

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

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REVISION PETITION NO. 412 OF 2011

(Against the order dated 4.01.2011 in Misc. Appl. No. 688/2010 in Complaint No. 37 / 2010 of State Consumer Disputes Redressal Commission, Haryana)

DLF Limited,
DLF Centre,
Sansad Marg,
New Delhi – 110001.
Through Ms. Poonam Madan
Vice – President (Legal),
M/s. DLF Limited

... Petitioner

Versus

Mridul Estate (Pvt.) Ltd.,
H-108, Connaught Place,
New Delhi – 110001
Through its Director,
Shri Kamal Kumar Singh

... Respondent

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REVISION PETITION NO. 1301 OF 2011

(Against the order dated 17.03.2011 in No. MA-259/2010 in CC/48/10 of State Consumer Disputes Redressal Commission, West Bengal)

South City Projects (Kolkata) Ltd.
Registered office at 375,
Prince Anwar Shah Road,
Kolkata – 700068

... Petitioner

Versus

Nawal Kishore Banka,
24-A, Shakespeare Sarani,
2nd Floor, Room No. 6,
Kolkata – 700017

... Respondent

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REVISION PETITION NO. 1238 OF 2013

(Against the order dated 2.11.2012 in Misc. Appl. No. 262/2012 in Complaint No. 8 / 2012 of State Consumer Disputes Redressal Commission, West Bengal)

DLF Limited,
DLF IT Park
DLF Building, Ground Floor,
Tower 2, Major Arterial Road,

Block AF, New Town
Rajarhat, Kolkata
Through its Auth. Signatory ... Petitioner
Versus

Paradip Cargo Carriers Pvt. Ltd.
Through its Managing Director,
Mr. Bijay Kumar Kandoi,
S/o Late Sh. Manmal Kandoi,
At: Professorpara,
Cuttack -753 003 (Odisha) ... Respondent

MISCELLANEOUS APPLICATION NO. 210 OF 2011
(For reference of the matter to arbitration)
IN
CONSUMER COMPLAINT NO. 183 OF 2010

Atlanta Systems Pvt. Ltd.
Through Mr. Sandeep Narula
Regd. Office M-135,
Second Floor, Opp. Super Bazaar
Connaught Place,
New Delhi – 110001. ... Complainant

Versus

1. Negolice India Ltd.
Through Mr. Mahesh Bhagchandha
E-13/29, Harsha Bhawan
Connaught Circus
New Delhi – 110001

2. Delhi Development Authority,
Through Vice-Chairman,
Vikas Sadan, INA,
New Delhi. Opposite Parties

MISCELLANEOUS APPLICATION NO. 3 OF 2011
(For reference of the matter to arbitration)
IN
CONSUMER COMPLAINT NO. 188 OF 2010

1. Mr. Rohit Shroff,
S/o Mr. Rajan Shroff

2. Mrs. Sushmita Shroff
W/o Mr. Rohit Shroff

Both R/o 6B, Keyatalla Road,
Kolkata – 700029.

3. Mrs. Enakshi Tagore
W/o Late S.N. Tagore

4. Mr. Rudrendra Nath Tagore,
S/o Late S.N. Tagore

Both R/o “Sunflower Garden”
Flat no. 1D, 74, Topsia Road,
Kolkata – 700046.

Complainant No. 2 to 4 are represented by
complainant no.1, Mr. Rohit Shroff, who is
the Special Power of Attorney holder of
all the other three complainants.

..... Complainants

Versus

Renault Developers Private Limited
Office at 43 / 3, Hazra Road,
P.S. Ballygunge,
Kolkata - 700019

.... Opposite Party

Interim Application NO.1579/2013

(For withdrawal filed by Complainant No.51)

and

Interim Application No. 465 OF 2013

(For Deletion of name)

IN

CONSUMER COMPLAINT NO. 240 OF 2010

Aghore Bhattacharya & Ors.
All the complainants are represented by
their constituted Attorney,
Shri Ranjeet Shankar Guha,
S/o Late Major Subodh
Chandra Guha of 7K,
Cornfield Road,

Kolkata – 700019

..... Complainants

Versus

Rosedale Developers Pvt. Ltd.
Rep. by its Managing Director,
SHARCHI TOWER, 3rd Floor
(West Block),
686, Anandapur,
Kolkata – 700107.

.... Opposite Party

MISCELLANEOUS APPLICATION NO. 231 OF 2011
(For referral of matter to Arbitration)
IN
CONSUMER COMPLAINT NO. 254 OF 2010

1. Mr. Vivek Jain

2. Mrs. Khyati Goenka

Both R/o

40, Paras Nath Street,
Muzaffar Nagar, U.P. 251002.

3. Mr. Shrinivas Mishra

4. Mrs. Nupur Trivedi

Both R/o

D-313, Sungrace, Raheja Vihar,
Chandivali,
Mumbai

5. Mr. Aarkesh Anand

6. Mr. Prashant Anand

Both R/o

B-1/197, First Floor,
Janakpuri, Delhi – 110058.

