

**IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE**

RESERVED ON: 02.09.2026

DELIVERED ON: 07.10.2026

PRESENT:

THE HON'BLE MR. JUSTICE GAURANG KANTH

AP-COM 687 OF 2026

DAMODAR VALLEY CORPORATION

VS

M/S. HRD BUILDERS PVT. LTD.

Appearance: -

Mr. Abhinav Mukerji, Sr. Adv.

Ms. Payal Kakra, Adv.

Mr. Debangshu Dinda, Adv.

Ms. Arpita Dey, Adv.

Mr. Arnab Kr. Ghosh, Adv.

Ms. Archita Nigam, Adv.

Mr. Pranav, Adv.

Mr. Aditya Roy, Adv.

Ms. Sruti Datta, Adv.

..... for the petitioner

Mr. Avinash Trivedi, Adv.

Mr. Dhirodatto Chaudhuri, Adv.

..... for the respondent

JUDGMENT

Gaurang Kanth, J. :-

1. The Petitioner has preferred the present petition under Section 34 of the Arbitration & Conciliation Act, 1996 whereby the Petitioner challenges the impugned award dated 16.05.2026 passed by the majority Arbitral Panel whereby the Petitioner's application dated 12.09.2025 filed under Section 23 read with Section 19 of the Arbitration and Conciliation Act, 1996 (along with Order VIII Rule 1A, Order XII Rule 6 and Section 151 CPC, 1908), raising the question of maintainability of the arbitral proceedings/jurisdiction of the Tribunal, was dismissed.
2. The brief facts leading to the present petition are as follows:

- 3.** The Petitioner, Damodar Valley Corporation ("DVC"), had invited tenders in the year 2015 for the work of "Rehabilitation, Improvement and Basic Facility of Maithon Dam in Dhanbad District of Jharkhand under DRIP, Package-I (Civil Works)". Upon evaluation of bids, M/s H.R. Builders, a sole proprietorship concern of Mr. Hans Raj Dhankar, was declared the successful bidder and a Letter of Acceptance dated 27.05.2016 was issued in its favour for a contract value of Rs. 25,06,62,070/-. Pursuant thereto, a Contract Agreement bearing No. MDD/DRIP/(01)(2016-17) dated 01.08.2016 (signed on 12.08.2016) was executed between DVC and M/s H.R. Builders (Proprietorship Firm), containing an arbitration clause at Clause 25.3 of the General Conditions of Contract read with Clause 4 of the Special Conditions of Contract.
- 4.** On account of disruption caused by the Covid-19 pandemic, correspondence was exchanged between the parties regarding treatment of the period between 22.03.2020 and 03.05.2020 as force majeure, followed by DVC's direction to withhold work with effect from 30.06.2020 in view of stoppage of World Bank funding, and its subsequent calls to remobilise vide letters dated 21.10.2020 and 24.12.2020. Upon M/s H.R. Builders declining to remobilise vide its letter dated 29.12.2020, DVC issued a Termination Notice dated 28.06.2021 (No. MDD/DRIP/276), followed by a formal Termination Letter dated 13.07.2021 (No. MDD/DRIP/291), both addressed exclusively to M/s H.R. Builders (Proprietorship Firm).
- 5.** The said termination was challenged by M/s H.R. Builders before the Hon'ble High Court of Jharkhand by way of Writ Petition (C) No. 2929 of 2021 filed on 05.08.2021, which was subsequently amended to also

challenge the letter dated 13.07.2021 and directions relating to extension of bank guarantees.

- 6.** M/s H.R. Builders (Proprietorship Firm) invoked arbitration vide notice dated 21.03.2022 under Clause 25.3 of the General Conditions of Contract read with Section 21 of the Act, pursuant to which the Arbitral Tribunal (comprising three arbitrators, including the erstwhile Presiding Arbitrator Sh. Krishna Kant) was constituted on 26.09.2022.
- 7.** Thereafter, by a Business Transfer Agreement dated 21.11.2022 ("BTA"), M/s H.R. Builders (Proprietorship Firm) as Seller purportedly transferred its business as a going concern, by way of slump sale, to M/s HRD Builders Pvt. Ltd. as Purchaser, a private limited company, for a consideration of Rs. 10 crores discharged by allotment of equity shares.
- 8.** Notwithstanding that the arbitration had been invoked, and the Tribunal constituted, by M/s H.R. Builders prior to execution of the BTA, a Statement of Claim was filed before the Arbitral Tribunal on 15/16.12.2022 not by M/s H.R. Builders but by M/s HRD Builders Pvt. Ltd., claiming a sum of Rs. 24,94,52,706/- under twelve heads, disclosing the BTA as the source of its locus to maintain the claim as an assignee/"Representative-in-interest". DVC filed its Statement of Defence and Counter-Claim on 20.05.2023, denying the averments in entirety, followed by exchange of Admission-Denial affidavits, Rejoinder to the Statement of Defence, and Reply/Rejoinder to the Counter-Claim.
- 9.** During the pendency of the arbitral proceedings, the Writ Petition (C) No. 2929 of 2021, which continued to be prosecuted by M/s H.R. Builders (without impleading or substituting the present Claimant) even after execution of the BTA, was disposed of by the Hon'ble High Court of

