* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 20.12.2024
Pronounced on: 13.01.2025

\+ FAO(OS) (COMM) 227/2024 & CM APPL. 59210/2024

APTEC ADVANCED PROTECTIVE TECHNOLOGIES AG
.....Appellant

Through: Mr.Ashish Dholakia, Sr. Adv. with Mr.Akash Panwar, Mr.Subhoday Banerjee, Ms.Ananya Narain & Mr.Rohan Chawla, Advs.

versus

UNION OF INDIA .....Respondent

Through: Mr. Vikram Jetly, CGSC with Ms. Shreya Jetly, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

NAVIN CHAWLA, J.

1. This appeal has been filed by the appellant under Section 13(1A) of the Commercial Courts, Act, 2015 read with 37 of the Arbitration and Conciliation Act, 1996 (in short, 'A&C Act'), challenging the Judgment dated 20.08.2024 (hereinafter referred to as 'Impugned Judgment') passed by the learned Single Judge of this Court in O.M.P. (COMM) 216/2020 titled ***APTEC Advanced Protective Technologies Ag v. Union Of India*** (hereinafter referred to as 'Section 34 Petition'), whereby, the learned Single Judge has dismissed the petition filed under Section 34 of A&C Act by the

appellant herein, holding that the decision dated 18.11.2010 of the learned Sole Arbitrator dismissing the four applications, bearing no. Nos. 1, 2, 3 and 4 of 2009, filed by the appellant herein *inter alia* seeking discovery of certain additional documents from the respondent, was not an 'Award' and therefore, petition filed under Section 34 of the A&C Act to challenge the same was not maintainable.

2. The appellant had challenged the decision dated 18.11.2010 of the learned Sole Arbitrator *vide* Section 34 Petition before the learned Single Judge of this Court, contending therein that the decision dated 18.11.2010 of the learned Sole Arbitrator is an *interim Award* and hence subject to the challenge under Section 34 of the A&C Act.

3. The learned Single Judge, *vide* the Impugned Judgment, dismissed Section 34 Petition filed by the appellant herein by observing that the decision dated 18.11.2010 of the learned arbitrator is not an *interim Award*, but is only an order on the applications that it disposes of, and therefore, not subject to challenge under Section 34 of the A&C Act.

Brief background of facts:

4. To understand the controversy involved, a brief background of facts, shorn of details, is given as under:

4.1 The appellant herein, a company incorporated in Switzerland, is engaged in the business of developing, manufacturing and marketing Mountaineering Boots.

4.2 The appellant received an Order for supply of boots for

the Defence Forces from the respondent herein through Contract Purchase Order bearing No. 21(4)/98 - D(0-I) dated 01.07.1999 (hereinafter referred to as 'CPO').

4.3 It is the case of the appellant that the appellant supplied 12,000 pairs of Model- A Boots and 5700 pairs of Model-B Boots, in five consignments, to the Respondent's nominated agent at Graz Airport, Austria, on 30.09.1999, 08.10.1999, 27.10.1999, 04.11.1999 and 12.11.1999. Each of the consignments was inspected by the Inspectors of the Ministry of Defence / AHQ within 30 days of arrival, in terms of Clause 6 of Annexure III of the CPO, and on being satisfied that the boots met the qualitative requirement specified in Annexure V of the CPO, the respondent made payments to the tune of 90% of the the invoices raised by appellant herein, however, did not make any payment *qua* the remaining 10% of the invoice amount.

4.4 The respondent, *vide* Letter dated 09.11.2000, issued a "Provisional Warranty Claim-cum-Performance Notice" on the appellant, alleging that the Model-A Boots supplied by the appellant herein had been found to be of substandard and defective. The appellant herein denied the aforesaid claim of the respondent and called upon the respondent to produce one pair of Model-A Boots for scientific testing.

4.5 On 26.02.2001, the respondent encashed the "Warranty Guarantee" furnished by the appellant. The appellant protested against the said encashment and demanded that the losses caused due to non-payment/ delayed payment of balance 10% of the

invoice value and wrongful encashment of bank guarantee be immediately compensated.

4.6 The appellant, thereafter, invoked arbitration by serving upon the respondent the notice invoking arbitration.

4.7 The Supreme Court *vide* its order dated 29.08.2006 passed in Arb. Petition 5 of 2006 titled ***Aptec Advanced Tech.Protective Tech.AG v. Union of India Th. Secretary, M/O Defence***, appointed the learned Sole Arbitrator to adjudicate the disputes between the parties.

4.8 On completion of the pleading of the parties, the following final issues were framed in the arbitration proceedings, *vide* Order dated 29.09.2008:-

> *"**Issues in Claim***
> *1. Whether the Statement of Claim is properly signed, verified and instituted?*
> *2. Whether the Claims of the Claimant are within limitation?*
> *3. Whether the Respondent committed breach of its obligations with regard to payments to the Claimant as per the contract?*
> *4. Whether there was delay on the part of the Respondent in issuing Arrival Certificates to the Claimant? If so, was the delay justified?*
> *5. Whether the Claimant is entitled to any amount from the Respondent on account of the alleged delay in issuing arrival certificates or alleged delay/non-payment of 10% of invoice value and in particular*
> *a) Whether the Claimant is entitled to recover CHF 138,369.00 from the Respondent towards non-payment of 10% of Invoice Amount of 3rd Consignment together with interest @ 18% per annum from 29.11.1999 till date of realization?*
> *b) Whether the Claimant is entitled to recover CHF 12,587.08 from the*

Respondent towards delayed payment of 10% of Invoice Amount of the 1st Consignment?

c) Whether the Claimant is entitled to recover CHF 9,839.14 from the Respondent towards delayed payment of 10% of Invoice Amount of the 2nd Consignment?

d) Whether the Claimant is entitled to recover CHF 2,759.54 from the Respondent towards delayed payment of 10% of Invoice Amount of the 4th Consignment?

e) Whether the Claimant is entitled to recover CHF 3,218.95 from the Respondent towards delayed payment of 10% of Invoice Amount of the 5th Consignment?

