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

+ CM(M) 363/2017 and CM Nos. 12792-94/2017

HOLY CROSS CBSE ENGLISH MEDIUM HIGH
SCHOOL

..... Petitioner

Through Ms.Kanupriya Tiwari, Advocate

versus

M/S EDUSMART SERVICES PVT LTD & ANR..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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12.04.2017

1. The present petition is filed under Article 227 of the Constitution of India to impugn the order dated 01.09.2016 by which an application filed by the petitioner under Section 16 of the Arbitration and conciliation Act, 1996 was dismissed. The petitioner had filed the said application seeking an order declaring that the Sole Arbitrator is not having jurisdiction to adjudicate upon the present proceedings.
2. Learned counsel for the petitioner submits that while adjudicating upon the application under Section 16 of the Arbitration Act, the Arbitrator has instead come to a conclusion on merits of the case holding that the breach is entirely on the part of the petitioner. It is strongly urged that these findings are entirely illegal, non-est and void as without hearing arguments on the merits of the matter and without permitting the parties to lead evidence, the Arbitrator has come to a conclusion on the final merits of the case. Prima facie there is merit in the contention of the petitioner.
3. However, the settled legal position in this regard is that the courts

would not interfere in the arbitration matters at interlocutory stage. Reference in this context may be had to the judgment of the Supreme Court in *S.B.P. & Co. vs. Patel Engineering Limited*, (2005) 8 SCC 618 wherein it was held as follows:-

“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 of India. 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 his 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, the 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 of India. Such an intervention by the High Courts is not permissible.”

4. Hence, the petition is dismissed.
5. All pending applications also stand dismissed.

JAYANT NATH, J

APRIL 12, 2017/rb