellants to disclose particulars of the running account bills raised upon M/s Rapiscan Systems Private Limited and the status of payments received there against; to produce the books of accounts, profit and loss statements and balance sheets pertaining to the project; and to disclose records evidencing the total revenue generated under the sub-contract dated 16.09.2021.

10. By the impugned order dated 10.06.2025, the learned Sole Arbitrator held that the reliefs sought by the respondents fell within the ambit of Section 17(1)(ii)(a) and Section 17(1)(ii)(c) of the Arbitration and Conciliation Act, 1996 and that the documents sought were relevant to the disputes pending before the Arbitral Tribunal. Accordingly, the learned Sole Arbitrator directed the appellants to disclose the particulars of the running account bills raised upon M/s Rapiscan Systems Private Limited together with their clearance status, to disclose the relevant books of accounts, profit and loss statements and balance sheets, and to produce records relating to the total revenue generated under the sub-contract, within the timelines stipulated therein.

11. Aggrieved by and dissatisfied with the aforesaid order dated 10.06.2025, the appellants have preferred the present appeal.

Submission on behalf of the Appellants

12. Mr. Jishnu Choudhury, learned Senior Counsel appearing on behalf of the Appellants, submits that the application preferred by the Respondents before the learned Sole Arbitrator under Section 17 of the Arbitration and Conciliation Act, 1996 was wholly misconceived and that the impugned order dated 10.06.2025 is *ex facie* without jurisdiction and is therefore liable to be set aside. It is submitted that no Joint Venture was ever given effect to between the parties: Clause 17 of the Sub-Contractor Contract dated 16.09.2021 between Rapiscan Private Limited and the Appellants expressly barred sub-contracting without Rapiscan's prior written consent. It is contended that no such consent was ever granted in favour of the Respondents that the proposed joint venture namely "Maharav Infra Projects" was never formed, and that the entire work was executed solely by the Appellants without demur from the Respondents until after the work had been complete. These facts, going to the root of the Respondents' claimed entitlement to the documents sought, were never considered in the impugned order.

13. It is submitted that the jurisdiction of an Arbitral Tribunal under Section 17 is analogous to, and co-extensive with, that of a Court under Section 9, both being confined to granting interim measures of protection; Section 17 does not empower an Arbitral Tribunal to direct discovery, disclosure or compulsory production of documents for the purpose of collecting or preserving evidence. The impugned order, directing disclosure of Running Account bills, books of accounts, profit and loss statements, balance-sheets and relating to the total revenue generated records, under the sub-contract is in substance an order for production of evidence, and any such direction could only have been issued under Section 19, which governs admissibility, relevance and production of evidence, read with Section 27 of the Act. The source of the power to order discovery is accordingly not rooted in Section 17(1)(ii)(c) at all, and any attempt to invoke Section 17 for this purpose renders Sections 19 and 27 nugatory, as held in ***Union of India v. Reliance Industries Limited and Others,*** reported as ***2018 SCC OnLine Del 13018***, and in ***Pennar Aluminium Company Limited (PALCO) v. Chairman-cum-Managing Director, National Aluminium Co. Ltd.,*** reported as ***2019 SCC OnLine Ori 370***.

14. It is further submitted that Section 17(1)(ii)(c) is couched in language almost identical to Order XXXIX Rule 7 of the Code of Civil Procedure, 1908, and is, therefore, required to be construed accordingly, as held in ***Augmont Gold Private Limited v. One97 Communication Limited,***

reported as ***2021 SCC OnLine Del 4484***. Order XXXIX Rule 7 empowers the Court to direct detention, preservation and inspection only of the property which is the subject matter of the suit, and not of documents which are merely of evidentiary value, as held in ***Ramswarup v. Mst. Kesar***, reported as ***AIR 1958 Raj 218*** (para 8). It is further submitted that even where a question may arise relating to the suit, no commission or order can be issued thereunder for the purpose of collecting evidence through discovery, as held in ***Institution of Engineers (India) v. Bishnu Pada Bag,*** reported as ***AIR 1978 Cal 296***, and in ***The Owners and Parties Interested in the Vessel 'M.V. Baltic Confidence' v. The State Trading Corporation of India Limited,*** reported as ***AIR 2000 Cal 91***. The books of account and RA bills sought by the Respondents cannot, in any event, be construed as "property or thing" which is the subject matter of dispute, as held in ***Padam Sen and Another v. State of Uttar Pradesh,*** reported as ***1960 SCC OnLine SC 77***.

