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WHAT DOES AND DOES NOT CONSTITUTE AN ARBITRAL AWARD

A. INTRODUCTION

1. An arbitral tribunal adjudicates the disputes between the parties before it on the basis of the claims, counter-claims and defenses. A final decision on such disputes is presented by the tribunal in the form of an arbitral award.

2. The Arbitration and Conciliation Act, 1996 (for short 'the said Act') provides that the arbitral award may be challenged on any of the grounds available under Section 34 of the said Act.

3. In various decisions of the courts, such challenges have been admitted and adjudicated upon.

4. However, on multiple occasions, interim awards or interim orders of the arbitral tribunal have also been challenged before the courts. On such instances, the courts have first dealt with the issue of whether such orders are amenable to challenge under section 34 of the said Act in view of the argument that such interim orders cannot be given the weightage or recognition of an arbitral award.

5. In ***Rhiti Sports Management Pvt. Ltd. vs. Power Play Sports & Events Ltd. 2018 SCC OnLine Del 8678,*** the Court considered an application under section 34 which challenged an order of the Arbitral Tribunal wherein the prayer of the petitioner for production of additional documents in the arbitration proceedings was rejected.

6. The petitioner argued that such interim order was an interim award since the Tribunal had provided reasons for rejecting the prayer of the petitioner.

7. On the other hand, the respondent argued that an arbitral award or interim award must be distinguished from procedural orders and directions.

8. Thus, the main issue of adjudication was whether the impugned order was an award that could be brought under the purview of section 34 of the said Act.

B. Interim Award vs. Interim Order

1. Section 2(1)(c) of the said Act defines an arbitral award as one that would be understood to include an interim award.

award.

2. In order to understand the elements of an award, section 31 of the said Act may be referred to which provides for the form and content of an arbitral award. Within the meaning of such section an arbitral award shall be made in writing, shall be signed by the members of the tribunal, shall contain the reasons upon which it is based and shall mention the date and place of the award.

3. Section 31(6) also states that an arbitral tribunal is empowered to make an interim arbitral award at any time during the pendency of the arbitral proceedings on any matter that is to be decided in the final award.

4. In order to qualify as an interim award, the condition under section 31(6) must be present in the award.

5. Thus, an award, either final or interim, must settle a matter at which the parties are at issue.

6. As opposed to an interim/final award, an interim order is not an adjudication of a matter related to the claim in the arbitration proceedings

7. Section 17 of the said Act lists down the circumstances under which a party may make an application before the arbitral tribunal for seeking interim measures.

8. Interim orders, as opposed to an award are ancillary orders. Such orders may be procedural in nature and may include decisions in relation to manner of hearings, determination of time limits, appointments of expert witnesses, etc.

9. An award is a final determination of a particular issue while an order addresses the procedural mechanism and does not deal with the claims in the arbitration proceedings. An award is concerned with resolution of substance of the dispute while orders catalyze the processes which lead to the making of the award.

10. Now whether an order passed by an arbitral tribunal is correct or not can only be determined at the time of challenge made to the final award and not otherwise. Firstly, because section 34 application may only be filed against the award and not against an order and secondly,

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because of the limited scope of judicial intervention provided under the said Act or under the Alternative Dispute Resolution mechanism.

11. Section 5 of the said Act provides that judicial authority shall not intervene in matters covered under the said act except where expressly provided for.

C. ***Ratio Decidendi***

1. Numerous decisions of the courts have dealt with the present issue.

2. Centrotrade Minerals and Metal Inc vs. Hindustan Copper Ltd. (2017) 2 SCC 228, held that an award has finality attached to it in as much as it provides a decision on a substantive issue.

3. Rajiv Kumar vs. Sanjiv Kumar, a decision of the Calcutta High Court also passed an order on such issue based on similar reasons. It held that a decision of an arbitral tribunal under section 17(4) of the said Act including any decision on admissibility of a document cannot be said to be an interim award.

4. Shyam Telecom Ltd. vs. Icomm Ltd. 2010 (116) DRJ 456 held that an interim order is not an interim award when the order cannot be in the nature of a part decree and does not settle the rights between the parties.

