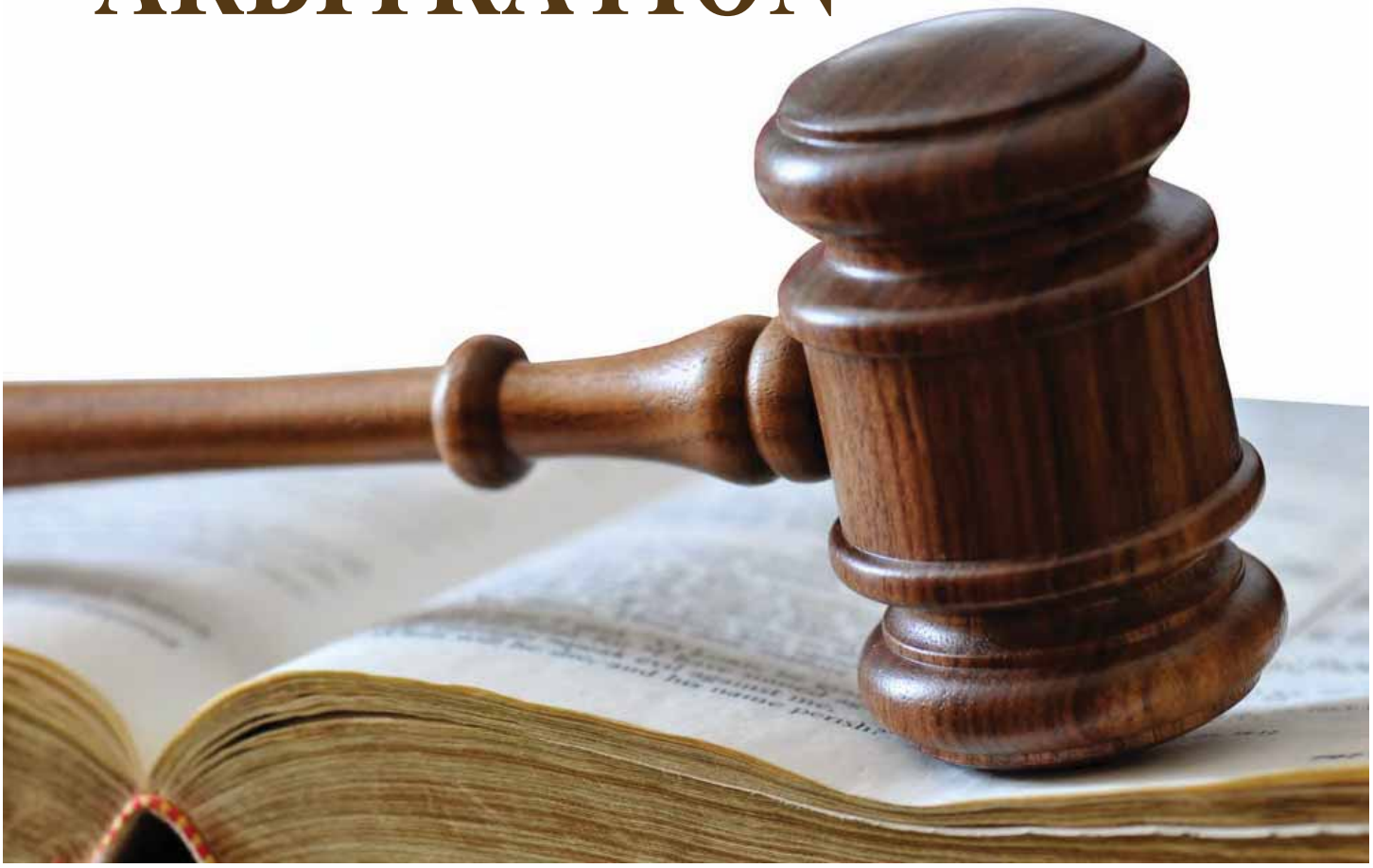
A PRACTICAL GUIDE ON

THE CONCEPT AND PRACTICE OF ARBITRATION



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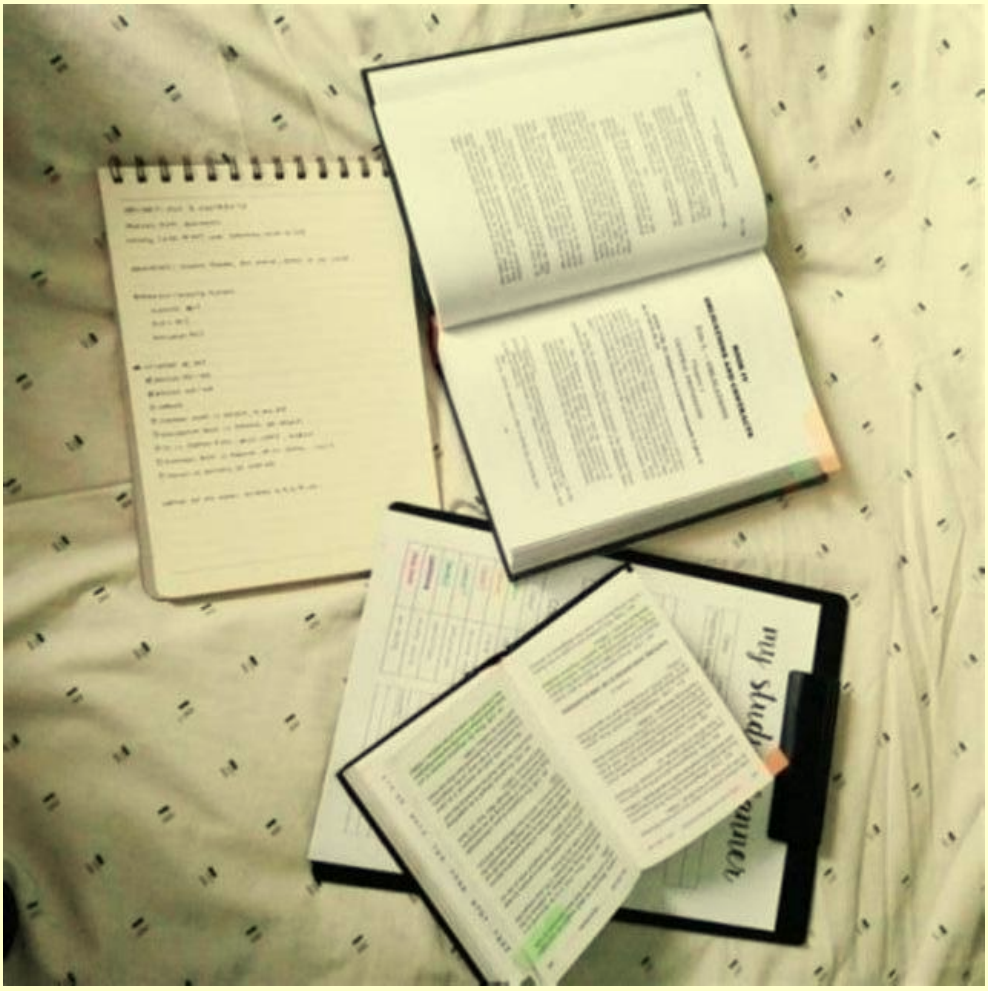

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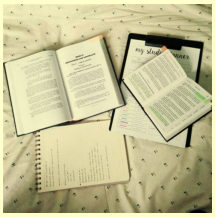

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A PRACTICAL GUIDE ON THE CONCEPT AND PRACTICE OF ARBITRATION

BY

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CHAPTER 1

INTRODUCTION TO METHODS OF DISPUTE RESOLUTION

Disputes and differences in business dealings are common. Unresolved disputes in business hinder the smooth flow and growth of trade whether domestic or international. A dispute is normally resolved by way of litigation or through Alternative Dispute Resolution (ADR) mechanism. In litigation a dispute is referred to a court of Law. Litigation is expensive, time consuming and full of complexities.

Alternative Dispute Resolution ("ADR") refers to any means of settling disputes outside the courtroom. ADR typically includes arbitration, mediation, negotiation, and conciliation. The above four methods of redressal and resolution of a dispute are collectively called Alternative Dispute Resolution as these are usually considered to be alternative to litigation. The number of cases to be resolved is piling up at the courts. Besides, the constant rise in the costs of litigation coupled with time delays continues to plague the litigants. As a result of all this, the reliance on ADR methods is on the rise.

The two most common forms of ADR are arbitration and mediation. Arbitration is a simplified version of a trial involving no discovery and simplified rules of evidence. Either both sides agree on one arbitrator, or each side selects one arbitrator and the two arbitrators elect the third to comprise a panel. Arbitration hearings usually last only a few hours and the opinions are not on public record. Arbitration has long been used in labour, construction, and securities regulation, but is now gaining popularity in the

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resolution of other business disputes as well.

ADR is a system whereby disputants resolve their disputes with minimum outside help. The ADR procedure consists of four basic methods of dealing with disputes which are:—

1. Negotiation
2. Mediation
3. Conciliation
4. Arbitration

NEGOTIATION: Negotiation is the process where interested parties resolve disputes, agree upon courses of action, bargain for individual or collective advantage, and/or attempt to craft outcomes which serve their mutual interests. Negotiation is usually regarded as a form of alternative dispute resolution. The first step in negotiation is to determine whether the situation is in fact a negotiation. The essential qualities of negotiation are: the existence of two parties who share an important objective but have some significant difference(s). The purpose of the negotiating conference is to compromise the difference(s). The outcome of the negotiating conference may be a compromise satisfactory to both the sides, or a standoff (failure to reach a satisfactory compromise) or a standoff with an agreement to try again at a later time. Negotiation differs from “influencing” and “group decision making.”. In negotiation the disputing parties resolve their differences out of court by entering into negotiation themselves. No lawyers or outsiders are generally involved. There are no hard and fast rules, no technicalities and complicated procedures. However, if a dispute cannot be resolved through negotiations, one can try mediation.

MEDIATION : In mediation generally a third party is involved who acts as a facilitator. In a typical mediation, there is always a win-win situation. However, the settlement reached through mediation

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is non-binding. Mediation comprises of an act of bringing two states, sides or parties in a dispute closer together towards an agreement through alternative dispute resolution (ADR). It is a dialogue in which a (generally) neutral third party, the mediator, using appropriate techniques, assists two or more parties to help them negotiate an agreement, with concrete effects, on a matter of common interest. More generally speaking, the term "mediation" covers any activity in which an impartial third party (often a professional) facilitates an agreement on any matter in the common interest of the parties involved.

Mediation applies to different fields, with some common peculiar elements and some differences for each of its specialities. The main fields of mediation include commerce, legal disputes and diplomacy, but forms of mediation appear in other fields as well.

CONCILIATION : Conciliation is now recognised by the Arbitration and Conciliation Act, 1996. In Conciliation, the disputing parties resolve their disputes with the help of one or more conciliators. The settlement agreement reached by the parties and authenticated by the conciliator is binding upon the parties.

ARBITRATION : Arbitration is the settlement of a dispute by the decision not of a court of law but of one or more persons called arbitrators which is executable as a decree of the court.

ADR PROCESS : STRAULS Institute of dispute resolution of Pepperdine University has summarised the process of ADR as mentioned below:—

NEGOTIATION	MEDIATION	CONCILIATION	ARBITRATION
Voluntary	Usually Voluntary	Usually Voluntary	Either voluntary or by reference of court

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NEGOTIATION	MEDIATION	CONCILIATION	ARBITRATION
If there is agreement it is enforceable as a contract	If there is agreement it is enforceable as a contract	If there is agreement it is enforceable as a contract	If there is agreement it is enforceable as a contract
No third party involvement	Neutral selected by parties	Neutral selected by parties	Neutral selected by parties
Formalities established by parties	Formalities established by parties and neutral	Formalities established by parties and neutral	Formalities established by parties and neutral
Usually unrestricted party representation	Presentation limited by agreed rules	Presentation limited by agreed rules with power to neutral to give his/her opinion on the rules	Presentation limited by agreed rules however arbitrator is empowered to give a decision on rules if warranted
Parties control process and outcome	Parties control process and outcome	Parties control process and outcome	Parties control process and outcome
Private	Private	Usually Private	Usually Private

OTHER METHODS : It may not be out of place to mention that in practice, a combination of ADR methods is used.

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The mechanism of ADR is evolving and new experiments are constantly being carried out by various arbitral organisations all over the world. In its various forms ADR is becoming popular and considered as a co-operative problem solving system.

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CHAPTER 2

CONCEPT OF ARBITRATION

The dictionary meaning of Arbitration is "The process by which the parties to a dispute submit their differences to the judgment of an impartial person or group appointed by mutual consent or statutory provision". Arbitration is one of the four forms of alternate dispute resolution – the other three being Negotiation, Mediation and Conciliation.

Need for Arbitration

The overburdened courts and judiciary system of our country is a proof of the quantum of disputes and differences in business dealings. As per the data available, there are over 20 million cases pending before district courts across the country. The data as on 28/3/2016 on National Judicial Data Grid (NJDG) website is reproduced below.

Tenure of Pendency	Civil Cases	Criminal Cases	Total
Cases Pending over 10 years	6,58,326	15,53,488	22,11,814
Cases Pending (Between 5 and 10 years)	11,35,900	26,22,060	37,57,960
Cases Pending (Between 2 and 5 years)	21,31,757	41,77,091	63,08,849
Cases Pending less than 2 years	31,74,431	57,89,085	89,63,517
Total Pending Cases	**71,00,414**	**1,41,41,794**	**2,12,42,210**

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Arbitration, by its very nature, is meant to be an alternative to courts and a speedier remedy for dispute resolution. Almost all disputes–Commercial, Civil, Labour and Family disputes can be settled through arbitration. Arbitration process has been proven to work in the business environment, especially in respect of disputes involving joint ventures, construction projects, partnership differences, intellectual property rights, and personal injury and product liabilities.

Advantages of Arbitration

i. Privacy – An arbitration hearing is a private meeting.

ii. Informality – The adversary elements of an open court hearing are less evident in the less formal atmosphere of arbitration.

iii. Choice of decision maker – The parties can choose a technical person as arbitrator, so technical evidence will be readily understood.

iv. Convenience – The hearings can be arranged at times and places to suit all.

v. Flexibility – The Rules and procedures can be segmented, streamlined or simplified.

vi. Efficiency – Arbitration can be heard sooner than the court. Preparation should be less onerous, and the hearing should be shorter, faster and economical.

vii. Finality – There is generally no right of appeal, although the court has limited powers to set aside or remit an award.

viii. Internationality – Arbitration is internationally accepted, and awards can be enforced in most countries.

ix. Neutrality.

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x. Party Autonomy – It gives a presumption in most of the sections that unless a specific mention is made under the Arbitration Agreement to various issues, the Arbitral Tribunal would have the power to decide on the same.

xi. Timeliness – The amended Act calls for settlement of dispute within 12 months and added initiative to arbitrators for settlement of dispute within six months. This will insure timely disposal of dispute through Arbitration.

What Disputes Can Not Be Referred To Arbitration?

Section 2(3) of the Act provides that :- This part shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration. Thus if a matter is governed by any other law which excludes reference to Arbitration, this Act will not apply. Since in those cases, the law has given specific jurisdiction to specified courts or tribunals only, they cannot be decided through the mechanism of Arbitration.

The following matters in general practice, are not arbitrable.

1) Insolvency matters e.g. adjudication of a person or an insolvent

2) Matrimonial causes (except matters pertaining to settlement of terms of separation or divorce)

3) Testamentary matters e.g. validity of a will

4) Pertaining to suit under section 92 of the Code of Civil Procedure, 1908

5) Pertaining to proceedings for appointment of guardian of a minor or lunatic

6) Pertaining to industrial disputes

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7) Pertaining to criminal proceedings [excepting matters relating to compoundable offences]

8) Relating to charities or charitable trusts

9) Pertaining to dissolution or winding up of a Companies

10) Relating to claim for recovery of octroi duty

11) Pertaining to title to immovable property in a foreign country

12) Relating to possession of leased premises governed by the provisions of the Bombay Rents, Hotels and Lodging House Rates Control Acts, 1947

13) Any dispute, which is subject to an arbitration agreement, may be determined by arbitration unless the agreement is contrary to public policy or unless, under any other law, such a dispute is not capable of determination by arbitration.

The above, however, is not an exhaustive list.

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CHAPTER 3

LEGISLATIVE HISTORY OF ARBITRATION

With pending court cases piling up to an alarming levels and resulting in inordinate delay in justice, Arbitration has become an indispensible need of the modern times. However, origin of Arbitration as a mechanism of dispute redressal is older than people normally think.

The origin of arbitration is lost in obscurity. At what time or place man first decided to submit to his chief or to his friends for a decision and a settlement with his adversary, instead of resorting to violence and self-help, or to the public legal machinery available, is unknown. If at all an attempt is to be made to find its origin, it would be righteous to do it in the history of social growth and ethics rather than in either law or economics. In all religions there are many injunctions to be at peace with one's neighbours and to be reconciled speedily with an adversary. Aristotle (320 B.C.) urged the benefits of conciliation in his Rhetorics.' In Animadversiones, written by Heraldus, there is described a court of reconcilement that existed among the Greeks. It was common among the Romans "to put an end to litigation" by means of arbitration. The introduction of arbitration seems to be coeval with the foundation of our law. [Wolaver, Earl S. "The Historical Background of Commercial Arbitration." University of Pennsylvania Law Review and American Law Register 83.2 (1934): 132-46. Web]

In the earliest forms of society disputes were tried by the heads of families, from where the concept of Arbitration seems to have

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been derived. In India, arbitration was conceived in the system called the Panchayat. Indian civilization was an express proponent of encouraging settlement of differences by tribunals chosen by the parties themselves. Usually the tribunals were constituted of wise men in the community.

Arbitration in India has undergone a phenomenon metamorphosis. It has grown from the stage of village elders sitting under a banyan tree and resolving disputes to the stage of gaining statutory recognition. East India Company was mainly responsible for this evolution. Arbitration as a written law can be traced to the Bengal Regulation 1 of 1772 which for the first time provided for Resolution of dispute through arbitration. The succeeding Regulation i.e., Bengal Regulation 1781 contained a provision which is interesting to read.

"The judge do recommend and so far as he can without compulsion prevail upon the parties to submit to the arbitration of one person, to be mutually agreed upon by the parties ... No award of any arbitrator be set aside, except upon full proof, made by oath of two creditable witnesses that the arbitrators had been guilty of gross corruption or partially, in the course of which they had made their award."

Then followed Bombay Regulation 1 of 1779 and Madras Regulation 1 of 1802 which *inter alia* provided for reference to and resolution of disputes through arbitrations. Then with the advent of Code of Civil Procedure, 1859, if further cemented its place in Indian legislation. Sections 312 to 317 of the Code related to arbitration. These provisions contemplated 2 types of arbitration viz.,

1) Arbitration by the intervention of the court in a pending suit and

2) Arbitration without the intervention of the court.

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Exclusive Legislation for Arbitration in India

A legislation exclusively dealing with arbitration was enacted in the year 1899 with the passing of Arbitration Act, 1899 which was based on the English Arbitration Act, 1899. It replaced the provisions of CPC and provided for similar provisions.

However, a new Code of Civil Procedure was enacted in the year 1908. It contained Section 89, Section 104(1)(a) to (f) and Schedule II dealing with arbitrations. These provisions enabled the parties in civil suit to seek reference of disputes for arbitration and empowered the courts to refer the dispute for arbitration, have control over arbitral proceedings and adjudicate on the validity of awards.

Later, based on the English Arbitration Act 1934, the **Arbitration Act, 1940** was enacted in India to consolidate and amend the law relating to arbitration as contained in the Indian Arbitration Act, 1899 and the Second Schedule of the Code of Civil Procedure 1908. It was an exhaustive law relating to the domestic arbitration. The Act extended to whole of India except J&K. The Act dealt with broadly three kinds arbitration: viz., (1) arbitration without intervention of a court: (2) arbitration with intervention of a court where there is no suit pending and (3) arbitration in suits. It empowered the Indian courts to modify the award, remit the award to the arbitrators for reconsideration and to set aside the award on specific grounds.

On 23rd October, 1937, India became a signatory to both the Geneva Protocol on Arbitration Clauses 1923 & Geneva Convention of 1927. Convention **and the Arbitration (Protocol and Convention) Act 1937,** was enacted in India to give effect to the said conventions. The New York Convention which came into force on 7th June, 1959 was an improvement on the Geneva Convention of 1927 (“New York Convention”). India became a signatory to the New York Convention on 13th July, 1960. Accordingly, the **Foreign**

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Awards (Recognition and Enforcement) Act, 1961 was enacted by Indian Government to give effect to the New York Convention ("Foreign Awards Act"). In this Foreign Awards Act, there was no provision for challenging the foreign award on merits similar or identical to the provisions contained in the Arbitration Act, 1940.

The Arbitration Act, 1940, which was mainly intended to provide for a simple, speedy and less expensive alternative system of dispute resolution failed to produce desired results. The main reason for this is conferment of wide power on courts to interfere with the functioning of the arbitral forums at all the stages, not to speak of the powers to interfere with awards passed by the arbitrators. No one has recognised and expressed better than the Apex Court the fact that the 1940 Act failed to realise its objects in its judgment in *M/s. Guru Nanak Foundation vs M/s. Rattan Singh & Sons (AIR 1981 SC 2975)* quote a few lines from this judgment.

"Interminable, time consuming, complex and expensive court procedures impelled jurists to search for an alternative forum, less formal, more effective and speedy for resolution of disputes avoiding procedure claptrap and this led them to Arbitration Act, 1940. However the way in which the proceedings under the Act are conducted and without an exception challenged in courts has made lawyers laugh and legal philosophers weep....."

Apart from the inadequacies of the 1940 Arbitration Act and the recommendations of the successive Law Commissions proposing drastic changes to the existing law, Justice Malimanth Committee's report recommended a number of Alternative Dispute Resolution forums to reduce the heavy pendency in the courts.

The policy of liberalisation in the field of industry and commerce by the Government of India opened flood gates for foreign investment. This impelled the Government to follow UNCITRAL Model Law i.e., (UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW) and bring out the new enactment

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called **'The Arbitration and Conciliation Act, 1996'.** This Act repealed the laws of arbitration in India that were contained in the Protocol and Convention Act, 1937, the Arbitration Act, 1940 and the Foreign Awards (Recognition and Enforcement) Act, 1961.

This Act sought to reduce the interference of courts with the Arbitral proceedings at all the 3 important stages viz., pre-reference, post-reference and post award stages. This Act even empowered the arbitrators to rule on their own jurisdiction without allowing the party raising the plea of arbitrator's jurisdiction to approach courts and interdict the arbitral proceedings, till the award was made. The scope of courts interference with the arbitration award was also reduced to a great extent by limiting the challenge to a few ground such as the personal misconduct of arbitrator, the award being opposed to public policy, the decision falling outside the scope of reference etc., The most important and welcome change that was brought about in this Act was the simplified procedure of arbitrator. Unlike in the old Act which empowered courts to refer disputes for arbitration, the highest judicial functionaries such as Chief Justice of India or his nominee in the case of International Arbitrations and the Chief Justice of the High Court concerned or his nominee in the case of domestic arbitrations were vested with the powers to appoint arbitrations.

The Civil Procedure Code Amendment Act, 1999 was passed by Parliament on 20-12-1999. Though it became a subject matter of controversy on various aspects, it introduced two pivotal provisions regarding arbitration. They were section 89 and Rules 1A to 1C to Order X. These provisions make it incumbent upon the courts where it appears that there exist elements of settlements to call upon the parties at their option to agree for one or the other Alternative Methods of Dispute Resolution viz., Arbitration, Conciliation, Judicial Settlement including settlement through Lok Adalat or Mediation.

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Latest Amendment

On 23rd October, 2015, the Government of India through an executive action had promulgated the Arbitration and Conciliation Ordinance 2015 **('the Ordinance')** bringing about large scale changes to the Arbitration and Conciliation Act, 1996 with the intention expediting the process and reducing court interference. The Arbitration and Conciliation (Amendment) Act, 2015 **('Amendment Act')** was passed by both Houses of Parliament in the winter session, pursuant to which it has received Presidential assent on 31st December, 2015. The Act was notified in the Gazette of India on 1st January, 2016 and has now come into force but with effect from 23rd October, 2015.

These amendments are based on the Law Commission's recommendations and suggestions received from stakeholders. Law Commission of India (LCI) in its 246th Report had recommended various amendments in Arbitration and Conciliation Act, 1996 in order to pave way for India to become a hub of International Commercial Arbitration in 2016. The provisions of amended Act have been dealt in details in forthcoming chapters.

The amended Act contains 86 sections besides the Preamble and seven Schedules. The Act is divided into four parts as follows.

Part/Chapter No.	Title	Section Nos.
Part I	**Arbitration**	
Chapter I	General provisions	2-6
Chapter II	Arbitration agreement	7-9
Chapter III	Composition of Arbitral Tribunal	10-15
Chapter IV	Jurisdiction of Arbitral Tribunals	16-17
Chapter V	Conduct of Arbitral Proceedings	18-27
Chapter VI	Making of arbitral award and termination of proceedings	28-33

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Part/Chapter No.	Title	Section Nos.
Chapter VII	Recourse against arbitral award	34
Chapter VIII	Finality and enforcement of arbitral awards	35-36
Chapter IX	Appeals	37
Chapter X	Miscellaneous	38-43
Part II	**Enforcement of certain foreign awards**	
Chapter I	New York convention awards	44-52
Chapter II	Geneva Convention Awards	53-60
Part III	**Conciliation**	61-81
Part IV	**Supplementary provisions**	82-86
First Schedule	**Convention on the recognition and enforcement of foreign arbitral awards**	Article I – XVI
Second Schedule	**Protocol on arbitration clauses**	
Third Schedule	**Convention on the execution of foreign arbitral awards**	Article 1-11
Fourth Schedule	**Model Fees of Arbitral Tribunal**	
Fifth Schedule	**Grounds for doubting independence/ impartiality of an arbitrator.**	
Sixth Schedule	**Form for disclosure of independence by Arbitrator**	
Seventh Schedule	**Relationship with parties/ counsel/matter of dispute that makes Arbitrator ineligible**	

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CHAPTER 4

PRINCIPLE OF NATURAL JUSTICE

Natural justice implies fairness, equity and equality. The concept of natural justice is to prevent miscarriage of justice. The principles of natural justice apply to judicial, quasi-juridical as well as administrative proceedings. The principle of natural justice encompasses following two rules:-

1. *Nemo judex in causa sua* – No one should be made a judge in his own cause or the *rule against bias.*

2. *Audi alteram partem* – Hear the other party or the rule of fair hearing or the rule that no one should be condemned unheard.

RULE AGAINST BIAS (NEMO JUDEX CAUSA SUA)

Bias means an operative discrimination, whether conscious or unconscious in relation to a person or a subject. The existence of any kind of bias can be detrimental to the cause of justice. Therefore, to ensure non-existence of bias the following two aspects should be taken care of:-

a) No one should be a judge in his own cause.

b) Justice should not only be done but manifestly and undoubtedly be seen to be done.

The rule against Bias ensures that a judge is impartial and is in a position to apply his mind objectively and indiscriminately to the dispute before him. This absence of bias can be ensured by asserting the following two main aspects:-

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- The person exercising adjudicatory powers must not have any personal or proprietary interest in the subject or the outcome of the proceedings.
- There must not be real likelihood of bias.

Real likelihood of bias means either actual bias or a reasonable suspicion of bias. It is a subjective term as it is difficult to access the state of mind of an individual. Therefore, the courts depends upon the existence or non-existence of reasonable ground for believing that the deciding factor was likely to have been biased.

AUDI ALTERAM PARTEM OR RULE OF FAIR HEARING

The principle of *audi alteram partem* is the one of the basic concept incorporated in the principle of natural justice. It implies that a person must be given opportunity to defend himself in any proceeding of law or administrative proceeding. This principle is *sine qua non* i.e. indispensable part of judiciary of every civilised society. This rule covers various stages through which judiciary proceeding passes starting from notice to final determination. Therefore, right to fair hearing includes:-

a) Right to notice

b) Right to present case and evidence

c) Right to rebut adverse evidence

   (i) Right to cross examination

   (ii) Right to legal representation

d) Disclosure of evidence to party

e) Report of enquiry to be shown to the other party

f) Reasoned decisions or speaking orders

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However, sometimes **pre-decisional stages** of hearing may be dispensed with in an emergent situation where immediate action is required to prevent some imminent danger or injury or hazard to paramount public interest. Still, mere urgency cannot be reason for exclusion of *audi alteram partem rule*. However, the decision to exclude pre-decisional hearing would be justifiable, where there is made a provision for post-decisional remedial hearing in such emergent situations. The idea is post-decisional hearing at least affords an opportunity to the aggrieved person and is better than no hearing at all. However, post-decisional hearing should be an exception rather than rule.

Cross-examination is used to rebut evidence or elicit and establish truth. However, in case of administrative adjudication, the courts may not insist on cross-examination unless the circumstances are such that in the absence of it, an effective defence cannot be put up like in case where evidence are in the form of affidavits and the copies are made available to the other party. Where, however, witnesses depose orally before the authority, the refusal to allow cross-examination would certainly amount to violation of principles of natural justice.

Though **right of legal representation** is an important pillar of principle of natural justice in judicial proceedings, it is not considered as an indispensable part of the rule of fair hearing in administrative proceedings. However, some professional assistance must be given to the party to make his right to defend himself fair where:

- Party defending is illiterate
- Matter is technical or complicated
- Expert evidence is on record
- Question of law is involved
- Person is facing trained prosecutor

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To emphasis the above, in ***Nandlal Bajaj vs. State of Punjab*** courts have observed that it would be improper to disallow legal representation to the aggrieved person where the State is allowed to be represented through a lawyer.

Another essential element of fair judicial proceeding is the requirement of passing **a speaking/reasoned order** because reasons reveal the rational nexus between the facts considered and the conclusions reached. This is emphasised by the fact that, Supreme Court in *S. N. Mukherjee vs. UOI* has held that the requirement to record reasons could be regarded as one of the principles of natural justice. The requirement of stating reasons serves the following purpose:-

- It ensures that the administrative authority will apply its mind and objectively look at the facts and evidence of the case.
- It ensures that all the relevant factors have been considered and that the irrelevant factors have been left out.
- The reasons would produce clarity in the decisions and reduce arbitrariness.
- It satisfies the aggrieved party in the sense that his view points have been examined and considered prior to reaching a conclusion.
- Where the decision is challenged before the higher appellate authorities and courts, they are in a better position to consider the appeals on the question of law.

Another factor which can amount to denial of the principles of natural justice is **non-furnishing of the enquiry report** to the delinquent before recording a finding against him. Though, this cannot be laid down as general rule, if the non-disclosure of the

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report causes any prejudice in any manner to the party, it must be disclosed. If the court comes to the conclusion that the non-supply of report would have made no difference to the ultimate findings and the punishment given the courts would not interfere with the order of punishment. Otherwise the order of punishment can be set aside.

Principle of Natural Justice and our Constitution

Despite the fact that in India there is no statute laying down the minimum procedure which administrative agencies must follow while exercising decision-making powers. Natural Justice is a concept of common law and represents higher procedural principles developed by the courts, which every judicial, quasi-judicial and administrative agency must follow while taking any decision adversely affecting the rights of a private individual. Hence this applies to an award made during an arbitration proceeding.

Though, in the Constitution of India the expression Natural Justice is used nowhere, the idea of natural justice is the soul of Indian Constitution. It starts with Preamble of the Constitution which talks of

'JUSTICE, social, economical and political;

LIBERTY of thought, expression, belief, faith and worship; and

EQUALITY of status and of opportunity.

Therefore, the Preamble itself ensures fairness in social and economical activities of the people and acts as shield to individual's liberty against the arbitrary action which is the base for principles of Natural Justice. Besides Preamble, there are various other Articles in the Constitution which asserts the principle of Natural Justice like Articles 14, 21, 22, 32, 39-A, 136, 226 and 311. **Article 14** of the Constitution states that "The State shall not deny

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to any person equality before the law or the equal protection of the laws within the territory of India." This Article guarantees equality before law and equal protection of law. It bars discrimination and prohibits both discriminatory laws and administrative action. It lays down general preposition that all persons in similar circumstance shall be treated alike both in privileges and liabilities imposed. A law conferring unguided and unrestricted power on an authority is bad, arbitrary and discriminatory. Therefore, Article 14 illegalises discrimination in the actual exercise of any discretionary power. It strikes at arbitrariness in administrative action and ensures fairness and equality of treatment. The person adversely affected by administrative action be given the right of being heard before the administrative body passes an order against him. It is believed that such a procedural safeguard may minimise the chance of the Administrative authority passing an arbitrary order. Thus, the Supreme Court has extracted from Article 14 the principle that natural justice is an integral part of administrative process. In Delhi Transport Corporation vs. DTC Mazdoor Union, SC held that "the *audi alteram partem* rule, in essence, enforce the equality clause in Article 14 and it is applicable not only to quasi-judicial bodies but also to administrative order adversely affecting the party in question unless the rule has been excluded by the Act in question.

Article 21 of the Constitution states that, "no person shall be deprived of his life or personal liberty except according to procedure established by law." Over years, this Article has been a matter of varied interpretation in the courts of law as regards is upholding of principle of natural justice because of the inclusion of words 'procedure established by law'. In *A. K Gopalan vs. State of Madras,* Supreme Court had held that the 'procedure established by law' means the procedures laid down by the statute and such procedure can override the Principle of Natural Justifies as it not a codified law and nowhere specifically provided in law. But this stagnant interpretation of the Article was latter rebutted in *Kharak*

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Singh vs. State of U.P, where the court says that "personal liberty" of Article 21 is not only limited to the bodily restrain but also includes various other types of rights including, that means rights given in Article 19 also. Eventually the position was settled in the case of *Maneka Gandhi vs. UOI,* where the court says that the procedure contemplated in Article 21 cannot be unreasonable or unfair. The principle of reasonableness is an essential element of equality. So any procedure which takes away people's right to go abroad, without giving reasonable opportunity of being heard, will be considered as violation of Article 21 as it violates the principle of natural justice.

Article 22 of the Constitution provides for the fundamental rights of the arrested person. It confers the following rights upholding the principle of natural justice like:

a. Right to be informed about the grounds of arrest at the time of arrest.

b. Right to consult and be defended by a legal practitioner.

c. Right to be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate.

d. Right not to be detained in custody beyond 24 hours without the authority of a magistrate.

By requiring that the arrested person must be given the right to know the grounds of arrest, the Article ensures that the person is given a proper opportunity of preparing his defence. If the grounds are not disclosed to accused this would result to denial of 'fair hearing' and thus result to violation of Natural Justice.

Article 311 deals with the rights of person employed in civil capacities under the Union or a State, who is being dismissed,

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removed or reduced in rank. It specifically provides for opportunity of being heard before such an order is made. It also requires that such person cannot be dismissed or removed by an authority subordinate to that by which he was appointed. *Union of India v Tulshiram Patel* while interpreting Article 311 of the Constitution, the court says that the rule of natural law is not a mere creation of Article 14, but Article 14 is the constitutional guarantor of the principle of natural justices.

Similarly, **Articles 32 and 226** uphold the principle of Natural Justice by providing for constitutional remedies for violation of Fundamental Rights and other rights. This is done by higher courts by issuing writs, directions and orders.

Article 227 also provides that every High Court shall have superintendence over all courts and tribunals throughout the territories under its jurisdiction.

Principle of Natural Justice and Arbitration & Conciliation Act, 1996

The law of Arbitration in India is governed by the Arbitration and Conciliation Act, 1996. It is rather a simple law, without any notified Rules, which doesnot prescribes too many procedural aspects of Arbitral proceedings. Moreover, Arbitral Tribunal shall not be bound by The Code of Civil Procedure, 1908 or The Indian Evidence Act, 1872. Most aspects of the arbitral proceedings are determined by the parties themselves at the time entering in an agreement. If however, the parties are silent, then the arbitrator has to prescribe the procedure. The procedure so prescribed, however, should be in consonance with the principles of natural justice. The violation of principles of natural justice would amount to be contrary to the public policy of India. The Arbitral Tribunal discharging quasi judicial functions is expected to be fair and impartial in the arbitral proceedings. The doctrine of natural justice pervades the procedural law of arbitration as its observance

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is the pragmatic requirement of fair play in action. Procedural fairness and regularity are indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied. The doctrine of natural justice seeks not only to secure justice but also to prevent miscarriage of justice. Some of the aspects of the Act that upholds the principle of natural justice are discussed below.

- The Arbitrators are appointed by the parties to dispute. All the parties involved in dispute must arrive at the name of Arbitrators with a consensus. This ensures that a biased person is not appointed as an arbitrator. Where an arbitrator is appointed by Supreme/High Court or any other institution under section 11(6) of the Act, the appointing authority is required to obtain disclosure regarding the independence or impartiality of the arbitrators. [Section 11(8b)]
- The Amendment Act, 2015 have inserted Schedules Fifth and Seventh wherein grounds that will guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator and categories of relationship that makes a person ineligible for appointment as an Arbitrator are stated. This will further ensure impartiality in the arbitral proceeding and hence adherence to principle of Natural Justice.
- Section 13 allows the parties to challenge the arbitrator.
- Section 16(6) allows a party aggrieved by an arbitral award to make an application for setting aside such an arbitral award.
- Section 18 requires that the parties shall be treated with equality and each party shall be given a full opportunity to present his case.

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- Section 21 states that unless otherwise agreed by the parties, the arbitral proceedings, in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent. Hence fulfilling the requirement of proper notice laid down in the principle of Natural Justice. This is further emphasised by section 24(3) which states that the parties should be given sufficient advance notice of any hearing and of any meeting of the Arbitral Tribunal for the purposes of inspection of documents, goods or other property.

- Section 23 emphasizes on giving both claimant and respondent proper opportunity to state the facts of the claims and defence.

- Section 24(3) requires that all statements, documents or other information supplied to, or applications made to, the Arbitral Tribunal by one party should be communicated to the other party, and any expert report or evidentiary document on which the Arbitral Tribunal may rely in making its decision should be communicated to the parties. Section 31(3) also requires that the arbitral award shall state the reasons upon which it is based, unless –

    (a) The parties have agreed that no reasons are to be given, or

    (b) The award is an arbitral award on agreed terms.

    Hence requiring the arbitrators to pass a speaking order, which is another prerequisite of the principle of Natural Justice.

- Section 34 empowers court to set aside a an arbitral award if the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case.

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Hence we see that the principle of Natural Justice is deep seated in the Law of Arbitration. However, there seems to be one loophole in the Act which is against the principle of Natural Justice. As discussed above one of the most important rules of the principle of Natural Justice is *Nemo judex in causa sua i.e.* no one should be a judge of his own cause. Section 13(3) of the Arbitration and Conciliation Act, 1996 states that "unless the arbitrator challenged under sub-section (2) withdraws from his office or the other party agrees to the challenge, the Arbitral Tribunal shall decide on the challenge". This clause seems little absurd as the arbitrator who is being challenged remains in the Arbitral Tribunal and hence decides about his own competence as an arbitrator, which is completely against the principle of Natural Justice.

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CHAPTER 5

TYPES OF ARBITRATION

The arbitration can be of varied types depending upon the nationality of person involved, place of award or the arbitrators involved in the arbitral proceeding. Broadly we can classify Arbitration as *Ad Hoc* Arbitration or Institutional Arbitration depending on whether the Arbitration agreement is between parties and arranged by the parties themselves or whether services of institution involved in settling dispute through arbitration mechanism is availed.

A) *Ad hoc* Arbitration

An arbitration proceeding conducted without recourse to an institution is commonly known as "*Ad hoc* Arbitration". Thus *Ad hoc* Arbitration is an arbitration agreement between the parties and arranged by the parties themselves. The proceedings in *Ad hoc* Arbitration are conducted by the arbitrators as per the agreement between the parties or with concurrence of the parties.

An *Ad Hoc* Arbitration maybe: —

1. Domestic Arbitration
2. International Arbitration
3. Foreign Arbitration

1. Domestic Arbitration

Domestic Arbitration is that arbitration which takes place in India.

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2. International Arbitration

International Arbitration is arbitration where at least one of the parties is an individual national of or habitually resident in a country other than India or a body corporate incorporated outside India or a company or an Association or a Body of Individuals whose central management and control is exercised from out of India or by a Government of a Foreign Country. Section 2(1)(f) of the Act, defines "International commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is–

(i) An individual who is a national of, or habitually resident in, any country other than India; or

(ii) A body corporate which is in corporate in any country other than India; or

(iii) An association or a body of individuals whose central management and control is exercised in any country other than India; or

(iv) The Government of a foreign country.

3. Foreign Arbitration

Foreign Arbitration is an arbitration conducted in a place outside India.

Thus, it may be noted that the Act broadly classifies arbitration according to the place of Arbitration. International Commercial Arbitration, if conducted in India will be known as Domestic Arbitration.

The above provision is discussed in detail at appropriate places in this book.

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In short, the judicial statement of dispute is a public sector mechanism and arbitration is a private sector alternative to the same.

Institutional Arbitration

There are number of national and international organisations set up with the main object of settling commercial disputes by way of Arbitration and other Alternative Dispute Resolution mechanism. These organisations lay down rules for the conduct of arbitration. These rules, however, cannot override the Act. These organisations handle the arbitration cases of the parties and provide valuable services like administrative assistance, consultancy and recommending names of arbitrators from the panel maintained by them. Since these organisations have experience and proper infrastructure to conduct the arbitral proceedings, it is quite often beneficial to parties to avail of their services.

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CHAPTER 6

ARBITRATION AGREEMENT

An Arbitration Agreement is a contract between two or more parties to refer a dispute to arbitration. Depending on the financial resources and the size of the contract, some parties have whole, separate agreements on arbitration and more properly, these can be stated as arbitration agreements. Others merely insert a clause related to arbitration in the primary contract; this can be more properly stated to be an arbitration clause. However, the terms arbitration agreement and arbitration clauses are often used interchangeably by judges or others, to generally refer to an arbitration clause.

As per section 2(b), an "Arbitration agreement" means an agreement referred to in section 7 of the Act

Section 7 of the Act is reproduced below

Arbitration agreement

(1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in–

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(a) A document signed by the parties;

(b) An exchange of letters, telex, telegrams or other means of telecommunication **including communication through electronic means** which provide a record of the agreement; or

(c) An exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) There reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

Though the above definition of the Arbitration Agreement looks simple and self-explanatory, it is necessary to understand the same properly. An Arbitration Agreement is the very foundation on which the whole arbitration procedure rests. If there is no valid Arbitration Agreement, there cannot be a valid arbitration.

An Arbitration Agreement need not be in a particular form. What is important is that there should be an intention of the parties to refer the dispute to Arbitration

Who Can Enter Into An Arbitration Agreement?

Generally speaking, all disputes of a civil nature or quasi-civil nature, which can be decided by a civil court, can be referred to arbitration. Thus disputes relating to property, right to hold an office, compensation for non-fulfilment of a clause in a contract, disputes in partnership etc. can be referred to arbitration. Even the disputes between an insolvent and his creditors can be referred to arbitration by the official receiver or the official assignee with the leave of the court. Thus disputes arising in respect of defined legal relationship, whether contractual or not, can be referred to Arbitration.

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1) Every person who is **Competent to contract** can enter into an Arbitration Agreement.

2) **Minors and lunatics** can enter into an Arbitration Agreement **through their natural or legal guardians.**

3) **A recognised Agent** can enter into an Arbitration Agreement on behalf of his principal.

4) Disputes about joint family property can be referred to Arbitration by the **karta.**

5) **Advocate/solicitor** can enter in an Arbitration Agreement on behalf of his client.

6) Trustees can refer a dispute to Arbitration.

7) An **executive or administrator** can refer the matters related to management or Administration of estate to Arbitration.

8) **Legatees** may refer disputes relating to division of a estate to Arbitration.

Precaution to be taken while drafting an Arbitration Agreement

Proper care should be taken while drafting an Arbitration Agreement. The Act lays considerable stress on party autonomy. It gives a presumption in most of the sections that unless a specific mention is made under the Arbitration Agreement to various issues, the Arbitral Tribunal would have the power to decide on the same. Thus, except a few provisions which are mandatory in the Act, almost all the provisions are subject to the agreement between the parties. The parties may determine the number of arbitrators, the procedure for appointing arbitrators, rules of procedures, the venue of Arbitration, the language of the Arbitration proceedings, procedure for challenging an Arbitrator etc.

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For example, if the place of Arbitration is not determined by the parties, then the Arbitral Tribunal may decide upon the same. So is the case with the language and other procedures.

It is advisable to obtain legal advice at the initial stage of drafting an agreement to avoid any differences later on.

The Arbitration Agreement should precisely mention the scope and the subject matter of the reference. It should preferably specify the venue and the language of the proceedings and the modes of service of notice or other communication.

The Apex Court, in the case of *K. K. Modi vs. K. M. Modi and Others (1998 Arb. W.L.J. 174)* while deciding on what constitutes an Arbitration Agreement, has extensively quoted from: "Commercial Arbitration" by Mustill & Boyd. (2nd edition page 30). The authors mention that:—

"Among the attributes which must be present for an agreement to be considered as arbitration agreement are:

1. The arbitration agreement must contemplate that the decision of the Tribunal will be binding on the parties to the agreement.

2. That the jurisdiction of the Tribunal to decide the rights of parties must be derived either from the consent of the parties or from an order of the court or from a statute, the terms of which make it clear that the process is to be an arbitration.

3. The agreement must contemplate that substantive rights of parties will be determined by the agreed Tribunal.

4. That the Tribunal will determine the rights of the parties in an impartial and judicial manner with the Tribunal owing an equal obligation of fairness to both sides.

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5. That the agreement of the parties to refer their disputes to the decision of the Tribunal must be intended to be enforceable in law and lastly,

6. The agreement must contemplate that the Tribunal will make a decision upon a dispute which is already formulated at the time when a reference is made to the Tribunal".

In the above case, the question before the Supreme Court was whether the following clause in a MoU constitutes an Arbitration Agreement:

"Implementation will be done in consultation with the financial institutions. For all disputes, clarification etc. in respect of implementation of this agreement, the same shall be referred to the Chairman or his nominees whose decision will be final and binding on both the groups."

The Supreme Court after examining a host of court decisions and authorities on Arbitration ruled that the same is not an Arbitration Agreement but an arrangement to avoid dispute between the members of the family. The Apex Court also said that the decision of the Chairman is not an Arbitration award but an opinion of an expert. The test which an Arbitration Agreement must satisfy is whether the intention of the parties is to avoid disputes or to resolve disputes. Only in the latter case, there will be a valid Arbitration Agreement. The intention of the parties has to be found out by reading the terms broadly and clearly without being circumscribed. If there is an agreement to refer an issue to an expert, the same will not constitute an Arbitration Agreement.

MODEL ARBITRATION CLAUSE

a) Arbitration Clause in a Hire Purchase Agreement of a Finance Company

"All disputes, differences and/or claims, arising out of this hire purchase agreement whether during its subsistence or

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thereafter shall be settled by arbitration in accordance with the provision of Arbitration & Conciliation Act, 1996 or any statutory amendments thereof and shall be referred to the sole arbitration of an arbitrator nominated by the Managing Director of the owner. The award given by such an arbitrator shall be final and binding on all the parties to this agreement.

It is a term of this agreement that in the event of such an arbitrator to whom the matter has been originally referred doing or being unable to act for any reason, the Managing Director of the owner, at the time of such death of the arbitrator or his inability to act as arbitrator, shall appoint another person to sit as arbitrator. Such a person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

b) Arbitration Clause in a Partnership Deed

In the event of any dispute or difference arising between the parties hereto or their representatives, in any way concerning or relating to the business of the firm, it shall be referred to arbitration and every such reference shall be deemed to be an arbitration within the meaning of Arbitration & Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force. The award of the arbitration shall be binding on all the parties.

c) Arbitration Clause in a Partnership Deed of a Professional Firm of Chartered Accountants

All disputes, differences and questions, whatsoever which shall arise either during the continuation of the partnership or after the termination thereof between the parties or their respective representatives shall be referred to arbitration of a sole arbitrator as per the provisions of the Arbitration & Conciliation Act, 1996 or any statutory modification thereof.

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The venue of arbitration shall be Mumbai and only a senior Chartered Accountant of repute empanelled with Indian Council of Arbitration will be appointed as an arbitrator who will give his award within 3 months.

d) Arbitration Clause in a Joint Venture Agreement

All disputes and differences which may hereafter arise between the parties hereto in connection with this agreement or in connection with the interpretation of any of the terms and conditions herein contained and/or connection with the rights and obligations of the parties hereto under this agreement, shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The place of arbitration shall be at Mumbai and the same shall be subject to the jurisdiction of the Court at Mumbai.

e) Arbitration Clause in a Tenancy Agreement

Any dispute or difference that may arise out of the interpretation of these presents, shall be referred to the arbitration of Mr. ..... and the arbitration shall be under the provision of Arbitration & Conciliation Act, 1996. The arbitrators shall have summary powers.

All disputes and differences which may hereafter arise between the parties hereto in connection with this agreement or in connection with the interpretation of any of the terms and conditions herein contained and/or connection with the rights and obligations of the parties hereto under this agreement, shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The place of Arbitration shall be Mumbai and the same shall be subject to the jurisdiction of the court at Mumbai.

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f) Arbitration Clause in a MoU for Purchase of a Flat

In the event of there being any dispute or difference between the parties hereto as to any clause or provision of this Memorandum of Understanding or as to the interpretation thereof or as to any account or valuation or as to the rights, liabilities, act or omission of any part hereto arising under or by virtue of these presents or otherwise in anyway relating to this Memorandum of Understanding such dispute or difference shall be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory enactment or modification thereof the time being in force. The arbitrators shall be entitled to give interim relief/orders. The award given by the arbitrators shall be final and binding on the parties hereto.

g) Arbitration Clauses in Article of Association of Company

Whenever any difference arises between the company on the one hand and any of the members, their executors, administrators or assignees on the other hand touching of true intent or construction or the instance or consequences of these presents or of the statutes or touching anything then or transfer done executed or omitted or of the statutes or touching any breach or alleged breach of these presents or any claim on account of any such breach or alleged breach or otherwise relating to the premises or to these presents or to any statutes affecting the company or to any of the affairs of the company, every such difference shall be referred to the decision of a single arbitrator in case parties agree upon the arbitrator, otherwise to two arbitrators (one to be appointed by each party to the difference) or to their umpire in accordance with the provisions of the Arbitration & Conciliation Act, 1996, or any statutory modification thereof in force for the time being.

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h) Arbitration Clause Recommended by American Arbitration Association

"Any controversy or claim arising out of or relating to this contract shall be determined by arbitration under the International Arbitration Rules of the American Arbitration Association. "The parties may wish to consider adding:

i) The number of arbitrators shall be ..... (one or three)

ii) The place of arbitration shall be ..... (city and/or country)

iii) The language of arbitration shall be .....

i) The Arbitration Clause Recommended by the Indian Council of Arbitration

"All disputes or differences whatsoever arising between the parties out of or relating to the construction, meaning and operation or effect of this contract or the breach thereof shall be settled by arbitration in accordance with the Rules of Arbitration of the Indian Council of Arbitration and the award made in pursuance thereof shall be binding on the parties."

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CHAPTER 7

ARBITRAL TRIBUNAL

An arbitral tribunal (or arbitration tribunal) is a panel of one or more adjudicators which is convened and sits to resolve a dispute by way of arbitration. The tribunal may consist of a sole arbitrator, or there may be more arbitrators but the number of arbitrators can never be even number under the Arbitration & Conciliation Act, 1996.

Section 10(1) says that the parties are free to determine the number of arbitrators. This is, however, subject to the condition that such number shall not be an even number. In case there is no provision as to number of arbitrators in the arbitration agreement, the reference will be to a sole arbitrator as per Section 10(2).

If the parties fail to agree upon the name of a sole arbitrator, the appointment shall be made by the Supreme Court or the High Court or any person or institution designated by such Court. (Section 11)

In case of three arbitrators, each party shall appoint one arbitrator. These two appointed arbitrators shall then, appoint a third arbitrator who shall act as the presiding arbitrator.

If a party fails appointment shall be made by the chief justice. (Section 11)

Two appointed arbitrators fail to appoint the third arbitrator, the appointment shall be made by the Supreme/High Court or any

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person or institution designated by such Court. The designating authority will take into account the following before appointing an arbitrator : (Section 11(8))

1) A qualification required of the arbitrator by the agreement of the parties; and

2) Other considerations as are likely to secure the appointment of an independent and impartial arbitrator.

3) In case of INTERNATIONAL COMMERCIAL ARBITRATION, Supreme/High Court or any person or institution designated by such court may appoint an arbitrator of a nationality other than nationalities of the parties where the parties belong to different nationalities. (Section 11(9))

Duties and Responsibilities of an Arbitrator

Any person can be appointed as an arbitrator. No qualifications are prescribed. However, parties may agree at certain qualification/ experience requirement for future appointment of Arbitrator in their arbitration agreement. In such case, the Arbitrator appointed must meet the required qualification condition. It is fundamental that an arbitrator act fairly. The Arbitration Act requires the arbitrator to be impartial and independent, and adhere to the rules of natural justice during the procedure and in making the award. It is important for the person appointed to have a good knowledge of the law and practice of arbitration.

Ethics Applicable To Arbitrators

The rules of natural justice are legal principles to be followed by any person or body charged with adjudicating disputes or the rights of others. The Rules are:

- To act fairly, in good faith, without bias, and in a judicial temper

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- To give each party the opportunity of adequately stating their case, and correcting any relevant statement prejudicial to their case, and to not hear one side behind the back of the other
- To not be a judge in one's own cause (so that an arbitrator must declare any interest in the dispute)
- To disclose to the parties any relevant documents which are looked at (by the arbitrator).

In short, not only should justice be done but it should be seen to be done. The courts are careful to guard the right of citizens to have their disputes settled with proper regard to the principles of natural justice. It should also be noted that an arbitrator is never the representative of either party, even if appointed by one of them.

The Arbitration and Conciliation (Amendment) Act, 2015 has cast an additional responsibility on the Arbitral Tribunal by inserting Section 29 A which requires the Arbitral Tribunal to make the award within 12 months of the date on which the Arbitrators have received notice of their appointment in writing. In case parties agree to fast track procedure as contained in Section 29B, the award must be made within 6 months of referral.

Disclosure by Arbitrator

Section 12(1) provides that the arbitrator before accepting his appointment shall disclose in writing, in format specified in Schedule Six of the Act, to the parties any of the following circumstances:

- The existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and

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- Which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.

The following format has been prescribed in newly inserted Schedule Six:

Name: Contact details: Prior experience (including experience with arbitrations): Number of ongoing arbitrations: Circumstances disclosing any past or present relationship with or interest in any of the parties or in relation to the subject matter in dispute, whether financial, business, professional, or other kind, which is likely to give justifiable doubts as to your independence or impartiality (list out):

This is applicable throughout the arbitral proceedings and any time after his appointment such situation arise, he must disclose the same in writing to the parties. The Arbitration and Conciliation Amendment Act, 2015 have specified the format for the above disclosure by the proposed arbitrator and also the grounds that can guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator. The above stated grounds are stated in the Fifth Schedule. Moreover the Seventh Schedule lists the categories of relationship of the person proposed to be the Arbitrator, with the parties or the counsel or the subject matter of the dispute that will make him ineligible to be appointed as an arbitrator. Both the Schedules have been reproduced below.

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As per the Fifth Schedule, the following grounds give rise to justifiable doubts as to the independence or impartiality of the arbitrators.

A. Arbitrator's relationship with the parties or counsel

1) The arbitrator is an employee, consultant, advisor or has any other past or present business relationship with the party.

2) The arbitrator currently represents or advises one of the parties or an affiliate of one of the parties.

3) The arbitrator currently represents the lawyer or law firm acting as counsel for one of the parties.

4) The arbitrator is a lawyer in the same law firm which is representing one of the parties.

5) The arbitrator is a manager, director or part of the management, or has similar controlling influence, in an affiliate of one of the parties if the affiliate is directly involved in the matters in dispute in the arbitration.

6) The arbitrator's law firm had a previous but terminated involvement in the case without the arbitrator being involved himself or herself.

7) The arbitrator's law firm currently has a significant commercial relationship with one of the parties or an affiliate of one of the parties.

8) The arbitrator regularly advises the appointing party or an affiliate of the appointing party even though neither the arbitrator nor his or her firm derives a significant financial income therefrom.

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9) The arbitrator has a close family relationship with one of the parties and in the case of companies with the persons in the management and controlling the company.

10) A close family member of the arbitrator has a significant financial interest in one of the parties or an affiliate of one of the parties.

11) The arbitrator is a legal representative of an entity that is a party in the arbitration.

12) The arbitrator is a manager, director or part of the management, or has a similar controlling influence in one of the parties.

13) The arbitrator has a significant financial interest in one of the parties or in the outcome of the case.

14) The arbitrator regularly advises the appointing party or an affiliate of the appointing party, and the arbitrator or his or her firm derives a significant financial income therefrom.

B. Relationship of the arbitrator to the dispute

15) The arbitrator has given legal advice or provided an expert opinion on the dispute to a party or an affiliate of one of the parties.

16) The arbitrator has previous involvement in the case.

C. Arbitrator's direct or indirect interest in the dispute

17) The arbitrator holds shares, either directly or indirectly, in one of the parties or an affiliate of one of the parties that is privately held.

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18) A close family member of the arbitrator has a significant financial interest in the outcome of the dispute.

19) The arbitrator or a close family member of the arbitrator has a close relationship with a third party who may be liable to recourse on the part of the unsuccessful party in the dispute.

D. Previous services for one of the parties or other involvement in the case

20) The arbitrator has within the past three years served as counsel for one of the parties or an affiliate of one of the parties or has previously advised or been consulted by the party or an affiliate of the party making the appointment in an unrelated matter, but the arbitrator and the party or the affiliate of the party have no ongoing relationship.

21) The arbitrator has within the past three years served as counsel against one of the parties or an affiliate of one of the parties in an unrelated matter.

22) The arbitrator has within the past three years been appointed as an arbitrator on two or more occasions by one of the parties or an affiliate of one of the parties.

23) The arbitrator's law firm has within the past three years acted for one of the parties or an affiliate of one of the parties in an unrelated matter without the involvement of the arbitrator.

24) The arbitrator currently serves, or has served within the past three years, as arbitrator in another arbitration on a related issue involving one of the parties or an affiliate of one of the parties.

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E. Relationship between an arbitrator and another arbitrator or counsel

25) The arbitrator and another arbitrator are lawyers in the same law firm.

26) The arbitrator has been within the past three years a partner of, or otherwise affiliated with, another arbitrator or any of the counsel in the same arbitration.

27) A lawyer in the arbitrator's law firm is an arbitrator in another dispute involving the same party or parties or an affiliate of one of the parties.

28) A close family member of the arbitrator is a partner or employee of the law firm representing one of the parties, but is not assisting with the dispute.

29) The arbitrator has within the past three years received more than three appointments by the same counsel or the same law firm.

F. Relationship between arbitrator and party and others involved in the arbitration

30) The arbitrator's law firm is currently acting adverse to one of the parties or an affiliate of one of the parties.

31) The arbitrator has been associated within the past three years with a party or an affiliate of one of the parties in a professional capacity, such as a former employee or partner.

G. Other circumstances

32) The arbitrator holds shares, either directly or indirectly, which by reason of number or denomination, constitute a material holding in one of the parties or an affiliate of one of the parties that is publicly listed.

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33) The arbitrator holds a position in an arbitral institution with appointing authority over a dispute.

34) The arbitrator is a manager, director or part of the management, or has a similar controlling influence, in an affiliate of one of the parties, where the affiliate is not directly involved in the matters in dispute in the arbitration.

Explanation 1 – The term "close family member" refers to a spouse, sibling, child, parent or life partner.

Explanation 2 – The term "affiliate" encompasses all companies in one group of companies including the parent company.

Explanation 3 – For the removal of doubts, it is clarified that it may be practice in certain specific kinds of arbitration, such as maritime or commodities arbitration, to draw arbitrators from a small, specialised pool. If in such fields it is the custom and practice for parties frequently to appoint the same arbitrator in different cases, this is a relevant fact to be taken into account while applying the rule set out above.

As per Seventh Schedule, the following relationship of Arbitrator with the parties, counsel or the subject matter of dispute will render the Arbitrator as ineligible:

Arbitrator's relationship with the parties or counsel

1) The arbitrator is an employee, consultant, advisor or has any other past or present business relationship with the party.

2) The arbitrator currently represents or advises one of the parties or an affiliate of one of the parties.

3) The arbitrator currently represents the lawyer or law firm acting as counsel for one of the parties.

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4) The arbitrator is a lawyer in the same law firm which is representing one of the parties.

5) The arbitrator is a manager, director or part of the management, or has similar controlling influence, in an affiliate of one of the parties if the affiliate is directly involved in the matters in dispute in the arbitration.

6) The arbitrator's law firm had a previous but terminated involvement in the case without the arbitrator being involved himself or herself.

7) The arbitrator's law firm currently has a significant commercial relationship with one of the parties or an affiliate of one of the parties.

8) The arbitrator regularly advises the appointing party or an affiliate of the appointing party even though neither the arbitrator nor his or her firm derives a significant financial income therefrom.

9) The arbitrator has a close family relationship with one of the parties and in the case of companies with the persons in the management and controlling the company.

10) A close family member of the arbitrator has a significant financial interest in one of the parties or an affiliate of one of the parties.

11) The arbitrator is a legal representative of an entity that is a party in the arbitration.

12) The arbitrator is a manager, director or part of the management, or has a similar controlling influence in one of the parties.

13) The arbitrator has a significant financial interest in one of the parties or in the outcome of the case.

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14) The arbitrator regularly advises the appointing party or an affiliate of the appointing party, and the arbitrator or his or her firm derives a significant financial income therefrom.

Relationship of the arbitrator to the dispute

15) The arbitrator has given legal advice or provided an expert opinion on the dispute to a party or an affiliate of one of the parties.

16) The arbitrator has previous involvement in the case.

Arbitrator's direct or indirect interest in the dispute

17) The arbitrator holds shares, either directly or indirectly, in one of the parties or an affiliate of one of the parties that is privately held.

18) A close family member of the arbitrator has a significant financial interest in the outcome of the dispute.

19) The arbitrator or a close family member of the arbitrator has a close relationship with a third party who may be liable to recourse on the part of the unsuccessful party in the dispute.

Explanation 1 – The term "close family member" refers to a spouse, sibling, child, parent or life partner.

Explanation 2 – The term "affiliate" encompasses all companies in one group of companies including the parent company.

Explanation 3 – For the removal of doubts, it is clarified that it may be practice in certain specific kinds of arbitration, such as maritime or commodities arbitration, to draw arbitrators from a small, specialized pool. If in such fields it is the custom and practice for parties frequently to appoint the same arbitrator in different cases, this is a relevant fact to be taken into account while applying the rule set out above.

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Removal of Arbitrator

The appointment of an arbitrator may be challenged only if

a) Circumstances exist that gives rise to justifiable doubts as to his independence or impartiality, or

b) He does not possess the qualification agreed to by the parties

The Act provides that a party may challenge an arbitrator appointment by him also. But this can be done for those reasons of which he becomes aware after the appointment has been made.

Challenge Procedure

A party may challenge an arbitrator in terms of Section 13 of the Act. This he must do within 15 days of the constitution of the Arbitral Tribunal or becoming aware of the grounds for challenge as mentioned earlier. The reason for the challenge should be sent to the Arbitral Tribunal in writing. The challenge may result into the following: -

i) The challenged arbitrator may withdraw from the office.

ii) The other party may agree on the challenge and terminate the appointment of the arbitrator.

iii) In case, events mentioned above in (i) and (ii) do not happen the Arbitral tribunal may decide upon the challenge.

If the challenge is not accepted, the Arbitral Tribunal shall continue the Arbitration proceedings and make an award. The aggrieved party may make an application for setting aside the award in terms of Section 34 of the Act.

It may so happen that, an arbitrator was disqualified at the time of reference, but this fact was known to the party at that point of time. In such cases, leave to revoke authority of such an arbitrator cannot be granted.

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Failure or Impossibility to Act

The mandate of an arbitrator shall terminate and he shall be substituted by other arbitrator if: -

a) He becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay ; and

b) He withdraws from his office or the parties agree to terminate his mandate.

If a controversy remains concerning any of the grounds referred to in clause (a) above, a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate.

Besides, an arbitrator may withdraw from his position himself or both the parties may agree to terminate the mandate of an arbitrator (Section 15(1)). When the authority of an arbitrator is terminated, a **substitute arbitrator** should be appointed {Section 15}. The same is done by the following the same procedure as followed while appointing the arbitrator who has been substituted.

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CHAPTER 8

PROCEDURE OF ARBITRATION

There are many important differences between the rules of litigation and a courtroom, compared to those of arbitration. A contract that includes an agreement to arbitrate disputes typically outlines some key aspects relating to any potential future arbitration. The rules and procedures that will be used in an arbitration proceeding are typically part of this agreement. If an outside service will be used to handle an arbitration proceeding, as in the case of institutional arbitration, the contract may specify whether that service's already-established rules and procedures will be used. Because of the variety of arbitration services, as well as the flexibility provided to parties to draw up their own rules, there is no single set of rules or procedures that apply to all arbitrations. However, regardless of the rules used, the following are some of the key issues that are typically addressed under the Act:

(1) Equal Treatment of Parties – {Section 18}

"The parties shall be treated with equality and each party shall be given a full opportunity to present his case." [Section 18]. This section imposes two-fold duty on the Arbitral Tribunal.

i. The Arbitral Tribunal shall give equal treatment to the parties to the reference.

ii. The Arbitral Tribunal shall give to each party to the reference full opportunity to present its case.

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The section lays down the basic principles of natural justice.

a) An Arbitrator must not receive information from one party, which is not disclosed to the other party.

b) The refusal by Arbitrator to give adjournment for one day as the counsel was busy in another case was held violative of principles of natural justice.

c) When a matter is remanded to the arbitrators for reconsideration, the parties are entitled to "personal hearing".

d) Examination of one party or witness in the absence of the opposite party is often fatal to the award.

e) Unless expressly authorised by the parties, an arbitrator cannot decide on the basis of private or secret enquiries.

f) A point blank refusal by the arbitrator to record an oral evidence was held against the Law of natural justice.

(2) Rules of Procedure {Section 19}

There is no uniform or notified rules which can be followed in arbitration proceeding. Even the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872 is not applicable in arbitration proceedings. Normally, parties under dispute may mutually agree to conduct the proceedings in the manner they consider appropriate. In case of institutional arbitration, generally, the rules of an institution, which are based on the provisions of Act, apply.

(3) Venue {Section 20} : The parties are free to agree on the place of arbitration.

(4) Language – {Section 22} : The parties have freedom to decide the language of proceedings. In absence of any such agreement, the Arbitral Tribunal shall determine the language or languages to be used in the arbitral proceedings.

