

# Wapcos Limited vs Virgo Aqua on 11 December, 2024

**Author: Yashwant Varma**

**Bench: Yashwant Varma, Dharmesh Sharma**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO(05) (COMM) 97/2024 and CM APPL. 30515/2024 (S

WAPCOS LIMITED

Through:

versus

VIRGO AQUA

Through:

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% 11.12.2024

1. We take note of the instant appeal having been preferred with reference to Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 1.

2. The principal order which was assailed originally in the appeal was dated 20 March 2024 and in the context of the requirements placed by Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 2.

3. We have been further informed that the appeal was thereafter permitted to be amended to also assail the final order passed on 22 August 2024 consequent to which the learned Judge noting that the appellant had failed to comply with the stipulation of deposit of 75% of the awarded amount as contemplated under Section 19 of the Act MSME Act This is a digitally signed order.

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4. One of the issues which would therefore arise would be whether the orders impugned in this appeal would amount to a refusal to set aside and which is the language employed in clause (c) of Section 37 (1).

5. In this regard, we bear in consideration the judgment rendered by us in CP Rama Rao Sole Proprietor v. National Highway Authority of India 3 where we had observed as follows: -

"4. Dr. George, the learned amicus who has rendered invaluable assistance, while dealing with the question of whether the order passed by the District Judge would fall within the ambit of Section 37 has drawn our attention to the following significant findings as rendered by the Supreme Court in BGS SGS Soma JV v. NHPC Limited.

"13. Given the fact that there is no independent right of appeal under Section 13(1) of the Commercial Courts Act, 2015, which merely provides the forum of filing appeals, it is the parameters of Section 37 of the Arbitration Act, 1996 alone which have to be looked at in order to determine whether the present appeals were maintainable. Section 37(1) makes it clear that appeals shall only lie from the orders set out in sub-clauses (a), (b) and (c) and from no others. The pigeonhole that the High Court in the impugned judgment [NHPC Ltd. v. Jaiparkash Associates Ltd., 2018 SCC OnLine P&H 1304 : (2019) 193 AIC 839] has chosen to say that the appeals in the present cases were maintainable is sub-clause (c). According to the High Court, even where a Section 34 application is ordered to be returned to the appropriate court, such order would amount to an order "refusing to set aside an arbitral award under Section 34".

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

"1. Appeals from orders.-- An appeal shall lie from the following orders under the provisions of Section 104, namely--

(a) an Order under Rule 10 of Order 7 returning a plaint to be presented to the proper court [2024 SCC OnLine Del 7342] This is a digitally signed order.

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

filed under Section 151 read with Order 7 Rule 10 CPC, determining that the Special Commercial Court at Gurugram had no jurisdiction to proceed further with the Section 34 application, and therefore, such application would have to be returned to the competent court situate at New Delhi."

5. As the Supreme Court explained in BGS SGS Soma, it is only those orders which would be referable to Section 34 and amounting to a refusal to set aside an award on grounds mentioned therein, which could be placed in clause (c) of Section 37(1). As in the present case, BGS SGS Soma was dealing with a question raised with reference to the return of a Section 34 petition by the Special Commercial Court at Gurugram which had held that it would lack jurisdiction. Such an order, the Supreme Court explained, would clearly not fall within the ambit of clause (c) of Section 37(1)."

6. We additionally deem it apposite to take note of the following pertinent observations rendered by the Supreme Court in Chintels India Limited v. Bhayana Builders Private Limited 4: -

"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 [(2021) 4 SCC 602] This is a digitally signed order.

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39. This section does not take Shri Rohatgi's argument much further, as after the non obstante clause, the section states that no judicial authority shall intervene "except where so provided in this Part". What is "provided in this part" is Section 37, which therefore brings us back to square one. Undoubtedly, a limited right of appeal is given under Section 37 of the Arbitration Act, 1996. But it is not the province or duty of this Court to further limit such right by excluding appeals which are in fact provided for, given the language of the provision as interpreted by us hereinabove. Thus, this last argument also has no legs on which to stand.

40. Consequently, the question of law is answered by stating that an appeal under Section 37(1)(c) of the Arbitration Act, 1996 would be maintainable against an order refusing to condone delay in filing an application under Section 34 of the Arbitration Act, 1996 to set aside an award."

7. In order to enable Mr. Upadhyay, learned counsel appearing in support of the appeal to address submissions in the aforesaid light, let the appeal be called again on 31.01.2025.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

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