15. It is submitted that an Arbitral Tribunal, being a private adjudicatory forum, is not vested with the coercive powers of a civil court to compel production of documents. Even before a civil court, failure to produce documents results only in the drawing of an adverse inference under Section 114(g) of the Indian Evidence Act, 1872, and not in the issuance of a mandatory direction to produce such documents, as held in ***Rajesh Bhatia v. G. Parimala & Ors.,*** reported as ***2005 SCC OnLine AP 970***, and in ***Krishan Dayal v. Chandu Ram,*** reported as ***1969 SCC OnLine Del 134***. It is further submitted that under Section 27 of the Act, a party is entitled to an opportunity of being heard and to contend that no such order ought to be made before a Court renders assistance in taking evidence, a safeguard which according to the Appellants was denied to them. It is also submitted that the underlying dispute being a pure money claim, the money claimed cannot by itself constitute the "subject matter of the arbitration" within the meaning of Section 17. At the highest, a party may seek attachment or security in respect of the claim, but no order for disclosure or production of documents can be justified on this footing, since documentary evidence can never assume the character of the subject matter of the dispute.

16. Finally, it is submitted that the impugned order contains no discussion of the facts of the case and records no finding as to why the Respondents would be entitled to the documents sought, thereby rendering the impugned order perverse on this ground alone. For the reasons set out above, the impugned order dated 10.06.2025 is wholly unsustainable in law, having been passed without jurisdiction and without consideration of the relevant facts, and is accordingly liable to be set aside.

Submission on behalf of the Respondents

17. Mr. Rachit Lakhmani, learned Counsel for the Respondents submits that the impugned order dated 10.06.2025 passed by the learned Sole Arbitrator is a well reasoned order passed after due application of mind to the facts and circumstances of the case, and does not warrant any interference by this Court in exercise of its jurisdiction under Section 37 of the Arbitration and Conciliation Act, 1996. It is submitted that the question as to whether the documents sought to be produced and disclosed form part of the subject matter of the arbitration is essentially one which depends upon a careful interpretation of the various clauses of the agreements entered into between the parties, requiring a detailed and comprehensive analysis of the contractual terms. The learned Sole Arbitrator has undertaken precisely such an exercise by carefully examining the relevant clauses of the Joint Venture Agreement and the Supplementary Agreement dated 06.09.2021, and has arrived at a considered finding that the documents in question constitute the subject matter of the present arbitration. It is submitted that this Court, while exercising its appellate jurisdiction under Section 37 of the Act, is neither required nor expected to interfere with such findings of fact and law arrived at by the learned Arbitral Tribunal, which fall squarely within the domain of the Tribunal's jurisdiction.

18. It is further submitted that the Joint Venture Agreement dated 06.09.2021 was entered into between all the parties herein, whereunder appellant no. 1 holds a 34% share in the joint venture, respondent no. 1 holds a 33% share, and respondents nos. 2 to 4, being partners of the partnership firm Marketing Point, collectively hold the remaining 33% share. It is submitted that prior to the formation of the joint venture, all three entities were already actively associated with and working on the project in connection with M/s. Rapiscan Systems Private Limited. On the same date, the parties also executed a Supplementary Agreement. Since the formation of a new legal entity would have taken considerable time, an interim arrangement was mutually agreed upon by all the parties, whereby appellant no. 1 was permitted to submit the bid and receive the sub-contract in its own name as a temporary measure pending the constitution of the joint venture entity. Learned Counsel for the respondents draws the attention of this Court to Clause 5.2 of the Joint Venture Agreement, which according to him expressly creates a right in favour of the respondents to inspect the records of the joint venture and correspondingly imposes a duty upon the appellants to disclose all details pertaining to the operations of the joint venture, including the books of accounts. It is therefore submitted that the obligation of disclosure cast upon the appellants is not merely a procedural requirement but a substantive contractual right vested in the respondents as joint venture partners.