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(5) Statement of Claims & Defence {Section 23}

Party who makes the claim is called claimant; party against whom the claim is made is called a Respondent. Claimant has to file a statement of claims within the period agreed. Claimant shall also state the facts and enclose the relevant documents. The copy of statement of claim is given to each member of Arbitral Tribunal as to the respondent.

Respondent on receiving the statement of claim shall file his defence in response the particulars submitted by the claimant. Further newly inserted Section 23(2A), allows the respondent, to also submit a counter claim or plead a set-off, which shall be adjudicated upon by the Arbitral Tribunal, if such counterclaim or set-off falls within the scope of the arbitration agreement.

Upon receiving the reply, the claimant may add something further called Rejoinder. Parties may amend and supplement their claim or defence during the course of proceeding. However, to ensure that this process does not go on and on, Tribunal may refuse to give permission to file such a submission or to amend supplement claim or defence in Arbitration proceedings. Finally the respondent gives a closing address and then the claimant gives a closing address.

(6) Failure To Submit Claims {Section 25(a)}

If the claimant fails to submit the statement of his claims, the Arbitral Tribunal shall terminate the proceedings.

(7) Failure To Submit Defence {Section 25(b)}

If the respondent fails to submit his statement of defence, the following situation will emerge:-

a) The Arbitral Tribunal shall continue the proceedings and the award will be made on the material and the evidence available before the Tribunal, and

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The Tribunal will not treat the failure itself as an admission of the allegation made by the claimants. However, the amended Act provides arbitrators the discretion to treat the failure of the respondent to file such statement of defence as forfeiture of right to file the same.

(8) Failure to Appear {Section 25(c)}

If a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

(9) Hearing By The Tribunal {Section 24}

Unless otherwise agreed by the parties, the Arbitral Tribunal shall decide whether to hold oral hearings for the presentation of evidence or an argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, the amended Act recommends that the Tribunal should hold oral hearings for presentation of evidence or for oral arguments on day-to-day basis. Adjournments should be discouraged and should not be granted unless sufficient cause is given. Moreover, the amended Act also empowers the Tribunal impose costs including exemplary costs on the party seeking adjournment without any sufficient cause.

(10) Who shall Represent?

Parties to the dispute can appear or they may engage an advocate or counsel.

(11) Appointment of Experts {Section 26}

Tribunal may appoint expert(s) on specific issues. Experts may be required to appear before the Tribunal to explain their finding and answer question of the parties.

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(12) Waiver of Right to Object {Section 4}

If a party knows that any provision of Act or arbitration agreement has not been complied with and yet participates in the arbitration proceedings without stating his objections, he shall be deemed to have waived his right to so object.

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CHAPTER 9

ARBITRAL AWARD

An arbitral award or arbitration award refers to a decision made by an Arbitration Tribunal in an arbitration proceeding. An arbitral award is analogous to a judgment in a court of law. An arbitral award can be of a non-monetary nature where the entire claimant's claims fail and no money needs to be paid by either party. Or it can be made for payment of a sum of money, declaration upon any matter to be determined in the arbitration proceedings, injunctive relief, specific performance of a contract and for rectification, setting aside or cancellation of a deed or other document. Important provisions relating to Arbitral Award in the Act and otherwise are discussed below.

MAKING OF ARBITRAL AWARD {Section 28}

The document that gives and explains the decision(s) of an arbitrator is called an award. An award is binding on both parties. An arbitrator has authority to issue interim, partial and final awards. Having issued a final award, the arbitrator has no further duty or authority upon the arbitration, except for the right to correct any minor slips.

Either party can, within a reasonable time may seek to challenge an award in the High Court. However, the court will only interfere on limited grounds relating to the capacity of the parties, the validity or scope of the arbitration agreement, or unfairness or impropriety in the conduct of the proceedings. For domestic arbitrations, the court may also, unless otherwise agreed by the parties, consider an appeal on a question of law arising from the award. In this case,

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the court may confirm, vary, set aside the award, or refer it back to the arbitrator for reconsideration in the light of the court's opinion on the question of law.

Sections 28 to 33 of the Act deals with the Award by arbitrators and termination of proceedings. Salient features of the same are discussed herewith.

a) Rules Applicable to Substance of Dispute

Generally the Arbitral Tribunal decides the dispute submitted to arbitration in accordance to the substantive law for the time being in force in India [Section 28(1)(a)]. For example, dispute between the partners of a firm shall be resolved by application of the provision of the Indian Partnership Act.

However, in case of International commercial arbitration, the parties have been allowed autonomy to designate the rule of law. Where the parties fail to designate any law, the Arbitral Tribunal is to apply the law as considered appropriate in the circumstances of dispute. Section 28(1) (b) lays down that in international commercial arbitration:

1) The Arbitral Tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute.

2) Any designation by the parties of the law or legal system of a given country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country and not its conflict of laws rules.

3) Failing any designation of the law under clause (a) by the parties the Arbitral Tribunal shall apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute.

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The parties to the arbitration can authorise the Arbitral Tribunal to decide *'ex aequo et bono'* i.e.,' based on equity and good conscience' or as amiable compositeur' (as friendly compromiser) i.e., without applying strict legal rules of interpretation as to the obligation of the parties whether contractual or otherwise [Section 28(2)]

In all cases the Arbitral Tribunal is to decide in accordance with the terms of the contract by taking into account the usage of the trade applicable to the transaction [Section 28(3)].

b) Decision Of The Arbitral Tribunal- {Section 29}

The decision of the Arbitral Tribunal is required to be made by majority of all its members unless the parties have agreed otherwise. For example, the parties may decide that the decision should be unanimous and not be majority.

The parties or all the members of the Arbitral Tribunal may agree that the question of procedure in the arbitration proceedings may be decided by the presiding arbitrator.

c) Time Limit for making Award

One of main objectives of the amendments made was to make provisions for timely completion of arbitral proceedings. To fulfil this objective the amended Act has set the time limit for arbitral award and also laid down an additional Fast Track Procedure (Section 29B). Section 29 A requires that the award shall be made within a period of twelve months from the date the Arbitral Tribunal enters upon the reference. This period can be further extended at maximum by six months by the parties under dispute. If the award is not made within the period specified or the extended period as stated above, the mandate of the arbitrator(s) stands terminated unless the Court extends the period. Such extension of period may be

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on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court. Further, while extending the period the Court may substitute one or all of the arbitrators. In such cases, the arbitral proceedings will continue from the stage already reached and on the basis of the evidence and material already on record. As a measure to penalise arbitrators for inordinate delay, the amended Act provides that while extending the period, if the Court finds that the proceedings have been delayed for the reasons attributable to the Arbitral Tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent for each month of such delay. Court may also impose actual or exemplary costs upon any of the parties. To further incentivise the Tribunal for speedy disposition of dispute, sub-section (2) of newly inserted Section 29A, entitles Arbitral Tribunal to receive additional fees as agreed by the parties, if the case is disposed within a period of six months.

Fast Track Procedure {Section 29B}

Newly inserted Section 29B, allows the parties to an arbitration agreement to agree in writing to have their dispute resolved by fast track procedure wherein the award is to be compulsorily made within a period of **six months** from the date the Arbitral Tribunal enters upon the reference. This can be done at any stage either before or at the time of appointment of the Arbitral Tribunal. A sole arbitrator can be chosen by the parties for the purpose. Sub-section (3) specifies the procedures for fast track Arbitration which are as follows:

- The Arbitral Tribunal must decide the dispute on the basis of written pleadings, documents and submissions filed by the parties without any oral hearing;
- The Arbitral Tribunal shall have power to call for any further information or clarification from the parties in addition to the pleadings and documents filed by them;

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- An oral hearing may be held only, if, all the parties make a request or if the Arbitral Tribunal considers it necessary to have oral hearing for clarifying certain issues;
- The Arbitral Tribunal may dispense with any technical formalities, if an oral hearing is held, and adopt such procedure as deemed appropriate for expeditious disposal of the case.

Under fast track procedure, if the Tribunal fails to make the Award within six months, the period may be extended by the Court and all provisions applicable in case of extension of period by Court in case where normal procedure is followed, would apply.

d) Settlement {Section 30}

The Arbitral Tribunal may encourage the parties to settle their dispute at any times during the arbitration proceedings. The Tribunal can take initiative and find out whether there is an element of settlement, and for this purpose it may use mediation, conciliation and other procedures.

If a settlement is reached, the same may be incorporated in an arbitral award and signed by the arbitrators. However, this can be done only if requested by the parties and not objected to by the Arbitral Tribunal.

An arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the substance of the dispute. In another words, an arbitral award out of settlement can also be enforced as a decree of the court.

e) Forms and Contents of Arbitral Award {Section 31}

1) The award shall be made in writing and shall be signed by arbitrators.

2) Where there is more than one arbitrator, the signature of majority of the arbitrators shall be sufficient. However,

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in such cases, the reason for any omitted signature must be stated.

3) The award should be speaking one, clearly specifying the reason for such decision subject to the following exceptions:

- The parties have agreed that reasons are not to be given
- The award is the outcome of settlement and on agreed terms as mentioned in Section 30.

4) The award shall state its date and the place of arbitration.

5) A signed copy of the award shall be delivered to each party.

6) The arbitrators may make an interim award. In practice, a request for interim award by a party is entertained by arbitrators, when there are numerous subject matters in the same dispute and each one of them is separate and distinct from the other.

7) The arbitrators have power to award interest for the whole or part of the period between the date on which cause of action arose and the date on which the award is made. However, the parties can by their agreement take away the power of the arbitrators to award interest.

8) Moreover, the amended Act requires that an interest at the rate 2% higher than current rate of interest prevailing on the date of award, from the date of award to the date of payment should be paid on the sum directed to be paid by a Tribunal unless the arbitrators

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decide otherwise. A model arbitral award is reproduced below:

MODEL ARBITRAL AWARD

Award of _____ (Sole Arbitrator)

Arbitration Case no: _____ (where applicable)

I Narrative Part

In the above mentioned arbitration I hereby make the following award:

1. A Brief History of the case
2. Arbitration Clause as contained in the contract
3. Order of appointment as arbitrator
4. Claim – summary of
5. Defence – summary of
6. Issues in the award
7. Other things depending on the circumstances of the case.

II Analytical Part ..... (Critical Part as this is what makes the award speaking)

This part must basically contain issue-wise discussion based upon the claims and the defences as well as the rejoinders submitted, the evidence gathered and collected, the arguments in support of the decision taken and the decision or the conclusion.

III Operative Part

1. Damages or other amount etc. as is awarded
2. Interest
3. Costs

Dated : _____ (Date of the Award)

At : _____ (Place of the Award)

Signature of the Arbitrator

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f) Cost of the Proceeding

The amended Section 31(8) of the Act provides that the costs of an arbitration proceeding shall be fixed by the Arbitral Tribunal in accordance with the Act. Section 31A empowers the Arbitral Tribunal to have the discretion to determine the cost which would mean reasonable costs relating to the following:

- The fees and expenses of the arbitrators, Courts and witnesses;
- Legal fees and expenses;
- Any administration fees of the institution supervising the arbitration;
- Any other expenses incurred in connection with the arbitral or Court proceedings and the arbitral award.

The Tribunal would also have the discretion to decide whether costs are payable by one party to another and the time at which such costs are to be paid. Normally, the unsuccessful party will be ordered to pay the costs of the successful party. This is in order to discourage frivolous claims, the 'loser pays' principle, common to dispute resolution procedures in other jurisdictions, will now apply to any costs orders made by Tribunals in relation to the parties' legal fees and expenses and the costs of the arbitration. However, the Court or the Arbitral Tribunal may make a different order for reasons to be recorded in writing.

In determining the costs, the Court or Arbitral Tribunal shall have regard to all the circumstances, including—

(a) The conduct of all the parties;

(b) Whether a party has succeeded partly in the case;

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(c) Whether the party had made a frivolous counter claim leading to delay in the disposal of the arbitral proceedings; and

(d) Whether any reasonable offer to settle the dispute is made by a party and refused by the other party.

Notwithstanding anything stated above, the Court or Arbitral Tribunal may make any order regarding the costs including the order that a party shall pay—

(a) A proportion of another party's costs;

(b) A stated amount in respect of another party's costs;

(c) Costs from or until a certain date only;

(d) Costs incurred before proceedings have begun;

(e) Costs relating to particular steps taken in the proceedings;

(f) Costs relating only to a distinct part of the proceedings; and

(g) Interest on costs from or until a certain date.

Termination of Proceedings {Section 32} **and Enforcement of Award**

g) Termination of Proceedings {Section 32}

This section contains the provisions regarding conditions and procedure for termination of arbitral proceedings. The same is summarised in the following paragraphs.

1. The arbitration proceeding is terminated as soon as the final arbitral award is made by the arbitrators.

2. The proceedings stand terminated by an order of the Arbitral Tribunal where:

   a) The claimant withdraws his claims

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b) Both the parties agree on the termination of the proceedings.

c) The Tribunal finds that the continuation of the proceedings has for any other reason became unnecessary or impossible.

h) Additional Award {Section 33}

A party with notice to the other party may request the Arbitral Tribunal to make an additional award as to claim presented in the arbitral proceedings but omitted from the arbitral award. The party can do so within 30 days from the receipt of the award unless the parties have agreed to different time frame. The Arbitral Tribunal shall make the additional award within sixty days of the receipt of the request provided it considers the request to be justified. However, this limit of sixty days can be extended by tribunal. The provisions relating to cost of the proceeding as discussed above would apply here.

i) Finality and Enforcement of Awards {Sections 35 & 36}

An arbitral award is considered final and binding on both the parties. However, an unsatisfied party has the right to make an application to the court for setting aside the order (discussed in forthcoming paragraph). Therefore, in real sense, an arbitral award shall be considered final only after the time limit to apply for setting it aside has elapsed. After expiry of such time such award can be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a decree of the Court. Even where an application to set aside the arbitral award has been filed in the Court under Section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award on a separate application

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made for that purpose. However, in case, a party has made such application, the Court may grant stay after giving reason for the same in writing and the award will not be final and binding till the application is refused by the Court. Once the award becomes final as mentioned above, it shall be enforced as if it were a decree of the Court.

j) Recourse against Arbitral Award & Appeal {Section 33, 34 & 37}

Once an arbitral award is pronounced it is treated as final like a decree of Court. However, if arbitral award seems unjust or is erroneous the following recourse is available to the claimant.

- Setting aside of the arbitral award
- Correction of the arbitral award or
- Appeal against the award in limited case (appealable orders)

Setting Aside of Arbitration Award {Section 34}

Section 34 of the Arbitration and Conciliation Act, 1996 provides that a dissatisfied party may apply to the Court for setting aside of Arbitration awards, subject to the condition as mentioned in Sections 34(2) and 34(3).

Application for setting aside an Award

A dissatisfied party may take recourse to Section 34(1) and make an application to the Court for setting aside the Arbitration award. There is no special form of drafting required for an application to the Court. However, newly inserted sub-section (5) of Section 34 requires that an application under this section be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

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Conditions for Setting Aside Award

Section 34(2) of the Act provides that an Arbitral award may set aside by the court only if—

a) The party making the application furnishes proof that------
A party was under **some** incapacity, or

   i. The arbitration agreement is not valid under law to which the parties have subjected it or, failing any indication thereon under the law for the time being in force; or

   ii. The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;

   iii. The arbitral award deals with disputes not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration.

   iv. The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

b) the court finds that:
   i. A party making the application furnishes proof that-

   ii. The arbitration agreement is not under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

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iii. The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case.

iv. The arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration or it contains decisions on matters beyond the scope of the submission to arbitration.

v. The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties; or

c) the court finds that–

i. The subject matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

ii. The arbitral award is in conflict with the public policy of India

The newly inserted sub Section 2A to Section 34 also states that an arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award. However, an erroneous application of the law or by re-appreciation of evidence cannot be an ample ground for setting aside an award.

Time limit for making an application for setting aside award

Section 34(3) lays down that the maximum permissible period for an application to set aside the award is a period of three months. Thirty days condonation of delay can be allowed by Court. There is no special form prescribed for making such an application.

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Time limit for disposal of application

Newly inserted sub-section (6) of Section 34 requires that an application for setting aside an arbitral award must be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice is served upon the other party.

Correction and Interpretation of Award {Section 33}

A party, with notice to the other party, may request the arbitral tribunal to correct any computation or tropical errors any other errors of a similar nature occurring in the award or to give an interpretation of a specific point or part of the award. The party can do so within 30 days from the receipt of the award unless the parties have agreed to different time frame. The Arbitral Tribunal shall make the additional award within thirty days of the receipt of the request provided it considers the request to be justified. However, this limit of thirty days can be extended by Tribunal.

Appeal (Section 37)

Section 37 of the Act contains provisions regarding appeals against certain orders. There are limited grounds on which an appeal shall lie to the appellate court. The same has been summarised in the following paragraphs.

1. Where an application for referring to arbitration has been made under Section 8 and there is a valid arbitration agreement and Court refuses to refer the parties to arbitration; (Section 37(1) (a))

2. A party may apply to the court for interim measures of protection in respect of certain matters under Section 9. An appeal can be preferred against granting or refusing to grant any such measures by the court (Section 37(1) (b))

3. Likewise, an appeal shall lie against setting aside or refusing to set aside an arbitral award.

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It is obvious that, in both the above cases, the appeal is against the order of a court.

The Act also provides that, certain orders of the Arbitral Tribunal are Appealable. In the following cases, the order of an arbitral tribunal can be challenged in appeal: -

a) Accepting the plea referred to in sub section (2) or sub-section (3) of section 16. Sections 16(2) and 16(3) contains the issues relating to jurisdiction of the Arbitral Tribunal.

b) Granting or refusing to grant a interim measure under section 17.

SECOND APPEAL {Section 37(3)}

The Acts permits only one appeal. So, no second appeal can be preferred against an order passed in appeal. Nothing in this section shall affect or take away any right to appeal to the Supreme Court.

LIMITATIONS FOR APPEALS

The time limit for filing appeal is governed by the Limitation Act, 1963. Accordingly, if the appeal lies to any other Court, it would be thirty days from the date of the order. One month's condonation can be allowed.

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CHAPTER 10

FEES FOR ARBITRATION

Prior to amendment made by the Arbitration and Conciliation (Amendment) Act, 2015, there were no specific provisions in the Act to regulate the fees of the Arbitrators. However, newly inserted sub-section 11(14) empowers the High Court to frame rules for determination of the fees of the Arbitral Tribunal in case of domestic arbitration not guided by the rules of an arbitral institution. The High Court must however, determine the fees after considering the rates specified in the newly inserted Fourth Schedule of the Act. The aforesaid Schedule is reproduced below:

Sum in dispute	**Model fee**
Up to ` 5,00,000/-	` 45,000/-
Above ` 5,00,000/- and up to ` 20,00,000/-	` 45,000/- plus 3.5 per cent of the claim amount over and above ` 5,00,000/-
Above ` 20,00,000/- and up to ` 1,00,00,000/-	` 97,500/- plus 3 per cent of the claim amount over and above ` 20,00,000/-
Above ` 1,00,00,000/- and up to ` 10,00,00,000/-	` 3,37,500/- plus 1 per cent of the claim amount over and above ` 1,00,00,000/-
Above ` 10,00,00,000/- and up to ` 20,00,00,000/-	` 12,37,500/- plus 0.75 per cent of the claim amount over and above ` 10,00,00,000/-
Above ` 20,00,00,000/-	` 19,87,500/- plus 0.5 per cent of the claim amount over and above ` 20,00,00,000/- with a ceiling of ` 30,00,000/-

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CHAPTER 11

RECOGNITION & ENFORCEMENT OF FOREIGN AWARDS

With the opening of the economy and the world becoming a global village, there will be more and more joint ventures, collaborations and commercial transactions between parties of two or more countries. Different countries have different legal systems. Some contracts may be governed by laws of more than one country and their application may involve a complicated procedure. But in International Arbitration, the parties can provide a procedure and law which maybe acceptable to both of them.

In International Commercial Arbitration the following three things are important:–

i) Proper Law

ii) Arbitral Procedure

iii) Enforcement of awards

The parties are free to designate the rules of law as applicable to the substance of dispute. Generally, the parties are reluctant to refer the dispute to the national court of one of the parties. This maybe because of any of the following reasons:–

1. The party may apprehend biased judgment and nationalistic sentiments from the national court of the other party.

2. The parties may have the natural desire to have the dispute resolved outside the countries of the parties.

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3. The parties may have the desire to be governed by a law which is neutral to the contracting parties.

Arbitration enables parties from two different countries to avoid submitting disputes to the national court of either of the parties. It gives an ample choice of arbitrators thereby eliminating the fear of biased judgments or nationalistic sentiments.

Geneva and London are considered as arbitration friendly venues but they maybe very expensive. The Indian party should insist for a venue of arbitration in India only. In case the foreign counterpart insists on a neutral venue, then Colombo or Dhaka can be preferred which are comparatively cheaper and nearby.

Law Governing Arbitration Agreement

Normally, the proper law of the Arbitration Agreement is the same as the proper law of contract. This law applies to issue such as consent of parties, validity, interpretation and scope of the arbitration agreement etc.

Law Governing the Arbitration Procedure

Unless otherwise agreed by the parties, the Arbitration proceedings are conducted in accordance with the law of the country in which the arbitration is held.

Enforcement of Foreign Award

International Commercial arbitrations transcend national boundaries and usually have a foreign element. One of the problems faced in such arbitration is related to the recognition and enforcement of arbitral awards. The award is made in one country and the same has to be enforced in the courts of another country. Each country may have a different set of laws. This deficiency was sought to be removed through various international conventions particularly Geneva Convention (1927) and New York Convention (1958).

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Part II of the Act contains two chapters. Chapter I deals with New York Convention awards and Chapter II deals with Geneva Convention awards. It has been observed by the Apex Court in *Renusagar Power Co. vs. G. E. C. (1994) 81 Company cases 171,* that the New York Convention is an improvement on the Geneva Convention in the sense that it provides for a similar and effective method of obtaining recognition and enforcement of foreign arbitral awards and between the states which are parties to both the conventions, the New York Convention replace Geneva Convention.

New York Convention

India is party to the New York Convention as well as the Geneva Convention. India has made two reservations while ratifying the Convention which are as follows:

1) That it would apply to the Convention for the recognition and enforcement of an award only if it was made in the territory of another contracting state.

2) It would apply the Convention only to differences arising out of legal relationships which are considered "Commercial under Indian Law."

Global Recognition of New York Convention

New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards has been accepted and signed by almost all important countries in the world. Hence an arbitral award is enforceable against a party to the arbitration agreement in any territory of any contracting state. An award made at London, maybe a purely domestic award in U.K., can be enforced anywhere in India. Similarly an award made at New Delhi, a purely domestic award in India, can be enforced against the party at New York or London or anywhere in a country which is a signatory to the Convention. Challenging the foreign award is subject to law of the territory where it has been made.

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It may be noted that The New York Convention supersedes the Geneva Convention i.e. if a country is both under the Geneva Convention and in the New York Convention the award must be enforced under the New York Convention since the New York Convention supersedes Geneva Convention.

Procedure for Enforcement under the Conventions

There is not much of a difference in the procedure for enforcement of foreign awards under the Geneva Convention and the New York convention. Any person interested in enforcing a foreign award may apply in writing to any court having jurisdiction over the subject matter of the award. In addition to filing of the award and the agreement on which it is based as required by the Convention, the Act requires that evidence as to the award being a foreign award has to be filed.

The competent court in which the award is to be filed is the court which will have jurisdiction over the subject matter of the award. The application will be admitted in the court as a suit. The court will direct notice to be given to the parties requiring them to show cause why the award should not be filed. The court on being satisfied that the foreign award is enforceable under the Act will pronounce judgment according to the award. Upon the judgment so pronounced, a decree will follow. No appeal will lie from such a decree except in so far as the decree is in excess of or not in accordance with the award.

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CHAPTER 12

PRACTICAL HINTS FOR ARBITRATORS

1. Be firm but polite

2. Disclose your interest if any, at the beginning. For specimen of such declaration, see the Chapter on Duties and Responsibilities of Arbitrators.

3. You should be impartial.

4. Ensure that arbitrators are appointed as per Law and as per arbitration agreement.

5. As an arbitrator you are supposed to conduct the arbitration proceedings. Don't participate in the proceedings.

6. Arbitrator should perform his functions without undue delay and give equal opportunity to both the parties. He should follow the principles of natural justice.

7. Before accepting the appointment, ensure that you are able to carry out your job efficiently and with competence. You should be willing to devote time as per the need of the case.

8. Study the statement of claims, counter-claims, defence, rejoinders and other pleadings carefully. Prepare yourself.

9. Needless to say, an arbitrator must have good knowledge of The Arbitration and Conciliation Act, 1996, The Indian Contract Act, 1872, The Indian Evidence Act, 1872, Limitation Act, 1963, and all other relevant Laws applicable in a particular case including regulatory requirements if any.

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It is advisable to keep a copy of above books/Acts ready in the Arbitration room.

10. It is advisable to record the proceedings of the hearing by way of minutes and get it signed by both the parties.

11. Give clear directions to the parties in the first/preliminary meeting regarding:–

    a. Deadlines for submission of claims/defence etc.

    b. Whether there will be oral hearings or not?

    c. Examination of witnesses.

    d. Admittance/denial of documents.

    e. Whether advocates/counsels will represent the party?

    f. Address at which parties would like to receive communication.

    g. Arbitrators fees/cost of arbitration.

    h. Any deposit required from the parties.

    i. Venue/Language of arbitration.

    j. Spot Inspection / Site Visit.

12. Unlike a court, an arbitrator should not immediately pass an exparte judgment.

13. If a heated argument ensues, control the counsels and the parties tactfully.

14. Always remember, as an arbitrator you are not a mediator. You have to decide the issue after hearing both the sides in an independent, impartial and judicious manner.

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15. An arbitrator must not act as an advocate or counsel of the party who has nominated him. He is holding the position of an independent judge.

16. During the Arbitration proceedings, many original documents are filed with the Tribunal. As an arbitrator, you must preserve these documents carefully. As a matter of practice, these documents are returned to the parties after the award becomes final.

17. An arbitrator must also ensure confidentiality in all the dealings that happen in the arbitration room.

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CHAPTER 13

ROLE OF CHARTERED ACCOUNTANTS IN ARBITRATION

A Chartered Accountant renders multifarious services to his clients. His wide exposure in taxation, accounting, projects, financial services, business planning, takeovers etc., help him to quickly grasp the background of a dispute or difference. Generally, whenever a dispute and/or difference arise between the two parties, they first consult their Chartered Accountant and do not rush to an Advocate. Day in and day out, a Chartered Accountant is engaged in resolving disputes of his clients though informally. He also possesses enough experience of drafting commercial agreements and is also actively involved in negotiation with Government authorities and represents clients in a number of ways.

Arbitration and other methods of Alternate Dispute Resolution (ADR) offer a promising opportunity to a Chartered Accountant. He must look at ADR as a positive addition to the skills he can offer his client. He can be instrumental in resolving complex disputes by utilising his wide experience. The following are few of the areas where he can render his services.

As an Arbitrator

A Chartered Accountant is required to maintain a high degree of professional competence and technical standard. He is bound by the code of conduct framed by the Institute of Chartered Accountants of India. Section 2(2) of the Chartered Accountants' Act, 1949 read with Regulation 191 of the Chartered Accountants' Regulations, 1988 specifically provides that a Chartered Accountant in his professional capacity is allowed to act as an arbitrator.

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Indian Council of Arbitration, a specialised arbitral body, sponsored by Government of India and certain apex business organisations, also recognise Chartered Accountants as arbitrators. The above organisation maintains a panel of arbitrators drawn from various fields. Clause III (b) of the "broad categories of qualification and experience for empanelment as an arbitrator indicate that Chartered Accountants are eligible for empanelment. Clause III (b) reads as follows:–

III(b) "Chartered Engineers, Chartered Accountants, Chartered Secretaries, Architects, basically Valuers or other technical consultants in any branch of engineering, accountancy etc. with at least 15 years' experience in Government/private organisation or in professional practice, with adequate knowledge and experience in arbitration matters."

So, a Chartered Accountant having 15 years of professional experience is eligible for empanelment as an arbitrator. There are a large number of organisations, national as well as international, which maintain a panel of arbitrators. The job of an arbitrator is often challenging but satisfying.

As a Counsel for the client

In recent times, there is a move all over the world to encourage professionals and experts like Chartered Accountants, Company Secretaries, Engineers etc. to play an active role in arbitral processes. The objective of arbitration is to provide expeditious, efficient and economic justice to the aggrieved parties as it is felt that too much legality defeats the very purpose of arbitration.

A Chartered Accountant can equip himself to enter into the field with considerable advantage. A Chartered Accountant normally represents the cases of his clients before various authorities including the Tribunals, Company Law Benches, SEBI, RBI etc. He can definitely specialise in arbitration matters particularly

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those connected with breach of contracts, insurance claims, loss of profit, securities fraud, commercial disputes, rights of properties, lease transactions etc. and represent his clients in Arbitration proceedings.

As an Expert

Under Section 26(1) of the Arbitration and Conciliation Act, 1996 the Arbitral Tribunal may appoint expert/s to report on any specific issue to be determined by it. It may also require the parties to give the expert any relevant information, explanations, or to produce or provide access to any relevant documents, goods or other property for inspection. An expert may be examined and cross-examined by a party on request of a party and where an Arbitral Tribunal considers it necessary.

A CA can help the Arbitral Tribunal in the capacity of an expert in matters relating to accounts, commercial transactions, lease transactions etc., where he has sufficient domain knowledge.

As a Conciliator

Conciliation is a process by which the conciliator endeavours to bring the disputant parties to an agreement. A conciliator is generally an independent third party who mediates for the disputing parties in order to bring them to a mutually acceptable settlement. A mediator is normally taken to be a person of the disputant's choice. The conciliator is instrumental in drawing up the terms of settlement in the shape of an agreement, consequent upon comprehensive discussions with the parties to the dispute. A CA in his day-to-day practice often helps his clients in settling their disputes through conciliation. CA's can serve as professional conciliators. With the acquisition of thorough knowledge on the process of mediation, negotiating skills and related techniques of conciliation a CA can act as a successful professional conciliator thereby adding to the array of services he provides.

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In other Capacity

A Chartered Accountant can also advise the client whether a particular case is arbitrable or not. In case of arbitrable disputes, he can provide various services like, advising the clients on selection of arbitrator, initiating the arbitral proceedings, preparation of statement of claims or defence, pleadings etc. He can help in deciding which ADR process the client should choose. After enough experience in arbitration and other ADR methods, he can also play an important role in solving the pending disputes of his clients by identifying those cases that are suitable for resolution through ADR.

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CHAPTER 14

ARBITRATION PRACTICE ACROSS INDUSTRIES

The CDDRL working paper 2009, on Development and Practice of Arbitration in India – Has it Evolved as an Effective Legal Institution has analysed the arbitration practice across industries in India which is reproduced for our reading and understanding.

Unlike in Europe, where the manner of settling disputes has substantially evolved separately across various industry sectors, there is no marked difference in arbitration practice from one industry to another in India. The exceptions to this rule, however, are the construction industry and the IT industry. Due to the technical complexities and long-term nature of relationships between parties in these industries, arbitration in construction and IT industry disputes are characterised by certain peculiarities quite distinct from other industries. The growth in the infrastructure and the IT industry in India is a recent development, and a result of the globalisation of the Indian economy. An important secondary effect of this development is that arbitration has also streamlined a sector-specific approach to cater to the technicalities and specific requirements of such specific sectors.

1. Arbitration in the construction industry

Construction/infrastructure is one of the fastest growing sectors of the Indian economy, and millions of dollars are spent in construction related disputes. According to a survey conducted in 2001 by the Construction Industry Development Council, the amount of capital blocked in construction sector

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disputes was over INR 540,000 million. *Ad hoc* arbitration is still very popular in the construction industry. Arbitration in the construction industry has a unique feature, which is quite distinct from the general arbitration practice seen in other industries.

1.1 Standard Contracts of Central and State Governments and Industry Giants

Over the last four decades in India, there has been a great deal of construction activity both in the public and private sectors. Central and State Governments; State instrumentalities; and public and private companies have all been entering into contracts with builders as part of their commercial activities. The rights and obligations, privies and privileges of the respective parties are formally written. The Central and State Governments and instrumentalities of the States, as well as private corporations, have their own standard terms of contract, catering to their individual needs. Often, these contracts provide for remedial measures to meet various contingencies.

Despite these extensive and time-tested contracts, disputes and differences often arise between the parties. To meet these situations, arbitration clauses are provided in the contract themselves, generally covering either all disputes arising from the contract or all disputes save a few 'excepted matters.'

1.2 Unique Features of Arbitration in the Construction Industry

In the standard forms adopted by the Government departments like the Central Public Works Department (CPWD), Military Engineer Services (MES), railways and public enterprises, although an arbitration clause may include within its purview all the possible disputes relating to the transaction, there are exemption clauses or exclusion

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clauses that make the decision of an authority named in the agreement, final and binding on the parties.

These clauses are included, because in construction contracts, situations arise for which immediate decisions on a point of difference or dispute is required to avoid costly delays. In these situations, the 'excepted matters' or 'exclusion clauses,' make the decision of a particular authority final and binding on both the parties, and not subject to arbitration.

There has been a series of judicial decisions, which have held that if a particular matter has been excluded from the purview of arbitration incorporating excepted matter clause/exclusion clause, the same shall not be re-agitated in arbitration. In *Food Corporation of India vs. Sreekanth Transport,* 21 the Supreme Court held that 'excepted matters' do not require any further adjudication, since the agreement itself provides a named adjudicator, and concurrence by the parties to the decision of the named adjudicator is obviously presumed by reason of unequivocal acceptance of the terms of the contract of the parties.

'Exception' can also operate differently. There may be certain clauses in the contract which empower either the engineer-in-charge or the consultant to take an on-the-spot decision regarding points of difference between the builder and the employer. Such clauses also provide a right of appeal to a superior officer within a particular time, and impose a liability on the officer to give a decision within a stipulated time. The clause further provides reference of the matter to arbitration, in case one of the parties is not satisfied with such decision, or if the officer does not render a decision. However, the provision expressly provides that if none of the parties opt for the choice to refer the matter to arbitration within the time limit thus prescribed, the decision last rendered shall be treated as final and binding upon both the parties.

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1.3 Dispute Review Board in the Construction Industry

The concept of a Dispute Review Board (DRB) is quite common in the construction industry. The DRB is a panel of three experienced, respected and impartial reviewers. The DRB is organised before construction begins and meets periodically at the job site. The DRB members are kept abreast of the developments and progress in the job, and made familiar with the project procedures and the participants, and are provided with the contract plans and specifications.

The DRB meets with the employer and the contractor representatives during regular site visits, and encourages the resolution of disputes at the job level. The DRB process helps the parties to solve problems before they escalate into major disputes.

The proceedings of the DRB can be brought as evidence before an Arbitral Tribunal or other judicial forum. The board members could also be presented as witnesses. Recommendations made by the three experts known for their reputation, accepted by both the parties at the start of the work as neutral persons and having thorough knowledge of the project will not normally be changed by any such Tribunal. It would therefore become difficult to go against the Tribunal. On this consideration, due acceptance is given to the system worldwide, and almost no case goes up to arbitration.

The statistics up to the year 2001 indicate that there were 818 projects with DRBs valued at US $ 41 billion; and that during that year, 1,221 disputes were settled by the DRBs, and out of 1,038 recommendations made, only 31 were taken by the parties to the Arbitral Tribunal.

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1.4 Specialised Arbitral Institutions in the Construction Industry

In India, substantial sums amounting to several crores of Indian rupees (INR) are locked up in contractual disputes in the construction sector alone. Therefore, the construction industry felt the need to introduce new measures to resolve disputes in a fair, speedy and cost-efficient manner. Due to such requirements, the Construction Industry Development Council, India (CIDC), in co-operation with the Singapore International Arbitration Centre (SIAC), set up an arbitration centre in India called the Construction Industry Arbitration Council (CIAC). This type of institution-administered arbitration has clear advantages over *ad hoc* arbitrations for construction companies, public sector undertakings and government departments that have construction contracts.

3. Arbitration in the Information Technology (IT) Industry

IT disputes differ from disputes in other industries mostly in their substance. IT projects tend to be complex and characterised by a network of responsibilities shared between parties that are dedicated to carry through a technology-related, long-term relationship. Thus, IT disputes typically centre on contractual or intellectual property (IP) law issues.

The Indian Council of Arbitration (ICA), which is now considered to be an apex arbitral institution in the country, has started the process of identifying and training specialised arbitrators for disputes connected with the IT industry. In relation to this aspect, the ICA conducted an in-depth seminar on Alternate Dispute Redressal methods for the IT sector in India's major cyber cities like Bengaluru and Hyderabad for the purpose of creating an expert pool of arbitrators specialised in cyber laws.

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CHAPTER 15

SAMPLE ARBITRATION CLAUSES BY COUNTRY

AUSTRALIA

Australian Centre for International Commercial Arbitration Clause

Any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the ACICA Arbitration Rules. The seat of arbitration shall be Sydney, Australia [or choose another city]. The language of the arbitration shall be English [or choose another language]. The number of arbitrators shall be one [or three, or delete this sentence and rely on Article 8 of the ACICA Arbitration Rules].

Institute of Arbitrators & Mediators Australia Commercial Arbitration Clause

Any dispute or difference whatsoever arising out of or in connection with this contract shall be submitted to arbitration in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Rules for the Conduct of Commercial Arbitrations.

CANADA

ADR Institute of Canada Inc. Arbitration Clause

All disputes arising out of or in connection with this agreement, or in respect of any legal relationship associated with or derived from

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this agreement, shall be arbitrated and finally resolved, pursuant to the National Arbitration Rules of the ADR Institute of Canada, Inc. [the Simplified Arbitration Rules of the ADR Institute of Canada, Inc.]. The place of arbitration shall be [specify City and Province of Canada]. The language of the arbitration shall be English or French [specify language].

HONG KONG SPECIAL ADMINISTRATIVE REGION

Hong Kong International Arbitration Centre Clause

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in Hong Kong under the Hong Kong International Arbitration Centre Administered Arbitration Rules in force when the Notice of Arbitration is submitted in accordance with these Rules. The number of arbitrators shall be ... (one or three). The arbitration proceedings shall be conducted in .... (insert language)."

NEW ZEALAND

Arbitrators' and Mediators' Institute of New Zealand Inc.

Arbitration Clause

Any dispute or difference arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in New Zealand in accordance with New Zealand law and the current Arbitration Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc. The arbitration shall be by one arbitrator to be agreed upon by the parties and if they should fail to agree within twenty-one (21) days from the date upon which the dispute arises then to be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc.

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PHILIPPINES

Philippine Dispute Resolution Center, Inc.

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the Philippine Dispute Resolution Center, Inc. (PDRCI) Arbitration Rules as at present in force.

(a) The appointing authority shall be... (name of institution or person)

(b) The number of arbitrators shall be... (one or three)

(c) The place of arbitration shall be... (city or country)

(d) The language(s) to be used in the arbitral proceedings shall be... (language)

UNITED KINGDOM

London Court of International Arbitration Clause

Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be [one/three]. The seat, or legal place, of arbitration shall be [City and/or Country]. The language to be used in the arbitral proceedings shall be [ ]. The governing law of the contract shall be the substantive law of [ ].

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UNITED STATES

American Arbitration Association Standard Commercial – Arbitration Clause

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

JAMS Standard Commercial Arbitration Clause

Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in (insert the desired place of arbitration), before (one) (three) arbitrator(s). The arbitration shall be administered by JAMS pursuant to its (Comprehensive Arbitration Rules and Procedures) (Streamlined Arbitration Rules and Procedures). Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

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CHAPTER 16

USEFUL LINKS

ARBITRAL ORGANISATIONS IN INDIA

A) The International Centre for Alternative Disputes Resolution

http://www.icadr.org/

B) Indian Council of arbitration

http://www.ficci.com/icanet/

C) Indian Institute of Arbitration & Mediation

http://www.arbitrationindia.com/

INTERNATIONAL ARBITRATION INSTITUTIONS

A) International Federation of Commercial Arbitration Institutions [IFCAI]

www.ifcai-arbitration.org

B) United Nations Commission on International Trade Law

http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration.html

In 1976, the United Nations Commission on International Trade Law (UNCITRAL) promulgated rules for use in *ad hoc* international arbitrations. The rules are widely accepted. Some arbitration institutions have adopted the UNCITRAL Rules as their institutional rules and other institutions will administer arbitrations under the UNCITRAL Rules, if requested.

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C) American Arbitration Association International Arbitration Rules

http://www.adr.org/

The AAA is a not-for-profit-organisation with offices throughout the U.S. and in Dublin, Ireland. The AAA headquarters is in New York, New York. The AAA provides administrative services in the U.S., as well as abroad through its International Centre for Dispute Resolution (ICDR). The AAA's and ICDR's administrative services include assisting in the appointment of mediators and arbitrators, setting hearings, and providing users with information on dispute resolution options, including settlement through mediation. Ultimately, the AAA aims to move cases through arbitration or mediation in a fair and impartial manner until completion.

D) International Chamber of Commerce Rules of Conciliation and Arbitration

http://www.iccwbo.org/

The International Chamber of Commerce International Court of Arbitration's rules are widely recognised and can also be selected by parties for use in *ad hoc* arbitrations or in arbitrations conducted by other institutions.

E) Permanent Court of Arbitration

http://www.pca-cpa.org

PCA was established by the Convention for the Pacific Settlement of International Disputes, concluded at The Hague in 1899 during the first Hague Peace Conference. The Conference was convened at the initiative of Czar Nicolas II of Russia "with the object of seeking the most objective means of ensuring to all peoples the benefits of a real and

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lasting peace, and above all, of limiting the progressive development of existing armaments." The most concrete achievement of the Conference was the establishment of the PCA: the first global mechanism for the settlement of disputes between states. The 1899 Convention was revised at the second Hague Peace Conference in 1907.

F) World Intellectual Property organisation-393 panellists from 55 countries 7 are Indian

http://www.wipo.int/amc/en/domains/panel/panelists.html#80

REGIONAL INSTITUTIONS

A) Asia Pacific Regional Arbitration Group- http://www.aprag.org/index.html

B) CHINA INTERNATIONAL ECONOMIC AND TRADE ARBITRATION COMMISSION

http://www.cietac.org.cn/index

C) CHICAGO INTERNATIONAL DISPUTE RESOLUTION ASSOCIATION

http://www.cidra.org/

D) Hong Kong International Arbitration Centre

www.hkiac.org

E) VIETNAM INTERNATIONNAL ARBITRATION CENTRE

http://english.viac.or

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CHAPTER 17

SPECIMEN DOCUMENTS

1. SPECIMEN LETTER TO OTHER PARTY REQUESTING APPOINTMENT OF AN ARBITRATOR

To

M/s. _____

_____

_____

That in respect of the disputes and differences which have arisen between us under the agreement dated the ..... day of ..... 20 ..... I have this day appointed A, of ..... etc. to be the arbitrator on my behalf.

That I now call upon you within seven clear days after the service of this notice on you to appoint an arbitrator to act on your behalf in the matter of the said disputes and differences.

That in default of your so doing the said A will be appointed by me to act as sole arbitrator in the reference.

Thanking you,

Yours faithfully,

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2. NOTICE OF APPOINTMENT OF ARBITRATOR

Date:_____

To

M/s. _____

_____

_____

As per agreement dated ..... made between you on the one part and myself on the other part, it was agreed that all disputes and differences concerning matters referred to in the said agreement shall be referred to arbitration.

Notice is hereby given that in pursuance of clause No. ..... of the said agreement, I have this day appointed "M" to be the arbitrator on my behalf to settle the disputes which have arisen between us, and you are hereby required within seven clear days after the service of this notice to appoint an arbitrator to act on your behalf in the matter of the said disputes and that on your failure, I will appoint the said "M" to act as the sole arbitrator.

Thanking you,

Yours faithfully,

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3. NOTICE BY ARBITRATOR

Date:_____

To

M/s. _____

_____

_____

Dear Sir,

I have been appointed as sole arbitrator pursuant to the arbitration clause in the agreement dated ..... I hereby inform you that I have been requested by Mr. ..... a party to the said agreement, to arbitrate in the said matter. I hereby fix ..... clock in the evening on the ..... day of 20..... the day of the first meeting at ..... for the purpose of commencing the arbitration proceeding giving directions and finalising the conduct of arbitral procedure, please note that you are required to attend the said hearing personally or through duly authorised representative or counsel.

Thanking you,

Yours faithfully,

Sd/-
(Arbitrator)

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4. SPECIMEN DISCLOSURE BY ARBITRATOR AS PER SECTION 12

Specimen

To

M/s. _____

_____

_____

Dear Sir,

Ref : Your letter No. _____ dt. _____
in the matter of arbitration between ABC Ltd. vs. XYZ

With reference to the above, I am pleased to give my consent to act as arbitrator.

To the best of my knowledge, there are no circumstances likely to give rise to justifiable doubts as to my independence or impartiality.

I shall also keep the parties informed if any such circumstances arise during the arbitral proceedings.

Thanking you,

Yours faithfully,

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5. NOTICE TO APPOINT SUBSTITUTE ARBITRATOR

Date:_____

To

M/s. _____

_____

_____

Please take notice that Mr. ..... appointed by you as arbitrator under the agreement of reference dated ..... has refused to act. I hereby request you to appoint a substitute arbitrator within ..... days of the receipt of this letter. In default whereof, I shall proceed to appoint Mr. ..... to act as sole arbitrator in the reference.

Thanking you,

Yours faithfully,

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6. NOTICE OF INTENTION TO PROCEED EX–PARTE AFTER FAILURE TO ATTEND HEARING

To,

XYZ

Sub: In the matter of Arbitration between ABC and yourselves

I refer to my letter/directions dated _____, in which I had notified you that the hearing would take place at _____ AM/PM at _____ (place) ____. You did not appear before me in that hearing.

Consequently I had adjourned it to the same place and same time on ___(adjourned date)_____.

If you do not attend that hearing as well, it is my intention to proceed with the hearing without your presence.

Sd/-

(Sole Arbitrator)

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7. SPECIMEN AGREEMENT OF REFERENCE TO A COMMON ARBITRATOR

THIS AGREEMENT is made at ... this ... day of ..... between Mr. A of ..... residing at ..... hereinafter referred to as the Party of the First Part and Mr. B of ..... residing at ..... hereinafter referred to as the Party of the Second Part.

WHEREAS by an Agreement (Building contract) dated the ... day of ... entered into between the parties hereto the Party of the First Part entrusted the work of constructing a building on his plot of land situated at... to the Party of the Second Part on the terms and conditions therein mentioned.

AND WHEREAS the Party of the Second Part has commenced the construction of the building according to the plans sanctioned by the... Municipal Corporation and has completed the construction to the extent of the 1st floor level.

AND WHEREAS the Party of First Part has made certain payments to the Party of the Second Part on account but the Party of the Second Part is pressing for more payments which according to the Party of the First Part he is not bound to pay and, therefore the work has come to a standstill.

AND WHEREAS disputes have therefore arisen between the parties hereto regarding the interpretation of certain provisions of the said agreement and also regarding the quality of construction and delay in the work.

AND WHEREAS the said agreement provides that in the event of any dispute or difference arising between the parties the same shall be referred to arbitration of a common arbitrator if agreed upon or otherwise to two Arbitrators and the Arbitration shall be governed by the provisions of the Arbitration & Conciliation Act, 1996.

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AND WHEREAS the parties have agreed to refer all the disputes regarding the said contract to Mr..... Architect, as common Arbitrator and have proposed to enter into this Agreement for reference of the disputes to the sole arbitration of the said Mr.....

NOW IT IS AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. That the following points of dispute arising out of the said agreement dated... are hereby referred to the sole arbitration of the said Mr.... for his decision and award.

2. The points of dispute are:

    a. Whether the Party of the Second Part has carried out the work according to the sanctioned plans and specifications.

    b. Whether the Party of the Second Part has delayed the construction.

    c. Whether the Party of the Second Part is overpaid for the work done up to now.

    d. Whether Party of the First Part is bound to make any further payment over and above the payments made up to now for the work actually done.

    e. All other claims of one party against the other party arising out of the said contract up to now.

3. The said Arbitrator shall allow the parties to file their respective claims and contentions and to file documents relied upon by them within such reasonable time as the Arbitrator may direct.

4. The said Arbitrator shall give hearing to the parties either personally or through their respective Advocates but the

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Arbitrator will not be bound to take any oral evidence including cross examination of any party or person.

5. The said Arbitrator shall make his Award within a period of four months from the date of service of a copy of this agreement on him by any of the parties hereto provided that, the Arbitrator will have power to extend the said period from time to time with the consent of both the parties.

6. The Arbitrator will not make any interim award.

7. The Arbitrator will have full power to award or not to award payment of such costs of and incidental to this arbitration by one party to the other as he may think fit.

8. Subject to the provisions of the Arbitration & Conciliation Act 1996 the award will he binding on the parties hereto.

9. The Arbitration shall the subject to what is herein provided be governed by the provisions of the Arbitration Act.

IN WITNESS WHEREOF the parties have put their respective hands the day and year first hereinabove written.

SIGNED by the within named
Mr. A ... in the presence of:

Signed by the within named
Mr. B.... in the presence of:

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8. FORM OF AGREEMENT TO REFER THE DISPUTE TO SOLE ARBITRATOR

This deed of agreement made on this ____ day of _____, 2009, between:

1. Mr. RN, aged about __ years s/o Mr. PT, r/o _____, hereinafter called the 1st party.
2. Mr. KK, aged about __ years s/o Mr. PT, r/o _____, hereinafter called the 2nd party.

Whereas first and second parties have some dispute regarding management of the partnership business, being run by the parties. And whereas both the parties are agreed upon to refer the dispute to one arbitrator duly appointed by the both parties.

NOW THIS DEED OF AGREEMENT WITNESSES AS UNDER: -

1. That both the parties have agreed upon to appoint Mr. SB s/o Mr. KM r/o _____ as arbitrator.
2. That both the parties appoint Mr. SB as arbitrator.
3. That the arbitrator will go through the partnership deed and decide the dispute between the parties under the provision of the partnership deed.
4. That this deed shall be confined only up to the dispute of the management of the firm.

Witnesses:

1. Name..... Sd/-.....1st party

   Address

   .....

   .....
2. Name..... Sd/-.....2nd party

   Address

   .....

   .....

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9. AGREEMENT TO REFER DISPUTE TO ONE ARBITRATOR

THIS AGREEMENT made on the ...day of ...BETWEEN AB, etc. AND CD, etc.

WHEREAS

1. AB has made the following claims against CD;

   (1) ...

   (2) ...

2. CD does not admit the said claims of AB.

3. Dispute have arisen between the parties hereto respecting these claims; and

4. The parties aforementioned agree to refer the said disputes to arbitration.

NOW IT IS AGREED BETWEEN THE PARTIES HERETO as follows:

1. All the matters in dispute relating to the claims of CD are referred to the final determination and award of OP as arbitrator.

2. For the purpose of final determination of the disputes aforesaid, the arbitrator may take such evidence and make such enquiries, as he deems proper. He may proceed ex-parte in case any party fails to attend before him after reasonable notice. However, he cannot embark upon any secret enquiries for this purpose behind the back of the parties.

3. The provisions of the Arbitration & Conciliation Act, 1996, so far as applicable and as are not consistent or repugnant to the purposes of this reference shall apply to this reference to arbitration.

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4. Both the parties agree that they would co-operate and lead evidence before the arbitrator.

5. The parties hereto agree that this reference to arbitration would not be revoked by death of either party or for any cause.

6. The award of the arbitrator shall be binding on the parties, their heirs, executors and legal representatives.

7. The parties hereto agree that within one month of the passing of award, the said award shall be filed in the court and a decree obtained in the terms of the award.

8. The cost of this reference shall be in the discretion of the arbitrator.

IN WITNESS WHEREOF the parties hereto have signed this agreement on the day and year first written above.

…(Sd.)	…(Sd.)
(AB)	(CD)

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10. AGREEMENT FOR REFERENCE TO TWO ARBITRATORS

THIS AGREEMENT made on the...day of...BETWEEN AB, etc., of the one part AND CD, etc. of the other part.

WHEREAS the parties aforesaid have been carrying on the business as partners in the name and style of. ...at...under a partnership deed dated.....;

AND WHEREAS each party has contributed to the capital of the partnership RS...and has been sharing the profit and loss of the partnership in equal shares;

AND WHEREAS the business in the partnership has been carried on for the last ...years,

AND WHEREAS disputes and differences have arisen between the parties hereto rendering it impossible to carry on the business in the partnership; and

AND WHEREAS the parties have agreed to refer the following matters for the decision of two arbitrators, namely M/s..... AND.....

1. The amount of profit and loss as per the books of account of the partnership;

2. The liability of the parties to pay the amounts on settlement of accounts; and

3. Fixation of the date on which the partnership shall be deemed to be dissolved.

NOW IT IS HEREBY AGREED as follows:

1. The arbitrators shall enter upon the reference and decide the aforesaid matters.

2. The arbitrators shall make their award within three months after entering upon the reference or after having been

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called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators by any writing signed by them may from time to time enlarge the time in making the award.

3. The aforesaid two arbitrators shall have the power to appoint an Umpire at any time of the period during which they have to make the award.

4. If the arbitrators agree among themselves then their unanimous decision shall make an award and will be binding on the parties. If the arbitrators do not agree, then the umpire shall make his award within one month, after the original or extended time appointed for making the award of the arbitrators has expired, or on before any later day to which the Umpire by any writing signed by him, may from time to time enlarge the time for making the award and in that case the decision of the Umpire shall be binding on the parties.

5. The arbitrators may proceed *ex parte* in case either party fails to appear after reasonable notice.

6. This agreement shall remain effective and enforceable against the legal representatives of either party in case of death.

7. The arbitrators may appoint an accountant for examining the account of the party if they think necessary and the remuneration of the accountant as determined by the arbitrators shall be the costs in the reference to be paid by the parties as the arbitrators may direct in their award.

8. In case the arbitrators award that any sum is due from one party to the other, then the party to whom the said sum is awarded may apply to the court for having a decree passed in terms of the award and may realise the amount in execution of the decree from the other party.

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9. The provisions of the Indian Arbitration & Conciliation Act, 1996, shall apply to this reference.

10. The costs of this reference shall be at the discretion of the arbitrators.

IN WITNESS WHEREOF the parties hereto have signed this agreement on the day and year first written above.

…(Sd.)	…(Sd.)
(AB)	(CD)

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11. APPOINTMENT OF SOLE ARBITRATOR ON DEFAULT OF OTHER PARTY

WHEREAS you had been appointed on .....by me to act as an arbitrator under the agreement of reference dated..... (or the arbitration clause in deed, dated.....) on my behalf;

AND WHEREAS the other party viz.....had appointed Sri.....as his arbitrator;

AND WHEREAS the other party has failed to appoint an arbitrator within 30 days from the receipt of request to do so from the other party;

NOW pursuant to the power conferred on me by virtue of the provisions of Arbitration & Conciliation Act, 1996, and upon request of the party, I hereby appoint you to act as the sole arbitrator in the matters in dispute referred to you for arbitration.

Dated.....

(Sd.).....

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12. ARBITRATION AGREEMENT BETWEEN THREE PARTNERS

THIS AGREEMENT made at ... this ... day of... between Mr. A of the One Part Mr. B of the Second Part and Mr. C of the Third Part.

WHEREAS the parties hereto have been carrying on business in partnership under a Deed of Partnership dated ... entered into by the parties hereto and in the name of M/s. X Y Z & Co.

AND WHEREAS disputes and differences have arisen between the parties regarding the management of the business of the partnership accounts and the legality of certain transactions entered into.

AND WHEREAS one of the partners has given notice of dissolution of the partnership, the validity of which is disputed by the others.

AND WHEREAS each of the parties in terms of the arbitration clause contained in the said Deed of Partnership has appointed an arbitrator being Mr. D. Mr. E and Mr. F.

AND WHEREAS the parties have agreed to enter into a separate submission paper or Arbitration agreement in the manner following:

NOW IT IS AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. The parties hereto agree to refer to the said three Arbitrators M/s. D, E and F all their disputes and differences *'inter se'* touching the business of the said partnership, its properties and accounts and arising out of or in connection with the said Deed of Partnership and without prejudice to the generality of this clause, to decide the following questions:

    a. To decide whether the notice of dissolution given by one partner Mr. A is valid if so, the date of dissolution and If not to decide whether the other parties are entitled to continue the said business without the said Mr. A and to decide the date of his retirement.

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b. In the event of the arbitrator holding that the partnership is dissolved, to divide and partition the moveable and immovable assets of the Firm among the parties according to their respective rights under the Deed of Partnership with power to the Arbitrator to sell any part of the said assets for equitable distribution among the parties.

c. To take accounts of the partnership for the last three years that is from ... to ... and to ascertain the amount payable by one to the other or others if any.

d. To make provisions for payment of debts and liabilities of the Firm including Income-tax liabilities.

1. The Arbitrators shall direct the parties to file statements of their respective claims, legal submissions and reliefs claimed and each party to file his statement of defence in reply to the statements of claims of others.

2. The Arbitrators shall allow the parties to produce documents in support of their claims.

3. The Arbitrators shall direct the books of account and other papers of the Firm to be produced before them and arrange for their safe custody. The Arbitrators will have power to appoint a qualified accountant to inspect the accounts and to draw a balance sheet.

4. The Arbitrators shall allow the parties to be represented by their respective advocates.

5. The Arbitrators shall not be bound to take oral evidence but if any party or their witness is examined he will be allowed to be cross-examined.

6. If there is a difference of opinion between the Arbitrators during the Arbitration proceedings or in making the award

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the decision of the majority will prevail and be binding on the parties.

7. The Arbitrators shall be entitled to make one or more Interim Awards.

8. The Arbitrators shall make their award within four months from their entering upon the reference but can extend the said period from time to time with the consent of all the parties hereto, obtained in writing.

9. In the event of any party refusing to participate in the Arbitration proceedings or remaining absent without valid cause, the Arbitrator shall have power to proceed ex-parte against such party.

10. The costs of the Arbitration proceedings will be at the discretion of the Arbitrators.

11. The Arbitration, subject to what is herein provided shall be governed by the Arbitration & Conciliation Act, 1996.

IN WITNESS WHEREOF the parties hereto have put their hands the day and year first hereinabove written.

Signed and delivered by the
Within named Mr. A..... in the
presence of _____

Signed and delivered by the
within named Mr. B..... in the
presence of _____

Signed and delivered by the
within named Mr. C ..... in the
presence of _____

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13. AGREEMENT OF REFERENCE BETWEEN MEMBERS OF HUF

THIS AGREEMENT is made the day...of ...BETWEEN Shri...of ... AND Km...daughter of ...AND Smt...widow of.....

WHEREAS the parties aforementioned are members of a joint Hindu family and possess joint-family property and business, and

WHEREAS differences have arisen between the said members as to the share and the rights of each member in the said property and business, and

WHEREAS the parties are not agreed as to which property should be allotted to each respective party, and

WHEREAS Shri...aforementioned claims to own certain properties as self-acquired alleging that the same is not divisible as amongst the other parties and

WHEREAS the parties have agreed to refer their disputes about the division of the joint-family properties and business to the sole arbitration of Shri...exercising the powers hereinafter mentioned.

NOW THIS AGREEMENT OF REFERENCE WITNESSES as follows:

1. That the arbitrator shall be entitled to ascertain the extent of value of the joint-family properties and shall determine the manner in which the business of the joint family shall be carried on hereafter and wound up and provide for the disposal of the goodwill of the business as he shall deem fit.

2. That the arbitrator shall have full power to divide and allot by lot or otherwise the joint-family properties amongst the parties aforementioned after determining the share of each such party and the extent and nature of the rights which belong to Smt.....aforementioned. The arbitrator shall also take into consideration the rights of the unmarried

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daughters of the parties aforementioned and shall make provisions for their education, up-bringing and marriage as the circumstances may require.

3. The arbitrator shall be entitled to award money compensation from one party to equalise the shares thereof. The arbitrators shall be entitled to cause any property or properties to be sole and to distribute the assets after payment of debts of the family in such manner as he shall deem fit. The arbitrator shall be entitled to take such evidence as he may deem necessary and to direct the delivery of title deeds or other documents from one party to the other in connection with the share allotted to such other party. He shall also be entitled to cause any of the joint-family property to be partitioned or divided by metres or bounds and to cause a structure to be built or demolished as he may think fit for the separate enjoyment of the share in immovable property allotted to each or any party.

4. Except for fraud or collusion, the award of the arbitrator shall not be set aside for any other judicial misconduct in the proceedings.

IN WITNESS WHEREOF the aforementioned parties have signed this deed in token of acceptance thereof.

Witness..... A .....

..... B .....

..... C .....

..... D .....

..... E .....

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.....

14. FORM OF AGREEMENT FOR REFERENCE TO THREE ARBITRATORS

This deed of agreement made on this _____, 2009 between:

1. Shri PL, aged about ___ years s/o Shri SS r/o _____, Delhi, hereinafter called the 1st party.

2. Shri KL, aged about ___ years s/o Shri SS r/o _____, hereinafter called the 2nd party.

3. Shri CL, aged about ___ years s/o Shri SS r/o _____, hereinafter called the 3rd party.

Whereas the above parties are carrying on business of general merchandise in partnership under name and style M/s. _____, at _____ since _____, 2000.

And whereas share of profit or loss in the firm is : 1st party 50%, 2nd party 30% and 3rd party 20%.

And whereas all the three parties are active partners in the partnership business.

And whereas some disputes have arisen amongst the parties above named and it has become impossible to carry on business under partnership.

And whereas the parties hereto have agreed to refer the matter to the arbitration mentioned here under :

i. Mr. PK s/o Mr. KP, r/o _____.

ii. Mr. PK s/o Mr. RP, r/o _____. and

iii. Mr. SK, s/o Mr. JN r/o _____.

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NOW THIS AGREEMENT WITNESSES AS UNDER:

1. The arbitrators are entitled to decide and determine the following matter of disputes, which are referred to them for final determination and award.

    a. To determine the position of assets and liabilities of the firm.

    b. To prepare the list of sundry debtors and creditors

    c. To divide the assets and liabilities according to the share of the parties.

I. That the arbitrators shall enter upon the reference with effect from _____ and shall deliver their award within 4 months.

II. That the award given by the arbitrators shall be final and binding on the arbitrators.

III. That the award of the arbitrators shall be final and binding on heirs, legal representatives and assignees of the parties in case of death of any of the party during the course of arbitration proceedings.

IV. That Mr. RN, the 1st arbitrator shall be the President of the Arbitration Tribunal who will arrange the sitting for arbitration proceedings.

V. In case of difference of opinion between the arbitrators, the decision of the majority shall be final.

VI. The arbitrators shall fix up the date of hearing and issue notices to the parties for appearance.

VII. That if the parties do not turn up on the date fixed for hearing, the arbitration will proceed *ex-parte*.

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VIII. That this agreement shall be binding on the legal representatives, heirs, and assignees in case of death of any of the parties.

IX. If the arbitrators think it proper, they shall appoint an accountant for preparation and finalisation of accounts on fixed remuneration and shall include the remuneration in the cost of arbitration award.

X. If the arbitrators award that any sum is due against any party, then that party may file a suit in the proper Court and obtain a decree in terms of award and shall realize the same from the party against whom the sum is due.

XI. That save the matter provided in this deed, the provisions of the Indian Arbitration & Conciliation Act, 1996 shall apply to this reference.

XII. That it shall be the discretion of the arbitrators to fix the cost of reference.

The above named parties do hereby agree to all the terms and conditions stated above without any duress, or undue influence and after fully understanding the terms of this deed of arbitration, do hereby put our hands on this _____, 2009, in the presence of following witnesses:

1. Signature..... 1st party

Name

.....

Address.....

.....

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2. Signature……2nd party

Name

……

Address……

……

3. Signature…… 1st party

Name

……

Address……

……

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15. FORM OF ARBITRATION CLAUSE IN AN AGREEMENT

i. Every dispute, difference, or question which may at any time arise between the parties hereto or any person claiming under them, touching or arising out of or in respect of this agreement (deed) or the subject matter thereof shall be referred to the arbitration of XY, etc. or if he shall be unable or unwilling to act, to another arbitrator to be agreed upon between the parties or failing agreement to be nominated by.....or, failing agreement to two arbitrators one to be appointed by each party to the difference (whether consisting of one or more than one person) and in case of difference of opinion between them to an umpire appointed by the said two arbitrators before entering on the reference and the decision of the arbitrator (or such arbitrators, or umpire as the case may be) shall be final and binding on the parties.

OR

ii. In the event of any dispute, difference or question arising out of or in respect of this agreement or the commission of any breach of any terms thereof or of compensation payable thereof or in any manner whatsoever in connection with it, the same shall be referred to the Chamber of Commerce..... (or the Association of.....) for arbitration as provided in Rules framed by the said Chamber (or Association) for the purpose. The decision or award so given shall be binding on the parties hereto.

OR

iii. All disputes arising between the partners as to the interpretation, operation, or effect of any clause in this deed or any other difference arising between the

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partners, which cannot be mutually resolved, shall be referred to the arbitration of.....failing him to any other arbitrator chosen by the partners in writing. The decision of such an arbitrator shall be binding on the partners.

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16. NOTICE BY ARBITRATOR FOR COMMENCEMENT OF ARBITRATION

WHEREAS I, have been appointed as sole arbitrator pursuant to the arbitration clause in the agreement dated..... (or by the agreement for reference dated.....) and I have entered upon the said reference. I hereby appoint ..... O'clock in the evening of ..... as the date of the first meeting at.....for the purpose of commencing the arbitration proceedings.

Please note that you are required to attend at the said meeting personally or through duly accredited representative or counsel in default whereof I shall proceed *ex-parte*.

Dated.....

(Sd).....

(Sole Arbitrator)

17 NOTICE TO ARBITRATOR BY PARTIES FOR ARBITRATION

WHEREAS the parties to an agreement of reference (enclosed herewith) dated.....have referred their disputes and differences to your sole arbitration, WE, the aforesaid parties, hereby request you to please take up the arbitration and act, in accordance therewith.

AB.....

CD.....

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18. NOTICE OF REVOCATION TO ARBITRATOR

To

Please take notice that I, the undersigned, have, by instrument dated……..revoked your authority to arbitrate in the matter originally referred to you for arbitration under the letter to appointment dated……..or agreement of reference dated……..or deed dated……..

I hereby restrain you from acting in the said arbitration and direct you to return to me all the papers submitted to you by me in that behalf. You are hereby discharged under the said reference.

Dated……

(Sd)…….....

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19. AWARD (MADE ON REFERENCE BY COURT)

IN THE MATTER OF AN ARBITRATION between AB, etc. and CD, etc., WHEREAS in pursuance of an order of reference made by the court of .....and dated the.....following matter in difference between AB and CD had been referred to me (us) for determination, namely.....

NOW I/ we having duly considered the matter referred to me (us) hereby make my (our) award as follows:

1. (We) award.....

