REVERSE and REMAND; and Opinion Filed March 12, 2018.

In The

Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-00412-CV

SIGNATURE PHARMACEUTICALS, L.L.C., SIGNATURE R&D HOLDINGS, L.L.C., AMERICAN GENERICS, INC., AND MCCORMICK HOLDINGS, L.L.C., Appellants
V.
RANBAXY, INC. (F/K/A RANBAXY PHARMACEUTCALS, INC.), RANBAXY LABORATORIES, LTD., VENKATACHALAM KRISHNAN, AND ARUN SAWHNEY, Appellees

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On Appeal from the 296th Judicial District Court
Collin County, Texas
Trial Court Cause No. 296-03032-2014

MEMORANDUM OPINION

Before Justices Lang-Miers, Fillmore, and Stoddart
Opinion by Justice Lang-Miers

This dispute arises out of the parties' joint venture agreement. The trial court and an arbitration panel reached conflicting conclusions about the meaning of an arbitration provision in that agreement. Because the parties agreed that the arbitration panel would construe the agreement, we conclude that the trial court erred by rendering a declaration and order based on its own interpretation of the agreement. We reverse the trial court's order and remand the case with instructions to order the parties to return to arbitration.

BACKGROUND

Appellants Signature Pharmaceuticals, L.L.C., Signature R&D Holdings, L.L.C., American Generics, Inc., and McCormick Holdings, L.L.C. (together, "Signature") and appellees

Ranbaxy, Inc., Ranbaxy Laboratories, Ltd., Venkatachalam Krishnan, and Arun Sawhney (together, "Ranbaxy") entered into a joint venture agreement on June 19, 2002, (the "JVA") for the development and marketing of a drug used to treat diabetes. Section 12.8 of the JVA provided:

> **Arbitration.** In the event of any disputes that are not resolved by the Board or the Members shall be resolved exclusively through arbitration and settled by a panel of three (3) arbitrators in New York, New York (one of whom shall be selected by [Signature], one of whom shall be selected by Ranbaxy and the third of whom shall be selected by the arbitrators selected by [Signature] and Ranbaxy) **who shall hold a hearing and make an award within sixty (60) days of the filing for arbitration**. The arbitrators shall be selected and the proceedings and award conducted **in accordance with the rules of the American Arbitration Association then pertaining**. The arbitrators, in addition to any award that they shall make, shall have the discretion to award the prevailing party the costs of the proceedings together with reasonable attorney's fees. Any award made hereunder may be docketed in a court of competent jurisdiction. In the event there are any issues which are not arbitrable as a matter of law, and as a condition precedent to a court making a determination on any non-arbitrable issues, any issues which may be arbitrated shall first be determined by arbitration pursuant to this Section 12.8.

(Emphasis added).

When Signature sued Ranbaxy in the trial court for fraud, breach of fiduciary duty, and other causes of action arising from the joint venture, Ranbaxy responded by moving to compel arbitration in accordance with the JVA. The trial court granted Ranbaxy's motion on December 19, 2014, staying the trial court proceedings "until such arbitration has been had in accordance with the terms of the agreement to arbitrate."

Signature filed a demand for arbitration before the American Arbitration Association ("AAA"), and arbitration proceedings commenced before three arbitrators (the "Tribunal") chosen in accordance with section 12.8 of the JVA. The parties immediately disagreed on the meaning of section 12.8's provision that the Tribunal "shall hold a hearing and make an award within sixty (60) days of the filing for arbitration." Ranbaxy maintained that the Tribunal was required to hold a hearing and issue a final award on all disputed issues on or before December 26, 2016, within sixty days of Signature's October 25, 2016 demand for arbitration. Signature responded that "the

Tribunal may satisfy the 60-day provision by issuing an interim, interlocutory, or partial award pursuant to Rules R-37 and R-47" of the AAA Commercial Arbitration Rules ("AAA Rules"). The parties provided letter briefs to the Tribunal in support of their respective positions. Signature also requested an award denying Ranbaxy's statute of limitations defense.

