

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-12700-2019 (O&M)

Decided on: 10.12.2019

Punjab State Power Corporation Limited

..... Petitioner

versus

The Arbitration Tribunal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Atul Nanda, Senior Advocate with
Ms. Rameeza Hakeem, Advocate and
Mr. Vinod S. Bhardwaj, Advocate, for the petitioner.

Mr. Abhimanyu Bhandari, Advocate with
Mr. Sangram Singh Saron, Advocate and
Ms. Nattasha Garg, Advocate, for respondent No.2.

* * *

DEEPAK SIBAL, J.

Through the present petition filed under Articles 226/227 of the Constitution of India the petitioner seeks quashing of the order dated 08.01.2017, passed by the Arbitral Tribunal (for short, the Tribunal), dismissing an application filed by the petitioner under Section 16 of the Arbitration and Conciliation Act, 1996 (for short, the 1996 Act), through which the petitioner had questioned the jurisdiction of the Tribunal to adjudicate upon the dispute referred to and pending before it.

The relevant facts which need to be noticed for adjudicating upon the instant petition are that in February/March 1999, the Punjab State Electricity Board (now Punjab State Power Corporation Limited)-petitioner invited tenders to carry out coal mining operations which were to be conducted through a Joint Venture Company to be created for the said purpose by the petitioner and the highest bidder. Respondent No.2-EMTA Coal Ltd. (for short, EMTA) was the highest bidder. On 21.03.2001, the petitioner and EMTA entered into a joint venture agreement through which they created respondent No.3-M/s PANEM Coal Mines Limited (for short, PANEM) to develop and extract coal from Pachwara (Central)

Coal Block. The extracted coal was to be supplied by PANEM to the petitioner to be used by it in its thermal power station(s) for generating electricity. On 30.08.2006, the petitioner and PANEM entered into a coal purchase agreement which contained the terms for the supply of coal by PANEM to the petitioner.

Thus, three agreements were entered into. Through the first one the petitioner and the highest bidder-EMTA agreed to form a joint venture for carrying out mining operations to extract coal from Pachwara (Central) Coal Block. The second agreement was the Joint Venture Agreement dated 21.03.2001 through which the petitioner and EMTA created PANEM for extracting coal to be supplied to the petitioner and the third agreement was the coal purchase agreement dated 30.08.2006 between the petitioner and PANEM through which terms were set out as to how and in what manner PANEM was to supply coal to the petitioner.

It is the admitted position that for the resolution of a dispute all the aforesaid agreements contained an arbitration clause.

EMTA raised a dispute with regard to non-payment of its dues by the petitioner. EMTA invoked the arbitration clause. By consent of the petitioner and EMTA, under the Joint Venture Agreement dated 21.03.2001, two Arbitrators were appointed, who in turn appointed a third Arbitrator and thus, a three member Tribunal came into existence before which EMTA filed its claim to which the petitioner not only filed a written statement but also its counter claim. As soon as the petitioner had filed its objections to EMTA's claim as also its counter claim, an application under Section 16 of the 1996 Act was filed by the petitioner calling upon the Tribunal to determine its jurisdiction to adjudicate upon EMTA's claim. Such application was dismissed by the Tribunal through its order dated 08.01.2017. Thereafter, the matter before the Tribunal continued during the course of which both the parties led their respective evidence. When EMTA had concluded its final arguments and the matter was listed for final arguments on

behalf of the petitioner, at that stage, in May 2019, the petitioner filed the instant petition before this Court to challenge therein the aforesaid order dated 08.01.2017 passed by the Tribunal dismissing the petitioner's application filed by it under Section 16 of the 1996 Act.

On 14.05.2019, a Single Judge of this Court issued notice and granted stay of further proceedings before the Tribunal. EMTA challenged the grant of interim stay through an intra-Court Appeal. The issue raised therein was primarily with regard to the maintainability of the present petition. A Division Bench of this Court disposed of EMTA's appeal and remitted the matter to this Court, to decide, in a time bound manner, the issue with regard to the maintainability of the present petition. Thereafter, EMTA filed an application before this Court seeking therein dismissal of the instant petition on the ground that the same was not maintainable. On the same grounds, in the alternative, vacation of interim stay granted on 14.05.2019 was sought.

Since the issue with regard to maintainability of the instant petition and/or vacation of the interim stay granted on 14.05.2019 was to be considered and decided, by consent of the learned counsel for the parties, in the first instance learned counsel for the contesting respondent No.2-EMTA was permitted to address this Court which he did.

Learned counsel for EMTA drew the attention of this Court to sub-sections 5 and 6 of Section 16 of the 1996 Act to submit that after the dismissal of the application filed by the petitioner questioning therein the jurisdiction of the Tribunal, the Tribunal is statutorily obliged to continue with the arbitration proceedings leading to the passing of an Award and then the remedy available to the petitioner is to challenge such award under Section 34 of the 1996 Act and not to challenge the order passed by the Tribunal dismissing the petitioner's application filed by it under Section 16 through the present petition under Articles 226/227 of

the Constitution of India.

Reference was also made to Section 5 of the 1996 Act to submit that no judicial authority shall intervene in arbitration matters except where it is so provided under the 1996 Act.

In support of his submissions, learned counsel for EMTA placed reliance on the following judgments: -

1. M/s S.B.P. & Co. vs M/s Patel Engineering Limited and another” (2005) 8 SCC 618.
2. M/s Sterling Industries vs Jayprakash Associates Limited and others Civil Appeal Nos.7117-7118 of 2017; decided on 10.07.2019.
3. M/s International Coil Limited vs M/s DLF Cyber City Developers Limited” rendered in CR-735-2019 on 24.05.2019; (Punjab & Haryana High Court).
4. Steel Authority of India Ltd. and another vs Indian Council of Arbitration & others” (2013) SCC Online Delhi 4490; (Delhi High Court).
5. Sandip Industries, Pondicherry vs Superpack, a Division of Bajaj Steel Industries Ltd. and another” (2008) SCC Online Bom 659. (Bombay High Court).

