

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 152 of 2014**

Zee Steels Pvt. Ltd. Through its Director Zee Steels Pvt. Ltd. Kamal Kishor Agrawal, son of Shiv Kumar Agrawal, aged about 38 years, resident of Jawahar Nagar Chowk, P.S. Maudhapara, Raipur, Civil and Revenue District Raipur -492001 (C.G.)

----Petitioner**Versus**

1. South Eastern Central Railway, through its General Manager, Zonal Head Office Bilaspur (C.G.)
2. Union of India, through Controller of Stores, South Eastern Central Railway, Bilaspur (C.G.)
3. The Senior Divisional Mechanical Manager, South East Central Railway, Bilaspur Division, Bilaspur (C.G.)

---- Respondents.

For Petitioner	: Shri Sunil Otewani, Advocate.
For Respondents	: Shri Abhishek Sinha, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****18/09/2018**

1. By way of this petition, the petitioner is challenging the legality, validity and propriety of award dated 08.11.2013, by which the claim petition filed by the petitioner before the Arbitrator was partly allowed but the interest on the awarded amount has not been paid; and it has further been prayed that the respondents authorities be directed to permit the petitioner to purchase the remaining quantity of scrap as mentioned in the acceptance letter.

2. Learned counsel for the petitioner would submit that the learned Arbitrator is absolutely unjustified in not granting interest on the awarded amount. He would further

pray for issuance of writ of mandamus directing the respondent authorities to permit the petitioner to purchase the remaining quantity of scrap as mentioned in the acceptance letter.

3. Per contra, learned counsel appearing for the respondents would submit that the award dated 08.11.2013 has been passed by the Arbitrator, arbitrating the dispute between the parties, as such, recourse available to the petitioner against the arbitral award to file application under Section 34 (2) of the Arbitration and Conciliation Act, 1996, as such the writ petition as framed and filed is not maintainable.

4. At this stage, Shri Otwani, counsel for the petitioner would submit that award cannot be partially set aside under Section 34(2) of the Arbitration and Conciliation Act, 1996.

5. I have heard learned counsel appearing for the parties and perused the order impugned with utmost circumspection.

6. Issue raised in the writ petition is no longer res integra, as it has already been decided by the Supreme Court in the matter of **SBP & Co. Vs. Patel Engineering Ltd. and another**¹. Paragraphs 45 & 46 of the report state as under: -

“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

1 (2005) 8 SCC 618

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.”

7. In view of the aforesaid legal position, appropriate remedy of the petitioner to file an application under Section 34(2) of the Act, 1996 for appropriate relief before the District Judge in accordance with law.

8. In view of foregoing, the writ petition is held to be not maintainable. Accordingly, it is dismissed as not maintainable. However, the petitioner is at liberty to file application under Section 34(2) of the Act, 1996 for appropriate relief in accordance with law.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

