M/S Emaar Mgf Land Limited vs Aftab Singh on 10 December, 2018

Equivalent citations: AIRONLINE 2018 SC 828, 2019 (12) SCC 751, (2018) 15 SCALE 846, (2018) 4 CURCC 418, (2018) 6 ARBILR 313, (2019) 133 ALL LR 228, (2019) 194 ALLINDCAS 105, (2019) 1 CIVILCOURTC 726, (2019) 1 RECCIVR 334

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Bench: Ashok Bhushan, Uday Umesh Lalit

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

REVIEW PETITOIN (C) Nos. 2629-2630 OF 2018
IN
CIVIL APPEAL NOS.23512-23513 OF 2017

M/S. EMAAR MGF LAND LIMITED ...APPELLANT(S)

VERSUS

AFTAB SINGH ...RESPONDENT(S)

J U D G M E N T

ASHOK BHUSHAN,J.

These review petitions have been filed seeking review of the judgment dated 13.02.2018 of this Court by which civil appeals were dismissed.

2. The Civil Appeal Nos. 23512-23513 of 2017 had been filed challenging the order dated 13.07.2017 passed by Larger Bench of the National Consumer Disputes Redressal Commission (hereinafter referred to as "NCDRC") holding consumer disputes to be non- arbitrable. Prayer was also made to set aside the subsequent order dated 28.08.2017 passed by Single Member of the NCDRC dismissing the application filed under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "1996 Act") by the appellant.

3. Looking to the nature of the issue raised in these review petitions, we have heard learned counsel for the parties on 27.11.2018 in the review petitions after issuing notice on 17.09.2018. Delay in filing of review petitions is condoned. Learned counsel for the parties have made elaborate submissions, which we proceed to consider in these review petitions.

4. Brief facts giving rise to civil appeals and the review petitions need to be noted for appreciating the issues raised herein. The appellant is a company which has acquired and purchased land in District Mohali, Punjab with a view to set up and develop thereon an integrated township. The respondent submitted an application to the appellant for allotment of a villa in Sector 106, Mohali. A Buyer's agreement was entered dated 06.05.2008 between the appellant and the respondent. In the Buyer's agreement, there was an arbitration clause providing for settlement of disputes between parties under the 1996 Act. On 27.07.2015, the respondent filed a Complaint No. 701 of 2015 before the NCDRC against the appellant praying for following reliefs in Paragraph No.17 of the complaint, which are as follows:-

> "a. The complainant prays for a direction to the opposite Parties to deliver the possession of the built up villa No. 40, At Sector 106, GMADA, and b. to adjust the excess payment in terms of letter dated 2.2.2008, Annexure C-5, which comes to Rs.2,63,165/- and c. to adjust the penalty @ Rs.1500/- per month in terms of clause 8 of the Agreement, after 2011 for 55 months as on date which comes to Rs.83,500/- and d. to adjust the final account after making the above deductions of clause B and C and to refund the remaining/balance payment back to the complainant at the earliest along with interest @ 18% per annum from 6.2.2010 (i.e. 24 months from the date of the Agreement); and e. the Hon'ble National Commission May be pleased to grant compensation to the tune of Rs. 20,00,000 on account of deficiency in service on the part of the opposite parties, mental agony and harassment suffered by the complainant, and f. the cost of this complaint may be awarded from the opponent to the complainant, and g. the Hon'ble National Commission may be pleased to grant any other relief deemed in fit just and proper by the Hon'ble National Commission in the Circumstances of the case."

5. Notice was issued to the appellant by the NCDRC on 09.11.2015 asking the appellant to appear on 11.01.2016. The appellant appeared and made an application for extension of time for filing the written statement. The appellant also filed an application under Section 8 of the 1996 Act for referring the matter to arbitration for and on behalf of the appellant. In the application, appellant has referred to Clause 43 of the Buyer's agreement, which according to appellant would constitute a valid arbitration agreement in terms of Section 7(2) of the 1996 Act. The appellant also filed a reply to the complaint. The application filed under Section 8 of the 1996 Act was objected by the respondent with the prayer that the said application be rejected. NCDRC heard the complaint case of the respondent alongwith several other similarly situated applications in the complaint case filed by the respondent and other similarly situated applications filed under Section 8 for referring the parties to the arbitration. A learned Single Member of the Commission proceeded to consider the said applications and passed an order dated 31.08.2016. The learned Single Member had taken the view that considering the vital importance and far reaching consequence of the legal issue involved

in these applications, it would only be appropriate that these applications are considered and decided by a Larger Bench, consisting of at least Three Members.

6. In pursuance of the order of the learned Single Member, a Larger Bench of NCDRC was constituted and Consumer Complaint No. 701 of 2015 with Interim Application No. 247 of 2016 as well as interim applications filed by other complainants were heard and decided by Three Members Bench presided by President of the NCDRC vide its judgment dated 13.07.2017. The Three Members Bench have considered the submissions of the parties in detail and arrived at following conclusions in Paragraph Nos. 55 and 56:-

> "55. In view of the afore-going discussion, we arrive at the following conclusions: (i) the disputes which are to be adjudicated and governed by statutory enactments, established for specific public purpose to sub-serve a particular public policy are not arbitrable;
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> (ii) there are vast domains of the legal universe that are non-arbitrable and kept at a distance from private dispute resolution;
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> (iii) the subject amendment was meant for a completely different purpose, leaving status quo ante unaltered and subsequently reaffirmed and restated by the Hon'ble Supreme Court; (iv) Section 2(3) of the Arbitration Act recognizes schemes under other legislations that make disputes non-arbitrable and (iv) in light of the overall architecture of the Consumer Act and Court-evolved jurisprudence, amended sub-

section (1) of Section 8 cannot be construed as a mandate to the Consumer Forums, constituted under the Act, to refer the parties to Arbitration in terms of the Arbitration Agreement.

56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."

7. After the reference having been answered by Three Members Bench, the Consumer Complaint No. 701 of 20156 alongwith other applications was taken by a Single Member of the Commission and by order dated 28.08.2017, the applications filed by the appellant under Section 8 of the 1996 Act were rejected. After rejecting the application under Section 8, the Commission directed the parties to proceed further with the complaint. The appellant filed F.A.O. No. 395 of 2017 in the Delhi High Court challenging the orders dated 13.07.2017 and 28.08.2017 of NCDRC. The High Court held that appeals filed by the appellant under Section 37(1)(a) of the 1996 Act have been wrongly brought before the High Court. The High Court refused to entertain the appeals and returned to be presented before the appropriate Appellate Court. After the judgment of the Delhi High Court dated 07.11.2017, the appellant filed Civil Appeal No. 23512-23513 of 2017 challenging the judgment of Larger Bench of NCDRC dated 13.07.2017 as well as the consequential order dated 28.08.2017 in this Court. Both the appeals were called for hearing on 13.02.2018 and were dismissed by this Court.