5. In Harinarayn G. Bajaj vs. Sharedeal Financial Consultants Pvt. Ltd. AIR 2003 Bom 296, the Court clarified that every order or decision is not an award.

D. The decision in Rhiti Sports

1. The Delhi High Court in Rhiti Sports referred to all of the above-mentioned decisions in order to reach the conclusion that a clear distinction can be established between an interim order and an award.

2.In the present case, rejection of prayer for filing additional documents in the proceeding was clearly a procedural matter which did not deal with the dispute between the parties and hence did not qualify as an arbitral award.

3. The Court held that by such reason the application was not maintainable under section 34 as the challenge was made to an order or decision of the tribunal which was not an interim award as contented by the petitioner.

E. Conclusion

1. The statutory mandates and provisions under the said Act as well the adjudications thereunder by various courts in repeated decisions clearly establish that an award shall be distinguished from an order of the arbitral tribunal.

2. A challenge under section 34 can only be initiated after an award has been passed and the ancillary orders passed during the proceedings may be brought to the notice of the court during such challenge.

3. Further, the object of minimum judicial intervention sought to be achieved through the said Act must be regarded,prima facie, before a decision on the challenge to an order of the tribunal is made since the same would stall the proceedings and affect the authority of the arbitral tribunal each time a party is unsatisfied with its decision.

4. The said Act also clearly specifies the mode and manner in which appeals against orders and awards may be made and therefore, in view of such provisions, a challenge to an interim order cannot be made under section 34 of the said Act.

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O.M.P. (COMM) 394/2017

Rhiti Sports Management Pvt. Ltd. v. Power Play Sports & Events Ltd.

2018 SCC OnLine Del 8678

In the High Court of Delhi at New Delhi

(BEFORE VIBHU BAKHRU J.)

Rhiti Sports Management Pvt. Ltd. ..... Petitioner

Power Play Sports & Events Ltd. ..... Respondent

O.M.P. (COMM) 394/2017

Decided on May 1, 2018

Advocates Who Appeared in this Case:

For the Petitioner:Mr. I.S. Alag, Senior Advocate with Mr. J.S. Lamba, Advocates.

For the Respondent:Ms Diya Kapur and Ms. Akshita Sachdeva, Advocates.

The Judgment of the Court was delivered by

The Judgment of the Court was delivered by

VIBHU BAKHRU, J.

Introduction

1. Rhiti Sports Management Private Limited (hereafter 'the petitioner') has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') impugning an order dated 19.09.2017 (hereafter 'the impugned order') passed by the Arbitral Tribunal constituted by a sole arbitrator (hereafter 'the Arbitral Tribunal'). By the impugned order, the Arbitral Tribunal has rejected the petitioner's application filed under Order VIII Rule 1A(3) Code of Civil Procedure for taking "on record the e-mail dated 06.09.2013 and the Services Agreements dated

23.07.2010 and 24.09.2012"

2. The first and foremost question that falls for consideration of this Court is whether the impugned order can be construed as an arbitral award that is susceptible to challenge under Section 34 of the Act.

Factual context

3. Briefly stated, the aforesaid controversy arises in the following context:

3.1 The India Cements Limited (ICL) was granted franchise rights by the Board of Control for Cricket in India (BCCI) for forming a cricket team to represent the City of Chennai in twenty-twenty Cricket Tournaments. The said team is now called "Chennai Super Kings". The petitioner (arrayed as respondent in the arbitral proceedings) claimed to have been granted the sponsorship rights exclusively by ICL for its team Chennai Super Kings for the period 2011-13. The petitioner was desirous of procuring sponsorship for the Chennai Team for league matches and the respondent claimed that it had the expertise, knowledge and the resources to procure such sponsorship for the Chennai team.

3.2 In view of the above, the parties entered into an agreement dated 25.02.2011 (hereafter 'the Agreement'), whereby the respondent agreed to procure sponsors for the Chennai Team for IPL League Tournament and to facilitate ICL and the relevant sponsors in entering into a sponsorship agreement or arrangement. In terms of the Agreement, the petitioner agreed to pay the respondent a fee equivalent to 5% of the total fee paid by each sponsor arranged by the respondent.

