



April 2023

Arbitrator's order rejecting an application for impleadment of a party does not constitute an 'interim award'

A Division Bench of the Delhi High Court (“**Delhi HC**”) in *Goyal MG Gases Pvt. Ltd. v. Panama Infrastructure Developers Pvt. Ltd.*¹ held that the arbitrator’s order rejecting an application for impleadment of a non-signatory party in the arbitration proceedings does not constitute an ‘interim award’ under the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) and can therefore not be challenged under Section 34 of the Arbitration Act (as an application for setting aside arbitral award).

Brief Facts

1. The buyer, Goyal Mg Gases Pvt. Ltd. (“**Appellant**”) and the seller, Panama Infrastructure Developers Pvt. Ltd. (“**Respondent**”) entered into agreements for sale of certain windmill projects.
2. The Respondent terminated the agreements and disputes arose between the parties which were referred to arbitration.
3. During the arbitration proceedings, the Appellant learnt that the Respondent had subsequently sold the windmill projects to certain third parties.
4. Accordingly, the Appellant filed an application under Order 1 Rule X of the Civil Procedure Code, 1908 (“**CPC**”) before the arbitrator seeking impleadment of third parties in the arbitration.
5. The arbitrator dismissed the application for impleadment on the ground that the third parties were neither necessary nor proper parties to the arbitration proceedings.
6. The Appellant filed a petition under Section 34 of the Arbitration Act challenging the arbitrator’s order.
7. The Single Judge dismissed the Section 34 petition, *inter-alia*, on the ground that the application was not maintainable since the arbitrator’s order did not qualify as an interim award under the Arbitration Act.
8. The Appellant filed an appeal against the Single Judge’s order before the Delhi HC under section 37 of the Arbitration Act.

¹ 2023:DHC:2276-DB

Issue

The following issues were framed before the Delhi HC:

1. Whether the alleged subsequent buyer who is not signatory to the arbitration agreement can be impleaded in the arbitral proceedings;
2. Whether an application rejecting a prayer for impleadment can constitute an interim award.

Findings of the Delhi HC

The Delhi HC dismissed the appeal and held that:

1. Though a party that is a non-signatory to the agreement can be impleaded as a necessary party in arbitration proceedings, the issue to be decided in the appeal was whether an order dismissing the application under Order 1 Rule X of the CPC can be taken as an interim award.
2. An order would be an award or interim award when it decides a substantive/core dispute which exists between the parties and if it has the attributes of a decision on the merits of the dispute.
3. The Arbitral Tribunal rejecting the application for impleadment of a party neither decides the substantive question of law nor touches upon the merits of the case.

JSA Comment

As a result of this judgment, parties would have to wait till passing of a final award for challenging the arbitrator's rejection of an application for impleadment of third parties. This could result in considerable delay in finally deciding the dispute if, after passing of the final award, the court ultimately decides that the third-party ought to have been impleaded in the arbitration proceedings.

While in this case, it was not possible for the Appellant to implead the non-signatories at the time of initiation of the arbitration proceedings (since the Appellant was not aware of the subsequent sale), where possible it would be desirable to implead the non-signatories while initiating the arbitration itself. This is because an order allowing an application (filed under Section 16 of the Arbitration Act) for deletion of a non-signatory from arbitration (on the ground that the arbitrator does not have jurisdiction) can still be challenged under Section 37(2)(a) of the Arbitration Act before passing of the final award.

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