



## ELP Arbitration Weekly Alert

July 26, 2019

**EXERCISE OF WRIT JURISDICTION BY HIGH COURTS AGAINST ORDERS PASSED BY THE ARBITRAL TRIBUNAL IS IMPERMISSIBLE.**

***M/s Sterling Industries v. Jayprakash Associates Ltd. & Ors.<sup>1</sup>, (Supreme Court; July 10, 2019)***

### **Brief background**

The Allahabad High Court while exercising its writ jurisdiction under Article 227 of the Constitution of India. ("**Constitution**"), had set aside a partial award passed in an application ("**Application**") under Section 20 of the Arbitration and Conciliation Act, 1996 ("**the Act**") read with Section 19 of the Micro, Small & Medium Enterprises Development Act, 2006 ("**MSME Act**"). This Application was made to the District Judge by Jayprakash Associates Ltd.

<sup>1</sup> Civil Appeal Nos. 7117-7118 of 2017

("Respondent No.1") against a partial award made under Section 16 of the Act. Aggrieved by the said order of the High Court, M/s Sterling Industries ("Applicant") preferred a Special Leave Petition in front of the Hon'ble Supreme Court ("Court").

### Findings of the Court

The Court held that the Application against partial award was contrary to the provisions of Section 16 (6) of the Act. It was further held that it was not upon the High Court to set aside the partial award in an untenable application in exercise of its writ jurisdiction. Reliance was placed upon the decision of the Court in **SBP & Co. vs. Patel Engineering Ltd. & Anr.**<sup>2</sup>, which held as follows:

*"45. It is seen that some High Courts have proceeded on the basis that any order passed by an arbitral tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution of India. We see no warrant for such an approach. Section 37 makes certain orders of the arbitral tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating his grievances against the award including any in-between orders that might have been passed by the arbitral tribunal acting under Section 16 of the Act. The party aggrieved by any order of the arbitral tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The arbitral tribunal is after all, the creature of a contract between the parties, the arbitration agreement, even though if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the arbitral tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the arbitral tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution of India. Such an intervention by the High Courts is not permissible."*

[Emphasis Supplied]

The Court, deciding in favour of the Applicant, set aside the order of the Allahabad High Court. Additionally, upon insistence by Respondent No.1, liberty was granted to Respondent No.1 to challenge the award as and when it was finally passed under the MSME Act in accordance with law.

### Conclusion and analysis

It is pertinent to mention that the present decision of the Court stands in agreement with a plethora of previous decisions of the Court as well as various High Courts. The decision of the Court in **SBP & Co. vs. Patel Engineering Ltd. & Anr** (cited supra) is settled law and the same has been subsequently relied upon by the Court in the case of **Lalitkumar V. Sanghavi (D) Th. L.Rs. and Ors. v. Dharamdas V. Sanghavi and Ors**<sup>3</sup>. In **Lalitkumar's** case the Court dealt with an appeal against the order of the Bombay High Court which dismissed the Petitioner's application under Section 11 of the Act, seeking re-appointment of arbitrator along with directions against the Respondents therein for depositing a certain sum towards costs of arbitration and fees of arbitrator, for lack of maintainability and held the Petitioner's remedy to be under Article 226 of the Constitution.

In our considered opinion, this practice of the Court to discourage the exercise of writ jurisdiction as a challenge mechanism against the tribunals' is noteworthy. Such precedents go a long way in achieving the objective of minimal judicial intervention of the Courts in arbitration proceedings as envisaged under the Act.

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<sup>2</sup> (2005) 8 SCC 618

<sup>3</sup> (2014) 7 SCC 255