3.3 It is claimed that the petitioner paid the agreed fee for the initial term of three years; however, thereafter the petitioner failed to pay the agreed fee on renewal of the sponsorship agreement by a sponsor - Gulf Oil Limited. The respondent claimed that it sent various communications demanding the said fee; however,

the petitioner failed and neglected to pay the same.

3.4 In view of the above disputes, the respondent invoked the arbitration clause as contained in the Agreement. However, the petitioner failed to nominate an arbitrator. This led the respondent to file an application under Section 11 of the Act (ARB P. No. 265/2015) in this Court. The said application was allowed by an order dated 20.08.2015. It was further directed that the arbitration shall take place under the aegis of Delhi International Arbitration Centre (DIAC) and in

accordance with its Rules.

3.5 The respondent filed its Statement of Claims, inter alia, claiming a sum of Rs. 30 lakhs along with interest at the rate of 18% per annum.

3.6 The petitioner filed its Statement of Defence contesting the claims made by the respondent. The petitioner, inter alia, claimed that the Agreement was novated by the respondent's conduct and the Agreement "stood negated in its entirety as null and void and the terms therein ceased to be in force since then"

3.7 The respondent led its evidence and the witness produced by the respondentwas also cross-examined. Thereafter, the petitioner filed an affidavit of evidence of one Sh. Sanjay Pandey wherein reference was made to an agreement dated 23.07.2010 and a subsequent agreement dated 24.09.2012. The said evidence was objected to by the respondent on the ground that it was beyond the pleadings filed by the petitioner.

3.8 Thereafter, on 01.04.2017, the petitioner filed an application captioned as "Application under Order VIII Rule 1A(3) read with Section 151 of Code of Civil Procedure for placing additional documents on record which could not be placed on record by the respondent at the time of filing of reply to the statement of

claim filed by the claimant", inter alia, praying as under:

"take on record the e-mail dated 06.09.2013 and the Services Agreements dated 23.07.2010 and 24.09.2012"

3.9 The respondent objected to the said application and, in particular, the production of an e-mail dated 06.09.2013. On 01.04.2017, the Arbitral Tribunal took the said application on record subject to the arguments being heard on the admissibility of the documents mentioned therein at the stage of final arguments.

3.10 The Arbitral Tribunal considered the aforesaid application and passed the impugned order rejecting the petitioner's application and this has led the petitioner to file the present petition.

Submissions

4. Mr. Alag, the learned counsel appearing for the petitioner earnestly contended that the impugned order widely affected the rights and interests of the petitioner in as much as it adjudicated an important issue with regard to the production of additional documents, which vitally affects the interest of the parties. He submitted that any adjudication of rival contentions advanced by the parties would constitute an arbitral award. In this case, the Arbitral Tribunal had provided reasons for declining the petitioner's application and this constituted an award within the meaning of Section 2 (1)(c) of the Act.

5. He also referred to the decision of a Division Bench of this Court in National Highways Authority of India v. Baharampore-Farakka Highways Ltd.: FAO(OS)(COMM) 47/2017, decided on 02.03.2017 and, on the strength of the said decision, contented that adjudication of any of the contentions advanced by the parties would constitute

6. He further contended that the term order would cover only those orders that are referred to in Section 37(2) of the Act - that is, an order accepting the plea referred to in Section 16(2) or 16(3) of the Act and an order granting or refusing to grant interim measures under Section 17 of the Act - and any ministerial order or direction which do

not adjudicate any rights or contentions. He contended that any order adjudicating any rights and/or contentions of the parties would necessarily have to be construed as an arbitral award and the same could be assailed under Section 34 of the Act.

7. Next, he referred to the decision of the Supreme Court in Indian Farmers Fertilizer Cooperative Limited v. Bhadra Products, (2018) 2 SCC 534. He drew the attention of this Court to paragraph 8 of the said decision wherein the Supreme Court had explained that the expression "matter" is of a very wide nature and subsumes issues at which parties are in dispute. He submitted that since the question of production of additional documents as sought for by the application, was contested between the parties, the impugned order would necessarily have to be construed as an

interim award. He also referred to paragraph 14 of the aforesaid decision, wherein the Supreme Court after referring to its earlier decision in Mc Dermott International Inc. v.

