

ITEM NO.301

COURT NO.5

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petitions for Special Leave to Appeal (C) Nos.32919-32920/2025

[Arising out of impugned final judgment and order dated 26-08-2025 in ARBA No. 8/2023 and WP(C) No. 7019/2024 passed by the High Court of Orissa at Cuttack]

PARADIP PORT TRUST (PPT)

Petitioner(s)

VERSUS

M/S MODI PROJECTS LIMITED ETC.

Respondent(s)

[FOR FINAL DISPOSAL].....FOR ADMISSION

Date : 27-07-2026 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE K.V. VISWANATHAN

For Petitioner(s) :

Mr. Shubhranshu Padhi, AOR
Mr. Pranav Giri, Adv.
Mr. Jay Nirupam, Adv.
Mr. D. Girish Kumar, Adv.
Mr. Ekansh Sisodia, Adv.
Mr. Ritik Sharma, Adv.

For Respondent(s) : Mr. Krishna Kumar Singh, AOR

Mr. K.M. Nataraj, A.S.G.
Mr. Vinayak Sharma, Adv.
Ms. Disha Thakkar, Adv.
Ms. Smita Pandey, Adv.
Mr. Raman Yadav, Adv.
Mr. Amrish Kumar, AOR
Mr. D.S. Parmer, Adv.
Mr. Gurmeet Singh Makker-AOR

UPON hearing the counsel the Court made the following
O R D E R

1. These petitions arise from the common Judgment and Order dated 26th August, 2025 passed by the High Court of Orissa in Arbitration Application No.8 of 2023 along with Writ Petition (Civil) No.7019 of 2024, by which the arbitration application

preferred by the petitioner before us - Paradip Port Trust, under Section 37 of the Arbitration and Conciliation Act, 1996 came to be dismissed, whereas the Writ Petition preferred by the Respondent before us came to be allowed, by which the High Court observed that it would be open for the respondent to avail the benefit of the scheme called 'Vivaad se Vishwaas II'.

2. Being dissatisfied with the common Judgment and Order passed by the High Court, the petitioner - trust is before us with the present petitions.

3. We heard Mr. Shubhranshu Padhi, the learned counsel appearing for the petitioner, Mr. K.M. Nataraj, the learned Additional Solicitor General appearing for the Union of India and Mr. Navin Pahwa, the learned Senior counsel assisted by Mr. Nikhil Rohatgi, the learned counsel appearing for the Respondent No.1.

4. Our two orders dated 28th January, 2026 and 19th March, 2026 respectively speaks for themselves.

5. The two Orders read thus:

28-1-2026:-

1. We heard Mr. Tushar Mehta, the learned Solicitor General for India assisted by Mr. Shubhranshu Padhi, learned counsel appearing for the petitioner - Paradip Port Trust (PPT) and Mr. Mukul Rohatgi & Mr. Navin Pahwa, the learned Senior Counsel assisted by Mr. Nikhil Rohatgi, learned counsel appearing for the respondent M/s Modi Projects Limited.

2. These petitions arise from the common judgment and order passed by the High Court of Orissa at Cuttack, dated 26.08.2025 in Arbitration Appeal No. 8 of 2023 and Writ Petition (Civil) No. 7019 of 2024 respectively, by which the Arbitration Appeal preferred by the petitioner-Port Trust under Section 37 of the Arbitration Act, 1996 (for short the 1996 Act) came to be dismissed, thereby affirming the order passed by the Commercial Court under Section 34 of the 1996 Act, and the Arbitral Award passed by the Arbitral Tribunal. The Writ Petition preferred by the respondent herein came to be disposed of with appropriate directions to the authority concerned.

3. We take notice of the fact that in the wake of dispute between the parties, the matter was referred for arbitration. The

Arbitral Tribunal passed an award in favour of the respondent. In accordance with the Arbitral Award, the petitioner- Port Trust has to pay an amount of Rs.13,66,01,820/- (Rupees Thirteen Crore Sixty Six Lakh One Thousand Eight Hundred Twenty) with interest to the respondent no.1-claimant. The petitioner being dissatisfied with the Arbitral Award challenged the same before the Commercial Court by filing a petition under Section 34 of the 1996 Act, which came to be dismissed. Being dissatisfied with the order passed by the Commercial Court, the petitioner went in appeal before the High Court under Section 37 of the 1996 Act. The appeal also came to be dismissed.