Jharkhand vide order dated 06.04.2023, recording that upon return of the bank guarantees to the petitioner, "no dispute exists between the parties" and that there was no reason to proceed further, without reserving any liberty to pursue further remedies.

- 10.** In the meanwhile, the Claimant examined one witness, CW-1 (Mr. Rakesh Kumar Kataria, Authorised Representative), whose evidence affidavit was filed on 10.11.2023, while DVC examined three witnesses (RW-1 Mr. Taskheer Zaman, RW-2 Mr. Sanjeev Kumar and RW-3 Mr. Abhishek Shukla).
- 11.** During cross-examination of CW-1, conducted over several dates between 30.01.2024 and 29.02.2024, admissions were elicited to the effect, *inter alia*, that the Letter of Acceptance had been issued to M/s H.R. Builders and not to the Claimant; that Clause 5 of Schedule B of the BTA vested the right to continue all litigation exclusively in the Seller; and that the order of the Hon'ble High Court of Jharkhand dated 06.04.2023 was passed only between M/s H.R. Builders and DVC.
- 12.** Upon the demise of the erstwhile Presiding Arbitrator, the Arbitral Tribunal was reconstituted, with Hon'ble Justice Aloke Chakrabarti (Retd.) appointed as the new Presiding Arbitrator along with Mr. M.C.T. Pareva and Mr. Rakesh Munjal continuing as Co-Arbitrators.
- 13.** Upon reconstitution, the Petitioner/DVC filed an Application dated 12.09.2025 under Section 23 read with Section 19 of the Act along with Order VIII Rule 1A, Order XII Rule 6 and Section 151 of the Code of Civil Procedure, 1908, raising the question of maintainability of the arbitral proceedings at the instance of the Claimant company. The principal grounds urged were that: (a) the Claimant was not a signatory to the

Contract Agreement dated 01.08.2016 containing the arbitration clause; (b) Clause 7.1 of the General Conditions of Contract barred assignment of the contract without DVC's prior written consent, admittedly never obtained; (c) the BTA was a private arrangement between the Seller and the Claimant to which DVC was not a party and which could not bind DVC or confer any right on the Claimant to invoke the arbitration clause; (d) Clause 5 of Schedule B of the BTA itself mandated that all litigation, including the present arbitration, be continued, prosecuted, defended and enforced exclusively by the Seller (M/s H.R. Builders) and not by the Claimant/Purchaser; (e) since the arbitration had already been invoked and the Tribunal constituted prior to execution of the BTA, the right to continue the proceedings remained with the original claimant; and (f) the order of the Hon'ble High Court of Jharkhand dated 06.04.2023, recording that no dispute existed between the parties, had attained finality and operated as constructive *res-judicata*, barring the present claims.

- 14.** The Respondent/Claimant filed its Reply to the said application on 21.10.2025, opposing the same on the grounds, *inter alia*, that it was the successor-in-interest to M/s H.R. Builders pursuant to the BTA; that rights under a contract, including the benefit of an arbitration clause, are assignable in law; that DVC had waived its objection to jurisdiction by filing its Statement of Defence and Counter-Claim, participating in the proceedings without demur, and repeatedly consenting to extension of the mandate of the Tribunal under Section 29A of the Act; that an arbitration agreement could be inferred under Section 7(4)(c) of the Act from the exchange of pleadings; that the writ proceedings before the Hon'ble High Court of Jharkhand were limited in scope and did not bar the present

claims; and that Clause 5 of the BTA governed only the *inter se* obligations of the Seller and Purchaser and did not affect the Claimant's right to pursue the present arbitration. DVC filed its Rejoinder thereto on 08.11.2025.