7. Mr. Dinesh Kumar Agrawalla

8. Mrs. Rupam Tiwary

R/o Flat No. 501,
HUDDA COGHS PLOT No. 1,
Sector – 56,
Gurgaon Haryana

..... Complainants

Versus

1. M/s. Unitech Ltd.
Registered Office at
6, Community Centre,
Saket, New Delhi – 110017.

2. ICICI HFC Ltd.
Home Loans Division,
SCO – 18 & 19, 2nd Floor,
HUDA Shopping Complex,
Sector – 14,
Gurgaon

.... Opposite Parties

INTERIM APPLICATION NO. 2 OF 2011
(For referral of matter to Arbitration)
IN

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CONSUMER COMPLAINT NO. 58 OF 2011

1. Mr. Vinod Kumar
2. Mrs. Anjali Kumar
3. Ms. Madhuban Kumar
Through her Attorney,
Mr. Vinod Kumar.

All R/o House No. 778,
Sector – 17, Faridabad
Haryana

..... Complainants

Versus

Uppal Housing Limited,
(formerly known as Uppal Housing Private Limited)

Having its Registered Office at
S-39 A, Panchsheel Park
New Delhi – 110017
Through its Chairman
Mr. B.K. Uppal

.... Opposite Party

INTERIM APPLICATION NO. 305 / 2013
(For referral of the matter to arbitration)
IN
CONSUMER COMPLAINT NO. 110 OF 2011

1. Sheikh Mohammed Naqi
S/o Late Sheikh Haji Mohammed Shafi,

2. Sheikh Shariq Naqi,
S/o Sheikh Mohammed Naqi

Both R/o
6, Ataur Rehman Lane
Under Hill Road,
Civil Lines
Delhi- 110054

.... Complainants
Versus

DLF Commercial Developers Ltd.
DLF Centre Sansad Marg,
New Delhi - 110001

.... Opposite Party

INTERIM APPLICATION NO. 532 OF 2013
(FOR DISMISSAL OF COMPLAINT)
IN
CONSUMER COMPLAINT NO. 241 OF 2011

1. Mrs. Anjana Arora
W/o Mr. Ashish Kumar Kulshreshtha

2. Mr. Ashish Kumar Kulshreshtha
S/o Sh. Harish Chandra Kulshreshtha

Both R/o
R/o P-402, Purva Fountain Square,
Marathahalli, Bangalore - 560037

..... Complainants

Versus

1. M/s. Unitech Ltd.
Registered Office at
6, Community Centre,
Saket, New Delhi – 110017.

2. ICICI HFC Ltd.
Home Loans Division,
SCO – 18 & 19, 2nd Floor,
HUDA Shopping Complex,
Sector – 14,
Gurgaon

.... Opposite Parties

**INTERIM APPLICATION NO. 531 OF 2013
(FOR DISMISSAL OF COMPLAINT)**

IN

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CONSUMER COMPLAINT NO. 273 OF 2011

1. Mr. Hitendra Mahajan
S/o Sh. Y.P. Mahajan

2. Mrs. Abha Gupta
W/o Sh. Hitendra Mahajan

Both R/o
2/119, Sunder Vihar,
Outer Ring Road,
New Delhi – 110087

..... Complainants

Versus

1. M/s. Unitech Ltd.
Registered Office at
6, Community Centre,
Saket, New Delhi – 110017.

2. ICICI HFC Ltd.
Regd. Office at Ramon House,
H.T. Parekh Marg,
169, Backbay Reclamation,
Churchgate, Mumbai

.... Opposite Parties

AND**CONSUMER COMPLAINT NO. 226 OF 2012**

1. Ajay Vaishnavi,
S/o Late Shri B.K. Vaishnavi,
R/o A-1204, Park View City -2
Sohna Road, Gurgaon-122018
 2. Mrs. Preeti Vaishnavi,
W/o Shri Ajay Vaishnavi
R/o A-1204, Park View City -2
Sohna Road, Gurgaon-122018
- Complainants

Versus

1. M/s. Unitech Ltd.
Registered Office at
6, Community Centre,
Saket, New Delhi – 110017.
- Opposite Parties

BEFORE: -

**HON'BLE MR. JUSTICE ASHOK BHAN, PRESIDENT
HON'BLE MRS. VINEETA RAI, MEMBER
HON'BLE DR. S.M. KANTIKAR, MEMBER**

IN RP/412/2011

For the Petitioner : Mr.Sudhir Nandrajog, Sr.Advocate with
Mr. Pritpal Nijjar, Mr.Pranavakshar Kapur and Mr.Dhiraj
Philip, Advocates

For the Respondent : Mr.Neeraj Kumar Jain, Sr. Advocate with
Mr. Anil Kumar, Mr. Rajiv Kapoor,
Mr.Avinash Mishra, Advocates with Mr.Santosh Paul,
Advocate as amicus curiae

IN RP/1301/2011

For the Petitioner : Mr. Aman Ahluwalia and Mr. Sumit Atri,
Advocates

For the Respondent : Mr. Rakesh Sinha and
Mr. Pawan Kumar Bansal, Advocates

IN RP/1238/2013

For the Petitioner : Mr. H.L. Tiku, Senior Advocate and
Mr.Abhijeet Swarup, Advocate with him.

