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

Reserved on: 12.01.2026
Pronounced on: 02.02.2026

\+ **EFA(OS) (COMM) 19/2023**

THE UNION OF INDIA .....Appellant

Through: Mr. R. Venkataramani, Attorney General of India and Mr.Sanjay Jain, Sr. Adv. with Mr.Shravan Yammanur, Mr.Mangesh Krishna, Ms.Prachi Kaushik, Ms.Harshita Sukhija, Advs.

versus

RELIANCE INDUSTRIES LIMITED & ANR. .....Respondents

Through: Mr. Harish Salve, Sr. Adv. and Ms.Shyel Trehan, Sr. Adv. with Mr.Sameer Parekh, Ms.Sonali Basu Parekh, Mr.Ishan Nagar, Mr.Abhishek Thakral, Ms.Ruchi Krishna Chauhan, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE MADHU JAIN

J U D G M E N T

NAVIN CHAWLA, J.

1. This appeal has been filed under Section 50 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'A&C Act'), challenging the order dated 02.06.2023 passed by the learned Single Judge of this Court in OMP(EFA)(COMM) 1/2019, titled ***The Union***

of India v. Reliance Industries Ltd. & Anr. (hereinafter referred to as, 'Impugned Order').

2. The respondents have taken a preliminary objection challenging the maintainability of the present appeal under Section 50 of the A&C Act. Mr. Harish Salve, the learned senior counsel appearing for the respondents, and Mr. R. Venkataramani, the learned Attorney General of India appearing for the appellant, therefore, confined their submissions to the same issue and by the present judgment, we shall be considering only the said objection. We may herein itself clarify that any observation made by us in the subsequent part of our present judgment, would be only for the purposes of answering the objection raised by the respondents and shall not be considered as a reflection on the merits of the appeal.

BRIEF BACKGROUND OF FACTS:

3. To appreciate the objection raised, a brief background of facts in which the present appeal arises, would be necessary. The same are as under:

3.1 It is the case of the appellant that the appellant, through Oil and Natural Gas Corporation (ONGC), entered into two Production Sharing Contracts, both dated 22.12.1994 (hereinafter referred to as the 'PSCs'), for development of Tapti and Panna Mukta Oil and Gas Fields, with the respondent no. 1 and Enron Oil and Gas India Limited (ENRON), having an Arbitration Clause governed by the

laws of England.

3.2 M/s B.G. Exploration and Production India Limited (respondent no.2) entered into the shoes of ENRON in 2004, and accordingly, on 10.01.2005, the PSCs were amended.

3.3 In terms of the PSCs, the respondents together have 60% participating interest, while ONGC has 40% interest. The respondents were to extract the oil at their own costs, recoverable as 'Cost Petroleum' (hereinafter referred to as 'CP) from the appellant, however, subject to a specified upper 'Cost Recovery Limit' (hereinafter referred to as 'CRL'). Additionally, the appellant and the respondents were to be entitled to share in the profit earned by sale of the extracted petroleum, referred to as 'Petroleum Profit' (hereinafter referred to as 'PP'). These shares were to be determined on the basis of an 'Investment Multiple' (hereinafter referred to as 'IM').

3.4 It is the case of the appellant that certain differences arose between the parties *qua* the above and various other provisions including royalties, cess, service tax, etc., of the PSCs, and the respondents invoked the Arbitration Clause in the PSCs.

3.5 The Arbitral Tribunal, *vide* its Partial Award dated 12.09.2012, rejected the preliminary objections raised by the appellant with respect to arbitrability of disputes raised by the respondents. This Award was called the Final Partial

Award on Arbitrability.

3.6 The Arbitral Tribunal passed a Partial Award dated 10.12.2012 on the interpretation of certain provisions of the PSCs. This Award is referred to as the 'CRL Award'.

3.7 The Arbitral Tribunal, thereafter, gave the Final Partial Award dated 12.10.2016 (hereinafter referred to as the 'FPA 2016)', by a majority of 2:1, rendering 63 findings. A Clarificatory Order dated 28.12.2016 was also passed by the learned Arbitral Tribunal. The said Award is the subject matter of the Execution Application filed by the appellant which has resulted in the impugned order. To understand the challenge of the respondent and the impugned order, however, developments subsequent to the FPA 2016 are also relevant and therefore, are being narrated in brief hereunder.

3.8 The FPA 2016 was challenged by the respondents before the High Court of London. It is the case of the appellant that the High Court, *vide* its Judgment dated 16.04.2018, dismissed eight out of nine challenges filed by the respondents *qua* the FPA 2016, however, noted that the Arbitral Tribunal had not adjudicated on the issue of Additional Development Costs claimed by the respondents herein, and therefore, remanded the matter back to the Arbitral Tribunal to adjudicate on the said Claim of the respondents.

3.9 It is the case of the appellant that the Arbitral Tribunal, *vide* its Award dated 01.10.2018, partially allowed the claim of

the respondents herein *qua* the Additional Development Costs, however, held that a part of the Claim was beyond the scope of the principal PSCs, and therefore, dismissed the same.

3.10 The Award dated 01.10.2018 was challenged by both the parties before the High Court in London.

3.11 The learned Arbitral Tribunal also rendered a Final Partial Award dated 12.03.2019 (CRL Jurisdiction Award).

3.12 It is the case of the appellant that the challenge of the appellant against the Award dated 01.10.2018 was dismissed, while the challenge of the respondents accepted by the High Court in London, *vide* its Order dated 12.02.2020, and matter remitted back to the Arbitral Tribunal for adjudicating on the claim regarding the Expand Plan of Development, holding the same to be within the scope of the present arbitration proceedings.

3.13 Thereafter, by a majority Award dated 29.01.2021, the Arbitral Tribunal deferred the adjudication for the claim of the respondents of the increase in cost, to the stage when it would consider the case regarding the increase in CRL. The said FPA also came to be challenged by the appellant.

3.14 It is the case of the appellant that, in spite of the above developments subsequent to the FPA 2016, the determination by the Arbitral Tribunal in its FPA 2016 remained unaffected *qua* the Total Cost of Petroleum and

Profit Petroleum, which fell due to the appellant herein.

3.15 The appellant filed the Enforcement Petition, being OMP(EFA)(COMM) 1/2019, seeking execution of the Final Partial Award dated 12.10.2016, to recover a sum of USD 3,856,734,582 purportedly in terms of the said Award.

IMPUGNED ORDER

4. The learned Single Judge of this Court, *vide* the Impugned Order dated 02.07.2023, dismissed the Execution Petition filed by the appellant, by holding the same to be premature, however, reserved liberty with the appellant to move for execution at an appropriate stage.