- 15.** The Tribunal thereafter heard arguments on the question of maintainability following which DVC filed its Written Submissions on 09.03.2026 and the Claimant filed its Written Submissions on 18.03.2026.
- 16.** By the impugned Award dated 16.05.2026, the Arbitral Tribunal rendered a split verdict on the question of maintainability. The majority, comprising Hon'ble Justice Alope Chakrabarti (Retd.) (Presiding Arbitrator) and Mr. M.C.T. Pareva (Co-Arbitrator), held that the Claimant, as assignee and "Representative-in-interest" under Section 15(b) of the Specific Relief Act, 1963, was entitled to continue the arbitration; that Clause 7.1 of the Contract restricted only sub-contracting and did not bar assignment by way of slump sale; that an assignee of a contract containing an arbitration clause is entitled to invoke the said clause; that Clause 5 of the BTA created rights only as between the Seller and Purchaser *inter se* and did not disentitle the Claimant from continuing the proceedings against DVC; and that DVC's belated objection, raised only in September 2025 after extensive participation in the proceedings, did not, in the circumstances, disentitle the Claimant from continuing the arbitration. Accordingly, the majority rejected the Petitioner/DVC's objection to maintainability and held the arbitral proceedings maintainable.
- 17.** Mr. Rakesh Munjal, Co-Arbitrator, however, dissented and passed a separate, detailed minority order recording findings on six issues, holding, in substance, that: the Claimant had failed to establish itself as a

successor-in-interest or valid assignee of M/s H.R. Builders in the absence of any assignment clause in the Contract and DVC's consent under Clause 7.1; that no valid assignment of the arbitration agreement was made out and, in any event, Clause 5 of the BTA vested the exclusive right to continue all litigation, including the present arbitration, in the Seller alone; that mere participation by DVC in the proceedings, filing of pleadings, or consent to extension of the Tribunal's mandate under Section 29A did not amount to waiver of its jurisdictional objection; that no arbitration agreement could be inferred under Section 7(4)(c) of the Act in the absence of a clear and unequivocal admission by DVC; and that the order of the Hon'ble High Court of Jharkhand dated 06.04.2023 operated as constructive *res-judicata*, barring the present claims. On these findings, the minority order held the arbitral proceedings, as instituted by the Claimant, not maintainable, dismissed the claims, treated DVC's counter-claim as not pressed, and terminated the arbitral proceedings, while clarifying that the finding would not preclude the original contracting parties, M/s H.R. Builders and DVC, from pursuing such remedies as may be available to them in accordance with law.

- 18.** Being aggrieved by the aforesaid majority Award dated 16.05.2026 rejecting its objection to maintainability/jurisdiction, the Petitioner has preferred the present petition under Section 34(2) and Section 34(2A) of the Arbitration and Conciliation Act, 1996, challenging the said award as being contrary to law, perverse and in conflict with the fundamental policy of Indian law, praying, *inter alia*, that the impugned Award dated 16.05.2026 be set aside.

- 19.** Learned Counsel for the Respondent, at the outset, raised a preliminary objection to the maintainability of the present petition, that it is premature, since the impugned Award only rejects a jurisdictional plea. In view of this preliminary objection, this Court proceeds to decide the same in the first instance. This judgment accordingly decides only that objection, and expresses no view on the merits of DVC's objection to the Claimant's locus, or on the claims and counter claim.

Submission on behalf of the Respondent on maintainability of the present Petition.

- 20.** Mr. Avinash Trivedi, learned counsel for the Respondent, at the outset, raised an objection on the maintainability of the present proceedings. It was submitted that in the present case, the Petitioner had challenged the jurisdiction of the Arbitral Tribunal to entertain the claim of the Respondent, and the Tribunal, by the impugned majority Award dated 16.05.2026, rejected the said challenge and held that the Tribunal has the jurisdiction to proceed with and decide the claim on merits. It was submitted that since the impugned Award is confined solely to the jurisdictional issue of the Tribunal, the same cannot be independently assailed at this interim stage under Section 34 of the Act, and can only be challenged, if at all, along with the final award, once the arbitral proceedings culminate.
- 21.** Learned counsel drew the attention of this Court to the scheme of Section 16 of the Act. It was submitted that Section 16(2) requires a plea that the arbitral tribunal lacks jurisdiction to be raised not later than the submission of the statement of defence; that under Section 16(5), where the Tribunal rejects such a plea, it is mandated to continue with the

arbitral proceedings and make an arbitral award; and that it is only under Section 16(6) that the party aggrieved by such rejection is entitled to challenge the same, and that too by way of an application under Section 34, after the final award is made. It was further submitted that Section 37(2) of the Act permits an appeal only where the Tribunal accepts the plea of lack of jurisdiction, i.e., where it terminates the proceedings on that ground and not where such a plea is rejected. In other words, an immediate remedy is available only against an order upholding the objection to jurisdiction; where the objection is rejected, the aggrieved party's remedy under the scheme of the Act stands deferred to the stage of challenge to the final award.

