

(2022) 02 DEL CK 0196

In the Delhi High Court

Case No : Civil Suit (OS) No. 222 Of 2021, Miscellaneous Application No. 2118 Of 2022

Mahavir Prasad Gupta

APPELLANT

Vs

Union Of India & Anr

RESPONDENT

Date of Decision : 23-02-2022

Acts Referred:

Arbitration Act, 1940 — Section 2(c), 8, 14, 14(2), 17, 20, 20(4), 30, 31, 31(1), 31(2), 31(3), 31(4), 33, 34
Arbitration And Conciliation Act, 1996 — Section 11, 42

Citation : (2022) 02 DEL CK 0196

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Vivekanand, Ashok Singh

Final Decision : Allowed

Judgement

Vibhu Bakhru, J

Introduction

1. The petitioner has filed the present petition under Sections 14 and 17 of the Arbitration Act, 1940 (hereafter 'the Arbitration Act'), inter alia, praying that directions be issued to the learned Arbitrator (respondent no.2) to file the original award dated 02.03.2021 (hereafter 'the Award'). The petitioner further prays that in terms of Section 17 of the Arbitration Act, a judgment be rendered in terms of the Award.

2. By an order dated 19.04.2021, this Court had directed the learned Arbitrator (respondent no.2) to file the Award along with the arbitral record in this Court. Respondent no.2 has since, filed the Award along with the arbitral record.

3. On 17.11.2021, this Court had called upon the parties to file objections to the Award, if any. Respondent no.1 (hereafter 'the Respondent') has not filed any objection to the Award but has filed an application (being IA No.2118/2022)

seeking dismissal of the present petition. Mr Ashok Singh, learned counsel appearing for respondent submits that the objections stated in the said application may be treated as objections to the petition as well as the Award.

Factual Background

4. By a notice dated 30.06.1992, Northern Railways (the respondent) had invited tenders for execution of the work of "Leading, Loading and Unloading Railway materials such as cement, steel, P. way and other materials anywhere in Delhi, Haryana, and Uttar Pradesh states for works under Dy.CE/C/GC, N. Rly., Tilak Bridge, New Delhi in c/w gauge conversion between Delhi-Rewari Section" (hereafter 'the Works').

5. The petitioner had submitted its bid for the Works pursuant to the aforesaid Notice Inviting Tender dated 30.06.1992. The petitioner's bid was accepted by a Letter of Acceptance dated 06.08.1992 (hereafter 'the LoA') and the contract for executing the aforesaid Works was awarded to the petitioner.

6. The Works were to be completed within a period of eight months from the date of the LoA (that is, on or before 05.04.1993).

7. The petitioner and the respondent entered into a formal agreement on 10.09.1992 (hereafter 'the Agreement'). It was agreed that the contract would also be governed by the General Conditions of Contract, 1989 (GCC) of the Northern Railways.

8. The petitioner claims that the Works were completed within the stipulated period. However, the respondent failed to clear the entire dues of the petitioner. The petitioner states that the respondent applied incorrect rates for payment of extra items resulting in shortfall in the amount paid.

9. By a letter dated 10.06.1994, the petitioner invoked the arbitration agreement and sought reference of the disputes to arbitration.

10. Thereafter, on 01.12.1994, the petitioner filed a petition under Section 20 of the Arbitration Act seeking reference of the disputes to arbitration and for appointment of an Arbitrator. The said petition –registered as CS(OS) No.2705A/1994 – was allowed by an order dated 27.09.2005 and this Court, directed reference of the disputes to arbitration and appointment of an Arbitrator.

11. The respondent preferred an appeal, being FAO(OS) No.442/2006 captioned Union of India v. Mahavir Prasad Gupta, against the order dated 27.09.2005. The said appeal was dismissed by an order dated 25.05.2009; the order dated 27.09.2005 passed by the Single Judge of this Court directing respondent no.1 to appoint an Arbitrator in terms of Clause 64 of the GCC was upheld.