5. The learned Single Judge has held that mere declaratory Awards, which cannot be reduced to hard cash, cannot be executed in terms of money. It has held that for a purely declaratory Award to be executed like a money decree, the Award must, firstly, identify one of the parties to the dispute as entitled to receive a quantifiable sum of money from the other, and, secondly, set out the principles on the basis of which such quantification is to be done, so that all that is required to be done by the Executing Court is application of pure arithmetic. The learned Single Judge held that the FPA 2016 does not meet this test.

6. The learned Single Judge held that the FPA 2016 does not award any amount to the appellant herein. It was further held that the determination of CRL being the most essential element for computing

the amount of claim for Cost Petroleum ('CP'), has not attained finality, therefore, the liability of the respondents herein towards the appellant for the said claim cannot be determined.

7. It was further held that an Execution Petition cannot be preferred under Section 48 of the A&C Act, if the Award decides only some of the issues, while deferring the decision regarding the remaining.

8. The learned Single Judge further held that the execution sought by the appellant for the FPA 2016, was itself contrary to the said Award as the Arbitral Tribunal has itself held that the findings therein can be implemented only once the application by the respondents seeking increase of CRL as well as other issues is adjudicated upon by the Arbitral Tribunal.

9. The learned Single Judge also held that while seeking such execution, the appellant herein has ignored the subsequent Awards passed by the Arbitral Tribunal and hence, the FPA 2016 cannot be enforced *dehors* the findings contained in the other Awards.

10. Importantly, the learned Single Judge held that the grounds set out in Section 48(1) of the A&C Act do not imply that an Award which is *per se* inexecutable should be executed by the Court. It held that the Court can justifiably refuse to execute the Award applying Section 48(2)(b) read with its Explanation 1(ii) of the A&C Act.

11. We may quote from the Impugned Order as under:

> "*2. There is no dispute that the 2016 FPA does not specifically award any amount to the petitioner. The Execution Petition,*

nonetheless, claims, in para 7, that an amount of US $ 2314040750 is payable to the petitioner by the respondents-Judgment Debtors under the 2016 FPA, and seeks recovery thereof.

3. The respondents contend that such an execution petition is unknown to law. Briefly stated, the respondents' contention is that the 2016 FPA is one in a series of FPAs rendered by the learned AT in the arbitral proceedings between the parties. A reading of the 2016 FPA, conjointly with prior and later FPAs rendered by the learned AT, submits the respondents, discloses that, even as on date, the amount finally payable by either party to the other, in the arbitral proceedings, is yet to be determined. The petitioner, according to the respondents, is seeking to capitalize on certain interim findings of the learned AT, which are, even under the 2016 FPA, subject to the decision to be rendered on other claims of the respondents against the petitioner, regarding which the learned AT has specifically reserved jurisdiction in the 2016 FPA itself. The petitioner cannot usurp this jurisdiction and work out, on its own basis, an intermediate amount allegedly payable by the respondents to it, and seek its recovery by execution. The exercise undertaken by the petitioner in the present Execution Petition is, therefore, according to the respondents, not only without authority of law, but is contrary to the terms of the 2016 FPA itself, read with subsequent FP As issued by the learned AT.

4. I agree.

5. To me, too, it appears, on the face of it, that the present Execution Petition would not be maintainable for a variety of reasons, which I would elucidate presently. I also agree with the respondents that allowing the

petitioner's prayer would be contrary to the 2016 FPA, as well as other FPAs and orders subsequently issued by the learned AT. The Execution Petition is also, therefore, in my considered opinion, premature.

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46. It cannot, therefore, be disputed that, so long as the CRL remains fluid, there can be no definitive ascertainment either of the CP to which the respondents would be entitled or of the shares in which the PP would be divisible between the petitioner and the respondents.

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48. It is obviously in arbitral recognition of this contractual position that the learned AT, in the PO dated 13th January 2014, as well as in the 2016 FPA, the 2018 FPA, the 2019 FPA and the 2021 FPA, clearly fixed a schedule for hearing the applications filed by the respondents for CRL increase and also clarified, unequivocally, that the findings and decisions of the learned AT in the 2016 FPA could be implemented only at the final state of reconciliation of accounts, after all issues had been decided by the learned AT.

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50. The contractual and arbitral position that obtains, therefore, is thus. The PSCs entitles the respondents to retain CP subject, however, to capping of the DC element in the computation of the CP, by the CRL. The DCs also constitute part of the denominator in the IM equation. The share of the petitioner in the PP is dependent on the IM in a slab-wise manner as reflected in para 12 supra. The entitlement of the respondents to CP, and the respective shares of the petitioner and respondents in the PP essentially require, therefore, knowledge of the CRL. The CRL is an indispensable and essential element in the exercise. It is fundamentally not possible, therefore, to determine the amount due from the respondents to the petitioner, or vice versa,

unless the CRL is finally determined. So long as the request for CRL increase, made in accordance with Article 13.1.4(c) of the PSCs, was pending, therefore, there can be no determination of the entitlements of the petitioner or the respondents in the CP or PP.

It is for this reason that, even while directing amounts payable to the respondents by the petitioner, which did not involve any element of CRL, to be paid, the 2016 FPA does not direct payment of any amount whatsoever by the respondents to the petitioner. The liability of the respondents to the petitioner being, at that stage, not therefore definitively quantifiable, it was obviously both illogical and illegal for the petitioners to contend that any specific amount was payable by the respondents to the petitioner merely on the basis of the findings in the 2016 FPA, which were by themselves insufficient to work out liability, till the CRL was definitely known. The very basis of the present Execution Petition is, therefore, flawed.

51. Essentially, therefore, the petitioner is seeking execution of an award which does not determine all the elements which are required to be determined in order for the liability of the respondents to the petitioner, if any, to be fixed. In doing so, the petitioner is proceeding unmindful of the specific clarification, voiced many times over by the learned AT, and also acknowledged by the petitioner itself, that application of the findings in the 2016 AT would have to await resolution of all issues by the learned AT and the rendering of its final quantum award thereafter.

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55. The proposition is, however, easier stated than applied. While I also subscribe to the view that there is no proscription against enforcement of a declaratory award - no such proscription being contained in the 1996 Act either - the enforcement would, clearly,

require the declaration to be practically enforceable. This principle would have to be applied keeping in mind the fact that the executing Court merely executes; it does not pronounce or adjudicate. The executing Court can, therefore, execute only if the award - or decree -is executable, and not otherwise. Mere declarations, which cannot be reduced to hard cash cannot, therefore, be executed in terms of money. If, however, the declarations are sufficiently explicit as to require a mere application of the principles declared to accepted facts and figures and application of mere arithmetic to arrive at the liability, then the award would probably be executable; but not otherwise. Russell, therefore, correctly expressed the principle in the passage on which the petitioner itself relies:

"It is, however, sufficiently certain if the award sets out the method of calculation of the amount due to be paid, so that all that is required to determine the actual amount is "mere arithmetic". It is not unusual, for example, for an award to set out the basis on which interest is to be calculated, without actually including a specific figure."

