



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 41 OF 2016

IN

ARBITRATION PETITION NO. 768 OF 2014

WITH

APPEAL NO. 42 OF 2016

IN

ARBITRATION PETITION NO. 1045 OF 2014

WITH

APPEAL NO. 43 OF 2016

IN

ARBITRATION PETITION NO. 767 OF 2014

WITH

APPEAL NO. 45 OF 2016

IN

ARBITRATION PETITION NO. 587 OF 2014

Oil and Natural Gas Corporation Limited

....*Petitioner*

: *Versus* :

Jindal Drilling and Industries Limited

....*Respondent*

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**Mr. Pankaj Savant, Senior Advocate** with Mr. Nishit Dhruva, Ms. Khushbu Chhajed and Mr. Pulkit Awasthi, i/by. MDP Legal, for the Appellant.

**Mr. V. R. Dhond, Senior Advocate** with Mr. Aseem Chaturvedi, Mr. Ravitej Chilumuri, Mr. Milind Sharma, Ms. Radhika Kulkarni and Ms. Karishma Rao i/by. Khaitan & Co., for the Respondent.

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CORAM : ALOK ARADHE, CJ. &  
SANDEEP V. MARNE, J.

JUDGMENT RESD. ON : 4 JULY 2025.

JUDGMENT PRON. ON : 10 JULY 2025.

JUDGMENT : (Per : Sandeep V. Marne, J.)

1) These Appeals are filed by the Appellant challenging the common judgment and order dated 28 April 2015 passed by the learned Single Judge dismissing Arbitration Petition Nos. 587 of 2014, 767/2014, 768/2014 and 1045/2014 filed under the provisions of Section 34 of the Arbitration and Conciliation Act, 1996 challenging Arbitral Award dated 9 October 2013.

2) Brief facts leading to filing of the Appeals are that, the Oil and Natural Gas Corporation Ltd. (ONGC) floated a tender for charter hire of a Floating Production Storage and Off-loading vessel (FPSO) in October 2005. M/s. Discovery Enterprises Pvt. Ltd. (Discovery) submitted its bid. On 22 March 2006, ONGC awarded the contract in favour of Discovery. Pursuant to the said contract, according to ONGC, Discovery imported the vessel FPSO (Crystal Sea) for oil and gas processing in the Bombay High in the offshore fields of ONGC. ONGC paid customs duty on the said vessel on behalf of Discovery of Rs.55,78,12,857/- with an understanding that the vessel would be exported under the duty drawback scheme and that Discovery would complete all the formalities for claiming the duty drawback. Discovery allegedly failed to comply with their part of obligation and accordingly the contract was terminated on 12 November 2006. ONGC issued notice dated 12 February 2007 to Discovery and demanded various amounts

towards compensation. The dispute between ONGC and Discovery was accordingly referred to the Arbitral Tribunal.

3) In the arbitration proceedings between ONGC and Discovery, ONGC impleaded M/s. Jindal Drilling and Industries Limited (**Jindal**)-the present Respondent. Jindal filed an application on 23 August 2008 in the arbitration proceedings under Section 16 of the Arbitration and Conciliation Act, 1996 (**the Act**) praying for deletion of its name from the arbitration proceedings by raising the issue of jurisdiction. By order passed by the Arbitral Tribunal on 27 October 2010, the plea of Jindal was accepted and ONGC was directed to strike off Jindal's name from the array of the parties. Aggrieved by the order dated 27 October 2010, ONGC filed Appeal under Section 37 of the Act which came to be dismissed by this Court vide order dated 27 June 2012. ONGC filed Special Leave to Petition against the order dated 27 June 2012 before the Supreme Court which remained pending. In the meantime, the Arbitral Tribunal passed final award dated 6 June 2013 in favour of ONGC and against Discovery. Discovery has apparently not challenged the said final award dated 6 June 2013.