- 22.** Applying this scheme to the facts of the present case, learned counsel submitted that though the Petitioner's application dated 12.09.2025 was styled as one under Section 23 read with Section 19 of the Act, it was, in substance, and by consent of the parties recorded in the order dated 09.11.2025, treated by the Tribunal as a question going to its jurisdiction, akin to a challenge under Section 16 of the Act. The majority of the Tribunal, by the impugned Award dated 16.05.2026, rejected the Petitioner's objection and held the arbitral proceedings to be maintainable, directing that the claim be heard and decided on merits. This being a rejection of the jurisdictional plea, and not an acceptance thereof terminating the proceedings, the case squarely falls within Section 16(5) and 16(6) of the Act, and no independent challenge under Section 34 lies at this stage. Had the majority instead upheld the Petitioner's objection and terminated the proceedings for want of jurisdiction, the remedy would

have lain in an appeal under Section 37(2), but that is admittedly not the case here.

- 23.** In support of this submission, learned counsel placed reliance on the recent judgment of the Hon'ble Supreme Court in ***M/s. MCM Worldwide Private Limited v. M/s. Construction Industry Development Council***, reported as **2026 INSC 425**, decided on 21.04.2026. It was submitted that the facts of that case were materially similar: an application under Section 16 of the Arbitration Act, raising the plea that the claim was barred by limitation, was rejected by the learned Arbitrator; the aggrieved party filed an application under Section 34 against that rejection, which came to be entertained by the District Judge and thereafter by the Division Bench of the Delhi High Court in appeal under Section 37, both on merits. The Hon'ble Supreme Court held that this course was impermissible, as neither the District Judge nor the Division Bench were correct in entertaining a challenge under Sections 34 and 37 respectively against an order merely rejecting a plea of lack of jurisdiction under Section 16(2). It was held that such a party has no option but to wait till the conclusion of the arbitral proceedings and raise the very same issue by way of an application under Section 34 against the final award.
- 24.** Learned counsel further submitted that the Hon'ble Supreme Court, in the said judgment, clarified the correct import of its earlier decision in ***Indian Farmers Fertilizer Cooperative Limited v. Bhadra Products***, reported as **(2018) 2 SCC 534**, and held that the said decision applied only to a situation where an arbitrator decides an issue such as limitation as a preliminary issue on its own accord, outside the framework of Section 16, in which event such a decision would amount to an interim award falling

within Section 2(1)(c) of the Act, immediately challengeable under Section 34. It was clarified that the said decision did not lay down that a rejection of a plea of jurisdiction under Section 16(2) or 16(3) could similarly be treated as an interim award; to accept such a construction, it was held, would do violence to the scheme of the Act and render Section 37(2) superfluous. Learned counsel submitted that this clarification applies on all fours to the present case, inasmuch as the impugned majority Award does nothing more than reject the Petitioner's objection to the jurisdiction/maintainability of the Tribunal, and directs that the arbitration proceed on merits, it does not decide any issue on the merits of the dispute between the parties so as to be treated as an interim or partial award of the kind considered in ***Indian Farmers Fertilizer Cooperative Limited*** (supra).

- 25.** It was accordingly submitted that the present petition under Section 34, having been filed against an order of the majority of the Arbitral Tribunal merely rejecting the Petitioner's objection to jurisdiction, is premature and not maintainable at this stage, and is liable to be dismissed *in limine* on this short ground alone, without going into the merits of the rival contentions on the question of maintainability of the arbitral proceedings before the Tribunal. It was submitted that the Petitioner would be at liberty, if so advised, to urge the very same grounds at the appropriate stage, i.e., while challenging the final award, if and when the same comes to be passed and is adverse to the Petitioner.

Submission on behalf of the Petitioner on maintainability of the present petition.

- 26.** Mr. Abhinav Mukerji, learned senior counsel for the Petitioner submits that the preliminary objection raised on behalf of the Respondent as to the

maintainability of the present petition is misconceived. It is submitted that the application dated 12.09.2025 giving rise to the impugned Award was filed under Section 23 read with Section 19 of the Act, a fact recorded by the Tribunal itself and not under Section 16, so that the special, self-contained deferral mechanism of Sections 16(5), 16(6) and 37(2), confined on its express terms to a plea raised and decided "under section 16," is simply not attracted. Learned counsel draws support, by analogy, from ***Celir LLP v. Sumati Prasad Bafna***, reported as **2024 SCC OnLine SC 3727**, illustrating that a specific statutory embargo, cast in defined terms, cannot be read to extend beyond the precise situation it contemplates. On the same principle, the embargo in Sections 16(5), 16(6) and 37(2) cannot be stretched to cover an order admittedly passed on an application under Section 23 read with Section 19.

