AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.26 of 2014

Order reserved on: 16-9-2016

Order delivered on: 11-11-2016

Jhansi-Orai Tollyway Pvt. Ltd., A Company incorporated under the provisions of the Companies Act, 1956 and having its registered office at G.E. Road, Pulgaon, Durg 491 001 (C.G.), Through its duly Authorised Representative and Director Surendra Rathi, S/o Shri Lalchandji Rathi, aged about 42 years, Occ.: Business, R/o A-16, Mahesh Nagar, Durg (C.G.)

---- Petitioner

Versus

1. Bank of India, Bhilai Mid Corporate Branch, Shop No.111, First Floor, Grace Plaza, Nehru Nagar Square, Bhilai, District Durg, Chhattisgarh, Through its Branch Manager.

2. Bank of Baroda, Padmanabhpur Branch, Patel Complex, Padmanabhpur, District Durg, Chhattisgarh, Through its Branch Manager.

3. National Highways Authority of India, An Authority constituted under the National Highways Authority of India Act, 1988, Having its Principal office at G-5 & 6, Sector-10, Dwarka, New Delhi – 110 075, Through its Chairman and having Unit Office at Project Director, National Highways Authority of India, House No.A-7, VIP Estate, Shankar Nagar, Raipur – 492 001.

---- Respondents

For Petitioner:	Mr. Prafull N. Bharat, Advocate.
For Respondent No.1:	Mr. Avinash Chand Sahu, Advocate.
For Respondent No.2:	None present.
For Respondent No.3:	Mrs. Fouzia Mirza & Mrs. Smita Jha, Advocates.

AND

Civil Revision No.21 of 2014

Bank of India, Bhilai Mid Corporate Branch, Shop No.111, First Floor, Grace Plaza, Nehru Nagar Square, Bhilai, District Durg, Chhattisgarh, Through its Assistant General Manager.

---- Applicant/
(Ori. Def. No.1)

Versus

1. Jhansi-Orai Tollyway Pvt. Ltd., A Company incorporated under the provisions of the Companies Act, 1956 and having its registered office at G.E. Road, Pulgaon, Durg 491 001 (C.G.), Through its duly Authorised Representative and Director Surendra Rathi, S/o Shri Lalchandji Rathi, aged about 42 years, Occ.: Business, R/o A-16, Mahesh Nagar, Durg (C.G.)

(Ori. Plaintiff)

2. Bank of Baroda, Padmanabhpur Branch, Patel Complex, Padmanabhpur, District Durg, Chhattisgarh, Through its Branch Manager.

(Ori. Def. No.2)

3. National Highways Authority of India, Through its Chairman, Having its Principal office at G-5 & 6, Sector-10, Dwarka, New Delhi – 110 075.

(Ori. Def. No.3)/
---- Respondents

For Petitioner:	Mr. Avinash Chand Sahu, Advocate.
For Respondent No.1:	Mr. Prafull N. Bharat, Advocate.
For Respondent No.2:	None present.
For Respondent No.3:	Mrs. Fouzia Mirza & Mrs. Smita Jha, Advocates.

Hon'ble Mr. Justice Sanjay K. Agrawal

O R D E R [C. A. V.]

1. Oppugning legality, validity and correctness of the order dated 10-2-2014 passed by the trial Court (judicial authority) in Civil Suit No.207-A/2013 by which that Court in exercise of power conferred under Section 8(1) of the Arbitration and Conciliation Act, 1996 (hereinafter called as the 'AC Act, 1996') relegated the parties to arbitration finding prima facie valid arbitration agreement existed between the parties and the dispute to be capable of settlement by arbitration, these two revision petitions have been preferred under Section 115 of the Code of Civil Procedure, 1908, one by the plaintiff and another by defendant

No.1 Bank stating the impugned order to be unsustainable in law.

[Parties will hereinafter be referred as per their status shown in the suit before the trial Court.]

2. Essential facts, shorn of all paraphernalia, requisite to adjudge the correctness of the order impugned are as under: -

3. The petitioner Jhansi-Orai Tollyway Pvt. Ltd. instituted a suit for declaration and injunction under Sections 27, 31 and 38 of the Specific Relief Act, 1963 read with Section 23 of the Indian Contract Act, 1872 stating inter alia that the petitioner / plaintiff is a company registered under the provisions of the Companies Act, 1956 and is a leading highway contractor engaged in construction of bridges, road works, fabrication, erection of steel structures, Railway works, sanitary and water supply. It has been further pleaded that defendant No.3 therein namely National Highways Authority of India (NHAI) had granted exclusive right, license and authority to operate and maintain Jhansi-Orai Section (Km 90.300 to Km 225.713) a stretch of National Highway-25 (Total Length 135.413 Km) in the State of Uttar Pradesh on Operation Management and Transfer (OMT) under Public Private Partnership (PPP) basis to the plaintiff for a period of nine years vide the Concession Agreement dated 5-2-2013. It was also pleaded that on 1-9-2012, as per clause 2.1.7 read with clause 2.1.8 of the Request for Proposal, the plaintiff obtained and submitted a Bank Guarantee for Bid

Security to the extent of Rs.5.10 crores from defendant No.1 Bank of India, Bhilai Mid Corporate Branch to defendant No.3. The Bank Guarantee was valid till 30-4-3013 and was subsequently extended up to 30-10-2013. It was further pleaded that on 9-11-2012, defendant No.3 NHAI sought consent of the plaintiff Company to confirm the acceptance of deletion of clause 14.7 from the Request for Proposal which relates to rectification of latent defects and ultimately, the plaintiff finding no option but to concede to the request of defendant No.3 to delete clause 14.7, by letter dated 16-11-2012 accepted the deletion of clause 14.7 from the RFP documents. It was finally pleaded that the act of deletion of said clause has rendered the entire contract as immoral and against the judicial conscience of the Court of law as it affects the basic structure of bidding and tendering process and therefore the contract on the basis thereof i.e. the Concession Contract dated 5-2-2013 is void and based upon fraud played upon the plaintiff. Finally, the plaintiff sought relief that the Concession Agreement dated 5-2-2013 entered into between the plaintiff and defendant No.3 is against law, void ab initio, against public policy and immoral and consequently, it be quashed and the plaintiff be released from the obligation of the Bank Guarantee dated 1-9-2012 issued by defendant No.1 in favour of defendant No.3, and further to hold and declare that defendant No.3 has no right to encash the Bid Security and

appropriate proceeds thereof. A decree be also passed for declaration in favour of the plaintiff and against defendant No.3 that defendant No.3 has played fraud on the plaintiff to grab Bid Security in the form of Bank Guarantee, and other reliefs were also sought.

4. Upon notice being served, defendant No.3 National Highways Authority of India (NHAI) filed an application under Section 8(1) of the AC Act, 1996 stating inter alia that Concession Agreement has been entered into between the plaintiff and defendant No.3 on 5-2-2013 and there is an arbitration agreement in the shape of clause 36.1 to 36.3 which is a valid, enforceable and binding contract between the parties and therefore the matter has to be referred to arbitration for resolving the dispute and also filed certified copy of the arbitration agreement before the trial Court (judicial authority) supported by the Manager (Technical), NHAI, PIU, Raipur.

5. The petitioner/plaintiff vehemently opposed the said application filed before the trial Court under Section 8(1) of the AC Act, 1996 by filing reply, stating inter alia that neither the original arbitration agreement has been filed before the trial Court nor a duly certified copy thereof has been filed and therefore Section 8(1) of the AC Act, 1996 cannot be invoked into. It was further pleaded that in the civil suit filed before the trial Court, the plaintiff seeks declaration that the Concession Agreement dated 5-2-2013 is null and void and the suit has been filed

under Section 23 of the Indian Contract Act, 1872 and therefore the relief claimed in the suit cannot be granted in the arbitration proceeding being non-arbitrable dispute. It was also pleaded that the arbitration agreement cannot be invoked into in absence of conciliation as enumerated in clause 36.2 of the Concession Agreement and the relief claimed cannot be granted by the Arbitrator.

6. The trial Court by its impugned order exercising the powers conferred under Section 8(1) of the AC Act, 1996, allowed the application and relegated the parties to the Concession Agreement to arbitration holding that valid and enforceable arbitration agreement exists between them and dispute between the parties is an arbitrable dispute and it can be settled by arbitration.

7. As stated in the opening paragraph, feeling aggrieved against the order referring the matter to arbitration under Section 8(1) of the AC Act, 1996, Civil Revision No.26/2014 under Section 115 of the Code of Civil Procedure, 1908 has been filed before this Court by the petitioner Company as well as by Bank of India – defendant No.1 being Civil Revision No.21/2014 challenging the same impugned order to be unsustainable in law.

8. Since common question of fact and law is involved in both the revisions, they were taken up and heard together and are being disposed of by this common order.

