

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

Before:

**The Hon'ble Justice Arijit Banerjee
And
The Hon'ble Justice Om Narayan Rai**

**A.P.O. 84 of 2023
With
A.P. 831 of 2018**

**Garden Reach Shipbuilders & Engineers Limited
Vs.
Marine Craft Engineers Private Limited**

For the Appellant : Mr. Debnath Ghosh, Sr. Adv.
Mr. Biswaroop Mukherjee, Adv.
Mr. Debsoumya Basak, Adv.

For the Respondent : Mr. Sabyasachi Chowdhury, Sr. Adv.
Mr. S. E. Huda, Adv.
Mr. Shounak Mukhopadhyay, Adv.
Mr. Shreyaan Bhattacharyya, Adv.
Ms. Anwesha Guha Ray, Adv.
Mr. Abhijit Guha Ray, Adv.

Judgment on - 23.07.2025

Om Narayan Rai, J.:-

1. This is an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereafter "the said Act of 1996"). It lays challenge to an order dated April 5, 2023 passed on an application under Section 34 of the said Act of 1996 being A.P. 831 of 2018, whereby the said application was allowed upon setting aside the award made and published on September 23, 2018, which had been impugned therein.

2. The case run in the application under Section 34 of the said Act of 1996 for setting aside the arbitral award is as follows:

- (a) The appellant had floated a tender for repair of Wet Basin Flat Gate at main yard on turnkey basis. The respondent participated in the tender process and emerged successful.
- (b) Thereafter a letter of intent was issued by the appellant in favour of the respondent. The said letter of intent was followed by a purchase order indicating the works to be done by the respondent.
- (c) The respondent completed the work in terms of the work order but the payments due to the respondent upon completion of the work were not made by the appellant. Representations made by the respondent to the appellant demanding the payments which were due to the respondent failed to fructify.
- (d) Feeling aggrieved by the delinquency in contractual payment on the part of the appellant, the respondent approached this Court in its writ jurisdiction under Article 226 of the Constitution of India by filing a writ petition being W.P. No. 18603(W) of 2015.
- (e) During pendency of the writ petition, the respondent also approached the West Bengal State Micro and Small Enterprise Facilitation Council (hereafter “MSME Council”) under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (hereafter “the said Act of 2006”) on May 11, 2016 since the respondent is an MSME Entity.
- (f) Upon the respondent approaching the MSME Council, the said Council issued a notice to the appellant thereby calling upon the appellant to appear before the MSME Council on July 4, 2016 for conciliation.

- (g) The writ petition being W.P. No. 18603(W) of 2015 filed by the respondent was ultimately disposed of holding the same to have become infructuous because the respondent had already approached the MSME Council.
- (h) While the reference before the said Council was pending for consideration, the appellant went ahead and appointed an arbitrator on September 23, 2016 by invoking the arbitration clause in the work order.
- (i) The respondent challenged the jurisdiction of the arbitrator by taking out an application under Section 16 of the said Act of 1996 but such challenge was repelled by an order dated February 28, 2017.
- (j) The respondent thereafter, approached this Court in its writ jurisdiction under Article 226 of the Constitution of India by filing a writ petition being WP 11108 (W) of 2017, seeking an expeditious disposal of the proceedings pending before the said Council. The aforesaid writ petition was disposed of by an order dated April 19, 2017 thereby directing the Council to dispose the plaint made by the respondent in accordance with law preferably within a period of 90 days from the date of the order.
- (k) Subsequently, the arbitrator appointed by the appellant herein proceeded with the arbitral proceedings and made and published an award on September 23, 2018 in favour of the appellant.
- (l) Feeling aggrieved by the said award, the respondent approached this Court by filing an application under Section 34 of the said Act of 1996 which was registered as A.P. 831 of 2018.

