

JUDICIAL GUARDIAN TO THE RESCUE! PREVENTING THE ABUSE OF TERMINATION PROCEEDINGS IN ARBITRATION

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I. INTRODUCTION

Basing its foundation upon the UNCITRAL Model Law¹ the Indian Arbitration and Conciliation Act, 1996 (“**Indian Arbitration Act**”) provides for the termination of arbitration proceedings broadly through two procedural ways: (i) a final arbitral award; and (ii) *an* order of the arbitral tribunal.² This section of the article aims to argue that the scope of the final award expands to include partial awards within its ambit. For this purpose, it is necessary to delve into the discussion of the Working Group II while drafting the provision within the 1985 Model Law.

From the different drafts of the second Working Group, a base definition was attributed to the final award as an award that decides all the claims presented or submitted before the arbitral tribunal.³ It was further discussed that termination of arbitration proceedings or the arbitrator’s mandate would, therefore, not be attracted in case of non-finality. Given the foregoing, examples of non-final awards were said to include partial awards, interlocutory awards, and interim awards.⁴ It is noteworthy that a similar stance for this definition has also been adopted by the Supreme Court of India.⁵

In the First Draft (1982), the Working Group took a weaker stance by stating that the proceedings shall not terminate unless the award either “*is apparently*” or “*indicates that it is*” or “*not intended to settle the dispute in full*”.⁶ In the subsequent draft (1982), the provision was comparatively strongly worded stating that termination would happen unless the award either “*is not intended to*” or “*does not*” “*constitute a final disposition of the substance of the dispute*”.⁷ During the final discussions, however, the Working Group omitted this expansive definition and replaced it with the term final award which is present in Article 32(1) of the

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¹ UNCITRAL Model Law on International Commercial Arbitration, 1985.

² Arbitration and Conciliation Act, 1996, §32, No. 26, Acts of Parliament (India).

³ ILIAS BANTEKAS, *Termination of Proceedings- Article 32 in UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION: A COMMENTARY* 836 (Cambridge University Press 2020).

⁴ HOWARD HOLTZMANN & JOSEPH NEUHAUS, *A GUIDE TO THE UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION: LEGISLATIVE HISTORY AND COMMENTARY* 867 (Kluwer Law International 1989).

⁵ IFFCO Ltd. v. Bhadra Products, (2018) 2 SCC 534.

⁶ First Draft, A/CN.9/WG-II/WP.38, ¶¶118-119.

⁷ Second Draft, A/CN.9/WG-II/WP.40.

Model Law.⁸ While this discussion provides a clear idea of the intent of the drafters of what would constitute a final award, the Indian Courts have taken a divergent view, perhaps unintentionally, which reflects one essential point the drafters missed while deliberating on the incorporation of this model provision i.e., if partial awards are final.

The historical background of the provision, therefore, unfolds one amongst several instances that possess the potential for the abuse of termination of arbitration proceedings: the scope of a ‘final’ award under Section 32(1) of the Indian Arbitration Act. It is necessary to define the contours of this term since a part of an arbitral award supporting the favored party is not only enforceable under the New York Convention⁹, but can also be set aside under Section 34 of the Indian Arbitration Act if the party is aggrieved, making the arbitration proceedings time-efficient.¹⁰

II. SCOPE OF FINAL AWARD IN TERMINATION OF PROCEEDINGS: CAN A PARTIAL AWARD BE INCLUDED?

The main argument of this section is that partial awards may also be final and therefore, they cannot be treated separately from final awards. Such an observation entails that termination of arbitration proceedings will also happen in case of pronouncement of partial awards, as opposed to the intent of the Working Group, and, in the narrower sense, the same would happen with respect to that particular claim for which the partial award has been issued.

The Indian Arbitration Act defines an “arbitral award” under Section 2 (1) (c) to mean that it includes an interim award. It does not use the expression “*partial award*”.. However, this category of partial award also falls within the ambit of ‘award’ under Section 2(1)(c) of the Indian Arbitration Act.¹¹ The Supreme Court in the McDermott Case had noted:

“On the other hand, we are of the opinion that it is final in all respects with regard to disputes referred to the arbitrator which are subject matter of such award. We may add that some arbitrators instead and in place of using the expression “interim award” use the expression partial award...”¹²

⁸ UNCITRAL Model Law on International Commercial Arbitration, 1985, art. 32, cl. 1.

⁹ Martin King and Ian Meredith, *Partial Enforcement of International Arbitration Awards*, 26(3) ARBITRATION INTERNATIONAL, 381-390 (2010).