4) In the meantime, ONGC entered into agreement with Jindal on 2 December 2006 and took on hire the drilling unit RIG Noble Charlie Yester from Jindal to conduct drilling operations in the offshore waters of India. Three contracts were executed with Jindal on 9 December 2004, 17 August 2006 and 23 December 2003 for three other works. The four contracts awarded to Jindal by ONGC were independent contracts not relating to each other and according to Jindal, not having any connection with the contract between ONGC and Discovery. Jindal apparently executed the works awarded under the said four contracts and submitted various bills to ONGC. ONGC

did not dispute the said bills but refused to pay the same on the ground that since Discovery was liable to compensate ONGC in respect of the amounts claimed in the arbitration proceedings, ONGC adjusted/appropriated and/or exercised lien on the amount of Rs.63,87,38,070.76 which was kept by Jindal with ONGC as security to satisfy award if passed in favour of ONGC in the then pending arbitration proceedings between ONGC and Discovery.

5) Since ONGC refused to pay the undisputed dues of Jindal in respect of the four contracts, disputes arose between the parties, which were referred to arbitration. By common Award dated 9 October 2013, the Arbitral Tribunal allowed the claims made by Jindal and directed ONGC to pay various amounts to Jindal alongwith interest and costs. The said common Award dated 9 October 2013 became subject matter of challenge by ONGC before the learned Single Judge of this Court in Arbitration Petition Nos. 587/2014, 767/2014, 768/2014 and 1045/2014. By common judgment and order dated 28 April 2015, the learned Single Judge has dismissed all the four Arbitration Petitions filed by ONGC. In the present Appeals, judgment and order dated 28 April 2015 passed by the learned Single Judge has been challenged.

6) Turning back to the arbitration proceedings between ONGC and Discovery, the challenge raised by ONGC to the order passed by the Arbitral Tribunal allowing Jindal's Section 16 application, as upheld by Single Judge was pending before the Supreme Court, in which ONGC moved an application seeking transfer of the present Appeals to the Hon'ble Supreme Court. By order dated 1 September 2016, the transfer petition was allowed and the present Appeals stood transferred to the Supreme Court and tagged alongwith the pending SLP/Civil Appeal.

7) After transfer of the present Appeals before the Hon'ble Supreme Court, ONGC deposited the awarded amount of approximately 160 crores in the Supreme Court and Jindal was permitted to withdraw the same on 6 January 2020 subject to bank guarantees to the satisfaction of this Court.

8) On 27 April 2022, the Hon'ble Supreme Court allowed the Civil Appeal filed by ONGC holding that the application for discovery and inspection of documents ought to have been decided by the Arbitral Tribunal before deciding application filed under Section 16 of the Act. Accordingly, the interim award, as well as the order passed by this Court under Section 37 were set aside. The Supreme Court directed that the application filed by Jindal under Section 16 be decided afresh, after deciding the application for discovery and inspection. Parties were also granted liberty to lead fresh evidence. While disposing off the Civil Appeal filed by ONGC, the Apex Court also remanded the present Appeals to this Court, which were directed to be kept in abeyance till decision of application filed under Section 16 of the Act. Additionally, the bank guarantees were directed to be kept alive till the issue is decided by this Court.

9) The Arbitral Tribunal was reconstituted pursuant to order of remand made by the Supreme Court. The reconstituted Arbitral Tribunal allowed ONGC's application for discovery of documents, pursuant to which Jindal filed all the available documents. ONGC also led fresh evidence. ONGC's application to file additional documents was also allowed. By order dated 3 April 2025, the Arbitral Tribunal once again allowed Jindal's application filed under Section 16 of the Act and Jindal was ordered to be deleted from the array of parties in the arbitration proceedings between ONGC and Discovery. By order dated 18 April 2025, the arbitration proceedings were terminated.

10) On account of decision of application under Section 16 of the Act by the Arbitral Tribunal deleting Jindal from arbitration proceedings between ONGC and Discovery, the present Appeals are moved contending that the stay granted by the Hon'ble Apex Court by judgment and order dated 27 April 2022 has come to an end and that the Appeals can now be decided by this Court.