6. Whether the Model A Boots supplied by the Claimant under the Contract were defective and sub-standard?

7. Whether the Claimant committed breach of its warranty obligations under the Contract?

8. Whether the Warranty Claim dated 9.11.2000 of the Respondent was unsustainable?

9. Has the Warranty Bond been illegally invoked by the Respondent?

10. Whether the Claimant is entitled to any amount on account of encashment of the Warranty Bond by the Respondent? And in particular, whether the Claimant is entitled to recover CHF 402,210.00 from the Respondent for unlawful encashment of Bank Guarantee together with interest @ 18% per annum from 26.02.2001 till date of realization?

Issues in Counter-claim

1. Whether the Counter-claim is outside the scope of reference of the present proceedings and not maintainable?

2. Whether the Counter Claimant (Respondent) is entitled to Warranty Claims?

3. Whether there was delay in making supplies by the Claimant? If so, whether the Counter Claimant (Respondent) is entitled to liquidated damages under the contract as a consequence of the said delay by the Claimant?

4. Whether the Respondent is entitled to the

Counter Claims in prayer clauses (2) to (g) of the Counter Claim?
5. Whether the Counter Claimant (Respondent) is entitled to interest, damages as claimed or in any other amount?
6. Whether the counter claim is barred by limitation?
Common Issue
What is the relief, including facts, to be granted in favour or against the Claimant or Respondent in the claim and Counter-claim put together?"

4.9 The appellant filed the affidavit of evidence of its first witness, who was cross-examined by the respondent.

4.10 The appellant then filed four applications before the learned Sole Arbitrator seeking discovery of documents, applying the principles of Order XI Rules 12 & 14 of the Code of Civil Procedure, 1908 (in short, 'CPC'). The learned Sole Arbitrator dismissed the said applications *vide* its decision dated 18.11.2010.

4.11 The appellant challenged the decision dated 18.11.2010 of the learned Sole Arbitrator *vide* Section 34 Petition before the learned Single Judge of this Court, contending therein that the decision dated 18.11.2010 of the learned Sole Arbitrator is an *interim Award* and hence subject to the challenge under Section 34 of the A&C Act.

4.12 The learned Single Judge has summarised the application and findings of the learned Sole Arbitrator on the same as under:-

"3. *A summary of the 04 applications bearing I.A. Nos. 1, 2, 3 and 4 of 2009 filed by the petitioner before the learned Arbitrator,*

including the documents sought by the petitioner, the respondent's response thereto and the Tribunal's findings thereon, may be summarized as follows:

I.A. No.	***Document sought by the claimant (petitioner) from the non-claimant (respondent)***	***Respondent 's response***	***Tribunal's findings***
1 of 2009 filed on 07.04.2009	*Document No. 1: Acceptance Test Procedures adopted as per SOP-Standard Operating Procedures of DGQA specific to Multipurpose Mountaineering Boots and Joint Receipt Inspection Reports - Nov 1999 to Jan 2000*	*Document not available with the respondent*	*Document No. 1 does not exist since the boots were inspected visually. Therefore, not possible to call for production of document No. 1.*
	Document No. 2: Defect Investigation Report and Scientific Laboratory Test Methodology with List of Applicable Standards for Model 'A' Boot purported to have been defective with	*Document supplied*	*Documents Nos. 2 and 3 had already been filed by the respondent in Volume-II of their documents. The competent authority under the R.T.I. Act has already furnished full text of the report sought for as Document No. 4. Hence, no further orders necessary.*

	regard to 'sole erosion' - Nov 2000 to June 2002		
	<u>Document No. 3</u>: Defect Investigation Report and Scientific Laboratory Test Methodology with List of Applicable Standards for comparative testing of Model 'A' (purported to be defective) and Model 'B' (accepted) with regard to 'sole erosion' - Nov 2000 to June 2002	*Document supplied*	
	<u>Document No. 4</u>: Reports of the visit of DGQA Team to Units under XIV Corps c/o 56 APO - In connection with purported defect of Boot Koflach being used in Siachen Glacier area plus other items like Crampons, Gloves, Ice Pick, Ice Pitons, Jummar, Rope Climbing etc. - 2nd Feb to10th Feb 2001	*Relevant pages of document supplied under RTI - remaining part of the report claimed to be confidential and sensitive*	
2 of 2009 filed on 17.06.2009	*Production of Field Trial Report of December, 1998 pertaining to the Model 'A' Boot*	*Respondent had supplied the document to the Tribunal for considerati on*	*A copy of the Report was produced by the respondent before the Tribunal; and the Tribunal found that the respondent had conducted Trial test on only 3 sets of Boots. The Tribunal noted that it*

			was stated in the report that the tests were done on the 03 pairs of shoes, which was on a limited scale which did not represent the exhaustive view of users to the meagre number of samples given for users trials. *For this reason, the Tribunal was of the opinion that the Field Test Reports, 1998 need not be supplied to the claimant.*
3 of 2009 filed on 07.07.2009	*Document No. 1:* *Field Trial Directive for Boot Crampon with Straps - 1990 to 1991*	*Not available with the respondent as the document was very old*	*Prayer for production of Documents Nos. 1 and 2 is rejected as they are in the nature of fishing and roving enquiry.* *Documents Nos. 3 and 4 are privileged since they pertain to supplies to the Army. Since the Army considers that details of such equipment cannot be divulged, the Tribunal cannot deviate from the opinion of the concerned authority.* *Further no case of incompatibility of crampons is made-out.*
	Document No. 2: *Field Trial Report of Boot Crampons with Straps - December 1990*	*Not available with the respondent as the document was very old*	
	Document No. 3: *Contract Purchase Order placed on M/s. JAMDPAL of France for supply of 10,000 Pairs of Boot Crampons with Straps - June to July 1999*	*Confidential document entered into by the respondent with a third-party; and not relevant for the proceedings.*	

