REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.10932 OF 2013
(Arising out of S.L.P.(C) No. 19951 OF 2013)

CHATTERJEE PETROCHEM CO. & ANR .....**APPELLANTS**

Vs.

HALDIA PETROCHEMICALS LTD.& ORS. ..... **RESPONDENTS**

J U D G M E N T

V. Gopala Gowda J.

On 21st March, 2012, the appellant Chatterjee Petrochem (Mauritius) Company (hereinafter referred to as 'CPMC') filed a request for arbitration in International Chamber of Commerce (ICC), Paris in relation to an agreement of restructuring which was

entered into between CPMC, Government of West Bengal, West Bengal Industrial Development Corporation (in short 'WBIDC') and Haldia Petrochemical Limited (in short 'HPL') on 12th January, 2002. As per the Agreement, the Government of West Bengal was to cause WBIDC to transfer existing shareholding to CPMC to ensure that CPMC holds 51% of the total paid up capital of HPL. Clause 15 of the Agreement provides for reference of all disputes, in any way relating to the said Agreement or to the business of or affair of HPL to the Rules of the ICC, Paris.

2. The respondent HPL on the other hand, claims that the Arbitration Agreement contained in clause 15 of the Agreement dated 12th January, 2002 is void and/ or unenforceable and/or has become inoperative and/or incapable of being performed.

3. A dispute arose between the parties regarding the allotment of shares and the appellant filed Company Petition No. 58 of 2009 before the Company Law Board

(in short 'CLB')on the grounds of oppression and mismanagement. The appellant also sought transfer of 155 million shares in favour of Chatterjee Petrochem (India) Pvt. Ltd. (in short "the CPIL"), the Indian counterpart of CPMC as was decided in the Agreement.

4. The Company Petition was disposed of by the CLB by upholding the decision of the Company to allot 155 million shares by Indian Oil Corporation (in short 'IOC'). The transfer of 155 million shares to CPIL by WBIDC was also confirmed. The CLB further directed the Government of West Bengal and WBIDC to transfer 520 million shares held by them in HPL to Chatterjee Groups.

5. The Government of West Bengal preferred an appeal against the said Order before the High Court of Judicature at Calcutta under the provisions of Section 10F of the Company's Act, 1956. The High Court set aside the Order of the CLB on the ground that CPIL was not a member of HPL and the CLB could not have enforced

its right under private contract entered into between CPIL and WBIDC for transfer of shares as the same could not be the subject matter of a petition under Section 397 of the Companies Act.

6. Aggrieved by the same, the appellant preferred appeal Nos. 5416-5419, 5420, 5437 and 5440 of 2008 before this Court. Vide judgment dated 30.09.2011, this Court held that the claim of the appellant transferring shares to IOC has changed the private character of the Company and was not an act of oppression on the part of the Company. According to this Court, the transfer of shares to IOC was a result of failure on the part of the appellant to infuse adequate funds into the Company by way of equity as promised and to participate in its rights issues. The Company was therefore, constraint to induct IOC as a member and the 155 million shares which was to be transferred to the appellant was instead transferred to

the IOC. The relevant paragraph of the judgment reads as under:

> "103. The failure of WBIDC and GoWB to register the 155 million shares transferred to CP(I)PL could not, strictly speaking, be taken to be failure on the part of the Company, but it was the failure of one of the parties to a private arrangement to abide by its commitments. The remedy in such a case was not under Section 397 of the Companies Act. It has been submitted by both Mr. Nariman and Mr. Sarkar that even if no acts of oppression had been made out against the Company, it would still be open to the learned Company Judge to grant suitable relief under Section 402 of the Act to iron out the differences that might appear from time to time in the running of the affairs of the Company. No doubt, in the Needle Industries case, this Court had observed that the behaviour and conduct complained of must be held to be harsh and wrongful and in arriving at such a finding, the Court ought not to confine itself to a narrow legalistic view and allow technical pleas to defeat the beneficial provisions of the Section, and that in certain situations the Court is not powerless to do substantial justice between the parties, the facts of this case do not merit such a course of action to be taken. Such an argument is not available to the Chatterjee Group, since the alleged breach of the agreements referred to hereinabove, was really in the nature of a breach between two members of the Company and not the Company itself. <u>It is not on account of any act on the part of the Company that the shares transferred to CP(I)PL were not registered in the name of the Chatterjee</u>

> Group. There was, therefore, no occasion for the CLB to make any order either under Section 397 or 402 of the aforesaid Act. If, as was observed in M.S.D.C. Radharamanan's case (supra), the CLB had given a finding that the acts of oppression had not been established, it would still be in a position to pass appropriate orders under Section 402 of the Act. That, however, is not the case in the instant appeals."
>
> (emphasis laid by this Court)

7. On this decision given by this Court, the appellant sought to invoke the arbitration clause contained in the agreement dated 12th January, 2002 and made a request for arbitration. The respondent no.1 on the other hand, filed a suit before the High Court of judicature at Calcutta praying that the arbitration clause in the agreement be declared as void.

