
**ARBITRATOR'S DECISION ON THE JURISDICTION, CAN BE CHALLENGED ONLY
ALONG WITH THE FINAL AWARD - Supreme Court of India**

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Supreme Court of India while dealing with the case of Deep Industries², held that an order passed by allowing or dismissing an application filed under Section.16 of the Arbitration and Conciliation Act,1996 (Herein after "The Act") cannot be challenged under Article 227 of the Constitution of India and the said order must wait for the final award and then both can be challenged under S.34 of the Act. But at the same time the said Court held that a judgment passed under S.37 of the Act either allowing or dismissing the appeal, which is a first appeal over the order of the Court under S.34, can be challenged under Article 227, since there is no Second Appeal provided under the 1996 Act. The above said judgment has brought in clarity with regard to filing of an appeal against the order of an Arbitral Tribunal passed under Section 16 and the possibility of filing a revision under Article 227 challenging an order passed under S.37 of the Act.

The Appellant filed a claim petition before the arbitrator in which the termination of the contract / show-cause notice was challenged and damages were claimed. After the said claim petition was filed, the appellant was blacklisted by the respondent for a period of 2 years. Meanwhile an application under section 16 was made before the arbitrator basically on the ground that since the arbitration notice was confined only to the termination of the agreement, blacklisting would be outside the arbitrators jurisdiction. The said section 16 application was dismissed by the learned arbitrator, in which the learned arbitrator held that the notice was not merely confined to termination of the contract but was also in respect of the blacklisting that was sought to be imposed at that point of time.

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² Deep Industries Limited Vs Oil and Natural Gas Corporation Limited and Another (2020) 15 SCC 706

In the meantime, on the application of the claimant, arbitral tribunal granted an interim order restraining the respondent from implementing the order of blacklisting. Hence the Respondent challenged the above said order passed under section 16, invoking the jurisdiction of the High Court under Article 227 of the constitution of India. It is important to note that the order passed by the Arbitral tribunal is not an appealable order as per the Act. The High Court passed a factually erroneous order, setting aside the order of the arbitral tribunal, against which appeal was preferred in the Supreme Court of India.

The Supreme Court of India also insisted that while exercising jurisdiction under Section 227, the High Court requires to keep in mind the principles laid down by the amended S.115 of the Code of Civil Procedure i.e., no revision lies against an order if an alternative remedy or appeal is available and further, even if a revision lies it should be only against a final disposal of the entire matter and not against interlocutory orders. Hence, the Supreme Court has settled the law relating to invoking the jurisdiction of High Courts under Article 227, in arbitration matters.