¹⁰ *Larsen Air Conditioning & Refrigeration Co. v. Union of India*, (2023) SCC OnLine SC 982.

¹¹ Sanjeev Kapoor and Saman Ahsan, *Challenging and Enforcing Arbitral Awards: India*, GLOBAL ARBITRATION REVIEW (Nov. 11, 2023, 02:45 AM), <https://globalarbitrationreview.com/insight/know-how/challenging-and-enforcing-arbitration-awards/report/india>.

¹² *McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181, ¶70.

Furthermore, the Court had also observed that an interim award may be a final award on those claims that have been settled at the interim stage.¹³ This finality of partial award is evident from cases in different jurisdictions including the UK, the USA, India, etc.

In the case of *EGF v. HVF*¹⁴, the England High Court categorically held that if an award is passed at any stage, it has to be final and conclusive. It observed that arbitral tribunals must avoid providing interim relief through partial or interim awards. The reasoning behind this is that interim relief is meant to be temporary. In contrast, an award- whether interim or final- resolves the dispute conclusively between parties and cannot be reconsidered. One scenario observed by the New York State High Court has been that if the parties mutually agree that the decision shall be treated as final on the decided issue, a partial award can be considered final, however, in the case before it no mutual agreement had existed.¹⁵

In *Emirates Trading Agency LLC v. Sociedade de Fomento Industrial Private Limited*¹⁶, the court recognized the finality of a partial award since both awards are binding in nature and, subject to a few exceptions, the tribunal loses its power to review or reconsider the subject matter of the award in both cases.

Similarly, in *NHAI v. Trichy Thanjavur Expressway Ltd.*, the Court observed that each independent claim has its distinct award and the final award is composed of several decisions or awards. Thus, it is well-settled that partial awards determine or settle some of all the claims submitted to arbitration and impose res judicata.¹⁷ Additionally, it has been ruled that “*if the partial award answers the definition of the award, as envisaged under Section 2(c) of the 1996 Act, for all intent and purport, it would be a final award*”.¹⁸

Lastly, both the partial award and the final award are the subject matter of challenge under Section 34 of the Indian Arbitration Act.¹⁹ Given that the partial award is determinative of the rights of the parties, the finality of a partial award is strengthened by the fact that it will have an effect even after the final award is issued. Conclusively, any inclusion of a partial award within the final award will, thus, prevent the deliberate prolonging of arbitration proceedings

¹³ *Id.* at ¶68.

¹⁴ (2022) EWHC 2470 (Comm).

¹⁵ *American Intl. Specialty Lines Ins. Co. v. Corporation*, (2020) NY Slip Op 02529.

¹⁶ (2015) EWHC 1452 (Comm).

¹⁷ ILIAS BANTEKAS, *Termination of Proceedings- Article 32* in UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION: A COMMENTARY 836 (Cambridge University Press 2020); *McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181.

¹⁸ *McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181, ¶69.

¹⁹ *Id.* at ¶70.

i.e., guerilla tactics on a res judicata issue, and prevent wasting of resources and time ensuring a streamlined, prompt, and efficient resolution of the dispute.²⁰

III. WITHDRAWAL OF CLAIM: CAN STRICT INTERPRETATION ABUSE THE ARBITRAL PROCESS?

To answer this question, the arbitration dispute between *Fortminster v. Czech Republic* [**Fortminster award**] must be referred to.²¹ The award holds importance for India as the same was decided under the UNCITRAL Arbitration Rules.²² The point of law to be decided by the tribunal was whether withdrawal of notice invoking arbitration would unilaterally terminate the arbitral proceedings under Article 32(2) of the UNCITRAL Arbitration Rules. The tribunal observed:

*“...that the Claimant could bring arbitration proceedings to an end unilaterally by withdrawing its Notice of Arbitration and without the constitution of an arbitral tribunal, that would also mean that the Claimant would be given the right to get rid of the Respondent's claim for costs to all intents and purposes. In the Arbitral Tribunal's view, such a consequence would be unacceptable by any standards.”*²³

In this case, the Claimant had set out its prayer for relief with an indication of the amounts sought as well as a statement of the facts supporting its claim within the Notice of Arbitration.²⁴ The tribunal ‘determination’ of costs was left to be decided by the arbitral tribunal, it constituted a legitimate interest in the non-termination of proceedings and also concluded that by virtue of such an interest, the continuance of proceedings had not become unnecessary to attract Article 32. While the tribunal impliedly differentiated between the notice of arbitration and statement of claim through the ‘determination’ of costs, it incidentally brought the notice of arbitration within the ambit of ‘claim’ by referring to it in the context of a legitimate interest of the respondent under Paragraph 2(a) of the Arbitration Rules. It is worth noting that the difference lies in the quantification of claims.²⁵ While the former includes an initial quantification, the latter incorporates the amount of all quantifiable claims.

