Naveen Kedia And Ors. vs Chennai Power Generation Limited And ... on 11 June, 1998

Equivalent citations: [1999]95COMPCAS640(CLB)

ORDER

1. The petitioners hereinabove, have filed this petition under Section 397/398 of the Companies Act (Act) alleging acts of oppression and mismanagement in the affairs of Chennai Power Corporation Ltd. (the company). They also filed an application for interim reliefs. When the application was taken up for hearing on April 13, 1998, the respondents filed an application under the Arbitration and Conciliation Act, 1996, praying for referring the matter to arbitration on the ground that the substantial matter covered in the petition arises out of an agreement between the parties in which there is a provision for settling the disputes between the parties through arbitration under the rules of the London Court of International Arbitration.

2. Since the matter of arbitration was raised, we thought it fit first to hear the application of the respondents. Shri Sarkar, senior advocate, appearing for the respondents, initiating his arguments submitted that, the disputes raised in the petition are private disputes between two shareholders' groups and not in any way related to the affairs of the company to invoke the provisions of Section 397/398 of the Companies Act, According to him, the disputes between the parties have arisen out of and in connection with an agreement dated October 14, 1996 (principal agreement), as modified by a supplemental agreement dated July 7, 1997. The principal agreement very specifically provides in Clause 26 that any dispute arising out of or in connection with the agreement shall be finally resolved by arbitration under the rules of the London Court of International Arbitration. Since the main allegation relates to alleged breach of contractual terms, recourse to arbitration alone is permissible and cannot be enforced through a petition under Section 397/398. He pointed out to Section 45 of the Arbitration and Conciliation Act of 1996, according to which a judicial authority shall have to, at the request of one of the parties, refer the parties to arbitration when such a judicial authority is seized of an action in a matter in respect of which the parties have made an agreement for an arbitration. According to him the foundation of the petition, is that respondents Nos. 2 and 3 have not provided to the company certain funds as agreed to between the parties as per the principal and supplemental agreements. The main relief sought also relates to a direction being given to respondents Nos. 2 and 5 to forthwith fulfil their obligation of providing the funds, more particularly of US $ 14 million as agreed to be advanced as per the principal agreement. Therefore, according to him, since the CLB is seized of a matter on which there is an arbitration agreement between the parties, the CLB is bound to refer the matter to arbitration as per Section 45 of the Arbitration and Conciliation Act, 1996. In this connection, he referred to the decision of the Supreme Court in Svenska Handelsbanken v. Indian Charge Chrome Ltd. [1994] 2 SCC 155 in which the court held, with reference to the Foreign Awards (Recognition and Enforcement) Act, 1961, that the right to foreign arbitration is an indefeasible right in which the court does not have any discretion.

