Before Sudip Ahluwalia, J.

M/S INTERNATIONAL COIL LTD.—*Petitioner*

versus

M/S DLF CYBER CITY DEVELOPERS LTD.—*Respondent*

CR No.735 of 2019

May 24, 2019

Constitution of India, 1950—Arts. 226 and 227—Arbitration and Conciliation Act, 1996— Ss.8, 11, 16, 34—Haryana Urban (Control of Rent and Eviction) Act, 1973—Revision petition under Arts. 226/227 of the Constitution against order of Arbitrator dismissing petitioner's application for rejection of claim made in Arbitration—Not maintainable—Remedy under Arbitration and Conciliation Act, 1996 to be availed.

Held that, a careful reading of Section 16(2) (3) (4) and (5) goes to show challenge to jurisdiction of the Arbitral Tribunal, or a plea that the Tribunal is exceeding the scope of its Authority is to be taken at the earliest, particularly being not later than the submission of statement of defence, and as soon as the matter alleged to be beyond the scope of the Tribunal's authority is raised, respectively. Of course, the Tribunal according to Section 16(4) in its discretion may admit such pleas if it considers the delay justified. But according to Section 16(5) where the Tribunal takes a decision rejecting either of these pleas, it is required to continue with the Arbitral proceedings and make an Arbitral Award. Thereafter according to Section 16(6), the aggrieved party can apply for setting aside of such Award in accordance with Section 34 of the Act. It is, therefore, seen that even Section 16 does not contemplate any scope for a party to challenge the Arbitral proceedings before passing of the final Award, once the Tribunal has determined that it is possessed of jurisdiction to entertain the dispute.

(Para 24)

Mukesh Rao, Advocate
for the Petitioner.

R.S.Rai, Senior Advocate with
Harsh Bunger, Advocate
for the Respondent.

SUDIP AHLUWALIA, J.

(1) This Revision Petition has been preferred against the impugned order dated 15.11.2018 passed by Shri Manish Makhija, Arbitrator on an Application filed on behalf of the present Petitioner, who is Respondent in the Arbitration Proceedings, in which, it had sought for rejection of the Claim made by it in Arbitration.

(2) In the concerned Application (Annexure P-10), the Petitioner had challenged the maintainability of the Arbitration Proceedings as also jurisdiction of the Arbitrator to entertain the same. In substance, it was contended on behalf of the Petitioner that it is a Statutory Tenant under the Respondent in terms of Registered Lease Deed entered into between the parties on 31.5.2016. As such according to the Petitioner, the provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973 were applicable to the premises taken on Lease by it, and in view of existence of such Special Legislation to govern their relationship, the matter could not be referred to arbitration. In addition, it was also contended on behalf of Petitioner that the relevant Clause 10 of the Lease Deed had been cleverly inserted to enable the Respondent for unilaterally appointing an Arbitrator of its choice, which was contrary to the principles of justice, equity and fair play as also the principle of natural justice and that in any case, the disputed Claim could not be raised in arbitration, since already a Civil Suit had been filed by the Petitioner against the Respondent in the Court of Ld. Civil Judge (Junior Division), Gurugram, in which, the Respondent had been restrained from dispossessing the Petitioner from the Demised Premises, and the order was still operative when the Arbitration Proceedings were invoked. Such proceedings therefore, according to the Petitioner were *non est* and liable to be dropped forthwith.

(3) Vide the impugned order, the Ld. Arbitrator rejected the contentions raised on behalf of the Petitioner in its Application.

(4) The Revision has been contested on behalf of the Respondent/Claimant, which has at the outset, contended that it is out and out non-maintainable in view of the Statutory provisions of the Arbitration Act, which have the effect of restricting Judicial intervention in Arbitration Proceedings except when specifically permitted in the Arbitration and Conciliation Act (hereinafter referred to be as "the Arbitration Act"), 1996. Even otherwise, it has been contended that the decision of the Ld. Arbitrator in holding that he is possessed of jurisdiction to entertain the Claim in terms of the Arbitration Clause mentioned in the concerned Lease Deed is correct

on merits. At this stage, this Court is inclined to first of all consider whether or not the present Revision would itself be maintainable in view of the restriction on Judicial Authorities as provided in the Arbitration Act.

(5) Section 5 of the Arbitration Act provides -

> "**5. Extent of judicial intervention –** Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."

(6) Before proceeding to consider the implication of Section 5 quoted above, it is also appropriate to advert to Section 16 of the Arbitration Act, which pertains to competence of Arbitral Tribunal to rule on its own jurisdiction. The relevant Section is reproduced below-

> **"16. Competence of arbitral tribunal to rule on its jurisdiction –** (1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—
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> a. an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and
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> b. a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.
>
> (2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.
>
> (3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.
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> (4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

> (5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.
>
> (6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34."