   (i) .....

   (ii) .....

...(Sd.)

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20. AWARD BY AN ARBITRAL TRIBUNAL

THIS IS THE AWARD by the undersigned, made the .....day of .....

WHEREAS by an agreement under the deed, dated.....and made between (contractor) of the one part and.....(owner of the property) of the other part (being an agreement by the said contractor) to construct certain works upon the land of the said (owner) in accordance with sanctioned plans and specifications contained therein it was agreed between the parties that if any dispute should arise in future between the parties thereto relating to or touching the said agreement or the interpretation thereof or in relation to the rights, duties or liabilities of either party there under, the same should be referred to two arbitrators and their umpire in accordance with the provisions of Arbitration & Conciliation Act, 1996.

AND WHEREAS disputes having arisen between the aforesaid parties relating to the said agreement the said (contractor) by writing dated.....nominated and appointed Shri..... (one arbitrator).....of etc, and the said (owner) by writing dated.....nominated and appointed Shri.....(other arbitrator).....of etc, to act as arbitrators and settle the said matters in dispute between the parties.

AND WHEREAS the said arbitrators respectively accepted the said appointments and took upon themselves to discharge the burden of the said reference and before starting the proceeding for the consideration of the disputed matter referred to them by writing under their hands dated.....appointed me the said Presiding Arbitrator in the said arbitration.

AND WHEREAS the said arbitrators duly extended the time for making the award until the .....day of.....

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AND WHEREAS the said arbitrators were unable to agree amongst themselves unanimously upon an award and under such circumstances gave me notice in writing dated……and thereupon the disputes stood referred to me.

NOW BE IT KNOWN that, I, said Presiding Arbitrator, make my award on the following matter:

1. I find that the completion of the work although delayed for……..months beyond the agreed date on which it ought to have been completed such delay was caused partly by exceptionally bad weather and partly by lack of workmen caused by labour strikes and also their having taken up construction works under the Government and I find and award that the said (contractor) is not liable for any damages on that account.

2. I find that a part of the work executed by the said (contractor) was found to be defective in the following respects…….. (defects set out) and I award that the said (owner) is entitled to `…….as damages on that account.

3. I find and award that after deducting the said sum of `…on account of the damages there is still due and owing to the said (contractor) in respect of the matters in dispute between the said parties to reference the sum of……..

4. I direct the said (owner) shall pay the said sum of `……..to the said (contractor) on or before the ……..day of……..

5. I award and direct that the cost of the said (contractor) relating to and incidental to this arbitration reference including the costs of the arbitrators and of this award which is `……..shall be borne and paid by the said (owner) or whatever may be the award as to costs.

…(Sd.)

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21. Notice for Arbitration – Form 106

Form: 106

NOTICE FOR ARBITRATION

Name of Initiating party

(Individual or organisation) _____

Address of Initiating Party _____

_____

Telephone / Fax of Initiating Party _____

Email address of Initiating Party _____

Name of Responding Party,

(Individual or organisation) _____

Address of Responding Party _____

_____

Telephone / Fax of Responding Party _____

E-mail address of Responding Party _____

The parties above named entered into a contract dated _____. The said contract has

a valid and binding arbitration clause for the resolution of disputes by the Indian Institute of Arbitration & Mediation (IIAM). A fair and accurate copy of which is attached hereto as Exhibit “A”.

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Presently, the parties are in dispute as to:

_____

_____

_____

_____

As the parties cannot agree as to the resolution of these issues, the Initiating Party, hereby demands that the Responding Party submit to arbitration pursuant to the IIAM Arbitration rules and procedures.

The Initiating Party further states said party is claiming damages as follows:

_____

_____

_____

_____

TOTAL DAMAGES CLAIMED _____

In filing this Notice for Arbitration, the Initiating Party certifies that he/she has issued this demand to the Responding Party.

So demanded and certified, this ____ day of _____ , 200___ .

Initiating Party

- To institute proceedings, please send three copies of this demand and the arbitration agreement, with the filing fee as provided in the IIAM Rules.
- Use additional sheets, if required.

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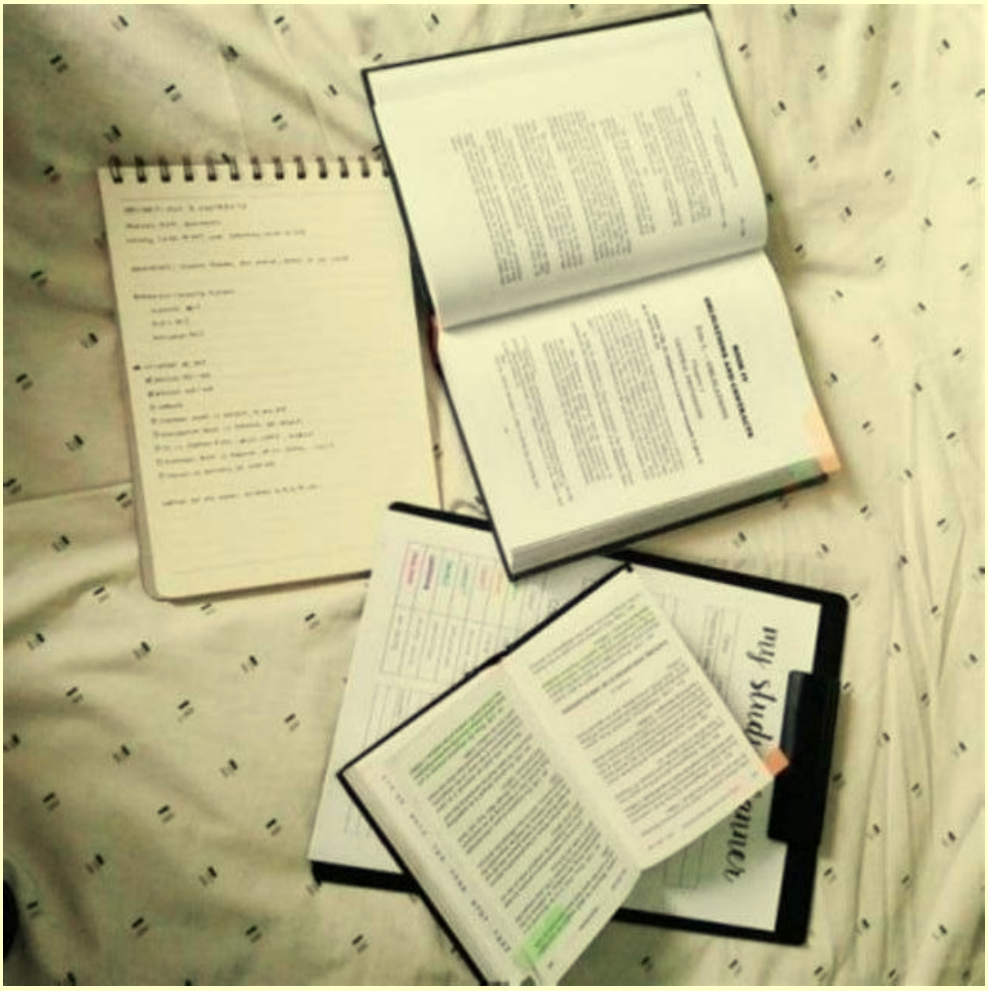

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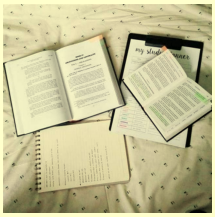

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CHAPTER 18

SUPREME COURT JUDGEMENTS ON ARBITRATION

2001 SCCL.COM 17(Case/Appeal No: Civil Appeal No. 3586 of 1994 with (C.A. Nos. 710-711/1981, 6808-09/83, 6810/83, 10649/83, 779/82 & 2723/81))

Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa, etc. etc. Appellants vs. N.C. Budharaj (Dead) by Lrs. etc. etc. Respondents, decided on 1/10/2001.

Name of the Judge: Hon'ble Mr. Justice G. B. Pattanaik, Hon'ble Mr. Justice S. Rajendra Babu, Hon'ble Mr. Justice D. P. Mohapatra, Hon'ble Mr. Justice Doraiswamy Raju and Hon'ble Mr. Justice Shivaraj V. Patil.

Subject Index: Arbitration — question for consideration of the Constitution Bench — whether the arbitrator has got jurisdiction to award interest for the pre-reference period in cases which arose prior to the commencement into force on 19/8/1981 of the Interest Act, 1978, when the provisions of the Interest Act, 1839 was holding the field? — in the absence of any prohibition to claim or grant interest under the Arbitrationagreement whether Arbitrator has no jurisdiction to award interest for the pre-reference period under the general law or equitable principles, although such claim may not strictly fall within the provisions of Interest Act, 1839? — held the arbitrator has jurisdiction to award interest for the pre-reference period.

2001 SCCL.COM 62(Case/Appeal No: Civil Appeal No. 3683 of 1996 with 4144 of 1996)

Paradip Port Trust and Ors. etc. Appellants Vs. Unique Builders etc. Respondents, decided on 30/1/2001.

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Name of the Judge: Hon'ble Mr. Justice S. Rajendra Babu and Hon'ble Mr. Justice Shivaraj V. Patil.

Subject Index: Arbitration Act, 1940 — generally award passed by arbitrator considered binding between the parties and power to set aside award restricted to cases set out in Section 30 of the Act — unless there appears to be a mistake on the face of the award and the documents appended or incorporated thereto which form part of the award, it cannot be set aside even with respect to interest part of it.

2001 SCCL.COM 68 (Case/Appeal No: Civil Appeals Nos. 3593-3596 of 1996 with Civil Appeals Nos. 3688-3691 of 1996)

International Construction Co. etc. Appellant vs. State of Andhra Pradesh and Ors. Respondents, decided on 1/2/2001.

Name of the Judge: Hon'ble Mr. Justice S. Rajendra Babu and Hon'ble Mr. Justice S. N. Variava.

Subject Index: Arbitration — award made by arbitrators on account of claims suffered by contractor on account of severe cyclone and abnormal rains and unprecedented floods — challenged — High Court reversed a portion of the award — contention that High Court sought to interpret the clauses of the agreement which it was not entitled to do so and could not have reappraised the evidence — held view taken by the High Court is correct and calls for no interference — appeals dismissed.

2001 SCCL.COM 83 (Case/Appeal No: Civil Appeal No. 5281 of 1996)

T. P. George Appellant vs. State of Kerala and Anr. Respondents, decided on 2/6/2001.

Name of the Judge: Hon'ble Mr. Justice S. Rajendra Babu and Hon'ble Mr. Justice S. N. Variava.

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Subject Index: Arbitration — the view of the arbitrator would be binding if it is one which is possible — it cannot be said that the view of the arbitrator is unreasonable or one which cannot be arrived at by a reasonable person — further Arbitrator has power to grant interest *pendente lite* — held the direction to pay interest from date of award cannot be faulted.

2001 SCCL.COM 86 (Case/Appeal No: Criminal Appeal No. 1059 of 2001)

Union of India and Ors. Appellants Vs. Manager, M/s. Jain and Associates Respondent, decided on 6/2/2001.

Name of the Judge: Hon'ble Mr. Justice M. B. Shah and Hon'ble Mr. Justice S. N. Phukan.

Subject Index: Code of Civil Procedure — Order IX Rule 13 — Arbitration Act, 1940 — Section 33 — whether provisions of Order IX Rule 13 of the CPC or the principles thereof are applicable in a case where objections under Section 33 of the Arbitration Act, 1940 are not filed and ex-parte decree is passed on the basis of the award filed before the Court by making the award rule of the Court?

2001 SCCL.COM 100(Case/Appeal No: Civil Appeals Nos. 9420-9423 of 1995)

Star Construction and Transport Co. and Ors. Appellants Vs. The India Cements Ltd. Respondent, decided on 13/2/2001.

Name of the Judge: Hon'ble Mr. Justice S. Rajendra Babu and Hon'ble Mr. Justice K. G. Balakrishnan.

Subject Index: Arbitration Act, 1940 — Civil Procedure Code — Order XXIII Rule 3 — applications under — scope of proceedings before an arbitrator as to how in the course of Arbitration, additional claims can be raised before them and an adjudication thereof, if results, an award is binding on parties — unless it is

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clearly established that an accord or compromise has been entered into between the parties, the powers under Order XXIII Rule 3 CPC could not be exercised.

2001 SCCL.COM 110 (Case/Appeal No: Civil Appeal No. 11031 of 1996)

Manocha Construction Company (Now dissolved) through partner, R.S. Manocha (dead) rep. by Lrs. Appellant Vs. State of Madhya Pradesh & Ors. Respondents, decided on 16/2/2001.

Name of the Judge: Hon'ble Mr. Justice S. Rajendra Babu and Hon'ble Mr. Justice K. G. Balakrishnan.

Subject Index: Arbitration Award — Madhyastham Adhikaran Adhiniyam, 1982 — Section 19 — award passed by M.P. Arbitration Tribunal — challenged — alleged material irregularity committed by the Tribunal by improper appreciation of evidence — whether the Tribunal passed a wrong award and thereby failed to exercise jurisdiction vested in it and whether the High Court should have interfered by virtue of the powers conferred on it under Section 19 of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1982 — held the appellant could not point out any defect or illegality committed by the Tribunal in fixing the rate payable for the additional work — no error of jurisdiction, illegality or material irregularity warranting interference by the Revisional court — further when a fresh award has been passed by the Tribunal, whatever award passed by it earlier loses its significance.

2001 SCCL.COM 111(Case/Appeal No: Civil Appeal No. 1309 of 2001)

Sanshin Chemicals Industry Appellant vs. Oriental Carbons and Chemicals Ltd. and Ors. Respondents, decided on 16/2/2001.

Name of the Judge: Hon'ble Mr. Justice G. B. Pattanaik, Hon'ble Mr. Justice K. G. Balakrishnan and Hon'ble Mr. Justice B. N. Agrawal.

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Subject Index: Arbitration and Conciliation Act, 1996 — Section 34 — whether a decision regarding the venue of the Arbitration proceedings could be assailed in appeal under Section 34 of the Arbitration and Conciliation Act, 1996 — held the ultimate arbitral award could be assailed on the grounds indicated in sub-section (2) of Section 34 and an erroneous decision on the question of venue, which ultimately affected the procedure that has been followed in the arbitral proceeding could come within the sweep of Section 34(2) and as such it can not be said that an aggrieved party has no remedy at all.

2001 SCCL.COM 119(Case/Appeal No: Civil Appeal No.10014 of 1995)

U.P. State Electricity Board Appellant Vs. M/s. Searsole Chemicals Ltd. Respondent, decided on 21/2/2001.

Name of the Judge: Hon'ble Mr. Justice S. Rajendra Babu and Hon'ble Mr. Justice S. N. Phukan.

Subject Index: Arbitration award — when the arbitrators have applied their mind to the pleadings, the evidence adduced before them and the terms of the contract, not within scope to re-appraise the matter as if it were an appeal — also where two views are possible, the view taken by the arbitrators would prevail — no justification to interfere with the award — appeal dismissed.

2001 SCCL.COM 123(Case/Appeal No: Civil Appeal Nos. 5489-5490 of 1995)

Bharat Coking Coal Ltd. Appellant Vs. M/s. L.K. Ahuja & Co., Respondent, decided on 21/2/2001.

Name of the Judge: Hon'ble Mr. Justice S. Rajendra Babu and Hon'ble Mr. Justice S. N. Phukan.

Subject Index: Arbitration award — error apparent on the face

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of the award of the arbitrator — entire award of the arbitrator set aside — matter remitted to be decided by a new arbitrator — Limitation Act, 1963 — Section 5 — Arbitration Act — Section 30 — CPC — Order XXI — objection to the award must be filed within 30 days — condonation of delay permissible by resorting to Section 5, Limitation Act — Section 5 applicable to all applications other than those under Order XXI CPC.

2001 SCCL.COM 145(Case/Appeal No: Civil AppealNo.9405 of 1995)

Ramachandra Reddy & Co. Appellant Vs. State of Andhra Pradesh & Ors. Respondents, decided on 27/2/2001.

Name of the Judge: Hon'ble Mr. Justice G. B. Pattanaik, Hon'ble Mr. Justice U. C. Banerjee and Hon'ble Mr. Justice Brijesh Kumar.

Subject Index: Arbitration — arbitrator being a creature of the agreement, unless agreement either specifically or inferentially provides for a higher rate to be awarded for any additional or excess work done by the contractor, it would not be permissible for the arbitrator to award for the so-called additional work at a higher rate.

2001 SCCL.COM 199(Case/Appeal No: Civil Appeal Nos. 2238-39 of 2001)

East India Hotels Ltd. Appellant Vs. Agra Development Authority Respondent, decided on 21/3/2001.

Name of the Judge: Hon'ble Mr. Justice S. S. Mohammed Quadri and Hon'ble Mr. Justice S. N. Phukan.

Subject Index: Arbitration Act, 1940 — Section 14(2) — Arbitration award challenged on the ground that no notice under sub-section (2) of Section 14 was served on the respondent — what amounts to service of notice under Section 14(2) — held a notice issued after

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filing of the award but before filing of other documents is a valid notice under Section 14(2) and no fresh notice need be issued after filing of other documents by the Arbitrator/Umpire — order making award rule of the court affirmed.

2000 SCCL.COM 688(Case/Appeal No: C.A.No.7063-7065 of 2000)

M/s. National Heavy Engineering Co-operative Ltd. Appellant Vs. M/s. King Builders Respondent, decided on 4/12/2000.

Name of the Judge: Hon'ble Mr. Justice D. P. Mohapatra and Hon'ble Mr. Justice Shivaraj V. Patil.

Subject Index: Arbitration Act — question that arises for consideration is who is to act as arbitrator for adjudication of the disputes raised by the parties in the case; whether it is the former Additional Chief Engineer appointed by the Court or the former Executive Engineer as suggested by Tilam Sangh — held the order of the High Court confirming the appointment of arbitrator by the lower court warrants no interference in exercise of the jurisdiction under Article 136 of the Constitution.

2000 SCCL.COM 682(Case/Appeal No: Civil Appeal No. 723 of 1973)

Chiranjilal Srilal Goenka (dead) by Lrs. Appellants Vs. Jasjit Singh and others Respondents, decided on 1/12/2000.

Name of the Judge: Hon'ble Mr. Justice M. Jagannadha Rao and Hon'ble Mr. Justice M. B. Shah.

Subject Index: Hindu Adoptions & Maintenance Act, 1956 — Sections 12 and 13 — Registration Act — Sections 17(1)(b) and 49 — Arbitration — rights of adopted son and adoptive parents — reading section 12 proviso (c) and Section 13 together it is apparent that adoption would not divest any person of any estate which is vested in him or her before the adoption. It does not deprive

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the adoptive father or mother the power to dispose of his or her property by transfer, *inter vivos* or by will. However, this power to dispose of the property would be subject to any agreement between the parties — question whether the writing dated 26/1/1961 can be considered to be an agreement between Chiranjilal and the parents of Rahdeshyam? — whether it is an agreement as contemplated by Section 13 of the Act limiting the rights of adoptive parents to dispose of the property by will? And if so, whether it requires registration? — held it cannot be said that by the said letter, there is any agreement limiting the rights of adoptive parents to dispose of their property by executing a will — when in case of an award by an arbitrator, two views are possible and the arbitrator has taken one plausible view, the award whether can be interfered with?

2000 SCCL.COM 648(Case/Appeal No: Arbitration Petition No. 18 of 2000)

Malaysian Airlines Systems Bhd Petitioner vs. M/s. Stic Travels (P) Ltd. Respondent, decided on 11/21/2000.

Name of the Judge: Hon'ble Mr. Justice M. Jagannadha Rao.

Subject Index: Stamp Act, 1899 — Sections 3(c), 11, 18, 32 and 42 — interpretation of — question of impounding a power of attorney executed outside India and presented in India for use in proceedings in the Supreme Court.

2000 SCCL.COM 597(Case/Appeal No: Civil Appeal Nos. 5880-5889 of 1997 etc. etc.)

M/s. Konkan Railway Corporation Ltd. and Anr. etc. Appellant Vs. M/s. Rani Construction Pvt. Ltd. etc. Respondent, decided on 19/10/2000.

Name of the Judge: Hon'ble Mr. Justice M. Jgannadha Rao and Hon'ble Mr. Justice K. G. Balakrishnan.

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Subject Index: Constitution of India — Article 136 — Arbitration and Conciliation Act, 1996 — section 11 — contention of appellants that order of Chief Justice of Bombay High Court u/s. 11 of Arbitration and Conciliation Act, 1996 on the preliminary issues is a judicial order and is liable to be set aside under Article 136 of the Constitution of India — also contended that even if it is administrative in nature, it is amenable to Article 136 — held as question is one arising almost constantly in a large number of cases in various High Courts, it is desirable that this Court re-examines the matter — papers directed to be placed before Hon'ble CJI for passing appropriate orders.

2000 SCCL.COM 595(Case/Appeal No: Civil Appeal No. 5986 of 2000)

Datar Switchgears Ltd. Appellant Vs. Tata Finance Ltd. & Anr. Respondents, decided on 18/10/2000.

Name of the Judge: Hon'ble Mr. Justice M. Jagannadha Rao and Hon'ble Mr. Justice K. G. Balakrishnan.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11 — whether for the purposes of Section 11(6) the party to whom a demand made for appointment is made, forfeits his right to do so if he does not appoint an arbitrator within 30 days? — held so far as Section 11(6) is concerned, if one party demands the opposite party to appoint an arbitrator and the opposite party does not make appointment within 30 days of the demand, the right to appointment does not get automatically forfeited after expiry of 30 days — if the opposite party makes an appointment even after 30 days of the demand, but before the first party has moved the Court under Section 11, that would be sufficient.

2000 SCCL.COM 586(Case/Appeal No: Civil Appeal No. 5937 2000)

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Union of India Appellant vs. M/s. Popular Builders, Calcutta Respondent, decided on 10/17/2000.

Name of the Judge: Hon'ble Mr. Justice G. B. Pattanik, Hon'ble Mr. Justice M. B. Shah and Hon'ble Mr. Justice S. N. Phukan.

Subject Index: Arbitration Act, 1940 — award of arbitrator made rule of Court under Section 14 — objection under Sections 30 and 33 for setting aside the award — rejected — hence appeal — question raised that the final bill having been accepted without any objection, there did not subsist any arbitral dispute to be referred to Arbitration — notwithstanding non-objection by UOI before the forums, so far as the claim item No. 2 is concerned, the same could not have been a matter of reference of an arbitrable dispute and as such, the award of the arbitrator to that extent must be set aside — so far as other items are concerned as UOI did not take objection, it cannot be raised now — appeal partly allowed.

2000 SCCL.COM 584(Case/Appeal No Civil Appeal No. 1329 of 1995)

National Fertilizers Appellant vs. Puran Chand Nangia Respondent, decided on 10/17/2000.

Name of the Judge: Hon'ble Mr. Justice M. Jagannadha Rao and Hon'ble Mr. Justice K. G. Balakrishnan.

Subject Index: Indian Arbitration Act, 1940 — award of arbitrator — appeal against — arbitrator gave non-speaking award — whether the arbitrator acted illegally on facts or in law? — whether there is any error apparent on the face of the record in the award? — held no — appeal dismissed.

2000 SCCL.COM 575(Case/Appeal No.: Civil Appeal No. 5626 of 2000)

Federal Bank Ltd. Appellant vs. V. M. Jog Engineering Ltd. & Ors. Respondents, decided on 29/9/2000.

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Name of the Judge: Hon'ble Mr. Justice M. Jagannadha Rao and Hon'ble Mr. Justice U. C. Banerjee.

Subject Index: Banking — Uniform Customs and Practice of Documentary Credits (1983) — in the context of need for Banks to take reasonable care to scrutinise the documents produced before it for honouring the L/C, what is the relevance of the UCP Code issued by the International Chamber of Commerce, which has been expressly incorporated in the L/C? — in case of 'fraud' and the Negotiating Bank being guilty of or having knowledge of fraud, could the Negotiating Bank not seek reimbursement from the Issuing Bank, as a holder in due course of the Bill of Exchange, against the L/C? — legal relation of a Negotiating Bank vis-a-vis the Issuing Bank.

2000 SCCL.COM 558(Case/Appeal No. Attention Petition No. 19 of 2000 etc.)

Nimet Resources Inc. & another etc. Petitioners vs. Essar Steels Ltd. Respondent, decided on 27/9/2000.

Name of the Judge: Hon'ble Mr. Justice S. Rajendra Babu.

Subject Index: Arbitration & Conciliation Act, 1996 — Sections 11 and 16 — whether, in the circumstances, the powers under Section 11 of the Act should be exercised or not? — whether the transaction fructified into a contract with an Arbitration clause is a moot point to be decided — matter posted for further orders.

2000 SCCL.COM 488(Case/Appeal No. Special Leave Petition (C) Nos. 11522-11526 of 1999 etc.)

Konkan Railway Corpn. Ltd. & Others Appellants vs. M/s. Mehul Construction Co. etc. Respondent, decided on 21/8/2000.

Name of the Judge: Hon'ble Mr. Justice G. B. Pattanaik, Hon'ble Mr. Justice Doraiswamy Raju and Hon'ble Mr. Justice S. N. Variava.

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Subject Index: Arbitration and Conciliation Act, 1996 — Section 11(6) — what should be the correct approach of the Chief Justice or his nominee in relation to the matter of appointment of an arbitrator under Section 11(6) of the Act, and what is the true nature of the said order and further if a person is aggrieved by such order, can he file application in a Court and whether such an application could be entertained and if so, in which forum?

2001 SCCL.COM 238(Case/Appeal No. Civil Appeal No. 2561 of 2001)

Municipal Council, Hansi, District Hissar, Haryana Appellant vs. Mani Raj and Ors. Respondents, decided on 4/4/2001.

Name of the Judge: Hon'ble Mr. Justice D. P. Mohapatra Hon'ble Mr. Justice Shivaraj V. Patil.

Subject Index: Arbitration — application by appellant seeking intervention in the award before the High Court — dismissed on the ground of delay and latches — appellant not party in award case — held the application made by the appellant ought to have been allowed when the direction adversely and seriously affected the valuable rights of the appellant over the immovable property in dispute — High Court committed manifest error in rejecting the application filed by the appellant.

2001 SCCL.COM 244 (Case/Appeal No. Criminal Appeal No. 466 of 2001)

Manohar Lal Appellant vs. Vinesh Anand and Ors. Respondents, decided on 9/4/2001.

Name of the Judge: Hon'ble Mr. Justice A. P. Misra and Hon'ble Mr. Justice Umesh C. Banerjee.

Subject Index: Arbitration Act, 1940 — Arbitration Act, 1996 — Code of Criminal Procedure — Sections 340 and 195(1)(b), 195(3)

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— applicability of the provisions of Section 340, Cr. P. C. in a proceeding before the arbitrator — held the Arbitrator cannot be termed to be a Court within the meaning of Section 195 of the Cr. Procedure Code, as such question of applicability of Section 340, Cr.P.C. in a proceeding before the Arbitrator does not and cannot arise — appeal dismissed.

2001 SCCL.COM 316(Case/Appeal No. Civil Appeal Nos. 2789-2790 of 1997)

M/s. Sikkim Subba Associates Appellants vs. State of Sikkim Respondent, decided on 5/1/2001.

Name of the Judge: Hon'ble The Chief Justice, Hon'ble Mr. Justice R. C. Lahoti and Hon'ble Mr. Justice Doraiswamy Raju.

Subject Index: Arbitration Act — Sections 30 and 39 — award — setting aside of — dispute relating to alleged termination of agreement by the State — reference to Arbitrator — award of arbitrator under challenge — held award stands vitiated on account of several serious errors of law apparent on the face of it — Arbitrator acted arbitrarily and irrationally on a perverse understanding or misreading of the materials and also misdirected himself on vital issues before him — award of Arbitrator set aside.

2001 SCCL.COM 334(Case/Appeal No. Civil Appeal No. 3594 of 2001)

M/s. Fuerst Day Lawson Ltd. Appellant Vs. Jindal Exports Ltd. Respondent, decided on 5/4/2001.

Name of the Judge: Hon'ble Mr. Justice D. P. Mohapatra and Hon'ble Mr. Justice Shivaraj V. Patil.

Subject Index: Arbitration and Conciliation Act, 1996 — Sections 47 to 49 — every final arbitral award is to be enforced as if it were a decree of the court — for enforcement of foreign award

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there is no need to take separate proceedings, one for deciding the enforceability of the award to make rule of the court or decree and the other to take up execution thereafter.

2001 SCCL.COM 490(Case/Appeal No. Civil Appeal No. 12881 of 1996)

Indu Engineering & Textiles Ltd. Appellant Vs. Delhi Development Authority Respondent, decided on 7/11/2001.

Name of the Judge: Hon'ble Mr. Justice A. P. Misra and Hon'ble Mr. Justice D. P. Mohapatra.

Subject Index: Arbitration Act, 1940 — Section 30 — scope for interference by Court with award passed by arbitrator — limited — DB of High Court erred in setting aside the award passed by the arbitrator which was made rule of Court by the Single Judge — appeal allowed.

2001 SCCL.COM 493(Case/Appeal No. Civil Appeal No. 4051 of 2001)

M/s. Ethiopian Airlines Appellant Vs. M/s Stic Travels (P) Ltd. Respondent, decided on 7/11/2001.

Name of the Judge: Hon'ble Mr. Justice A. P. Misra and Hon'ble Mr. Justice Doraiswamy Raju.

Subject Index: Arbitration Act, 1940 — Section 10 — challenge to the constitution of the Arbitral Tribunal — two appointed arbitrators appointed the third arbitrator — whether third arbitrator could sit as a member of the Arbitral Tribunal along with the other two arbitrators — whether the third appointed arbitrator would be an umpire or not — whether application of Section 10(1) or 10(2) — interpretation of intention of parties whether appointment falls under sub-section (1) or (2) — held on interpreting the Arbitration clause concluded that the parties intended that their dispute be

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referred to the Arbitral Tribunal consisting of three arbitrators — also conduct of parties indicates to the same effect — held agreements fall under sub-section (2) of Section 10 — appeal dismissed.

2001 SCCL.COM 515(Case/Appeal No. Civil AppealNo.4503 of 2001)

M/s. Ispat Engineering & Foundry Works, vs. M/s Steel Authority of India Ltd., decided on 7/25/2001.

Name of the Judge: Hon'ble Mr. Justice G. B. Pattanaik and Hon'ble Mr. Justice Umesh C. Banerjee.

Subject Index: Arbitration Act, 1940 — Sections 30 and 33 — award — interference of court — held no evidence that the umpire has overstepped his jurisdiction or has travelled beyond the agreement — court ought not to have entertained the objection and set aside the award as passed by the chosen forum of the parties — order passed by High Court cannot be sustained — appeal allowed.

2001 SCCL.COM 600(Case/Appeal No: Civil Appeal No. 5537 of 2001)

The Owners & Parties interested in the Vessel M. V. "Baltic Confidence" & Anr. Appellants vs. State Trading Corporation of India Ltd. & Anr. Respondents, decided on 8/20/2001.

Name of the Judge: Hon'ble Mr. Justice A. P. Misra and Hon'ble Mr. Justice D. P. Mohapatra.

Subject Index: Arbitration clause — in considering the question, whether the Arbitration clause in a Charter Party Agreement was incorporated by reference in the Bill of Lading: the principal question is, what was the intention of the parties to the Bill of Lading? — held there is no good ground or acceptable reason why the intention of the parties to incorporate the Arbitration clause in the Charter Party Agreement in the Bill of Lading should not be

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given effect to. The High Court was not right in rejecting the prayer of the appellants for stay of the suit.

2001 SCCL.COM 624(Case/Appeal No: Civil Appeal Nos. 3652-53 of 1993)

U.P. State Electricity Board Appellant vs. Banaras Electric Light & Power Co. Ltd. Respondent, decided on 8/28/2001.

Name of the Judge: Hon'ble Mr. Justice A. P. Misra and Hon'ble Mr. Justice D. P. Mohapatra.

Subject Index: Indian Electricity Act, 1910 — Indian Electricity (U.P. Amendment and Validation) Act, 1976 — Arbitration — validity of appointment of Arbitrator by respondent — disputes regarding mode of assessment of purchase money to be paid by the Board to the company — company appointed arbitrator — objection raised against appointment — held the Special Officer appointed by the State Government is the only competent authority to assess the amount of purchase money to be paid by the Board to the Company and such assessment is to be made on the book-value of the undertaking. The Arbitrator appointed by the Company has no authority to undertake such exercise. The Award, if any, passed by such Arbitrator is *non-est.*

2001 SCCL.COM 664(Case/Appeal No: Civil Appeal No. 12930 of 1996)

Smita Conductors Ltd. Appellant Vs. Euro Alloys Ld. Respondent, decided on 31/8/2001.

Name of the Judge: Hon'ble Mr. Justice S. Rajendra Babu and Hon'ble Mr. Justice S. N. Phukan.

Subject Index: A) Public Policy — means public policy of India and the recognition and enforcement of foreign award cannot be questioned on the ground that it is contrary to the foreign

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country public policy — question of public policy does not arise. B) Force majeure clause — effect — view taken by the arbitrators plausible. C) Award — made by the arbitrators — no exceptional circumstances to modify. D) Arbitration — the appellant cannot any longer challenge the existence of an Arbitration agreement between the parties and such an agreement was not covered by the New York Convention.

2001 SCCL.COM 734(Case/Appeal No: Civil Appeal No. 6997 of 2001)

Union of India Appellant Vs. M/s. Popular Construction Co. Respondent, decided on 5/10/2001.

Name of the Judge: Hon'ble Mr. Justice G. B. Pattanaik and Hon'ble Mr. Justice Mrs. Ruma Pal.

Subject Index: Limitation Act, 1963 — Section 5 — Arbitration and Conciliation Act, 1996 — section 34 — whether the provisions of Section 5 of the Limitation Act, 1963 are applicable to an application challenging an award, under Section 34 of the Arbitration and Conciliation Act, 1996? — held no — appeal dismissed.

2001 SCCL.COM 795(Case/Appeal No: Criminal Appeal No. 1072 of 2001)

S.W. Palanitkar and Ors. Appellants Vs. State of Bihar and Anr. Respondents, decided on 18/10/2001.

Name of the Judge: Hon'ble Mr. Justice D. P. Mohapatra and Hon'ble Mr. Justice Shivaraj V. Patil.

Subject Index: Indian Penal Code — Sections 406, 420 r/w 120B — allegation of offences under — Criminal Procedure Code — Section 482 — allegations of cheating, fraud and criminal breach of trust — every breach of trust may not result in a penal offence

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or criminal breach of trust unless there is evidence of a mental act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person wronged may seek his redress for damages in a civil court but a breach of trust with mens rea gives rise to a criminal prosecution as well — in order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as a act leading to cheating — further, merely because there is an Arbitration clause in the agreement, that cannot prevent criminal prosecution against the accused if an act constituting a criminal offence is made out even *prima facie* — a wrongful or illegal act such as criminal breach of trust, misappropriation, cheating or defamation may give rise to action both on civil as well as on criminal side when it is clear from the complaint and sworn statements that necessary ingredients of constituting an offence are made out.

2001 SCCL.COM 820(Case/Appeal No: Civil Appeal No. 7391 of 2001)

Asia Restore Ltd. Appellant Vs. Usha Breco Ltd. Respondent, decided on 30/10/2001.

Name of the Judge: Hon'ble Mr. Justice D. P. Mohapatra and Hon'ble Mr. Justice K. G. Balakrishnan.

Subject Index: Limitation Act — Arbitration Act — Section 20 — period of limitation for filing application u/s. 20 — the Arbitration clause states that all parties would resolve such differences by mutual consultation failing which either party must give to the other notice in writing of the existence of such question, dispute or difference and the same shall be referred for the final determination. The appellant issued notice to the respondent and a

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definite reply was received by the appellant. It is clear that cause of action for filing had arisen, the moment the appellant received the reply notice denying the claims made by the appellant. Therefore, the Division Bench has rightly held that the application was barred by time — however, the delay caused in filing the application by the appellant was not willful and hence is liable to be condoned on payment of costs of ` 20,000/-.

2001 SCCL.COM 839 (Case/Appeal No: Civil Appeal No. 7754 of 2001)

State of Karnataka and others Appellants Vs. Siddaiah Respondent, decided on 6/11/2001.

Name of the Judge: Hon'ble Mr. Justice R. C. Lahoti and Hon'ble Mr. Justice K. G. Balakrishnan.

Subject Index: Compensation — on compassionate grounds — unnatural death of daughter of respondent probably due to food poisoning in hostel mess — claim for compensation from State and grant of land — matter referred to Arbitration — Arbitrator directed compensation of ` 1,50,000/- with interest and 4 acres of land — challenge to allotment of 4 acres of land instead of 2 acres as recommended by Taluk Social Welfare Officer — held direction of allotment of 4 acres modified to 2 acres — appeal partly allowed.

2001 SCCL.COM 872 (Case/Appeal No: Civil Appeal No. 8115 of 2001 (with S.L.P. (C) No. 6172 of 2001))

State of Rajasthan and another Appellants with M/s. Nav Bharat Construction Co. Petitioner vs. M/s. Nav Bharat Construction Co. Respondent and State of Rajasthan Respondent, decided on 27/11/2001.

Name of the Judge: Hon'ble Mr. Justice M. B. Shah and Hon'ble Mr. Justice B. N. Agrawal.

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Subject Index: Arbitrator — award of — challenged — held scope for setting aside the award is limited to the grounds available under the Arbitration Act — contentions or claims not raised before the arbitrators or at any stage thereafter, cannot be decided in appeal — further, it cannot be held that arbitrator has committed any error apparent on the face of the record or has misconducted himself in passing the impugned award — however, considering the overall circumstances of the case award rate of interest modified.

2002 SCCL.COM 049 (Case/Appeal No: Civil Appeal No. 689 of 2002)

J.G. Engineer's Pvt. Ltd. Appellant Vs. Calcutta Improvement Trust and another Respondents, decided on 25/1/2002.

Name of the Judge: Hon'ble Mr. Justice G. B. Pattanaik and Hon'ble Mr. Justice Y. K. Sabharwal.

Subject Index: Arbitration Act, 1940 — award under — set aside on the ground that wrongful termination of the contract was an excepted matter and, thus, not arbitrable and further the arbitrator has not considered the counter claim of the CIT and thereby has failed to exercise jurisdiction vested in him by law — held Division Bench not correct in coming to the conclusion that the fundamental terms of the agreement between the parties prohibited the arbitrability of the excepted matters — further the conclusion of the Division Bench that the arbitrator has not considered the counter claim of the CIT is contrary to the record — appeal allowed.

2002 SCCL.COM 065(Case/Appeal No: Civil Appeal Nos. 5880-5889 of 1997 (with C.A. Nos. 713-714, 715, 716, 2037-2040, 2041, 2042-2044, 4311, 4312, 4324, 4356, 7304 and 7306-7309 of 1999))

M/s. Konkan Railway Corporation Ltd. and another Appellants Vs. M/s. Rani Construction Pvt. Ltd. Respondent, decided on 30/1/2002.

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Name of the Judge: Hon'ble the Chief Justice, Hon'ble Mr. Justice Syed Shah Mohammed Quadri, Hon'ble Mr. Justice Umesh C. Banerjee, Hon'ble Mr. Justice S. N. Variava and Hon'ble Mr. Justice Shivaraj V. Patil.

Subject Index: Constitution of India — Article 136 — Arbitration and Conciliation Act, 1996 — Section 11 — whether the order of the Chief Justice or his designate under Section 11 of the Act is a judicial order or an administrative order — held the order of the Chief Justice or his designate under Section 11 nominating an arbitrator is not an adjudicatory order and the Chief Justice or his designate is not a Tribunal. Such an order cannot properly be made the subject of a petition for special leave to appeal under Article 136.

2002 SCCL.COM 082(Case/Appeal No: Civil Appeal No. 1006 of 2002)

Greater Cochin Development Authority Appellant Vs. Leelamma Valson and Ors. Respondents, decided on 6/2/2002.

Name of the Judge: Hon'ble Mr. Justice S. Rajendra Babu and Hon'ble Mrs. Justice Ruma Pal.

Subject Index: *Res judicata* — Arbitration Act, 1940 — award under — Code of Civil Procedure — Sections 114 and 152 — the language in the body of the application and the prayer made by the respondents was to consider the grant of future interest on the ground that the prayer had been overlooked while passing the decree in terms of the award — held the High Court affirmed the decree in 1991, the decree had already been interpreted – an interpretation which was not questioned — the issue of future interest had been raised and decided once and the respondents were barred by res judicata from reopening it — appeal allowed.

2002 SCCL.COM 110(Case/Appeal No: Civil Appeal No. 1382 of 2002)

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Narayan Prasad Lohia Appellant Vs. Nikunj Kumar Lohia and others Respondents, decided on 20/2/2002.

Name of the Judge: Hon'ble Mr. Justice G. B. Pattanaik, Hon'ble Mr. Justice S. N. Phukan and Hon'ble Mr. Justice S. N. Variava.

Subject Index: Arbitration and Conciliation Act, 1996 — whether a mandatory provision of the Act can be waived by the parties? — whether a party has a right to object to the composition of the arbitral tribunal, if such composition is not in accordance with the said Act and if so at what stage?

2002 SCCL.COM 112(Case/Appeal No: Civil Appeal Nos. 1398-99 of 2002)

Inder Sain Mittal Appellant Vs. Housing Board Haryana and others Respondents, decided on 21/2/2002.

Name of the Judge: Hon'ble Mr. Justice M.B. Shah and Hon'ble Mr. Justice B. N. Agrawal.

Subject Index: Arbitration Act, 1940 — Section 30 — grounds of objection under.

2002 SCCL.COM 133(Case/Appeal No: Civil Appeal No. 1791 of 2002)

General Manager Northern Railways and another Appellants Vs. Sarvesh Chopra Respondent, decided on 3/1/2002.

Name of the Judge: Hon'ble Mr. Justice R. C. Lahoti and Hon'ble Mr. Justice Brijesh Kumar.

Subject Index: Arbitration Act, 1940 — Section 20 — 'excepted matters'.

2002 SCCL.COM 173 (Case/Appeal No: Civil Appeal No. 6527 of 2001)

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Bhatia International Appellant Vs. Bulk Trading S.A. and another Respondents, decided on 13/3/2002.

Name of the Judge: Hon'ble Mr. Justice G. B. Pattanaik, Hon'ble Mr. Justice S. N. Phukan and Hon'ble Mr. Justice S. N. Variava.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 9 — "international commercial Arbitrations" — the provisions of Part I would apply to all Arbitrations and to all proceedings relating thereto. Where such Arbitration is held in India the provisions of Part I would compulsory apply and parties are free to deviate only to the extent permitted by the derogable provisions of Part I. In cases of international commercial Arbitrations held out of India provisions of Part I would apply unless the parties by agreement, express or implied, exclude all or any of its provisions. In that case the laws or rules chosen by the parties would prevail. Any provision, in Part I, which is contrary to or excluded by that law or rules will not apply.

2002 SCCL.COM 307(Case/Appeal No: Civil Appeal No. 3287 of 2002)

West Bengal State Warehousing Corporation & Anr. Appellants vs. Sushil Kumar Kayan & Ors. Respondents, decided on 3/5/2002.

Name of the Judge: Hon'ble Mr. Justice V. N. Khare and Hon'ble Mr. Justice Ashok Bhan.

Subject Index: Arbitration award — the award made by an Arbitrator can be set aside if the Arbitrator acts beyond jurisdiction, and, to find out whether the Arbitrator has travelled beyond jurisdiction, it would be necessary to consider the agreement between the parties containing the Arbitration clause and if the Arbitrator acts beyond the Arbitration clause then it would be deemed that he has acted beyond jurisdiction — held Arbitrator has confined his award within the framework of the reference made to him and did not exceed the jurisdiction conferred upon him — award made rule of the Court — appeal disposed of.

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2002 SCCL.COM 350(Case/Appeal No: Civil Appeal No. 3620 of 2002)

M/s. I.T.I. Ltd. Appellant vs. M/s. Siemens Public Communications Network Ltd. Respondent, decided on 5/20/2002.

Name of the Judge: Hon'ble Mr. Justice N. Santosh Hegde and Hon'ble Mr. Justice D. M. Dharmadhikari.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 37(2)(b) — Code of Civil Procedure — Section 115 — whether a revision petition under Section 115 of the Civil Procedure Code lies to the High Court as against an order made by a Civil Court in an appeal preferred under Section 37 of the Act. If so, whether on the facts and circumstances of this case, such a remedy by way of revision is an alternate and efficacious remedy or not — whether when a second appeal is statutorily barred under the Act and when the Code is not specifically made applicable, can it be said that a right of revision before the High Court would still be available to an aggrieved party? — while holding that this Court in an appropriate case would entertain an appeal directly against the judgment in first appeal, held the High Court also has the jurisdiction to entertain a revision petition, therefore, in the facts and circumstances of this case, appellant directed to first approach the High Court — appeal dismissed.

2002 SCCL.COM 375 (Case/Appeal No: Civil Appeal Nos. 4040-41 of 2002 (With C.A. Nos. 4043-44 of 2002))

M/s. Shyama Charan Agarwala and Sons appellant vs. Union of India Respondent, decided on 15/7/2002.

Name of the Judge: Hon'ble Mr. Justice D. P. Mohapatra and Hon'ble Mr. Justice P. Venkatarama Reddi.

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Subject Index: Arbitration Act, 1940 — Section 30 — grounds on which interference in award is permissible — held the aim of Arbitration is to settle all the disputes between the parties and to avoid further litigation. There is no legal justification in restricting the scope of Arbitration in the manner in which the High Court did — the High Court ought not to have intertfered with the award in so far as claim No.1 is concerned with the award in so far as claim no.1 is concerned in any respect. To this extent the appeals filed by the Contractor are partly allowed — as regards the other two items on a persusal of the judgment of the High Court and on consideration of the relevant clauses, we are of the view that the judgment does not suffer from any serious error in the approach of the matter.

2002 SCCL.COM 403(Case/Appeal No: Civil Appeal No. 4356 of 2002 (With C.A. No. 4357 of 2002))

Pradeep Anand Appellant Vs. I.T.C. Ltd. and others Respondents, decided on 29/7/2002.

Name of the Judge: Hon'ble Mr. Justice D. P. Mohapatra and Hon'ble Mr. Justice Brijesh Kumar.

Subject Index: Arbitration Act — Companies Act, 1956 — limited question came up for consideration before High Court i.e., whether the further proceeding before the Arbitrator should be stayed or it should continue — the view taken by the High Court that the arbitrator should not proceed further in the Arbitration proceeding in unnecessary, uncalled for an erroneous — Any observation touching upon the merits of the case particularly, the allegations relating to alleged misconduct of the Arbitrator at the stage of consideration of the application for interim order of stay, not called for — appeals allowed.

2002 SCCL.COM 438(Case/Appeal No: Special Leave Petition (C) No. 22106 of 2001)

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Nirma Ltd. Petitioner vs. M/s. Lurgi Lentjes Energietechink GMBH and Anr. Respondents, decided on 14/1/2002.

Name of the Judge: Hon'ble Mr. Justice R. C. Lahoti and Hon'ble Mr. Justice K. G. Balakrishnan.

Subject Index: Constitution of India — Article 136 — Arbitration and Conciliation Act, 1996 — Section 37(2) — Code of Civil Procedure — Section 115 — merely because a second appeal against an appellate order is barred by the provisions of sub-Section (3) of Section 37, the remedy of revision does not cease to be available to the petitioner, for the City Court deciding an appeal under sub-Section (2) of Section 37 remains a court subordinate to the High Court within the meaning of Section 115 of the C.P.C.

2002 SCCL.COM 561(Case/Appeal No: Arbitration Petition No. 3059 of 2002)

M/s. Grid Corporation of Orissa Ltd. Petitioner vs. M/s. AES Corporation and others Respondents, decided on 1/10/2002.

Name of the Judge: Hon'ble Mr. Justice R. C. Lahoti.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11(6) — petition under — there is no occasion for filing a request petition under Section 11(6) of the Act — a petition under Section 11(6) of the Act is not an appropriate remedy which the petitioners have chosen. None of the grounds contemplated by clauses (a), (b) and (c) of sub-section (6) of Section 11 exists. There is no deficiency in the constitution of the Arbitral Tribunal attributable to any of the parties or the arbitrators.

2002 SCCL.COM 571(Case/Appeal No: Civil Appeal No. 4037 of 2002 etc. etc. (With C.A. Nos. 4045/02, 4046/02, 4047-49/02, 4050-51/02, CA No. 6487/02, SLP(C) No. CC 6293/02 & CA No. 6488/2002 @ SLP(C) No. CC 6307/02))

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West Bengal Electricity Regulatory Commission Appellant vs. C.E.S.C. Ltd. etc. etc. Respondents, decided on 10/3/2002.

Name of the Judge: Hon'ble Mr. Justice N. Santosh Hegde, Hon'ble Mr Justice B. N. Agrawal and Hon'ble Mr. Justice B. P. Singh.

Subject Index: Electricity Regulatory Commissions Act, 1998 — Section 27 — determination of tariff — bias — whether the High Court sitting as an appellate court under Section 27 of the Act has the jurisdiction to go into the validity of the Regulations framed under the Act and if so, factually the Regulations as found by the High Court are contrary to the statute? — held no — under the 1998 Act who determines the tariff — held it is the Commission concerned and in the instant case the State Commission of West Bengal, which is the sole authority to determine the tariff, of course as per the procedure in the said Act — extent of the appellate power of the High Court under Section 27 of the 1998 Act.

2002 SCCL.COM 749(Case/Appeal No: Civil Appeal Nos. 8620-8621 of 2002)

Harbanslal Sahnia and another Appellants Vs. Indian Oil Corporation Ltd. and others Respondents, decided on 20/12/2002.

Name of the Judge: Hon'ble Mr. Justice R.C. Lahoti and Hon'ble Mr. Justice Brijesh Kumar.

Subject Index: Arbitration — whether in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction? — Agreement — dealership agreement — termination of — challenged — cancellation of dealership solely on the failure of appellants' sample — held the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion — the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating Arbitration proceedings — appeals allowed.

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2003 SCCL.COM 47 (Case/Appeal No: Civil Appeal No. 1382 of 2002 (with Contempt Petition Nos. 368 & 369 of 2002))

Narayan Prasad Lohia Appellant Vs. Nikunj Kumar Lohia and others Respondents, decided on 28/1/2003.

Name of the Judge: Hon'ble Mr. Justice N. Santosh Hegde and Hon'ble Mr. Justice B. P. Singh.

Subject Index: A) Arbitration and Conciliation Act, 1996 — whether, having regard to the provisions of the Arbitration and Conciliation Act, 1996, there cannot be an even number of arbitrators and that Arbitration by two arbitrators was against the statutory provision of the said Act and, therefore void and invalid — decided earlier by Bench of 3 Hon'ble Judges that Section 10 of the Act was a derogable provision and respondents 1 & 2 not having raised any objection to the composition of the Arbitral Tribunal, as provided in section 16, they must be deemed to have waived their right to object. B) Arbitration award — since there are more grounds available to the respondents to challenge the award, apart from the two grounds, on which the Appellate Bench disposed of the appeals before it, it is only appropriate that the Division Bench of the High Court should consider the other grounds also on which the award had been set aside by the learned Single Judge — matter remitted to High Court.

2003 SCCL.COM 121 (Case/Appeal No: Civil Appeal No. 7055 of 1994)

Food Corporation of India Appellant vs. Surendra, Devendra and Mahendra Transport Co. Respondents, decided on 30/1/2003.

Name of the Judge: Hon'ble Mr. Justice M. B. Shah, Hon'ble Mr. Justice Ashok Bhan and Hon'ble Mr. Justice Arun Kumar.

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Subject Index: Arbitration — payment of transport charges for transporting goods cargo — Arbitrator has not committed an error apparent from the face of the record — impugned judgment and order passed by the High Court does not call for interference.

2003 SCCL.COM 131 (Case/Appeal No: Civil Appeal No. 1005 of 2003 [Arising Out of S.L.P. (C) No. 4123 of 2001])

The Tata Hydro-Electric Power Supply Co. Ltd. & Ors. Appellants vs. Union of India Respondent, decided on 2/5/2003.

Name of the Judge: Hon'ble Mr. Justice M. B. Shah, Hon'ble Mr. Justice B. P. Singh and Hon'ble Mr. Justice H. K. Sema.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 34 — appeal against the judgment and order of Bombay High Court whereby the Division Bench of the High Court affirmed the judgment of Single Judge allowing the Arbitration Petition — challenging the award of the Umpire dated 30th March, 1998 on the ground of an error of law apparent on the face of the Award — the High Court erred in setting aside the award of the Umpire on a finding that the dispute before him was one contemplated by sub-section (6) of section 26 of the Act and, therefore, not arbitrable — the dispute related only to the claim of the appellant who had submitted a supplementary bill for the electrical energy supplied but not recorded — the award is required to be modified to the extent that interest be awarded at the same rate, but with effect from the date of the award i.e. 30th March, 1998 instead of August, 1993. The impugned judgment and order of the High Court is set aside.

2003 SCCL.COM 132(Case/Appeal No: Civil Appeal No. 1577 of 1994)

Food Corporation of India Appellant vs. Surendra, Devendra & Mahendra Transport Co. Respondent, decided on 5/2/2003.

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Name of the Judge: Hon'ble Mr. Justice M. B. Shah, Hon'ble Mr. Justice Ashok Bhan and Hon'ble Mr. Justice Arun Kumar.

Subject Index: Arbitration Act, 1940 — Section 20 — appeal against DB judgment order where the High Court has upheld the Award — since there was a specific bar to the raising of a claim regarding transit, demurrage and wharfage charges, the award made by the arbitrator in respect thereof would be in excess of the jurisdiction — there is no infirmity in the award regarding other claims made by the respondents.

2003 SCCL.COM 151 (Case/Appeal No: Civil Appeal No. 1062 of 2003 (with Appeal No. 1063 of 2003))

Municipal Corporation of Delhi and others Appellants vs. Intnl. Security & Intelligence Agency Ltd. Respondent, decided on 6/2/2003.

Name of the Judge: Hon'ble Mr. Justice R. C. Lahoti, Hon'ble Mr. Justice Brijesh Kumar and Hon'ble Mr. Justice Arijit Pasayat.

Subject Index: Arbitration Act, 1940 — Section 39 — whether in an appeal under Section 39 of the Arbitration Act, 1940, a respondent has a right to file cross objection and, if so, whether the cross objection must be heard and decided on merits though the appeal by reference to which cross object has been filed is itself dismissed as not maintainable?

2003 SCCL.COM 284 (Case/Appeal No: Civil Appeal No. 2321 of 2003)

Mysore Cements Ltd. Appellant vs. Svedala Barmac Ltd. Respondent, decided on 3/12/2003.

Name of the Judge: Hon'ble Mr. Justice Doraiswamy Raju and Hon'ble Mr. Justice Shivaraj V. Patil.

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Subject Index: Arbitration and Conciliation Act, 1996 — whether a Letter of Comfort furnished on the same day of a Settlement arrived at during conciliation signed by both the parties and authenticated by the Conciliators is enforceable in the same manner as an Arbitration award under Section 74 read with Sections 30 and 36 of the Arbitration and Conciliation Act, 1996?

2003 SCCL.COM 353 (Case/Appeal No: Civil Appeal No. 1174 of 2002)

Sukanya Holdings Pvt. Ltd. Appellant Vs. Jayesh H. Pandya and another Respondents, decided on 14/4/2003.

Name of the Judge: Hon'ble Mr. Justice M. B. Shah and Hon'ble Mr. Justice Arun Kumar.

Subject Index: Arbitration & Conciliation Act, 1996 — Sections 5 and 8 — Code of Civil Procedure — Section 89 — Arbitration Act does not oust the jurisdiction of the Civil Court to decide the dispute in a case where parties to the Arbitration Agreement do not take appropriate steps as contemplated under sub-sections (1) & (2) of Section 8 of the Act — entire subject matter of the suit should be subject to Arbitration agreement — further, Section 89 CPC cannot be resorted to for interpreting Section 8 of the Act as it stands on a different footing and it would be applicable even in cases where there is no Arbitration agreement for referring the dispute for Arbitration — appeal dismissed.

2003 SCCL.COM 361(Case/Appeal No: Civil Appeal No. 7419 of 2001)

Oil & Natural Gas Corporation Ltd. Appellant Vs. SAW Pipes Ltd. Respondent, decided on 17/4/2003.

Name of the Judge: Hon'ble Mr. Justice M.B. Shah and Hon'ble Mr. Justice Arun Kumar.

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Subject Index: Arbitration and Conciliation Act, 1996 — Section 34 — the ambit and scope of Court's jurisdiction in case where award passed by the Arbitral Tribunal is challenged under Section 34 of Arbitration and Conciliation Act, 1996 — whether the Court would have jurisdiction under Section 34 of the Act to set aside an award passed by the Arbitral Tribunal which is patently illegal or in contravention of the provisions of the Act or any other substantive law governing the parties or is against the terms of the contract?

2003 SCCL.COM 365(Case/Appeal No: Civil Appeal No. 105 of 2002)

Delhi Transport Corporation Ltd. Appellant Vs. Rose Advertising Respondent, decided on 17/4/2003.

Name of the Judge: Hon'ble Mr. Justice M. B. Shah and Hon'ble Mr. Justice Arun Kumar.

Subject Index: Arbitration Act, 1940 — Arbitration & Conciliation Act, 1996 — whether the old Act applied in the facts of the present case or the case is governed by the 1996 Act.

2003 SCCL.COM 400(Case/Appeal No: Transfer Petition (Civil) No. 326 of 1990)

Satish Chandra Dass & Co. Petitioner vs. Pradeep Phosphate Ltd. and another Respondents, decided on 12/3/2003.

Name of the Judge: Hon'ble Mr. Justice M.B. Shah and Hon'ble Mr. Justice Arun Kumar.

Subject Index: Arbitration Act, 1940 — Section 30 — it is difficult to arrive at a conclusion that the award passed by the Arbitrator calls for interference under Section 30 — it cannot be said that the Award contains no reasons. There is no substance in the objection application filed by the contractor — objection petition dismissed.

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2003 SCCL.COM 405(Case/Appeal No: Special Leave to Appeal (C) No. 2092 of 2003)

State of West Bengal Petitioner Vs. Sarkar & Sarkar Respondent, decided on 4/4/2003.

Name of the Judge: Hon'ble Mr. Justice S.N. Variava and Hon'ble Mr. Justice B. N. Agrawal.

Subject Index: Arbitration and Conciliation Act, 1996 — Sections 11 and 16 — arbitrator appointed by Chief Justice — merely administrative in nature and cannot be challenged in a Special Leave Petition — further, a party can take up the question of existence or validity of the Arbitration agreement before the Arbitrator provided such a plea is not raised later than the submission of the statement of defence.

2003 SCCL.COM 469(Case/Appeal No: Civil Appeal No. 97 of 2002 (With C.A. Nos. 98, 99, 100 and 101 of 2002))

M/s. N.S. Nayak and Sons with M/s. Heera Constructions with M/s. Rani Constructions Pvt. Ltd. with M/s. Pioneer Engineer Syndicate Appellants Vs. State of Goa Respondent with Board of Trustees of Port Mormugao Respondents, decided on 8/5/2003.

Name of the Judge: Hon'ble Mr. Justice M.B. Shah and Hon'ble Mr. Justice Arun Kumar.

Subject Index: Arbitration Act, 1940 — once the arbitral proceedings have started under the Old Act, the Old Act would apply for the award becoming decree and also for appeal arising thereunder.

2003 SCCL.COM 490(Case/Appeal No: Civil Appeal Nos. 5267-5268 of 2001)

Hindustan Newsprint Ltd. Appellant Vs. Koshy Varghese and others Respondents, decided on 11/3/2003.

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Name of the Judge: Hon'ble Mr. Justice M. B. Shah and Hon'ble Mr. Justice Arun Kumar.

Subject Index: Arbitration — where in a contract, there is no term for referring the dispute for Arbitration, it is difficult to approve the reasons recorded by the High Court in allowing the appeal and setting aside the order passed by the learned Single Judge in writ petition and directing the Arbitrator to be appointed to resolve the contractual dispute between the parties.

2003 SCCL.COM 491(Case/Appeal No: SLP (C) No. 1190 of 2002)

Gesellschaft Fur B. Forschung MBH, Germany Petitioner vs. Kopran Laboratories Ltd. and Another Respondents, decided on 13/3/2003.

Name of the Judge: Hon'ble Mr. Justice R.C. Lahoti and Hon'ble Dr. Justice A. R. Lakshmanan.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 8 — grievance that the High Court has made an appointment in departure from the terms of Arbitration clause and while doing so has not even assigned any reason for not referring the disputes / claims for settlement by Arbitration in accordance with the Rules of Conciliation of the International Chamber of Commerce, Paris — case is sent back to the High Court of Bombay for decision afresh and appointment of arbitrator in accordance with law — appeal allowed.

2003 SCCL.COM 518 (Case/Appeal No: Civil Appeal No. 4655-4809 of 2003 (with C.A. Nos. C.A. Nos. 4810-4987 of 2003))

Food Corporation of India Appellant Vs. Indian Council of Arbitration and others etc. etc. Respondents, decided on 17/7/2003.

Name of the Judge: Hon'ble Mr. Justice Doraiswamy Raju and Hon'ble Mr. Justice D. M. Dharmadhikari.

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Subject Index: Arbitration — questions relating to the relevant scope, meaning, purport and the effect of the Arbitration clause found in the agreement between parties concerned and the legality or propriety of the Constitution of Arbitral Tribunal, in the teeth of Rules 21 and 22 of the ICA Rules as well as question relating to alleged contradictions or inconsistencies among those provisions are matters which go to the jurisdiction of the Arbitral Tribunal or as to the existence or validity of the Arbitration agreement itself which, as enjoined under Section 16 of the 1996 Act, falls within the jurisdiction of the Arbitral Tribunal constituted which has been enabled to adjudicate on such question also before embarking upon an exercise to decide the dispute between the parties or decide them simultaneously — appeals allowed.

2003 SCCL.COM 530 (Case/Appeal No: Civil Appeal No. 5156 of 2003)

Hindustan Petroleum Corpn. Ltd. Appellant Vs. M/s. Pinkcity Midway Petroleums Respondent, decided on 23/7/2003.

Name of the Judge: Hon'ble Mr. Justice N. Santosh Hegde and Hon'ble Mr. Justice B. P. Singh.

Subject Index: A) Arbitration and Conciliation Act, 1996 — Section 8 r/w ss. 5 and 16 — parties to the Dealership agreement agreed to refer dispute to arbitrator — if there is any objection as to the applicability of the Arbitration clause to the facts of the case, the same will have to be raised before the concerned Arbitral Tribunal — held Section 16 the courts below ought not to have proceeded to examine the applicability of the Arbitration clause to the facts of the case in hand but ought to have left that issue to be determined by the Arbitral Tribunal as contemplated in Clause 40 of the Dealership Agreement and required under Sections 8 and 16 of the Act. B) Code of Civil Procedure — Section 115 — maintainability of the revision petition before the High Court under Section 115 of the CPC — held the Civil Court had no jurisdiction to entertain

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a suit after an application under Section 8 of the Act is made for Arbitration. Therefore, we are of the opinion that the trial court failed to exercise its jurisdiction vested in it under Section 115 of the C.P.C. when it rejected the application of the appellant filed under Sections 8 and 5 of the Act. In such a situation, refusal to refer the dispute to Arbitration would amount to failure to justice as also causing irreparable injury to the appellant — appeal allowed.

2003 SCCL.COM 558(Case/Appeal No: Civil Appeal No. 5313 of 2003 (with C.A. No. 5314 of 2003))

State of Orissa and others Appellants vs. Gokulananda Jena Respondents, decided on 30/7/2003.

Name of the Judge: Hon'ble Mr. Justice N. Santosh Hegde and Hon'ble Mr. Justice B. P. Singh.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11(6) — validity of an order made by the Judge designated by the Chief Justice of the Orissa High Court for appointing an Arbitrator challenged — writ petition maintainability of — view of the High Court as to the non-maintainability of a writ petition against an order made by the Designated Judge under Section 11(6) of the Act cannot be sustained — the High Court was wrong in coming to the conclusion that an order made by the Designated Judge under Section 11(6) of the Act is not amenable to the writ jurisdiction of the High Court — not appropriate to remand the matter back to the High Court.

2003 SCCL.COM 560(Case/Appeal No: Civil Appeal No. 5315 of 2003)

Hythro Power Corporation Ltd. Appellant vs. Delhi Transco Ltd. Respondent, decided on 30/7/2003.

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Name of the Judge: Hon'ble Mr. Justice Shivaraj V. Patil and Hon'ble Mr. Justice D. M. Dharmadhikari.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11 — rejection of application under section 11 by Delhi High Court — keeping in view the law as settled by this Court, the designate of the Chief Justice acting under Section 11 of the Act and the Division Bench of the High Court in exercise of power under Article 226 of the Constitution both acted under a misconception of law and wrongly held that the disputes were not referable to the Arbitration.

2003 SCCL.COM 593(Case/Appeal No: Civil Appeal Nos. 3253-58 of 1991 (with C.A. Nos. 3260, 3259, 3261 of 1991))

M.S. Madhusoodhanan and another Appellants vs. Kerala Kaumudi Pvt. Ltd. and others Respondents, decided on 1/8/2003.

Name of the Judge: Hon'ble Mrs. Justice Ruma Pal and Hon'ble Mr. Justice B. N. Srikrishna.

Subject Index: Companies — controlling interests — dispute between the members of a family — Civil Appeals 3263-58 of 1991 from M.F.A. 330/90 are allowed, and the decision of the Trial Court affirmed with the directions earlier specified. Civil Appeals 3260 and 3261 of 1991 are dismissed Civil Appeal No. 3259 of 1991 is also allowed. The decision of the Division Bench is set aside and the decree of the Trial Court is restored — displeasure in the manner in which the paper books have been prepared. Documents which are vital for decision on the several issues raised, continue to remain in Malayalam without being translated, sexual exhibits as well as the pleadings, such as plaints, written statements etc. are not on record.

2003 SCCL.COM 604(Case/Appeal No: Civil Appeal No. 12645 of 1996)

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Madan Mohan Rajgarhia Appellant vs. M/s Mahendra R. Shah and Bros. and another Respondents, decided on 31/7/2003.

Name of the Judge: Hon'ble the Chief Justice, Hon'ble Mr. Justice K. G. Balakrishnan and Hon'ble Mr. Justice S. B. Sinha.

Subject Index: Indian Arbitration Act, 1940 — Section 34 — provision for Arbitration as regards dispute in the suit — clause in the bill — the appellant urged that the Arbitration clause printed on the bills does not include the persons like plaintiff and, therefore, the appellant being a non-member is not required to seek Arbitration — held no merit in the contention — appeal dismissed.

2003 SCCL.COM 637(Case/Appeal No: Civil Appeal No. 2025 of 1997)

Bihar State Mineral Dev. Corpn. and Anr. Appellants Vs. Encon Builders (I) Pvt. Ltd. Respondent, decided on 21/8/2003.