8. Learned senior counsel on behalf of the appellant Dr. Abhishek Manu Singhvi relied upon Clause 15 of the letter of agreement dated 12th January, 2002 to contend that any dispute, difference or claims arising between the parties relating to this letter of agreement dated 12th January, 2002, or any construction or

interpretation relating to the working of or the business of the respondent no.1, shall first make an endeavour to settle their disputes, differences etc. in accordance with the Rules of Arbitration of the International Chamber of Commerce. Therefore, the learned senior counsel contended that the validity or existence of the arbitration agreement is to be decided by the Arbitration Tribunal in terms of Article 6 of the ICC Rules, 1998 which is pari-materia to Section 16 of the Arbitration and Conciliation Act, 1996 (in short 'A & C Act')and the Civil Court has no jurisdiction to decide on such issues. In support of this legal contention, the learned senior counsel relied upon the decision of this Court in ***Yograj Infrastructure Ltd. v. Ssang Yong Engineering and Construction Co. Ltd.***[1] wherein it was held that the arbitration shall be held as is mentioned in the agreement which in the present case, is at Paris.

[1] (2011) 9 SCC 735

9. It is the further case of the appellant that the agreement dated 12th January, 2002 between the parties was not novated by the subsequent agreements. According to the appellant, the agreement dated 12th January, 2002 is the principal agreement, which was later followed by the supplemental agreements dated 8th March, 2002 and 30th July, 2004. The letter of agreement dated 8th March, 2002 did not create any independent legal right but was a mere direction from CPMC to transfer 155 million shares to its nominee CPIL to avoid delay. Therefore, according to the appellant, the letter of agreement dated 8th March 2002 provided that the terms and conditions of 12th January, 2002 agreement would continue to remain valid and subsisting between the parties. The relevant clauses will be mentioned in the reasoning portion of the judgment.

10. The learned senior counsel relied upon Section 45 of the A & C Act to contend that the suit instituted by the respondent No. 1 against the request of arbitration

by the appellant is not maintainable in law. He further argued that the suit instituted by the respondent No. 1 to restrain a foreign arbitration for resolution of the disputes between the parties was in violation of Section 5 of the A & C Act which limits judicial authority's intervention in arbitration and therefore the impugned order of injunction passed by the High Court of Judicature at Calcutta was contrary to law and therefore, the same is liable to be set aside. In this regard, the learned senior counsel relied upon the three Judge Bench decision of this Court in ***Bhatia International*** *v.* ***Bulk Trading S.A. and Anr.***[2] to contend that section 5 of the A & C Act provides that no judicial authority shall intervene except where it is provided. The relevant paragraph will be extracted in the reasoning portion of the judgment.

11. Mr. Sudipto Sarkar, learned senior counsel also appearing on behalf of the appellant further contended that the maintainability of the arbitration of the

[2] (2002) 4 SCC 105

disputes between the parties can be established by relying on the decision of this Court in ***Venture Global Engineering*** *v.* ***Satyam Computer Services Ltd. and Anr.***[3] wherein it was held that Part I of the A & C Act will be applicable to international arbitrations as well. Therefore, Mr. Sarkar contended that the Arbitration clause will be a bar for judicial intervention in the present case in spite of the fact that it is an international arbitration as per the principal agreement which will be continued in force as per the terms of the supplemental agreements.

12. On the other hand, it is the case of the respondent HPL that the arbitration agreement dated 12th January, 2002 is rendered void in respect of the claim for transfer of 155 million shares in favour of CPIL inasmuch as the parties had contracted out of their earlier agreement and the legal liability in respect thereof was redefined in the subsequent 8th March, 2002 Agreement which provided for an exclusive jurisdiction

[3] (2008) 4 SCC 190

to courts in Calcutta to decide dispute arising out of the said agreement. Therefore, it was pleaded by Mr. Ashok Desai, the learned senior counsel appearing on behalf of the respondent no. 1-HPL that once a party to an arbitration agreement seeks to adjudicate dispute before another forum and such forum arrives at a conclusive findings of fact in relation to the dispute then, the subsequent effort on the part of the same party to refer dispute for arbitration under ICC Rules would be vexatious and abuse of law and it shall be construed that the arbitration clause in the principal agreement has been rendered inoperative by the conduct of the party itself.