(7) Ld. counsel for the Petitioner has contended that the present Revision filed under Article 227 of the Constitution of India is maintainable notwithstanding the restriction imposed upon judicial intervention by virtue of Section 5 quoted above. To support this contention, the Supreme Court in the case of ***"L. Chandra Kumar Vs. Union of India", Civil Appeal No.481 of 1989*** has been cited. It was observed therein -

> "It is equally their duty of oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict standards of legal correctness and judicial independence. The constitutional safeguards which ensure the independence of the Judges of the superior judiciary, are not available to the Judges of the subordinate judiciary or to those who man Tribunals created by ordinary legislations. Consequently, Judges of the latter category can never be considered full and effective substitutes for the superior judiciary in discharging the function of constitutional interpretation. We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Articles 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.
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> 80. We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided."

(8) The Apex Court thereafter went on to record -

> "The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution."

(9) The Petitioner's side has also relied upon another Constitutional Bench's decision of the Supreme Court in ***"M/s S.B.P. & Co.*** versus ***M/s Patel Engineering Ltd. & Anr." Civil Appeal No.4168 of 2003***. In this Judgment, the power of Chief Justice regarding appointment of Arbitrator(s) under Section 5 came up for consideration as to whether the same happens to be in exercise of Administrative or Judicial power. Attention of this Court was drawn specifically to the observations made in Para 19 of the Judgment, in which, it had been noted -

> "19. Section 16 is said to be the recognition of the principle of Kompetenz - Kompetenz. The fact that the arbitral tribunal has the competence to rule on its own jurisdiction and to define the contours of its jurisdiction, only means that when such issues arise before it, the Tribunal can and possibly, ought to decide them. This can happen when the parties have gone to the arbitral tribunal without recourse to Section 8 or 11 of the Act. But where the jurisdictional issues are decided under these Sections, before a reference is made, Section 16 cannot be held to empower the arbitral tribunal to ignore the decision given by the judicial authority or the Chief Justice before the reference to it was made. The competence to decide does not enable the arbitral tribunal to get over the finality conferred on an order passed prior to its entering upon the reference by the very statute that creates it. That is the position arising out of Section 11(7) of the Act read with Section 16 thereof. The finality given to the order of the Chief Justice on the matters within his competence under Section 11 of the Act, are incapable of being reopened before the arbitral tribunal."

(10) Ld. Counsel for the Petitioner has also stressed that certain types of disputes are inherently inarbitrable, in which case, the Court concerned before which a Suit is pending, would be well within its right

to refuse to refer the parties to arbitration, notwithstanding any Agreement between them to use arbitration as the Forum for settlement of their disputes. To support this submission, attention of the Court was drawn to the decision of the Apex Court in ***"Booz Allen and Hamilton Inc.*** versus ***SBI Home Finance Ltd. & Ors.***[1], in which, it was held -

> "Consequently, where the cause/dispute is inarbitrable, the court where a suit is pending, will refuse to refer the parties to arbitration, under section 8 of the Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes. The well recognized examples of non-arbitrable disputes are : (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes."

(11) Similarly, in ***"Himangni Enterprises*** versus ***Kamaljeet Singh Ahluwalia***[2], the Apex Court dismissed the appeal directed against the Judgment of the Additional District judge, South East District New Delhi, which was affirmed by the Delhi High Court, by virtue of which, in a Suit filed by the Landlord/Lessor for eviction of the Lessee/Tenant, Defendant/Tenant's Application under Section 8 of the Arbitration Act was rejected after observing -

> "23. Yet in another case of Booz Allen & Hamilton Inc. (supra), this Court (two Judge Bench) speaking through R.V.Raveendran J. laid down the following proposition of law after examining the question as to which cases are arbitrable and which are non-arbitrable:
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> > "36. The well-recognised examples of non-arbitrable disputes are: (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial

[1] 2011(5) SCC 532
[2] 2017(2) R.C.R. (Rent) 517

> separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding-up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes."

25. Learned counsel for the appellant, however, argued that the provisions of the Delhi Rent Act, 1955 are not applicable to the premises by virtue of Section 3(c) of the Act and hence the law laid down in the aforementioned two cases would not apply. We do not agree.