Name of the Judge: Hon'ble the Chief Justice and Hon'ble Mr. Justice S. B. Sinha.

Subject Index: Arbitration Act — Section 39(1)(i) — Arbitration agreement — Clause 60 — whether the learned court below committed an illegality in refusing to refer the matter to Arbitration — as bias on the part of the second Appellant goes to the root of his jurisdiction to act as an arbitrator, the entire action is a nullity — as the acts of bias on the part of the second appellant arose during execution of the agreement, the question as to whether the respondent herein entered into the agreement with his eyes wide open or not takes a back-seat. An order which lacks inherent jurisdiction would be a nullity and, thus, the procedural law of waiver or estoppel would have no application in such a situation — as the learned Subordinate Judge, inter alia, held that clause 60 did not constitute an Arbitration agreement, the same could not have been the subject-matter of an appeal under Section 39(1)(i) of the Act inasmuch as thereby the Arbitration agreement was not superseded.

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2003 SCCL.COM 669(Case/Appeal No: Civil Appeal Nos. 5647-48 of 1997)

Bharat Coking Coal Ltd. Appellant vs. M/s. Annapurna Construction Respondent, decided on 29/8/2003.

Name of the Judge: Hon'ble the Chief Justice and Hon'ble Mr. Justice S.B. Sinha.

Subject Index: Arbitration — the learned sole arbitrator should have taken into consideration the relevant provisions contained in the agreement as also the correspondences passed between the parties. The question as to whether the work could not be completed within the period of four months or the extension was sought for on one condition or the other was justifiable or not, which are relevant facts which were required to be taken into consideration by the arbitrator — the Arbitrator cannot act arbitrarily, irrationally, capriciously or independent of the contract — there lies a clear distinction between an error within the jurisdiction and error in excess of jurisdiction. Thus, the role of the arbitrator is to arbitrate within the terms of the contract. He has no power apart from what the parties have given him under the contract. If he has travelled beyond the contract, he would be acting without jurisdiction, whereas if he has remained inside the parameter of the contract, his award cannot be questioned on the ground that it contains an error apparent on the face of the records — the matter requires reconsideration. Having regard to the facts and circumstances of this case and particularly keeping in view the fact that the matter relates to pure interpretation of document which gives rise to question of law and instead and in place of remitting the matter to the named arbitrator, we would direct that the disputes in relation to Claim item Nos. 3, 7 and 11 be referred to Hon'ble Mr. Justice D. N. Prasad, a retired Judge of the Jharkhand High Court on such terms and conditions as may be mutually agreed upon by the parties. The learned arbitrator is requested to

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consider the desirability of making his award as expeditiously as possible keeping in view the fact that the matter has been pending for a long time.

2003 SCCL.COM 684(Case/Appeal No: Civil Appeal No. 2732 of 1997)

Gwalior Dugdha Sangh Sahakari Ltd. Appellant vs. G. M. Govt. Milk Scheme, Nagpur and others Respondents, decided on 21/8/2003.

Name of the Judge: Hon'ble the Chief Justice and Hon'ble Mr. Justice S. B. Sinha.

Subject Index: Madhya Pradesh Co-operative Societies Act, 1960 — Section 64 — Arbitration Act, 1940 — Section 33 — application for quashing condition No. 19 whereby the Arbitration was to be done by the Dairy Development Commissioner, Bombay, Maharashtra — whether in view of Section 64 of the Act, condition No. 19 of the agreement was erroneous — held since the agreements in the present case were entered into and executed in the State of Maharashtra, Section 64 of the Act is not applicable and, therefore, the view taken by the High Court was correct — appeal dismissed.

2003 SCCL.COM 690(Case/Appeal No: Civil Appeal No. 2809 of 1979 (with C.A. No. 2810/79 and C.P.(C) No. 484 of 1998 in C.A. No. 2809/79))

Sohan Lal Gupta (dead) through L.` and others Appellants Vs. Smt. Asha Devi Gupta and others Respondents, decided on 1/9/2003.

Name of the Judge: Hon'ble the Chief Justice, Hon'ble Mr. Justice S. B. Sinha.

Subject Index: Arbitration — What constitutes a reasonable notice by an arbitrator is the question involved in these appeals which arise out of a judgment and decree dated 2/1/1979 passed by a Division Bench of the Calcutta High Court affirming an order

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passed by a learned Single Judge setting aside an Arbitration award — the principles of natural justice, it is trite, must not be stretched too far — the impugned judgment cannot be sustained which is set aside accordingly. These appeals are allowed. Award given by the arbitrator is made rule of the court. Any transaction in regard to property covered by the award shall be subject to this decision. The Executing Court would look into these matters.

2003 SCCL.COM 697(Case/Appeal No: Civil Appeal No. 2477 of 1997 (With C.A. No. 2478 of 1997))

State of West Bengal Appellant vs. Amritlal Chatterjee Respondent, decided on 9/3/2003.

Name of the Judge: Hon'ble the Chief Justice and Hon'ble Mr. Justice S. B. Sinha.

Subject Index: Arbitration Act, 1940 — Arbitration and Conciliation Act, 1996 — Section 21 of the new Act provides that unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to Arbitration is received by the respondent. Clause (a) of sub-section (2) of Section 85 of the new Act provides that notwithstanding repeal of the Arbitration Act, 1940, the provisions of the said enactment shall apply in relation to arbitral proceedings which commenced before this Act came into force unless otherwise agreed by the parties but this Act shall apply in relation to arbitral proceedings which commenced on or after this Act comes into force — Rule 3 of the First Schedule to the 1940 Act imposes a duty on the arbitrators to make their award within one or other of the three alternative period mentioned therein — no merit in appeals — dismissed.

2003 SCCL.COM 754(Case/Appeal No: Civil Appeal No. 8431 of 1997 (With C.A. No. 8453 of 1997))

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M/s. Continental Construction Ltd. Appellant vs. State of U.P. Respondent, decided on 22/9/2003.

Name of the Judge: Hon'ble the Chief Justice and Hon'ble Mr. Justice S. B. Sinha.

Subject Index: Arbitration Act. 1940 — Section 30 — the award is a non-speaking one. It is trite that the Court while exercising its jurisdiction under Section 30 of the Arbitration Act, 1940 can interfere with the award only in the event the arbitrator has misconducted himself or the proceeding or there exists an error apparent on the face of the award — the court exercises a very limited jurisdiction while adjudicating upon an objection to the award in terms of Section 30 of the Arbitration Act, 1940 — in the instant case, the Umpire has merely set out the claims, given the history of the claims and awarded certain amount. He has not disclosed his mind indicating as to why he had done so or what was done. The Courts, therefore, could not interfere with the award merely on ipse dixit — the awards made by the learned Umpire are directed to be made rule of court.

2003 SCCL.COM 757(Case/Appeal No: Civil Appeal No. 640 of 1998)

State of Maharashtra Appellant Vs. M/s. S. D. Shide & Co. Respondent, decided on 17/9/2003.

Name of the Judge: Hon'ble the Chief Justice and Hon'ble Mr. Justice S. B. Sinha.

Subject Index: Arbitration Act, 1940 — Section 20 — appointment of an arbitrator — arbitrator gave an award — subsequently arbitrator filed an interim award — for being made rule of the Court — award set aside — sole arbitrator appointed — an interim order was passed whereby the appellant was directed to pay the final bill to the respondent in relation whereof an application was

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filed by the respondent purported to be under Section 18 of the Act — respondent filed a revision application before the High Court — the learned single Judge on the basis of the preparation of the final bill directed the appellant to pay the amount — the award had already been set aside by the Civil Judge. No award therefore was in existence which was capable of execution. Unless and until the order of the Civil Judge was set aside and the award was directed to be made a rule of court, no decree in terms thereof would have been drawn up. The execution case would have been maintainable only after preparation of the decree in terms of the award after the same is made a rule of court — the High Court had no jurisdiction to pass the impugned order — in the name of an interim order, the High Court could not have passed the impugned order the effect of which will be that not only the order of the Civil Judge is set aside, the decree also would stand executed. Such an order at the interim stage is not contemplated in law — impugned order set aside and the matter remanded to the High Court for decision of the Civil Revision on merits.

2003 SCCL.COM 785(Case/Appeal No: Civil Appeal No. 1247 of 1998)

K. K. John Appellant Vs. State of Goa Respondent, decided on 18/9/2003.

Name of the Judge: Hon'ble the Chief Justice and Hon'ble Mr. Justice S. B. Sinha.

Subject Index: Arbitration Act, 1940 — section 16(3) – interpretation of.

2003 SCCL.COM 798(Case/Appeal No: Civil Appeal No. 1996 of 1998)

Pooran Chand Nangia Appellant Vs. National Fertilizers Ltd. Respondent, decided on 8/10/2003.

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Name of the Judge: Hon'ble the Chief Justice, Hon'ble Mr. Justice S. B. Sinha.

Subject Index: Arbitration — Whether once the appellant having accepted the award, is it open to him to challenge the same on the ground that the Arbitrator had no jurisdiction and whether the Deputy General Manager (Materials) was competent or has jurisdiction to enter into anArbitration — held no illegality in the matter of entering into the reference of the Deputy General Manager (Materials) as once the General Manager was not available, the Deputy General Manager (Materials) was totally competent to enter into the Arbitration and, thus, the objection taken by the appellant that the Deputy General Manager (Materials) had no jurisdiction must be rejected — no merit in the appeal.

2003 SCCL.COM 824(Case/Appeal No: Civil Appeal No. 6478 of 2001)

Pure Helium India Pvt. Ltd. Appellant Vs. Oil and Natural Gas Commission Respondent, decided on 9/10/2003.

Name of the Judge: Hon'ble the Chief Justice and Hon'ble Mr. Justice S. B. Sinha.

Subject Index: Arbitration Act, 1940 — Section 30 — whether jurisdiction of an arbitrator to interpret a contract can be subject-matter of an objection under Section 30 of the Arbitration Act, 1940.

2003 SCCL.COM 830(Case/Appeal No: Civil Appeal No. 1725 of 1997)

M.D., Army Welfare Housing Organisation Appellant vs. Sumangal Services Pvt. Ltd. Respondent, decided on 8/10/2003.

Name of the Judge: Hon'ble the Chief Justice, Hon'ble Mr. Justice Brijesh Kumar and Hon'ble Mr. Justice S. B. Sinha.

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Subject Index: Arbitration Act, 1940 — Sections 30 and 33 — application filed questioning the award — Held while upholding Claim No. 1 of the award are of the opinion that the award of the Arbitrations in relation to Claim No. 2 must be set aside. Consequently, no interest thereupon shall be payable.

2003 SCCL.COM 835(Case/Appeal No: Civil Appeal Nos. 7940-7942 of 2001)

M. Anasuya Devi and Anr. Appellants Vs. M. Manik Reddy and Ors. Respondents, decided on 16/10/2003.

Name of the Judge: Hon'ble the Chief Justice and Hon'ble Mr. Justice S. B. Sinha.

Subject Index: Arbitration and Conciliation Act, 1996 — Sections 34(1), 36 and 37 — partition of joint Hindu properties — disputes — referred to Arbitral Tribunal — award passed — petition under section 34(1) — the High Court was of the view that since the Award was not stamped and registered it was, therefore, invalid and without jurisdiction — the question whether an Award requires stamping and registration is within the ambit of Section 47 of the Code of Civil Procedure and not covered by Section 34 of the Act — since the High Court has not dealt with other objections raised under Section 34 of the Act — matter remitted to the High Court to decide the same.

2003 SCCL.COM 891(Case/Appeal No: Civil Appeal Nos. 4542-4544 of 1998 (With C.A. Nos. 4545-4547 of 1998))

State of Bank of India Appellant Vs. M/s. Ram Das and another Respondents, decided on 29/10/2003.

Name of the Judge: Hon'ble the Chief Justice and Hon'ble Mr. Justice S. B. Sinha.

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Subject Index: Award — setting aside of — whether the arbitrators or the Umpires are required to pass a reasoned award depends upon the nature of the Arbitration agreement — where a party despite knowledge of the defect in the jurisdiction or bias or malice of an Arbitrator participated in the proceedings without any kind of objection by his conduct it disentitles itself to raise such a question in the subsequent proceedings — the appellant despite numerous opportunities made available to it although it was aware of the defect in the award of the Umpire at no stage made out any case of bias against the Umpire — the appellant cannot be permitted to raise question of bias for the first time before this Court — it will be open to the appellant to challenge the award, if it is so advised, before the appropriate forum.

2003 SCCL.COM 910(Case/Appeal No: Civil Appeal No. 2758 of 2002)

Mallikarjun Appellant vs. Gulbarga University Respondent, decided on 5/11/2003.

Name of the Judge: Hon'ble the Chief Justice, Hon'ble Mr. Justice S.B. Sinha and Hon'ble Dr. Justice AR. Lakshmanan.

Subject Index: Arbitration Act, 1940 — award made whether in terms of the provisions of the Arbitration Act? Held — the very fact that Clause 30 has been inserted by the parties despite the clauses for prevention of dispute is itself a pointer to the fact that the parties to the contract were *ad idem* that the dispute and differences arising out of or under the contract should be determined by a domestic tribunal chosen by them — if their contention was that the Award made by the Superintending Engineer, Gulbarga Circle, Gulbarga, was without any authority or beyond his jurisdiction, they could have furthermore filed an appropriate application in terms of Section 34 of the Arbitration and Conciliation Act, 1996.

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2003 SCCL.COM 913(Case/Appeal No: Civil Appeal No. 4269 of 2002)

Dulal Poddar Appellant vs. Executive Engineer, Dona Canal Division and Ors. Respodents, decided on 12/11/2003.

Name of the Judge: Hon'ble the Chief Justice and Hon'ble Mr. Justice S. B. Sinha.

Subject Index: Arbitration — construction of canal — agreement — dispute — notice as to the appointment of Arbitrator — an award which have been made by the Arbitrator having been passed without giving an opportunity of hearing to the respondent herein, was illegal and void.

2003 SCCL.COM 918(Case/Appeal No: Civil Appeal Nos. 9136-9137 of 2003)

M/s. Sathyanarayana Brothers (P) Ltd. Appellants vs. Tamil Nadu Water Supply & Drainage Board Respondent, decided on 18/11/2003.

Name of the Judge: Hon'ble Mr. Justice Brijesh Kumar and Hon'ble Mr. Justice Arun Kumar.

Subject Index: Arbitration Award — validity of — jurisdiction of the arbitrator and umpire to decide the matter — handing over note – there is no question of secrecy or confidentiality so far the 'handing over note' of the Chief Engineer is concerned. It is a note prepared by the Chief Engineer of the project in official discharge of his duties. It contains relevant facts and information regarding questions involved in the case. The appreciation of the contents of the 'note' and its effect would of course be a matter to be decided by the appropriate authority/arbitrator/ umpire but its perusal or consideration could not be shut out on the meek ground that the department was not bound by it or on the ground of confidentiality in the times when more stress is rather on transparency — the

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order of the Division Bench, reversing the decision of the Single Judge is not sustainable and the matter may be required to be remitted to be considered in the light of the 'handing over note' of the Chief Engineer in respect whereof an application was moved by the appellant before the arbitrator as well as before the Umpire which remained unattended to by the forum and later did not accede to the request — it is an old matter and it being a speaking award the matter having also been considered by the learned single Judge, it would better serve ends of justice to ensure expeditious disposal of the matter, therefore, the Division Bench of the High Court may consider the matter afresh, taking into account the 'handing over note' of the Chief Engineer of the Project and other relevant documents in respect of which request may have been made but refused — the order of the Division Bench of the High Court is set aside and the matter is remitted to the High Court for being decided afresh by the Division Bench in the light of the observations made.

2003 SCCL.COM 947(Case/Appeal No: Civil Appeal No. 5377 of 1998)

Union of India and Anr. Appellants vs. M/s. Sohan Lal Puglia Respondent, decided on 19/11/2003.

Name of the Judge: Hon'ble the Chief Justice, Hon'ble Mr. Justice S. B. Sinha and Hon'ble Dr. Justice A. R. Lakshmanan.

Subject Index: Arbitration Act, 1940 — Section 20 — appointment of Arbitrator — when the appellants had not refused to appoint an Arbitrator, under Section 20 of the Act the petition was not maintainable — the learned District Judge ought to have directed the parties to appoint Arbitrators in terms of the Arbitration agreement — direct the parties to appoint Arbitrators in consonance with the Arbitration clause contained in the contract.

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2003 SCCL.COM 1016(Case/Appeal No: Interlocutory Application No. 2 of 2003 (in Civil Appeal No. 2522 of 1999))

National Aluminium Co. Ltd. Appellant vs. M/s. Pressteel & Fabrications Pvt. Ltd. and Another Respondents, decided on 18/12/2003.

Name of the Judge: Hon'ble Mr. Justice N. Santosh Hegde and Hon'ble Mr. Justice B. P. Singh.

Subject Index: A) Arbitration Act, 1940 — whether the proceedings in which an impugned award has come to be made, are governed by the 1940 Act or the 1996 Act? and whether the appropriate Court for the purpose of challenging the said award or seeking modification of the said award is this Court, being the Court which appointed the arbitrator or an appropriate Court as contemplated under Section 34 of the 1996 Act read with Section 2(e) of the said Act which contemplates said Court to be the principal civil Court of original jurisdiction? — there is no discretion left with the Court to pass any interlocutory order in regard to the said award except to adjudicate on the correctness of the claim made by the applicant. B) Arbitration Act, 1940 — Section 34 — change in law — required — the delay in regard to the filing of the objections as contemplated under Section 34 of the 1996 Act shall be condoned by the said Court since the time consumed was in *bona fide* prosecution of the application in a wrong forum.

2003 SCCL.COM 1019(Case/Appeal No: Civil Appeal No. 92 of 1998)

The Secretary, Thirumurugan Co-operative Agricultural Credit Society Appellant vs. M. Lalitha (Dead) through Lrs. and others Respondents, decided on 11/12/2003.

Name of the Judge: Hon'ble Mr. Justice Shivaraj V. Patil and Hon'ble Mr. Justice D. M. Dharmadhikari.

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Subject Index: A) Consumer Protection Act, 1986 — Jurisdiction of the Consumer Forum to decide the dispute between members and co-operative society in view of Section 90 of the Tamil Nadu Co-operative Societies Act, 1983 — the view taken by the State Commission that the provisions under the Act relating to reference of disputes to Arbitration shall prevail over the provisions of the 1986 Act is incorrect and untenable — the remedies that are available to an aggrieved party under the 1986 Act are wider. For instance in addition to granting a specific relief the forums under the 1986 Act have jurisdiction to award compensation for the mental agony, suffering, etc., which possibly could not be given under the Act in relation to dispute under Section 90 of the Act. Merely because the rights and liabilities are created between the members and the management of the society under the Act and forums are provided, it cannot take away or exclude the jurisdiction conferred on the forums under the 1986 Act expressly and intentionally to serve a definite cause in terms of the objects and reasons of the Act — while affirming the order of the National Commission as to the maintainability of the disputes before the forum under the Act, we remand the appeals to the State Commission for their adjudication on other issues on merits without going to the question of maintainability of the disputes before the forum under the 1986 Act. B) Consumer Protection Act, 1986 — for the Forums under the 1986 Act to leave the parties either to proceed or avail the remedies before the other forums, depending on the fact and circumstances of the case.

2003 SCCL.COM 1028(Case/Appeal No: Civil Appeal No. 10104 of 2003 Etc.)

M/s. Gurbax Singh Appellant vs. Punjab Mandi Board Respondent, decided on 18/12/2003.

Name of the Judge: Hon'ble Mr. Justice N. Santosh Hegde and Hon'ble Mr. Justice B. P. Singh.

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Subject Index: Arbitration — Award — Filing — bar of Limitation — Filing of award without connected paper — For the purpose of entertaining an application for making the award a rule of the court and for issuing notice thereon it is not necessary that the application should contain all or any other papers apart from the signed award — the notice should be issued by the court and not by an arbitrator as was the fact in Choudhury's case (supra). In the instant case there is no dispute in regard to the fact that the notice was actually issued by the court — for the purpose of Article 119 of the Limitation Act, 1993 the date of service will have to be taken as the first service effected. In the instant case it cannot be legally disputed that the service effected on 6/11/1991 was not an effective service. If that be so the limitation of 30 days would start from that day namely 6/11/1991. Even the second order of 24/12/1991 does not make the issuance of notice by the court on 30/11/1991 ineffective — if the appellant succeeds on the question of bar of limitation in filing the objections, in the eye of law there being no objection to the award other questions do not arise four our consideration. For the reasons stated above, this appeal succeeds.

2003 SCCL.COM 1059(Case/Appeal No: Civil Appeal No. 5188 of 2001 (With C.A. Nos. 5189 and 5190 of 2001))

Ganga Retreat and Towers Ltd. and another Appellants vs. State of Rajasthan and others Respondents, decided on 19/12/2003.

Name of the Judge: Hon'ble Mr. Justice R. C. Lahoti and Hon'ble Mr. Justice Ashok Bhan.

Subject Index: A) Writ Petition — Maintainability of — in contractual matters. B) Constitution of India — Article 136 — disputed questions of fact — not to be adjudicated in exercise of writ jurisdiction but Court not inclined — in the exercise of power under Article 136 of the Constitution to dismiss the appeal on this account at this stage because that is likely to result in the miscarriage of justice on account of lapse of time which

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may now result in the foreclosure of all other remedies which could be availed of by the appellants in the ordinary course. At the present stage of the proceedings the alternative remedy of filing the suit would not be efficacious. C) Conveyance deed — cancellation — misrepresentation — having declared their intention to proceed with the contract the appellants were bound by their affirmation. Having affirmed the contract they cannot go back on their affirmation and seek rescission of the contract. That the contention in relation to frustration is misconceived as Section 56 of the Indian Contract Act does not apply to the cases of completed transfer.

2004 SCCL.COM 2 (Case/Appeal No: Civil Appeal No. 2754 of 2002)

Chairman and M.D., N.T.P.C. Ltd. Appellant vs. M/s. Reshmi Constructions, Builders & Contractors Respondent, decided on 5/1/2004.

Name of the Judge: Hon'ble the Chief Justice and Hon'ble Mr. Justice S. B. Sinha.

Subject Index: Arbitration — whether an Arbitration clause in a contract agreement survives despite purported satisfaction thereof.

2003 SCCL.COM 1063(Case/Appeal No: Civil Appeal Nos. 4350-4351 of 2002)

M/s. Gora Lal Appellant Vs. Union of India Respondent, decided on 18/12/2003.

Name of the Judge: Hon'ble the Chief Justice and Hon'ble Mr. Justice S. H. Kapadia.

Subject Index: A) Arbitration — whether the Arbitrator ought to have given reasons in support of his findings, along with the sums awarded, on each items of dispute — the Arbitrator was required to give reasons in support of his findings on the items of dispute

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along with the sums awarded — this order is confined to the facts of this case and our interpretation is confined to Clause 70 of Arbitration agreement in this case — no finding recorded on each item as required by the Arbitration clause, the High Court was justified in setting aside the award. B) Words and Phrases — 'Finding' 'Reasons' — meaning of.

2004 SCCL.COM 74(Case/Appeal No: Civil Appeal No. 123 of 2004 SLP (C) No. 16373 of 2003)

M/s. Telephone Cables Ltd. Appellant vs. Chief General Manager (Telecom), Haryana Telecome Circle & Anr. Respondents, decided on 8/1/2004.

Name of the Judge: Hon'ble Mrs. Justice Ruma Pal and Hon'ble Mr. Justice S. B. Sinha.

Subject Index: Arbitration and Conciliation Act, Section 11 — appointment of Arbitration — the Civil Judge erred in going into the substance of the dispute sought to be referred to Arbitration. Decision of the High Court as well as Civil Judge set aside.

2004 SCCL.COM 116(Case/Appeal No: Civil Appeal No. 1712 of 1999)

M/s. Uptron India Ltd. Appellant Vs. Union of India and another Respondents, decided on 5/2/2004.

Name of the Judge: Hon'ble the Chief Justice, Hon'ble Mr. Justice S. B. Sinha and Hon'ble Mr. Justice S. H. Kapadia.

Subject Index: Arbitration award — filed before the High Court for making rule of the Court — simultaneously respondent filed appeal before the appellate authority — award set aside and sent for fresh resolution — the learned Single Judge and consequently, the Division Bench of the High Court were correct in holding that the prayer for making the Award a Rule of Court could not be granted — no error in the judgment under challenge.

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2004 SCCL.COM 182(Case/Appeal No: Special Leave Appeal (Civil) No. 19479 of 2002)

S. K. Viswanadham Petitioner Vs. M/s. Visakhapatnam Port Trust Respondent, decided on 1/27/2004.

Name of the Judge: Hon'ble Mr. Justice R. C. Lahoti and Hon'ble Mr. Justice B. N. Agrawal.

Subject Index: Arbitration and Conciliation Act, 1996 — sections 8 and 34 — suit filed by respondent for recovery of ` 2,50,000 directed to be stayed in view of the agreement, sole Arbirator appointed — the Trial Court may appoint a time limit within which the sole Arbitrator shall make this Award. The Trial Court shall also have power to make all such other directions as may be necessary for securing adjudication by Arbitrator.

2004 SCCL.COM 230(Case/Appeal No: Civil Appeal No. 1427 of 2004)

National Aluminium Co. Ltd. Appellant vs. Gerald Metals SA Respondent, decided on 27/2/2004.

Name of the Judge: Hon'ble Mr. Justice N. Santosh Hegde and Hon'ble Mr. Justice B. P. Singh.

Subject Index: Arbitration matter — Court did not express any opinion on legal arguments nor on the factual issues — appeal disposed on the grounds of equity and balance of convenience — while the respondents should be permitted to take the goods, the appellants should be paid as an interim measure the present value of the goods — arrangement is interim in nature and is subject to the award that may be made in the Arbitration proceedings.

2004 SCCL.COM 233(Case/Appeal No: Civil Appeal Nos. 1260-1261 of 1999)

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Anil Bansal Appellant vs. Ashok Kumar Bansal and others Respondents, decided on 27/2/2004.

Name of the Judge: Hon'ble the Chief Justice and Hon'ble Mr. Justice S. H. Kapadia.

Subject Index: Hindu Undivided Family — Arbitration Award — appellant has come to this Court with unclean hands — the appellant before us seeks to eat the cake and have it to. He wants all the benefits but not the liability — The award is based on distribution of assets, liabilities and properties of the parties — appeals dismissed.

2004 SCCL.COM 241(Case/Appeal No: Civil Appeal No. 1417 of 2004)

Secur Industries Ltd. Appellant vs. M/s. Godrej & Boyce Mfg. Co. Ltd. and another Respondents, decided on 26/2/2004.

Name of the Judge: Hon'ble Mrs. Justice Justice Ruma Pal and Hon'ble Mr. Justice P. Venkatarama Reddi.

Subject Index: Jurisdiction of the High Court in staying proceedings — in Arbitration matters appeal from an interim order passed by DB of Bombay High Court staying the Arbitration proceedings before the Uttar Pradesh Industry Facilitation Council set up under the interest on delayed payment to small scale and Ancillary Industrial Undertakings Act, 1993 — whether the High Court had the jurisdiction to pass the impugned order — High Court erred in staying proceedings before the Council. It had no jurisdiction to do so.

2004 SCCL.COM 275(Case/Appeal No: Civil Appeal No. 5601 of 2001 (With C.A. Nos. 7340-7341 of 2001))

Mukand Ltd. Appellant Vs. Mukand Staff & Officers' Association Respondent, decided on 10/3/2004.

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Name of the Judge: Hon'ble Mr. Justice Y. K. Sabharwal and Hon'ble Dr. Justice A. R. Lakshmanan.

Subject Index: Jurisdiction — of Industrial Tribunal — whether the Industrial Tribunal was justified in adjudicating upon the service conditions of employees, who are not "workmen" under the Industrial Disputes Act, 1947 and are hence clearly outside its jurisdiction — held the Industrial Tribunal did not have jurisdiction to adjudicate the present dispute in as much as it pertains to the conditions of service of non-workmen. The learned single Judge and the Division Bench of the High Court failed to appreciate that parties cannot be their conduct create or confer jurisdiction on an adjudicating authority when no such jurisdiction exists — the Division Bench has erred in holding that there is community of interest between the workmen and the non-workmen and holding further that the workmen could raise a dispute regarding the service conditions of non-workmen — the Industrial Tribunal is directed to adjudicate the claim of the workmen alone within six months from the date of receipt of this judgment.

2004 SCCL.COM 395(Case/Appeal No: Civil Appeal No. 9672 of 2003 (with C.A. Nos. 9673-74 of 2003))

Milkfood Ltd. Appellant Vs. M/s. GMC Ice Cream (P) Ltd. Respondent, decided on 5/4/2004.

Name of the Judge: Hon'ble the Chief Justice and Hon'ble Mr. Justice S. B. Sinha and Hon'ble Mr. Justice S. H. Kapadia.

Subject Index: Arbitration Act, 1940 — Arbitration and Conciliation Act, 1996 — provisions — interpretation of.

2004 SCCL.COM 997(Case/Appeal No: Civil Appeal No. 7140 of 2004)

Dharma Prathishthanam Appellant Vs. M/s. Madhok Construction Pvt. Ltd. Respondents, decided on 2/11/2004.

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Name of the Judge: Hon'ble the Chief Justice, Hon'ble Mr. Justice G. P. Mathur and Hon'ble Mr. Justice P. P. Naolekar.

Subject Index: Arbitration — Arbitration — Appointment of — award — the impugned Award given by the Arbitrator along with the appointment of the Arbitrator and reference made to him are all set aside as void *ab initio* and nullity. The respondent shall be at liberty to seek enforcement of his claim, if any, by having recourse to such remedy as may be available to him under law and therein pray for condonation of delay by seeking exclusion of time lost in the present proceedings.

2004 SCCL.COM 345(Case/Appeal No: Civil Appeal No. 4660 of 2001 (with C.A. Nos. 4661, 4662, 5208 and 6338 of 2001))

A. P. Gas Power Corpn. Ltd. Appellant with Madras Cements Ltd. Appellant with My Home Cement Industries Ltd. Appellant India Cements Co. Ltd. Appellant vs. A.P. State Regulatory Commission And another Respondents, decided on 23/3/2004.

Name of the Judge: Hon'ble Mr. Justice Brijesh Kumar and Hon'ble Mr. Justice Arun Kumar.

Subject Index: A) Andhra Pradesh Electricity Reform Act, 1998 — Sections 15, 16 — exemption under — appeal against the judgment of the Andhra Pradesh High Court, upholding the order passed by the Andhra Pradesh State Regulatory Commission and its finding that the extended activities of supply of energy to the sister concern of the participating industries of A. P. Gas Power Corporation Ltd. (for short, 'APGPCL') would require Licence or exemption therefrom under the provisions of Sections 15 or 16 of the Andhra Pradesh Electricity Reform Act 1998 — Held no licence is necessary for utilization of energy generated by APGPCL and utilised by the participating industries and the concerns holding shares of APGPCL transferred to them by the participating industries to the extent of value of the shares so transferred. It would, however, be necessary to have a licence for supply of energy to the sister concerns. B) Electricity Supply Act — Section 43(A)(1)(C) — any person — meaning of.

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2004 SCCL.COM 383(Case/Appeal No: Civil Appeal No. 1556 of 1999)

State of West Bengal Appellant vs. M/s. G. C. Ghosh Respondent, decided on 11/3/2004.

Name of the Judge: Hon'ble the Chief Justice, Hon'ble Mr. Justice S. H. Kapadia.

Subject Index: Arbitration Act, 1940 — Section 8 — dispute arose — referred to sole Arbitrator — Arbitrator died — Learned Single Judge of the High Court — instead of appointing an Arbitrator named in the agreement, appointed one Dilip Surana, Advocate. It is against the said judgment, the appellant is in appeal — in view of the designated Arbitrator named in the agreement, no other person could be appointed as an Arbitrator — it will be open to the Chief Engineer, Public Works Department to nominate any other person to act as an Arbitrator within a period of three months from today and give notice to the respondent of such appointment of Arbitrator.

2004 SCCL.COM 411(Case/Appeal No: Civil Appeal Nos. 5943-5945 of 1997)

Dr. Karan Singh Appellant Vs. State of Jammu and Kashmir and another Respondents, decided on 13/4/2004.

Name of the Judge: Hon'ble Mr. Justice Y. K. Sabharwal and Hon'ble Dr. Justice A. R. Lakshmanan.

Subject Index: Constitution of India — Article 363 — whether 563 articles lying in 'Toshakhana' (Treasury of the State of Jammu and Kashmir) can be declared as the private property of the appellant or this issue deserves fresh determination by Government of India or it be referred to Arbitration for adjudication — Bar of Article 363 of the Constitution of India to the maintainability of the writ petition — whether the appellant is disentitled to relief on applicability of

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the doctrine of estoppel, abandonment and waiver — whether the decision of the Government of India rejecting the representation deserves to be quashed and declaration granted that the articles are private property of the appellant or the issue either deserves to be remitted to Government of India for reconsideration or referred for adjudication to an arbitrator to be appointed by this Court.

2004 SCCL.COM 425(Case/Appeal No: Civil Appeal No. 1531 of 1999)

Union of India and others Appellants Vs. M/s. Banwari Lal and Sons (P) Ltd. Respondent, decided on 12/4/2004.

Name of the Judge: Hon'ble the Chief Justice, Hon'ble Mr. Justice S. B. Sinha and Hon'ble Mr. Justice S. H. Kapadia.

Subject Index: Arbitration — acquisition of property by Govt. — damages — payment of — arbitrator appointed — award made — objections — whether the use and occupation of the property by the appellant after 10.3.1987 was wrongful and illegal and in the nature of trespass — whether the arbitrator had failed to take into account relevant factors in assessing damages awarded in favour of the respondent — the arbitrator was required to assess damages by applying correct principles of valuation — if the said arbitrator is not available, the High Court shall appoint another arbitrator who shall decide the matter within three months from the date of appointment.

2004 SCCL.COM 428(Case/Appeal No: Civil Appeal Nos. 5489-5490 of 1995)

Bharat Coking Coal Ltd. Appellant Vs. L. K. Ahuja Respondent, decided on 12/4/2004.

Name of the Judge: Hon'ble Mr. Justice S. Rajendra Babu and Hon'ble Mr. Justice Ashok Bhan.

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Subject Index: A) Limitation Act — Section 119(b) — challenge to the validity of the award — definite time limit — the law is clearly to the effect that mere knowledge of passing of an award is not enough. The period of limitation will commence as provided in Article 119(b) of the Limitation Act only upon notice as to filing of the Award in the court has been given to the parties concerned. B) Award — modification of — so far as interest that is payable is concerned, the arbitrator has appropriately considered the same and no real objection can be raised in this regard. As regards Arbitration costs also there cannot be any serious dispute — except for the sums coming under the heading No.5, that is, Refund of Sales Tax and claim for payment of losses arising out of turn over due to prolongation of work, other part of the award having been upheld by us, the award made by the arbitrator shall stand modified accordingly.

2004 SCCL.COM 473(Case/Appeal No: Civil Appeal No. 538 of 2004)

The New Friends Co-operative House Building Society Ltd. Appellant Vs. Rajesh Chawla and Ors. Respondents, decided on 21/4/2004.

Name of the Judge: Hon'ble Mr. Justice Doraiswamy Raju and Hon'ble Mr. Justice Arijit Pasayat.

Subject Index: Writ Petition — legality of the judgment rendered by the High Court declaring the respondent not defaulters It was no body's case that any other person has been illegally asked to pay, or that any such collection has been illegally made. Direction for refund to other members is without application of mind and totally uncalled for. Judgment of the High Court set aside — respondents 1 to 3 have filed application before the Registrar of the Society on 27.8.2003 for referring the dispute to Arbitration, which alone is the proper procedure to get their civil liability finally and effectively adjudicated.

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2004 SCCL.COM 475(Case/Appeal No: Civil Appeal No. 6678 of 1996 (With Civil Appeal No. 1984 of 2000))

D.D. Sharma Appellant vs. Union of India Respondent, decided on 27/4/2004.

Name of the Judge: Hon'ble the Chief Justice, Hon'ble Mr. Justice S. B. Sinha and Hon'ble Mr. Justice S. H. Kapadia.

Subject Index: Arbitration Act, 1940 — Section 30 — objection filed by Union of India — allowed in part by DB of High Court appeal — no material existed to show that the Arbitrator while making an award ignored any material documents, the impugned judgment cannot be sustained, which is set aside accordingly — Civil Appeal No. 6678 of 1999 filed by the contractor is, therefore, allowed and Civil Appeal No. 1984 of 2000 filed by the Union of India is dismissed.

2004 SCCL.COM 737(Case/Appeal No: Civil Appeal No. 1346 of 1999)

G. D. Engineering Construction Appellant vs. Union of India Respondent, decided on 13/1/2004.

Name of the Judge: Hon'ble the Chief Justice V. N. Khare and Hon'ble Mr. Justice S.H. Kapadia.

Subject Index: Arbitration — Award — set aside by the High Court for not giving reasons — unless there is a statutory requirement to give reasons, an Arbitrator cannot be said to have committed illegality if no reasons are given in the Award.

2004 SCCL.COM 765(Case/Appeal No: Civil Appeal No. 5479 of 2004)

U.P. State Sugar Corporation Ltd. Appellant Vs. Jain Construction Co. and another Respondents, decided on 25/8/2004.

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Name of the Judge: Hon'ble Mr. Justice N. Santosh Hegde and Hon'ble Mr. Justice S. B. Sinha.

Subject Index: Arbitration Act, 1940 — Section 39(iv) — appeal under — allowed — in respect of the arbitral proceedings commenced before coming into force the 1996 Act, the provisions of the 1940 Act shall apply — the impugned judgment cannot be sustained. It is set aside accordingly. The matter is remitted to the High Court for consideration of the merits of the matter afresh.

2004 SCCL.COM 945(Case/Appeal No: Civil Appeal No. 689 of 1998 (with C.A. Nos. 5385/98 and 5389-5390 of 2002))

P.S. Sathappan (D) by Lrs. Appellants Vs. Andhra Bank Ltd. and others Respondents, decided on 10/7/2004.

Name of the Judge: Hon'ble Mr. Justice N. Santosh Hegde, Hon'ble Mr. Justice S. N. Variava, Hon'ble Mr. Justice B. P. Singh, Hon'ble Mr. Justice H. K. Sema and Hon'ble Mr. Justice S. B. Sinha.

Subject Index: Code of Civil Procedure — Section 104 — Interpretation of Section 104 of the Code of Civil Procedure (for short, 'the Code') *vis-a-vis* Clause 15 of the Letters Patent of the High Court of Madras is in question — Section 104 itself contemplates different rights of Appeals. Appeals saved by Section 104(1) can be filed. Those not saved will be barred by Section 104(2) — the Order of the High Court cannot be sustained. It is hereby set aside. The appeals are accordingly allowed with no order as to costs. The matters are remitted back to the High Court for decision on merits.

2004 SCCL.COM 1040(Case/Appeal No: I.A. No. 2 in Civil Appeal No. 1795 of 1982)

I.T.C. Ltd. Appellant Vs. George Joseph Fernandes & Anr. Respondents, decided on 19/11/2004.

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Name of the Judge: Hon'ble Mr. Justice Shivaraj V. Patil and Hon'ble Mr. Justice B. N. Srikrishna.

Subject Index: Arbitration — Application for transfer of the arbitral award to the Principal Senior Civil Judge at Vishakhapatnam, Andhra Pradesh — appropriate if the Award is transmitted to the Court in Vishakhapatnam and the parties are left at liberty to raise all contentions — both the parties are at liberty to raise all their contentions before the said Court.

2004 SCCL.COM 1083(Case/Appeal No: Civil Appeal No. 7890 of 2004)

Harinarayan G. Bajaj Appellant Vs. Rajesh Meghani and another Respondents, decided on 6/12/2004.

Name of the Judge: Hon'ble Mrs. Justice Ruma Pal, Hon'ble Mr. Justice Arijit Pasayat and Hon'ble Mr. Justice C. K. Thakker.

Subject Index: Bye-laws of the NSE — claim referred against the appellant to Arbitration — the appellant contested the claim and contended that he Arbitration reference under the Bye-laws was not maintainable on the ground that the same was filed after the respondent had been declared a defaulter. The appellant also filed a counter claim against the respondent before the Arbitral Tribunal — whether a trading member of the NSE who has been declared a defaulter has the right to initiate Arbitration proceedings under the NSE Rules and Byelaws — the provisions of Chapter XII would show that the amount which may be realised by the defaulter in respect of the transactions covered by Rules (1C) cannot be retained by him but must be made over by him to the Defaulters' Committee — the Defaulters' Committee may take action independently against the defaulters or his debtor or both under Bye law 28 in the name of the Exchange. If any further protection is required by the Exchange it is a need that must be met by the Exchange by framing an appropriate Bye law under Section 9 of the Securities

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Contracts (Regulation) Act, 1956 and not an exercise for the Courts to undertake by convoluted construction.

2004 SCCL.COM 1101(Case/Appeal No: Civil AppealNo.7978 of 2004 (with C.A. No. 7979 of 2004))

Hari Om Maheshwari Appellant Vs. Vinitkumar Parikh Respondent, decided on 9/12/2004.

Name of the Judge: Hon'ble Mr. Justice N. Santosh Hegde and Hon'ble Mr. Justice S. B. Sinha.

Subject Index: Arbitration Act — Section 30 — setting aside of the award — denial of opportunity for leading evidence — not ground contemplate under section 30 of the Arbitration Act jurisdiction of court entertaining a petition or application for setting aside an award under Section 30 of the Act is extremely limited to the grounds mentioned therein and the court does not think that grant or refusal of an adjournment by an arbitrator comes within the parameters of section 30 of the Act — the learned Single Judge and Division Bench have erred in setting aside the award only with a view to give an opportunity to the defaulting respondent to lead evidence which was rejected by the arbitrators by their reasoned order of 5/10/1999.

2005 SCCL.COM 38(Case/Appeal No: Criminal AppealNos.117-118 of 2005)

Kailash Verma Appellant vs. Punjab State Civil Supplies Corporation and Another Respondents, decided on 1/18/2005.

Name of the Judge: Hon'ble Mr. Justice K. G. Balakrishnan and Hon'ble Mr. Justice B. N. Srikrishna.

Subject Index: Indian Penal Code, 1860 — Sections 406 and 428 — crime registered under — The Chief Judicial Magistrate was of the view that the allegation contained in the complaint was of

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civil nature and no criminal case was made out. The Chief Judicial Magistrate also observed that there was no prima facie case to show that the paddy was supplied to the accused and that there was shortage of rice supplied to the corporation — by the impugned order the learned Single Judge set aside the order passed by the Additional Chief Judicial Magistrate, Sangrur, as well as the order passed by the Sessions Judge — the respondent-corporation has also initiated steps for Arbitration proceedings on the basis of the Arbitration clause in the agreement — the High Court was not justified in exercising its inherent power under Section 482 of the Criminal Procedure Code in this case. It cannot be either said that there was miscarriage of justice warranting interference by the High Court — the order of discharge passed by the learned Magistrate in favour of the appellant is affirmed.

2005 SCCL.COM 183(Case/Appeal No: Civil Appeal No. 3117 of 1999)

Shanmughasundaram and Ors. Appellants Vs. Diravia Nadar (D) by Lrs. and Anr. Respondents, decided on 11/3/2005.

Name of the Judge: Hon'ble Mr. Justice D. M. Dharmadhikari and Hon'ble Mr. Justice G. P. Mathur.

Subject Index: Arbitration Act, 1940 — Appeal against order of High Court — the High Court of Madras. By the impugned order, the High Court in exercise of its revisional jurisdiction has set aside the order of sub-ordinate Judge, Tuticorin whereby the latter had allowed substitution of the deceased arbitrator on the panel of seven arbitrators appointed by the parties under the Arbitration agreement — the property which is the subject matter of Arbitration agreement, is the land in occupation of the appellant as a tenant and on which by building a superstructure he is carrying on his business of Coffee House.

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2005 SCCL.COM 208(Case/Appeal No: Civil Appeal No. 1784 of 2005)

Union of India Appellant vs. Tecco Trichy Engineers & Contractors Respondents, decided on 3/16/2005.

Name of the Judge: Hon'ble the Chief Justice, Hon'ble Mr. Justice G. P. Mathur and Hon'ble Mr. Justice P. P. Naolekar.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 34(3) — application for condonation of delay — delay of 34 days — which is the effective date on which the appellant was delivered with and received the arbitral award as that would be the date wherefrom the limitation within the meaning of sub- Section (3) of Section 34 of the Act shall be calculated.

2005 SCCL.COM 228(Case/Appeal No: Civil AppealNo.8052 of 2001)

State of Rajasthan etc. etc. Appellants vs. M/s. Nav Bharat Construction Co. Respondent, decided on 28/3/2005.

Name of the Judge: Hon'ble the Chief Justice, Hon'ble Mr. Justice D. M. Dharmadhikari and Hon'ble Mr. Justice P. K. Balasubramanyan.

Subject Index: A) Arbitration Act, 1940 — Section 30 — objection petition — no objection was raised on the competence of the arbitrator or the validity of the Arbitration proceedings under Clause 23 of the agreement — the State is estopped on the doctrine of acquiescence and waiver from raising objection to the competence of the substituted arbitrator and validity of the Arbitration proceedings by taking recourse to clause 23 of the agreement on the basis of which initial reference was made to sitting Chief Engineer. B) Constitution of India — Article 136 — Court declined to interfere in the rate of interest awarded by the Civil Court — the appeal, preferred by the Contractor claiming future interest at higher rate, is dismissed. C) Revision Petition

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barred by time — no interfere — appeal filed against order of the High Court.

2005 SCCL.COM 255(Case/Appeal No: Civil Appeal Nos.2412-2413 of 2005 (With C.A.No. 2414 of 2005))

Bhagawati Oxygen Ltd Appellant Vs. Hindustan Copper Ltd. Respondent, decided on 5/4/2005.

Name of the Judge: Hon'ble Mrs. Justice Ruma Pal and Hon'ble Mr. Justice C. K. Thakker.

Subject Index: Arbitration Act, 1940 — Arbitration Award — A. P. filed by Hindustan Cooper Ltd. — Interest award of — interest — the learned single Judge as also the Division Bench were, therefore, not justified in setting aside the award passed by the Arbitrator dismissing the counter-claim and hence the order of the learned single Judge as confirmed by the Division Bench deserves to be set aside by restoring dismissal of counter-claim of HCL by the Arbitrator — it was within the power of Arbitrator to award interest — a relevant and germane factor weighed with the Arbitrator in awarding eighteen per cent interest that at that rate HCL had given advance to BOL — that part of the award passed by the Arbitrator did not deserve interference and learned single Judge and the Division Bench were not right in reducing the rate of interest.

2005 SCCL.COM 351(Case/Appeal No: Criminal Misc. Petition Nos.47-48 of 2005 (with Criminal Misc. Petition Nos.53-54 of 2005) IN Criminal Appeal Nos.1265-1266of 2004)

Arvind Mohan Johari & Another Appellants with The Stock Exchange, Mumbai Applicant vs. State of U.P. & Another Respondents,decided on 4/5/2005.

Name of the Judge: Hon'ble Mr. Justice N. Santosh Hegde, Hon'ble Mr. Justice D. M. Dharmadhikari and Hon'ble Mr. Justice S. B. Sinha.

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Subject Index: Bail — granting of — rejected — to whether the respective Stock Exchanges were entitled to debit the amounts of ` 21 Crores and 17 Crores respectively towards their purported claim should be directed to be scrutinized by us by a Chartered Accountant — the recoveries have been directed to be made by the Stock Exchanges in exercise of their power conferred upon them under the bye-laws governing the parties. Furthermore, several Arbitration awards are said to have been passed in favour of the clients/investors and the members of the Stock Exchanges. The parties, therefore, must get their disputes determined in an appropriate forum — the Appellants misled this Court in passing the said order dated 3/11/2004 by raising contention to the effect that a sum of ` 17 Crores and 13 Crores are admittedly lying with the Bombay Stock Exchange and National Stock Exchange in the shape of bank guarantee money and securities margin money etc. — having regard to the peculiar facts and circumstances of this case, that if a substantial sum lying with them are not available for disbursement to the claimants, the very purpose for enlarging the Appellants herein on bail would not be subserved and in that view of the matter.

2005 SCCL.COM 419 (Case/Appeal No: Civil Appeal No. 2641 of 2000 (with C.A. No. 2642 of 2000 and 3744-3746 of 2000))

State of H.P. and others Appellants vs. Gujarat Ambuja Cement Ltd. and another Respondents, decided on 18/7/2005.

Name of the Judge: Hon'ble Mrs. Justice Ruma Pal, Hon'ble Mr. Justice Arijit Pasayat & Hon'ble Mr. Justice C. K. Thakker.

Subject Index: Central Sales Tax Act, 1956 — Himachal Pradesh General Sales Tax Act, 1968 — Sales Tax — incentive scheme issued for exemption — provisional registration valid till 14/2/94 — renewed till 31/12/95 — certificate issued on 1/1/96 — effective from 11/8/95 — defect in declaration forms — held no non-compliance of statutory provisions — respondents entitled to

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exemption of sales tax — not liable to pay purchase tax on royalty paid — appeals dismissed.

2005 SCCL.COM 448(Case/Appeal No: Writ Petition (C) No. 496 of 2002 (with W.P. (C) No. 570 of 2002))

Salem Advocate Bar Association, Tamil Nadu Petitioner Vs. Union of India Respondent, decided on 2/8/2005.

Name of the Judge: Hon'ble Mr. Justice Y. K. Sabharwal, Hon'ble Mr. Justice D. M. Dharmadhikari and Hon'ble Mr. Justice Tarun Chatterjee.

Subject Index: Code of Civil Procedure, 1908 — Amendment Acts of 1999 and 2002 — recommendations and suggestions to various amendments in the Code made — draft Civil Procedure – Alternative Dispute Resolution and Mediation Rules and Model Case Flow Management Rules framed — High Courts, Central / State Governments to take requisite action and file progress report within four months.

2005 SCCL.COM 473(Case/Appeal No: Civil Appeal No. 5045-5046 of 2005)

Rajendra Construction Company Petitioner Vs. Maharashtra Housing & Area Development Authority and others Respondents, decided on 12/8/2005.

Name of the Judge: Hon'ble Mr. Justice C. K. Thakker and Hon'ble Mr. Justice P. K. Balasubramanyan.

Subject Index: A) Arbitration Act, 1940 — Award — not liable to be set aside merely because reasons are not given unless same required by the Arbitration agreement, deed of submission, order of an court or statute governing Arbitration. B) Arbitration — arbitrator has power to award interest for (i) pre-reference period; (ii) *pendente lite* and (iii) post award period — keeping in view facts and circumstances of the case.

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2005 SCCL.COM 484(Case/Appeal No: Civil Appeal No. 5048 of 2005)

Shin-Etsu Chemical Co. Ltd. Appellant Vs. M/s. Aksh Optifibre Ltd. and Another Respondents, decided on 12/8/2005.

Name of the Judge: Hon'ble Mr. Justice Y.K. Sabharwal, Hon'ble Mr. Justice D. M. Dharmadhikari and Hon'ble Mr. Justice B. N. Srikrishna.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 45 — Majority view — an application under section 45 has to be determined after arriving at the *prima facie* satisfaction that there exists an arbitral agreement, which is "not null and void, inoperative or incapable of being performed" — by interpreting the provision as above basic requirements namely, expedition at pre-reference stage and fair opportunity to contest the award after full trial, satisfied — Minority view — under section 45 determination has to be on merits final and binding.

2005 SCCL.COM 552(Case/Appeal No: Civil Appeal No. 6593 of 2003 (with C.A. No. 5143 of 2005))

Management Committee of Montfort Senior Secondary School Appellant vs. Shri Vijay Kumar and Others Respondents, decided on 12/9/2005.

Name of the Judge: Hon'ble Mr. Justice Arijit Pasayat and Hon'ble Mr. Justice H. K. Sema.

Subject Index: Delhi School Education Act, 1973 — Sections 8(1) and (3) and 15 — non-referral of appeal to Arbitration by Delhi School Tribunal — challenged as statutory Arbitration agreement subsisting between parties — two remedies i.e. appeal and Arbitration available to employee under the Act — provisions of Act applicable to un-aided minority institutions — in case multiple remedies are available, principle of *dominus litis* is applicable — appeal dismissed.

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2005 SCCL.COM 559 (Case/Appeal No: Civil Appeal No. 7337 of 2004)

Mrs. Sanjana M. Wig Appellant Vs. Hindustan Petro Corporation Ltd. Respondent, decided on 9/15/2005.

Name of the Judge: Hon'ble Mr. Justice S. B. Sinha and Hon'ble Mr. Justice C. K. Thakker.

Subject Index: Judicial Review — writ petition dismissed *in limine* on ground of existence of an alternative remedy i.e., Arbitration clause in agreement — challenged as relief of restoration of distributionship agreement cannot be granted by arbitrator — disputed questions involved — relief of restoration cannot be granted as contract stood terminated on death of appellants partner — no new contract entered into — appellant committed default in payments and also violated terms of contract — appeal dismissed.

2005 SCCL.COM 627(Case/Appeal No: Civil Appeal No. 2500 of 2001)

State of Rajasthan Appellant Vs. M/s. Nav Bharat Construction Company Respondent, decided on 4/10/2005.

Name of the Judge: Hon'ble Mr. Justice S. N. Variava and Hon'ble Mr. Justice Tarun Chatterjee.

Subject Index: Arbitration Act, 1940 — Sections 11, 20, 30 and 33 — bias — no evidence produced showing that umpire was appearing for and / or regularly assisting the respondents — contention of bias untenable — majority of claims against the terms of the contract — arbitrator went beyond the terms of the contract between the parties — misconduct — award set aside — independent umpire appointed and matter referred to him.

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2005 SCCL.COM 706(Case/Appeal No: Civil Appeal No. 4168 of 2003 (C.A. Nos. 4169/2003, 4170-4173/2003, 4076/2004, 3777/2003 and C.A. Nos. 6562,6563-6564,6565-6566 of 2005 of 2005 arising out of S.L.P. (Civil) Nos. 3205/2004, 14033- 14034/2004, 21272-21273/2002))

M/s. S. B. P. & Co. Appellant Vs. M/s. Patel Engineering Ltd. and another Respondents, decided on 26/10/2005.

Name of the Judge: Hon'ble the Chief Justice R. C. Lahoti, Hon'ble Mr. Justice B. N. Agrawal, Hon'ble Mr. Justice Arun Kumar, Hon'ble Mr. Justice G. P. Mathur, Hon'ble Mr. Justice A. K. Mathur & Hon'ble P. K. Balasubramanyan, J.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11 — nature of the functions of the Chief Justice under Section 11 — power exercised under Section 11(6) is a judicial power — can be delegated by Chief Justice to another judge of same court — designation of District Judge as an authority impermissible — appeal against order passed by Chief Justice of High Court lies under Article 136 of Constitution — no appeal lies against order passed by Chief Justice of Supreme Court.

2005 SCCL.COM 773(Case/Appeal No: Arbitration Petition No. 3 of 2005)

Rite Approach Group Ltd. Petitioner vs. M/s. Rosoboronexport Respondent, decided on 16/11/2005.

Name of the Judge: Hon'ble Mr. Justice A. K. Mathur.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11(6) — Appointment of Arbitrator– specific Arbitration clause in agency agreement conferring power on a Trade Federation for resolution of dispute — whenever there is a specific clause conferring jurisdiction on a particular Court to decide the matter then it automatically ousts the jurisdiction of other Courts — Supreme Court has no jurisdiction to resolve issue in instant case — application rejected.

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2005 SCCL.COM 812(Case/Appeal No: Arbitration Petition No. 22 of 2005)

MSA Nederland B. V. Petitioner vs. M/s. Larsen & Toubro Ltd. Respondent, decided on 29/11/2005.

Name of the Judge: Hon'ble Mr. Justice Arun Kumar.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11(9) — application for appointment of arbitrator having a neutral nationality — under provisions of Section 11(9) it is not mandatory that sole arbitrator should be of nationality other than the nationalities of the parties to the agreement — held Court not bound to appoint arbitrator having neutral nationality.

2005 SCCL.COM 835(Case/Appeal No: Civil Appeal No. 7522 of 2005)

M/s. Transmission Corporation of A. P. Ltd. Appellant vs. M/s. Lanco Kondapalli Power Pvt. Ltd. Respondent, decided on 15/12/2005.

Name of the Judge: Hon'ble Mr. Justice S. B. Sinha and Hon'ble Mr. Justice P. P. Naolekar.

Subject Index: Constitution of India, 1950 — Article 136 — Arbitration and Conciliation Act, 1996 — Sections 9 and 11 — Andhra Pradesh Electricity Reform Act, 1998 — Section 37(1) — Power Purchase Agreement entered into between parties — dispute regarding installed capacity — application for permanent injunction filed by respondent u/s 9 of the Act — application filed by appellant before AP Electricity Regulatory Commission — arbitrator not appointed — not a fit case to exercise jurisdiction under Article 136 — High Court directed to consider desirability of petitions.

2006 SCCL.COM 19(Case/Appeal No: Civil Appeal Nos. 8357 of 2003 (with C.A. No. 8358 of 2003))

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Dresser Rand S. A. Appellants vs. M/s. Bindal Agro Chem. Ltd. and another Respondents, decided on 12/1/2006.

Name of the Judge: Hon'ble Mr. Justice Arun Kumar and Hon'ble Mr. Justice R. V. Raveendran.

Subject Index: Foreign Awards (Recognition and Enforcement) Act, 1961 — Section 3 — Arbitration Act, 1940 — Sections 33 and 34 — Reference of dispute to Arbitration — no specific Arbitration agreement in General Conditions of Purchase' or 'Letters of Intent' — purchase order not placed — fact that at some point of time respondents stated that they would appoint an Arbitrator would not come in the way of their demonstrating that there is no Arbitration agreement between parties — appeals dismissed.

2006 SCCL.COM 53(Case/Appeal No: Arbitration Petition 1 of 2005)

Shin Satellite Public Co. Ltd. Petitioner vs. M/s. Jain Studios Limited Respondent, decided on 31/1/2006.

Name of the Judge: Hon'ble Mr. Justice C. K. Thakker.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11(6) — Contract Act, 1872 — Section 28 — Arbitrator — appointment of – Arbitration agreement — validity of — Arbitration clause challenged as it took away rights of parties to challenge award passed by arbitrator — as per severability clause, if any provision of agreement is rendered invalid or illegal it would not prejudice the remainder — hence rest of agreement enforceable — arbitrator appointed.

2006 SCCL.COM 74(Case/Appeal No: Civil Appeal No. 955 of 2006)

M/s BSES Ltd. (Now Reliance Energy Ltd.) Appellant vs. M/s. Fenner India Ltd. another Respondents, decided on 3/2/2006.

Name of the Judge: Hon'ble Mr. Justice H. K. Sema and Hon'ble Mr. Justice B. N. Srikrishna.

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Subject Index: Bank Guarantee — invocation of — contract not satisfactory performed — appellants entitled to encash bank guarantees — no case of fraud or irretrievable injury made out by respondent — Arbitration proceedings pending — appellant entitled to encash bank guarantees, subject to adjustment in arbitral proceedings — appeal allowed with costs.

2006 SCCL.COM 176(Case/Appeal No: Arbitration Petition No. 27 of 2005(With Arbitration Petition Nos. 28 and 29/2005))

You One Engg. & Construction Co. Ltd. & Another Petitioners Vs. National Highways Authority of India Respondent, decided on 10/3/2006.

Name of the Judge: Hon'ble Mr. Justice B. N. Srikrishna.

Subject Index: Arbitration and Conciliation Act, 1996 — Sections 2(f)(ii), 11(6) and 11(12) — appointment of arbitrator — presiding arbitrator appointed by Indian Road Congress — no qualification for arbitrator prescribed in agreement — arbitrator appointed as per terms of agreement between parties — appointment valid and justified — petitions dismissed.

2006 SCCL.COM 182(Case/Appeal No: Civil Appeal Nos. 5573-5574 of 2004)

Percept D'Mark (India) Pvt. Ltd. Appellant vs. Zaheer Khan and another Respondents, decided on 22/3/2006.

Name of the Judge: Hon'ble Mr. Justice H. K. Sema and Hon'ble Dr. Justice A. R. Lakshmanan.

Subject Index: Indian Contract Act, 1872 — Section 27 — Arbitration and Conciliation Act, 1996 — Section 9 — appellant appointed to manage media affairs, endorsements of respondent — contract not renewed by respondent — agreement providing for obligation on part of respondent to give opportunity to appellant

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to match offer of third party does not restricts respondent from entering into contract with a third party — appellant can proceed for breach of contractual terms only — appeals dismissed.

2006 SCCL.COM 217(Case/Appeal No: Civil Appeal No. 126 of 2005)

Hari Shankar Singhania and others Appellants vs. Gaur Hari Singhania and others Respondents, decided on 4/4/2006.

Name of the Judge: Hon'ble Mr. Justice H. K. Sema and Hon'ble Dr. Justice A. R. Lakshmanan.

Subject Index: Arbitration Act, 1940 — Section 20 — Limitation Act, 1963 — Article 137 — Arbitration — limitation — family settlement — series of communications between family member for dissolution of partnership, plaint u/s 20 of Arbitration Act filed on 8/5/1992 within period of 3 years from date of last correspondence dated 29/9/1989 hence plaint not barred by limitation — suit property in hands of Respondents 1 to 9 who are avoiding amicable settlement — sole arbitrator appointed by Court for resolution of disputes.

2006 SCCL.COM 242(Case/Appeal No: Civil Appeal No. 3134 of 2002)

Hindustan Zinc. Ltd. Appellant Vs. M/s. Friends Coal Carbonisation Respondent, decided on 4/4/2006.

Name of the Judge: Hon'ble Mr. Justice Arun Kumar and Hon'ble Mr. Justice R. V. Raveendran.

Subject Index: Arbitration and Conciliation Act, 1996 — Sections 34 and 37 — contract between parties for supply of metallurgical coke — dispute regarding price variation referred to Arbitration — respondents used superior quality of coal since 14/7/1992, hence respondents entitled to price increase as per escalation clause from

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that date — escalation to be calculated with reference to prevailing price of superior quality of coal and base price of superior quality of coal — amount rightly calculated by appellant and already paid alongwith interest — appeal allowed.

2006 SCCL.COM 258(Case/Appeal No: Arbitration Petition No. 25 of 2005)

Rodemadan India Limited Petitioner vs. International Trade Expo Centre Limited Respondent, decided on 17/4/2006.

Name of the Judge: Hon'ble Mr. Justice B. N. Srikrishna.

Subject Index: (A) Arbitration and Conciliation Act, 1996 — Sections 2(1)(f), 9, 11(6) — Appointment of arbitrator — charged on ground thatArbitration agreement was repudiated in General Meeting — correctness of resolution disputed — arbitrator appointed. (B) Arbitration and Conciliation Act, 1996 — Section 11(6) — Supreme Court Rules, 1966 — Order VII Rule 1 — power of Chief Justice u/s 11(6) different from power of Supreme Court, hence specification in Order VII Rule 1 as to the minimum number of judges has no application thereto.

2006 SCCL.COM 264(Case/Appeal No: Arbitration Petition 1 of 2006)

Sedco Forex International Drilling Inc. Appellant Vs. The Oil and Natural Gas Corporation Ltd. Respondent, decided on 20/4/2006.

Name of the Judge: Hon'ble Mr. Justice S. H. Kapadia.

Subject Index: Arbitration and Conciliation Act, 1946 — Section 11(4) — Customs duty paid by applicant — liability of reimbursement denied by respondent — Arbitration petition challenged on ground that appropriate authority has not pronounced decision on entitlement of applicant under the essentiality certificate — applicant is seeking reimbursement of

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duty paid in terms of contract and as liability to pay customs duty had accrued, application not pre-mature — arbitrators appointed.

2006 SCCL.COM 272(Case/Appeal No: Civil Appeal No. 2153 of 2006)

M/s. Mukand Ltd. Appellant vs. Hindustan Petroleum Corporation Ltd. Respondent, decided on 21/4/2006.

Name of the Judge: Hon'ble Mr. Justice S.B. Sinha and Hon'ble Mr. Justice P. K. Balasubramanyan.

Subject Index: Arbitration Act, 1940 — Section 30 — Appeal against award — appellant aggrieved by award of 11% future interest on decretal amount — *post decree* interest reduced to 7½ p.a. — appeal disposed of.

2006 SCCL.COM 306(Case/Appeal No: Arbitration Petition Nos. 8 and 9 of 2005)

San-A Tradubg Co. Ltd. Appellant Vs. I.C. Textiles Ltd. Respondent, decided on 28/4/2006.

Name of the Judge: Hon'ble Mr. Justice P. P. Naolekar.

Subject Index: Arbitration and Conciliation Act, 1996 — Sections 11(6) and 15 — Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22 — named arbitrator expressed his inability to act as arbitrator — respondent company declared a sick company — no specific condition debarring appointment of a fresh arbitrator hence, Arbitration clause does not stand obliterated on the named arbitrator's refusal — Arbitrationproceedings not barred u/s. 22 of SICA — named arbitrator ready to take up Arbitration — applications disposed of.

2006 SCCL.COM 356(Case/Appeal No: Civil Appeal No. 2562 of 2006 (with C.A. No. 2564 of 2006))

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M/s. Centrotrade Minerals & Metal. Inc. Appellant vs. Hindustan Copper Ltd. Respondent, decided on 9/5/2006.

Name of the Judge: Hon'ble Mr. Justice S. B. Sinha .

Subject Index: Arbitration and Conciliation Act, 1996 — Sections 4 and 16 — Contract Act, 1872 — Section 23 — Jurisdiction — two tierArbitration is invalid in context of 1996 Act — an Arbitration agreement which is contrary to the provisions of law governing the contract between the parties would be void being opposed to public policy — appeals disposed of.

2006 SCCL.COM 393(Case/Appeal No: Civil Appeal No. 4492 of 1998)

Mcdermott International Inc. Appellant Vs. Burn Standard Co. Ltd. & Ors. Respondent, decided on 12/5/2006.

Name of the Judge: Hon'ble Mr. Justice B. P. Singh and Hon'ble Mr. Justice S. B. Sinha.

Subject Index: A) Arbitration and Conciliation Act, 1996 — Sections 2(1), 31, 33, 34, 16, 37 — Indian Contract Act, 1872 — Sections 55 and 73 — application for setting aside of award — partial award in substance is an interim award, its validity cannot be challenged — exchange rate clause shall not cease to apply because of breaches on part of respondent — rate of interest reduced to 7½% — award modified. (B) Construction contracts — methods for computation of damages — Hudson formula — Emden formula — Eichleay Formula — scope of.

2006 SCCL.COM 415(Case/Appeal No: Arbitration Petition No. 4 of 2006)

M/s. Groupe Chimique Tunisien SA Petitioner vs. M/s. Southern Petrochemicals Industries Corpn. Ltd. Respondent, decided on 24/5/2006.