- 27.** Learned senior counsel further submits that the impugned Award, having finally determined the Respondent's authority and locus to institute and maintain the claim, is in substance an "interim award" independently challengeable under Section 34, as held in ***Zillion Infraprojects Private Limited v. Bridge and Roof Company India Limited***, reported as **2026 SCC OnLine Cal 372**, and reinforced by the Division Bench of the Bombay High Court in ***Palmview Investments Overseas Limited v. Ravi Arya***, reported as **(2023) 1 HCC (Bom) 259**, where, on facts materially similar to the present case, it was held that "an order or decision is an interim award if it finally decides an issue or 'matter' between the parties on which the Tribunal can make a final award, including an order determining whether the claimant is authorised to file the claim". The words "any matter" in Section 31(6) being "very wide in nature", and such an award, "which does

not relate to the Arbitral Tribunal's own jurisdiction under Section 16, does not have to follow the drill of Sections 16(5) and (6)" (para 16), a conclusion was drawn, on facts "almost similar to that of the present matter" in **MSEDCL v. Godrej and Boyce Mfg. Co. Ltd.**. It was further submitted and accepted in that case that permitting such finding to be reopened or bypassed would "negate and reverse the finality of findings... confirming subject-matter of the interim award," giving a party "a clean slate to reagitate disputed matters of substance" precisely the finality that attaches to the majority's determination of the Respondent's locus here.

28. Learned counsel places further reliance on **Indian Farmers Fertilizer Cooperative Limited** (*supra*), and on **Ambuja Neotia Holdings Private Limited v. Planet M Retail Limited**, reported as **2015 SCC OnLine Cal 7000**, where this Court held that an arbitration clause is personal to the contracting parties and that "*the assignees of the rights of the parties to the matrix contract do not necessarily inherit the arbitration clause unless it is demonstrated that they had agreed to adhere to the same*". It is submitted that this is precisely the question the majority Award purports to have finally resolved against the Petitioner, without any finding that the Respondent had demonstrated an agreement to adhere to the arbitration clause specifically. It is the gravity and correctness of such a finding, going to the very existence of an arbitration agreement binding the Petitioner, that warrants its treatment as a self-contained interim award open to immediate scrutiny rather than being left unexamined until the final award.
29. Without prejudice to the above, it is reiterated that the Respondent's conduct, the misrepresentation on oath regarding CW-1's authority, the non-disclosure of the BTA to the Hon'ble High Court of Jharkhand, the

taking of inconsistent positions before two fora, and the contradiction of its own case by independent GST records, amounts to fraud practised upon the Tribunal and the Petitioner, which no procedural bar can be permitted to shield from timely correction. For the foregoing reasons, it is submitted that the objection to maintainability raised on behalf of the Respondent is liable to be rejected, and this Hon'ble Court may proceed to examine the petition on its merits.

Legal Analysis

- 30.** This Court heard the arguments advanced by the learned counsel for both the parties and examined the documents and Judgments cited at bar.
- 31.** The core issue involved in the present matter, upon a full consideration of the rival submissions, is twofold: first, whether the maintainability of a challenge to an order of the Arbitral Tribunal is to be tested by the procedural label under which the underlying objection was raised, or by the substance and effect of the order itself; and second, applying that test, whether the impugned majority Award dated 16.05.2026, which rejects the Petitioner's objection to the jurisdiction of the Tribunal and directs that the arbitral proceedings continue to be heard on merits, constitutes a pure jurisdictional ruling, deferred for challenge under Section 34 along with the final award in terms of Sections 16(5) and 16(6) of the Act, or an "interim award" within the meaning of Section 2(1)(c) thereof, independently and immediately challengeable under Section 34 at this stage.
- 32.** Section 16 of the Act empowers the Arbitral Tribunal to rule on its own jurisdiction, including any objection with respect to the existence or validity of the arbitration agreement. Section 16(5) mandates that where

the Tribunal rejects a plea of want of jurisdiction, *"it shall continue with the arbitral proceedings and make an arbitral award."* Section 16(6) provides that a party aggrieved by such an arbitral award *"may make an application for setting it aside in accordance with section 34."* Section 37(2)(a) correspondingly makes an order accepting a plea of lack of jurisdiction, one by which the Tribunal terminates the proceedings, directly appealable, without recourse to Section 34.