3. The said application under Section 34 of the said Act of 1996 has been allowed by the order impugned in the present appeal.
4. Mr. Ghosh, learned Senior Advocate appearing for the appellant at the outset submitted that the scope of Section 34 of the said Act of 1996 was very narrow and that it was not proper for the Hon'ble Single Judge to interfere with the award in the case at hand when the same did not satisfy any of the conditions mentioned in the said provision for setting aside arbitral award. In support of his submission, Mr. Ghosh relied on the judgments of the Hon'ble Supreme Court in the case of ***Project Director, National Highways No. 45 E and 220 National Highways Authority of India vs. M. Hakeem & Anr.***¹ and ***Kinnari Mullick & Anr. vs. Ghanshyam Das Damani***².
5. He further submitted that in any case, since the matter pertained to the Commercial Division of this Court, the application under Section 34 of the said Act of 1996 being A.P. 831 of 2018 ought to have been decided by the Commercial Court and not by the Court exercising ordinary original civil jurisdiction. He took us to Section 2(1)(c)(vi) and 2(1)(xviii) as well as Section 15 of the Commercial Courts Act, 2015 to demonstrate that A.P. 831 of 2018 ought to have been decided by the Courts sitting in Commercial Division and not by the Court exercising ordinary original civil jurisdiction.
6. It was submitted by Mr. Ghosh that since the aforesaid petition has been decided by a Court exercising ordinary original civil jurisdiction and not a commercial Court therefore the order passed by the said Court is one without jurisdiction and should be treated as a nullity. It was further

¹ (2021) 9 SCC 1

² (2018) 11 SCC 328

submitted that there being no provision for transfer of a proceeding on the ordinary original civil jurisdiction to the Commercial Division of this Court, even otherwise, the arbitration petition being A.P. 831 of 2018 could not have been transferred from the ordinary original civil jurisdiction to the Commercial Division.

7. Mr. Ghosh then invited our attention to the relevant contract and pointed out the scope of work thereof. He submitted that the Council did not have jurisdiction to decide any dispute other than that arising from a contract pertaining to supplies and services.
8. It was further submitted by Mr. Ghosh that upon a sincere reading of the scope of the work of the contract awarded to the respondent by the appellant, it would be clear that the said contract was of a mixed/composite nature i.e. a works contract and a supply of goods and services contract blended together. It was submitted that since the contract was composite and did not pertain only to supply of goods and/or rendering of services in terms of Section 2(n) of the said Act of 2006, the said Act of 2006 could not have been invoked by the respondent and the MSME Council could not have been approached by the respondent seeking redressal of its grievances. In support of his contention that a works contract or a contract which is mixed in nature (i.e. a blend of a works contract as well as a contract for supply of goods and rendering services) could not be the subject matter of reference and disputes arising therefrom could not be adjudicated by the MSME Council, Mr. Ghosh relied on the following judgments:

- a. ***Kone Elevator India Private Limited vs. State of Tamil Nadu***³
(paragraphs 44 to 46),
- b. ***Rahul Singh vs. Union of India & Ors.***⁴ (paragraphs 2,4,6 and 9),
- c. ***Sterling and Wilson Private Limited & Anr. vs. Union of India & Ors.***⁵ (paragraphs 4,11,12,17,23,25,27,31 and 41 to 43).

9. The next limb of submission of Mr. Ghosh was that in order to claim the benefit and protection of the said Act of 2006, the person concerned i.e. the claimant must be a supplier within the meaning of Section 2(n) of the said Act of 2006 on the date of the contract entered into between the parties. It was contended that the respondent was not registered under the said Act of 2006 as on September 27, 2012, when the letter of acceptance followed by purchase order had been issued by the appellant to the respondent.
10. It was further contended that the subsequent registration would only apply prospectively and that since the contract between the parties had been entered into prior to the registration of the respondent under the said Act of 2006, therefore, the dispute arising out of such contract could not have been referred for conciliation before the MSME Council followed by arbitration under the said Act of 2006. It was further submitted that the respondent could not have claimed benefits under the said Act of 2006 by obtaining registration on or after April 19, 2013, i.e. subsequent to the issuance of the letter of intent as also the purchase order dated November 6, 2012.

³ (2014) 7 SCC 1

⁴ 2017 SCC OnLine All 3579

⁵ 2017 SCC OnLine Bom 6829

11. In support of aforesaid submissions Mr. Ghosh relied on the following judgments:

- a. **Gujarat State Civil Supplies Corporation Limited vs. Mahakal Foods Private Limited (Unit 2) & Anr.**⁶,
- b. **Silpi Industries & Ors. vs. Kerala State Road Transport Corporation & Anr.**⁷ (paragraphs 42 to 44).

