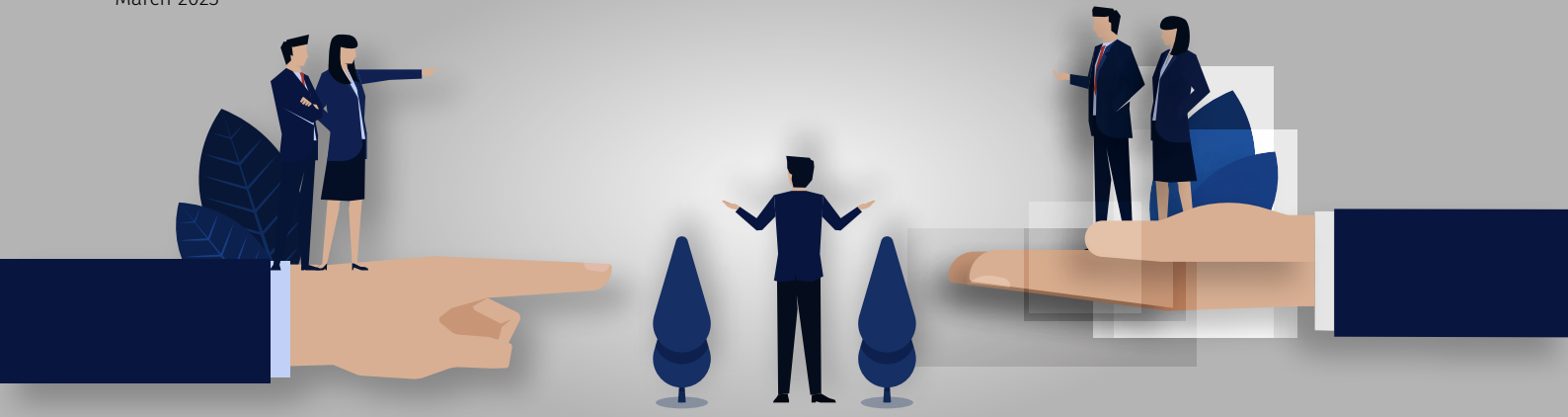




March 2023



High Court of Delhi refuses to interfere with an interim award based on an admission made in corporate insolvency resolution proceedings¹

Brief Facts

Bharat Heavy Electricals Ltd. (“Appellant”) filed an appeal (“Appeal”) under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (“Arbitration Act”) before the High Court of Delhi (“Court”). The Appeal was preferred by the Appellant against an order passed by a District Judge dismissing the objections raised by the Appellant under Section 34 of the Arbitration Act, against an interim award passed by a sole arbitrator (“Arbitral Tribunal”) in an arbitration between the Appellant and Zillion Infraprojects Pvt. Ltd. (“Respondent”).

In 2010, the Appellant entered into a contract with the Respondent for erection, testing, commissioning and trial operation of boilers. Disputes arose between the parties and the Respondent invoked arbitration. The Arbitral Tribunal commenced the hearing on 5 November 2018. Shortly after the commencement of the arbitral proceedings, Corporate Insolvency Resolution Proceedings (“CIRP”) were initiated against the Respondent.

In view of the CIRP, the Appellant moved an application under Section 14 of the Insolvency and Bankruptcy Code, 2016 (“IBC”) requesting adjournment of the arbitration proceedings *sine die* till the continuation of the resolution process. Consequently, the Arbitral Tribunal passed an order adjourning the arbitral proceedings *sine dine*. However, the Arbitral Tribunal observed that while the Appellant (operational creditor) may not be in a position to file its counterclaims before the Interim Resolution Professional (“IRP”), there is no bar on the Respondent (corporate debtor) to continue with the proceedings before the Arbitral Tribunal.

The Appellant admitted [in Form B under Section 7 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“2016 Regulations”)] that a total sum of INR 6,903,671.85/- was liable to be adjusted as set off, from the total amount of INR 26,419,997.33/- payable to him by the Respondent. Based on the Appellant’s admission before the IRP of the admitted amount, the Respondent filed an application under Section 31(6) read with Section 17 of the Arbitration Act for an interim award in terms of the admitted amount. The Appellant denied having admitted any liability and argued that the pleadings filed before the IRP cannot be treated as an admission on which an interim award may be allowed since the adjudication of the same is pending. The Arbitral Tribunal allowed the application of the Respondent and issued an interim award for the admitted sum, in favour of the Respondent.

The Appellant challenged the interim award under Section 34 of the Arbitration Act before the District Court, which was dismissed for being baseless and devoid of any merit. Further, the District Court directed that both, claims and counterclaims, including set off, may be heard and adjudicated by the Arbitral Tribunal. The Appellant filed the present Appeal against the judgment passed by the District Judge under Section 37(1)(c) of the Arbitration Act before the Court.

The Appellant broadly argued before the Court that: (i) the alleged admissions mentioned as set off in Form B submitted before the IRP cannot be considered as a determinate amount, unless adjudicated; and (ii) as Form B was filed before the IRP and not before the Arbitral Tribunal, it cannot be treated as an unequivocal admission in the arbitration proceedings.

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Issues

Issue (i): Whether the set off claimed by the Appellant in Form B under Section 7 of the 2016 Regulations may be construed as an admission?

Issue (ii): Whether the set off claimed by the Appellant in Form B under Section 7 of the 2016 Regulations can become the basis of the interim award passed by the Arbitral Tribunal?

Judgment

Issue (i): The Court observed that while giving a detailed statement of claims before the IRP in Form B under Section 7 of the 2016 Regulations, the Appellant also indicated an amount that may be set off against the claims. The Court held that this set off amount does not require any further adjudication by the Arbitral Tribunal and can be treated as a categorical admission by the Appellant for the purpose of passing an interim award.

Issue (ii): Relying on the judgments on admissions under Order XII, Rule 6 of the Code of Civil Procedure, 1908, the Court observed that an admission may be based on a statement made by a party in the pleadings before the adjudicating authority or “otherwise”. The Court observed that the set off claimed by the Appellant before the IRP in Form B under Section 7 of the 2016 Regulations was made in the proceedings relating to the claims/counterclaims filed by the parties against each other. Further, the Appellant’s admission of set off was not couched with any explanation or any denial. Therefore, the admission was unequivocal and rightly formed the basis of the interim award.

Analysis

The Court applied the legal position laid down by the Supreme Court’s decisions² and reiterated the limited scope of interference under Sections 34 and 37 of the Arbitration Act. The Court reinforced that the scheme of the Arbitration Act requires the courts to respect the finality of the arbitral award and party autonomy of having chosen to get their dispute resolved through arbitration. Further, courts cannot be permitted to independently evaluate the merits of the dispute but should limit their authority to the grounds of challenge provided under Sections 34 and 37 of the Arbitration Act.

Endnotes

- 1 Authored by Binsy Susan, Partner, Neha Sharma, Senior Associate and Palak Kaushal, Associate; *Bharat Heavy Electricals Limited v. Zillion Infraprojects Pvt. Ltd.*, FAO (COMM) No. 66/2021 & C.M. Appl. No. 33889/2020, High Court of Delhi, 2023 SCC OnLine Del 973, judgment dated 21 February 2023.
Coram: Neena Bansal Krishna and Suresh Kumar Kait, JJ.
- 2 *National Highway Authority of India v. M. Hakeem*, (2021) 9 SCC 1; *Anglo American Metallurgical Coal Pty. Ltd. v. MMTC Ltd.*, (2021) 3 SCC 308.

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