3. He further submitted that the stand taken by the respondents in the reply to the application that the supplementary agreement dated July 7, 1997, which does not contain an arbitration clause is a substitution of the principal agreement is not correct. The agreement dated July 7, 1997, was only a modification of the principal agreement and therefore, the arbitration clause is squarely applicable for all disputes arising out of or in connection with both the agreements. Even the question as to whether the second supplemental agreement has resulted in extinguishing the principal agreement has to be decided in the arbitration as explicitly provided in clauses 26.1 and 26.6 of the arbitration clause in the original agreement. For this proposition he relied on Renusagar Power Company Limited v. GEC, AIR 1985 SC 1156. He referred to Juggilal Kamlapat v. N. V. Internationale Crediet-En-Handels Vereeninging Rotterdam, AIR 1955 Cal 65, according to which, mere alterations or modifications of a term of contract do not amount to its rescission. The modifications are read into and become part and parcel of the original contract. He also relied on Alliance Jute Mills v. Lal Chand, AIR 1978 Cal 19, and Rungta Sons v. Jugometal, AIR 1959 Cal 423, for the same proposition. He further submitted that, as long as the foundation on which the petition has been made relates to a matter covered under the arbitration agreement, it is immaterial as to the nature of the reliefs sought and the stand taken by the respondents to the application that the reliefs sought in the petition cannot be granted by the arbitrator is of no relevance. Referring to the decision of the Calcutta High Court in S. I. Engineering Private Limited v. Port Shipping Company Limited [1994] 1 Cal LJ, in which the court held that it is not merely a suit that can be stayed under Section 34 of the Arbitration Act of 1940, but also any legal proceedings of whatever nature, he argued to state that even the present proceedings should be referred to arbitration since the question of staying the proceedings under the 1996 Act does not arise. In this connection, he also relied on a similar decision of the Calcutta High Court in Swaika Vanaspati Products Ltd. v. Vivek Kumar Daga (unreported decision dated April 29, 1994). He also referred to Japan Kumar Paul v. Krishna Kanta Paul, AIR 1980 Cal 28, to state that even in a proceeding under Section 397/398, the matter could be referred to arbitration as was done in that case. On referring to the reply of the petitioners that the proceedings before the arbitral tribunal would be expensive involving expenditure in foreign exchange to justify proceedings with the present petition. Shri Sarkar submitted that this ground has never been considered to be good ground even under Section 34 of the Arbitration Act of 1940 (Rungta Sons v. Jugometal, AIR 1959 Cal 423). Presenting a copy of the London Court of Arbitration Rules, he drew our attention to Article 13.2 to state, in view of these provisions, that the petitioners are precluded from seeking the interim relief as sought for from the CLB. In view of the above submissions, Shri Sarkar prayed that the parties should be referred to the London Court of Arbitration in terms of the arbitration clause contained in the agreement dated October 14, 1996.

4. Shri V. P. Singh, senior advocate, appearing for the petitioners stated that, before we consider the prayer of the applicant for referring the parties to arbitration, we should decide whether there is an arbitration agreement in existence after the supplemental agreement was entered into and whether the matters complained of under Section 397/398 could be referred to arbitration in view of the fact that the relief as could be provided under these sections cannot be granted by the arbitrator. According to him, the Company Law Board has been given the exclusive jurisdiction in the matter of allegations relating to oppression and mismanagement in the affairs of a company. The shareholders have the statutory right to move the CLB in such cases. Since the jurisdiction of the CLB under these sections is exclusive and the jurisdiction of the civil court has been ousted, the

matter complained of before the CLB cannot be relegated to arbitration. Further, according to him, the nature of action under Section 397/398 is a derivative action and not an inter se dispute between the shareholders. Such a right cannot be enforced de hors the statute which confers the right and provides for specific relief. In other words, according to him, the shareholders, by an agreement between themselves, cannot create a right in their favour and vest a private forum with powers to adjudicate upon such a derivative claim, de hors the statutory tribunal. He further submitted that the powers conferred on the CLB under sections 402 to 407, which are in aid of proceedings under Section 397/398, are of the widest amplitude, conferred on the CLB to bring to an end the matters complained of and that these powers are in the domain of public policy. Dealing with his arguments that the CLB has exclusive jurisdiction in the matter of oppression and mismanagement as enjoined under Section 397/398 of the Companies Act, he submitted that on the vesting of jurisdiction on the CLB, the jurisdiction of the civil court should be inferred to have been ousted. For this proposition, he relied on Union of India v. Tara Chand Gupta, AIR 1971 SC 1558, in which the Supreme Court, after considering various judgments in paragraph 22, laid down that ousting of jurisdiction of the civil courts in favour of the special tribunal is inferred where the statute gives finality to the order of the tribunal on which it confers jurisdiction and provides for adequate remedy to do what the court would normally do in such a proceeding before it According to Shri Singh, under Section 397/398, the statute has provided for finality to the orders of the Company Law Board by vesting vast powers. This being the position, he submitted that, when the parties cannot approach even a civil court in respect of matters under Section 397/398, the parties cannot, by a private agreement confer jurisdiction on a tribunal of their own choice and oust the jurisdiction of the Company Law Board which is a special tribunal created by the statute. Such an act would be contrary to public policy and the law. On the proposition that the jurisdiction of a special tribunal cannot be ousted by asking for referring the parties for arbitration, he relied on Natraj Studio Private Ltd. v. Navrang Studios, AIR 1981 SC 537, in which the Supreme Court held that public policy requires that contract to the contrary which nullifies the rights conferred on tenants by the Bombay Rent Control Act cannot be permitted and thus the arbitration agreement between the parties whose rights are regulated by this Act cannot be recognised by a court of law.