9. Mr. Prafull N. Bharat, learned counsel appearing for the plaintiff/ petitioner in C.R.No.26/2014, would vehemently submit that defendant No.3 NHAI failed to file the original arbitration agreement/Concession Agreement dated 5-2-2013 or a duly certified copy thereof before the trial Court which is *sine qua non* for invoking Section 8 of the AC Act, 1996. Elaborating his submission, he would submit that certified copy alleged to have been filed by defendant No.3 is allegedly certified by the Manager (Technical), NHAI, who was not competent to certify the copy of arbitration agreement to be the copy of the original arbitration agreement. It was also stated in the application filed under Section 8(1) of the AC Act, 1996 that there was no such plea that the arbitration agreement existed between the parties and there is no averment in the application that defendant No.3 has filed either the original arbitration agreement or the duly certified copy thereof to invoke the jurisdiction of this Court under Section 8(1) of the said Act. He would also submit that Section 8(1) of the AC Act, 1996 is mandatory in nature and in absence of original agreement or duly certified copy thereof, the application under Section 8(1) of the AC Act, 1996 ought to have been rejected by the trial Court/judicial authority. He placed reliance on the decisions of the Supreme Court in the matters of **P. Anand Gajapathi Raju and others v. P.V.G. Raju (Dead) and others**[1], **Atul Singh & Ors. v. Sunil Kumar**

1 (2000) 4 SCC 539

Singh & Ors.[2] and **N. Radhakrishnan v. Maestro Engineers and others**[3].

10. Arguing further; Mr. Bharat, learned counsel, would submit that the civil suit has been filed under Section 23 of the Indian Contract Act, 1872 seeking declaration that the entire Concession Agreement dated 5-2-2013 is null and void as deletion of clause 14.7 from the Request for Proposal itself was illegal rendering the entire contract void and against the public policy and immoral, therefore such a suit is only triable by the civil court and such relief as claimed in the suit can be granted only by the trial Court/judicial authority, as fraud has been played in deleting clause 14.7 of the Concession Agreement, as such complicated and serious issue of fraud is required to be determined, which can be adjudicated only by a civil court by recording evidence of the parties and such dispute is non-arbitrable and is not capable of settlement by way of arbitration. He would further submit that clause 36.3 which is arbitration clause cannot be invoked into in absence of proceeding for conciliation between the parties, as conciliation is the condition precedent for invoking arbitration clause i.e. clause 36.3 and therefore the order passed by the trial Court deserves to be set aside. He further placed reliance in the matters of **Khardah Company Ltd. v. Raymon & Co. (India) Private Ltd.**[4], **Booz**

2 AIR 2008 SC 1016
3 (2010) 1 SCC 72
4 AIR 1962 SC 1810

Allen and Hamilton Inc. v. SBI Home Finance Limited and others[5], **Sukanya Holdings Pvt. Ltd. v. Jayesh H. Pandya and another**[6] and **Haryana Telecom Ltd. v. Sterlite Industries (India) Ltd.**[7].

11. Countering and replying the submissions made by Mr. Prafull N. Bharat, Mrs. Fouzia Mirza, learned counsel appearing for defendant No.3/respondent No.3 NHAI, would submit that the Concession Agreement along with the arbitration agreement is duly certified by the Manager (Technical), NHAI to be the certified copy of the arbitration agreement and it is certified copy within the meaning of Section 76 of the Indian Evidence Act, as the Manager (Technical), NHAI was duly authorized by the Project Director of NHAI to swear the affidavit and file the documents. She would further submit that the provision of conciliation would not apply as the plaintiff himself has instituted the civil suit for declaring the Concession Agreement to be void and if defendant No.3 is allowed to go for conciliation by seeking adjournment in the suit then the right to file application under Section 8(1) of the AC Act, 1996 would lapse and he would be deprived to file application under Section 8(1) of the AC Act, 1996 causing failure of justice and is violative of Section 77 of the AC Act, 1996. She would also submit that clause 14.7 has already been deleted from the Request for

5 (2011) 5 SCC 532
6 AIR 2003 SC 2252
7 (1999) 5 SCC 688

Proposal prior to execution of Concession Agreement dated 5-2-2013 therefore, validity of the concession agreement, if any, arises after deletion of said clause can very well be adjudicated by way of arbitration and particularly, in view of Section 16 of the AC Act 1996. She would finally submit that there is no such requirement of pleading about filing of certified copy of the arbitration agreement along with the application under Section 8(1) of the AC Act, 1996 and therefore, bifurcation of cause of action is not permissible. She placed reliance upon the decision of the Supreme Court in **Sukanya Holdings Pvt. Ltd.** (supra) and submitted that the revision petition deserves to be dismissed with cost(s).

12. Mr. Avinash Chand Sahu, learned counsel appearing for defendant No.1 Bank of India / petitioner in C.R.No.21/2014, would submit that Bank of India is not party in the arbitration agreement and therefore Bank of India cannot be relegated to arbitration. Therefore, it be directed that Bank of India is not required to join to arbitration. He placed reliance upon the decision of the Supreme Court in the matter of **Sandeep Kumar and others v. Master Ritesh and others**[8].

13. Mrs. Fouzia Mirza, learned counsel for the defendant NHAI, while replying the submission made on behalf of Bank of India in C.R.No.21/2014, would submit that the trial Court has not directed Bank of India to go for arbitration, as such, Bank of

8 (2006) 13 SCC 567

India be excluded from joining arbitration as the trial Court has only directed the parties to the arbitration agreement to go for arbitration to resolve their dispute by way of arbitration as such, the revision petition deserves to be dismissed.

14. I have heard learned counsel for the parties and considered their rival submissions made therein cautiously and carefully and also gone through the records with utmost circumspection.

15. After hearing learned counsel for the parties, following questions would arise for consideration: -

1. Whether the judicial authority (trial Court) is justified in holding that defendant No.3 NHAI had accompanied the certified copy of the original arbitration agreement along with the application filed under sub-section (1) of Section 8 of the AC Act, 1996?

2. (A) Whether the provision for conciliation as contained in clause 36.2 of the Concession Agreement is directory / mandatory?

   (B) Whether the judicial authority is justified in holding that the subject matter of suit / action is the same as that of the arbitration agreement and dispute is arbitrable by arbitration?

Consideration to question No.1: -

16. The defendant NHAI on the date of submitting its first statement on substances of the dispute filed an application under sub-

section (1) of Section 8 of the AC Act, 1996 stating inter alia that the Concession Agreement has been executed between the plaintiff and the NHAI on 5-2-2013 and there is a valid and binding arbitration agreement between the parties in terms of clauses 36.1 to 36.3 and therefore the dispute, if any, brought by the plaintiff has to be adjudicated in terms of arbitration agreement entered into between the parties and the suit as framed and filed is beyond the jurisdiction of the Court and as such, the dispute is arbitral dispute and is required to be referred to arbitration. The application was supported by an affidavit filed by Shri Savyasachi Chaudhary who is Project Director of NHAI. The defendant NHAI also filed certified copy of the Concession Agreement certifying it by putting the seal of NHAI on each page of the copy signed by the Manager (Technical), NHAI, which also includes the arbitration agreement. The plaintiff filed its reply to the said application apart from opposing the merits of the matter as also submitted that the application is not accompanied by the original arbitration agreement or duly certified copy thereof, as the defendant has failed to comply with it. The judicial authority (trial Court) by its impugned order did not accept the plea of the petitioner / plaintiff and overruled the plea holding that along with the application the Concession Agreement, which has been duly certified copy putting the seal of NHAI on each page of the copy and signed by the Manager (Technical), NHAI, PIU,

has been filed which is sufficient compliance as per Section 8(2) of the AC Act, 1996.

17. Mr. Prafull N. Bharat, learned counsel appearing for the petitioner, would submit that the copy filed with the seal and signature of the Manager (Technical) and seal of NHAI on each page of the copy cannot be said to be the duly certified copy of the arbitration agreement, therefore, the application deserves to be rejected as Section 8(2) of the AC Act, 1996 is imperative in nature.

18. In order to decide the dispute raised on behalf of the plaintiff / petitioner, it would be appropriate to reproduce Section 8(2) of the AC Act, 1996 (unamended), which states as under: -

> "(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."