Burn Standard Co. Ltd., (2006) 11 SCC 181 had observed as under:—

"The aforesaid judgment makes it clear that an interim award or partial award is a final award on matters covered therein made at an intermediate stage of the arbitral proceedings."

8. Ms. Diya Kapur, the learned counsel appearing for the respondent countered the submissions made on behalf of the petitioner. She contended that an arbitral award must be distinguished from procedural orders and directions, which deal with matters such as exchange of evidence, production of documents etc. She referred to the

decisions in Shyam Telecom Ltd. v. Icomm Ltd., 2010 (116) DRJ 456; Deepak Mitra v. District Judge, Allahabad, AIR 2000 All 9; Anand Prakash v. Asst. Registrar Coop Societies, AIR 1968 All 22; Uttam Singh Dugal & Co. Pvt. Ltd. v. Hindustan Steel Ltd., AIR 1982 M.P. 206 in support of her contentions.

9. Ms. Kapur also contended that the impugned order was not an award as it only concerned the matter regarding production of evidence. She stated that it is settled law that matter regarding the extent of disclosure of documents is procedural in nature and, thus, any decision in that respect cannot be considered as an award. She referred to the decision of the Bombay High Court in the case of Anuptech Equipments Pvt. Ltd. v. Ganpati Cooperative Hosing society Ltd.,:1999 (2) Mh. L.J. 161 in supportof her contention. Reasons and Conclusions:

10. Arbitration has also been described as 'private justice'. It is an alternate dispute resolution mechanism that is founded on the fundamental principles of party autonomy and minimal judicial intervention. Thus, unless specifically provided, no judicial intervention would be permissible in arbitral proceedings. One of the stated primary object of the Act is "to minimize the supervisory role of courts in the arbitral process". The above principle finds statutory expression in Section 5 of the Act, which expressly provides that "Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."

11. Undisputedly, in view of the express provisions of Section 5 of the Act, recourse to courts is not available except in cases where specific provisions have been made in this regard. It is in this context, the petitioner has founded the present petition on the assertion that the impugned order is an arbitral award. The respondent disputes this assertion. Thus, the principal controversy to be addressed is whether the impugned order is an arbitral award that is amenable to judicial review under Section 34 of the Act.

12. Section 2(1)(c) of the Act provides for an inclusive definition of the term "arbitral award". In terms of the afore-said clause, arbitral award is defined to include an interim award.

13. Section 31 of the Act provides for the form and content of the arbitral award. Sub-section (6) of Section 31 of the Act reads as under:—

"(6) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award."

14. It would also be relevant to refer to Section 32 of the Act, which is set out below:—

"32. Termination of proceedings.—

(1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—

(a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,

(b) the parties agree on the termination of the proceedings, or

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings."

15. In terms of Section 32(1) of the Act, 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) of the Act. Since the arbitral proceedings ter-minate on passing of the final award, it is obvious that the final award would embody a decision on all or the re-maining disputes (disputes that have not been decided earlier) between the concerned parties. Section 32(2) of the Act provides an exception to the rule that arbitral proceedings would be terminated other than by passing a final award. A plain reading of Section 32(2) of the Act indicates that it, essentially, contemplates situations where it is not necessary to enter an award for settlement of the disputes or where the same becomes impossible. In terms of Clause (a) of Section 32(2) of the Act, an arbitral proceeding would come to an end with a claimant withdrawing his claim unless it is necessary to enter a final award at the instance of the respondent.Clause (b) of Section 32(2) of the Act contemplates circumstances where parties by consent seek termination of the arbitral proceedings. This may arise where the parties have resolved their difference or no longer seek to obtain an arbitral award. Clause (c) of Section 32(2) of the Act contemplates the situation where continuing the arbitral proceedings has become unnecessary or has been rendered impossible.

16. A plain reading of Section 32 of the Act indicates the fact that the final award would embody the terms of the final settlement of disputes (either by adjudication process or otherwise) and would be a final culmination of the dis-putes referred to arbitration. Section 31(6) of the Act expressly provides that an Arbitral Tribunal may make an inter-im arbitral award in any matter in respect of which it may make a final award. Thus, plainly, before an order or a decision can be termed as 'interim award', it is necessary that it qualifies the condition as specified under Section 31(6) of the Act: that is, it is in respect of which the arbitral tribunal may make an arbitral award.