5. He also advanced the argument that, there have been a large number of decisions of various High Courts to the effect that, a petition under Section 397/398, cannot be stayed on account of an arbitration agreement between the parties. For this point he relied on 0. P. Gupta v. Shiv General Finance (P.) Ltd. [1977] 47 Comp Cas 279 (Delhi) ; Manavendra Chit-nis v. Leela Chitnis Studios P. Ltd. [1985] 58 Comp Cas 113 (Bom). He also submitted that even if the articles of association of a company provide that matters relating to the company be referred to arbitration, a proceeding under Section 397/398 in respect of that company cannot be stayed as held in Surendra Kumar Dhawan v. R. Vir [1977] 47 Comp Cas 276 (Delhi).

6. He further mentioned that, there are a large number of decided cases, in which, it has been held that, even if there is an agreement that no legal proceeding can be initiated till the arbitrator gives an award on the dispute between the parties, there is no bar in one of the parties bringing a winding up petition against the company and the court will not stay the winding up petition on the plea of an arbitration agreement (Hind Mercantile Corporation P. Ltd. v.J. H. Rayner and Co. Ltd. [1971] 41 Comp Cas 548 (Mad)).

7. He also submitted that the question of referring the matter to arbitration does not arise at all, in the present case, in as much as, the supplemental agreement dated July 7, 1997, in effect, completely changed all the fundamental and essential features of the principal agreement and created new rights and obligations between the parties. In other words, there has been novation of the principal agreement. The supplemental agreement does not contain any arbitration clause and it stands on its own. He relied on the case of Damodar Valley Corporation v. K. K. Kar, AIR 1974 SC 158, 161, in which the Supreme Court held "Section 62 of the Contract Act, incorporates this principle when it provides that if the parties to a contract agree to substitute a new contract or to rescind or alter it, the original contract need not be performed. Where, therefore, the dispute between the parties is that the contract itself does not subsist either as a result of its being substituted by a new contract or by rescission or alteration, that dispute cannot be referred to the arbitration as the arbitration clause itself would perish if the averment is found to be valid. As the very jurisdiction of the arbitrator is dependent upon the existence of the arbitration clause under which he is appointed, the parties have no right to invoke a clause which perishes with the contract." Citing this judgment and drawing our attention to clause (F) of the supplemental agreement dated July 7, 1997, which reads as "The parties are now desirous of altering the principal agreement to reflect this understanding arrived at between them, to wit;" to submit that the principal agreement got substituted and as such it no longer survives to enable the applicant to rely on the arbitration clause contained therein. The supplemental agreement does not contain any arbitration clause. Relying on Ramdas v. Orient Pictures, AIR 1942 Bom 332, wherein the court held that, if rights and liabilities under the original agreement containing an arbitration clause are materially altered by a subsequent agreement containing no arbitration clause then suit on both the agreements is maintainable, he argued to state that, the allegations in the petition relate to failure to perform obligations under the supplemental agreement and as such the arbitration clause in the original agreement even assuming that the agreement is surviving, has no application to the rights, obligations and liabilities contained in the supplemental agreement.