19. A careful perusal of sub-section (2) of Section 8 of the AC Act, 1996 would show that application under Section 8(1) of the AC Act, 1996 would not be entertainable and maintainable unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

20. The Supreme Court in **Atul Singh** (supra) has clearly held that application under Section 8(1) of the AC Act, 1996 must be accompanied by original arbitration agreement or duly certified copy thereof and failure of the applicant to file original arbitration agreement or duly certified copy thereof amounts to

non-compliance of mandatory provision of sub-section (2) of Section 8 of the AC Act, 1996 and dispute could not referred to arbitration. The Supreme Court has observed in para 10 as under: -

> "..... There is no whisper in the petition dated 28.2.2005 that the original arbitration agreement or a duly certified copy thereof is being filed along with the application. Therefore, there was a clear non-compliance of sub-section (2) of Section 8 of 1996 Act which is a mandatory provision and the dispute could not have been referred to arbitration. Learned counsel for the respondent has submitted that a copy of the partnership deed was on the record of the case. However, in order to satisfy the requirement of sub-section (2) of Section 8 of the Act, defendant No.3 should have filed the original arbitration agreement or a duly certified copy thereof along with the petition filed by him on 28.2.2005, which he did not do. Therefore, no order for referring the dispute to arbitration could have been passed in the suit."

21. Similar is the proposition laid down by the Supreme Court in **N. Radhakrishnan** (supra) in which the Supreme Court has clearly held that Section 8(2) of the AC Act, 1996 is mandatory in nature and thereby filing of original arbitration agreement is imperative and the judicial authority is not empowered to refer parties to arbitration if procedural requirement of filing arbitration agreement as contained in Section 8(2) is not complied with. The Supreme Court succinctly laid down as under: -

> "29. ..... Since the original deed was not filed within the requirement of Section 8(2) of the Act, it must be held that the mandatory requirement under the Act had not been complied with. Accordingly, even if we accept the factum of a dispute relating to

> the retirement of the appellant under the original deed dated 7-4-2003, still the Court would not be empowered to refer the matter to an arbitrator due to the non-compliance with the provisions mentioned under Section 8(2) of the Act."

22. Thus, from the perusal of Section 8(2) of the AC Act, 1996, as considered by the Supreme Court in **Atul Singh** (supra) and **N. Radhakrishnan** (supra), there is not an iota of doubt that the provision contained in Section 8(2) is mandatory in nature and non-filing of same would entail the rejection of application under Section 8(1) notwithstanding the subsistence of arbitral dispute between the parties and the judicial authority is powerless to refer the parties to arbitration for want of compliance of Section 8(2) of the AC Act, 1996.

23. Aforesaid judicially crystallized view would take me to the facts of the present case. In the case in hand, the respondent defendant No.3 NHAI filed an application under Section 8(1) of the AC Act, 1996 and also filed certified copy of the Concession Agreement which includes arbitration agreement with the seal of NHAI duly signed by the Manager (Technical) on each page of the Concession Agreement. The trial Court has accepted the said copy to be the duly certified copy in terms of Section 8(2) of the AC Act, 1996.

24. Vehement submission of Mr. Bharat is that since the Manager (Technical) was not authorized by the NHAI to certify the copy as certified copy of the agreement, he was not competent to certify the arbitration agreement and the copy filed by his seal

and signature cannot be said to be duly certified copy thereof and therefore the trial Court is absolutely unjustified in holding the said copy to be certified copy of the arbitration agreement.

25. The argument of Mr. Bharat ignores the fact that sub-section (2) of Section 8 of the AC Act, 1996 nowhere defines as to who will be the certifying officer to certify the copy to be the certified copy of the original arbitration agreement. In the case in hand, the Manager (Technical) of NHAI has certified the copy of the arbitration agreement to be certified copy by putting his seal and signature on the photocopy of the original arbitration agreement which has been accepted by the trial Court.

26. It is not the objection and the case of the petitioner herein / plaintiff that the copies which have been filed duly certified by the Manager (Technical), NHAI are not the correct copies of the original arbitration agreement, not a whisper has been made either in the return reply filed before the judicial authority nor before this Court to substantiate his plea that it is not the correct copy of the original arbitration agreement. Only for the sake of plea to non-suit the NHAI, such a plea has been made relying upon the decision of the Himachal Pradesh High Court in the matter of **M/s. Shobit Construction and another etc. v. M/s. T.K. International Ltd.**[9] in which neither the duly certified copy was filed nor the original arbitration agreement was filed, whereas in the matter of **Bharat Sewa Sansthan v. U.P.**

9 AIR 2006 HP 4

Electronic Corpn. Ltd.[10], the Supreme Court has held that photo copies of original agreement could be admitted on record when both lessor and lessee are denying possession of original.

27. In the case in hand, copy of the arbitration agreement certified under the seal and signature of the Manager (Technical), NHAI, has been filed in absence of certifying authority statutorily provided in the AC Act, 1996 as to who will be the certifying officer. The copy submitted to be the duly certified copy under the seal and signature of the Manager (Technical), NHAI cannot be held to be non-compliance of Section 8 (2) of the AC Act, 1996, as the petitioner has failed to show that the agreement which has been filed before the trial Court (judicial authority) is different than the agreement relied upon by the other side and in such a situation, the case of **Bharat Sewa Sansthan** (supra) would come to the rescue of the NHAI to the effect where the opposite party is not disputing the copy filed to be the correct copy. Therefore, it cannot be held that the trial Court is unjustified in holding that the defendant NHAI has complied with sub-section (2) of Section 8 of the AC Act, 1996 and the substantial compliance has been made to the said provision, as such, the argument raised on behalf of the petitioner is hereby rejected.

Answer to question No.2(A): -

10 AIR 2007 SC 2961

2(A) Whether the provision for conciliation as contained in clause 36.2 of the Concession Agreement is directory or mandatory?

28. In order to answer the above-stated question, it would be appropriate to notice and reproduce the conciliation provision contained in the contract agreement. Clause 36 of the Concession Agreement provides for Dispute Resolution which includes Conciliation and Arbitration.

"36.1 Dispute resolution

36.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or, in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 36.2.

36.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

36.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the Chairman of the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 days (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If

> such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 36.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 36.3.
>
> **36.3 Arbitration** --- (quoted hereinafter)"

29. The question, in short, would be, whether prior requirement of conciliation before seeking reference of dispute to the arbitration is directory or mandatory. Section 8(1) of the AC Act, 1996 mandates a party to apply to the judicial authority not later than when submitting his first statement on the substance of the dispute for referring such a dispute to the arbitration and if the provision for conciliation is held to be mandatory, same would result in serious and grave prejudice to a party who is seeking to invoke arbitration clause as the time consumed in conciliation proceeding is not excludable either under the contract or under the Limitation Act including Section 14 of the Act of 1963; once notice / summon is served to the defendant / party to arbitration agreement, he has to apply under Section 8 of the AC Act, 1996 to the judicial authority for referring the matter to arbitration while submitting his first statement on the substance of the dispute, and if it is not applied the plea that the dispute is capable of settlement by arbitration would go and in substance, would close his right to invoke arbitration clause.

30. Section 77 of the AC Act, 1996 provides that in spite of the conciliation proceedings going-on, the existence of same will not prevent any of the parties to exercise its rights in accordance with law. Section 77 of the AC Act, 1996 provides as under: -

> "**77. Resort to arbitral or judicial proceedings**.- The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject-matter of the conciliation proceedings except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights."

31. A careful reading of Section 77 of the AC Act, 1996 provides that a party to arbitration agreement is entitled to initiate arbitral proceeding, it is necessary for preserving his right. Section 8 of the AC Act, 1996 has to be invoked by a party on receipt of notice / summon from the judicial authority at the first available opportunity while filing his statement for getting the suit dismissed and referring the matter to arbitration failing which his right to make request to the judicial authority for referring the dispute to arbitration would go as such, invocation of Section 8 of the AC Act, 1996 are the proceeding which are necessary to preserve right of getting the disputes decided by arbitration.

32. Accordingly, it is held that existence of conciliation provision would not be a bar in seeking to file proceeding for reference of matter to arbitration, which is necessary for preserving right as provided under Section 77 of the AC Act, 1996 and the

application filed under Section 8 of the AC Act, 1996 which is necessary for preserving rights under Section 77 of the AC Act, 1996 cannot be rejected on the ground of existence of conciliation provision or non-compliance of conciliation provision. The question is answered accordingly.

Answer to question No.2(B): -

> 2(B) Whether the judicial authority is justified in holding that the subject matter of suit / action is the same as that of the arbitration agreement and dispute is arbitrable by arbitration?

33. Determination of above-stated questions would bring me to the next question whether the judicial authority (trial Court) is justified in referring the dispute to arbitration invoking Section 8(1) of the AC Act, 1996.

34. In order to decide the dispute, it is appropriate to notice sub-section (1) of Section 8 of the AC Act, 1996 (unamended) which states as under: -

> "**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."

35. Section 8(1) of the AC Act, 1996 (unamended) has been considered judicially by Their Lordships of the Supreme Court in umpteen number of judgments. However, it would be

profitable to notice some of them gainfully herein. Sub-section (1) of Section 8 of the AC Act, 1996 came up for consideration before the Supreme Court in **P. Anand Gajapathi Raju** (supra) in which Their Lordships of the Supreme Court have held that four conditions are required to be satisfied under Sections 8(1) and 8(2) of the AC Act, 1996 before the court can exercise its powers, and categorized the conditions as under: -

> "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. ....."