For the Respondent : NEMO

IN CC/183/2010

For the Complainant : Mr. Kirtiman Singh, Advocate
Mr. T. Singhdev, Advocate

For Opp. Party No.1 : Mr. Parveen Kr. Aggarwal, Advocate

For Opp. Party No.2 : NEMO

IN CC/188/2010

For the Complainants : NEMO

For the Opposite Party : Mr. Gaurav Malik and
Mr.Tarun Banga, Advocates

IN CC/240/2010

For the Complainants : Mr.Prabir Basu Mr. S. Banerjee
Mr. Sanjoy Kumar Ghosh, Advocates

For the Opposite Party : Mr. Sonjoy Ghose , Advocate

IN CC/254/2010

For the Complainants : NEMO

For Opp. Party No.1 : Mr. Sushil Bhashiya, Advocate
For Mr.Sunil Goel, Advocate

For Opp. Party No.2 : Mr.Abhinav Hansaria, Advocate

IN CC/58/2011

For the Complainants : NEMO

For the Opposite Party : Mr. Vijay Nair, Advocate

IN CC/110/2011

For the Complainants : Mr. M Salim, Advocate

For the Opposite Party : Mr. Archit Virmani, Advocate

IN CC/241/2011

For the Complainants : NEMO

For Opposite Party No.1: Mr. Sushil Bhashiya, Advocate
For Mr.Sunil Goel, Advocate

IN CC/273/2011

For the Complainants : NEMO

For Opposite Party No.1 : Mr. Sushil Bhashiya, Advocate
For Mr.Sunil Goel, Advocate

IN CC/226/2012

For the Complainants : NEMO

For the Opposite Party : Mr. Sushil Bhashiya, Advocate
For Mr.Sunil Goel, Advocate

PRONOUNCED ON: 13.05.2013

ORDER**ASHOK BHAN, J., PRESIDENT**

In this batch of cases (Revision Petitions and the Original Petitions) a two Members Bench has referred the following question of law to a larger Bench for consideration and opinion:-

“ Whether the consumer fora constituted under the Consumer Protection Act, 1986 are bound to refer the dispute raised in the complaint, once an application under section 8 of the Arbitration and Conciliation Act, 1996, is filed by the opposite party(ies) seeking reference of the dispute to an Arbitral Tribunal in terms of valid arbitration agreement, despite the provisions of Section 3 of the Consumer Protection Act, 1986. “

2. For the sake of brevity, we do not wish to recapitulate the facts of each case. The facts are taken from Revision Petition No. 412 of 2013.

3. The parties are being referred as per their original status as the Complainant and the Opposite Party.

FACTS:-

4. Complainant booked a flat No.810 with two parking spaces with the Opposite Party DLF Ltd. in its building project at The Aralias, Gurgaon and an Apartment Buyer's Agreement was executed between the parties on 5.11.04. The apartment was sold by the opposite party to the Complainant on bare shell concept. The interior works were to be done by the Complainant with various facilities to be provided by the Opposite Party on chargeable basis to complete the apartment. By letter dated 24.10.09, Opposite Party cancelled the allotment of apartment as the Complainant neither made the payment demanded by it nor did it undertake the interior work of the apartment. Complainant vide letter dated 05.12.09 requested the Opposite Party for withdrawal of the cancellation letter. Opposite Party offered to restore the allotment of apartment to the complainant subject to payment of Rs.1,09,63,010/- inclusive of holding charges, penalties and restoration charges.

Complainant agreed to pay all amounts except restoration charges of Rs.59,00,000/- and accordingly sent a cheque of Rs.50,63,010/- to the Opposite Party which was sent back by it to the Complainant. Complainant, being aggrieved, filed the complaint before the State Commission.

5. During the pendency of the complaint before the State Commission, Opposite Party filed Misc. Application No.688 of 2010 under Section 8 of the Arbitration and Conciliation Act, 1996 for referring the dispute for arbitration under clause 51 of the Apartment Buyer's Agreement dated 5.11.04.

6. State Commission by its interim order dated 04.01.11 dismissed the M.A.No.688/2010 by observing as under:-

“ **In the above cited P.Anand Gajapathi Raju's case**

(Supra), the applicant fulfilled the pre-requisite conditions of Section 8. Another authoritative pronouncement of the Hon'ble Apex Court in Branch Manager, Magna Leasing and Finance Ltd. and Anr. Vs. Potluri Madhaviata and Anr. (Supra) is also on the same footing wherein the pre-requisite conditions were fulfilled by the applicant for referring the matter to the arbitrator. But in the instant case the applicant/opposite party submitted itself to the jurisdiction of the State Consumer Commission to entertain and decide this complaint when it first applied for setting aside of ex-parte proceedings challenging the orders dated 30.07.10 and 17.8.2010 which were stayed by the Hon'ble National Commission vide order dated 24.09.2010 with respect to carrying out the repair work in the flat by opening the lock of the flat. Thus, keeping in view that the applicant/opposite party sought adjournment on one pretext or the other, sometime for compromise and sometime for setting aside ex-parte order and also filed revision petition before the Hon'ble National Commission against the ex-parte order wherein stay was granted, it should show that the applicant/opposite party is bent upon delaying this case by moving one application and the other. In this view of the matter, there is no force in this application which is totally against the provisions of Section 8 of the Arbitration Act as well as law discussed above. "

