* **HIGH COURT OF DELHI : NEW DELHI**

\+ **EFA (OS) No.22/2006**

% Judgment reserved on : 10th September, 2008

Judgment pronounced on : 28th November, 2008

M/s. IRCON International Ltd. ...Appellant
Through : Mr. K.R. Gupta, Adv. with Ms. Kiran Dharam, Adv. and Mr. Ram Prakash, Advisor of the Appellant

Vs.

M/s. National Building Construction Corporation Limited ...Respondent
Through : Mr. Ravi Varma, Adv.

Coram:

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not?

3. Whether the judgment should be reported in the Digest? Yes

MANMOHAN SINGH, J.

1. This appeal has been filed by the appellants against the order of the learned Single Judge of this court whereby the execution petition of the appellants was dismissed as not maintainable.

2. Brief facts relevant for deciding this appeal are that the appellant M/s Ircon International Ltd. (Ircon) and the respondent M/s National Building Construction Corp. Ltd. (NBCC) entered into an

agreement whereby NBCC proposed to construct the commercial building on plot no. 15, Bhikaji Cama Place, New Delhi. IRCON made a payment of Rs. 15, 93, 00,000/- to NBCC which is almost 90 per cent of the sale price. After construction of the building, however NBCC did not handover the requisite space to IRCON and sold it to others by making profits.

3. In view of the arbitration clause contained in the agreement, arbitrator entered upon the reference and made his Award dated 22.6.1999 granting partial relief to IRCON. IRCON filed an appeal in the appellate authority who by his award dated 8.10.99 directed refund of the entire advance of Rs. 15,93,00,000/- along with interest thereon @ 15 per cent per annum in case NBCC fails to make the payment of the awarded principal amount within two months.

4. On failure of NBCC to discharge their full liability IRCON approached the Committee on Disputes of the Cabinet Secretariat, which passed the order on 21.10.2003 to pursue the remedy before appropriate judicial forum.

5. IRCON filed the execution petition under Order 21 Rule 1 of CPC in this court for execution of the Award whereby they claimed a sum of Rs.4,90,43,815/- as principal and Rs.72,35,642/- as interest (total Rs.5,62,79,457/-) as outstanding dues.

6. NBCC filed their objections under Section 47 of CPC stating that the execution application was not maintainable in view of ouster

provision contained in the arbitration agreement to the effect that: "The Arbitration and Conciliation Act, 1996 (for short the 'Act')shall not be applicable to arbitration under this clause". The said provision reads as under:-

> "In the event of any dispute or difference relating to the interpretation and application of the provisions of the contracts, such disputes or differences shall be referred by either party for arbitration to the sole Arbitrator in the Department of Public Enterprises. The Arbitration and Conciliation Act 1996 shall not be applicable to arbitration under this clause. The award of the Arbitrator shall be binding upon the parties to the dispute, provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to the law Secretary, Department of Legal Affairs, Minister of Law and Justice, Govt. Of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary/Additional Secretary, when so authorized by the Law Secretary, whose decision shall bind the parties finally and conclusively. The parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator."

7. It has also been alleged by the respondent that the entire amount payable by the respondent to IRCON has been paid. After the appeal by IRCON was disposed off by the appellate authority, the parties arrived at settlement amount by which IRCON agreed to receive the sum of Rs 17,62,45,057/- in full and final settlement of the entire claim of IRCON. The respondent has paid the same amount to IRCON, which is not disputed.

8. In reply to this averment of the respondent, it was denied by the appellant that the entire payment has been made by the respondent to IRCON as per the Award. It was also denied that the parties arrived at a settlement amount by which IRCON agreed to

received the sum of Rs.17, 62, 45,057/- in full and final settlement of the entire claim. No such settlement or any other settlement at all took place between the parties.

9. It is stated by IRCON that arbitration means any arbitration whether or not administered by permanent arbitral institution. The expression "under this clause" in the said ouster provision means that the provisions of the Act would not apply to proceedings before arbitrator but they shall fully apply to proceedings before court. It was further stated in the reply that:-

> **"**It is also well settled that the parties to a contract cannot contract out of statute nor there can be any estoppels against statute, e.g., parties cannot by agreement altogether rule out the applicability of, say, the Contract Act, the Transfer of Property Act and the like, to their jural relationship. Section 23 of the Contract Act states that an agreement which is of such a nature that if permitted would defeat the provisions of any law or which is opposed to public policy, is void.**"**

10. The learned Single Judge dismissed the execution petition as not maintainable by order dated 27.7.2006 and held that in view of the ouster provision contained in the arbitration clause, it cannot be said, there was an award which had the force of a decree under Section 35 of the Act and could as such, be executed under Section 36 of the said Act.