	<u>Document No. 4</u>: Acceptance Test Procedures adopted as per SoP-Standard Operating Procedures of DGQA specific to Boots Crampons with Straps and Joint Receipt Inspection Reports of Boot Crampons with Straps Qty 10,000 Pairs supplied by M/s. JAMDPAL of France - June 1999 to January 2000	*Confidential information, with direct bearing on the defence and security of the country.*	
4 of 2009 filed on 19.08.2009	*Details of investigation carried-out by AHSP pertaining to Crampons pursuant to report of DGQA team based on its visit between 02.02.2001 and 10.02.2001 to Units under XIV Corps c/o 56 APO and complete correspondence on subject matter as well as action undertaken by CQA after 10th Feb 2001*	*Not pleaded by the claimant*	*The application is belated and liable to be dismissed in view of judgment of the Delhi High Court in Bhatia Plastics v. Peacock Industries Ltd., AIR 1995 Del 144* *The production of these documents cannot be allowed since the application is in the form of a fishing and roving inquiry.*
	Photographs of Boot Crampons with straps procured from M/s. JAMDPAL of France (manufacturer M/s.	*Not pleaded by the claimant*	

	Camp, Italy) - June 1999 to Jan 2000.		

4.13 The learned Single Judge, *vide* the Impugned Judgment, dismissed Section 34 Petition filed by the appellant herein, observing that the decision dated 18.11.2010 of the learned Sole Arbitrator is not an *interim Award*, but is only an order on the applications that it disposes of, and therefore, not subject to challenge under Section 34 of the A&C Act. The learned Single Judge held as under:-

> *"15. Upon considering the rival arguments made, this court is of the view, that though while deciding the four applications seeking discovery and inspection of documents, the learned Arbitrator has gone into a detailed discussion on several aspects of the disputes between the parties and appears to have drawn inferences and conclusions therefrom, at the same time the learned Arbitrator has also expressly clarified that his decision on the four applications is not a decision on the merits of the disputes pending in arbitration. Though it may be said that the manner in which the impugned decision is phrased does create an impression that the learned Arbitrator has expressed a final view as regards the quality of the crampons and their compatibility with the boots, to allay any apprehension that the petitioner may entertain in that behalf, the learned Arbitrator has also specifically recorded in order/minutes of meeting dated 05.04.2011, that he has only passed orders in relation to the discovery and inspection of documents and has not passed any 'award' on the dispute between the parties.*
>
> *****
>
> *17. It is also noticed that in the impugned decision, the learned Arbitrator has, in so*

> *many words, acknowledged that the main issue in the arbitration proceedings, namely Issue No. 6 on whether the boots supplied by the petitioner were defective or sub-standard has been specifically framed and is yet to be answered. There is nothing in the impugned decision to indicate that by the said decision, the learned Arbitrator has disposed-of Issue No.6, which is central to the arbitral proceedings. Accordingly, the impugned decision is an order which "does not finally settle a matter at which the parties are at issue" and accordingly does not qualify even as an interim award.*
>
> *18. In the above view of the matter, and taking on record the specific observations of the learned Arbitrator as contained in impugned decision dated 18.11.2010 and in order/minutes dated 05.04.2011, this court is of the opinion that the impugned decision dated 18.11.2010 is not an interim award, but is only an order on the applications that it disposes-of. Accordingly, the present petition under section 34 of the A&C Act challenging the impugned decision, is not maintainable."*

Submissions of the learned senior counsel for the appellant:

5. The learned senior counsel for the appellant submits that the learned Single Judge has erred in his conclusion that the decision dated 18.11.2010 of the learned Sole Arbitrator is not an *interim* Award and is, therefore, not capable of being challenged by way of a petition under Section 34 of the A&C Act. He submits that the learned Sole Arbitrator has conclusively and finally decided that the appellant had not raised an issue of incompatibility of the Crampons and defects thereof. He submits that the learned Sole Arbitrator has in fact, held that there were no defects in the Crampons and that this issue does not

arise in the arbitration proceedings. He submits that the decision dated 18.11.2010 of the learned Sole Arbitrator therefore, finally decided the issues of substance between the parties and was an *interim* Award. In support, he places reliance on the Judgments of this Court in ***Cinevistaas Ltd. v. Prasar Bharti,*** 2019 SCC OnLine Del 7071, and ***MBL Infrastructure Ltd. v. Rites Limited & Anr.,*** 2023 SCC OnLine Del 2736.

6. The learned senior counsel for the appellant submits that the learned Single Judge has, however, based only on the self-certification of the learned Sole Arbitrator in the Impugned decision dated 18.11.2010 and the subsequent Order dated 05.04.2011, held that the Impugned decision decides only the applications and not the controversy in the arbitration proceedings and is therefore, not an Arbitral Award. He submits that this finding of the learned Sole Arbitrator is totally erroneous and cannot be sustained.

