



ARBITRATION AND CONCILIATION

Union of India v. Hariom Projects (P) Ltd.

In *Union of India v. Hariom Projects* (2026 SCC OnLine SC 1996), the Supreme Court held that a Section 37 appeal against the rejection of a Section 9 application cannot be remitted to an Arbitral Tribunal as a Section 17 application, even by consent of the parties.

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2026 SCC OnLine SC 1996

Facts of the Case

- Hariom Projects Pvt. Ltd. (the “Respondent”) held a contract from the Union of India (the “Appellant”) for Administrative and Training Infrastructure (Phase-I) at NDA Khadakwasla. Disputes arose over adjustments, payment calculations and design issues.
- On a writ petition, the High Court directed the Appellant on 12th February 2025 to constitute a Dispute Resolution Board. The Board rejected every claim, encompassing all of the contractor’s grievances regarding those adjustments, payment calculations, and design issues on 26th April 2025.
- Pursuant thereto, the Respondent invoked the [arbitration clause](#) on 6th May 2025.
- Thereafter, the Appellant issued a show cause notice on 18th May, 2025 and, on 21st July, 2025, demanded Rs 1,46,40,147.32 as an overpayment under a corrected escalation formula.
- In response, the Respondent filed a Section 9 Application before the District Judge, Pune, seeking, among other reliefs, an injunction against cancellation or termination of the contract (the “said application”). The said application was dismissed on 15th October 2025.
- Meanwhile, the Respondent appealed under Section 37 and also filed a [Section 11 petition for appointment of an arbitrator](#).
- While the appeal was pending, the Appellant terminated the work order on 3rd January 2026.
- The High Court stayed the termination on 5th January 2026 and continued the status quo on 12th January 2026.
- The High Court then suggested that the parties go before an arbitrator.
- By order dated 13th January 2026, the High Court appointed Maj. Gen. R.K. Mattu as sole arbitrator by consent. It also directed that the proceedings before it be remitted to the Tribunal and treated as a Section 17 application. The Appellant challenged only this last direction.

Issues Framed

- Can a High Court exercising appellate jurisdiction under Section 37(1)(b) of the Act, against the rejection of a Section 9 application, remit the appeal by consent to a subsequently constituted Arbitral Tribunal and direct it to treat the appeal as a Section 17 application?
- Implicit in this is a narrower question: can the parties’ agreement move a statutory appeal to a forum the Act does not give it?

What the Court Held

- At the outset, the Hon’ble Supreme Court held that appellate jurisdiction under Section 37 vests exclusively in the “Court” as defined in [Section 2\(1\)\(e\) of the Act](#).
- The Hon’ble Supreme Court observed that a Tribunal exercising Section 17 powers does not sit in appeal over a Section 9 order. The direction would have made the Tribunal examine the subject of a statutory appeal under a different label. It found the nature and source of the two powers distinct, so they cannot be interchanged by remitting the file.
- Further, the Hon’ble Supreme Court also pointed out the route the Hon’ble High Court should have taken. Once the Tribunal was constituted, it could have granted the Respondent liberty to approach the Tribunal independently under Section 17.
- The Hon’ble Supreme Court further observed that the Section 9 prayer seeking to restrain termination had spent itself following the termination of the work order on 3rd January 2026, notwithstanding the High Court’s subsequent order staying its effect and operation. Any further interim protection would have to be considered in light of subsequent events and the specific relief sought.

- Accordingly, the impugned order was set aside only to the extent of the remittal, and the appointment of the arbitrator was untouched.
- The Tribunal was already seized of all issues, and the parties had signed a Supplementary Agreement on 24th April 2026 allowing the Respondent to complete the work.
- Therefore, the Hon'ble Supreme Court left every other dispute to the Tribunal, with both sides free to raise any contention the law permits. In doing so, the Hon'ble Supreme Court clarified that its order was passed solely to settle the position of law, a point further supported by the Respondent's senior counsel, who had himself conceded that the remittal direction could not stand.

Our View

The judgment reaffirms that appellate jurisdiction under Section 37 of the Act vests exclusively in the "Court" as defined in Section 2(1)(e) of the Act and clarifies that a statutory appeal cannot be remitted to an Arbitral Tribunal, even where such remittal is recorded with the consent of the parties. The judgment further clarifies that the powers under Sections 9 and 17 of the Act are distinct in their nature and source, and that an Arbitral Tribunal exercising powers under Section 17 does not sit in appeal over an order passed by a Court under Section 9. Where an Arbitral Tribunal is constituted during the pendency of a Section 37 appeal, the appropriate course is for the Court to grant the party liberty to approach the Tribunal under Section 17, rather than to transfer the appeal to it. Any such application must be considered by the Arbitral Tribunal independently, in light of subsequent events and the specific relief sought.

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