8. He further submitted that the complaint against the applicants arose out of their failure to fulfil their obligations as undertaken by them through board meetings of the company and cannot be said to arise out of the agreement. In other words, according to him, the petitioners' pleadings are based on various acts of mismanagement and lack of probity on the part of the applicants. He stated that the entire pleading should be considered in totality and if done so, then it would clearly indicate that all the ingredients of Section 397/398 have been satisfied. Summing up his arguments, he submitted that there is no scope for referring the parties to arbitration, in view of the fact that there is novation of the principal agreement by the supplemental agreement and that the supplemental agreement does not contain an arbitration clause to refer the parties to arbitration on disputes arising out of this supplemental agreement and that the CLB, being a special tribunal to deal with these matters under Section 397/398 of the Companies Act, these matters cannot be referred to arbitration.

9. We have considered the arguments of counsel. We have also taken note of the submissions of Shri Sarkar that, the issues relating to whether the supplementary agreement has novated the principal agreement or whether the terms of supplementary agreement are subject to the arbitration clause in the main agreement, have to be decided by the arbitrators in terms of Article 26.1 of the principal agreement. Since the prayer of the petitioner for referring the matter to arbitration cannot be

considered unless and otherwise we give a finding on the effect of the supplementary agreement on the principal agreement, we have to perforce consider these issues in these proceedings. However, we make it abundantly clear that our finding on these issues are not intended to either influence or act as res judicata in any other proceedings in which these matters may have to be examined.

10. To decide whether the parties should be referred to arbitration, it is necessary to examine whether the arbitration clause contained in the principal agreement still exists and if so, then, whether the matters arising out of and in connection with the supplemental agreement will also become the subject-matter of arbitration. Shri Singh argued to state that there has been novation of the principal agreement, According to him, fundamental and essential features contained in the principal agreement have been changed by the supplemental agreement relating to shareholding, management and financial arrangement and these changes have created new rights and obligation between the parties. Therefore, according to him by virtue of Section 62 of the Contract Act, there has been novation of the principal agreement. We have already indicated the cases cited by him in this regard. The parties initially entered into an agreement on October 14, 1996, in which there were three parties, namely, petitioner No. 9, respondent No. 1, which was then known as GVK Generation Ltd., and respondent No. 2. It was agreed that petitioner No. 9 with its associates and affiliates would hold 50 per cent. shares and respondent No. 2 and its affiliates and associates the balance 50 per cent. shares in respondent No. 1 company, through which, the project to set up a power project in the State of Tamil Nadu is to be implemented. Clause (G) of the preamble to the agreement states "KCDIL (petitioner No. 9 herein) and GMH (the applicant herein) have agreed that their respective rights in the company shall be regulated by the provisions of this agreement as may be amended from time to time and articles of association of the company and the company has agreed with the shareholders to comply with such of the matters herein contained as relate to the company." This agreement elaborately deals with the shareholding pattern, project implementation, management of the company, financing of the company, future issue and listing, warranties, duration and termination and other incidental matters essential for a contract. Clause 26.1 of this agreement deals with arbitration. Clause 26.1 reads as follows : "Any dispute arising out of or in connection with this agreement including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this clause. Parties agree that, except as provided in Clause 26.6, no resort to the courts may be made." Clause 26.6 deals with making an application to a court of competent jurisdiction for judicial acceptance of the award of the arbitrators.

11. From clause (F) to the preamble to this agreement, it is apparently clear that the parties had visualised the possibility of amendments to the principal agreement in future and they have also undertaken to abide by the, amended terms. This being the case, we have to examine whether the supplemental agreement is an amendment to the principal agreement or is in substitution of the principal agreement. According to Shri Sarkar, it is an amendment while according to Shri Singh it is a substitution.