17. As indicated above, a final award would necessarily entail of (i) all disputes in referred to the arbitral tribunal, or (ii) all the remaining disputes in case a partial or interim award(s) have been entered prior to entering the final award. In either event, the final award would necessarily (either through adjudication or otherwise) entail the settle-ment of the dispute at which the parties are at issue. It, thus, necessarily follows that for an order to qualify as an arbitral award either as final or interim, it must settle a matter at which the parties are at issue. Further, it would require to be in the form as specified under Section 31 of the Act.

18. To put it in the negative, any procedural order or an order that does not finally settle a matter at which the par-ties are at issue, would not qualify to be termed as "arbitral award".

19. In an arbitral proceeding, there may be several procedural orders that may be passed by an arbitral tribunal. Such orders may include a decision on whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the arbitral proceedings are to be conducted on the basis of documents and other materials as required to be decided - unless otherwise agreed between the parties - in terms of Section 24(1) of the Act. There are also other matters that the arbitral tribunal may require to determine such as time period for filing statement of claims,

statement of defence, counter claims, appointment of an expert witness etc. The arbitral tribunal may also be re-quired to address any of the procedural objections that may be raised by any party from time to time. However, none

of those orders would qualify to be termed as an arbitral award since the same do not decide any matter atwhich the parties are at issue in respect of the disputes referred to the arbitral tribunal.

20. At this stage, it may be also relevant to refer to certain authoritative texts as to what would constitute an award. In Russell on Arbitration (Twenty-Third Edition), the author explains as under:—

"No statutory definition. There is no statutory definition of an award of English arbitration law despite the important consequences which flow from an award being made. In principle an award is a final determination of a particular issue or claim in the arbitration. It may be contrasted with orders and directions which address the procedural mechanisms to be adopted in the reference. Such procedural orders and directions are not necessarily final in that the tribunal may choose to vary or rescind them altogether. Thus, questions concerning the jurisdiction of the tribunal or the choice of the applicable substantive law are suitable for determination by the issue of an award. Questions concerning the timetable for the reference or the extent of disclosure of documents are procedural in nature and are determined by the issue of an order or direction and not by an award. The distinction is important because an award can be the subject of a challenge or an appeal to the court, whereas an order or direction in itself cannot be so challenged. A preliminary decision, for example of the engineer or adjudicator under a construction contract which is itself subject to review by an arbitration tribunal, is not an award."

21. In Mustill & Boyd on Commercial Arbitration (Second Edition), the author suggests two characteristics, which could be accepted as indicia of an award. The relevant extract of the aforesaid text reads as under:—

"....we do suggest two characteristics which we believe would be accepted as indicia of an award by the arbitrating community at large:

1. An award is the discharge, either in whole or in part, of the mandate entrusted to the tribunal by the parties; namely to decide the dispute which the parties have referred to them. That is, the award is concerned to resolve the substance of the dispute. Important aspects of the arbitrators duties are naturally concerned with the processes which lead up to the making of the awards, and they are empowered to arrive at decisions which enable those processes to be performed. The exercise of these powers are, however, antecendent to the performance of the mandate, not part of the ultimate performance itself. Thus, procedural decisions, and the documents in which they may be embodied are not 'awards'.

2. Constituting as it does the discharge of the arbitrators mandate the award has two effects:

(a) Since the parties have, by their agreement to arbitrate, promised to be bound by the arbitrator' decision of their dispute, they are for all purposes bound by it between themselves, although others are not so bound. That is, the dispute becomes res judicata, with all that the concept implies for the purposes of English law as regards issues explicitly or implicitly decided as intermediate steps on the way to the final decision, issues which could have been raised, the effect on parties with derivative interests, and so on.

(b) Since the making of the award constitutes a complete performance of the mandate entrusted to the arbitrators, it leaves them with no powers left to exercise: except of course, in the case of a partial award, when the exhaustion of the arbitrator' powers is complete as to part and incomplete as to the remainder."