The appellant has filed these review petitions to review the judgment of this Court. In the review petitions, following prayers have been made by the appellant:-

> "(1)Allow the present review petition and review the Order dated 13.02.2018 passed by this Hon'ble Court in Civil Appeal No. 23512-23513 of 2017;
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> (2)Set aside the Order dated 13.07.2017 passed by the Larger Bench of the Hon'ble National Commission in C.C. 701/2015 holding consumer disputes to be non-arbitrable amongst other similar erroneous findings;
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> (3)Set aside the Order dated 28.08.2017 passed by the Single Judge of the Hon'ble National Commission in C.C. 701/2015 dismissing the Application u/S. 8 of the Arbitration and Conciliation Act, 1996;
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> (4)And pass such other or further order or orders as the Hon'ble Court may deem fit and proper in the interest of justice."
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> 8. We have heard Shri Fali S. Nariman, learned senior counsel appearing for the appellant and Shri Aditya Swarup, learned counsel appearing for the respondent No.1.
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> 9. Shri Fali s. Nariman in his imitable style in support of review petitions submits that substantial questions of law has been raised in the present review petitions, which need to be addressed and decided by this Court. Shri Nariman submits that after amendment of Section 8 of 1996 Act by the Arbitration and Conciliation (Amendment) Act, 2015 (Act 3 of 2016), by which Parliament had added the words "notwithstanding any judgment, decree or order of the Supreme Court or any Court" in Section 8 of the Arbitration Act w.e.f.

23.10.2015, the Parliamentary intendment is clear that after the said amendment, the judicial authority is mandated to refer a dispute for arbitration if there is a valid arbitration agreement and parties apply not later than the date of submitting his first statement on the substance of the dispute. He submits that the above words cannot be treated as redundant while interpreting the amended Section 8. It is further submitted that this Court acting as an Appellate Court under Section 23 of Consumer Protection Act, 1986 read with Section 37(1)(a) of 1996 Act has duty to go into every fact and law including the amendment made in Section 8 of the 1996 Act. It is submitted that Constitution Bench of this Court has already held that consumer fora are covered by the term "judicial authority" for the purposes of Section 8 of the 1996 Act, hence, it was obligatory for the Commission to refer the dispute to arbitration in view of the arbitration clause between the parties. NCDRC has wrongly termed consumer disputes as non-arbitrable, which is contrary to the decision of this Court in National Seeds Corporation Limited Vs. M. Madhusudan Reddy and Another, (2012) 2 SCC 506. This Court had interpreted the words "notwithstanding any judgment, decree or order of the Supreme Court or any Court" as occurring in newly added Section 11(6A) of the 1996 Act in Duro Felguera, S.A. Vs. Gangavaram Port Limited, (2017) 9 SCC 729, which interpretation is equally

applicable to Section 8 as amended by Act 3 of 2016. NCDRC has erred in relying on judgment of this Court in A. Ayyasamy Vs. A. Paramasivam and Others, (2016) 10 SCC 386. The amendment in Section 8 of Arbitration Act by Act 3 of 2016 now makes it obligatory to judicial authority to refer disputes to arbitration notwithstanding any judgment, decree or order of the Supreme Court or any Court. Judgments of this Court interpreting Section 8 prior to 2016 amendment, thus, have become wholly irrelevant and have to be disregarded while deciding the application under Section 8 filed after 2016 amendment.

10. Referring to Section 2(3) of the 1996 Act, it is submitted that it cannot be said that by reason of provision of Consumer Protection Act, consumer disputes cannot be submitted to arbitration. It is further submitted that far from the Consumer Protection Act, 1986, providing either expressly or by necessary implication that consumer disputes may not be submitted to arbitration, the law as explained in the National Seeds Corporation Limited (supra) and in Rosedale Developers Private Limited (supra) clearly shows that arbitration of consumer disputes is definitely envisaged and contemplated in the Consumer Protection Act, 1986, itself, before the amendment by way of substitution of Section 8(1) of the 1996 Act, it was at the option of the complainant (under Section 8(1) as enacted) to either go to arbitration as provided for in the arbitration agreement or to file a complaint under the Consumer Protection Act, 1986. It is submitted that after the substitution of Section 8(1) even this option is no longer available, it being mandatory for the judicial authority (NCDRC) to refer the parties to arbitration "unless it finds that prima facie no valid arbitration agreement exists".

11. Shri Aditya Swarup, learned counsel appearing for the respondent in his short and impressive submissions contends that the Consumer Act, 1986 provides for an additional and beneficial remedy to the consumer to avail of the speedy, expeditious disposal of his or her dispute. The consequences of allowing the present petition and setting aside the impugned order would, inter alia, be that every consumer, no matter how small or big the dispute, would now be forced to adjudicate his dispute before an arbitral tribunal and not avail of the beneficial remedy provided to him or her. Under the 1986 Act. Accepting the interpretation placed by the appellant on the 1996 Act will mean collapsing of entire edifice of consumer jurisprudence but also jurisprudence relating to trusts, tenancy disputes, industrial disputes, telecom disputes, intellectual property disputes and other non-arbitral disputes. Repeating the words of NCDRC, it is submitted that "the ripples of the amendment to Section 8(1) cannot be so large as to inundate the domains of other legislations and jurisprudence, painstakingly built by the Legislators and Courts, especially without any engagement, debate and critique with the foundations of these related laws". Section 2(3) of the Arbitration Act expressly states that Part I of the Arbitration Act "shall not affect any other law for the time being in force by virtue of which certain disputes may not be referred to arbitration". Under this Section, if any law provides, either expressly or by necessary implication that specified disputes may not be submitted to arbitration, then, in spite of the non obstante provision in Section 5 of the Arbitration Act, the law will be saved by Section 2(3) of the Arbitration Act. Section 2(3) of the Arbitration Act restricts the overriding effect apparent in Section 5 of the Arbitration Act. The Consumer Act being a beneficial legislation enacted to give an additional remedy for the settlement of disputes, the same cannot be taken away by Section 8 of the 1996 Act. This Court in jurisdiction cases have already held that Arbitration Act does not exclude the jurisdiction of the Consumer Forum to decide disputes under

the Consumer Act. The amendment to Section 8(1) of the Arbitration Act by Act 3 of 2016 was never intended to interfere with the jurisdiction of Consumer Forum to decide consumer disputes. He submits that amendment in Section 8(1) is being read in a manner which was never the intention of the Parliament. He submits that the NCDRC has rightly rejected the application under Section 8 filed by the appellant and no error has been committed by this Court in dismissing the appeal, hence, the present petitions are liable to be dismissed.

12. From the submissions of the learned counsel for the parties and pleadings of the parties following are the principal issues which arise for consideration in these petitions:

> (i) Whether NCDRC committed error in rejecting the application of the appellant filed under Section 8 of 1996, Act praying for reference to the arbitrator as per Arbitration clause in the builders agreement?
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> (ii) Whether after the amendments made in Section 8 by the Arbitration and Conciliation (Amendment)Act, 2015 the application filed under Section 8 by the appellant could not have been rejected in view of substantial changes brought in the statutory scheme by inserting the words "notwithstanding any judgment, decree or order of the Supreme Court or any Court" in sub-section (1) of Section 8?
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> (iii) Whether NCDRC as well as this Court committed error in not adverting to the above statutory amendment which completely changed the legal position as was earlier existing prior to the aforesaid amendment?
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> (iv) Whether by the insertion of words "notwithstanding any judgment, decree or order of the Supreme Court or any Court" under Section 8(1) by the (Amendment) Act, 2015 legislature intended to do away with the decision of judgments of Supreme Court laying down that Consumer Protection Act being special remedy can be initiated and continued despite there being any arbitration agreement between the parties?

