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APPEAL NOT MAINTAINABLE UNDER SECTION 37 OF ARBITRATION ACT

"SYNERGIES CASTING LTD. V. NATIONAL RESEARCH DEVELOPMENT CORPORATION"

Hon'ble Delhi High Court in case of *Synergies Casting Ltd. v. National Research Development Corporation*¹ reaffirmed that the Arbitration & Conciliation Act, 1996 is a self-contained code and does not permit appeals beyond those expressly provided in Section 37 of the Act. Key issue involved an appeal challenging an order that directed the appellant to deposit the principal awarded amount with the Registrar General of the Court, staying execution of the arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 (A&C Act). The primary legal issue before the Hon'ble Court was whether the appeal was maintainable under Section 37 of the A&C Act, Section 13 of the Commercial Courts Act, 2015, and Order 43 Rule 1 of the Code of Civil Procedure, 1908.

Hon'ble Court held that an appeal is not maintainable under Section 13 of the Commercial Courts Act unless it falls within the specific provisions of Section 37 of the A&C Act. Since the impugned order neither set aside nor refused to set aside the arbitral award, it did not fall within the scope of Section 37(1)(c) of the A&C Act. Consequently, Hon'ble Court dismissed the appeal as not maintainable and disposed of the pending applications.

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¹ FAO(OS) (COMM) 1/2025

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 08.01.2025

+ **FAO(OS) (COMM) 1/2025**

SYNERGIES CASTING LTD.Appellant

Through: Mr.Angad Mehta, Adv.

versus

NATIONAL RESEARCH DEVELOPMENT CORPORATION
& ANR.Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (Oral)

CM APPL. 551/2025 (Exemption)

1. Allowed, subject to all just exceptions.

CM APPL. 549/2025

2. For the reasons stated in the application, the delay of 29 days in filing the appeal is hereby condoned.

3. The application is accordingly disposed of.

FAO(OS) (COMM) 1/2025 & CM APPL. 550/2025, CM APPL. 552/2025

4. This appeal has been filed by the appellant, challenging the Order dated 10.09.2024 passed by the learned Single Judge of this Court in O.M.P.(COMM) 7/2024, titled *Synergies Casting Ltd Through Its Authorised Representative v. National Research*

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Development Corporation & Anr., whereby the learned Single Judge has directed the appellant to deposit the principal awarded amount with the Registrar General of this Court within eight weeks from the date of the said Order, on which deposit, the execution of the Impugned Award has been directed to remain stayed until the pendency of the said petition filed by the appellant herein, under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'A&C Act').

5. At the outset, we have enquired from the learned counsel for the appellant to satisfy us regarding the maintainability of the present appeal.

6. The learned counsel for the appellant submits that the appeal, though would not be maintainable under Section 37 of the A&C Act, it would be maintainable under Section 13 of the Commercial Courts Act, 2015, read with Order 43 Rule 1 of the Code of Civil Procedure, 1908 (for short, 'CPC'), and also under Section 10 of the Delhi High Court Act, 1966.

7. We are not impressed with the submission made by the learned counsel for the appellant.

8. In *Furest Day Lawson Limited v. Jindal Exports Limited*, (2011) 8 SCC 333, the Supreme Court held that the A&C Act being a self-contained Code, carries the negative import that appeals not mentioned therein, are not permissible. It was held that therefore, an order not appealable under Section 50 of the A&C Act, was not open to Letters Patent Appeal.



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9. In *Kandla Export Corporation v. OCI Corporation*, (2018) 14 SCC 715, the Supreme Court reiterated that no appeal is maintainable in arbitration matters governed by the A&C Act, other than expressly provided for under Section 37 or 50 of the said Act.

10. In *BGS SGS Soma JV v. NHPC Ltd.*, (2020) 4 SCC 234, the Supreme Court reiterated that the A&C Act being a Special Act while the Commercial Courts Act being a General Act, the appeal against any order passed under the provisions of the A&C Act shall be maintainable only in accordance with Sections 37 or 50 of the same. It was further held that Section 13 of the Commercial Courts Act, 2015 does not provide any independent right to appeal, and merely provides for Forums thereof. It was held that even though an order passed may generally be appealable under Order 43 Rule 1 of the CPC, if it does not fall with the 'pigeonhole' of Section 37 of the A&C Act, it would not be appealable under Section 13 of the Commercial Courts Act. The Supreme Court held as under:

“12. The interplay between Section 37 of the Arbitration Act, 1996 and Section 13 of the Commercial Courts Act, 2015, has been laid down in some detail in the judgment in Kandla Export Corpn. [Kandla Export Corpn. v. OCI Corpn., (2018) 14 SCC 715 : (2018) 4 SCC (Civ) 664] The precise question that arose in Kandla Export Corpn. [Kandla Export Corpn. v. OCI Corpn., (2018) 14 SCC 715 : (2018) 4 SCC (Civ) 664] was as to whether an appeal, which was not maintainable under Section 50 of the Arbitration Act, 1996, is nonetheless maintainable under Section 13(1) of the Commercial Courts Act, 2015. In this context, after setting out various provisions of the Commercial Courts Act, 2015 and the



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Arbitration Act, 1996, this Court held : (SCC pp. 727, 729, 731-34, paras 13-15, 20-22 & 27)

“13. Section 13(1) of the Commercial Courts Act, with which we are immediately concerned in these appeals, is in two parts. The main provision is, as has been correctly submitted by Shri Giri, a provision which provides for appeals from judgments, orders and decrees of the Commercial Division of the High Court. To this main provision, an exception is carved out by the proviso. ...”

14. The proviso goes on to state that an appeal shall lie from such orders passed by the Commercial Division of the High Court that are specifically enumerated under Order 43 of the Code of Civil Procedure Code, 1908, and Section 37 of the Arbitration Act. It will at once be noticed that orders that are not specifically enumerated under Order 43 CPC would, therefore, not be appealable, and appeals that are mentioned in Section 37 of the Arbitration Act alone are appeals that can be made to the Commercial Appellate Division of a High Court.

15. Thus, an order which refers parties to arbitration under Section 8, not being appealable under Section 37(1)(a), would not be appealable under Section 13(1) of the Commercial Courts Act. Similarly, an appeal rejecting a plea referred to in sub-sections (2) and (3) of Section 16 of the Arbitration Act would equally not be appealable under Section 37(2)(a) and, therefore, under Section 13(1) of the Commercial Courts Act.

20. Given the judgment of this Court in Fuerst Day Lawson [Fuerst Day Lawson Ltd. v. Jindal Exports Ltd., (2011) 8 SCC 333 : (2011) 4 SCC (Civ) 178] , which Parliament is presumed to know when it enacted the Arbitration Amendment Act, 2015, and given the fact that no change was made in Section 50



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of the Arbitration Act when the Commercial Courts Act was brought into force, it is clear that Section 50 is a provision contained in a self-contained code on matters pertaining to arbitration, and which is exhaustive in nature. It carries the negative import mentioned in para 89 of Fuerst Day Lawson [Fuerst Day Lawson Ltd. v. Jindal Exports Ltd., (2011) 8 SCC 333 : (2011) 4 SCC (Civ) 178] that appeals which are not mentioned therein, are not permissible. This being the case, it is clear that Section 13(1) of the Commercial Courts Act, being a general provision vis-à-vis arbitration relating to appeals arising out of commercial disputes, would obviously not apply to cases covered by Section 50 of the Arbitration Act.

*21. However, the question still arises as to why Section 37 of the Arbitration Act was expressly included in the proviso to Section 13(1) of the Commercial Courts Act, which is equally a special provision of appeal contained in a self-contained code, which in any case would be outside Section 13(1) of the Commercial Courts Act. One answer is that this was done *ex abundanti cautela*. Another answer may be that as Section 37 itself was amended by the Arbitration Amendment Act, 2015, which came into force on the same day as the Commercial Courts Act, Parliament thought, in its wisdom, that it was necessary to emphasise that the amended Section 37 would have precedence over the general provision contained in Section 13(1) of the Commercial Courts Act. Incidentally, the amendment of 2015 introduced one more category into the category of appealable orders in the Arbitration Act, namely, a category where an order is made under Section 8 refusing to refer parties to arbitration. Parliament may have found it necessary to emphasise the fact that an order referring parties to arbitration under Section 8 is not appealable under Section 37(1)(a) and would, therefore, not be*

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appealable under Section 13(1) of the Commercial Courts Act. Whatever may be the ultimate reason for including Section 37 of the Arbitration Act in the proviso to Section 13(1), the ratio decidendi of the judgment in Fuerst Day Lawson [Fuerst Day Lawson Ltd. v. Jindal Exports Ltd., (2011) 8 SCC 333 : (2011) 4 SCC (Civ) 178] would apply, and this being so, appeals filed under Section 50 of the Arbitration Act would have to follow the drill of Section 50 alone.

22. This, in fact, follows from the language of Section 50 itself. In all arbitration cases of enforcement of foreign awards, it is Section 50 alone that provides an appeal. Having provided for an appeal, the forum of appeal is left “to the Court authorised by law to hear appeals from such orders”. Section 50 properly read would, therefore, mean that if an appeal lies under the said provision, then alone would Section 13(1) of the Commercial Courts Act be attracted as laying down the forum which will hear and decide such an appeal.