26. The Delhi Rent Act, which deals with the cases relating to rent and eviction of the premises, is a special Act. Though it contains a provision (Section 3) by virtue of it, the provisions of the Act do not apply to certain premises but that does not mean that the Arbitration Act, ipso facto, would be applicable to such premises conferring jurisdiction on the arbitrator to decide the eviction/rent disputes. In such a situation, the rights of the parties and the demised premises would be governed by the Transfer of Property Act and the civil suit would be triable by the Civil Court and not by the arbitrator. In other words, though by virtue of Section 3 of the Act, the provisions of the Act are not applicable to certain premises but no sooner the exemption is withdrawn or ceased to have its application to a particular premises, the Act becomes applicable to such premises. In this view of the matter, it cannot be contended that the provisions of the Arbitration Act would, therefore, apply to such premises."

(12) In "***Natraj Studios (P) Ltd.*** versus ***Navrang Studios***[3], it had been held by the Supreme Court -

> "18. Thus exclusive jurisdiction is given to the Court of Small Causes and jurisdiction is denied to other Courts (1) to entertain and try any suit or proceeding between a landlord and a tenant relating to recovery of rent or possession of any premises, (2) to try any suit or proceeding

[3] 1981(1) SCC 523

between a licensor and a licensee relating to the recovery of licence fee or charge, (3) to decide any application made under the Act and,(4) to deal with any claim or question arising out of the Act or any of its provisions. Exclusive jurisdiction to entertain and try certain suits, to decide certain applications or to deal with certain claims or questions does not necessarily mean exclusive jurisdiction to decide jurisdictional facts also. Jurisdictional facts have necessarily to be decided by the Court where the jurisdictional question falls to be decided, and the question may fall for decision before the Court of exclusive jurisdiction or before the Court or ordinary jurisdiction. A person claiming to be a landlord may sue his alleged tenant for possession of a building on grounds specified in the Rent Act. Such a suit will have to be brought in the Court of Small Causes, which has been made the Court of exclusive jurisdiction. In such a suit, the defendant may deny the tenancy but the denial by the defendant will not oust the jurisdiction of Court of Small Causes. If ultimately the Court finds that the defendant is not a tenant the suit will fail for that reason. If the suit is instituted in the ordinary Civil Court instead of the Court of Small Causes the plaint will have to be returned irrespective of the plea of the defendant. Conversely a person claiming to be the owner of a building and alleging the defendant to be a trespasser will have to institute the suit, on the plaint allegations, in the ordinary Civil Court only. In such a suit the defendant may raise the plea that he is a tenant and not a trespasser. The defendant's plea will not straightaway oust the jurisdiction of the ordinary Civil Court but if ultimately the plea of the defendant is accepted the suit must fail on that ground. So the question whether there is relationship of landlord and tenant between the parties or such other jurisdictional questions may have to be determined by the Court where it falls for determination-be it the Court of Small Causes or the ordinary Civil Court. If the jurisdictional question is decided in favour of the Court of exclusive jurisdiction the suit or proceeding before the ordinary Civil Court must cease to the extent its jurisdiction is ousted."

(13) The Apex Court thereafter in declaring the Arbitration Clause in the original Agreement between the parties to be inoperative

further went on to observe -

> "24. In the light of the foregoing discussion and the authority of the precedents, we hold that both by reason of Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and by reason of the broader considerations of public policy mentioned by us earlier and also in Deccan Merchants Cooperative Bank Ltd. v. M/s. Dalichand Jugraj Jain & Ors. (supra), the Court of Small Causes has and the Arbitrator has not the jurisdiction to decide the question whether the respondent-licensee-landlord is entitled to seek possession of the two studios and other premises together with machinery and equipment from the appellant-licensee-tenant. That this is the real dispute between the parties is abundantly clear from the petition filed by the respondents in the High Court of Bombay, under Section 8 of the Arbitration Act seeking a reference to Arbitration. The petition refers to the notices exchanged by the parties, the respondent calling upon the appellant to hand over possession of the studios to him and the appellant claiming to be a tenant or protected licensee in respect of the studios. The relationship between the parties being that of licensor-landlord and licensee-tenant and the dispute between them relating to the possession of the licensed demised premises, there is no help from the conclusion that the Court of Small Causes alone has the jurisdiction and the Arbitrator has none to adjudicate upon the dispute between the parties."