On December 7, 2016, the Tribunal ruled:

> ARBITRATORS' ORDER NO. 1
>
> [T]he Arbitrators . . . confirm the following rulings made in the December 6, 2016 conference call with counsel:
>
> 1. In order to expedite proceedings, the Claimant's [Signature's] request for a bifurcated hearing is granted. The proceedings shall first determine issues of liability: (i) to determine to what extent, if any, the Statute of Limitations defenses asserted by the Respondent [Ranbaxy] apply to the claims asserted by Claimant; and (ii) to determine whether and what type of damages may be awarded; and (iii) a hearing on damages, if required.

Order No. 1 also set a briefing schedule and hearing date. The Tribunal held a hearing in accordance with the schedule.

After the hearing, the Tribunal made a "Partial Final Award" on December 19, 2016 ("Partial Final Award"). In the Partial Final Award, the Tribunal reviewed the JVA, the relevant procedural history, and the parties' contentions, explaining that:

- Ranbaxy maintained that Delaware's three-year statute of limitations applied to Signature's claims, while Signature sought a declaration that Ranbaxy's statute of limitations defense failed as a matter of law; and
- Signature contended that an award on the limitations defense would constitute an award within sixty days under section 12.8 of the JVA, while Ranbaxy argued that section 12.8 required the Tribunal to render a final award not later than December 26, 2016.

The Tribunal then ruled:

> 20. Section 12.8 of the Agreement specifies that the arbitrators "shall hold a hearing and make an award" within 60 days of filing for arbitration. Rule R-47(b) states:
>
> > "In addition to a final award, the arbitrator may make other decisions, including interim, interlocutory, or partial rulings, orders and awards. . . . In any interim, interlocutory, or partial award, the arbitrator may assess and

> apportion the fees, expenses, and compensation related to such award as the arbitrator determines is appropriate."
>
> 21. **Section 12.8 of the Agreement does not require that a final award be made by any specified deadline, only that an award be made. Section R-47(b) [of the AAA Rules] includes partial awards within the category of "awards." This Partial Final Award is an award made, following a hearing, in accordance with the requirements of that Section and Rule.**
>
> VI. AWARD
>
> WHEREFORE, for the reasons set forth above, we hereby DECLARE and AWARD as follows:
>
> 22. **Signature's Request for a declaration that there is no time limit on Signature's right to pursue its claims arising out of or relating to the JV Agreement is denied. The arbitrators have discretion to enforce such a time limit if it is appropriate in the circumstances to do so.**
>
> 23. Except as set forth herein, all other claims and defenses in the arbitration are preserved for further proceedings, and the arbitrators will retain jurisdiction to decide these at a later stage in this proceeding. . . . .

(Emphasis added).

The parties' dispute about the meaning of the 60-day provision continued, however, after the Tribunal made its Partial Final Award. Ranbaxy took the position that the Partial Final Award was "not 'an award' as contemplated by Section 12.8 and in no way 'satisfied' the time limit set forth in that provision." Ranbaxy objected to any action other than a "modest amendment" to the parties' agreement "to accommodate the recent holidays," and maintained that any other action by the arbitrators was "outside the bounds of the parties' arbitration agreement." Ranbaxy "specifically reserve[d] its right to seek vacatur of any award issued in this action." Each party then submitted a letter to the Tribunal in support of its position on the question whether the Partial Final Award satisfied section 12.8 of the JVA. After a conference call with the Tribunal, Ranbaxy again asserted that it "reserves all rights under Section 12.8 of the JVA, and that Ranbaxy's continued participation in these proceedings is performed subject to, and without waiver of, this reservation of rights."