12. Mr. Ghosh relied on the judgment of the Hon'ble Supreme Court in the case of **NBCC (India) Limited vs. State of West Bengal & Ors.**⁸ and submitted that the decision of **Silpi Industries** (supra) has been referred to larger Bench for reconsideration of the issue as to whether or not a supplier who got registered under the said Act of 2006 subsequent to the principal agreement between the warring parties (i.e. the supplier MSME entity and the purchaser) would be entitled to lay claim before the MSME Council for supplies made subsequent to such registration. It was submitted that as such question was yet to be decided by the larger Bench the issue should not be treated one having been finally decided and the respondent should not be given any benefit of even the work/supply rendered, if any, subsequent to its registration under the said Act of 2006 as alleged by the respondent.

13. Mr. Ghosh further submitted that since neither the parameters of Section 34 were fulfilled, nor the Court which decided the arbitration petition under Section 34 of the said Act of 1996 had jurisdiction and nor did the respondent (claimant) satisfy the definition of supplier under Section 2(n) of

⁶ (2023) 6 SCC 401

⁷ (2021) 18 SCC 790

⁸ (2025) 3 SCC 440

the said Act of, 2006, no award could have been passed by the MSME Council and the award passed by the arbitrator on September 23, 2018, could not have been touched by the Court in purported exercise of its jurisdiction under Section 34 of the said Act of 1996.

14. Mr. Chowdhury, learned Advocate appearing for the respondent submitted that at the relevant point of time when the arbitration petition was filed, the Court presided over by the same Hon'ble Judge had the jurisdiction/determination in respect of both types of matters i.e. matters pertaining to the ordinary original civil jurisdiction as well as commercial matters and, therefore, the contention that A.P. 831 of 2018 had been decided by the Court while exercising ordinary original civil jurisdiction would not be a case of lack of determination or inherent lack of jurisdiction. It was at best an error of description of jurisdiction which was/is corrigible.
15. Mr. Chowdhury further submitted that the Hon'ble Single Judge has rightly held that the appellant had ample opportunity to put forth its positive case by way of a counterclaim and that the appellant was not justified in initiating a separate arbitration proceeding during the pendency of the reference before the MSME Council.
16. Mr. Chowdhury referred to Section 23 (2A) of the said Act of 1996 and submitted that the said provision permitted lodging of counterclaim before the arbitrator and that the appellant herein could have very-well made use of such provision.
17. Mr. Chowdhury then took this Court to page 640 of Volume V of the paper book and invited the Court's attention to the answers to question nos. 1 to 7

to demonstrate that the said answers in fact amounted to admission of the claimant/respondent's case by the appellant.

18. In answer to the appellant's contention that the respondent did not satisfy the definition of a supplier under Section 2(n) of the said Act of 2006, Mr. Chowdhury invited the attention of the Court to page 314 of Volume III of the paper book to demonstrate that the respondent had performed the work awarded to it under the contract after the respondent was registered under the said Act of 2006.
19. Mr. Chowdhury further invited the attention of this Court to the order passed by the arbitrator on the application under Section 16 of the said Act of 1996 to demonstrate that although the appellant was aware about the proceedings before the MSME Council, the appellant for obvious reasons did not submit its claim before the said Council.
20. Responding to the point of the contract being of composite nature, Mr. Chowdhury submitted that the argument advanced on behalf of the appellant was fundamentally flawed. He traced the evolution of law pertaining to works contract by submitting that prior to independence, the provincial legislature had the power to make laws pertaining to taxation of 'sale of goods'.
21. It was submitted that after independence, taxation of "sale of goods" was incorporated into the State List of the Constitution of India. Exercising the said power, the Madras Sales Tax Act was enacted which not only made transfer of property in goods involved in execution of works contract similarly taxable as sale of goods by enlarging the definition of sale but also defined "works contract" for such purpose. The said provisions were struck

down by the Madras High Court while holding that the same were ultra vires the powers of the provincial legislature as Entry 48 only permitted legislation in respect of sale of goods and a works contract did not only involve sale of material but also execution of work payment wherefor was to be made cumulatively. The matter walked up to the Hon'ble Supreme Court and the decision of the Madras High Court was upheld. The case came to be known as the Gannon Dunkerley – I case i.e. ***The State of Madras vs. Gannon Dunkerley & Co. (Madras) Limited***⁹. It was then submitted that since the State Governments were losing out on revenue due to the aforesaid judgment in Gannon Dunkerley – I case, clause 29A was inserted in Article 366 of the Constitution of India vide its 46th amendment and it was clarified that tax on sale or purchase of goods included tax on transfer of property in goods involved in execution of works contract.