Learned counsel for EMTA also sought dismissal of the present petition on the ground of delay and on the principle of estoppel. It was submitted that the order impugned through the present petition was passed on 08.01.2017 and the present petition was filed on 13.05.2019 i.e. after a delay of over two years and five months for which no explanation whatsoever was found in the present petition and for these two years and five months the petitioner took part in the proceedings before the Tribunal without any protest. Only when the Tribunal was in the midst of hearing final arguments the petitioner instituted the instant petition before this Court.

Per contra, learned counsel for the petitioner submitted that sub-sections 5 and 6 of Section 16 of the 1996 Act only provided for a remedy which could be resorted to by a party in the case of dismissal of its application filed by it

under Section 16 of the 1996 Act. Such remedy could at the most be taken to be an alternate remedy but could not be considered to be a bar on the jurisdiction of this Court under Articles 226/227 of the Constitution of India. According to learned counsel for the petitioner, the remedy under Articles 226/227 of the Constitution of India was part of the basic structure of the Constitution and therefore, could not be taken away by any provision of law much less sub-sections 5 and 6 of Section 16 of the 1996 Act. In support of his contentions, learned counsel for the petitioner placed reliance on the following judgments: -

1. Associated Cement Companies Ltd. vs P.N. Sharma and another; AIR 1965 SC 1595.
2. L. Chandra Kumar vs Union of India and others” (1997) 3 SCC 261.
3. Punjab Agro Industries Corporation Limited vs Kewal Singh Dhillon (2008) 10 SCC 128.
4. M/s Unik Accurate Pvt. Ltd. vs M/s Sumedha Fiscal Services Ltd. (2000) SCC Online Cal. 328.
5. M/s M.L.Gupta and Associates vs. H.P.Housing & Urban Development Authority and others (2011) SCC Online HP 3746.

To appreciate the controversy in hand it would be necessary to refer to Sections 5, 16, 34 and 37 of the 1996 Act. The same read as under: -

“5. Extent of judicial intervention.—Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.”

“16. Competence of arbitral tribunal to rule on its jurisdiction.—(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2)

or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.”

“34. Application for setting aside arbitral award.—

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application furnishes proof that—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that— (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or (ii) the arbitral award is in conflict with the public policy of India. 1

[Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

[(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award: PROVIDED that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappraisal of evidence.]

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

PROVIDED that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

[(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.]”

“37. Appealable orders.—

(1) An appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—

[(a) refusing to refer the parties to arbitration under section 8;

(b) granting or refusing to grant any measure under section 9;

(c) setting aside or refusing to set aside an arbitral award under section 34.]

(2) An appeal shall also lie to a court from an order of the arbitral tribunal—

(a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or

(b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.”

(emphasis supplied)

A harmonious reading of the afore quoted provisions clearly brings out the legislative intent which is that between the appointment of an Arbitrator/constitution of an Arbitral Tribunal and the passing of the award there should be no unnecessarily delay; during the above arbitral process minimal judicial interference is permissible and that too as per the remedies specifically provided under the 1996 Act and that the award to be passed by the Tribunal is open to challenge before the competent Court under Section 34 on the grounds so mentioned therein.

The procedure prescribed under Section 16 clearly reflects the afore legislative intent. Section 16(2) of the 1996 Act provides that objections with regard to the Tribunal not having jurisdiction to adjudicate upon the dispute should be submitted “before” the filing of the statement of defence. As per Section 16(3) if any party is to raise an objection that the Tribunal has travelled beyond its scope the same should be filed “as soon as” such party feels that the Tribunal has done so. The delay in filing of the aforesaid applications is condonable only on justifiable grounds.

If the objections filed by a party under Sections 16(2) and (3) are

overruled by the Arbitral Tribunal it would mean that the Tribunal, as per its own ruling, would have jurisdiction to adjudicate the dispute referred to it or that it has not exceeded the scope of its authority. In both eventualities the reference made to the Arbitral Tribunal continues to be live before it and therefore Section 16(5) mandates the Arbitral Tribunal to continue with the arbitral proceedings and go on to pass an award. In the integrum no judicial interference is contemplated. No remedy of appeal is also provided in the 1996 Act against the overruling of objections filed under Sections 16(2) and (3). However, the aggrieved party is also not left without a remedy as under Section 16(6) it is at liberty to make an application under Section 34 for setting aside of the award to be passed on the grounds provided therein.

Only where objections filed by a party under Sections 16(2) and 16(3) are accepted by the Tribunal giving rise to a situation where as per the Tribunal itself it does not have jurisdiction to continue with the arbitral proceedings or has travelled beyond the scope of its authority the aggrieved party has a remedy to challenge such order of the Arbitral Tribunal through an appeal under Section 37 (2)(a) as in such a situation once the Tribunal itself is of the opinion that it does not have jurisdiction to decide the dispute referred to it or is exceeding its scope of reference no useful purpose would be served in continuing with such proceedings resulting in the passing of an award.