On January 30, 2017, the Tribunal issued an "Arbitrators' Order." In it, the Tribunal quoted paragraphs 20 and 21 from the Partial Final Award. The Tribunal went on to explain that despite its Partial Final Award "made prior to the 60th day following the filing of the arbitration," Ranbaxy continued to insist on "reserving its rights" under section 12.8 of the JVA. The Tribunal continued, "[t]he Arbitrators advised [Ranbaxy] that it would be manifestly unjust and unfair, for the parties to expend a significant amount of time and resources, and for [Ranbaxy] to 'sit on its rights' as perceived, and to await the outcome of the arbitration." The Tribunal concluded:

> 4. **The proposed "reservation" by [Ranbaxy] of "all rights" under Sec. 12.8 of the JVA is not acceptable to the Arbitrators**, who require that the issue of arbitral jurisdiction after the 60th day following the filing of the arbitration be resolved prior to proceeding with the merits of the case. The Arbitrators are therefore suspending the proceedings in this arbitration until February 21, 2017 so that either party can proceed in the appropriate court with jurisdiction to determine the applicability of Section 12.8 of the JVA to these proceedings or any other pre-Award issues which are appropriate for judicial intervention. Alternatively, either party may present the issue of jurisdiction under Sec. 12.8 of the JVA to the Panel for a further final and binding award on jurisdiction, relying on prior submissions or supplementing them as the party may choose, by February 21, 2017. The Arbitrators' decision shall constitute a final and binding ruling on jurisdiction pursuant to AAA Rule R-7. The Panel will understand that each party, by proceeding with the arbitration after February 21, 2017 without having taken either of these steps, will have waived any further objection to jurisdiction under Sec. 12.8 of the JVA.

(Emphasis added).

Each party responded to the Tribunal's January 30 Order. Signature argued that the Tribunal "has already ruled on and rejected Ranbaxy's challenge to the Tribunal's jurisdiction," but in the alternative requested a "further award confirming its prior ruling," and reserved its right to respond to any action taken by Ranbaxy in court. Ranbaxy announced its intent to "seek a judicial determination as to the meaning of the 60-day time limit in Section 12.8 of the JVA and its applicability to this arbitration proceeding." On February 8, 2017, the Tribunal ordered:

ARBITRATORS' ORDER

> **The Arbitrators confirm that the Partial Final Award dated December 16,**[1] **2016 was their award on jurisdiction with respect to the 60 day requirement of Section 12.8 of the JVA.** The Parties have not agreed to seek a further ruling on the subject from the Panel. [Ranbaxy], in response to the Arbitrators' Order dated January 30, 2017, states that it has commenced proceedings ". . . to determine the applicability of Section 12.8 to these proceedings . . . ." The Arbitrators request that counsel keep the Panel updated on all court proceedings and rulings on a timely basis.

(Emphasis added).

In the trial court, Ranbaxy filed a motion to lift the December 19, 2014 stay of proceedings "for the limited and sole purpose" of deciding Ranbaxy's accompanying motion for declaratory judgment. Ranbaxy requested the trial court to render judgment that:

> (i) the 60-day time limit in Section 12.8 of the JVA requires that any arbitration action under the JVA must be completed with entry of award within 60 days of the filing for arbitration;
>
> (ii) the arbitration that Signature commenced on October 25, 2016 was concluded as of December 24, 2016; and
>
> (iii) any relief or award issued by the Panel after December 24, 2016 is in violation of the terms of the parties' arbitration agreement and, as such, is invalid and unenforceable . . . .

Signature responded by filing its own "Motion to Confirm International Arbitral Award," requesting that the trial court confirm the Partial Final Award and compel Ranbaxy to resume arbitration. Each party then filed its response to the other's motion. The trial court heard these motions on March 13, 2017. In a memorandum to the parties the following day, the trial court:

- Granted Ranbaxy's motion to lift the stay;
- Denied Signature's motion to confirm the Tribunal's award;

[1] Some copies of the Partial Final Award in the record are dated December 16, 2016, and some are dated December 19, 2016. The only substantive difference between the two versions is the addition of the phrase in paragraph 23, quoted above, that "the arbitrators will retain jurisdiction to decide these at a later stage in this proceeding," in reference to "all other claims and defenses in the arbitration" that are "preserved for further proceedings."

- Found that the JVA "contractually limits the duration of the arbitration to 'sixty (60) days of the filing for arbitration,'" citing *Smith v. Transport Workers of America*, 374 F.3d 372 (5th Cir. 2004);
- Found that the sixty days have elapsed;
- Denied Ranbaxy's motion for a declaration that "the 'arbitration is over and Plaintiff take-nothing'";
- Vacated its previous stay of the proceedings; and
- Ordered counsel to submit an order consistent with the court's rulings.