13. The learned senior counsel for the respondent no. 1 further claimed that Section 5 of the A & C Act can come into play only when existence of a valid arbitration agreement is established. Institution of such a suit by the respondent no.1 would constitute an "action pending before the judicial authority"

necessitating the invocation of Section 45 of the A & C Act, if one of the parties makes a request to refer the matter for arbitration. In such cases, the court must see whether the arbitration agreement is valid, operative and capable of being performed, before referring the parties to arbitration.

14. It is the further case of respondent no.1 that the subsequent agreement through letter dated 8th March 2002, in respect of transfer of 155 million shares of HPL, new rights and liabilities were created by and between the non- parties to the arbitration agreement. The new agreement also provided for a different dispute resolution mechanism among the parties, that is, the courts in Calcutta. The relevant clause will be extracted in the reasoning portion of the judgment.

15. The learned senior counsel, Mr. K.K. Venugopal, appearing on behalf of Respondent no. 2, Govt. of West Bengal, contended that the Arbitration and Conciliation Act, 1996 does not apply to the present case. According

to the learned senior counsel, a party may purport to appoint an arbitrator who may enter upon the arbitration even when there is serious dispute as to whether the arbitration clause exists. In spite of the fact that no arbitration clause exists, if a party resorts to arbitration, then neither section 8 nor section 45 of the A & C Act in case of international arbitration would provide for adjudication of the issue as to whether the arbitration clause exists. It is only where a suit has first been filed, in point of time, on the substantive agreement or the underlying agreement, either by way of specific performance or for compensation for breach of contract, that section 8 or section 45 of the A & C Act would come into play. However, we are not inclined to comment on this contention since it is not pertinent to the case.

16. The learned senior counsel for Respondent no. 2 also contended that when no arbitration clause exists in the agreement, the matter cannot be adjudicated

either under Part I or Part II of the A & C Act rather, the matter can be adjudicated only by an independent suit seeking injunction against the party who had initiated arbitration, from proceeding with the arbitration.

17. It is further the case of the learned senior counsel, Mr. K.K. Venugopal that the facts of the present case are extraordinary and that the matter has been extensively litigated in the previous round both, before the Company Law Board and the appellate proceedings thereof. At no point in time did the Chatterjee Group or any of its constituent affiliate, saved or reserved their right to seek arbitration under the alleged Arbitration Agreement which they now seek to enforce. This Court has already declined the reliefs on merit as well as on the point of jurisdiction. Therefore, he submits that at this juncture, invoking the arbitration clause from the principal agreement by the Chatterjee Group disregarding the Agreement dated

8th March, 2002, is clearly vexatious and abuse of the process of law. Therefore, the suit filed by respondent no. 1 seeking injunction relief on arbitration is maintainable in law.

18. It is further the case of the learned senior counsel on behalf of Respondent no.2 that the matter has been elaborately argued before this Court on complicated issues of law which arise for determination in the case. It is therefore, submitted by him that in such an event this Court would not render findings on questions of law while disposing an appeal against the interlocutory order so as to give finality in such findings. This approach of the Court is adopted in many cases arising under the Intellectual Property law, namely ***Bajaj Auto Ltd.*** *v.* ***TVS Motor Company Ltd.***[4], ***Shree Vardhman Rice & General Mills*** *v.* ***Amar Singh Chawalwala***[5], ***Milmet Oftho Industries & Ors.*** *v.* ***Allergan Inc.***[6] and ***Dhariwal Industries Ltd. & Anr.*** *v.*

[4] (2009) 9 SCC 797 (para 5)
[5](2009) 10 SCC 257 (para 2)
[6] (2004) 12 SCC 624 (paras 9 to 11)

M.S.S. Food Products[7]. We are inclined to mention at this stage that in this appeal we are confined to deciding upon the validity of the arbitration clause in the principal agreement dated 12th January, 2002 only. Hence, this contention does not require to be addressed in this appeal.

