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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 07th MARCH, 2025

IN THE MATTER OF:

+ **O.M.P. (COMM) 234/2024 & I.A. 29934/2024, I.A. 29936/2024**

NTPC LIMITED

.....Petitioner

Through: Mr Puneet Taneja, Mr Amit Yadav,
Mr Anil Kumar, Mr Manmohan
Singh Narula, Advocates.

versus

STARCON INFRA PROJECTS INDIA PVT LTDRespondent

Through: Mr. Pawan Upadhyay, Mr. Rishab
Khare, Mr. Anmol Wadhwa,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court under Section 34 of the Arbitration & Conciliation Act, 1996 challenging the Order dated 11.04.2024 passed by the Arbitral Tribunal consisting of a Sole Arbitrator dismissing an application filed by the Petitioner/Counter-Claimant under Section 23(3) of the Arbitration and Conciliation Act, 1996.

2. Shorn of unnecessary details, the facts leading to the present petition are as under:-

- i. It is stated that the Petitioner herein floated a tender for "Construction of Roads and Drains in Solapur STPP" for a total order value of Rs.22,35,16,730/-. It is stated that the Respondent made a bid. It is stated that a Letter of Award dated 18.10.2019 was issued in favour of the Respondent herein and the Contract Agreement had



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- been executed between the parties. It is stated that the work was to be completed within 15 months from the scheduled date of work.
- ii. It is stated that disputes have arisen between the parties under the said Letter of Award and a Petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 being ARB. P. No.1367/2022 was filed by the Respondent for the appointment of an Arbitrator. *Vide* Order dated 27.02.2023, this Court had appointed the former Judge of the Apex Court as the Sole Arbitrator to adjudicate the disputes between the parties under the Agreement. The fees of the Sole Arbitrator was fixed as per DIAC Rules.
 - iii. It is stated that the Petitioner/Counter-Claimant herein has filed nine counter-claims totalling to Rs.1,19,27,70,295/- and contended that as per the Contract, the dispute resolution process by an Arbitrator through arbitration can adjudicate claims and counter-claims only to a maximum of Rs.25 crores. Since the present claim had gone much beyond 25 crores, an application under Section 23(3) of the Arbitration and Conciliation Act, 1996 was filed by the Petitioner/Counter-Claimant withdrawing Claim No.1 which is the loss on account of non-inclusion of capital cost in the tariff amounting to Rs.21,51,25,592/- and counter-claim No.5 which is the return on equity amounting to Rs.83,36,11,670/-. It is stated that the said



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application was rejected by the Arbitrator stating that once the claims and counter-claims have been filed, they are not amenable to any change as agreed by the parties vide the contract agreement. It is this Order of the Arbitrator which is under challenge in the instant petition.

3. Learned Counsel appearing on behalf of the Petitioner/Counter Claimant contends that the Arbitration Clause postulates that the Arbitrator could adjudicate disputes only to a maximum of Rs.25 Crores and not beyond that. It is stated that though the Contract stipulates that once the claim or the counter-claim has been made, it is final and not amenable to change. A harmonious reading of the various clauses of the arbitration only mean that the maximum limit is Rs.25 crores and that within that limit of Rs.25 crores, whatever claim or counter-claim is made cannot be subjected to any change.

4. The learned Arbitrator had rejected the argument of the Petitioner/Counter-Claimant herein and had dismissed the application filed under Section 23(3) of the Arbitration and Conciliation Act, 1996 for withdrawal of the counter-claims No.1 and 5.

5. Learned Counsel appearing on behalf of the Petitioner herein has virtually reiterated the submissions made by him before the Arbitrator.

6. Per contra, learned Counsel appearing on behalf of the Respondent-Claimant stated that the order dismissing the application under Section 23(3) of the Arbitration and Conciliation Act, 1996 is only a procedural order and therefore is not an interim Award which is amenable to challenge under Section 34 of the Arbitration and Conciliation Act, 1996. It is stated that all procedural orders cannot be termed as an interim Award.



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7. Learned Counsel for the Petitioner, in rejoinder, states that since the Arbitrator can adjudicate claims only to a maximum limit of Rs.25 crores and for the rest of the claims, it was open for either of the parties to take recourse to other modes for adjudication of disputes, the effect of the Order is that the Petitioner is precluded from taking recourse to other modes for adjudication of the disputes. It is also stated that the Arbitrator has decided a question which is in issue between the parties as to whether the total amount, which the Arbitrator can adjudicate, can or cannot exceed Rs.25 crores. He also states that Section 23(3) of the Arbitration and Conciliation Act, 1996 permits either party to amend or supplement his claim of defence unless the Tribunal considers it inappropriate to allow the amendment. It is the case of the Petitioner that when the Arbitrator cannot adjudicate a claim or a counter-claim beyond Rs.25 crores then the Petitioner-Counter-Claimant herein ought to have been permitted to amend his claim so as to bring his claim within the maximum limit postulated under the Arbitration Clause. This issue affects the rights of the parties. Therefore, the present order is an interim award amenable to challenge under Section 34 of the Arbitration and Conciliation Act, 1996. It is also contended that the Arbitrator has interpreted a term of a clause in the Contract, being the Arbitration Clause itself, and therefore it would necessarily amount to an interim Award.