7. Opposite Party, being aggrieved, filed the Revision Petition before this Commission.

8. Ld. respective counsels appearing for the parties and the amicus curiae have been heard at length.

9. The main thrust of the submissions of the Ld. Counsel for the Opposite Parties is that the Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as the Arbitration Act of 1996) is peremptory in nature and it is obligatory on the part of the "judicial authority" to refer the parties for arbitration in terms of the arbitration clause in the agreement as the purpose of Section 8 of the Arbitration Act of 1996 is to make the arbitration agreement to be

effective. That the mandate of Section 8 of the Arbitration Act of 1996 comes into operation only after an application under sub-section (1) is made by a party before the “judicial authority” before which an action is brought. There may be cases where despite existence of an arbitration agreement, the parties may get their dispute adjudicated from Consumer Fora or other judicial authorities. The reference of the matter to the arbitration is not automatic in case of existence of an arbitration agreement. But once an application under section 8 (1) of the Arbitration Act of 1996 is made by any party, the “judicial authority” has no discretion but to refer the parties to arbitration in view of the use of the word “shall” in the provision. That the bar of Section 8 of the Arbitration Act of 1996 if not strictly enforced it would create an anomalous situation wherein if the matter is not referred for arbitration, as there are counter-claims of the Opposite Parties which the Consumer Fora cannot adjudicate and it would lead to two parallel dispute resolutions over the same/similar issue. That Section 5 of the Arbitration Act of 1996 further confirms the intention of the legislature that the provisions of the Act are intended to have over-riding effect excluding the judicial authorities to intervene in the matters governed by the provisions of the Arbitration Act. That the effect of Section 8 of the Arbitration Act of 1996 is not to non-suit the consumer but to relegate him to a remedy which is already agreed upon. That if the Consumer Fora do not refer the matter to the arbitrator in terms of Section 8, it would result in a peculiar situation where there may be contradictory orders from the Consumer Fora and the Arbitrator. The Arbitrator is not denuded of his jurisdiction simply by virtue of a complaint having been filed before the Consumer Fora. If both proceedings are allowed to proceed simultaneously, the arbitral award would be enforceable as a decree of the court in terms of Section 36 of the Arbitration Act of 1996.

10. It is further contended by the Ld. Counsel for the Opposite Parties that the Section 3 of the Consumer Protection Act, 1986 (hereinafter to be referred as the

“C.P Act”) provides an alternative remedy not in derogation of any provisions of any other law for the time being in force. That Section 3 of the C.P Act does not partially repeal or abrogate any law and, therefore, it can be safely presumed that the Section 3 of the C P Act does not abrogate Section 5 and Section 8 of the Arbitration Act of 1996. But inversely, the aforesaid proposition is not correct because the Section 5 as well as Section 8 of the Arbitration Act of 1996 clearly bars/ouster the jurisdiction of “any judicial authority” which includes the Consumer Fora. In support of the proposition, Ld. Counsels for the Opposite Parties have placed reliance on the Seven Judges Bench’s judgment of the Supreme Court in the case of **S.B.P & Co. Vs. Patel Engineering Ltd. & Anr. - (2005) 8 SCC 617** and the following other judgments:-

- (i) **Agri Cold Exims Ltd. Vs. Laxmi Knits & Woven & Ors. – (2007) 3 SCC 686**
- (ii) **Hindustan Petroleum Corporation Ltd. Vs. Pink City Midways Petroleum – (2003) 6 SCC 503**
- (iii) **P. Anand Gajapathi Raju & Ors. Vs. P.V.G. Raju (Dead) & Ors. – (2000) 4 SCC 539**
- (iv) **Rashtriya Ispat Nigam Ltd. & Anr. Vs. Verma Transport Co. – (2006) 7 SCC 275.**
- (v) **Kalpana Kothari Vs. Sudha Yadav (2000) 4 SCC 539.**
- (vi) **Branch Manager, Magma Leasing and Finance Ltd. & Anr. Vs. Potluri Madhaviata & Anr. (2009) 10 SCC 103**

11. It is also contended by them that the decision of the Supreme Court in the case of **National Seeds Corporation Ltd. Vs. M. Madhusudhan Reddy and Anr. – (2012) 2 SCC 506** does not consider and appreciate the distinction between Section 34 of the Arbitration Act, 1940 and Section 8 of the Arbitration Act of 1996. That it has failed to consider the earlier decisions of the Supreme Court which laid down that Section 8 is mandatory in character and the judicial authorities are bound to refer the matter to arbitration if any application is filed in a

timely manner. That the decision is per incuriam and not binding.

12. Ld. Counsels appearing for the Complainants on the other hand contend that the Consumer Fora have jurisdiction to entertain and decide the complaints filed before it despite the existence of an arbitration clause in the agreement executed between the parties to the complaint and it is not open to the opposite party to seek reference of the dispute to the Arbitral Tribunal as the Section 3 of the C P Act provides a remedy in addition to the consentient arbitration which can be enforced under the Arbitration Act or in a civil suit. That the Hon'ble Supreme Court has repeatedly held that the judicial authorities under the C P Act are at liberty to proceed with the matter in accordance with the provisions of the Act and it is not obligatory on their part to refer the parties to arbitration proceedings pursuant to a contract entered into between the parties. That the Parliament was fully and duly aware of the provisions contained in the C.P Act and in particular Section 3 of the Act which provides that provisions of the CP Act are in addition to and not in derogation of the provisions of any other law for the time being in force.