36. Their Lordships further held that the language of Section 8 is peremptory and it is obligatory for the Court to refer the parties to arbitration in terms of their arbitration agreement. The Supreme Court further held as under: -

> "8. In the matter before us, the arbitration agreement covers all the disputes between the parties in the proceedings before us and even more than that. As already noted, the arbitration agreement satisfies the requirements of Section 7 of the new Act. The language of Section 8 is peremptory. It is, therefore, obligatory for the Court to refer the parties to arbitration in terms of their arbitration agreement. Nothing remains to be decided in the original action or the appeal arising therefrom. There is no question of stay of the

> proceedings till the arbitration proceedings conclude and the award becomes final in terms of the provisions of the new Act. All the rights, obligations and remedies of the parties would now be governed by the new Act including the right to challenge the award. The court to which the party shall have recourse to challenge the award would be the court as defined in clause (e) of Section 2 of the new Act and not the court to which an application under Section 8 of the new Act is made. An application before a court under Section 8 merely brings to the court's notice that the subject-matter of the action before it is the subject-matter of an arbitration agreement. This would not be such an application as contemplated under Section 42 of the Act as the court trying the action may or may not have had jurisdiction to try the suit to start with or be the competent court within the meaning of Section 2 (e) of the new Act."

37. Similarly, in the matter of **Hindustan Petroleum Corpn. Ltd. v. Pinkcity Midway Petroleums**[11], the Supreme Court has considered the principle of law laid down in **P. Anand Gajapathi Raju** (supra) and reiterated that Section 8 of the AC Act, 1996 is mandatory in nature and further held that in cases where there is an arbitration clause in the agreement, it is obligatory for the court to refer the parties to arbitration in terms of their arbitration agreement and held as under:

> "14. This Court in the case of P. Anand Gajapathi Raju v. P.V.G. Raju [(2000) 4 SCC 539] has held that the language of Section 8 is peremptory in nature. Therefore, in cases where there is an arbitration clause in the agreement, it is obligatory for the court to refer the parties to arbitration in terms of their arbitration agreement and nothing remains to be decided in the original action after such an application is made except to refer the dispute to an arbitrator. Therefore, it is clear that if, as contended by a party in an agreement between the parties before the civil court, there is a clause

11 (2003) 6 SCC 503

> for arbitration, it is mandatory for the civil court to refer the dispute to an arbitrator. In the instant case the existence of an arbitral clause in the Agreement is accepted by both the parties as also by the courts below but the applicability thereof is disputed by the respondent and the said dispute is accepted by the courts below. Be that as it may, at the cost of repetition, we may again state that the existence of the arbitration clause is admitted. If that be so, in view of the mandatory language of Section 8 of the Act, the courts below ought to have referred the dispute to arbitration."

38. Similar is the proposition of law laid down by the Supreme Court in the matter of **Agri Gold Exims Ltd. v. Sri Lakshmi Knits & Wovens and others**[12].

39. Thereafter, in the matter of **Branch Manager, Magma Leasing and Finance Limited and another v. Potluri Madhavilata and another**[13], Their Lordships of the Supreme Court have held that Section 8 of the AC Act, 1996 is in the form of legislative command to the court and once the prerequisite conditions are satisfied, the court must refer the parties to arbitration. On fulfillment of the conditions of Section 8, no option is left to the court and the court has to refer the parties to arbitration. The Supreme Court has observed as follows: -

> "17. ..... An analysis of Section 8 would show that for its applicability, the following conditions must be satisfied:
>
> (a) that there exists an arbitration agreement;
>
> (b) that action has been brought to the court by one party to the arbitration agreement against the other party;

12 (2007) 3 SCC 686
13 (2009) 10 SCC 103

(c) that the subject-matter of the suit is same as the subject-matter of the arbitration agreement;

(d) that the other party before he submits his first statement of the substance of the dispute, moves the court for referring the parties to arbitration; and

(e) that along with the application the other party tenders the original arbitration agreement or duly certified copy thereof.

18. Section 8 is in the form of legislative command to the court and once the prerequisite conditions as aforestated are satisfied, the court must refer the parties to arbitration. As a matter of fact, on fulfillment of the conditions of Section 8, no option is left to the court and the court has to refer the parties to arbitration. There is nothing on record that the prerequisite conditions of Section 8 are not fully satisfied in the present case. The trial court, in the circumstances, ought to have referred the parties to arbitration as per arbitration Clause 22."

40. Very recently, in the matter of **M/s. Sundaram Finance Limited and Anr. v. T. Thankam**[14], Their Lordships of the Supreme Court have noticed the earlier decisions in **P. Anand Gajapathi Raju** (supra), **Branch Manager, Magma Leasing and Finance Limited** (supra) and **Sukanya Holdings Pvt. Ltd.** (supra) and held that once there is an agreement between the parties to refer the disputes or differences arising out of the agreement to arbitration, and in case either party, ignoring the terms of the agreement, approaches the civil court and the other party, in terms of the Section 8 of the AC Act, 1996, moves the court for referring the parties to arbitration before the first statement on the substance of the dispute is filed, in view

14 AIR 2015 SC 1303

of the peremptory language of Section 8 of the AC Act, 1996, it is obligatory for the court to refer the parties to arbitration in terms of the agreement, and held as under in paragraphs 13 and 15: -

> “13. The attempt of the trial court and the approach made by the High Court in bifurcating the cause of action, is fallacious. It would only lead to delaying and complicating the process. The said issue is also no more res integra. In Sukanya Holdings (P) Limited v. Jayesh Pandya and another [(2003) 5 SCC 531 : (AIR 2003 SC 2252 : 2003 AIR SCW 2209)] at paragraphs-16 and 17, it was held as follows:
>
> "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.
>
> 17. Secondly, such bifurcation of suit in two parts, one to be decided by the Arbitral Tribunal and the other to be decided by the civil court would inevitably delay the proceedings. The whole purpose of speedy disposal of dispute and decreasing the cost of litigation would be frustrated by such procedure. It would also increase the cost of litigation and harassment to the parties and on occasions there is possibility of conflicting

judgments and orders by two different forums."

15. Once an application in due compliance of Section 8 of the Arbitration Act is filed, the approach of the Civil Court should be not to see whether the court has jurisdiction. It should be to see whether its jurisdiction has been ousted. There is a lot of difference between the two approaches. Once it is brought to the notice of the court that its jurisdiction has been taken away in terms of the procedure prescribed under a special statue, the Civil Court should first see whether there is ouster of jurisdiction in terms or compliance of the procedure under the special statute. The general law should yield to the special law-*generalia specialibus non derogant*. In such a situation, the approach shall not be to see whether there is still jurisdiction in the Civil Court under the general law. Such approaches would only delay the resolution of disputes and complicate the redressal of grievance and of course unnecessarily increase the pendency in the court."

41. On a conspectus of the above-stated judgments of the Supreme Court, it is pellucid that Section 8 of the AC Act, 1996 (unamended) is imperative in nature and in case where there is an arbitration clause in the agreement, it is obligatory for the judicial authority necessarily to refer the parties to arbitration in terms of their arbitration agreement and the said reference is a must and there is no discretion left with the judicial authority once the conditions precedent necessary for exercise of power under Section 8(1) of the AC Act, 1996 is fulfilled as held in the above-stated judgments.

42. The above-stated crystallized judicial view would bring me to the next question whether the judicial authority is justified in invoking Section 8(1) of the AC Act, 1996 in this case.

43. For the sake of repetition, it would be appropriate to notice the conditions precedent of Section 8(1) of the AC Act, 1996 at this stage also which is as follows: -

(1) there should be an arbitration agreement;

(2) action has been brought to the court by one party to the arbitration agreement against the other party;

(3) the subject-matter of the suit is same as the subject-matter of the arbitration agreement;

(4) the other party before he submits his first statement of the substance of the dispute, moves the court for referring the parties to arbitration; and

(5) along with the application the other party tenders the original arbitration agreement or duly certified copy thereof.

44. In the case in hand, the dispute as to non-filing of duly certified copy of arbitration agreement has been taken note of and it has been held in preceding paragraphs that duly certified copy was filed by the defendant No.3 / respondent No.3 herein before the judicial authority. It is not in dispute that the Concession Agreement contains an arbitration agreement and it is also not in dispute that civil suit has been filed by the petitioner against the defendant and both the parties are party to the arbitration agreement. It is also not in dispute that defendant No.3, on the first date of hearing, has moved an application under Section 8(1) of the AC Act, 1996 for referring the dispute to arbitration holding the dispute to be arbitral dispute. But the main dispute raised by the petitioner herein i.e. the dispute pleaded and

raised in the suit is not the subject-matter of arbitration agreement in other words, arbitrability of the dispute is the main issue raised before the judicial authority as well as before this Court.

