



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.3081 of 2025 (O&M)

Pronounced on: 01.07.2025

Apollo Green Energy Limited

...Petitioner

Versus

Man Structurals Private Limited

...Respondent

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Gaurav Chopra, Senior Advocate, with
Mr. Vivek Sethi, Advocate,
Mr. Rohit Jerry, Advocate, and
Mr. Vardaan Seth, Advocate, for the petitioner.

Mr. Pancham Surana, Advocate, and
Mr. Himanshu Setia, Advocate, for the respondent.

TRIBHUVAN DAHIYA, J.

This petition under Article 227 of the Constitution of India has been filed for setting aside order dated 02.05.2025, Annexure P-16, passed by Additional District Judge-cum-Presiding Judge, Exclusive Commercial Court at Gurugram, in CIS No.ARB-02-2024, whereby he has ordered release of the decretal amount ₹19,33,71,085 to the respondent on furnishing Bank guarantee of the equivalent amount, during pendency of the petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the 1996 Act') against the award dated 10.10.2023, Annexure P-7.



2. Facts relevant to decide the matter are, disputes between the parties were referred to arbitration, which led to passing of the award dated 10.10.2023, directing the petitioner to pay a sum of ₹14,44,70,000 along with simple interest at the rate of twelve per cent per annum from the date of cause of action, along with ₹13,09,105 as arbitration costs, to the respondents. The award was challenged before the Commercial Court at Gurugram by filing objection petition under Section 34 of the 1996 Act which is pending adjudication.

2.1. The respondent/decreed holder filed an execution petition in the Delhi High Court, OMP (ENF) (Comm.) 18 of 2024 titled *Man Structural Pvt. Limited v. Apollo International Limited* (now known as Apollo Green Energy Limited) for enforcement of the award. Vide order dated 23.01.2024, the Executing Court passed an interim order for maintaining *status quo* with regard to title of immovable properties belonging to the petitioner as mentioned in the list of assets furnished by the respondent.

2.2. Later, the Commercial Court decided the petitioner's application for stay on enforcement of the arbitral award filed under Section 36(3) of the 1996 Act, vide order dated 06.09.2024, Annexure P-10. It was partially allowed by requesting the Delhi High Court/Executing Court that the decretal amount to be deposited by the petitioner may not be disbursed to the respondent/decreed holder. The order reads thus:

11. Admittedly, an execution petition has already been filed by the claimant/respondent before the Hon'ble Delhi High Court i.e. case titled as *Man Structural Pvt. Ltd. Versus Apollo International Limited* (Now *Apollo Green Energy Limited*) OMP (ENF.) (COMM.) 18/2024 in which a direction has been



issued by the Hon'ble Delhi High Court vide order dated 15.07.2024 directing the judgment debtor i.e. the present petitioner to deposit the decretal amount with the learned Registrar General of the Hon'ble High Court of Delhi within 8 weeks from the date of order passed by Hon'ble High Court of Delhi.

12. In the light of discussion made above and without observing anything on the merits of the case lest it may prejudice the parties while deciding the main petition under Section 34 of the Act, the application moved by the applicant/petitioner is partly allowed. On depositing of the decretal amount by the applicant/petitioner with the learned Registrar General of Hon'ble High Court of Delhi, Hon'ble executing court is requested not to disburse the aforesaid amount to the respondent/claimant/DH till the decision of the main petition under Section 34 of the Act. The application stands disposed of in the aforesaid terms.

However, request of the Commercial Court not to disburse the amount was rejected by the Executing Court, vide order dated 23.09.2024 (produced by learned counsel for the respondent and retained on the case file as Annexure 'A').

2.3. The order, dated 06.09.2024, granting conditional stay was challenged by the petitioner before this Court by filing a revision petition, CR No.5996 of 2024, which was dismissed vide judgment dated 20.11.2024, Annexure P-11. This Court was of the view that the direction to deposit the decretal amount with the Executing Court/Delhi High Court with the request not to disburse it till disposal of the objection petition under Section 34 of the 1996 Act, safeguarded the petitioner's interests.