19. It is also submitted that the Supplementary Agreement expressly acknowledges the efforts and contributions of the respondents towards the project and categorically records that the sub-contract was awarded by M/s. Rapiscan Systems Private Limited as a direct result of the combined marketing efforts of respondent no. 1 and the partnership firm represented by respondents nos. 2 to 4. The appellant was merely authorised to obtain the sub-contract in its name as an interim measure. The Supplementary Agreement further reflects that the respondents had already rendered services in connection with the project prior to its formal award. Under the terms of the said agreement, the appellant was obligated to raise bills upon M/s. Rapiscan Systems Pvt. Ltd and the respondents were entitled to receive their respective shares within 10 days from the receipt of each payment from M/s. Rapiscan systems Pvt. Ltd. It is therefore submitted that the respondents are not mere sub-contractors engaged by the appellant for the execution of work under the appellant's instructions but are joint venture partners entitled to profit sharing. The Joint Venture Agreement having been incorporated by reference into the Supplementary Agreement, the appellant is under a clear contractual obligation to disclose all accounts and details of the bills raised to the respondents in their capacity as joint venture partners.

20. It is submitted that Section 17(1)(ii)(c) of the Arbitration and Conciliation Act, 1996 expressly empowers an Arbitral Tribunal to pass an order for the detention, preservation or inspection of any property or thing which is the subject matter of the dispute in arbitration, or as to which any question may arise therein. It is further authorises any person to enter upon any land or building in the possession of any party, or authorises any samples to be taken, or any observation to be made, or any experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence. It is submitted that the expression "thing" as used in Section 17(1)(ii)(c) is a deliberate and significant addition, going beyond the language of Order XXXIX Rule 7 of the Code of Civil Procedure, 1908, which does not employ the said expression. This addition reflects the legislative intent to confer wider powers upon an Arbitral Tribunal so as to encompass any property or thing which constitutes the subject matter of the dispute. Learned Counsel submits that the correct legal position, which is also supported by the decision of the Hon'ble Delhi High Court in ***Reliance Industries Ltd.*** *(supra)*, is that where the documents or records in question relate to the subject matter of the dispute in arbitration, an order directing their production and inspection can competently be passed under Section 17 of the Act. It is only where the documents sought do not relate to the subject matter of the dispute that recourse to Section 19 of the Act would be appropriate. In the present case, the learned Sole Arbitrator has, after a thorough examination of the contractual documents, arrived at a finding that the running account bills, books of accounts, and revenue records sought by the respondents are directly referable to and form part of the subject matter of the arbitration. Learned Counsel also places reliance upon the definition of *"subject matter"* as contained in Black's Law Dictionary in support of the submission that the documents sought fall squarely within the ambit of the said definition and that the impugned order is therefore well within the jurisdiction conferred upon the learned Sole Arbitrator under Section 17 of the Act.

21. Learned Counsel for the Respondent also sought to distinguish the judgments cited by the Appellant. It is accordingly prayed that the present appeal be dismissed with costs.

Legal Analysis

22. This Court has heard the arguments advanced by the learned Senior Counsel for the appellant and learned counsel for the respondent, examined the documents placed on record, and perused the judgments cited at the Bar.

23. The present appeal under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 arises out of the order dated 10.06.2025 passed by the learned Sole Arbitrator, whereby an application filed by the respondents under Section 17 of the Arbitration and Conciliation Act, 1996 was allowed, directing the appellants to disclose the particulars of running account bills raised against M/s. Rapiscan Systems Private Limited, to produce their books of accounts, profit and loss statements and balance sheets, and to submit duly validated records relating to the total revenue generated under the sub-contract dated 16.09.2021.

