

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

## WRIT PETITION (L) NO. 39997 OF 2025

SAP India Private Limited and Anr.

... Petitioners

V/s.

Cox and Kings Limited

... Respondent

Mr. Navroz H. Seervai, Senior Advocate with Mr. Yohaann Limathwalla, Mr. Farhad Sorabjee, Mr. Pratik Pawar, Ms. Shanaya Cyrus Irani and Mr. Siddhesh S. Pradhan i/b. J. Sagar Associates for the Petitioners

Mr. Hiroo Advani with Mr. Navdeep Dahiya, Ms. Janhavi Sakalkar and Mr. Esham Karanjikar i/b. Advani Law LLP for the Respondent

RESERVED ON : 17<sup>th</sup> DECEMBER 2025  
PRONOUNCED ON : 23<sup>rd</sup> DECEMBER 2025

## ORDER (Per Farhan P. Dubash J.) :

1. The scope of judicial interference by writ courts under Articles 226/227 of the Constitution of India against orders passed by the Arbitral Tribunal, including those passed under Section 16 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) is now well settled and needs no debate – It is restricted to only those exceptional cases of patent lack of inherent jurisdiction involving perversity, that must stare one in the face. The

present Writ Petition attempts to make out such an exceptional case and implores this Court to interfere in the matter and set aside two orders dated 31<sup>st</sup> March 2025 and 10<sup>th</sup> November 2025 (collectively, “**impugned orders**”) passed by the Arbitral Tribunal, rejecting two applications taken out by the Petitioner under Section 16 of the Arbitration Act.

2. Briefly put, the Petitioners contend that by entertaining the claim of the Respondent herein (Claimant in the arbitral proceedings), the Arbitral Tribunal has *ex-facie* usurped jurisdiction, which it patently lacked under the agreement under which it was appointed pursuant to an order passed by the Supreme Court. The Petitioners contend that the claim made in the arbitral proceedings fall under a different agreement with a different institutional and other mechanism for arbitration which has not been invoked till date.

3. Petitioner No. 1 and the Respondent had entered into three agreements: (i) SAP Software and License Support Agreement – Order Form 3 dated 30<sup>th</sup> October 2015 (**License Agreement - Order Form 3**), (ii) Services General Terms and Conditions Agreement dated 30<sup>th</sup> October 2015 (**GTC**), and (iii) SAP Global Service and Support Agreement – Order Form 1 dated 16<sup>th</sup> November 2015 (**Services Agreement - Order Form 1**).

4. Pursuant to invocation of the arbitration agreement contained in terms of Clause 15.7 of the GTC by Petitioner No. 1 and after orders were passed by this Court under Section 11 of the Arbitration Act, an Arbitral Tribunal presided over by Justice Madan B. Lokur (Retd) (**Original Arbitration Tribunal**) came to be constituted when Petitioner No. 1 made a claim of Rs. 17 crores on the Respondent, who in turn, made a counter claim of Rs. 45.99 crores. The Petitioners took out an application under Section 16 of the Arbitration Act since they contended that the counter claim was filed by the Respondent under the License Agreement - Order Form 3 (wherein, the arbitration agreement had not been invoked) whilst the Original Arbitration Tribunal was appointed only to adjudicate the claims under the Services Agreement - Order Form 1. However, before this application could be decided, the Respondent was admitted into corporate insolvency resolution proceedings by an order dated 22<sup>nd</sup> October 2019 passed by the National Company Law Tribunal (**NCLT**) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**Code**) which resulted in the imposition of a moratorium under Section 14(1)(a) thereof, prohibiting the continuation of pending proceedings against the Respondent. Accordingly, on 5<sup>th</sup> November 2019, the arbitration proceedings before the Original Arbitration Tribunal came to be adjourned *sine die*, which position is stated to continue till date.

5. Within 2 days i.e. on 7<sup>th</sup> November 2019, the Respondent through its then Interim Resolution Professional (IRP) is stated to have invoked the arbitration agreement contained in terms of Clause 15.7 of the GTC and made a claim of Rs. 942.45 crores on the Petitioners. Since the Petitioners challenged this invocation/claim, the Respondents moved the Supreme Court and ultimately, by an order dated 9<sup>th</sup> September 2024, the Arbitral Tribunal (comprising of Justice Mohit Shah (Retd) as the Sole Arbitrator) came to be appointed notwithstanding the various preliminary objections raised by the Petitioners. By this order, the Supreme Court however directed that it would be open to the Petitioners to raise the said objections before the Arbitral Tribunal, who was directed to consider and decide the same before proceeding to adjudicate the claims of the Respondent.

6. On 11<sup>th</sup> October 2024, the Respondent filed its statement of claim before the Arbitral Tribunal claiming a sum of Rs. 45.99 crores from the Petitioners. Since this claim appeared to be similar to the counter-claim made by the Respondent before the Original Arbitration Tribunal, the Petitioners preferred the first application under Section 16 of the Arbitration Act which came to be rejected by an order dated 31<sup>st</sup> March 2024 (**impugned order no. 1**). The Respondent then, after obtaining leave of the Arbitral

Tribunal, amended its statement of claim when it is stated to have provided a detailed break-up of the sum of Rs. 45.99 crores. Upon comparison of the tabular summary of claims provided in the amendment, the Petitioners are stated to have realized that the said claims were identical to the earlier counter-claim filed by the Respondent before the Original Arbitration Tribunal. This resulted in them preferring the second application under Section 16 of the Arbitration Act, which too, met the same fate as the first one, and an order dated 10<sup>th</sup> November 2025 (**impugned order no. 2**) came to be passed.