11) We have heard Mr. Savant, the learned Senior Advocate appearing for the Appellant-ONGC. He would submit that the order passed by the Arbitral Tribunal on 3 April 2025 has been challenged by ONGC by filing Appeal under Section 37 of the Act and that therefore till the said Appeal is decided, hearing of the present Appeals be kept in abeyance. He would submit that the spirit of the judgment of the Apex Court dated 27 April 2022 is such that the present Appeals challenging award of the Arbitral Tribunal in proceedings between Jindal and ONGC cannot be decided independent of the parallel arbitration proceedings held between ONGC and Discovery. That Discovery is a sister concern of Jindal, it is merely a shell company and was always controlled and managed by the directors of Jindal. That no assets are left in Discovery from which ONGC can recover awarded sum of Rs.63 crores and USD 1.8 million. That ONGC wants to establish linkage between Jindal and Discovery by applying the 'group of companies doctrine'. That the Hon'ble Apex Court had stayed hearing of the present Appeals after *prima-facie* noticing the linkage between Jindal and Discovery. That merely because ONGC can independently execute Award against Discovery, the same cannot be a reason for going ahead with hearing and decision of the present Appeals. That the same position was presented before the Apex Court, which thought it appropriate to keep the hearing of the present Appeals in abeyance till

Jindal's application under Section 16 of the Act was decided afresh. He would submit that ONGC would not be able to independently recover the awarded sum from Discovery and that it is necessary that ONGC is allowed to make an attempt to establish linkage between Jindal and Discovery in Appeal filed under Section 37 of the Act. He would submit that the issue of public funds is involved and therefore it is prudent that hearing of the Appeals is deferred for few more days till the Appeal filed by ONGC is decided by the learned Single Judge. That the bank guarantees submitted by Jindal are otherwise in force till January 2026. Alternatively, he would pray that ONGC be atleast allowed to apply for stay to the order dated 3 April 2025 passed by the Arbitral Tribunal before the learned Single Judge hearing Section 37 Appeal. On these broad submissions, Mr. Savant has opposed hearing and decision of the present Appeals.

**12)** *Per-contra*, Mr. Dhond, the learned Senior Advocate appearing for Jindal would submit that the hearing of the present Appeals was stayed by the Apex Court only till fresh decision of application filed by Jindal under Section 16 of the Act by the Arbitral Tribunal. Once, the said application is allowed by order dated 3 April 2025, the embargo put by the Apex Court on hearing of the present Appeals has come to an end. That ONGC is seeking to rewrite the directions issued by the Apex Court in para-76 of the judgment by contending that the stay on hearing of the present Appeals must continue till ONGC exhausts the last available remedy in proceedings between ONGC and Discovery. He would therefore submit that the present Appeals must be now heard, which are pending for the last 11 long years. He would submit that though Jindal has withdrawn the deposited amount, it is required to maintain bank guarantees towards security on account of which Jindal is incurring huge expenditure. He would submit that ONGC does not have any defence on merits as it has



admitted its liability to Jindal in the arbitration proceedings. The only defence taken by ONGC was about adjustment of ONGC's liability towards Jindal against liabilities of Discovery to ONGC. That once the linkage between Discovery and Jindal is not established, the whole defence sought to be raised by ONGC is falsified and the Appeals must necessarily be dismissed. That Jindal cannot be made to incur expenditure towards keeping alive the bank guarantees for indefinite period of time. He would accordingly submit that the present Appeals have become infructuous and would pray for their dismissal.

**13)** Rival contentions of the parties now fall for our consideration.

**14)** In the present Appeals, ONGC has challenged the common judgment and order dated 28 April 2015 passed by the learned Single Judge of this Court dismissing the arbitration petitions filed by it under the provisions of Section 34 of the Act. In those petitions, ONGC had challenged common arbitral award dated 9 October 2013, by which, the Arbitral Tribunal has awarded sum of USD 14.7 million plus interest to Jindal. ONGC does not really dispute the liability to pay the said amount to Jindal. However, ONGC believes that Discovery is a sister concern of Jindal, against whom ONGC has secured a separate Award in the sum of Rs.63 crores and USD 1.8 million and that therefore the said amount due by Discovery to ONGC must be adjusted against ONGC's liability to pay the awarded sum to Jindal. This is the only defence taken by ONGC in the arbitration proceedings and it continues to raise the said dispute even in the present Appeals.

