

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. 7117-7118 OF 2017

M/S. STERLING INDUSTRIES .. APPELLANT(S)

VERSUS

**JAYPRAKASH ASSOCIATES LTD.
& ORS. .. RESPONDENT(S)**

O R D E R

1. Having heard learned counsel for the parties at length, we find that the judgment of the High Court is liable to be set aside on one ground alone. The High Court entertained a writ petition under Article 227 of the Constitution of India against an order of the learned District Judge, Gautam Budh Nagar purportedly passed under Section 20 of the Arbitration and Conciliation Act, 1996(for short, "the Arbitration Act") read with Section 19 of the Micro, Small & Medium Enterprises Development Act, 2006 (for short, "the MSME Act"). This application was made to the District Judge by respondent No. 1- Jayprakash Associates Ltd. against a partial award made under Section 16 of the Arbitration Act. Such an application was not tenable vide Section 16 (6) of the Arbitration Act. Since such an application was not tenable, we fail to understand how in a writ

petition filed against an order made by the District Judge in an untenable application, the High Court could have set aside the partial award. This is clearly contrary to law. This court in the case of SBP & Co. vs. Patel Engineering Ltd. & Anr., reported in (2005) 8 SCC 618 in Paragraph No. 45 held as follows.

"45.It is seen that some High Courts have proceeded on the basis that any order passed by an arbitral tribunal during arbitration, would be capable of being challenged under [Article 226](#) or [227](#) of the Constitution of India. We see no warrant for such an approach. [Section 37](#) makes certain orders of the arbitral tribunal appealable. Under [Section 34](#), the aggrieved party has an avenue for ventilating his grievances against the award including any in-between orders that might have been passed by the arbitral tribunal acting under [Section 16](#) of the Act. The party aggrieved by any order of the arbitral tribunal, unless has a right of appeal under [Section 37](#) of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The arbitral tribunal is after all, the creature of a contract between the parties, the arbitration agreement, even though if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the arbitral tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the arbitral tribunal

is capable of being corrected by the High Court under [Article 226](#) or [227](#) of the Constitution of India. Such an intervention by the High Courts is not permissible."

2. In these circumstances, we are of the view that the judgment of the High Court is liable to be set aside. Ordered accordingly.

3. Shri S.B. Upadhyay, learned senior counsel appearing on behalf of respondent No. 1-Jayprakash Associates Ltd. consents to this order and seeks liberty to challenge the award as and when it is finally passed under the MSME Act in accordance with law. Such liberty is granted. However, there is some dispute about whether the final award has been passed. It is not necessary for us to adjudicate on this aspect.

4. The appeals are disposed of accordingly.

.....J.
[S.A. BOBDE]

.....J.
[R. SUBHASH REDDY]

.....J.
[B.R. GAVAI]

NEW DELHI,
JULY 10, 2019.

ITEM NO.1

COURT NO.2

SECTION III-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

IA 41620/2019, in Civil Appeal No(s). 7117-7118/2017

M/S. STERLING INDUSTRIES

Appellant(s)

VERSUS

JAYPRAKASH ASSOCIATES LTD. & ORS.

Respondent(s)

IA No. 41620/2019 - APPROPRIATE ORDERS/DIRECTIONS)

Date : 10-07-2019 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.A. BOBDE
HON'BLE MR. JUSTICE R. SUBHASH REDDY
HON'BLE MR. JUSTICE B.R. GAVAI

For Appellant(s) Mr. Jeetender Gupta, AOR

For Respondent(s) Mr. S.B. Upadhyay, Sr. Adv.
Mr. Pawan Upadhyay, Adv.
Mr. R.L. Batta, Adv.
Mr. Sarvjit Pratap Singh, Adv.
Mr. Nishant Kr., Adv.
for M/s. Unuc Legal LLP, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeals are disposed of in terms of the signed order.

Pending application stands disposed of.

[CHARANJEET KAUR]
A.R. - CUM - P.S.

[INDU KUMARI POKHRIYAL]
ASSTT. REGISTRAR

[Signed order is placed on the file]