



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. _____ OF 2026
(@ SPECIAL LEAVE PETITION (CIVIL) NO. 7338 OF 2026)**

**M/s. GVV Constructions
Private Limited**

... Appellant

Versus

The Union of India & Ors.

... Respondents

J U D G M E N T

Alok Aradhe, J.

1. Leave granted.
2. This appeal takes exception to the judgment dated 16.12.2025 passed by the Division Bench of the High Court for the State of Telangana at Hyderabad.

FACTS

3. The facts leading to the filing of the present appeal may be stated briefly. The appellant is a private limited company and is engaged in construction and infrastructure works. On 21.02.2017, South Central Railway namely, respondent no. 2 invited tenders for the work of “Doubling of track between Guntur-Guntakal Section- Earthwork in formation including blanketing to GE: 0014

specifications, construction of bridges, RUBs for LCs and other miscellaneous works....” (‘Work’). In response to the aforesaid tender, the appellant submitted its bid. The appellant’s bid was accepted, and on 30.11.2017, a formal Contract Agreement was executed stipulating the due date of completion of the Work as 23.10.2018.

4. On 10.06.2022, the said contract was terminated under Clause 62 of Indian Railways Standard General Conditions of Contract (‘GCC’) and the performance guarantee and security furnished by the appellant were also forfeited. Further, the appellant was held to be disentitled to any compensation for any loss.
5. The appellant sought quashing of the aforesaid order of termination in a writ petition *inter alia* on the ground that the same is in contravention of the procedure laid down under GCC and sought a consequential direction to respondents to follow Clause 17 of the GCC. The learned Single Judge by an order dated 18.10.2022, dismissed the writ petition *inter alia* on the ground that serious and complicated questions of fact were not amenable to adjudication under Article 226 of the Constitution of India. In paragraph 35 of the order, the learned Single Judge further held that since the appellant had already invoked the

arbitration clause by filing an arbitration petition it could take all its defences before the Arbitral Tribunal. However, it was also recorded as a finding that there existed no irregularity in the order of termination of contract.

6. Being aggrieved, the appellant preferred an appeal. The Division Bench of the High Court vide its judgment dated 16.12.2025, held that the finding recorded by the learned Single Judge that the contract of the appellant had been validly terminated, was without assigning any reason. It was further held that if the validity of the order of termination of contract is upheld, there would be no scope left for the Arbitral Tribunal or any other forum to decide the dispute in favour of the appellant. The Division Bench accordingly set aside the finding contained in paragraph 35 of the order of the learned Single Judge which stated that there exists no irregularity in termination of the contract of the appellant. The appellant was granted the liberty to raise all its claims before the Arbitral Tribunal, which in turn was granted the liberty to decide the claims of the appellant strictly in accordance with the terms of the contract agreed upon between the parties. The Division Bench clarified that the Arbitral Tribunal shall take a decision in accordance with law

without being influenced by the observations made either by it or by the learned Single Judge.

7. In pursuance of the order passed by the Division Bench of the High Court, a former judge of this Court was appointed as the Sole Arbitrator and arbitration proceedings commenced on 20.01.2026. The Arbitral Tribunal framed twelve issues including the issue of the validity of the order of termination dated 10.06.2022 and the question whether any claims are barred by limitation or fall under “excepted matters” or are not otherwise arbitrable.

SUBMISSIONS

8. Mr. Gaurav Agarwal, learned senior counsel for the appellant submitted that the reasons for delay in completion of the Work were not attributable to the appellant. It was contended that the contract was illegally terminated. It was pointed out that respondents themselves admitted in paragraph 1 of the counter affidavit filed in the writ petition, that the same is not maintainable, as appellant has an effective and alternative remedy of arbitration. Therefore, the respondents cannot now turn around and dispute that the issue of termination of contract cannot be decided by the Arbitral Tribunal. It was urged that the

only grievance of the appellant in the present appeal pertains to the direction issued by the Division Bench to the Arbitral Tribunal to decide all claims of the appellant in accordance with the terms of the contract agreed upon by the parties. It was contended that the issue of the illegal termination of the contract is directly and intrinsically linked with all other issues pending before the Arbitral Tribunal and, therefore, it should be permitted to decide the issue of termination of contract as well. It was submitted that the impugned direction is contrary to the decision of this Court in **ABS Marine Services v. Andaman and Nicobar Administration**¹.