On April 3, 2017, the trial court signed an order granting the motion to lift stay, denying the motion to confirm the arbitration award, and declaring that (1) the JVA "contractually limits the duration of the arbitration to sixty (60) days of the filing for arbitration;" and (2) "Sixty (60) days have elapsed from the date of the arbitration being filed." The trial court denied Ranbaxy's request for a declaration that Signature "take-nothing," and vacated its December 19, 2014 order to stay. This appeal followed.

ISSUES

We questioned our jurisdiction over this appeal and requested that the parties address the issue by letter. The parties complied and have also addressed this Court's jurisdiction in their respective briefs. Further, in three issues, Signature contends the trial court erred by (1) failing to confirm the Tribunal's Partial Final Award; (2) determining that the Partial Final Award did not satisfy the 60-day deadline in section 12.8 of the JVA; and (3) improperly interfering in an ongoing arbitration.

STANDARD OF REVIEW

As we discuss below, section 51.016 of the civil practice and remedies code permits interlocutory appeal of a matter subject to the Federal Arbitration Act ("FAA"). TEX. CIV. PRAC.

& REM. CODE ANN. § 51.016 (West 2015).[2] We apply an abuse of discretion standard of review to appeals under this section. *Big Bass Towing Co. v. Akin*, 409 S.W.3d 835, 838 (Tex. App.—Dallas 2013, no pet.). We defer to the trial court's factual determinations if they are supported by evidence, but we review the trial court's legal determinations de novo. *Id.*

DISCUSSION

1. Jurisdiction

Generally, this Court has jurisdiction only over appeals from final judgments and certain interlocutory orders as permitted by statute. *See CMH Homes v. Perez*, 340 S.W.3d 444, 447 (Tex. 2011) (citing *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001)). Consequently, we questioned our jurisdiction over the portion of the trial court's order granting Ranbaxy's motion for declaratory judgment in part.

Section 51.016 of the Texas Civil Practice and Remedies Code permits interlocutory appeal of a matter "subject to the Federal Arbitration Act (9 U.S.C. Section 1 et seq.) . . . under the same circumstances that an appeal from a federal district court's order or decision would be permitted by 9 U.S.C. Section 16." TEX. CIV. PRAC. & REM. CODE ANN. § 51.016; *Big Bass Towing Co.*, 409 S.W.3d at 838. Section 16(a) of the FAA provides:

> (a) An appeal may be taken from–
>
> (1) an order–
>
> (A) refusing a stay of any action under section 3 of this title,
>
> (B) denying a petition under section 4 of this title to order arbitration to proceed,

[2] In the trial court and in this Court, both parties rely on the Federal Arbitration Act rather than the Texas Arbitration Act ("TAA") as the law applicable to their dispute. The FAA and the TAA are not mutually exclusive. *In re D. Wilson Constr. Co.*, 196 S.W.3d 774, 779 (Tex. 2006) (orig. proceeding). The FAA only preempts contrary state law, not consonant state law. *Id.* Neither party has argued that our resolution of the issues presented here would be different under the TAA; consequently, we address the parties' arguments without further specific reference to the TAA. *See Cambridge Legacy Grp., Inc. v. Jain*, 407 S.W.3d 443, 448 (Tex. App.—Dallas 2013, pet. denied) (no need to determine whether FAA or TAA applied where conclusion "would be the same under either act").

(C) denying an application under section 206 of this title to compel arbitration,

(D) confirming or denying confirmation of an award or partial award, or

(E) modifying, correcting, or vacating an award;

(2) an interlocutory order granting, continuing, or modifying an injunction against an arbitration that is subject to this title; or

(3) a final decision with respect to an arbitration that is subject to this title.

9 U.S.C. § 16(a) (Westlaw through Pub. L. No. 115-122).

Signature asserts that this Court has jurisdiction over this appeal under subsections (1)(D), (1)(E), and (3) of section 16(a). Ranbaxy contends that Signature's appeal does not fall within these subsections because the arbitrators did not make an "award" or a "partial award" under subsection (1)(D) or (1)(E), and because the trial court did not make "a final decision with respect to arbitration" under subsection (3). We conclude that we have jurisdiction under subsections 16(a)(1)(D) and (E).