19. The learned senior counsel for respondent No. 3 Mr. C.A. Sundaram contends that jurisdictional issue in the present case, shall be decided as the threshold issue in the present case. In relation to this, he placed reliance upon the three Judge Bench decision of this Court in ***Chloro Controls India Pvt. Ltd.*** *v.* ***Severn Trent Water Purification Inc. and Ors***.[8]

20. In the light of the facts and circumstances presented before us on the basis of admitted documents on record, and also based on the legal contentions urged by the learned senior counsel on behalf of both

[7] (2005) 3 SCC 63 (para 20)
[8] (2013) 1 SCC 641

the parties, the following issues would arise for consideration of this Court in these proceedings:

1. Can the Arbitration clause under clause 15 of the letter of Agreement dated 12th January, 2002 be invoked by the appellants and whether Clause 7.5 of the subsequent Agreement dated 8th March, 2002 invoking the exclusive jurisdiction of the courts of Calcutta nullify the scope of arbitration as mentioned in the previous agreement dated 12th January, 2002?

2. Is the suit, filed by the respondents, seeking injunction against arbitration of disputes between the parties sought for by the appellants as per Clause 15 of the principal agreement referred to supra maintainable in law?

3. What Order?

Answer to Point no.1

21. We are inclined to reject the submission made by the learned senior counsel on behalf of the respondents that the transfer of shares to CPIL instead of CPMC substantially changes the legal rights and responsibilities of the parties as per agreement

referred to supra thereby, resulting in novation of contract.

22. It is nowhere mentioned in the letter dated 8th March, 2002 that transfer of shares to CPIL instead of CPMC extinguishes the old agreement dated 12th January, 2002 to nullity. In fact, in the letter dated 8th March, 2002, CPMC has been constantly mentioned as a guarantor. It is only to this extent the nature of agreement has changed.

23. It is argued by the learned senior counsel Mr. C.A. Sundaram, appearing on behalf of Respondent no.3 that the concurrent findings of facts on the prima facie case by the learned single Judge and the Division Bench of the High Court of Calcutta have held that there has been a novation of agreement between the parties to the principal agreement dated 12th January,2002 by the subsequent agreements dated 8th March, 2002 and 30th July, 2004.

24. It has been held by the learned single Judge of the Calcutta High Court that:

> "……This is a case, where by express words the parties have altered their obligations by a new agreement on 8th March, 2002 with a term that the Courts in Kolkata 'alone' would have jurisdictions. This was affirmed by the 30th July, 2004 agreement. This put an end to the arbitration, once and for all. Therefore, the arbitration clause in the 12th January, 2002 agreement was abrogated by the 8th March agreement. Abrogation of an arbitration agreement could not be made in clearer terms…".

25. Further, the Division Bench of Calcutta High Court vide impugned judgment dated 12th January 2012, made the following observations:

a.) Agreement of 12th January 2002 was substituted by agreements of March 8, 2002 and July 30, 2004.

b.) Such a subsequent agreement completely extinguished the rights existing under the January 12, 2002 agreement and also destroyed the arbitration clause.

c.) Remedy is under Agreement of March 8, 2002 which does not provide for Arbitration but states that courts at Calcutta alone shall have jurisdiction.

d.) Agreement of March 8, 2002 is not an ancillary to agreement of January 12, 2002 but materially alters the same. The principle laid

down in **Chloro Controls Case** (supra) does not apply. Real intention of the parties in the instant case was to substitute one agreement with another.

26. Clause 1 of the supplementary agreement dated 30th July, 2004 reads as under:

> "Pursuant to the said Principal Agreement GoWB has caused WBIDC to transfer to Chatterjee Petrochem (India) Private Limited (CPIL), ***an affiliate of CPMC*** Rs. 155 crores of shares from the shareholding of WBIDC existing on the date of principal agreement…"
>
> (emphasis laid by this Court)

The abovementioned clause goes to show that CPIL is an affiliate of CPMC. This is to say, that by means of the letter dated 8th March,2002 CPMC becomes a guarantor whereas CPIL becomes the borrower. Therefore, the same does not change the rights and responsibilities of the parties under the agreement dated 12th January, 2002.

27. Further, the letter written by CPMC to WBIDC along with the agreement dated 8th March, 2002 reads as follows:

> "…It is clarified that the aforesaid **shall not prejudice any of our rights under the said**

> **Agreement dt. January 12, 2002** and **all terms and conditions thereof shall continue to remain valid, binding and subsisting** between the parties to be acted upon sequentially".
> (emphasis laid by this Court)

The content of this letter goes to show that the agreement dated 12th January, 2002 remains the principal agreement while agreement dated 8th March 2002 remains a supplementary agreement which was meant for restructuring of HPL on urgency.

