

IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



Bharat Heavy Electricals Limited Vs. M/S Zillion Infraprojects Pvt. Ltd.

Brief Facts

In the present case, for the construction, testing, equipping, and trial operation of 2X270 MW Units (Unit I & II) of boilers, including ESP, rotating machines, and pipelines at GVK, Goindwal Thermal Power Station, District Tarantaran, Punjab, a tender was issued by the petitioner. A letter of intent dated July 9, 2010, was granted to the defendant for a sum of Rs. 380,000,000/-. In accordance with Clause 33 of the General Instructions to Tenders and Contract, the respondent Company initiated arbitration in response to certain disagreements between the parties to the Contract, and an arbitrator was assigned.

By order dated 13.08.2020, the Sole Arbitrator approved the claim of the respondent/Claimant and issued an interim award for the amount of Rs. 69,03,671.85/-. The learned Sole Arbitrator carefully noted the authority to make temporary orders under Section 17(3) of the Act, 1996, as well as her

authority to determine the validity, reliance, relevance, and weight of any evidence under Section 19(4) of the Act, 1996. The Act of 1996's Section 2(c), which specifies "Award" to include "interim Award," was mentioned.

The appellant's argument that the set-off sum cannot be regarded as an acknowledgment until it was decided was denied by the learned Arbitral Tribunal. The learned Arbitral Tribunal, thus, allowed the interim award in the sum of Rs. 69,03,671.85/- with the observations that "it is only an interim Award and at the time of conclusion of arbitral proceedings, if any amount is eventually held payable between the parties, the adjustments can be made and the final Award shall take care of this aspect to do justice between the parties." The interim Award was challenged by the appellant under Section 34 of the Act, 1996.

The principal ground of challenge brought up in the current allure was that the interim award dated 13.08.2020 depended on the reason that the set-off raised by the appellant thus could never have been recorded before the learned Arbitrator, being banned under Section 14 of IBC, 2016. In any case, when the Counter-claim was allowed to be documented before the learned Arbitrator according to the Order dated 10.11.2020 of the Court, the reasoning for allowing the interim Award does not survive as the set-off can now be adjudicated along with the Claim/counter-claim by the learned Arbitrator.

The present Appeal was filed under Section 37(1) (c) of the Arbitration and Conciliation Act, 1996 against the order dated 10.11.2020.

Decision

The court observed that the term "set-off" is defined in the Black Law Dictionary as, among other things, the debtor's right to deduct any amount the creditor owes the debtor from the total amount of the obligation; the counterbalancing sum held by the creditor.

The Apex Court stated in reference to the notion of set-off under Sub-rule (1) of Rule 6 of Order VIII CPC, 1908 that "What the rule deals with is lawful set-off. The claim being sought to be offset must be for a known amount of money and be one that the applicant may lawfully pursue. More importantly, both sides must share the same character with regard to the two claims that are being attempted to be offset or modified. A right to set-off known as equitable exists in addition to the rule established in Rule 6 above, irrespective of the rules of the Code.

Such common obligations and credits or cross-requests, to be accessible for eradication via fair set-off, should have emerged out of a similar exchange or should be so associated in their tendency and conditions as to make it unjust for the court to permit the case before it and leave the respondent without a friend in the world for the present except if he documents a cross-suit of his own.

Such mutual debts and credits or cross-demands, to be available for extinction by way of equitable set-off, must have arisen out of the same transaction or ought to be so connected in their nature and circumstances as to make it inequitable for the court to allow the claim before it and leave the defendant high and dry for the present unless he files a cross-suit of his own. When a petition like equitable set-off is made, it is not done as a matter of right, and the court has the authority to consider and approve such a plea or not."

The extent of impedance under Section 37 of the Act, 1996 is incredibly restricted. Sections 34 and 37 demand regard to the conclusion of the arbitral decision and the party's independence in having decided to get their issues settled through substitute gathering of mediation which would be defeated if the courts were to acknowledge the demand to the arbitral decisions on factual issues ordinarily. It was seen by the Apex Court that Section 34 has an alternate procedure and it can't be considered as a typical Appellate Jurisdiction.

The court held that as per Section 31(6) of the Act, 1996, the learned Arbitrator wisely employed its authority to render a provisional Award based on the acknowledgment made by the petitioner in Form B by way of set-off. The learned District Judge approved the learned Arbitrator's conclusions that they contain no criminality, perversity, or irrationality. Therefore, the appeal is found to be with no merits. Accordingly, the pending application was dismissed as being infructuous.

[Link of the Order](#)

<https://ibbi.gov.in/uploads/order/725cf2390da8e04cb7b67d6e02ff4e3f.pdf>



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