11. The appellant relied upon ***Oil and Natural Gas Commission vs. Collector of Central Excise JT 1991 (4) SC 158*** wherein the Supreme Court on the basis of the report of Cabinet Secretary directed the Government of India to set up a Committee for resolution of disputes to

deal with dispute between public enterprises wherein, it will be obligatory to obtain a clearance from the committee for every court and every tribunal where such a dispute is raised. The Cabinet Secretariat pursuant to the order of Supreme Court dated 1/9/91 stated that:

> "I would also like to state that the Government respects the views expressed by this Hon'ble Court and has accepted them that public undertakings of Central Government and the Union of India should not fight their litigation in court by spending money on fees on counsel, court fees, procedural expenses and wasting public time. It is in this context that the Cabinet Secretariat has issued instructions from time to time to all Departments of the Government of India as well as to public undertakings of the Central Government to the effect that all disputes, regardless of the type should be resolved through the good offices of empowered agencies of the Government or through arbitration and *recourse to litigation should be eliminated*".

Also, in para 5 & 6 of the above said judgment, Supreme Court clarified that:-

> "5. Accordingly, there should be no bar to the lodgment of an appeal or petition either by the Union of India or the Public Sector Undertakings before any court or tribunal so as to save limitation. But, before such filing every Endeavour should be made to have the clearance of the High Power Committee.
>
> However, as to what the court or tribunal should do if such judicial remedies are sought before such a court or tribunal, the order of 11th October 1991 clarifies:
>
> "It shall be the obligation of every Court and every Tribunal where such a dispute is raised hereafter to demand a clearance from the Committee in case it has not been so pleaded and in the absence of any clearance, the proceedings would not be proceeded with."
>
> "6. Wherever appeals, petitions etc. are filed without the clearance of the High Power Committee, so as to save

> limitation, the appellant or the petitioner as the case may be, shall within a month from such filing, refer the matter to the High Power Committee ..... The reference shall be deemed to be valid if made in the case of the Union of India by its Secretary, Ministry of Finance Department of Revenue, and in the case of Public sector Undertakings by its Chairman, Managing Director or Chief Executive, as the case may be. It is only after such reference to the High Power Committee in the manner indicated that the operation of the order or proceedings under challenge shall be suspended till the High Power committee resolves the dispute or gives clearance to the litigation. If the High Power Committee is unable to resolve the matter for reasons to be record by it, it shall grant clearance for litigation."

12. Another judgment relied upon by him is **1994 (70) ELT 45 (SC)** wherein it was held that public enterprises are not debarred from filing objections against the final appellate board under Section 34 of the Act.

13. The only question to be decided in the present case is what is the effect of ouster provision on the award as to whether it acquires force of a decree or not by virtue of Section 36 of the Act.

14. It was argued by the learned counsel for the appellant that the expression "under this clause" in the ouster provision of the arbitration agreement has to be given a harmonious interpretation. It should be interpreted to mean limited to arbitration proceedings before the dispute resolution machinery and not to proceedings before the courts. If it were not so, then the ouster provision would be hit by section 23 of the Contract Act, 1872 as being against public policy and also if permitted to operate it would defeat the provisions of the Act. Every jural relationship has to be governed by some law of the land and

the parties cannot contract out of statute. When an award is being rendered by the arbitrator, the law applicable to such an award is the above said act and it becomes executable by virtue of Section 36 of the Act.

15. The learned counsel for the appellant has also relied upon ***AIR 2006 SC 963, (2006) 6 SCC 315, AIR 1965 PATNA 239, AIR 1996 ALLAHABAD 72 and AIR (37) 1950 LAHORE 174*** wherein the part of the arbitration agreement, "which makes the arbitrators determination 'final' and binding between the parties" and declares that the parties have waived the right of an appeal or objection 'in any jurisdiction' ", has been held to be hit by Section 28 of the Contract Act and also being against public policy.

16. In **Shin Satellite Public Co. Ltd. vs. M/s. Jain Studios Ltd.; AIR 2006 SC 963** it was held as under :

> "27. In Union Construction Co. (P) Ltd. vs. Chief Engineer, Eastern Command, Lucknow & Anr., AIR 1960 All 72, a similar contention was raised that the Arbitration Agreement giving finality and conclusiveness was illegal and unenforceable as it was hit by Section 28 of the Contract Act. Clause 68 of the Arbitration Agreement, which was similar to the case on hand, read thus:
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> "68. Arbitration – All disputes between the parties to the Contract arising out of or relating to the contract, other than those for which the decision of the C.W.E. or of any other person is by the Contract expressed to be final and conclusive, shall after written notice by either party to the contract to the other of them be referred to the sole arbitration of an Engineer. Officer to be appointed by the authority mentioned in the tender documents.
>
> Unless the parties otherwise agree, such reference shall not take place until after the completion, alleged completion or

abandonment of the works or the determination of the contract.

The venue of arbitration shall be such place or places as may be fixed by the arbitrator in his sole discretion.

The award of the arbitrator shall be final, conclusive and binding on both parties to the contract."