4. We shall now give a fair idea about the connected Writ Petition, which the High Court dealt with while hearing the appeal filed under Section 37 of the 1996 Act. The Writ Petition filed by the respondent no.1 herein had something to do with the Scheme by the name 'Vivaad Se Vishwas II' (contractual disputes Scheme). This Scheme is of the year 2023. The High Court while disposing of the Writ Petition observed that under the Scheme, the respondent no.1 herein, i.e., the original claimant, has a right to put forward its proposal of accepting a lesser amount than what has been actually awarded by the Arbitral Tribunal. The High Court observed that since the claimant has applied under the Scheme, it would be for the authority concerned to look into the proposal and take an appropriate decision in that regard. Insofar as the two orders passed by the Courts below are concerned, i.e., the order passed by the Commercial Court and the one passed by the High Court, the principal contention canvassed on behalf of the petitioner is that both the orders are non-speaking orders. None of the contentions raised before the Courts below were dealt with in any manner. So far as the contention with regard to the Scheme is concerned, according to the learned Solicitor General, since the matter was pending before the High Court, the authority was unable to take any final call in the matter. Learned Solicitor General has many things to say about the Scheme, more particularly, the effect in terms of revenue, etc. We are not getting into any other debate insofar as the Scheme is concerned. The fact remains that the Scheme is in force today. Way back in the year 2023, the respondent no.1-claimant had applied. The authority concerned has yet to take a final decision in this regard.

5. Today all that we are directing is that the authority concerned shall take a final decision insofar as the proposal of the respondent no.1-claimant under the Scheme is concerned. Let an appropriate decision be taken in accordance with law keeping in mind the parameters of the Scheme, more particularly the object behind the same and the decision that may be taken shall be placed before us by the next date of hearing. If the authority concerned is of the view that the claimant is entitled to seek appropriate relief under the Scheme, then we may not have to adjudicate this matter any further. It is only in the event that for some good reason, the proposal of the respondent no.1-claimant is not accepted, then we shall hear the matter on its own merits. While considering the proposal, if the authority deems fit, it may hear the petitioner herein - Paradip Port Trust.

6. Let the decision be taken within a period of four weeks and be placed before us.

7. List on 19.03.2026."

Order dated 19-03-2026:-

1. We heard Mr. Tushar Mehta, the learned Solicitor General appearing for the petitioner Trust and Mr. Navin Pahwa, the learned senior counsel, assisted by learned counsel Mr. Nikhil Rohatgi, appearing for the respondent no.1.

2. Para 5 of our order dated 28.01.2026 reads thus:-

"5. Today, all that we are directing is that the authority concerned shall take a final decision insofar as the proposal of the respondent no.1-claimant under the Scheme is concerned. Let an appropriate decision be taken in accordance with law keeping in mind the parameters of the Scheme, more particularly the object behind the same and the decision that may be taken shall be placed before us by the next date of hearing. If the authority concerned is of the view that the claimant is entitled to seek appropriate relief under the Scheme, then we may not have to adjudicate this matter any further. It is only in the event that for some good reason, the proposal of the respondent no.1-claimant is not accepted, then we shall hear the matter on its own merits. While considering the proposal, if the authority deems fit, it may hear the petitioner herein - Paradip Port Trust."

3. By our order dated 28.01.2026, we had made ourselves very clear that the Government of India in its Ministry of Ports, Shipping & Waterways should clarify in clear terms whether the respondent no.1 is entitled to avail the benefit of the scheme or not. It appears that the matter was looked into by the Government of India in its concerned Department and a letter came to be addressed to the petitioner Trust dated 09.03.2026 which reads thus:-

"No. PD-26026/1/2023-PD-1
Government of India
Ministry of Ports, Shipping & Waterways
(Ports Wing)

Transport Bhawan,
1, Parliament Street, New Delhi - 100001

Dated the 09th March, 2026

To

The Chairperson,
Paradip Port Authority,
Odisha - 754142

Subject: Reference received from Suman Khaitan & Co. regarding the Order dated 28.01.2026 passed by the Hon'ble Supreme Court in SLP (C) Nos. 32919/2025 filed by Paradip Port Trust (PPT) Vs. Modi Project Private Limited - regd.