(14) Ld. Counsel for the Respondent has, however, drawn attention of the Court to the subsequent Constitutional Bench's decision of the Supreme Court in the case of ***"M/s S.B.P. & Co.*** versus ***M/s Patel Engineering Ltd. & Anr." Civil Appeal No.4168 of 2003.*** Specific attention was drawn to the following observations made in Paras 44 to 46 of the decision, which are set out as follow -

> "44. It is seen that some High Courts have proceeded on the basis that any order passed by an arbitral tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution of India. We see no warrant for such an approach. Section 37 makes certain orders of the arbitral tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating his

grievances against the award including any in-between orders that might have been passed by the arbitral tribunal acting under Section 16 of the Act. The party aggrieved by any order of the arbitral tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The arbitral tribunal is after all, the creature of a contract between the parties, the arbitration agreement, even though if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the arbitral tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the arbitral tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution of India. Such an intervention by the High Courts is not permissible.

45. The object of minimizing judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 of the Constitution of India or under Article 226 of the Constitution of India against every order made by the arbitral tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the arbitral tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage.

46. We, therefore, sum up our conclusions as follows:

i) to v) xxx xxx xxx

(vi) Once the matter reaches the arbitral tribunal or the sole arbitrator, the High Court would not interfere with orders passed by the arbitrator or the arbitral tribunal during the course of the arbitration proceedings and the parties could approach the court only in terms of Section 37 of the Act or in terms of Section 34 of the Act." (Emphasis Added)

(15) In view of the above emphasized extracts in the decision pronounced in "***M/s S.B.P. & Co.'s"*** case (supra), this Court is also of the view that proceedings in an Arbitral Tribunal including its decision

to decide on its own jurisdiction cannot be challenged under Articles 226 and 227 of the Constitution before the High Court, and of the decision relied upon by the Petitioner's side, would not be of any help, for the reasons being recorded in the following Paragraphs.

(16) Ironically, the last mentioned citation of "***M/s S.B.P. & Co.'s" case*** (supra) originally cited on behalf of Petitioner's side in the context of the limits on the competence of the Arbitral Tribunal to rule on its own jurisdiction, which is a subject-matter to be covered in relation to the provisions of Section 16 also quoted earlier separately. But from the observations of the Constitutional Bench in its aforesaid decision delivered on 26.10.2005, there remains little scope for doubting that the order or decision passed by an Arbitral Tribunal during the course of the proceedings pending before it cannot be interfered with by any Judicial Authority including High Court under Articles 226/227, except when specifically provided in Part I of the Arbitration Act. The said decision of the Constitutional Bench, therefore, clearly overrides the earlier decision in "***L. Chandra Kumar's" case*** (supra), in which, in any case, the restriction on Judicial intervention specifically introduced by the subsequent enactment of the amended Arbitration Act could not have even come up for any consideration.

(17) The decision in "***L. Chandra Kumar's" case*** (supra) was pronounced by the Constitutional Bench in relation to a Civil Appeal, which was admitted in the Supreme Court way back in 1989. The applicability of Articles 226/227 of the Constitution came up for consideration in this decision in the context of the controversy arising out of the Legislation by way of Administrative Tribunals Act, 1985, which was of rather recent origin when the ultimate SLP was filed in the Apex Court. The observations noted in preceding Paras 7 & 8 of this Judgment were also in the context of the power ostensibly granted to the Tribunals, which were created under Article 323-A & B of the Constitution and the particular reference in the said Appeal was also in relation to the Central Administrative Tribunal, which had only recently come into existence at that time. The controversy emanated out of the competence granted to the Tribunal to test the *vires* of any act of the State, and it was clarified specifically in Para 8 as reproduced above, that the existence of a provision in case of any Tribunal(s) constituted under Article 323-A and B, could not in any way take away from the jurisdiction conferred upon High Courts under Articles 226/227 and upon Supreme Court under Article 32 of the Constitution, which is part

of the inviolable basic structure of our Constitution, and that the other Courts and Tribunals may perform a supplemental role in discharging the powers conferred by these Articles while this jurisdiction cannot be ousted.

(18) Now it needs to be noted that the amended Arbitration Act had been enacted long after the Civil Appeal had been admitted in 1989, and its amended provisions including Section 5 restraining Judicial intervention had not yet come up for Judicial review. But the matter has since been comprehensively settled in the subsequent Constitutional's Bench decision in "***M/s S.B.P. & Co.'s" case*** (supra), wherein the Apex Court had specifically held that proceedings of an Arbitral Tribunal cannot be challenged in exercise of Articles 226/227 of the Constitution, except when authorized under the Act itself, and this is now the settled legal position in this regard.

(19) As already noted in Para 9 thereafter, attention of this Court had been drawn to Para 19 of the Supreme Court's Judgment, which had essentially held that appointment of an Arbitrator by the Chief Justice(s) is in exercise of Judicial and not Administrative Authority. But this particular observation in Para 19 is not connected with the real question regarding competence of the Judicial Authorities to entertain challenges of Arbitral Proceedings when not permitted by the Act itself in exercise of powers under Articles 226/227 of the Constitution, which, as has already been seen in subsequent Paras 44 to 46 of the very same judgment, have not been approved of by the Constitutional Bench.