13. All the issues being interconnected are being taken together. The main emphasis of Shri Fali S. Nariman, learned senior counsel for the petitioner is that entire legal regime pertaining to the 1996, Act in relation to Consumer Protection Act when seen after the amendment fully supports the interpretation put by the petitioner which has not at all adverted by the NCDRC and this Court.

14. Before we come to the amendments made by the 2015, Act and its real intent and consequences, it is necessary to look into the law as was existing prior to the said amendment in relation to proceedings under Consumer Protection Act in reference to arbitration agreement under 1996 Act.

15. The Consumer Protection Act, 1986 has been enacted to provide for better protection of the interests of consumers and for the purpose, to make provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and for matter connected therewith. This Court had occasion to consider the object and purpose of the Act in Lucknow

Development Act vs. M.K. Gupta, (1994) 1 SCC 243, this Court elaborately noticed the object and purpose of the Act in the following words:

> "To begin with the preamble of the Act, which can afford useful assistance to ascertain the legislative intention, it was enacted, 'to provide for the protection of the interest of consumers'. Use of the word 'protection' furnishes key to the minds of makers of the Act. Various definitions and provisions which elaborately attempt to achieve this objective have to be construed in this light without departing from the settled view that a preamble cannot control otherwise plain meaning of a provision. In fact the law meets long felt necessity of protecting the common man from such wrongs for which the remedy under ordinary law for various reasons has become illusory. Various legislations and regulations permitting the State to intervene and protect interest of the consumers have become a haven for unscrupulous ones as the enforcement machinery either does not move or it moves ineffectively, inefficiently and for reasons which are not necessary to be stated. The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful business, described as, 'a network of rackets' or a society in which, 'producers have secured power' to 'rob the rest' and the might of public bodies which are degenerating into storehouses of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked. The malady is becoming so rampant, widespread and deep that the society instead of bothering, complaining and fighting against it, is accepting it as part of life. The enactment in these unbelievable yet harsh realities appears to be a silver lining, which may in course of time succeed in checking the rot."

16. Section 3 of the Act provided that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Noticing the object and purpose of the Act as well as Section 3, this Court in Secretary, Thirumurugan Cooperative Agricultural Credit Society vs. M. Lalitha (dead) Through LRs. And others, (2004) 1 SCC 395, laid down following in paragraph 11 and 12:

> "11. From the Statement of Objects and Reasons and the scheme of the 1986 Act, it is apparent that the main objective of the Act is to provide for better protection of the interest of the consumer and for that purpose to provide for better redressal, mechanism through which cheaper, easier, expeditious and effective redressal is made available to consumers. To serve the purpose of the Act, various quasi- judicial forums are set up at the district, State and national level with wide range of powers vested in them. These quasi-judicial forums, observing the principles of natural justice, are empowered to give relief of a specific nature and to award, wherever appropriate, compensation to the consumers and to impose penalties for non-compliance with their orders.

> 12. As per Section 3 of the Act, as already stated above, the provisions of the Act shall be in addition to and not in derogation of any other provisions of any other law for the time being in force. Having due regard to the scheme of the Act and purpose sought to be achieved to protect the interest of the consumers better, the provisions are to be interpreted broadly, positively and purposefully in the context of the present case to give meaning to additional/extended jurisdiction, particularly when Section 3 seeks to provide remedy under the Act in addition to other remedies provided under other Acts unless there is a clear bar."

17. This court had occasion to consider the provisions of Section 34 of Arbitration Act, 1940 in reference to the Consumer Protection Act, 1986 in Fair Air Engineering Pvt. Ltd. and another vs. N.K. Modi, (1996) 6 SCC 385. This Court in the said case held that consumer fora is a judicial authority. In the above case, the appellant had entered into a contract with the respondent to carry out installation of a centrally air-conditioned plant in the residential house of the respondent. The respondent filed a complaint before the State Commission under the Consumer Protection At, 1986 which proceedings were stayed by the State Commission and it relegated the parties to arbitration proceedings. The NCDRC held that the proceedings before the Consumer fora is not a legal proceedings and Commission is not a judicial authority, therefore, Section 34 of the Arbitration Act, 1940 is not available to stay the proceedings. The said order of NCDRC was challenged in this Court. This Court reversed the order of the State Commission and remitted the matter to the State Commission to decide the matter on merits according to law. This Court held that the Parliament was well aware of the Arbitration Act, 1940 when the Consumer Protection Act was enacted providing for additional remedy. In paragraphs 15 and 16 following has been laid down:

> "15. Accordingly, it must be held that the provisions of the Act are to be construed widely to give effect to the object and purpose of the Act. It is seen that Section 3 envisages that the provisions of the Act are in addition to and are not in derogation of any other law in force. It is true, as rightly contended by Shri Suri, that the words "in derogation of the provisions of any other law for the time being in force" would be given proper meaning and effect and if the complaint is not stayed and the parties are not relegated to the arbitration, the Act purports to operate in derogation of the provisions of the Arbitration Act. Prima facie, the contention appears to be plausible but on construction and conspectus of the provisions of the Act we think that the contention is not well founded. Parliament is aware of the provisions of the Arbitration Act and the Contract Act, 1872 and the consequential remedy available under Section 9 of the Code of Civil Procedure, i.e., to avail of right of civil action in a competent court of civil jurisdiction. Nonetheless, the Act provides the additional remedy.
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> 16. It would, therefore, be clear that the legislature intended to provide a remedy in addition to the consentient arbitration which could be enforced under the Arbitration Act or the civil action in a suit under the provisions of the Code of Civil Procedure. Thereby, as seen, Section 34 of the Act does not confer an automatic right nor create an automatic embargo on the exercise of the power by the judicial authority under

the Act. It is a matter of discretion. Considered from this perspective, we hold that though the District Forum, State Commission and National Commission are judicial authorities, for the purpose of Section 34 of the Arbitration Act, in view of the object of the Act and by operation of Section 3 thereof, we are of the considered view that it would be appropriate that these forums created under the Act are at liberty to proceed with the matters in accordance with the provisions of the Act rather than relegating the parties to an arbitration proceedings pursuant to a contract entered into between the parties. The reason is that the Act intends to relieve the consumers of the cumbersome arbitration proceedings or civil action unless the forums on their own and on the peculiar facts and circumstances of a particular case, come to the conclusion that the appropriate forum for adjudication of the disputes would be otherwise those given in the Act."