12. The supplemental agreement was entered into on July 7, 1997, in which clause (A) to the preamble reads as follows : "Pursuant to the shareholders' agreement dated October 9, 1996

(14-10-1996) executed by and between KCDIL, GMH and the company (the principal agreement), it was agreed inter alia, that, KCDIL and GMH would participate as shareholders in the company to jointly promote and develop the project (defined in the principal agreement) on the terms and conditions thereunder appearing," Clause (F) to the preamble reads : "The parties are now desirous of now altering the principal agreement to reflect this understanding arrived at between them to wit". As per the preamble there are certain clauses relating to shareholding, composition of the board of directors, etc. Clause (4) of this agreement explicitly provides to state : "The parties record and confirm that the principal agreement shall be deemed to be amended from the effective date to the effect that all references to 50 per cent, shareholding in the company by GMH and or MIL shall be deleted and substituted by reference to 60 per cent." A reading of these clauses would indicate, without any shadow of doubt, that the supplemental agreement is only an amendment to the terms contained in the principal agreement. We are not referring to the various case law cited by the counsel on whether a new agreement is to be treated as a substitution or amendment to the original agreement, since we are of the view that such a decision would depend on the language, terms and conditions of the new agreement. According to us, the proper test would be, whether the new agreement could stand on its own without reference to the terms and conditions contained in the original agreement. In this particular case, the original agreement was entered into for the purpose of establishing a project for generation and supply of electricity in the State of Tamil Nadu and the principal agreement, as we have mentioned earlier in general terms, contains various clauses on the installation and commissioning of the project. The supplemental agreement contains certain clauses relating to shareholding and management of the company. Other than making a reference "to the project as defined in the principal agreement", there is nothing found in the supplemental agreement relating to establishment and commissioning of the project. In other words, the purpose for which the main agreement was entered into, if it is to be taken that there is novation of the same by the supplemental agreement, then we do not find any terms and conditions relating to establishment of the project in the supplemental agreement. In other words, the terms of agreement as contained in the supplemental agreement cannot be enforced without recourse to the terms of agreement in the principal agreement. Further, various clauses in the supplemental agreement directly refer to terms in the principal agreement and possibility of future amendment to the main agreement had been envisaged even at the time when the principal agreement was entered into. Even otherwise, no agreement can be termed as a supplemental agreement if there is no principal agreement. Therefore, we have no hesitation to come to the conclusion that the supplemental agreement is nothing but an agreement containing certain amendments or additions to the principal agreement, and, therefore, we are not in a position to agree with Shri Singh that the supplemental agreement has novated the principal agreement. In other words, both the agreements are subsisting and have to be read together.

13. Having held that there is no novation of the principal agreement which contains an arbitration clause and also holding that both the agreements subsist, the issue for our consideration is whether the allegations in the petition are matters arising in and out of the terms of agreement. As per Section 45 of the Arbitration and Conciliation Act, 1996, a judicial authority, when seized of an action of the matter in respect of which parties have made an agreement, referred to in Section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or