²⁰ ILIAS BANTEKAS, *Termination of Proceedings- Article 32 in UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION: A COMMENTARY* 836 (Cambridge University Press 2020).

²¹ *Fortminster v. Czech Republic*.

²² UNCITRAL Arbitration Rules, GA Resolution 31/98.

²³ *Fortminster v. Czech Republic*, ¶70.

²⁴ *Id.* at ¶62.

²⁵ Team Farallon, *Notice of Arbitration*, FARALLON LAW CORPORATION (Nov. 28, 2023, 02:47 AM), <https://fl.sg/resource/notice-of-arbitration/>.

In international arbitration, it is well-settled that unilateral termination of proceedings cannot take place. This is also evident from investment arbitration, for instance, through cases like *Ambiente Ufficio v. Argentina* and *Abaclat v. Argentina*.²⁶ In these, the tribunal had observed that the claimant cannot unilaterally withdraw its request for arbitration without the consent of the other party once the request for arbitration has been registered. In fact, the Czech Republic tribunal has set a sound precedent for national courts and arbitration tribunals to adopt while adjudicating disputes of similar subject matter.

Through the lens of the Indian arbitration landscape, Section 23 of the Indian Arbitration Act provides that the statement of claim consists of the facts supporting his claim, the points at issue, and the relief or remedy sought.²⁷ The same is outlined in Article 18 of the UNCITRAL Arbitration Rules.²⁸ On the other hand, Article 3 provides for the contents of the notice of arbitration to include, inter alia, the names and addresses of the parties; the general nature of the claim, and an indication of the amount involved, if any, and the relief or remedy sought.²⁹ A similar form of the arbitration notice has been observed by the court in *Veena v. Seth Industries Ltd.*³⁰, stating that there is no statutory requirement to state the claims proposed to be made in the reference to include within the notice invoking arbitration. Crystallization of claims is not necessary and a notice merely indicating the emergence of a dispute and invoking the arbitration clause is sufficient. The rule of liberal interpretation adopted by the tribunal would also prevent misuse of this provision where the parties could seek guerilla tactics to unilaterally terminate arbitration proceedings post-invocation of notice of arbitration.

IV. SAFEGUARDS FROM ABUSE AND REMEDY TO THE REMEDILESS: A CIRCUMSPECT INTERVENTION BY COURTS

The Indian courts, while emphasizing the need for minimal judicial intervention in arbitration, have been wary of expanding the exercise of the High Court's supervisory jurisdiction under Article 227 of the Constitution of India, 1950 ("**Constitution**") over orders of arbitral tribunals. Statutorily judicial intervention is made permissible for exceptional circumstances or where a party has acted in bad faith i.e. appeals allowed under Section 37 of the Indian Arbitration Act.

²⁶ *Ambiente Ufficio v. Argentina* (Decision on Jurisdiction & Admissibility), ¶337; *Abaclat v. Argentina* (Decision on Jurisdiction & Admissibility), ¶615.

²⁷ Arbitration and Conciliation Act, 1996, §23, No. 26, Acts of Parliament (India).

²⁸ UNCITRAL Arbitration Rules, GA Resolution 31/98.

²⁹ UNCITRAL Arbitration Rules, GA Resolution 31/98.

³⁰ (2010) SCC OnLine Bom 1684, ¶24.

A 7 judge bench in the case of *SBP and Co. v. Patel Engineering and Anr.* held that High Court's exercise of jurisdiction over arbitral tribunals is not permissible as an arbitral tribunal is a creature of a contract i.e. the arbitration agreement. The underlying reasoning provided by the court was that if such an exercise of supervisory jurisdiction was permitted it would render the purpose and objective of "minimum judicial interference" nugatory.