18. This Court had occasion to consider the provisions of Consumer Protection Act as well as the Arbitration Act, 1996. In Skypak Couriers Ltd. v. Tata Chemicals, (2000) 5 SCC 294, this Court laid down the following:

"Even if there exists an arbitration clause in an agreement and a complaint is made by the consumer, in relation to a certain deficiency of service, then the existence of an arbitration clause will not be a bar to the entertainment of the complaint by the Redressal Agency, constituted under the Consumer Protection Act, since the remedy provided under the Act is in addition to the provisions of any other law for the time being in force."

19. Another judgment which is relevant for the present issue is National Seeds Corporation Limited vs. M. Madhusudhan Reddy and another, (2012) 2 SCC 506. In the above case, the respondent filed a complaint in the District Consumer Redressal Forum that they had suffered loss due to failure of the crops/less yield because the seeds sold/supplied by the appellant were defective. The compensation was awarded against which appeal was dismissed. The appellant challenged the order of the Commission and main contention was that the District Forum has no jurisdiction to entertain the complaint, in view of the provisions of Seeds Act, 1966 it was contended that there was arbitration clause contained in the agreement and the only remedy available to the respondent is an appropriate arbitration and the District Forum has no jurisdiction to entertain the complaint. This Court repelled the submission and dismissed the appeal. In paragraph 64 this Court had noticed the contention of the appellant which is to the following effect:

"64. According to the learned counsel for the appellant, if the growers had applied for arbitration then in terms of Section 8 of the Arbitration and Conciliation Act the dispute arising out of the arbitration clause had to be referred to an appropriate arbitrator and the District Consumer Forums were not entitled to entertain their complaint. This contention represents an extension of the main objection of the appellant that the only remedy available to the farmers and growers who claim to

have suffered loss on account of use of defective seeds sold/supplied by the appellant was to file complaints with the Seed Inspectors concerned for taking action under Sections 19 and/or 21 of the Seeds Act."

20. The contention was dealt with in paragraph 66 where following was laid down:

"66. The remedy of arbitration is not the only remedy available to a grower. Rather, it is an optional remedy. He can either seek reference to an arbitrator or file a complaint under the Consumer Protection Act. If the grower opts for the remedy of arbitration, then it may be possible to say that he cannot, subsequently, file complaint under the Consumer Protection Act. However, if he chooses to file a complaint in the first instance before the competent Consumer Forum, then he cannot be denied relief by invoking Section 8 of the Arbitration and Conciliation Act, 1996. Moreover, the plain language of Section 3 of the Consumer Protection Act makes it clear that the remedy available in that Act is in addition to and not in derogation of the provisions of any other law for the time being in force."

21. Another judgment where this Court reiterated the position of law is Rosedale Developers Private Limited Vs Aghore Bhattacharya And Others, (2018) 11 SCC 337 (decided on 06.09.2013). In the above case, a complaint was filed by the respondent before NCDRC. An application was filed by the appellant praying for making reference to the arbitrator in view of the arbitration agreement. The issue has been noticed in paragraphs 1 and 2 which are to the following effect:

"1. Delay condoned. This appeal filed against order dated 13-5-2013 (2013 SCC OnLine Ncdrc 486, DLF Ltd. v. Mridul Estate (P) Ltd.338b) passed by the National Consumer Disputes Redressal Commission (for short "the National Commission") whereby the appellant's prayer for making a reference to the arbitrator was rejected can appropriately be termed as a frivolous piece of litigation which merits nothing but dismissal at the threshold with exemplary costs.

2. The respondents filed complaint alleging deficiency in service on the appellant's part and claimed compensation to the tune of Rs 17,41,09,000 with costs of Rs 1,00,000. On being noticed by the National Commission, the appellant filed a written statement to contest the complaint. It also filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 (for short "the 1996 Act") for making a reference to the arbitrator.

A two-member Bench of the National Commission referred the matter to the larger Bench. After considering the relevant statutory provisions and adverting to several judgments including the judgments in Fair Air Engineers (P) Ltd. v. N.K. Modi; Skypak Couriers Ltd. v. Tata Chemicals Ltd. and National Seeds Corpn. Ltd. v. M. Madhusudhan Reddy, the larger Bench of the National Commission held that the consumer forums constituted under the Consumer Protection Act, 1986 (for short "the 1986 Act") are not bound to refer the dispute raised in the complaint to an Arbitral

Tribunal in terms of the arbitration clause contained in the agreement entered into between the parties.

22. The contention was raised before this Court that once an application under Section 8 of 1996 Act is filed, Consumer Forum is duty-bound to make a reference to the arbitrator. The above submission was noticed in paragraph 3 which is to the following effect:

> "3. Shri Sanjay Ghose, learned counsel for the appellant relied upon the judgment of the Constitution Bench in SBP & Co. v. Patel Engg. Ltd. as also the judgments in Agri Gold Exims Ltd. v. Sri Lakshmi Knits and Wovens and Magma Leasing and Finance Ltd. v. Potluri Madhavilata and argued that once an application is filed under Section 8 of the 1996 Act, the consumer forum is duty-bound to make a reference to the arbitrator because that section is mandatory in character."

23. This Court rejected the above submission and laid down in paragraph 4:

> "4. In our opinion, there is no merit in the submission of the learned counsel. The question whether the existence of an arbitration clause contained in the agreement executed between the parties excludes the jurisdiction of the consumer forum and on an application made by either party, the consumer forum is duty-bound to make a reference to the arbitrator was extensively considered in National Seeds Corpn. Ltd. v. M. Madhusudhan Reddy and it was observed: (SCC pp. 534-35, paras 64-66.)"

24. This Court held that there is no merit in the above submission of the counsel. This Court referred to judgments of this Court in National Seeds Corporation Ltd. (supra) and Fair Air Engineers Pvt. Ltd.(supra) and laid down following in paragraph 6 and 7:

> "6. The judgments relied upon by Shri Ghose do not have any bearing on the issue raised in this appeal. In neither of those cases, has this Court interpreted the provisions of the 1996 Act in the light of the provisions contained in the 1986 Act. Therefore, the propositions laid down in those judgments that Section 8 of the 1996 Act is mandatory cannot lead to an inference that the consumer forum is bound to make a reference to the Arbitral Tribunal.
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> 7. In view of the abovestated legal position, the National Commission did not commit any error by holding that the remedy of arbitration available to the complainant does not bar the jurisdiction of the consumer forums and the consumer forums are not under an obligation to refer the matter to the Arbitral Tribunal. With the above observation, the appeal is dismissed."

25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the

application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above.