(Emphasis supplied)

What would be required, therefore, for a purely declaratory award to be executed like a money decree is, therefore, that the award must, firstly, identify one of the parties to the dispute as entitled to receive a quantifiable sum of money from the other, and, secondly, to set out the principles on the basis of which such quantification is to be done, so that all that is required to be done by the executing Court is application of pure arithmetic.

56. By no stretch of the imagination, in my view, can the 2016 FPA be said to be so explicit and clear regarding the existence of a definite liability of the respondents to the petitioner, and regarding the method of

computing and quantifying that liability, that all that is required, to work out the annas and paise, is mere arithmetic. Nor can the manner in which the Execution Petition works out the amount which, according to the petitioner, is due to it from the respondents, be said to be a purely arithmetical exercise, fitting figures into the formula which the FPA provides.

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58. Rather, the learned AT is explicit in its declaration that the implementation of the findings in its 2016 FPA would be undertaken by the learned AT itself after it pronounced on all issues in the arbitral proceedings and went on to deliver its final quantum award. Prior thereto, applying the principles cited supra, it cannot be said that an enforceable declaratory award stood rendered by the learned AT, in the form of the 2016 FPA.

59. Considerable reliance was placed by the learned ASG on Section 48(1) of the 1996 Act to contend that, as the grounds urged by the respondents to oppose the Execution Petition were not among those enumerated and envisaged in clauses (a) to (e) of Section 48(1), the 2016 FPA was ipso facto enforceable. The argument misses the wood for the trees. Clauses (a) to (e) of Section 48(1) merely set out the circumstances in which the Court could refuse to execute an arbitral award, at the instance of the opposite party against whom the award is being sought to be executed. It does not, in any way, imply that an award which is per se inexecutable should be executed by the Court. When the CRL has to be known in order for the respondents' liability to the petitioner to be quantifiable, and the arbitral award, while pronouncing on all other issues, defers the CRL determination to a later stage, can it be said, nonetheless, that, as this factor is not one of those enumerated in Section 48(1), the

Court should proceed to execute the award, even though all factors which are required to be known for the award to be executed are still not known? The answer, quite obviously, has to be in the negative.

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61. To my mind, Explanation 1 to Section 48(2) of the 1996 Act is a rare case of a statutory anomaly; and I say so in full awareness of the principle that anomaly is ordinarily not to be attributed to the legislature. Why, according to me, Explanation 1 is indeed a statutory anomaly is because, while Section 48(2)(b) refers to "the enforcement of the award" being "contrary to the public policy of India", Explanation 1 "clarifies" not when the enforcement of an award would be contrary to the public policy of India, but when an award itself would be contrary to the public policy of India. Indeed, the legislature appears, apparently innocently, to have imported, into Section 48, Explanation 1 in Section 34, which applies to Section 34(2)(b)(ii), and which envisages, as one of the grounds on which an arbitral award can be challenged, the award itself being in conflict with the public policy of Indian law.

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65. "Adopting of a judicial approach" and "compliance with the principles of natural justice" are, therefore, inalienable insignia of the "fundamental policy of Indian law". Where adopting of a judicial approach, or complying with the principles of natural justice, would justify refusing to execute a foreign arbitral award in the manner in which the execution petitioner desires it to be executed, the Court may, therefore, justifiably refuse to execute the award, applying Section 48(2)(b) read with Explanation 1 (ii) thereto.

66. In the present case, can it be said that, in the teeth of the views expressed by the

learned AT itself, and the fact that the prayer of the respondent for third CRL increase, as was permissible under Article Article 13.1.4 (c) of the PSCs, was still pending before the learned AT after it had already been increased twice after the passing of the 2016 FPA, execution of the 2016 FPA as the petitioner seeks would be "adopting of a judicial approach", or in compliance with the principles of natural justice?

67. With respect, I should think not.

68. As, even applying the limited grounds envisaged in Section 48 of the 1996 Act in which a Court could refuse to execute an arbitral award, the 2016 FPA is found by me to be unexecutable, I do not feel that, in adopting the said view, I am in breach of the principles enunciated in ***Vijay Karia****.* ***Vijay Karia****, in fact, envisages failure, on the part of the Arbitral Tribunal, to decide on the issues which arose for consideration before it as a legitimate ground on which the executing court could, under Section 48(2)(b), refuse to execute the award. Mutatis mutandis, I would hold, the 2016 FPA cannot be enforced where one of the issues - of determination of the CRL to be applied - was still under seisin before the learned AT which had yet to pronounce thereon.*

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70. *... In the present case, the respondents have, in Ex Appl. (OS) 1012/2020, indeed raised specific issues regarding the maintainability of the execution petition and enforceability of the 2016 FPA. These two issues are, in fact, interlinked, and any attempt at unravelling the skeins of one from the other is bound to be an abortive exercise. Though, superficially, an execution petition could be maintained for enforcement of any award, whether it is executable or not, the award can*

be regarded as enforceable only if it is actually executable. Actual executability would require, as its sine qua non, determination, by the learned AT, of all the issues on the basis of which the liability of the parties towards each other can be fixed. Absent such determination, the award remains inchoate - as in the present case- and ex facie unenforceable. In the present case, the learned AT has itself held as much, on more than one occasion, most recently reiterating the position in the 2021 FPA by holding that the adjustment of the accounts was "an exercise to be undertaken after the Tribunal has determined all outstanding matters between the Parties, notably the Balance EPOD Agreements Case and the CRL Increase Applications." The 2016 FPA cannot, therefore, be enforced in isolation at this stage, as the petitioner would desire. As a petition which seeks enforcement of an unenforceable award, the present Execution Petition would also, ipso facto, not be maintainable.

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73. *I am, therefore, of the view that the 2016 FPA is not an executable arbitral award, for the following reasons:*

(i) The 2016 FPA does not award any amount to the petitioner.

(ii) The 2016 FPA cannot be likened to an award which sets out the manner in which the liability is to be computed, and leaves the parties to do the math. The manner of computation of liability, in the Execution Petition, goes far beyond a mere academic exercise, and transgresses the boundaries of the 2016 FPA.