24. The main dispute between the parties centres around the interpretation and enforceability of two agreements dated 06.09.2021, namely a Joint Venture Agreement and a Supplementary Agreement, executed between the appellants and the respondents. The respondents contend that pursuant to the said agreements, they rendered marketing and consultancy services which resulted in the award of the sub-contract by M/s. Rapiscan Systems Private Limited in favour of the appellants, entitling them to receive 10% of the value of each running account bill. The appellants dispute the enforceability of both agreements, contending that the Joint Venture Agreement was never acted upon and was consciously abandoned, that the Supplementary Agreement was void for want of prior written consent of M/s. Rapiscan Systems Private Limited as required under Clause 17 of the sub-contract, and that the documents sought pertain exclusively the contractual relationship between the appellants and M/s. Rapiscan System Private Limited, a third party. It is therefore contended that the impugned order directing production of such documents has been passed without jurisdiction and in excess of the powers conferred under Section 17 of the Act.

25. Before analysing the core issue involved in the present appeal, it is necessary to set out Section 17(1) of the Act:

Interim measures ordered by arbitral tribunal.

> (1) *A party may, during the arbitral proceedings [***], apply to the arbitral tribunal-*
>
> (i) *for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or*
>
> (ii) *for an interim measure of protection in respect of any of the following matters, namely:-*
>
> (a) *the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;*
>
> (b) *securing the amount in dispute in the arbitration;*
>
> (c) *the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any*

samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) *interim injunction or the appointment of a receiver;*

(e) *such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient, and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it."*

26. Two features of this provision merit immediate attention. First, the powers conferred are interim and protective in nature, designed to preserve the status quo pending the conclusion of the arbitral proceedings. Secondly, the provision is confined to property or things which are the subject matter of dispute, or as to which a question may arise therein. On a plain reading, Section 17 does not contemplate or authorise an Arbitral Tribunal to compel a party to produce documents as evidence in support of the other side's claim. Matters relating to procedure and evidence are governed by Section 19 of the Act. This distinction between preservation of subject matter and compelled production of evidence is fundamental and goes to the root of the jurisdictional question.

27. The scope of Section 17 was examined by the Hon'ble Delhi High Court in ***Reliance Industries Ltd***. (supra), a decision relied upon by both parties. That judgment draws a clear distinction between (a) orders preserving and protecting documents that constitute the subject matter of the dispute itself, which fall within the ambit of Section 17, and (b) orders requiring a party to affirmatively produce or disclose documents to enable the other side to establish or quantify its claim, which are, in substance, orders for discovery and production of evidence properly governed by Section 19 of the Act. It is the character and purpose of the order, not the label attached to it, that determines which provision applies. This Court respectfully adopts this position.

28. Learned Senior Counsel for the appellants has additionally submitted that Section 17(1)(ii)(c) is couched in language substantially similar to Order XXXIX Rule 7 of the Code of Civil Procedure, 1908, and that the principles governing that provision furnish a useful interpretative aid, as recognised in ***Augmont Gold Private Limited*** *(Supra)*. It has been submitted, relying on ***Ramswarup*** *(supra)*, that Order XXXIX Rule 7 authorises detention, preservation and inspection only of property which is the subject matter of the suit, and does not extend to documents which are merely of evidentiary value. This Court finds the said analogy to be instructive: as it reinforces, from a parallel statutory provision, the very distinction already drawn in ***Reliance Industries Ltd.*** *(supra)* between preservation of subject matter and production of evidence.

29. It has further been submitted, relying upon ***Institution of Engineers (India)*** *(Supra)*, and *T**he Owners and Parties Interested in the Vessel 'M.V. Baltic Confidence'*** *(Supra)*, that even where a question may arise relating to the suit, no commission or order can be issued for the purpose of collecting evidence through discovery. This Court accepts that this principle applies with equal, if not greater, force to an Arbitral Tribunal exercising an analogous power under Section 17(1)(ii)(c) of the Act: a provision permitting inspection of the subject matter cannot be stretched into a general discovery mechanism, whether the forum is a civil court acting under Order XXXIX Rule 7 of the Code of Civil Procedure, 1908 or an Arbitral Tribunal acting under Section 17 of the Act.

