



ARBITRATION AND CONCILIATION

Supreme Court allows Contempt Proceeding against Violation of the Order of Arbitral Tribunal

AUTHOR Arundhati Sukhtankar

PUBLISHED 26 July 2017

The Supreme Court in its recent judgment dated 20th July 2017 in *Alka Chandewar v. Shamshul Israr Khan* in Civil Appeal No. 8720 of 2017 held that the Arbitral Tribunal can make representation to High Court for contempt if any of its orders or interim orders are violated.

Facts

The respondent in this matter had violated an interim order passed by the arbitrator, under Section 17 of the Arbitration and Conciliation Act, 1996 ("Act"), restraining the respondent from the sale of flats without obtaining the leave of the arbitral tribunal. The arbitrator, therefore, referred the aforesaid contempt of its interim order to the High Court for passing necessary orders under sec. 27 (5) of the Act.

Sections 27(5) of the Act

Section 27(5) states that persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the tribunal during the conduct of Arbitral proceedings shall be subject to the like, disadvantages, penalties and punishments by order of the court on the representation of the tribunal as they would incur for the like offences in suits tried before the court.

Judgment of the Bombay High Court

The High Court held that Section 27(5) empowers the arbitral tribunal to make representation to the High Court for contempt only if there is any failure in respect of proceeding for taking evidence. The tribunal has no such power in respect of any other order or interim order.

Argument before the Supreme Court

The appellant argued that Section 27 did not leave any doubt as to the scope and ambit of the court's power to punish for contempt of orders made by the tribunal. In the absence of such power an order made by an arbitrator under Section 17 will be toothless, thereby defeating the whole purpose of that section. The respondent, on the other hand, submitted that Section 27 (5) would only apply to contempt while taking evidence and not to any other contempt.

Judgment/Analysis of the Supreme Court

The Supreme Court observed that plain reading of Section 27(5) makes it clear that '*persons failing to attend in accordance with process*' fell under a separate category from "*any other default*". This Section is not confined to failure to attend in accordance with court process but also to any other default during the conduct of the arbitral proceedings.

Further, the Supreme Court also observed that the object of allowing a party to approach the arbitral tribunal instead of the court for interim reliefs would be stultified, if the interim orders passed by such tribunal is not enforceable. Hence, the appeal was allowed setting aside the judgment of the Bombay High Court. The matter was remanded to decide the alleged contempt on facts.

Remarks

The Bombay High Court had taken a narrower approach while interpreting Section 27(5). The Delhi High Court in its earlier orders held that a person failing to comply with the order of the tribunal under Section 17 would be deemed to be making "*any other default*" and would be liable for contempt proceedings under Section 27(5) of the Act.^[1]

Further, with the insertion of Sub Section 2 to Section 17, pursuant to the Arbitration (Amendment) Act of 2015, the cumbersome procedure of the arbitration tribunal approaching the High Court every time for contempt of its orders is no longer required. Such orders were deemed to be orders of the Court for all purposes and can be enforced in the same manner as if they are the order of the Court.

^[1] *Sri Krishnan v. Ananad* 2009 3 Arb LR 447(Del) which was followed in *Indiabulls Financial Services v. Jubilee Plots*, OMP nos 452-453 of 2009 order dated 18.8.2009