(iii) The CRL is one of the most essential elements which go towards determining the CP entitlement of the respondents, or the shares of the petitioner and respondents in the PP. So long as the applicable CP had

not been finally determined by the learned AT, the liability of the respondents towards the petitioner, if at all, remained inchoate and unknown. An execution petition, under Section 48 of the 1996 Act, could not lie for execution of a partial award which decided only some of the issues, while deferring the decision regarding the remaining issues, which too were essential to ascertain the liability of the parties, for later. Any attempt at execution had necessarily, in such a situation, to await such latter determination.

(iv) Enforcement and execution of the 2016 FPA is being sought contrary to the orders passed by the learned AT itself, which clearly hold that the findings in the 2016 FPA can be implemented only after the CRL increase application of the respondents, as well as all other issues, are finally decided and a final quantum award is passed.

(v) The petitioner seeks, therefore, by the Execution Petition, to pre-empt this exercise, and effectively usurp the jurisdiction which the learned AT has consciously vested in itself.

(vi) The petitioner seeks enforcement of the 2016 FPA by viewing the FPA in isolation, and ignoring the subsequent 2018 and 2021 FPAs, even after it has failed in its challenge, before the UK High Court, against the 2018 FPA. This is impermissible, as the arbitral proceedings are integrated, and one FPA cannot be sought to be enforced in isolation de hors the findings contained in other FPAs.

(vii) This legal position stood recognized by the petitioner itself. The Execution Petition was, therefore, contrary to the legal position which the petitioner itself acknowledged as being applicable."

12. Aggrieved of the Impugned Order, the appellant has filed the present appeal.

SUBMISSIONS BY THE LEARNED SENIOR COUNSEL FOR THE RESPONDENTS ON MAINTAINABILITY:

13. Mr.Salve, the learned senior counsel appearing for the respondents, has contended that the Impugned Order cannot be said to have been passed under Section 48 of the A&C Act. He submits that only an Order passed under Section 48 of the A&C Act is appealable in terms of Section 50 of the A&C Act. Once it is established that the Impugned Order does not refuse to enforce the Foreign Award under Section 48 of the A&C Act, the order would not be appealable and the appellant would have to take its separate remedies in accordance with law to challenge the same.

14. To substantiate the above submission, the learned senior counsel for the respondents has submitted that the learned Single Judge, by the Impugned Order, has held that the execution petition filed the appellant is not maintainable and, in fact, allowing the prayer of the appellant at this stage would be contrary to the FPA 2016 itself, of which enforcement is being sought. He submits that this finding of the learned Single Judge is not premised on Section 48 of the A&C Act, but on the finding as to whether the said Award itself was enforceable and binding under Sections 46 and 49 of the A&C Act. The Impugned Order, therefore, cannot be challenged under Section 50 of the A&C Act.

15. He submits that the learned Single Judge has noted that due to

the Procedural Order dated 13.01.2014 read with the modified Partial Award dated 01.10.2018 and the FPA dated 29.01.2021, passed by the learned Arbitral Tribunal, which again was in challenge before the English Court, there was no Foreign Award to be enforced in terms of Section 46 of the A&C Act. He submits that, therefore, the Impugned Order cannot be read as a refusal of the learned Single Judge to execute the Foreign Award under Section 48 of the A&C Act, making it appealable under Section 50 of the A&C Act.

16. He submits that an appeal is a statutory right and not an inherent right vested in any party. Further, the provisions of the A&C Act are a complete Code and therefore, the general provisions of the Code of Civil Procedure, 1908 ('CPC') or the Commercial Courts Act, 2015 cannot be invoked to support an appeal. In support, he places reliance on the judgments of the Supreme Court in ***Competition Commission of India v. Steel Authority of India Limited & Anr.,*** (2010) 10 SCC 744; ***Amazon.com NV Investment v. Future Retail Ltd. & Ors.,*** (2022) 1 SCC 209; ***Mohinder Singh (Dead) through Legal Representatives v. Paramjit Singh & Ors.,*** (2018) 5 SCC 698; ***Union of India v. Mohindra Supply Co.***, 1961 SCC OnLine SC 344; ***Fuerst Day Lawson Limited v. Jindal Exports Limited,*** (2011) 8 SCC 333, and ***Kandla Export Corporation & Anr. v. OCI Corporation & Anr.,*** (2018) 14 SCC 715.

17. He submits that there can be various grounds on which the enforcement of a Foreign Award may be refused, for example, limitation or misreading of the Foreign Award. These circumstances,

however, do not fall under Section 48 of the A&C Act and therefore, appeal under Section 50 of the A&C Act would not be maintainable. In support, he draws parallels with the judgments of the Supreme Court in ***Hindustan Copper Limited v. Nicco Corporation Limited,*** (2009) 6 SCC 69 and ***BGS SGS Soma JV v. NHPC Limited,*** (2020) 4 SCC 234, wherein it was held that an appeal under Section 37 of the A&C Act would lie only when the "*preconditions mentioned therein*" stood satisfied.

18. He submits that Section 50 of the A&C Act must be construed literally, there being no ambiguity in the same. He submits that the learned Single Judge, by interpreting the FTA 2016, held that the same was not enforceable. He submits that this would not fall within the grounds of Section 48 of the A&C Act and, therefore, the Impugned Order would not be appealable under Section 50 of the A&C Act.

19. He submits that it was the own case of the appellant before the learned Single Judge and even in the present appeal, that the grounds on which the enforcement application has been dismissed, do not fall within the ambit and scope of Section 48 of the A&C Act. The appellant, therefore, cannot now contend that the enforcement application has been dismissed under Section 48 of the A&C Act.

20. He submits that any reference made by the learned Single Judge in the Impugned Order to Section 48 of the A&C Act, are *obiter dicta* as they have not been mentioned in the "Conclusion" by the learned Single Judge in paragraph 73 of the Impugned Order.

21. We must herein itself note that Mr. Salve also placed reliance on the judgments of the Supreme Court in ***Sarda Prasad & Ors. v. Lala Jumna Prasad & Ors.,*** 1961 SCC OnLine SC 278, and ***State of M.P. v. Mangilal Sharma,*** (1998) 2 SCC 510, to submit that mere declaratory decrees are not enforceable, however, as this would be touching also on the merits of the appeal, rather than being confined to its maintainability, we shall be refraining ourselves from considering the same in *extenso*, except as far as is considered necessary for answering the question of maintainability of the appeal.