13. It is further contended by them that the Legislature by enacting the C.P Act wanted to create an additional avenue for having speedy redressal of the grievances of the consumer in respect of a consumer dispute either arising from a defect in the goods purchased as per Section 2(1)(f) of the said Act or for deficiency in the service as per Section 2(1)(g) of the said Act and even if it is found that the dispute between the parties is covered by the arbitration agreement and such dispute can be resolved by arbitration as per the said agreement, still a party to such contract cannot be precluded from seeking remedy under the C.P. Act in addition to the Forum available to the parties for resolution of their dispute by way of arbitration.

14. In support of their contentions, Ld. Counsels appearing for the Complainants placed reliance on the following judgments of the Supreme Court:-

(i) Lucknow Development Authority v. M.K. Gupta - (1994) 1 SCC 243,

- (ii) ***Fair Air Engineers (P) Ltd. vs. N. K. Modi – (1996) 6 SCC 385***
- (iii) ***Skypay Couriers Limited v. Tata Chemicals Limited (2000) 5 SCC 294***
- (iv) ***State of Karnataka vs. Vishwabharathi House Building Cooperative Society – (2003) 2 SCC 412***
- (v) ***CCI Chambers Cooperative Housing Society Limited Vs. Development Credit Bank Limited – (2003) 7 SCC 233***
- (vi) ***Secretary, Thirumurugan Cooperative Agricultural Credit Society Vs. M. Lalitha (2004) 1 SCC 305,***
- (v) ***H.N. Shankara Shastry Vs. Assistant Director of Agriculture, Karnataka- (2004) 6 SCC 230***
- (vi) ***Trans Mediterranean Airways Vs. Universal Exports and another- (2011) 10 SCC 316***

and in particular the recent judgment of the Supreme Court in **National Seeds Corporation Ltd. Vs. M. Madhusudhan Reddy & Anr. – (2012) 2 SCC 506** wherein the Hon'ble Supreme Court after taking into consideration the provisions of the Section 8 of the Arbitration Act of 1996 and the Section 3 of the C.P. Act has held that the plain language of Section 3 of the C.P. Act makes it clear that the remedy available in that Act is in addition to and not in derogation of the provisions of any other law for the time being in force. Supreme Court has also held that the complaint filed by a consumer before the Consumer Fora would be maintainable despite their being an arbitration clause in the agreement to refer the dispute to the Arbitrator.

15. Mr. Santosh Paul, Advocate, amicus curiae, based on certain foreign and Indian decisions made submissions to advance the proposition that the provisions of Consumer Protection Act, 1986 are in addition and not in derogation of the provisions of Arbitration and Conciliation Act, 1996. His first submission is that the Consumer Protection Act, 1986 has itself carved out a jurisdiction for Redressal

Forums to redress the grievance of consumers in regard to specific disputes, i.e., defect in goods, deficiency in certain service(s) rendered by the service provider and adoption of restrictive and or unfair trade practice by certain service provider and, therefore, those matters cannot be referred to Arbitration. In other words, his submission is that no arbitration agreement can be entered by the parties for the settlement of the disputes of the above referred nature. In this regard he has relied upon the following passages from the book titled "Mustil & Boyd Commercial Arbitration, Second Edition" Page No. 149 & 151 & 152 reads as under:-

"In practice therefore, the question has not been whether a particular dispute is capable of settlement by arbitration, but whether it ought to be referred to arbitration or whether it has given rise to an enforceable award. No doubt for this reason, English law has never arrived at a general theory for distinguishing those disputes which may be settled by arbitration from those which may not. The general principle is, we submit, that any dispute or claim concerning legal rights which can be the subject of an enforceable award, is capable of being settled by arbitration. The principle must be understood, however, subject to certain reservations."

"In Soleimany V Soleimany (1999) QB 785, the Court of Appeal suggested that there may be cases where on grounds of public policy disputes under certain types of contract cannot be referred to arbitration, e.g., trading with the enemy or a partnership in crime."

16. Mr. Paul then carved out the salient features of Consumer Protection Act, 1986 as under:-

"1. The consumer Protection Act, 1986 in its preamble states as follows:-

An Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumer's disputes and for matters connected therewith.

