IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (LODGING) NO. 24652 OF 2024
IN
COMMERCIAL ARBITRATION PETITION NO. 389 OF 2024

Urban Infrastructure Trustees Limited ...Applicant
Respondent No.1

IN THE MATTER BETWEEN :

Neelkanth Mansions and Infrastructure
Private Limited & Anr. ...Petitioners

Versus

Urban Infrastructure Trustees Limited & Anr. ...Respondents

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- Mr. Janak Dwarkadas, Senior Advocate a/w. Mr. Gaurav Joshi, Senior Advocate, Mr. Kazan Shroff, Mr. M. S. Federal, Mr. Murtuza Federal, Ms. Rashne Mulla-Feroze, Mr. Aaroha Kulkarni and Mr. Nikhil Jalan i/b. Federal & Company for Petitioners in CARBP/389/2024 and for Plaintiff in Suit/255/2024.
- Mr. Navroz Seervai, Senior Advocate a/w Mr.Aditya Bapat, Mr. Arup Pereira, Ms. Mumtaz Bandukwala, Mr. Sandeep Junnarkar and Mr. H. Bhati i/b Junnarkar and Associates for Respondent No.1 in CARBP/389/2024.
- Mr. Shiraz Rustomjee, Senior Advocate a/w Mr. Aditya Bapat, Mr. Arup Pereira, Ms. Mumtaz Bandukwala, Mr. Sandeep Junnarkar and Mr. H. Bhati i/b Junnarkar and Associates for Defendant Nos.1 and 2 in Suit/255/2024.
- Mr. Dinyar Madon, Senior Advocate a/w Mr. J. S. Kini a/w. Mr. Aum Kini i/b. Ms. Sapna Krishnappa for Defendant No.3 in Suit/255/2024.
- Mr. J. S. Kini a/w. Mr. Aum Kini i/b. Ms. Sapna Krishnappa and for Respondent No.2 in CARBP/389/2024.

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CORAM : MANISH PITALE, J.

DATE : 23rd JUNE 2025.

ORDER:

1. The respondent No.1 (original claimant) has filed this application for deciding a preliminary issue regarding maintainability of arbitration

petition filed under Sections 14, 15 and 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Arbitration Act"), with a further prayer for accepting the preliminary objection and dismissing the arbitration petition as not maintainable.

2. The arbitration petition challenges an order dated 07th May 2024, passed by the learned Arbitrator dismissing an application filed by the petitioners (original respondents before the Arbitrator) under Section 32 of the Arbitration Act. According to the petitioners herein, in the light of certain developments that took place during the pendency of the arbitration proceedings, it had become impossible to continue the said proceedings as per Section 32(2)(c) of the Arbitration Act. The learned Arbitrator passed a detailed order on 07th May 2024, disagreeing with the petitioners and consequently dismissed the said application.

3. Mr. Navroz Seervai, learned senior counsel appearing for the applicant (respondent No.1) submitted that Section 32 of the Arbitration Act specifies the scenarios in which arbitration proceedings terminate and the said provision makes a clear distinction between an "Award" and an "Order". By emphasizing upon the contents of sub-Sections (1) and (2) of Section 32 of the Arbitration Act, the aforementioned distinction was highlighted and it was submitted that in the present case, the petitioners sought termination of the

arbitration proceedings before the learned Arbitrator on the assertion that in the light of certain circumstances it had become impossible to continue the Arbitral proceedings. It was submitted that the form of the application filed by the petitioners before the learned Arbitrator and its contents, both were relatable to Section 32(2)(c) of the Arbitration Act and a perusal of the order dated 07th May 2024, passed by the learned Arbitrator would show that power under that very provision was exercised while dismissing the application of the petitioners. By referring to the contents of the impugned order, it was submitted that, only the question of alleged impossibility of continuation of the arbitral proceedings, was considered and hence, the impugned order was nothing but an order refusing to terminate the arbitral proceedings as sought by the petitioners under Section 32(2)(c) of the Arbitration Act.

4. On this basis, it was submitted that the impugned order cannot be termed as an "Award" and hence the petition filed by the petitioners under Section 34 of the Arbitration Act, is not maintainable. It was submitted that the question decided in the impugned order had nothing to do with the lis between the parties and the disputes that are subject matter of the pending arbitral proceedings and therefore, it can neither be termed as an "Interim Award" nor a "Partial Final Award", as sought to be projected on behalf of the petitioners.