22. Mr. Chowdhury further submitted that the aforesaid amendment of the Constitution of India was unsuccessfully assailed before the Hon'ble Supreme Court in the case of ***Builders' Association of India & Ors. vs. Union of India & Ors.***¹⁰. Mr. Ghosh also referred to the case of ***M/s Gannon Dunkerley and Company & Ors. vs. State of Rajasthan & Ors.***¹¹ and submitted that a similar provision as that of the Madras Sales Tax Act which was there in the Rajasthan Sales Tax Act was also challenged by Gannon Dunkerley and in the said case too Section 5(3) of the Rajasthan Sales Tax Act was struck down and held to be ultra vires on the ground that

⁹ AIR 1958 SC 560

¹⁰ (1989) 2 SCC 645

¹¹ (1993) 1 SCC 364

the State Legislature did not have the competence to frame laws on “taxable turnover as distinguished from “turnover” simpliciter.

23. Citing the judgments of the Hon’ble Supreme Court in the cases of ***State of Andhra Pradesh vs. Kone Elevators (India) Ltd.***¹² and ***K. Raheja Development Corporation vs. State of Karnataka***¹³, Mr. Chowdhury took pains to demonstrate how the law relating to taxation on works contracts developed. He then cited the case of ***Larsen and Toubro Limited & Anr. vs. State of Karnataka & Anr.***¹⁴ where the Hon’ble Supreme Court waded through the history of law pertaining to works contract and taxation thereof.
24. Finally, relying on the judgment in the case of ***Kone Elevators (India) Ltd.*** (supra) and citing paragraphs 31, 32, 46 and 47 thereof, Mr. Chowdhury submitted that a works contract entails an element of indivisibility i.e. it would be difficult to segregate which portion thereof pertained to sale/supply of goods and which portion pertained to work or labour. It was submitted that in the instant case the concept of works contract being separate from the contract of supplies and services was introduced for the purpose of computation of taxes in relation to works contract and that the difference between the two types of contracts is wholly irrelevant insofar as the application of the said Act of 2006 is concerned.
25. It was further submitted that the ratio laid down by the Bombay High Court in case of ***Sterling and Wilson Private Limited*** (supra) has been misread and misapplied by the appellant to the facts of the present case since the said case before the Bombay High Court was one under Section 11 of the

¹² (2005) 3 SCC 389

¹³ (2005) 5 SCC 162

¹⁴ (2014) 1 SCC 708

MSME Act relating to “Procurement Preference Policy”. It is submitted that it was the said Policy which fell for consideration in the said case and the judgment was pronounced in the facts of the aforesaid case.

26. Mr. Chowdhury further submitted that the judgment of the Allahabad High Court in the case of **Rahul Singh** (supra) was again cited without appreciating that the same was decided in the context of Section 11 of the said Act of 2006 and the same was therefore wholly inapplicable to the facts of the present case.

27. Mr. Chowdhury took us through the judgment of **NBCC (India) Limited** (supra) and submitted that the same supported the case of the respondent all the more inasmuch as in the said judgment, the Hon’ble Supreme Court has opined that the definition of a supplier as provided under the said Act of 2006 “*encompasses not only those who have filed the memorandum, but also those who have not filed*” and further that the reason behind such a definition is that the said section of (micro and small enterprises) is still unorganized, growing and evolving with many of them being at start-up levels.

28. Mr. Chowdhury then cited the judgment of the Hon’ble Supreme Court in the case of **Union Territory of Ladakh & Ors. vs. Jammu and Kashmir National Conference & Anr.**¹⁵, for the proposition that it was not open for this Court to await the outcome of a reference or a review petition and refuse to follow a judgment that the same has been doubted by a later co-ordinate Bench of the Hon’ble Supreme Court. Mr. Chowdhury thus submitted that the order impugned did not deserve interference at all.