26. Not only the proceedings of Consumer Protection Act, 1986 are special proceedings which were required to be continued under the Act despite an arbitration agreement, there are large number of other fields where an arbitration agreement can neither stop or stultify the proceedings. For example, any action of a party, omission or commission of a person which amounts to an offence has to be examined by a criminal court and no amount of agreement between the parties shall be relevant for the said case. For example, there may be a commercial agreement between two parties that all issues pertaining to transaction are to be decided by arbitration as per arbitration clause in the agreement. In case where a cheque is dishonoured by one party in transaction, despite the arbitration agreement party aggrieved has to approach the criminal court. Similarly, there are several issues which are non- arbitrable. There can be prohibition both express or implied for not deciding a dispute on the basis of an arbitration agreement. This Court had occasion to consider the above aspect and has noticed various disputes which are non-arbitrable, reference is made to the judgment of this Court in Booz Allen and Hamilton Inc. vs. SBI Home Finance Limited and others, (2011) 5 SCC 532. In paragraphs 35 to 38 following has been laid down:

> "35. The Arbitral Tribunals are private fora chosen voluntarily by the parties to the dispute, to adjudicate their disputes in place of courts and tribunals which are public fora constituted under the laws of the country. Every civil or commercial dispute, either contractual or non-contractual, which can be decided by a court, is in principle capable of being adjudicated and resolved by arbitration unless the jurisdiction of the Arbitral Tribunals is excluded either expressly or by necessary implication. Adjudication of certain categories of proceedings are reserved by the legislature exclusively for public fora as a matter of public policy. Certain other categories of cases, though not expressly reserved for adjudication by public fora (courts and tribunals), may by necessary implication stand excluded from the purview of private fora. Consequently, where the cause/dispute is inarbitrable, the court where a suit is pending, will refuse to refer the parties to arbitration, under Section 8 of the Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes.
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> 36. The well-recognised examples of non-

arbitrable disputes are: (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding-up matters;

(v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes.

37. It may be noticed that the cases referred to above relate to actions in rem. A right in rem is a right exercisable against the world at large, as contrasted from a right in personam which is an interest protected solely against specific individuals. Actions in personam refer to actions determining the rights and interests of the parties themselves in the subject-matter of the case, whereas actions in rem refer to actions determining the title to property and the rights of the parties, not merely among themselves but also against all persons at any time claiming an interest in that property. Correspondingly, a judgment in personam refers to a judgment against a person as distinguished from a judgment against a thing, right or status and a judgment in rem refers to a judgment that determines the status or condition of property which operates directly on the property itself. (Vide Black's Law Dictionary.)

38. Generally and traditionally all disputes relating to rights in personam are considered to be amenable to arbitration; and all disputes relating to rights in rem are required to be adjudicated by courts and public tribunals, being unsuited for private arbitration. This is not however a rigid or inflexible rule. Disputes relating to subordinate rights in personam arising from rights in rem have always been considered to be arbitrable."

27. The complaints filed under the Consumer Protection Act can also be proceeded with despite there being any arbitration agreement between the parties which have been well settled by the catena of decisions as noticed above.

28. Now, the issue to be addressed is effect and consequences of the above stated position of law consequent to the Arbitration and Conciliation (Amendment) Act, 2015 amending Section 8. Section 8(1) and 8(2) of Act, 1996 (as existed prior to amendment of the Act, 1996) are as follows:

> "8. Power to refer parties to arbitration where there is an arbitration agreement.-
>
> (1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.
>
> (2) The application referred to in sub-

section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof."

29. Section 8(1) and 8(2) after Amendment by Act, 2015 are as follows:

> "Section 8(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.
>
> (2) the following proviso shall be inserted, namely:— "Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court."."

30. Two more provisions of the 1996 Act need to be noted before we proceed further to consider the issues. The 1996 Act contains two Parts – Part I and Part II. Part I contains heading "Arbitration" and Part II contains heading "Enforcement of certain Foreign Awards". Chapter I of Part I is "General Provisions", in which Section 2 deals with definitions. Section 2(1) begins with the words "In this Part, unless the context otherwise requires". Section 2(1) contains definitions. Section 2(3) provides:-

> "Section 2(3) 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."

31. There are two aspects to be noticed in the Scheme of Section 2, firstly, Section 2 contains a heading "Definitions" but it is covered by general heading of Chapter I "General Provisions". Section 2(3) does not contain any definition but contain a general provision which clarifies 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". Section 2(3) gives predominance of any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration.

32. We have already noted several categories of cases, which are not arbitrable. While referring to judgment of this Court in Booz Allen and Hamilton Inc. (supra), those principles have again been reiterated by this Court in A. Ayyasamy (supra), Dr. A.K. Sikri, J. delivering the judgment in that case has noticed certain cases, which are not arbitrable in paragraph No.14, which is as follows:-

> "14. In the instant case, there is no dispute about the arbitration agreement inasmuch as there is a specific arbitration clause in the partnership deed. However, the question is as to whether the dispute raised by the respondent in the suit is incapable of settlement through arbitration. As pointed out above, the Act does not make any provision excluding any category of disputes treating them as non-arbitrable. Notwithstanding the above, the courts have held that certain kinds of disputes may not be capable of adjudication through the means of arbitration. The courts have held

that certain disputes like criminal offences of a public nature, disputes arising out of illegal agreements and disputes relating to status, such as divorce, cannot be referred to arbitration. The following categories of disputes are generally treated as non-arbitrable:

(i) patent, trade marks and copyright;

(ii) anti-trust/competition laws;

(iii) insolvency/winding up;

(iv) bribery/corruption;

(v) fraud;

(vi) criminal matters.

Fraud is one such category spelled out by the decisions of this Court where disputes would be considered as non-arbitrable."

33. Dr. Justice D.Y. Chandrachud, J. in his concurring opinion has referred to Booz Allen and Hamilton Inc. (supra) and noticed the categories of cases, which are not arbitrable. Paragraph No. 35 of the judgment is quoted as below:-

"35. Ordinarily every civil or commercial dispute whether based on contract or otherwise which is capable of being decided by a civil court is in principle capable of being adjudicated upon and resolved by arbitration "subject to the dispute being governed by the arbitration agreement" unless the jurisdiction of the Arbitral Tribunal is excluded either expressly or by necessary implication. In Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd., this Court held that (at SCC p. 546, para

35) adjudication of certain categories of proceedings is reserved by the legislature exclusively for public fora as a matter of public policy. Certain other categories of cases, though not exclusively reserved for adjudication by courts and tribunals may by necessary implication stand excluded from the purview of private fora. This Court set down certain examples of non-arbitrable disputes such as: (SCC pp. 546-47, para 36)

(i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences;

(ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights and child custody;

(iii) matters of guardianship;

(iv) insolvency and winding up;

(v) testamentary matters, such as the grant of probate, letters of administration and succession certificates; and

(vi) eviction or tenancy matters governed by special statutes where a tenant enjoys special protection against eviction and specific courts are conferred with the exclusive jurisdiction to deal with the dispute.

This Court held that this class of actions operates in rem, which is a right exercisable against the world at large as contrasted with a right in personam which is an interest protected against specified individuals. All disputes relating to rights in personam are considered to be amenable to arbitration while rights in rem are required to be adjudicated by courts and public tribunals. The enforcement of a mortgage has been held to be a right in rem for which proceedings in arbitration would not be maintainable. In Vimal Kishor Shah v. Jayesh Dinesh Shah, (2016) 8 SCC 788 this Court added a seventh category of cases to the six non-arbitrable categories set out in Booz Allen, namely, disputes relating to trusts, trustees and beneficiaries arising out of a trust deed and the Trust Act."

34. Another Section, which needs to be noted is Section 5, which is as follows:-

"Section 5. Extent of judicial intervention.— Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."