SUBMISSIONS BY THE LEARNED ATTORNEY GENERAL FOR THE APPELLANT ON MAINTAINABILITY:

22. Mr. Venkataramani, the learned AG, in support of the maintainability of the appeal submits that any order refusing to enforce a Foreign Award under Section 48 of the A&C Act, is appealable within the scope of Section 50 of the A&C Act. Once the learned Single Judge holds that the enforcement petition itself was not maintainable, it is a refusal to enforce the Foreign Award under Section 48 of the A&C Act and is therefore, appealable under Section 50 of the A&C Act. He submits that the question of maintainability of the enforcement petition, cannot be independently considered or divorced from the question of enforceability of a Foreign Award under Section 48 of the A&C Act. In support, he places reliance on the judgments of the Supreme Court in ***LMJ International Limited v. Sleepwell Industries Company Limited,*** (2019) 5 SCC 302;

Government of India v. Vedanta Limited & Ors., (2020) 10 SCC 1; ***Chintels India Limited v. Bhayana Builders Pvt. Ltd.,*** (2021) 4 SCC 602, and of the Bombay High Court in ***Nivaran Solutions, Goa and Ors v. Aura Thia Spa Services Pvt. Ltd***., 2016 SCC OnLine Bom 5062.

23. We must herein again note that the learned AG also made submissions on the limited scope of the jurisdiction vested in a Court to refuse the enforcement of a Foreign Award under Section 48 of the A&C Act, and how, according to him, the learned Single Judge has transgressed that scope of jurisdiction, especially placing reliance on the judgments of the Supreme Court in ***Vijay Karia & Ors. v. Prysmian Cavi e Sistemi SRL & Ors.,*** (2020) 11 SCC 1; ***Kandla Export*** (supra); ***Vedanta Limited*** (supra); ***LMJ International Limited*** (supra); ***Gemini Bay Transcription Pvt. Ltd. v. Integrated Sales Services Ltd. & Anr.,*** (2022) 1 SCC 753, and ***KK Velusamy v. N.Palanisamy,*** (2011) 11 SCC 275, however, as this would again require us to consider the appeal on merits, we shall be restraining ourselves from considering the same in *extenso,* except as far as is necessary to answer the question of maintainability of the present appeal.

ANALYSIS AND FINDINGS

24. We have considered the submissions made by the learned counsels for the parties.

25. At the outset, there can be no dispute to the proposition of law

urged by the learned senior counsel appearing for the respondents, that right to appeal is a creature of a statute and not an inherent right. There can also be no dispute to the proposition, that the A&C Act being a complete Code in itself, the right to appeal is confined only against the limited orders mentioned in Section 37 or Section 50 of the A&C Act, as the case may be. In this regard, we would only note the judgment of the Supreme Court in ***Kandla Export*** (supra), wherein Supreme Court observed as under:

> *"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.*
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> *16. So far, so good. However, it is Shri Giri's main argument that Section 50 of the Arbitration Act does not find any mention in the proviso to Section 13(1) of the Commercial Courts Act and, therefore, notwithstanding that an appeal would not lie under Section 50 of the Arbitration Act, it would lie under Section 13(1) of the Commercial Courts Act.*
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> *20. Given the judgment of this Court in Fuerst Day Lawson, 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 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 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.

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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.

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25. What is important to note is that it is Section 50 that provides for an appeal, and not the letters patent, given the subject-matter of appeal. Also, the appeal has to be adjudicated within the parameters of Section 50 alone. Concomitantly, where Section 50 excludes an appeal, no such appeal will lie."

26. In view of the above, it must be held that, in terms of Section 50(1)(b) of the A&C Act, an appeal shall lie only from an order refusing to enforce of a Foreign Award under Section 48 of the A&C Act.

27. Before we proceed further to examine whether the Impugned Order can be said to be one which has refused to enforce a Foreign Award under Section 48 of the A&C Act, we deem it appropriate to study the scheme of Chapter I of Part II to the A&C Act, which deals with the New York Convention Awards. The relevant provisions of the same are reproduced hereinunder:

> *"46. When foreign award binding.—Any foreign award which would be enforceable under this Chapter shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India and any references in this Chapter to enforcing a foreign award shall be construed as including references to relying on an award.*
>
> *47. Evidence.—(1) The party applying for the enforcement of a foreign award shall, at the time of the application, produce before the court—*
> *(a) the original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made;*
> *(b) the original agreement for arbitration or a duly certified copy thereof; and*
> *(c) such evidence as may be necessary to prove that the award is a foreign award.*
> *(2) If the award or agreement to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.*
> *Explanation.—In this section and in the*

sections following in this Chapter, "Court" means the High Court having original jurisdiction to decide the questions forming the subject-matter of the arbitral award if the same had been the subject-matter of a suit on its original civil jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from decrees of courts subordinate to such High Court.

48. Conditions for enforcement of foreign awards.—(1) Enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the court proof that—
(a) the parties to the agreement referred to in section 44 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
(b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
(c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:
Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be enforced; or
(d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

(2) Enforcement of an arbitral award may also be refused if the Court finds that—

(a) the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or

(b) the enforcement of the award would be contrary to the public policy of India.

Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(3) If an application for the setting aside or suspension of the award has been made to a competent authority referred to in clause (e) of sub-section (1) the Court may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

49. Enforcement of foreign awards.—Where the Court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of that Court.

> *50. Appealable orders.—(1) [Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the order refusing to—*
> *(a) refer the parties to arbitration under section 45;*
> *(b) enforce a foreign award under section 48,*
> *to the court authorised by law to hear appeals from such order.*
> *(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."*

28. Section 46 of the A&C Act states that any Foreign Award '*which would be enforceable under this Chapter*' shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India, and any references in the said Chapter to enforcing a Foreign Award shall be construed as including references to relying on an Award. Therefore, in terms of Section 46 of the A&C Act, a party can seek to rely on a Foreign Award in legal proceedings in India, without first seeking its formal enforcement in terms of Section 49 of the A&C Act.

29. Section 47 of the A&C Act gives the requisites of an application seeking enforcement of a Foreign Award.

30. Section 48 of the A&C Act gives the grounds on which the enforcement of a Foreign Award may be refused by the Court. It is in two parts; where sub-Section (1) provides for refusal to enforce the Award if the party '*furnishes to the court proof*' of any of the

circumstances mentioned in Clauses (a) to (e) thereof, while sub-Section (2) provides for the refusal of the Court to enforce the Award where it '*finds*' the existence of the circumstances mentioned in Clauses (a) and (b) thereof.

31. Section 49 of the A&C Act states that where the Court is satisfied that the Foreign Award is enforceable under Chapter I Part II of the A&C Act, the Award shall be deemed to be a decree of that Court.

