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A CASE STUDY ON SERI INFRASTRUCTURE FINANCE VS TUFF DRILLING ((2018) 11 SCC 470)

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ABSTRACT

The case study "***SERI Infrastructure Finance v. Tuff Drilling: Jurisdiction of Arbitral Tribunals under Section 25(a) of the Arbitration & Conciliation Act, 1996***" presents a landmark Supreme Court ruling addressing the tribunal's authority to reconsider termination orders. The case originated from Srei Infrastructure Finance Ltd.'s legal action against Tuff Drilling Private Limited under arbitration proceedings. Despite several opportunities, Tuff Drilling failed to submit its Statement of Claim, leading to termination of proceedings under Section 25(a) of the Act. Upon the claimant's application for recall, the tribunal rejected it, prompting a revision application before the Calcutta High Court. The High Court, recognizing the tribunal's power to review its orders, remitted the matter for reconsideration. Dissatisfied, Tuff Drilling appealed to the Supreme Court, which examined the jurisdiction of arbitral tribunals under Section 25(a). The court analyzed relevant provisions, precedents, and legislative intent, concluding that tribunals possess the authority to recall termination orders upon sufficient cause. This ruling clarifies procedural review in arbitration, ensuring fairness and procedural integrity. It sets a precedent for future cases, emphasizing the importance of considering circumstances before terminating proceedings. Despite strengths in promoting fairness and clarity, challenges like legislative ambiguity and potential for delay warrant attention. Nonetheless, the case underscores India's commitment to robust arbitration frameworks, promoting access to justice and reinforcing its position in international arbitration.

INTRODUCTION

In a notable case adjudicated upon by the Supreme Court in 2018, Srei Infrastructure Finance Ltd. initiated legal proceedings against Tuff Drilling Private Limited.¹⁷⁶⁸ The case pertained to arbitration proceedings governed by the Arbitration & Conciliation Act, 1996. The Supreme Court's ruling shed light on the tribunal's authority under Section 25(a) of the Act, which allows for the termination of proceedings in certain circumstances. Importantly, the Court elucidated that if the arbitral tribunal opts to terminate proceedings due to the claimant's failure to submit a statement of claim within the stipulated timeframe, it retains the prerogative to

reconsider its decision. This reconsideration is contingent upon the claimant providing a compelling justification for the delay. The Court underscored the tribunal's discretion in accommodating such delays upon the presentation of adequate reasoning, even permitting the retraction of the termination order post-conclusion of the proceedings.

FACTS

During the initial preliminary meeting held on August 27, 2011, between the Sole Arbitrator and the involved parties, it was stipulated that Tuff Drilling had to submit its Statement of Claim (SOC) by November 19, 2011. However, Tuff Drilling failed to adhere to this deadline. Despite an extension granted until December 9, 2011, the Claimant still did not file the required documentation. Consequently, on December 12, 2011, the tribunal decided to terminate the

¹⁷⁶⁸ (2018) 11 SCC 470.

proceedings in accordance with Section 25(a) of the A&C Act².

Following this termination, on January 20, 2012, the Claimant submitted an application detailing the reasons for the delay and seeking condonation for not filing the SOC on time, along with a request for the recall of the termination order. However, on April 26, 2012, the Tribunal rejected the Claimant's application, citing that it had already completed its functions and thus lacked the authority to revoke its termination order.

Dissatisfied with the Tribunal's decision, the Claimant pursued a revision application under Article 227 of the Constitution before the Calcutta High Court. The High Court, in its ruling, acknowledged the tribunal's power to reconsider its own orders. Consequently, it nullified the arbitral tribunal's decision and referred the matter back to the tribunal for a thorough review of the Claimant's application. Unhappy with the Calcutta High Court's judgment, the Original Respondent appealed to the Supreme Court.