8. Heard the learned Counsels for both the parties and perused the material on record.

9. Clause 7.3.1 of the Letter of Award dated 18.10.2019 contains an Arbitration Clause, which reads as under:-

"7.3 Arbitration



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7.3.1 If the process of mutual consultation and/or ESC fails to arrive at a settlement between the parties as mentioned at GCC Sub-Clauses 7.1 & 7.2 above. Employer or the Contractor may, within Thirty (30) days of such failure, give notice to the other party, with a copy for information to the ESC (as applicable), of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. The mechanism of settling the disputes through arbitration shall be applicable only in cases where the disputed amount (i.e. total amount of Claims excluding claims of interest) does not exceed Rs. 25 crores. In case the disputed amount exceeds Rs. 25 Crores, the parties shall be within their rights to take recourse to remedies as may be available to them under the applicable laws other than Arbitration after prior intimation to the other party. There shall be no arbitration where the claim amount is only up to Rs. 5 lakhs.

The parties at the time of invocation of arbitration shall submit all the details of the claims and the counterclaims including the Heads/Sub-heads of the Claims/Counter-Claims and the documents relied upon by the parties for their respective claims and counter-claims. The parties shall not file any documents/details of the claims and counter-claims thereafter.

The claims and the counter claims raised by the parties at the time of invocation of the arbitration shall be final and binding on the parties and no further change shall be allowed in the same at any stage during arbitration under any circumstances whatsoever.

The parties to the contract shall invoke arbitration within six months from the date of completion of the execution of work under the contract or the termination of the contract as the case may be and the parties shall



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not invoke arbitration later on after expiry of the said period of six months. The parties shall not Invoke arbitration other than in the case of completion of execution of work or the termination of the contract as mentioned above.

Notwithstanding the above, in case of disputes with Indian Contractor who is a Central Government Department /Enterprise /Organisation or a State Level Public Enterprise (SLPE), the aforesaid limit of Rs 25 crores shall not be applicable and arbitration proceeding may be commenced irrespective of the amount involved in dispute if the dispute could not be resolved through Conciliation as brought out at GCC Sub Clause 7.2 above.”

10. The first question that is to be considered is whether the Order which is under challenge in the present petition is a procedural order or is an interim award which can be challenged under Section 34 of the Arbitration & Conciliation Act.

11. Section 2(c) of the Arbitration & Conciliation Act defines an arbitral award to include an interim award. Section 31 of the Arbitration & Conciliation Act brings out the form and contents of an arbitral award and Section 31(6) provides that an arbitral tribunal at any point of time during the arbitral proceedings can make an interim award on any matter in respect to which it can make a final award.

12. In IFFCO Limited v. Bhadra Products, (2018) 2 SCC 534, the Apex Court has held that the term ‘any matter with respect to which it may make a final award’ is very wide in nature and subsumes issues on which the parties are in dispute. Paragraph 7 of the said judgment reads as under:-

“7. As can be seen from Section 2(c) and Section 31(6), except for stating that an arbitral award includes an interim award, the Act is silent and does not define



what an interim award is. We are, therefore, left with Section 31(6) which delineates the scope of interim arbitral awards and states that the Arbitral Tribunal may make an interim arbitral award on any matter with respect to which it may make a final arbitral award.”

13. A perusal of the said judgment makes it clear that an interim award must be one which must deal with a point of dispute among the parties and that point of dispute has to be answered by the Tribunal. Unless the award does not deal with a point of dispute between the parties, it cannot be termed as an interim award which can be the subject matter of a challenge under Section 34 of the Arbitration & Conciliation Act.

14. In Satwant Singh Sodhi v. State of Punjab & Ors., (1999) 3 SCC 487, the Apex Court has held that the interim award must intend to determine the rights of the parties with finality. Paragraph 6 of the said judgment reads as under:-

“6. The question whether interim award is final to the extent it goes or has effect till the final award is delivered will depend upon the form of the award. If the interim award is intended to have effect only so long as the final award is not delivered it will have the force of the interim award and it will cease to have effect after the final award is made. If, on the other hand, the interim award is intended to finally determine the rights of the parties it will have the force of a complete award and will have effect even after the final award is delivered. The terms of the award dated 26-11-1992 do not indicate that the same is of interim nature.”

15. The Apex Court has therefore held that for any order to be termed as an interim award, it must finally determine the rights of the parties and any order which does not give any imprimatur on the rights of the parties cannot



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be termed as an interim award.