5. In this context, learned senior counsel appearing for the applicant submitted that the claim of the petitioners that if the preliminary objection was accepted, they would be left remediless, is a submission without any merit. In this context specific reliance was placed on judgment of the Delhi High Court in the case of **Future Coupons Private Limited & Ors. Vs. Amazon.Com & Anr.**[1]. It was clarified in the said judgment that in such situations, the aggrieved party can certainly challenge the order if the arbitral award goes against it and an occasion arises for filing a petition under Section 34 of the Arbitration Act to challenge such a final award. Reliance was also placed on judgment of this Court in the case of **M/s. Anuptech Equipments Private Limited Vs. Ganpati Co-Operative Housing Society**[2]**.** By referring to the judgment in the case of **Ramchandra Udaysinh Jadhavrao Vs. Girishnavnathrao Avhad and another**[3]**,** it was submitted that, only if the application filed by the petitioners for termination of the arbitral proceedings was allowed by the learned Arbitrator, the remedy under Sections 14 and 15 of the Arbitration Act would be available. In this context, attention of this Court was invited to the judgment of the Supreme Court in the case of **Lalitkumar Sanghavi Vs. Dharamdas V. Sanghavi**[4]**,** followed by this Court in the case of **Neeta Lalit Sanghavi Vs. Bakulaben Dharamdas Sanghavi**[5]**.**

1 2022 SCC OnLine Bom 3890
2 1999 SCC OnLine Bom 54
3 2023 SCC OnLine Bom 2470
4 (2014) 7 SCC 255
5 2019 SCC OnLine Bom 250

6. It was submitted that the petitioners are not justified in invoking Sections 14 and 15 of the Arbitration Act, to challenge the impugned order because the said provisions can be invoked only if the mandate of the Arbitrator terminates. In the present case, the arbitration proceedings are very much alive and the same are at the stage of final hearing before the learned Arbitrator. It was highlighted that the arbitration between the parties has been pending for about 10 years now, with the petitioners making all efforts to derail the same and in this backdrop the said application was filed claiming that it was impossible to continue the arbitral proceeding in the light of certain events that had occurred during the pendency of the arbitration. Since the present application is restricted only to the question of maintainability of the petition, the learned senior counsel appearing for the applicant did not refer to the merits of the challenge, although he indicated that the point raised on behalf of the petitioners, on the basis of the events that took place during the pendency of the arbitration, has been already rejected by this Court in the context of this very applicant by an order dated 22nd April 2025 passed in Interim Application No.1144 of the 2021 in Commercial Execution Application No.194 of 2020. On this basis, it was submitted that the arbitration petition against the impugned order is not maintainable and it ought to be dismissed, so that the final hearing in the arbitration proceeding can be undertaken at the earliest.

7. On the other hand, Mr. Janak Dwarkadas, learned senior counsel appearing for the original petitioners submitted that this Court ought to look at the substance and not the form. According to him, even if the petitioners had filed the application under Section 32 of the Arbitration Act, it was necessary to examine the manner in which the application was decided by the learned Arbitrator and as to whether the impugned order finally decided an issue arising squarely between the parties to the arbitration. It was submitted that if a proper examination was to be undertaken, it would be clear that the impugned order is nothing but an "Award." By referring to Sections 31 and 32 read with Section 2(1)(c) of the Arbitration Act, it was submitted that a final award would include an interim award. It was submitted that Section 31(6) of the Arbitration Act provides that an Arbitral Tribunal can make an interim arbitral award on any matter with respect to which it may make a final arbitral award. On this basis, it was submitted that the issue raised in the application filed before the learned Arbitrator gave rise to findings that could be termed as an interim award or if the application were to be allowed it would have been a final award. It was further submitted that the words used in Section 31(6) of the Arbitration Act are crucial in this context, for the reason that the issue squarely raised by the petitioners invited the learned Arbitrator to give findings and he rendered an award, thereby indicating that the petition filed under Section 34 of the Arbitration Act is clearly maintainable and the instant

application deserves to be dismissed.