9. Mr. Vikramjit Banerjee, learned Additional Solicitor General, submitted that appellant by seeking to submit the issue of validity of termination of contract to arbitration is acting in direct violation of Clause 63 of GCC which was signed and accepted by both the parties. It was further submitted that exclusion of validity of termination of the contract from the scope of arbitration does not prevent the appellant from approaching the civil court which is the designated forum for “excepted matters”. It was contended that the reliance placed on the decision of this

¹ 2026 SCC OnLine SC 460.

Court in **ABS Marine Services** (supra), is misplaced as the clauses in GCC are different from the Clause struck down by this Court in the said decision. It was urged that the Arbitral Tribunal has no jurisdiction over “excepted matters” under the GCC and the impugned judgment does not call for any interference in this appeal. In support of the aforesaid submissions, reliance has been placed on the decisions of this Court in **General Manager, Northern Railway and Another² v. Sarvesh Chopra and Harsha Constructions v. Union of India and Others³**.

ANALYSIS

10. We have carefully considered the rival submissions advanced by the learned counsel for the respective parties and have perused the record.

ISSUE

11. The solitary issue which arises for consideration in this appeal is whether the observation of the Division Bench that “the Arbitrator is at liberty to decide the claim of the appellant strictly in accordance with the terms of the contract agreed upon between the parties”, travels beyond the scope of the jurisdiction of a court exercising power of judicial review under Article 226 of

² (2002) 4 SCC 45.

³ (2014) 9 SCC 246.

the Constitution of India and impinges upon the jurisdiction of the Arbitral Tribunal under Section 16 of the Arbitration and Conciliation Act, 1996 ('Act').

RELEVANT CLAUSES OF THE AGREEMENT

- 12.** Before proceeding to deal with the issue, it is apposite to take note of Clause 63 and relevant parts of Clause 64 of the GCC :-

“63. Matters Finally Determined By The Railway: All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the work or after its completion and whether before or after the determination of the contract, shall be referred by the contractor to the GM and the GM shall, within 120 days after receipt of the contractor’s representation, make and notify decisions on all matters referred to by the contractor in writing provided that matters for which provision has been made in **Clauses 8, 18, 22(5), 39, 43(2), 45(a), 55, 55-A(5), 57, 57A, 61(1), 61(2) and 62(1) to (xiii)(B) of Standard General Conditions of Contract or in any Clause of the Special Conditions of the Contract shall be deemed as ‘excepted matters’ (matters not arbitrable) and decisions of the Railway authority, thereon shall be final and binding on the contractor; provided further that ‘excepted matters’ shall stand specifically excluded from the purview of the Arbitration Clause.**

64.(1) Demand for Arbitration

64.(1)(i) In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liability of the parties on any matter in question, dispute or difference on any account or as to the withholding by the Railway of any certificate to which the contractor may claim to be entitled to, or if the Railway fails to make a decision within 120 days, then and in any such case, but except in any of the “excepted matters” referred to in Clause 63 of these conditions, the contractor, after 120 days but within 180 days of his presenting his final claim on disputed matters shall demand in writing that the dispute or difference be referred to arbitration.

64.(1)(ii) The demand for arbitration shall specify the matters which are in question, or subject of the dispute or difference as also the amount of claim item-wise. Only such dispute(s) or difference(s) in respect of which the demand has been made, together with counter claims or set off, given by the Railway, shall be referred to arbitration and other matters shall not be including in the reference.”

Thus, a conjoint reading of Clause 63 and relevant part of Clause 64 of the GCC, makes it clear that Clause 63 only excludes the excepted matters from the purview of the Arbitration Clause but does not exclude the jurisdiction of the Court of Law to examine the validity of the decision taken in respect of excepted matters.