A Constitution Bench of the Supreme Court in S.B.P's case (supra) while considering the issue as to whether the powers of the Chief Justice or his Nominee under Section 11(6) of the 1996 Act are administrative or judicial, scanned all relevant provisions of the 1996 Act including the scope of interference by the High Court under Articles 226/227 of the Constitution of India against the overruling of objections filed by a party before the Arbitral Tribunal under Section 16 and went on to hold as under: -

“12. Section 16 of the Act only makes explicit what is even otherwise implicit, namely, that the Arbitral Tribunal constituted under the Act has the jurisdiction to rule on its own jurisdiction, including ruling on objections with respect to the existence or validity of the arbitration agreement. Sub-section (1) also directs that an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. It also clarifies that a decision by the Arbitral Tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause. Sub-section (2) of Section 16 enjoins that a party wanting to raise a plea that the Arbitral Tribunal does not have jurisdiction, has to raise that objection not later than the submission of the statement of defence, and that the party shall not be precluded from raising the plea of jurisdiction merely because he has appointed or participated in the appointment of an arbitrator. Sub-section (3) lays down that a plea that the Arbitral Tribunal is exceeding the scope of its authority, shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. When the Tribunal decides these two questions, namely, the question of jurisdiction and the question of exceeding the scope of authority or either of them, the same is open to immediate challenge in an appeal, when the objection is upheld and only in an appeal against the final award, when the objection is overruled. Sub-section (5) enjoins that if the Arbitral Tribunal overrules the objections under Sub-section (2) or (3), it should continue with the arbitral proceedings and make an arbitral award. Sub-section (6) provides that a party aggrieved by such an arbitral award overruling the plea on lack of jurisdiction and the exceeding of the scope of authority, may make an application on these grounds for setting aside the award in accordance with Section 34 of the Act. The question, in the context of sub-section (7) of Section 11 is, what is the scope of the right conferred on the Arbitral Tribunal to rule upon its own jurisdiction and the existence of the arbitration clause, envisaged by Section 16(1), once the Chief Justice or the person designated by him had appointed an arbitrator after satisfying himself that the conditions for the exercise of power to appoint an arbitrator are present in the case. Prima facie, it would be difficult to say that in spite of the finality conferred by sub-section (7) of Section 11 of the Act, to such a decision of the Chief Justice, the Arbitral Tribunal can still go behind that decision and rule on its own jurisdiction or on the existence of an arbitration clause. It also appears to us to be incongruous to say that after the Chief Justice had appointed an Arbitral Tribunal, the Arbitral Tribunal can turn round and say that the Chief Justice had no jurisdiction or authority to appoint the Tribunal, the very creature brought into existence by the exercise of power by its creator, the Chief Justice. The argument of the learned Senior Counsel, Mr. K.K. Venugopal that Section 16 has full play only when an Arbitral Tribunal is constituted without intervention under Section 11(6) of the Act, is one way of reconciling that provision with Section 11 of the Act, especially in the context of sub-section (7) thereof. We are inclined to the view that the decision of the Chief Justice on the issue of jurisdiction and the existence of a valid arbitration agreement would be binding on the parties when the matter goes to the Arbitral Tribunal and at subsequent stages of the proceeding except in an appeal in the Supreme Court in the case of the decision being by the Chief Justice of the High Court or by a Judge of the High Court designated by him.

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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 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.

47. We, therefore, sum up our conclusions as follows:

(i) The power exercised by the Chief Justice of the High Court or the Chief Justice of India under Section 11(6) of the Act is not an administrative power. It is a judicial power.

(ii) The power under Section 11(6) of the Act, in its entirety, could be delegated, by the Chief Justice of the High Court only to another Judge of that court and by the Chief Justice of India to another Judge of the Supreme Court.

(iii) In case of designation of a judge of the High Court or of the Supreme Court, the power that is exercised by the designated, Judge would be that of the Chief Justice as conferred by the statute.

(iv) The Chief Justice or the designated Judge will have the right to decide the preliminary aspects as indicated in the earlier part of this judgment. These will be his own jurisdiction to entertain the request, the existence of a valid arbitration agreement, the existence or otherwise of a live claim, the existence of the condition for the exercise of his power and on the qualifications of the arbitrator or arbitrators. The Chief Justice or the designated Judge would be entitled to seek the opinion of an institution in the matter of nominating an arbitrator qualified in terms of Section 11(8) of the Act if the need arises but the order appointing the arbitrator could only be that of the Chief Justice or the designated Judge.

(v) Designation of a District Judge as the authority under Section 11(6) of the Act by the Chief Justice of the High Court is not warranted on the scheme of the Act.

(vi) Once the matter reaches the Arbitral Tribunal or the sole arbitrator, the High Court would not interfere with orders passed by the arbitrator or the Arbitral Tribunal during the course of the arbitration proceedings and the parties could approach the Court only in terms of Section 37 of the Act or in terms of Section 34 of the Act.

(vii) Since an order passed by the Chief Justice of the High Court or by the designated Judge of that Court is a judicial order, an appeal will lie against that order only under Article 136 of the Constitution to the Supreme Court.

(viii) There can be no appeal against an order of the Chief Justice of India or a Judge of the Supreme Court designated by him while entertaining an application under Section 11(6) of the Act.

(ix) In a case where an Arbitral Tribunal has been constituted by the parties without having recourse to Section 11(6) of the Act, the Arbitral Tribunal will have the jurisdiction to decide all matters as contemplated by Section 16 of the Act.

(x) Since all were guided by the decision of this Court in *Konkan Railway Corpn. Ltd. v. Rani Construction Pvt. Ltd.* [(2002)2 SCC 388] (supra) and orders under Section 11(6) of the Act have been made based on the position adopted in that decision, we clarify that appointments of arbitrators or

Arbitral Tribunals thus far made, are to be treated as valid, all objections being left to be decided under Section 16 of the Act. As and from this date, the position as adopted in this judgment will govern even pending applications under Section 11(6) of the Act.

(xi) Where District Judges had been designated by the Chief Justice of the High Court under Section 11(6) of the Act, the appointment orders thus far made by them will be treated as valid; but applications if any pending before them as on this date will stand transferred, to be dealt with by the Chief Justice of the High Court concerned or a Judge of that Court designated by the Chief Justice.