12. The arbitral proceedings took an inordinately long time to complete. During the course of several years, the constitution of the Arbitral Tribunal was changed a number of times. Finally, Mr. Ajay Kumar Goyal, the learned Arbitrator appointed by the respondent, delivered the Award. The same was communicated

to the petitioner by the General Manager, Northern Railways.

13. In terms of the Award, the Arbitral Tribunal has awarded a sum of ₹ 1,93,011/- to the petitioner against its claim for difference in the rate of additional lead over non schedule items (Claim No.1); an amount of ₹63,900/- as short payment for leading of heavy material (Claim No.2); and, interest on the awarded amount from 01.01.1996 till the date of the Award (that is, 02.03.2021) at the rate of 15% per annum quantified at ₹9,69,857/- (Claim No.3).

14. In addition, the Arbitral Tribunal has also awarded future interest at the rate of 9% per annum on the awarded amount from the 61st day of the Award till the date of payment.

Submissions

15. Mr Singh, learned counsel appearing for the respondent has assailed the Award on two grounds. First, he submitted that the award of interest was contrary to the express terms of the Agreement. He referred to Clause 64(5) of the GCC as applicable to the Agreement in question and submitted that the same expressly prohibits award of any interest. He also referred to the decision of this Court in OMP(COMM) No.299/2021 captioned Union of India v. Om Vajrakaya Construction Company Ltd., decided on 20.12.2021 in support of his contention that an arbitral award rendered in disregard of Clause 64(5) of the GCC would be vitiated by patent illegality. He also referred to the decisions of the Supreme Court in Union of India v. Bright Power Projects (India) Private Limited: (2015) 9 SCC 695 and Jaiprakash Associates v. Tehri Hydro Development Corporation (India) Ltd.:(2019) 17 SCC 786 in support of the aforementioned contention.

16. Second, he submitted that this Court does not have the jurisdiction to entertain the present petition as the value of the disputes as well as the awarded claims were below the threshold of the pecuniary jurisdiction of this Court. He relied upon the decisions of the Supreme Court in Bharat Coking Coal Limited v. Annapurna Construction: (2008) 6 SCC 732 and State of West Bengal & Ors. v. Associated Contractors:(2015) 1 SCC 32 and on the strength of the said decisions contended that merely because this Court had directed appointment of the arbitrator, this Court would not be the Court under Section 2(c) of the Arbitration Act for filing the Award.

17. Mr Vivekanand, learned counsel appearing for the petitioner countered the aforesaid submissions. He submitted that Clause 64(5) of the GCC, which proscribed the award of interest was introduced by Northern Railways as a part of the Standard General Conditions of Contract in May 1999 (GCC, 1999). The GCC as applicable to the Agreement did not include any clause that prohibited the Arbitral Tribunal from awarding interest. He contended that the GCC published in 1989 was applicable to the Agreement in question and therefore, the Award could not be faulted.

18. Second, he submitted that the provisions of the Arbitration Act were

materially different from the provisions of the Arbitration & Conciliation Act, 1996 (hereafter 'the A&C Act'). He contended that by virtue of Section 31(4) of the Arbitration Act, this Court would have the jurisdiction to entertain the present petition. He relied on the decisions of the Supreme Court in *Guru Nanak Foundation v. M/s Rattan Singh & Sons*: (1981) 4 SCC 634; *State of Madhya Pradesh v. Saith & Skelton (P) Ltd.*: (1972) 1 SCC 702; and *Union of India v. Surjeet Singh Atwal*: 1969 (2) SCC 211 in support of his contention. He also relied upon the decision of the Division Bench of this Court in *Jaswant Lal Chugh & Bros. v. NCERT & Anr.*: (2003) 107 DLT 620.

Reasons & Conclusion

19. At the outset, it is relevant to note that the controversy whether the GCC, as applicable to the Agreement, proscribed entering an award of interest, was resolved during the course of the proceedings. Mr Singh, had sought instructions from respondent no.1 and had conceded that Clause 64(5) of the GCC, 1999 which proscribed award of pendente lite interest was introduced by the Northern Railways in the Standard GCC after the parties had entered into the Agreement. The GCC as applicable to the Agreement did not include any such clause that prohibited award of interest.