Indian courts have permitted writ challenges under Article 227 against orders of arbitral tribunals including orders for termination passed under Section 32(2) of the Indian Arbitration Act.³¹ The underlying principle that forms the basis for this approach is that a legislative enactment cannot curtail a right granted under the Constitution.³² The High Courts can thus continue to exercise their writ powers of supervisory jurisdiction conferred on them by the Constitution of India. But to what extent? The Indian Arbitration Act does not contemplate a direct interference with orders passed by arbitral tribunals except under 34 and 37 of the Indian Arbitration Act. Courts have "*almost a nil scope of interference*" unless there is some adversity, perversity or the award is contrary to law or it actually shocks the conscience of the court.³³ Hence, as a consequence, it is only under exceptional circumstances that a writ petition under Article 227 ought to be entertained.³⁴ One such exceptional circumstance is where an application for termination of the arbitration proceedings is allowed by the arbitral tribunal under Section 32(2).³⁵ Notably, the Indian Arbitration Act does not envisage any provision to challenge such a termination order thus, rendering the party remediless. This aspect is further substantiated by the fact that an order under Section 32(2) is not appealable under Section 37.³⁶ Even if the affected party wishes to challenge such a rejection of the request to termination order, it would have to hold in abeyance and wait for the final award to be passed to exercise its right to challenge the final award under Section 34 of the Indian Arbitration Act.

Once a termination application is permitted, the arbitral proceedings come to an end and the mandate of the arbitral tribunal stands terminated.³⁷ An arbitral tribunal becomes *functus officio*

³¹ Deep Industries Ltd. v. ONGC Ltd. (2020) 15 SCC 706.

³² Chandra Kumar v. Union of India, (1997) 3 SCC 261; Tagus Engineering Private Limited & Ors. v. Reserve Bank of India and Ors., W.P. 3957/2021, ¶15.

³³ Municipal Corporation of Delhi v. Mr. Narinder Kumar, 2023/DHC/000598.

³⁴ IDFC First Bank Limited v. Hitachi MGRM Net Limited, W.P. (C) 8573/2021.

³⁵ Arbitration & Conciliation Act, 1996, §32(2), No. 26, Acts of Parliament (India).

³⁶ Arbitration & Conciliation Act, 1996, §37, No. 26, Acts of Parliament (India).

³⁷ *Id.* at §32(3).

when it passes an order for termination of the arbitration proceedings.³⁸ Post-termination, the tribunal has no jurisdiction to entertain any applications or pass any orders in the proceedings.

A. Striking a Balance between Writ Jurisdiction and Non-Judicial Interference

The courts are entrusted with the duty to maintain the delicate balance between the constitutional rights available under Article 227 and the statutory policy objective of minimum judicial interference under Section 5 of the Indian Arbitration Act.³⁹

Article 227 delineates the High Court's authority to exercise "*superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction*". Arbitrations are considered a special mechanism of dispute resolution. Accordingly, arbitral tribunals are held to be no different from statutory tribunals.⁴⁰ Extraordinary situations can arise which may require course correction using judicial interference. Indian Arbitration Act does not prohibit judicial interference but calls for minimum judicial interference to ensure smooth and speedier resolution of the dispute in the best interest of a developing economy.

The supervisory jurisdiction of High Courts under Article 227 is to be applied judiciously, particularly in scenarios where either the court/tribunal has (i) assumed jurisdiction that it does not have; (ii) failed to exercise jurisdiction that it does have; and (iii) overstepped the limits of its jurisdiction. A challenge to an order rejecting termination of arbitration proceedings cannot be permitted. This is primarily because, in such a scenario, the arbitral tribunal would continue to hold the mandate for arbitration and any interference by the court would be unwarranted and unqualified.

On the other hand, party autonomy and minimum judicial interference form the foundation for arbitration law. The doctrine of minimum judicial interference restricts the role of courts to that of watchdogs. Section 5 is akin to Article 5 of the UNCITRAL Model Law.⁴¹ Section 5 of the Indian Arbitration Act is a non-obstante clause to give an overriding effect to the provisions of the Indian Arbitration Act over other statutes⁴², ensuring a smooth and quick resolution to a dispute. The intervention of courts is expressly barred, except in situations specifically

³⁸ M/s Vag Educational Services v. Aakash Educational Services Ltd., (2022) SCC OnLine Del 3401.

³⁹ Videocon Industries Ltd. v. Union of India, (2011) 6 SCC 161.

⁴⁰ SREI Infrastructure Finance Ltd. v. Tuff Drilling Pvt. Ltd., (2018) 11 SCC 470.

⁴¹ UNCITRAL Model Law on International Commercial Arbitration, 1985, art. 5.

⁴² Arbitration & Conciliation Act, 1996, §5, No. 26, Acts of Parliament (India).

provided for in the Indian Arbitration Act itself.⁴³ But, no act can curtail the power bestowed upon the High Court under Article 227 which forms part of the basic structure of the constitution.