(xii) The decision in *Konkan Railway Corpn. Ltd. v. Rani Construction Pvt. Ltd.* [(2002)2 SCC 388] (supra) is overruled.”

(emphasis supplied)

Through the afore quoted observations, after recognizing the legislative intent of the 1996 Act with regard to quick disposal of arbitral proceeding with minimal judicial interference, the Supreme Court has clearly depreciated interference by the High Court in writ petitions filed under Articles 226/227 of the Constitution of India against orders of the Arbitral Tribunal with specific reference to the orders by the Tribunal passed by it under Section 16. In para 47(vi) the Supreme Court further goes on to hold that once the matter was before the Tribunal the High Court would not interfere with orders passed by it during the course of the arbitration proceedings and the parties could and would approach the competent Court only in terms of Sections 34 or 37 of the 1996 Act.

To the same effect are the following observations by the Supreme Court made as recently as on 10.07.2019 in *M/s Sterling's case* (supra): -

“1. Having heard learned counsel for the parties at length, we find that the judgment of the High Court is liable to be set aside on one ground alone. The High Court entertained a writ petition under Article 227 of the Constitution of India against an order of the learned District Judge, Gautam Budh Nagar purportedly passed under section 20 of the Arbitration and Conciliation Act, 1996 (for short, "the Arbitration Act") read with Section 19 of the Micro, Small & Medium Enterprises Development Act, 2006 (for short, "the MSME Act"). This application was made to the District Judge by respondent No. 1- Jayprakash Associates Ltd. against a partial award made under section 16 of the Arbitration Act. Such an application was not tenable vide section 16 (6) of the Arbitration Act. Since such an application was not tenable, we fail to understand how in a writ petition filed against an order made by the District Judge in an untenable application, the High Court could have set aside the partial award. This is clearly contrary to law. This court in the case of *SBP & Co. v. Patel Engineering Ltd. & Anr.*, reported in (2005) 8 SCC 618 in Paragraph No. 45 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."

2. In these circumstances, we are of the view that the judgment of the High Court is liable to be set aside. Ordered accordingly."

S.B.P's case (*supra*) was followed by this Court in *M/s International*

Coil Limited's case (supra) and the relevant observations in this regard are as

under: -

"15. In view of the above emphasized extracts in the decision pronounced in "M/s. S.B.P. and Co.'s" case (*supra*), this Court is also of the view that proceedings in an Arbitral Tribunal including its decision to decide on its own jurisdiction cannot be challenged under Articles 226 and 227 of the Constitution before the High Court, and of the decision relied upon by the Petitioner's side, would not be of any help, for the reasons being recorded in the following Paragraphs.

16. Ironically, the last mentioned citation of "M/s. S.B.P. and Co.'s" case (*supra*) originally cited on behalf of Petitioner's side in the context of the limits on the competence of the Arbitral Tribunal to rule on its own jurisdiction, which is a subject-matter to be covered in relation to the provisions of Section 16 also quoted earlier separately. But from the observations of the Constitutional Bench in its aforesaid decision delivered on 26.10.2005, there remains little scope for doubting that the order or decision passed by an Arbitral Tribunal during the course of the proceedings pending before it cannot be interfered with by any Judicial Authority including High Court under Articles 226/227, except when specifically provided in Part I of the Arbitration Act. The said decision of the Constitutional Bench, therefore, clearly overrides the earlier decision in "L. Chandra Kumar's" case (*supra*), in which, in any case, the restriction on Judicial intervention specifically introduced by the subsequent enactment of the amended Arbitration Act could not have even come up for any consideration.

17. The decision in "L. Chandra Kumar's" case (*supra*) was pronounced by the Constitutional Bench in relation to a Civil Appeal, which was admitted in the Supreme Court way back in 1989. The applicability of Articles 226/227 of the Constitution came up for consideration in this decision in the context of the controversy arising out of the Legislation by way of Administrative Tribunals Act, 1985, which was of rather recent origin when the ultimate SLP was filed in the Apex Court. The observations noted in preceding Paras 7 and 8 of this Judgment were also in the context of the power ostensibly granted to the

Tribunals, which were created under Article 323-A and B of the Constitution and the particular reference in the said Appeal was also in relation to the Central Administrative Tribunal, which had only recently come into existence at that time. The controversy emanated out of the competence granted to the Tribunal to test the vires of any act of the State, and it was clarified specifically in Para 8 as reproduced above, that the existence of a provision in case of any Tribunal(s) constituted under Article 323-A and B, could not in any way take away from the jurisdiction conferred upon High Courts under Articles 226/227 and upon Supreme Court under Article 32 of the Constitution, which is part of the inviolable basic structure of our Constitution, and that the other Courts and Tribunals may perform a supplemental role in discharging the powers conferred by these Articles while this jurisdiction cannot be ousted.

18. Now it needs to be noted that the amended Arbitration Act had been enacted long after the Civil Appeal had been admitted in 1989, and its amended provisions including Section 5 restraining Judicial intervention had not yet come up for Judicial review. But the matter has since been comprehensively settled in the subsequent Constitutional's Bench decision in "M/s. S.B.P. and Co.'s" case (supra), wherein the Apex Court had specifically held that proceedings of an Arbitral Tribunal cannot be challenged in exercise of Articles 226/227 of the Constitution, except when authorized under the Act itself, and this is now the settled legal position in this regard.

19. As already noted in Para 9 thereafter, attention of this Court had been drawn to Para 19 of the Supreme Court's Judgment, which had essentially held that appointment of an Arbitrator by the Chief Justice(s) is in exercise of Judicial and not Administrative Authority. But this particular observation in Para 19 is not connected with the real question regarding competence of the Judicial Authorities to entertain challenges of Arbitral Proceedings when not permitted by the Act itself in exercise of powers under Articles 226/227 of the Constitution, which, as has already been seen in subsequent Paras 44 to 46 of the very same judgment, have not been approved of by the Constitutional Bench.