20. There is no dispute that if a contract proscribes award of interest by the Arbitral Tribunal, an arbitral award awarding interest would be patently illegal. However, in this case, the terms or conditions of the Agreement do not prohibit entering an award of interest. The decision in the case of *Union of India v. Bright Power Projects (India) Private Limited* (supra) and *Jaiprakash Associates v. Tehri Hydro Development Corporation (India) Ltd* (supra) are thus, inapplicable to the facts of the present case. In view of the above, the decision of the Arbitral Tribunal to award interest cannot be faulted.

21. Mr Singh has also contended that the award of interest at the rate of 15% per annum is excessive. This Court finds no merit in the said contention and the same is rejected.

22. The principal question to be addressed is whether this Court has the jurisdiction to entertain the present petition considering that the value of the disputes as well as the claims awarded are below the pecuniary jurisdiction of this Court.

23. The term 'Court' is defined under Section 2(c) of the Arbitration Act as under:

"2. Definitions. – In this Act, unless there is anything repugnant in the subject or context, -

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(c) "Court" means a Civil Court having jurisdiction to decide the questions forming the subject-matter of the reference if the same had been the subject-matter of a suit, but does not, except for the purpose of arbitration proceedings

under section 21, include a Small Cause Court.”

24. Section 31 of the Arbitration Act contains provisions regarding the jurisdiction of the court where an arbitral award is required to be filed. Section 31 of the Arbitration Act is set out below:

“31. Jurisdiction. (1) Subject to the provisions of this Act, an award may be filed in any Court having jurisdiction in the matter to which the reference relates.

(2) Notwithstanding anything contained in any other law for the time being in force and save as otherwise provided in this Act, all questions regarding the validity, effect or existence of an award or an arbitration agreement between the parties to the agreement- or persons claiming under them shall be decided by the Court in which the award under the agreement has been, or may be, filed, and by no other Court.

(3) All applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings shall be made to the Court where the award has been, or may be, filed, and to no other Court.

(4) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force where in any reference any application under this Act has been made in a Court competent to entertain it, that Court alone shall have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference and the arbitration proceedings shall be made in that Court and in no other Court.”

25. The controversy in the present case relates to the applicability of sub-section (4) of Section 31 of the Arbitration Act. The said sub-section contains a non obstante provision and expressly provides that notwithstanding anything contained in the Arbitration Act, where any application has been made under the Act before a competent court, the said court alone would have the jurisdiction in respect of the arbitration proceedings and all subsequent applications arising out of the reference. In the present case, the petitioner had filed an application under Section 20 of the Arbitration Act seeking reference of the disputes which was allowed.

26. At this stage, it would be relevant to refer to Section 20 of the Arbitration Act and the same is set out below:

“20. Application to file in Court arbitration agreement. - (1) Where any persons have entered into an arbitration agreement before the institution of any suit with respect to the subject matter of the agreement or any part of it, and where a difference has arisen to which the agreement applies, they or any of them, instead of proceeding under Chapter II, may apply to a Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court.

(2) The application shall be in writing and shall be numbered and registered as a

suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs and the remainder as defendant or defendants, if the application has been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

(3) On such application being made, the Court shall direct notice thereof to be given to all parties to the agreement other than the applicants, requiring them to show cause within the time specified in the notice why the agreement should not be filed.

(4) Where no sufficient cause is shown, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed by the parties, whether in the agreement or otherwise, or, where the parties cannot agree upon an arbitrator, to an arbitrator appointed by the Court.

(5) Thereafter the arbitration shall proceed in accordance with, and shall be governed by, the other provisions of this Act so far as they can be made applicable.”

27. The essential question to be addressed is whether filing of an application under Section 20 of the Arbitration Act in a competent court, which results in reference of the disputes and appointment of an arbitrator, would imply that the said court alone has the jurisdiction in respect of the arbitration proceedings.

