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

Date of decision: 13th JANUARY, 2026

IN THE MATTER OF:

+ **O.M.P. (COMM) 71/2025 & I.A. 3156/2025**

LOMASH SLURRYTECH PVT LTD

.....Petitioner

Through: *Appearance not given*

versus

DSC ENGINEERING PVT LTD

.....Respondent

Through: Mr. Vineet Tayal & Ms. Nishtha Wadhwa, Advs.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present petition under Section 34 of the Arbitration & Conciliation Act, 1996 ["A&C Act"] has been filed by the Petitioner challenging the Order dated 12.11.2024 passed by the Ld. Arbitral Tribunal. It is averred that the Impugned Order is in the nature of an Interim Award whereby the Ld. Arbitral Tribunal has rejected the application filed by the Petitioner herein, under Order XI Rules 12 & 14 of CPC.

2. Shorn of unnecessary details, the facts leading to the filing of the present petition are that Respondent herein issued a Work Order dated 18.10.2016 to the Petitioner for doing microsurfacing work on Lucknow Sitapur Expressway Ltd and payments whereof were agreed to be made within a period of 10 days. The Respondent issued a Purchase Order on 03.11.2016 to the Petitioner for supplying of microsurfacing emulsion. It is stated that the Petitioner rendered the services and supplied microsurfacing

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emulsion in terms of Work Order and Purchase Order and raised invoices for the same during the period from 30.11.2016 to 04.02.2017. It is the case of the Petitioner that the Respondent never made payments in terms of payment terms stipulated in the Work Order and the Purchase Order and instructed the Petitioner to stop the work. It is stated that despite stopping the work, the Respondent on 28.06.2017 issued a second Work Order in terms of which payments were agreed to be made within a period of 7 days. The Respondent also issued a Purchase Order on the even date for restarting the microsurfacing work. The Petitioner raised RA Bills No.1-7 for the services rendered and requested the Respondent to release the payments for the work. It is stated that disputes arose between the parties due to non-payment of the dues of the Petitioner.

3. It is the case of the Petitioner that the Petitioner followed-up with the Respondent regarding non-payment of dues on numerous occasions. It is stated that Respondent gave verbal assurance to the Petitioner that out of the total outstanding amount, a sum of Rs.30 lakhs shall be paid immediately to the Petitioner and balance shall also be cleared. It is stated that only Rs.14.70 lakhs has been received from the Respondent, thereby leaving a balance payment of Rs.15.30 lakh. It is also the case of the Petitioner that the Respondent consumed the material lying at the site for its own use without permission from the Petitioner and therefore, the Petitioner raised an invoice on account of usage of 'Special Microsurfacing Type III Aggregate' by the Respondent.

4. It is stated that in the meantime, substantial amount of dues got accumulated and in order to settle the outstanding dues of the Petitioner, the Respondent offered a meagre amount i.e., Rs. 28 lakh against full and final

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settlement of dues of the Petitioner. It is stated that the Petitioner, thereafter, approached the Competent Authority under the Insolvency and Bankruptcy Code, 2016 [“IBC”] and initiated CIRP proceedings against the Respondent which was rejected vide Order dated 23.08.2021.

5. It is stated that the Respondent, thereafter, approached this Court by filing a petition being ARB. P. 870/2019 seeking appointment of an Arbitrator and this Court vide Order dated 06.10.2022 constituted an Arbitral Tribunal. Claims and counter-claims were raised by both the parties. Pleadings were completed on 06.07.2023. Affidavits of Admission/denial of documents were filed by both sides. Issues were framed on the claims and counter-claims of the Petitioner and the Respondent.

6. It is the case of the Petitioner that during the cross-examination of CW-1 - Sh. Sunil M. Asnani before the Ld. Arbitral Tribunal, CW-1 - Sh. Sunil M. Asnani was asked to produce the invoices in terms of which he stated to have made the payments, however, the said question was disallowed by the Ld. Arbitral Tribunal. At this juncture, it is apposite to reproduce the question and the decision of the Ld. Arbitral Tribunal which reads as under:

“Q19- Kindly produce the invoices as stated by at Para 11 of your affidavit of evidence which was submitted by the respondent to the claimant company?”