20. With reference to the decision in "Booz Allen and Hamilton Inc.'s" case (supra) mentioned in Para 10 above, it is to be noted that it was pronounced in the background of refusal of the Court to refer the dispute to arbitration under section 8 of the Arbitration Act. At no stage in that case, the actual Arbitral Tribunal was constituted. So there was no question of any Judicial Authorities having entertained any Application or Petition against the Arbitral Tribunals' proceedings, when in fact, no such proceedings could ever have taken place without actual constitution of the Tribunal. Therefore, the decision in "Booz Allen and Hamilton Inc.'s" case (supra) is not helpful to the Petitioner.

21. Similarly, in "Himangni Enterprises's" case (supra) referred to in Para 11 earlier, again the proceedings had arisen out of rejection of the Tenant's Application under section 8 of the Arbitration Act by the Addl. District Judge, which decision was affirmed by the Delhi High Court as well as the Apex Court. In this case, again no Arbitral Tribunal had ever been constituted since the Application for reference to Arbitration was itself dismissed, and as such, the question of challenging the proceedings before such non-existent Arbitral Tribunal could not have arisen at all.

22. In "Natraj Studios (P) Ltd.'s" case (supra), the Supreme Court had declared inoperative Arbitration Clause in the original Agreement between the parties. The final operative portion of this Judgment as passed by the Apex Court happens to be -

"28. In the result both the appeals are allowed with costs. The arbitration clause in the agreement dated March 28, 1970 is declared to be inoperative. The application for reference to Arbitration is dismissed."

23. It is thus seen that in this case also, it was actually a case of dismissal of the Application for reference to Arbitration, which had been allowed at the High Court level. Challenge to any orders passed by the Tribunal itself was again not the subject-matter in this decision and the controversy was limited to the reference to Arbitration. At any rate, this Judgment of the Supreme Court was

delivered way back on 7.1.1981, which is more than 15 years before the amended Arbitration Act had even come into operation, and so even this decision can be of no help to the Petitioner.

24. While thus holding that proceedings of/orders passed by the Arbitral Tribunal cannot be challenged under Articles 226 and 227 of the Constitution, except when so permitted under the Act itself, let us now also see if reference to the provisions pertaining to the competence of the Arbitral Tribunal to rule on its own jurisdiction can be of any help to the Petitioner. The relevant section 16 of the Arbitration Act has already been reproduced in Para 6 earlier. A careful reading of Section 16(2) (3) (4) and (5) goes to show challenge to jurisdiction of the Arbitral Tribunal, or a plea that the Tribunal is exceeding the scope of its Authority is to be taken at the earliest, particularly being not later than the submission of statement of defence, and as soon as the matter alleged to be beyond the scope of the Tribunal's authority is raised, respectively. Of course, the Tribunal according to Section 16(4) in its discretion may admit such pleas if it considers the delay justified. But according to Section 16(5) where the Tribunal takes a decision rejecting either of these pleas, it is required to continue with the Arbitral proceedings and make an Arbitral Award. Thereafter according to Section 16(6), the aggrieved party can apply for setting aside of such Award in accordance with Section 34 of the Act. It is, therefore, seen that even Section 16 does not contemplate any scope for a party to challenge the Arbitral proceedings before passing of the final Award, once the Tribunal has determined that it is possessed of jurisdiction to entertain the dispute.

25. For the aforesaid reasons, this Court finds no justification for interfering with the impugned order passed by the Arbitral Tribunal itself, since it is not a final order, but is restricted to the question of the Tribunal's competence and jurisdiction to entertain the concerned dispute in a situation where the Tribunal was constituted without any Judicial intervention and in the absence of any Application under section 8 and 11 of the Arbitration Act. Consequently, in view of the Constitutional Bench's decision in "M/s. S.B.P. and Co.'s" case (supra), this Court has no jurisdiction to entertain any challenge to the impugned order and the Petitioners are therefore, obligated to await the conclusions of the Arbitral Proceedings, only after which they can challenge any such Award or Order either by referring to Section 34, or to any other specific provisions permitting them to do so under the Act."

In Steel Authority of India's case (supra), the Delhi High Court followed the dictum laid by the Supreme Court in S.B.P's case (supra) and refused to interfere in a writ petition preferred before it to challenge therein an order passed by the Arbitrator under Section 16(2) of the 1996 Act. The relevant observations made in Steel Authority of India's case (supra) are as follows: -

"10. The following view taken by the Hon'ble Supreme Court in SBP Company (supra), in my view, clinches this issue:-

'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 Articles 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 Articles 226 or 227 of the Constitution of India. 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 Articles 227 of the Constitution of India or under Articles 226 of the Constitution of India 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.

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47 (vi) Once the matter reaches the arbitral tribunal or the sole arbitrator, the High Court would not interfere with orders passed by the arbitrator or the arbitral tribunal during the course of the arbitration proceedings and the parties could approach the court only in terms of Section 37 of the Act or in terms of Section 34 of the Act.'