28. Further, and most importantly, the agreement entered into between the parties dated 30th July, 2004 states as follows:

> "WHEREAS the Parties hereto had entered into an agreement dated January 12, 2002 (hereinafter referred to as the principal agreement…."

Also, the Agreement dated 30th July, 2004 which is based on shareholding issues, also notes through clause 6 that:

> "6. The Parties hereby agree, record and confirm that **all other terms and conditions as contained in the said Principal Agreement shall**

> **remain binding, subsisting, effective, enforceable** and in force between the parties."
> (emphasis laid by this Court)

The abovementioned clauses of the subsequent Agreements dated 8th March, 2002 and 30th July, 2004 go to show that there has been no alteration in the nature of rights and responsibilities of the parties involved in the contract. Consequently, there has been no novation of the contract.

29. It has been further argued by the learned senior counsel for the respondents that Section 5 of the A & C Act, which bars intervention by judicial authority in Arbitration Agreement will not be applicable to International Agreements such as the present case. We are inclined to reject this contention by placing reliance upon the legal principle laid down by this Court in ***Venture Global Engineering*** case (supra), the relevant paragraph of which reads as under:

> "25. …… In order to find out an answer to the first and prime issue and whether the decision in ***Bhatia International*** (supra) is an answer to

> the same, let us go into the details regarding the suit filed by the appellant as well as the relevant provisions of the Act. The appellant -VGE filed O.S. No. 80 of 2006 on the file of the Ist Additional District Court, Secunderabad, for a declaration that the Award dated 3.4.2006 is invalid, unenforceable and to set aside the same. Section 5 of the Act makes it clear that in matters governed by Part I, no judicial authority shall intervene except where so provided. Section 5 which falls in Part I, specifies that no judicial authority shall intervene except where so provided. The Scheme of the Act is such that the general provisions of Part I, including Section 5, will apply to all Chapters or Parts of the Act."
>
> (emphasis laid by this Court)

30. Further, it is pertinent to read Clause 7.5 of the Agreement dated 8th March, 2002 carefully. Clause 7.5 reads thus:

> "**Jurisdiction:** Courts at Calcutta alone shall have jurisdiction in all matters relating to this Agreement."

The phrase 'this agreement' means the Agreement dated 8th March, 2002 which is essentially a supplementary Agreement and does not, by any mean, make the Principal Agreement dated 12th January, 2002 subject to the jurisdiction of the Court.

31. Therefore, we are of the opinion that both the learned single Judge and the Division Bench erred in arriving at the conclusion mentioned above and their findings are liable to be set aside. In the light of the case mentioned above and also on the basis of the clauses of the Principal Agreement dated 12th January 2002 and subsequent Agreements dated 8th March 2002 and 30th July, 2004, read with section 5 of the A&C Act, we are inclined to observe that the Arbitration clause in the Principal Agreement continued to be valid in view of clause no. 6 of the Agreement dated 30th July, 2004 and also by virtue of its mention in different parts of both the supplementary agreements dated 8th March, 2002 and 30th July, 2004. Therefore, the arbitration clause mentioned in Clause 15 of the Arbitration agreement dated January 12, 2002 is valid and the appellant is entitled to invoke the arbitration clause for settling their disputes. We, therefore, answer the point no.1 in favour of the appellant.

Answer to Point nos.2 and 3

32. We answer point nos. 2 and 3 together since they are interrelated.

It is the claim of the respondent no.3 that the suit was filed by Respondent no. 1 under section 9 of CPC and not section 45 of the A&C Act. Respondent no.3 further placed reliance upon the decision of this Court in ***Ganga Bai*** *v.* ***Vijay Kumar & Ors.***[9] to hold that:

> "15. …There is an inherent right in every person to bring suit of a civil nature and unless the suit is barred by statute one may, at ones peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous the claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute."
>
> (emphasis supplied by this Court)

Therefore, the learned senior counsel appearing on behalf of respondent no. 3 places reliance upon this

[9] (1974) 2 SCC 393

decision to contend that the Calcutta High Court (exercising its ordinary original jurisdiction) has the jurisdiction (territorial as well as pecuniary) to entertain the present suit under section 9 of CPC and grant of such interim injunctive relief as it deems fit under Order 39 Rules 1 and 2 of the CPC is permissible in law.

