

## **ARBITRATION AWARD CANNOT BE REMANDED TO THE TRIBUNAL SUO MOTO**

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Arbitration is private mechanism for resolving commercial disputes, the courts still exert power to supervise the arbitration and have the power to even set aside an arbitration award on the grounds provided in the procedural law of the country. After an arbitration award is pronounced if a party is resentful about it and approaches the supervising court challenging the award, the court may allow the application and set aside the award, reject the application to set aside, make certain alternations while upholding it or remand the award to the arbitral tribunal for reconsideration of legal and factual issues. This articles further will discuss the powers and limitations of the court while remanding the arbitration award to the arbitral tribunal (Under Indian law)

Arbitration and Conciliation Act was passed for the main purpose of defining the scope of jurisdiction of the arbitration tribunals. The act also seeks to limit the power of the courts to interfere with arbitration awards. The recent judgement by the Supreme Court is on the lines of the motive to restrict the power of the court in interfering with the arbitration award. The two cases have made it clear that section 34 clause 4 of Arbitration and conciliation act should be interpreted in a way that the courts do not have any power to send the case back to the arbitration tribunal without any application from a party provided that the court deems it fit for sending it back to the arbitration tribunal. The power of the court in this case is restrictive in nature. Court can merely adjourn the ongoing proceedings regarding the dispute on the award given. The court cannot order to start the fresh arbitration proceedings. It can only allow the arbitration tribunal to take necessary steps to take out the grounds for dispute on the reward given by the arbitration tribunal. The necessary steps to be taken is again in the discretion of the arbitration tribunal and not for the court to decide. The court cannot do both 1) set aside the grounds for dispute of the award given and,

2) Remand the case back to arbitration tribunal for fresh consideration. The court on request of a party can merely adjourn the proceedings of the court u/s 34 (4) of the act so as to provide time to continue the arbitration proceedings limited to the scope of removing the grounds for contention against the award. The above stated position was taken in M/S.M.M.T.C vs Vicnivass Agency on 21 August, 2008 and was reiterated by Supreme Court in Kinnari Mullick and Ors. v. Ghanshyam Das Damani.

As per the Arbitration and Conciliation Act,1996 resentful party may challenge the arbitration award under section 34 of the act, requesting to set aside the arbitration award by filing an application in the supervising court of the specific arbitral tribunal. Section 34(4) provides power to the court in remanding the matter to the tribunal to take such alternate actions which would help eliminate the grounds of setting aside of the arbitration award. Section 34(4) says:

*“On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.”*

***Kinnari Mullick and Another vs Ghanshyam Das Damani<sup>1</sup>***, Supreme Court of India held that supervising courts do not have Suo motu powers in remanding the award back to arbitral tribunal for reassessment. In the mentioned case, on 27/08/10 the interim award was passed and final award was passed on 18/06/13 by the arbitral tribunal and the resentful party challenged the said award before the HC of Calcutta. The learned single judge allowed the application on finding that the challenged award did not contain any reason in support of the decision and hence the award was set aside, the parties were advised to pursue their remedies in accordance with the law.

The respondent against the decision of the single judge appealed before the division bench of the High Court of Calcutta. The Division Bench upheld the findings recorded by the learned single

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<sup>1</sup> AP No. 1074 of 2013, Kinnari Mullick and Another v. Ghanshyam Das Damani

judge and advised the arbitral tribunal to state reasons in support of its award as per law without getting affected by the award which is set aside. In the process of dealing with the appeal from the above judgement of the Division Bench the Supreme Court has taken the legal position settled by it in MCDermott International Inc into consideration confirming the judgement of Karnataka high court in Bhaskar Industrial development Ltd. Case which held as follows:

*“...Parliament has not conferred any power of remand to the court to remit the matter to the Arbitral Tribunal except to adjourn the proceedings as provided under sub-section (4) Of section 34 of the act. The object of sub-section (4) of section 34 of the act is to give an opportunity to the Arbitral Tribunal to resume the arbitral proceedings or to enable it to take such to her action which will eliminate the grounds for setting aside the arbitral award.”*