Sir,

I am directed to enclose herewith the reference dated 12.02.2026 received from Suman Khaitan & Co. along with the Order dated 28.01.2026 passed by the Hon'ble Supreme Court and OM dated 19.08.2024 of Department of Expenditure on the subject cited above with a request to take necessary action in the matter in accordance with Vivas se Vishwas-II Scheme and settle the dispute accordingly.

Encl: As above

Yours faithfully,

(Naveen Kumar)

Under Secretary to the Government of India

Tel: 011-23719207

Email: uspd-psw@gov.in

4. We also take notice of the letter dated 13.03.2026 addressed by the Ministry to the petitioner Trust which reads thus:-

"No. PD-26026/1/2023-PD-1
Government of India
Ministry of Ports, Shipping & Waterways
(Ports Wing)

Transport Bhawan,
1, Parliament Street, New Delhi - 100001
Dated the 13th March, 2026

To

The Chairperson,
Paradip Port Authority,
Odisha - 754142

Subject: Reference received from Suman Khaitan & Co. regarding the Order dated 28.01.2026 passed by the Hon'ble Supreme Court in SLP (C) Nos. 32919/2025 filed by Paradip Port Trust (PPT) Vs. Modi Project Private Limited - regd.

Sir,

I am directed to refer to this Ministry's letter of even number dated 09.03.2026 forwarding therewith the reference dated 12.02.2026 received from Suman Khaitan & Co. along with Order dated 28.01.2026 passed by the Hon'ble Supreme Court and OM dated 19.08.2024 of Department of Expenditure on the subject cited above with a request to furnish the updated status in the matter to the Ministry.

Encl: As above

Yours faithfully,

(Naveen Kumar)

Under Secretary to the Government of India

Tel: 011-23719207

Email: uspd-psw@gov.in

5. Mr. Pahwa would submit that the Government vide its letter dated 09.03.2026 referred to above could be said to have made

itself very clear that the respondent no.1 is entitled to avail the benefit of the scheme and the petitioner Trust has been accordingly directed to settle the dispute.

6. On the other hand, the learned Solicitor General would submit that the letter of the concerned Ministry dated 09.03.2026 is not clear. According to him, there is no reference of the letter addressed by the Trust dated 19.02.2026 to the concerned Ministry. The letter dated 19.02.2026, purported to have been addressed to the Government of India reads thus:-

"xxx

1. The present letter is being addressed in compliance with the Directions passed by the Hon'ble Court in SLP No. 32919-32920/2025 on 28.01.2026. A copy of the order is enclosed herewith.

2. This is one of the rare and shocking cases wherein a manifestly perverse award is not examined either by the First Court under Section 34 of the Arbitration and Conciliation Act, 1996 or by the Appellate court under Section 37 of the Arbitration and Conciliation Act. Both the judgements are completely without any reasons. A strict reliance upon the Vivaad se Vishwaas II (Contractual Disputes) scheme would result into loss of crores of rupees to the public exchequer without examination of the court under the statutory process.

3. The background for addressing the letter is the following-

(a) The aforesaid directions have been passed by the Hon'ble Supreme Court in Special Leave Petition No. 32919-32920/2025 pending before the Hon'ble Supreme Court titled as "Paradip Port Trust (PPT) vs. M/s Modi Projects Limited", wherein the challenge is to a common order dated 26.08.2025 passed by the Hon'ble High Court of Orissa in ARBA No. 8/2023 preferred by PPT under S.37 of the Arbitration and Conciliation Act, 1996, which was dismissed by the Hon'ble High Court.

(i) The Id. Tribunal has allowed claim 5 (loss of overheads) to tune of Rs.2,20,23,800/- without any evidence in support thereof by applying the Hudson formula. The said finding is erroneous as Respondent had produced no shred of evidence to show that it had in fact incurred any loss at all. Further, the application of the Hudson formula in insolation is contrary to the judgment passed by the Hon'ble Supreme Court in Batliboi Environment Engineers Ltd. v. Hindustan Petroleum Corporation Ltd., (2024) 2 SCC 375;

(ii) The Learned Tribunal has erroneously awarded Claim No. 6 - Loss of Profit of Rs.6,31,94,400/- without assigning any reasoning or referring to supporting evidence. The award is based solely on an arbitrary assumption of 10% of the unexecuted work value. The Respondent-Claimant produced no proof of actual loss or inability to undertake other contracts. The said finding is also contrary to the judgment passed by the Hon'ble Supreme Court in Unibros v. All India Radio, 2023 SCC OnLine SC 1366, wherein it was held that loss of profit must be proved by cogent evidence;