32. A combined reading of the above provisions would show that Chapter I of Part II of the A&C Act provides a complete Code for the enforcement of a Foreign Award to which the New York Convention applies, starting from an application being made under Section 47 of the A&C Act for seeking enforcement, the Court considering the objections against its enforcement in Section 48 of the A&C Act, and if the Court finds that the Foreign Award is enforceable, Section 49 of the A&C Act providing that such Award shall be deemed to be a decree of that Court.

33. The Supreme Court in ***LMJ International Limited*** (supra), considering the above provisions, has held that the scheme of Section 48 of the A&C Act does not envisage piecemeal consideration of the issue of maintainability of the application seeking enforcement of the Foreign Award, in the first place, and then the issue of enforceability thereof. It held that keeping in mind the legislative intent of speedy disposal of arbitration proceedings and limited interference by the Courts, the Court is expected to consider both these aspects

simultaneously at the threshold. We quote from the judgment as under:-

> *"17. Be that as it may, the grounds urged by the petitioner in the earlier round regarding the maintainability of the execution case could not have been considered in isolation and dehors the issue of enforceability of the subject foreign awards. For, the same was intrinsically linked to the question of enforceability of the subject foreign awards. In any case, all contentions available to the petitioner in that regard could and ought to have been raised specifically and, if raised, could have been examined by the Court at that stage itself. We are of the considered opinion that the scheme of Section 48 of the Act does not envisage piecemeal consideration of the issue of maintainability of the execution case concerning the foreign awards, in the first place; and then the issue of enforceability thereof. Whereas, keeping in mind the legislative intent of speedy disposal of arbitration proceedings and limited interference by the courts, the Court is expected to consider both these aspects simultaneously at the threshold. Taking any other view would result in encouraging successive and multiple round of proceedings for the execution of foreign awards. We cannot countenance such a situation keeping in mind the avowed object of the Arbitration and Conciliation Act, 1996, in particular, while dealing with the enforcement of foreign awards. For, the scope of interference has been consciously constricted by the legislature in relation to the execution of foreign awards. Therefore, the subject application filed by the petitioner deserves to be rejected, being barred by constructive res judicata, as has been justly observed by the High Court in the impugned judgment."*

34. In ***Vedanta Limited*** (supra), the Supreme Court, examining the scheme of Sections 47 to 49 of the A&C Act, held as under:

> *"**83.The scheme of the 1996 Act for enforcement of New York Convention awards is as follows**:*
>
> ***83.1.** Part II Chapter 1 of the Arbitration and Conciliation Act, 1996 pertains to the enforcement of New York Convention awards. Under the 1996 Act, there is no requirement for the foreign award to be filed before the seat court, and obtain a decree thereon, after which it becomes enforceable as a foreign decree. This was referred to as the "double exequatur", which was a requirement under the Geneva Convention, 1927 and was done away with by the New York Convention, which superseded it. There is a paradigm shift under the 1996 Act. Under the 1996 Act, a party may apply for recognition and enforcement of a foreign award, after it is passed by the Arbitral Tribunal. The applicant is not required to obtain leave from the court of the seat in which, or under the laws of which, the award was made.*
>
> ***83.2.** Section 44 of the 1996 Act provides that a New York Convention award would be enforceable, if the award is with respect to a commercial dispute, covered by a written agreement in a State with which the Government of India has a reciprocal relationship, as notified in the Official Gazette.*
>
> ***83.3.** Section 46 provides that a foreign award which is enforceable under Chapter 1 of Part II of the 1996 Act, shall be treated as final and binding on the parties, and can be relied upon by way of defence, set off, or otherwise, in any legal proceeding in India.*

83.4. *Section 47 sets out the procedure for filing the petition for enforcement/execution of a foreign award. This section replicates Article IV(1) of the New York Convention which requires the applicant to file the authenticated copy of the original award, or a certified copy thereof, along with the original agreement referred to in Article II, or a certified copy thereof, at the time of filing the petition.*

83.5. *Section 47 provides that the application shall be filed along with the following evidence i.e.:*

1. the original award, or an authenticated copy, in accordance with the laws of the seat of arbitration;

2. the original arbitration agreement, or certified copy thereof;

3. such evidence, as may be necessary to prove that the award is a foreign award.

83.6. *In PEC Ltd. v. Austbulk Shipping Sdn. Bhd., this Court held that even though Section 47 provides that the award-holder "shall" produce such evidence along with the application for enforcement of a foreign award, this being a procedural requirement, a pragmatic, flexible and non-formalist approach must be taken. The non-production of documents at the initial stage, should not entail a dismissal of the application for enforcement. The party may be permitted to produce the evidence during the course of the proceedings, to enable the court to decide the enforcement petition. It was observed that excessive formalism in the matter of enforcement of foreign awards must be deprecated.*

83.7. *The award-holder is entitled to apply for recognition and enforcement of the foreign*

award by way of a common petition. In Fuerst Day Lawson Ltd. v. Jindal Exports Ltd. this Court held that a proceeding seeking recognition and enforcement of a foreign award has different stages: in the first stage, the Court would decide about the enforceability of the award having regard to the requirements of Sections 47 and 48 of the 1996 Act. Once the enforceability of the foreign award is decided, it would proceed to take further effective steps for the execution of the award. The relevant extract from the judgment reads as: (SCC pp. 371-72, para 31)

"31. Prior to the enforcement of the Act, the law of arbitration in this country was substantially contained in three enactments, namely, (1) the Arbitration Act, 1940, (2) the Arbitration (Protocol and Convention) Act, 1937, and (3) the Foreign Awards (Recognition and Enforcement) Act, 1961. A party holding a foreign award was required to take recourse to these enactments. The Preamble of the Act makes it abundantly clear that it aims at consolidating and amending Indian laws relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards. The object of the Act is to minimise supervisory role of the court and to give speedy justice. In this view, the stage of approaching the court for making the award a rule of court as required in the Arbitration Act, 1940 is dispensed with in the present Act. If the argument of the respondent is accepted, one of the objects of the Act will be frustrated and defeated. Under the old Act, after making award and prior to execution, there was a procedure for filing and making an award a rule of court i.e. a decree. Since the object of the Act is to provide speedy and alternative solution of the dispute, the same procedure cannot be insisted under the new Act when it is advisedly eliminated. If separate proceedings