8. The learned senior counsel appearing for the petitioners referred to the aforementioned judgments, upon which reliance was placed on behalf of the applicant. Much emphasis was placed on the observations made by this Court in the case of ***Ramchandra Udaysinh Jadhavrao Vs. Girishnavnathrao Avhad (supra),*** wherein it was stated that if a lis between the parties on any issue is finally decided by the Arbitrator, it would amount to an "Award." The judgment of the Delhi High Court in the case of ***Future Coupons Private Limited & Ors. Vs. Amazon.Com & Anr (supra),*** was also sought to be interpreted in favour of the petitioners by contending that the impugned decision or order passed by the learned Arbitrator did dispose of an issue that touched upon the merits of the matter, thereby indicating that it was nothing but an "Award", susceptible to challenge under Section 34 of the Arbitration Act.

9. The learned senior counsel appearing for the petitioners, relied upon judgment of the Division Bench of this Court in the case of **Aero Club Vs. Solar Creations Private Limited**[6], wherein tests to treat an interim award or partial final award as an arbitral award were formulated by this Court. It was submitted that the impugned order passed by the learned Arbitrator satisfies all the three tests. It was indicated that a fourth test could be added to

6 2020 SCC OnLine Bom 6078

examine as to whether the findings rendered in such an order would amount to *res judicata* and if so, the order would have to be treated as an award and hence, capable of being challenged under Section 34 of the Arbitration Act. It was further submitted that the petitioners have much to say about findings rendered by the learned Arbitrator in the impugned order and that the same can be canvassed before this Court upon dismissal of the instant application.

10. This Court has considered the rival submissions in the light of the provisions of the Arbitration Act and the nature of power exercised by the learned Arbitrator, while passing the order dated 07th May 2024. There can be no doubt about the fact that substance would prevail over form. Yet, it would be necessary to consider the documents on record to examine as to in what manner did the petitioners invoke the jurisdiction of the learned Arbitrator while filing the application, leading to the aforesaid order challenged in the accompanying petition. The application itself specifically invoked Section 32(2)(c) of the Arbitration Act, which invited the learned Arbitrator to render a finding that the continuation of the arbitration proceedings had become impossible. The learned Arbitrator considered the contentions raised on behalf of the petitioners in the context of the events that took place during the pendency of the arbitration proceedings to examine as to whether such events had led to a situation where continuance of the arbitration proceedings had become impossible. The learned Arbitrator

examined only this aspect while considering the rival submissions and thereupon, rendered a finding that the claim regarding impossibility of further continuance of the arbitration proceedings was without any merit. After rendering such finding, the learned Arbitrator dismissed the application. The application filed by the petitioners before the learned Arbitrator and the order dated 07th May 2024, passed thereupon do indicate that the petitioners specifically invoked the jurisdiction of the learned Arbitrator, only under Section 32(2)(c) of the Arbitration Act.

11. In this context, it would be appropriate to refer to Section 32 of the Arbitration Act, which reads as follows :

> *"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).*
>
> *(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—*
>
> *(a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,*
>
> *(b) the parties agree on the termination of the proceedings, or*
>
> *(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become*

unnecessary or impossible.

(3) Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings."

12. There is substance in the contention raised on behalf of the applicant that the above quoted provision clearly distinguishes between an arbitral award on the one hand which leads to termination of the arbitral proceedings and on the other hand, an order that can also lead to termination of such proceedings. Sub-section (1) of Section 32 of the Arbitration Act makes the distinction clear, highlighting the fact that an order that would terminate the arbitral proceedings, as opposed to an arbitral award, would be an order under sub-section (2) of Section 32 of the Arbitration Act.

13. Section 32(2) of the Arbitration Act specifies three types of orders that an Arbitral Tribunal can pass, which would lead to termination of the arbitral proceedings. Clause (a) pertains to a situation where the claimant withdraws the claim, clause (b) pertains to a situation where the parties agree on the termination of the proceedings and clause (c), with which we are concerned, invites the Arbitral Tribunal to render a finding that continuation of the arbitration proceedings for any reason has become unnecessary or impossible. Thus, it is clear that if an order is passed by the Arbitral Tribunal under Section 32(2) of the Arbitration Act, as per the legislative scheme, it can

never be an arbitral award. This Court in the case of ***Ramchandra Udaysinh Jadhavrao Vs. Girishnavnathrao Avhad (supra),*** took note of the fact that Section 34 of the Arbitration Act, which provides for remedy to challenge an arbitral award, specifically uses the words "Recourse to a Court against an arbitral award may be made only by an application for setting aside such award". It was specifically found that these words indicate that the remedy under Section 34 of the Arbitration Act is available only for challenging an arbitral award. In the said judgment, this Court further held that an order passed under Section 32(2)(c) of the Arbitration Act, leading to termination of the proceedings, is not an arbitral award and in such a situation, the remedy of Section 34 of the Arbitration Act is not available.

