

The Award passed on the point of Limitation is an interim Award

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In a recent Judgment delivered on 23rd January 2018 in the matter of M/S. Indian Farmers Fertilizer Co-operative Limited Vs M/S. Bhadra Products, Supreme Court of India dealt with an interesting issue **“Whether an arbitration award passed by an Arbitrator is an interim award as defined under S.2(c) of the Act and can it be challenged separately and independently under S.34 of the Arbitration and Conciliation Act,1996?”**. The Indian Arbitration law defines “arbitration award” includes interim award. If a party is aggrieved by an Arbitration award he has no other remedy other than the remedy under S.34 of the Act. But in the present case the question arose, if the award passed on the issue of limitation is an interim award.

The interim award is contemplated under S.31(6) of the act as, “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”. The said definition has been settled by various judgments including Mc Dermott International Vs Burn standard Co., as reported in (2006) 11 SCC 181, in which it was held that an interim award in terms of the said provision is not one in respect of which a final award can be made, but it may be final award on matters covered there by, but made it in an interim stage.

A similar issue came up before Supreme Court while deciding the case of NTPC Vs Siemans reported as (2007) 4 SCC 451. In that case, an arbitral tribunal formed by international Chamber of Commerce (ICC) passed a partial award deciding certain issues without touching the jurisdiction of the tribunal, which was challenged by NTPC under S.37(2)(a) of the Act, before the High Court. High Court dismissed matter on the ground that the issues which arise out of the partial awards are not the issues touching s.16(2) and 16(3) of the Act. The Hon’ble Supreme Court also upheld the same.

In the present case, the tribunal passed an award relating to limitation holding that the claim is not barred by time. The said interim award was challenged before the District court and the appeal was dismissed on the ground that it is not an interim award and hence an application under S.34 is not maintainable. The same view was taken by the Orissa High court and hence the said matter came to Supreme Court of India.

Conclusion: While deciding the matter, Supreme Court of India took a view that the issue of limitation is an independent matter and hence the said award is an interim award. That means the award decided the issue of limitation finally and hence it is an interim award. More over

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Limitation being an issue not relating to jurisdiction of the Arbitral tribunal the procedure prescribed under S.16(4) and 16(5) need not be followed and hence appeal under S.34 is sustainable in law.