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Name of the Judge: Hon'ble Mr. Justice R. V. Raveendran .

Subject Index: Arbitration and Conciliation Act, 1996 — Sections 2(b), 7, 10 and 11(4) — appointment of an Arbitral Tribunal — Arbitrationagreement contained in the contract (purchase order) by reference, hence invoice need not contain a provision for Arbitration — if a party takes the stand that there is no Arbitration agreement on account of mistake or wrong understanding of law, it is not estopped from seeking Arbitration– Arbitral Tribunal constituted.

2006 SCCL.COM 416(Case/Appeal No: Civil Appeal No. 5352 of 2002)

M/s. Klassic Construction (Pvt.) Ltd. Appellant Vs. M/s. Army Welfare Housing Organisation Respondent, decided on 25/5/2006.

Name of the Judge: Hon'ble Dr. Justice A. R. Lakshmanan and Hon'ble Mr. Justice Lokeshwar Singh Panta.

Subject Index: Arbitration — appointment of arbitrator — panel of three names submitted by respondent — sole arbitrator selected by appellant from the panel — arbitrator nominated with consent of both the parties — appeal disposed of.

2006 SCCL.COM 442(Case/Appeal No: Civil Appeal No. 1457 of 2004 (with C.A. Nos. 1458, 1459-1460, 1461, 1462, 1463, 1464, 1465 of 2004))

State of Goa Appellant vs. M/s. Western Builders Respondent, decided on 5/7/2006.

Name of the Judge: Hon'ble Mr. Justice H. K. Sema and Hon'ble Mr. Justice A. K. Mathur.

Subject Index: Limitation Act, 1963 — Sections 5, 14 and 29 — Arbitration and Conciliation Act, 1996 — Sections 34, 43 — limitation –Arbitration — whether provisions of Section 14 of

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Limitation Act are application of Arbitration and Conciliation Act — neither the Statement of Objects and Reasons nor does the Arbitration and Conciliation Act itself expressly excludes the applicability of Section 14 of the Limitation Act — hence, Section 14 is applicable is Arbitration and Conciliation Act — appeals allowed.

2006 SCCL.COM 458(Case/Appeal No: Review Petition (Civil) (D) No. 5970 of 2006 (In Arbitration Petition No. 1 of 2005))

M/s. Jain Studios Ltd. Through its President Petitioner vs. Shin Satellite Public Co. Ltd. Respondent, decided on 7/11/2006.

Name of the Judge: Hon'ble Mr. Justice C. K. Thakker (Chamber Judge).

Subject Index: Constitution of India, 1950 — Article 137 — Arbitration and Conciliation Act, 1996 — Section 11(6) — Review — Arbitration — an order passed by CJI or his nominee u/s 11(6) is an order within meaning of Article 137 and is subject to review — if an issue has been once decided in original matter, same relief cannot be sought by an indirect method by filing review petition — prayer for reconsideration of order passed in Arbitration Petition rejected.

2006 SCCL.COM 464(Case/Appeal No: Special Leave Petition (Civil) No. 11279 of 2006)

M/s. Yashwith Constructions (P) Ltd. Petitioner vs. M/s. Simplex Concrete Piles India Ltd. & Another Respondents, decided on 3/7/2006.

Name of the Judge: Hon'ble Mr. Justice P. K. Balasubramanyan and Hon'ble Mr. Justice R. V. Raveendran.

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Subject Index: Arbitration and Conciliation Act, 1996 — Sections 11(6) and 15 — Appointment of substitute arbitrator — arbitrator resigned — appointment of substitute arbitrator by Managing Director of respondent company challenged — power exercised by Managing Director is saved by Section 15(2) providing for appointment of substitute arbitrator and is in terms of the Arbitration agreement — petition dismissed.

2006 SCCL.COM 555(Case/Appeal No: Civil Appeal No. 3420 of 2006)

Rashtriya Ispat Nigam Limited & Another Appellants vs. M/s. Verma Transport Company Respondent, decided on 8/8/2006.

Name of the Judge: Hon'ble Mr. Justice S. B. Sinha and Hon'ble Mr. Justice Dalveer Bhandari.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 8 — interpretation and application of — for maintaining an application under Section 8 of the 1996 Act, service of notice under the Arbitration agreement was not mandatory. The said stage was yet to be reached. What was necessary was existence of an Arbitration agreement.

2006 SCCL.COM 609(Case/Appeal No: Civil Appeal No. 3801 of 1999(with C.A. No. 3802 of 1999))

Jai Narain Parasurampuria (Dead) and others Appellants Vs. Pushpa Devi Saraf and others Respondents, decided on 24/8/2006.

Name of the Judge: Hon'ble Mr. Justice S. B. Sinha and Hon'ble Mr. Justice P. P. Naolekar.

Subject Index: Specific performance of the contract — not granted — the conduct of both the parties are blameworthy. The value of the property is now said to be a few crores. The appellants had deposited a sum of ` 10 lakhs as far back as on 12/6/1984. The

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said amount must be directed to be refunded to the appellants with interest @15% per annum — interest of justice would be met if the respondents are directed to pay a sum of ` 50,00,000/- to the Appellants herein by way of compensation. Such amount should be in addition to the sum of ` 10,00,000/- deposited by the Appellants together with interest at the rate of 12% per annum thereupon. This order shall not preclude Manoj Kumar Poddar to bring an independent action against the respondents herein, if he so desires.

2006 SCCL.COM 637(Case/Appeal No: Civil Appeal No. 3773 of 2006)

Jindal Vijayanagar Steel (JSW Steel Ltd.) Appellant vs. Jindal Praxair Oxygen Company Ltd. Respondent, decided on 29/8/2006.

Name of the Judge: Hon'ble Dr. Justice A. R. Lakshmanan and Hon'ble Mr. Justice Lokeshwar Singh Panta.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 9 — appeal against the order of High Court, which according to appellant wrongly assumed jurisdiction — despite holding that the entire cause of action has arisen outside its territorial jurisdiction.

2006 SCCL.COM 651(Case/Appeal No: Civil Appeal No. 3870 of 2006)

United India Insurance Co. Ltd. Appellant vs. J.A. Infra Structure Pvt. Ltd. Respondent, decided on 30/8/2006.

Name of the Judge: Hon'ble Dr. Justice A. R. Lakshmanan and Hon'ble Mr. Justice Tarun Chatterjee.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 34 — Limitation Act, 1963 — Section 14 — applicability of — there is no two opinion in the matter that the Arbitration and Conciliation Act, 1996 does not expressly excluded the applicability of Section 14 of the Limitation Act and that the prohibitory provision has to be construed strictly.

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2006 SCCL.COM 680(Case/Appeal No: Civil Appeal No. 4109 of 2006)

B.S.N.L. and others Appellants vs. M/s. Subash Chandra Kanchan and another Respondents, decided on 9/13/2006.

Name of the Judge: Hon'ble Mr. Justice S.B. Sinha and Hon'ble Mr. Justice Dalveer Bhandari.

Subject Index: Arbitration Act, 1996 — discretion jurisdiction — exercise of — it does not appear that the allegations contained in the said application were supported by an affidavit. In that view of the matter, no credence to the averments contained therein cannot be given — it is not a case where this Court should exercise its discretionary jurisdiction.

2006 SCCL.COM 782(Case/Appeal No: Civil Appeal No. 4516 of 2006)

Union of India Appellant vs. M/s. Shring Construction Company Private Limited Respondent, decided on 17/10/2006.

Name of the Judge: Hon'ble Mr. Justice G. P. Mathur and Hon'ble Mr. Justice A. K. Mathur.

Subject Index: Limitation Act — Section 14 — applicability to the Arbitration and Conciliation Act, 1996.

2006 SCCL.COM 828(Case/Appeal No: Civil Appeal No. 4610 of 2006)

Sandeep Kumar and others Appellants vs. Master Ritesh and others Respondents, decided on 10/31/2006.

Name of the Judge: Hon'ble Mr. Justice S. B. Sinha and Hon'ble Mr. Justice Dalveer Bhandari.

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Subject Index: Arbitration — plaints — amendments — Arbitration agreement — it may be true that Plaintiffs-Appellants had been representing a group, but admittedly all the parties to the suit were not parties to the Arbitration agreement. If some of the Defendants were not parties to theArbitration agreement, the question of invoking the Arbitration clause as against those Defendants would not arise — fail to see as to how theArbitration agreement can still be invoked under Section 34 of the Arbitration Act, 1940 or Section 8 of the Arbitration and Conciliation Act, 1996.

2006 SCCL.COM 870(Case/Appeal No: Civil Appeal No. 4130 of 2003)

Paramjeet Singh Patheja Appellant vs. ICDS Ltd. Respondent, decided on 31/10/2006.

Name of the Judge: Hon'ble Dr. Justice A. R. Lakshmanan and Hon'ble Mr. Justice Lokeshwar Singh Panta.

Subject Index: Presidency Town Insolvency Act, 1909 — Sections 9 and 9(2) — whether an Arbitration award is a "decree" for the purpose of section 9 of the Presidency Towns Insolvency Act, 1909? — whether an insolvency notice can be issued under section 9(2) of the Presidency Towns Insolvency Act, 1909 on the basis of an Arbitration award?

2006 SCCL.COM 884(Case/Appeal No: Civil Appeal No. 4759 of 2006)

Chief Engineer of B.P.D.P./R.E.O., Ranchi Appellant vs. M/s. Scoot Wilson Kirpatrick India Pvt. Ltd. Respondent, decided on 11/10/2006.

Name of the Judge: Hon'ble Mr. Justice Arijit Pasayat and Hon'ble Mr. Justice Lokeshwar Singh Panta.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 37 — appeal filed under — maintainability of.

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2006 SCCL.COM 889(Case/Appeal No: Civil Appeal No. 4699 of 2006)

Oil & Natural Gas Corporation Ltd. Appellant Vs. M/s. Nippon Steel Corporation Ltd. Respondent, decided on 11/7/2006.

Name of the Judge: Hon'ble Dr. Justice A. R. Lakshmanan and Hon'ble Mr. Justice Tarun Chatterjee.

Subject Index: Arbitration Act, 1940 — Section 14(2) — whether the filing of the award dated 2/3/1996 by M/s. Little & Co., advocate for the Oil & Natural Gas Corporation Ltd. in the Court on 23/3/1996 is the deemed notice under Section 14(2) of the Arbitration Act, 1940 and whether the limitation for setting aside the said award at the instance of ONGC shall commence from that date — mere intimation from one party to the other of the filing of the Award cannot be construed as notice in terms of Section 14(2) of the Act.

2006 SCCL.COM 917(Case/Appeal No: Civil Appeal No. 4780 of 2006)

M/s. Pandey & Co. Builders Pvt. Ltd. Appellant Vs. State of Bihar and another Respondents, decided on 11/10/2006.

Name of the Judge: Hon'ble Mr. Justice S. B. Sinha and Hon'ble Mr. Justice Dalveer Bhandari .

Subject Index: Arbitration and Conciliation Act, 1996 — Section 37(2) — Jurisdiction to hear the appeal — not necessary to go into the question as to whether Sub-section (3) of Section 37 of the 1996 Act would debar an appeal from appellate order passed under Sub-section (2) of Section 37 thereof — there exists a distinction between an appeal and an application. Whereas Section 31(4) of the 1940 Act or Section 42 of the 1996 Act provides for an application, Sub-section (2) of Section 37 of the 1996 Act provides for a statutory appeal. A forum of an appellate court must be

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determined with reference to the definition thereof contained in the 1996 Act.

2006 SCCL.COM 954(Case/Appeal No: Civil Appeal Nos. 6593-6594 of 2005)

Union of India and another Appellants vs. M/s. V. S. Engineering (P) Ltd. Respondent, decided on 16/11/2006.

Name of the Judge: Hon'ble Mr. Justice A. K. Mathur and Hon'ble Mr. Justice Lokeshwar Singh Panta.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11 — appointment of arbitrator — Railways and Public institutions are very slow in reacting to the request made by a contractor for appointment of the arbitrator — in case appointment is not made in time on the request made by the contracting party. then in that case the power of the High Court to appoint arbitrator under Section 11 of the Act will not be denuded. Court cannot allow administrative authorities to sleep over the matter and leave the citizens without any remedy — the General Manager, Railway to appoint arbitral tribunal within a period of 30 days from the date of receipt of a certified copy of this order.

2006 SCCL.COM 1078(Case/Appeal No: Civil Appeal No. 2572 of 2006)

Morgan Securities and Credit Pvt. Ltd. Appellant vs. Modi Rubber Ltd. Respondent, decided on 12/14/2006.

Name of the Judge: Hon'ble Mr. Justice S. B. Sinha and Hon'ble Mr. Justice P. K. Balasubramanyan.

Subject Index: Arbitration and Conciliation Act, 1996 — provisions of — whether the provisions of the Arbitration and Conciliation Act, 1996 would prevail over the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985.

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2007 SCCL.COM 18(Case/Appeal No: Civil Appeal No. 149 of 2007)

Krishna Bhagya Jala Nigam Ltd. Appellant vs. G. Harischandra Reddy and another Respondents, decided on 1/10/2007.

Name of the Judge: Hon'ble Dr. Arijit Pasayat and Hon'ble Mr. Justice S. H. Kapadia.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 37(1)(b) — dismissal of the appeal by DB of Karnataka High Court — 2 issues for determination — whether Jala Nigam could raise that Clause 29 is not Arbitration clause and the second is regarding merits of the claim made.

2007 SCCL.COM 54(Case/Appeal No: Civil Appeal No. 266 of 2007)

M/s. Engineer Syndicate Appellant Vs. State of Bihar and others Respondents, decided on 17/1/2007.

Name of the Judge: Hon'ble Dr. Justice AR. Lakshmanan and Hon'ble Mr. Justice V. S. Sirpurkar.

Subject Index: Arbitration Act, 1940 — case under — appeal against the final judgment of Patna High Court — learned senior counsel submitted that the order passed by the learned subordinate Judge as affirmed by the High Court is not correct and that the award can be set aside on the ground of error of law apparent on the face of the record under Section 30 of the Act but it qualified the above legal position that the Court while dealing with the application for setting aside an award has no power to consider whether the view of the arbitrator on the evidence was justified — the award passed by the arbitrator dated 4/7/1988 is restored and the appellant will be entitled to the amount awarded by the said award. The award of the arbitrator dated 4/7/1988 is made a rule of court.

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2007 SCCL.COM 63(Case/Appeal No: Civil Appeal No. 326 of 2007)

M/s. Agri Gold Exims Ltd. Appellant vs. M/s. Sri Lakshmi Knits & Wovens and others Respondents, decided on 23/1/2007.

Name of the Judge: Hon'ble Mr. Justice S. B. Sinha and Hon'ble Mr. Justice Markandey Katju .

Subject Index: Arbitration — appeal against an order of Andhra Pradesh High Court directing the parties to take recourse to the provisions of the Arbitration and Conciliation Act, 1996, opining that the suit filed by the appellant was not maintainable — in a case where there exists an Arbitration agreement, the court is under obligation to refer the parties to Arbitration in terms of the Arbitration agreement — High Court was right in referring the dispute between the parties to Arbitration.

2007 SCCL.COM 74(Case/Appeal No: Civil Appeal No. 5230 of 2004 (with Civil Appeal No. 5231 of 2004))

Ghaziabad Zila Sahkari Bank Ltd. Appellant vs. Addl. Labour Commissioner and others Respondents, decided on 17/1/2007.

Name of the Judge: Hon'ble Dr. Justice A. R. Lakshmanan and Hon'ble Mr. Justice Tarun Chatterjee.

Subject Index: Ex-gratia payment to the employees of bank — policy matter — State of U. P. has filed petition for leave of this Court questioning the correcting of the order passed by the High Court — the impugned judgment of the High Court suffers from the error of complete non-application of mind on the merits of the case in as much as whole pleadings either before the Commissioner and before the High Court was that the payment of ex-gratia to the employees are against the objects of the society and it is in contravention of the provisions of the U.P. Act, 1947, rules and regulations — appeals of the bank and State allowed — the payments made need not be recovered.

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2007 SCCL.COM 158(Case/Appeal No: Criminal Appeal No. 814 of 2007)

Vipin Kumar Gadhok Petitioner vs. Ravinder Nath Khanna & Ors. Respondents, decided on 19/2/2007.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice R. V. Raveendran.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11 — appeal against the order passed by Delhi High Court in Arbitration Application and the order rejecting the application for review — The High Court has rightly allowed the application for appointment of sole Arbitrator, to decide the disputes between Applicants 1 and 2, and Respondents 1 to 4, before it — no question of Arbitrator examining whether the disputes are arbitrable or not.

2007 SCCL.COM 214(Case/Appeal No: Civil Appeal No. 1099 of 2007 (with Civil Appeal No. 1100 of 2007))

State of Arunachal Pradesh Appellant Vs. M/s. Damani Construction Respondent, decided on 28/2/2007.

Name of the Judge: Hon'ble Mr. Justice A. K. Mathur and Hon'ble Mr. Justice V. S. Sirpurkar.

Subject Index: Arbitration Act — section 34(3) — application under — totally misconceived — and the reply sent by the arbitrator does not entitle the appellant a fresh cause of action so as to file an application under Section 34(3) of the Act, taking it as the starting point of limitation from the date of reply given by the arbitrator i.e. 10/4/2004 — the view taken by learned Single Judge appears to be justified and there is no ground to interfere in this appeal.

2007 SCCL.COM 217(Case/Appeal No: Civil Appeal No. 1953 of 2006)

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National Thermal Power Corporation Ltd Appellant Vs. Siemens Atkeingesellschaft Respondent, decided on 28/2/2007.

Name of the Judge: Hon'ble Mr. Justice P. K. Balasubramanyan.

Subject Index: Arbitration and Conciliation Act, 1996 — section 37(2)(a) — What was called a partial award, the claim of Siemens was found to be in time and the counter claim made by N.T.P.C. was found to be unsustainable — The partial award was therefore a decision on a plea under Section 16(2) of the Act and consequently appealable under Section 37(2)(a) of the Act — What is sought to be argued on behalf of N.T.P.C., the appellant, is that the Arbitral Tribunal had intended to deal with the question of jurisdiction and limitation in the first instance and it was during the course of deciding those questions that the counter claim had been rejected and this amounted to a declining of jurisdiction by the Arbitral Tribunal in dealing with the counter claim — the High Court was right in holding that the appeal filed by N.T.P.C. under Section 37(2)(a) was not maintainable.

2007 SCCL.COM 248(Case/Appeal No: Civil Appeal No. 1119 of 2007)

C.M.C. Ltd. Appellant vs. Unit Trust of India and Ors. Respondents, decided on 1/3/2007.

Name of the Judge: Hon'ble Mr. Justice P. K. Balasubramanyan and Hon'ble Mr. Justice V. S. Sirpurkar.

Subject Index: Arbitration — Appellant and respondent No.1 entered into an agreement for a technology upgrade project — agreement contained an Arbitration clause — dispute arose — no infirmity in the interpretation of the Arbitration agreement by the designated Judge and in the constitution of the Arbitral Tribunal as presently constituted — no prejudice is caused to the appellant and no injustice is involved in the constitution of the Arbitral Tribunal — the Arbitral Tribunal to enter upon the reference without any

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further delay and pronounce its award within nine months of its entering upon the reference.

2007 SCCL.COM 282(Case/Appeal No: Civil Appeal No. 18 of 2005)

India House hold and Health Care Ltd. Appellant Vs. LG Household and Healthcare Ltd, decided on 3/8/2007.

Name of the Judge: Hon'ble Mr. Justice S. B. Sinha .

Subject Index: Arbitration and Conciliation Act, 1996 — Sections 11(5) and (6) — application under — appointment of Arbitration — as and when a question in regard to the validity or otherwise of the Arbitration agreement arises, a judicial authority would have the jurisdiction under certain circumstances to go into the said question — applicant has not appointed its arbitrator. Respondent has also not been called upon to appoint its arbitrator by the said notice or otherwise. An application for appointment of an arbitrator, therefore, is not maintainable unless the procedure and mechanism agreed to by and between the parties is complied with.

2007 SCCL.COM 285(Case/Appeal No: Civil Appeal No. 1280 of 2006)

BOC India Ltd Appellant Vs. Bhagwati Oxygen Ltd. Respondents, decided on 12/3/2007.

Name of the Judge: Hon'ble Dr. Justice A. R. Lakshmanan and Hon'ble Mr. Justice Tarun Chatterjee.

Subject Index: Arbitration Act, 1940 — Section 30 read with section 33 — objection filed by the appellant — learned Single Judge refused to accept — appeal — dismissal by D. B. of Calcutta High Court — appeal — it is not open to the Court to set aside the award on the ground that the learned Arbitrator had, while continuing with the proceeding, acted beyond his jurisdiction and violated the contract while awarding ` 17,95,710/- in the form of

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Award No. 9 — when the Arbitrator had taken a plausible view on interpretation of contract, it is not open to the Court to set aside the award on the ground that the Arbitrator had misconducted himself in the proceedings and therefore, the award was liable to be set aside.

2007 SCCL.COM 299(Case/Appeal No: Civil Appeal No. 1134 of 2007)

Jatinder Nath Appellant Vs. M/s. Chopra Land Dev. P. Ltd. and Anr. Respondents, decided on 3/2/2007.

Name of the Judge: Hon'ble Mr. Justice S. H. Kapadia and Hon'ble Mr. Justice B. Sudershan Reddy.

Subject Index: Arbitration Act, 1940 — Section 14 — whether the Additional Civil Judge (Senior Division), Faridabad was right in dismissing the application filed under section 14 of the Arbitration Act, 1940 (for short "the Act") filed by M/s Chopra Land Developers Pvt. Ltd. ("the Developer") on the basis of Award dated 29/3/1994 given by the Arbitrator in the above court for want of jurisdiction.

2007 SCCL.COM 316(Case/Appeal No: Civil Appeal No. 1523 of 2007)

M/s. Shree Ram Mills Ltd. Appellant vs. M/s. Utility Premises (P) Ltd. Respondents, decided on 21/3/2007.

Name of the Judge: Hon'ble Mr. Justice H. K. Sema & Hon'ble Mr. Justice V. S. Sirpurkar.

Subject Index: Arbitration and Conciliation Act, 1996 — section 11(6) — order under — appointing Arbitrators by the Designate Judge of Bombay High Court questioned by the petitioner — order is assailed mainly on two grounds, firstly, that there was no live issue in existence in between the parties and the learned Judge erred in holding that there was a live issue in between the parties and secondly that the claim had become barred by limitation between the parties — whether the order passed is good in law?

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2007 SCCL.COM 344(Case/Appeal No: Civil Appeal No. 1526 of 2007)

Ravi Prakash Goel Appellant vs. Chandra Prakash Goel & Anr Respondents, decided on 21/3/2007.

Name of the Judge: Hon'ble Dr. Justice AR. Lakshmanan and Hon'ble Mr. Justice Altamas Kabir.

Subject Index: Arbitration and Conciliation Act, 1996 — section 11 — application moved by the appellant dismissed by the chief justice of Allahabad High Court — appeal — the learned Chief Justice of the High Court on 10/02/2006 has dismissed the appellant's application concluding that the applicant has no presently establishable binding Arbitration agreement with the respondents — in view of the provisions of Sections 40 and 46 of the Partnership Act read with Section 40 of the Arbitration Act, the appellant has a legal right to commence Arbitration by moving an application under Section 11 of the Arbitration Act in the High Court — the right to sue survives on him as legal representatives of the deceased Dulari Devi and he is entitled to invoke clause 13 of the partnership deed. Moreover, the dispute referable to Arbitration had already arisen during the lifetime of Dulari Devi which is also well settled that where a dispute is referable to Arbitration, the parties cannot be compelled to take recourse to in the civil courts.

2007 SCCL.COM 362(Case/Appeal No: Arbitration Petition No. 17 of 2005)

HBM Print Ltd Petitioner vs. Scantrans India Pvt. Ltd. Respondent, decided on 29/3/2007.

Name of the Judge: Hon'ble Mr. Justice K. G. Balakrishnan.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11 application under — the petitioner, a company incorporated under the laws of Singapore — carrying on business in Singapore

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and Respondent Co. incorporated under the Companies Act in India having registered officer at Chennai — joint venture dispute arose — clause 8 — to be resolved through Arbitration Rules in the India Republic — Section 42 has no application to the fact of the present case. Section 42 is applicable in a case where the party has submitted to the jurisdiction of a particular Court and has filed an application before that Court — in the present case, the Chief Justice of the Madras High Court had no jurisdiction but appointment of Arbitrator in the matter being a dispute between the parties related to International Commercial Agreement and under Section 11 Chief Justice of India alone or any other person or institution designated by him alone has jurisdiction to appoint the Arbitrator. Therefore, the contention raised as to Section 42 of the Act also is without any basis — the dispute between the parties is referred to the Arbitrator. The Arbitrator is requested to pass a reasoned award within eight months from this Order.

2007 SCCL.COM 388(Case/Appeal No: Civil Appeal No. 1783 of 2007)

Ace Pipeline Contracts Private Limited Appellant vs. Bharat Petroleum Corporation Limited Respondent, decided on 4/4/2007.

Name of the Judge: Hon'ble Mr. Justice A. K. Mathur and Hon'ble Mr. Justice Tarun Chatterjee.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11(5) — Application under — for appointing a retired Judge of the Supreme Court of India to adjudicate the claims and disputes between the parties arising out of the contract between the parties dated 10/06/2002. The said contract pertained to the laying down of a pipeline and associated facilities for Section-1 [Manmad in Maharashtra to M.P. Border near (Shirpur)] for Mumbai-Manmad Pipeline Extension Project of the respondent-Bharat Petroleum Corporation Limited — the main issue was with regard to interpretation of Clause 91 of the contract which pertains

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to appointment of arbitrator — in the present case, in fact the appellant's demand was to get some retired Judge of the Supreme Court to be appointed as arbitrator on the ground that if any person nominated in the Arbitration clause is appointed, then it may suffer from bias or the arbitrator may not be impartial or independent in taking decision. Once a party has entered into an agreement with eyes wide open it cannot wriggle out of the situation that if any person of the respondent-BPCL is appointed as arbitrator he will not be impartial or objective — no reason to interfere with the order passed by the learned Single Judge of the High Court of Delhi in Arbitration Petition No.181 of 2005. The arbitrator has already been appointed. He should proceed in the matter and decide the dispute expeditiously. Consequently, the appeal is dismissed.

2007 SCCL.COM 404(Case/Appeal No: Civil Appeal No. 432 of 2004 (With Civil Appeal No. 433, 434 436 of 2004, 36, 37, 38, 916, 2819, 2820, 2821, 2822 of 2006, 6069, 6077 of 2005 and SLP (C) Nos. 15651-15652 & 25246-25247 of 2005))

Greater Bombay Co-op. Bank Ltd. Appellant vs. M/s. United Yarn Tex. Pvt. Ltd. & Ors Respondents, decided on 4/4/2007.

Name of the Judge: Hon'ble Mr. Justice B. N. Agrawal, Hon'ble Mr. Justice P. P. Naolekar and Hon'ble Mr. Justice Lokeshwar Singh Panta.

Subject Index: Right of recovery of debts — by co-operative banks constituted under the co-operative societies Acts of the States of Maharashtra and Andhra Pradesh — the issue has arisen in the context of enactment of the Recovery of Debts due to Banks and Financial Institutions Act, 1993. Under the Co-operative Societies Act, there is a mechanism for recovery of debts by the Banks constituted under those Acts, which are also called Co-operative Banks. After the enactment of the 1993 Act, question arose as to whether such Co-operative Banks would have right of recovery under the respective Co-operatives Societies Acts or they will

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have to proceed under the 1993 Act. These aspects and some other issues, including the issue of legislative competence of the States to enact the provisions relating to Co-operative Banks, came up for consideration before the Bombay High Court and the High Court of Andhra Pradesh at Hyderabad. Both the High Courts have pronounced judgments on the issues and these judgments are under appeal in these cases. Looking to the issues involved and the far-reaching consequences which such a decision will leave, that these matters be decided by a Larger Bench — "co-operative banks" can only recover their dues from their members, whereas the RDB Act will be applicable to all other banks, which have advanced loan to any person/society/corporation/industry, etc. etc. without any stipulation of membership of the Banks.

2007 SCCL.COM 414(Case/Appeal No: Civil Appeal No. 1874 of 2007)

Food Corporation Of India Appellant vs. M/s. Chandu Construction & Anr. Respondents, decided on 10/4/2007.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice D. K. Jain.

Subject Index: Arbitration award — made by the arbitrator — by awarding extra payment for supply of sand the arbitrator has out-stepped confines of the contract. This error on his part cannot be said to be on account of misconstruing of the terms of the contract but it was by way of disregarding the contract, manifestly ignoring the clear stipulation in the contract — by doing so, the arbitrator misdirected and misconducted himself. Hence, the award made by the Arbitration in respect of claim No. 9, on the face of it, is beyond his jurisdiction; is illegal and needs being set aside — the impugned judgment of the High Court, to the extent it pertains to claim No. 9 is set aside.

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2007 SCCL.COM 437(Case/Appeal No: Civil Appeal No. 1945 of 2007)

Municipal Corporation, Jabalpur and Ors. Appellants vs. M/s. Rajesh Construction Co. Respondent, decided on 13/4/2007.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice P. K. Balasubramanyan.

Subject Index: Appointment of Sole Arbitrator — retired Chief Justice of Punjab and Haryana High Court — as Sole Arbitrator — A bare perusal of this direction made by the High Court, while allowing the application under Section 11(6)(c) of the Act, would clearly indicate that the Corporation was directed to invoke the Arbitration clause and appoint an Arbitration Board in compliance with Clause 29 of the contract — the Corporation to constitute an Arbitration Board in terms of Clause 29 within a period of three months from this date, provided the respondent furnishes security in terms of the table provided in Clause 29(d) of the contract, as determined by the Corporation within a period of six weeks from this date.

2007 SCCL.COM 439(Case/Appeal No: Civil Appeal No. 6063-6064 of 2000)

Spl. Deputy Collector (L.A.) General Hyd. Appellant Vs. B. Chandra Reddy and Ors. Respondents, decided on 16/4/2007.

Name of the Judge: Hon'ble Mr. Justice C. K. Thakker and Hon'ble Mr. Justice Lokeshwar Singh Panta.

Subject Index: Requisitioning and Acquisition of Immovable Property Act, 1952 — Arbitration appointed — award passed — learned single judge directed the appellant — to comply with the award — in writ appeal DB confirmed the award appeals — the offer of amount as compensation by the Competent Authority under the Act had not been accepted by the claimants and they opted for

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appointment of Arbitrator under the Act — Award was made by the Arbitrator on November 13, 1991 — the case in hand is not one which calls for exercise of discretionary power under Article 136 of the Constitution in favour of the appellant — this is not a fit case to exercise discretionary jurisdiction under Article 136 of the Constitution.

2007 SCCL.COM 486(Case/Appeal No: Civil Appeal No. 2133 of 2007)

Maharshi Dayanand University and Anr. Appellants vs. Anand Coop. L/C Society Ltd. and Anr. Respondents, decided on 25/4/2007.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice P. K. Balasubramanyan.

Subject Index: Arbitrator — appointment — no reason to interfere with the appointment of an arbitrator — Appeal dismissed — giving liberty to the parties to raise all their contentions based on lack of jurisdiction of the Arbitral Tribunal before the arbitrator. The arbitrator will permit the appellant to amend or supplement the objections already filed by it if it is felt necessary by the appellant — the arbitrator, in the first instance, has to decide whether the existence of an Arbitration agreement in terms of Section 7 of the Act is established and also to decide whether the claim now made is a claim that comes within the purview of Clause 25A of the tender conditions in case it is found to be an agreement within the meaning of Section 7 of the Act. Only on deciding these two aspects can the arbitrator go into the merits of the claim made by the respondent.

2007 SCCL.COM 506(Case/Appeal No: Civil Appeal No. 4467 of 2002)

Jagdish Chander Appellant vs. Ramesh Chander and Ors. Respondents, decided on 26/4/2007.

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Name of the Judge: Hon'ble Mr. Justice H. K. Sema and Hon'ble Mr. Justice R. V. Raveendran.

Subject Index: Arbitration and Conciliation Act, 1996 — Appeal by special leave is against the order passed by the Designate of Chief Justice of Delhi High Court allowing Arbitration application filed under Section 11(5) and (6) — The appellant and first respondent entered into a Partnership as per deed dated 1/9/1964 to carry on the business under the name and style of 'Empire Art Industries'. Clause 16 of the said Deed relates to settlement of disputes — The first respondent filed the application for appointment of an Arbitrator to decide the disputes in regard to dissolution of the said partnership firm and for rendition of accounts — The existence of an Arbitration agreement as defined under Section 7 of the Act is a condition precedent for exercise of power to appoint an Arbitrator/ Arbitral Tribunal, under Section 11 of the Act by the Chief Justice or his Designate. It is not permissible to appoint an Arbitrator to adjudicate the disputes between the parties, in the absence of an Arbitration agreement or mutual consent. The designate of the Chief Justice of Delhi could not have appointed the Arbitrator in the absence of an Arbitration agreement.

2007 SCCL.COM 574(Case/Appeal No: Civil Appeal No. 2440 of 2007)

M/s. Gas Authority of India Ltd. & Anr. Appellant vs. M/s. Keti Construction (I) Ltd. and Ors. Respondents, decided on 11/5/2007.

Name of the Judge: Hon'ble Mr. Justice G.P. Mathur and Hon'ble Mr. Justice Lokeshwar Singh Panta.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 37 — appeal filed under allowed and judgment and order dated 20/10/03 of learned Single Judge was dismissed — appeal by special leave — the principal ground on which the petition under Section 34 of the Act had been filed by respondent No.1 was that it

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had invoked the Arbitration clause by sending a notice to appellant no.1 on 17/7/1999 and accordingly the appellant No.1 was required to send a panel of three names for Arbitration within 30 days of receipt of notice. Since appellant No.1 did not respond to the notice and did not send a panel within 30 days, it forfeited its right to nominate a panel and thereafter respondent No.1 sent its own panel on 28/10/1999 — the whole object and scheme of the Act is to secure an expeditious resolution of disputes. Therefore, where a party raises a plea that the Arbitral Tribunal has not been properly constituted or has no jurisdiction, it must do so at the threshold before the Arbitral Tribunal so that remedial measures may be immediately taken and time and expense involved in hearing of the matter before the Arbitral Tribunal which may ultimately be found to be either not properly constituted or lacking in jurisdiction, in proceedings for setting aside the award, may be avoided — the appeal is allowed with costs throughout and the judgment and order dated 7/12/2004 of the Division Bench of the High Court is set aside. The judgment and order dated 20/10/2003 of the learned Single Judge dismissing the petition under Section 34 of the Act, which was filed by respondent No.1, is affirmed.

2007 SCCL.COM 609(Case/Appeal No: Arbitration Petition No. 11 of 2006)

M/s. Delta Mechcons (India) Ltd. Appellant vs. M/s. Marubeni Corporation Respondent, decided on 18/5/2007.

Name of the Judge: Hon'ble Mr. Justice P. K. Balasubramanyan.

Subject Index: Arbitration and Conciliation Act, 1998 — Section 11(6) — petition under — this is a case where the Court has to appoint a Chairman of the Arbitral Tribunal who is of a nationality different from the nationality of either of the parties — the parties either to submit an agreed name with the consent of that person or in case they are not able to agree, submit two names each with the consent of the nominees, for being considered for appointment as the Chairman of the Arbitral Tribunal.

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2007 SCCL.COM 610(Case/Appeal No: Civil Appeal No. 2386 of 2007)

The Iron and Steel Co. Ltd. Appellant vs. M/s. Tiwari Road Lines Respondent, decided on 8/5/2007.

Name of the Judge: Hon'ble Mr. Justice G. P. Mathur and Hon'ble Mr. Justice Lokeshwar Singh Panta.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11 — Application under — maintainability of — the legislative scheme of Section 11 is very clear. If the parties have agreed on a procedure for appointing the arbitrator or arbitrators as contemplated by sub-section (2) thereof, then the dispute between the parties has to be decided in accordance with the said procedure and recourse to the Chief Justice or his designate cannot be taken straightaway — the respondent should have initiated proceedings for settlement of disputes by Arbitration in accordance with the Rules of Arbitration of the Indian Council of Arbitration as provided in clause 13.1 of the agreement and the application moved by it to the City Civil Court, Hyderabad, for appointment of an arbitrator was not maintainable. Consequently, the order passed by the City Civil Court, Hyderabad dated 27/12/2004 is wholly illegal and without jurisdiction and is liable to be set aside.

2007 SCCL.COM 635(Case/Appeal No: Civil Appeal No. 2707 of 2007)

M/s Arvind Constructions Co. Pvt. Ltd. Petitioner vs. M/s Kalinga Mining Corporation and Ors. Respondents, decided on 17/5/2007.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice P. K. Balasubramanyan.

Subject Index: Arbitration and Conciliation Act, 1996 — In spite of the parties naming their respective arbitrators, in terms of the Arbitration agreement, more than one year back, the arbitrators so

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appointed had not been able to nominate a Presiding Arbitrator in terms of the arbitration agreement — Arbitral Tribunal — Constitution of — it would be appropriate and just to both the parties to appoint Mr. Justice Y. K. Sabharwal, former Chief Justice of India as the sole arbitrator for deciding all the disputes between the parties.

2007 SCCL.COM 636(Case/Appeal No: Arbitration Petition No. 15 of 2006)

National Agricultural Co-op. Marketing Federation India Ltd. Petitioner vs. Gains Trading Ltd. Respondent, decided on 22/5/2007.

Name of the Judge: Hon'ble Mr. Justice R. V. Raveendran.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11(5) — petition under — for appointing a sole arbitrator to adjudicate upon the disputes between the petitioner and respondent — whether an arbitration clause comes to an end, if the contract containing such arbitration agreement, was abrogated? — whether Section 11 of the Act is inapplicable in regard to the arbitrations which are to take place outside India? (iii) Whether the appointment of the arbitrator, and the reference arbitration are governed by the laws in force in Hong Kong and not by the arbitration and Conciliation Act, 1996?

2007 SCCL.COM 756(Case/Appeal No: Civil Appeal No. 6569 of 2005)

Adhunik Steels Ltd. Appellant Vs. Orissa Manganese and Minirals Pvt. Ltd. Respondent, decided on 10/7/2007.

Name of the Judge: Hon'ble Mr. Justice H. K. Sema and Hon'ble Mr. Justice P. K. Balasubramanyan.

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Subject Index: Arbitration and Conciliation Act, 1996 — Section 37(1)(a) — these Cross Appeals by Special Leave challenge the order passed by the High Court of Orissa — dismiss the appeal filed by O.M.M. Private Limited leaving open the questions raised by it for being decided by the arbitrator or Arbitral Tribunal in accordance with law — Court also substantially dismissed the appeal filed by Adhunik Steels except to the extent of granting it an order of injunction restraining O.M.M. Private Limited from entering into a transaction for mining and lifting of the ore with any other individual or concern making it clear that it can, on its own, carry on the mining operations in terms of the mining lease — the Arbitration proceedings must be expedited — it would be in the interests of justice if this Court appoints here and now a sole arbitrator to adjudicate on the dispute between the parties. Hence this Court appoints Mr. Justice R. C. Lahoti, former Chief Justice of India as the sole arbitrator to decide the dispute between the parties. The arbitrator will be free to fix his terms in consultation with the parties — the sole arbitrator to enter upon the reference and pronounce his award expeditiously.

2007 SCCL.COM 786(Case/Appeal No: Arbitration Petition No.15 of 2006)

National Agricultural Co-op. Marketing Federation India Ltd. Petitioner vs. Gains Trading Ltd. Respondent, decided on 22/5/2007.

Name of the Judge: Hon'ble Mr. Justice R. V. Raveendran.

Subject Index: Arbitration and Conciliation Act, 1996 — petition under for appointing a sole arbitrator to adjudicate upon the disputes between the petitioner and respondent — as none of the objections of the respondent has any merit, this petition deserves to be allowed — learned counsel for the respondent submitted that in view of the bona fide objections raised by the respondent, it had not suggested any one for being appointed as Arbitrator. He also submitted that the respondent was not willing for any of the

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persons suggested by the petitioner being appointed as Arbitrator. He stated that an independent arbitrator may be appointed as the sole Arbitrator, keeping in view sub-section (9) of section 11 which provides that in the case of appointment of a sole arbitrator in an international commercial Arbitration, the Chief Justice of India or his designate may appoint an arbitrator of a nationality other than the nationality of the parties if the parties belong to different nationalities — let this matter be listed on 24/5/2007 for appointment of the Arbitrator.

2007 SCCL.COM 835(Case/Appeal No: Civil Appeal No. 3522 of 2007)

Himadri Chemicals Industries Ltd. Appellants vs. Coal Tar Refining Company Respondent, decided on 7/8/2007.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterji and Hon'ble Mr. Justice P. K. Balasubramanyan.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 9 — application under — this appeal is directed against the judgment and order dated 21st June, 2007 passed by a Division Bench of the Calcutta High Court whereby an appeal preferred against an order dated 5th June, 2007 of a learned Single Judge of the same High Court was dismissed and the order of the learned Single Judge was affirmed. The learned Single Judge by his order dated 5th June, 2007 had vacated an interim order of *status quo* granted earlier on an application filed under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') for an order of injunction restraining the respondent from receiving any payment under a Letter of Credit no merit in the appellant appeal dismissed.

2007 SCCL.COM 843(Case/Appeal No: Arbitration Petition No. 8 of 2007)

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M/s. Aurohill Global Commodities Ltd. Petitioner vs. M.S.T.C. Ltd. Respondent, decided on 31/7/2007.

Name of the Judge: Hon'ble Mr. Justice S. H. Kapadia.

Subject Index: Arbitration and Conciliation Act, 1998 Section11(9) read with section 11(5) — application under — for appointment to settle the dispute — Petitioner company is based in Cyprus having its offices in Russia and India. Petitioner has been exporting steel products for more than a decade — not possible for this Court to substitute the British Rules of Arbitration by the procedural law under the said 1996 Act. — The question as to whether there existed a concluded contract, the question as to whether the alleged contract was *non est* and the question as to whether M/s. Sunvijay Rolling and Engineering Ltd. was necessary and proper party are all questions to be decided in the Arbitration proceedings and Conciliation Act, 1996. — There is no waiver of the British Rules of Arbitration and, therefore, the parties are bound by the terms of the Arbitration Clause No. 19.

2007 SCCL.COM 845(Case/Appeal No: Civil Appeal No. 3692 of 2007)

Union of India Appellant vs. Bharat Battery Manufacturing Co. (P) Ltd. Respondent, decided on 13/8/2007.

Name of the Judge: Hon'ble Mr. Justice H. K. Sema and Hon'ble Mr. Justice Lokeshwar Singh Panta.

Subject Index: Arbitration & Conciliation Act, 1966 — Section 11(6) — Clause 12 of rate contract — price variation clause dispute — Clause 24 of agreement is the Arbitration clause — contention that Section 11(8) of Arbitration Act not followed — Held that right to appoint the arbitrator under the clause of agreement ceases after Section 11(6) petition has been filed by the other party before the Court securing appointment of arbitrator.

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2007 SCCL.COM 846(Case/Appeal No: Civil Appeal No. 3696 of 2007)

Asian Thermal Insulation (I) P. Ltd Petitioner vs. Bridge & Roof Co. (I) Ltd. Respondent, decided on 13/8/2007.

Name of the Judge: Hon'ble Mr. Justice Arijit Pasayat and Hon'ble Mr. Justice C. K. Thakker and Hon'ble Mr. Justice Lokeshwar Singh Panta.

Subject Index: Arbitration clause — Arbitration & Conciliation Act 1966 — Section 11(6) — Nature of the power exercised by Chief Justice of the High Court & Chief Justice of India under the Arbitration Act — Power is a judicial power & not administrative — Chief Justice to nominate presiding officer of Arbitration.

2007 SCCL.COM 875(Case/Appeal No: Civil Appeal No. 12 of 2007)

You one Maharia–JV Thr. You One Eng. & Construction Co. Ltd & Another Appellant vs. National Highways Authority of India Respondents, decided on 21/8/2007.

Name of the Judge: Hon'ble Mr. Justice C. K. Thakkar.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11(6) and 11(12) — petition under — for appointment of Third/ Presiding Arbitrator in accordance with the Agreement/Contract Package No. NS-23/AP dated May 31, 2001 entered into between the petitioners and the respondent.

2007 SCCL.COM 1019(Case/Appeal No: Civil Appeal No. 4538 of 2007)

Bhola Nath Appellant vs. Monika (D) Thr. Lrs. & Another Respondents, decided on 24/9/2007.

Name of the Judge: Hon'ble Mr. Justice S. B. Sinha and Hon'ble Mr. Justice H. S. Bedi.

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Subject Index: Arbitration — Award — The dispute between the parties relates to plot No. 66, admeasuring 45 ft.x. 80 ft. total area 3600 sq.ft situated at Jawahar Nagar Extension Colony, Mauja Bhadeni Pargana Dehat, City Varanasi. As a dispute arose between petitioner and a cooperative society, the same was referred to Arbitration. In the year 1981 an award was passed in favour of the petitioner — in the award made in favour of the respondent, it was directed that any of the 3 plots namely, plot Nos. 66, 91 or 15 may be allotted in her favour. As the plot Nos. 91 and 15 were not available having been allotted to other members of the co-operative society, the respondent filed an execution application for allotment of the said plot No. 66 and execution of sale deed in her favour — the sole question which arose for consideration before the executing authority was as to whether in view of the fact that a deed of sale has been executed in favour of the petitioner in respect of the said plot No. 66, the execution petition filed at the instance of the respondent was maintainable — the remedy of the petitioner would, therefore, be to initiate an appropriate proceeding for giving effect to the award passed by the Arbitrator in his favour.

2007 SCCL.COM 898(Case/Appeal No: Civil Appeal No. 2016 of 2006)

Bharat Sewa Sansthan Appellant vs. U. P. Electronics Corporation Limited Respondents, decided on 29/8/2007.

Name of the Judge: Hon'ble Mr. Justice H. K. Sema and Hon'ble Mr. Justice Lokeshwar Singh Panta.

Subject Index: Arbitration and Conciliation Act, 1956 — section 8 — application under — filed by the U.P. Electronics Corporation Ltd. — the claim relating to balance arrears of rent, balance arrears of water & sewerage tax and rate of interest on payment of arrears of rent raised by the appellant-Sansthan in its calculation statement filed before this Court is at variance with the calculation statement submitted by the respondent-Corporation. The respondent-

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Corporation has denied the payment of interest to the appellant-Sansthan. The above-said disputed claims can be appropriately tackled and adjudicated upon by the Arbitrator in terms of the Arbitration clause — this Court ordinarily will not be obliged to bypass the provisions of the Arbitration and Conciliation Act, 1996 in exercise of its power and jurisdiction under Article 142 of the Constitution of India — not fit case to grant relief to the appellant-Sansthan as claimed by it in its calculation statement which is vehemently disputed by the respondent-Corporation. Therefore, the contention of the appellant-Sansthan that this Court can grant the payment of balance amount of arrears of rent and arrears of water & sewerage tax and interest on arrears of rent detailed in calculation statement submitted before this Court, does not merit acceptance — no perversity or infirmity in the order of the High Court to warrant any interference.

2007 SCCL.COM 920(Case/Appeal No: Civil Appeal No. 4079-80 of 2007)

Numaligarh Refinery Ltd Appellant vs. Daelim Industrial Company Ltd Respondents, decided on 9/6/2007.

Name of the Judge: Hon'ble Mr. Justice A. K. Mathur and Hon'ble Mr. Justice Markandey Katju.

Subject Index: Arbitration appeal — the view taken by the majority of the arbitrators cannot be said to be wrong as it is a pure question of fact and therefore, Court of opinion that the grant of ` 0.2 crore towards interest on delayed amount has been rightly held by the majority of the arbitrators and affirmed by the High Court — the grant of interest is discretionary and the majority of the arbitrators has rightly granted interest at the rate of 12 per cent pendente lite and at the rate of 18 per cent post pendent lite. Therefore, no exception can be taken to grant of such interest — finding of the majority of the Arbitrators is affirmed.

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2007 SCCL.COM 931 (Case/Appeal No: Criminal Appeal No. 17 of 2006)

DHV BV Appellant vs. Tahal Consulting Engineers Ltd. & Others Respondents, decided on 9/12/2007.

Name of the Judge: Hon'ble Mr. Justice D.K. Jain.

Subject Index: Arbitration and Conciliation Act, 1996 — section 11(6) — petition under — the petition is allowed and as prayed by learned counsel for the parties, instead of constituting an Arbitral Tribunal, Justice P. K. Balasubramanyan, a former Judge of the Supreme Court, is appointed as the Sole Arbitrator to adjudicate upon the claims/disputes raised by DHV, subject to his consent and such terms as he may deem fit and proper.

2007 SCCL.COM 942(Case/Appeal No: Civil Appeal No. 2668 of 2007)

Markfed Vanaspati & Allied Industries Appellant Vs. Union of India Respondents, decided on 14/9/2007.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice Dalveer Bhandari.

Subject Index: Tender — issued by Union of India for purchase of oil — the appellant failed to supply the oil as per the delivery schedule. The time for supply was extended, reserving the respondent's right to levy liquidated damages. All the supplies could not be delivered. The contract was cancelled and the appellant resorted to *force majeure* Clause — the dispute was referred to an arbitrator. The sole arbitrator made and published his award on 20th June, 1995 — Arbitration is a mechanism or a method of resolution of disputes that unlike court takes place in private, pursuant to agreement between the parties. The parties agree to be bound by the decision rendered by a chosen arbitrator after giving hearing. The endeavour of the court should be to

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honour and support the award as far as possible — no interference is called for.

2007 SCCL.COM 1035(Case/Appeal No: Arbitration Application (C) No. 1 of 2007)

Citibank N.A. Applicant vs. TLC Marketing PLC & Another Respondents, decided on 10/5/2007.

Name of the Judge: Hon'ble Mr. Justice Lokeshwar Singh Panta.

Subject Index: Arbitration and Conciliation Act, 1996 — Sections 11(5), 11(10), 11(12) read with section 10 — application under — for appointment of sole Arbitrator in an 'international commercial Arbitration' in terms of Section 2(f) of the Act, to adjudicate the dispute between the parties — in view of the instances of breaches of the terms and conditions of the relevant clauses of the agreement coupled with the breaches of specific obligations and responsibilities contained in the Appendix(s) and Enclosures attached and incorporated by reference as an integral part of the agreement and having regard to the words used in Clause 10 of the agreement and having regard to the fact that the parties have failed to determine an even number of arbitrators as per the provisions of Section 10(1) of the Act, the requirement of Section 10(2) of the Act is fully attracted in the present proceedings, in other words, the Arbitration agreement deemed to be one providing for a sole arbitrator — taking into consideration the fact that the disputes and differences between the parties emanating from the contract are required to be resolved through Arbitration, Hon'ble Mrs. Justice Sujata V. Manohar, retired Judge of this Court, is appointed to act as a sole Arbitrator.

2007 SCCL.COM 1055(Case/Appeal No: Civil Appeal No. 4857 of 2007)

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The Security Printing and Minting Corporation of India Limited & Another Petitioner vs. M/s. Gandhi Industrial Corporation Respondent, decided on 12/10/2007.

Name of the Judge: Hon'ble Mr. Justice A. K. Mathur and Hon'ble Mr. Justice D. K. Jain.

Subject Index: Arbitration award — given by the sole arbitrator — affirmed by the learned single Judge — appeal against the order of DB — whether the appellant- security press was entitled to get the benefit of modvat credit or not. In order to appreciate the controversy it will be profitable to first reproduce the relevant clause of the supply order which relates to credit of MODVAT to the security press — the Arbitrator took the view that since the MODVAT credit is only available to the manufacturer on account of book credit and the claimant was the manufacturer, therefore, the appellant cannot get that benefit. It was also observed that the unilateral decision taken by the appellant is entirely against the Modvat scheme and contrary to tender notice issued and on the basis of which offer was made by the claimant. It is not permissible to alter the terms and condition of the offer letter to the detriment of contractor who has been awarded the tender contract and certainly not by unilateral decision — the view taken by the Arbitrator and affirmed by the learned Single Judge and the Division Bench of the High Court cannot be sustained — the view taken by the Arbitrator, as affirmed by learned Single Judge and the Division Bench of the High Court on the face of it is illegal and against the law.

2007 SCCL.COM 1062(Case/Appeal No: Civil Appeal No. 4829 of 2007)

Bharat Petroleum Corporation Ltd Petitioner Vs. The Great Eastern Shipping Co. Ltd. Respondent, decided on 12/10/2007.

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Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice D. K. Jain.

Subject Index: Arbitration matter — order passed by the Arbitral Tribunal set aside — holding that they did not have jurisdiction to entertain and try the claim and counter claim made by the parties — whether on the expiry of the extended period of charter hire on 31st August, 1998, Charter Party dated 6th May, 1997 came to an end and the Arbitration agreement between the parties perished with it — the principle of *sub silentio* is clearly attracted in the present case — the appellant was under an obligation to redeliver the vessel as per the procedure contemplated in the noted clauses — no infirmity in the view taken by the High Court that Charter Party dated 6th May, 1997 had not come to an end by efflux of time and it got extended by the conduct of the parties, warranting interference.

2007 SCCL.COM 1085 (Case/Appeal No: Contempt Petition (civil) 289 of 2003)

Maruti Udyog Limited Appellant vs. Mahinder C. Mehta and Others Respondents, decided on 10/10/2007.

Name of the Judge: Hon'ble Mr. Justice S. B. Sinha and Hon'ble Mr. Justice Harjit Singh Bedi.

Subject Index: Contempt petition — Petitioner manufacturer of cars — alleged contemnors were Directors of a Company known as M/s. Mahalaxmi Motors Limited (Company). The Company obtained various advances from the customers on behalf of the petitioner. It, however, did not pay the amount to petitioner herein. Respondents admitted their liability of the petitioner to the extent of ` 7.63 crores in respect of supply of vehicles made by it — Arbitration agreement — appointment of Arbitrator — an award was made on 04/10/2005 as against the Company for a sum of ` 7.63 crores with interest at the rate of 8% in favour of the petitioner along with

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costs and expenses — a proposal for sale of the property could be made only if the respondents had any subsisting title thereto and not otherwise — the alleged contemnors have misled this Court and have committed gross contempt of this Court — it is eminently a fit case where jurisdiction of this Court under Article 129 of the Constitution of India as also the provisions of the Contempt of Courts Act, 1970 should be invoked — so far as the alleged contemnor No. 1 is concerned, Court is of the opinion that he being the Managing Director of the Company, is liable to be punished. He is sentenced to undergo six months imprisonment. The alleged contemnor No. 2 is also held guilty but as he was not the Managing Director, Court is of the view that sentencing him three months imprisonment shall meet the ends of justice.

2007 SCCL.COM 1096(Case/Appeal No: Civil Appeal No. 4877 of 2007 with Civil Appeal No. 4878 of 2007 arising out of SLP(C) No. 1343 of 2007 and Civil Appeal No. 4879 of 2007 arising out of SLP(C) No. 1602 of 2007)

The Empire Jute Co. Ltd. and Others Appellant Vs. The Jute Corporation of India Ltd. and Another Respondent, decided on 12/10/2007.

Name of the Judge: Hon'ble Mr. Justice S. B. Sinha and Hon'ble Mr. Justice Harjit Singh Bedi.

Subject Index: Constitution of India — Article 142 — all disputes between the parties should be directed to be resolved upon taking recourse to the Arbitration agreement contained in clause 9.0 of the Sale Order — all disputes and differences between the parties be referred to the arbitration in terms of clause 9.0 of the contract. Reference to Arbitration would be deemed to be one under the 1996 Act. The parties would be at liberty to approach the High Court for any other or further direction(s). The learned Arbitrator would make an Award within a period of four months from the date of entering into reference — in terms of 1940 Act, even a civil

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suit could have been entertained subject of course to exercise of the court's jurisdiction under Section 21 thereof. Section 5 of 1996 Act takes away the jurisdiction of the Court. There cannot be any doubt whatsoever, the provision of the 1996 Act must be given effect to.

2007 SCCL.COM 1178(Case/Appeal No: Civil Appeal No. 5159 of 2007 [with C.A. No 5160 of 2007(Arising out of S.L.P. (C) No. 4015 of 2006])

Larsen & Toubro Ltd. Appellant vs. Fertilizer & Chemicals Travancore Ltd. Respondent, decided on 12/11/2007.

Name of the Judge: Hon'ble Dr. Justice Arijit Pasayat and Hon'ble Mr. Justice Lokeshwar Singh Panta.

Subject Index: Arbitration Act — provisions — applicability of — the amendments incorporated by the Special conditions only provide that the provisions of the relevant Arbitration Act and the rules made thereunder and any statutory modifications thereof for the time being in force will be applicable and the venue of Arbitration and language of the proceedings.

2007 SCCL.COM 1202 (Case/Appeal No: Civil Appeal No. 5366 of 2007)

Rameshwar Das Agrawal & another Appellants vs. Kiran Agrawal & others Respondents, decided on 23/11/2007.

Name of the Judge: Hon'ble Mr. Justice G. P. Mathur and Hon'ble Mr. Justice P. Sathasivam.

Subject Index: Arbitration Application — Appointment of retired Judge of Allahabad High Court as Arbitrator in respect of dispute — challenged in appeal.

2007 SCCL.COM 1203(Case/Appeal No: Civil Appeal No. 5210 of 2007)

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ONGC Ltd. Appellant vs. Garware Shipping Corporation Limited Respondent, decided on 14/11/2007.

Name of the Judge: Hon'ble Dr. Justice Arijit Pasayat and Hon'ble Mr. Justice S. H. Kapadia.

Subject Index: Arbitration and Conciliation Act, 1998 — Section 34 — Challenge in this appeal is to the judgment rendered by a Division Bench of the Bombay High Court dealing with an appeal questioning the correctness of the order passed by a learned Single Judge who dismissed the appellant's appeal under Section 34.

2007 SCCL.COM 1319(Case/Appeal No: Civil Appeal No. 4576 of 2007)

Utkal Galvanizers Ltd. Appellant vs. Orissa Hydro Power Corpn. Ltd. & Others Respondents, decided on 28/9/2007.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice Dalveer Bhandari.

Subject Index: Arbitration and Conciliation Act, 1996 — section 11 — prayer for appointment of an Arbitrator — refused by High Court — appeal against.

2008 SCCL.COM 8(Case/Appeal No: Civil Appeal No. 10 of 2008)

Atul Singh & others Appellants vs. Sunil Kumar Singh & others Respondents, decided on 4/1/2008.

Name of the Judge: Hon'ble Mr. Justice G.P. Mathur and Hon'ble Mr. Justice Aftab Alam.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 8 — prayer for referring the dispute for Arbitration rejected by trial court — civil revision petition preferred — allowed and order passed set aside — appeal — there was a clear non-compliance of sub-section (2) of Section 8 of 1996 Act which is a mandatory

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provision and the dispute could not have been referred to Arbitration — however, in order to satisfy the requirement of sub-section (2) of Section 8 of the Act, defendant no.3 should have filed the original Arbitration agreement or a duly certified copy thereof along with the petition filed by him on 28/2/2005, which he did not do. Therefore, no order for referring the dispute to Arbitration could have been passed in the suit.

2008 SCCL.COM 32(Case/Appeal No: Civil Appeal No. 309 of 2008)

Venture Global Engineering Appellant vs. Satyam Computer Services Ltd. & another Respondents, decided on 1/10/2008.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice P. Sathasivam.

Subject Index: Arbitration award — Part I of the Act is applicable to the Award in question even though it is a foreign Award — the legal position as set out in three-Judge Bench decision in Bhatia International 2002 (4) SCC 105, specific clause in the Shareholders Agreement (SHA), conduct of the parties have not been properly adverted to and considered by the Trial Court as well as the High Court. Accordingly, both the orders passed by the City Civil Court and of the High Court are set aside — if it is found that the Court in which the appellant has filed a petition challenging the Award is not competent and having jurisdiction, the same shall be transferred to the appropriate Court. Since from the inception of ordering notice in the special leave petition both parties were directed to maintain *status quo* with regard to transfer of shares in issue, the same shall be maintained till the disposal of the suit — considering the nature of dispute which relates to an Arbitration Award, the concerned Court to dispose of the suit on merits one way or the other within a period of six months from the date of receipt of copy of this judgment.

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2008 SCCL.COM 70(Case/Appeal No: Civil Appeal No. 1971-1973 of 2000)

J. C. Budhraja Appellant vs. Chairman, Orissa Mining Corporation Ltd. & another Respondents, decided on 18/1/2008.

Name of the Judge: Hon'ble Mr. Justice H. K. Sema, G. P. Mathur and Hon'ble Mr. Justice R. V. Raveendran.

Subject Index: A) Limitation in case of Arbitration — The limitation for a suit is calculated as on the date of filing of the suit. In the case of Arbitration, limitation for the claim is to be calculated on the date on which the Arbitration is deemed to have commenced. Section 37(3) of the Act provides that for the purpose of Limitation Act, an Arbitration is deemed to have been commenced when one party to the Arbitration agreement serves on the other party thereto, a notice requiring the appointment of an arbitrator. Such a notice having been served on 4/6/1980, it has to be seen whether the claims were in time as on that date. If the claims were barred on 4/6/1980, it follows that the claims had to be rejected by the arbitrator on the ground that the claims were barred by limitation — the period of limitation for filing a petition under Section 8(2) seeking appointment of an arbitrator cannot be confused with the period of limitation for making a claim. B) Arbitration — whether the claim made before the arbitrator or any part thereof was barred by limitation — whether the award is liable to be set aside on the ground of legal misconduct and the error apparent on the face of the award — whether the award is liable to be set aside on the ground that the arbitrator exceeded his jurisdiction?

2008 SCCL.COM 170(Case/Appeal No: Civil Appeal No. 2347 of 2007)

Uday Gopinath Powale Appellant vs. Resha Uday Powale Respondent, decided on 4/2/2008.

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Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice H. S. Bedi.

Subject Index: Arbitration proceedings — extension of time to complete — application disposed.

2008 SCCL.COM 218(Case/Appeal No: Civil Appeal No. 1496 of 2008)

Sumitomo Corporation Appellant vs. CDC Financial Services (Mauritius) Ltd. & others Respondents, decided on 22/2/2008.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice P. Sathasivam.

Subject Index: Companies Act, 1956 — Section 10(1)(a) — Arbitration and Conciliation Act, 1996 — Section 50 — lack of Territorial jurisdiction — appeal filed by the appellant — dismissal by High Court — holding that Section 10(1)(a) of the Companies Act, 1956 will take precedence over Section 50 of the Arbitration and Conciliation Act, 1996 — joint venture agreement — contained Arbitration agreement — the appellant has wrongly based its arguments on matters such as ouster of jurisdiction, over-riding effect of special statute over general statute, over-riding effect of subsequent statute etc — ouster of jurisdiction arises only in regard to original jurisdiction and it cannot have any application to appellate jurisdiction as the one provided in Section 50 of the Arbitration Act. The appeal is a statutory remedy and it can lie only to the specified forum. The appellate forum cannot be decided on the basis of cause of action as applicable to original proceedings such as suit which could be filed in any court where part of cause of action arises.

2008 SCCL.COM 246 (Case/Appeal No: Civil Appeal No. 1511 of 2008)

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M/s. B. L. Gupta Construction Ltd Appellant vs. M/s. Bharat Co-op. Group Hng. Sty. Ltd. Respondent, decided on 22/2/2008.

Name of the Judge: Hon'ble Mr. Justice S. B. Sinha and Hon'ble Mr. Justice Harjit Singh Bedi.

Subject Index: Arbitration award — interest awarded — several issues have been sought to be raised by the learned counsel for the appellant as to the method to be adopted for the calculation of and as to how the payments made from time to time had to be adjusted — no such argument is open to the appellant as of now for the reason that interest had been awarded only against some claims and that the calculations have been made both at the stage of the Arbitrator and at the stage of the execution in the High Court and directions have been issued by this Court to make payment on interest on specific sums from particular dates — the appellant has dragged on the proceedings for years together despite the orders clarifying all issues from time-to-time — no hesitation in dismissing the appeal and while doing so impose ` 50, 000/- as costs on the appellant.

2008 SCCL.COM 293(Case/Appeal No: Arbitration Petition 4 of 2007)

M/s Shivnath Rai Harnarain (India) Ltd Appellant vs. M/s. Abdul Ghaffar Abdul Rehman(Dead) by L. ` Respondent, decided on 10/3/2008.

Name of the Judge: Hon'ble Mr. Justice H. K. Sema.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11(6) — this is an application filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (in short "the Act") for appointment of an Arbitrator — whether an application under Section 11(6) of the Act is maintainable?

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2008 SCCL.COM 385(Case/Appeal No: Civil Appeal No. 1940 of 2008 Civil Appeal No. 1941 of 2008 [Arising out of S.L.P(C) No.675 of 2007])

Gujarat Urja Vikash Nigam Ltd Appellant vs. Essar Power Ltd. Respondent, decided on 3/13/2008.

Name of the Judge: Hon'ble Mr. Justice H. K. Sema and Hon'ble Mr. Justice Markandey Katju.

Subject Index: Arbitration and Conciliation Act, 1996 — sections 11(5) and (6) — petition under — since the High Court has appointed an arbitrator for deciding the dispute between the licensee and the generating company, the judgment of the High Court has to be set aside. Only the State Commission or the arbitrator (or arbitrators) appointed by it could resolve such a dispute. We, therefore, set aside the impugned judgment of the High Court but leave it open to the State Commission or the Arbitrator (or Arbitrators) nominated by it to adjudicate/arbitrate the dispute between the parties expeditiously. Appeal allowed. The impugned judgment set aside — this appeal is filed regarding the deduction of ` 5 crores. The appellant may file application under Section 94(2) of the Electricity Act, 2003 before the appropriate Commission, to pass such an interim order, as may consider appropriate.

2008 SCCL.COM 445(Case/Appeal No: Civil Appeal No. 2350 of 2008)

Mahipatlal Patel Appellant vs. Chief Engineer & Another Respondents, decided on 1/4/2008.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice Harjit Singh Bedi.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 85 — interpretation of.

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2008 SCCL.COM 452(Case/Appeal No: Civil Appeal Nos. 3534-3535 of 2001)

M/s. P. R. Catering Co. and another Appellants vs. Oil and Natural Gas Corporation Ltd. & Others Respondents, decided on 13/3/2008.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice Harjit Singh Bedi.

Subject Index: Award of the Arbitrator — reasoned and speaking one — observed that in the light of the well settled principles of the law, proceedings under Section 30 of the Act did not visualise a drastic reappraisal of the findings of the arbitrator unless there was a total perversity in the award and that if two views were possible the one taken by the arbitrator was not liable to be interfered with — it would not be proper to labour the matter any further in view of the fact that this court intends to maintain the order of the High Court and to make any comment on the merits could prejudice the case of one of the parties — the arbitrator to complete the arbitration proceedings within three months from the date of the supply of the copy of this order. There will be no order as to costs — appeal dismissed.