7. At this stage, we must also note that the learned senior counsel for the appellant also made submissions on the merits of the decision dated 18.11.2010 of the learned Sole Arbitrator. However, as these were not gone into or tested by the learned Single Judge, given the finding that the petition under Section 34 of the A&C Act was not maintainable, we also refrain ourselves from commenting on the same. Any observation made by us in our Judgment is only for the purpose of considering whether the decision dated 18.11.2010 can be termed as an *interim* Award and can be subjected to a challenge by way of a petition under Section 34 of the A&C Act.

Submissions of the learned counsel for the respondent:

8. On the other hand, the learned counsel for the respondent submits that the learned Sole Arbitrator, *vide* the decision dated 18.11.2010, has merely decided the four applications filed by the appellant. The learned Sole Arbitrator has, on more than one occasion in the decision dated 18.11.2010 itself, as also in the Order dated 05.04.2011, clarified that any observations made in the decision dated 18.11.2010 are only for the purposes of deciding the applications and should not be considered as a final expression of opinion on the merits of the arbitration dispute. He submits that, therefore, the learned Single Judge has rightly held that the decision dated 18.11.2010 does not amount to an *interim* Award and, therefore, cannot be challenged by way of a petition under Section 34 of the A&C Act. In support, he places reliance on the Judgment of this Court in ***Rhiti Sports Management Pvt. Ltd. v. Power Play Sports & Events Ltd.,*** 2018 SCC OnLine Del 8678**,** and in ***Goyal MG Gases Pvt. Ltd. v. Panama Infrastructure Developers Pvt. Ltd. & Ors.,*** 2023 SCC OnLine Del 1894.

9. The learned counsel for the respondent also tried to make submissions on the merits of the controversy involved in the applications filed by the appellant before the learned Sole Arbitrator as also on the dispute in the arbitration proceedings, however, as noted hereinabove, given the limited nature of issue to be determined by this Court in the present appeal, that is, whether the decision dated 18.11.2010, of the learned Sole Arbitrator, is an *interim* Award or a mere order deciding the applications filed by the appellant, we refrain

ourselves from making any observation on the merits of the decision dated 18.11.2010.

Analysis & findings:

10. We have considered the submissions made before us by the learned counsels for the parties.

11. From the above, it would be apparent that the issue before us is as to whether the Sole Arbitrator's decision dated 18.11.2010 is an 'Award' or is merely an order on the applications filed by the appellant. It needs no emphasis that a petition under Section 34 of the A&C Act is maintainable only against an 'Arbitral Award'.

12. The A&C Act itself does not give us much guidance on the issue in hand. Section 2(1)(c) of the A&C Act states that the term 'arbitral award' shall include an *interim* Award, however, the A&C Act has not defined an *interim* Award.

13. At the same time, Section 31(6) of the A&C Act states that any time during Arbitral proceedings, Arbitral Tribunal may make an *interim* Award on any matter on which it can make a final Award. This, therefore, gives guidance of what constitutes an *interim* Award. Section 31(6) of the A&C Act reads as under:

> "*31.Form and contents of arbitral award.*
>
> *****
>
> *(6) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.*"

14. The Supreme Court, in the case of ***IFFCO Ltd. v. Bhadra***

Products, (2018) 2 SCC 534, while interpreting the term 'interim Award', held that the Arbitral Tribunal can make an *interim* arbitral Award on any matter with respect to which it may make a final Award; and the term "matter" in Section 31(6) of the A&C Act includes any point of dispute between the parties which has to be answered by the Arbitral Tribunal. We may quote from the said Judgment as under:

> ***"7.*** *As can be seen from Section 2(c) and Section 31(6), except for stating that an arbitral award includes an interim award, the Act is silent and does not define what an interim award is.* ***We are, therefore, left with Section 31(6) which delineates the scope of interim arbitral awards and states that the Arbitral Tribunal may make an interim arbitral award on any matter with respect to which it may make a final arbitral award.***
>
> ***8.*** *The language of Section 31(6) is advisedly wide in nature.* ***A reading of the said sub-section makes it clear that the jurisdiction to make an interim arbitral award is left to the good sense of the Arbitral Tribunal, and that it extends to "any matter" with respect to which it may make a final arbitral award. The expression "matter" is wide in nature, and subsumes issues at which the parties are in dispute. It is clear, therefore, that any point of dispute between the parties which has to be answered by the Arbitral Tribunal can be the subject-matter of an interim arbitral award.*** *However, it is important to add a note of caution. In an appropriate case, the issue of more than one award may be necessitated on the facts of that case. However, by dealing with the matter in a piecemeal fashion, what must be borne in mind is that the resolution of the dispute as a whole will be delayed and parties will be put to additional expense. The Arbitral Tribunal should, therefore, consider whether there is*

> *any real advantage in delivering interim awards or in proceeding with the matter as a whole and delivering one final award, bearing in mind the avoidance of delay and additional expense. Ultimately, a fair means for resolution of all disputes should be uppermost in the mind of the Arbitral Tribunal."*
>
> ***(Emphasis Supplied)***

15. The Supreme Court further considered Section 32(1) of the A&C Act, which reads as under:-

> *"32. Termination of proceedings.—*
> *(1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2)."*

16. Considering the above, the Supreme Court in the said Judgment emphasised that while the arbitration proceedings can be terminated only by way of a final Award, there can be one or more *interim* Awards before the final Award, which conclusively and finally determine some of the issues between the parties, finally leading upto the final Award. We may quote from the judgment, as under:-