28. Sub-section (4) of Section 20 of the Arbitration Act expressly provides that the court would make an order of reference to the arbitrator appointed by the parties or to an arbitrator appointed by the court. Thus, it is clear that the scope of Section 20 of the Arbitration Act is not limited to appointment of an Arbitrator alone but also extends to making a reference of disputes to arbitration.

29. In *Orissa Mining Corporation Ltd. v. Prannath Vishwanath Rawley*: (1977) 3 SCC 535, the Supreme Court had held that if an agreement is filed in a court and an order of reference in respect of certain claims is made, the arbitrator is not empowered to enlarge the scope of the reference by entertaining claims that have not been referred.

30. In the facts of the present case, the petitioner had sought reference of five claims to arbitration. The order dated 27.09.2005 passed by this Court in CS(OS) No.2705A/1994 [the application filed by the petitioner under Section 20 of the Arbitration Act] indicates that out of the five claims, only four claims were referred to arbitration. The respondent had objected to reference of one of the claims (Claim No.3) as according to the respondent, the said dispute was an “excepted matter” within the meaning of Clause 63 of the GCC and therefore, could not be referred to arbitration. This Court had accepted the aforesaid contention and had restricted the reference to arbitration to only four claims (Claim Nos.1, 2, 4 & 5) as mentioned by the petitioner in paragraph 11 of his application under Section 20 of the Arbitration Act. Paragraphs 7 and 8 of the order dated 27.09.2005 passed by this Court are set out below:

"7. Learned counsel for the petitioner has fairly conceded that so far as claim no. (3) listed in para 11 is "excepted matter" within the meaning of Clause 63 of the General Conditions of Contract or Special Conditions of Contract and, therefore, may not be referred to arbitration. Learned counsel representing the respondent / Northern Railway, on the other hand, has stated that rest of the matters are referable to arbitration and there is no objection from the side of the respondent if the same are referred to arbitration. Accordingly, it must be held that all the disputes / claims as find mention in para 11 except at serial no.(3) is liable to be referred to arbitration.

8. In the result, the petition is partly allowed and claim no.(1), (2), (4) and (5) are referred to the arbitration. The respondent / General Manager, Northern Railway is hereby called upon to appoint an arbitrator within a period of eight weeks from the date of this order in terms of Clause 64 of the General Conditions of Contract for settlement of the above claims viz. (1), (2), (4) & (5). Counter claim, if any, which might be raised by the respondent shall also be entertained by the arbitrator. The arbitrator so appointed shall enter the reference and make and publish his award expeditiously within a period of four months from the date of entering the reference."

31. In view of the above, the order referring the disputes to arbitration cannot be interpreted to be an order merely appointing an Arbitrator and not an 'order in reference' as contemplated under Section 31(4) of the Arbitration Act. In *Kumbha Mawji v. Union of India* : 1953 SCR 878, the Supreme Court had explained that the phrase 'in any reference' as used in Section 31(4) of the Arbitration Act was not confined to applications that were made during the pendency of the arbitral proceedings but also included substantive applications made before and after the arbitral proceedings had commenced.

32. There is no dispute that this Court had the jurisdiction to entertain the petitioner's application under Section 20 of the Arbitration Act. Thus, on a plain reading of Section 31(4) of the Arbitration Act, this Court would have the jurisdiction to entertain the present petition.

