IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:19.05.2025

\+ **CM(M) 53/2025 & CM APPL. 1854/2025**

LATA YADAV ..... Petitioner

versus

SHIVAKRITI AGRO PVT. LTD & ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Akhil Sibal, Sr. Adv. with Mr. Gyanendra Shukla, Mr. Krishnesh Bapal & Ms. Jahnavi Sindhu, Advs.

For the Respondent : Mr. Samir Malik (through VC), Ms. Bani Dikshit, Mr. Dhruva Vig & Mr. Uddhav Khanna, Advs. for R1
Mr. Yashvardhan & Mr. Pranav Das, Advs. for R2

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition has been filed under Article 227 of the Constitution of India challenging the order dated 20.11.2024 (hereafter '**impugned order**') passed by the learned Arbitrator.

2. By the impugned order, the learned Arbitrator rejected the application under Section 16(3) read with Section 32(2)(c) of the Arbitration and Conciliation Act, 1996 ('**Act**'), preferred by the petitioner, seeking termination of the arbitral proceedings on the ground that the disputes are non-arbitrable for the reason that the contract entered into between the parties was *void ab initio,* and that the assets which are subject matter of the proceedings have been provisionally attached by the Enforcement Directorate under Section 5 of the Prevention of Money Laundering Act, 2002 ('**PMLA**').

3. The brief facts of the case are as follows:

3.1. The petitioner and Respondent No.2 are the partners of Respondent No.4 LLP. It is the case of Respondent No.1 (claimant before the learned Arbitrator) that Corporate Insolvency Resolution Proceedings pertaining to Respondent No.3, which was principally engaged in the milling, branding and marketing of rice having plants in two locations–Amritsar and Bahalgarh, was pending before the learned National Company Law Tribunal. Respondent No.1 was also engaged in the milling, processing, trading and exporting of rice. An agreement had been entered into between Respondent No.1 and Respondent No.3 whereunder Respondent No.3 agreed to make available part of its processing facilities as well as storage facilities at Bahalgarh on job work basis to Respondent No.1. Under a similar agreement, Respondent No.1 was also put in possession and permitted use of the Amritsar Facility.

3.2. Respondent No.4 LLP participated in the said insolvency proceedings and filed a resolution plan. The same was approved on 12.09.2020, whereafter, to discharge its obligations under the resolution plan, Respondent No.4 along with its partners, including the petitioner, approached Respondent No.1 seeking financial assistance. In pursuance to the same, a Facility Agreement dated 30.09.2019 (hereafter '**Facility Agreement**') was executed between the parties whereunder financial assistance of ₹130 crores was extended to Respondent No.4 LLP, for the purpose of making payments to the creditors of Respondent No.3. It is claimed that the amount was extended as Respondent No.1 already being in possession and use of the Bahalgarh and Amritsar Units, was desirous of purchasing the same.

3.3. Subsequently, a further amount of ₹16 crores was extended to Respondent No.4 LLP. The entire shareholding of Respondent No.3 stood transferred to Respondent No.4 LLP. It is claimed by Respondent No.1 that the respondents had breached their obligations by attempting to create charge/ encumbrance in violation of several clauses of the Facility Agreement after having already benefited from the huge financial assistance extended by Respondent No.1.

3.4. Respondent No.1 invoked the arbitration clause contained in the alleged Facility Agreement and filed an application under Section 11 of the Act. In pursuance thereof, the learned Arbitrator was appointed by another Bench of this Court on 09.12.2021. The argument in

relation to non-existence of the arbitration agreement was agitated in the said proceedings, however, it was noted that the parties will be at liberty to raise all arguments, including in relation to existence of the arbitration agreement before the learned Tribunal.

3.5. The statement of claim as well as the statement of defence cum counter claim was filed before the learned Sole Arbitrator. The pleadings were completed, issues were framed and evidence affidavits were filed by the parties.

3.6. When the arbitral proceedings were in the middle of cross-examination of Respondent No.2, the representatives of the Respondent No.1 including Mr. Paramjeet (CW-2) and Mr. Rakesh Gulati (CW-1) as well as Respondent No.2 were arrested by ED. A provisional attachment order dated 26.08.2024 was also passed in respect of the Bahalgarh and Amritsar units, which are the subject matter of the Facilitation Agreement and the arbitral proceedings.