> ***"9.****To complete the scheme of the Act, Section 32(1) is also material. This section goes on to state that the arbitral proceedings would be terminated only by the final arbitral award, as opposed to an interim award, thus making it clear that there can be one or more interim awards, prior to a final award, which conclusively determine some of the issues between the parties, culminating in a final arbitral award which ultimately decides all remaining issues between the parties.*
>
> *****
>
> ***13.*** *In Satwant Singh Sodhi v. State of Punjab [Satwant Singh Sodhi v. State of Punjab, (1999) 3 SCC 487] , an interim award in*

respect of one particular item was made by the arbitrator in that case. The question before the Court was whether such award could be made the rule of the Court separately or could be said to have been superseded by a final award made on all the claims later. This Court held: (SCC p. 491, para 6)

> *"6. The question whether interim award is final to the extent it goes or has effect till the final award is delivered will depend upon the form of the award. If the interim award is intended to have effect only so long as the final award is not delivered it will have the force of the interim award and it will cease to have effect after the final award is made. If, on the other hand, the interim award is intended to finally determine the rights of the parties it will have the force of a complete award and will have effect even after the final award is delivered. The terms of the award dated 26-11-1992 do not indicate that the same is of interim nature."*

On the facts of the case, the Court then went on to hold: (Satwant Singh case [Satwant Singh Sodhi v State of Punjab, (1999) 3 SCC 487] , SCC p. 493, para 11)

> *"11. This Courtn in Rikhabdass v. Ballabhdas [Rikhabdass v. Ballabhdas, AIR 1962 SC 551 : 1962 Supp (1) SCR 475] held that once an award is made and signed by the arbitrator, the arbitrator becomes functus officio. In JuggilalKamlapat v. General Fibre Dealers Ltd.[JuggilalKamlapat v. General Fibre Dealers Ltd., AIR 1962 SC 1123 : 1962 Supp (2) SCR 101] this Court held that an arbitrator having signed his award becomes functus officio but that did not mean that in no circumstances could there be further arbitration proceedings where an award was set aside or that the same arbitrator could never have anything to do with the*

> *award with respect to the same dispute. Thus, in the present case, it was not open to the arbitrator to redetermine the claim and make an award. Therefore, the view taken by the trial court that the earlier award made and written though signed was not pronounced but nevertheless had become complete and final, therefore, should be made the rule of the court appears to us to be correct with regard to Item 1 inasmuch as the claim in relation to Item 1 could not have been adjudicated by the arbitrator again and it has been rightly excluded from the second award made by the arbitrator on 28-1-1994. Thus the view taken by the trial court on this aspect also appears to us to be correct. Therefore, the trial court has rightly ordered the award dated 28-1-1994 to be the rule of the court except for Item 1 and in respect of which the award dated 26-11-1992 was ordered to be the rule of the court."*
>
> *It is, thus, clear that the first award that was made that finally determined one issue between the parties, with respect to Item 1 of the claim, was held to be an interim award inasmuch as it finally determined Claim 1 between the parties and, therefore, could not be re-adjudicated all over again."*

17. A learned Single Judge of this Court, in ***Cinevistaas*** (supra), applied the principle of ***Shah Babulal Khimji v. Jayaben D. Kania & Anr.,*** (1981) 4 SCC 8, to hold that while determining whether the order passed by the Arbitral Tribunal can be considered to be an '*interim* Award', regard should be had to whether the order determines substantial rights of the parties. It was held, as under:

> *"**35.** Arbitral proceedings are not meant to be dealt with in a straightjacket manner. Arbitral*

proceedings cannot also be conducted in a blinkered manner. There could be various situations wherein, due to inadvertent or other errors, applications for amendments/corrections may have to be moved. So long as the disputes fall broadly within the reference, correction and amendments ought to be permitted and a narrow approach cannot be adopted. ***The principles of Shah Babulal Khimji (supra) would have greater application in arbitral proceedings as the said judgment lays down the principle, that the substantive rights affected ought to be seen, while determining what kind of orders are challengeable. An interim order of the present kind rejecting a large number of additional amounts/claims would constitute an interim award under Section 2(1)(c) of the Act.***

36. *In the facts of this case, it is clear that the quantification of claims was done correctly in the notice invoking arbitration, in the application under Section 11 as also in the writ petition filed by the Petitioner. The rejection of the additional claims has in fact resulted in greater delay rather than expeditious disposal.* ***The bona fides of the Petitioner are not in question. Rejection of additional claims by the impugned order have all the trappings of an award and hence the Section 34 petition is clearly maintainable.*** *On the basis of the tests laid down in Shah Babulal Khimji (supra), the rejection of the application to add or expand the amounts claimed under certain heads results in a conclusive determination that the said claims cannot be adjudicated. Thus, there is not just formal adjudication but in fact a final rejection of the said claims. This constitutes a dismissal of the claims and hence would constitute an award within the meaning of Section 2(1)(c) of the Act."*

(Emphasis Supplied)

18. In ***MBL Infrastructure Ltd.*** (supra), a Division Bench of this

court, reiterated the above principle, in the following words:

> *"**45.**In our view, the extract from the judgment of the Supreme Court in IFFCO case (supra) is clear and categoric. A decision of an Arbitral Tribunal which brings a quietus to an issue before it and is an order which the Arbitral Tribunal is empowered to pass at the final stage would constitute an interim award within the meaning of Section 31(6) as also Section 34 of the Act."*

19. In ***Goyal MG Gases Pvt. Ltd.*** (supra), though on facts the Division Bench held that a decision of the learned Arbitrator dismissing an application filed under Order I Rule 10 of the CPC does not amount to an *interim* Award, reiterated the principles applicable to determine if an order amounts to an *interim* Award or not, in the following words:

> *"**20.**It is reflecting that an order would said to be an award or interim award when it decides a substantive dispute which exists between the parties. It is essential before an order can be understood as an award that it answers the attributes of the decision on the merits of the dispute between the parties or accords in conclusively settling a dispute which pertains to core issue. Therefore to qualify as an award it must be with respect to an issue which constitutes a vital aspect of the dispute. As held in the case of Rhiti Sports the order passed by the arbitral tribunal would have the attributes of an interim award when same decides the 'matters of moment' or disposes of a substantive claim raised by the parties. Accordingly, an order passed by the Arbitral Tribunal rejecting the application for impleadment neither decides the substantive question of law nor touches upon the merits of the case. The impugned order, as such, has not travelled the distance to answer the attributes of determination of an issue."*

20. In ***Rhiti Sports Management Pvt. Ltd.*** (supra), a learned Single Judge of this Court reiterated that for an order to qualify as an Award, whether final or *interim*, it must settle a dispute on which the parties are at issue; any procedural order that does not settle a matter on which the parties are at issue, will not qualify to be termed as an Award.

21. In the present case, the summary of the applications has been given hereinabove. In determining these applications, the learned Sole Arbitrator framed the following issues for consideration:

> *"1) Whether there is any truth in the allegation of the Respondent that the Claimant has started filing I.As in order to get over the evidence of its witness CW-1 by shifting its stand from whether the Model 'A' Boot's were not defective, to a new case that the Crampons used by the Respondent were "incompatible"?*
> *(2) Whether I.A.3 filed on 17-7-1999 for discovery, after the completion of the evidence of CW1 on 23-2-1999 is very much belated and is liable to be dismissed?*
> *(3) Whether the I.A. is in the nature of a fishing and roving enquiry, particularly in the light of the submissions of the learned counsel for the claimant in respect of Documents 1 and 2 in the I.A. (The Field Trial Directive for Boot Crampon 1990-91, and Dec, 1990) and is liable to be dismissed?*
> *(4) Whether Ex.P.3 filed along with the Rejoinder in the 1.A.3 r/w the DGQA Report supplied under the RTI Act prove that Crampons were supplied to the Respondent by the M/s. JAMDPAL & CO, haring been manufactured by M/s. Camp & Co?*
> *(5) Whether I.A.3/2009 for discovery documents 3 and 4 relating to M/S.JAMOPAL & co is maintainable, in the absence of any allegations in the Claim statement and the*

Rejoinder to the Defence statement that the said company supplied the Crampons to the respondent and that they were 'incompatible'?
(6) Whether, assuming that the Crampons (manufactured by Camp & Co.,) were supplied by M/s. JAMDPAL & Co., there is any material or basis set out in I.A. 3 of 2009 for contending that the Crampons used by the Respondent were 'incompatible'? Whether consequentially the application for the discovery of Documents 3 & 4 in the I.A. is not maintainable?
7) Whether the principle contended for by the learned counsel for claimant "that evidence led on a question though not specifically covered by an issue, such evidence cannot be eschewed or ignored", is applicable in respect of Documents 3 and 4 in the L.A.?
(8) Whether the points raised by the Claimant in its Written submissions dt. 14.4.2010 and 31.8.2010 are correct?
(9)Whether the documents 3 & 4 in the I.A. cannot be directed to be produced by the Respondent in view of the Reply of the Respondent that they deal with facts relating to the 'affairs of State' or because disclosure could be detrimental to interest of the Government of India and also being against public interest?"

(Emphasis Supplied)

22. The learned Sole Arbitrator, in answering issue no. 6 framed by him, held as under:-

"Points: 6:

Under this point, the question is ***whether, assuming that the Crampons(manufactured by Camp & Co.,) were supplied by M/s. JAMDPAL & Co., there is any material or basis set out in I.A. 3 of 2009 for contending that the Crampons used by the Respondent were 'incompatible'?*** *Whether consequentially the application for the discovery of Documents 3 & 4 in the I.A. is not maintainable?.*

*****

> ***I may make it clear that though I am compelled to go into question as to whether any material is filed to prove the non-compatibility or otherwise of the Crampons used by the respondents because of the allegations in the I.A.****, my finding on Point No.5 continues to hold good that it is not open to the claimant to make these allegations in the I.A. when no such allegation was made in the clairn statement, the rejoinder of the claimant and no issue was sought as to whether the Crampons used by the respondent were incompatible.* ***As already stated, the only issue 6 related to the question whether the Model 'A' Boots were defective or substandard****.*
>
> ******
>
> *From the above material before the Arbitral Tribunal,* ***it is clear that there is evidence that the Crampons supplied by M/s. JAMDPAL & Co., to the respondent were satisfactory and that there is no basis or material to the contrary and hence the allegation in I.A.3/2009 that the Crampons supplied by JAMDPAL & Co., and used by the respondent were 'incompatible', is not correct****.*
>
> ***(Emphasis Supplied)***

23. From the reading of the above findings, it is evident that the learned Sole Arbitrator has given a final finding on the issue whether the Crampons supplied by JAMDPAL & Co. were defective or not, thereby, giving a final adjudication on one of the defences which the appellant tried to raise in the arbitration proceedings. The question whether the appellant could at all be allowed to raise this defence, given the pleadings and the issues framed, is different from the conclusion reached by the learned Sole Arbitrator that from the material placed on record in the arbitration proceedings it was proved

that the "*Crampons supplied by M/s. JAMDPAL & Co., to the respondent were satisfactory and that there is no basis or material to the contrary and hence the allegation in I.A.3/2009 that the Crampons supplied by JAMDPAL & Co., and used by the respondent were 'incompatible', is not correct.*"