¹⁵ 2023 SCC OnLine SC 1140

29. Mr. Ghosh, learned Senior Advocate appearing for the appellant in reply submitted that at the time when the respondent had made the reference before the Council, Section 23(2A) was not there in the said Act of 1996. It was inserted later by way of an amendment and was given retrospective effect. He further submitted that the judgment of the Hon'ble Supreme Court in the case of **Silpi Industries** (supra) which held that the Council had power to adjudicate even on counterclaim, would have to be interpreted prospectively and should be given prospective effect inasmuch as the said judgment amounts to declaration of law on counterclaim. He submitted that the said judgment having declared the law on counterclaim in the year 2021, the appellant could not be expected to file a counterclaim in the proceedings that had been launched before the MSME Council prior to the interpretation of the provisions of Sub-Section 2A in Section 23 of the said Act of 1996 in **Silpi Industries** (supra). Mr. Ghosh further submitted that the appellant cannot be non-suited on the basis of a judgment rendered after the claim had already been decided by the arbitrator.
30. We have heard the learned Advocate appearing for the respective parties and considered the material on record.
31. Since a challenge has been thrown to the jurisdiction of the Court that passed the order impugned in the present appeal, the same needs to be decided first. It had been contended by the appellant that the order should have been passed by a Commercial Court and not a Court exercising ordinary original civil jurisdiction inasmuch as the dispute between the parties is a commercial dispute. Mr. Chowdhury appearing for the respondent had submitted that the same Court which was exercising

ordinary original civil jurisdiction was also exercising the jurisdiction under the Commercial Division on the relevant date when the matter was heard and decided and as such the order impugned even if expressed to have been passed by the Court in exercise of its ordinary original civil jurisdiction, could not be said to have been passed without jurisdiction. Since there was no opposition to the aforesaid submission made by Mr. Chowdhury, we proceeded to hear the matter on merits as well.

32. However, while dictating the judgment we thought it prudent to check up the orders passed in the matter from time to time and get satisfied as regards the determination of the Hon'ble Judge who had passed the order impugned at the material point of time.

33. Upon checking up we found that the first of the several orders passed by the Hon'ble Judge who disposed of A.P. 831 of 2018 is one dated December 05, 2019. We also found that the matter was marked heard in part by the said Hon'ble Judge on December 13, 2019 upon consent of the parties and thereafter the same continued to be taken by the same Hon'ble Judge till it was disposed of by the order impugned. As on December 05, 2019 and December 13, 2019 both of which dates are relevant for the purpose, the determination roster applicable to the Hon'ble Judges of this Court was one dated November 18, 2019. In terms of the said roster, the determination that rested with the Hon'ble Judge who has passed the order impugned was as follows:

"Determination O/S (i.e. Original Side)

Hearing of Applications under Section 34 of the Arbitration & Conciliation Act, 1996, including applications connected thereto filed upto 2018.

**Commercial Appellate Division & Commercial Division,
Calcutta High Court**

Will hear all Suits pertaining to commercial disputes not assigned to any other Bench.”

34. Another Hon’ble Judge had the following determination apropos arbitration matters under the commercial division of this Court:

**“Commercial Appellate Division & Commercial Division,
Calcutta High Court**

Will hear all Suits and applications of the nature of commercial disputes relating to Admiralty and Maritime Law and Arbitration matters specified under Section 10 of Act 4 of 2016.”

35. Since section 10 of the Commercial Court’s Act, 2015 has been referred in the abovementioned determination roster the same may be noticed. The same reads thus:

“Section 10: Jurisdiction in respect of arbitration matters.

10. *Where the subject-matter of an arbitration is a commercial dispute of a Specified Value and–*

(1) If such arbitration is an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed in a High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(2) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(3) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted.”