33. In *Jaswant Lal Chugh & Bros. v. NCERT & Anr.* (supra), the Division Bench of this Court had observed as under:

"8. Section 31(4) starts with a non obstante clause to override anything contained in any other law for the time being in force while laying down that where in any reference any application under this Act was made in a Court competent to entertain it, that Court alone would have the jurisdiction on the arbitration proceedings and that all applications arising out of that reference and the arbitration proceedings shall be made in that Court alone and in no other Court. The mandate of provision is clear and unequivocal. It vests exclusive jurisdiction in the Court in which an application in any reference under the Arbitration Act is made. Whether such application was made during the reference or before it is immaterial for our purposes in the factual context of the present

case. While dealing with that aspect Supreme Court held in Kumbha Mauji's case:

"In the contest of Section 31, Sub-section (4), it is reasonable to think that the phrase "in any reference" means "in the matter of a reference". The word "reference" having been defined in the Act as "reference to arbitration" "the phrase" "in a reference" would mean "in the matter of a reference to arbitration". The phrase "in a reference" is, therefore, comprehensive enough to cover also an application first made after the arbitration is completed and a final award is made and in our opinion that is the correct construction thereof in the context. We are, therefore, of the opinion that Section 31(4) would vest exclusive jurisdiction in the Court in which an application for the filing of an award has been first made under Section 14 of the Act."

9. These observations of the Supreme Court, though in a wider context, fortify the interpretation which is required to be placed on provisions of Section 31(4) and whereby no Court other than the one in which applications in a reference have been filed retains the jurisdiction.

10. There is no dispute that application for reference in the present case was made in this Court which was a Court of competent jurisdiction at the relevant time and even now. The application for filing the Award was also made in this Court and so were the objections/applications under Sections 30/33 filed in this Court. Therefore, this Court alone had the jurisdiction to entertain and try these applications under various provisions of the Arbitration Act. No other Court could assume this jurisdiction in view of the bar imposed by Section 31(4). Nor could the proceedings be transferred to any other Court in view of this even though that Court had been vested with a higher pecuniary jurisdiction subsequently. Conversely even if pecuniary jurisdiction of District Court had gone upto Rs. 5 lacs that by itself could not result in transfer of any proceedings pending in this Court under various provisions of the Arbitration Act more because of the embargo created by provisions of Section 31(4) of the Act which required all applications to be filed in the Court which had made the reference for arbitration."

34. It is also relevant to refer to the observations made by the Supreme Court in *Union of India v. Surjeet Singh Atwal* (supra). In that case, the Supreme Court had held that an application filed under Section 34 of the Arbitration Act for seeking stay of a suit on the ground of existence of an arbitration agreement would not be considered an application 'in any reference' as contemplated under Section 31(4) of the Arbitration Act. However, the court also observed that an application under Section 20 of the Arbitration Act for filing the arbitration agreement in court and an order of reference to an Arbitrator would squarely fall within the purview of Section 31(4) of the Arbitration Act. The relevant extract of the said decision is set out below:

"5. Two conditions must be fulfilled in order to give a Court exclusive jurisdiction under Section 31(4) of the Act. In the first place an application under the Arbitration Act must be made to the Court competent to entertain it. In the

second place, the application must be made "in any reference." It was contended on behalf of the respondent that an application for stay of suit under Section 34 of the Act was an application made "in a reference" within the meaning of Section 31(4) of the Act. In support of this proposition reference was made to the decision of this Court in *Kumbha Mawji v. Union of India* in which it was held that the phrase "in any reference" in Section 31 (4) of the Act was comprehensive enough to cover an application first made after the arbitration is completed and a final award made and the sub-section is not confined to applications made during the pendency of the arbitration proceeding. It was pointed out that sub-section (1) of Section 31 determines the jurisdiction of the court in which an award can be filed and that sub-sections. (2), (3) and (4) of Section 31 were intended to make that jurisdiction effective in three different ways : (1) by vesting in one court the authority to deal with all questions regarding the validity, effect or existence of an award or an arbitration agreement, (2) by casting on the persons concerned the obligation to file all applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings in one court, and (3) by vesting exclusive jurisdiction in the court in which the first application relating to the matter was filed. The context, therefore, of sub-section (4) would seem to indicate that the sub-section was not meant to be confined to applications made during the pendency of an arbitration. The necessity for clothing a single court with effective and exclusive jurisdiction, and to bring about by the combined operation of these three provisions the avoidance of conflict and scramble is equally essential whether the question arises during the pendency of the arbitration or after the arbitration is completed or before the arbitration is commenced. It was, therefore, held that the expression "in any reference" in Section 31(4) should be construed as "in the course of a reference". Even so, we are of opinion that the application for stay of suit under Section 34 in the present case is not an application in a reference within the wider meaning given to that phrase by this Court in *Kumbha Mawji's* case. There are different sections in the Arbitration Act whereby an application is to be made even before any reference has been made. Section 8 for instance, provides for an application to invoke the power of the Court, when the parties fail to concur in the appointment of an arbitrator to whom the reference can be made. So also Section 20 provides for an application to file the arbitration agreement in Court so that an order of reference to an arbitrator can be made. These are clearly applications anterior to the reference but they lead to a reference. Such applications are undoubtedly applications. "in the matter of a reference" and may fall within the purview of Section 31(4) of the Act even though these applications are made before any reference has taken-place. But an application under Section 34 is clearly not an application belonging to the same category. It has nothing to do with any reference. It is only intended to make an arbitration agreement effective and prevent a party from going to Court contrary to his own agreement that the dispute is to be adjudicated by a private tribunal."