24. In addition to the above, in deciding point no. 3 framed by the learned Sole Arbitrator for I.A. 4 of 2009 filed by the appellant herein, the learned Sole Arbitrator discussed at length the DGQA report, and observed as under:

> *"I do not propose to comment on para 5.1 of the Report which deals with the defects in the Boots Multipurpose Model 'A' in as much as that is a matter which has to be gone into the under Issue No.6 in the main Arbitration Case.*
>
> *But, the discussion in this I.A. 4 of 2009 in regard to para 5.3, and 5.7 of the DGQA Report will be the same as in I.A. 3 of 2009. As stated in I.A. 3 of 2009, what is of importance is the detailed report on Crampons contained in para 5.3 rather than the single sentence in para 5.7 and in fact, both paragraphs have to be read together. If that is done, it is clear from para 5.3 that the soldiers, the training school, the DGQA team, and the Head Quarters XIV Corps all unanimously observed that the Crampons manufactured by M/s. Camp & Co. (which according to claimant were supplied by M/s.JAMDPAL & Co to the Respondent) were good and their procurement should he continued in future. But so far as the Crampons supplied by M/s.Stubai, Austria were concerned, they sated that the said Crampons should be discontinued and whatever balance of Crampons that were supplied by that company remained, they should be used in the training school only. If the crampons manufactured by M/s.Camp &*

Co. (which were, according to claimant, were supplied by M/s.JAMDPAL & Co.) were "incompatible", it is obvious that the soldiers, the training school, the DGOA team which actually observed the use of Crampons and the Head Quarters of XIV Corps would not have recommended that the procurement thereof should be continued in future also.

As stated in I.A. 3 of 2009, it is because of the above facts contained in para 5.3 of the GOA Report, the claimant has conveniently not referred to the said para in I.A.4/2009 and has straight away gone to para 5.7 which is in a single line in which it was stated that "Crampons do not fit in all sizes of Boots Multipurpose and proceeded to state that para 5.7 contained an "admission" that the Crampons used by the Respondent on the Boots were "incompatible". However, as pointed out above, there is no such admission either in para 5.3 or 5.7 and in fact, on the other hand, para 5.3 contains a recommendation for continuing the procurement of the Crampons manufactured by M/s. Camp & Co., (which according to the claimant were supplied by M/s.JAMDPAL & Co to Respondent) and obviously those Crampons were not reported by the soldiers or the training school to be incompatible. Indeed if the said Crampons were "incompatible", the team would not have recommended their future procurement. It is also important notice that the recommendation in para 5.3 is both by the soldiers and by the training school. In para 5.7 the training school cannot be contradicting itself in para 5.7, what it had stated in the elaborate observations made by it in para 5.3.*

Thus the allegation in the discovery application I.A.4/2009 that para 5.7 of the DGOA Report contained an admission by the respondent that the Crampons used by the respondent were "incompatible" has no basis and the claimant has wrongly arrived at that inference by straight away going to single sentence in para 5.7 and by deliberately

omitting to refer elaborate report on the Crampons that were actually used by troops, as contained in para 5.3 of the report. If the assumption of the claimant that there is an admission in para 5.7 of the DGQA Report is therefore wrong for the reasons given above, the request for discovery of the investigation by the concerned AHSP and further correspondence on the subject, cannot be accepted."

25. The learned Sole Arbitrator then proceeded to answer point no. 4 framed by him and, in answering to the same, again observed as under:

"So far as the present documents sought for in this I.A.4/2009 are concerned, here also, there is no material produced to show that the Crampons were 'incompatible'. The claimant wants to go for a fishing and roving enquiry. ***Once para 5.3 specifically deal with the Crampons manufactured by M/s. Camp & Co., (supplied by M/s. JAMDPAL & Co.) are fully satisfactory for the soldiers, the Siachen Training School, the DGQA team and Hq Corps XIV, and they wanted that those Crampons to be procured in future also. The matter should end there.*** *So far as the para 5.7 is concerned, all that the Siachen Training School stated was that "Crampons do not fit in all the sizes of Boots multipurpose. It was suggested that matter will be investigated by concern AHSP and further correspondence all the subject will follow". This general remark does not specifically refer to the Crampons manufactured by M/s. Camp &Co. which had been used and which were found to be satisfactory and the training school had also recommended, along with the soldiers, that those specific Crampons should be further procured in future."*

(Emphasis Supplied)

26. From a reading of the above extracts of the decision dated 18.11.2010 of the learned Sole Arbitrator, it would be evident that apart from dismissing the applications filed by the appellant on the ground of them being belated or as being in the nature of a fishing and roving inquiry, the learned Sole Arbitrator has gone ahead and considered whether there was any truth in the claim of the appellant that the Crampons used by the respondent were incompatible with the boots supplied by the appellant or were in any manner defective. The learned Sole Arbitrator, in answering the same, has discussed in detail the DGQA reports and other material and concluded, based thereon, that there was evidence supporting the fact that the Crampons supplied by M/s. Camp & Co. / M/s JAMDPAL & Co. to the respondent were satisfactory and, on the contrary, there was no material to show that these were incompatible. In our view, this is a final finding of fact by the learned Sole Arbitrator. Whether this finding was necessary to be given by the learned Sole Arbitrator or not for the decision on the applications filed by the appellant, is not relevant to determine whether the decision dated 18.11.2010 of the learned Sole Arbitrator can be termed as an 'Award' or not. What is relevant is that the learned Arbitrator's findings conclusively decide the issue of whether the Crampons supplied by M/s. Camp & Co./ M/s JAMDPAL & Co. were not satisfactory or were incompatible, against the appellant. This finding is conclusive and binding on the parties to the arbitration.

