

Final Award or Partial Award – Tests

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An arbitral tribunal need not give only one award in an arbitration, depending on the requirements in each case, it can give multiple awards but the last one would be the final award. The award pronounced in the end of the proceedings is known as Final award and the other awards are called as partial awards or interim awards. But some of the interim awards are legally treated like Final awards. That means, those interim awards are to be challenged under Section 34 within the limitation period provided in the Act. Hence, the author tries to deal with the various tests that were applied by the Courts to determine which are the interim awards that are like final awards. The arbitral award is defined in section 2(1)(c) of arbitration and conciliation act, 1996 (The Act). The provision of section 2(1)(c) of the said act states that an arbitral award includes interim award. The expressions “interim award” or “Partial award” or “Partial final award” are nowhere defined under the said Act except in S.31(6). Even the UNCITRAL MODEL law² also did not have any such provision in it. Hence the courts have tried to understand the meaning of the above said expressions in the light of the definitions provided in the provisions of subsections (1), (2) and (3) of Section 31 of the said act. Regarding the form and the contents of an arbitral award, the above said Section 31 of the Act, sets out the requirements of an award. An award to be a valid award, it must satisfy the following requirements:

- (1) That an award should be in writing
- (2) it is signed by the member or the members of the tribunal
- (3) it contains the reasons upon which it is based, except for the exceptions set out under Section (3) therein and
- (4) it bears the date and the place of Arbitration

Even in the international scenario, the UNCITRAL MODEL law³ also does not have any such provision in it. In some countries like Singapore⁴, Australia⁵ have specifically defined interim awards in their statute. But many of the Arbitration Rules of the International Arbitration Institutions including ICC⁶, HKIAC⁷, SIAC⁸, UNCITRAL Model Rules have such a provision in their Rules.

Sub-section (6) of Section 31 of the said Act delineates the scope of an interim award and it states that the arbitral tribunal may make an interim award on any matter with respect to which it may make a

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² UNCITRAL Model law on International Commercial Arbitration, 1985.

³ UNCITRAL Model law on International Commercial Arbitration, 1985.

⁴ International Arbitration Act of Singapore

⁵ Commercial Arbitration Acts of Australia

⁶ International Chamber of Commerce

⁷ Hong Kong International Arbitration center

⁸ Singapore International arbitration Center

final arbitral award. It is important to note that, not that every order, decision or adjudication of the tribunal on the matters referred to it because that becomes an award or an interim award. For example, the arbitral tribunal has power under section 16 of the Act to rule its own jurisdiction including the ruling of any objection with respect to the existence or validity of the arbitration agreement. If the arbitral tribunal rules that it does not have jurisdiction over the referred dispute, the only remedy under the said Act is to prefer statutory appeal under sub-section (2)(a) of Section 37 of the said Act to the court authorized by law, to hear the appeals from the original decrees of the court passing the award.

Various tests were tried by different courts to determine the characteristics of an interim award that should be treated like a final award. One of the tests that was tried for the above said purpose was “*functus officio*”. The contention was that the arbitrator becomes *functus officio* once he signs the Final award and hence all other awards are interim awards and they should not be treated similar to Final awards. But in some interim awards arbitrator becomes *functus officio*, even after signing of an interim award because that interim award determined some of the disputes between the parties conclusively. Hence, the arbitrator even after signing the interim award or partial award becomes *functus officio*, but that does not mean that in no circumstances could there be further arbitration proceedings where the same arbitrator could never have anything to do with the award with respect to the same dispute as held by Supreme Court of India in the case of Satwant Singh case⁹. The question whether an interim award is final to the extent, it goes or has the effect till the final award is delivered, depends upon the form and contents of an award. If the interim award is intended to have the effect only so long as the final award is delivered, it will have the force of the interim award and it will cease to have the effect after the final award is made. If on the other hand, the award is intended to be determination of all the rights of the parties, it will have the force of a complete award and will have the effect even after the final award is delivered. In such cases, in the absence of challenge to the partial or interim award, the challenge to the final award cannot succeed. Hence the test of “*functus officio*” cannot be said to be a conclusive test, as held by High Court of Mumbai in Aero club case¹⁰.

The next test was enforceability of the award in question. The contention was that if an interim or partial award is not enforceable it cannot be said to be like Final award. The question of enforceability or the enforcement of an arbitral award under the section 2(1)(c) of the act is governed by Section 36 therein. The question involved is of setting aside of partial award by invoking the provision of section 34 of the act and it does not depend on executability or the enforceability of such arbitral award. The intendment of the arbitrator while passing such an award is to pass final award which may become executable or enforceable. The enforceability of an award cannot be a conclusive test for determining the nature of the interim or partial award. For example, merely because the interim award is found to be declaratory in nature without making it impossible would not mean that you cannot assume the character of an arbitral award under section 2(1)(C) of the said Act so as to attract bar of limitation under subsection 3 of section 34 of the said Act. In a Judgment of Supreme Court in the matter of

⁹ Satwant Singh Sodhi Vs State of Punjab (1999) 3SCC487

¹⁰ Aero Club Vs Solar Creations Pvt Ltd (2020) SCC Online Bom 472

IFFCL¹¹, it was held that a decision/ interim award with regard to the issue of limitation is an award under S.2(1)(c) and hence a proceeding under S.34 is sustainable against such an interim award. It was also held that the issue of Limitation is not an issue of Jurisdiction and hence an appeal under Section 37(2)(a) of the Act.

Hence, it can be understood that the interim or partial awards, that determine some of the rights of the parties finally, are awards that are sub-sumed within the expression “Arbitration award” under Section 2(1)(c) of the Arbitration and Conciliation Act, 1996 so as to attract the bar of limitation contained under sub-section (3) of Section 34, to challenge it under Section 34 of the Act. Hence, only test that can be relied on is the nature of award and “Whether it determined any of the rights and obligations of the parties finally?”.

¹¹ India Farmers fertilizer Cooperative Limited Vs Bhadra Products (2018)2SCC 534