35. Section 5 contains an injunction to judicial authority from intervening except where so provided in this Part. Section 2(3), Section 8, Section 11 and Section 34 are some of the provisions, which provides for judicial intervention in matters. Here, we are concerned with power of judicial authority under Section 8, hence Section 5 is not much relevant in the present case.

36. Now, we come back to the interpretation of Section 8 as amended by Act No. 3 of 2016. What is the legislative intent and object in bringing the amendment to Section 8 is the main question to be answered in this case. Amendment under Section 8 has been undertaken by the Parliament after taking into consideration the 246th Law Commission Report (2014). Taking into consideration the working of the 1996 Act, there was an earlier attempt to carry out certain amendments in the 1996 Act. 176th Report of the Law Commission on the "Arbitration and Conciliation (Amendment) Bill, 2001" was submitted by the Commission, although, the Government decided to accept the recommendations and introduced a bill namely "Arbitration and Conciliation (Amendment) Bill, 2003, the bill was referred to Department relating Standing Committee on Personnel, Public Grievances, Law and Justice for a further analysis, which opined that many provisions of the bill were insufficient hence the bill was withdrawn. The Ministry of Law and Justice issued a consultation paper and asked the Law Commission to take a study of the amendments proposed to the 1996 Act. The Law Commission submitted 246th Report "Amendments to the Arbitration and

Conciliation Act, 1996 in August, 2014. The Commission in its Report has observed "judicial intervention in arbitration proceedings adds significantly to the delays in the arbitration process and ultimately negates the benefits of arbitration". Commission referring to amendments, which were recommended in Section 8 and 11 in paragraph No. 33 stated following:-

> "33. It is in this context, the Commission has recommended amendments to sections 8 and 11 of the Arbitration and Conciliation Act, 1996. The scope of the judicial intervention is only restricted to situations where the Court/Judicial Authority finds that the arbitration agreement does not exist or is null and void. In so far as the nature of intervention is concerned, it is recommended that in the event the Court/Judicial Authority is prima facie satisfied against the argument challenging the arbitration agreement, it shall appoint the arbitrator and/or refer the parties to arbitration, as the case may be. The amendment envisages that the judicial authority shall not refer the parties to arbitration only if it finds that there does not exist an arbitration agreement or that it is null and void. If the judicial authority is of the opinion that prima facie the arbitration agreement exists, then it shall refer the dispute to arbitration, and leave the existence of the arbitration agreement to be finally determined by the arbitral tribunal. However, if the judicial authority concludes that the agreement does not exist, then the conclusion will be final and not prima facie....."

37. The Report of the Commission on amendment to Section 8 as well as Note thereon contains a Note, which is to the following effect:-

> "[NOTE: The words "such of the parties... to the arbitration agreement" and proviso (i) of the amendment have been proposed in the context of the decision of the Supreme Court in Sukanya Holdings Pvt. Ltd. v. Jayesh H. Pandya and Anr., (2003) 5 SCC 531, – in cases where all the parties to the dispute are not parties to the arbitration agreement, the reference is to be rejected only where such parties are necessary parties to the action – and not if they are only proper parties, or are otherwise legal strangers to the action and have been added only to circumvent the arbitration agreement. Proviso (ii) of the amendment contemplates a two-step process to be adopted by a judicial authority when considering an application seeking the reference of a pending action to arbitration. The amendment envisages that the judicial authority shall not refer the parties to arbitration only if it finds that there does not exist an arbitration agreement or that it is null and void. If the judicial authority is of the opinion that prima facie the arbitration agreement exists, then it shall refer the dispute to arbitration, and leave the existence of the arbitration agreement to be finally determined by the arbitral tribunal. However, if the judicial authority concludes that the agreement does not exist, then the conclusion will be final and not prima facie. The amendment also envisages that there shall be a conclusive determination as to whether the arbitration agreement is null and void.]"

(iii) In sub-section (2), after the words "duly certified copy thereof" add "or a copy accompanied by an affidavit calling upon the other party to produce the original arbitration agreement or duly certified copy thereof in a circumstance where the original arbitration agreement or duly certified copy is retained only by the other party." [NOTE: In many transactions involving Government bodies and smaller market players, the original/ duly certified copy of the arbitration agreement is only retained by the former. This amendment would ensure that the latter class is not prejudiced in any manner by virtue of the same.]"

38. The Commission proposed amendment in Section 11 by adding sub-section (6A). In its Report, following Note was submitted in the above context:-

"[NOTE: The proposed section 11 (6A) envisages the same process of determination as is reflected in the proposed amendment to section

8. Explanation 2 envisages that reference by the High Court to any person or institution designated by it shall not be regarded as a delegation of judicial power. Explanation 3 has been inserted with the hope and expectation that High Courts would encourage the parties to refer the disputes to institutionalize arbitration by a professional Indian or international arbitral institute.]"

39. After taking into consideration the Report of the Law Commission, a Bill namely "The Arbitration and Conciliation (Amendment) Bill, 2015" was submitted.

The Statement of Objects and Reasons of the Bill throws considerable light on the Objects and Reasons of the amendments. Relevant part of the Statement of Objects and Reasons is as follows:-

"2. The Act was enacted to provide for speedy disposal of cases relating to arbitration with least court intervention. With the passage of time, some difficulties in the applicability of the Act have been noticed. Interpretation of the provisions of the Act by courts in some cases have resulted in delay of disposal of arbitration proceedings and increase in interference of courts in arbitration matters, which tend to defeat the object of the Act....."

6. xxxxxxxxxxxxxxxxxxxxxxx

(iv) to provide that while considering any application for appointment of arbitrator, the High Court or the Supreme Court shall examine the existence of a prima facie arbitration agreement and not other issues;

xxxxxxxxxxxxxxxxxxxxx"

40. Notes on the Clauses on amendment in Section 8 reads as follows:-

> "Clause 4 of the Bill seeks to amend section 8 of the principal Act to specify that the judicial authority shall refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exits. A proviso below sub-section (2) is inserted to provide that where the original arbitration agreement or certified copy thereof is not available with the party who apply under sub-section (1), and is retained by the other party, such party shall file a copy of the arbitration agreement along with application under sub-section (1) praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before the Court."

41. On amendment to Section 11 by inserting sub-section (6A), following was stated:-

> "Clause 6 of the Bill seeks to amend section 11 of the principal Act to provide that appointment of arbitrator shall be made by the Supreme Court or the High Court, as the case may be, instead of the Chief Justice of India or the Chief Justice of the High Court.

Subsection (6A) is inserted to provide that the Supreme Court or the High Court while considering application under sub-section (4) to (6) shall confine to the examination of an arbitration agreement....."

42. Prior to above amendment, this Court in several cases has interpreted Section 8. Several conditions for exercising power under Section 8 were laid down by this Court. In P. Anand Gajapathi Raju and Others Vs. P.V.G. Raju (Dead) and Others, (2000) 4 SCC 539, several conditions were noticed by this Court, which are to be satisfied before Court can exercise its power under Section 8. In paragraph No.5, following has been stated:-

> "5. The conditions which are required to be satisfied under sub-sections (1) and (2) of Section 8 before the court can exercise its powers are:
>
> (1) there is an arbitration agreement;
>
> (2) a party to the agreement brings an action in the court against the other party;
>
> (3) subject-matter of the action is the same as the subject-matter of the arbitration agreement;
>
> (4) the other party moves the court for referring the parties to arbitration before it submits his first statement on the substance of the dispute.