2008 SCCL.COM 552 (Case/Appeal No: Civil Appeal No. 4683 of 2004 with Civil Appeal Nos. 4684/2004, 4685/2004, 4713/2004, 4714/2004 and 4715/2004)

M/s. Bharat Engineering Service Technocrats & Co Appellant vs. Executive Engineer and others Respondents, decided on 26/2/2008.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice Harjit Singh Bedi.

Subject Index: Arbitration Act, 1940 — The common reasoned award passed by the learned Arbitrator on 23rd of May, 1996 under the Arbitration Act, 1940 and made a rule of the court by the Civil Court on 20th of December, 1997 was set aside in its entirety

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by the High Court only on the ground that the arbitrator had erroneously decided the issue whether the claims preferred by the appellant were barred by limitation. It is on record that the entire matter was remitted by the High Court, despite the lapse of over 10 years since the reference was made, to a different arbitrator for a fresh decision on merits — in this view of the matter, this court sets aside the judgment of the High Court as well as of the Trial Court and the matter may be remitted back to the Trial Court for decision on the objection filed under Section 33 of the Act. The objection under Section 33 of the Act shall be decided by the Trial Court positively within six months from the date of supply of a copy of this order to it after giving hearing to the parties and after passing a reasoned order in accordance with law.

2008 SCCL.COM 634(Case/Appeal No: Arbitration Application No.2 of 2008)

TDM Infrastructure Private Limited Petitioner vs. UE Development India Private Limited Respondent, decided on 14/5/2008.

Name of the Judge: Hon'ble Mr. Justice S. B. Sinha.

Subject Index: Arbitration award — parties are companies — Directors and shareholders — residents of Malaysia and India — contract for rehabilitation — application for appointment of Arbitrator — the nationality of a company is determined by the law of the country in which it is incorporated and from which it derives its personality. However, for the purpose of taxation, test of residence may not be registration but where the company does its real business and where the central management and control exists. A distinction, thus, exists in law between a nationality and the residence. Furthermore, there exists a dispute that all the Board meetings take place only in Malaysia. In a matter involving determination of jurisdiction of a Court, certainty must prevail which cannot be determined by entering into a dispute question of fact — this Court has no jurisdiction to nominate an arbitrator. The application is dismissed with costs.

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2008 SCCL.COM 683(Case/Appeal No: Civil Appeal No.3628, 3629 of 2008)

M/s. Bakemans Industries Pvt. Ltd. Appellant vs. M/s. New Cawnpore Flour Mills and others Respondents, decided on 16/5/2008.

Name of the Judge: Hon'ble Mr. Justice S. B. Sinha and Hon'ble Mr. Justice Lokeshwar Singh Panta.

Subject Index: Company in liquidation — Sale of property of Company — whether power of a Company Court to sell the property of a company *vis-a-vis* the power of the Financial Corporation can be merged is the question involved in these appeals which arise out of the judgments and orders dated 2nd July, 2007 and 6th July, 2007 passed in Company Appeal No. 27 of 2004 and Company Appeal No. 2 of 2007 respectively passed by the Division Benches of the Delhi High Court — the jurisdiction of the Company Court is vast and wide. It can mould its reliefs. It may exercise one jurisdiction or the other. It may grant a variety of reliefs to the parties before it. The parties before the Company Judge are not only the Company or the creditors who had initiated the proceedings but also others who have something to do therewith — the Company Judge was not correct in its view and passed the impugned judgments only having regard to the wrongful conduct on the part of the appellant in obtaining an award from the conciliation Tribunal or failure to bring a better offer from another bidder — the court has to take into consideration the fate of not only those workmen who are working but also those who have a claim against the Company — the court, if it thinks fit and proper, may, apart from the provisional liquidator, appoint another person to supervise the works and functioning of Ceylon Biscuits Pvt. Ltd. as a receiver of the Court. As Ceylon Biscuits Pvt. Ltd. is being appointed as a receiver, it goes without saying that it shall act strictly under the supervision of the court and abide by the orders which may be passed by it from time-to-time.

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2008 SCCL.COM 695(Case/Appeal No: Civil Appeal Nos. 1151-1152 of 2001)

Union of India & another Appellants Vs. Raunaq International Ltd. Respondent, decided on 8/5/2008.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice Dalveer Bhandari.

Subject Index: Arbitration Act, 1940 — Section 20 — whether the Court while deciding the application under Section 20 of the Arbitration Act, 1940 can consider the issue as to what is arbitrable and what is not arbitrable, or judicial officer's role is only ministerial or mechanical in nature i.e. referring the dispute to arbitrator if there is an arbitration agreement and some disputes have arisen out of the contract between the parties?

2008 SCCL.COM 714(Case/Appeal No: Civil Appeal No. 1218 of 2001 with Civil Appeal No. 1219 of 2001)

2008 SCCL.COM 761(Case/Appeal No: Arbitration Petition No. 5 of 2007)

Tata Industries Ltd. & Another Appellants vs. M/s.Grasim Industries Ltd. Respondents, decided on 9/7/2008.

Name of the Judge: Hon'ble Mr. Justice V. S. Sirpurkar.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11(6) — application under — in restricting to the jurisdictional issue and in not perusing the issue of Apex Investments (Mauritius) Holding Private Limited not being a party to the Shareholders Agreement before Bombay High Court, the non-applicant abandoned that issue. The argument is, therefore, rejected — the application under Section 11(6) is liable to be allowed — hon'ble Dr. Justice A. S. Anand, former Chief Justice of India, Hon'ble Mr. Justice Arun Kumar and Hon'ble Mr. Justice P. K. Balasubramanyan,

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former Judges of the Supreme Court of India are appointed as the Arbitrators. Their terms shall be decided by themselves.

2008 SCCL.COM 852(Case/Appeal No: Civil Appeal No. 4368 of 2008)

M/s. Dharmendra Construction Co. Appellant Vs. State of Rajasthan and others Respondents, decided on 14/7/2008.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice Aftab Alam.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11 — application for appointment of an arbitrator — be decided — as early as possible preferably within six months from the date of supply of a copy of this order — this Court has — not gone into the merits of the application under Section 11 of the Arbitration and Conciliation Act which shall be decided by the High Court in accordance with law.

2008 SCCL.COM 869(Case/Appeal No: Civil Appeal No. 4630 of 2008)

M/s. National Projects Cons. Corporation Ltd. Appellant vs. M/s. Sadhu Singh & Co. Respondent, decided on 24/7/2008.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice Aftab Alam.

Subject Index: Arbitration award — Parties agreed that the Proceedings shall stand abated — It will be open to the respondent to file the award for making it a rule of the Court in the Himachal Pradesh High Court where it had earlier filed as C.S. No. 45/1989 under Sections 8 and 20 of the Indian Arbitration Act, 1940 within four weeks from the date it receives it from the Registry of the Delhi High Court — the Respondent shall intimate the date of filing of the award in the Himachal Pradesh High Court to the appellant

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within one week of the filing of the award — the delay in filing the award before the Himachal Pradesh High Court is condoned; the High Court shall consider the case of the parties on merits and pass final orders accordingly.

2008 SCCL.COM 906(Case/Appeal No: Civil Appeal No. 7340 of 2002)

M/S. M.B. Patel and Co. Appellant Vs. Oil and Natural Gas Commission Respondent, decided on 8/5/2008.

Name of the Judge: Hon'ble Mr. Justice H. K. Sema and Mr. Justice Markandey Katju.

Subject Index: Arbitration — award — appeal against the judgment order of — Gujrat High Court setting aside the award on the ground — that an arbitrator or umpire has misconducted himself in the proceedings; — that there appears to be an error on the face of the record inasmuch as the Umpire has overlooked clauses 14 & 18 of the Arbitration Agreement — that the Umpire has travelled beyond the scope of the contract between the parties on certain items and claims and — that he has rendered lump sum award making it totally unintelligible — the arbitrator has not at all considered clause 14 of the arbitration agreement. The interest has been awarded in violation of clause 14 of the Agreement. Apart from others these two legal aspects have not been considered by the Arbitrator.

2008 SCCL.COM 951(Case/Appeal No: Arbitration Application [C] No. 18 of 2007)

Shristi Infrastructure Development Corporation Ltd. Applicant Vs. Sunway Construction SDN BHD Respondent, decided on 12/3/2008.

Name of the Judge: Hon'ble Mr. Justice Lokeshwar Singh Panta.

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Subject Index: Arbitration and Conciliation Act, 1996 — Section 11(6) read with Section — 11(12) — application under — and relates to a dispute under an agreement between a foreign company and an Indian company. The application is filed by an Indian company against the foreign company seeking reference of the disputes to an arbitrator — taking into consideration the fact that the disputes and differences between the parties emanating from the contract are required to be resolved through an Arbitration of sole arbitrator and further keeping in view the urgency of the Project to be completed by the respondent-company, and also the time-gap of about 3 years from the date of contract entered into between the petitioner and the respondent-company — at this stage granting of interim relief sought for by the petitioner in these proceedings will not be in the larger interest of both the parties and in completion of the time-bound Project of public importance — the question whether the Chief Justice or his designate person is a 'Court' within the meaning of Section 2(e) of the Act, is left open for consideration and decision in some appropriate proceedings as in this case the petitioner has already approached High Court of Calcutta twice under Section 9 of the Act and third time in the High Court of Delhi for the grant of interim relief or measures.

2008 SCCL.COM 967(Case/Appeal No: Civil Appeal No. 4747 of 2008)

Gulbarga University Appellant vs. Mallikarjun S. Kodagali and another Respondents, decided on 1/8/2008.

Name of the Judge: Hon'ble Mr. Justice S.B. Sinha and Hon'ble Mr. Justice Cyriac Joseph.

Subject Index: Limitation Act, 1965 — Section 14 — application of — in a proceeding under Section 34 of the Arbitration and Conciliation Act, 1996 — is in question in this appeal which arises out of a judgment and order dated 31/1/2005 passed by the High Court of Karnataka at Bangalore in Miscellaneous First Appeal No.

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717 of 2004 whereby and whereunder the objection filed by the appellant herein under Section 34 of the Act was held to be barred by limitation.

2008 SCCL.COM 1002(Case/Appeal No: Civil Appeal No. 4918 of 2008)

M/s. GAIL (I) Ltd. Appellant Vs. Bal Kishan Agarwal Glass Industries Ltd. Respondent, decided on 7/8/2008.

Name of the Judge: Hon'ble Dr. Justice Arijit Pasayat and Hon'ble Dr. Justice Mukundakam Sharma.

Subject Index: Arbitration and Conciliation Act, 1996 — Sections 9 and 17 — interim mandatory injunction — gas supply tampered — writ petition dismissed — alternative remedy — the proceedings are pending before the arbitrator. Under Section 17 of the Act, interim orders can be passed by the Arbitrator

2008 SCCL.COM 1011(Case/Appeal No: Civil Appeal No. 2461, 2462 of 2008)

M/s. Consolidated Engg. Enterprises with Hatti Gold Mines Company Ltd. Appellant Vs. Principal Secy. Irrigation Deptt. & Others with M/s. Vinay Heavy Respondents, decided on 3/4/2008.

Name of the Judge: Hon'ble CJI., Justice R.V. Raveendran and Hon'ble Mr. Justice J. M. Panchal.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 34 — application under — dismissal — as time – barred — matter remanded to the District Court with a direction to proceed further — the Division Bench of the High Court of Karnataka was not justified in concluding that the appellant had not prosecuted the matter in other Courts with due diligence and in good faith. The said finding being against the weight of evidence on record, is liable to be set aside and is hereby set aside — the appellant had

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prosecuted the matter in other Courts with due diligence and in good faith and, therefore, is entitled to claim exclusion of time in prosecuting the matter in wrong Courts. Ravindran, J — the decision in Popular Construction will not apply. Fairgrowth merely reiterates the principle in Popular Construction in regard to the exclusion of Section 5 of Limitation Act — Section 14(2) of the Limitation Act, 1963 is applicable to proceedings under section 34(1) of the AC Act.

2008 SCCL.COM 1013(Case/Appeal No: Civil Appeal Nos. 3376-77 of 2008)

M/s. Associated Construction Appellant vs. Pawanhans Helicopters pvt. Ltd. Respondent, decided on 7/5/2008.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice Harjit Singh Bedi.

Subject Index: Arbitration Act Section 30 or 33 — contract work — the respondent, Pawanhans Helicopters Pvt. Ltd. a Government of India undertaking, floated two tenders for allocation of work for construction of a compound wall and a bridge over a nala — as per the contract the work was required to be completed within four months. It appears that on account of some delay which was attributable to Pawanhans, the work did not proceed as per schedule and the contractor accordingly informed Pawanhans by letters — the contractor had invoked the clause for arbitration — the contractor was compelled to issue a "No Dues Certificate" and in this view of the matter, it could not be said that the contractor was bound by what he had written. It is also clear that there is voluminous correspondence over a span of almost 2 years between the submission of the first final bill on 3rd June 1991 and the second final bill dated 2nd February 1993 and as such the claim towards escalation or the plea of the submission of a "No Dues Certificate" under duress being an after thought is not acceptable — the judgment of the Division Bench is erroneous and

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is accordingly set aside. The judgment of the learned Single Judge is accordingly restored. In the facts and circumstances of the case, in that Pawanhans has taken advantage of a beleaguered contractor, and has behaved in a most unbecoming manner in pushing it ever deeper into the chasm, the contractor will have its costs which are computed at ` 10,000/-.

2008 SCCL.COM 1089(Case/Appeal No: Civil Appeal No. 5226 of 2008)

Punjab Agro Industries Corporation Ltd. Appellant vs. Kewal Singh Dhillon Respondent, decided on 8/25/2008.

Name of the Judge: Hon'ble Mr. Justice R.V. Raveendran and Hon'ble Mr. Justice P. Sathasivam.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11(4) — petition under — though the order under Section 11(4) is a judicial order, having regard to Section 11(7) relating to finality of such orders, and the absence of any provision for appeal, the order of the Civil Judge was open to challenge in a writ petition under Article 227 of the Constitution. The decision in SBP does not bar such a writ petition. The observations of this Court in SBP that against an order under Section 11 of the Act, only an appeal under Article 136 of the Constitution would lie, is with reference to orders made by the Chief Justice of a High Court or by the designate Judge of that High Court. The said observations do not apply to a subordinate Court functioning as Designate of the Chief Justice. This Court has repeatedly stressed that Article 136 is not intended to permit direct access to this Court where other equally efficacious remedy is available and the question involved is not of any public importance; and that this Court will not ordinarily exercise its jurisdiction under Article 136, unless the appellant has exhausted all other remedies open to him. Therefore the contention that the order of the Civil Judge, Sr. Division rejecting a petition under Section 11 of the Act could only be challenged, by recourse to Article 136 is untenable — appeal allowed.

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2008 SCCL.COM 1090(Case/Appeal No: Civil Appeal No. 5067 of 2008 with C.A. Nos. 568, 5069, 5071-5076 & 5078-5085 of 2008)

Northern Railway Administration Ministry of Railway, New Delhi Appellant Vs. Patel Engineering Company Ltd. Respondents, decided on 18/8/2008.

Name of the Judge: Hon'ble Dr. Justice Arijit Pasayat and Hon'ble Mr. Justice P. Sathasivam and Hon'ble Mr. Justice Aftab Alam.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11(6) — appointment of Arbitrator — ambit and scope of Section 11(b)

2008 SCCL.COM 1095(Case/Appeal No: Arbitration Petition No. 16 of 2006)

M/s. INDTEL Technical Services Pvt. Ltd. Appellant Vs. W.S. Atkins PLC. Respondent, decided on 25/8/2008.

Name of the Judge: Hon'ble Mr. Justice Altamas Kabir.

Subject Index: Arbitrator — appointment of — since all attempts made by the applicant, including resolution of the dispute through an alternate dispute resolution process and mediation, proved to be abortive, the applicant ultimately filed the present application for the appointment of a sole Arbitrator under Section 11(9) of the Arbitration Act, 1996, as per clause 13(2) of the Memorandum of Understanding dated 11th June, 2002 — the decision in the Bhatia International case (supra) has been rendered by a Bench of Three Judges and governs the scope of the application under consideration, as it clearly lays down that the provisions of Part-I of the Arbitration and Conciliation Act, 1996, would be equally applicable to International Commercial Arbitrations held outside India, unless any of the said provisions are excluded by agreement between the parties expressly or by implication, which is not so in the instant case — Justice B. N. Srikrishna, is appointed as

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sole arbitrator to arbitrate upon the disputes which have arisen betweens the parties hereto as set out in sub-paragraphs (a) to (h) of paragraph 19 of the present application. The sole Arbitrator will be entitled to decide upon the procedure to be adopted in the arbitral proceedings, the sittings of the arbitral proceedings and to also settle his fees in respect thereof. The sole arbitrator shall make positive efforts to complete the arbitration proceedings and pass his award with expedition.

2008 SCCL.COM 1096(Case/Appeal No: Arbitration Petition No. 10 of 2006)

Great Offshore Ltd. Appellant vs. Iranian Offshore Eng & Constn. Co. Respondent, decided on 25/8/2008.

Name of the Judge: Hon'ble Mr. Justice Dalveer Bhandari.

Subject Index: Arbitration and Conciliation Act, 1966 — Section 11(5)(6)(9) and (12) — petition under — for appointment of sole arbitrator — the charter party agreement that had been signed by the applicant and the respondent clearly indicated that the parties have entered into a valid and concluded contract. The other correspondence between the parties also leads to a definite conclusion: the parties have entered into a valid contract containing an Arbitration clause. Since a dispute has arisen between the applicant and the respondent, it needs to be referred to the arbitrator — the applicant is entitled in law to an order for appointment of a sole arbitrator — learned arbitrator shall not be bound by any observations which have been made in this judgment. The observations have been made only to decide this Arbitration petition.

2008 SCCL.COM 1190(Case/Appeal No: Civil Appeal No. 5645 of 2008)

Bharat Sanchar Nigam Ltd. and another Appellants vs. Motorola India Pvt. Ltd. Respondent, decided on 15/9/2008.

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Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice Lokeshwar Singh Panta.

Subject Index: Arbitrator — Appointment — Prayer — The pivotal questions that need to be decided in this appeal are: i) whether the levy of liquidated damages under Clause 16.2 of the tender document is an "excepted matter" in terms of Clause 20.1 of the said document so that the same cannot be referred to Arbitration or looked into by the arbitrator. ii) Whether Clause 62 of the special conditions of the tender document will prevail over Clause 16.2 of the general conditions of the contract — the contention of the Respondent that Clause 62 referring to special clauses has an overriding effect on Clause 16.2, cannot be accepted.. There is in fact no conflict between clause 62 and 16.2. Clause 62 has two parts in it. One part referring to the Liquidated damages and the other part refers to incentives in case the respondent/Motorolla performs its part of the contract within time. The part dealing with Liquidated Damages under Clause 62 in fact refers it back to clause 16.2 dealing with the quantification of Liquidated Damages. So it is apparent that there is no dispute between Clause 62 and Clause 16.2 — the High Court was justified in passing the impugned judgment and there is no infirmity in the impugned order.

2008 SCCL.COM 1210(Case/Appeal No: Civil Appeal No. 5733 of 2008)

National Insurance Co. Ltd. Appellant Vs. M/s. Boghara Polyfab Pvt. Ltd. Respondent, decided on 18/9/2008.

Name of the Judge: Hon'ble Mr. Justice R.V. Raveendran and Hon'ble Mr. Justice Lokeshwar Singh Panta.

Subject Index: Insurance — whether a dispute raised by an insured, after giving a full and final discharge voucher to the insurer, can be referred to Arbitration.

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2008 SCCL.COM 1227(Case/Appeal No: Civil Appeal No. 5605 of 2008)

Union of India and others Appellants Vs. M/s. Talson Builders Respondent, decided on 11/9/2008.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice Aftab Alam.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11(6) — Appointment of retired Judge of Allahabad High Court as Arbitrator by Chief Justice of the High Court — to decide the dispute — according to the appellants, the respondent submitted its final bill and received full payment without any protest. However, on 14th of August, 2000, the respondent sent a letter to the appellants for appointment of an Arbitrator which was not agreed to by them with the observation that the final bill in respect of the subject work had been signed and the amount had already been paid in full and final settlement and therefore, there was no dispute to be referred to the Arbitrator as prayed for by the respondent — no other alternative but to set aside the order of the High Court and request the High Court to go into the dispute and then dispose of the application for appointment of an Arbitrator under Section 11(6) of the Act in accordance with law.

2008 SCCL.COM 1256(Case/Appeal No: Civil Appeal No. 5796 of 2008)

M/s. Shakti Bhog Foods Limited Appellant vs. Kola Shipping Limited Respondents, decided on 23/9/2008.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice Dalveer Bhandari.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 45 — Application filed by the respondent allowed by the Additional District Judge, Kakinada — affirmed by the High Court — appeal by

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special leave — the appellant is a company dealing in the business of manufacturing and exporting food products and cereals/grains etc. The appellant was to export sorghum (hereinafter referred to as the "cargo") to the State of Niger. The appellant thereafter negotiated with the head of the State of Niger through a lady Principal Officer for an export order. In that process, the appellant herein obtained an irrevocable letter of credit from the State Bank of India, Overseas Branch, New Delhi, on 12th of July, 2005. On 26th of July, 2005, the appellant addressed an e-mail to the respondent through its broker Brisk Marine Services — there is a charter party agreement existing between the parties and, that as per the provisions of Section 45 of the Act, the High Court as well as the trial court were fully justified in allowing the application preferred by the respondent and accordingly, impugned order must be affirmed — the High Court was justified in passing the impugned judgment and there is no infirmity in the impugned order in the same.

2008 SCCL.COM 1281(Case/Appeal No: Civil Appeal No. 6039 of 2008)

M/s. UNISSI (India) Pvt. Ltd. Appellant vs. P.G. Institute of Med. Edn. & Research Respondent, decided on 10/1/2008.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice Dalveer Bhandari.

Subject Index: Arbitration case — Dismissing the application filed by the appellant for appointment of an arbitrator on the ground that no Arbitration Clause was in existence between the parties — although no formal agreement was executed, the tender documents indicating certain conditions of contract contained an Arbitration clause. It is also an admitted position that the appellant gave his tender offer which was accepted and the appellant acted upon it — the learned Additional District Judge, Chandigarh erred in holding that there did not exist any Arbitration agreement between the

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parties and, therefore, the order passed by him is liable to be set aside — the impugned order is set aside and the appeal is allowed — the matter may be placed before the Hon'ble Chief Justice of the High Court of Chandigarh to appoint an Arbitrator in accordance with law to resolve the dispute between the parties.

2008 SCCL.COM 1347(Case/Appeal No: Civil Appeal No. 6104 of 2008)

Ludhiana Improvement Trust and another Appellants vs. M/s. Today Homes & Infrastructure P. Ltd. Respondent, decided on 14/10/2008.

Name of the Judge: Hon'ble Mr. Justice Altamas Kabir and Hon'ble Mr. Justice Markandey Katju.

Subject Index: Arbitration and Conciliation Act, 1996 — section 11 — petition under — for appointment of Arbitrator — this appeal has been filed by the Ludhiana Improvement Trust, through its Administrator, and the State of Punjab, against the order passed by the Chief Justice of Punjab and Haryana High Court in a petition filed by the respondent herein under Section 11 of the Arbitration and Conciliation Act, 1996 for the appointment of an Arbitrator — this court has, no option but to set aside the order of the Chief Justice and remit the matter for a fresh decision in keeping with the decision of the seven-Judge Bench in S.B.P. & Company vs. Patel Engineering Limited and Another [2005 (8) SCC 618].

2008 SCCL.COM 1381(Case/Appeal No: Arbitration Petition No. 17 of 2007)

M/s. COMED Chemicals Ltd. Appellant vs. C. N. Ramchand Respondent, decided on 6/11/2008.

Name of the Judge: Hon'ble Mr. Justice C. K. Thakker.

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Subject Index: Arbitration and Conciliation Act, 1996 — Section 11 — petition under — praying to Hon'ble the Chief Justice of India to appoint third Arbitrator as Presiding Arbitrator or to appoint Sole Arbitrator as deemed fit in the facts and circumstances of the case.

2008 SCCL.COM 1439(Case/Appeal No: Arbitration Petition No. 13 of 2007)

M/s. Everest Holding Ltd. Appellant vs. Shyam Kumar Shrivastava and others Respondents, decided on 24/10/2008.

Name of the Judge: Hon'ble Dr. Justice Mukundakam Sharma.

Subject Index: Arbitration and Conciliation Act, 1996 — section 11(6) and (9) — petition under for appointment of an arbitrator — there could be other disputes between the sister concerns of the appellant and the respondent arising out of separate and independent agreements. Such disputes would have to be decided and adjudicated upon in accordance with law. But all such disputes which are identified and mentioned hereinbefore and which arise out of and in relation to JVA have to be and must be decided by appointing an arbitrator in terms of the Arbitration agreement — it shall be open for the learned Arbitrator to fix his remuneration after discussing with the parties — it goes without saying that the observations made herein are only for the purpose of deciding the issue as to whether or not the disputes should be referred to the arbitrator. Necessarily any observation made herein would not be construed as any views or opinion expressed on the merit of the claims.

2008 SCCL.COM 1543(Case/Appeal No: Arbitration Application No. 6 of 2008)

Standard Corrosion Controls Pvt. Ltd. Applicant vs. Sarku Engineering Services SDN BHD Respondent, decided on 11/11/2008.

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Name of the Judge: Hon'ble Mr. Justice Markandey Katju.

Subject Index: Arbitration and Conciliation Act, 1996 — section 11(5) — application for appointment of an arbitrator — the applicant is a company registered under the Indian Companies Act, having its registered office at Thane, Maharashtra. The respondent is a company incorporated under the law of Malaysia having its registered office at Miri, Sarawak, Malaysia. The respondent had been awarded a contract of 26 Well Unmanned Platforms by the Oil & Natural Gas Corporation — the applicant had been short-listed as one of the potential sub-contractors for painting work scope package and was requested to submit its quotations. On going through the quotation of the applicant, the respondent issued a contract dated 21/2/2006 — subsequently, the applicant received a letter dated 8/9/2006 from the respondent stating that they had no choice but to exercise Article VII, the Suspension and Termination Clause, of the Contract Agreement with immediate effect on the alleged plea that the respondent was unable to furnish bank guarantee and feedback confirmation of the applicant's readiness for work. This resulted in a dispute between the parties and the applicant wrote a letter dated 14/4/2007 invoking the Arbitration clause in the agreement between the parties, being Article X — Article IX has no relevance to the controversy in this case as it only says that the contract shall be governed by the laws of India. The laws of India would mean the Contract Act, Limitation Act, Specific Relief Act etc. Article/Clause IX does not deal with the procedure by which the arbitrator has to be appointed. That is governed by Clause X — in view of the above, this arbitration application is not maintainable and it is accordingly dismissed.

2008 SCCL.COM 1579(Case/Appeal No: Civil Appeal No. 7012 of 2008)

Royal Education Society Appellant vs. LIS (India) Construction Co. Pvt. Ltd. Respondent, decided on 2/12/2008.

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Name of the Judge: Hon'ble Mr. Justice Lokeshwar Singh Panta and Hon'ble Mr. Justice Aftab Alam.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 34 — Arbitration petition against award of the Arbitral Tribunal dismissal — appeal — this appeal is directed against the judgment and order dated 19/04/2006 passed by the Division Bench of the High Court of Judicature at Bombay in Appeal No. 198 of 2006. The appellant-Society has filed the above said appeal challenging the order.

2008 SCCL.COM 1584 (Case/Appeal No: Arbitration Petition No. 16 of 2007)

VISA International Ltd. Applicant(s) Vs. Continental Resources (USA) Ltd. Respondent, decided on 12/2/2008.

Name of the Judge: Hon'ble Mr. Justice B. Sudershan Reddy.

Subject Index: Arbitration and Conciliation Act, 1996, Section 11 — prayer to appoint an arbitrator — respondent entered into an "MOU" with Orissa Mining Corporation — respondent proposed a joint venture with appellant by setting up a Special Purpose Vehicle — the two sign "MOU" accordingly — dispute arose when the parties differed with each other over the reference of an Arbitration clause in the agreement — respondent never disputed existence of arbitration clause — but contended that the agreement is an inchoate document, a contingent matter and cannot be enforced as an Arbitration agreement — question between arbitration and conciliation — appeal before S.C. — no satisfactions recorded by the parties over their claims — claims not barred by limitation — there is a live issue — clear case for appointing arbitrator — former Chief Justice of India, Justice Dr. Anand appointed sole arbitrator.

2008 SCCL.COM 1598 (Case/Appeal No: Special Leave Petition (C) No. 29333 of 2008)

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Yogi Agarwal Petitioner vs. M/s. Inspiration Clothes & U and others Respondent, decided on 12/1/2008.

Name of the Judge: Hon'ble Mr. Justice R. V. Raveendran and Hon'ble Mr. Justice D. K. Jain.

Subject Index: Arbitration and Conciliation Act, 1996, Section 8 — dismissal of application under filed by the defendants in a money suit — recovery of money by way of price of the consignments supplied by plaintiff to the nominees of first defendant company — and by way of value of samples given by plaintiff to defendant — by a suit, defendants applied for referring the parties to Arbitration — Trial Court held no arbitration agreement — High Court affirmed the decision — SLP filed after a delay of 182 days — Held: no provision for Arbitration contained in any contract of document relating to suit transactions — no arbitration agreement in regard to subject matter — SLP dismissed both on the grounds of delay and on merits.

2008 SCCL.COM 1600(Case/Appeal No: Civil Appeal No. 6753 of 2008)

Narayan Prasad Lohia Appellant vs. Nikunj Kumar Lohia Respondent, decided on 25/11/2008.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice Aftab Alam.

Subject Index: Family Dispute — Arbitration award — failed to satisfy all contesting parties — two objections against award filed in High Court by two different respondents in High Court — one: No. of arbitrators was even, two: award was called bad due to panel of two arbitrators Three-Judge Bench sets aside Single Judge and Division Bench judgments — some developments during the pendency of SLP by a respondent — Division Bench 's view: "there was no award in existence and no question of putting a non-existence award into execution." — appellant directed to file a

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review petition for modification of the order — appeal dismissed, no costs.

2008 SCCL.COM 1603(Case/Appeal No: Civil Appeal No. 6853 of 2008)

Brigadier Man Mohan Sharma, FRGS (Retd.) Appellant vs. Lt. Gen. Depinder Singh Respondent, decided on 26/11/2008.

Name of the Judge: Hon'ble Mr. Justice Altamas Kabir and Hon'ble Mr. Justice Markandey Katju.

Subject Index: Arbitration and Conciliation Act, 1996, Section 8 and 11 — Copy Right Act, Section 19(A) — Arbitration Act, 1940 — unwillingness of 'appellant publisher' to publish fresh edition of respondent's book — another publisher printed the edition with the leave and concurrence of 'appellant publisher' — publishing it without acknowledging the fact it was "First published by" the appellant amounted to piracy and plagiarism — appellant complained to the 'Copyright Board' — respondent terminated the 'publication agreement' with appellant — appellant filed an application before Delhi High Court for reference to arbitration — Single Judge dismissed application — Division Bench refused to interfere with Single Judge's decision on the ground that a civil suit on the same issue is pending and no matter of dispute existed — appealed held: — termination of publication agreement is a matter of dispute — principle of estoppel wrongly invoked — High Court's order set aside — matter remanded to the designated Judge for appointment of an Arbitral Tribunal — appeal allowed.

2008 SCCL.COM 1617(Case/Appeal No: Arbitration Application No. 22 of 2007)

Speech & Software Technologies (India) Pvt. Ltd. Applicant vs. Neos Interactive Ltd. Respondent, decided on 12/5/2008.

Name of the Judge: Hon'ble Mr. Justice J. M. Panchal.

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Subject Index: Arbitration and Conciliation Act, 1996, section 11(6) — appointment of arbitrator — no reply by the respondent on a notice by the applicant over appointment of sole arbitrator — respondent said in reply that share purchase agreement stands novated, rescinded and revoked on certain events not taking place — applicant filed rejoinder reiterating its claim of payment of a sum by respondent for its services — Held: in the instant case, services agreement was never a schedule to the Tripartite Share Purchase Agreement — services agreement has not ceased to exist and the applicant is entitled to invoke the Arbitration clause — arbitrable disputes exist between parties — application accepted — Justice Arvind Sawant (Retd.), former Chief Justice of Kerala High Court appointed sole arbitrator.

2008 SCCL.COM 1621(Case/Appeal No: Civil Appeal No. 7282 of 2008)

B. P. Moideen Sevamandir and another Appellants vs. A. M. Kutty Hassan Respondent, decided on 12/12/2008.

Name of the Judge: Hon'ble Mr. Justice R. V. Raveendran and Hon'ble Mr. Justice D. K. Jain.

Subject Index: Legal Services Authorities Act, 1987, Section 20(5) — Arbitration and Conciliation Act, 1996 Sections 67, 75, 86 — suit for declaration and mandatory injunction against appellants — appellants lost before Trial Court and the First Appellate Court — second appeal before Kerala High Court — interim stay of execution — second appeal referred to Lok Adalat — despite tentative settlement, no compromise deed or petition drawn up — no settlement even after a second reference to Lok Adalat by High Court — failure report by Lok Adalat said — "considering the nature of demands made by appellants, there is no chance of settlement" — second appeal before Single Judge of High Court for final hearing — appellants' counsel failed to appear and appeal was dismissed — application for restoration — Single Judge

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dismissed the same, holding that a "cantankerous litigant" cannot be allowed to "continue protracting the litigation even after an award is passed at the Lok Adalat" — SLP before Supreme Court — Held: Lok Adalat and High Court Single Judge totally lost sight of purpose and scope of Lok Adalats — Held: there cannot be an award when there is no settlement — overbearing attitude of Lok Adalats will bring disrepute to them as an 'ADR' process — Held: as the apex body, National Legal Services Authority should issue uniform guidelines for effective functioning of Lok Adalats — Held: Lok Adalats should desist from finding fault with any litigant, as this would prejudice the mind of the Court — appeal allowed, impugned order of High Court set aside — second appeal restored to the file of High Court for disposal on merits.

2008 SCCL.COM 1646(Case/Appeal No: Civil Appeal No. 7315 of 2008)

M/s Shakti Tubes Ltd. Tr. Director Appellant Vs. State of Bihar and others Respondents, decided on 16/12/2008.

Name of the Judge: Hon'ble Mr. Justice S. B. Sinha and Hon'ble Mr. Justice Cyriac Joseph.

Subject Index: Limitation Act, 1963, section 14 — Code of Civil Procedure, section 80 — Small Scale, Ancillary Industrial Undertakings Act, 1992 — question whether the period spent on pursuing a writ petition should be excluded for the purpose of computing the period of limitation in filing a suit in terms of Section 14 of the Limitation Act, 1963? — appellant entered into a contract for supply of black pipes to Minor Irrigation Department of Bihar — agreement contained a clause for escalation of price — on appellant seeking a hike in the rate, in view of price escalation the State and the 'Irrigation Department' worked out different rates — orders were placed for further supply — but appellant wrote a letter stating that escalation granted to them is not correct and insufficient — appellant cautioned that it will claim interest

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on the unsettled amount for the period of delay, if payment was not made immediately — no response — appellant filed writ petition before Patna High Court seeking issue of a mandamus on respondents — Single Judge admitted the writ petition on the limited question of interest on delayed payments and referred the same to a Division Bench — appellant filed a suit for a decree for a sums of ` 65,97,319/- — suit was decreed and Trial Judge held that appellant was entitled to benefit of escalation — appealed — Single Judge while holding that the plaintiff is entitled to get escalated price, stated that the plaintiff's suit is barred by law of limitation — appealed — Held: Provisions of Section 14 of Limitation Act are applicable even in proceeding under Section 34 of Arbitration and Conciliation Act, 1996 — Section 14 of Limitation Act are applicable to present case — impugned judgment cannot be sustained — set aside.

2008 SCCL.COM 1680(Case/Appeal No: Civil Appeal No. 6347 of 2000)

H.P. State Forest Company Ltd. Appellant vs. M/s. United India Insurance Co. Ltd. Respondent, decided on 18/12/2008.

Name of the Judge: Hon'ble Mr. Justice Dalveer Bhandari and Hon'ble Mr. Justice Harjit Singh Bedi.

Subject Index: Indian Contract Act, 1872 — Section 28 — Limitation Act — Section 44 — C.P.C. Order 6 Rule 17 — Arbitration and Conciliation Act, 1996 — respondent agreed to insure the timber owned by appellant and issued cover note — insured timber washed away — respondent refuted liability saying policy was issued for 8 months only — respondent allegedly accepted additional premium even after the policy was repudiated — respondent insurance company also refused appointment of an arbitrator — appellant filed complaint before National Commission — complaint dismissed as time barred — appealed — held : no insurance policy existed as on the date of flood — no case for interference made out — appeal dismissed.

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2008 SCCL.COM 1707(Case/Appeal No: Civil Appeal No. 7408-7409 of 2008)

M/s. P. Manohar Reddy and Bros. Appellant vs. Maharashtra Krishna Valley Dev. Corp. and others Respondents, decided on 12/18/2008.

Name of the Judge: Hon'ble Mr. Justice S. B. Sinha and Hon'ble Mr. Justice Cyriac Joseph.

Subject Index: Arbitration Act, 1940 — Indian Contract Act, Section 28 — Limitation Act, 1963, Article 137 — General condition of contract — extra works — canal excavation work by appellant — contractor — extra item of work other than those in contract — raised claims — rejected by respondent — corporation invoking clause 54 of general condition of contract, appellant issued notice to respondent — apart from rejecting claim, respondent opined that matter cannot be considered for Arbitration — after request by appellant for referring disputes to an arbitrator, appellant filed application under Section 8 of Arbitration Act in civil court — arbitrator appointed by court — revision application by respondent before High Court — allowed — review petition by appellant dismissed — appeal — held : a bare perusal of general conditions of contract entered into by the parties shows that the Arbitration agreement entered into by them is not of wide amplitude — held : no claim of extra work was raised by the contractor even after final measurement had been recorded and the bill was paid in full and final satisfaction — held : Arbitration clause could be invoked only when appellant — contractor is dissatisfied with decision of appellate authority, that too within a period of 30 days from the date of receipt of decision in question failing which, the some would be final — appellant did not invoke Section 37(a) of Arbitration act — High Court judgment affirmed — appeals dismissed.

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2009 SCCL.COM 32(Case/Appeal No: Civil Appeal No. 107 of 2009)

Om Construction Co. Appellant vs. Ahmedabad Municipal Corp. and another Respondents, decided on 13/1/2009.

Name of the Judge: Hon'ble Mr. Justice Altamas Kabir and Hon'ble Mr. Justice Markandey Katju.

Subject Index: Arbitration Act, 1996 — Section 11(6) — Gujarat Tribunal Act, 1992 — Section 2(1)(k) — whether in the absence of a Notification in the Official Gazette, the Municipal Corporation can at all be considered as a Public Authority for the purpose of Section 2(1)(k) of the Gujarat Tribunal Act, 1992 — whether the absence of a procedure for appointment of an Arbitrator in the Arbitration Agreement itself, would constitute a bar for the appointment of an Arbitrator under Section 11(6) or any other provision of the 1996 Act, when not only the parties to these proceedings, but the High Court as well, had arrived at a conclusion that the provisions of the Gujarat Tribunal Act, 1992, would not be applicable in the instant case — whether this matter should be remitted to the High Court for appointment of an Arbitrator or whether this Court should appoint an Arbitrator in terms of the Arbitration Agreement. Remitting the matter to the High Court would only mean another round of litigation, whereas if the appointment is made by this Court, the matter will achieve finality, which would ultimately be beneficial for all concerned.

2009 SCCL.COM 35(Case/Appeal No: Civil Appeal Nos. 5430-5431 of 2002)

Rajasthan State Electricity Board Appellant vs. M/s. Universal Petrol Chemicals Ltd. Respondent, decided on 12/1/2009.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Dr. Justice Mukandakam Sharma.

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Subject Index: Arbitration Act, 1940 — Section 20 — contentions that were raised on behalf of the appellant in the present appeals, revolves around the issue of territorial jurisdiction of the Calcutta High Court in entertaining the said petition under Section 20 of the Act — according to the appellant, the Calcutta High Court would have no jurisdiction to entertain and decide the aforesaid petition under Section 20 of the Act and that it is only the Court at Jaipur which would have territorial jurisdiction to entertain and decide any such petition filed by any of the party, in view of the specific intention of the parties as disclosed from the stipulations in the purchase order and agreements entered into between the parties — the learned Division Bench of the Calcutta High Court misread and misinterpreted the provisions of sub-Sections (3) and (4) of Section 31 of the Act and thereby arrived at a wrong finding to the effect that by virtue of the provision of Section 31(4) the Calcutta High Court would have jurisdiction in the matter — it is only the Court at Jaipur which will have jurisdiction to try and decide the Arbitration proceedings between the parties and also entertain a petition of the nature i.e. Section 20 of the Act.

2009 SCCL.COM 70(Case/Appeal No: Arbitration Petition No. 7 of 2006)

Balli Petrochemicals Limited Petitioner Vs. National Aluminium Company Ltd. Respondent, decided on 20/1/2009.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11(6) — Clause 16.0 — appointment of arbitrator — it was open to the respondent to select any one from the panel sent by the respondent after the expiry of the period for selecting a person by the petitioner. In this case, since the respondent has already exercised the Arbitration clause and already replaced and selected a sole arbitrator in place of Justice R. S. Pathak (since deceased) who has already entered appearance, this Court does not find any reason

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to replace the appointed arbitrator at this stage when admittedly no allegations have been put forward by the petitioner against such appointment excepting that since a former Chief Justice of India was appointed to arbitrate the disputes between the parties, this time also a former Chief Justice of India ought to have been appointed — the appointment was already made and it is only a case of replacement of earlier sole arbitrator on the ground of his resignation.

2009 SCCL.COM 99(Case/Appeal No: Civil Appeal No. 448 of 2009)

M/s Mohinder Singh & Co. Appellant vs. Board of Trustees of the Port of Bombay Respondent, decided on 1/27/2009.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice H. L. Dattu.

Subject Index: Speaking and Reasoned order — appeal against the final order passed by DB of the High Court in Arbitration Petition — by which the DB refused to grant interest to the appellant on a sum of thirty lacs awarded by the learned Arbitrator — only on the ground that the order was not a speaking and a reasoned order and the same was passed without applying its mind, the impugned order is set aside. The High Court is requested to decide the prayer made by the appellant in accordance with law after giving hearing to the parties and dispose of the same after passing a speaking and reasoned order.

2009 SCCL.COM 120(Case/Appeal No: Criminal Appeal No. 1069 of 2004)

State of Punjab Appellant Vs. Pritam Chand and others Respondents, decided on 11/2/2009.

Name of the Judge: Hon'ble Dr. Justice Arijit Pasayat and Hon'ble Dr. Justice Mukundakam Sharma.

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Subject Index: Indian Penal Code, 1860 — Section 406 — charge under — challenge in this appeal is to the judgment of a learned Single Judge of the Punjab and Haryana High Court dismissing the appeal filed by the State of Punjab against the judgment of acquittal recorded by learned Judicial Magistrate, Ist Class, Samana — it was alleged that the accused failed to account for the paddy and thus misappropriated the same. Pursuant to Arbitration clause between the parties an arbitrator was appointed and an award of ` 1,81,315.43 was rendered in favour of the Corporation. The Trial Court acquitted the accused on the ground that the matter arose out of breach of contract, the same was of civil nature and a criminal case against the accused was not made out — the High Court should not have in a summary manner dismissed the appeal after having recorded that a criminal case may arise even when breach of contract is also there and there is no bar for prosecution under the criminal law — the impugned judgment is set aside — matter remitted to the High Court for fresh consideration in accordance with law.

2009 SCCL.COM 181(Case/Appeal No: Civil Appeal No. 1089 of 2009)

Deepak Kumar Bansal Appellant Vs. Union of India and another Respondents, decided on 17/2/2009.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice V. S. Sirpurkar.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11(6) — application under — rejected by the learned Judge — this appeal is directed against the judgment and order dated 25th of May, 2007 passed by a learned Judge of the High Court of Judicature for Rajasthan at Jaipur Bench — the High Court has misdirected itself in holding that the claim was in excess of 20% of the total cost of the work. Admittedly, the work was for a sum of ` 32,17,641.29 (original) and three additions viz. ` 4,99,471.36,

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` 3,25,865.02 and ` 2,17,748.63 totalling ` 42,60,726.30/-, which cannot be in excess of 20% of the total cost of the work — the High Court was wrong in holding that since the value of the claim of the appellant was more than 20% of the value of the work and in view of the Circular issued by the respondent, the claim must be held to be more than 20% of the value of the work and, therefore, disputes could not be referred to arbitration — the application is now directed to be posted to the concerned Judge of the High Court and to appoint an arbitrator in compliance with Clause 64 of the General Conditions of Contract entered into by the parties.

2009 SCCL.COM 288(Case/Appeal No: Civil Appeal No. 1098 of 2009)

N. Srinivasa Appellant vs. M/s. Kuttukaran Machine Tools Ltd. Respondent, decided on 18/2/2009.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice Dalveer Bhandari.

Subject Index: Property dispute — *status quo* — granting of — the Additional City Civil Judge, *Bangalore* was fully justified in directing the parties to maintain *status quo* as to the nature and character of the property in dispute till the award is passed by the sole arbitrator — if the order of the status quo is not granted and respondent is permitted to sell the property in dispute to a third party, complications will arise and the third party interest will be created, for which the award, if any, passed in favour of the appellant ultimately, would become nugatory — the High Court had failed to appreciate that in the contract relating to immovable property, time cannot be the essence of contract. In any event even in such a case, the arbitration clause would survive and the dispute would be required to be resolved. That being the position, pending disposal of the arbitration proceeding, interim measure to safeguard the interest was required to be taken — the High Court had failed to appreciate the material on record as the agreement and the

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correspondences produced by the parties to the effect that since the appellant was required to furnish the nil encumbrance certificate till the date of transaction to show that there was no charge over the property and further since the property was to be kept vacant at the time of the execution of the sale deed, time cannot be held to be the essence of the contract in the facts and circumstances of the case.

2009 SCCL.COM 321(Case/Appeal No: Arbitration Application No. 6 of 2007)

M/s. Nandan Biomatrix Limited Applicant Vs. D 1 Oils Limited Non-applicant, decided on 11/2/2009.

Name of the Judge: Hon'ble Mr. Justice S. H. Kapadia.

Subject Index: Arbitration and Conciliation Act, 1996 — section 11(5) and (9) — application under.

2009 SCCL.COM 330(Case/Appeal No: Civil Appeal No. 7121 of 2001)

M/s. Kwality Manufacturing Corporation Appellant/Petitioner Vs. Central Warehousing Corporation Respondent, decided on 23/2/2009.

Name of the Judge: Hon'ble Mr. Justice R. V. Raveendran and Hon'ble Dr. Justice Mukundakam Sharma.

Subject Index: Arbitration Award — validity of — the scope of interference by courts in regard to arbitral awards is limited. A court considering an application under section 30 or 33 of the Act, does not sit in appeal over the findings and decision of the arbitrator. Nor can it reassess or reappreciate evidence or examine the sufficiency or otherwise of the evidence. The award of the arbitrator is final and the only grounds on which it can be challenged are those mentioned in Sections 30 and 33 of the Act.

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Therefore, on the contentions urged, the only question that arose for consideration before the High Court was, whether there was any error apparent on the face of the award and whether the arbitrator misconducted himself or the proceedings.

2009 SCCL.COM 349(Case/Appeal No: Civil Appeal No. 1746 of 2009)

M.P. Housing Board Appellant Vs. Progressive Writers & Publishers Respondents, decided on 20/3/2009.

Name of the Judge: Hon'ble Mr. Justice Lokeshwar Singh Panta and Hon'ble Mr. Justice B. Sudershan Reddy.

Subject Index: Arbitration Act, 1940 — Section 34 — award of the Arbitrator — the Board initiated appropriate proceedings for setting aside the award passed by the arbitrator. The Trial Court confirmed the award passed by the arbitrator against which the Board preferred appeals under Section 39 of the Arbitration Act, 1940 — the High Court dismissed the appeals preferred by the Board. Hence the present Special Leave Petition — in the present case there is no erroneous application of law by the arbitrator or any improper and incorrect finding which is demonstrable on the face of the material on record — there is nothing in the award requiring intervention by the courts. The courts below rightly refused to interfere with the award passed by the arbitrator.

2009 SCCL.COM 370(Case/Appeal No: Civil Appeal No. 1910 of 2009)

Sunder Kukreja and others Appellants/Petitioners Vs. Mohan Lal Kukreja and another Respondents, decided on 26/3/2009.

Name of the Judge: Hon'ble Mr. Justice Markandey Katju and Hon'ble Mr. Justice V. S. Sirpurkar.

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Subject Index: Arbitration and Conciliation Act, 1940 — dispute under — in the present case the learned Single Judge had referred the matter to a forensic expert who gave a report that the alleged retirement deed dated 16/8/1990 was not genuine and had not been executed by the appellant. On the basis of this report of the forensic expert, the learned Single Judge recorded a *prima facie* satisfaction that the dispute is still alive and deserved to be referred to the arbitrator — there is no dispute in this case about the validity or existence of the partnership deed or the Arbitration clause therein — the learned Division Bench was not correct in holding that the dispute should not have been referred to the arbitrator in view of the alleged retirement deed dated 16/8/1990, sole Arbitrator appointed.

2009 SCCL.COM 442(Case/Appeal No: Civil Appeal No. 1794 of 2009)

M/s. Kailash Store Appellant/Petitioner Vs. Union of India Respondent, decided on 23/3/2009.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice H.L. Dattu.

Subject Index: Arbitration case — appointment of Arbitrator — without going into the legal issues raised by the appellant, as agreed between the parties, this Court appoints Shri D. R. Bhatia as the sole arbitrator to decide all the disputes raised by the appellant in the petition filed under Section 11 of the Act as expeditiously as possible and, at any rate, within a outer limit of six months from the date of receipt of copy of this court's order after issuing notice to both the parties. The arbitrator's fee is fixed at ` 50,000/- (Rupees Fifty Thousand only) as agreed by the appellant.

2009 SCCL.COM 463(Case/Appeal No: Civil Appeal No. 4998 of 2007)

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Shin-Etsu Chemical Co. Ltd. Appellant/Petitioner Vs. Vindhya Telelinks Ltd. and others Respondents, decided on 27/3/2009.

Name of the Judge: Hon'ble Mr. Justice R. V. Raveendran and Hon'ble Mr. Justice Markandey Katju.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 45 — application under — direction to reconsider — These appeals by special leave are filed against the order dated 30/11/2006 passed by the IV Additional District Judge, Rewa, Madhya Pradesh, aggrieved by the remand, while allowing in part Civil Appeal Nos. 24 and 25 of 2006 filed by the appellant, with a direction to reconsider the applications of the appellant under Section 45 of the Arbitration and Conciliation Act, 1996 in terms of the Judgment of this Court in Shin-Etsu Chemical Co. Ltd. vs. Aksh Optifibre Ltd. & Anr. 2005(7) SCC 234 — though the existence of an alternative remedy by itself will not take away the jurisdiction of this Court under Article 136, this Court would not grant leave and entertain appeals against orders/judgments/decrees of the District Court or Courts subordinate thereto, if remedy by way of appeal or revision to the High Court or other court or forum is available — in this case the Special Leave Petition was filed on 11/12/2006 and this Court on 4/1/2007 ordered issue notice and subsequently granted leave on 22/10/2007. This court is conscious of the fact that the matter has been pending before this Court for more than two years and relegation to alternative remedy will further delay the consideration of the issue. But it is inevitable in the circumstances — the case does not involve any special and exceptional circumstance that warrants direct interference with an order of a District Court bypassing the remedy available before the High Court. Therefore the mere fact of leave having been granted will not come in the way of the appellant being relegated to the available alternative efficacious remedy.

2009 SCCL.COM 672(Case/Appeal No: Civil Appeal No. 5630 of 2008)

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Hindustan Copper Limited Appellant Vs. M/s. Nicco Corporation Ltd. Respondent, decided on 20/5/2009.

Name of the Judge: Hon'ble Dr. Justice Mukundakam Sharma and Hon'ble Dr. Justice B.S. Chauhan.

Subject Index: Arbitration Act, 1996 — Section 34 — petition under — matter remitted to the Civil Court competent to hear and decide the same as envisaged under Section 2(1)(e) of the Act — the orders of the learned Single Judge as also of the then Chief Justice of Jharkhand High Court stand modified.

2009 SCCL.COM 693(Case/Appeal No: Civil Appeal No. 62 of 2003)

National Aluminium Co. Ltd. and another Appellants vs. G.C. Kanungo Respondents, decided on 29/4/2009.

Name of the Judge: Hon'ble Dr. Justice Arijit Pasayat and Hon'ble Mr. Justice Asok Kumar Ganguly.

Subject Index: Arbitration Act, 1940 — Section 39 — appeal under — challenge was to the order passed by learned Civil Judge, Senior Division, Angul making the award rule of the Court — the primary stand before the High Court was that the claim made by the respondent-contractor was barred in terms of Section 137 of the Limitation Act, 1963, the High Court did not accept the stand of the appellant — the claim made was within the period of three years. That being so, the claim as made was within the period of limitation and the stand of the appellant that the claim was barred by limitation is not tenable.

2009 SCCL.COM 700(Case/Appeal No: Arbitration Appeal No. 8 of 2008)

Citation Infowares Limited Applicant/Appellant vs. Equinox Corporation Respondent, decided on 20/4/2009.

Name of the Judge: Hon'ble Mr. Justice V. S. Sirpurkar.

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Subject Index: Arbitration and Conciliation Act, 1996 — Section 11(5) — application under — in the result the application must succeed. Accordingly, this Court appoints Hon'ble Mr. Justice R. C. Lahoti (Ex.CJI) as the sole Arbitrator to arbitrate upon the disputes which have arisen between the parties hereto as set out in the present application. The sole arbitrator would be entitled to decide upon the procedure to be followed in the arbitration proceedings, sittings of the proceedings as also to settle his fees in respect thereof. However, the law governing the contract would be the Californian Law.

2009 SCCL.COM 799(Case/Appeal No: Civil Appeal Nos. 3510-3511 of 2008 With Civil Appeal No. 4269 of 2008 Civil Appeal No. 3593 of 2008 Civil Appeal No. 6098 of 2008)

Tata Power Company Ltd. Appellant and Municipal Corporation of Greater Mumbai BEST Undertaking Appellant Vs. Reliance Energy Limited and others Respondents and Maharashtra Electricity Regulatory Commission and others Respondents, decided on 6/5/2009.

Name of the Judge: Hon'ble Mr. Justice S. B. Sinha and Hon'ble Dr. Justice Mukundakam Sharma.

Subject Index: Electricity Act, 2003 — Section 125 — statutory appeals under — are directed against a common judgment and order dated 6th May, 2008 passed by the Appellate Tribunal for Electricity, New Delhi in Appeal No. 143 of 2007 and I.A. No.70 of 2008 whereby and whereunder a judgment and order dated 6th November, 2007 passed by the Maharashtra Electricity Regulatory Commission was set aside — whether recourse to Section 23 of the Act can be taken for issuance of any direction to the generating company — whether the Commission while applying the provisions of Section 86(1)(b) of the Act could also take recourse to Sections 23 and 60 thereof — whether equitable allocation of power generated by a generating company

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is permissible — the impugned judgment of the Tribunal cannot be sustained. It is set aside accordingly.

2009 SCCL.COM 836(Case/Appeal No: Civil Appeal No. 753 of 2007)

Eastern Coalfields Ltd. Appellant Vs. Sanjay Transport Agency and another Respondents, decided on 22/5/2009.

Name of the Judge: Hon'ble Dr. Justice Mukundakam Sharma and Hon'ble Dr. Justice B. S. Chauhan.

Subject Index: Arbitration and Conciliation Act, 1996 — section 11(6) — application under Section 11(6) for appointment of Arbitrator — sole arbitrator appointed — appeal against the order.

2009 SCCL.COM 897(Case/Appeal No: Civil Appeal No. 4150 of 2009)

M.R. Engineers & Contractors Pvt. Ltd. Appellant vs. Som Datt Builders Ltd. Respondent, decided on 7/7/2009.

Name of the Judge: Hon'ble Mr. Justice R.V. Raveendran and Hon'ble Mr. Justice J.M. Panchal.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 7(5) — interpretation of — the issue involved is whether an Arbitration clause contained in a main contract, would stand incorporated by reference, in a sub-contract, where the sub-contract provided that it "shall be carried out on the terms and conditions as applicable to the main contract."

2009 SCCL.COM 914(Case/Appeal No: Civil Appeal No. 4152 of 2009)

H. Lathakumari Appellant vs. Vamanapuram Block Panchayat and others Respondents, decided on 7/7/2009.

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Name of the Judge: Hon'ble Mr. Justice R. V. Raveendran and Hon'ble Mr. Justice J. M. Panchal.

Subject Index: Arbitration and Conciliation Act, 1996 — section 11 — application under — seeking appointment of an Arbitrator. The first respondent filed a counter denying the claims and also contending that there was no Arbitration agreement. The said application was dismissed by the designate of the Chief Justice of the High Court by order dated 13/1/2003. He considered the contention of the appellant that there was anArbitration agreement in terms of clause 73 of MDSS for resolving the disputes — whether there is an arbitration agreement between the parties? The first respondent did not deny the existence of an Arbitration clause in terms of Clause 73 of MDSS, which was admittedly a part of the agreement. The contention was that the said Arbitration clause stood deleted from contracts in view of the G.O. dated 19/11/1988. The question is whether the Arbitration clause has, in fact, stood deleted — the disputes between the parties are referable to Arbitration in terms of the said arbitration agreement. No other objection to the Arbitration is raised — the appeal is allowed and the first respondent is directed to refer the disputes to the Superintending Engineer in terms of the arbitration agreement contained in Clause 73 of MDSS within six weeks from today.

2009 SCCL.COM 916(Case/Appeal No: Civil Appeal No. 4197 of 2009)

M/s. Sayeed Ahmed & Co. Appellant vs. State of U. P. and others Respondents, decided on 9/7/2009.

Name of the Judge: Hon'ble Mr. Justice R. V. Raveendran and Hon'ble Mr. Justice P. Sathasivam.

Subject Index: arbitration — Whether the Arbitrator can award interest for pre-reference period and *pendente lite*, when the contract prohibits the employer from entertaining any claim for interest?

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2009 SCCL.COM 959(Case/Appeal No: Arbitration Petition No.14 of 2008)

Vanna Claire Kaura Tr. Cont. Atr. Petitioner(s) vs. Gauri Anil Indulkar & others Respondent(s), decided on 22/7/2009.

Name of the Judge: Hon'ble Mr. Justice Dalveer Bhandari.

Subject Index: Arbitration and Conciliation Act, 1996 — section 11(5) read with Section 11(9) and 11(12) — application under — for appointment of an arbitrator for adjudicating and deciding the disputes which have arisen between the applicant and the respondents in respect of the implementation and working of agreements entered into between the applicant and the respondent No.3 on the one hand and respondent nos. 1 and 2 on the other hand on 29/1/2005 and the supplementary agreement between the same parties on 2/2/2005 — the applicant is a citizen of the United States of America and is a person of Indian origin — respondent no.3, Dr. Vinod Kaura is the husband of the applicant, Vanna Claire Kaura — the dispute has arisen between the parties and it needs to be adjudicated and decided by an Arbitrator — this Court requests Hon'ble Mr. Justice S. N. Variava, a former Judge of this Court to accept this arbitration and adjudicate and decide the dispute which has arisen between the parties. The learned Arbitrator would be free to decide about his fee.

2009 SCCL.COM 960(Case/Appeal No: Civil Appeal No. 4427 of 2009)

Union of India Appellant Vs. Saraswat Trading Agency and others Respondents, decided on 16/7/2009.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice Aftab Alam.

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Subject Index: Arbitration award — appeal — tender invited by the appellant and made a contract with respondent on the basis of 'fixed price contract' for 3 years — respondent terminated the contract as between under clause 1(1) of the agreement — departmental arbitrator was appointed for final settlement of the claims of respondent — not being satisfied respondent challenged the award by filing an application before HC – HC appointed its arbitrator — respondent entitled to receive from appellant of ` 32,71,774/- with interest @ 18% p.a. till the date of payment — hence the appeal before SC — appeal allowed to the limited extent.

2009 SCCL.COM 962(Case/Appeal No: Arbitration Petition No. 3 of 2009)

Sime Darby Engineering SDN, BHD. Petitioner(s) Vs. Engineering India Ltd. Respondent(s), decided on 22/7/2009.

Name of the Judge: Hon'ble Mr. Justice Asok Kumar Ganguly.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11 — petition under — by the petitioner praying for appointment of the arbitral tribunal to adjudicate the claims and disputes between the petitioner and the respondent — the petitioner is a company incorporated and existing under the laws of Malaysia and is engaged in the business of fabrication of all types of offshore and onshore structures and complexes. The respondent on the other hand is the company incorporated under the (Indian) Companies Act, 1956 and is *inter alia* engaged in the business of providing engineering and related technical services for petroleum refineries and other industrial projects — the definition of Arbitral Tribunal in Section 2(1)(d) of the said Act is verbatim the same as in Article 2(b). Article 10 of the UNCITRAL model law has close similarity with Section 10 of the said Act — Section 10 deviates from Article 10 of the UNCITRAL law only in the sense that Section 10(1) of the Act provides that despite the freedom given to the parties to determine the number of arbitrators such numbers shall not be

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even number — in the instant case, the arbitration Clause 12.2 is silent as to the number of arbitrator. The said Clause read with Section 10(2) of the Act makes it very clear that Arbitral Tribunal in the instant case would be consisting of a sole arbitrator —the Hon'ble arbitrator is requested to decide the dispute as early as possible and preferably within a period of six months from the date of entering upon the reference. The terms of arbitration proceeding are left to be decided by learned arbitrator.

2009 SCCL.COM 978(Case/Appeal No: Civil Appeal No. 2627 of 2009)

Petine Shipping Inc. of Monrovia Appellant Vs. The Minerals and Metals Trading Corporation of India Ltd. Respondent, decided on 17/4/2009.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice H. L. Dattu.

Subject Index: Arbitration Act, 1940 — Section 31 and 28 — invest a Single Court with the exclusive jurisdiction to decide all questions relating to the matter of Arbitration and extension of time period — whether Bombay High Court has the jurisdiction to adjudicate upon the Arbitrati on Petition where a previous application had been filed before the Delhi High Court and subsequently dismissed by the same Court having become infructuous — under agreement — Bombay as the port of the delivery — although application filed before Delhi High Court — did not retain any control over proceedings — it cannot be denied that Bombay High Court had the jurisdiction is the Arbitration Petition — extension of time restored — Court is requested to consider the application on merits.

2009 SCCL.COM 993(Case/Appeal No: Civil Appeal No. 4151 of 2009 With Civil Appeal No. 4155 of 2009)

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M. K. Abraham & Co. Appellant(s) Vs. State of Kerala and another Respondent(s), decided on 7/7/2009.

Name of the Judge: Hon'ble Mr. Justice R.V. Raveendran and Hon'ble Mr. Justice J. M. Panchal.

Subject Index: Arbitration and Conciliation Act, 1996 — section 11 — Arbitration clause — a formal contract agreement between appellant & respondent for a section of work relating to NH-49 — appellant by notice called upon the respondent to refer the dispute for full & final settlement of claims through Arbitration — non compliance by respondent — appellant filed application under Section 11 — High Court dismissed the application on grounds of specific bar against Arbitration in Clause 24 & 24(a) of 'Notice Inviting tenders for Works' and Clause (3) of the standard form of Agreement — hence this appeal — whether there is an Arbitration agreement between the parties — NH Contracts has a policy of having arbitration to settle disputes, a slip signed by both the parties attached to the standard form of agreement stipulating that Arbitration clause will be applicable — there is an arbitration agreement between the parties in terms of the standard arbitration clause prescribed by the Ministry of Surface Transport, Govt. of India — High Court did not examine the further objection of respondent that there was a full & final settlement & no arbitral dispute — Supreme Court set aside the order of High Court — Supreme Court remanded the matter to the High Court to consider and decide other objections raised by the respondents — appeal allowed.

2009 SCCL.COM 1010(Case/Appeal No: Civil Appeal No. 4153 of 2009)

National Sample Survey Organisation and another Appellants vs. Champa Properties Ltd. and another Respondents, decided on 7/7/2009.

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Name of the Judge: Hon'ble Mr. Justice R.V. Raveendran and Hon'ble Mr. Justice J. M. Panchal.

Subject Index: Landlord-Tenant dispute on Leased property — premises taken on lease by appellant — increase in rent on recommendation of Hiring Committee — premises was old and lacking in amenities — appellant unwilling to pay higher rent, vacated the premises — appellant not agreeable for rent recommended by Hiring Committee — request to review the reassessment of rent — rent not reviewed — appeal — whether the writ petition by respondent was not maintainable — whether the recommendation was binding on appellant — whether the direction issued by High Court justified — Arbitration clause would not come in the way of the writ petition being entertained — except where there is an agreement to abide by the fixation of rent by the Hiring Committee, determination of rent by the Hiring Committee is not statutory — neither binding on the hiring departments nor on the lessors — respondent is not entitled to the reliefs sought in the writ petition — set aside the orders of the Single Judge & Division Bench of the High Court — dismiss the writ petition — appeal allowed.

2009 SCCL.COM 1040(Case/Appeal No: Civil Appeal No. 1110 of 2007 With Civil Appeal Nos. 1138, 1152, 1327 and 1112 of 2007)

U.P. Power Corporation Ltd. Appellant vs. National Thermal Power Corporation Ltd. and others Respondents, decided on 3/3/2009.

Name of the Judge: Hon'ble Mr. Justice S. B. Sinha, Mr. Justice Lokeshwar Singh Panta and Hon'ble Mr. Justice Sudershan Reddy.