3.7. In view of the same, the petitioner and Respondent No.4 filed an application under Section 16 read with Section 32(2)(c) of the Act seeking *inter alia* termination of the arbitral proceedings.

3.8. By the impugned order, the learned Arbitrator dismissed the aforesaid application.

Submissions

4. The learned Senior Counsel for the petitioner at the outset submitted that the instant writ petition against the impugned order is

maintainable. He submitted that this Court in ***Surender Kumar Singhal v. Arun Kumar Bhalotia*** **: 2021 SCC OnLine Del 3708** had noted that an arbitral tribunal is one against which a petition under Article 227 of the Constitution of India would be maintainable, and that the *non-obstante* clause in Section 5 of the Act would not be applicable in respect of the exercise of powers under Article 227 of the Constitution of India.

5. He submitted that since the facility agreement is vitiated by fraud and the same is the subject matter of proceedings by the CBI and under the PMLA, the arbitral proceedings are liable to be terminated under Section 16 read with Section 32(2)(c) of the Act. He submitted that in the provisional attachment order dated 26.08.2024 the ED alleged that the monies advanced by Respondent No. 1 under the Facility Agreement are proceeds of crime, and that the Facility Agreement is a sham instrument entered collusively to enable the ex-promoters of M/s. Sunstar Overseas Ltd. to illegally retain indirect control of the said company. He consequently submitted that the assets of M/s/ Sunstar Overseas Ltd. which are the subject matter of the Facility Agreement and the subject arbitration have been provisionally attached. He further submitted that the allegations are elaborated in the prosecution complaint of which cognizance has been taken and the accused persons have been summoned.

6. He submitted that evidently Respondent No. 1 is seeking various reliefs in the arbitration for enforcement of the said Facility

Agreement including specific performance and control over the assets of Sunstar. He submitted that in the event that the allegations under the provisional attachment order and the prosecution complaint are found to be correct, the Facility Agreement would be rendered void and unenforceable under Section 23 of the Indian Contract Act, 1872.

7. He consequently submitted that the question of validity/fraud/illegality of the facility agreement is not a purely contractual dispute in order for it to be left to be decided in a private arbitration. He submitted that the dispute has implications for third parties – in this case banks and the ex-promoters of Sunstar. He submitted that the allegations of fraud are serious in nature, and the fraud alleged permeated over the entire contract. He relied upon the decision of the Hon'ble Apex Court in ***N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd.*** **: (2021) 4 SCC 379** and ***Vidya Drolia v. Durga Trading Corpn.*** **: (2021) 2 SCC 1** to contend that the dispute which are criminal offences of a public nature cannot be referred to arbitration. He submitted that in terms of Section 41 of the PMLA, no Civil Court or other authority has any jurisdiction to entertain any suit or proceeding in respect of any action to be taken by the designated authority in pursuance of any power conferred under the PMLA.

8. He submitted that the earlier applications filed by the petitioner under Sections 9 and 11 of the Act had been decided in view of the power of the tribunal to rule on its own the issues pertaining to the validity of the agreement and the jurisdiction of the tribunal.

9. He further submitted that the maintainability of the second application before the learned Tribunal under Section 16(3) of the Act which led to the passing of the impugned order has been sought to be challenged by the respondents by placing reliance on an earlier application filed by the petitioner under Section 16 of the Act and the order passed therein. He submitted that while the earlier Section 16 application raised grounds regarding the validity and existence of the arbitration agreement, the said application did not raise any ground of non-arbitrability on the basis of the pending CBI/PMLA proceedings.

10. He submitted that the earlier application invited the learned Tribunal to decide on the validity and subsistence of the arbitration agreement and defer further proceedings till such determination. He submitted that considering that the issues raised by the petitioner required a consideration of facts and law, the learned Tribunal on 08.11.2022 deferred consideration of the application until after the evidence had been led. He submitted that on the contrary, the present/second application has been filed under Section 16 read with Section 32(2)(c) seeking termination of the proceedings on the ground of pending CBI/PMLA proceedings.

11. *Per contra,* the learned counsel for the respondent submitted that the instant writ petition is liable to be dismissed at the outset on the ground of maintainability. He submitted that the threshold to entertain a petition under Article 227 of the Constitution of India against interlocutory orders passed by the Arbitral Tribunal is high,

and the writ petition must pass the twin test of disclosing an exceptional circumstance and the perversity complained must be conspicuous on the face of it. He submitted that the requisites of the twin test have not been met in the present case.