45. The judicial authority / trial Court has held that the dispute raised in the suit is arbitrable dispute and it is capable of settlement by arbitration and granted application under Section 8(1) of the AC Act, 1996 which has been assailed before this Court in this revision.

46. At this stage, it would be appropriate to notice the suit filed by the plaintiff / petitioner.

47. The petitioner / plaintiff entered into a Concession Agreement with the NHAI – defendant No.3 and by that agreement, the NHAI had granted exclusive right, license and authority to operate and maintain Jhansi-Orai Section (Km 90.300 to Km 225.713) stretch of National Highway-25 (Total Length 135.413 Km) in the State of Uttar Pradesh on Operation Management and Transfer (OMT) under Public Private Partnership (PPP) basis for a period of nine years vide the Concession Agreement dated 5-2-2013. It was pleaded in the plaint that on 1-9-2012, as per clause 2.1.7 read with clause 2.1.8 of the Request for Proposal, the plaintiff obtained and submitted a Bank Guarantee for Bid Security to the extent of Rs.5.10 crores from defendant No.1 Bank of India, Bhilai Mid Corporate Branch to

defendant No.3. The Bank Guarantee was valid till 30-4-3013 and was subsequently extended up to 30-10-2013. It was further pleaded that on 9-11-2012, defendant No.3 NHAI sought consent of the plaintiff Company to confirm the acceptance of deletion of clause 14.7 from the Request for Proposal which relates to rectification of latent defects and ultimately, the plaintiff finding no option but to concede to the request of defendant No.3 to delete clause 14.7, by letter dated 16-11-2012 accepted the deletion of clause 14.7 from the RFP documents. It was also pleaded that the act of deletion of said clause has rendered the entire contract as immoral and against the judicial conscience of the Court of law as it affects the basic structure of bidding and tendering process and therefore the contract on the basis thereof i.e. the Concession Contract dated 5-2-2013 is void and based upon fraud played upon the plaintiff. Ultimately, the plaintiff sought relief that the Concession Agreement dated 5-2-2013 entered between the plaintiff and defendant No.3 is against law, void ab initio, against public policy and immoral and consequently, it be quashed and the plaintiff be released from the obligation of the Bank Guarantee dated 1-9-2012 issued by defendant No.1 in favour of defendant No.3, and further to hold and declare that defendant No.3 has no right to encash the Bid Security and appropriate proceeds thereof. A decree be also passed for declaration in favour of the plaintiff and against defendant No.3 that defendant

No.3 has played fraud on the plaintiff to garb Bid Security in the form of Bank Guarantee, and other reliefs were also sought.

48. Whereas in the application filed under Section 8(1) of the AC Act, 1996, it has been stated that the Concession Agreement has been entered into between the plaintiff and defendant No.3 on 5-2-2013 and there is an arbitration agreement in the shape of clause 36.1 to 36.3 which is a valid and binding contract between the parties and therefore the matter has to be referred to arbitration for resolving the dispute and also filed certified copy of the arbitration agreement before the trial Court supported by Manager (Technical), NHAI, PIU, Raipur.

49. Thus, in the instant case, there is an issue of arbitrability of dispute between the parties as to whether the dispute as raised in the suit is capable of being settled by way of arbitration or it has to be adjudicated by civil court.

50. In order to resolve the dispute of arbitrability between the parties, it would be appropriate to notice the judgment rendered by the Supreme Court in the matter of **Booz Allen and Hamilton Inc.** (supra). In that case, the Supreme Court considered the issue of arbitrability as arises in the context of application under Section 8 of the AC Act, 1996 in the pending suit and it has been held that the term “arbitrability” has different meanings in different contexts. The Supreme Court has delineated the three facets of arbitrability, relating to the

jurisdiction of the Arbitral Tribunal which are as under: -

(i) *Whether the disputes are capable of adjudication and settlement by arbitration?* That is, whether the disputes, having regard to their nature, could be resolved by a private forum chosen by the parties (the Arbitral Tribunal) or whether they would exclusively fall within the domain of public fora (courts).

(ii) *Whether the disputes are covered by the arbitration agreement?* That is, whether the disputes are enumerated or described in the arbitration agreement as matters to be decided by arbitration or whether the disputes fall under the "excepted matters" excluded from the purview of the arbitration agreement.

(iii) *Whether the parties have referred the disputes to arbitration?* That is, whether the disputes fall under the scope of the submission to the Arbitral Tribunal, or whether they do not arise out of the statement of claim and the counterclaim filed before the Arbitral Tribunal. A dispute, even if it is capable of being decided by arbitration and falling within the scope of arbitration agreement, will not be "arbitrable" if it is not enumerated in the joint list of disputes referred to arbitration, or in the absence of such joint list of disputes, does not form part of the disputes raised in the pleadings before the Arbitral Tribunal.

51. This Court is concerned with the first facet of the arbitrability of dispute as to whether the dispute raised by way of civil suit by the petitioner / plaintiff is a non-arbitrable dispute and exclusively triable by the courts or it is capable of settlement by arbitration.

52. Their Lordships in **Booz Allen and Hamilton Inc.** (supra) held that generally 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. It was succinctly crystallized as under: -

> "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 a 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.
>
> 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."

53. In **Booz Allen and Hamilton Inc.** (supra) ultimately, Their Lordships have delineated six categories of disputes to be non-arbitrable which are as under: -

"36. The well-recognised examples of non-arbitral 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 of 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."

54. In the matter of **Vimal Kishor Shah and others v. Jayesh Dinesh Shah and others**[15], the Supreme Court carved out a seventh category of case to the non-arbitrable category and

15 AIR 2016 SC 3889

added to the sixth category set-out in **Booz Allen and Hamilton Inc.** (supra) namely dispute relating to trust, trustees, and beneficiaries arising out of a trust deed and the Trust Act. Relevant paragraph of the report states as under: -

> "62. We thus add one more category of cases, i.e., category (vii), namely, cases arising out of Trust Deed and the Trust Act, in the list of (vi) categories of cases specified by this Court in Para 36 at page 547 of the decision recorded in the case of Booz Allen & Hamilton Inc. (AIR 2011 SC 2507) (supra) which as held above cannot be decided by the arbitrator(s)."

55. The short question that emanates for consideration is whether the fraud / allegations of fraud would constitute another category where the dispute is to be treated as non-arbitrable and to be adjudicated by civil court alone (public fora) and incapable of settlement by arbitration.

56. Mr. Prafull Bharat, learned counsel for the petitioner / plaintiff relying upon the decision of the Supreme Court in **N. Radhakrishnan** (supra), would submit that in the present case, complicated question relating to deletion of certain clause in the agreement has been raised which is beyond the purview of arbitration and therefore, the matter cannot be referred to arbitration as the plaintiff / petitioner has also sought relief that the Concession Agreement be declared null and void under Section 23 of the Indian Contract Act, 1872. He would further submit that in **N. Radhakrishnan** (supra), it has been held that complicated matter involving various questions and issues

requires detailed investigations and production of elaborate evidence and must be tried by a civil court.

57. On the other hand, Mrs. Fouzia Mirza, learned counsel appearing for the NHAI, relying upon the matter of **Swiss Timing Limited v. Commonwealth Games 2010 Organising Committee**[16], would submit that even if the contract is null and void, the arbitration agreement would exist independently and the matter can be referred to arbitration invoking Section 8 of the AC Act, 1996.

58. The Supreme Court in **N. Radhakrishnan** (supra) while considering the matter held that considering the serious allegations against the respondent of manipulation and malpractice in relation to the partnership, the case may not be properly dealt with by the arbitrator and it ought to be settled by the court through detailed evidence led by the parties following the decision of the Supreme Court in the matter of **Abdul Kadir Shamsuddin Bubere v. Madhav Prabhakar Oak**[17].

59. The question whether the allegations of fraud would constitute another category where dispute is to be held to be non-arbitrable incapable of settlement by arbitration, came to be considered very recently before the Supreme Court in the matter of **A. Ayyasamy v. A. Paramasivam and others**[18] and Their Lordships have clearly held that the AC Act, 1996 does

16 (2014) 6 SCC 677
17 AIR 1962 SC 406
18 AIR 2016 SC 4675

not make any provision excluding any category of disputes treating them as non-arbitrable, but further held that certain kinds of disputes may not be capable of adjudication through the means of arbitration, and also held that fraud is one such category spelled out by the judgment where disputes would be considered as non-arbitrable. Relevant portion of the report condensely states as under: -

> "13. When the case involves serious allegations of fraud, the dicta contained in the aforesaid judgments would be understandable. However, at the same time, mere allegation of fraud in the pleadings by one party against the other cannot be a ground to hold that the matter is incapable of settlement by arbitration and should be decided by the civil court. The allegations of fraud should be such that not only these allegations are serious that in normal course these may even constitute criminal offence, they are also complex in nature and the decision on these issues demand extensive evidence for which civil court should appear to be more appropriate forum than the Arbitral Tribunal. Otherwise, it may become a convenient mode of avoiding the process of arbitration by simply using the device of making allegations of fraud and pleading that issue of fraud needs to be decided by the civil court. The judgment in **N. Radhakrishnan** does not touch upon this aspect and said decision is rendered after finding that allegations of fraud were of serious nature."

