



## TRIBUNAL'S DECISION ON THE ISSUE OF LIMITATION SHALL BE CONSTRUED AS AN INTERIM AWARD

*Indian Farmers Fertilizer Co-operative Limited ('IFFCI') v. Bhadra Products ('Bhadra') [January 23, 2018]*

### INTRODUCTION

- 1) The issue which arose for consideration before the Supreme Court in the captioned case was (i) whether an award on the point of limitation is an interim award and amenable to appeal under Section 34 of the Arbitration and Conciliation Act, 1996 ("Act"); or (ii) whether a decision on the point of limitation would go to the root of jurisdiction, and therefore be covered within the ambit of Section 16 of the Act and subjected to the procedure prescribed therein.

### BACKGROUND

- 2) IFFCI issued a Letter of Intent dated November 2, 2006 in favor of Bhadra for the supply of defoamers ("Contract"). Disputes arose between the parties and Bhadra invoked arbitration. Amongst the issues framed by the parties, the tribunal first took up the issue of limitation. On 23 July 2015, the tribunal held in favor of Bhadra and held that the claim was not hit by limitation ("Award").
- 3) IFFCI filed an application under Section 34 of the Act, before the District Judge, Jagatsinghpur ("District Judge"), to set aside the arbitral Award. The District Judge held in favor of Bhadra and observed that as the impugned Award was not an interim award and thus the District Judge lacked jurisdiction to proceed under Section 34 of the Act. The appeal before the High Court of Orissa ("HC") was also dismissed by an order dated 30 June 2017 ("Order"). Aggrieved as such, IFFCI challenged the Order before the Supreme Court ("SC").
- 4) While IFFCI contended that the Award is an interim award under Section 2(c) of the Act and therefore amenable to challenge under Section 34 of the Act, Bhadra submitted that a ruling on the point of limitation is analogues to a ruling on the point of 'jurisdiction' and therefore would attract the provisions under Section 16 of the Act.

### OBSERVATIONS AND FINDINGS

#### NATURE OF THE AWARD – INTERIM AWARD

##### *Plea of Absence of Jurisdiction*

- 5) The SC examined Section 16 of the Act and noted that once a plea of limitation/ absence of jurisdiction is rejected by the tribunal, the arbitral proceedings ought to continue and the challenge can only be taken at a later stage once the final award has been passed. However, if the plea is accepted by the tribunal, parties will have recourse to Section 37(2)(a), which provides that a direct appeal lies from an order accepting the plea of absence of jurisdiction under Section 16 of the Act.

##### *Definition and Scope of Interim Award*

- 6) The SC noted that while the Act is silent with respect to the independent definition of 'interim award', Section 2(c) of the Act and Section 31(6) of the Act shed light on the scope of interim awards. Section 2(c) provides that an arbitral award includes an interim award, whereas, Section 31(6) of the Act "delineates the scope of interim arbitral award and states that the arbitral tribunal may make an interim arbitral award on any matter with respect to which it may make a final arbitral award". The SC recognized the wide reach of the terms 'any matter' and observed that "the jurisdiction to make an interim arbitral award is left to the good sense of the arbitral tribunal and that it extends to 'any matter' with respect to which it may make a final arbitral award. The expression 'matter' is wide in nature and subsumes issues at which the parties are in dispute." Relying upon *Satwant Singh Sodhi v. State of Punjab*<sup>1</sup> and *McDermott International Inc. v. Burn Standard Co. Ltd.*<sup>2</sup>, the SC concurred that an interim award or a partial award made at an intermediate stage of arbitral proceedings is a final award on matters covered therein.
- 7) Testing the given circumstances in light of the statutory provisions and judicial pronouncements, in the present case the SC observed that (i) the tribunal disposed on one of the matters between the parties i.e. issue of limitation; (ii) the Award is an 'interim award' according to the meaning ascribed to interim awards in Section 2(1) (c) of the Act; and (iii) Since interim award is

<sup>1</sup> (1999) 3 SCC 487

<sup>2</sup> (2006) 11 SCC 181

subsumed within the expression 'arbitral award', it could therefore be challenged under Section 34 of the Act.

### **Applicability of Section 16**

- 8) While dealing with the question of whether the Award was covered within the ambit of Section 16 of the Act, as opposed to being an interim award, the SC conjointly read Section 16 with its ruling in *SBP & Co. v. Patel Engg. Ltd* ("**SBP**")<sup>3</sup>.
- 9) The SC concurred with its decision in *SBP*<sup>4</sup>, wherein it held that since the tribunal's finding that the claim was barred by limitation was an adjudication on merits, the aggrieved party would have recourse to Section 34 of the Act and would have to succeed on establishing any of the grounds available under that provision. In *SBP*<sup>5</sup>, the SC clarified that "*it would not be open to that party to take up the position that by refusing to go into the merits of his claim, the Arbitral Tribunal had upheld a plea that it does not have jurisdiction to entertain the claim and hence the award or order made by it, comes within the purview of Section 16(2) of the Act and consequently is appealable under Section 37(2) (a) of the Act.*"

### **CONCLUSION AND ANALYSIS**

- 10) Based on the above findings, the SC held that the Award is an interim award, which could be challenged separately and independently under Section 34 of the Act. The SC allowed the appeal, set aside the impugned Order, and directed the District Judge to decide the Section 34 proceedings.
- 11) The SC recommended that Parliament should consider amending Section 34 of the Act to consolidate all interim awards along with the final award, so that upon the delivery of the final arbitral award, a single challenge is filed under Section 34 rather than multiple challenges. The SC observed "*Piecemeal challenges like piecemeal awards lead to unnecessary delay and additional expense.*"
- 12) The SC laid emphasis on the wide reach of Section 31(6) and indicated that decisions of the tribunal on any other 'matter', such as limitation in the present case, would be an interim award under Section 31(2) of the Act. Time will only tell how a wider interpretation of Section 31(6) may affect the challenges arising from interim awards and if the same delays arbitral proceedings or expedites the process in its entirety. It also remains to be seen whether the legislature will act on the suggestions of the apex court through the present judgment.

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<sup>3</sup> (2005) 8 SCC 618

<sup>4</sup> *Supra* note 3

<sup>5</sup> *Supra* note 3