Per Tribunal:

This question stands disallowed as the minutes of the meeting were signed by both the parties on 19/03/2018 and it is Ex.CW-1/6, This is for appreciation at the time of the arguments”



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7. The Petitioner, thereafter, filed an application under Order XI Rules 12 & 14 of CPC before the Ld. Arbitral Tribunal seeking production of the aforesaid documents by the Respondent, the request of which has been rejected by the Ld. Arbitral Tribunal vide Impugned Order dated 12.11.2024. The Ld. Arbitral Tribunal vide Impugned Order dated 12.11.2024, while rejecting the application, observed that the cross-examination of CW-1 - Sh. Sunil M. Asnani was completed. According to the Ld. Arbitral Tribunal, the Petitioner is trying to get over the decision of the Tribunal and the same cannot be circumvented by moving this application. Paragraph No.10 of the Impugned Order dated 12.11.2024 reads as under:

“10. In the present case the cross examination of CW-1 Sh. Sunil M. Asnani was completed and thereafter, this application was filed by the claimant. Respondent cannot now, as per its own convenience can seek production of the aforesaid documents. The Respondent cannot be allowed to re-agitate a question which was already disallowed by this Tribunal and it was recorded that the MOM dated 10.12.2018 shall be appreciated at the time of final arguments. The judgements relied by the claimant are not applicable in the peculiar circumstances of this case.”

8. Learned Counsel for the Respondent has raised a preliminary objection stating that the Impugned Order which has been sought to be challenged by the Petitioner in the present petition cannot be termed as an Interim Award and is only a procedural order.

9. Section 31.6 of the A&C Act provides that the Arbitral Tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award. An

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Interim Award can be a subject matter of challenge in an application under Section 34 of the Arbitration and Conciliation Act, 1996.

10. The Apex Court in IFFCO Ltd. v. Bhadra Products, (2018) 2 SCC 534 has interpreted the term “Interim Award”. The relevant portion of the said Judgment reads as under:

“7. As can be seen from Section 2(c) and Section 31(6), except for stating that an arbitral award includes an interim award, the Act is silent and does not define what an interim award is. We are, therefore, left with Section 31(6) which delineates the scope of interim arbitral awards and states that the Arbitral Tribunal may make an interim arbitral award on any matter with respect to which it may make a final arbitral award.

8. The language of Section 31(6) is advisedly wide in nature. A reading of the said sub-section makes it clear that the jurisdiction to make an interim arbitral award is left to the good sense of the Arbitral Tribunal, and that it extends to “any matter” with respect to which it may make a final arbitral award. The expression “matter” is wide in nature, and subsumes issues at which the parties are in dispute. It is clear, therefore, that any point of dispute between the parties which has to be answered by the Arbitral Tribunal can be the subject-matter of an interim arbitral award. However, it is important to add a note of caution. In an appropriate case, the issue of more than one award may be necessitated on the facts of that case. However, by dealing with the matter in a piecemeal fashion, what must be borne in mind is that the resolution of the dispute as a whole will be delayed and parties will be put to additional expense. The Arbitral Tribunal should, therefore, consider whether there is any real advantage in delivering interim





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awards or in proceeding with the matter as a whole and delivering one final award, bearing in mind the avoidance of delay and additional expense. Ultimately, a fair means for resolution of all disputes should be uppermost in the mind of the Arbitral Tribunal.

9. To complete the scheme of the Act, Section 32(1) is also material. This section goes on to state that the arbitral proceedings would be terminated only by the final arbitral award, as opposed to an interim award, thus making it clear that there can be one or more interim awards, prior to a final award, which conclusively determine some of the issues between the parties, culminating in a final arbitral award which ultimately decides all remaining issues between the parties.”

(emphasis supplied)

11. A Co-ordinate Bench of this Court in Shyam Telecom Ltd. v. Icomm Ltd., 2010 SCC OnLine Del 1234, has observed as under:

“2.

Clearly an interim Award has to be on a matter with respect to which a final Award can be made i.e. the interim Award is also the subject matter of a final Award. Putting it differently therefore an interim Award has to take the colour of a final Award. An interim Award is a final Award at the interim stage viz. a stage earlier than at the stage of final arguments. It is a part final Award because there would remain pending other points and reliefs for adjudication. It is therefore, that I feel that an interim Award has to be in the nature of a part judgment and decree as envisaged under Section 2(2) of CPC and the same must be such that it conclusively determines the rights of the parties on a matter in controversy in the suit as done in a final judgment. An interim order



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thus cannot be said to be an interim Award when the order is not in the nature of a part decree. In my opinion the impugned order in view of what I have said hereinabove, is not an interim Award as it is not in the nature of a part decree being only an interim order.”
(emphasis supplied)

12. Another Co-ordinate Bench of this Court in Rhiti Sports Management (P) Ltd. v. Power Play Sports & Events Ltd., 2018 SCC OnLine Del 8678 has observed as under:

“16. A plain reading of Section 32 of the Act indicates the fact that the final award would embody the terms of the final settlement of disputes (either by adjudication process or otherwise) and would be a final culmination of the disputes referred to arbitration. Section 31(6) of the Act expressly provides that an Arbitral Tribunal may make an interim arbitral award in any matter in respect of which it may make a final award. Thus, plainly, before an order or a decision can be termed as ‘interim award’, it is necessary that it qualifies the condition as specified under Section 31(6) of the Act: that is, it is in respect of which the arbitral tribunal may make an arbitral award.

