
If an Arbitration Award is set aside, arbitration can be initiated again

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If an Arbitration award is challenged by a party and consequentially is set aside in a petition filed under S.34 of the Arbitration and Conciliation Act, 1996, the losing party has every right to initiate a fresh arbitration again. Delhi High Court while dealing with the case of **Steel Authority of India Vs Indian Council of Arbitration (2015) SCC Online Del 13394** following the Judgment of the Supreme Court of India in the case of **Mcdermott International Inc Vs Burn Standard Corporation Limited (2006) 11 SCC 181** held that the order of High Court setting aside the award does not amount to determination of issues between the parties and hence principles of Resjudicata shall not apply.

Let us examine the legal effect of setting aside of an Arbitration award. An award is the statement of determination of issues by an arbitral tribunal and there is no appeal provided under the Act against an arbitration award. The same legal mechanism is provided under UNCITRAL Model law and hence followed by all model law countries of the world. But there is a provision under S.34 that can be availed by the aggrieved party to pray for setting aside the arbitration award. The supervising Court has powers to examine and test the award against the grounds provided in the procedural law and if the award is in contravention to any of the grounds provided in the said law, the court can set aside the same. But the supervising courts do not have the powers to alter or modify or remand back the award for reconsideration to the arbitral tribunal, as per the law settled by the supreme court in Mcdermott case and their duty is to just set aside the award if it does not withstand the legal scrutiny. It is also true that in Some cases, courts in India have altered or modified the award before upholding it.

In the above said case, the award which was in favour of the 2nd Respondent GE Shipping and was set aside by the High Court. After that the 2nd Respondent

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chose to initiate arbitration proceedings again by issuing notice of arbitration under the arbitration Rules of Indian Council of Arbitration (ICA). But the petitioner filed a Writ petition against the ICA, the administering arbitral institution with a prayer that the ICA had erred in allowing the commencement of arbitration. The contention of the petitioner was that the 2nd proceeding is affected by resjudicata since the issues between the parties attained finality by the award being set aside by the High Court. It was also contended that once a party avails the arbitration it cannot be allowed to avail it again but the Court held that the arbitration clause just provides for a mechanism and hence it can be availed till the final determination of issues between parties. It was also held that there no legal bar that the arbitration cannot be initiated again if the supervising court did not remand the matter back to the arbitral tribunal.