12. He submitted that the second application preferred by the applicant under Section 16 of the Act only reflects a persistent effort on the part of the petitioner to stall the arbitration proceedings. He submitted that the learned Arbitrator by order dated 08.11.2022 had directed that the first application under Section 16 of the Act be decided after the parties led their evidence since the same involved mixed questions of facts and law. He submitted that the order dated 08.11.2022 had not been challenged and had consequently attained finality. He submitted that the second application under Section 16(3) of the Act essentially seeks to raise the same issue as to whether post the passing of the provisional attachment order, the jurisdiction of the arbitral tribunal is ousted.

13. He submitted that a perusal of the prayers raised in the Statement of Claim and the points of determination as finalised by the arbitral tribunal by order dated 08.11.2022, would manifest that the moot question that arises for the consideration of the arbitral tribunal is whether any valid facility agreement existed between the parties. He submitted that the arbitral tribunal is not prevented from examining such question including the issue of fraud. He submits that even if this Court finds that there exists an overlap in the events underlying

proceedings under the PMLA and that before the Arbitral Tribunal, the issues involved in both the proceedings are distinct and pertain to different statutory domain.

14. He submitted that the provisional attachment order is merely a provisional order under Section 5(1) of the PMLA awaiting confirmation from the competent authorities. He submitted that such an order cannot be treated as conclusive and binding in respect of issues recorded therein and cannot lead to closure of any proceedings.

15. He submitted that Section 41 of the PMLA ousted the jurisdiction of Civil Courts only in matters within the exclusive domain of the Appellate Tribunal under Chapter VI. He submitted that there existed no provision under the PMLA that ousted the jurisdiction of an arbitral tribunal from entertaining purely contractual disputes even if there were simultaneous criminal proceedings pending under Chapter VII. He relied upon the decision of the Hon'ble Apex Court in ***Swiss Timing Ltd. v. Commonwealth Games 2010 Organising Committee*** **: (2014) 6 SCC 677** and submitted that mere allegation of fraudulent execution of contract does not preclude the reference of underlying contractual disputes to arbitral proceedings between private parties.

16. He submitted that the arbitration proceedings and proceedings under the PMLA operate in different spheres and one proceeding does not have the effect of ousting the jurisdiction of the other. He

consequently submitted that no case for termination of proceedings as warranted under Section 32(2)(c) of the Act is not made out.

17. He submitted that the arbitral tribunal is empowered to decide even questions relating to whether the facility agreement is vitiated by fraud or not. He submitted that Respondent No. 1 had earlier filed a complaint before EOW, Mumbai (later transferred to EOW, Delhi) alleging fraud and cheating by the petitioner, her husband and Umaiza Infracon LLP. He submitted that the EOW after conducting a proper inquiry wherein Ajay Yadav was also summoned, had closed the complaint *vide* letter dated 24.11.2022 thereby observing that the allegations were civil in nature and no cognizable offence had been made out. He submitted that the present petition has only been filed to stall the arbitration proceedings and submitted that the same be dismissed.

Analysis

18. The petitioner has sought to challenge the impugned order by invoking the jurisdiction of this Court under Article 227 of the Constitution of India. In doing so, the petitioner has relied upon the decision of this Court in ***Surender Kumar Singhal v. Arun Kumar Bhalotia*** (*supra*) to contend that a petition under Article 227 of the Constitution of India would be maintainable against the orders passed by an arbitral tribunal, and that the *non-obstante* clause in Section 5 of the Act would not be applicable in respect of the exercise of powers by High Court under Article 227 of the Constitution of India.

19. It is pertinent to note that the scope of interference while exercising jurisdiction under Article 227 of the Constitution of India is extremely circumspect. While the Court in exercise of jurisdiction under Article 227 of the Constitution of India is not precluded from entertaining challenges to orders passed in arbitral proceedings, the scope of interference is limited to only exceptional circumstances where perversity is conspicuous on the face of it. While delineating the scope of interference under Article 227, the Hon'ble Apex Court in ***Deep Industries Ltd. v. ONGC*** **: (2020) 15 SCC 706** observed as hereunder:

> *"17. This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us hereinabove so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction."*

20. Upon a consideration of the facts and circumstances of the present case, this Court is of the opinion that no ground is made out to warrant interference against the impugned order.