- 33.** In ***MCM Worldwide Private Limited*** (supra), the Hon'ble Supreme Court held that a rejection, under Section 16(2), of a plea that the Arbitrator lacks jurisdiction to proceed cannot be independently challenged under Section 34; the aggrieved party's remedy stands deferred, under Sections 16(5) and 16(6), to a composite challenge along with the final award:

"17. ...the respondent was not entitled to file an application under Section 34 of the Arbitration Act against the order dated 19.05.2023 passed by the learned Arbitrator rejecting its plea of lack of jurisdiction on the ground of limitation... It would be open to the respondent to test the validity of the order dated 19.05.2023 passed by the learned Arbitrator only after passing of the final award..."

- 34.** The Hon'ble Supreme Court simultaneously preserved ***Indian Farmers Fertilizer Cooperative Limited*** (supra), confining it to a distinct category, a decision that finally disposes of a discrete issue or claim on its merits, such that nothing survives for adjudication in respect thereof; such a decision was held to be an *"interim award"* under Section 2(1)(c), independently challengeable under Section 34.
- 35.** This Court, in ***Zillion Infraprojects*** (supra), applied precisely this jurisdiction/merits distinction, holding that the mere invocation of Section 16 as the procedural vehicle does not, by itself, insulate an order from challenge under Section 34, where the order in substance goes beyond ruling on competence and finally disposes of specific claims:

"20. ...Once the tribunal's determination transcends a threshold jurisdictional enquiry and culminates in the final disposal of substantive claims, the order ceases to be interlocutory in nature and assumes the character of an interim award within the meaning of Section 2(1)(c) of the Act."

- 36.** Critically, in doing so, this Court expressly delineated the outer boundary of that principle, distinguishing **Deep Industries Ltd. v. ONGC**, reported as **(2020) 15 SCC 706**, and **Uttarakhand Purva Sainik Kalyan Nigam Limited v. Northern Coalfields Limited**, reported as **(2020) 2 SCC 455**, on the ground that those decisions proceed on the premise that the order under challenge is a pure jurisdictional ruling, whereby the arbitral tribunal either accepts or rejects its competence to adjudicate the dispute, without finally determining the substantive rights of the parties. It was only because the Arbitrator, though acting on a Section 16 application, had gone on to substantively adjudicate and permanently extinguish Claim Nos. 2 to 9 on limitation, leaving nothing further to be adjudicated by the Tribunal in respect thereof, that the order was held to have shed its jurisdictional character and assumed the character of an interim award.
- 37.** Learned senior counsel for the Petitioner sought to draw an analogy between the extinguishment of Claim Nos. 2 to 9 in **Zillion Infraprojects** (supra) and the impugned Award's rejection of the Petitioner's jurisdictional objection here, contending that the latter, too, is a "final and severable" determination of privity and the existence of the arbitration agreement that will never be revisited at any later stage of the arbitration, and ought equally to be treated as an interim award. This Court is unable to accept the said analogy.
- 38.** The test articulated in **Zillion Infraprojects** (supra) is not whether the impugned determination is final *qua* the Tribunal in the sense of not being

revisited, an order rejecting a jurisdictional objection is, in that limited sense, always "final" before the Tribunal, since the Tribunal will not re-open the question of its own competence once decided. Were "*non-revisability before the Tribunal*" alone the touchstone, every order under Section 16(5) rejecting a jurisdictional plea would qualify as an interim award, and Sections 16(5)(6) and Section 37(2) would be rendered wholly otiose, a construction expressly disapproved in **MCM Worldwide** (*supra*). The true touchstone, as this Court itself framed it, is whether the order has gone beyond ruling on the Tribunal's competence to adjudicate the dispute and has instead finally determined the substantive rights of the parties, i.e., extinguished, allowed, or otherwise concluded a head of claim or relief, such that it stands removed, once and for all, from what remains open to be decided in any award, interim or final.