Article 227, being a constitutional provision, triumphs the applicability of the non-obstante clause under Section 5. The Supreme Court stamped this understanding in the case of *Deep Industries Ltd. v. ONGC Ltd.* and held that “Article 227 is a constitutional provision which remains untouched by the non-obstante Clause of Section 5 of the Act.”⁴⁴

Article 227 cannot be invoked routinely for matters falling under the Indian Arbitration Act. The threshold for interference under Article 227 against an order of the tribunal ought to be high to prevent any abuse of process and derailment of the statutory scheme of the Indian Arbitration Act. Any such challenge can only be entertained in ‘exceptional cases’.⁴⁵ The courts must be “*extremely circumspect*” and may interfere in case of an order being perverse.⁴⁶ Further, they must discourage any litigation that interferes with the arbitral process unnecessarily. The courts should only exercise their discretionary powers in cases of exceptional rarity where bad faith is demonstrable.⁴⁷

B. Saga of Termination of Arbitration between Amazon and Future Group: A Setback to the Pro-Arbitration Approach

In the infamous case of *Future Group-Amazon*, the Competition Commission of India passed an order keeping its approval for the acquisition of equity shareholding of FCPL by Amazon in abeyance.⁴⁸ The Future Group asserted that, the main agreement between the parties became unenforceable, and the arbitration - ‘impossible’, calling for termination. The Future Group sought adjournment of the hearing of expert witnesses approximately three months after they had been pre-scheduled with the consent of all the parties and arbitrators. The arbitral tribunal declined to adjourn the hearings. The Arbitral Tribunal accommodated the request of Future Group by utilizing the allocated dates for a hearing on applications for termination of arbitration proceedings. Future Group challenged the procedural orders issued by the arbitral

⁴³ Videocon Industries Ltd. v Union of India, (2011) 3 SCC 161.

⁴⁴ (2020) 15 SCC 706.

⁴⁵ Bhaven Construction versus Executive Engineer, Sardar Sarovar Narmada Nigam Ltd. & Anr., (2022) 1 SCC 75.

⁴⁶ Deep Industries Ltd. v. Oil and Natural Gas Corporation Ltd. & Anr., (2019) SCC Online SC 1602.

⁴⁷ Surendra Kumar Singhal & Ors. v. Arun Kumar Bhalotia & Ors., (2021) SCC OnLine 3708.

⁴⁸ Proceedings against Amazon.com NV Investment Holdings LLC under Sections 43A, 44 and 45 of the Competition Act, 2002, Competition Commission of India, Order dated December 17, 2021.

tribunal under Article 227 seeking a direction that continuation of arbitration proceedings was contrary to law.

The Single Judge of the Delhi High Court following the law laid down in *Surender Kumar Singhal Case*⁴⁹ held that the petition under Article 227 was not maintainable⁵⁰. Even in the *Surender Kumar Singhal Case*, the court had held a petition filed under Article 227, against an order rejecting an application filed under Section 16 deciding upon the jurisdiction of the arbitral tribunal, to be non-maintainable. He noted that there cannot be a complete bar to the petitions being filed under Article 227. There is “*only a very small window*” for interference with orders passed by the arbitral tribunal while exercising jurisdiction under Article 227.⁵¹ Court in exercise of jurisdiction under Article 227, cannot dictate to a duly constituted arbitral tribunal, the manner and the procedure of carrying out the arbitration proceedings.⁵²

The Single Judge dismissed the writ petitions following a pro-arbitration approach. He balanced the scope of judicial supervision and the doctrine of minimum judicial intervention. The intent of the Indian Arbitration Act was to ensure expeditious disposal of disputes between the parties and there should be minimum judicial interference by courts in arbitration proceedings. The Single Judge added that “*if the parties are encouraged to approach the Court at every stage of the arbitration proceedings, the whole purpose of the arbitration would stand frustrated.*”⁵³

The Future Group, however, filed Letters Patent Appeals (“**LPAs**”) before the Delhi High Court against the Single Judge’s order. The Division Bench stayed the arbitral proceedings.⁵⁴ Interestingly, the Division Bench made note of the objections to the very maintainability of the appeals but did not decide the issue. The Division Bench placed heavy reliance on the order of the CCI. The Division Bench followed the three basic principles for granting an interim injunction i.e. there exists a prima facie case, balance of convenience, and irreparable harm.⁵⁵

We argue that the order to stay arbitration proceedings was passed in non-maintainable appeals. No intra-court appeals or Letters Patent Appeals are maintainable against orders passed by a

⁴⁹ *Id.* 42 at ¶24.