LEGAL ISSUES

- Whether arbitral tribunal, which has terminated the proceeding under Section 25(a) due to non-filing of claim by claimant, has jurisdiction to consider the application for recall of the order terminating the proceedings on sufficient cause being shown by the claimant?
- Whether the order passed by the arbitral tribunal under Section 25(a) terminating the proceeding is amenable to jurisdiction of High Court under Article 227 of the Constitution of India.

PROCEDURAL HISTORY

1. The respondent initiated proceedings by applying Section 11 of the Arbitration and Conciliation Act, 1996, seeking arbitration based on a contract with the appellant.
2. With the consent of both parties, Sri Baskar Sen, Senior Advocate, Bar-at-Law, was

appointed as the sole Arbitrator. Consequently, the application under Section 11 was dismissed.

3. The arbitral tribunal, comprising a single arbitrator, convened for its first sitting on August 27, 2011. During this meeting, the tribunal directed the respondent to submit its statement of claim.

4. Despite being given multiple opportunities, the respondent failed to submit its claim by the designated dates. As a result, the tribunal terminated the proceedings on December 12, 2011, citing Section 25(a) of the Arbitration and Conciliation Act, 1996.

5. Subsequently, the claimant filed an application on January 20, 2012, seeking to recall the termination order and requesting an extension of time to file the statement of claim. The application detailed the reasons for the delay in filing the claim.

6. The appellant objected to the application, arguing that the tribunal had become functus officio following the termination of proceedings and thus lacked jurisdiction to reconsider its decision.

7. The tribunal rejected the claimant's application on April 26, 2012, upholding the appellant's objections.

8. Dissatisfied with the tribunal's decision, the claimant approached the Calcutta High Court, filing a revisionary application under Article 227 of the Constitution. The High Court held that the tribunal possessed the authority to recall its order and remitted the matter back to the tribunal for further consideration.

9. The appellant, aggrieved by the High Court's judgment, filed the present appeal before the Supreme Court.

10. The Supreme Court issued notice on July 7, 2015, and stayed the operation of the High Court's order. Despite being served, the respondent did not appear during the proceedings.

11. During the hearing on August 29, 2017, the Supreme Court noted the significance of the legal questions involved and sought assistance

from Shri Rakesh Dwivedi, Senior Advocate, to aid in resolving the issues.

12. The Supreme Court heard arguments from both parties' counsels and the amicus curiae, Shri Rakesh Dwivedi.

ARGUMENTS OF THE PARTIES

Appellant's Arguments:

1. The appellant contends that the arbitral tribunal rightfully terminated the proceedings on December 12, 2011, due to the claimant's failure to submit its claim despite multiple opportunities provided. According to the appellant, once the tribunal terminates proceedings under Section 25(a) of the Arbitration and Conciliation Act, 1996, it becomes functus officio and lacks jurisdiction to reconsider its decision.

2. The appellant further argues that the claimant's recourse against the termination order was to file an application under Section 34 of the 1996 Act for setting aside the order, rather than approaching the High Court under Article 227 of the Constitution.

3. The appellant relies on the judgment in *Lalit Kumar V. Sanghavi Vs. Dharamdas V. Sanghavi & Ors.*¹⁷⁶⁹ to support the contention that a writ petition is not maintainable against an order of an arbitral tribunal.

Amicus Curiae's Arguments:

1. The amicus curiae submits that there is a distinction between termination of proceedings under Section 25(a) and termination under Section 32(2). While termination under Section 32(2) leads to the termination of the arbitral tribunal's mandate, termination under Section 25(a) does not have such consequences.

2. It is argued that Section 25(a) of the 1996 Act does not provide for any remedy against an order terminating proceedings, unlike Section 32(3). Therefore, the amicus curiae suggests that the order under Section 25(a) should be

treated as an award to make it amenable to the remedy under Section 34 of the Act.

3. Additionally, the amicus curiae contends that the arbitral tribunal can recall an order passed under Section 25(a) based on principles akin to Order IX Rule 13 of the Civil Procedure Code (CPC).

4. Referring to various judgments from different High Courts, the amicus curiae emphasizes the need to address the legislative gap between Sections 25(a), 32, and 34 of the 1996 Act.