Following the aforesaid decision of the Apex Court, a learned Single Judge of this Court in Cadre Estate Pvt Ltd. (supra), inter alia, held as under:

'30. It may be observed that as regards the Petitioner's challenge to the jurisdiction of the learned Arbitrator it is not as if it has no remedy. If its application under Section 16 of the AC Act is allowed by the learned Arbitrator it will have no grievance left. If not, the Petitioner has to abide by the legislative scheme outlined in Section 16(5) read with Section 16(6) AC Act and await the passing of the Award. If the Award goes against the Petitioner, it can challenge the Award on the grounds available to it under Section 34 of the AC Act. The mere fact that this may cause it the inconvenience of having to await the conclusion of the arbitral proceedings is no ground to entertain a writ petition at an intermediate stage in a manner contrary to the legislative scheme under Section 16 AC Act. The AC Act being a complete code in itself and with Section 5 of the AC Act limiting interference by judicial authorities, any attempt to expand the scope for interference by the High Court in exercise of its powers under Articles 226 of the Constitution would defeat the object and purposes of the AC Act.

31. Consequently, this Court holds that the present writ petition under Articles 226 of the Constitution read with Articles 227 thereof, to challenge either the jurisdiction of the learned Arbitrator generally or the order dated 18th December 2009 passed by the learned Arbitrator in particular, is not maintainable.'

11. It was contended by the learned senior counsel for the petitioner that being a Tribunal exercising quasi judicial function, the Arbitral Tribunal is subject to the writ jurisdiction of the Court and a party aggrieved from the failure of the Arbitral Tribunal to rule to its own jurisdiction, despite objection from a party cannot be left remediless. He also submitted that appeal to Supreme Court by way of a special leave under Articles 136 of the Constitution cannot be said to be an appropriate remedy. He also submitted that the only issue before the Honble Supreme Court in SBP Company (supra) was as to what is the function of the Chief Justice or his designate under Section 11 of the Court and the Apex Court, while adjudicating on the said issue, held that even the Chief Justice or his designate will have the right to decide the preliminary aspects such as the existence of a valid arbitration agreement between the parties. In support of his contention that SBP & Company is not an authority on the question of law arising in this petition, the learned counsel for the petitioner

relied upon the view taken in U.P. SRTC (supra) holding that a decision is an authority for which it decides or not what can be logically deduced therefrom. He also submitted that in Punjab Agro Industries (supra), which is a later decision, Supreme Court has clarified that its decision in SBP & Company (supra) does not affect the maintainability of the writ petition. He also referred to National Insurance Company Limited (supra), where the Apex Court categorized the issue arising in an application under Section 11 of the Act into three categories; one of them being the issues which the Chief Justice or his designate will have to decide. One of the issues falling in the first category is as to whether there is an arbitration agreement or whether a party who has applied under Section 11 of the Act is a party to such an agreement or not.

12. A careful perusal of the decision of the Apex Court in SBP & Company (supra) would show that in the aforesaid case, the Apex Court, while examining the nature of the functions of the Chief Justice or his designate under Section 11 of the Act, had gone into the whole gamut of the Act and had examined its scheme at length. Section 16 of the Act, interpretation of which is involved in the present writ petitions, also was analyzed by the Apex Court in para 12 and 20 of the judgment (SCC Citation). The view taken by the Apex Court in paras 45, 46 and 47 (vi) of the judgment, therefore, cannot be said to be only an obiter and is a clear statement of law on the applicability of Articles 226 and 227 of the Constitution to an order passed by the Arbitral Tribunal.

In Municipal Committee, **Amritsar v. Hazara Singh (1975 1 SCC 794)**, the Apex Court approved the following statement of law:

'Judicial propriety, dignity and decorum demand that being the highest judicial tribunal in the country even obiter dictum of the Supreme Court should be accepted as binding. Declaration of law by that Court even if it be only by the way has to be respected. But all that does not mean that even statement contained in a judgment of that Court would be attracted by Articles 141. Statements on matters other than law have no binding force.' Obiter dicta of the highest Court, where it lays down a rule of law, is certainly entitled to the greatest respect. In fact, several times, the obiter dicta of the Supreme Court has been taken as a precedent though every passing expression, of course, cannot be treated as an authority.

In **Sarwan Singh Lamba and others v. Union of India and others [(1995) 4 SCC 546]**, the Apex Court observed that normally even the obiter dicta is expected to be abided and followed.

13. In Tania Construction Private Limited (supra), the Apex Court, inter alia, held that availability of an alternative remedy is not an absolute bar to the invocation of the writ jurisdiction of the High Court or the Supreme Court and even without exhausting such alternative remedy, a writ petition would be maintainable. This judgment, in my view, does not apply to the issue involved in the present writ petitions.

14. In any case, the decision of this Court in Cadre Estate Pvt Ltd. (supra), which is a judgment directly on this very issue, also binds this Court even if there be no pronouncement of the Apex Court directly on this very issue. Neither in Punjab Agro Industries (supra) nor National Insurance Co. Ltd. (supra), the Apex Court has taken a view on the maintainability of a writ petition against a non-appealable order such as an order of the Arbitral Tribunal deciding to go ahead with the arbitration proceedings, without first adjudicating upon the plea of want of jurisdiction raised under sub-section (2) of Section 16 of the Act or rejecting such a plea. As regards the decisions of Bombay High Court in Anuptech Equipments Private Limited (supra) and the decision of the Calcutta High Court in Arati Dhar (supra) and Unik Accurates (supra), no reliance on the aforesaid decision can be placed by this Court considering the view taken by the Apex Court in SBP & Company (supra) as well as the view taken by this Court in Cadre Estate Pvt Ltd. (supra). This Court, therefore, must necessarily hold that a writ petition does not lie against a non-appealable order passed by the Arbitrator during the course of arbitral proceedings.

15. In any case, even if it is held that a writ petition against a non-appealable order of the Arbitrator is maintainable, considering the legislative intent, as expressed in Section 5 of the Act, which provides that no judicial authority shall intervene in matters governed by Part-I except to the extent provided in the said Part and acknowledging that interference with the arbitral proceedings, in exercise of writ jurisdiction of the Court, is bound to delay the conclusion of such proceedings, thereby defeating one of the main objectives behind preferring arbitration over litigation, the Court would be well advised in not interfering with such an order in exercise of its writ jurisdiction.”