16. A Division Bench of this Court in MBL Infrastructure Limited v. Rites Limited & Anr., **2023 SCC OnLine Del 2736**, has observed as under:-

“45. In our view, the extract from the judgment of the Supreme Court in IFFCO case (supra) is clear and categorical. A decision of an Arbitral Tribunal which brings a quietus to an issue before it and is an order which the Arbitral Tribunal is empowered to pass at the final stage would constitute an interim award within the meaning of Section 31(6) as also Section 34 of the Act.”

17. Another Coordinate Bench of this Court in Rhiti Sports Management Private Limited v. Power Play Sports & Events Limited, **2018 SCC OnLine Del 8678**, has held that any procedural order or an order that does not finally settle a matter on which the parties are at issue, would not qualify to be termed as an arbitral award. Paragraph 18 of the said judgment reads as under:-

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

18. Similarly, a Coordinate Bench of this Court in Goyal MG Gases Private Limited v. Panama Infrastructure Developers Private Limited & Ors., **2023 SCC OnLine Del 1894**, while deciding a case under Order I Rule 10 CPC, has observed as under:-

“20. It is reflecting that an order would said to be an award or interim award when it decides a substantive dispute which exists between the parties. It is essential before an order can be understood as an award that it answers the attributes of the decision on the merits of the dispute between the parties or accords in



conclusively settling a dispute which pertains to core issue. Therefore to qualify as an award it must be with respect to an issue which constitutes a vital aspect of the dispute. As held in the case of Rhiti Sports the order passed by the arbitral tribunal would have the attributes of an interim award when same decides the 'matters of moment' or disposes of a substantive claim raised by the parties. Accordingly, an order passed by the Arbitral Tribunal rejecting the application for impleadment neither decides the substantive question of law nor touches upon the merits of the case. The impugned order, as such, has not travelled the distance to answer the attributes of determination of an issue."

19. Applying the said law to the facts of this case, the Arbitrator in the present case has rejected the application of the Petitioner herein to withdraw its Counter Claim No.1 and 5.

20. As stated above, it is the contention of the Petitioner that the Arbitrator does not have the jurisdiction to adjudicate on any claim exceeding Rs.25 crores and therefore the Arbitrator could not adjudicate upon the Counter Claims which totals to almost 120 crores. Learned Counsel for the Petitioner places reliance on Section 23(3) of the Arbitration & Conciliation Act to contend that the party can amend its claims.

21. An order rejecting an application under Section 23(3) of the Arbitration & Conciliation Act does not decide any matter with respect to which it has to make a final award.

22. A Coordinate Bench of this Court in Punit A. Bhardwaj v. Rashmi Juneja, 2022 SSC OnLine Del 2691, while deciding a challenge under Section 34 of the Arbitration & Conciliation Act to an order passed by the Tribunal rejecting an application for amendment of the claims has held that an application under Section 23(3) of the Arbitration & Conciliation Act



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does not amount to an interim award. Paragraph 18 of the said judgment reads as under:-

“18. The three judgments of this Court cited by learned counsel for the parties must be read in the context of this provision. The statute clearly vests discretion in the arbitral tribunal to disallow a party to amend or supplement its pleadings on the ground that the application is belated. In Container Corporation [Container Corporation of India Ltd. v. Texmaco Limited: 2009 SCC OnLine Del 1594], the amendment was rejected by the arbitral tribunal on this ground and the challenge under Section 34 of the Act was held not to be maintainable. In Cinevistaas [Cinevistaas Ltd. v. Prasar Bharti: O.M.P. (COMM) 31/2017, decided on 12.02.2019] and Lt. Col. H.S. Bedi Retd [Lt. Col. H.S. Bedi Retd v. STCI Finance Limited: O.M.P. (COMM) 546/2020, decided on 07.12.2020] on the other hand, the Court came to the conclusion that the rejection of the amendments were in the nature of final adjudication of the claims and defences proposed to be raised. It is this factor which clothed the orders of the tribunal with the characteristic of finality and rendered them susceptible to challenge as interim awards. This distinction, in my view, is the key to determining the maintainability of the present petition.”

23. It is always open for the Petitioner herein to challenge the award on the ground that the Arbitrator did not have the jurisdiction to entertain a dispute beyond Rs. 25 crores. It is pertinent to mention that the Arbitrator has rejected the application, on a reading of the arbitration clause stating that once the arbitration has been invoked, then no party is allowed to amend the claims, on the ground that the Petitioner is considered to have given up his right to pursue the Counter Claims at any other forum.

24. This Court is not making any comment on the said finding of the



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learned Arbitrator, leaving it open for the Petitioner herein to challenge the same after the award is pronounced. This Court is rejecting the present petition only on the short ground that an order dismissing an application under Section 23(3) of the Arbitration & Conciliation Act is only a procedural order and does not qualify as an 'interim award' amenable to challenge under Section 34 of the Arbitration & Conciliation Act.

25. With these observations, the Petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

MARCH 07, 2025

RJ/hsk/mt