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

+ W.P.(C) 5064/2016 & C.M.Nos.21138-21139/2016

M/S HINDUSTAN STEEL WORKS Petitioner

Through Mr.G.Umapathy, Advocate.

versus

M/S NTPC LTD. & ANR Respondents

Through Mr.Jasmeet Singh, CGSC for R-2.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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30.05.2016

Present writ petition has been filed challenging order dated 11th February, 2015 whereby the Appellate Authority under respondent No.2 has set aside the order passed by the Arbitrator under the Permanent Machinery of Arbitration.

Petitioner also challenges the order dated 30th March, 2016 whereby the review application of the petitioner was dismissed on the ground that the same would require detailed examination on merits which is not warranted in terms of OM dated 12th June, 2013 related to PMA Scheme and the law laid by the Supreme Court.

Learned counsel for petitioner states that the order dated 30th March, 2016 is contrary to the Appellate Authority's own order dated 5th January, 2016 whereby the Appellate Authority has held that it has jurisdiction to hear on merits as per OM dated 24th March, 2014.

This Court has recently on 29th February, 2016 upon a writ petition being filed by respondent no.1 challenging the order dated 5th

January, 2016 passed by respondent no.2 has held that such writ petitions are not maintainable. The relevant portions of the order disposing of W.P.(C) No.1635/2016 dated 29th February, 2016 are reproduced hereinbelow:-

“6. However, learned senior counsel for the petitioner states that Mr. Dinesh Bhardwaj held the review petition to be maintainable and has now decided to proceed ahead with the review petition on merits. He emphatically submits that Mr. Dinesh Bhardwaj has no jurisdiction to proceed ahead with the review petition.

7. A Coordinate Bench of this Court in Kandla Port Trust vs. PEC Limited, W.P.(C) 7887/2011,7898/2011 as well as a Division Bench of this Court in Ircon International Ltd. vs. National Building Construction Corporation Limited, 155 (2008) DLT 226 (DB) have held that the permanent machinery for arbitration is essentially an arbitration and insofar as it excludes the Arbitration and Conciliation Act, it is void. It was further held that the judicial review is available on the limited grounds as provided under the Arbitration and Conciliation Act, 1996.

8. A Constitution Bench of the Supreme Court in SBP & Co. VS. Patel Engineering Ltd. and Another, (2005) 8 SCC 618 has disapproved the approach of some of the High Courts that any order passed by an arbitral tribunal is capable of being corrected under Article 226 or 227 of the Constitution. The relevant portion SBP & Co. VS. Patel Engineering Ltd. and Another (supra) is reproduced hereinbelow:-

“45. It is seen that some High Courts have proceeded on the basis that any order passed by an Arbitral Tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution. We see no warrant for such an approach. Section 37 makes certain orders of the Arbitral Tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating its grievances against the award including any in-between orders that might have been passed by the Arbitral Tribunal acting under Section 16 of the Act. The party aggrieved by any order of the Arbitral Tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This

appears to be the scheme of the Act. The Arbitral Tribunal is, after all, a creature of a contract between the parties, the arbitration agreement, even though, if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the Arbitral Tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the Arbitral Tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution. Such an intervention by the High Courts is not permissible.

46. The object of minimising 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 or under Article 226 of the Constitution 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.

(emphasis supplied)

9. At this stage, learned senior counsel for the petitioner states that the Supreme Court in the said judgment has only dealt with the cases during the pendency of the arbitration, whereas, in the present case, the award has already been passed. However, the fact of the matter is that it is the case of the alleged Arbitrator that he is exercising his powers in accordance with para X of the PMA. The relevant portion of said para is reproduced hereinbelow:-

“The Appellate Authority will have the power to revise his/her own decision for rectification of any error or for editorial corrections etc.”

10. In the opinion of this Court, the Arbitration and Conciliation Act, 1996 deals not only with pendency of arbitration proceedings but also with pre and post arbitration awards. This Court is also of the view that the petitioner would have sufficient opportunity to challenge whatever decision is

taken by Mr. Dinesh Bhardwaj, in accordance with the Arbitration and Conciliation Act, 1996. Further, the fact that PMA is an Alternative Dispute Resolution cannot be lost sight of. Consequently, the writ petition and the application are dismissed.”

Since this Court in the aforesaid order has already held that it is not open to the parties to challenge an Appellate Authority's order/award by way of a writ petition, the issue whether the Arbitrator had the jurisdiction to pass the impugned order cannot be decided in the present proceedings. In accordance with the aforesaid order, it shall be open to the petitioner to file an appropriate proceeding under the Arbitration and Conciliation Act, 1996. With the aforesaid liberty, the present writ petition and the applications are dismissed.

MANMOHAN, J

MAY 30, 2016

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