60. Their Lordships in **A. Ayyasamy** (supra) further took cognizance of the 246th Law Commission Report and clearly reached to the conclusion that where there are allegations of fraud simplicitor and allegations are merely alleged, the effect of the arbitration agreement cannot be nullified. Paragraph 18 of the report states as under:-

> "18. A perusal of the aforesaid two paragraphs brings into fore that the Law Commission has recognized that in cases of serious fraud, courts have entertained civil suits. Secondly, it has tried to make a distinction in cases where there are allegations of serious fraud and fraud simplicitor. It, thus, follows that those cases where there are serious allegations of fraud, they are to be treated as non-arbitrable and it is only the civil court which should decide such matters. However, where there are allegations of fraud simplicitor and such allegations are merely alleged, we are of the opinion it may not be necessary to nullify the effect of the arbitration agreement between the parties as such issues can be determined by the Arbitral Tribunal."

61. Not only this, Their Lordships have held in no uncertain terms that mere allegation of fraud simplicitor may not be a ground to nullify the effect of arbitration agreement between the parties and held as under in paragraph 20: -

> "20. In view of our aforesaid discussions, we are of the opinion that mere allegation of fraud simplicitor may not be a ground to nullify the effect of arbitration agreement between the parties. It is only in those cases where the Court, while dealing with Section 8 of the Act, finds that there are very serious allegations of fraud which make a virtual case of criminal offence or where allegations of fraud are so complicated that it becomes absolutely essential that such complex issues can be decided only by civil court on the appreciation of the voluminous evidence that needs to be produced, the Court can sidetrack the agreement by dismissing application under Section 8 and proceed with the suit on merits. It can be so done also in those cases where there are serious allegations of forgery/fabrication of documents in support of the plea of fraud or where fraud is alleged against the arbitration provision itself or is of such a nature that permeates the entire contract, including the agreement to arbitrate, meaning thereby in those cases where fraud goes to the validity of the contract itself of the entire contract which contains the arbitration clause or the validity of the arbitration clause itself. Reverse position thereof would be that

> where there are simple allegations of fraud touching upon the internal affairs of the party *inter se* and it has no implication in the public domain, the arbitration clause need not be avoided and the parties can be relegated to arbitration. While dealing with such an issue in an application under Section 8 of the Act, the focus of the Court has to be on the question as to whether jurisdiction of the Court has been ousted instead of focusing on the issue as to whether the Court has jurisdiction or not. It has to be kept in mind that insofar as the statutory scheme of the Act is concerned, it does not specifically exclude any category of cases as non-arbitrable. Such categories of non-arbitrable subjects are carved out by the Courts, keeping in mind the principle of common law that certain disputes which are of public nature, etc. are not capable of adjudication and settlement by arbitration and for resolution of such disputes, Courts, i.e. public for a, are better suited than a private forum of arbitration. Therefore, the inquiry of the Court, while dealing with an application under Section 8 of the Act, should be on the aforesaid aspect, viz. whether the nature of dispute is such that it cannot be referred to arbitration, even if there is an arbitration agreement between the parties. When the case of fraud is set up by one of the parties and on that basis that party wants to wriggle out of that arbitration agreement, a strict and meticulous inquiry into the allegations of fraud is needed and only when the Court is satisfied that the allegations are of serious and complicated nature that it would be more appropriate for the Court to deal with the subject matter rather than relegating the parties to arbitration, then alone such an application under Section 8 should be rejected."

62. In **A. Ayyasamy** (supra), Hon'ble Mr. Justice Dr. D.Y. Chandrachud in his separate but concurring judgment (paragraph 14) has held that once there is an arbitration agreement between the parties, a judicial authority before whom an action is brought covering the subject matter of the arbitration agreement is under a positive obligation to refer

parties to arbitration by enforcing the terms of the contract and has observed in paragraphs 14 and 16 as under: -

> "14. The position that emerges both before and after the decision in **N. Radhakrishnan** is that successive decisions of this Court have given effect to the binding precept incorporated in Section 8. Once there is an arbitration agreement between the parties, a judicial authority before whom an action is brought covering the subject matter of the arbitration agreement is under a positive obligation to refer parties to arbitration by enforcing the terms of the contract. There is no element of discretion left in the court or judicial authority to obviate the legislative mandate of compelling parties to seek recourse to arbitration. The judgment in **N. Radhakrishnan** has, however, been utilised by parties seeking a convenient ruse to avoid arbitration to raise a defence of fraud. First and foremost, it is necessary to emphasise that the judgment in **N. Radhakrishnan** does not subscribe to the broad proposition that a mere allegation of fraud is ground enough not to compel parties to abide by their agreement to refer disputes to arbitration. More often than not, a bogey of fraud is set forth if only to plead that the dispute cannot be arbitrated upon. To allow such a plea would be a plain misreading of the judgment in **N. Radhakrishnan**. As I have noted earlier, that was a case where the appellant who had filed an application under Section 8 faced with a suit on a dispute in partnership had raised serious issues of criminal wrongdoing, misappropriation of funds and malpractice on the part of the respondent. It was in this background that this Court accepted the submission of the respondent that the arbitrator would not be competent to deal with matters "which involved an elaborate production of evidence **to establish the claims relating to fraud and criminal misappropriation**". Hence, it is necessary to emphasise that as a matter of first principle, this Court has not held **that a mere allegation of fraud will exclude arbitrability**. The burden must lie heavily on a party which avoids compliance with the obligation assumed by it to submit disputes to arbitration to establish the dispute is not arbitrable under the law for the time being in force. In each such case where an

objection on the ground of fraud and criminal wrongdoing is raised, it is for the judicial authority to carefully sift through the materials for the purpose of determining whether the defence is merely a pretext to avoid arbitration. It is only where there is a serious issue of fraud involving criminal wrongdoing that the exception to arbitrability carved out in **N. Radhakrishnan** may come into existence. Allegations of fraud are not alien to ordinary civil courts. Generations of judges have dealt with such allegations in the context of civil and commercial disputes. If an allegation of fraud can be adjudicated upon in the course of a trial before an ordinary civil court, there is no reason or justification to exclude such disputes from the ambit and purview of a claim in arbitration. Parties who enter into commercial dealings and agree to a resolution of disputes by an arbitral forum exercise an option and express a choice of a preferred mode for the resolution of their disputes. Parties in choosing arbitration place priority upon the speed, flexibility and expertise inherent in arbitral adjudication. Once parties have agreed to refer disputes to arbitration, the court must plainly discourage and discountenance litigative strategies designed to avoid recourse to arbitration. Any other approach would seriously place in uncertainty the institutional efficacy of arbitration. Such a consequence must be eschewed.

16. The basic principle which must guide judicial decision making is that arbitration is essentially a voluntary assumption of an obligation by contracting parties to resolve their disputes through a private tribunal. The intent of the parties is expressed in the terms of their agreement. Where commercial entities and persons of business enter into such dealings, they do so with a knowledge of the efficacy of the arbitral process. The commercial understanding is reflected in the terms of the agreement between the parties. The duty of the court is to impart to that commercial understanding a sense of business efficacy."

63. His Lordship (Dr. D.Y. Chandrachud, J) finally concluded in paragraph 20 as under: -

"20. The Arbitration and Conciliation Act, 1996,

> should in my view be interpreted so as to bring in line the principles underlying its interpretation in a manner that is consistent with prevailing approaches in the common law world. Jurisprudence in India must evolve towards strengthening the institutional efficacy of arbitration. Deference to a forum chosen by parties as a complete remedy for resolving all their claims is but part of that evolution. Minimising the intervention of courts is again a recognition of the same principle."

64. Thus, from the principles of law laid down by Their Lordships of the Supreme Court in **A. Ayyasamy** (supra), serious allegation of fraud has been held to be a category where the disputes would be considered as non-arbitrable, but bare and simple allegation of fraud simplicitor will not exclude arbitrability of dispute making it incapable of arbitration provided in arbitration agreement and once the parties have chosen to get their dispute resolved by way of arbitration, the Court should loath and discourage litigative tendency to avoid arbitration as will be contrary to object and intent of the AC Act, 1996 and evade to the institutional efficacy of arbitration.