(iii) The Id. Tribunal has failed to appreciate material evidence on record, which the Respondent's own letter dated

29.03.2016 expressly admitting that no work could be executed during the seven-month monsoon period from June 2015 to December 2015;

(iv) The Id. Tribunal failed to appreciate relevant clauses of the contract such as Clause 10, Special Conditions of Contract, which states that work had to be done during monsoon season also and that the Respondent - Contractor had to maintain sufficient labour force on ground. In spite of such a clause being there and also a letter of Respondent wherein he himself admits of not executing any work in monsoon, the Id. Tribunal has still held that delay was solely attributable to the Petitioner.

6. It is pertinent to state that in the present case, the challenge to the award dated 12.04.2017 under Section 34 of the Arbitration Act and also the appeal under Section 37 of the Arbitration Act has been dismissed without any reasoning in support thereof. The same is also observed in the order dated 05.12.2025 of the Hon'ble Supreme Court, while issuing notice in the matter.

7. Even otherwise, it is imperative to mention that the Vivaad se Vishwaas Scheme itself contains a clause with respect to willingness and consent of the parties which is produced below:

"10. Each of the persons signing this settlement agreement is fully authorized to do so, has fully understood the contents of the same and is signing on the same out of complete free will and consent, without any pressure and undue influence."

8. In view of the aforesaid it is requested that in these extraordinary circumstances, PPT may not be mandated to enter into a settlement as per Vivaad se Vishwaas II (Contractual Disputes).

9. It is humbly prayed that the Ministry may kindly clarify the issue so that the decision can be placed before the Hon'ble Supreme Court as directed by the Hon'ble Court.

10. The matter may be treated as Most Urgent.
This issues with the approval of Chairman, PPA"

7. We would like to know from the concerned Ministry whether the respondent no.1 is entitled to avail the benefit of the scheme or not.

8. The Trust may have its own objections. It is for the concerned Ministry to look into. We would like the concerned Ministry to make its stance explicitly clear. We want a particular stance to be now made clear by way of an affidavit to be filed by a responsible Officer.

9. Let such affidavit be filed within a period of one week from today. One copy of the affidavit may be furnished to all other learned counsel appearing in this particular matter.

10. *Post this matter for further hearing on 07.05.2026.*

11. *We permit the petitioner to implead the Government of India in its Ministry of Ports Shipping and Waterways as party respondent no.3.*

12. *Let the cause title be amended accordingly.*

13. *Let notice be issued to the newly impleaded respondent no.3, returnable on 07.05.2026."*

6. In pursuance of the aforesaid order, the Union of India has filed an affidavit dated 6-5-2026 duly affirmed by Shri Navin Kumar, Under Secretary at Ministry of Ports, Shipping and Waterways, stating as under:

"10. That in view of the above, the following is humbly submitted by Respondent No.3:-

"i the Scheme applies to the present case and requires due consideration of the claim in accordance with its parameters; and

ii. the final determination must be undertaken by the procuring entity (i.e., the petitioner) in accordance with the Scheme.

7. Although the learned Senior Counsel appearing for the petitioner has manifold contentions to raise as regards the legality and validity of the two orders passed by the courts below, one under Section 34 and the other under Section 37 of the Arbitration Act, we are of the view that, in view of the specific stance of the Union of India as regards the entitlement of the Respondent No.1 to avail the benefit of the scheme, it would not be necessary for us to go into the merits of the matter. All that the Respondent No.1 wants is to seek the benefit of the Scheme by an appropriate direction to the petitioner to disburse the requisite amount in their favour that may be determined by petitioner.

8. In the aforesaid view of the matter, we dispose of these petitions, saying that the Respondent No.1 shall be extended the benefit of the Scheme and whatever amount is to be paid to the Respondent No.1 in accordance with the scheme shall be

determined by the petitioner - Trust and be paid accordingly within a period of two months from today.

9. Pending applications, if any, also stand disposed of.

(VISHAL ANAND)
DEPUTY REGISTRAR

(POOJA SHARMA)
COURT MASTER (NSH)