THE ARBITRATION AND CONCILIATION ACT, 1996

- 13.** The Act is modelled on the UNCITRAL Model Law and is intended to bring the domestic as well as International Commercial

Arbitration in consonance with the UNCITRAL Model, the New York Convention and the Geneva Convention, as has been held by a three-Judge Bench of this Court in **Chloro Controls India Pvt. Ltd. v. Severn Trent Water Purification Inc. & Ors.**⁴

Section 5 of the Act prescribes the extent of judicial intervention and begins with a *non-obstante* clause and mandates that “no judicial authority shall intervene except where so provided in this part”. Section 16(1) of the Act empowers the Arbitral Tribunal to rule on its jurisdiction “including ruling on any objections with respect to existence or validity of the arbitration agreement”. Section 16 incorporates the principle of kompetenz-kompetenz, which lies at the foundation of the Act and makes a decisive departure from the preceding statutory regime contained in the Arbitration Act, 1940.

PERMISSIBLE EXTENT OF JUDICIAL SCRUTINY PRIOR OR AT THE STAGE OF REFERENCE OF DISPUTE

14. The extent of judicial scrutiny permissible even at the stage anterior to appointment of an Arbitrator or at the stage of appointment of an Arbitrator under Section 11 of the Act has travelled through four distinct phases each marking a

⁴ (2013) 1 SCC 641.

progressively narrower conception of the Court's role, culminating in the position that holds the field today. In **Konkan Railway Corpn. Ltd. & Ors. v. Mehul Construction Co.**⁵, reaffirmed by a Constitution Bench in **Konkan Railway Corpn. Ltd. v. Rani Construction (P) Ltd.**⁶, this Court characterised the power of appointment under Section 11(6) as purely administrative, leaving every contested question, including the existence of the agreement and arbitrability, to the Arbitral Tribunal under Section 16. The aforesaid view was overruled by a seven-Judge Bench in **SBP & Co. v. Patel Engineering. Ltd. and Another**⁷, wherein it was held the power to be judicial, requiring the court, at the referral stage, to decide, amongst other things, the existence of a valid arbitration agreement. This view was refined in **National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd.**⁸, which classified the issues arising on a Section 11 application into three categories, of which "Category III" issues, namely whether the claim made falls within the arbitration clause, illustratively including "a matter which is reserved for the final decision of a departmental authority and excepted or

⁵ (2000) 7 SCC 201.

⁶ (2002) 2 SCC 388.

⁷ (2005) 8 SCC 618.

⁸ (2009) 1 SCC 267.

excluded from arbitration”, were held to be decided by the Arbitral Tribunal alone, and not by the referral court.

15. The Arbitration and Conciliation (Amendment) Act, 2015, on the basis of the recommendations contained in the 246th Report of the Law Commission of India, inserted Section 11(6A)⁹ in the Act, by which the scope of examination by the Court, “notwithstanding any judgment, decree or order of any Court”, is confined, at the stage of appointment, to the existence of the arbitration agreement. In **Duro Felguera, S.A. v. Gangavaram Port Ltd.**¹⁰, this Court applied the amended provision literally, holding that the referral court is only required to examine “if an arbitration agreement exists, nothing more, nothing less”. A three-Judge Bench of this Court in **Mayavati Trading (P) Ltd. v. Pradyut Deb Burman**¹¹, held that Section 11(6A) legislatively overruled the wider scrutiny contemplated by **SBP & Co.** and **Boghara Polyfab** (supra).
16. Another three-Judge Bench of this Court in **Vidya Drolia and Others v. Durga Trading Corporation**¹², harmonised the standard of review under Sections 8 and 11 of the Act and held

⁹ Sub-section (6A) omitted by Act 33 of 2019, sec 3(v) [Date of enforcement yet to be notified.]

¹⁰ (2017) 9 SCC 729.

¹¹ (2019) 8 SCC 714.

¹² (2021) 2 SCC 1.

that a court should decline reference only where it is manifestly and *ex facie* certain that the arbitration agreement is non-existent, invalid, or that the dispute is non-arbitrable; short of that, the governing maxim is “when in doubt, do refer.” This “eye of the needle” standard has since been applied consistently, in subsequent decisions by this Court in **Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd.**¹³ (holding that limitation, being a mixed question of fact and law bound up with the Tribunal’s Section 16 jurisdiction, is ordinarily for the Arbitral Tribunal) and in **In Re: Interplay Between Arbitration Agreements and the Indian Stamp Act, 1899**¹⁴ (holding by a seven-Judge Bench, that even insufficiency of stamping is a curable, evidentiary question for the Tribunal, and thus overruling **N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd.**)¹⁵.