Subject Index: Tariff — revision in — the power of the Central Commission to make tariff and to revise the same at the instance of a generating company —whether the amount required to be paid by the first respondent National Thermal Power Corporation towards revision of scales of pay of its employees in terms of the

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recommendations made by the High Level Committee constituted under the Chairmanship of Justice S. Mohan with retrospective effect from 1st January, 1997 can be a subject matter of revision in tariff for the tariff years 1997-1998; 1998–1999 and 1999–2000 — the Parliament with a view to provide for establishment of a Central Electricity Regulatory Commission and State Electricity Regulatory Commissions, rationalisation of electricity tariff, transparent policies regarding subsidies, promotion of efficient and environmentally benign policies and for matters connected therewith or incidental thereto, enacted the Electricity Regulation Commissions Act, 1998. It came into force with effect from 9th June, 1998 — framing of tariff is made in several stages. The generating companies get enough opportunity not only at the stage of making of tariff but may be at a later stage also to put forth its case including the amount it has to spend on operation and maintenance expenses as also escalation at the rate of 10% in each of the base year. It cannot, be permitted to re-agitate the said question after passing of many stages. Furthermore, the direction of the Tribunal that the additional costs may be absorbed in the new tariff, was not correct. Some persons who are consumers during the tariff year in question may not continue to be the consumers of the appellant. Some new consumers might have come in. There is no reason as to why they should bear the brunt. Such quick-fix attitude, is not contemplated as framing of forthcoming tariff was put subject to fresh regulations and not the old regulations — it was not a fit case where the Appellate Tribunal should have interfered with the order of the Central Commission.

2009 SCCL.COM 1052(Case/Appeal No: Civil Appeal No. 4796 of 2009 With Transfer Petition (C) No. 1195 of 2008 with Transfer Petition (C) No. 1196 of 2008 with Transfer Petition (C) Nos. 1207-1209 of 2008)

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Nahar Industrial Enterprises Ltd. Appellant vs. Hong Kong & Shanghai Banking Corporation Respondent, decided on 29/7/2009.

Name of the Judge: Hon'ble Mr. Justice S. B. Sinha and Hon'ble Mr. Justice Asok Kumar Ganguly.

Subject Index: Power to transfer a suit — whether the High Court and/or this Court has the power to transfer a suit pending in a Civil Court situated in one State to a Debt Recovery Tribunal situated in another is the question involved herein.

2009 SCCL.COM 1071(Case/Appeal No: Criminal Appeal No. 1417 of 2009)

State of Madhya Pradesh Appellant vs. Sheetla Sahai and others Respondents, decided on 4/8/2009.

Name of the Judge: Hon'ble Mr. Justice S. B. Sinha and Hon'ble Mr. Justice Cyriac Joseph.

Subject Index: Prevention of Corruption Act, 1988 — Sections 13(1)(d)(2)(ii-iii) read with Section 13(2) and Section 120B of IPC, 1860 — respondent proceeded against for commission of the offences under — appellant is before this Court being aggrieved by and dissatisfied with a judgment and order dated 12/01/2006 passed by a learned Single Judge of the Madhya Pradesh High Court allowing the criminal revision applications filed by the respondents herein arising out of the orders dated 21/12/1998 and 13/05/1997 passed by the Special Judge, Bhopal in Special Case No. 6 of 1997 — sanction for prosecution in terms of Section 197 of the Code of Criminal Procedure was required to be obtained — there is no merit in this appeal which is dismissed accordingly.

2009 SCCL.COM 2005 (Case/Appeal No: Civil Appeal No. 5075 of 2009)

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Union of India Appellant Vs. M/s. Premier Files Ltd. Respondent, decided on 4/8/2009.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice R. M. Lodha.

Subject Index: Arbitration and Conciliation Act, 1996 — section 11(6) — appointment of Arbitrator by Court — an agreement between respondent and appellant — work agreement completed and final bill passed — dispute arose between parties, an arbitrator appointed by competent authority who resigned — no appointment made by competent authority for about 2 months — arbitration application for appointment of arbitrator pending before High Court, another arbitrator appointed by appellant — a lawyer Arbitrator appointed by High Court in terms under Section 11(6) of Act — appeal — appointing lawyer Arbitrator must be said to be violation of clause 25 of the agreement which says arbitrator must be appointed by competent authority appointment of Arbitrator before final order passed by High Court under Section 11 — set aside the order of High Court and restore the order of competent authority.

2009 SCCL.COM 2016(Case/Appeal No: Civil Appeal No. 5139 of 2009)

Fiza Developers & Inter-Trade P. Ltd. Appellants vs. AMCI(I) Pvt. Ltd. and another Respondents, decided on 27/7/2009.

Name of the Judge: Hon'ble Mr. Justice R.V. Raveendran and Hon'ble Mr. Justice B. Sudershan Reddy.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 34 — setting aside Arbitral award — Code of Civil Procedure, 1908 — order 14 Rule 1 — framing of issues — dispute between respondent and appellant referred to Arbitration — whether 'issues' as contemplated under Order14 Rule 1, CPC should be framed in applications under Section 34 of Arbitration and Conciliation

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Act, 1996 — held No — Rule 4(b) of Karnataka rules, cannot be read as making applicable all provisions of the Code, which apply to regular civil suits, to proceedings under Section 34 — in application under Section 34, even if there is no contest, the Court cannot, on the basis of averments, set aside the award — appeal dismissed.

2009 SCCL.COM 2030 (Case/Appeal No: Transfer Petition (Civil) No. 61 of 2007)

Shree Baidyanath Ayurved Bhawan Pvt. Ltd. Petitioner vs. Praveen Bhatia and others Respondents, decided on 8/4/2009.

Name of the Judge: Hon'ble Mr. Justice S. B. Sinha and Hon'ble Mr. Justice Cyriac Joseph.

Subject Index: Code of Civil Procedure, 1908 — Section 25 — power of Supreme Court to transfer suits — Arbitration and Conciliation Act, 1996 — Section 34 — Arbitral award by the arbitrator appointed by authority as per the agreement — respondents committed misappropriation of a huge amount — also created several forged and fraudulent credits — parties invoked the arbitration clause — 2 awards made by 2 different arbitrators — objections to the said award — whether the appointment of respective arbitrators by the parties valid — whether the arbitrators acted within the four corners of the arbitration agreement — respondent No. 6 not a party to arbitration agreement but appointed him as its distributor, claiming his interest — transfer petition allowed — the Court concerned should send all the records of the respective case to the transferee Court.

2009 SCCL.COM 2064(Case/Appeal No: Civil Appeal No. 5760 of 2009)

Indian Oil Corporation Ltd. and others Appellants vs. M/s Raja Transport (P) Ltd. Respondent, decided on 24/8/2009.

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Name of the Judge: Hon'ble Mr. Justice R. V. Raveendran and Hon'ble Mr. Justice D. K. Jain.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11(6) — appointment of retired Judge as sole arbitrator — appellant through agreement appointed respondent as its dealer for retail sale of petroleum products — with a clause for settlement of disputes by Arbitration — appellant terminated the dealership of respondent — whether the learned Chief Justice justified in assuring that when an employee of one of the parties to the dispute is appointed as an arbitrator he will not act independently or impartially? — No — whether the appellant had failed to act as required under the appointment procedure? — No — held that a person being an employee of one of the parties cannot per se be a bar to his acting as an Arbitrator — the respondent ought to have directly referred the disputes to the Director (Marketing) of the appellant corporation in terms of the Arbitration agreement — held the Director (Marketing) of the appellant Corporation appointed as the sole arbitrator to decide the disputes between the parties — appeal allowed.

2009 SCCL.COM 2086(Case/Appeal No: Civil Appeal No. 7687 of 2004)

General Manager, Telecom Appellant vs. M. Krishnan and another Respondent, decided on 1/9/2009.

Name of the Judge: Hon'ble Mr. Justice Markandey Katju and Hon'ble Mr. Justice Asok Kumar Ganguly.

Subject Index: Indian Telegraph Act — Section 7-B — Arbitration of Disputes — telephone connection of respondent disconnected on non-payment of telephone bill — District Consumer Forum directed the appellant to pay compensation of ` 5,000/- with interest @12% p.a. — remedy provided in Section 7-B of the Indian Telegraph Act regarding disputes in respect of telephone bills, then

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the remedy under the Consumer Protection Act is by implication barred — Rule 413 of the Telegraph Rules provides that all services relating to telephone are subject to Telegraph Rules — set aside the impugned judgement of District Consumer Forum and High Court — appeal allowed with no costs.

2009 SCCL.COM 3006(Case/Appeal No: Civil Appeal No. 5241 of 2002)

Steel Authority of India Ltd. Appellant Vs. Gupta Brother Steel Tubes Ltd. Respondent, decided on 9/9/2009.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice R. M. Lodha.

Subject Index: Indian Arbitration Act, 1940 — Sections 30/33 — to set aside the arbitral award — an agreement between appellant (SAIL) and respondent under 'Full Requirement Supply Scheme' with an Arbitration clause — dispute arose between parties — arbitrator appointed — arbitral award in favour of respondent/ claimant — appellant filed petition contending that arbitrator entered into a time barred claim and also exercised his power beyond clause 7.2 (material) of the agreement — whether the breaches alleged by the respondent covered by the stipulations under clause 7.2? — Yes — no impediment for the parties to a contract to make provision of liquidated damages for specific breaches only leaving other types of breaches to be dealt with as unliquidated damages — once the arbitrator construed clause 7.2 by giving elaborate reasons, not open to the courts to interfere with the award of the arbitrator — appeal dismissed with no costs.

2009 SCCL.COM 3009(Case/Appeal No: Transfer Petition (Civil) No. 78 of 2009)

Balaji Coke Industry Pvt. Ltd. Petitioner/Appellant Vs. M/s Maa Bhagwati Coke (Guj) Pvt. Ltd. Respondent, decided on 9/9/2009.

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Name of the Judge: Hon'ble Mr. Justice Altamas Kabir and Hon'ble Mr. Justice Cyriac Joseph.

Subject Index: Transfer petition — specific High Seas Sale Agreement between petitioner and respondent — Clause 14 of the said agreement provided that the sale contract would be subject to Kolkata jurisdiction — dispute arose between the parties — whether, notwithstanding the mutual agreement to make the High Seas Sale Agreement subject to Kolkata jurisdiction, it would be open to the respondent to contend that since a part of the cause of action purportedly arose within the jurisdiction in the Bhavnagar Court, the application filed under Section 9 ofArbitration and Conciliation Act, 1996, before Bhavnagar Court, would still be maintainable? — No — parties knowingly and voluntarily agreed that the contract arising out of the said agreement would be subject to Kolkata jurisdiction, even if the courts in Gujarat also had jurisdiction to entertain the action arising out of agreement, it has to held that disputes decided in Kolkata by an Arbitrator in Kolkata will be valid — transfer petition allowed with no costs.

2009 SCCL.COM 3040(Case/Appeal No: Civil Appeal No. 6399 of 2009)

The Branch Manager, M/s. Magma Leasing & Finance Limited and another Appellants vs. Potluri Madhavilata and another Respondents, decided on 9/18/2009.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice R. M. Lodha.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 8 — power to refer parties to Arbitration where there is an Arbitration agreement — hire-purchase agreement — respondent purchased motor vehicle from appellant as per the terms of agreement — hirer committed default in payment of few installments — appellant terminated the agreement and seized

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the vehicle from the hirer — hirer filed a suit against appellant seeking recovery of possession of the vehicle — does the arbitration agreement survive for the purpose of resolution of disputes arising under or in connection with the contract even if its performance has come to an end on account of termination due to breach? — Yes — merely because the contract has come to an end by its termination due to breach, the arbitration clause does not get perished nor rendered inoperative; rather it survive for resolution of disputes arising "in respect of" or "with regard to" or "under" the contract — Trial Court ought to have referred the parties to arbitration as per arbitration Clause 22 — appeal allowed with no costs.

2009 SCCL.COM 3059(Case/Appeal No: Civil Appeal No(s). 2732 of 2001)

U. P. Cooperative Federation Ltd. Appellant(s) vs. M/s. Three Circles Respondent(s), decided on 10/9/2009.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice Harjit Singh Bedi.

Subject Index: Tender Agreement — The Arbitration Act, 1940 — contract executed between appellant & respondent — dispute arose — arbitrator appointed — arbitral award in favour of respondent to get ` 32,68,805.80/- with interest @ 15% from the appellant — arbitrator acted with the terms & conditions of the contract relating to the extra items on rates other than the CPWD rates — the poor workmanship not fall under any of the sub-clauses of Clause 10 of the Articles of Agreement — HC reduced the rate of interest to the 'current rate of interest' — rate of interest reduced from 15% to 7% — no interference in the orders passed by the arbitrator but only reduction of the rate of interest to 7% — appeal dismissed with no costs.

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2009 SCCL.COM 3063(Case/Appeal No: Civil Appeal Nos. 311-312 of 2003)

M/s. Asian Techs Ltd. Appellant vs. Union of India and others Respondent, decided on 9/7/2009.

Name of the Judge: Hon'ble Mr. Justice Markandey Katju and Hon'ble Mr. Justice Asok Kumar Ganguly.

Subject Index: Indian arbitration Act, 1940 — contract agreement — non-settlement of claim — appellant entered into an agreement with respondents for Construction of 'Provision of Lab & Administrative Block' at probable amount of ` 3,58,96,665/- — delay in the execution of the contract due to the default of the respondents — no agreement for payment on rates for extra and altered items — part-payment received by the appellant, this invoked the arbitration clause in the agreement for settlement of disputes — arbitral award in favour of the appellant for payment of ` 39,75,484/- altogether — High Court set aside the arbitral award, except for payment of ` 1,20,000/- wrongfully withheld by the respondents — evidence on record to prove that the delay in the execution of the contract due to the default of the respondent — not open to the respondent to contend that no claim for further amount can be made and that the arbitrator had no jurisdiction to award the same — set aside the order of the High Court — award of the arbitrator restored — appeal allowed with no costs.

2009 SCCL.COM 3064(Case/Appeal No: Civil Appeal No. 1146 of 2003)

Coal Linker Appellant vs. Coal India Ltd. Respondent, decided on 7/9/2009.

Name of the Judge: Hon'ble Mr. Justice Markandey Katju and Hon'ble Mr. Justice Asok Kumar Ganguly.

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Subject Index: Indian Arbitration Act, 1940 — work order agreement between appellant and respondent for transportation of coal/coke by road to the respondent's stockyard — contained Arbitration clause — dispute between the parties arose — arbitral award granted in favour of appellant of ` 51,77,600/- and interest @ 15% — Executing Court directed the payment of interest @ 18% p.a. from the date of award till the date of decree — Division Bench set aside the order of the Executing Court — whether the Division Bench correct in setting aside the order of the Executing Court directing payment of interest @ 18%? — Yes — held that the interest has been granted by the arbitrator — Executing Court went beyond the arbitral award and thus went beyond its jurisdiction and passed decree which become a nullity — appeal dismissed with no costs.

2009 SCCL.COM 3074(Case/Appeal No: Civil Appeal No. 6971 of 2009)

Indian Hume Pipe Co. Ltd. Appellant vs. State of Rajasthan Respondent, decided on 19/10/2009.

Name of the Judge: Hon'ble Mr. Justice V. S. Sirpurkar and Hon'ble Mr. Justice Deepak Verma.

Subject Index: Arbitration Act, 1940 — Execution of agreement between the parties — for laying PSC pipeline in Kota division — contained an Arbitration clause — dispute arose between the parties — arbitrators allowed the claim of the appellant together with interest for pre-reference on outstanding payment, *pendente lite* interest and future interest — learned District Judge and Single Judge allowed the respondents objections — hence this appeal — held that power to award interest at all stages vests with the arbitrators and if there is no embargo or legal hurdle in awarding interest then there cannot be any justifiable reason to deny the same — set aside and quashed the impugned orders of learned District Judge and Single Judge — appeal allowed — restored the award alongwith interest as awarded by the arbitrators.

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2009 SCCL.COM 3085(Case/Appeal No: Civil Appeal No. 4168 of 2003 With Civil Appeal No. 4169 of 2003)

M/s. S. B. P. and Company Appellant vs. M/s. Patel Engineering Ltd. and another Respondents, decided on 10/21/2009.

Name of the Judge: Hon'ble Mr. Justice G. S. Singhvi and Hon'ble Dr. Justice B. S. Chauhan.

Subject Index: Arbitration and Conciliation Act, 1996 — Sections 11 and 15 — appointment of Arbitrator and termination of mandate and substitution of arbitrator — sub-contract agreement and piece work agreement between appellant and the respondent-1 — contained arbitration clause — dispute arose between the parties — arbitrator appointed by respondent-1 refused to act as an arbitrator making respondent-2 as sole arbitrator — respondent-1 appointed substitute arbitrator — Bombay High Court appointed third arbitrator as per the arbitration application of respondent-1 — hence this appeal — held that arbitrator appointed by respondent-1 not entered upon the arbitration and thus no question of his withdrawing from the office of arbitrator so as to enable respondent No.1 to appoint a substitute arbitrator — the agreements entered into between the appellant and respondent-1 not contained a provision for appointment of a substitute arbitrator in case arbitrator appointed by either party was to decline to accept appointment or refuse to arbitrate in the matter — set aside the order of High Court appointing third arbitrator — appeals allowed — directed respondent-2 to proceed the matter as the sole Arbitrator and to pass award in accordance with law.

2009 SCCL.COM 3094 (Case/Appeal No: Civil Appeal No. 7019 of 2009)

N. Radhakrishnan Appellant vs. M/s. Maestro Engineers and others Respondents, decided on 22/10/2009.

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Name of the Judge: Hon'ble Mr. Tarun Chatterjee and Hon'ble Mr. Justice V. S. Sirpurkar.

Subject Index: Partnership dispute — appellant filed an application under Section 8 of Arbitration Act, 1996 to resolve the dispute — dispute related to the retirement of the appellant from the partnership firm and its reconstitution after the respondents had created a new partnership deed to that effect without the appellant being a part of it — High Court held that since the case relates to allegations of fraud and serious malpractices on the part of the respondents, such a situation can only be settled in court through furtherance of detailed evidence by either parties and such a situation can not be properly gone into by the Arbitrator — since the original deed not filed within the requirement of Section 8(2) of the Act, hence, mandatory requirement under the Act not been complied with — appeal dismissed — no cost — held : "it will be open to the parties to adduce evidence (both documentary and oral) to prove their respective claims relating to the contentions of fraud and the retirement of the appellant in consonance with the original partnership agreement."

2009 SCCL.COM 3127(Case/Appeal No: Civil Appeal Nos. 2880-2881 of 2005)

Tamil Nadu Water Supply & Drainage Board Appellant Vs. M/s. Satyanarayana Brothers Pvt. Ltd. Respondent, decided on 5/11/2009.

Name of the Judge: Hon'ble Mr. Justice Altamas Kabir and Hon'ble Mr. Justice Cyriac Joseph.

Subject Index: Arbitration Act, 1940 — Section 30 — to set aside Arbitral award — work undertaken by the respondent not completed within the stipulated time — dispute arose between the parties — referred to Arbitration — as per the arbitral award, the respondent was entitled to ` 40,02,591/- from the appellant and after allowing the deduction for the same the respondent was

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liable to pay to the appellant a sum of ` 2,69,93,674/- with interest @9% per annum from the date of the Award — both the parties aggrieved by the award on the ground of non-application of mind by the arbitrator — held that the learned arbitrator misconducted himself in appreciating the case — set aside the Arbitral award — matter remitted to the learned arbitrator appointed by this Court for fresh decision.

2009 SCCL.COM 3160(Case/Appeal No: Civil Appeal No. 2726 of 2004)

M/s Ravindra & Associates Appellant vs. Union of India Respondent, decided on 21/11/2009.

Name of the Judge: Hon'ble Mr. Justice Markandey Katju and Hon'ble Mr. Justice Asok Kumar Ganguly.

Subject Index: Contract for construction — arbitral award — appellant was awarded a contract for construction of accommodation — dispute arose between the parties — arbitrator awarded ` 70,94,265/- to the claimant with interest @ 18% — Sub-Judge made the arbitral award a Rule of the Court but reduced the interest to 12% on the amount — High Court set aside the Arbitration award — appeal — change in the contract mixture from M/15 to M/20 done at the insistence of the department — labour retained for a longer period due to delay in supply of stores by the respondents, hence, overtime charges to the labour — contract provided for teak wood but it was changed to second class hard-wood at the insistence of the department — impugned judgment of the High Court set aside — arbitral award restored — appeal allowed — no cost.

2009 SCCL.COM 3186(Case/Appeal No: Civil Appeal No. 8019 of 2009)

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M/s. Ravindra Kumar Gupta & Company Appellant(s) Vs. Union of India Respondent(s), decided on 3/12/2009.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice Surinder Singh Nijjar.

Subject Index: Indian Arbitration Act, 1940 — Arbitral award — appellant was allotted certain civil works — dispute arose between the parties after completion of the work regarding the work and payment — invoked Arbitration clause — arbitrator passed the award — Civil Court made the award of the sole arbitrator rule of the Court — Division Bench set aside the finding recorded by the arbitrator — hence this appeal — evidence duly scrutinised and evaluated by the arbitrator and given elaborate reasons — High Court erroneously substituted the conclusion of the arbitrator with its own opinion on appreciation of the evidence — impugned judgment of the High Court set aside — appeal allowed.

2009 SCCL.COM 3192(Case/Appeal No: Civil Appeal No. 8385 of 2004)

M/s. Madnani Construction Corporation (P) Ltd. Appellant(s) Vs. Union of India and others Respondent(s), decided on 7/12/2009.

Name of the Judge: Hon'ble Mr. Justice Markandey Katju and Hon'ble Mr. Justice Ashok Kumar Ganguly.

Subject Index: Indian Arbitration Act, 1940 — Section 17 — Interest Act, 1978 — Sections 2(a) and 3 — agreement between the appellant and the North Eastern Railway for the construction of bridge island over Kosi river — disputes cropped between the parties in relation to payments — learned Civil Judge appointed sole arbitrator to adjudicate the disputes — arbitrator concluded that there were manipulations/alterations/over writings by the railways and as a result of which the volume of work done by the contactor has been reduced — gave arbitral award in favour of the appellant of ` 4,48,873.22 with compoundable bank interest to be

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paid by the respondents — Senior Civil Judge made the award a Rule of Court — High Court partly allowed the appeal filed by the respondents — appeal — held the High Court's conclusion that Item Nos. 1 to 3 and 5 to 8 of the award are `excepted matters' and non-arbitrable not correct — clause 16(2) of GCC and Clause 30 of the SCC do not impose any bar on the arbitrator in granting interest — impugned judgement of the High Court set aside — held no interference to the award passed by the arbitrator — appeal allowed — no costs.

2009 SCCL.COM 3210(Case/Appeal No: Arbitration Petition No. 9 of 2009)

Geo-Group Communications INC Appellant vs. IOL Broadband Ltd. Respondent, decided on 17/11/2009.

Name of the Judge: Hon'ble Mr. Justice J. M. Panchal.

Subject Index: Arbitrator & Conciliation Act, 1996 — Section 11(6) — to appoint sole arbitrator nominated by the appellant for adjudicating the disputes — Share Subscription and Shareholders Agreement (SHA) between appellant and Exatt — appellant supplied CISCO equipment to Exatt — xerox copy of share certificate mentioning 6920 equity shares of ` 10/- each of the Exatt were issued and allotted to the applicant, but original share certificate never issued — appellant Company never mentioned in the register of members of Exatt — Exatt amalgamated with it successor-in-interest (respondent Company) — dispute arose between the parties in respect of non-transfer of shares — after amalgamation of Exatt, with the respondent, all the liabilities and obligations of Exatt, including those mentioned in SHA stood transferred, in law, to the respondent company — held existence of a valid arbitration agreement between the parties — appellant's application allowed with all the question including arbitrability of the dispute left open to be decided by the learned Arbitrator — no costs.

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2009 SCCL.COM 3229(Case/Appeal No: Civil Appeal No. 8230 of 2009 @ SLP© No. 8218 of 2007 With C.A. No. 8231 of 2009 @ SLP (C) No. 8222 of 2007 C.A. No. 8232 of 2009 @ SLP (C) No. 8224 of 2007 C.A. No. 8233 of 2009 @ SLP (C) No. 8226 of 2007 C.A. No. 8234 of 2009 @ SLP (C) No. 8234 of 2007)

Bharat Sanchar Nigam Ltd. and another Appellants Vs. Dhanurdhar Champatiray Respondent, decided on 11/12/2009.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice Aftab Alam.

Subject Index: Arbitration and Conciliation Act, 2006 — Section 11 — appointment of arbitrator — respondent entered in contract with the appellant/BSNL for construction of building as staff quarters — dispute arose between the parties — respondent requested the Chief Engineer (Civil) for appointment of an arbitrator to adjudicate the dispute — appellant failed to respond to the letters of respondent — High Court appointed a Senior Advocate of the Orissa High Court as the sole arbitrator on the application of the respondent filed under Section 11(6) of the Act, 2006 — appeal — held that the High Court failed to take into consideration the requirement to have due regard to the qualifications required by the agreement or other conditions necessary to secure the appointment of an independent and impartial arbitrator under Section 11(8) — impugned order of the High Court set aside — matter remanded back to the High Court for considering the application afresh — appeal allowed — no cost.

2010 SCCL.COM 13(Case/Appeal No: Civil Appeal No. 8 of 2010 With Civil Appeal No. 9 of 2010)

N.B.C.C. Ltd. Appellant Vs. J.G. Engineering Pvt. Ltd. Respondent, decided on 5/1/2010.

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Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice Aftab Alam.

Subject Index: Indian Arbitration Act, 1940 — Section 15 — termination of mandate and substitution of arbitrator — appellant entered into a contract with the respondent for construction of terminal buildings and various ancillary jobs at the Bhubaneshwar Airport — appellant terminated the contract on failure of respondent to fulfil its part of the obligations required under the contract — appointing authority appointed three arbitrators who were all unable to conduct the arbitral proceedings for some reason or the other — another sole arbitrator was appointed who expired before concluding the Arbitration proceedings — both parties by mutual consent extended the time to conclude the Arbitration proceeding — as per the application of the respondent, High Court restrained the arbitrator from making an award and terminated the mandate of the arbitrator on the ground of delay of 3 months after the expiry of the period of concluding the proceeding and making the award — appellant not filed any application for enlargement of time to pass the award after the expiry of the period before the orders of the High Court — High Court appointed another sole arbitrator to adjudicate the disputes between the parties — appeal — held the High Court justified in terminating the mandate of the arbitrator on account of his failure to publish the award within the time fixed by the parties but erred in not allowing the appellant to decide upon the appointment of an arbitrator pursuant to sub-section (2) of Section 15 of the Act — impugned order of the High Court set aside — matter remanded back to the High Court for fresh decision — appeals allowed — no costs.

2010 SCCL.COM 20(Case/Appeal No: Civil Appeal No. 2500 of 2001 With Civil Appeal No. 2501 of 2001)

State of Rajasthan Appellant vs. M/s. Nav Bharat Construction Company Respondent, decided on 8/1/2010.

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Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice R. M. Lodha.

Subject Index: Indian Arbitration Act, 1940 — Sections 30 and 33 — appellant entered in contract with the respondent for construction of Bhimsagar Dam — inspite of extension of time, the work not completed within the time allotted — appellant terminated the contract and rejected various claims of the respondent — dispute referred to arbitration — appellant filed an application under Section 11 of the Act for removal of the Umpire on the ground of bias which was dismissed by the High Court — this Court set aside the award of the Umpire and appointed another Umpire for passing award — Umpire entered to reference and passed the arbitral award — appellant filed an application for making the award a rule of the Court and the respondent filed objection under Sections 30 and 33 and claimed compound Interest — held no reason to set aside the order of the Umpire, as the Umpire has rightly considered the entire aspect of interest and passed arbitral award — objections filed by the respondent u/s. 30 and 33 rejected and the application for making the award and rule of the Court allowed — no costs.

2010 SCCL.COM 44(Case/Appeal No: Civil Appeal No. 10 of 2010)

Snehadeep Structures Private Limited Appellant Vs. Maharashtra Small Scale Industrial Development Corporation Ltd. Respondent,decided on 5/1/2010.

Name of the Judge: Hon'ble Mr. Justice Tarun Chatterjee and Hon'ble Mr. Justice V. S. Sirpurkar.

Subject Index: Interest Act, 1993 — Section 7 — Arbitration and Conciliation Act, 1996 — Section 34 — respondent Corporation issued a supply order in favour of appellant — huge delay on the part of the Corporation in paying the bills to the appellant company and no reasonable cause was shown — the appellant company

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demanded interest on delayed payment under the Interest Act — referred to arbitration — the arbitrator by his Award directed the Corporation to pay a sum of ` 78,19,540.73 to the Appellant company — during the pendency of the proceedings for setting aside the arbitral award, the appellant company pointed out for deposition of 75% of the arbitral award by the Corporation u/s. 7 of the Interest Act — High Court allowed the appeal of the respondent-corporation and ordered that the pending petition to challenge the award be disposed of according to the law, as the preliminary objection in terms of the requirement of pre-deposit of interest awarded was ruled out — appeal — whether the expression 'appeal' used in Section 7 of the Interest Act includes an application to set aside the arbitral award filed under Section 34 of the Arbitration Act, 1996? — held that if challenging the arbitral award not construed as an 'appeal', the requirement of pre-deposit of interest before the buyer challenging an award passed against him, becomes a total nullity. Thus the term "appeal" appearing in Section 7 of the Interest Act should include an application under Section 34 as well — impugned order of the High Court set aside — directed the respondent to deposit 75% of the amount awarded by the learned Arbitrator in Court where the application for setting aside the award is now pending decision — appeal allowed — no costs.

2010 SCCL.COM 53(Case/Appeal No: Arbitration Petition No. 10 of 2009)

Trimex International FZE Ltd. Dubai Petitioner(s)/Appellant(s) vs. Vedanta Aluminium Ltd., India Respondent(s), decided on 22/1/2010.

Name of the Judge: Hon'ble Mr. Justice P. Sathasivam.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11(6) — to invoke Arbitration clause — Indian Contract Act, 1872 — Section 4 — purchase order — the petitioner submitted a

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commercial offer through e-mail for the supply of Bauxite to the respondent — on the basis of the acceptance of the offer by the respondent through e-mail, the petitioner entered into a formal Bauxite Sales Agreement with Bauxite supplier in Australia and also entered into a binding Charter Party Agreement with the ship owner — the respondent requested the petitioner to hold the next consignment until further notice — petitioner terminated the contract and served a notice of claim-cum-arbitration on the respondent — respondent rejected the arbitration notice on the ground of no concluded contract between the parties — hence the petition — the acceptance conveyed by the respondent through e-mail satisfied the requirement of 'communication' u/s. 4 of the Act, 1872 — held that once the contract is concluded orally or in writing, the mere fact that a formal contract has to be prepared and initialed by the parties would not affect either the acceptance of the contract so entered into or implementation thereof — Arbitration petition allowed — the former Judge of this Court appointed as an Arbitrator to resolve the dispute between the parties — no costs.

2010 SCCL.COM 67(Case/Appeal No: Civil Appeal No. 89 of 2010)

Vijay Kumar Sharma @ Manju Appellant vs. Raghunandan Sharma @ Baburam and others Respondents, decided on 5/1/2010.

Name of the Judge: Hon'ble Mr. Justice R.V. Raveendran and Hon'ble Mr. Justice K. S. Radhakrishnan.

Subject Index: Civil Procedure Code, 1908 — Order 7, Rule 11 — rejection of plaint — Arbitration and Conciliation Act, 1996 — Section 7 — arbitration agreement — dispute between the parties for partition and possession of the portions of the suit premises — respondent Nos. 2 and 3 filed an application u/s 8 of the Act, 1996 in relation to the declaration made by the deceased to resolve the dispute in connection with the Will through arbitration — Trial Court dismissed the civil suits filed by the parties — appellant filed appeal against the dismissal of civil suit where as the first

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respondent filed an application for appointment of independent arbitrator — the designate of the Chief Justice allowed the said application and appointed an arbitrator to resolve the disputes — appeal — no Arbitration agreement u/s 7 of Act, 1996 between the parties — validity of the Will is pending consideration in the two civil suits filed by the appellant and the first respondent — held that a unilateral declaration by a father that any future disputes among the sons be settled by an arbitrator named by him, cannot be considered as an arbitration agreement among his children who become parties to a dispute — impugned order of the Designate of the Chief Justice appointing an arbitrator set aside — appeal allowed.

2010 SCCL.COM 112(Case/Appeal No: Arbitration Petition No. 21 of 2009)

Dolphin Drilling Ltd. Petitioner vs. Oil and Natural Gas Corporation Ltd. Respondent, decided on 17/2/2010.

Name of the Judge: Hon'ble Mr. Justice Aftab Alam.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11(6) — application under — for appointment of arbitrator — applicant entered into agreement with the respondent to carry out drilling operations in the offshore waters as allocated by the respondent — non-payment/part-payment of the invoices by the respondent — appellant addressed a notice to the respondent to invoke arbitration clause to which the respondent not responded — hence this petition — held that arbitration Clause 28 of the agreement cannot be said to be a one time measure and it cannot be held that once the arbitration clause is invoked the remedy of arbitration is no longer available in regard to other disputes that might arise in future — this Court appointed the former judge of this Court as arbitrator on behalf of the respondent to decide the matter — petition disposed — no cost.

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2010 SCCL.COM 145(Case/Appeal No: Civil Appeal No. 1094 of 2010)

State of Haryana and others Appellants vs. M/s. S.L. Arora & Company Respondent, decided on 29/1/2010.

Name of the Judge: Hon'ble Mr. Justice R.V. Raveendran and Hon'ble Mr. Justice K. S. Radhakrishnan.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 31(7)(a) — power of Arbitral Tribunal to award interest — construction contract between the parties — due to delay in completion of work, respondent's claim not settled — Arbitral award passed in favour of the respondent — Arbitral Tribunal rejected the counter-claims of the appellants and awarded ` 14,94,000/- with interest to the respondent-contractor — the respondent made an application for modification of the amount claimed, contending that due to inadvertence, a lesser amount had been claimed in the execution petition — the Executing Court accepted the revised calculation made by the respondent — appellants filed petition against the said order which was dismissed by the High Court — appeal — whether Section 31(7) of the Act authorizes and enables Arbitral Tribunals to award interest on interest from the date of award? — No — whether the arbitral award granted future interest from the date of award, only on the principal amount found due to the respondent (that is ` 14,94,000/-) or on the aggregate of the principal and interest upto the date of award (` 31,98,879/-) — this Court held that in the absence of any provision for interest upon interest in the contract, the arbitral tribunals do not have the power to award interest upon interest, or compound interest, either for the pre-award period or for the post-award period — the future interest awarded by the arbitrator on the "sums due" referred to the "total amount of the award", therefore, what was awarded by the Arbitrator was future interest at the rate of 18% per annum on the amounts awarded on various claims in

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all aggregating to ` 14,94,000/- and not upon the interest awarded thereon up to to date of the award — impugned judgment of the Executing Court and of the High Court set aside — appeal allowed.

2010 SCCL.COM 149(Case/Appeal No: Civil Appeal No. 2283 of 2010)

Union of India and others Appellants vs. M/s. Neelam Engineering & Construction Company Respondent, decided on 10/3/2010.

Name of the Judge: Hon'ble Mr. Justice Altamas Kabir and Hon'ble Mr. Justice Cyriac Joseph.

Subject Index: Arbitration Act, 1940 — Sections 14(2), 17 and 29 — petition under — Sections 30 and 33 — objections under — Limitation Act, 1963 — Article 119 — agreement between the parties for providing additional security lighting arrangement in various zones — dispute arose — referred to Arbitration — Arbitrator made his award in favour of the respondent — respondents filed petition for making the Arbitral award, a Rule of Court — appellants filed objections against the arbitral award — the Civil Court ordered to make the award a Rule of Court — Appeal Court concluded that the objection filed on behalf of the Appellants could not be held to be barred by limitation, but was premature and the appellants were not competent to file the said objection before the award was received in the Court — High Court affirmed the orders of the Appeal Court — appeal — held that although the Appellants filed their objection under Sections 30 and 33 the same was done prematurely even before the filing of the Award and such objection could not be treated as a valid objection under Sections 30 and 33 of the Act in view of the provisions of Article 119 of the Limitation Act, 1963 — appeal dismissed — no costs.

2010 SCCL.COM 177(Case/Appeal No: Civil Appeal No. 1256 of 2005)

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O. P. Pathrose Appellant vs. State of Kerala and others Respondents, decided on 16/3/2010.

Name of the Judge: Hon'ble Mr. Justice Markandey Katju and Hon'ble Mr. Justice K. S. Radhakrishnan.

Subject Index: Indian Arbitration Act, 1940 — arbitral award — agreement between the suit parties for execution of the work for the formation of Kottayam Branch Canal including siphons and cross drainage works — dispute arose — claim raised by the appellant referred to arbitration — the arbitrator passed a reasoned award whereby the claims Nos. a, b, c, d, g were allowed — award was made the rule of the Court. However, Division Bench set aside the claims Nos. 'a' to 'd' and decree was passed only in terms of claim 'g' — appeal — this Court observed that with regard to claims Nos. a and b, the arbitrator stated cogent reasons for allowing those claims as there were substantial changes in the designs of the canal as well as the structure which, it was found, was effected to suit the site condition, but no materials in support for granting claims Nos. (c) and (d) by the Arbitrator — impugned orders of the High Court in respect of claims (a) and (b) set aside and in respect of claims Nos. (c) and (d) sustained — appeal partly allowed.

2010 SCCL.COM 205(Case/Appeal No: Civil Appeal No. 2928 of 2010)

State of Maharashtra Appellant vs. M/s. Hindustan Construction Company Ltd. Respondent, decided on 1/4/2010.

Name of the Judge: Hon'ble Mr. Justice R. V. Raveendran and Hon'ble Mr. Justice R. M. Lodha.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 37 — appeal under — for amendment in memorandum of appeal — both the parties entered into a contract for the construction of civil work of Pressure Shafts and Power House Complex — dispute arose — Arbitral Tribunal awarded an amount of ` 17,81,25,152/-

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in favour of the respondent — appellant made an Arbitration application for setting aside the award — Trial Court rejected the said application — appellant made an application before the High Court seeking amendment to the memorandum of Arbitration appeal by adding additional grounds — learned Single Judge dismissed the application for amendment in the memorandum of Arbitration appeal — appeal — whether in an appeal under Section 37 from an order refusing to set aside the award, an amendment in the memorandum of appeal to raise additional/new grounds can be permitted — No — whether the High Court committed any error in rejecting the appellant's application for addition of new grounds in the memorandum of Arbitration appeal — No — the grounds sought to be added in the Memorandum of arbitration appeal by way of amendment were not originally raised in the arbitration petition by the appellant for setting aside the award — held no illegality in the impugned orders of the High Court — appeal dismissed — no costs.

2010 SCCL.COM 209(Case/Appeal No: Civil Appeal No. 868 of 2010)

Bharat Sanchar Nigam Ltd. Appellant vs. Telephone Cables Ltd. Respondent, decided on 1/22/2010.

Name of the Judge: Hon'ble Mr. Justice R.V. Raveendran and Hon'ble Mr. Justice K. S. Radhakrishnan.

Subject Index: (A) Arbitration and Conciliation Act, 1996 — Section 11(6) — application for appointment of arbitrator — notice inviting tenders — the respondent aggrieved that the BSNL did not adjudge it as V-1 and did not place purchase order for 30% tendered quantity in his favour as per the directions of the High Court and thus, denied the opportunity to manufacture and supply a quantity of 5.306 LCKM of cables, resulting in a loss of profit at the rate of ` 200/- per CKM on the quantities for which it did not get an order — respondent filed writ petition before the High Court

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which was later withdrawn with liberty to take appropriate civil remedies — respondent filed an application for appointment of an Arbitrator to decide its claim for ` 10,61,21,000/- — High Court allowed the said application and appointed a retired Judge of the Delhi High Court as an arbitrator — appeal — whether there exists an Arbitration agreement between the parties — No — this Court observed that bid documents did not constitute a contract, or an agreement or an agreement to enter into a contract. It was merely an invitation to make an offer — held that when a purchase order is not placed, there is no contract or agreement and if there is no contract or agreement, the terms of General Conditions including the arbitration clause do not come into existence, thus, BSNL did not intended to have arbitrations in regard to tender stage disputes or pre-contract differences, at a stage when there was no privity of contract. (B) Liability of the bid inviter — where the terms of the bid documents barred any claim being made on account of the rejection or non-acceptance of any bid, the bid inviter would not incur any liability to any aggrieved bidder, and the bidder would not have any cause of action in private law — impugned judgement of the High Court set aside and the application under Section 11 dismissed — appeal allowed.

2010 SCCL.COM 237(Case/Appeal No: Civil Appeal No. 3307 of 2010)

The Amravati District Central Co-operative Bank Ltd. Appellant Vs. United India Fire & General Insurance Co. Ltd. Respondent, decided on 15/4/2010.

Name of the Judge: Hon'ble Mr. Justice R.V. Raveendran and Hon'ble Mr. Justice K. S. Radhakrishnan.

Subject Index: Renewal Insurance Policy — indemnification of loss — appellant-Bank was insured by the respondent against losses caused by acts or omission of the Bank's employees to a limit of ` 6 lacs (basic cover) plus ` 9 lacs (cash in safe) — an employee

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of the Bank working in its Dhamangaon Branch committed a series of embezzlements who was dismissed from service — the Bank claimed indemnity from the Insurer — assessors assessed the reimbursable loss as ` 29,000/- and the Insurer offered the said sum in full settlement of the claim — matter referred to arbitration — the Arbitrator found that there were a series of embezzlements by the employee and held that the insurer could not apply the Excess clause to each and every loss separately, thus, directed the insurer to pay ` 2,58,337/40 to the Bank — High Court set aside the award of the Arbitrator and held that the Excess Clause in the policy envisaged the deduction from every claim, that is every single amount embezzled, 25% of the amount embezzled or ` 11,500/- whichever was higher, to arrive at the liability of the insurer. Further remitted the matter to the Arbitrator for deciding the claim afresh — appeal — this Court held that as per the proviso (1) of the Policy, the Bank has to bear 25% of the amount embezzled (or ` 11500/- whichever is higher) in regard to each and every embezzlement, and not by aggregation of the embezzlements as the loss on account of each embezzlement forms a separate claim — no interference in the orders of the High Court — appeal dismissed.

2010 SCCL.COM 264(Case/Appeal No: Civil Appeal No. 3838 of 2010 @ SLP(C) No. 20767 of 2008 With C.A. No. 3839/2010 [@ SLP(C) No. 21730/2008], C. A. Nos.3840-3841/2010 [@ SLP(C) Nos. 3971-3972/2009], C.A. No.3842/2010 [@ SLP(C) No. 31169/2008], C.A. No. 3843/2010 [@ SLP(C) No. 7293/2009], C.A. No.3844/2010 [@ SLP(C) No. 9875/2009],C.A. No. 3845/2010 [@ SLP(C) No. 10393/2009], C.A. No.3848/2010 [@ SLP(C) No. 15773/2009], C.A.No.3849/2010 [@ SLP(C) No. 19684/2009] and C.A. Nos.3850-63/2010 [@ SLP(C) No. 31096-31109/2009].)

Special Land Acquisition Officer Appellant Vs. Karigowda and others Respondents, decided on 26/4/2010.

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Name of the Judge: Hon'ble Mr. Justice R. V. Raveendran and Hon'ble Mr. Justice Swatanter Kumar.

Subject Index: Land Acquisition Act, 1894 — Section 23 — computation of compensation — the respondents were the owner of the lands which got submerged under the backwaters of Tonnur tank in the year 1993 due to construction of Hemavathi Dam — the Special Land Acquisition Officer (SLAO) fixed the market value of the wet lands at the rate of ` 90,640/- per acre and for dry land at the rate of ` 37,200/- with statutory benefits — the Reference Court enhanced the compensation to ` 2,92,500/- per acre for the wet lands (garden land). ` 1,46,250/- for dry land (lightly irrigated) and ` 1,20,000/- for dry land (without mulberry crop) . However, the High Court enhanced the compensation at the rate of ` 5,00,000/- per acre for wet/garden land (in other cases) ` 2,53,750/- per acre for dry lands — appeal — whether, manufacturing or commercial activity carried on by the agriculturist, either himself or by using the yield for production of some other final product can be the basis for determining the fair market value of the acquired land — it is only the direct agricultural crop produced by the agriculturist from the acquired land and not the consequential or remote benefits occurring from an agricultural activity that is a relevant consideration for determination of the fair market value on the date of the Notification — this Court held that the manufacturing of silk thread does not include growing of mulberry crop and thus, is only an agricultural activity and the entire remaining process cannot impliedly or by inference be termed as agricultural activity or an activity directly connected to agriculture — the compensation computed by the SLAO was on the basis of the sale instances of the villages falling within the same Circle as well as on the basis of the guidance value maintained in the Register of the Sub-Registrar of the concerned villages — held that the claimants have not only lost their agricultural land but they have also been deprived of seasonal income that was available to them as a result of sale of

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mulberry leaves, thus awarded the compensation at the rate of ` 2,30,000/- per acre for the wet/garden land and at the rate of ` 1,53,400/- per acre for the dry land to the claimants — impugned orders of the High Court and of the Reference Court set aside — appeals partly allowed — directions issued.

2010 SCCL.COM 270(Case/Appeal No: Civil Appeal No. 3874 of 2010)

Indowind Energy Ltd. Appellant Vs. Wescare (I) Ltd. and another Respondents, decided on 27/4/2010.

Name of the Judge: Hon'ble Mr. Justice R. V. Raveendran and Hon'ble Mr. Justice K. S. Radhakrishnan.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 7 — Arbitration agreement — Section 11 — application under — for appointment of sole arbitrator — an agreement of sale was entered into between respondent Nos. 1 and 2 — the Board of Director of Respondent Nos. 1 and 2 approved the said agreement however no such approval taken by the Board of Director of appellant — certain disputes arose between respondent No. 1 on the one hand and respondent No. 2 and appellant on the other, in respect of the said agreement — the High Court allowed the application of respondent No. 1 for appointment of sole arbitrator and held that appellant was *prima facie* a party to the arbitration agreement and was bound by it, even though it was not a signatory to the agreement — appeal — whether an Arbitration clause found in a document (agreement) between two parties, could be considered as a binding arbitration agreement on a person who is not a signatory to the agreement? — No — whether a company could be said to be a party to a contract containing an Arbitration agreement, even though it did not sign the agreement containing an arbitration clause, with reference to its subsequent conduct? — No — respondent No. 1 had not entered into any agreement with appellant, referring to the agreement with respondent No. 2 containing the arbitration agreement, with the

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intention of making such Arbitration agreement, a part of the their agreement — this Court held that the 2 Companies having common shareholders or common Board of Directors, will not make the two companies a single entity. Nor will lead to an inference that one company will be bound by the acts of the other — impugned orders of the High Court set aside and the application under Section 11 dismissed — appeal allowed.

2010 SCCL.COM 304(Case/Appeal No: Civil Appeal No. 4029 of 2010 @ SLP (C) No. 3883 of 2008)

Eureka Forbes Limited Appellant vs. Allahabad Bank and others Respondents, decided on 5/3/2010.

Name of the Judge: Hon'ble Mr. Justice B. Sudershan Reddy and Hon'ble Mr. Justice Swatanter Kumar.

Subject Index: Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 2(g) — 'debt' — scope of — the Bank granted financial assistance to respondent Nos. 2 and 3, who in turn had hypothecated the goods, plants and machinery in favour of the Bank — the respondent Nos. 2 and 3 failed to pay the licence fee to the appellant Company for the use and occupation of the premises, goods etc. as agreed, thus permitted them to sell the stocks as well as lathe machine lying in the factory premises and adjust the sale proceeds thereof towards the arrears of licence fee — the goods have been sold by the appellant without the consent of the Bank, therefore, the Bank filed a suit against the present appellant and respondent Nos. 2 & 3 claiming a sum of ` 22,11,618.62 — the Tribunal recorded the evidence and an ex-parte judgment was passed against the appellant which attained finality while the Tribunal held it a claim for damages in tort and not a debt, and also beyond the scope of the jurisdiction vested in the Tribunal. However, the High Court set aside the reasoning of the Tribunal and observed that, even claim for damages fall within the jurisdiction of the Tribunal — appeal — the appellant took no

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remedial or *bonafide* steps even after it had come to know that the goods were hypothecated to the Bank. On the contrary, it issued advertisement for sale of hypothecated goods for which they had no preferential right — this Court held the claim raised by the Bank within the jurisdiction of the Tribunal and also under the scope of Section 2(g) of the Recovery Act, thus, directed the appellants to pay ` 9,63,975/- to the respondent with interest @ 6% p.a. — impugned orders of the High Court modified.

2010 SCCL.COM 312(Case/Appeal No: Civil Appeal No. 3272 of 2007)

Andhra Pradesh Tourism Development Corporation Ltd. and another Appellants Vs. M/s. Pampa Hotels Ltd. Respondent, decided on 20/4/2010.

Name of the Judge: Hon'ble Mr. Justice R. V. Raveendran and Hon'ble Mr. Justice H. L. Dattu.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11 — Arbitration application filed under — certain disputes arose between the parties in regard to the Lease Agreement and Management Agreement — the designate of the Chief Justice allowed the application filed by the respondent and appointed a retired Judge of the said High Court as arbitrator, with the observation that the appellant is entitled to raise all its pleas including the validity of the Arbitration agreement before the Arbitrator — appeal — where the party seeking Arbitration is a company which was not in existence on the date of the signing of the contract containing the Arbitration agreement, whether it can be said that there is an Arbitration agreement between the parties? — No — whether the question as to the existence or validity of the Arbitration agreement, has to be decided by the Chief Justice/ Designate when considering the petition under Section 11 of the Act or by the arbitrator? — the certificate of registration issued by the Registrar of Companies shows the date of the respondent's

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incorporation as 9.4.2003, thus, the applicant in application under Section 11 of the Act was non-existent on 30/3/2002 when the Arbitration agreement was entered into — this Court held that when one of the parties to the Lease Agreement and Management Agreement, was a non-existent imaginary party, there is no contract and if there was no contract, there is no question of a clause in such contract being an arbitration agreement between the parties. Further held that the issue ought to have been decided by the learned Designate of the Chief Justice and could not have been left to the arbitrator — the arbitrator directed to decide the issue in regard to the existence/validity of the arbitration agreement as a preliminary issue relating to jurisdiction — appeal disposed.

2010 SCCL.COM 326(Case/Appeal No: Arbitration Petition No. 16 of 2009)

Denel (Proprietary Limited) Petitioner Vs. Bharat Electronics Ltd. and another Respondents, decided on 10/5/2010.

Name of the Judge: Hon'ble Mr. Justice H. L. Dattu.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11 — petition filed under — to appoint a sole arbitrator to adjudicate the dispute between the parties — dispute arose between the parties in regard to payment of certain amounts towards Purchase Orders/Invoice — the respondent though admitted their liability towards the aforesaid Purchase Orders, refuse to settle the amounts due only on the ground, that, they are prohibited from making any payments to the petitioner by the Ministry of Defence, Government of India — this Court observed failure on the part of the respondent in making appointment of an arbitrator for resolving the dispute in accordance with the understanding of the parties as reflected in the Purchase Order, thus, appointed a former Justice of this Court as sole arbitrator to settle the dispute between parties — petition allowed.

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2010 SCCL.COM 372(Case/Appeal No: Civil Appeal No. 5286 of 2006)

M/s. Rashtriya Chemicals & Fertilizers Ltd. Appellant vs. M/s. Chowgule Brothers and others Respondents, decided on 7/7/2010.

Name of the Judge: Hon'ble Mr. Justice Aftab Alam and Hon'ble Mr. Justice T. S. Thakur.

Subject Index: Arbitration petition — statutory revisions in the wages — parties entered into a contract for clearing, forwarding, handling and stevedoring jobs at Mormugao Port initially for a period of one year up to 14th January 1984 and the appellant extended the contract for a further period of one year — the extension was accepted by the respondent and was pointed out that statutory revisions in the wages of Mormugao Dock Labour Board (M.D.L.B.) that had come about during the period of one year need be considered while extending the contractual period — the appellant stated that increases in wages that may have been under negotiations or those granted on a later date with retrospective effect could not consequently be considered — a claim for reimbursement of ` 24.74 lakhs made by the respondents, which claim was refuted by the appellant on the strength of Clause 2.03 of Schedule II to the notice inviting tenders forming part of the contract between the parties — dispute referred to a panel of 3 arbitrators for adjudication — aggrieved by the majority award, the appellant filed arbitration petition which was allowed by the learned Single Judge. However, the Division Bench through its orders set aside the order passed by the Single Judge and restored the majority Award made by the two Arbitrators — appeal — whether an Arbitrator can made an award contrary to the terms of the contract executed between the parties — No — the contract does not envisage settlement or revision of the rate by reference to any stage post commencement of the extended period — the entitlement of the respondent to claim any amount

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on account of escalation consequent upon the increase in the wages of M.D.L.B. workers is not established, therefore, held that the claims on account of escalation could not have been allowed by the Arbitrators nor could the incidental claim for payment of interest on that claim be granted. Further this Court found no real justification by the appellant for disallowing the claim made by the respondents representing the balance amount due to the claimant towards its final bill — the award made by the Arbitrators set aside except to the extent of a sum of ` 8,63,953/- be payable to the respondent-contractor with the interest @ 9% p.a. — appeal partly allowed.

2010 SCCL.COM 428(Case/Appeal No: Civil Appeal No(s). 6000 of 2010)

M/s. Afcons Infrastructure Ltd. and another Appellant(s) vs. M/s. Cherian Varkey Constn. Co. Pvt. Ltd. and others Respondent(s),decided on 26/7/2010.

Name of the Judge: Hon'ble Mr. Justice R. V. Raveendran and Hon'ble Mr. Justice J. M. Panchal.

Subject Index: Civil Procedure Code, 1908 — Section 89 and Order 10, Rule 1A — whether the said section empowers the court to refer the parties to a suit to arbitration without the consent of both parties — the second respondent entrusted the work of construction of certain bridges and roads to the appellants under an agreement. The appellants sub-contracted a part of the said work to the first respondent under an agreement however, the agreement between the appellants and the first respondent did not contain any provision for reference of the disputes to Arbitration — dispute arose — the first respondent filed an application under Section 89 of the Code before the Trial Court praying that the court may formulate the terms of settlement and refer the matter to arbitration which was allowed by the Trial Court. The High Court confirmed the order of the trial court & held that Section 89

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permitted the court, in appropriate cases, to refer even unwilling parties to Arbitration — appeal — a court has no power, authority or jurisdiction to refer unwilling parties to Arbitration u/sec. 89, if there is no Arbitration agreement, therefore, where there is no pre-existing Arbitration agreement between the parties, the consent of all the parties to the suit will be necessary, for referring the subject matter of the suit to Arbitration under Section 89 of the Code — impugned order of the Trial Court as affirmed by the High Court set aside and the Trial Court directed to decide upon a non-adjudicatory ADR process — appeal allowed.

2010 SCCL.COM 433 (Case/Appeal No: Civil Appeal No(s). 5998 of 2010)

State of H. P. and another Appellant(s) vs. M/s. Himachal Techno Engineers and another Respondent(s), decided on 26/7/2010.

Name of the Judge: Hon'ble Mr. Justice R. V. Raveendran and Hon'ble Mrs. Justice Gyan Sudha Misra.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 34 — petition under — challenging the arbitral award — the parties entered into a contract for the construction of a water purification plant — dispute raised — referred to arbitration — the arbitrator made an award in favour of the respondent — the petition was filed accompanied by an application for condonation of delay of 28 days which was dismissed by the learned Single Judge on the ground that the period of three months plus thirty days expired on 10.3.2008 and therefore the petition filed on 11/3/2008 was barred — whether the petition was filed beyond three months plus thirty days — no — the award was received by the Executive Engineer on 12/11/2007. Consequently, the three months should be calculated from 13/11/2007 and would expire on 12/2/2008. Thirty days calculated from 13/2/2008 and would expire on 13/3/2008. Therefore the petition filed on 11.3.2008 was well in time and was not barred by limitation — impugned order set aside and the matter

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remanded to the High Court for consideration of the petition under Section 34 of the Act on merits, in accordance with law— appeal allowed.

2010 SCCL.COM 445(Case/Appeal No: Civil Appeal No(s). 3185 of 2002)

M/s. Sumitomo Heavy Industries Ltd. Appellant(s) vs. Oil & Natural Gas Company Respondent(s), decided on 28/7/2010.

Name of the Judge: Hon'ble Mr. Justice R.V. Raveendran and Hon'ble Mr. Justice H. L. Gokhale.

Subject Index: Arbitration claim — parties entered into contract for installing and commissioning of well-cum-production platform Deck and connected system including submarine pipelines for extraction of oil — the appellant appointed MII as the Sub-Contractor in execution of this work by a back to back contract to the full knowledge of the respondent but the respondent declined to reimburse the tax amount which MII was required to pay (concerning the profits and gains in connection with the business of exploration of minerals) — the appellant invoked arbitration clause and the Umpire directed the respondent to pay the appellant the sum of Japanese Yen 129,764,463/- with interest at 4.5% per annum — the respondent filed petition and the High Court set aside the Award made by the umpire in an arbitration claim of the appellant against the respondent — appeal — whether the umpire exceeded his jurisdiction in making the award or whether there is an error apparent on the face of the award — the liability of the appellant to reimburse that amount to MII arose in view of the commitment made by the appellant in their sub-contract to MII — the respondent had taken up the responsibility for the income tax liabilities of the appellant. So had the appellant taken up the responsibility for the tax liabilities of MII and the respondent cannot be said to be ignorant there of, therefore, the Umpire gave the direction to the respondent to compensate the appellant for

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the amount of the necessary and reasonable extra cost caused by change in law — this Court held that the approach adopted by the umpire being a plausible interpretation, is not open to interfere — impugned orders of the High Court set aside & the award made by the Umpire upheld — appeal allowed.

2010 SCCL.COM 499(Case/Appeal No: Civil Appeal No. 6519 of 2010)

Venture Global Engineering Appellant(s) vs. Satyam Computer Services Ltd. and another Respondent(s), decided on 11/8/2010.

Name of the Judge: Hon'ble Mr. Justice P. Sathasivam and Hon'ble Mr. Justice Asok Kumar Ganguly.

Subject Index: Arbitration & Conciliation Act, 1996 — Section 34(2)(b)(ii) — interpretation of — Civil Procedure Code, 1908 — Order VIII Rule 9 — application for additional pleadings — the appellant entered into a Shareholders Agreement and a Joint Venture Agreement with the first respondent, for establishing the second respondent/Co.. The appellant and the first respondent each held 50 per cent shareholding in the second respondent — the appellant alleged concealment and dereliction of duty as a joint venture partner — disputes cropped up — referred to arbitration — the sole arbitrator gave his award whereby the appellant is to transfer its entire shareholding in the second respondent to the first respondent — the appellant filed a suit seeking a declaration to set aside the award and also prayed for a permanent injunction against the transfer of shares under the arbitral award. Meanwhile, the chairman of the first respondent confessed that the balance sheets had been fraudulently inflated. The appellant filed application for additional pleadings which was allowed by the Trial Court. However, the High Court held that the petition for additional pleading is not maintainable — hence, the petition — whether by allowing the amendment, the Court will allow material facts to be brought on record in the pending setting aside proceeding —

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this Court concluded that if the concealed facts, disclosed after the passing of the award, have a causative link with the facts constituting or inducing the award, such facts are relevant in a setting aside proceeding and award may be set aside as affected or induced by fraud, therefore, the appellant is allowed to bring the materials on record by way of amendment in plea for setting aside the award — impugned orders of the High Court set aside and of the Trial Court restored — appeal allowed — no costs.

2010 SCCL.COM 511(Case/Appeal No: Arbitration Petition No.17 of 2009)

Sirajuddin Kasim and another Petitioner(s) Vs. M/s. Paramount Investment Ltd. Respondent(s), decided on 2/8/2010.

Name of the Judge: Hon'ble Mr. Justice Asok Kumar Ganguly.

Subject Index: Arbitration and Conciliation Act, 1996 — section 11 — petition under — for appointment of an arbitrator — disputes cropped up between the parties out of the settlement agreement — the respondent called upon the petitioners to appoint an independent accounting firm for a thorough investigation of the accounts — the settlement agreement as also the Power of Attorney were revoked by the petitioner No.1 and the request to appoint an impartial arbitrator in terms of settlement agreement was made. Thereafter, the respondent filed a suit against P1 before the High Court of Republic of Singapore, claiming damages and interest and prayed for specific performance of the Settlement Agreement — whether the arbitration Clause in the SHA still survives — the Arbitration clause was invoked earlier than the filing of a suit — this Court opined that whether rights of the parties under SHA have been superseded by the subsequent settlement agreement may be an arbitrable issue and that issue can be examined by the arbitrator — petition allowed — no costs.

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2010 SCCL.COM 518(Case/Appeal No: Civil Appeal No(s).6815-6816 of 2010)

Sree Kamatchi Amman Constructions Appellant(s) vs. The Divisional Railway Manager (Works), Palghat & others Respondent(s),decided on 20/8/2010.

Name of the Judge: Hon'ble Mr. R.V. Raveendran and Hon'ble Mr. Justice H. L. Gokhale.

Subject Index: Arbitration and Conciliation Act, 1996 — arbitral award — in challenge — a contract between the parties regarding certain construction work — disputes arose — referred to Arbitral Tribunal — the Tribunal while rejected 2 claims of the appellants and all the claims of the Railways, further awarded certain amounts to be paid to the appellants. The Arbitral Tribunal awarded only future interest and refused to award the interest for pre-reference period and interest *pendente lite* — being aggrieved the parties challenged the award — the Division Bench allowed the Railways appeal and set aside the award made on claim No. 3 and claim No. 5 of the appellant — appeal — whether the contract between the parties contains an express bar regarding award of interest — Yes — whether the Arbitral Tribunal was justified in refusing interest for the period between the date of cause of action to date of award — the amount awarded in regard to claim No. (4) was an amount payable to the contractor under the contract. No interest could be paid thereon having regard to the bar under Clause 16(2) of the General Conditions of contract, thus, in view of the specific bar under Clause 16(2), the Arbitral Tribunal was justified in refusing interest from the date of cause of action to date of awards — this Court held that the arbitrator had the discretion to decide whether interest should be awarded or not during the *pendente lite* period and he was not bound by the contractual terms insofar as the interest for the *pendente lite* period, therefore, where the arbitral tribunal has exercised its discretion and refused award of interest

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for the period *pendente lite* the award of the arbitrator could not be interfered with — appeals dismissed.

2010 SCCL.COM 535(Case/Appeal No: Civil Appeal No(s).5220-5221 of 2010)

H. Srinivas Pai and another Appellant(s) vs. H. V. Pai (D) Thr. Lrs. & others Respondent(s), decided on 9/7/2010.

Name of the Judge: Hon'ble Mr. Justice R. V. Raveendran and Hon'ble Mr. Justice H. L. Gokhale.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 8 — application under — suit for partition — the appellant filed an application for stay of proceedings — the Division Bench of the High Court dismissed the application on the ground that the right claimed by the respondent in the original suit for partition of the joint family properties, is a civil dispute, which does not attract the provisions of the Act — appeal — this court held that there is no basis for the observation of the High Court that Arbitration and Conciliation Act, 1996 will not apply to 'civil disputes', but will apply only to 'commercial disputes' or international commercial disputes. Reference to arbitration and arbitability depends upon the existence of an arbitration agreement, and not upon the question whether it is a civil dispute or commercial dispute — the application u/sec. 34 of the Arbitration Act, 1940 was dismissed in the year 1995 and affirmed in appeal in 2000 and by the High Court in 2001 and attained finality, thus, the application under Section 8 has been rightly negatived by the trial Court and by the High Court — appeals disposed.

2010 SCCL.COM 583 (Case/Appeal No: Arbitration Petition No.7 of 2008)

Anil Kumar Appellant vs. B. S. Neelkanta and others Respondent, decided on 7/5/2010.

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Name of the Judge: Hon'ble Mr. Justice D. K. Jain.

Subject Index: Arbitration and Conciliation Act, 1996 — Sections 11(5) and 11(6) — petition under — for appointment of an Arbitrator — for adjudication of the disputes — agreement between the respondent Nos. 1, 2 & 3 and respondent No. 4 for development of the existing Hotel Ritz as a "Heritage Grand" category hotel — disputes arose — since the respondents as also the Corporation having failed to appoint an Arbitrator, the petitioner filed a petition under Section 11(6) for appointment of an arbitrator. The High Court appointed a former Judge of this Court as the sole arbitrator. However, the respondent No. 4 filed objection with regard to the jurisdiction of the High Court to entertain the petition under Section 11(6) for appointment of an arbitrator — hence, the petition — whether the dispute regarding termination of relationship between lessee/Varsha and the petitioner is dead one in the sense that on alleged allotment of equity in favour of an associate of the petitioner, agreement has worked itself out and no live issue in terms of the said agreement subsists? — there is an Arbitration agreement to which the petitioner is a party along with the respondents — disputes between the parties on the issues/ claim raised by the petitioner including whether the claim still subsists or has been extinguished as alleged by the respondents, which cannot be resolved without evidence — the issues/claim raised by the petitioner, on a mere assertion cannot be said to be a dead one without evidence to be produced by the parties on their respective stands, regarding rights and obligations of the parties under agreements on allotment of 74% of equity in favour of IICL and petitioner's right to nominate or being himself on the Board of Directors of Varsha — this court appointed a former Judge of this Court as the sole arbitrator to adjudicate upon the claims/disputes raised by the petitioner — petition allowed.

2010 SCCL.COM 656(Case/Appeal No: Civil Appeal No. 8249 of 2010)

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Department of Telecommunications Appellants vs. Gujarat Co-operative Milk Marketing Federation Ltd. Respondents, decided on 24/9/2010.

Name of the Judge: Hon'ble Mr. Justice R.V. Raveendran and Hon'ble Mr. Justice Dalveer Bhandari, J..

Subject Index: Indian Telegraph Act, 1885 — Section 7B — arbitral award under — telephone connection — excessive billing — on account of a large number of international party calls — the Divisional Engineer of the appellant after verification informed the respondent that the bills were correct. The General Manager of the appellant confirmed the demands under the 2 bills — as the bill amounts were not paid, the telephone was disconnected — dispute referred to Arbitration — the Arbitrator made an award holding that the bills were proper and the respondent had to make complete payment of the said bills — the respondent challenged the arbitral award — the learned Single Judge allowed the writ petition with costs of ` 5000 and quashed the bills and the consequential demand notice. The Division Bench affirmed the said orders — appeal — the amount of the second bill and the period for the second bill demonstrates that after receipt of first bill and complaint, there was in fact some kind of control and reduction in such phone calls — held no ground for the High Court to interfere with the findings arrived at by the arbitrator in exercising the power of judicial review — the mere fact that the Arbitrator is of a rank lower than the officer who rejected the claim of the subscriber would not invalidate the arbitration or can be a reason for imputing bias to the arbitrator — impugned orders of the High Court set aside — writ petition dismissed — appeal allowed.

2010 SCCL.COM 705(Case/Appeal No: Civil Appeal No (s). 8817 of 2010)

Oil & Natural Gas Corp. Appellant(s) vs. M/s. Wig Brothers Builders & Enginnr. P. Ltd. Respondent(s), decided on 8/10/2010.

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Name of the Judge: Hon'ble Mr. Justice R. V. Raveendran and Hon'ble Mr. Justice H. L. Gokhale .