COURT'S ANALYSIS AND DECISION

In this case, the main issue before the court was whether an arbitral tribunal has the jurisdiction to recall an order terminating proceedings under Section 25(a) of the Arbitration and Conciliation Act, 1996, upon sufficient cause being shown.

The court analyzed various provisions of the Arbitration and Conciliation Act, particularly Sections 18, 19, 23, 24, 25, and 32. It noted that Section 25(a) provides for the termination of proceedings if the claimant fails to communicate their statement of claim without showing sufficient cause. However, the court interpreted this provision to mean that the termination of proceedings is not automatic and is subject to the claimant showing sufficient cause.

The court referred to precedents and observed that while the Act does not expressly confer the power of review on the arbitral tribunal, such power may be implied to ensure effective discharge of its functions and to do justice between the parties. The court further held that the arbitral tribunal, being quasi-judicial in nature, has the power to invoke procedural review, particularly in cases where a procedural defect vitiates the proceedings.

Additionally, the court emphasized the legislative intent behind the Arbitration and Conciliation Act, which is to provide an alternative dispute resolution mechanism and

¹⁷⁶⁹ 2014(7) SCC 255.

to interpret the provisions in a manner that facilitates effective adjudication.

Based on these analyses, the court concluded that the arbitral tribunal does have the jurisdiction to recall an order terminating proceedings under Section 25(a) upon sufficient cause being shown. Therefore, the arbitral tribunal's rejection of the claimant's application to recall the termination order was deemed erroneous. The court directed the arbitral tribunal to reconsider the claimant's application for recall and proceed with the arbitration proceedings expeditiously.

Ultimately, the court dismissed the appeal and discharged the interim order granting a stay on the operation of the previous order. The parties were directed to bear their own costs.

PRECEDENTIAL IMPACT

The case clarifies the interpretation and application of Section 25 of the Arbitration and Conciliation Act, 1996, particularly regarding the termination of proceedings due to a party's default. The ruling establishes that the arbitral tribunal has the authority to recall an order terminating proceedings under Section 25 if the defaulting party shows sufficient cause.

This sets a precedent for future arbitration cases, guiding arbitral tribunals on their powers and responsibilities when dealing with parties' defaults. It emphasizes the importance of considering the circumstances and reasons behind a party's failure to comply with procedural requirements before terminating proceedings. This approach promotes fairness and ensures that parties are given a reasonable opportunity to present their case.

Moreover, the case underscores the principle of procedural review in arbitration proceedings. It reaffirms that arbitral tribunals have the authority to review and reconsider their decisions, ensuring a fair and comprehensive process for all parties involved.

CRITIQUE AND ANALYSIS

SERI Infrastructure Finance v. Tuff Drilling is a seminal case in Indian arbitration law, addressing the pivotal issue of whether an arbitral tribunal possesses the jurisdiction to recall an order terminating proceedings under Section 25(a) of the Arbitration and Conciliation Act, 1996. This critique aims to provide a detailed analysis of the case, highlighting its strengths, weaknesses, and broader implications.

Strengths:

- Legal Clarity:** The case offers much-needed clarity on the jurisdiction of arbitral tribunals in India. By affirming the tribunal's authority to reconsider termination orders if sufficient cause is shown, the court provides a clear framework for addressing procedural defects, thereby enhancing the integrity and efficiency of the arbitration process.
- Protection of Procedural Fairness:** The decision underscores the importance of procedural fairness in arbitration proceedings. By allowing parties the opportunity to present sufficient cause for their default, the court upholds the principles of natural justice and ensures that both parties are afforded a fair opportunity to present their case.
- Flexibility in Arbitration:** The ruling demonstrates the inherent flexibility of the arbitration process. Arbitral tribunals are empowered to rectify procedural errors and address parties' concerns, even after proceedings have been terminated, thereby promoting adaptability and responsiveness in dispute resolution.