Keeping in view the legislative intent with regard to minimal judicial interference and speedy disposal of arbitral proceedings the alternate remedies provided under the 1996 Act should be strictly followed as holding otherwise would set at knot the very purpose for which settlement of disputes are resorted to through the mode of arbitration. This would also be in line with the directions issued by the Supreme Court in S.B.P's case (supra) which have already been quoted and referred to earlier.

The submissions raised by learned counsel for the petitioner that sub-sections 5 and 6 of Section 16 of the 1996 Act do not bar the jurisdiction of this Court under Articles 226/227 of the Constitution of India to quash an order passed by the Tribunal under Section 16 of the 1996 Act, does not cut ice with this Court as acceptance of such an argument would not only be against the law laid down by the Supreme Court in S.B.P's case (supra) but would also be in direct conflict with the legislative intent with which the 1996 Act has been promulgated which is for speedy disposal of arbitral disputes with minimal judicial interference.

Learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in Associated Cement Companies Ltd's case (supra) to submit that the powers of the High Court under Articles 226/227 of the Constitution of India could not be curtailed.

In Associated Cement Companies Ltd's case (supra) the issue which came up for consideration before the Supreme Court was whether the State while exercising its appellate jurisdiction under the Punjab Welfare Officers Recruitment and Conditions of Service Rules, 1952 was a Tribunal within the meaning of

Article 136(1) of the Constitution of India. In that case the Associated Cement Companies Ltd. had challenged before the Supreme Court the order passed by the State while exercising its appellate jurisdiction and through which the State had directed it to reinstate respondent No.1 therein. At the time of hearing of the matter, an objection was raised that special leave should not be granted to the appellant as the decision of the State under the aforesaid Rule was not a decision of a Tribunal.

The issue raised in Associated Cement Companies Ltd's case (supra) was clearly distinct than the issue in the present case as herein the objection by the contesting respondent is to the maintainability of a writ petition under Article 226 of the Constitution through which issuance of a writ of certiorari is sought to quash an order passed by an Arbitral Tribunal under Section 16(2) of the 1996 Act whereas in Associated Cement Companies Ltd's case (supra) the issue was whether the order passed by the State was by a Tribunal within the meaning of Article 136 (1) of the Constitution. In fact, in para 17 of the judgment in Associated Cement Companies Ltd's case (supra) the Supreme Court itself has brought out such distinction as under: -

“It will be noticed that in these cases, this Court was not called upon to consider whether the authorities whose decisions were challenged under Article 226 were tribunals or not because, the requirement that the imposed decision should be that of a tribunal which has been prescribed by Article 136(1) is not to be found in Article 226; and so, the only point which fell for decision was whether the impugned orders amounted to judicial or quasi-judicial decisions liable to be corrected by the issue of a writ of certiorari under Article 226, or not. That problem is different from the one which we have to decide in the present case.”

Even otherwise, Associated Cement Companies Ltd's case (supra) was not a case under the 1996 Act. It was also considered by a Larger Bench of the Supreme Court in S.B.P's case (supra) and it is thereafter that the afore quoted directions were issued by the Supreme Court in S.B.P's case (supra).

In L.Chandra Kumar's case (supra) the following issues fell for

consideration before the Supreme Court: -

“(1) Whether the power conferred upon Parliament or the State Legislatures, as the case may be, by sub-clause (d) of clause (2) of Article 323-A or by sub-clause (d) of clause (3) of Article 323-B of the Constitution, to totally exclude the jurisdiction of 'all courts', except that of the Supreme Court under Article 136, in respect of disputes and complaints referred to in clause (1) of Article 323-A or with regard to all or any of the matters specified in clause (2) of Article 323-B, runs counter to the power of judicial review conferred on the High Courts under Articles 226/227 and on the Supreme Court under Article 32 of the Constitution?

(2) Whether the Tribunals, constituted either under Article 323-A or under Article 323-B of the Constitution, possess the competence to test the constitutional validity of a statutory provision/rule?

(3) Whether these Tribunals, as they are functioning at present, can be said to be effective substitutes for the High Courts in discharging the power of judicial review? If not, what are the changes required to make them conform to their founding objectives?”

After considering the afore quoted issues, the Supreme Court held Articles 323-A(2)(d) and 323-B(3)(d) to be unconstitutional to the extent that they exclude the jurisdiction of the High Court under Articles 226/227 and of the Supreme Court under Article 32 of the Constitution of India. Such decision of the Supreme Court was rendered in the year 1997.

The issue in L.Chandra Kumar's case (supra) case did not pertain to the arbitral proceedings and therefore Sections 5 and 16 of the 1996 Act along with the entire scheme of the 1996 Act were not considered. These provisions were subsequently considered by another Constitution Bench of the Supreme Court in S.B.P's case (supra) in which the Supreme Court through the afore quoted observations/directions authoritatively enunciated the law that once the matter reaches the Arbitral Tribunal or the sole Arbitrator the High Court would not interfere with the orders passed by the Tribunal or the Arbitral Tribunal during the course of the arbitration proceedings and the parties could and would approach the competent Court only in terms of Sections 34 or 37 of the 1996 Act. Thus,

L.Chandra Kumar's case (supra) would be of no help to the petitioner's case.