Xxxxxxxxxxxxxxxxx"

43. In Paragraph No. 8 of the judgment, it was further stated that the language of Section 8 is peremptory and it is, therefore, obligatory for the Court to refer the parties to arbitration in terms of their arbitration agreement.

44. In Sukanya Holdings (P) Ltd. Vs. Jayesh H. Pandya and Another, (2003) 5 SCC 531, this Court had occasion to consider the ingredients of Section 8. This Court noticed certain circumstances, where matter was not required to be referred to the Arbitral Tribunal. In Paragraph No. 12, 13 and 15, following has been held:-

> "12. ..... Further, the matter is not required to be referred to the Arbitral Tribunal, if:
>
> (1) the parties to the arbitration agreement have not filed any such application for referring the dispute to the arbitrator; (2) in a pending suit, such application is not filed before submitting first statement on the substance of the dispute; or (3) such application is not accompanied by the original arbitration agreement or duly certified copy thereof.....

13. Secondly, there is no provision in the Act that when the subject-matter of the suit includes subject-matter of the arbitration agreement as well as other disputes, the matter is required to be referred to arbitration. There is also no provision for splitting the cause or parties and referring the subject- matter of the suit to the arbitrators.

15. The relevant language used in Section 8 is:

> "in a matter which is the subject of an arbitration agreement". The court is required to refer the parties to arbitration. Therefore, the suit should be in respect of "a matter" which the parties have agreed to refer and which comes within the ambit of arbitration agreement. Where, however, a suit is commenced — "as to a matter" which lies outside the arbitration agreement and is also between some of the parties who are not parties to the arbitration agreement, there is no question of application of Section 8. The words "a matter" indicate that the entire subject-matter of the suit should be subject to arbitration agreement."
>
> 45. Court further held that Section 8 does not admit interpretation to partly referring the disputes to arbitration. In Paragraph No.16, following was laid down:-
>
> "16. The next question which requires consideration is — even if there is no provision for partly referring the dispute to arbitration, whether such a course is possible under Section 8 of the Act. In our view, it would be difficult to give an interpretation to Section 8 under which bifurcation of the cause of action, that is to say, the subject-matter of the suit or in some cases bifurcation of the suit between parties who are parties to the arbitration agreement and others is possible. This would be laying down a totally new procedure not contemplated under the Act. If bifurcation of the subject-matter of a suit was contemplated, the legislature would have used appropriate language to permit such a course. Since there is no such indication in the language, it follows that bifurcation of the subject-matter of an action brought before a judicial authority is not allowed."

46. The law as declared by this Court in the above cases was in existence when the Law Commission submitted its 246th Report and Parliament considered the Bill, 2015 for Amendment Act, 2016. The Law Commission itself in its Report has referred to amendment in Section 8 in context of decision of this Court in Sukanya Holdings (P) Ltd. (supra), which was clearly noticed in the Note to Section 8 as extracted above. The words "notwithstanding any judgment, decree or order of the Supreme Court or any Court" added by amendment in Section 8 were with intent to minimise the intervention of judicial authority in context of arbitration agreement. As per the amended Section 8(1), the judicial authority has only to consider the question whether the parties have a valid arbitration agreement? The Court cannot refuse to refer the parties to arbitration "unless it finds that prima facie no valid arbitration agreement exists". The amended provision, thus, limits the intervention by judicial authority to only one aspect, i.e. refusal by judicial authority to refer is confined to only one aspect, when it finds that prima facie no valid arbitration agreement exists. Other several conditions, which were noticed by this court in various pronouncements made prior to amendment were not to be adhered to and the Legislative intendment was clear departure from fulfilling various conditions as noticed in the judgment of P. Anand Gajapathi Raju (supra) and Sukanya Holdings (P) Ltd. (supra). Same Legislative intendment is decipherable by amendment of Section 11 by adding sub-section (6A). Section 11(6A) is as follows:-

11. Appointment of arbitrators.— xxxxxxxxxxxxxxxxxxxxxxxx [(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-

section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.

47. The same words "notwithstanding any judgment, decree or order of any Court" finds place in sub- section (6A) of Section 11 and Supreme Court and High Court is confined to the examination of the existence of an arbitration agreement. This Court had occasion to consider the amendment made in Section 11(6A) in Duro Felguera, S.A. (supra). Justice Kurian Joseph in his concurring opinion in Paragraph No. 48 has laid down following:-

"48. Section 11(6-A) added by the 2015 Amendment, reads as follows:

"11. (6-A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-

section (4) or sub-section (5) or sub-

section (6), shall, notwithstanding any judgment, decree or order of any court, confine to the examination of the existence of an arbitration agreement." (emphasis supplied) From a reading of Section 11(6-A), the intention of the legislature is crystal

> clear i.e. the court should and need only look into one aspect—the existence of an arbitration agreement. What are the factors for deciding as to whether there is an arbitration agreement is the next question. The resolution to that is simple—it needs to be seen if the agreement contains a clause which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement."

48. Section 8 of the 1996 Act as amended also came for consideration in Ameet Lalchand Shah and Others Vs. Rishabh Enterprises and Another, AIR 2018 SC 3041:

> (2018) 6 SCALE 621: 2018 SCC Online SC 487. This Court noticed the object and purpose of amended Section 8.

In Paragraph No. 29 to 31, following has been laid down:-

> "29. "Principally four amendments to Section 8(1) have been introduced by the 2015 Amendments-(i) the relevant "party" that is entitled to apply seeking reference to arbitration has been clarified/amplified to include persons claiming "through or under"
>
> such a party to the arbitration agreement; (ii) scope of examination by the judicial authority is restricted to a finding whether "no valid arbitration agreement exists" and the nature of examination by the judicial authority is clarified to be on a "prima facie" basis; (iii) the cut-off date by which an application Under Section 8 is to be presented has been defined to mean "the date of" submitting the first statement on the substance of the dispute; and
>
> (iv) the amendments are expressed to apply notwithstanding any prior judicial precedent.

The proviso to Section 8(2) has been added to allow a party that does not possess the original or certified copy of the arbitration agreement on account of it being retained by the other party, to nevertheless apply under Section 8 seeking reference, and call upon the other party to produce the same." (Ref: Justice R.S. Bachawat's Law of Arbitration and Conciliation, Sixth Edition, Vol. I (Sections 1 to 34) at page 695 published by LexisNexis).

31. The language of amendment to Section 8 of the Act is clear that the amendment to Section 8(1) of the Act would apply notwithstanding any prayer, judgment, decree or order of the Supreme Court or any other Court. The High Court laid emphasis upon the word ".....unless it finds that prima-facie no valid agreement exists". The High Court observed that there is no arbitration agreement between Astonfield and Rishabh. After referring to Sukanya Holdings and the amended Section 8 and Section 45 of the Act, the High Court pointed out the difference in language of Section 8 and Section 45 of the Act. The High Court distinguished between Sukanya Holdings and Chloro Controls, and observed that Sukanya Holdings was not overruled by Chloro Controls...."