2.4. The matter was thereafter taken to the Supreme Court as the petitioner challenged the order, dated 20.11.2024, passed by this Court by filing SLP (C) no.29157 of 2024, which was disposed of vide order dated 13.12.2024, Annexure P-12, with the following observations:

Heard the learned Senior counsel appearing for the petitioner. Though no case is made out for interference with the order granting conditional stay, on the prayer made by the learned senior counsel appearing for the petitioner, we extend the time to deposit the amount in terms of paragraph 12 of order dated 6th September, 2024 passed by the Commercial Court by a period of four months from today. If the amount is not deposited within four months from today with the Commercial Court, the stay shall stand vacated without any further reference to the Court.

We make it clear that as soon as the amount is deposited, the same shall be invested in the interest bearing Fixed Deposit in any Nationalised Bank. The Court in which petition under Section 34 of Arbitration and Conciliation Act, 1996 (for short, 'the Act'), shall not permit withdrawal or disbursement of amount unless a specific application for withdrawal is made by the respondent and unless the petitioner is heard on the application.

In this manner, under orders of the Supreme Court the time to deposit the decretal amount was extended up to four months from the date of the order, and the Commercial Court hearing the petition under Section 34 was directed not to permit withdrawal or disbursement of the decretal amount unless a specific application for withdrawal was made by the respondent and the petitioner was heard thereupon.

2.5. The proceedings of the objection petition filed under Section 34 of the 1996 Act remained pending with the Commercial Court, and the



respondent/decreed holder filed an application under Section 151 CPC for release of the decretal amount deposited by the petitioner, dated 22.02.2025, Annexure P-14. It was responded to by the petitioner by filing reply dated 11.04.2025, Annexure P-15. Considering the same, the Commercial Court passed the impugned order dated 02.05.2025, directing as under:

13. A division bench of Hon'ble Punjab and Haryana High Court vide order dated 22.10.2024 passed in CM-60-FCARB-2024 in FAO-CARB-16-2024, titled as M/s Spaze Towers Pvt. Ltd. Versus Ishan Singh dealt with a similar question. In the case before Hon'ble High Court also, an application was moved by the successful claimant seeking permission to withdraw the amount deposited by the non-applicant/appellant in view of award passed against it. After hearing both the sides, Hon'ble Punjab and Haryana High Court allowed the said application and ordered releasing of the sum deposited by the non-applicant-appellant before Hon'ble High Court on furnishing a bank guarantee of an equivalent amount to the satisfaction of this court as the amount was deposited before this court by the non-applicant-appellant during the pendency of the petition under Section 34 of the Act whose release was sought by the applicant-respondent before the Hon'ble High Court after giving notice to the non-applicant-appellant as it would serve the ends of justice. A similar view was also taken by a division bench of Hon'ble Punjab and Haryana High Court vide order dated 06.11.2024 passed in CM-78-FCARB-2024 in/and CM-40-FCARB-2024 in/and FAO-CARB-50-2023 and connected matter titled as M/s Countrywide Promoters Pvt. Ltd. Versus Prof. Tej Ram Yadav.

14. In the present case also, it is a similar situation as petition under Section 34 of the Act is pending adjudication before this court and the awarded amount with interest is now deposited with this court by the non-applicant/petitioner or the same has



been received by way of transfer from the learned Registrar General Hon'ble High Court of Delhi at New Delhi and from attached bank accounts of the non-applicant/petitioner. In the application moved by the applicant/respondent, it has prayed for releasing an amount of Rs.19,33,71,085/-. This calculation has not been disputed by the non-applicant/petitioner by filing reply or otherwise. In fact learned counsel for DH has shown a copy of order dated 29.04.2025 passed in OMP (ENF.) (COMM.) 18/2024, EX.APPL.(OS) 1957/2024, EX.APPL.(OS) 1960/2024, EX.APPL.(OS) 20/2025, titled as Man Structural Pvt. Ltd. Versus Apollo International Limited (Now Apollo Green Energy Limited) in which learned counsel for the judgment debtor appearing before Hon'ble Delhi High Court has not disputed the sum of Rs.19,33,71,805/- being due as per the award passed against it and has prayed for de-attachment of the accounts of the judgment debtor beyond the sum of Rs.19,33,71,805/-.