39. Tested against this touchstone, the impugned Award does not extinguish any claim or relief. All twelve heads of the Respondent's claim, aggregating Rs. 24,94,52,706/-, remain entirely open to be contested by the Petitioner on merits; not a single substantive defence of the Petitioner going to the merits of the claim has been foreclosed, considered, or decided. The majority has done no more than hold that the Tribunal possesses the competence to proceed with and decide that claim as between these parties, which is a "*pure jurisdictional ruling*" of exactly the kind this Court itself carved out, in **Zillion Infraprojects** (*supra*), as falling outside the ambit of **Indian Farmers Fertilizer Cooperative Limited** (*supra*) and within **Deep Industries** (*supra*)/ **Uttarakhand Purva Sainik Kalyan Nigam Limited** (*supra*). Indeed, the objection decided by the majority, *whether the Respondent is entitled, as an assignee, to invoke Clause 25.3 of the Contract*

Agreement at all, is a question going to the "existence or validity of the arbitration agreement" in the most literal terms of Section 16(1) itself; it is jurisdictional in the strictest and narrowest sense, unlike the limitation objection in **Zillion Infraprojects** (*supra*), which, although raised as a Section 16 application, resulted in the Arbitrator substantively adjudicating and rejecting specific heads of claim on their merits.

40. Learned senior counsel for the Petitioner, in further support of the contention that the impugned Award is an interim award, placed strong reliance on the decision of the Bombay High Court in **Palmview Investments Overseas Limited** (*supra*), where it was held, following **Indian Farmers Fertilizer Cooperative Limited** (*supra*) and **MSEDCL** (*supra*), that "an order or decision is an interim award if it finally decides an issue or 'matter' between the parties on which the Tribunal can make a final award, including an order determining whether the claimant is authorised to file the claim", the expression "any matter" in Section 31(6) being "very wide in nature". It was submitted that the impugned Award, which determines whether the Respondent was authorised/entitled to institute the present claim as an assignee, is indistinguishable from the order in **Palmview Investments Overseas Limited** (*supra*), which likewise determined whether the claimant's representative was authorised to institute the claim, and was held to be an interim award notwithstanding that the Tribunal had granted liberty to cure the defect rather than dismissing the claim outright.

41. This Court is unable to accept the analogy sought to be drawn with **Palmview Investments Overseas Limited** (*supra*), for the reason that the issue decided therein was of a materially different character from the issue

decided by the impugned Award. In ***Palmview Investments Overseas Limited*** (*supra*), it was never in dispute that the claimant company, an admitted party to the shareholders' agreement containing the arbitration clause, was entitled to invoke arbitration; what was in issue was a narrow and discrete question of procedural competence, namely, whether the individual who had signed and verified the statement of claim on the claimant's behalf possessed valid authority to do so, a matter the Bombay High Court itself analysed through the prism of Order 29 Rule 1 read with Order 6 Rule 14 of the Code of Civil Procedure, and treated as curable by ratification. That question did not touch the "*existence or validity of the arbitration agreement*" within the meaning of Section 16(1) at all; it was, in substance, an evidentiary/procedural "matter" of the kind contemplated by Section 31(6), which is precisely why the objection there was raised not under Section 16, but by way of an application under Section 31(6) read with Section 32 of the Act, inviting the Tribunal to render an interim award on that discrete question. The present case stands on a wholly different footing: what the majority has decided is not the authority of an individual signatory acting for an admitted party, but whether the Respondent, a company that is not at all a signatory to the Contract Agreement, as a matter of substantive law of assignment, entitled to step into the shoes of the original contracting party and invoke Clause 25.3 in the first place. That is a question of the "*existence or validity of the arbitration agreement*" qua the Respondent in the most literal sense of Section 16(1), and is thus jurisdictional in a manner the issue in ***Palmview Investments Overseas Limited*** (*supra*) was not.

42. Learned senior counsel for the Petitioner also relied upon **Ambuja Neotia Holdings Private Limited** (*Supra*), for the proposition that an arbitration clause is personal to the contracting parties and that *"the assignees of the rights of the parties to the matrix contract do not necessarily inherit the arbitration clause unless it is demonstrated that they had agreed to adhere to the same"*, and submitted that the majority Award, in extending the arbitration clause to the Respondent without such a demonstration, was erroneous, and that this very fragility warranted immediate scrutiny by this Court. This submission, however, addresses the *correctness* of the majority's conclusion on the jurisdictional objection, and not the antecedent, and analytically distinct, question of *maintainability* presently before this Court, namely, at what stage such correctness may be tested. Whether the majority rightly or wrongly applied the principle in **Ambuja Neotia Holdings Private Limited** (*Supra*) to the facts of the present case is a matter going to the merits of the jurisdictional challenge itself, and, for the reasons already discussed, that challenge, however strong or weak on the merits, remains one falling within Section 16(5) of the Act, to be raised, and answered, only in a composite challenge under Section 34 together with the final award. Similarly, the other grounds urged by the Petitioner including the allegations of fraud, are matters on the merits and are not required to be, and are not, decided at this stage; they remain open to the Petitioner in the composite challenge to the final award. The perceived strength of the Petitioner's case on merits cannot, by itself, convert a pure jurisdictional ruling into an interim award; were it otherwise, the maintainability of every Section 34 petition against a Section 16(5) order

would turn on a preliminary assessment of the merits of the underlying objection, a course foreclosed by **MCM Worldwide** (*supra*).