21. The petitioner is aggrieved by the rejection of the application filed by the petitioner under Section 16(3) read with Section 32(2)(c)

of the Act. Before delving into the correctness of the impugned order, it is firstly pertinent to highlight the scope of Section 16 and Section 32 of the Act. Section 16 of the Act empowers the arbitral tribunal to rule on its own jurisdiction so as to decide whether the tribunal is competent to preside over a particular dispute referred to it or not. Section 16(3) of the Act, in turn, provides that a plea that the tribunal is exceeding the scope of its authority ought to be raised as soon as the matter alleged to be beyond the scope of the authority is raised during the proceedings. Further, Section 32 of the Act outlines the circumstances in which the arbitral proceedings can be terminated. In that regard, Section 32(2)(c) of the Act provides that in the event that the arbitral tribunal finds that the continuation of the proceedings has become unnecessary or impossible, then the arbitral proceedings can be terminated.

22. It is the case of the petitioner that the facility agreement is marred with serious allegations of fraud thereby making the disputes between the parties non-arbitrable.

23. It is pertinent to note that merely alleging fraud does not translate to the disputes between the parties being non-arbitrable. The Hon'ble Apex Court in the case of ***A. Ayyasamy v. A. Paramasivam* : (2016) 10 SCC 386** had distinguished between simple and serious allegations of fraud and had noted that while serious allegations of fraud would be non-arbitrable, allegations of fraud *simpliciter* would not make the dispute non-arbitrable. Further, while delineating the

scope of serious as opposed to simple allegations of fraud, the Hon'ble Apex Court in the case of ***Rashid Raza v. Sadaf Akhtar* : (2019) 8 SCC 710**, after considering the decision in the case of ***A. Ayyasamy v. A. Paramasivam*** (*supra*), had observed as hereunder:

> *"4. The principles of law laid down in this appeal make a distinction between serious allegations of forgery/fabrication in support of the plea of fraud as opposed to "simple allegations". **Two working tests laid down in para 25 are: (1) does this plea permeate the entire contract and above all, the agreement of arbitration, rendering it void, or (2) whether the allegations of fraud touch upon the internal affairs of the parties inter se having no implication in the public domain."***
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> (emphasis supplied)

24. Subsequently, in the case of ***Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd.* : (2021) 4 SCC 713**, the Hon'ble Apex Court while specifying the tests for "*serious allegations of fraud*" had observed as under:

> *"35. After these judgments, it is clear that "serious allegations of fraud" arise only if either of the two tests laid down are satisfied, and not otherwise. **The first test is satisfied only when it can be said that the arbitration clause or agreement itself cannot be said to exist in a clear case in which the court finds that the party against whom breach is alleged cannot be said to have entered into the agreement relating to arbitration at all. The second test can be said to have been met in cases in which allegations are made against the State or its instrumentalities of arbitrary, fraudulent, or mala fide conduct, thus necessitating the hearing of the case by a writ court in which questions are raised which are not predominantly questions arising from the contract itself or breach thereof, but questions arising in the public law domain."***

25. The same had been reiterated by the Hon'ble Apex Court in the case of ***Vidya Drolia v. Durga Trading Corpn.* : (2021) 2 SCC 1**.

26. It is also pertinent to note that this Court in the case of ***Avantha Holdings Ltd. v. CG Power & Industrial Solutions Ltd.* : (2021) 4 HCC (Del) 267**, while in receipt of an application under Section 11 of the Act, had noted that mere allegations of fraud do not *ipso facto* mean that the disputes between the parties are non-arbitrable unless the Court comes to a conclusion that the arbitration agreement itself is void. Relevant paragraphs of the said judgment read as under:

> *81. The decision of the Supreme Court in N.N. Global Mercantile (P) Ltd. case [N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd.(2021) 4 SCC 379 : (2021) 2 SCC (Civ) 555] has put the aforesaid issue to rest. The court has clearly held that it is only in such cases "where the court come to a conclusion that the contract is void without receiving any evidence, it may be justified in declining the reference to arbitration in a few isolated cases".*
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> *82. In the facts of the present case, there is no dispute that the respondent had entered into the agreement that includes the arbitration clause. The dispute, essentially, is whether the said agreement is invalid as being part of the fraudulent exercise by the promoters of the respondent to siphon funds from the respondent Company. The dispute whether the consent is vitiated on account of fraud, as defined under Section 17 of the Contract Act, 1872, and the agreement is voidable under Section 19 of the said Act, is clearly a matter that can be referred to arbitration. The said issue is no longer res integra in view of the decision of the Supreme Court in N.N. Global Mercantile (P) Ltd. case [N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd.(2021) 4 SCC 379 : (2021) 2 SCC (Civ) 555].*
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> *83. As noted above, an agreement, which is invalid on account of fraud, would undoubtedly have a bearing on the question of arbitrability of the disputes. If the arbitration agreement is invalid, it is obvious that recourse to arbitration would not be available for*