27. The matter can be looked at from a slightly different angle. Given the objects of both the statutes, it is clear that arbitration itself is meant to be a speedy resolution of disputes between parties. Equally, enforcement of foreign awards should take place as soon as possible if India is to remain as an equal partner, commercially speaking, in the international community. In point of fact, the raison d'être for the enactment of the Commercial Courts Act is that commercial disputes involving high amounts of money should be speedily decided. Given the objects of both the enactments, if we were to provide an additional appeal, when Section 50 does away with an appeal so as to speedily enforce foreign awards, we would be turning the Arbitration Act and the Commercial Courts



Act on their heads. Admittedly, if the amount contained in a foreign award to be enforced in India were less than Rs 1 crore, and a Single Judge of a High Court were to enforce such award, no appeal would lie, in keeping with the object of speedy enforcement of foreign awards. However, if in the same fact circumstance, a foreign award were to be for Rs 1 crore or more, if the appellants are correct, enforcement of such award would be further delayed by providing an appeal under Section 13(1) of the Commercial Courts Act. Any such interpretation would lead to absurdity, and would be directly contrary to the object sought to be achieved by the Commercial Courts Act viz. speedy resolution of disputes of a commercial nature involving a sum of Rs 1 crore and over. For this reason also, we feel that Section 13(1) of the Commercial Courts Act must be construed in accordance with the object sought to be achieved by the Act. Any construction of Section 13 of the Commercial Courts Act, which would lead to further delay, instead of an expeditious enforcement of a foreign award must, therefore, be eschewed. Even on applying the doctrine of harmonious construction of both statutes, it is clear that they are best harmonised by giving effect to the special statute i.e. the Arbitration Act, vis-à-vis the more general statute, namely, the Commercial Courts Act, being left to operate in spheres other than arbitration.”

13. Given the fact that there is no independent right of appeal under Section 13(1) of the Commercial Courts Act, 2015, which merely provides the forum of filing appeals, it is the parameters of Section 37 of the Arbitration Act, 1996 alone which have to be looked at in order to determine whether the present appeals were maintainable. Section 37(1) makes it clear that appeals shall only lie from the orders set out in sub-clauses (a), (b) and (c) and from no others. The pigeonhole



that the High Court in the impugned judgment [NHPC Ltd. v. Jaiparkash Associates Ltd., 2018 SCC OnLine P&H 1304 : (2019) 193 AIC 839] has chosen to say that the appeals in the present cases were maintainable is sub-clause (c). According to the High Court, even where a Section 34 application is ordered to be returned to the appropriate court, such order would amount to an order “refusing to set aside an arbitral award under Section 34”.

14. *Interestingly, under the proviso to Section 13(1-A) of the Commercial Courts Act, 2015, Order 43 CPC is also mentioned. Order 43 Rule (1)(a) reads as follows:*

“1. Appeals from orders.— *An appeal shall lie from the following orders under the provisions of Section 104, namely—*

(a) an order under Rule 10 of Order 7 returning a plaint to be presented to the proper court except where the procedure specified in Rule 10-A of Order 7 has been followed;”

This provision is conspicuous by its absence in Section 37 of the Arbitration Act, 1996, which alone can be looked at for the purpose of filing appeals against orders setting aside, or refusing to set aside awards under Section 34. Also, what is missed by the impugned judgment [NHPC Ltd. v. Jaiparkash Associates Ltd., 2018 SCC OnLine P&H 1304 : (2019) 193 AIC 839] is the words “under Section 34”. Thus, the refusal to set aside an arbitral award must be under Section 34 i.e. after the grounds set out in Section 34 have been applied to the arbitral award in question, and after the Court has turned down such grounds. Admittedly, on the facts of these cases, there was no adjudication under Section 34 of the Arbitration Act, 1996 — all that was done was that the Special Commercial Court at Gurugram allowed an application filed under Section 151 read with Order 7 Rule 10 CPC, determining that the Special



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Commercial Court at Gurugram had no jurisdiction to proceed further with the Section 34 application, and therefore, such application would have to be returned to the competent court situate at New Delhi.

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20. It is clear, therefore, that the appeals filed in the present case do not fall within Section 37 of the Arbitration Act, 1996 and are not maintainable.”

11. In view of the above, as the Impugned Order neither sets aside, nor refuses to set aside the arbitral award in challenge before the learned Single Judge in OMP (Comm)7/2024, it is not an order falling within the ambit and scope of Section 37(1)(c) of the A&C Act, and therefore, is not appealable.

12. In view of the above, we find that the present appeal is not maintainable. The same is accordingly dismissed.

13. The pending applications also stand disposed of.

NAVIN CHAWLA, J

SHALINDER KAUR, J

JANUARY 8, 2025/sg/TK

[Click here to check corrigendum, if any](#)