65. This would bring me back to the facts of the case to consider as to whether the nature of dispute is such that it is not capable of adjudication by arbitrator, and it is non-arbitrable.

66. Before proceeding further in order to consider the pleas, it would be appropriate to notice the arbitration clause contained in the Concession Agreement which states as under: -

> “36.3 Arbitration
>
> 36.3.1 Any Dispute which is not resolved

> amicably by conciliation as provided in Clause 36.2 shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 36.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**"), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be Delhi, and the language of arbitration proceedings shall be English.
>
> 36.3.2 There shall be a Board of three arbitrators of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules."

67. Before proceeding further to consider the submission of learned counsel for the petitioner that in the suit filed, serious allegations of fraud have been made and same has to be adjudicated and therefore dispute involved is non-arbitrable and is incapable of settlement by way of arbitration, it would be appropriate to notice the averments of the plaint alleging fraud. In the entire suit filed by the petitioner / plaintiff, only in paragraphs 3, 12, 13, 43 and 52, allegations of fraud have been averred by the petitioner / plaintiff. In order to consider the plea raised at the Bar, it would be expedient to reproduce the above-stated paragraphs of the plaint in toto herein, which state as under: -

> "3) That the Defendant No.1 herein is the Bank of India, who had issued the Bank Guarantee for Bid Security dated 01/09/2012 bearing BG No. 9307IPEBG120034. The Plaintiff has complied with

all terms and conditions of the Tendering Documents. The Bank Guarantee is a bid security given for the purposes for which it is expressly stated. However, till date there is no default nor violation of terms and conditions giving rise to invocation of the Bank Guarantee. It is defendant No.1 and 3 who are mis-interpreting contractual obligations for their unlawful gain and to put Plaintiff to irreparable loss by playing fraud. The Defendant No.2 is the Bank of Baroda, the other banker of the Plaintiff, who shall be issuing the Performance Bank Guarantee and formal but necessary party. Both the Defendant Nos.1 & 2 are Nationalized Banks. That the Defendant No.3 herein is the National Highways Authority of India, constituted under Section 3 of the National Highways Authority of India Act, 1988 (hereinafter referred to as the NHAI Act, 1988"). The Project Highway, namely, the National Highway No.25 (NH-25) vest in the said Defendant No.3.

12) On 09/11/2012, the Defendant No.3 Authority addressed a letter to the Plaintiff Company thereby seeking the consent of the Plaintiff to confirm the acceptance of deletion of Clause 14.7 from the Request for Proposal (RFP). The Managing Director of Plaintiff was told that without the Plaintiff accepting to the said deletion, the Letter of Acceptance would not be issued by the Defendant No.3. Clause 14.7 is reproduced hereunder :

> *"14.7 Rectification of latent defects*
>
> *14.7.1 Notwithstanding anything to the contrary contained in this Agreement, in the event that a material defect or deficiency appears in the Project Highway after the date of this Agreement and the defect or deficiency is not on account of any failure on the part of the Concessionaire to comply with Maintenance Requirements and is such that it could not have been detected or anticipated by the Concessionaire prior to such date with the exercise of due diligence in accordance with good Industry Practice, the repair and rectification thereof shall be undertaken as if it were a Change of Scope; provided that the provisions of this Clause 14.7.1 shall not apply if the cost of such repair and rectification is less than Rs. 10.75 crores (Rupees Ten*

Crores and Seventy Five Lakhs Only). For the avoidance of doubt, it is expressly agreed that damage to the carriageway on account of overloading of vehicles shall not be construed as a latent defect.

14.7.2 The works and services forming part of Change of Scope under Clause 14.7.1 shall be undertaken in accordance with the procedure specified in this Article 14; provided that if such works and services are of an urgent nature and need to be undertaken forthwith, the Concessionaire may, with the consent of the Independent Engineer, commence such works and services pending determination of the costs thereof, and the provisions of Clause 14.2 and 14.3 shall apply mutatis mutandis to the determination of such costs".

13) That the Plaintiff had no option but to concede to the request of the Defendant No.3 to delete Clause 14.7 for otherwise, the Letter of Acceptance would be held up. Therefore, vide letter dated 16/11/2012, the Plaintiff Company accepted the deletion of Clause 14.7 from the terms of the RFP Documents. Moreover, the said acceptance for deletion was agreed to by the Plaintiff as the condition of the project Highway at the relevant point of time was traffic worthy. It may also be mentioned that the Plaintiff prior to the addressing of the aforesaid letter to the Defendant No.3 had done a survey of the Highway wherein it was found to be fit for traffic. It was thus, that the Plaintiff addressed the letter dated 16/11/2012 to the Defendant No.3 Authority. The act of deletion of the said clause has rendered entire contract as immoral, against judicial conscience of the Court of law as it affects basic structure of bidding and tendering process, hence, the contract on basis thereof i.e. Concession Contract dated 05/02/2013 needs to be adjudge as void, based upon fraud played upon the plaintiff.

43) That the Plaintiff most respectfully states and submits that the action of the Defendant No.3 is fraudulent in as much as at the time of Notice inviting tenders, the prospective bidders were allowed to conduct a survey of the Project Highway, wherein the Plaintiff had also on 25/09/2011

conducted the survey and finding the condition of the Road to be good, the Bidders had submitted their bids for the project work. Accordingly, the Defendant No.3 had incorporated Clause 14.7 in the Request for Proposal according to which any defect or material deficiency which has occurred on the road, which cannot be attributed to the Concessionaire shall be rectified/repaired by the Defendant No.3. Pursuant to the same, the condition of the Road deteriorated due to heavy flow of Traffic, Rain etc. It may also be pertinent to mention that after the survey being conducted by the Plaintiff on 25/09/2011, the Defendant No.3 with a fraudulent intention addressed a letter on 09/11/2012 to the Plaintiff and coerced the Plaintiff to agree to the deletion of Clause 14.7. The Plaintiff in good faith and in the bonafide belief that the Agreement will be executed, accepted the deletion of Clause 14.7 as the condition of the Road at the prevalent point of time was good for which the Plaintiff had duly conducted a survey. The Letter of award was addressed to the Plaintiff on 12/12/2012 and the Concession Agreement was entered on 05/02/2013. The Plaintiff states that in January 2013, the condition of the Road had deteriorated for which the Plaintiff addressed a letter to the Defendant No.3 for protection of Clause 14.7, which letter remains unaddressed by the Defendant No.3 till date. Due to the abovementioned facts, the Plaintiff states that the condition of the Road requires urgent repairs for which numerous letters have been addressed by the Plaintiff to the Defendant No.3, which have not been replied to by the Defendant No.3 till date. The Plaintiffs have not undertaken the repair work of the Road which they are under an obligation to do as per the Concession Agreement and on the Contrary have been coercing/threatening the Plaintiff to encash the Bid Security. The said action of the Defendant No.3 is fraudulent, completely illegal and therefore completely unwarranted.

52) That the invocation and encashment of the Bank Guarantee furnished as a Bid Security in the facts as narrated above including the fact that the Bankers of the Plaintiff, namely the Defendants No. 1 & 2 are well aware of the fact that the Defendant No.3 has not complied with Clause 6.2 of the Concession Agreement as reflected in the Letter of

> the Defendant No.2 dated 27/08/2013 and so does the Defendant No.3 as recorded in its Letter dated 02/08/2013. The Defendant No.3 cannot be permitted to take advantage of its own default/ wrong by penalizing the Plaintiff. Under the circumstances, encashment of the Bank Guarantee would be ex-facie fraudulent and unwarranted. ..."

68. Thereafter, the plaintiff/petitioner in paragraph 53 of the plaint detailed the claim against the defendants/respondents herein which is also the relief(s) claimed and which is being noticed in the next paragraph.