22. In Centrotrade Minerals and Metal Inc. v. Hindustan Copper Ltd., (2017) 2 SCC 228, the Supreme Court had, inter alia, referred to the passages from Comparative International Commercial Arbitration Kluwer Law International, 2003 and Redfern and Hunter on International Arbitration (sixth edition) and observed as under:—

"9....The distinction between an award and a decision of an Arbitral Tribunal is summarized in Para 24-13 [Chapter 24: Arbitration Award in Julian D.M. Lew, Loukas A. Mistelis, et al., Comparative international Commercial arbitration]. It is observed that an award:

(i) concludes the dispute as to the specific issue determined in the award so that it has res judicata effect between the parties; if it is a final award, it terminates the tribunal's jurisdiction;

(ii) disposes of parties' respective claims;

(iii) may be confirmed by recognition and enforcement;

(iv) may be challenged in the courts of the place of arbitration.

10. In International Arbitration [Chapter 9. Award in Nigel Blackaby, Constantine Partasides, et al., Redfern and Hunter on International Arbitration (Sixth Edition), 6 edition: Kluwer Law International, Oxford University Press 2015 pp. 501-568] a similar distinction is drawn between an award and decisions such as procedural orders and directions. It is observed that an award has finality attached to a decision on a substantive issue. Paragraph 9.08 in this context reads as follows:

"9.08 The term "award" should generally be reserved for decisions that finally determine the substantive issues with which they deal. This involves distinguishing between awards, which are concerned with substantive issues, and procedural orders and directions, which are concerned with the conduct of the arbitration. Procedural orders and directions help to move the arbitration forward; they deal with such matters as the exchange of written evidence, the production of documents, and the arrangements for the conduct of the hearing. They do not have the status of awards and they may perhaps be called into question after the final award has been made (for example as evidence of "bias", or "lack of due process")."

23. The question whether in the given circumstances, a determination by an arbitral tribunal is an award has come up before courts in several matters. In Shyam.Telecom Ltd. v. Icomm Ltd., 2010 (116) DRJ 456, this Court considered the challenge laid to an order of the arbitral tribunal dismissing an amendment application filed by the petitioner. In this context, the Court observed as under:—

"Clearly an interim Award has to be on a matter with respect to which a final Award can be made i.e. the interim Award is also the subject matter of a final Award. Putting it differently therefore an interim Award has to take the colour of a final Award. An interim Award is a final Award at the interim stage viz a stage earlier than at the stage of final arguments. It is a part final Award because there would remain pending other points and reliefs for adjudication. It is therefore, that I feel that an interim Award has to be in the nature of a part judgment and decree as envisaged under Section 2 (2) of CPC and the same must be such that it conclusively determines the rights of the parties on a matter in controversy in the suit as done in a final judgment. An interim order thus cannot be said to be an interim Award when the order is not in the nature of a part decree. In my opinion the impugned order in view of what I have said hereinabove, is not an interim Award as it is not in the nature of a part decree being only an interim order."

24. In Sahyadri Earthmovers v. L&T Finance Limited, 2011 (6) BomCR 393, the Bombay High Court considered an application filed whereby the petitioner had, inter alia, prayed for directions to be issued to the arbitral tribunal to "formulate and prescribe the appropriate legal procedure for adjudicating the arbitration proceedings and convening the arbitration meetings and more particularly to record the evidence as per the Indian Evidence Act". The said application was moved under Section 9 read with Section 19 of the Act, but was occasioned by an order passed by the arbitral tribunal on an application filed by the petitioner for determining the arbitral procedure. In the aforesaid context, the Court observed as under:

"3. The first and foremost thing is that section 9 or section 19 or any other section under the Arbitration Act, nowhere permit a party to challenge such order passed by the Arbitrator pending the arbitration proceedings. It is neither final award and/or interim award. Therefore, there is no question of invoking even Section 34 of the Arbitration Act. The Arbitration Act permits or provides the power of Court to entertain or interfere with the order passed by the Arbitrator, only if it is prescribed and not otherwise. Section 5 of the Arbitration Act is very clear which is reproduced as under."

25. In the present case, the impugned order relates to rejection of the petitioner's application to file additional documents. Clearly, this is a procedural matter and does not decide any issue for adjudicating the dispute between the parties. Thus, the contention that the same would qualify as an interim award is wholly unmerited.