14. In the said case, this Court considered the question as to what would be the remedy for an aggrieved party against such an order, which is not an arbitral award. In that context, by following the law laid down by the Supreme Court in the case of ***Lalitkumar V. Sanghavi Vs. Dharamdas V. Sanghavi (supra)*** and by this Court in ***Neeta Lalit Sanghavi and Anr. Vs. Smt. Bakulaben Dharamdas Sanghavi (supra),*** it was held that the only remedy available would be to approach the Court under Section 14 of the Arbitration Act. Reference was made to the judgment of the Delhi High Court in the case of **Shushila Kumari & Anr. Vs. Bhayana Builders Private Limited**[7]**,** wherein it

7 2019 SCC OnLine Del 7243

was observed that there appeared to be a lacuna in the Arbitration Act, as no clear remedy was provided to an aggrieved party to challenge an order, whereby an Arbitral Tribunal terminates the proceedings under Section 32 of the Arbitration Act. This Court was also of the opinion that there is indeed such a defect or lacuna, but the forum for remedying the same is the legislature. In that context, it was held that the aggrieved party in the said case would have to approach the Court under Section 14 of the Arbitration Act, reinforcing the finding that an order under Section 32(2)(c) of the Arbitration Act cannot be termed as an arbitral award.

15. In the face of such an empathic position of law clarified by the Courts, an attempt has been made on behalf of the petitioners to claim that the order passed by the learned Arbitrator, in its true form, is nothing but an award and hence, the petition filed under Section 34 of the Arbitration Act is maintainable. It is in this context that the petitioners have relied upon certain observations made in the above referred judgments to the effect that if the order finally decides an issue between the parties, it has to be treated as an interim award or a partial final award. Such an attempt has been made to wriggle out of the aforementioned position of law clarified by this Court as regards Section 32 of the Arbitration Act. Therefore, much emphasis has been placed on "content" over "form". Therefore, it is necessary to consider the said contention also.

16. In this context, a perusal of the order passed by the learned Arbitrator would show that the arbitration proceeding between the parties have been pending since the year 2015. It has reached the stage of final hearing and at this stage the petitioners moved the aforesaid application, relying upon certain events that took place during the pendency of the arbitration proceedings to claim that it had become impossible to continue with the arbitration. Apart from the fact that the application was specifically filed under Section 32(2)(c) of the Arbitration Act, the issue sought to be raised on behalf of the petitioners had nothing to do with the issues for consideration in the arbitration proceedings. It had nothing to do with the disputes with which the parties entered into arbitration and for which the learned Arbitrator was called upon to consider the pleadings, material and evidence on record to render an award. The issue specifically raised on behalf of the petitioners was with regard to the alleged impossibility of continuing with the arbitral proceedings. It is in this context that the learned Arbitrator considered the rival submissions and rendered findings against the petitioners, to hold that the arbitration proceeding could very well continue and hence, the said application filed by the petitioners was dismissed.

17. The contents of the impugned order in no manner qualify to be an award, simply being an order, in form as well as content, under Section

32(2)(c) of the Arbitration Act.

18. Even if the tests indicated in the judgment of this Court in the case of ***Aero Club Vs. Solar Creations Private Limited (supra),*** are to be applied, the impugned order in the present case cannot qualify as an interim award or partial final award. In this context, the relevant portion of the judgment of the Division Bench of this Court in the case of ***Aero Club Vs. Solar Creations Private Limited (supra),*** is relevant and it reads as follows :

> *"(C) The predominant tests to treat an "interim award" or "partial final award" as an "arbitral award" under section 2(1)(c) of the said Act would be three fold :*
>
> *[i] that it satisfies the tests of the form and contents of an award under sub-sections (1), (2) and (3) of section 31 of the said Act;*
>
> *[ii] it is in relation to "any matter" with respect to which a final arbitral award can be made; as specified under sub-section (6) of section 31 of the said Act; and*
>
> *[iii] the nature, extent and intendment of such order, decision or adjudication.*
>
> *. If all these tests are satisfied, then, interim award or partial final award shall become an "arbitral award" as per section 2(1)(c) of the said Act and consequently, the bar of limitation under sub-section (3) of section 34 of the said Act shall be attracted in each case, even in respect of such an award."*