36. It is therefore clear that on both the aforesaid dates i.e. when the said Hon'ble Judge (who has passed the order impugned) took up the matter for adjudication for the first time and when the matter was marked heard in part by the said Hon'ble Judge, the said Hon'ble Judge had determination only over such applications under Section 34 of the said Act of 1996 which did not pertain/relate to commercial matters. Determination in respect of all arbitration applications including those under Section 34 of the said Act of 1996 (as spelt out in Section 10 of the Commercial Courts Act, 2015 extracted hereinabove) rested with another Hon'ble Judge of this Court in terms of the roster dated November 14, 2019.

37. The matter was finally disposed of by the Hon'ble Judge by an order dated April 05, 2023 after reserving judgment on March 31, 2023. It may be mentioned that on and from September 01, 2022 the said Hon'ble Judge continued to have the same determination till April 05, 2023. To wit, the determination of the said Hon'ble Judge published in the Combined Monthly List for the month of September 2022, (published on September 05, 2022) was as follows:

"FROM 1ST SEPTEMBER, 2022 (THURSDAY)-MATTERS (MOTION AND HEARING) UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA RELATING TO RESIDUARY UNDER GROUP-IX INCLUDING APPLICATIONS CONNECTED THERETO (2017 ONWARDS) (EXCLUDING MATTERS RELATING TO POLICE (INCLUDING C.B.I & CENTRAL AGENCIES), ESSENTIAL SERVICES)."

38. On the date of reserving judgment i.e. March 31, 2023 as also on the date of delivery of judgment i.e. April 05, 2023 the said Hon'ble Judge had the following determination in respect of the original side matters:

"MATTERS (MOTION AND HEARING) UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA RELATING TO RESIDUARY UNDER GROUP-IX

INCLUDING APPLICATIONS CONNECTED THERETO (2017 ONWARDS) (EXCLUDING MATTERS RELATING TO POLICE (INCLUDING C.B.I & CENTRAL AGENCIES), ESSENTIAL SERVICES)."

39. In such view of the matter, Mr. Ghosh's contention that the order dated April 05, 2023 is a nullity becomes irrefutable. We are conscious that both the parties had agreed for the matter to be marked as heard in part but unfortunately since on that date too when the matter was so marked, the Hon'ble Judge did not have determination over commercial matters as already indicated hereinabove, therefore, the defect of jurisdiction cripples the order impugned incurably.

40. In the case of **Garden Reach Shipbuilders & Engineers Ltd. vs. Grse Ltd. Workmens Union & Ors.**¹⁶ the Hon'ble Supreme Court has very recently held thus:

"9. In the light of the law laid down by the High Court itself in Sohan Lal Baid v. State of West Bengal, as approved by a three-Judge Bench of this Court in State of Rajasthan v. Prakash Chand which has subsequently been approved by a Constitution Bench in Campaign for Judicial Accountability and Reforms v. Union of India, as well as Rule 26 (supra), we hold that any order which a bench - comprising of two judges or a single judge - may choose to make in a case that is not placed before them/him by the Chief Justice of the High Court or in accordance with His Lordship's directions, such an order is without jurisdiction. In other words, an adjudication, beyond allocation, is void and such adjudication has to be considered a nullity. It needs no emphasis that the Chief Justice of the High Court, being the primus inter pares, has been vested with the power and authority to set the roster, as articulated in Sohan Lal Baid (supra), and such roster is final and binding on all the 'Companion Justices' of the said court. Plainly, therefore, the order dated March 11, 2024 and the impugned order are without jurisdiction."

(Emphasis supplied)

41. Since the order impugned is clearly without determination and hence without jurisdiction, therefore, we set aside the order dated April 05, 2023 passed in A.P.831 of 2018 and allow the appeal with a direction that A.P.

¹⁶ 2025 SCC OnLine SC 582

831 of 2018 be placed before the appropriate Bench under the commercial division of this Court having jurisdiction over arbitration petitions pertaining to commercial matters for fresh hearing.

42. Since we have allowed the appeal only on the ground of jurisdiction, we refrain from commenting on the merits of the matter and we leave all points open to be urged by the parties before the appropriate Court, in accordance with law. Since the matter pertains to the year 2018, the parties would be at liberty to pray for expeditious disposal of the application under section 34 of the said Act of 1996 before the appropriate Bench. No costs.

43. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(Arijit Banerjee, J.)

(Om Narayan Rai, J.)