**15)** In its quest to secure an order for adjustment of dues payable by Discovery to it, ONGC had impleaded Jindal in the arbitration proceedings filed against Discovery. However, its



impleadment in Discovery's arbitration proceedings was questioned by Jindal by filing application under Section 16 of the Act contending *inter-alia* that it has no connection with the contract executed between ONGC and Discovery. ONGC had filed an application for discovery and seeking inspection of various documents, which ONGC believed that the same would establish linkage between Jindal and Discovery. It appears that the then Arbitral Tribunal had deferred hearing of application for discovery of documents till the application under Section 16 of the Act was decided. By interim award dated 27 October 2010, the then Arbitral Tribunal allowed the application filed by Jindal and directed its deletion from Discovery's arbitration proceedings on account of ONGC's inability to establish any linkage between liability of Discovery with Jindal. Accordingly, the arbitration proceedings between ONGC and Discovery are independently decided in absence of Jindal by final award dated 6 June 2013 by which ONGC is awarded a sum of Rs.63 crores and USD 1.8 million against Discovery. ONGC has filed execution proceedings before the Delhi High Court for enforcement of the Award dated 6 June 2013, which are apparently pending.

**16)** As observed above, ONGC got aggrieved by deletion of Jindal from Discovery's arbitration proceedings and after dismissal of its Appeal filed under Section 37 of the Act, ONGC approached the Hon'ble Supreme Court by challenging interim award dated 27 October 2010 and order passed by the Single Judge of this Court on 27 June 2012. The present Appeals got transferred to the Supreme Court by allowing ONGC's transfer petition vide order dated 1 September 2016 on account of possibility of 'some connection' between the two arbitration proceedings.

17) The Apex Court allowed the Appeal filed by ONGC by a detailed judgment and order dated 27 April 2022. The Apex Court held that the Arbitral Tribunal adopted incorrect approach of deferring the application filed by ONGC for discovery of documents and in deciding Jindal's application filed under Section 16 of the Act without deciding the application for discovery of documents. The reason for transfer of the present Appeals has been discussed by the Apex Court in para-58 of the judgment, which reads thus :-

58. JDIL invoked the arbitration on 4-2-2010 and an Arbitral Tribunal consisting of Ms Justice Sujata Manohar, Mr Justice B.N. Srikrishna and Mr Justice M.S. Rane was constituted. The Arbitral Tribunal rendered a final award on 9-10-2013 (the arbitral award in the second proceeding) in favour of JDIL and accepted its claim amounting to US \$14,772,495.55 together with interest of 4% p.a. from the date of the invoice until payment or realisation. ONGC instituted proceedings under Section 34 before the Bombay High Court. By a judgment dated 28-4-2015, a Single Judge of the Bombay High Court upheld the arbitral award. The appeals against the judgment of the Single Judge under Section 37 were pending when ONGC applied for transfer of the appeals to this Court. By an order dated 1-9-2016, **the appeals have been transferred to this Court on the ground that "there is some connection" between the special leave petition arising from the judgment of the Bombay High Court affirming the decision of the Arbitral Tribunal that it lacked jurisdiction on the claim against JDIL.**

*(emphasis added)*

18) The Apex Court further noted the factum of ONGC not denying the claims made by Jindal in para-60 of the judgment, which reads thus :-

60. The Single Judge noted that ONGC had not denied the claims which were made by JDIL (the original claimant). The only defence of ONGC was that it was entitled to adjust the amount which was claimed by JDIL under the four contracts against ONGC's claim qua DEPL. In the course of the arbitral award in the second proceeding, the Arbitral Tribunal has also observed that the claims of JDIL were not disputed by ONGC. The award of the Arbitral Tribunal noted that:

"The above claims of the claimant are not denied by the respondent ONGC. The defence of ONGC to the claims made by the claimant in these arbitration proceedings is essentially to

the effect that the respondent is entitled to appropriate the sums payable by it to the claimant under these 4 contracts against the claim of the respondent against DEPL under its contract with DEPL."