27. We must herein itself also note that the learned Sole Arbitrator had, at least at two places in the impugned decision, cautioned that all his observations are only *prima facie* in nature, which, for the sake of

convenience are reproduced herein below:

> *"(Note: The under mentioned discussion has become necessary in this I.A. in view of the elaborate arguments submitted by the learned Counsel for the Claimant and also in view of his written submissions of the Claimant dated 14-4-2010 und Rejoinder written submissions dt.31-8-2010. My observations herein below are therefore, to be understood as having become necessary to answer the various points raised by the learned counsel for the Claimant in this I.A. However, observations made by me in regard to the allegations made by the Claimant in its Rejoinder in the main arbitration case are prima-facie observations to meet the contentions of the Claimant in the above said written submissions and have to be dealt with again in the main arbitration case).*
>
> *xxxxx*
>
> *Before concluding, I invite the attention of the parties to the "Note" set out in I.A.3/2009 before starting the discussion on the Points of that I.A. What I said in that Note applies equally to the discussion in I.A.4/2009. Therefore, any observations touching on the contentions of the parties in the main pleadings in the arbitration case, have become necessary in these two I.As 3 and 4/2009 only to meet the allegations and points raised by the claimant in these I.As and but for the same, I would not have made any observations concerning the allegations in the main arbitration case. It is made clear that the allegations in the main arbitration case will be decided on the basis of the evidence and the arguments relevant there for in the light of the issues already framed and that will be done without reference to any observations in I.As 1 to 4 of 2009."*

28. The learned Arbitrator has further, in his Order dated 05.04.2011, clarified as under:-

> *"The above statement of the claimant requires clarification by the Tribunal. The statement made by the claimant in the Application dated 23-3-2011 while seeking adjournment of the proceedings before the Tribunal that the Tribunal had passed an "award" on 18-11-2010, it must be pointed out, is an incorrect statement. The Tribunal did not pass any award on 18-11-2010 nor did it use the word "award" in its said order as wrongly claimed by the claimant in the said adjournment Application. The Arbitral Tribunal had only passed orders on 4 IAs filed by the claimant seeking to apply Order 11 Rule 12 and 14 of the Code of Civil Procedure, 1908 for discovery and inspection.*
>
> *It may be that the claimant approached to the Hon'ble High Court contending that the Arbitral Tribunal had passed an "award" but the Tribunal only wants to clarify that it had not passed any "award" nor used the word "award" as claimed by claimant in the Application for adjournment. This clarification has become necessary lest it may be contended that the Arbitral Tribunal did not object to its orders dated 18-11-2010 being described by the claimant as an "award".*
>
> *It is however, for the Hon'ble High Court to decide whether the application under Sec.34 is maintainable and whether the claimant could describe the orders of the Tribunal dated 18-11-2010 as amounting to an "award".*"

29. The above cautionary 'Note' appended by the learned Arbitrator and his opinion in the subsequent Order dated 05.04.2011, however, cannot detract from the fact that the learned Sole Arbitrator has given his final findings on the issue as to whether the Crampons supplied by M/s JAMDPAL & Co. can be said to be incompatible with the boots supplied by the appellant herein and therefore, has curtailed the

defence or a point of attack for the appellant. Though these findings are given in answer to the applications filed by the appellant seeking discovery of documents, they are substantial and final findings on facts determining a dispute and substantive rights of the parties. The decision dated 18.11.2010 of the learned Sole Arbitrator, therefore, on merits disposes of a substantive claim of the appellant and would, therefore, applying the above-extracted principle of law, amount to an *interim* Arbitral Award on the said issue.

Conclusion:

30. We, therefore, find that the learned Single Judge has erred in holding that the decision dated 18.11.2010 of the learned Sole Arbitrator was not an '*Award*' and, therefore, not amenable to a challenge under Section 34 of the A&C Act. We hold that the decision dated 18.11.2010, insofar as it decided the issue as to whether the Crampons supplied by M/s JAMDPAL & Co. were incompatible with the boots supplied by the appellant, is an 'Arbitral Award' and, therefore, amenable to a challenge under Section 34 of the A&C Act. We, however, hasten to clarify that we have not discussed nor our decision should be read as in any manner opining on the merit or demerit of the challenge of the appellant to the decision dated 18.11.2020 of the learned Sole Arbitrator. The same shall have to be considered by the learned Single Judge applying the principles that are applicable to an application filed under Section 34 of the A&C Act.

Directions:

31. Consequentially, the Impugned Judgment dated 20.08.2024

passed by the learned Single Judge in OMP (COMM) 216/2020 is set aside. OMP (COMM) 216/2020 titled ***APTEC Advanced Protective Technologies Ag v. Union of India***, is restored to be adjudicated on merit by the learned Single Judge of this Court.

32. As OMP (COMM) 216/2020 has been pending adjudication since 2011, we request the learned Single Judge to expedite the adjudication of the same on merits. For the said purpose, we direct the parties to appear before the learned Single Judge on 3rd February, 2025 for further directions.

33. We again reiterate that we have not gone into the merits of the challenge laid by the appellant to the findings of the learned Sole Arbitrator, and any observations in that regard made hereinabove would, in no manner, bind or influence the learned Single Judge while adjudicating the petition filed under Section 34 of the A&C Act by the appellant.

34. With the above observations and directions, the appeal, along with pending application(s) is disposed of.

NAVIN CHAWLA, J

SHALINDER KAUR, J

JANUARY 13, 2025*/rv/VS*

Click here to check corrigendum, if any