incapable of being performed". Therefore, we have to necessarily see whether the matter in respect of which the parties have made an agreement is the subject-matter in the petition. Instead of going through the entire petition to examine this issue, we feel that, it is sufficient to refer to the averments of the petitioners in their affidavit dated April 23, 1998, which is in reply to the application by the respondents, wherein at the last paragraph of page 8, it is averred : "The subject-matter of the present petition which relates to the mismanagement and oppressive conduct of respondents Nos. 2 to 6 which is prejudicial to the interest of respondent No. 1 company and to public interest principally arises out of and relates to the said supplemental agreement dated July 7, 1997, to which the arbitration clause relied upon by the petitioner, is not applicable and to which arbitration respondent No. 3 and also petitioners Nos. 1 to 8 are not parties". In other words, the petitioners themselves admit that the matters complained of in the petition principally arise out of and relate to the supplemental agreement. During the arguments, Shri Singh submitted that the supplemental agreement does not contain an arbitration clause and since there is a novation of the principal agreement, the arbitration clause in that agreement cannot be made applicable to the supplemental agreement. We have already held that the principal agreement has not been novated. That being the case, we have to only consider whether the arbitration clause in the principal agreement can be made applicable to disputes arising out of and in connection with the terms of the supplemental agreement. As we have already pointed out, the principal agreement itself visualises possibility of amendments to this agreement and the supplemental agreement also talks of amendment to the principal agreement. We have also held that without the principal agreement, the supplemental agreement cannot stand on its own. Under these circumstances, we have to read the supplemental agreement as a part and parcel of the original agreement and if we do so, then, all clauses of the principal agreement as long as they are not rescinded or modified explicitly in the supplemental agreement will continue to prevail. The case law cited by Shri Singh Ramdas v. Orient Pictures, AIR 1942 Bom 332, may not be applicable in the facts and circumstances inasmuch as in the Bombay case, the court found that the subsequent agreement which did not contain an arbitration clause contained certain clauses which were not found in the original agreement at all. In the present case before us, the supplemental agreement has only modified certain clauses in the principal agreement relating to shareholding and management. No new rights or obligation ab initio have been created in the supplemental agreement. The case cited by Shri Sarkar viz., Jamini Kanta Das v. Union of India, AIR 1955 Cal 45, seems to be more applicable to the present case, as in that case, the court held that an arbitration clause in the original contract was not inconsistent with the subsequent modification and continued to subsist in view of the fact that the modification of the contract in question did not go to the very root of the first contract and did not change its character and that the facts of the case did not warrant the inference that the parties intended to rescind the original contract. In the present case also, neither we could infer that the parties intended to rescind the principal agreement nor the circumstances show that the principal agreement had been rescinded impliedly. Therefore, we are of the view that the arbitration clause contained in the principal agreement will have to cover disputes arising out of and in connection with the supplemental agreement also. In page 8 of the reply as extracted earlier, the petitioners have stated that respondent No. 3 and petitioners Nos. 1 to 8 were not parties to the principal agreement. As far as respondent No. 3 is concerned, it is seen from the preamble to the supplemental agreement that respondent No. 3 has been assigned the rights of respondent No. 2 under the principal agreement and that both petitioner No. 9 and respondent No. 1 have agreed and conformed to this assignment.

In other words, respondent No. 3 has stepped into the shoes of respondent No. 2 and, therefore, is bound by the terms of the agreement. Likewise, in regard to petitioners Nos. 1 to 8, it is seen from paragraph 6 of the petition that petitioners Nos. 1 to 8 are the nominees of petitioner No. 9. In other words, being the nominees of petitioner No. 9, which was a signatory to the agreement, these petitioners are also bound by the terms of the principal agreement which includes the arbitration clause.

14. Having held that the matter before us is covered by arbitration, the next issue for consideration is whether we are bound to refer the parties to arbitration in terms of Section 45 of the Arbitration and Conciliation Act of 1996. The stand taken by the petitioners to advance their arguments that we should not refer the matter to arbitration is two fold. One is that as a specially constituted tribunal with wide powers to grant various reliefs to put an end to the acts complained of, to come before which, a statutory right has been conferred on shareholders, the CLB cannot abdicate its jurisdiction and confer the same on a private forum. The other ground is that a private forum namely in this case, the arbitrator, cannot grant the reliefs as sought for by the petitioners which can only be granted by us by virtue of the provisions of Section 402 of the Companies Act. Mr. Singh relied on a number of cases, which we have already indicated earlier, to state that, matters under Section 397/398 cannot be matters for arbitration. In all these cases, the issue that arose was whether a proceeding under Section 397/398 or proceedings for winding up could be stayed on account of either an agreement between the shareholders for referring the disputes to arbitration or by virtue of the provisions of the articles of association to that effect. It is well known that, to stay or not to stay the proceedings under Section 34 of the Arbitration Act, when a plea of arbitration is taken, was solely within the discretion of the court before which such a plea was taken. While in the cases cited by Shri Singh, the courts had refused to exercise their discretion to stay the proceedings, in the cases cited by Shri Sarkar, the courts exercised the discretion to stay the proceedings. However, after the coming into force of Arbitration and Conciliation Act, 1996, the legal position has changed, more particularly with reference to foreign arbitration. Now it is mandatory, by virtue of Section 45 of this Act, that a judicial body will have to refer the parties to arbitration once it is seized of an action in respect of which the parties have made an agreement for arbitration to which the convention in the First Schedule to the Act applies. (Foreign Arbitration.) The ingredients of this section are : a judicial authority should be seized of an action in the matter of which the parties have made an agreement for arbitration ; one of the parties should make a request for referring the parties to arbitration and that the judicial body does not find that the said agreement is null and void, inoperative or incapable of being performed. The CLB is a judicial authority and this fact is not controverted. It has been seized of a matter in which, as elaborated earlier, there is an agreement between the parties for arbitration. The petitioners did not advance any arguments to convince us that the agreement is null and void, inoperative or incapable of being performed. They have only taken a stand, in reply to the application, that, referring the matter to arbitration would be expensive, time consuming and would require transfer of documents from India to London for production as evidence. This stand, according to us, would not make the agreement inoperative or incapable of being performed. Thus, all the ingredients of Section 45 of the Arbitration and Conciliation Act, 1996, are present. Once it is so, we feel that there is no further scope for us to take into consideration the arguments of Shri Singh about the statutory rights of the shareholders to move the CLB, and that a specially constituted Tribunal cannot abdicate its jurisdiction, etc. We