17. A three-Judge Bench of this Court in **SBI General Insurance Company Ltd. v. Krish Spinning**¹⁶, in paragraph 114 held as follows,

“The use of the term “examination” under Section 11(6-A) as distinguished from the use of the term “rule”

¹³ (2020) 2 SCC 455.

¹⁴ (2024) 6 SCC 1.

¹⁵ (2023) 7 SCC 1 (overruled).

¹⁶ (2024) 12 SCC 1.

under Section 16 implies that the scope of enquiry under Section 11(6-A) is limited to a prima facie scrutiny of the existence of the arbitration agreement, and does not include a contested or laborious enquiry, which is left for the Arbitral Tribunal to “rule” under Section 16. The prima facie view on existence of the arbitration agreement taken by the Referral Court does not bind either the Arbitral Tribunal or the Court enforcing the arbitral award.”

This view was reiterated by a two-Judge Bench of this Court in **Office for Alternative Architecture v. Ircon Infrastructure and Services Ltd.**¹⁷

18. What emerges from the foregoing survey is that, under the Act, the question whether a particular claim is covered by, or falls outside, an “excepted matters” clause of a works contract is a matter squarely within the competence of the Arbitral Tribunal under Section 16, and not a question for a court exercising even the wider, appointment-stage jurisdiction under Section 11, much less for a court exercising the discretionary jurisdiction of judicial review under Article 226 of the Constitution, whose very engagement with the merits of the dispute, in the present case, was declined on the ground that it involved complicated questions of fact.

¹⁷ 2025 SCC OnLine SC 1098.

- 19.** If a court exercising the power of appointment under Section 11(6A) has no jurisdiction to enter upon, still less to pre-determine, the touchstone by reference to which the Arbitral Tribunal is to adjudicate a claim said to fall within an “excepted matters” clause, a writ appellate court, whose task was confined to testing the correctness of the learned Single Judge’s disposal of a writ petition impugning a termination notice, had, by parity of reasoning and *a fortiori*, no such jurisdiction. The direction that the Arbitrator “is at liberty to decide the claim of the appellant strictly in accordance with the terms of the contract agreed upon between the parties”, whatever the intention behind it, has the inevitable effect of circumscribing the width of the Arbitrator’s enquiry, including his authority under Section 16 to rule upon the scope of his own jurisdiction over the dispute relating to termination.
- 20.** Whether the dispute regarding termination is, in whole or in part, an “excepted matter” outside the Arbitrator's jurisdiction, and, if so, what remedy survives to the appellant in that behalf, are questions that Section 16 of the Act commits to the Arbitrator in the first instance. It was not open to the Division Bench, in the exercise of its writ appellate jurisdiction, to prescribe in advance

the manner of, or to place constraints upon, that adjudication. For yet another reason, the Division Bench ought not to have made such an observation as the issue of arbitrability of termination of agreement was not an issue before it. Accordingly, the issue is answered.

- 21.** Insofar as reliance placed by the appellant on **ABS Marine Services** (supra) is concerned, suffice it to say that same has no application to the fact situation of the case, as Clauses 3.20 of the said case and 63 of GCC in the instant case are differently worded. Clause 3.20 in **ABS Marine Services** (supra) ousts the jurisdiction of any court of law and prohibits arbitration proceedings as well, whereas in the instant case, Clause 63 does not bar the jurisdiction of the court but only puts the excepted matters beyond the scope of arbitration. As far as the reliance placed by the respondents on **General Manager Northern Railway** (supra) is concerned, same is of no assistance to them in the facts of the present case for the reason, that in the said case, this Court dealt with Section 20 of the Arbitration Act, 1940 and the provisions of the Act make a decisive departure from the previous statutory regime.

CONCLUSION

- 22.** For the foregoing reasons, it is clarified that the direction issued by the Division Bench to the Arbitrator to decide all claims of the appellant strictly in accordance with the terms of the contract agreed upon between the parties shall not be construed to impinge upon the jurisdiction of the Arbitral Tribunal, to adjudicate the dispute with regard to termination of contract. It is clarified that this Court has not expressed any opinion on the merits of the case.
- 23.** In the result, the appeal is disposed of. There shall be no order as to costs.
- 24.** Pending applications, if any, shall stand disposed of.

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.
[ALOK ARADHE]

**NEW DELHI;
SEPTEMBER 08, 2026.**