[underlined for emphasis]

35. In *Guru Nanak Foundation v. M/s Rattan Singh & Sons* (supra), the Supreme Court had considered the question whether the petition for filing the award could be made to the Supreme Court. In that case, the Arbitrator appointed by the Delhi High Court to adjudicate the disputes between the parties and to make an award, was removed by the Supreme Court and another Arbitrator was appointed in his place. During the pendency of the said arbitration proceedings, the appellant had filed an application (which was numbered as a suit) before the Delhi High Court, praying that the counter claims of the appellant be also covered under the terms of the reference. The said application was opposed on the ground that the Delhi High Court would not have the jurisdiction considering that the Arbitrator was appointed by the Supreme Court and therefore, the Supreme Court alone could entertain any such enlargement of reference. The Supreme Court accepted the said view and, in this context, observed as under:

"15. Section 31 of the Act provides the forum in which an Award may be filed. Sub-section (1) of Section 31 provides that an Award may be filed in any court having jurisdiction in the matter to which the reference relates. Incorporating the definition of the expression "court" as set out in Section 2(c) in sub-section (1) of Section 31 would mean that the Award will have to be filed in that court in which the suit in respect of the dispute involved in the Award would have been required to be filed. This is quite consistent with the provision contained in sub-section (2) of Section 14. So far there is no difficulty. The scheme disclosed in sub-sections (2), (3) and (4) of Section 31 clearly indicates that to the exclusion of all other courts only one court will have jurisdiction to deal with the proceedings incidental to the reference and the arbitration. Sub-section (3) clearly points in this direction when it provides that all applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings shall be made to the court where the Award has been or may be filed and to no other court. Then comes sub-section (4). It opens with a non-obstante clause and is comprehensive in character. The non-obstante clause excludes anything anywhere contained in the whole Act or in any other law for the time being in force if it is contrary to or inconsistent with the substantive provision contained in sub-section (4). To that extent it carves out an exception to the general question of jurisdiction of the court in which Award may be filed elsewhere provided in the Act in respect of the proceedings referred to in sub-section (4). The provision contained in sub-section (4) will have an overriding effect in relation to the filing of the Award if the conditions therein prescribed are satisfied. If those conditions are satisfied the court other than the one envisaged in Section 14(2) or Section 31(1) will be the court in which Award will have to be filed. That is the effect of the non-obstante clause in sub-section (4) of Section 31. Sub-section (4) thus invests exclusive jurisdiction in the court, to which an application has been made in any reference and which that court is competent to entertain as the court having jurisdiction over the arbitration proceedings and all subsequent applications arising out of reference and the arbitration proceedings shall have to be made in that court and in no other court. Thus sub-section (4)

not only confers exclusive jurisdiction on the court to which an application is made in any reference but simultaneously ousts the jurisdiction of any other court which may as well have jurisdiction in this behalf. To illustrate the point, if an Award was required to be filed under Section 14(2) read with Section 31(1) in any particular court as being the court in which a suit touching the subject-matter of Award would have been required to be filed, but if any application in the reference under the Act has been filed in some other court which was competent to entertain that application, then to the exclusion of the first mentioned court the latter court alone, in view of the overriding effect of the provision contained in Section 31(4), will have jurisdiction to entertain the Award and the Award will have to be filed in that court alone and no other court will have jurisdiction to entertain the same.”