The Tribunal bifurcated the proceedings and disposed of two substantive issues in their entirety: (1) the parties' dispute over the scope of the arbitration, and (2) Ranbaxy's limitations defense. *See* AAA rule R-32(b) (arbitrator may bifurcate proceedings and direct parties to "focus their presentations on issues the decision of which could dispose of all or part of the case"). The Tribunal unequivocally ordered that "the Partial Final Award dated December 16, 2016 was their award on jurisdiction with respect to the 60 day requirement of Section 12.8 of the JVA." (Feb. 8, 2017 Arbitrators' Order). In sum, the Tribunal ruled that its Partial Final Award was an "award" under the FAA satisfying the requirements of JVA section 12.8. The trial court disagreed, declaring that the 60-day period for arbitration had elapsed.

We look to the substance of the trial court's order to determine whether it falls within one of section 16's subsections permitting an appeal. *CMH Homes*, 340 S.W.3d at 449 ("[I]t is the

character and function of an order that determine its classification.") (quoting *Del Valle Indep. Sch. Dist. v. Lopez*, 845 S.W.2d 808, 809 (Tex. 1992)). The character and function of the trial court's order was to terminate the arbitration proceedings and vacate the Tribunal's award interpreting the parties' agreement to arbitrate. *See id*. FAA subsections 16(a)(1)(D) and (E) permit an appeal under these circumstances.

The cases Ranbaxy cites do not preclude Signature's appeal under subsections 16(a)(1)(D) and (E). Ranbaxy relies on cases following the principle that a trial court's order is not a "final decision with respect to an arbitration" under subsection (3) of FAA section 16(a) unless it includes final dismissal of the case. *See Green Tree Fin. Corp. v. Randolph*, 531 U.S. 79, 86, 87 n.2 (2000) ("final decision with respect to arbitration" under FAA § 16(a)(3) means decision that "ends the litigation on the merits and leaves nothing more for the court to do but execute the judgment" [internal quotations omitted]). In the cases cited by Ranbaxy, orders (1) appointing an arbitrator, (2) staying trial court proceedings and compelling arbitration, and (3) refusing to enjoin an arbitration in progress did not meet the "final decision" requirement of FAA section 16(a)(3). *See CMH Homes*, 340 S.W.3d at 450 (order appointing arbitrator remains interlocutory); *Mills v. Advocare Int'l, L.P.*, No. 05-15-00769-CV, 2015 WL 5286829, at *1 (Tex. App.—Dallas Sept. 10, 2015, no pet.) (order compelling arbitration and staying trial court proceedings, rather than dismissing proceedings with prejudice, is not "final decision with respect to arbitration" under FAA section 16(a)(3)); *Accenture LLP v. Spreng*, 647 F.3d 72, 74–77 (2d Cir. 2011) (no jurisdiction under FAA § 16(a)(3) to review trial court's order refusing to enjoin arbitration in progress; "official dismissal of all claims" required to review order compelling arbitration).

Neither *CMH Homes* nor *Mills* addressed jurisdiction under subsection 16(a)(1) of the FAA.[3] And although the court in *Accenture* did address FAA subsection 16(a)(1)(D) as well as section 16(a)(3), it did so in considering whether a "procedural ruling"—the arbitrator's denial of leave to amend a pleading—was an appealable "award" under subsection (1)(D). *Accenture*, 647 F.3d at 77. The court determined there was no appealable award because the arbitrator had not made a ruling on the substance of a claim. *Id.* The court contrasted awards that "'finally and conclusively dispose[ ] of a separate and independent claim.'" *Id.* (quoting *Metallgesellschaft A.G. v. M/V Capitan Constante*, 790 F.2d 280, 283 (2d Cir. 1986)).

