

## **COURT CANNOT REMAND AN ARBITRATION AWARD TO THE TRIBUNAL Suo Motu**

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Even though arbitration is a private mechanism for resolving commercial disputes, the supervising courts have powers to supervise the arbitration and even to set aside an arbitration award on the grounds provided in the procedural law of the country. After the pronouncement of an arbitration award if a party aggrieved approaches the supervising court challenging the said award, the court may reject the application to set aside or allow the application and set aside the award or make some alterations in the award while upholding it or remand the award to the arbitrator for reconsideration of certain or all legal and factual issues. This article deals with the powers and limitations of the court while remanding the matter to arbitration tribunal again under the Indian law.

As per the Arbitration and Conciliation act, 1996 an aggrieved party may challenge the arbitration award under section 34 of the act, seeking to set aside the award by filing an application in the supervising court in the seat of Arbitration. The said section 34 has a sub section 4 that provides powers to the courts to remand the matter to the arbitrator/arbitration tribunal to take such other actions as in the opinion of the arbitral tribunal that would eliminate the grounds for setting aside of the award. The above said section 34(4) is reproduced below:

*“On receipt of an application under subsection (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.”*

Hon’ble Supreme Court of India in a recent judgement in the matter *Kinnari Mullick and Another Versus Ghanshyam Das Damani*<sup>2</sup> held that the supervising courts do not have suo motu powers to remand the matter back to arbitral tribunal for reconsideration. In the said case, an interim award dated 27.08.2010 and final award dated 18.06.2013 were passed by the arbitral tribunal and the aggrieved party challenged the said award before the High Court of Calcutta. The learned single Judge was pleased to allow the said application on the finding that the impugned award did not disclose any reason in support of the decision and hence the said award was set aside, and the parties were left free to pursue their remedies in accordance with law.

Against the above said decision the Respondent preferred an appeal before the Division Bench of the High Court of Calcutta. The Division Bench affirmed the findings recorded by the learned single judge and directed the arbitral tribunal to assign reasons in support

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<sup>2</sup> (2018) 11 SCC 328, *Kinnari Mullick And Another Versus Ghanshyam Das Damani*

of its award as per law without getting influenced by the award which is set aside. While dealing with the appeal from the above said judgement of the Division Bench the Supreme Court considered the legal position settled by the Supreme Court in McDermott International Inc<sup>3</sup> confirming the judgement of Karnataka High Court in Bhaskar Industrial Development Ltd. case<sup>4</sup> which held as follows:

*“...Parliament has not conferred any power of remand to the Court to remit the matter to the Arbitral Tribunal except to adjourn the proceedings as provided under sub-section (4) of the section 34 of the act. The object of sub-section (4) of the section 34 of the act is to give an opportunity to the Arbitral Tribunal to resume the arbitral proceedings or to enable it to take such other action which will eliminate the grounds for setting aside the arbitral award.”*

From the above can be understood that the limited discretion available to the court under section 34(4) can be exercised only upon a written application made in that behalf by a party to the arbitration proceedings. It is crystal clear that the court cannot exercise this limited power of deferring the proceedings before it suo motu. Moreover, before the court formally setting aside an award, if the party to the arbitration proceedings fails to request the court to defer the proceedings before it, then it is not open to the party to move an application under section 34(4) of the Act. The Supreme Court also confirmed the view of Madras High court in MMTC Case<sup>5</sup> that the said section 34 of the Act prescribes three procedural conditions, namely, that there should be an application under section 34(1) of the new act and that a request should emanate from a party and the court considers it appropriate to invoke the power under section 34(4) of the new act.

<sup>3</sup> McDermott International Inc. Versus Burn Standard Co. Ltd., (2006) 11 SCC 181

<sup>4</sup> Bhaskar Industrial Development Ltd. Versus South Western Railway, 2016 SCC OnLine Kar 8330

<sup>5</sup> MMTC Versus Vicnivass Agency, 2008 SCC OnLine Mad 584 : (2008) 3 LW 1063