30. The learned Senior Counsel for the appellants has also placed reliance upon ***Rajesh Bhatia*** (supra), which reinforces that the powers of an Arbitral Tribunal under Section 17 are analogous to those of a Court under Section 9, and are confined to granting interim measures of protection. An Arbitral Tribunal, being a private adjudicatory forum, does not possess the coercive powers of a civil court to compel production of documents or leading of evidence; the only consequence of a party's failure to produce documents is the drawing of an adverse inference, a principle also reflected in ***Krishan Dayal*** *(Supra)*, and consistent with Section 114(g) of the Indian Evidence Act, 1872. It would be incongruous if an Arbitral Tribunal were held to possess wider powers to compel production of evidence than a civil court itself.

31. Reliance has also been placed upon ***Padam Sen and Another*** *(Supra)*, for the proposition that the power judicial or quasi judicial forum to direct production or collection of evidence cannot be assumed as an incident of a general or residuary power where the statute does not specifically confer such authority. The said decision lends further support to a narrow, textual construction of Section 17(1)(ii)(c). The power of "detention, preservation or inspection" of the subject matter cannot, in the absence of an express statutory sanction, be read to include a free-standing power to direct affirmative disclosure, validation and production of financial records such as books of accounts, profit and loss statements and balance sheets, which are, at best, evidentiary material and not themselves the "property or thing" in dispute.

32. In this background, it is relevant to examine the operative portion of the impugned order. Learned Sole Arbitrator recorded a *prima facie* satisfaction in paragraphs 19 to 21 of the impugned order, holding, in effect, that having regard to the pleadings and the Supplementary Agreement, an interim measure directing preservation and inspection of the running account bills submitted by the appellants to M/s. Rapiscan Systems Private Limited, being *prima facie* the subject matter of dispute, would be just and convenient, and accordingly the application under Section 17 of the Act was allowed.

33. Pursuant to that finding, the learned Sole Arbitrator passed operative directions in paragraph 22 requiring disclosure of particulars of the running account bills and their clearance status; disclosure of books of accounts, profit and loss statements and balance sheets; validation of all records relating to the total revenue generated under the sub-contract; to submit such validated records before the learned Arbitral Tribunal with copies to the respondents; and completion of "inspection and discovery" by 23.06.2025.

34. A plain reading of these operative directions reveals four distinct directions, disclosure of RA bill particulars, disclosure of accounting records, validation revenue records, and submission/forwarding of the same with a further direction for "discovery" requiring the appellants to produce, disclose, validate and furnish the entire array of financial and accounting documents pertaining to their sub-contractual dealings with M/s. Rapiscan Systems Private Limited.

35. Upon a careful analysis of the impugned order in light of the statutory provisions and the judicial precedents discussed above, including the line of authorities of the Code interpreting Order XXXIX Rule 7 and the principle laid down in ***Padam Sen*** (Supra) , this Court is of the opinion that the impugned order suffers from a fundamental legal infirmity in its operative directions, even though the *prima facie* satisfaction recorded in the reasoning portion is, to a limited extent, legally defensible.

36. The *prima facie* finding that the RA bills form part of the subject matter of the present arbitration is a finding of fact arrived at after examining the pleadings and the Supplementary Agreement, which on its face ties the respondents' remuneration to the RA bills and incorporates the Joint Venture Agreement by reference. This Court, while exercising limited appellate jurisdiction under Section 37, is not required to interfere with such *prima facie* finding, particularly since it rests on a plausible reading of the contractual documents.

37. The critical difficulty, however, arises from the operative directions themselves. An order restraining the appellants from destroying, damaging or disposing of the RA bills pending final adjudication would constitute a legitimate exercise of Section 17(1)(ii), falling within detention and preservation of the subject matter of the dispute, and would be consistent with an analogy drawn from the Order XXXIX Rule 7 of the CPC, 1908 as pressed by the appellants. However, a direction to affirmatively disclose the particulars of the running account bills, to disclose books of accounts and balance sheets, validate revenue records, and submit and forward the same is a different matter altogether. Such directions do not preserve the subject matter of the dispute; rather they compel production and disclosure of evidentiary material to enable the respondents to establish and quantify their claim, precisely the species of order that ***Reliance Industries Ltd*** *(Supra)*., ***Rajesh Bhatia*** *(Supra)*, ***Institution of Engineers*** *(supra)*, and the ***M.V. Baltic Confidence*** *(Supra)* line of authority hold falls outside the ambit of Section 17 (and outside Order XXXIX Rule 7 on the civil side), and within the domain of Section 19 of the Act.