Here, the trial court expressly denied Signature's motion to confirm the Tribunal's "Partial Final Award," and effectively vacated that award, circumstances under which FAA subsections 16(a)(1)(D) and (E) permit an appeal. We conclude we have jurisdiction over Signature's appeal. *See* FAA § 16(a)(1)(D), (E).

2. Signature's Issues

Signature's issues challenge the trial court's declarations that (1) the JVA contractually limits the duration of the arbitration to 60 days, and (2) the 60-day period has elapsed. Signature also challenges the trial court's denial of its motion to confirm the Tribunal's award. Signature contends that the trial court's declarations directly conflict with the Tribunal's ruling that the JVA "does not require that a final award be made by any specified deadline, only that an award be made." We conclude that the trial court erred by rendering an interpretation of the JVA that was contrary to the Tribunal's.

Following the hearing on Signature's motion to confirm the Tribunal's award and Ranbaxy's motions for declaratory judgment and to lift stay, the trial court issued a memorandum

[3] Similarly, *Lummus Global Amazonas SA v. Aguaytia Energy del Peru SR Ltda.*, 256 F. Supp. 2d 594, 639 (S.D. Tex. 2002), also cited by Ranbaxy, addressed whether an arbitration award was too indefinite to be enforced under FAA section 10(a)(4), not whether the court had jurisdiction to review an order under FAA section 16(a).

announcing its rulings. In support of its rulings granting Ranbaxy's motions and denying Signature's, the trial court cited *Smith v. Transport Workers of America*, 374 F.3d 372 (5th Cir. 2004). In *Smith*, the court stated that "[w]hether a contract requires arbitration of a given dispute is a matter of contract interpretation and a question of law for the court." *Id.* at 374. The court vacated an arbitration award that had been modified by the arbitrators after the express contractual period for doing so had expired. *See id.* at 374–75.

But where, unlike *Smith*, the parties have agreed "to submit the arbitrability question itself to arbitration," a court "must defer" to the arbitrator's decision. *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 943 (1995). The parties did so here by incorporating the AAA rules into their agreement. "[T]he express incorporation of rules that empower the arbitrator to determine arbitrability—such as the AAA Commercial Arbitration Rules—has been held to be clear and unmistakable evidence of the parties' intent to allow the arbitrator to decide such issues." *Schlumberger Tech. Corp. v. Baker Hughes, Inc.*, 355 S.W.3d 791, 802 (Tex. App.—Houston [1st Dist.] 2011, no pet). Section 12.8 of the JVA provides that disputes "shall be resolved exclusively through arbitration" in proceedings "conducted in accordance with" the AAA rules.

Rule R-7 of the AAA rules provides:

> R-7 Jurisdiction
>
> (a) The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim.
>
> . . .
>
> (c) A party must object to the jurisdiction of the arbitrator or to the arbitrability of a claim or counterclaim no later than the filing of the answering statement to the claim or counterclaim that gives rise to the objection. The arbitrator may rule on such objections as a preliminary matter or as part of the final award.

AAA rule R-47, "Scope of Award," provides in part:

> (a) The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract.
>
> (b) In addition to a final award, the arbitrator may make other decisions, including interim, interlocutory, or partial rulings, orders, and awards. . . .

Under AAA rule R-7(a), the Tribunal had the power to interpret the scope of the parties' agreement to arbitrate, and the JVA had no provisions negating or restricting the Tribunal's exercise of this power. *See Schlumberger*, 355 S.W.3d at 803.

Ranbaxy first asked the Tribunal, not the trial court, to resolve the dispute about the 60-day provision. In its initial motion to compel arbitration filed in the trial court, Ranbaxy contended that there was a valid agreement to arbitrate between the parties, and that the parties' dispute fell within the scope of the arbitration agreement. Ranbaxy did not request any interpretation of the 60-day provision or suggest that arbitration must be of limited duration. Ranbaxy argued that the FAA required the trial court to stay Signature's suit and compel arbitration. It was Signature who objected to the 60-day provision as unconscionable. The trial court overruled Signature's objections and granted Ranbaxy's motion. Arbitration commenced.