(emphasis added)

**19)** However, the Apex Court found error in the approach of the first Arbitral Tribunal in not deciding the application filed by ONGC for discovery and inspection of documents and proceeding to decide application filed by Jindal under Section 16 of the Act. Accordingly, the interim award dated 27 October 2010 passed under Section 16 of the Act as well as judgment of Single Judge of this Court dated 27 June 2012 dismissing ONGC's Appeal under Section 37 of the Act came to be set aside. While allowing the Civil Appeal filed by ONGC and remanding the proceedings to the Arbitral Tribunal for fresh decision of Section 16 application filed by Jindal, the Apex Court remanded the present Appeals to this Court but directed that Appeals shall remain adjourned *sine die* until the reconstituted Arbitral Tribunal decides the application filed by Jindal under Section 16 of the Act. It would be apposite to reproduce Paras-75 to 78 of the judgment which read as under:-

#### **D. Conclusion**

**75.** For all the above reasons we have come to the conclusion that there was a fundamental failure of the first Arbitral Tribunal to address the plea raised by ONGC for attracting the group of companies doctrine. Moreover, by leaving the application filed by ONGC for discovery and inspection unresolved, the first Arbitral Tribunal failed to allow evidence which may have had a bearing on the issue of whether JDIL could be considered to have an economic unity with DEPL and could hence be made a party to the arbitral proceedings.

**76.** For the above reasons, we are of the view that:

**76.1.** The interim award of the Arbitral Tribunal dated 27-7-2010 on the plea raised by JDIL under Section 16 has to be set aside.

**76.2.** The judgment of the Single Judge of the Bombay High Court dated 27-6-2012 [*ONGC Ltd. v. Discovery Enterprises (P) Ltd.*, 2012 SCC OnLine Bom 2351] dismissing ONGC's appeal under Section 37 would have to be set aside.

**76.3.** The plea by JDIL that the Arbitral Tribunal lacks jurisdiction would have to be decided afresh. In this regard, this Court was informed that one of the three arbitrators has died and that the Arbitral Tribunal cannot be reconstituted. We accordingly direct that ONGC and JDIL shall each nominate their arbitrators within a period of two weeks from the date of this judgment while the two arbitrators shall nominate and appoint the third arbitrator. The Arbitral Tribunal so reconstituted shall decide afresh upon the plea of JDIL in regard to the absence of jurisdiction after furnishing to the parties the opportunity of leading any further evidence or seeking the production of further documentary material on the record. The evidence and documentary evidence which has been already adduced before the earlier Arbitral Tribunal shall however form part of the record of the newly constituted Tribunal.

**76.4.** As regards the cases which have been transferred to this Court, we would order and direct that these cases be remitted back to the Bombay High Court. The decision on those appeals which arose from the dismissal by the Single Judge of the petition under Section 34 challenging the arbitral award dated 9-10-2013 in the second proceeding, in favour of JDIL, shall be held in abeyance and remain adjourned sine die until the Arbitral Tribunal which is reconstituted in terms of the above directions rules on its jurisdiction and in the event that it rejects the plea challenging its jurisdiction, until the arbitral award is delivered in relation to ONGC's claim against JDIL.

**76.5.** During the pendency of these proceedings, ONGC was directed to deposit the amount due under the arbitral award in the second proceeding dated 9-10-2013, which was permitted to be withdrawn by JDIL subject to furnishing a bank guarantee which shall be kept alive during the pendency of the proceedings before the Bombay High Court. The bank guarantee furnished by JDIL shall be kept alive to the satisfaction of the Prothonotary and Senior Master of the Bombay High Court.