69. The petitioner, on the basis of the above-stated averments, claimed following relief(s) in the suit which state as under : -

> "a) Pass decree with declaration in favour of the plaintiff and against the defendants that concession agreement dated 05/02/2013 between the plaintiff and defendant No.3 is against law, void-ab-initio, opposed to public policy and immoral consequently, quash, set-aside, rescind, cancel the Concession Agreement dated 05/02/2013 thereby release the plaintiff from obligation of the bank guarantee bearing B.G.No.93071PEBG120034 dated 01/09/2012 having its validity till 30/10/2013 issued by the Defendant No.1, i.e. Bank of India, Mid Corporate Branch, Nehru Nagar, Bhilai, Chhattisgarh;
>
> b) Hold and Declare that the defendant No.3 has no right to encash the Bid Security and appropriate the proceeds thereof as damages being against law, void-ab-initio, opposed to public policy, immoral and consequently, release the plaintiff from obligation of the bank guarantee bearing B.G. No.93071PEBG120034 dated 01/09/2012 having its validity till 30/10/2013 issued by the Defendant No.1, i.e. Bank of India, Mid Corporate Branch, Nehru Nagar, Bhilai, Chhattisgarh;
>
> c) Pass decree with declaration in favor of the plaintiff and against the defendants that the defendant No.3 has played fraud on the plaintiff to garb bid security in the form of bank guarantee and

consequentially hold and declare that entire action of the defendant No.3 to claim damages by action of encashment of bid security in the form of bank guarantee under clause 9.1 of the concession agreement is void-ab-initio, does not exist in the eyes of law, illegal and not binding on the plaintiff;

d) Pass decree with declaration in favour of the plaintiff and against the defendants that clause 9.1 of the Concession Agreement dated 05/02/2013 and action therein to seek encashment of bid security in the form of bank guarantee bearing B.G. No.93071PEBG120034 dated 01/09/2012 having its validity till 30/10/2013 issued by the Defendant No.1, i.e. Bank of India, Mid Corporate Branch, Nehru Nagar, Bhilai, Chhattisgarh is in violation of public policy and is immoral, injurious to plaintiff, based upon fraud and irretrievable injury upon plaintiff consequently, rescind, cancel the same under sections 27 and 31 of the Special Relief Act and section 23 of the Indian Contract Act;

e) Pass decree of Permanent, Perpetual Injunction in favour of the plaintiff and against the defendant No.3, its officers, servants and agents from initiating / taking any coercive steps against the Plaintiff under the Concession Agreement dated 05/02/2013 thereby restraining the defendant No.3 to invoke clause 9.1 of the Concession Agreement against the plaintiff consequently also against the defendant No.1 thereby restraining its Officer/ Servants/agents from honouring any request from the Defendant No.3 for encashing the Bank Guarantee bearing B.G.No.93071PEBG120034 dated 01/09/2012 having its validity till 30/10/2013 issued by the Defendant No.1, i.e. Bank of India, Mid Corporate Branch, Nehru Nagar, Bhilai, Chhattisgarh;

f) Saddle costs of the suit;

g) Grant any other consequential and further reliefs, as this Hon'ble Court deems fit in the facts and circumstances of the present case, in the interest of justice."

70. A careful perusal of the averments made in the plaint including the averment with regard to fraud in entering into the

Concession Agreement dated 5-2-2013 and claim laid before the civil court as well as the reliefs claimed, would clearly establish that the main and substantive dispute between the plaintiff and defendant No.3 is with respect to legality, validity or otherwise of the Concession Agreement dated 5-2-2013 entered into between the plaintiff / petitioner and defendant No.3 NHAI and that dispute is mainly based on deletion of clause 14.7 of the said agreement which according to the plaintiff, such a deletion has been made by practicing fraud and coercing the plaintiff to make such a deletion which is *void ab initio* against law, oppose to public policy and immoral, whereas according to the NHAI, it has been entered into with open eyes as on 9-11-2012, defendant No.3 sought consent of the plaintiff to confirm the deletion of clause 14.7 from the Request for Proposal which the plaintiff accepted by its letter dated 16-11-2012. Thus, adjudication is required as to legality and validity of the Concession Agreement dated 5-2-2013 with regard to deletion of clause 14.7 which has been deleted as stated above. The consequent dispute is the plaintiff claiming that he be relieved of the obligation of bank guarantee of Rs.5.10 crores which he has furnished to defendant No.3 and issued by defendant No.1 Bank and defendant No.3 be restrained from encashing the bank guarantee. In the entire plaint viz., paragraphs 3, 12, 13, 43 and 52, the allegation of fraud has been alleged for the sake of allegation only, even no particulars

of fraud as envisaged under Order 6 Rule 4 of the CPC are available in the pleadings so made and noticed herein-above.

71. After hearing learned counsel for the parties at considerable length, I am satisfied that the plaintiff has levelled the allegations of fraud only to nullify the effect of arbitration agreement and to avoid arbitration and the dispute raised by way of suit is capable of settlement by arbitration with the aid and assistance of the provisions of the AC Act, 1996 including Section 9 of the said Act. The petitioner / plaintiff has failed to discharge its heavy burden by establishing that the dispute is non-arbitrable and the dispute cannot be said to be non-arbitrable outside the jurisdiction of the Arbitrator merely on the allegation of fraud simplicitor. Therefore, I am unhesitatingly and unreservedly of the considered opinion that the allegations of purported fraud alleged in the plaint are not so serious which cannot be taken care of by the arbitrator in the arbitration proceeding.

72. This matter can be considered from another angle. The petitioner / plaintiff has only sought quashment on the ground that main concession agreement entered into with defendant No.3 to be null and void it is not the case of the plaintiff / petitioner that there is no valid and enforceable arbitration agreement between it and defendant No.3. In the matter of **SBP & Co. v. Patel Engg. Limited**[19], the Supreme Court has

19 (2005) 8 SCC 618

considered the issue regarding the continued existence of the arbitration agreement, notwithstanding the main agreement itself being declared void and it was held that an arbitration agreement could stand independent of the main agreement and did not necessarily become otiose, even if the main agreement, of which it is a part, is declared void. The said principle of law laid down in **SBP & Co.** (supra) was followed subsequently by the Supreme Court in the matter of **Today Homes and Infrastructure Private Limited v. Ludhiana Improvement Trust and another**[20] reiterating that there is no automatic invalidation of arbitration clause, if main agreement is declared as void, arbitration clause can continue to be enforceable, even if maintain agreement / contract is declared as null and void, and it was followed very recently by the Supreme Court in the matter of **Ashapura Mine-Chem Limited v. Gujarat Mineral Development Corporation**[21].

73. In the circumstances, the trial Court / judicial authority is absolutely justified in referring the matter to arbitration granting application under Section 8(1) of the AC Act, 1996. I do not find any jurisdictional error or illegality in the impugned order requiring interference by this Court in exercise of its revisional jurisdiction. The revision preferred by Jhansi-Orai Tollyway Pvt. Ltd. (C.R.No.26/2014) deserves to be dismissed.

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20 (2014) 5 SCC 68
21 (2015) 8 SCC 193

Civil Revision No.21/2014

74. The contention of Mr. Avinash Chand Sahu, learned counsel appearing for the petitioner, is that Bank of India is a party defendant in the suit filed by plaintiff Jhansi-Orai Tollyway Pvt. Ltd., whereas it is not a party to the arbitration agreement and therefore the judicial authority / trial Court is absolutely unjustified in relegating the defendant Bank also to arbitration by the impugned order. Whereas, according to learned counsel for NHAI, only parties to the arbitration agreement have been referred to arbitration.

75. The trial Court by its impugned order has directed that the parties are referred to arbitration as provided under Section 8(1) of the AC Act, 1996.

76. I have heard and considered the rival contentions of parties carefully on this issue.

77. In **Booz Allen and Hamilton Inc.** (supra), the Supreme Court has held that where a suit is filed by one of the parties to an arbitration agreement against the other parties to the arbitration agreement and if the defendant files an application under Section 8 of the AC Act, 1996 that parties should be referred to arbitration, the judicial authority will have to decide five factors including whether all the parties to the suit are parties to the arbitration agreement.

78. The Supreme Court in **Sandeep Kumar** (supra), has clearly

held that if some of the defendants were not parties to the arbitration agreement, the question of invoking arbitration clause as against those defendants would not arise.

79. From a careful perusal of the plaint and accompanying documents, it is quite vivid that there is valid enforceable arbitration agreement between plaintiff Jhansi-Orai Tollyway Pvt. Ltd. and defendant No.3 NHAI. The real dispute is only between the plaintiff (Jhansi-Orai Tollyway Pvt. Ltd.) and defendant No.3 (NHAI) and only parties to the arbitration agreement can be referred to arbitration. The order of the trial Court is clarified and it is directed that only parties to the arbitration agreement namely plaintiff Jhansi-Orai Tollyway Pvt. Ltd. and defendant No.3 NHAI are referred to arbitration. Thus, the impugned order passed by the trial Court is clarified and the revision is disposed of accordingly.

80. As a fallout and consequence of above-stated legal analysis, the civil revision filed by Jhansi-Orai Tollyway Pvt. Ltd. bearing C.R.No.26/2014 is hereby dismissed, whereas the civil revision filed by Bank of India bearing C.R.No.21/2014 is disposed off, clarifying the order impugned, leaving the parties to bear their own costs(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.26 of 2014

Jhansi-Orai Tollyway Pvt. Ltd.

Versus

Bank of India and others

AND

Civil Revision No.21 of 2014

Bank of India

Versus

Jhansi-Orai Tollyway Pvt. Ltd. and others

HEAD NOTE

Provisions of Sections 8(1) and 8(2) of the Arbitration and Conciliation Act, 1996 are mandatory in nature.

माध्यस्थम और सुलह अधिनियम, 1996 की धारा 8(1) और 8(2) के प्रावधान आज्ञापक प्रकृति के हैं।