L.Chandra Kumar's case (supra) was also considered and distinguished by this Court in M/s International Coil Limited's case (supra) in the following manner: -

“16. Ironically, the last mentioned citation of “M/s S.B.P. & Co.'s” case (supra) originally cited on behalf of Petitioner's side in the context of the limits on the competence of the Arbitral Tribunal to rule on its own jurisdiction, which is a subject-matter to be covered in relation to the provisions of Section 16 also quoted earlier separately. But from the observations of the Constitutional Bench in its aforesaid decision delivered on 26.10.2005, there remains little scope for doubting that the order or decision passed by an Arbitral Tribunal during the course of the proceedings pending before it cannot be interfered with by any Judicial Authority including High Court under Articles 226/227, except when specifically provided in Part I of the Arbitration Act. The said decision of the Constitutional Bench, therefore, clearly overrides the earlier decision in “L. Chandra Kumar's” case (supra), in which, in any case, the restriction on Judicial intervention specifically introduced by the subsequent enactment of the amended Arbitration Act could not have even come up for any consideration.

17. The decision in “L. Chandra Kumar's” case (supra) was pronounced by the Constitutional Bench in relation to a Civil Appeal, which was admitted in the Supreme Court way back in 1989. The applicability of Articles 226/227 of the Constitution came up for consideration in this decision in the context of the controversy arising out of the Legislation by way of Administrative Tribunals Act, 1985, which was of rather recent origin when the ultimate SLP was filed in the Apex Court. The observations noted in preceding Paras 7 & 8 of this Judgment were also in the context of the power ostensibly granted to the Tribunals, which were created under Article 323-A & B of the Constitution and the particular reference in the said Appeal was also in relation to the Central Administrative Tribunal, which had only recently come into existence at that time. The controversy emanated out of the competence granted to the Tribunal to test the vires of any act of the State, and it was clarified specifically in Para 8 as reproduced above, that the existence of a provision in case of any Tribunal(s) constituted under Article 323-A and B, could not in any way take away from the jurisdiction conferred upon High Courts under Articles 226/227 and upon Supreme Court under Article 32 of the Constitution, which is part of the inviolable basic structure of our Constitution, and that the other Courts and Tribunals may perform a supplemental role in discharging the powers conferred by these Articles while this jurisdiction cannot be ousted.

18. Now it needs to be noted that the amended Arbitration Act had been enacted long after the Civil Appeal had been admitted in 1989, and its amended provisions including Section 5 restraining Judicial intervention had not yet come up for Judicial review. But the matter has since been comprehensively settled in the subsequent Constitutional's Bench decision in “M/s S.B.P. & Co.'s” case (supra), wherein the Apex Court had specifically held that proceedings of an Arbitral Tribunal cannot be challenged in exercise of Articles 226/227 of the Constitution, except when authorized under the Act itself, and this is now the settled legal position in this regard.”

I concur with the above observations given by this Court.

M/s Unik Accurate's case (supra) is a judgment of the Calcutta High

Court which has been cited by learned counsel for the petitioner to contend that

this Court under Article 227 of the Constitution has the power to entertain and adjudicate upon the present petition on its merits. In view of the observations made above and because M/s Unik Accurate's case (supra) was a judgment which was pronounced prior to the law laid down by the Supreme Court in S.B.P's case (supra), the same is also of no help to the petitioner.

In M.L.Gupta's case (supra) the issue before the Himachal Pradesh High Court was that the dispute between the parties therein had been referred to the Arbitrator on 03.11.2008 and for about three years the same was at the preliminary stage. In line with the legislative intent of the 1996 Act a direction was issued to the Arbitrator to decide the arbitral proceedings within a time bound manner and if necessary by resorting to day-to-day hearing. The facts in M.L.Gupta's case (supra) are clearly distinguishable and thus not applicable to the facts of the case in hand.

In Punjab Agro Industries Corporation Limited's case (supra) on disputes having arisen between the parties, one of the parties filed a petition under Section 11(4) of the 1996 Act in the Court of the Civil Judge (Senior Division), Chandigarh (a designate of the Chief Justice of the Punjab & Haryana High Court). Such petition was dismissed on the ground that appointment of an Arbitrator was not called for as the matter had already been decided by the Board for Industrial and Financial Reconstruction. Against such dismissal a writ petition was filed before this Court which was dismissed being not maintainable. The Supreme Court set aside the order of this Court after observing that against an order passed under Section 11(4) of the 1996 Act the aggrieved party had no other remedy and therefore, could challenge such order only through the filing of a writ petition. In the case in hand, against the order impugned in the present petition, a remedy is available to the petitioner under Section 16(6) read with Section 34 of the 1996 Act and therefore, Punjab Agro's case (supra) would not support the petitioner's case.

Keeping in view the directions given by the Supreme Court in S.B.P's case (supra) which have been followed by this Court in *M/s International Coil Limited's case (supra)* and the Delhi High Court in *Steel Authority of India's case (supra)* as also keeping in mind the legislative intent expressed by the legislature through Sections 5, 16(5) and 16(6) with regard to the minimal judicial interference for quick disposal of arbitral proceedings, no interference is warranted by this Court in the present petition filed by the petitioner under Articles 226/227 of the Constitution of India seeking therein quashing of the order passed by the Tribunal rejecting the objections filed by it under Section 16(2) questioning therein the jurisdiction of the Arbitral Tribunal.

The instant petition is liable to be dismissed on another ground as well. The order impugned in the present petition is dated 08.01.2017. The petitioner did not challenge such order for nearly 2½ years and in the meanwhile, without any protest whatsoever, continued to voluntarily participate in the proceedings before the Tribunal. Only when final arguments in part had been heard by the Tribunal did the petitioner choose to file the instant petition to challenge therein an order passed nearly 2½ years ago. The petition is thus highly belated and liable to be dismissed on this ground alone especially when for the delay on the petitioner's part no explanation whatsoever is either forthcoming from the record or was argued at the bar.

For the reasons stated herein above, no merit is found in the present petition and accordingly, the same is dismissed.

No costs.

10.12.2019
Jyoti 1/shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No