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

+ **O.M.P. 8/2018 & IAs 5036-37/2018**

YOGESH JAIN

..... Petitioner

Through: Mr.Avadh Kaushik, Mr.Robin Singh,
Advs. along with petitioner in person.

versus

RAKESH JAIN

..... Respondent

Through: Mr.Vaibhav Jain, Ms.Deepshikha
Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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16.04.2018

IA 5036/2018

Exemption allowed subject to all just exceptions.

O.M.P. 8/2018 & IA 5037/2018

Issue notice. Notice is accepted by Mr.Vaibhav Jain, Advocate on behalf of the respondent.

The present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') praying for the setting aside of the order dated 26th March, 2018 passed by the Sole Arbitrator and communicating to the petitioner his decision that all meetings in the arbitration proceedings shall take place in Kolkata only and that no arbitration meeting shall take place in Delhi.

At the outset, it is noticed that the impugned order does not

decide in any manner, the substantive rights of either of the parties. It is an order merely fixing the venue of the arbitration proceedings and would therefore, fall under Section 20 of the Act which is reproduced hereinafter:-

20. Place of arbitration.—(1) *The parties are free to agree on the place of arbitration.*

(2) *Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.*

(3) *Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.*

Counsel for the petitioner submits that as the impugned order has been passed in spite of opposition of the petitioner, this would in some manner amount to an Interim Award. In this regard, he relied upon the judgment of the Supreme Court in *Indian Farmers Fertilizer Co-operative Ltd. vs. Bhadra Products* AIR 2018 SC 627 and of this Court in *ATV Projects India Ltd. vs. Indian Oil Corporation Ltd. & Anr.* 200 (2013) DLT 553.

I am unable to agree with the submissions made by the counsel for the petitioner. Supreme Court, in *Centrotrade Minerals and Metal Inc. v. Hindustan Copper Ltd.*, (2017) 2 SCC 228, has held that while all awards are decisions of the Arbitral Tribunal, all decisions of the Arbitral Tribunal are not awards. An award has finality attached to a decision on a substantive issue.

In the present case, the impugned order, in no manner, decides the substantive rights of either of the parties in the arbitration proceedings. It is only a procedural order and in my view, cannot qualify as an 'award' as defined in Section 2(1) (c) of the Act.

In *Sanshin Chemicals Industry vs. Orientals Carbons & Chemicals Ltd. & Ors.* 2001 (1) SCR 1101, the Supreme Court, held that the decision on the question of venue under Section 20 will neither be an award or an interim award and, therefore, Section 34 of the Act would not be applicable to challenge the same.

In *Indian Farmers Fertilizer Co-operative Ltd.*(supra), the Supreme Court, considered the issue of challenge to an interim award deciding the question of limitation. It was held that a decision on this substantive issue would amount to an interim award between the parties. Similarly, in *ATV Projects India Ltd.* (supra), this Court was considering the issue of closure of the right of the claimant to file his Statement of Claim. As such an order results in the termination of the arbitration proceedings, this Court held that the same would amount to an interim award. In the present case, none of these judgments would, therefore, be applicable as the impugned order is merely an order determining the venue of the arbitration proceedings and as noted above, does not affect any substantive rights of either of the parties.

In view of the above, I hold that the present petition is not maintainable and is accordingly dismissed. It is however, clarified that all rights and contentions of the parties remain open and the dismissal of this petition shall not preclude the petitioner from

seeking any other appropriate remedy that may be open to him in law.

NAVIN CHAWLA, J

APRIL 16, 2018
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