**77.** For the above reasons, we issue the following directions:

**77.1.** The judgment of the Single Judge of the Bombay High Court dated 27-6-2012 in *ONGC Ltd. v. Discovery Enterprises (P) Ltd.* [ONGC Ltd. v. Discovery Enterprises (P) Ltd., 2012 SCC OnLine Bom 2351] is set aside.

**77.2.** The appeal filed by ONGC under Section 37 of the 1996 Act against the interim award of the Arbitral Tribunal dated 27-10-2010 is allowed and the interim award of the Tribunal dated 27-10-2010 shall stand set aside.

**77.3.** A fresh Arbitral Tribunal shall be constituted by ONGC and JDIL each nominating their arbitrators within a period of two weeks

from the date of this judgment and the two arbitrators thereafter will jointly appoint the third arbitrator.

**77.4.** The present judgment will not have any bearing on the arbitral award dated 6-6-2013 passed in favour of ONGC against DEPL.

**77.5.** The transferred cases shall stand remitted back to the Bombay High Court. The hearing of the transferred cases is adjourned sine die so as to await the outcome of the arbitral proceedings between ONGC and JDIL in terms of sub-para 77.3 above.

**77.6.** In pursuance of the interim orders of this Court, ONGC was directed [*ONGC Ltd. v. Discovery Enterprises (P) Ltd.*, 2020 SCC OnLine SC 1373] to deposit the amount due to JDIL under the arbitral award in the second proceeding dated 9-10-2013 which was permitted [*ONGC Ltd. v. Discovery Enterprises (P) Ltd.*, 2020 SCC OnLine SC 1375] to be withdrawn by JDIL subject to furnishing a bank guarantee. The bank guarantee furnished by JDIL shall be kept alive to the satisfaction of the Prothonotary and Senior Master of the Bombay High Court pending the disposal of the arbitration appeals against the judgment of the Single Judge dated 28-4-2015 [*ONGC Ltd. v. Jindal Drilling & Industries Ltd.*, 2015 SCC OnLine Bom 1707] dismissing the petition under Section 34 challenging the arbitral award dated 9-10-2013.

**77.7.** Upon the reconstitution of the Arbitral Tribunal, the plea of JDIL under Section 16 shall be decided afresh. All the rights and contentions in that regard are kept open to be decided by the Arbitral Tribunal. The oral and documentary evidence which was produced before the earlier Arbitral Tribunal shall form part of the proceedings before the fresh Arbitral Tribunal to be constituted in pursuance of the above directions. ONGC would be at liberty to pursue its application for discovery and inspection and to seek further directions before the Arbitral Tribunal. Parties would be at liberty to apply for leading further evidence before the Arbitral Tribunal if they are so advised.

**78.** The appeal is allowed in the above terms. The transferred cases are remitted back to the Bombay High Court for disposal in the light of the above directions.

**20)** After remand of the Discovery's arbitration proceedings for fresh ruling on Arbitral Tribunal's jurisdiction, the Tribunal was reconstituted (*in accordance with the directions issued by the Supreme Court*) comprising of Hon'ble Mr. Justice (Retd.) Swatanter Kumar, Hon'ble Mr. Justice (Retd.) Naresh Patil and Hon'ble Mr. Justice (Retd.) Jayant Nath. The reconstituted Arbitral Tribunal allowed ONGC's application for discovery and inspection of documents by order dated 16 July 2022

and accordingly Jindal filed all the documents requisitioned by ONGC. ONGC also led fresh evidence.

**21)** After perusal of the said documents and ONGC's fresh evidence, the reconstituted Arbitral Tribunal allowed the application filed by Jindal under Section 16 of the Act by order dated 3 April 2025. The reconstituted Arbitral Tribunal held that ONGC was unable to satisfy the essential factors required to invoke 'Group of Companies doctrine' so as to create a liability for Jindal. Accordingly, the application filed by Jindal under Section 16 of the Act is allowed and Jindal has been directed to be deleted from the array of parties.