⁵⁰ *Future Retail Ltd. v. Amazon. Com NV Investment Holdings LLC*, (2022) SCC OnLine Del 13.

⁵¹ *S.B.P. & Company v. Patel Engineering Ltd. and Anr.*, (2005) 8 SCC 618; *Fuerst Day Lawson Limited v. Jindal Exports Limited*, (2011) 8 SCC 333, ¶¶15-17; *Bhaven Construction versus Executive Engineer, Sardar Sarovar Narmada Nigam Ltd. & Anr.*, (2022) 1 SCC 75, ¶¶10-19.

⁵² *Future Retail Ltd. v. Amazon. Com NV Investment Holdings LLC*, (2022) SCC OnLine Del 13, ¶24.

⁵³ *Id.* at ¶25.

⁵⁴ (2022) SCC OnLine Del 67.

⁵⁵ *Id.* at ¶9.

court exercising jurisdiction under Article 227.⁵⁶ Moreover, the Division Bench's order fell foul of the need to discourage unnecessary judicial interference in the arbitral process. It merely looked at the LPAs for grant of interim relief. It failed to provide any reasonable explanation for granting of a stay on arbitral proceedings. Accordingly, it was not prudent to exercise the jurisdiction under Article 227 to preserve the efficiency of the arbitral process in this case.

The stay order delayed and derailed an international commercial arbitration in non-maintainable appeals due to excessive judicial intervention. The stay order was in direct contradiction to the principles of Kompetenz-Kompetenz. The stay order was passed while completely ignoring the directions in the *Surender Kumar Singhal Case* where the court categorically pointed out that interference was permissible only if the order was completely perverse.⁵⁷ It held that the efficiency of the arbitral process should not be diminished and interdicting the arbitral process should be completely avoided. Amazon approached the Supreme Court against the stay order. The Supreme Court finally removed the stay on arbitration proceedings after approximately three months.⁵⁸

The applicability of the narrow scope for interference and the high threshold to entertain any challenge would help ensure that arbitration processes in India are respected. Only in exceptional circumstances where perversity is demonstrable should courts allow such challenges. Eventually, the burden falls on High Courts to enforce it strictly and curtail any abuse of process that may delay or derail arbitration proceedings.

V. CONCLUSION

In conclusion, the scope of final awards in the termination of arbitration proceedings must encompass partial awards due to their potential finality concerning specific claims. This understanding will prevent the prolongation of arbitration proceedings by treating partial awards as final for the claims they resolve, thus ensuring a streamlined, prompt, and efficient resolution of disputes. Further, the issue of unilateral withdrawal of claims in arbitration highlights the potential for abuse if interpreted strictly. In this regard, *Fortminster* award has served as a critical reminder, underscoring the need for a liberal interpretation of 'claim' vis-

⁵⁶ Section 10 of the Delhi High Court Act, 1966 read with Clause 10 of the Letters Patent (Lahore); *Jogendrasinhji Vikaysinhji v. State Of Gujarat & Ors.*, (2015) 9 SCC 1.

⁵⁷ *Id.* 42 and 44 at ¶24.

⁵⁸ *Amazon. Com NV Investment Holdings LLC v. Future Retail Ltd. & Ors.*, Civil Appeal No. 2845-2846 of 2022 [Order dated April 6, 2022].

à-vis termination proceedings, which would protect the respondent's legitimate interest in the determination of costs and prevent wastage of time of the tribunal.

Given the foregoing, it must also be put to the fore that termination of arbitration proceedings under Section 32(2) of the Indian Arbitration Act leaves a party without a remedy. Since the Act does not provide a direct mechanism to challenge a termination order and such orders are not appealable under Section 37, parties are effectively left without immediate recourse. This creates a unique scenario where judicial intervention under Article 227 becomes necessary to prevent a miscarriage of justice and to ensure that constitutional rights are upheld. While the scope for intervention under Section 34 is extremely limited, confined to instances of patent illegality, perversity, or awards that shock the conscience of the court, the need to address non-appealable termination orders warrants a cautious yet decisive judicial approach.

Given the potential for prolongation of termination proceedings by the parties and subsequently no recourse in cases of termination, such a landscape shows India in a bad light and impacts India's image as a pro-arbitration hub. Thus, the courts must tread carefully, ensuring that they do not overstep their boundaries and dilute the principle of minimal interference, while also providing necessary remedies in cases where parties are otherwise rendered remediless.