From the above, one can infer that the limited discretion available to the court under section 34(4) can be utilised only upon a written application provided on the behalf by a party to the arbitration proceedings. It is crystal clear that the court cannot exercise this power of adjourning the proceedings before it Suo motu. Also, before the court decides to set aside the award it should be aware if the party to the arbitration proceedings fails to request the court to delay the proceedings before it, otherwise it would not be allowed to move an application under section 34(4) of the Act. The SC also stated the view of the Madras High court in MMTC case that section 34 of the act stipulates three procedural conditions, namely, that there shall be an application under section 34(1) of the new act and that a request shall ensue from a party and the court considers it legitimate to solicit the power under section 34(4) of the new act.

### **Radha Chemicals vs Union of India**

#### **Facts**

The Appellant-Respondent used to supply goods to Union of India (the Respondent-Petitioner, the "UOI") under contracts from November from 1987 to 1991<sup>2</sup>.

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<sup>2</sup> APO No. 466/2017, Radha Chemicals v. Union of India.

Consequently, when the issues and differences arose between the parties, the Appellant-Respondent sent a notice for the matter to be referred to arbitration in 2004.

Subsequent to which on 28.02.2007 the arbitrator made and published the award in favour of the Appellant-Respondent for a sum of Rs.21,60,440/- (Rupees twenty-one lakh sixty thousand four hundred and forty only) along with 12% interest per annum.

At the Appeal stage before the Ld. Single Judge, it was contended by the UOI (the Petitioner in the appeal) that the award should be remitted back to the arbitration as it is barred by Section 14 of the Limitation Act, 1963.

To this the Appellant-Respondent contended that due to lodging of purchase bill as per the standard and the writ application in 1993 against the UOI to make payment which was eventually disposed of in 2002, the Appellant-Respondent is entitled for exclusion of the time period during which the writ was pending and thus, their award was not barred by the Limitation Act, 1963.

However, the Ld. Single Judge remitted the award to be decided on the point of limitation to a newly appointed arbitrator.

From this an Appeal was preferred to the Division Bench which was dismissed on 06.11.2017.

Thus, the present Special Leave Petition arose before the Honorable Supreme Court.

### **Issue**

Whether the Court under S.34 of the Arbitration and Conciliation Act, 1996 has the dominion to remand the proceeding to the tribunal for a reformed decision.

It was observed by the Single Bench, Division Bench that the court while determining a Section 34 petition has no jurisdiction to remand the matter to the tribunal whatsoever. Therefore, it is clear that the learned Single Judge's judgment is conflicting to this judgement as consequence of which both the judgements, the Single Judge as well as the Division Bench have to be set aside.

The SC took a comprehensive view and commended the matter to the stage of the petition of S.34 and remanded the matter to the Single Judge to determine the limitations as per the Arbitration and Conciliation Act 1996 as well as the Limitation Act, 1963.

The present order of the SC has additionally delineated the stand of jurisdiction and preference which the court needs to exercise while pardoning a matter for arbitration under S.34 in whole and not in isolation.

**Conclusion:**

The SC vide its judgement of *Radha Chemicals v Union of India*, has shed light and reaffirmed that the court while determining an application under S.34 of the Arbitration and Conciliation Act has no jurisdiction to remand the matter to the tribunal for reformed decision. The award once set out can only be set aside and it will be for the concerned party to commence fresh arbitration proceedings if the award is set aside under S.34 Arbitration and Conciliation Act.

The SC has clearly stated that section 34 cannot be used to have a second shot in improving the pleadings and proceedings. Therefore, going back to the tribunal is no longer an option. This also foists an obligation on both the parties to ensure that the pleadings, proceedings and arguments in the arbitration process are such so as to protect the arbitration award from S.34 of the act provocation.