38. This Court also finds a telling internal inconsistency within the impugned order. The reasoning portion employs the language of "preservation and inspection," yet the operative directions go well beyond that, extending to disclosure, validation, submission and "discovery." The operative directions thus exceed not only what is contemplated in the reasoning portion of the impugned order but also the jurisdiction conferred upon the learned Arbitrator under Section 17 of the Act, and are, to that extent liable to be set aside.

39. There is also merit in the submission that, in the context of a money claim, mere quantification evidence does not constitute the "subject matter of the dispute" so as to attract Section 17 of the Act. The RA bills are relied upon principally for the purpose of computing the respondents' alleged 10% share, and to that extent function as evidence bearing on quantum rather than as the res of the dispute. As submitted by the appellants relying on ***Padam Sen*** *(Supra)*, the books of accounts, profit and loss statements and balance sheets sought cannot in any event be construed as "property or thing" in dispute; treating quantification material as invariably constituting the "subject matter" would risk converting Section 17 into a general discovery provision in every money claim, a construction which this Court is not inclined to adopt.

40. The respondents' argument that Clause 5.2 of the JV Agreement creates a specific contractual right of inspection, and that the impugned order merely enforces it, does not assist them. Any such right, if it exists, must be asserted as part of the substantive claim or pursued through interim relief framed as an injunction against destruction of records, not through a direction compelling production. The sweeping directions in paragraph 22 travel well beyond the enforcement of any contractual inspection right and constitute a general direction for disclosure and production of evidence, which falls beyond the scope of Section 17, of the Act.

41. The appellants have further submitted, by reference to Section 27 of the Act and the safeguard contained therein before a Court renders assistance in taking evidence, that they were denied an equivalent opportunity to contest the production of these documents before the impugned order came to be passed. This Court finds force in the submission to the extent that it reinforces, rather than displaces, the conclusion already arrived at. Where production or discovery of documents is genuinely required for the purpose of the arbitration, the appropriate course is for the respondents to proceed under Section 19, where such safeguards and procedural regularity are built into the process, and not under Section 17.

42. This Court is conscious that its jurisdiction under Section 37(2)(b) is limited, and it is neither required to re-appreciate facts nor to substitute its own prima facie satisfaction for that of the Tribunal. The challenge in the present appeal is confined to the narrow question of law, as to whether the operative directions travel beyond the jurisdictional limits of Section 17, and it is on this ground alone that interference with the impugned order is warranted.

43. In view of the foregoing analysis, and having considered the additional authorities cited on behalf of the appellants, this Court is of the considered opinion that the impugned order dated 10.06.2025 deserves to be set aside to the extent indicated. The directions in paragraph 22 of the impugned order insofar as they direct affirmative disclosure of RA bill particulars, disclosure of books of accounts, profit and loss statements and balance sheets, validation and submission of revenue records, and forwarding of copies to the respondents, are beyond the scope of Section 17 and are accordingly set aside. If the respondents seek production and inspection of such documents for the purposes of the arbitral proceedings, they shall be at liberty to take appropriate steps before the learned Sole Arbitrator in accordance with law.

44. The appeal is accordingly allowed and disposed of.

45. It is clarified that any expression of opinion or observation made in this judgment is confined to the determination of the present appeal arising out of an interim measure and shall not be construed as an expression of opinion on the merits of the disputes pending adjudication before the learned Sole Arbitrator, who shall adjudicate the same independently and uninfluenced by any observation made herein.

46. All pending application accordingly disposed of.

(GAURANG KANTH, J.)

SAKIL AMED P.A

High Court Calcutta