7. A perusal of the impugned orders reveal that the Arbitral Tribunal has interpreted the three agreements viz. Services Agreement - Order Form 1, License Agreement - Order Form 3 and the GTC that were entered into between the Petitioners and the Respondent and has thereafter recorded a finding that all three agreements form part of a composite transaction and on such basis, held that it was authorised and empowered to entertain claims under all three agreements. On this main ground, the Arbitral Tribunal has rejected the two applications preferred by the Petitioners.

8. Mr. Seervai has painstakingly taken us through all the documents. He has also invited our attention to the separate arbitration

agreement that is contained in the License Agreement - Order Form 3 how that contained in the GTC. He has also invited our attention to the counter-claim made by the Respondent before the Original Arbitration Tribunal and the claim made by them before the Arbitral Tribunal. He submits that the exact amount has been claimed by them in both arbitral proceedings. He submits that notwithstanding the fact that the claim made by the Respondent before the Arbitral Tribunal is under the License Agreement - Order Form 3, wherein the arbitration agreement has not even been invoked by them, the Arbitral Tribunal has passed the impugned orders on a patently incorrect basis that it has jurisdiction to entertain such claims by erroneously holding that all three agreements form part of a composite transaction between the parties. In the bargain, he asserts that the Arbitral Tribunal has *ex-facie* usurped jurisdiction, which it patently lacked under the agreement under which it was appointed. He therefore submits that the impugned orders are perverse and deserve to be set aside.

9. Mr. Seervai has relied upon several decisions of the Supreme Court viz. *(i) Punjab State Power Corpn. Ltd. vs. Emta Coal Ltd.*<sup>1</sup> *(ii) Kelvin Air Conditioning & Ventilation System (P) Ltd. vs. Triumph Reality (P) Ltd.*<sup>2</sup> *(iii) Serosoft Solutions (P) Ltd. vs. Dexter Capital Advisors (P) Ltd.*<sup>3</sup> *(iv) Deep*

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1 (2020) 17 SCC 93

2 (2024) SCC OnLine Del 7137

3 (2025) SCC OnLine SC 22

*Industries Ltd. vs. ONGC<sup>4</sup>* and *(v) TN. Cements Corp. Ltd. vs. Unicon Engineers<sup>5</sup>* in support and submits that the present case warrants interference from this Court.

10. Mr. Advani, on the other hand, asserts that no interference is warranted by this Court exercising writ jurisdiction, in the facts of the present case. He submits that the remedy of the Petitioners as provided under the Arbitration Act is to await the final award and then, challenge it under Section 34 thereof. He submits that the Petitioners have already had three bites at the cherry (the first one, before the Supreme Court and the remaining two, before the Arbitral Tribunal) and they cannot be permitted a fourth. He submits that evidence would be necessary to be led in the matter before the case of the Petitioners can be made and therefore, no interference from this Court is called for, at this stage. He relies on the decision of the Supreme Court in *Bhavna Construction vs. Executive Engineer, Sardar Sarovar Narmada Nigam Limited & Anr.*<sup>6</sup> and submits that an order passed under Section 16 cannot be interfered with in writ jurisdiction under Article 226/227 of the Constitution of India, except in exceptionally rare circumstances, which he urges, the present case is not one such. He therefore seeks dismissal of the present Writ Petition.

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4 (2020) 15 SCC 706

5 (2025) 4 SCC 1

6 (2022) 1 SCC 75

11. We have considered the submissions. It is now well settled that only in rare and exceptional cases, and where it is *ex-facie* evident that the Arbitral Tribunal has passed an order which is patently illegal or perverse or where the exercise of its power is *ex-facie* and wholly without jurisdiction, interference from the writ court is warranted and not otherwise. All the decisions of the Supreme Court (supra) relied upon by Mr. Seervai also bear this out.

12. In the present case, the Arbitral Tribunal has recorded a finding that all three agreements form part of a composite arrangement between the parties by relying on the decision of the Supreme Court in *Ameet Lalchand Shah vs. Rishabh Enterprises*<sup>7</sup>. Hence, at least at this stage and without the benefit of the final award, it cannot be said that the Arbitral Tribunal has usurped the jurisdiction not vested in it or acted in excess of jurisdiction that was vested in it. We also do not find any patent illegality in the impugned orders. Thus, the interference in writ jurisdiction is not warranted in the present case. The Petitioners are entitled to challenge the impugned orders after the final award is passed in proceedings that may be taken out under Section 34 of the Arbitration Act.

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<sup>7</sup> (2018) 15 SCC 678

13. Accordingly, the present Writ Petition is disposed of in terms of the following order :-

**: ORDER :**

- (i) The present Writ Petition is dismissed.
- (ii) There shall be no order as to costs.

( **FARHAN P. DUBASH, J.** )

( **R.I. CHAGLA J.** )

Jyoti Pawar  
13. WPL 39997.2025

**JYOTI  
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