are to be taken, one for deciding the enforceability of a foreign award and the other thereafter for execution, it would only contribute to protracting the litigation and adding to the sufferings of a litigant in terms of money, time and energy. Avoiding such difficulties is one of the objects of the Act as can be gathered from the scheme of the Act and particularly looking to the provisions contained in Sections 46 to 49 in relation to enforcement of foreign award. In para 40 of Thyssen judgment already extracted above, it is stated that as a matter of fact, there is not much difference between the provisions of the 1961 Act and the Act in the matter of enforcement of foreign award. The only difference as found is that while under the Foreign Awards Act a decree follows, under the new Act the foreign award is already stamped as the decree. Thus, in our view, a party holding foreign award can apply for enforcement of it but the court before taking further effective steps for the execution of the award has to proceed in accordance with Sections 47 to 49. In one proceeding there may be different stages. In the first stage the court may have to decide about the enforceability of the award having regard to the requirement of the said provisions. Once the court decides that foreign award is enforceable, it can proceed to take further effective steps for execution of the same. There arises no question of making foreign award as a rule of court/decree again. If the object and purpose can be served in the same proceedings, in our view, there is no need to take two separate proceedings resulting in multiplicity of litigation. It is also clear from the objectives contained in para 4 of the Statement of Objects and Reasons, Sections 47 to 49 and the scheme of the Act that every final arbitral award is to be enforced as if it were a decree of the court. The submission that the execution petition

could not be permitted to convert as an application under Section 47 is technical and is of no consequence in the view we have taken. In our opinion, for enforcement of a foreign award there is no need to take separate proceedings, one for deciding the enforceability of the award to make it a rule of the court or decree and the other to take up execution thereafter. In one proceeding, as already stated above, the court enforcing a foreign award can deal with the entire matter. Even otherwise, this procedure does not prejudice a party in the light of what is stated in para 40 of Thyssen judgment."

(emphasis supplied)

83.8. *In a recent judgment rendered in LMJ International Ltd. v. Sleepwell Industries Co. Ltd. [LMJ International Ltd. v. Sleepwell Industries Co. Ltd., (2019) 5 SCC 302], this Court held that given the legislative intent of expeditious disposal of arbitration proceedings, and limited interference of the courts, the maintainability of the enforcement petition, and the adjudication of the objections filed, are required to be decided in a common proceeding.*

83.9. *The enforcement/execution petition is required to be filed before the High Court concerned, as per the amendment to Section 47 by Act 3 of 2016 (which came into force on 23-10-2015). The Explanation to Section 47 has been amended, which now reads as:*

*"**47. Evidence**.—(1)-(2) * * **

Explanation.—In this section and in the sections following in this Chapter, "Court" means the High Court having original jurisdiction to decide the questions forming the subject-matter of the arbitral award if the same had been the subject-matter of a suit on

its original civil jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from decrees of courts subordinate to such High Court."

(emphasis supplied)

83.10. *Section 48 replicates Article V of the New York Convention, and sets out the limited conditions on which the enforcement of a foreign award may be refused. Sub-sections (1) and (2) of Section 48 contain seven grounds for refusal to enforce a foreign award. Sub-section (1) contains five grounds which may be raised by the losing party for refusal of enforcement of the foreign award, while sub-section (2) contains two grounds which the court may ex officio invoke to refuse enforcement of the award, i.e. non-arbitrability of the subject-matter of the dispute under the laws of India; and second, the award is in conflict with the public policy of India.*

83.11.The enforcement court cannot set aside a foreign award*, even if the conditions under Section 48 are made out. The power to set aside a foreign award vests only with the court at the seat of arbitration, since the supervisory or primary jurisdiction is exercised by the curial courts at the seat of arbitration. The enforcement court may "refuse" enforcement of a foreign award, if the conditions contained in Section 48 are made out. This would be evident from the language of the section itself, which provides that enforcement of a foreign award may be "refused" only if the applicant furnishes proof of any of the conditions contained in Section 48 of the Act.*

83.12. *The opening words of Section 48 use permissive, rather than mandatory language, that enforcement "may be" refused.*

The use of the words "may be" indicate that even if the party against whom the award is passed, proves the existence of one or more grounds for refusal of enforcement, the court would retain a residual discretion to overrule the objections, if it finds that overall justice has been done between the parties, and may direct the enforcement of the award. This is generally done where the ground for refusal concerns a minor violation of the procedural rules applicable to the arbitration, or if the ground for refusal was not raised in the arbitration. A court may also take the view that the violation is not such as to prevent enforcement of the award in international relations.

83.13. *The grounds for refusing enforcement of foreign awards contained in Section 48 are exhaustive, which is evident from the language of the section, which provides that enforcement may be refused "only if" the applicant furnishes proof of any of the conditions contained in that provision.*

83.14. *The enforcement court is not to correct the errors in the award under Section 48, or undertake a review on the merits of the award, but is conferred with the limited power to "refuse" enforcement, if the grounds are made out.*

83.15. *If the Court is satisfied that the application under Section 48 is without merit, and the foreign award is found to be enforceable, then under Section 49, the award shall be deemed to be a decree of "that Court". The limited purpose of the legal fiction is for the purpose of the enforcement of the foreign award. The High Court concerned would then enforce the award by taking recourse to the provisions of Order 21 CPC."*

35. Applying the above principles to the facts of the present case, we now have to determine whether the Impugned Order can be said to be an order refusing to enforce the Foreign Award under Section 48 of the A&C Act.

36. We have already quoted hereinabove the relevant findings of the learned Single Judge. To summarise again, the learned Single Judge has held that even a declaratory Award can be enforced under the A&C Act, so long as it is practically enforceable and the declarations are sufficiently explicit as to require a mere application of the principles declared to the accepted facts and figures and an application of mere arithmetic to arrive at a liability. The learned Single Judge, however, did not find the FPA 2016 to be meeting such a standard. The learned Single Judge, in fact, invokes Section 48(2)(b)(ii) of the A&C Act to hold that in judicial exercise of its powers, the Foreign Award cannot be enforced. Only to re-emphasise the said finding of the learned Single Judge, we again quote the relevant finding of the learned Single Judge as under:

> *"66. In the present case, can it be said that, in the teeth of the views expressed by the learned AT itself, and the fact that the prayer of the respondent for third CRL increase, as was permissible under Article Article 13.1.4 (c) of the PSCs, was still pending before the learned AT after it had already been increased twice after the passing of the 2016 FPA, execution of the 2016 FPA as the petitioner seeks would be "adopting of a judicial approach", or in compliance with the principles of natural justice?*

> *67. With respect, I should think not.*
>
> *68. As, even applying the limited grounds envisaged in Section 48 of the 1996 Act in which a Court could refuse to execute an arbitral award, the 2016 FPA is found by me to be unexecutable, I do not feel that, in adopting the said view, I am in breach of the principles enunciated in Vijay Karia. Vijay Karia, in fact, envisages failure, on the part of the Arbitral Tribunal, to decide on the issues which arose for consideration before it as a legitimate ground on which the executing court could, under Section 48(2)(b), refuse to execute the award. Mutatis mutandis, I would hold, the 2016 FPA cannot be enforced where one of the issues - of determination of the CRL to be applied - was still under seisin before the learned AT which had yet to pronounce thereon."*

37. Therefore, the refusal to enforce the FPA 2016 by the learned Single Judge, is under Section 48 of the A&C Act, which is appealable under Section 50(1)(b) of the Act.

