



High Court of Delhi sets parameters for exceptional circumstances to invoke Article 227 of the Constitution against arbitral tribunal's order and holds that objections to tribunal's jurisdiction are to be dealt with utmost urgency¹

Brief Facts

The Petitioners herein were arrayed as parties in an arbitration arising out of a dispute between two brothers and their respective families under a family settlement/partition deed. In a civil suit filed by one of the brothers and his family, the High Court of Delhi ("**Court**") had referred the dispute to arbitration in an application filed by the other brother under Section 8 of the Arbitration and Conciliation Act, 1996 ("**Act**").

The Petitioners filed objections under Section 16 of the Act (*Competence of arbitral tribunal to rule on its jurisdiction*) and stated that the arbitrator has no jurisdiction to adjudicate the claims against the Petitioners since the Petitioners were *bona fide* purchasers of the property having valid title deeds and therefore, the arbitration clause was not binding upon them, and that the Petitioners were neither parties to the suit nor parties to the arbitration agreement and thus, cannot be compelled to participate in the arbitration proceedings.

The arbitrator adjudicated the Section 16 objections and held that the jurisdictional objections would be decided along with the final award. The Petitioners then filed an application for recall of the order, which was also rejected. Thereafter, the Petitioners filed a petition under Article 227 of the Constitution before the Court, seeking to set aside the order of the arbitral tribunal rejecting the Petitioners' objections under Section 16 of the Act.

Issues

Issue (i): Whether arbitral tribunals are tribunals over which jurisdiction under Article 226 or 227 of the Constitution is exercisable by High Courts and what is the scope of interference?

Issue (ii): What is the law governing applications under Section 16 of the Act and manner of consideration of such applications by arbitral tribunals?

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Issue (iii): Whether judicial interference is warranted in the facts of the present case where the orders passed by the arbitral tribunal are challenged?

Judgment

Issue (i): Relying on the recent decisions of the Supreme Court in *M/s. Deep Industries Limited v. Oil and Natural Gas Corporation Limited*² and *Bhaven Constructions v. Executive Engineer, Sardar Sarovar Narmada Nigam Ltd. & Anr.*,³ the Court observed that in exceptional circumstances, a High Court has powers under Article 227 of the Constitution to interfere with orders passed by an arbitral tribunal rejecting objections under Section 16 of the Act, only if the orders passed are so perverse that the only possible conclusion is that there is a patent lack of inherent jurisdiction.

The Court also relied on *Union of India v. R Gandhi, President Madras Bar Association*⁴ and *SREI Infrastructure Finance Limited v. Tuff Drilling Private Limited*⁵ to observe that the term ‘tribunal’ mentioned in Article 227 would include arbitral tribunals constituted under the Act and thus, their orders can be challenged by invoking Article 227.

Issue (ii): The Court relied on *Mcdermott International Inc. v. Burn Standard Co. Ltd. and Ors.*⁶ and held that it is mandatory for an arbitral tribunal to decide jurisdictional objections at the earliest under Section 16(5) of the Act. The Court also identified the following factors that arbitral tribunals should keep in mind while adjudicating objections raised under Section 16 of the Act:

- If the issue of jurisdiction can be decided on the basis of admitted documents on record, then the arbitral tribunal ought to proceed to hear the matter/objections under Section 16 at the inception of the matter itself;
- If the arbitral tribunal is of the opinion that the objections under Section 16 cannot be decided at the inception and would require further enquiry into the matter, the arbitral tribunal could consider framing a preliminary issue and deciding the same as soon as possible;
- If the arbitral tribunal is of the opinion that objections under Section 16 would require evidence to be led, then the arbitral tribunal could direct limited evidence to be led on the said issue and adjudicate the same; and
- If the arbitral tribunal is of the opinion that detailed written and oral evidence needs to be led, then after the evidence is concluded, the objections under Section 16 would have to be adjudicated first before proceeding to passing of the award.

Issue (iii): The Court was of the view that in the present case, the approach of the arbitrator was neither perverse nor patently lacking in jurisdiction and therefore, did not attract interference of the Court under Article 227. This is because while deciding the Section 16 objections, the arbitrator had stated that the final decision cannot be given unless further evidence is led by the parties. However, the Court observed that the arbitrator’s observation that jurisdictional objections shall be decided while passing the final award is not fully in line with *Mcdermott International* (*supra*). The Court directed the arbitrator to decide the jurisdictional objections first before passing the final award and accordingly disposed of the writ petition.

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Analysis

The decision provides much required clarity on Section 16(5) of the Act, namely that an arbitral tribunal must decide jurisdictional objections with a sense of urgency. Further, the guidelines or factors set out by the Court for adjudication of Section 16 objections would be beneficial for parties as arbitral tribunals would now be compelled to decide jurisdictional objections prior to passing the final award even if such adjudication requires evidence to be led. The judgment would certainly help in curbing the practice of keeping jurisdictional objections in abeyance. The decision also reinforces the recent shift in jurisprudence that under Article 227 of the Constitution, courts may interfere with orders of arbitral tribunals in exceptional circumstances.

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- 1 Authored by Gauhar Mirza, Partner and Prakhar Deep, Senior Associate; *Surender Kumar Singhal v. Arun Kumar Bhalotia*, CM(M) No. 1272/2019, High Court of Delhi, judgment dated 25 March 2021.

Coram: Pratibha M. Singh, J.

- 2 2019 SCC OnLine SC 1602.
- 3 2021 SCC OnLine SC 8.
- 4 2010 11 SCC 1.
- 5 2018 11 SCC 470.
- 6 2006 11 SCC 181.

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