(20) With reference to the decision in "***Booz Allen and Hamilton Inc.'s" case*** (supra) mentioned in Para 10 above, it is to be noted that it was pronounced in the background of refusal of the Court to refer the dispute to arbitration under Section 8 of the Arbitration Act. At no stage in that case, the actual Arbitral Tribunal was constituted. So there was no question of any Judicial Authorities having entertained any Application or Petition against the Arbitral Tribunals' proceedings, when in fact, no such proceedings could ever have taken place without actual constitution of the Tribunal. Therefore, the decision in "***Booz Allen and Hamilton Inc.'s" case*** (supra) is not helpful to the Petitioner.

(21) Similarly, in "***Himangni Enterprises's" case*** (supra) referred to in Para 11 earlier, again the proceedings had arisen out of rejection of the Tenant's Application under Section 8 of the Arbitration Act by the Addl. District Judge, which decision was affirmed by the Delhi High Court as well as the Apex Court. In this case, again no Arbitral

Tribunal had ever been constituted since the Application for reference to Arbitration was itself dismissed, and as such, the question of challenging the proceedings before such non-existent Arbitral Tribunal could not have arisen at all.

(22) In "***Natraj Studios (P) Ltd.'s" case*** (supra), the Supreme Court had declared inoperative Arbitration Clause in the original Agreement between the parties. The final operative portion of this Judgment as passed by the Apex Court happens to be -

> "28. In the result both the appeals are allowed with costs. The arbitration clause in the agreement dated March 28, 1970 is declared to be inoperative. The application for reference to Arbitration is dismissed."

(23) It is thus seen that in this case also, it was actually a case of dismissal of the Application for reference to Arbitration, which had been allowed at the High Court level. Challenge to any orders passed by the Tribunal itself was again not the subject-matter in this decision and the controversy was limited to the reference to Arbitration. At any rate, this Judgment of the Supreme Court was delivered way back on 7.1.1981, which is more than 15 years before the amended Arbitration Act had even come into operation, and so even this decision can be of no help to the Petitioner.

(24) While thus holding that proceedings of/orders passed by the Arbitral Tribunal cannot be challenged under Articles 226 and 227 of the Constitution, except when so permitted under the Act itself, let us now also see if reference to the provisions pertaining to the competence of the Arbitral Tribunal to rule on its own jurisdiction can be of any help to the Petitioner. The relevant Section 16 of the Arbitration Act has already been reproduced in Para 6 earlier. A careful reading of Section 16(2) (3) (4) and (5) goes to show challenge to jurisdiction of the Arbitral Tribunal, or a plea that the Tribunal is exceeding the scope of its Authority is to be taken at the earliest, particularly being not later than the submission of statement of defence, and as soon as the matter alleged to be beyond the scope of the Tribunal's authority is raised, respectively. Of course, the Tribunal according to Section 16(4) in its discretion may admit such pleas if it considers the delay justified. But according to Section 16(5) where the Tribunal takes a decision rejecting either of these pleas, it is required to continue with the Arbitral proceedings and make an Arbitral Award. Thereafter according to Section 16(6), the aggrieved party can apply for setting aside of such Award in accordance with Section 34 of the Act. It is, therefore, seen

that even Section 16 does not contemplate any scope for a party to challenge the Arbitral proceedings before passing of the final Award, once the Tribunal has determined that it is possessed of jurisdiction to entertain the dispute.

(25) For the aforesaid reasons, this Court finds no justification for interfering with the impugned order passed by the Arbitral Tribunal itself, since it is not a final order, but is restricted to the question of the Tribunal's competence and jurisdiction to entertain the concerned dispute in a situation where the Tribunal was constituted without any Judicial intervention and in the absence of any Application under Section 8 and 11 of the Arbitration Act. Consequently, in view of the Constitutional Bench's decision in "***M/s S.B.P. & Co.'s" case*** (supra), this Court has no jurisdiction to entertain any challenge to the impugned order and the Petitioners are therefore, obligated to await the conclusions of the Arbitral Proceedings, only after which they can challenge any such Award or Order either by referring to Section 34, or to any other specific provisions permitting them to do so under the Act.

(26) The present Revision Application is, therefore, dismissed. The interim stay on proceedings of the Arbitral Tribunal stands vacated with the observation that the period of stay shall not be counted to the detriment of the Tribunal for the purpose of Section 29A of the Arbitration Act.

Shubreet Kaur