- 2. The Consumer Protection Act, 1986 comes out “wrongs” for which an elaborate redressal mechanism has been set up. The wrongs are as follows:-**
- a. Deficiency of Notice (Section 2(f))**
 - b. Defect (Section 2(g))**
 - c. Restrictive Trade Practice 2 (nnn)**
 - d. Unfair Trade Practice 2 (r)**

17. It is the submission of the amicus curiae that for the redressal of the wrongs, an elaborate redressal mechanism has been set up at the District, State and National level to deal with the matters relating to defect in goods within the meaning of section 2 (f), deficiency in service under section 2(g), restrictive trade practice section 2(nnn) and unfair trade practice section 2(r) of the Act. That by establishing the consumer disputes redressal fora, the legislature has provided a special remedy for the redressal of the said wrongs which is in addition to the remedy already provided under the Code of Civil Procedure and the MRTP Act. According to him, the remedy provided under the Consumer Protection Act, 1986 is a special remedy with the object of redressal of the grievance of the affected consumers in an expeditious and non-expensive manner. That by the enacting the Arbitration and Conciliation Act, 1996, the legislature has not taken away the said remedy.

18. Preamble to the C.P. Act shows that this legislation is meant to provide for better protection of the interests of consumers and for that purpose to make provision for establishment of consumer councils and other authorities for the settlement of consumer disputes and for matters connected therewith. The salient features of the Consumer Protection Bill were to promote and protect the rights of consumers such as :-

- (a) the right to be protected against marketing of goods which are hazardous to life and property;**
- (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;**

- (c) ***the right to be assured, wherever possible, access to an authority of goods at competitive prices.***
- (d) ***the right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums;***
- (e) ***the right to seek Redressal against unfair trade practices or unscrupulous exploitation of consumers, and***
- (f) ***right to consumer education***

18. Section 2 of the C.P. Act contains the definition of various terms. Clause (d) and (f) read as under:-

“2 (d) ‘consumer’ means any person who,—

- (i) ***buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or***
- (ii) ***hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first-mentioned person but does not include a person who avails of such services for any commercial purpose;***

Explanation.—For the purposes of sub-clause (i), ‘commercial purpose’ does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment; (The explanation was substituted w.e.f. 15.3.2003 by Consumer Protection (Amendment) Act 62, 2003)

- (f) ***‘defect’ means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied, or as is claimed by the trader in any manner whatsoever in relation to any goods***

19. Section 3 declares that the provisions of the C P Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Section 9 provides for establishment of the Consumer Forums at the District, State and National level. Section 11 relates to jurisdiction of the District Forum. Section 12

prescribed the manner in which the complaint can be filed before the District Forum and the procedure required to be followed for entertaining the same.

20. The scope and reach of the C.P. Act has been considered by the Hon'ble Supreme Court in following judgments:-

- (i) ***Lucknow Development Authority v. M.K. Gupta - (1994) 1 SCC 243,***
- (ii) ***Fair Air Engineers (P) Ltd. vs. N. K. Modi – (1996) 6 SCC 385***
- (iii) ***Skypay Couriers Limited v. Tata Chemicals Limited (2000) 5 SCC 294***
- (iv) ***State of Karnataka vs. Vishwabharathi House Building Cooperative Society – (2003) 2 SCC 412***
- (v) ***CCI Chambers Cooperative Housing Society Limited Vs. Development Credit Bank Limited – (2003) 7 SCC 233***
- (vi) ***Secretary, Thirumurugan Cooperative Agricultural Credit Society Vs. M. Lalitha (2004) 1 SCC 305,***
- (v) ***H.N. Shankara Shastry Vs. Assistant Director of Agriculture, Karnataka- (2004) 6 SCC 230***

21. In **M Lalitha's case (supra)** two judges Bench of the Supreme Court noticed the background, the object and reasons and the purpose for which the C.P. Act was enacted. After referring to its earlier judgments in **M.K. Gupta's case (supra)** and **N.K. Modi's case (supra)**, the Hon'ble Supreme Court observed as under:-

“The preamble of the Act declares that it is an Act to provide for better protection of the interest of consumers and for that purpose to make provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and matters connected therewith. In Section 3 of the Act in clear and unambiguous terms it is stated that the provisions of the 1986 Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. From the Statement of Objects and Reasons and the scheme of the 1986 Act, it is apparent that the main objective of the Act is to provide for better protection of the interest of the consumer and for that purpose to provide for better redressal, mechanism through which cheaper, easier, expeditious and effective redressal is made available to consumers. To serve the purpose of the Act, various quasi-judicial forums are set up at the district, State and national level with wide range of powers vested in them. These quasi-judicial forums, observing the principles of natural justice, are empowered to give relief of a specific nature and to award, wherever appropriate, compensation to the consumers and to impose penalties for non-compliance with their orders.”

22. In **Kishore Lal Vs. Chairman, Employees' State Insurance Corporation (2007) 4 SCC 579**, the Supreme Court held that the jurisdiction of the Consumer Fora should not be curtailed unless there is an express provision prohibiting the Consumer Forum to take up the matter which falls within the jurisdiction of the civil court or any other forum as established under some enactment. The Court went to the extent of saying that if two different fora have jurisdiction to entertain the dispute in regard to the same subject, the jurisdiction of the Consumer Forum would not be barred and the power of the Consumer Forum to adjudicate upon the dispute could not be negated. The relevant observations read as under:-

“The trend of the decisions of this Court is that the jurisdiction of the Consumer Forum should not and would not be curtailed unless there is an express provision prohibiting the Consumer Forum to take up the matter which falls within the jurisdiction of civil court or any other forum as established under some enactment. The Court had gone to the extent of saying that if two different fora have jurisdiction to entertain the dispute in regard to the same subject, the jurisdiction of the Consumer Forum would not be barred and the power of the Consumer Forum to adjudicate upon the dispute could not be negated.”