33. We are inclined to reject this contention raised by the learned senior counsel appearing on behalf of Respondent no. 3. A careful reading of the decision leaves no doubt in the mind as has been held in **Ganga Bai'**s case (supra) that:

> "15. …There is an inherent right in every person to bring suit of a civil nature and unless the suit is barred by statute one may, at ones peril, bring a suit of one's choice……"
> (emphasis laid by this Court)

34. The learned senior counsel for respondent no. 3 further places reliance upon the Constitution Bench

decision of seven Judges in ***SBP & Co.*** *v.* ***Patel Engineering Ltd. & Anr.***[10] wherein it was held that:

> "19…..When the defendant to an action before a judicial authority raises the plea that there is an arbitration agreement and the subject matter of the claim is covered by the agreement and the plaintiff or the person who has approached the judicial authority for relief, disputes the same, the judicial authority, in the absence of any restriction in the Act, has necessarily to decide whether, in fact, there is in existence a valid arbitration agreement and whether the dispute that is sought to be raised before it, is covered by the arbitration clause…."
>
> (emphasis laid by this Court)

35. We have already held that the Principal Agreement dated 12th January, 2002 continues to be in force with its arbitration clause in place. We have also mentioned, while answering point no. 1, that section 5 of the A&C act will be applicable to Part II of the Act as well. The Agreement dated 12th January, 2002 remains valid and the arbitration clause, with all fours, will be applicable to the parties concerned to

[10] (2005) 8 SCC 618

get their disputes arbitrated and resolved in the Arbitration as per the Rules of ICC. The contention raised by the learned senior counsel for Respondent no.2, Mr. K.K. Venugopal regarding the maintainability of the suit while examining the interlocutory order in the appeals, is therefore, untenable in law.

36. The fact that CPIL, which initially was a non-signatory to the Agreement does not jeopardize the arbitration clause in any manner. In this connection, we are inclined to record an observation made in the three Judge Bench decision of this Court in ***Chloro Controls India Pvt. Ltd.*** (supra), wherein it was held as under:

> "107. If one analyses the above cases and the authors' views, it becomes abundantly clear that reference of even non-signatory parties to arbitration agreement can be made. It may be the result of implied or specific consent or judicial determination. Normally, the parties to the arbitration agreement calling for arbitral reference should be the same as those to the an action. But this general concept is subject to

> exceptions which are that when a third party, i.e. non-signatory party, is claiming or issued as being directly affected through a party to the arbitration agreement and there are principal and subsidiary agreements, and such third party is signatory to a subsidiary agreement and not to the mother or principal agreement which contains the arbitration clause, then depending upon the facts and circumstances of the given case, it may be possible to say that even such third party can be referred to arbitration."
>
> (Emphasis laid by this Court)

37. The respondent no.1 has filed a suit seeking two remedies against the appellants: firstly, that the Arbitration Agreement contained in Clause 15 of the Agreement dated January 12, 2002 is void and/or unenforceable and/or has become inoperative and/or incapable of being performed, and secondly, the respondent no.1 sought permanent injunction restraining the appellant herein from initiating and/ or continuing with the impugned Arbitration proceedings bearing case no. 18582/ARP pursuant to the

Impugned Arbitration Agreement contained in clause 15 of the Agreement dated January 12, 2002 and the Request for Arbitration dated March 21, 2012 and the communication dated April 02, 2012 issued by defendant no. 8 in the Arbitration proceedings connected therewith and incidental thereto.

Since, we have already held that the arbitration clause is valid, suit filed by the respondent no.1 for declaration and permanent injunction is unsustainable in law and the suit is liable to be dismissed.

38. In view of the above, we direct the parties to resolve their disputes through arbitration as mentioned in clause 15 of the letter of Agreement dated 12th January, 2002 in accordance with the Rules of ICC. We have also seen from the written submission of the appellants counsel that the appellants have already initiated an arbitration proceeding. In such case, the parties shall continue with the arbitration proceeding since the suit filed for permanent

injunction against the arbitration proceeding is dismissed by setting aside the impugned judgment and final order in A.P.O. No. 13 of 2013 passed by the High Court of judicature at Calcutta on 04.06.2013. Accordingly, the appeal is allowed, but no costs.

……J.
[G.S. SINGHVI]

……J.
[V. GOPALA GOWDA]

New Delhi,
December 10, 2013