

SAI BABU V. CLARIYA STEEL PVT. LTD. 2019 (5) SCJ 503

Supreme Court of India; 2-judge bench, **R.F. Nariman** and Vineet Saran JJ; decided on 1 May 2019

No recall application would lie in cases covered under Section 32 (3) ACA

Section 32 (1) ACA provides for termination of proceedings and states that the arbitral proceedings shall be terminated by the final award or by order of the tribunal under Section 32 (2).

Section 32 (2) ACA sets out under clauses (a) to (c) situations where the “arbitral tribunal shall issue an order for the termination.”

The arbitrator, in this case, terminated proceedings under Section 32 (2) (c). But, later on, allowing an application for recall, he said that “good reasons had been made out in the affidavit for recall, [and] he was inclined to recall the order even though under the Act, in law, it may be difficult to do so.”

The High Court dismissed a revision filed against the order.

The Supreme Court said the “matter is no longer *res integra*” and referred to *Srei Infrastructure Finance Ltd. v. Tuff Drilling (P) Ltd.*, (2018) 11 SCC 470. The court said that in *Srei*:

- (i) A distinction was made between termination under Section 32 ACA and termination under Section 25 ACA for the default of a party.
- (ii) And it was held that no recall application would lie in cases covered under Section 32 (3) ACA.

In *Srei* the court had based its reasoning on a comparative analysis of the language of Section 32(2)(c) ACA with that of Section 25(a) ACA. It first considered Section 25 and said: -

- (i) Under Section 25 the tribunal shall terminate the proceedings if the claimant fails to communicate his claim in a timely fashion without showing sufficient cause.
- (ii) Both sections provide grounds for termination of arbitral proceedings. While if Section 32 applies, the tribunal “shall issue an order for the termination”. The court said that Section 25 includes no such language.

The Supreme Court held that the omission of such language from one provision and its inclusion in the other must be “treated with purpose and objective.” So, an order of termination of arbitral proceedings under Section 32(2)(c) cannot be recalled since the mandate of the arbitration terminates with the proceedings.