Weaknesses:

- Legislative Ambiguity:** Despite the court's attempt to clarify the law, certain ambiguities persist within the Arbitration and Conciliation Act, 1996. The lack of precise guidelines or criteria for recalling termination orders may lead to inconsistent interpretations and applications by arbitral tribunals, undermining the predictability and reliability of the arbitration process.

2. Potential for Abuse: While the decision grants arbitral tribunals the discretion to reconsider termination orders, there is a risk of this power being abused. Without adequate checks and balances, tribunals may be susceptible to arbitrary decisions or manipulation by parties seeking to delay proceedings, thereby compromising the efficiency and effectiveness of arbitration.

3. Delay in Proceedings: Allowing arbitral tribunals to revisit termination orders could result in prolonged delays in dispute resolution. Parties may exploit the opportunity to repeatedly seek the recall of orders, leading to increased costs, administrative burden, and frustration for the opposing party.

Broader Implications:

1. Legal Certainty: SERI Infrastructure Finance v. Tuff Drilling contributes to legal certainty in Indian arbitration law by providing guidance on the jurisdiction of arbitral tribunals and the principles of procedural fairness. Clear precedents enable parties to navigate arbitration proceedings with confidence, fostering trust and stability in the arbitration process.

2. Access to Justice: The decision enhances access to justice by promoting fairness and transparency in arbitration proceedings. By upholding the rights of parties to be heard and addressing procedural defects, the ruling ensures that arbitration remains an accessible and effective means of resolving disputes, particularly in the commercial context.

3. International Recognition: The case reinforces India's commitment to aligning its arbitration laws with international standards. Clear and robust arbitration procedures enhance the country's reputation as a favorable destination for international arbitration, attracting foreign investment and bolstering its position in the global economy.

CONCLUSION

The case of SERI Infrastructure Finance v. Tuff Drilling represents a significant milestone in

Indian arbitration jurisprudence, particularly concerning the jurisdiction of arbitral tribunals to reconsider termination orders under Section 25(a) of the Arbitration and Conciliation Act, 1996. Through a comprehensive analysis of the legal issues and procedural history, this critique has highlighted both the strengths and weaknesses of the case, along with its broader implications and policy considerations.

The strengths of the case lie in its contribution to legal clarity, protection of procedural fairness, and promotion of flexibility in arbitration proceedings. By affirming the tribunal's authority to reconsider termination orders upon sufficient cause being shown, the court has provided a clear framework for addressing procedural defects while upholding the principles of natural justice. Moreover, the decision underscores the importance of procedural review in arbitration, ensuring a fair and comprehensive process for all parties involved.

However, certain weaknesses, such as legislative ambiguity and the potential for abuse, must be acknowledged and addressed to further enhance the efficacy of the arbitration process. Clear guidelines and criteria for recalling termination orders, along with adequate checks and balances to prevent abuse of power, are essential to maintain the integrity and efficiency of arbitration proceedings.

In terms of broader implications, the case contributes to legal certainty, access to justice, and international recognition of India's arbitration framework. Clear precedents enable parties to navigate arbitration proceedings with confidence, fostering trust and stability in the arbitration process. Moreover, the decision enhances access to justice by promoting fairness and transparency in arbitration proceedings, thus reinforcing India's reputation as a favorable destination for international arbitration. Policy considerations, including the promotion of party autonomy, efficient dispute resolution, procedural fairness, balancing efficiency with due process, and harmonization with international standards, are essential in

guiding future developments in arbitration law. By upholding these principles, India can further strengthen its arbitration framework and consolidate its position as a leading hub for international dispute resolution.

The case of SERI Infrastructure Finance v. Tuff Drilling represents a significant milestone in Indian arbitration law, emphasizing the importance of procedural fairness, flexibility, and efficiency in dispute resolution. By addressing the legal issues and policy considerations raised in this critique, India can continue to enhance its arbitration framework and contribute to the growth and development of international arbitration as a preferred method of resolving disputes.

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