have to do what the law mandates us to do. Section 45 requires us to refer the parties to arbitration and we have no discretion in this matter.

15. In this connection, we consider it relevant to refer to a decision of the Supreme Court on the purport of Section 45 of the Arbitration and Conciliation Act of 1996. In a petition filed before the CLB under Section 111, the issue of foreign arbitration agreement was raised and a prayer was sought for staying our proceedings under Section 34 of the Arbitration Act. Considering the facts and circumstances of that case, the Southern Bench of the Company Law Board declined to exercise its discretion to stay the proceedings. On an appeal, the Karnataka High Court upheld the decision of the Company Law Board. On an SLP filed before the Supreme Court, the Supreme Court directed the Company Law Board to refer the parties to arbitration in terms of Section 45 of the 1996 Act. It observed : "Without adverting to the correctness or otherwise of the decision of the High Court, it becomes otherwise plain that it has refused to interfere in the orders of the Company Law Board dated July 9, 1993, and the dispute is kept within the domain of the said Board for disposal. One of the questions which it is supposed to decide is about the title to the shares in dispute. While so, the Arbitration and Conciliation Ordinance, 1996, has appeared on the scene effective from January 25, 1996, which Ordinance before its lapse has been re-promulgated. Section 45 thereof enjoins a judicial authority (the Company Law Board being one such judicial authority) when requested by any one of the parties or any person claiming through or under him, where the parties have made an agreement referred to in Section 44, to refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed. Undisputedly, there exists an arbitration agreement between the parties whereby their disputes arising out of the contract would be referable to an arbitrator having his legal seat at Zurich, Switzerland, and to which disputes the substantive law of contract as prevalent in India would apply. The Company Law Board would thus be obliged to proceed in accordance with Section 45 and refer the parties to arbitration, because the agreement is neither null and void, nor inoperative or incapable of being performed. Incapability, of course, has not to be understood as being inconvenienced. When the parties enter into such agreement with open eyes they are presumed to have incurred on themselves the inconveniences inherent in the deal. Thus, only an application by any of the parties is required to be made which would set the judicial authority to act in the manner provided." (unreported order, Civil Appeal No. 7055 of 1996, dated April 10, 1996--SC). The above observation, in a way, answers the stand taken by Shri Singh.

16. Therefore, we conclude that the principal agreement still subsists and that the supplemental agreement has to be read as a part and parcel of the principal agreement which contains an arbitration clause and that the matter complained of in the petition before us has arisen out of and in connection with the said agreement and that there is nothing to show that the agreement is null and void, inoperative or incapable of being performed and that we are statutorily bound to refer the parties to arbitration in terms of Section 45 of the Arbitration and Conciliation Act, 1996.

17. Accordingly, we are disposing of this application by referring the parties to the London Court of International Arbitration in accordance with Clause 26.1 of the principal agreement entered into between the parties on October 14, 1996.

No order as to costs.