Ranbaxy then briefed its contentions about the 60-day provision to the Tribunal, arguing that "the 60-day time limit should be enforced according to its terms." And when the Tribunal adopted Signature's interpretation of the provision, Ranbaxy appealed to the trial court for a different interpretation. But there is no provision in the JVA, the AAA rules, or the FAA permitting such an appeal. *See, e.g.*, FAA § 10 (listing limited grounds for vacating arbitration award); *Myer v. Americo Life, Inc.*, 232 S.W.3d 401, 407–08 (Tex. App.—Dallas 2007, no pet.) (judicial review of arbitration award is "exceedingly deferential" and "extraordinarily narrow").

Ranbaxy argues that the Tribunal did not issue a "final jurisdictional award," but instead "invited judicial interpretation" of the 60-day provision. We disagree. As quoted above, the

Tribunal's January 30 Order stated, "[s]pecifically the Partial Final Award determined . . . [that] Section 12.8 of the Agreement does not require that a final award be made by any specified deadline, only that an award be made." The January 30 Order detailed Ranbaxy's attempts to "reserve its rights" under section 12.8—in the Tribunal's words, to '"sit on its rights' as perceived, and to await the outcome of the arbitration"—despite the Tribunal's assertion that such an action was "manifestly unjust and unfair." The January 30 Order continued, "[t]he proposed 'reservation' by [Ranbaxy] of 'all rights' under Sec. 12.8 of the JVA is not acceptable to the Arbitrators, who require that the issue of arbitral jurisdiction after the 60th day following the filing of the arbitration be resolved prior to proceeding with the merits of the case." The Tribunal suspended the arbitration proceedings so that either party could seek judicial intervention, request a further award on jurisdiction from the Tribunal, or proceed with the arbitration without "further objection to jurisdiction under Sec. 12.8 of the JVA."

There is nothing in the January 30 Order to indicate that the Tribunal was revoking its previous decision in order to "invite judicial interpretation." Rather, the January 30 Order reflects that the Tribunal deemed its Partial Final Award to fall within AAA rule R-47(b)'s provision for "interim, interlocutory, or partial rulings, orders, and awards." The Tribunal stated that it had "determined" that section 12.8 of the JVA "does not require that a final award be made by any specific deadline." But rather than allow Ranbaxy to '"sit on its rights' . . . and to await the outcome of the arbitration," the Tribunal required the issue to be "resolved prior to proceeding with the merits of the case."

Ranbaxy also argues AAA rule R-7 does not apply to "questions about arbitral procedure," and the 60-day provision was procedural. But "'procedural' questions which grow out of the dispute and bear on its final disposition are presumptively *not* for the judge, but for an arbitrator to decide." *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84 (2002) (internal quotation

omitted). And rule R-7 provides that the arbitrator has the power to rule on the scope of the parties' arbitration agreement. *See* AAA rule R-7(a).

Ranbaxy contends that the Tribunal's construction of section 12.8 was wrong. Ranbaxy argues that "section 12.8 requires arbitration to be complete within 60 days," and that "Signature's proposed interpretation of the sixty-day provision would render it meaningless." But Ranbaxy made these arguments to the Tribunal, and the Tribunal rejected them. Similarly, Ranbaxy also contends that the Partial Final Award is not an "award" meeting JVA section 12.8's requirement that the arbitrators "shall . . . make an award within sixty (60) days." But the Tribunal ruled that it was, and neither the JVA nor the FAA provides Ranbaxy with the right to an interim review of the correctness of this ruling. *See id.* "We are not permitted to review the arbitrator's decision on the merits even if the decision is alleged to be based on factual error or a misinterpretation of the parties' agreement." *Myer*, 232 S.W.3d at 408. Neither this Court nor the trial court may substitute its own judgment for the Tribunal's. *See id.*

