

10<sup>th</sup> SEPTEMBER, 2021

# TERMINATION OF ARBITRATION PROCEEDINGS U/S 32(2)(C) IS NOT AN AWARD

## I. Meaning of Arbitral Award

An arbitral award means the final decision rendered by an Arbitral Tribunal wherein arbitrators determine claims and issues between the concerned parties.

## II. Legislative framework regarding Arbitral Award

A final award embodies the terms of the final settlement of disputes between the parties. It is a final culmination of the disputes referred to arbitration.

In **IFFCO Ltd. v. Bhadra Products**(2018) 2 SCC 534, the Hon'ble Supreme Court held that the order shall qualify as an award where the arbitrator has finally decided a point at which the parties are in dispute.

In **Rhiti Sports Management Pvt. Ltd. v. Power Play Sports & Events Ltd.**, 2018 SCC Online Del 8678, the Hon'ble Delhi High Court discussed the scheme of the Arbitration Act, specifically the scope of Section 32 of the Arbitration Act and authoritative text on the subject.

## III. Termination of Arbitral Proceedings

The Arbitration Act provides that the arbitral proceedings would stand terminated by the final arbitral award or by an order of the Arbitral Tribunal as referred to in Section 32(2).

The arbitration proceedings are terminated in the following ways:

a. The Arbitration Act under Section 32(1) provides that proceedings terminate after a final award or by such order as specified u/s 32(2) of the Arbitration Act;

b. Further, Section 32(2)(a) provides that the proceedings terminate if the claimant withdraws his claim;

It shall terminate if the arbitral tribunal recognizes a legitimate interest on its part in obtaining a final settlement of the dispute or if it finds out that the continuation of the proceedings has become unnecessary or impossible according to Section 32(2)(c).

In **Lalitkumar V. Sanghavi v. Dharamdas V. Sanghavi**, (2014) 7 SCC 255, the Hon'ble Supreme Court clarified that an award is the final determination of the issue made by the arbitrators. It further elaborated that if the arbitral proceedings were terminated without providing any solution or determining the issues between the parties, then it cannot be considered as an award.

## IV. Termination as per Section(s) 14 and 15 of the Arbitration Act

Section 14(1)(a) of the Arbitration Act deals with the termination of the mandate of an arbitrator if he becomes de jure/ de facto or if he is unable to discharge his functions or if he fails to act without undue delay.

The Arbitration Act under Section 14(2) provides that if the controversy persists concerning any of the grounds referred to u/s 14(1), then the party has the liberty to approach the Court for deciding the issue of termination of the mandate.

The Arbitration Act under Section 15 provides additional grounds referred to in Section 13 or 14. It sets out that the mandate of an arbitrator shall terminate when he withdraws from his office due to some reason or if the parties mutually agree to terminate it.

It further provides for an appointment of a substitute arbitrator on termination of the mandate of the arbitrator.

## V. Recourse to the Court

Section 34 of the Arbitration Act provides that recourse to a Court can 'only' be taken under the said provision for setting aside an arbitral award. This Section indicates that it shall not be applicable if there is no 'arbitral award'.

## VI. Judicial Precedents

In the case of **Bridge & Roof Co. (India) Ltd. v. Guru Gobind Singh Indraprastha University and Anr.**, 2017 SCC OnLine Del 10412, a Coordinate Bench of the High Court ruled that an application u/s 34 of the Arbitration Act shall not be maintainable if an order is passed by the arbitral tribunal for terminating the proceedings due to failure of the claimant to file the statement of claim in time.



**Neha Maniktala**

Associate, MCO Legals  
BBA, LLB,  
Symbiosis Law School, Noida

### Expertise:

Corporate Due Diligence &  
Corporate/Commercial Arbitration  
✉ neha.m@mcolegals.co.in



**Shivangi Dubey**

Research Partner  
Master's in Business Laws,  
Amity University, Noida

Recently the Delhi High Court in **PCL Suncon v. National Highways Authority of India (NHAI), O.M.P. (T) (COMM.) 80/2020** dealt in detail with the question of 'termination of proceedings u/s 32(2)(c) is an arbitral award or not'.

**In the case of PCL Suncon v. National Highways Authority of India (NHAI), O.M.P. (T) (COMM.) 80/2020**, the Hon'ble Delhi High Court held:

- A decision of Arbitral Tribunal of impossibility or no necessity to continue with the proceedings cannot be considered as an award.
- It further clarified that such an order shall be challengeable u/s 14(2) of the Arbitration Act.
- This decision may be of substantial importance in understanding the law regarding termination of proceedings u/s 32(2)(c) of the Arbitration Act.

## VII. Conclusion

- For a decision of the Arbitral Tribunal to qualify as an award, the same must finally decide a point at which the parties are at issue.
- In cases where the same is dispositive of the entire dispute referred to the Arbitral Tribunal, the said award would be a final award, which would result in termination of the arbitral proceedings.
- An order not deciding any of the points of claim or issue is not an 'award'.
- An order of terminating the arbitral proceedings due to impossible or unnecessary continuation of proceedings would not be an award.
- Termination due to impossibility is merely an expression of the decision of the Tribunal that cannot be considered as a proceeding as it does not answer any issue in dispute between the concerned parties.