



## Supreme Court clarifies that section 8(1) of the amended Act does not render consumer disputes mandatorily arbitrable and does not render non-arbitrable disputes arbitrable<sup>1</sup>

### Brief Facts

The Appellant acquired and purchased land to develop an integrated township in District Mohali, Punjab. The Respondent bought a villa in this project. The parties entered into a buyer’s agreement dated 6 May 2008 (“**Agreement**”), which provided for arbitration of disputes under the Arbitration and Conciliation Act, 1996 (“**Act**”) in clause 43.

A dispute arose between the parties. The Respondent filed a complaint before the National Consumer Dispute Redressal Commission (“**NCDRC**”). The Appellant opposed the complaint and filed an application under section 8 of the Act asking for the dispute to be referred to arbitration in accordance with the Agreement.

The learned Single Member of the NCDRC referred the matter to a three-member Bench of the NCDRC, which ruled that an arbitration clause in an agreement cannot circumscribe the jurisdiction of a consumer forum for reasons of public policy and that consumer disputes fall within the category of disputes that are to be adjudicated and governed by specific public purpose statutory enactments (“**First Order**”). Consequently, the section 8 application was rejected by the single judge (“**Second Order**”).

Subsequently, the Appellant appealed against the First Order and the Second Order to the Supreme Court (“**SC**”). These appeals were also dismissed, following which the Appellant filed review petitions.

### Issues

**Issue (i):** Whether the NCDRC committed an

error in rejecting the Appellant’s application under section 8 of the Act?

**Issue (ii):** Whether after the amendments made in section 8 by the Arbitration and Conciliation (Amendment) Act, 2015 (“**Amendment Act**”), the Appellant’s application could not have been rejected in view of the substantial changes brought in the statutory scheme by the insertion of “*notwithstanding any judgment, decree or order of the Supreme Court or any Court*” in sub-section (1) of section 8?

**Issue (iii):** Whether the NCDRC and SC committed an error in not adverting to the above statutory amendment?

**Issue (iv):** Whether by the insertion of “*notwithstanding any judgment, decree or order of the Supreme Court or any Court*” in sub-section (1) of section 8, the legislature intended to do away with the SC judgments laying down that the special remedy under the Consumer Protection Act, 1986 can be pursued despite there being an arbitration agreement between the parties?

### Judgment

**Issue (i):** The SC held that the NCDRC did not commit an error in rejecting the Appellant’s application under section 8. The SC noted that the object of the Consumer Protection Act is to protect interests of consumers. In light of this interest, the statute provides consumers a special remedy, which is “*in addition to and not in derogation of the provisions of any other law for the time being in force*” as per section 3 of the statute. The SC referred to its previous dicta where it has held that the “*remedy of arbitration*

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available to the complainant does not bar the jurisdiction of the consumer forums and the consumer forums are not under an obligation to refer the matter to the Arbitral Tribunal”<sup>2</sup>

**Issues (ii), (iii) and (iv):** The SC addressed these issues collectively and held that by the insertion of “notwithstanding any judgment, decree or order of the Supreme Court or any Court”, the legislature did not intend to amend the established position of law – namely that the remedy under the Consumer Protection Act is **in addition to** other remedies in force and it cannot be negated or diluted by an arbitration agreement.

The SC clarified that the import of the inserted language is to minimise the extent of judicial intervention under section 8 to only examining *prima facie* existence of a valid arbitration agreement, and not other aspects as was hitherto done by courts. The import is **not** to render non-arbitrable disputes arbitrable, which is also in line with section 2(3) of the Act, which provides that “*this Part shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration*”.

## Analysis

This is a significant decision of the SC, from which three important points can be drawn: One, the SC drew the crucial distinction between disputes that are non-arbitrable (as laid down

in **Booz Allen and Hamilton Inc. v. SBI Home Finance Limited**<sup>3</sup>) and disputes, which can be arbitrated but are also governed by special/additional statutory remedies. Consumer disputes fall in the latter category, the result of which is that they can be arbitrated at the option of the aggrieved party i.e., if a valid arbitration agreement exists, the aggrieved party has the option to pursue arbitration in the first instance. However, if the aggrieved party elects to pursue the special remedy under the Consumer Protection Act in the first instance, he/she cannot be barred from doing the same by invoking section 8 of the Act.

Two, the SC clarified that the language introduced in section 8(1) of the Act by the Amendment Act could not have been intended to render non-arbitrable disputes arbitrable, and equally, it could not have been intended to make arbitration mandatory for cases where it is an optional remedy as per the settled law.

Third, the SC also made it clear that the legislative intent behind the language introduced in section 8(1) is to restrict the judicial intervention to only examining the *prima facie* existence of a valid arbitration agreement, as opposed to looking at other facets of the arbitration agreement, subject matter of the arbitration and whether the claim is dead or alive, as was the position prior to the Amendment Act (see **Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya**<sup>4</sup>).

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1 Authored by Surjendu Sankar Das, Partner and Juhi Gupta, Associate; *M/S. Emaar MGF Land Limited v. Aftab Singh*, Review Petition (C) Nos. 2629-2630 OF 2018 in Civil Appeal Nos. 23512-23513 of 2017, 2018 SCC OnLine SC 2378, Supreme Court, judgment dated 10 December 2018.

**Quorum:** Uday Umesh Lalit and Ashok Bhushan, JJ.

2 *Rosedale Developers Private Limited v. Aghore Bhattacharya and Others*, (2018) 11 SCC 337.

3 (2011) 5 SCC 532.

4 (2003) 5 SCC 531.

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