17. As indicated above, a final award would necessarily entail of (i) all disputes in case no other award has been rendered earlier in respect of any of the disputes referred to the arbitral tribunal, or (ii) all the remaining disputes in case a partial or interim award(s) have been entered prior to entering the final award. In either event, the final award would necessarily (either through adjudication or otherwise) entail the settlement of the dispute at which the parties are at issue. It, thus, necessarily follows that for an order to qualify as an arbitral award either as final or interim, it must settle a matter at which the parties are



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at issue. Further, it would require to be in the form as specified under Section 31 of the Act.

18. To put it in the negative, any procedural order or an order that does not finally settle a matter at which the parties are at issue, would not qualify to be termed as “arbitral award”.

19. In an arbitral proceeding, there may be several procedural orders that may be passed by an arbitral tribunal. Such orders may include a decision on whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the arbitral proceedings are to be conducted on the basis of documents and other materials as required to be decided - unless otherwise agreed between the parties - in terms of Section 24(1) of the Act. There are also other matters that the arbitral tribunal may require to determine such as time period for filing statement of claims, statement of defence, counter claims, appointment of an expert witness etc. The arbitral tribunal may also be required to address any of the procedural objections that may be raised by any party from time to time. However, none of those orders would qualify to be termed as an arbitral award since the same do not decide any matter at which the parties are at issue in respect of the disputes referred to the arbitral tribunal.

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22. In Centrotrade Minerals and Metal Inc. v. Hindustan Copper Ltd., (2017) 2 SCC 228, the Supreme Court had, inter alia, referred to the passages from Comparative International Commercial Arbitration Kluwer Law International, 2003 and Redfern and Hunter on International Arbitration (sixth edition) and observed as under:—

“9....The distinction between an award and a decision of an Arbitral Tribunal is summarized in Para



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24-13 [Chapter 24: Arbitration Award in Julian D.M. Lew, Loukas A. Mistelis, et al., *Comparative international Commercial arbitration*]. It is observed that an award:

(i) concludes the dispute as to the specific issue determined in the award so that it has *res judicata* effect between the parties; if it is a final award, it terminates the tribunal's jurisdiction;

(ii) disposes of parties' respective claims;

(iii) may be confirmed by recognition and enforcement;

(iv) may be challenged in the courts of the place of arbitration.

10. In *International Arbitration* [Chapter 9. Award in Nigel Blackaby, Constantine Partasides, et al., *Redfern and Hunter on International Arbitration* (Sixth Edition), 6th edition: Kluwer Law International, Oxford University Press 2015 pp. 501-568] a similar distinction is drawn between an award and decisions such as procedural orders and directions. It is observed that an award has finality attached to a decision on a substantive issue. Paragraph 9.08 in this context reads as follows:

“9.08 The term “award” should generally be reserved for decisions that finally determine the substantive issues with which they deal. This involves distinguishing between awards, which are concerned with substantive issues, and procedural orders and directions, which are concerned with the conduct of the arbitration. Procedural orders and directions help to move the arbitration forward; they deal with such matters as the exchange of written evidence, the production of documents, and the arrangements for the conduct of the hearing. They do not have the status of





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awards and they may perhaps be called into question after the final award has been made (for example as evidence of “bias”, or “lack of due process”).”

13. Applying the law to the facts of this case, it can be seen that during the cross-examination of CW-1, a question was put to the witness to produce invoices in terms of which the payments have been made. The said question was disallowed. The Petitioner has then filed an application under Order XI Rules 12 & 14 of the CPC seeking production of those documents and this application has been rejected by the Arbitral Tribunal in the order which is under challenge.

14. This Court is of the opinion that filing of the application by the Petitioner under Order XI Rules 12 & 14 of CPC before the Ld. Arbitral Tribunal is clearly an attempt to get over the decision of the Ld. Arbitral Tribunal not to permit the learned Counsel for the Petitioner from asking the witness to produce the documents. A perusal of the question and decision of the Ld. Arbitral Tribunal indicates that the said issue is still left open as while deciding the application, the Ld. Arbitral Tribunal has noted that the said issue shall be appreciated at the time of final arguments. The said issue has, therefore, yet not attained finality and since it has not attained finality, the Impugned Order dated 12.11.2024 cannot be said to be an Interim Award deciding the rights of the parties.

15. The petition stands dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

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