**22)** After Jindal moved a praceipe for listing of all the Appeals for hearing and when the present Appeals are taken up for hearing, a statement is made on behalf of ONGC by Mr. Savant that on 3 July 2025, ONGC has filed Appeal under Section 37 of the Act challenging the order dated 3 April 2025 passed by the reconstituted Arbitral Tribunal before the learned Single Judge of this Court. Mr. Savant has urged that till the said Appeal is decided, hearing of the present Appeals be deferred.

**23)** We have already reproduced the observations of the Apex Court in para-58 of the judgment in which the reason for transfer of the present Appeals before the Hon'ble Supreme Court has been discussed. The Appeals were transferred on the ground that there could be '*some connection*' between the Special Leave to Petition and the claim of ONGC against Jindal. The present Appeals could not be decided and remained pending before the Supreme Court till ONGC's challenge to Section 16 order was decided. When the Supreme Court allowed ONGC's Civil Appeal by directing fresh decision of Jindal's Section 16 Application, the Court thought it appropriate to keep the



present Appeals pending till ONGC made a fresh attempt before the reconstituted Arbitral Tribunal to establish connection between Jindal and Discovery. This appears to be the reason why the Apex Court directed keeping the present Appeals in abeyance in paras-76.4 and 77.5 of the judgment.

24) Careful perusal of the directions of the Apex Court in paras-76.4 and 77.5 of the judgment would indicate that the directions to keep the present Appeals in abeyance and to adjourn the same *sine-die* operated only till the reconstituted Arbitral Tribunal ruled on its jurisdiction. The said direction was also to be continued in the event of Jindal's plea challenging the jurisdiction was to be rejected, in which event, the present Appeals were required to be kept in abeyance until the Arbitral Award was delivered in relation to ONGC's claim against Jindal. However, the reconstituted Arbitral Tribunal has once again allowed Jindal's application filed under Section 16 of the Act and has deleted Jindal from Discovery's arbitration proceedings. Therefore, the direction for keeping the present Appeals in abeyance has come to an end on 3 April 2025. Now no proceedings would be held between ONGC and Jindal and no arbitral award can be made in relation to ONGC's claim against Jindal. Therefore, as per the directives of the Apex Court in paras-76.4 and 77.5 of the judgment, hearing of the present Appeals can proceed and need not be held in abeyance any longer.

25) ONGC's plea for further deferment of hearing of the present Appeals till decision of the Appeal filed by it under Section 37 of the Arbitration Act against order dated 3 April 2025 would virtually amount to rewriting the directions of the Apex Court in paras-76.4 and 77.5 of the judgment. The Apex Court has not directed that hearing of the present Appeals be held in abeyance until ONGC exhausts all the



remedies in respect of the ruling given by the Arbitral Tribunal on its jurisdiction under Section 16 of the Act. The Apex Court felt it appropriate to defer hearing of the present Appeals only till the reconstituted Arbitral Tribunal considered all the documents requisitioned by ONGC for a fresh ruling on the issue of jurisdiction. The order of remand of Section 16 proceedings was made by the Apex Court only on account of failure on the part of the first Arbitral Tribunal in not deciding ONGC's application for disclosure and inspection of documents. The Apex Court therefore directed the reconstituted Arbitral Tribunal to decide ONGC's application for disclosure and inspection of documents with liberty to the parties to apply for fresh evidence. Thus, the direction for keeping hearing of the present Appeals in abeyance were given by the Apex Court only on account of failure on the part of the first Arbitral Tribunal in not deciding ONGC's application for disclosure and inspection. The reconstituted Arbitral Tribunal has considered all the documents produced by Jindal after ONGC's application for discovery and inspection was allowed. It has also considered additional evidence led by ONGC. After consideration of fresh material, the Arbitral Tribunal has ruled in favour of Jindal by directing its deletion while allowing application filed under Section 16 of the Act.