> *deciding any dispute. However, unless the court finally concludes that the arbitration agreement is invalid, it would not be apposite to deny the request to arbitration. As highlighted in the Law Commission's 246 Report, a reference by any judicial authority is required to be made to arbitration if prima facie an arbitration agreement exists. However, the conclusion that an arbitration agreement does not exist would be conclusive and not prima facie. The Supreme Court also clearly held that where the summary consideration in a summary proceeding would be insufficient and inconclusive, the parties are required to be referred to arbitration. Unless the court gives a conclusion that ex facie the arbitration agreement is non-existent, invalid or the disputes are not arbitrable, the parties would be referred to arbitration See : para 154.4 of the decision in Vidya Drolia case [Vidya Drolia v. Durga Trading Corpn.(2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] .*

27. In the present case, the plea taken by the petitioner is essentially that since ED alleged that the monies advanced by Respondent No. 1 under the facility agreement are proceeds of crime and that the Facility Agreement itself is a sham instrument, the Facility Agreement is vitiated by fraud being subject matter of proceedings by CBI and ED. It is contended that the assets of Respondent No.3, which form the subject matter of the Facility Agreement, were provisionally attached, the same renders the dispute non-arbitrable since certain reliefs being sought in the arbitration include specific performance and control over the assets of Respondent No.3. Consequently, it is contended that the arbitral proceedings are liable to be terminated under Section 16 read with Section 32(2)(c) of the Act.

28. In the impugned order, the learned Sole Arbitrator has taken note of the substantive pleas contested by the petitioner in the statement of claim to ascertain the overlapping of subject issues in the arbitral proceedings as well as under PMLA. The learned Tribunal

also took note of the relevant points that had been coined for determination on 08.11.2022. The said issues are as under:

> *i) Whether there is an Arbitration Agreement between Shivakriti Agro Pvt. Ltd., Umaiza Infracon LLP and Ms. Lata Yadav?*
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> *ii) Whether Respondent No. 4 is a necessary and/ or proper Party in these proceedings?*
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> *iii) Whether there is a valid, subsisting and binding Facility Agreement dated 30.09.2019 between the Parties to these proceedings? If yes, whether the Claimant is entitled to specific performance thereof?*
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> *iv) Whether the Claimant is entitled to the Claims, other than the Claim covered by Point (iii) above, raised in the Statement of Claims?*

29. Pursuant to the same, the learned Sole Arbitrator observed that while it did not have the jurisdiction to adjudicate upon issues relating to whether offences under PMLA are made out, however, the basic question before the learned Sole Arbitrator is whether any valid Facility Agreement existed between the parties. It was noted that the provisional order of attachment was subject to confirmation by competent authorities and any such order could even otherwise not lead to closure of arbitral proceedings. Relevant portion of the impugned order reads as under:

> *27. There cannot be any quarrel with the proposition, as is sought to be canvassed in the present Application, that this Tribunal does not have jurisdiction to adjudicate upon any issue relating to the question as to whether the provisions of the PMLA are attracted on the facts of the present case and an offence of Money Laundering, as envisaged under the PMLA, has been made out or not, or the assets, which are stated to be subject matter of the Facility*

Agreement in question, have been acquired out of any proceeds of crime. Such questions would, undoubtedly, be within the exclusive domain of the Authorities empowered under the PMLA. However, as the afore-extracted prayers in the Statement of Claims and points for determination would show, the basic and the moot question that would require adjudication by the Tribunal is as to whether any valid Facility Agreement exists between the Parties. It may be true that, as highlighted by the Ld. Counsel appearing for the Applicants / Respondents No. 1 & 3, that in the PoA, there is a reference to some of the assets, in respect of which, the aforenoted declarations have also been sought in the Arbitral Proceedings, but the Tribunal is of the view that a mere reference to such assets would not preclude it from examining the question about the existence of a valid Facility Agreement between the Parties, which obviously would include the plea of fraud raised by all the Respondents including the Applicants. Evidently, this is purely contractual dispute between the Parties, which, pertinently, may even be beyond the remit of the Authorities empowered under the PMLA. Thus, the issue that may be pending before the Authorities under the PMLA and what is pending before the present Arbitral Tribunal may arise out of certain common events, which may be overlapping but the issues before the Fora under the two statutes, would definitely operate in different spheres of adjudication, thereon. For that very reason, in the opinion of the Tribunal, even a final and conclusive finding in the proceedings under the PMLA shall, at best, be of persuasive value in the adjudication before the Arbitral Tribunal and vice versa, and nothing more.