38. The reliance of Mr.Salve, the learned senior counsel appearing for the respondents, on the judgments of the Supreme Court in ***Hindustan Copper Limited*** (supra) and/or in ***BGS SGS Soma JV*** (supra) cannot be accepted, as therein, the application under Section 34 of the A&C Act had been rejected not on the grounds set out in Section 34 of the A&C Act but on the issue of maintainability of the application before the Court where it was made. This is not so in the present case.

39. On the other hand, the learned AG, in our view, has rightly relied upon the judgment of the Supreme Court in ***Chintels India***

Limited (supra), wherein the application filed under Section 34 of the A&C Act had been dismissed on the ground of delay. The Court held that under Section 37(1)(c) of the A&C Act, appeal is provided against an order refusing to set aside an arbitral Award under Section 34 of the Act and not any particular sub-Section thereof, particularly Section 34(2) of the Act. We quote from the judgment as under:

> *"**11.** A reading of Section 34(1) would make it clear that an application made to set aside an award has to be in accordance with both sub-sections (2) and (3). This would mean that such application would not only have to be within the limitation period prescribed by sub-section (3), but would then have to set out grounds under sub-sections (2) and/or (2-A) for setting aside such award. What follows from this is that the application itself must be within time, and if not within a period of three months, must be accompanied with an application for condonation of delay, provided it is within a further period of 30 days, this Court having made it clear that Section 5 of the Limitation Act, 1963 does not apply and that any delay beyond 120 days cannot be condoned — see State of H.P. v. Himachal Techno Engineers at para 5.*
>
> ***12.** We now come to Section 37(1)(c). It is important to note that the expression "setting aside or refusing to set aside an arbitral award" does not stand by itself. The expression has to be read with the expression that follows— "under Section 34". Section 34 is not limited to grounds being made out under Section 34(2). Obviously, therefore, a literal reading of the provision would show that a refusal to set aside an arbitral award as delay has not been condoned under sub-section (3) of Section 34 would certainly fall within*

Section 37(1)(c). The aforesaid reasoning is strengthened by the fact that under Section 37(2)(a), an appeal lies when a plea referred to in sub-section (2) or (3) of Section 16 is accepted. This would show that the legislature, when it wished to refer to part of a section, as opposed to the entire section, did so. Contrasted with the language of Section 37(1)(c), where the expression "under Section 34" refers to the entire section and not to Section 34(2) only, the fact that an arbitral award can be refused to be set aside for refusal to condone delay under Section 34(3) gets further strengthened.

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23. *In point of fact, the "effect doctrine" referred to in Essar Constructions is statutorily inbuilt in Section 37 of the Arbitration Act, 1996 itself. For this purpose, it is necessary to refer to Sections 37(1)(a) and 37(2)(a). So far as Section 37(1)(a) is concerned, where a party is referred to arbitration under Section 8, no appeal lies. This is for the reason that the effect of such order is that the parties must go to arbitration, it being left to the learned arbitrator to decide preliminary points under Section 16 of the Act, which then become the subject-matter of appeal under Section 37(2)(a) or the subject-matter of grounds to set aside under Section 34 an arbitral award ultimately made, depending upon whether the preliminary points are accepted or rejected by the arbitrator. It is also important to note that an order refusing to refer parties to arbitration under Section 8 may be made on a prima facie finding that no valid arbitration agreement exists, or on the ground that the original arbitration agreement, or a duly certified copy thereof is not annexed to the application under Section 8. In either case i.e. whether the preliminary ground for moving the court under Section 8 is not made out either by not*

annexing the original arbitration agreement, or a duly certified copy, or on merits — the court finding that prima facie no valid agreement exists — an appeal lies under Section 37(1)(a).

24. *Likewise, under Section 37(2)(a), where a preliminary ground of the arbitrator not having the jurisdiction to continue with the proceedings is made out, an appeal lies under the said provision, as such determination is final in nature as it brings the arbitral proceedings to an end. However, if the converse is held by the learned arbitrator, then as the proceedings before the arbitrator are then to carry on, and the aforesaid decision on the preliminary ground is amenable to challenge under Section 34 after the award is made, no appeal is provided. This is made clear by Sections 16(5) and (6) of the Arbitration Act, 1996 which read as follows:*

*"**16. Competence of Arbitral Tribunal to rule on its jurisdiction.**—(1)-(4)*

* * *

(5) The Arbitral Tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the Arbitral Tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with Section 34."

25. *Given the fact that the "effect doctrine" is part and parcel of the statutory provision for appeal under Section 37, and the express language of Section 37(1)(c), it is difficult to accede to the argument of Shri Rohatgi."*

40. The learned senior counsel for the respondents has placed reliance on the grounds urged by the appellant in support of the present appeal as also in its rejoinder to submit that it is the own case of the appellant that the Impugned Order cannot be said to be based on any of the grounds under Section 48 of the A&C Act. In our view, though it is the case of the appellant that the Impugned Order is liable to be set aside as it travels beyond the ambit and scope of Section 48 of the A&C Act and the grounds on which the enforcement of a Foreign Award can be refused thereunder, this would be an issue to be determined on merits of the appeal. These grounds cannot be urged to contend that the appeal itself will not be maintainable. To hold otherwise would mean that the appellant must, in fact, concede that the grounds on which the enforcement has been refused by the Court fall within the ambit and scope of Section 48 of the A&C Act and, in such event, there cannot be any meaning of the appeal at all and the challenge to an order refusing to enforce the Foreign Award will get highly restricted. The same cannot be the intent of the legislature.

41. It is the cardinal principle of statutory interpretation that the words of the legislature must be constructed in their natural meaning, without adding or subtracting therefrom. Applying the above test, the words of Section 50(1)(b) of the A&C Act provide for an appeal against the order of a court refusing to enforce a Foreign Award under Section 48 of the A&C Act, which is the case in hand. Therefore, the present appeal is maintainable.

42. Keeping in view the above, we do not find any merit in the

preliminary objection of the respondents to the maintainability of the present appeal. The objection is, accordingly, rejected.

43. As the appeal is now to be heard on merits, subject to orders of Hon'ble the Chief Justice, list the same before the Roster Bench on 17th February, 2026.

NAVIN CHAWLA, J

MADHU JAIN, J

FEBRUARY 2, 2026/Arya/ns/vs/ik