49. This Court, thus, in the above cases has noticed that amendments are expressed to apply notwithstanding any prior judicial precedents, but the scope of amendment under Section 8(1) was confined to three categories as has been noted in Paragraph No.29. Amendments under Section 8, thus, were aimed to minimise the scope of judicial authority to refuse reference to arbitration and only ground on which reference could have been refused was that it prima facie finds that no valid arbitration agreement exists. Notwithstanding any prior judicial precedents referred to under Section 8(1) relates to those judicial precedents, which explained the discretion and power of judicial authority to examine various aspects while exercising power under Section 8.

50. The Legislative intent and object were confined to only above aspects and was not on those aspects, where certain disputes were not required to be referred to arbitration. Can it be said that after amendment under Section 8(1), the law laid down by this Court in reference to Section 2(3), where large number of categories have been held to be non-arbitrable has been reversed or set at naught. Neither any such Legislature intendment was there nor any such consequence was contemplated that law laid down by this Court in context of Section 2(3) has to be ignored or reversed.

51. While carrying out amendment under Section 8(1) of Act, 1996, the statutes providing additional remedies/special remedies were not in contemplation. The legislative intent is clear that judicial authority's discretion to refuse arbitration was minimise in respect of jurisdiction exercise by judicial authority in reference to Section 8. The amendment was also aimed to do away with special or additional remedies is not decipherable from any material. The Law Commission 246th Report, the Statement and Objects of Bill and the notes on clauses do not indicate that amendments were made for overriding special/additional remedies provided under different statutes. In the event, the interpretation as put by the learned counsel for the petitioner is accepted, Section 8 has to be read to override the law laid down by this Court in reference to various special/additional jurisdictions as has been adverted to and noted in judgment of this Court in Booz Allen and Hamilton Inc.(supra) which was never the intent of amendment in Section 8.

52. The amendment in Section 8 cannot be given such expansive meaning and intent so as to inundate entire regime of special legislations where such disputes were held to be not arbitrable. Something which legislation never intended cannot be accepted as side wind to override the settled law. The submission of the petitioner that after the amendment the law as laid down by this Court in National Seeds Corporation Limited(supra) is no more a good law cannot be accepted. The words "notwithstanding any judgment, decree or order of the Supreme Court or any Court" were meant only to those precedents where it was laid down that the judicial authority while making reference under Section 8 shall entitle to look into various facets of the arbitration agreement, subject matter of the arbitration whether the claim is alive or dead, whether the arbitration agreement is null and void. The words added in Section 8 cannot be meant for any other meaning. Reference is also made to the judgment of this Court in Vimal Kishor Shah and others vs. Jayesh Dinesh Shah and others, (2016) 8 SCC 788. This Court in the above case had occasion to consider the provisions of Section 8 of the Act, 1996 in reference to special remedy provided under Trusts Act, 1882. This Court noticed the judgment of this Court in Booz Allen and Hamilton Inc.(supra) with approval in paragraphs 40 and 42 which is to the following effect:

"40. Before we examine the scheme of the Trusts Act, 1882, we consider it apposite to take note of the case law, which has a bearing on this issue. The question came up for consideration before this Court in Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd. as to what is the meaning of the term "arbitrability" and secondly, which type of disputes are capable of settlement by arbitration under the Act. Their Lordships framed three questions to answer the question viz.: (SCC p. 546, para 34) (1) Whether the disputes having regard to their nature could be resolved by a private forum chosen by the parties (Arbitral Tribunal) or whether such disputes exclusively fall within the domain of public fora (courts)?;

(2) Whether the disputes are covered by the arbitration agreement?; and (3) Whether the parties have referred the disputes to arbitrator?"

42. The question to be considered in this appeal is whether the disputes relating to affairs and management of the Trust including the disputes arising inter se trustees, beneficiaries in relation to their appointment, powers, duties, obligations, removal, etc. are capable of being settled through arbitration by taking recourse to the provisions of the Act, if there is a clause in the trust deed to that effect or such disputes have to be decided under the Trusts Act, 1882 with the aid of forum prescribed under the said Act?"

53. After noticing the issues which have arisen in the above case this Court laid down following in paragraphs 51 and 53:

"51. The principle of interpretation that where a specific remedy is given, it thereby deprives the person who insists upon a remedy of any other form of remedy than that given by the statute, is one which is very familiar, and which runs through the law, was adopted by this Court in Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke while examining the question of bar in filing civil suit in the context of remedies provided under the Industrial Disputes Act (see G.P. Singh, Principles of Statutory Interpretation, 12th Edn., pp. 763-

64). We apply this principle here because, as held above, the Trusts Act, 1882 creates an obligation and further specifies the rights and duties of the settlor, trustees and the beneficiaries apart from several conditions specified in the trust deed and further provides a specific remedy for its enforcement by filing applications in civil court. It is for this reason, we are of the view that since sufficient and adequate remedy is provided under the Trusts Act, 1882 for deciding the disputes in relation to trust deed, trustees and beneficiaries, the remedy provided under the Arbitration Act for deciding such disputes is barred by implication.

53. We, accordingly, hold that the disputes relating to trust, trustees and beneficiaries arising out of the trust deed and the Trusts Act, 1882 are not capable of being decided by the arbitrator despite existence of arbitration agreement to that effect between the parties. A fortiori, we hold that the

application filed by the respondents under Section 11 of the Act is not maintainable on the ground that firstly, it is not based on an "arbitration agreement" within the meaning of Sections 2(1)(b) and 2(1)(h) read with Section 7 of the Act and secondly, assuming that there exists an arbitration agreement (Clause 20 of the trust deed) yet the disputes specified therein are not capable of being referred to private arbitration for their adjudication on merits."

54. This Court held that disputes within the trust, trustees and beneficiaries are not capable of being decided by the arbitrator despite existence of arbitration agreement to that effect between the parties. This Court held that the remedy provided under the Arbitration Act for deciding such disputes is barred by implication. The ratio laid down in the above case is fully applicable with regard to disputes raised in consumer fora.

55. We may, however, hasten to add that in the event a person entitled to seek an additional special remedy provided under the statutes does not opt for the additional/special remedy and he is a party to an arbitration agreement, there is no inhibition in disputes being proceeded in arbitration. It is only the case where specific/special remedies are provided for and which are opted by an aggrieved person that judicial authority can refuse to relegate the parties to the arbitration.

56. We, thus, do not find that any error has been committed by the NCDRC in rejecting the application filed by the appellant under Section 8. No exception can be taken to the dismissal of the appeals by this Court against the judgment of NCDRC. No ground is made out to review the order dated 13.02.2018. The review petitions are dismissed.

.....J. (UDAY UMESH LALIT) .....J. (ASHOK BHUSHAN) New Delhi, December 10, 2018.