23. The definition of ‘consumer’ contained in Section 2 (d) of the C.P. Act which is reproduced in the earlier part of this order is very wide. Sub Clause (i) of the definition takes within its fold any person who buys any goods for a consideration paid or promoted or partly paid and partly promised, or under any system of deferred payment. It also includes any person who uses the goods though he may not be buyer thereof provided that such use is with the approval of the buyer. The last part of the definition contained in Section 2 (d) (i) excludes a person from the definition of ‘consumer’ who obtains the goods for resale or for any commercial purpose. By virtue of the explanation which was added by Amendment Act 62 of 2002, it was clarified that the expression ‘commercial purpose’ used in sub clause (i) does not include use by a consumer of goods bought and used by him for the purpose of earning his livelihood by means of self-employment.

24. We will now notice some of the provisions of the Arbitration and Conciliation

Act, 1996. Section 7 of the Arbitration Act of 1996 which defines Arbitration Agreement reads as under:-

“7. Arbitration agreement.-

- (1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.***
- (2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.***
- (3) An arbitration agreement shall be in writing.***
- (4) An arbitration agreement is in writing if it is contained in:-***
 - (a) a document signed by the parties;***
 - (b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement;
or***
 - (c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.***
- (5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.”***

25. Section 8 of the said Act reads 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.***
- (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.***

- (3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.”**

26. Section 5 of the said Act reads as under:-

5. Extent of judicial intervention

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

27. Section 8 of the Arbitration Act of 1996 is analogous to Section 34 of 1940 Act which reads as under:-

“34. Power of Court, where arbitration agreement is ordered not to apply to a particular difference, to order that a provision making an award a condition precedent to an action shall not apply to such difference: Where it is provided (whether in the arbitration agreement or otherwise) that an award under an arbitration agreement shall be a condition precedent to the bringing of an action with respect to any matter to which the agreement applies, the Court, if it orders (whether under this Act or any other law) that the agreement shall cease to have effect as regards any particular difference, may further order that the said provision shall also cease to have effect as regards that difference.”

28. A comparative study of the two sections will bring out as under:-

Section – 8 Arbitration and Conciliation Act, 1996	Section 34 Arbitration Act, 1940
<i>(1) There is an arbitration agreement.</i>	<i>(1) There is an arbitration agreement.</i>
<i>(2) A party to the agreement brings an action in the court against the other party.</i>	<i>(2) Any Party commences any legal proceedings against any other party to the agreement.</i>
<i>(3) Subject matter of the action is</i>	<i>(3) Claiming in respect of any</i>

<i>the same as the subject matter of the arbitration agreement;</i>	<i>matter against any other party to the agreement.</i>
<i>(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.</i>	<i>(4) The other party applies to stay the proceedings at any time before the filing of the Written statement or taking any other steps in the proceedings.</i>

29. In ***N.K. Modi's case (supra)***, the 2-Judge Bench of the Supreme Court after taking into consideration the provisions of the C.P Act, the Arbitration Act of 1996 and Arbitration Act, 1940 held as under:

“The provisions of the Act are to be construed widely to give effect to the object and purpose of the Act. It is seen that Section 3 envisages that the provisions of the Act are in addition to and are not in derogation of any other law in force. It is true, as rightly contended by Shri Suri, that the words “in derogation of the provisions of any other law for the time being in force” would be given proper meaning and effect and if the complaint is not stayed and the parties are not relegated to the arbitration, the Act purports to operate in derogation of the provisions of the Arbitration Act. Prima facie, the contention appears to be plausible but on construction and conspectus of the provisions of the Act we think that the contention is not well founded. Parliament is aware of the provisions of the Arbitration Act and the Contract Act, 1872 and the consequential remedy available under Section 9 of the Code of Civil Procedure, i.e., to avail of right of civil action in a competent court of civil jurisdiction. Nonetheless, the Act provides the additional remedy.

It would, therefore, be clear that the legislature intended to provide a remedy in addition to the consentient arbitration which could be enforced under the Arbitration Act or the civil action in a suit under the provisions of the Code of Civil Procedure. Thereby, as seen, Section 34 of the Act does not confer an automatic right nor create an automatic embargo on the exercise of the power by the judicial authority under

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

(emphasis supplied)

30. In **Skypay Couriers Ltd.’s case (supra)** the Supreme Court again in the context of Arbitration Act of 1940 observed as under :-

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

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31. In **Trans Mediterranean’s case (supra)** , the Hon’ble Supreme Court observed as under :-

“In our view, the protection provided under the CP Act to consumers is in addition to the remedies available under any other statute. It does not extinguish the remedies under another statute but provides an additional or alternative remedy.”