**26)** In our view, therefore the embargo on hearing of the present Appeals as per the observations made in para-76.4 and the directions given in para-77.5 of the judgment operated only till the outcome of the arbitral proceedings between ONGC and Jindal. The said arbitration proceedings are terminated by order dated 18 April 2025, which is passed consequent to the order dated 3 April 2025. Following the directives of the Apex Court, the hearing of the present Appeals can no longer be deferred. The Apex Court has not directed deferment of hearing of the Appeals after fresh decision of

Section 16 application. In our view, therefore in the order passed by this Court deferring hearing of the present Appeals beyond 3 April 2025/ 18 April 2025 would cause violence to specific directives in para 77.5 of the judgment. We accordingly rejected the plea on behalf of ONGC for deferment of hearing of the present Appeals till ONGC's Appeal under Section 37 of the Act challenging the order dated 3 April 2025 is decided.

27) It is not that disposal of the present Appeals or its decision against ONGC would render ONGC remediless in respect of its claim against Discovery. ONGC has secured award against Discovery and execution proceedings for enforcement of the said Award are already pending before the Delhi High Court. The entire objective behind establishing linkage between Jindal and Discovery was to seek adjustment of Discovery's dues to ONGC against ONGC's dues to Jindal. On account of order dated 3 April 2025, ONGC's attempt of such adjustment is frustrated and it will have to now pay the entire dues to Jindal as per the Award. However, the Award passed in its favour against Discovery would still continue to subsist and ONGC would still be in a position to recover its dues from Discovery. This is yet another reason why hearing of the present Appeals need not be deferred till ONGC exhausts its last remedy against the order passed by reconstituted Arbitral Tribunal on 3 April 2025.

28) We are not impressed by Mr. Savant's submission that the Apex Court directed deferment of hearing of the Appeals even after noticing existence of remedies for ONGC to execute Award against Discovery. The order of deferment for hearing of the present Appeals was made only on account of failure on the part of the first Arbitral Tribunal in making available all documents for examination of

connection between Jindal and Discovery. The Apex Court has not directed that hearing of the present Appeals shall be kept in abeyance even after ONGC fails to establish connection between Jindal and Discovery. The deferment of hearing of the present Appeals was ordered beyond decision of Section 16 application only in the event, the said application was to be dismissed and an Award was made determining liability of Jindal towards ONGC. The arbitral proceedings are however terminated by upholding the objection of jurisdiction raised by Jindal under Section 16 of the Act by order dated 3 April 2025. This is not the position that existed when the Apex Court made order for deferment of hearing of the present Appeals on 27 April 2022. We are therefore unable to accept the submission canvassed by Mr. Savant.

29) We accordingly proceed to hear all the Appeals filed by ONGC on merits. Mr. Savant has fairly admitted that ONGC has never disputed the claim of Jindal. As observed above, even the Hon'ble Apex Court has recorded non-denial of claims made by Jindal and that the only defence raised by ONGC is of adjustment. Now that ONGC's liability against Jindal cannot be adjusted against Discovery's liability to ONGC, the present Appeals must be dismissed as ONGC has not denied the claims made by Jindal.

30) We accordingly proceed to dismiss the Appeals by upholding the impugned judgment and order dated 28 April 2015 passed by the learned Single Judge as well as the impugned Award dated 9 October 2013 passed by the Arbitral Tribunal. The Appeals are accordingly **dismissed**. Costs in the Appeals are however made easy. Dismissal of the Appeals shall have no bearing on the Appeal filed by the Appellant challenging order dated 3 April 2025, which shall be decided on its own merits.

31) After the judgment is pronounced, Mr. Savant would request for continuation of arrangement of bank guarantee by Jindal for a period of 8 weeks with a view to enable ONGC to challenge the present judgment before the Apex Court. He would submit that the bank guarantees are otherwise in force till January 2026. The prayer is opposed by Mr. Dhond. Considering the fact that the bank guarantees are otherwise operational till January 2026, we deem it appropriate that Jindal shall maintain the bank guarantees furnished by it for a period of 8 weeks.

[SANDEEP V. MARNE, J.]

[CHIEF JUSTICE]

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