Subject Index: Arbitration Act, 1940 — Sections 30 & 33 — petition under — challenging the arbitral award — the appellant entrusted a construction work to the respondent — certain disputes arose between the parties — claims referred to a sole arbitrator — the arbitrator passed arbitral award in favour of the respondent/ claimant and also awarded 12% *pendente lite* interest and 6% from the date of the award/decree. The High Court upheld the judgment of the Civil Court making the award the rule of the court, subject only to one change, by reducing the rate of *pendente lite* interest from 12% to 6% per annum — appeal — the arbitrator held that the delay in completion was due to the fault of both the contractor and ONGC and that both are equally liable for the delay of 19 months, thus, the contractor was entitled to compensation at the rate of ` 1 lakh for a period of 9½ months — this Court held that as per clause 5 A of the contract in the event of the work being delayed for whatsoever reason, that is even delay which is attributable to ONGC, the contractor will only be entitled to extension of time for completion of work but will not be entitled to any compensation or damages, therefore, the award of the arbitrator in violation of the bar contained in the contract has to be held as one beyond his jurisdiction — the judgement of the Courts below making the award the rule of the court is partly set aside in so far as it relates to the award of ` 9.5 lakhs under claim No.(1) and the award of interest thereon — appeal partly allowed.

2010 SCCL.COM 709(Case/Appeal No: Civil Appeal No (s). 1979 of 2010)

Maharashtra State Electricity Distribution Co. Ltd. & Another Appellant(s) vs. Datar Switchgear Ltd. & others Respondent(s), decided on 8/10/2010.

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Name of the Judge: Hon'ble Mr. Justice D. K. Jain and Hon'ble Mr. Justice H. L Dattu.

Subject Index: Indian Penal Code, 1860 — Sections 192, 199 r/w Section 34 — fabricating false evidence with common intention — complaint filed for the commission of offence under — CrPC, 1973 — Section 482 — petition under — to quash the complaint — dismissed — various contracts entered into between the parties. During the validity period of the contract, various disputes arose between respondent No.1 and MSEB and respondent No.1 terminated the contract in entirely — dispute referred for arbitration — the Arbitral Tribunal passed the final award whereby it directed MSEB to pay damages to respondent No. 1, and pay interest. On the basis of the arbitral award, respondent Nos. 1 to 3 filed criminal complaint — the Judicial Magistrate took cognizance of the said complaint and issued summons against all the accused named in the complaint. The High Court observed that a *prima facie* case has been made out against the accused and the complaint clearly establishes the joint action of the accused to attract vicarious liability under the IPC — appeal — no allegation in the Complaint that appellant No. 2 had personally participated in the Arbitration proceedings or was monitoring them in his capacity as the Chairman of MSEB. Even the Board Resolution, adduced by the complainant, does not establish that appellant No. 2 was involved in the alleged fabrication of false evidence or adducing the same in evidence before the Arbitral Tribunal — this Court held that the complaint does not indicate the existence of any pre-arranged plan whereby appellant No. 2 had, in collusion, with the other accused decided to fabricate the document in question and adduce it in evidence before the arbitral tribunal, thus, no *prima facie* case has been made out against appellant No.2 in respect of charges under IPC — impugned order of the Magistrate taking cognizance against appellant No. 2 in criminal complaint is quashed.

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2010 SCCL.COM 718 (Case/Appeal No: Civil Appeal No(s). 8703 of 2010)

Coal India Limited & another Appellant(s) vs. M/s. Ujjal Transport Agency & others Respondent(s), decided on 21/10/2010.

Name of the Judge: Hon'ble Mr. Justice R. V. Raveendran and Hon'ble Mr. Justice H. L. Gokhle.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 34 — application for setting aside the arbitral award — Limitation Act — application for condonation of delay — the District Court dismissed the application for condonation of delay. The High Court affirmed the said orders — appeal — whether the appellants were *bona fide* and diligently pursuing the remedy before a wrong forum — the appellants stated that they became aware that the appeal was not maintainable before the High Court when they came to know about the execution proceedings. But thereafter, there was some uncertainty as to whether the application under Section 34 of the Act had to be filed in the District Court only after the withdrawal of `appeal' under Section 34 of the Act before the High Court, or whether the withdrawal and filing of fresh application under Section 34 of the Act should be simultaneous, or whether to avoid delay, the application under Section 34 of the Act should be filed in the District Court immediately even before the application for withdrawal could be moved before the High Court. In fact the appellants filed the application under Section 34 immediately on reopening of Court, without waiting for a formal order of withdrawal of the `appeal' under Section 34 before the wrong forum — this Court held that if the period spent before wrong forum is excluded, the application is filed within three months and there is no question of explaining any delay — impugned orders of the lower Court set aside and the District Court is directed to consider the application under Section 34 filed by the appellants in accordance with law — appeal allowed.

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2010 SCCL.COM 722(Case/Appeal No: Civil Appeal No. 516-527 of 2004 with Civil Appeal Nos. 280-286/2005, Civil Appeal No. 8324/2004, Civil Appeal Nos. 8325- 8328/2004, Civil Appeal No. 603/2005, Civil Appeal No. 990/2005, Civil Appeal No. 925/2005, Civil Appeal No. 924/2005, Writ Petition (C) No. 556/2004, Writ Petition (C) No. 555/2004, Civil Appeal Nos. 2247-2250/2005, Civil Appeal No. 923/2005, Civil Appeal No. 995/2005, Civil Appeal No. 994/2005, Writ Petition (C) No. 63/2005, Writ Petition (C) No. 61/2005, Writ Petition (C) No. 62/2005, Writ Petition (C) No. 60/2005, Civil Appeal No. 2246/2005, Civil Appeal Nos. 3231- 3232/2005, Civil Appeal No. 3091/2004, Civil Appeal No. 3087/2004, Civil Appeal No. 3092/2004, Civil Appeal Nos. 4599-4601/2004, Civil Appeal Nos. 528-531/2004, Writ Petition (C) No. 325/2004, Writ Petition (C) No. 324/2004, Writ Petition (C) No. 326/2004, Civil Appeal No. 992/2007, Civil Appeal No. 9174/2010 @ SLP (C) No. 20373/2009, Civil Appeal No. 532/2004, and Civil Appeal No. 604/2005.)

Brij Lal & others Appellant(s) vs. Commissioner of Income Tax, Jalandhar Respondent(s), decided on 21/10/2010.

Name of the Judge: Hon'ble The Chief Justice, Hon'ble Mr. Justice B. Sudershan Reddy, Hon'ble Mr. Justice K. S. Radhakrishnan, Hon'ble Mr. Justice Surinder Singh Nijjar, Hon'ble Mr. Justice Swatanter Kumar.

Subject Index: Income Tax Act, 1961 — Sections 234 A, 234 B, 234C, 245(D) and 154 — interest for defaults in payment of advance tax — whether Section 234B applies to proceedings of the Settlement Commission under Chapter XIX-A of the said Act — Yes — whether such interest should be computed up to the date of the Order under Section 245D(1) or up to the date of the Order of the Commission under Section 245D(4) — whether the Settlement Commission could reopen its concluded proceedings by invoking section 154 of the said Act so as to levy interest under section

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234B, though it was not so done in the original proceedings — no — levy of interest is incidental to the liability and computation of advance tax — once the Commission admits the case after being satisfied that the disclosure is full and true then the proceedings commence with the Settlement Commission. In the meantime, applicant has to pay the additional amount of tax with interest without which the application for settlement would not be maintainable. Thus, interest under Section 234B will be chargeable till the order of the Settlement Commission under Section 245D(1), i.e., admission of the case — this Court held that the Settlement Commission is a quasi-judicial body but have no power to rectify, therefore, the Settlement Commission cannot reopen its concluded proceedings by invoking Section 154 of the IT Act, 1961.

2010 SCCL.COM 726(Case/Appeal No: Civil Appeal No(s).3865 of 2006)

West Bengal State warehousing Corpn. Appellant(s) vs. M/s. Indrapuri Studio Pvt. Ltd. & another Respondent(s), decided on 19/10/2010.

Name of the Judge: Hon'ble Mr. Justice G. S. Singhvi and Hon'ble Mr. Justice B. S. Chauhan.

Subject Index: West Bengal Premises Requisition and Control Act, 1947 — section 11(1)(f) — appeal under — dismissed — the premises belonging to respondent No. 1 was requisitioned by the State Government and transferred to the appellant — amount of compensation payable to respondent No. 1 not fixed by agreement — an arbitrat was appointed. The Arbitrator held that the State Government is liable to pay as compensation ` 1,60,21,126/- for the covered area and ` 54,82,076/- for the open space with interest at the rate of 18% per annum. During the pendency of the Arbitration proceedings, the appellant represented to the State Government for appointment of a new arbitrator, however, no further action taken by the State Government for appointment of new arbitrator — the

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appellant filed appeal — the Division Bench while dismissing the appeal held that a person acquiring interest in the property does not have the right to participate in the arbitration proceedings or file an appeal against the award — appeal — this Court held that a person for whose benefit the premises are requisitioned or to whom the requisitioned premises are transferred does not have any locus to participate in the process of determination of compensation by agreement, or in the matter of appointment of an Arbitrator or reference of case to the Arbitrator or nomination of an assessor. Therefore, such person is neither entitled to copy of the award as of right nor he can challenge the award by filing an appeal under Section 11(1)(f) — appeal dismissed.

2010 SCCL.COM 733(Case/Appeal No: Civil Appeal No(s). 9224 of 2010 With Civil Appeal No. 9225 of 2010)

S.N. Prasad, M/s. Hitek Indus. (Bihar) Ltd. Appellant(s) vs. M/s. Monnet Finance Ltd. & others Respondent(s), decided on 22/10/2010.

Name of the Judge: Hon'ble Mr.Justice R. V. Raveendran and Hon'ble Mr. Justice H. L. Gokhle.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 7 — Arbitration agreement between the parties — Section 11 — application under — to settle the claim — whether a guarantor for a loan, who is not a party to the loan agreement containing the arbitration agreement executed between the lender and borrower, can be made a party to a reference to arbitration in regard to a dispute relating to repayment of such loan and subjected to the Arbitration award — facts of the case not in dispute — the loan agreements among the first respondent (lender), the second respondent (borrower) and the third respondent (guarantor) contained a provision for arbitration but the appellant was not made a party to the same — disputes arose — the lender referred the claims for Arbitration and the borrower, its Managing Director-

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cum-Guarantor, and the appellant were impleaded as respondents in the application — this Court held that an arbitration agreement between the lender on the one hand and the borrower and one of the guarantors on the other, cannot be deemed or construed to be an Arbitration agreement in respect of another guarantor who was not a party to the arbitration agreement. Therefore, there was no arbitration agreement in so far as appellant was concerned, though there was an arbitration agreement in regard to the second and third respondents — the statement of claim filed by the first respondent before the arbitrator does not contain an allegation or assertion of an arbitration agreement between the first respondent and appellant. Nor has the appellant accepted the existence of any arbitration agreement by not denying such arbitration agreement in the defence filed before the arbitrator — the appellant did not stated in his guarantee letter that he would be bound by the terms of loan agreement/s that may be executed by the borrower. Therefore the question of appellant impliedly agreeing to the arbitration Clause does not arise — held that having made only one of the guarantors to execute the loan agreements and having failed to get the appellant to execute the loan agreements, the first respondent cannot contend that the appellant who did not sign the loan agreements containing the arbitration clause should also be deemed to be a party to the arbitration and be bound by the awards, therefore, the impleading of appellant as a respondent in the arbitration proceedings and the award against the appellant in arbitration cannot be sustained — both the arbitration awards, as against the appellant set aside — appeals allowed.

2010 SCCL.COM 759(Case/Appeal No: Arbitration Petition No.5 of 2008)

M/s. Dezco India P. Ltd. Petitioner(s) vs. M/s. Doosan Infracore Co. Ltd. Respondent(s), decided on 10/8/2010.

Name of the Judge: Hon'ble Mr. Justice V. S. Sirpurkar.

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Subject Index: Arbitration and Conciliation Act, 1996 — Section 11 (6) — petition under — to appoint an Arbitrator — international Arbitration — Distributorship Agreement entered between the parties — disputes arose — the petitioner issued notice for appointment of an Arbitrator however, that have not been done — hence, the petition — whether this Court would be justified and would have the jurisdiction to appoint an Arbitrator under Section 11(6) of the Act — held no — the language of Articles 22 and 23 of the Distributorship agreement clearly indicated that the parties had agreed that the disputes arising out of the Agreement between them would be finally settled by the Arbitration in Seoul, Korea and the rules of arbitration to be made applicable were the Rules of International Chamber of Commerce — this Court held that since the interpretation of Article 23.1 suggests that the law governing the Arbitration will be Korean law and the seat of arbitration will be Seoul in Korea, there will be no question of applicability of Section 11(6) of the Act and the appointment of Arbitrator in terms of that provision — petition dismissed — no costs.

2010 SCCL.COM 806(Case/Appeal No: Civil Appeal No(s). 1401-1405 of 2002)

J. Kodanda Rami Reddy Appellant(s) vs. State of A.P. & others Respondent(s), decided on 11/11/2010.

Name of the Judge: Hon'ble Mr. Justice R.V. Raveendran and Hon'ble Mr. Justice Dalveer Bhadari .

Subject Index: Arbitration Act, 1940 — sections 8, 14(2), 30 and 33 — arbitration agreement — under challenge — the first respondent entered into an agreement in regard to execution of the work "Ongole Water Supply Improvement Scheme with NS canals as a source" in pursuance of acceptance of appellant's tender. The appellant lodged fourteen claims in regard to the said work — the first respondent did not settle the claims — the Trial Court appointed arbitrator under Section 8(2). The first respondent

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did not challenge the said order — the Arbitrator filed the award before the trial Court — the trial Court dismissed the objection petition of the first respondent and made the award, a rule of the court. However, the High Court held that disputes relating claims of more than `50000/- shall not be adjudicated by appointment of an Arbitrator under Section 8 of the Act, but should be resolved by a competent civil court — appeal — whether the GOM provided for Arbitration? — whether the order appointing an arbitrator under Section 8 (2) of the Act, could be challenged by the State Government, two years later, after participating in theArbitration proceedings without protest and after the arbitral award being made a rule of the court? — whether the High Court was justified in setting aside the order appointing the arbitrator under Section 8(2) of the Act and the common order rejecting the first respondent's application for setting aside the award and making the award, a rule of the court — held No. — the GOM does not contain any provision for Arbitration in regard to claims exceeding ` 50,000/-. However, having failed to contend that there was no Arbitration agreement in the proceedings under Sections 30 and 33 of the Act, and on the other hand having specifically conceded that the arbitrator was appointed in terms of the agreement, the first respondent was estopped from subsequently contending in the appeal that there was no arbitration agreement and the remedy of the contractor was only by way of a suit — impugned orders set aside and the order of the Trial Court restored. The matter remanded to the High Court to consider the order rejecting the application under Sections 30 and 33 of the Act — appeals allowed.

2010 SCCL.COM 810(Case/Appeal No: Arbitration Petition No(s). 2 of 2010)

Alva Aluminium Ltd. Bangkok Petitioner(s) Vs. Gabriel India Limited Respondent(s), decided on 16/11/2010.

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Name of the Judge: Hon'ble Mr. Justice T. S. Thakur.

Subject Index: Arbitration and Conciliation Act, 1996 — sections 11(5) & 11 (9) — petition filed under — for the appointment of an independent and impartial person as a sole arbitrator — the disputes involved international commercial Arbitration — Arbitration agreement — in question — whether this Court is in a petition under Sections 11(5) and 11(9) of the Arbitration and Conciliation Act, 1996 required to determine the existence of an arbitration agreement between the parties? — Whether any such agreement has indeed been executed between the parties to call for the appointment of an arbitrator for adjudication of the disputes and differences that have arisen between them? — held Yes — once the existence of the Arbitration agreement itself is questioned by any party to the proceeding initiated under Section 11 of the Act, the same have to be decided by the Chief Justice/designate as the case may be — the fact not disputed that a written contract document with arbitration clause is found existed between the parties. The correspondence between the parties was exchanged before the signing of the document is also not in dispute — the information provided, the correspondence exchanged and the documents executed clearly suggestive of the parties having finalised and signed a contract. No particulars was produced to establish that the signatures appended by the authorised person on behalf of the respondent to the contract document in token of its acceptance, was vitiated by any misrepresentation or such other considerations that could have the effect of vitiating the contract — this Court appointed a sole Arbitrator for adjudication of the disputes between the parties arising out of the contract — petition allowed.

2011 SCCL.COM 19(Case/Appeal No: Civil Appeal No. 5236 of 2007)

State of U.P. & others Appellant(s) vs. M/s. Combined Chemicals Company Pvt. Ltd. Respondent(s), decided on 4/1/2011.

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Name of the Judge: Hon'ble Mr. Justice G. S. Singhvi and Hon'ble Mr. Justice Chandramauli Kr. Prasad [Vacation Bench].

Subject Index: Arbitration Act, 1940 — Section 20 — petition under — for appointment of Arbitrator — the purchase committee of the Directorate of Industries approved the bid given by the respondent and appellant No. 2 issued acceptance letter to the respondent for supply of 200 metric tonnes of Zinc Sulphate to the Directorate of Agriculture — the respondent deposited the security money and dispatched a signed agreement to the Directorate of Agriculture for completion of other formalities. However, the purchase committee decided to postpone implementation of the acceptance letter — arbitrator was appointed — the Arbitrator passed an ex parte award and allowed the respondent's claim to the extent of ` 23,44,200/- with interest at the rate of 6% per annum. The award of the Arbitrator was made rule of the Court — whether letter issued by the Director of Industries, Uttar Pradesh (appellant No.2) conveying acceptance of the bid given by the respondent for supply of 200 metric tonnes Zinc Sulphate, Agriculture Grade, could be treated as an agreement executed by the parties — whether the respondent could invoke the arbitration clause contained in the tender document — whether the award passed by the Arbitrator is vitiated by patent error of law — held Yes — the Supreme Court opined that the bid given by the respondent was unequivocally accepted by the competent authority and the letter of acceptance was issued for and on behalf of the Governor by treating it to be a contract. Thus, in the light of the conduct of the parties, it becomes clear that an agreement was executed between the competent authority and the respondent. Further, the terms and conditions mentioned in the tender form were treated as part of the contract for supply of 200 metric tonnes Zinc Sulphate by the respondent to appellant No. 3 which provided for reference of any dispute to the arbitration. Therefore, the respondent was entitled to invoke the arbitration Clause. However, held that the Arbitrator passed the award without assigning any reason whatsoever and

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without even recording a finding that the respondent had suffered loss/damages on account of the failure of appellant No.3 to place supply order in furtherance of the acceptance letter — the award of the Arbitrator quashed and matter remitted back to the Arbitrator to decide the dispute afresh after giving reasonable opportunity of hearing to the parties — appeal partly allowed.

2011 SCCL.COM 103(Case/Appeal No: Civil Appeal No. 1282 of 2011)

Indian Oil Corporation Ltd. Appellant Vs. M/s. SPS Engineering Ltd. Respondent, decided on 3/2/2011.

Name of the Judge: Hon'ble Mr. Justice R.V. Raveendran and Hon'ble Mr. Justice A. K. Patnaik.

Subject Index: Arbitration and Conciliation Act, 1996 — section 11 — application under — for appointment of Arbitrator — contract agreement — between the parties — got terminated — the respondent raised certain claims against the appellant and invoked the Arbitration agreement — the appointed Arbitrator adjusted ` 11,10,662 awarded to the appellant, towards the sum of ` 91,33,844 awarded in favour of the respondent and consequently directed the appellant to pay to the respondent, the balance of ` 80,23,182 — the appellant paid the said amount to the respondent and filed a petition under section 11 of the Act praying for appointment of an arbitrator to decide its claim for the extra cost in getting the work completed through the alternative agency — the High Court dismissed the said application and held that the application under section 11 of the Act by the appellant was misconceived, barred by *res judicata*, and *mala fide* — appeal — whether the Chief Justice or his designate can examine the tenability of a claim, in particular whether a claim is barred by *res judicata*, while considering an application under section 11 of the Act — no — whether the Designate was justified in holding that the claim was barred by *res judicata* and that application under section 11 of the

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Act was misconceived and mala fide — no — a decision on res judicata requires consideration of the pleadings as also the claims/ issues/points and the award in the first round of arbitration, in juxtaposition with the pleadings and the issues/points/claims in the second Arbitration. It is for the arbitral tribunal to examine and decide whether the claim was barred by *res judicata*. There can be no threshold consideration and rejection of a claim on the ground of res judicata, while considering an application under section 11 of the Act — the Supreme Court held that if the cause of action arose after the completion of pleadings and commencement of hearing in the first round of Arbitration, nothing prevented the appellant from making a separate claim by initiating a second arbitration — the claim of the appellant for reimbursement of the extra cost for getting the work completed, is a claim for damages which is yet to be adjudicated by an adjudicating forum. The appellant cannot therefore adjust the amount due by it under the award, against a mere claim for damages made by it against the respondent — appellant's application under section 11 of the Act, 1996 allowed.

2011 SCCL.COM 146 (Case/Appeal No: Civil Appeal No(s). 1888-1889 of 2011)

M/s. APS Kushwaha (SSI Unit) Appellant vs. Municipal Corporation, Gwalior and others Respondents, decided on 2/17/2011.

Name of the Judge: Hon'ble Mr. Justice R. V. Raveendran and Hon'ble Mr. Justice A. K. Patnaik.

Subject Index: Arbitration and Conciliation Act, 1996 — section 11(6) — application under — for appointment of Arbitrator — Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 — provisions of — whether applicable — execution of an agreement in regard to maintenance of water supply and electrical works in different parts of Gwalior Municipal Corporation area — a

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work order was issued to the appellant by the respondent — bills were not paid — the designate of the Chief Justice appointed an independent arbitrator — the arbitrator made award however, the High Court set aside the orders holding that the arbitral award passed by the sole arbitrator was without jurisdiction as the dispute raised by the appellant could only be decided by the statutory arbitral tribunal constituted under the 1983 Adhiniyam and therefore the sole arbitrator appointed by the designate of Chief Justice under section 11(6) of the Act lacked inherent jurisdiction to decide the disputes — appeals — whether there was inherent lack of jurisdiction in the Arbitrator, thereby nullifying the award — held no — the Supreme Court held that the provision of the 1983 Adhiniyam apply where there was no Arbitration clause while the contract between the parties contained an Arbitration clause (clause 29). The designate chose to appoint a sole arbitrator and the order attained finality — impugned order of the High Court set aside — appeals allowed.

2011 SCCL.COM 168(Case/Appeal No: Civil Appeal No(s). 2152 of 2011)

State of Maharashtra & others Appellants vs. M/s. ARK Builders Pvt. Ltd. Respondent, decided on 2/28/2011.

Name of the Judge: Hon'ble Mr. Justice Aftab Alam and Hon'ble Mr. Justice R.M. Lodha.

Subject Index: Arbitration and Conciliation Act, 1996 — section 34 — application for setting aside arbitral award — whether the period of limitation for making an application under section 34 for setting aside an arbitral award is to be reckoned from the date a copy of the award is received by the objector by any means and from any source, or it would start running from the date a signed copy of the award is delivered to him by the arbitrator — the arbitrator gave a copy of the award, signed by him, to the claimant (the respondent) in whose favour the award was made. No copy of the award was,

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however, given to the appellant because the appellant had failed to pay the costs of Arbitration — the respondent submitted a copy of the award in the office of Executive Engineer claiming payment in terms of the award — the appellants filed application under section 34 — the trial Court and the High Court dismissed the appellants' application as barred by limitation — appeal — the period of limitation prescribed under section 34(3) of the Act would start running only from the date a signed copy of the award is delivered to/received by the party making the application for setting it aside under section 34(1) of the Act. If the law prescribes that a copy of the order/award is to be communicated, delivered, dispatched, forwarded, rendered or sent to the parties concerned in a particular way and in case the law also sets a period of limitation for challenging the order/award in question by the aggrieved party, then the period of limitation can only commence from the date on which the order/award was received by the party concerned in the manner prescribed by the law — impugned judgments of the Courts below set aside — appeal allowed.

2011 SCCL.COM 170(Case/Appeal No. Arbitration Petition No(s). 10 of 2010)

Omnia Technologies P. Ltd. Petitioner vs. W.M.A. Van Loosbroek Respondent, decided on 3/3/2011.

Name of the Judge: Hon'ble Mr. Justice T. S. Thakur.

Subject Index: Arbitration and Conciliation Act, 1996 — sections 11(6) & (9) — petition under — for appointment of the Arbitrator — on the ground that the respondent has committed a violation of the Original Agreement inasmuch as obligations cast upon the respondent under clause 13 of the agreement (supra) have not been discharged by the respondent thereby giving rise to disputes that are in terms of Clause 15 of the original agreement arbitrable — the Supreme Court appointed a sole Arbitrator and all disputes including the dispute regarding interpretation and effect of Clause

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4 of the termination agreement referred for adjudication by Arbitration — petition allowed.

2011 SCCL.COM 185(Case/Appeal No: Civil Appeal No(s). 2276 of 2011)

Bharat Petroleum Corporation Ltd. Appellant vs. Chembur Service Station Respondent, decided on 3/2/2011.

Name of the Judge: Hon'ble Mr. Justice R. V. Raveendran and Hon'ble Mr. Justice H. L. Gokhale.

Subject Index: Raveendran, J Public Premises Act, 1971 — recovery of the possession of suit property — Bombay Rent Act, MRC Act — sections 5(4A), 15A — deemed tenant — dealership agreement — termination of — the appellant issued a show cause notice to the respondent alleging that the respondent had manipulated/altered the original chip with a view to making illegal gain by cheating the customers of the company, thereby causing breach of trust — what is the nature of a licence that is granted to the respondent by the appellant under the DPSL agreement — whether the High court was justified in upholding the grant of an interim order of status quo directing the appellant not to interfere with the respondent's `possession' of the petrol pump premises and requiring the appellant to resort to appropriate legal action to secure possession from the respondent — whether the licence to use the petrol pump premises for the purpose of sale of the petroleum products of the appellant granted to respondent on 1/4/1972 could be construed as a licence as defined in Section 5(4A) of the old Bombay Rent Act so as to attract section 15A of the said Act which provided that any person who was in occupation of any premises as a licensee as on 1/2/1973 shall on that date be deemed to have become a tenant of the landlord in respect of the premises in his occupation — under the licence (DPSL) agreement, the respondent cannot enter the premises for any purpose other than for using the facilities or equipment installed by the appellant or for any purpose

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other than selling the petroleum products of the appellant — the Supreme Court held that where the licence in favour of the licensee is only to use the retail outlet premises or use the equipments/ facilities installed therein, exclusively in connection with the sale of the goods of the licensor, the licensee does not have the right to use the premises for dealing or selling any other goods — the respondent was not in `occupation' of the outlet in its own right for its own proposes, but was using the outlet and facilities in the possession and occupation of the appellant, to sell the appellant's products in the manner provided in the DPSL Agreement. The agent who is called as the licensee does not become a deemed tenant — the order of the High Court and of the courts below, directing status quo are set aside. The appellant is entitled to continue in possession of the petrol pump premises and use it for its business — appeal allowed. Gokhale, J:- Public Premises Act, 1971 — section 2(e) — MRC Act — section 7(15) — 'tenant' — the appellant intends to regain the possession of a Retail Petroleum Outlet concerning which, the High Court observed that it will be open to the appellant to proceed in respect of the concerned premises, if they are public premises, by following due process of law and not by force — the Supreme Court held that, even if the respondent is an agent of the appellant he is in occupation of the concerned premises consisting of the rooms and the structures of the RPO situated on the particular plot of land since 1/4/1972 by virtue of the dealership agreement between the parties. The respondent is not a trespasser — no fault with the impugned order passed by the learned Single Judge for directing the respondent to take steps in accordance with the Public Premises Act which will be the due process of law, and not by any force — appeal dismissed.

2011 SCCL.COM 192(Case/Appeal No. Civil Appeal No(s). 6314-6315 of 2001)

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T. V. Venogopal Appellant vs. Ushodaya Enterprises Ltd. & Another Respondents, decided on 3/3/2011.

Name of the Judge: Hon'ble Mr. Justice Dalveer Bhandari and Hon'ble Mr. Justice K. S. Panicker Radhakrishnan.

Subject Index: Copyright of infringement — passing off the trade mark — the appellant is the sole proprietor of a firm carrying on business *inter alia* as manufacturers of and dealers in incense sticks (agarbathis) and adopted the mark 'Ashika's Eenadu'. The respondent company, engaged in the business of publishing a newspaper in Telugu entitled as 'Eenadu', filed a suit for infringement of copyrights and passing-off trade mark — the High Court decreed the suit in favour of the respondent Co. — hence, the appeal — the respondent company's mark 'Eenadu' has acquired extraordinary reputation and goodwill in the State of Andhra Pradesh. The word 'Eenadu' may be a descriptive word but has acquired a secondary or subsidiary meaning and is fully identified with the products and services provided by the respondent company — the appellant company after adoption of name 'Eenadu' accounted for 90% of sale of their product Agarbathi — the Supreme Court held that the respondent company's products and services are correlated, identified and associated with the word 'Eenadu' in the entire State of Andhra Pradesh. 'Eenadu' means literally the products or services provided by the respondent company in the State of Andhra Pradesh, thus, the appellant cannot be referred or termed as an honest concurrent user of the mark 'Eenadu' and by adopting the mark 'Eenadu' in the State of Andhra Pradesh, the appellant clearly wanted to ride on the reputation and goodwill of the respondent company — permitting the appellant to sell his product with the mark 'Eenadu' would be encroaching on the reputation and goodwill of the respondent company and this would constitute invasion of proprietary rights vested with the respondent company — appeals disposed — directions issued.

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2011 SCCL.COM 249(Case/Appeal No: Civil Appeal No. 2691 of 2011)

Deutsche Post Bank Home Finance Ltd. Appellant vs. Taduri Sridhar & Another Respondents, decided on 29/3/2011.

Name of the Judge: Hon'ble Mr. Justice R. V. Raveendran and Hon'ble Mr. Justice A. K. Patnaik.

Subject Index: Arbitration and Conciliation Act, 1996 — section 11 — petition under — for appointment of an Arbitrator — allowed — whether the appellant could be made a party to the Arbitration, even though the appellant was not a party to the Arbitration agreement contained in clause (7) of the construction agreement between the first respondent and the developer — held no — if a person who is not a party to the arbitration agreement is impleaded as a party to the petition under section 11 of the Act, the court should either delete such party from the array of parties, or when appointing an Arbitrator make it clear that the Arbitrator is appointed only to decide the disputes between the parties to the arbitration agreement. The existence of an arbitration agreement in a contract between appellant and first respondent, will not enable the first respondent to implead the appellant as a party to an Arbitration in regard to his disputes with the developer.

2011 SCCL.COM 341(Case/Appeal No. Civil Appeal No(s). 5440 of 2002)

Booz-Allen & Hamilton Inc. Appellant vs. SBI Home Finance Ltd. & others Respondents, decided on 15/3/2011.

Name of the Judge: Hon'ble Mr. Justice R.V. Raveendran and Hon'ble Mr. Justice J. M. Panchal.

Subject Index: Arbitration and Conciliation Act, 1996 — section 8 — scope of — to consider — licence agreements between the parties — a tripartite deposit agreement was entered among RV

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Appliances and Capstone as the first party, appellant as the second party and SBI as the third party — mortgage suit filed by the SBI — the appellant took out a notice of motion praying that the parties to the suit be referred to arbitration as provided in the deposit agreement — the High Court dismissed the application — hence, the appeal — whether the subject matter of the suit fell within the scope of the Arbitration agreement contained in clause 16 of the deposit agreement — yes — whether the appellant had submitted his first statement on the substance of the dispute before filing the application under section 8 of the Act — no — whether the application under section 8 was liable to be rejected as it was filed nearly 20 months after entering appearance in the suit — no — whether the subject matter of the suit is 'arbitrable', that is capable of being adjudicated by a private forum arbitral tribunal — no — the reply affidavit filed by the appellant was for the limited purpose of opposing the interim relief which cannot be considered to be submission of a statement on the substance of the dispute resulting in submitting oneself to the jurisdiction of the court — a suit for enforcement of a mortgage being the enforcement of a right in rem, will have to be decided by courts of law and not by arbitral tribunals — the Supreme Court held that a decree for sale of a mortgaged property requires the court to protect the interests of persons other than the parties to the suit/petition and empowers the court to entertain and adjudicate upon rights and liabilities of third parties. Therefore, a suit for sale, foreclosure or redemption of a mortgaged property, should only be tried by a public forum, and not by an Arbitral Tribunal. Even if some of the issues or questions in a mortgage suit are arbitrable or could be decided by a private forum, the issues in a mortgage suit cannot be divided — dismissal of the application under section 8 of the Act, 1996 upheld — appeal dismissed.

2011 SCCL.COM 348(Case/Appeal No. Civil Appeal No. 3541 of 2011)

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Union of India & others Appellants vs. M/s. Master Construction Co. Respondent, decided on 4/25/2011.

Name of the Judge: Hon'ble Mr. Justice Aftab Alam and Hon'ble Mr. Justice R. M. Lodha.

Subject Index: Arbitration and Conciliation Act, 1996 — section 11(6) — proceedings under — contractual agreement between the parties — whether after furnishing 'no-claim certificates' and the receipt of payment of final bill, as submitted by the contractor, any arbitrable dispute between the parties survived or the contract stood discharged — at the time of receiving payment on account of final bill, the contractor executed the certificate which showed that upon receipt of the payment, there has been full and final settlement of the contractor's claim under the contract — mere allegation that no-claim certificates have been obtained under financial duress and coercion, without there being anything more to suggest that, does not lead to an arbitrable dispute — the Supreme Court held that the conduct of the contractor shows that 'no claim certificates' were given by it voluntarily; the contractor accepted the amount voluntarily and the contract was discharged voluntarily — impugned order passed by the Chief Justice of the High Court set aside — appeal allowed.

2011 SCCL.COM 367(Case/Appeal No. Civil Appeal No. 3349 of 2005)

M/s. J. G. Engineers Pvt. Ltd. Appellant vs. Union of India & another Respondents, decided on 4/28/2011.

Name of the Judge: Hon'ble Mr. Justice R. V. Raveendran and Hon'ble Mr. Justice Markandey Katju.

Subject Index: Arbitration and Conciliation Act, 1996 — section 34 — application under — for setting aside arbitral award — the respondents awarded the work of "extension of terminal building" at Guwahati airport to the appellant. However, terminated the

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contract on the ground of non-completion even after 35 months — the Arbitrator awarded a sum of ` 1,04,58,298/- with interest and costs in favour of the appellant and rejected the counter claims of the respondents — challenged — the District court dismissed the petition filed by respondents filed under section 34 and affirmed the Award passed by the Arbitrator. However, the High Court reversed the said orders — hence, the appeal — evidence on record showed that the appellant was not responsible for the delay and that the respondents were responsible for the delay. Once it is held that the contractor was not responsible for the delay, the provisions which make the decision of the Superintending Engineer or the Engineer-in-Charge final and conclusive, will be irrelevant. Therefore, the Arbitrator would have jurisdiction to try and decide all the claims of the contractor as also the claims of the respondents — the awards on items 2, 4, 6, 7, 8 and 9 were upheld by the civil court and the High Court in appeal did not find any infirmity in regard to the award on those claims, the judgment of the High Court setting aside the award in regard to claims 2, 4, 6, 7, 8 and 9 of the appellant, cannot be sustained, thus, set aside — the Arbitrator found that the contractor was not responsible for the delay and having extended the time without any levy of liquidated damages, the respondents could not have retrospectively levied liquidated damages — the Supreme Court held that the findings of the arbitrator that the contractor was not responsible for the delay and that the termination of contract is illegal are not open to challenge — arbitral award upheld — impugned order of the High Court set aside and of the District Court restored — appeal allowed.

2011 SCCL.COM 447(Case/Appeal No. Civil Appeal No. 4269 of 2011)

Videocon Industries Limited Appellant vs. Union of India and another Respondent(s), decided on 5/11/2011.

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Name of the Judge: Hon'ble Mr. Justice R.V. Raveendran and Hon'ble Mr. Justice G. S. Singhvi.

Subject Index: Arbitration and Conciliation Act, 1996 — section 9 — whether the Delhi High Court could entertain the petition filed by the respondents under Section 9 for grant of a declaration that Kuala Lumpur (Malaysia) is contractual and juridical seat of Arbitration and for issue of a direction to the Arbitral Tribunal to continue the hearing at Kuala Lumpur in terms of clause 34 of Production Sharing Contract (PSC) — whether Kuala Lumpur was the designated seat or juridical seat of arbitration and the same had been shifted to London — a PSC was executed between respondent No. 1 on the one hand and "the Contractor" in terms of which the latter was granted an exploration licence and mining lease to explore and produce the hydro carbon resources owned by respondent No. 1 — disputes arose — the respondents filed petition requesting to the Tribunal to conduct the remaining arbitral proceedings at Kuala Lumpur, but was rejected and it was declared that the remaining arbitral proceedings will be held in London — the juridical seat of Arbitration as per the agreement of the parties, was Kuala Lumpur. Therefore, mere change in the physical venue of the hearing from Kuala Lumpur to Amsterdam and London did not amount to change in the juridical seat of Arbitration — the parties agreed that notwithstanding Article 33.1, the Arbitration agreement contained in Article 34 shall be governed by laws of England thus, the Delhi High Court did not have the jurisdiction to entertain the petition filed by the respondents under Section 9 of the Act — appeal allowed.

2011 SCCL.COM 492(Case/Appeal No: Civil Appeal No. 2005 of 2007)

Union of India Appellant(s) vs. M/s. Krafters Engineering & Leasing (P) Ltd. Respondent(s), decided on 12/7/2011.

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Name of the Judge: Hon'ble Mr. Justice P. Sathasivam and Hon'ble Mr. Justice A. K. Patnaik.

Subject Index: Arbitration petition — challenging the award given by the Umpire with regard to interest granted — whether an arbitrator has jurisdiction to grant interest despite the agreement prohibiting the same — no — the Supreme Court held that in view of the specific prohibition of contract contained in Clause 1.15, the arbitrator ceases to have the power to grant interest. The bar under clause 1.15 is absolute and interest cannot be awarded without rewriting the contract — the award of the arbitrator granting interest in respect of the amount payable to the contractor under the contract set aside — appeal allowed — no costs.

2011 SCCL.COM 496(Case/Appeal No. Civil Appeal No. 4925 of 2011)

InterGlobe Aviation Ltd. Appellant vs. N.Satchidanand Respondent, decided on 7/4/2011.

Name of the Judge: Hon'ble Mr. Justice R.V. Raveendran and Hon'ble Mr. Justice A. K. Patnaik.

Subject Index: Airlines — delay in flight — the respondent filed a complaint against the appellant before the Permanent Lok Adalat for Public Utility Services, claiming compensation for the delay and deficiency in service resulting in physical discomfort, mental agony and inconvenience — the Permanent Lok Adalat held that the delay was due to poor visibility and bad weather conditions, reasons beyond the control of the appellant, however, awarded ` 10,000/- as compensation and ` 2,000/- as costs to the respondent — writ petition filed — dismissed — hence, the appeal — the Permanent Lok Adalat for public utility services, Hyderabad was constituted for the area of Hyderabad and transport services by way of carriage of passengers by air is a public utility service. Therefore the Permanent Lok Adalat at Hyderabad had jurisdiction to entertain

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the application against the appellant — the appellant being a low cost carrier, the facilitations offered by it, were reasonable and also met the minimum facilitation as per the DGCA guidelines — the Supreme Court opined that the stay of eleven hours in the aircraft was a voluntary decision of the respondent and having opted to remain on board the respondent could not make a grievance of the delay, or non-availability of food of his choice or medicines — neither the Permanent Lok Adalat, nor the High Court recorded any finding of wrongful or vexatious detention or harassment — the Supreme Court held that where the delay is for reasons beyond the control of the airlines in the absence of proof of negligence or deficiency in service, the airlines cannot be held responsible for the inconvenience caused to the passengers on account of the delay — the order of the Permanent Lok Adalat affirmed by the High Court awarding damages and costs to the respondent set aside — appeal allowed.

2011 SCCL.COM 514(Case/Appeal No. Civil Appeal No. 5820 of 2011)

M/s. SMS Tea Estates Pvt. Ltd. Appellant vs. M/s. Chandmari Tea Co. Pvt. Ltd. Respondent, decided on 20/7/2011.

Name of the Judge: Hon'ble Mr. Justice R. V. Raveendran and Hon'ble Mr. Justice A. K. Patnaik.

Subject Index: Arbitration and Conciliation Act, 1996 — section 11 — application under — for appointment of Arbitrator — Indian Stamp Act, 1899 — sections 35,40 — issue of stamp duty — to consider — a lease deed executed between the parties under which respondent granted a lease to the appellant for a term of 30 years in regard to the two Tea estates with all appurtenances. The respondent however abruptly and illegally evicted the appellant from the two estates and took over their management — application filed — seeking reference to Arbitration — the learned Chief Justice held that as the lease deed was not registered,

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no term in the said lease deed could be relied upon for any purpose and therefore clause 35 could not be relied upon for seeking reference to Arbitration — hence, the appeal — whether an Arbitration agreement contained in an unregistered (but compulsorily registrable) instrument is valid and enforceable — whether an Arbitration agreement in an unregistered instrument which is not duly stamped, is valid and enforceable — whether there is an Arbitration agreement between the appellant and respondent and whether an Arbitrator should be appointed — an Arbitration agreement does not require registration. It is an independent agreement to refer the disputes to Arbitration, which is independent of the main contract or instrument. Therefore an Arbitration agreement in an unregistered but compulsorily registrable document and can be acted upon and enforced for the purpose of dispute resolution by Arbitration — if the document is found to be duly stamped, or if the deficit stamp duty and penalty is paid, either before the Court or before the Collector and the defect with reference to deficit stamp is cured, the court may treat the document as duly stamped — the Supreme Court opined that as the lease deed was not registered, the lease deed or any term thereof and the lease deed cannot affect the immovable property which is the subject matter of the lease nor be received as evidence of any transaction affecting such property — impugned order of the High Court set aside and the matter remitted to the learned Chief Justice to decide the issue of stamp duty for appointment of an arbitrator — appeal allowed.

2011 SCCL.COM 500(Case/Appeal No: Special Leave Petition (C) No.19461 of 2006)

Shipping Corporation of India Ltd. Petitioner(s) vs. Mare Shipping Inc. Respondent(s), decided on 13/7/2011.

Name of the Judge: Hon'ble Mr. Justice Altamas Kabir and Hon'ble Mr. Justice A. K. Patnaik.

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Subject Index: Arbitration and Conciliation Act, 1996 — arbitral award allowing the Respondents' demurrage claim — under challenge — whether on arriving at anchorage point at Port Vadinar, despite the destination point being the SBM mooring, it could be said that it was an arrived ship which was competent under the Charter Party, to issue Notice of Readiness of discharge of its cargo — if the finding of the Arbitral Tribunal that the vessel was an arrived ship at Port Vadinar, as upheld by the learned Single Judge and the Division Bench of the Bombay High Court is accepted, would the Respondents/Owners of the vessel be entitled to damages or demurrage — yes — the responsibility of the Owners of the vessel ended with the declaration of the equipment available on board for mooring and berthing for the purpose of discharge of its cargo — no prior checking had been done by the Charterers to ascertain as to whether with the mooring equipment on board the vessel she would be able to moor safely at the SBM for discharge of her cargo. Even the subsequent deviation of the vessel from Vadinar to Mumbai was not on account of any laches on the part of the Owners of the vessel — the Charterers accepted the responsibility for the failure of the vessel to discharge her cargo at Vadinar and agreed to bear all the expenses for the delay in diversion of the vessel from Vadinar to Mumbai — the Supreme Court held no interference with the Award of the Arbitral Tribunal as confirmed by the High Court — petition dismissed.

2011 SCCL.COM 510(Case/Appeal No: Civil Appeal No. 5416 of 2011 with Civil Appeal No. 5417 of 2011)

M/s. MSK Projects (I) (JV) Ltd. Appellant Vs. State of Rajasthan & Anr. Respondents, decided on 21/7/2011.

Name of the Judge: Hon'ble Mr. Justice P.Sathasivam and Hon'ble Dr. Justice B. S. Chauhan.

Subject Index: Arbitration and Conciliation Act, 1996 — section 37(1)(A) — appeals under — concession agreement was entered

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into between the parties authorising collection of toll fee by MSK-appellant — dispute arose in collecting the toll fee — Arbitration clause invoked — the Arbitral Award was made in favour of MSK-appellant and the State of Rajasthan was directed to pay a sum of ` 990.52 lacs to MSK-appellant as loss with 18% interest on the ground that there was delay on the part of the State of Rajasthan in issuing the Notification and the State failed to implement the same and the contractor was entitled to collect toll fee even from the vehicles using Bharatpur-Deeg part of the road — challenged — the District Judge set aside the Arbitral Award and held that MSK-appellant was not entitled to any monetary compensation but only entitled to extension of concession period, and the rate of interest was reduced from 18% to 10%. The High Court affirmed the said orders — hence, the appeals — whether it was mandatory/necessary in view of the agreement/contract or on the basis of pre-bid understanding that the State had to issue the notification barring the vehicles through the markets of Bharatpur city — whether the private appellant had a right to collect the toll fee on the patch between Bharatpur–Deeg — the traffic flow on the Bharatpur-Deeg section indicates that this particular patch had also been an integral part of the project, therefore, the users of this patch were required to pay the toll fee — the documents revealed that the phase II work which included repairing, maintenance and second layer of bitumen on the entire road was never executed by the private appellants, thus, the toll fee cannot be collected to recover the amount never spent by the contractor — the Supreme Court held that as it was not the responsibility of the State to establish a police chowki etc. to implement the notification. Therefore, any award in favour of the private appellant in that respect for non-issuance of notification beyond the date of the notification, cannot be held to be justified — directions issued — appeals disposed of.

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2011 SCCL.COM 542(Case/Appeal No: Civil Appeal No. 6316 of 2011)

M/S Milkfood Pvt. Ltd. Appellant vs. M/s. GMC Ice Cream (P) Ltd. Respondent, decided on 8/4/2011.

Name of the Judge: Hon'ble Mr. Justice R. V. Raveendran and Hon'ble Mr. Justice A. K. Patnaik.

Subject Index: Arbitration Act, 1940 — Sections 14(2), 31(4) — Civil Procedure Code, 1908 — Order 7 Rule 10 — application under — disputes arose between the parties — the Arbitral Tribunal made an award in favour of the respondent — the respondent filed a suit in the Court of Sub-Judge, Gaya praying that the award be made a rule of the Court. However, the appellant filed application under Order 7 Rule 10 of the Code read with Section 31(4) contending that only the Delhi High Court had jurisdiction to entertain the application and Gaya court did not have jurisdiction — the Sub-Court Gaya dismissed the application filed by the appellant holding that it had jurisdiction to entertain and decide the application under Section 14(2) of the Act — whether the proceedings under Section 14(2) of the Act could have been initiated only in the Delhi High Court and not before the Sub-court, Gaya, having regard to Section 31(4) of the Act — the Supreme Court viewed that as OMPNo. 94/1998 has to be treated as the first application under the Act, Delhi High Court alone will have jurisdiction to entertain any subsequent applications and therefore the court at Gaya will not have jurisdiction — impugned order of the Patna High Court as also the order of Sub-Court, Gaya set aside — appeal allowed.

2011 SCCL.COM 554(Case/Appeal No: Civil Appeal No. 7085-7086 of 2011)

Ramesh Kumar & another Appellant(s) vs. Furu Ram & another Respondent(s), decided on 18/8/2011.

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Name of the Judge: Hon'ble Mr. Justice R. V. Raveendran and Hon'ble Mr. Justice A. K. Patnaik.

Subject Index: Arbitration Act, 1940 — Sections 32, 33 — Registration Act, 1908 — Section 17 — possession of the lands — the appellants filed two suits for a declaration that the judgments and decrees, the agreements, the awards, the proceedings and the mutations in pursuance of the said decrees were all null and void, *non-est* and not binding on them and for the consequential relief of possession of the suit properties — the Trial Court held that as the awards created a right in immovable properties in favour of the respondents who did not have any pre-existing right therein, they were compulsorily registrable; and as the Arbitration awards were not registered they were invalid and consequently the judgments and decrees of the Court, making decrees in terms of the said awards were also invalid. However, the High Court set aside the order of the Trial Court holding that decrees passed by a Court in terms of the Arbitration awards under Section 17 of the Arbitration Act, 1940, did not require registration and that Arbitration awards could be challenged only by applications under Section 33 of the said Act — hence, the appeals — whether the suits by appellants were not maintainable — whether the Courts below were justified in holding that there was no fraud or misrepresentation on the part of the respondents in obtaining the decrees in terms of the awards dated 13/3/1992 — No — whether the arbitration awards dated 13/3/1992 were invalid for want of registration — whether the orders dated 30/3/1992 directing that the said awards be made the rule of the court, invalid — Yes — the modus operandi adopted by the respondents to obtain title to lands without a conveyance and without incurring the stamp duty and registration charges due in respect of a conveyance by obtaining a sham and collusive Arbitration awards when there was no dispute, and then obtaining a nominal decree in terms of the said awards would be a fraud committed upon the court and the State Government by evading

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liability to pay the stamp duty and registration charges — the awards are clearly documents which purport or operate to create and declare a right, title or interest in an immovable property of the value of more than ` 100 which was not the subject of the dispute or reference to Arbitration. Therefore the awards were compulsorily registrable which were not registered — the Supreme Court held that if an award was not genuine, but was collusive and sham, the Court will not and in fact cannot make it a rule of the Court — impugned judgments of the first Appellate Court and the High Court set aside and the decrees of the Trial Court restored — appeals allowed.

2011 SCCL.COM 555(Case/Appeal No: Civil Appeal No. 7334 of 2011)

Bharat Rasiklal Ashra Appellant vs. Gautam Rasiklal Ashra & another Respondents, decided on 25/8/2011.

Name of the Judge: Hon'ble Mr. Justice R. V. Raveendran and Hon'ble Mr. Justice A. K. Patnaik.

Subject Index: Arbitration and Conciliation Act, 1996 — section 11 — application filed under — for appointment of arbitrator — allowed — hence, the appeal — where the arbitration agreement between the parties is denied by the respondent, whether the Chief Justice or his designate, in exercise of power under Section 11 of the Act, can appoint an arbitrator without deciding the question whether there was an arbitration agreement between the parties, leaving it open to be decided by the arbitrator — No — the Supreme Court held that where there is an arbitration agreement in the partnership deed dated 12/6/1988, but the dispute is raised and an appointment of arbitrator is sought not with reference to the said partnership deed, but with reference to another partnership deed dated 19/5/2000, unless the party filing the application under Section 11 of the Act is able to make out that there is a valid Arbitration clause as per the contract dated 19/5/2000, there

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can be no appointment of an arbitrator — impugned order of the High Court set aside and the matter remitted to the High Court for deciding the questions whether the deed dated 19/5/2000 was forged or fabricated and whether there is a valid and enforceable Arbitration agreement between the parties — appeal allowed.

2011 SCCL.COM 568 (Case/Appeal No: Civil Appeal No. 4933 of 2011 With C.A. No. 4935, 4936, 4934, 4937, 4939-4946 of 2011)

State of Orissa & others Appellant(s) vs. Bhagyadhar Dash Respondent, decided on 4/7/2011.

Name of the Judge: Hon'ble Mr. Justice R. V. Raveendran and Hon'ble Mr. Justice A. K. Patnaik.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11 — application filed under — for appointment of arbitrator — to decide the disputes raised by the contractors against the State Government — the learned Chief Justice held that the last sentence of the proviso to Clause 10 of the conditions of contract (forming part of the agreements between the State and the contractors) is an Arbitration agreement — whether Clause 10 of the conditions of contract is an Arbitration agreement — to consider — the last sentence of the proviso to Clause 10 does not refer to arbitration as the mode of settlement of disputes. It is a provision made with the intention to avoid future disputes regarding rates for non-tendered item. The decision of superintending Engineer is not a judicial determination, but decision of one party which is open to challenge by the other party in a court of law — the Supreme Court held that the proviso to Clause 10, which provides that the decision of the Superintending Engineer is 'final', merely discloses an intention to exclude the rates for extra items decided by the Superintending Engineer from the scope of Arbitration, as an excepted matter, when there was an Arbitration agreement in the contract. When the Arbitration agreement was deleted, provision dealing with non-tendered items can not be described as an Arbitration agreement

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— impugned order of the High Court appointing the arbitrator set aside — appeals allowed.

2011 SCCL.COM 582(Case/Appeal No: Civil Appeal No. 4926 of 2011)

Khivraj Motors Appellant vs. The Guanellian Society Respondent, decided on 4/7/2011.

Name of the Judge: Hon'ble Mr. Justice R. V. Raveendran and Hon'ble Mr. Justice A. K. Patnaik.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11 — application filed under — for appointment of arbitrator — joint development agreement entered into between the parties in regard to 3 acres of land — disputes arose — the High Court held that the joint development agreement was executed between the Society and the appellant and that Father A. John Bosco had signed the said agreement, only in his capacity as the President of the Society and not in his individual capacity and therefore the application under Section 11 of the Act by the Society was maintainable — hence, the appeal — the Supreme Court held that the allegations no doubt relate to the validity of the joint development agreement, but will have no bearing on the validity of the arbitration agreement, which is an independent agreement incorporated and rolled into the joint development agreement — appeal dismissed.

2011 SCCL.COM 594 (Case/Appeal No : Civil Appeal No. 4987 of 2011)

State of Goa Appellant Vs. Praveen Enterprises Respondent, decided on 4/7/2011.

Name of the Judge: Hon'ble Mr. Justice R.V. Raveendran and Hon'ble Mr. Justice A. K. Patnaik.

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Subject Index: Arbitration and Conciliation Act, 1996 — Sections 11, 23 r/w section 2(9) — agreement between the parties for construction work — disputes arose — the arbitrator made an award, however, the respondent challenged the arbitral award — the Civil Court upheld the award in regard to the claims of the respondent but accepted the objection raised by the respondent in regard to award made on the counter claim. The High Court affirmed the said order and held that the counter claims were bad in law as they were never placed before the court by the appellant and they were not referred by the Court to Arbitration — hence, the appeal — the appointment of Arbitral Tribunal is an implied reference in terms of the arbitration agreement — where the Arbitration agreement provides for referring all disputes between the parties, the arbitrator will have jurisdiction to entertain any counter claim, even though it was not raised at a stage earlier to the stage of pleadings before the Arbitrator — the arbitration clause in the case contemplates all disputes being referred to Arbitration by a sole arbitrator. Though the arbitration clause requires the party invoking the arbitration to specify the dispute/s to be referred to Arbitration, it does not require the appointing authority to specify the disputes or refer any specific disputes to Arbitration nor requires the arbitrator to decide only the referred disputes, therefore, the counter claims by the appellant were maintainable and arbitrable having regard to Section 23 read with Section 2(9) of the Act — orders of the lower Courts set aside and the award of the Arbitrator upheld — appeal allowed.

2011 SCCL.COM 619 (Case/Appeal No: Arbitration Petition Nos. 7 & 8 of 2009)

M/s. Cauvery Coffee Traders, Mangalore Petitioner(s) Vs. M/s. Hornor Resources (Intern.) Co. Ltd. Respondent(s), decided on 13/9/2011.

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Name of the Judge: Hon'ble Dr. Justice B. S. Chauhan.

Subject Index: Arbitration and Conciliation Act, 1996 — Sections 11(5) and (9) — arbitration applications under — for appointment of Arbitrator in an international Arbitration dispute — Purchase Agreement executed between the parties — dispute arose in relation to non-payment of amount — the respondents resorted to Clause 5 of the Purchase Agreement regarding price adjustment and the offer so made by the respondents has been accepted by the applicants and agreed to receive a particular sum offered by the respondents as a full and final settlement — the Supreme Court held that the negotiations, are self-explanatory steps of the intent and conduct of the parties to end the dispute, therefore, no dispute survives — applications dismissed.

2011 SCCL.COM 646(Case/Appeal No: Civil Appeal No. 1909 of 2004)

Trans Mediterranean Airways Appellant vs. M/s. Universal Exports & another Respondent(s), decided on 9/15/2011.

Name of the Judge: Hon'ble Mr. Justice G. S. Singhvi and Hon'ble Mr. Justice H. L. Dattu.

Subject Index: Consumer Protection Act, 1986 — operation of — in question — Carriage of Air Act, 1972 along with Warsaw Convention, 1929 — wrong delivery of the consignment — deficiency in service — whether the National Commission under the CP Act has the jurisdiction to entertain and decide a complaint filed by the consignor claiming compensation for deficiency of service by the carrier, in view of the provisions of the CA Act and the Warsaw Convention. Or whether domestic laws can be added to or substituted for the provisions of the conventions — whether the appellant can be directed to compensate the consignor for deficiency of service — yes — the value of the subject matter was more than ` 20 lakhs. The Supreme Court found no legal infirmity in the National Commission exercising its jurisdiction,

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as the same can be considered a Court within the territory of a High Contracting Party for the purpose of Rule 29 of the Second Schedule to the CA Act and the Warsaw Convention — the appellant-carrier cannot shift the burden by contending that it was expected from the consignor and his agent to have furnished the correct and proper particulars of the consignee in the airway bill. If, for any reason, the appellant-carrier was of the view that the name of the consignee is not forthcoming or if the particulars furnished were insufficient for effecting the delivery of the consignment, it was expected from the appellant-carrier to have made enquiries — the order of the National Commission directing the appellant to pay a sum equivalent to US $71,615.75 with 5% interest to the complainant and costs of ` 1 lakh for deficiency in service upheld — appeal dismissed.

2011 SCCL.COM 686 (Case/Appeal No: Civil Appeal No. 3343 of 2005)

Phulchand Exports Ltd. Appellant vs. OOO Patriot Respondent, decided on 12/10/2011.

Name of the Judge : Hon'ble Mr. Justice R. M. Lodha and Hon'ble Mr. Justice Jagdish Singh Khehar.

Subject Index : Arbitration and Conciliation Act, 1996 — Section 48(2)(b) — a transaction relating to sale of polished rice was concluded between the parties through contract — late shipment of goods — loss of goods — the Arbitral Tribunal awarded reimbursement of half the price paid by the buyers to the sellers — challenged — whether enforcement of the award given by the International Court of Commercial Arbitration at the Chamber of Commerce and Industry of Russian Federation, Moscow in favour of the respondent is contrary to public policy of India under Section 48(2)(b) of the Arbitration and Conciliation Act, 1996 — No — there was no delivery of the goods due to the fault of the sellers in shipment of the goods, firstly belatedly and then by a vessel

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that was not on way to Novorossiysk as the first port of discharge, the goods continued to be at the risk of the sellers as they were in fault — the clause of reimbursement or repayment in the event of delayed delivery/arrival or non-delivery is not to be regarded as damages. Even in the absence of such clause, where the seller has breached his obligations at threshold, the buyer is entitled to the return of the price paid and for damages — the parties agreed on all terms of the contract being in conformity with the international trade and commerce, thus, the clause for reimbursement or repayment is neither unreasonable nor unjust or contrary to the public policy of India — appeal dismissed.

2011 SCCL.COM 746(Case/Appeal No: Arbitration Petition (Civil) No. 5 of 2010)

Powertech World Wide Limited Petitioner vs. Delvin International General Trading LLC Respondent, decided on 14/11/2011.

Name of the Judge: Hon'ble Mr. Justice Swatanter Kumar.

Subject Index: Arbitration and Conciliation Act, 1996 — Section 11(6) — petition filed under — for appointment of an Arbitrator — a Purchase Contract entered into between the parties for sale-purchase of various articles — non-payment of the outstanding dues by the respondent — whether the Arbitration agreement as contained in the Purchase Contract was a binding Arbitration agreement enforceable in terms of Section 11(6) of the Act — the parties were *ad idem* to amicably settle their disputes or settle the disputes through an arbitrator in India/UAE. Even the respondent had admitted the existence of an Arbitration agreement between the parties and consented to the idea of appointing a common/ sole arbitrator to determine the disputes between the parties — the Supreme Court held that any ambiguity in the Arbitration clause contained in the purchase contract stood extinct by the correspondence between the parties and the consensus ad idem in relation to the existence of anArbitration agreement and settlement

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of disputes through Arbitration became crystal clear — petition for appointment of an Arbitrator to adjudicate upon the disputes allowed — no costs.

2011 SCCL.COM 763(Case/Appeal No: Civil Appeal No. 10301 of 2011, Civil Appeal No.10302 of 2011, Civil Appeal No. 10303 of 2011)

Ketan V. Parekh Appellant with Kartik K. Parekh Appellant with Panther Fincap and Management Services Ltd. Appellant Vs. Special Director, Directorate of Enforcement and another Respondent(s), decided on 29/11/2011.

Name of the Judge: Hon'ble Mr. Justice G. S. Singhvi and Hon'ble Mr. Justice Sudhansu Jyoti Mukhopadhaya.

Subject Index: Foreign Exchange Management Act, 1999 — Sections 3(d), 6(3)(e) — violation of the provisions of — imposition of penalty — Section 35 — applications filed by the appellants for condonation of delay of 1056 days in filing appeals — dismissed — hence, the appeals — the prayer made in the applications was for condonation of 1056 days' delay and not for exclusion of the time spent in prosecuting the writ petitions before the Delhi High Court — the manner in which the appellants prosecuted the writ petitions before the Delhi High Court leaves no room for doubt that they had done so with the sole object of delaying compliance of the direction given by the Appellate Tribunal and, by no stretch of imagination, it can be said that they were *bona fide* prosecuting remedy before a wrong forum. Indeed, it is not even the case of the appellants that they had filed appeals under Section 35 of the Act within 30 days — the Supreme Court held that the appellants miserably failed to make out a case, which could justify an order by the Appellate Tribunal to relieve them of the statutory obligation to deposit the amount of penalty — appeals dismissed.

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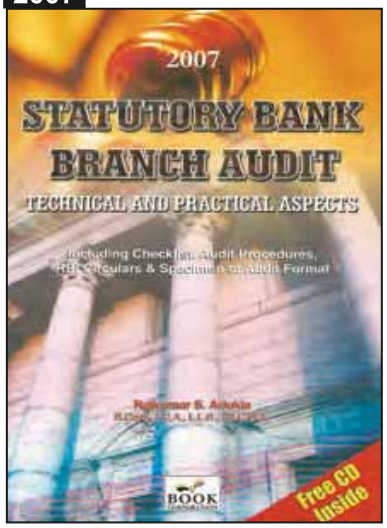

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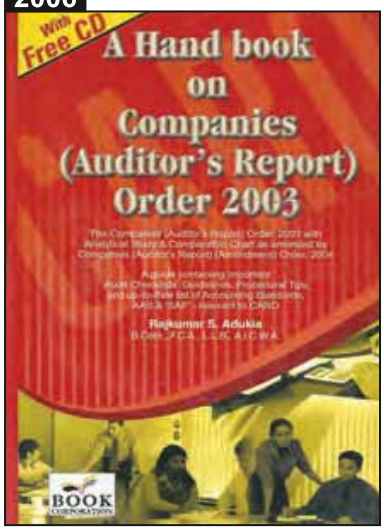

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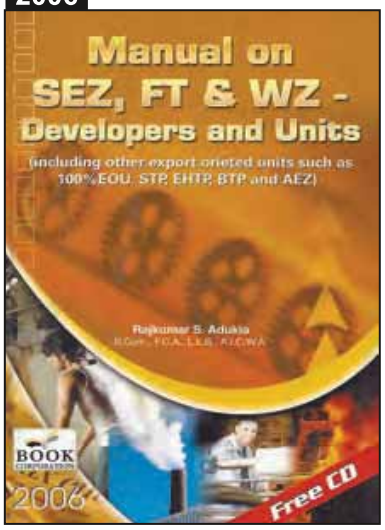

Manual on SEZ, FT & WZ– Developers and Units

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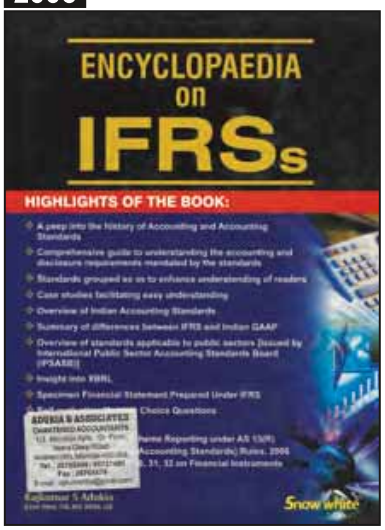

Encyclopedia on IFRSs

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Dr. Rajkumar Adukia, an eminent business consultant, academician, writer and speaker is a senior partner of Adukia & Associates, Chartered Accountants. His clientele include large corporations, owner-managed companies, small manufacturers, service businesses, property managers and developers, exporters, importers and professionals.

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He has been co-ordinating with various professional institutions, associations' universities, University Grants Commission and other educational institutions. Besides he has actively participated with accountability and standards-setting organisations in India and at the international level.

Dr. Adukia was a member of J. J. Irani Committee which drafted the Companies Bill 2008. He is a member of Secretarial Standards Board of ICSI. He represented ASSOCHAM as member of Cost Accounting Standards Board of ICWAI. He was a member of working group of Competition Commission of India, National Housing Bank, NABARD, RBI, CBI etc. He has served on the Board of Directors in the capacity of independent director at BOI Asset Management Co. Ltd., Bharat Sanchar Nigam Limited and SBI Mutual Funds Management Pvt. Ltd. He was also a member of the London Fraud Investigation Team.

A frequent speaker on trade and finance at seminars and conferences organised by various professional and Government bodies Mr. Adukia specialises in IFRS, Enterprise Risk Management, Internal Audit, Business Advisory and Planning, Commercial Law Compliance, XBRL, Labour Laws, Real Estate, Foreign Exchange Management, Insurance, Project Work, Carbon Credit, Taxation and Trusts.

He has written numerous articles on critical aspects of finance–accounting, auditing, taxation, valuation, public finance. His authoritative articles appear regularly in financial papers like Business India, Financial Express, Economic Times and other professional / business magazines. He has authored several accounting and auditing manuals. He has authored books on vast range of topics including IFRS, Internal Audit, Bank Audit, Green Audit, SEZ, CARO, PMLA, Anti-dumping, Income Tax Search, Survey and Seizure, Real Estate etc. His books are known for their practicality and for their proactive approaches to meeting practice needs.

He has authored more than 100 books on a wide range of subjects. His books on IFRS namely, "Encyclopedia on IFRS (3000 pages) and The Handbook on IFRS (1000 pages) have served number of professionals. He specialises in IFRS, Enterprise Risk Management, Internal Audit, Business Advisory and Planning, Commercial Law Compliance, XBRL, Labour Laws, Real Estate, Foreign Exchange Management, Insurance, Project Work, Green Audit, Carbon Credit, Taxation and Trusts.

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