



May 2024

## **Delhi High Court refuses to interfere with order under Section 16 of the Arbitration Act; holds that order must shock the conscience for interference under writ jurisdiction**

In the recent decision of *Oriel Financial Solutions Private Limited v. Bestech Advisors Private Limited*<sup>1</sup>, the Hon'ble High Court of Delhi ("Delhi HC") refused to interfere with an order by which the petitioner's application under Section 16 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") had been rejected. The Delhi HC reasoned that since the impugned order was not so perverse so as to shock the conscience of the court, no interference was warranted in the exercise of writ jurisdiction.

### **Brief Facts**

In an arbitral proceeding, Oriel Financial Solutions Private Limited ("**Petitioner**") had filed an application under Section 16 of the Arbitration Act on the ground that the dispute was non-arbitrable since the contract in question was *void ab initio*.

By an order dated February 1, 2024 ("**Impugned Order**"), the arbitrator dismissed the Petitioner's application, holding that the ground raised by the Petitioner required detailed examination of evidence and the application could not be decided on basis of the limited documents and evidence on record.

The Petitioner challenged the Impugned Order before the Delhi HC under Article 227 of the Constitution of India.

### **Issue**

The issue before the Delhi HC was whether interference with the Impugned Order, which was passed in an arbitral proceeding, was warranted in the exercise of writ jurisdiction.

### **Findings**

The Delhi HC noted that in the case of *SBP & Company v. Patel Engineering Limited*<sup>2</sup>, the Hon'ble Supreme Court of India ("**Supreme Court**") deprecated the proposition that any order passed by an arbitral tribunal could be corrected by High Courts in exercise of their writ jurisdiction. The Delhi HC also applied the case of *Deep Industries Limited v. Oil & Natural Gas Corporation*<sup>3</sup>, where the Supreme Court held that interference under writ jurisdiction should be

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<sup>1</sup> 2024:DHC:2390

<sup>2</sup> 2005 (8) SCC 618

<sup>3</sup> 2020 (15) SCC 706

restricted to orders which are patently lacking in inherent jurisdiction. Accordingly, the Delhi HC refused to interfere with the Impugned Order, holding that it was not so perverse so as to shock the conscience of the court.

## Conclusion

As observed by the Supreme Court in *Rohtas Industries Ltd. v. Rohtas Industries Staff Union*<sup>4</sup>, High Courts have expansive and extraordinary powers under writ jurisdiction, which can affect any person and be available for any purpose. However, certain restraints on use of these extraordinary powers have been spelt out, and those restraints should not be ignored, except where *“the monstrosity of the situation or other exceptional circumstances”* so demand.

One such restraint formulated by courts over the years is that while exercising writ jurisdiction, High Courts must be extremely circumspect in interfering with orders passed in arbitral proceedings. The circumstances in which such interference may be warranted are quite limited and fairly well settled.

As summarised by the Supreme Court in *Navayuga Engineering Company v. Bangalore Metro Rail Corporation*<sup>5</sup>, interference with orders of arbitrators would be warranted under Articles 226 and 227 of the Constitution of India only in 2 (two) scenarios – either *“in cases of exceptional rarity or cases which are stated to be patently lacking in inherent jurisdiction”*.

Other decisions of the Supreme Court provide guidance as to when these grounds can be invoked:

1. As per the decision in *Bhaven Construction v. Executive Engineer, Sardar Sarovar Narmada Nigam Limited*<sup>6</sup>, interference on basis of the first ground, i.e., that of ‘exceptional rarity,’ may be warranted in cases where “one party is left remediless under the statute or a clear “bad faith” [is] shown by one of the parties”.
2. As per the decision in *Punjab State Power Corporation v. EMTA Coal Limited*<sup>7</sup>, interference on basis of the second ground, i.e., that of ‘patent lack of inherent jurisdiction,’ would be warranted in cases that require “no argument whatsoever – *it must be the perversity of the order that must stare one in the face*”.

Therefore, the circumstances in which orders passed by arbitrators can be interfered with in the exercise of writ jurisdiction are quite limited and fairly well settled. In the case at hand, the Petitioner’s challenge to the Impugned Order did not fall within either of the said limited circumstances. As such, in our view, the rejection of such a challenge was not only in consonance with applicable precedent, but also aligned with the larger objective of ensuring minimal judicial interference with the arbitral process.

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<sup>4</sup> (1976) 2 SCC 82

<sup>5</sup> 2021 SCC OnLine SC 469

<sup>6</sup> (2022) 1 SCC 75

<sup>7</sup> (2020) 17 SCC 93

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**This Prism has been prepared by:**



**Divyam Agarwal**  
Partner



**Aniket Aggarwal**  
Senior Associate

		
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