Ranbaxy argues further that the Tribunal exceeded its contractual mandate, grounds for vacating an arbitration award under FAA section 10(a)(4). But a complaint that the Tribunal decided issues incorrectly or made mistakes of law is not a complaint that the Tribunal exceeded its powers under section 10(a)(4). *Ancor Holdings, LLC v. Peterson, Goldman & Villani, Inc.*, 294 S.W.3d 818, 830 (Tex. App.—Dallas 2009, no pet.). In *Ancor*, we explained that "[o]ur inquiry under section 10(a)(4) is whether the arbitrator had the authority, based on the arbitration clause and the parties' submissions, to reach a certain issue, not whether the arbitrator correctly decided the issue." *Id.* at 829. Although Ancor's argument was made under section 10(a)(4), we concluded it was "actually a complaint that the arbitrator committed an error of law by rejecting Ancor's assertion that PGV's claims were barred by res judicata or collateral estoppel." *Id.* at 830. Because Ancor did not establish that the arbitrator decided a matter "not properly before her," we could not

conclude that the arbitrator exceeded her powers under section 10(a)(4). *Id.* Similarly here, Ranbaxy's complaint is that the Tribunal decided an issue incorrectly, not that the Tribunal lacked the authority to reach the issue.

Additionally, Ranbaxy did not establish any of the other grounds under which a court may deny a motion to confirm an arbitration award. Under FAA section 9, a court "must grant" an application to confirm an arbitrator's award "unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11" of the FAA. FAA § 9. Under section 10, a trial court may vacate an award in one of four limited circumstances.[4] Ranbaxy argues only that the Tribunal exceeded its powers, an argument we have already rejected. *See* FAA § 10(a)(4). Consequently, the trial court should have granted Signature's motion to confirm the Tribunal's Partial Final Award. *See Metallgesellschaft A.G.*, 790 F.2d at 283 (district court did not err in confirming partial arbitration award that finally and conclusively disposed of separate and independent claim).

In section 12.8 of the JVA, the parties agreed to arbitrate their disputes in accordance with the AAA rules. Those rules grant arbitrators the power to rule on their own jurisdiction, including "any objections to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim." AAA rule R-7(a). The Tribunal determined that its Partial Final Award satisfied JVA section 12.8's provision that an award be made within 60 days of the filing of the arbitration. We conclude that the trial court erred by ruling to the contrary. We sustain Signature's issues.

[4] FAA section 10(a) provides that a court may make an order vacating an arbitration award upon application by a party where (1) the award was "procured by corruption, fraud, or undue means"; (2) there was "evident partiality or corruption" in an arbitrator; (3) the arbitrators were guilty of specified misconduct; or (4) the arbitrators exceeded or so imperfectly executed their powers that "a mutual, final, and definite award upon the subject matter submitted was not made." FAA § 10(a)(1)–(4).

CONCLUSION

We conclude that we have jurisdiction over Signature's appeal. Having sustained Signature's issues, we reverse the trial court's order and remand the case with instructions to confirm the Tribunal's Partial Final Award and to order the parties to return to arbitration.

/Elizabeth Lang-Miers/
ELIZABETH LANG-MIERS
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

SIGNATURE PHARMACEUTICALS, L.L.C., SIGNATURE R&D HOLDINGS, L.L.C., AMERICAN GENERICS, INC. AND MCCORMICK HOLDINGS, L.L.C., Appellants

No. 05-17-00412-CV V.

RANBAXY, INC. (F/K/A RANBAXY PHARMACEUTCALS, INC.), RANBAXY LABORATORIES, LTD., VENKATACHALAM KRISHNAN, AND ARUN SAWHNEY, Appellees

On Appeal from the 296th Judicial District Court, Collin County, Texas
Trial Court Cause No. 296-03032-2014.
Opinion delivered by Justice Lang-Miers; Justices Fillmore and Stoddart, participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **REVERSED** and this cause is **REMANDED** to the trial court with instructions to confirm the arbitration tribunal's Partial Final Award of December 19, 206, and to order the parties to return to arbitration.

It is **ORDERED** that appellants Signature Pharmaceuticals, L.L.C., Signature R&D Holdings, L.L.C., American Generics, Inc. and McCormick Holdings, L.L.C. recover their costs of this appeal from appellees Ranbaxy, Inc. (f/k/a Ranbaxy Pharmaceutcals, Inc.), Ranbaxy Laboratories, Ltd., Venkatachalam Krishnan, and Arun Sawhney.

Judgment entered this 12th day of March, 2018.