- 43.** Learned senior counsel for the Petitioner lastly relied on **Celir LLP** (*supra*), where the Hon'ble Supreme Court, in construing the statutory time-limits for conducting a auction under the Security Interest (Enforcement) Rules, confined the mandatory 30-day gap under Rule 8(6) read with Rule 9(1) strictly to the first auction, observing that the requirement to maintain a 30-day gap between the notice to the borrower and the notice of sale is mandatory only for the first auction, to submit that the statutory embargo under Sections 16(5), 16(6) and 37(2) must likewise be read strictly and confined to its own terms, and cannot be extended to an application filed, as here, under Section 23 read with Section 19. This Court finds that the principle of strict construction illustrated in **Celir LLP** (*supra*) is unexceptionable, but does not, in fact, assist the Petitioner. The very principle of construing a statutory provision according to its substance rather than its label is what this Court applied in **Zillion Infraprojects** (*supra*), where it was held that the mere invocation of Section 16, cannot be determinative of the nature of the order. Applying that same discipline here cuts against, rather than in favour of, the Petitioner, it requires this Court to look past the procedural label of "Section 23" under which the Petitioner's application was filed, and to ask what the application, in substance, sought, which was nothing other than a ruling on the Tribunal's competence to proceed with the claim at the instance of the Respondent, i.e., a challenge to the "existence or validity of the arbitration agreement" within Section 16(1). Viewed thus, the objection was, in substance, a Section 16 objection notwithstanding its label, and **Celir LLP**

(*supra*)'s teaching on strict construction, properly applied, reinforces rather than displaces this Court's conclusion.

- 44.** The irreversibility that animated this Court's concern in **Zillion Infraprojects** (*supra*) that Claim Nos. 2 to 9, once rejected, could never be resurrected or reconsidered at any subsequent stage, leaving the party aggrieved thereby without any other opportunity to correct the error, has no application here. If the Petitioner's objection to jurisdiction is ultimately found to be correct, that infirmity travels with the final award in its entirety and remains fully available to be raised, and remedied, by setting aside the final award, in a composite challenge under Section 34, exactly as contemplated by Sections 16(5) and 16(6) and as directed in **MCM Worldwide** (*supra*). Nothing is lost, foreclosed, or rendered incapable of correction by requiring the Petitioner to await the final award; the prejudice that justified immediate intervention in **Zillion Infraprojects** (*supra*), and that was found to justify intervention on the discrete, non-jurisdictional question of signing authority in **Palmview Investments Overseas Limited** (*supra*), is, for the reasons discussed above, wholly absent in the present case.
- 45.** Applying the above principles, the impugned majority Award dated 16.05.2026, which rejects the Petitioner's objection to jurisdiction/maintainability in its entirety and directs that "*the arbitration proceeding is maintainable and the claims made by the Claimant can be considered on merit on the pleadings and evidence on record,*" is a pure jurisdictional ruling within the meaning of Section 16(5) of the Act. It does not finally determine the substantive rights of the parties on any claim, nor does it extinguish any relief, nor does it decide a discrete procedural

"matter" of the kind considered in ***Palmview Investments Overseas Limited*** (*supra*). It is, therefore, indistinguishable in substance from the order considered in ***MCM Worldwide*** (*supra*) and falls outside the narrow category carved out in ***Indian Farmers Fertilizer Cooperative Limited*** (*supra*) and applied by this Court in ***Zillion Infraprojects*** (*supra*).

- 46.** For the foregoing reasons, this Court holds that the present petition under Section 34 of the Act, filed against the majority Award dated 16.05.2026 rejecting the Petitioner's objection to jurisdiction in its entirety, without finally disposing of any claim or issue on merits, is premature and not maintainable at this stage. The Petitioner is required, in terms of Sections 16(5) and 16(6) of the Act, as explained in ***MCM Worldwide*** (*supra*), to await the final outcome of the arbitration. It shall be open to the Petitioner, upon passing of the final award, if aggrieved thereby, to assail the correctness of the impugned Award dated 16.05.2026 as well, including its application of the principles in ***Ambuja Neotia*** (*supra*), together with the final award, in a composite challenge under Section 34 of the Act.
- 47.** The present petition is, accordingly, held to be premature at this stage and hence dismissed.

(GAURANG KANTH, J.)