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32. In **N.K. Modi’s case (supra)** and **Skypay Courier’s Case (supra)**, the Hon’ble Supreme Court in the context of the provisions of the C.P. Act and in

particular Section 3 of the Act and Arbitration Act of 1940 has held that the Consumer Fora created under the C.P. Act are at liberty to proceed with the matter in accordance with the provisions of the Act rather than relegating the parties to the Arbitration proceedings pursuant to an Agreement entered into between the parties. Ld. Counsel appearing for the Opposite Parties submitted before us that these judgments would not be applicable as they are in the context of the Arbitration Act of 1940. That the Arbitration Act of 1996 has brought out fundamental changes and in view of the Arbitration Act of 1996, it is mandatory on the part of the Judicial Authorities to refer the parties to the arbitration. That the mandate of Section 8 of Arbitration Act of 1996 would be defeated if the matter is not referred to arbitration in the cases where the parties have agreed to refer the dispute to the Arbitration. We do not find any substance in this submission as well. Hon'ble Supreme Court in **Madhusudhan Reddy's case (supra)** after posing the following questions for its consideration in para 31 of the judgment:-

“The Ld. Counsel relied upon Section 8 of the Arbitration and Conciliation Act, 1996 and argued that in view of the arbitration clause contained in the agreements entered between the appellant and the growers, the latter could have applied for arbitration and Consumer Forums should have non-suited them in view of Section 8 of the Arbitration and Conciliation Act, 1996.”

held that the complaint filed under the C.P. Act would be maintainable and the consumer cannot be denied the relief by invoking the jurisdiction of Section 8 of the Arbitration Act of 1986. That Section 3 of the C.P. Act makes it clear that the remedy available in that Act is in addition and not in derogation of the provisions of any other law for the time being in force. The relevant observations of the Supreme Court contained in para 66 of this judgment read as under:-

“The remedy of arbitration is not the only remedy available to a grower. Rather, it is an optional remedy. He can either seek reference to an arbitrator or file a complaint under the

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

33. Faced with this, Ld. Counsel appearing for the Opposite Parties contended that in this case, the Hon'ble Supreme Court did not take into consideration the decision of the Seven Judges Bench in the **S.B.P & Co.'s** case. We do not find substance in this submission as well. In **Madhusudhan Reddy's case (Supra)**, Supreme Court after taking into consideration the background, objectives and reasons behind the enactment of C.P. Act, juxtapositioning the provisions of the C.P. Act and the Arbitration Act of 1996 (Section 3 of the C.P. Act and Section 8 of the Arbitration Act of 1996) held that the complaint filed by a consumer under the C.P. Act would be maintainable and the relief cannot be denied by invoking the jurisdiction of section 8 of the Arbitration Act of 1996. We are bound to follow the law laid down by the Supreme Court. The judgment is binding precedent.

By establishing the Consumer Disputes Redressal Forums, the Legislature has provided special remedy for the redressal of the grievances of “small consumers” who buy the goods or avail of services for their personal purpose. Persons who have bought the goods or availed of services for commercial purposes have been specifically excluded from the definition of ‘consumer’ except where the goods have been bought or services availed of by a small consumer for earning his livelihood by way of self- employment. Remedy provided under the C.P. Act is a special remedy with the objective of redressal of the grievances of the affected consumers in an expeditious and non-expensive manner. If the small consumers are

relegated to the Alternative Dispute Resolution (ADR) mechanism of arbitration, the remedy provided under the C.P. Act would become illusory. It would be neither expeditious nor in-expensive. It would defeat the very purpose of enactment of the C.P. Act.

34. Another aspect in relation to the consumer disputes which has to be taken note of is that most of the complainants /consumers sign the agreement containing an arbitration clause under duress(instance is taken from Builder's agreement) because the other party which is in a dominating position insists for it, else they would not enter into builders' agreement. In most of the cases, the builder who is in a dominating position reserves the right to appoint Sole Arbitrator to himself and the Arbitrator so appointed in most of the cases is the officer of the builder from whom it is almost impossible to expect an impartial and fair award. If the builder is allowed to have resort to the arbitration agreement contained in the Builder's agreement, going by the prevalent practice and little experience we have in the matters, the consumer would never be able to redress his genuine grievance. Legislature by providing the additional remedy under Section 3 of the C.P. Act has tried to take care of such a situation to redress the grievances of the small consumers.

34. Respectfully following the view taken by the Hon'ble Supreme Court in catena of judgments and in particular in Madhusudhan Reddy's case (supra), the question referred is answered in negative, i.e. in favour of the Complainants and against the Opposite Parties. It is held that the Consumer Fora constituted under the C.P Act are not bound to refer the dispute raised in the complaint on an application filed u/s 8 of the Arbitration Act of 1996 seeking reference of the dispute to an Arbitral Tribunal in terms of valid arbitration clause in the agreement entered into between the parties.

35. Revision Petition are remitted back to the State Commission to decide the same on merits in accordance with law. Original Petitions be listed before the

respective Benches of this Commission as per current roaster for disposal in due course.

36. Before parting with the matter, we would like to place on record our deep sense of appreciation for the assistance rendered by the amicus, Mr. Santosh Paul, Advocate. We direct the Registry to disburse a sum of Rs.25,000/- to Mr. Paul as out of pocket expenses from the NCDRC Legal Aid Account.

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(ASHOK BHAN J.)

PRESIDENT

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(VINEETA RAI)

MEMBER

.....

(S.M. KANTIKAR)

MEMBER

YD/*