36. Similar view was expressed by the Supreme Court in *State of Madhya Pradesh v. Saith & Skelton (P) Ltd.* (supra). However, the decisions rendered in *Guru Nanak Foundation v. M/s Rattan Singh & Sons* (supra) and *State of Madhya Pradesh v. Saith & Skelton (P) Ltd.* (supra) were distinguished by the Supreme Court in a later decision in *Bharat Coking Coal Ltd v. Annapurna Construction* (supra). In that case, the arbitration proceedings had culminated in an award which was challenged by one of the parties. The matter was ultimately carried to the Supreme Court. In *Bharat Coking Coal Ltd v. M/s Annapurna Construction*: (2003) 8 SCC 154, the Supreme Court had set aside the award. However, while setting aside the award, the court had also expressed the view that the matter required reconsideration in respect of certain claims and appointed a former Judge of the Jharkhand High Court as an Arbitrator.

37. The learned Arbitrator appointed by the Supreme Court in the said proceedings made an award and in this context the question was raised whether the Supreme Court would be an appropriate court in terms of Section 31(4) of the Arbitration Act for filing the award. The Supreme Court held that it was not in seisin of the arbitral proceedings and therefore, it was not apposite that an application under Section 14 of the Arbitration Act be filed in the Supreme Court. The decisions in the case of *M/s Guru Nanak Foundation v. M/s Rattan Singh & Sons* (supra) and *State of Madhya Pradesh v. Saith & Skelton (P) Ltd.* (supra) were distinguished. The Supreme Court observed that in those cases, the court was in seisin of the arbitral proceedings and therefore, the award was required to be filed in the Supreme Court. The aforesaid decisions were overruled in a subsequent decision of the Supreme Court in *State of Jharkhand and Ors. v. Hindustan Construction Company Limited*: (2018) 2 SCC 602.

38. As noticed above, in the present case, this Court had not only issued directions for appointment of an Arbitrator but had also decided the question as to the disputes to be referred to the Arbitral Tribunal. Undeniably, the order dated 25.05.2009 was an order “in reference”, considering the expanded meaning of the said expression as explained by the Supreme Court in *Kumbha Mawji v. Union of India* (supra).

39. It is also relevant to state that the decision in the case of Union of India v. Surjeet Singh Atwal (supra) was not noticed by the Court in Bharat Coking Coal Ltd v. Annapurna Construction (supra). It is material to note the decision in Union of India v. Surjeet Singh Atwal (supra) was rendered by a larger bench of the Supreme Court.

40. Further, in Bharat Coking Coal v. Annapurna Construction (supra), the reference to arbitration was already made by a competent court, before the matter reached the Supreme Court.

41. There is a difference in the Scheme of the Arbitration Act and the A&C Act. Although Section 42 of the A&C Act is *pari materia* to Section 31(4) of the Arbitration Act, the scope of appointment of an Arbitrator by a Court is materially different. Under Section 11 of the A&C Act, the scope of examination is restricted to the existence of an Arbitration Agreement. This Court does not make an order of reference as contemplated under Section 20(4) of the Arbitration Act. Clearly, an order under Section 11 of the A&C Act would not attract the provisions of Section 42 of the A&C Act as held by the Supreme Court in State of West Bengal & Ors. v. Associated Contractors (supra).

42. In view of the above, this Court is unable to accept the contention that this Court does not have the jurisdiction to entertain the present petition.

43. The present petition is allowed and the Award is made the Rule of Court

44. Let a decree sheet be drawn in terms of the Award. The pending application is also disposed of.