28. What can also not be lost sight of is the fact that the Po A dated 26.08.2024, cited as the main reason for seeking termination of the present Arbitral Proceedings, is merely an Order under Section 5(1) of the PMLA, which is subject to final confirmation by the Competent Authorities under the provisions of the PMLA. Any such Order, even otherwise, can never be treated as conclusive and binding in respect of the issues, which are the subject matter of such Order and as such, can definitely not lead to final closure of any proceedings.

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30. For the aforenoted reasons, particularly, having come to a conclusion that the proceedings before the Arbitral Tribunal and the Authority concerned under the PMLA operate in different spheres and one proceedings does not have the effect of ousting the jurisdiction of the other, the Tribunal holds that no ground is made out in the Application warranting termination of the Arbitral

Proceedings for reasons as envisaged under Section 32 (2)(c) of the Arbitration Act."

30. It is pointed out that the proceedings under PMLA are under challenge. It is relevant to note that merely because some assets that form part of the present arbitral proceedings, in respect of which declaration is sought, also finds its reference in provisional order of attachment, the same does not tantamount to the jurisdiction of the arbitral tribunal being ousted. Further, simply because some part of the subject matter of the proceedings is being parallelly investigated by the CBI or ED in relations to allegations of fraud, the same cannot preclude the jurisdiction of the arbitrator. It is settled law that a transaction or incident can give rise to both civil and criminal proceedings and in such a case, the said proceedings may proceed simultaneously.

31. The effect of mere registration or progression of any parallel criminal proceedings will not bar the continuation of arbitral proceedings. If such a proposition is accepted, then every party would seek to establish such a defence to defeat the jurisdiction of the learned arbitral tribunal, irrespective of the fate of such criminal proceedings. The Hon'ble Apex Court, in the case of ***Swiss Timing Ltd. v. Commonwealth Games 2010 Organising Committee*** **: (2014) 6 SCC 677**, while deciding an application under Section 11 of the Act where it had been contended that allowing the arbitration proceedings to continue simultaneously with the pending criminal trial would lead to confusion, had observed as under:

> *"29. In the present case, it is pleaded that the manner in which the contract was made between the petitioner and the respondent was investigated by CBI. As a part of the investigation, CBI had seized all the original documents and the records from the office of the respondent. After investigation, the criminal case CC No. 22 of 2011 has been registered, as noticed earlier. It is claimed that in the event the Chairman of the Organising Committee and the other officials who manipulated the grant of contract in favour of the petitioner are found guilty in the criminal trial, no amount would be payable to the petitioner. Therefore, it would be appropriate to await the decision of the criminal proceedings before the Arbitral Tribunal is constituted to go into the alleged disputes between the parties. I am unable to accept the aforesaid submission made by the learned counsel for the respondents, for the reasons stated in the previous paragraphs. The balance of convenience is tilted more in favour of permitting the arbitration proceedings to continue rather than to bring the same to a grinding halt.*
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> *"34. ……The purpose of the aforesaid solitary rule is to avoid embarrassment to the accused. In contrast, the findings recorded by the Arbitral Tribunal in its award would not be binding in criminal proceedings. Even otherwise, the Constitution Bench in the aforesaid case has clearly held that no hard-and-fast rule can be laid down that civil proceedings in all matters ought to be stayed when criminal proceedings are also pending. As I have indicated earlier in case the award is made in favour of the petitioner herein, the respondents will be at liberty to resist the enforcement of the same on the ground of subsequent conviction of either the Chairman or the officials of the contracting parties."*

32. It is also argued that the arbitral proceedings are hit by the provision of Section 41 of the PMLA which ousts the jurisdiction of Civil Court. In this regard, it is relevant to refer to the observations made in the impugned order, which are us under:

> *"29. Therefore, the argument of the Applicants founded on Section 41 of the PMLA is liable to be rejected. Even reference to Section 71 of the PMLA by the Applicants is completely misconceived in as much as the said provision only gives overriding effect to the provisions of the PMLA, in the event of any inconsistency / conflict with any other law, for the time being in force. The Applicants have*

failed to demonstrate any inconsistency between the provisions of PMLA and any other law as may govern the present proceedings. Having reached the said conclusion, the Tribunal deems it unnecessary to burden the Order by delineating the ratio of the plethora of the judicial pronouncements relied upon by the Ld. Counsel for the Parties and referred to above. Suffice it to state that none of the decisions relied upon by the Parties may be relevant for deciding the Application under consideration, particularly, in the light of the legal and factual position discussed above. "

33. It is pertinent to note that the learned Arbitrator has aptly noted in the impugned order that he is not seized with ascertaining the legitimacy of any allegations of the alleged criminality involved, and rather, the question for determination before the learned Tribunal is the validity of the facility agreement. While there may be some overlap considering that the arbitral proceedings as well as the criminal proceedings stem from the same germane facts, however, the remit of both the proceedings cannot be said to be similar to such an extent that it would render the jurisdiction of the learned Sole Arbitrator untenable.

34. Further, the proceedings before the arbitral tribunal operate in a different sphere than the one in consideration before the authorities under the PMLA. In any case while some assets that form part of the present proceedings have been provisionally attached, in case the findings recorded by the learned Arbitrator overlap with those in the criminal proceedings, then the proceedings under PMLA will take precedence as the learned Arbitrator is confined to determination of issues which would not fall foul of Section 41 of the PMLA. As

pointed out by the parties during the course of the arguments, the arbitral proceedings have almost come to an end. In case of overreach of jurisdiction by the learned Arbitrator, the petitioner will have the remedy of challenging the final award under Section 16 read with Section 34 of the Act. However, at this stage, when the arbitral proceedings are at the fag end, in the opinion of this Court, the arbitral proceedings cannot be terminated pre-emptively.

35. It is also pertinent to note that prior to the present application being preferred by the petitioner under Section 16(3) of the Act seeking termination of proceedings, an application dated 17.05.2022 had also been filed by the application under Section 16(2) of the Act challenging the jurisdiction of the arbitral tribunal and subsistence of the arbitration agreement on the ground that the facility agreement had been obtained by fraud and material concealment. In the first application dated 17.05.2022, it was further contended that the alleged facility agreement was for unlawful consideration and entered into for an object forbidden by law, thereby being *void ab initio*. The learned Arbitrator *vide* order dated 08.11.2022, noting that the said determination involved mixed questions of facts and law, had deferred determination on the said issue until after the parties had led evidence in support of their respective stands. The same had not been challenged by either side and had attained finality.

36. The only change in circumstances while preferring the second application under Section 16(3) of the Act seeking termination of the

proceedings is that some assets, which are subject matter of the Facility Agreement, have now been provisionally attached by the ED. The same alone, in the opinion of this Court, is not sufficient to reagitate arguments and issues, the determination of which have essentially been already deferred.

37. At this juncture, this Court also considers it apposite to take note of the conduct of the petitioner. The earlier orders of the High Court in relation to proceedings under Sections 9 and 11 of the Act, where the argument in relation to non-arbitrability of the dispute had been raised by the petitioner, were not placed on record. The said orders were only brought to the notice of the Court by Respondent No.1 during the course of the arguments. It is argued on behalf of the petitioner that the earlier orders passed by the High Court were not relied upon by the learned Tribunal, and therefore, there is no concealment. Even so, it is not for the petitioner to discern as to whether the said orders were relevant or not. While the Court in the judicial orders had stated that the arguments in relation to non-arbitrability of the dispute can be raised before the learned Tribunal, however, the same are relevant to the facts of the case and ought to have been disclosed by the petitioner before this Court.

38. While it is correct that Section 5 of the Act does not bar the writ jurisdiction of this Court, in view of the aforesaid discussion, this Court does not find any reason to interfere with the impugned order. As noted above, interference while exercising power under Article 227

of the Constitution of India is only warranted when the twin condition of there being an exceptional circumstance coupled with perversity on the face of it is demonstrated both of which has not been made out in the present case.

39. The present petition is accordingly dismissed. Pending application also stands disposed of.

AMIT MAHAJAN, J

MAY 19, 2025