15. In the light of discussion made above, the application moved by the applicant/respondent is disposed of by ordering that an amount of Rs.19,33,71,085/- deposited with this court be released in favour of the applicant/respondent on its furnishing bank guarantee of an equivalent amount to the satisfaction of this court which shall remain valid till decision of the petition under Section 34 of the Act. The applicant/respondent shall also tender an undertaking in the form of an affidavit that the applicant/respondent will get the validity of the bank guarantee furnished before its date of expiry. The application is disposed of in the aforesaid terms.

3. In this factual background, Mr. Chopra, learned senior counsel for the petitioner contends that the impugned order is *per se* violative of the directions issued by the Supreme Court, as in terms therewith the Commercial Court was required to offer due opportunity of hearing to the



petitioner before passing the order for release of decretal amount to the respondent. This would mean considering and deciding the objections raised by the petitioner in his reply to the respondent's application seeking release of the amount. This has not been done, as the impugned order does not consider any of the objections raised by the petitioner, either in the application or during hearing of the matter. This shows the order is in violation of the Principles of Natural Justice as well, and needs to be set aside. Even otherwise, the impugned order does not record any reason as to why the decretal amount is required to be released at this stage, when the objection petition under Section 34 of the 1996 Act is ripe for arguments. Instead of ensuring conclusion of the pending proceedings, the decretal amount has been ordered to be released which has caused prejudice to the petitioner. In case the objection petition is finally decided in petitioner's favour, it will have to run after the respondent to get the amount recovered, and will also lose interest which is being generated as the decretal amount has been kept in the form of FDRs. Lastly, he contends that equities between the parties have been balanced by directing deposit of entire decretal amount by the petitioner, and there is no justification to release the same by passing the impugned order.

4. *Per contra*, Mr. Surana, learned counsel for the respondent, has vehemently opposed the submissions made by learned senior counsel. *Firstly*, he has contended that it has not been brought to the notice of the Court that decretal amount was not willingly deposited. The petitioner tried its level best to evade depositing the same which forced the Executing Court to attach its Bank accounts, and the amount from those accounts was



transferred under Court orders. *Secondly*, much stress has been laid on the interim order, dated 23.09.2024, passed by the Delhi High Court/Executing Court, whereby the Commercial Court's request not to release the decretal amount during pendency of Section 34 petition stands rejected. This order was not challenged before the Supreme Court. Accordingly, there is no bar on releasing the amount to respondent, nor can the same be objected to. *Thirdly*, it has been contended that the award is in the form of a money decree which cannot be stayed. Simply moving of an application for its release is sufficient for the Court to pass an order; no other aspect needs to be looked into for the purpose as the respondent is entitled to the amount being decree holder. *Fourthly*, it has been contended that impugned order is interlocutory in nature whereby release of the decretal amount has been conditioned upon furnishing of adequate Bank guarantee of an equivalent amount. As per settled law, revision against an interlocutory order is not maintainable. Besides, the discretion vested in the Court has been rightly exercised; there is no error apparent on record and, accordingly, interference by this Court is not called for.

5. Submissions made by learned counsel for the parties have been considered.

6. As per facts apparent on record, learned Arbitrator passed the award dated 10.10.2023, in response where to the petitioner filed an objection petition under Section 34 of the 1996 Act before the Commercial Court at Gurugram, which is pending adjudication. Execution proceedings of the award are also pending before the Delhi High Court. The Commercial Court, vide order dated 06.09.2024, granted conditional stay directing the



petitioner to deposit the decretal amount with a request to the Executing Court not to disburse the same during pendency of the petition. The request was declined vide order dated 23.09.2024. In the meanwhile, the Commercial Court's order, dated 06.09.2024, was challenged by the petitioner before this Court by filing revision petition, CR No.5996 of 2024, which was dismissed vide judgment dated 20.11.2024. This was questioned before the Supreme Court, wherein the judgment was not interfered with on merits, and vide order dated 13.12.2024 it was directed that the decretal amount be transferred to the Commercial Court and deposited in an interest bearing fixed deposit in any Nationalised Bank. And the Court shall not permit its withdrawal or disbursement unless a specific application for the purpose was made by the respondent and the petitioner was afforded hearing thereupon. Also, the time to deposit decretal amount was extended by four months from the date of the Supreme Court order. As submitted by learned senior counsel, the amount was, accordingly, deposited by the petitioner within time on 07.02.2025 in the accounts which were already under attachment since 21.10.2024. Soon thereafter, application for its release, dated 22.02.2025, was made by the respondent, and allowed by the Commercial Court vide impugned order dated 02.05.2025.