19. This Court is of the opinion that the impugned order passed by the learned Arbitrator in form and content being an order under Section 32(2)(c) of the Arbitration Act, does not amount to either an interim award or partial final award under Section 31(6) and 2(1)(c) of the Arbitration Act; it is not in relation to any matter in respect of which a final award can be made; the nature, extent and intendment of the order is only to decide whether it has become impossible to continue with the arbitration and even the fourth test proposed on behalf of the petitioners to the effect as to whether the findings would amount to *res judicata,* is also not satisfied in the present case.

20. It is to be noted that the Division Bench of this Court in the case of ***Aero Club Vs. Solar Creations Private Limited (supra),*** was considering a situation where, in the proceedings before the learned Arbitrator, the parties themselves by consent had decided that the proceedings would be split into two and the learned Arbitrator was called upon to pass a partial final award covering all issues which arose for consideration other than final calculations and qualifications. It is in the context of the aforesaid factual position that the Court was called upon to consider the aspect of limitation to challenge such an award. The factual position in the present case is clearly distinguishable and hence, reliance placed on the said judgment on behalf of the petitioners is wholly misplaced.

21. An attempt was made on behalf of the petitioners to claim that if the accompanying petition is dismissed as not maintainable, they would be rendered remediless. This Court finds no substance in the said contention raised on behalf of the petitioners. It would always be open for the petitioners to raise appropriate challenge to the findings rendered in the aforesaid order dated 07th May 2024, passed by the learned Arbitrator, in the event the arbitral award goes against them and an occasion arises to move an appropriate application/petition before the Court to challenge the arbitral award. If the petitioners are required to institute such a proceeding under Section 34 of the Arbitration Act to challenge the final award, they could certainly raise grounds of challenge with regard to findings rendered in the said order passed by the learned Arbitrator dismissing the application filed by them. Therefore, there is no question of the petitioners being rendered "remediless" as against the said order and the findings rendered therein.

22. The Delhi High Court in ***Future Coupons Private Limited & Ors. Vs. Amazon.Com & Anr (supra),*** rejected an identical argument, holding that the petitioners would not be left remediless and that they do have a remedy, but for the fact that they have to bide their time. This Court agrees with the said conclusion reached by the Delhi High Court.

23. There is also no substance in the emphasis placed on behalf of the

petitioners, in the context of the said judgment of the Delhi High Court in the case of ***Future Coupons Private Limited & Ors. Vs. Amazon.Com & Anr (supra),*** **that** the order impugned in the said case specifically stated that the decision did not decide any issue on the merits of the case and that it did not constitute an award within the meaning of Section 2(1)(c) of the Arbitration Act. It matters little what the order of the Arbitral Tribunal states, because the most crucial aspect of the matter is, as to the power exercised by the Arbitral Tribunal, leading to an order, which becomes the subject matter of challenge. In the present case, as noted hereinabove, in its form as well as content the order passed by the learned Arbitrator is clearly an order under Section 32(2)(c) of the Arbitration Act, holding that the plea regarding impossibility of continuance of the arbitral proceeding is meritless and hence rejected. Such an order can never be subject matter of a petition under Section 34 of the Arbitration Act. This Court has already noted hereinabove that there is no question of the petition being maintainable under Sections 14 and 15 of the Arbitration Act, for the simple reason that by the impugned order the mandate of the learned Arbitrator is not terminated. In fact, it was not even seriously pressed before this Court that the petition ought to be considered as one under Sections 14 and 15 of the Arbitration Act.

24. In view of the above, the instant application is allowed. It is held that the accompanying petition filed by the petitioners under Sections 14, 15

and 34 of the Arbitration Act is not maintainable against the order of the learned Arbitrator dated 07th May 2024. Consequently, the arbitration petition itself is dismissed as not maintainable. Any pending interlocutory applications in the arbitration petition also stand disposed of.

25. It is made clear that the petitioners would be at liberty to raise appropriate grounds of challenge concerning the said order dated 07th May 2024, passed by the learned Arbitrator, in the event the arbitral award goes against them and an occasion arises for them to file a petition under Section 34 of the Arbitration Act.

(MANISH PITALE, J.)