

High Court, While Substituting An Arbitrator Under Section 15(2), Cannot Declare Prior Arbitral Proceedings A Nullity: Supreme Court Of India

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Introduction

In *Ankhim Holdings Pvt. Ltd. vs. Zaveri Construction Pvt. Ltd.* (2026 INSC 137), the Supreme Court of India examined whether a High Court, while substituting an arbitrator under Section 15(2) of the Arbitration and Conciliation Act, 1996 ("**the Act**"), can go further and declare prior arbitral proceedings to be a "*nullity*" on the ground that they were conducted during the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**").

The Apex Court held that Section 15(2) of the Act vests a limited power with respect to substitution. It cannot be used to set aside the arbitral tribunal's orders, or to wipe out steps already taken in the arbitration. Accordingly, the Supreme Court set aside the portion of the order passed by the High Court of Bombay that declared the proceedings undertaken by the arbitral tribunal across seven hearings a nullity and reiterated that substitution should preserve continuity and efficiency.

Facts

The appellants and the respondent (now under liquidation) formed a partnership firm, "*M/s Anmol Alliance*", to develop a residential project at Andheri (West), Mumbai. Disputes arose between the partners, leading the appellants to file a petition under Section 9 of the Act before the Bombay High Court (Commercial Arbitration Petition No. 347/2019). An interim arrangement was worked out between the parties for the project's continuation. On 9 July 2019, the High Court passed an order in the Section 9 proceedings recording the consent terms between the parties and further appointed a sole arbitrator.

On 26 September 2019, the NCLT, Mumbai, admitted the respondent to CIRP and imposed a moratorium under Section 14 of the IBC. Thereafter, further applications were moved before the High Court in the Section 9 proceedings. On 3 November 2020, the appellants sought to restrain the resolution professional from obstructing the sale of certain flats and sought permission to sell flats in line with the consent terms. On 14 October 2021, the appellants moved another Section 9 application seeking permission to execute agreements for sale for certain flats.

By order dated 15 March 2022, the High Court disposed of the Section 9 applications while granting liberty to the appellants to move applications under Section 17 of the Act before the arbitral tribunal.

Pursuant to this liberty, on 17 March 2022, the appellants filed Section 17 applications before the tribunal. On 25 March 2022, the respondent moved an application under Section 16 of the Act, contending that the tribunal lacked jurisdiction due to the Section 14 moratorium. The tribunal rejected the Section 16 application on 29 March 2022. On the same date, the tribunal passed a Section 17 order permitting execution of

agreements for sale in respect of certain flats, and later, on 20 April 2022, permitted sale of additional flats.

On 26 August 2022, the NCLT initiated liquidation proceedings against the respondent. On 24 April 2023, the liquidator filed a Statement of Defence. The tribunal directed the liquidator to seek clarification from the High Court regarding the continuation of the arbitration. On 25 August 2023, the High Court dismissed an application filed by the liquidator seeking a declaration that the disputes were non-arbitrable. Subsequently, on 11 October 2023, the tribunal terminated the arbitration proceedings.

On 1 November 2023, the appellants filed a petition before the Bombay High Court under Section 15(2) seeking the appointment of a substitute arbitrator and the extension of time.

The Impugned Order passed by High Court of Bombay

By order dated 12 April 2024, the Bombay High Court appointed a substitute sole arbitrator. However, the High Court added a "*ride*" and declared that the arbitral proceedings conducted over seven hearing dates between 17 March 2022 and 25 August 2022 were a nullity, as those proceedings were undertaken when the respondent was under moratorium under Section 14 of the IBC (which the High Court held continued up to 26 August 2022, when liquidation commenced and a fresh moratorium under Section 33(5) of the IBC set in).

This declaration effectively treated the tribunal's Section 16 rejection, Section 17 orders, and consequential steps taken in that period as *non-est*.