6.1. A perusal of the impugned order shows no ground for releasing the decretal amount has been recorded; it only mentions the factum of application having been preferred by the respondent for the purpose. None of the objections taken by the petitioner against the release has been dealt with. Actually, the need to release the amount is to be seen in the context of the facts - (i) the Commercial Court had itself granted conditional stay vide



order dated 06.09.2024, directing the petitioner to deposit decretal amount with the Executing Court, and requested against its release during pendency of the objection petition under Section 34 of the 1996 Act; (ii) the order stands affirmed by this Court vide order dated 20.11.2024, as it balanced the equities; (iii) the Supreme Court has declined to entertain the challenge against this Court's judgment. Besides, there has been no change in circumstances since then. Only the objection petition has remained pending for some more time. However, it is not the case that the petitioner has delayed decision of the petition in any manner. The direction by the Supreme Court permitting release of the amount only after hearing the petitioner, is not to be read as a mandate to release the same. Apparently, it only means the release is permitted for justifiable grounds to be ascertained after hearing the petitioner, or else the requirement to afford a hearing would not have been incorporated. This Court is at a loss to understand the reasons requiring the release, as none has been indicated even remotely by the Commercial Court. The respondent is also unable to cite any; Mr. Surana only says the award being a money decree, the amount cannot be withheld. But that was the situation at the time of granting conditional stay as well, and challenge against it already stands declined on merits. The amount is lying in fixed deposits and earning interest, to be given to the party in whose favour the objection petition is finally decided. The impugned order is, therefore, bereft of any justification, and contrary to the facts on record.

6.2. Also, reliance in the impugned order, dated 02.05.2025, upon the orders passed by a Division Bench of this Court in CM-60-FCARB-2024 in/and FAO-CARB-16-2024 titled *M/s Spaze Towers Pvt. Ltd. v. Ishan*



Singh, and CM-78-FCARB-2024 in/and CM-40-FCARB-2024 in/and FAO-CARB-50-2023 titled *M/s Countrywide Promoters Pvt. Ltd. v. Prof. Tej Ram Yadav*, dated 22.10.2024 and 06.11.2024, respectively, is misplaced. *Firstly*, these are interim orders not laying down any binding precedent. *Secondly*, the same have been rendered on different facts, during pendency of appeals after dismissal of objection petitions under Section 34 of the 1996 Act against the awards impugned therein. *Thirdly*, in none of the cases had the Court initially granted stay/conditional stay against release of the decretal amount during pendency of the appeal.

6.3. Still further, the contention by Mr. Surana that rejection of Commercial Court's request by the Delhi High Court, vide order dated 23.09.2024, not to disburse the decretal amount will itself afford a basis for its release, is without substance. The order no longer subsists after the final order passed in the matter by the Supreme Court dated 13.12.2024. Although the order, dated 23.09.2024, had not specifically been challenged, it undisputedly was placed on record before the Supreme Court. Accordingly, the Court was conscious of the fact and decided the matter after taking it into account. Resultantly, the doctrine of merger will be constructively applicable and the High Court order will stand merged with the Supreme Court order, which is not a mandate to release the decretal amount, as already discussed.

6.4. The interlocutory nature of the impugned order will also not restrain this Court from exercising the jurisdiction to examine whether it is reasonable, based on sound legal principles, and justifiable in the light of evidence on record. The law on the issue is well settled that, in the absence of any statutory bar, a discretionary interlocutory order can be set aside in



exercise of appellate or supervisory jurisdiction if it is *mala fide*, arbitrary or perverse. A reference in this regard can be made to judgment rendered by the Supreme Court in *Wander Ltd. and another v. Antox India P. Ltd.*, 1990 (Supp) SCC 727, holding as under:

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. ...

As discussed herein before, the impugned order suffers from perversity, being unreasonable and has been passed sans any basis.

7. In view of the discussion above, the petition is allowed. The impugned order, dated 02.05.2025, is set aside, and the Commercial Court is directed to expeditiously decide the objection petition under Section 34 of the 1996 Act.

(TRIBHUVAN DAHIYA)
JUDGE

01.07.2025
Maninder

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No