

NHPC LIMITED

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v.

M/S PATEL ENGINEERING LIMITED

(Civil Appeal No. 11700 of 2018)

NOVEMBER 30, 2018

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**[DR. DHANANJAYA Y CHANDRACHUD AND
M. R. SHAH, JJ.]**

Arbitration and Conciliation Act, 1996: ss. 9 and 34 – Post-award application u/s. 9 - Application allowed and the appellant called upon to release the amount covered by the arbitral award – Challenge to, on the ground that the order of the High Court was passed even though the period of limitation for challenging the award u/s. 34 was still to expire – Appellant’s case that the application u/s.9, filed within the period of limitation prescribed for challenging the award ought not to have been entertained – Issuance of notice in these proceedings and stay of the operation of the impugned order of the High Court till the next date of listing – During the course of the hearing, award of the arbitral tribunal set aside – Since the arbitral award has been set aside, the basis on which the impugned order was passed by the High Court ceases to survive, the order passed by the High Court is set aside.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11700 of 2018.

From the Judgment and Order dated 22.08.2016 of the High Court of Punjab and Haryana at Chandigarh in FAO No. 4394 of 2016.

N.K. Kaul, Sr. Adv., Ajit Pudasery, K. Vijayan, Ajeet Singh Verma, Advs. for the Appellant.

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Mahesh Agarwal, E. C. Agrawala Advs. for the Respondent.

The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

Leave granted.

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1. The High Court by its impugned order dated 22 August 2016, allowed a post-award application under Section 9 of the Arbitration and Conciliation Act, 1996 (‘the Act’). As a result, the appellant was called upon to release the amount covered by the arbitral award along with

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A interest subject to the respondent furnishing a Bank Guarantee equal to the awarded amount for a period of one year.

2. The grievance of the appellant is that the order of the High Court dated 22 August 2016 was passed even though the period of limitation for challenging the award under Section 34 was still to expire.

B The award of the arbitral tribunal was made on 22 April 2016. Applications under Section 33 were disposed of on 04 June 2016. Hence according to the appellant, the period of limitation for filing the petition under Section 34 of the Act would have expired on 03 September 2016.

C 3. It has been urged on behalf of the appellant that the application under Section 9, which was filed on 13 June, 2016 within the period of limitation prescribed for challenging the award ought not to have been entertained and, in any event, such an order could not have been passed by the High Court within the parameters of Section 9 of the Act.

D 4. Notice in these proceedings was issued on 18 September 2016 and the operation of the impugned order of the High Court was directed to remain stayed till the next date of listing.

E 5. During the course of the hearing, we have been apprised of the fact that the award of the arbitral tribunal has been set aside on 29 November 2018 by the Additional District Judge-cum-Presiding Judge, Special Commercial Court, Gurugram. Since the arbitral award has been set aside, the basis on which the impugned order was passed by the High Court ceases to survive.

6. Hence, the order of the High Court dated 22 August 2016 is set aside.

F 7. Before concluding, it would be necessary for this Court to observe that the present judgment should not be construed as an expression of opinion by the Court on the correctness of the order passed by the High Court, particularly, in view of the submission which has been urged in the present proceedings that even on the date on which the order was passed by the High Court, it had acted in excess of its jurisdiction.

G The Civil Appeal is disposed of. No costs.

All the rights and contentions of the parties in regard to the challenge to the arbitral award are kept open to be urged in accordance with law.

H Nidhi Jain

Appeal disposed of.