Arguments before the Supreme Court

The appellants contended that the High Court, acting under Section 15(2) of the Act, could only substitute the arbitrator and could not declare prior proceedings to be a nullity. They emphasised that Section 15(4) specifically states that prior orders or rulings of the tribunal are not invalid merely because there is a change in the tribunal's composition, unless parties agree otherwise. They also argued that if the High Court's approach was accepted, it would create serious complications, particularly as third-party rights had arisen in relation to flats dealt with under the tribunal's Section 17 orders.

The liquidator supported the High Court's view, asserting that proceedings during the moratorium were void and could not be sustained.

Decision of the Supreme Court

The Supreme Court allowed the appeal in part and set aside the High Court's declaration of nullity.

First, the Supreme Court analysed Section 15 of the Act as a whole. It held that Section 15(2) cannot be read in isolation and must be read together with Sections 15(3) and 15(4) of the Act. The scheme under the Act shows that substitution is meant to ensure continuity. Any arbitral hearings may be repeated only at the substituted tribunal's

discretion (unless parties agree otherwise), and prior orders are not invalid solely because of substitution.

Secondly, relying on ***Yashwith Constructions Pvt. Ltd. v. Simplex Concrete Piles India Ltd.*** [(2006) 6 SCC 204], the Apex Court reiterated that the "rules" in Section 15(2) refer to the procedure applicable to the original appointment, and that the Court's role in substitution is tied to the limited appointment jurisdiction (and not a broader supervisory jurisdiction to revisit tribunal orders).

Thirdly, the Supreme Court held that the Arbitration Act is a self-contained code that prescribes specific routes to challenge particular tribunal orders. If a challenge is permitted, it must be brought through the route the Act provides. If a challenge is barred, it cannot be achieved indirectly through a different provision. In substance, by declaring proceedings a nullity, the High Court had done what the Act does not permit in that posture, including effectively setting aside:

- (i) an order rejecting a Section 16 application (which is not appealable under the Act),
- (ii) orders passed under Section 17 of the Act (without a Section 37 appeal),
- (iii) and (iii) other procedural directions.

Fourthly, the Supreme Court relied on the principle that jurisdiction is not merely about having a connection to the subject-matter, but also about having authority to grant the specific relief sought. Acting under Section 15(2) of the Act, the High Court did not have competence to declare prior proceedings void.

Finally, the Apex Court held that the proper course was simply to appoint a substitute arbitrator to continue from the existing stage. The High Court's approach would have forced a *de novo* restart, which would be inefficient and inequitable, especially given the consequences for transactions linked to the tribunal's interim orders.

Accordingly, the Supreme Court set aside the impugned order to the limited extent it declared the arbitral proceedings held between 17 March 2022 and 25 August 2022 to be a nullity. The substitution of the arbitrator otherwise remained undisturbed. Given the passage of time and the involvement of third-party interests (homebuyers), the Supreme Court also invoked Article 142 of the Constitution to declare the relevant transactions to be lawfully valid.

Key Takeaways

The decision of the Supreme Court in ***Ankhim Holdings (supra)*** is particularly relevant as it lays the following principles of law in respect of Section 15 of the Act:

- (i) Section 15(2) of the Act is a limited power for appointment and substitution of arbitrator(s), not a supervisory power. Courts cannot use it to nullify the tribunal's orders or erase prior proceedings.
- (ii) Section 15 must be read as a composite scheme where substitution is intended to preserve continuity. Any prior orders passed by the tribunal remain valid, and the

option of conducting a rehearing is a discretionary power vested with the substituted arbitrator(s) unless parties agree otherwise.

- (iii) The Arbitration Act's architecture on challenging orders or awards cannot be bypassed. If a tribunal order is not appealable (or is appealable only in a particular manner), Courts cannot achieve the same result through collateral routes.
- (iv) Courts should favour continuity and efficiency. A substitute arbitrator should ordinarily proceed from the stage at which the earlier tribunal left off, rather than resetting the arbitration.

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