26. In Sanshin Chemicals Industry v. Oriental Carbons and Chemicals Ltd., (2001) 3 SCC 341, the Supreme Court considered the question whether a decision of the arbitral tribunal regarding the venue of the arbitral proceedings could be assailed in an appeal under Section 34 of the Act. It is relevant to note that in that case, the petitioner had contended that the decision on the venue of the arbitration proceedings was vital as the rules for resolving the disputes would also be dependent on the said decision and if the court did not entertain the petition, the petitioner would be rendered remediless.

27. The Supreme Court did not accept the contention that such decisions could be challenged under Section 34 of the Act. The Court also repelled the contention that the petitioner would be rendered remediless in the following words:—

"But the further contention that an aggrieved party has no right to assail the same, once the said decision is not assailed at this stage, does not appear to be correct. The ultimate arbitral award could be assailed on the grounds indicated in sub-section (2) of Section 34 and an erroneous decision on the question of venue,which ultimately affected the procedure that has been followed in the arbitral proceeding could come within the sweep of Section 34 (2) and as such it cannot be said that an aggrieved party has no remedy at all."

28. In Harinarayan G. Bajaj v. Sharedeal Financial Consultants Pvt. Ltd., AIR 2003 Bom 296, the Bombay High Court, inter alia, considered the issue as to whether an application under Section 34 of the Act would be maintainable against the decision of the arbitral tribunal rejecting an application filed by the petitioner under Section 27 of the Act, inter alia, praying that the arbitral tribunal apply to the Court for assistance in taking evidence on certain documents. The arbitral tribunal (in that case) rejected the said application on the ground that the petitioner had not brought out any evidence to establish that the said documents were necessary for adjudication of the subject disputes. In this context, the Court held as under:—

"It is, therefore, clear that every order or decision is not an Award. An order or decision in the course of proceedings which are continuing and in respect of which no remedy is provided under the Act could normally be challenged while challenging the Award under section 34, provided the challenge was available under section 34(2) of the Act. In the instant case the order rejecting the application under section 27 is a decision and/or order. It is not definitely an interim award. It would, therefore, be open to the petitioner if finally aggrieved by an award to challenge the Award in which the order has merged, under section 34(2) if in law a challenge would be available under section 34(2) of the Act."

29. In Ranjiv Kumar v. Sanjiv Kumar: A.P. 679 of 2017, decided on 13.02.2018, the Calcutta High Court rejected

appears to be the scheme of the Act.

xxxx xxxx xxxx

46. The object of minimizing judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 of the Constitution of India or under Article 226 of the Constitution of India against every order made by the Arbitral Tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the Arbitral Tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage."

34. It is also apparent that the several rulings, which pertain to the distinction between an order and an award, were not brought to the notice of the Division Bench in National Highway Authority of India v. Baharampore-Farakka Highways Ltd. (supra).

35. The reliance placed by Mr. Alag in the case of Indian Farmers Fertilizer Co- operative v. Bhadra Products (supra) is also misplaced. In that case, the Court held that the decision of the arbitral tribunal on the issue of limitation could be considered as an arbitral award. Indisputably, whether the claims are barred by limitation is a decision on a matter at which the parties are at issue. The decision on the issue of limitation is indisputably a decision on the disputes and is a matter on which a final award can be entered. A plain reading of the decision of the Supreme Court also indicates that the Court had observed that the award had finally determined one of the issues between the parties, which could not be re-adjudicated all over again. The Court, after referring to various decisions and principles, observed as under:— "15. Tested in the light of the statutory provisions and the case law cited above, it is clear that as the learned Arbitrator has disposed of one matter between the parties i.e. the issue of limitation finally, the award dated 23rd July, 2015 is an "interim award" within the meaning of Section 2(1)(c) of the Act and being subsumed within the expression "arbitral award" could, therefore, have been challenged under Section 34 of the Act."

36. The aforesaid decision is not an authority for the proposition that any order adjudicating any contention would be an arbitral award within the meaning of Section 2(1)(c) of the Act.

37. In view of the above, the petition is dismissed. The parties are left to bear their own costs.