(emphasis supplied)

xxxx xxxx

29. In the present case, clause 23 relates to arbitration. It is in various parts. The first part mandates that, if there is a dispute between the parties, it shall be referred to and finally resolved by arbitration. It clarifies that the rules of UNCITRAL would apply to such arbitration. It then directs that the arbitration shall be held in Delhi and will be in English language. It stipulates that the costs of arbitration shall be shared by the parties equally. The offending and objectionable part, no doubt, expressly makes the arbitrator's determination "final and binding between the parties" and declares that the parties have waived the rights of appeal or objection "in any jurisdiction". The said objectionable part, in my opinion, however, is clearly severable as it is independent of the dispute being referred to and resolved by an arbitrator. Hence, even in the absence of any other clause, the part as to referring the dispute to arbitrator can be given effect to and enforced. By implementing that part, it cannot be said that the Court is doing something which is not contemplated by the parties or by 'interpretative process', the court is re-writing the contract which is in the nature of 'novatio'. The intention of the parties is explicitly clear and they have agreed that the dispute, if any, would be referred to an arbitrator. To that extent, therefore, the agreement is legal, lawful and the offending part as to the finality and restraint in approaching a Court of law can be separated and severed by using a 'blue pencil'.

(emphasis supplied)

17. In ***Rambilas Mahto vs. Babu Durga Bijai Prasad Singh; AIR 1965 Patna 239,*** it was observed that:-

"27A. Mr. Dasu Sinha, however, endeavored to get over the difficulty facing his clients by urging that under the terms of the arbitration agreement (Ex. B/1), the parties had agreed that the award given by the arbitrators

"shall by all means, be admitted and accepted by us. We shall not raise any kind of objection. If we do so, it will be null and void

and illegal in face of this panchnama and will not be entertained in Court. The arbitrator's award shall, by all means, remain intact and in force."

The contention of Mr. Sinha is that in view of this term in the arbitration agreement, the award (Ex. C/1) given by the arbitrators in pursuance of it is binding upon the parties even though it has not been made a rule of the court. In my judgment, this contention cannot be accepted as correct. An agreement of this kind cannot be held as valid to enable the parties to contract themselves out of the statutory requirements of Sections 14 and 17 of the Arbitration Act of 1940, which must govern every award upon arbitration without intervention of a Court. If the award without being filed in Court and made a rule of it is inoperative, the position is not, in the slightest degree altered because these words are incorporated in the agreement to refer the dispute to arbitration. To accede to such a contention would amount to defeating the mandatory provision and the clear policy of the law as laid down in the Act."

(emphasis supplied)

18. In ***Union Construction Co. vs. Chief Engineer; AIR 1960 Allahabad 72*** it was held that :

"14.In this connection Mr. Kunzru has next contended that Clause 68 of the agreement is void because it provides that "the award of the Arbitrator shall be final, conclusive and binding on both parties to the Contract." It is contended that inasmuch as this Clause operates to bar absolutely the jurisdiction of the ordinary tribunals it falls within the mischief of Section 28 of the Indian Contract Act and is consequently void. It is further contended that inasmuch as this Clause is void, the parties are relieved of the necessity of having recourse to arbitration and this Clause cannot be the basis of an alternative remedy in the present case. The relevant portions of Section 28 of the Indian Contract Act run as follows:

Section 28.Agreements in restraint of legal proceedings void.— Every agreement,—

(*a*) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, or

(*b*) which extinguishes the rights of any party thereto, or discharges any party thereto from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights,

is void to that extent.

***Exception* 1.—Saving of contract to refer to arbitration dispute that may arise.—**This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

***Exception* 2.—Saving of contract to refer questions that have already arisen.—**Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration. 3

Though under exception 1 of Section 28 of the Contract Act a contract by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration is not invalid, a contract which stipulates that the decision of the arbitrator shall be final and conclusive and which thus bars the jurisdiction of the ordinary tribunals from examining the validity of the award is void, and, notwithstanding that Clause, the Court's would have jurisdiction to examine the validity of the award in a properly framed proceeding.

The contract to refer to arbitration is not void because that of itself could not have the effect of ousting the jurisdiction of the Courts but the stipulation making the award conclusive and final becomes void as those words have the effect of excluding the jurisdiction of the ordinary Courts (see The Coringa Oil Co. Ltd. v. Koeglar. TLR 1 Cal 466; Mulji Tajsingh v. Ransi Devraj, ILR 34 Bom 13 and Ranga v. Sithaya, ILR 6 Mad 368)

However, tentatively speaking, even 'though' the Clause making the award final and conclusive does appear to be void, it is clear that the whole of cl, 68 does not become void as the sub-clause making the award final and conclusive is separable from the main Clause which makes a reference to an arbitrator imperative. The existence of the sub-clause or the fact that the sub-clause appears to be void does not in any way affect the right of the parties to have recourse to arbitration and does not make a reference to an arbitrator any the less an alternative remedy."

19. In ***Abdul Majid vs. Bahawal Bakhsh; AIR (37) 1950 Lahore 174*** at Para 5 & 6, it was observed that:

"5. However, I am doubtful whether in the present case the

parties really intended to agree that they would raise no objections whatsoever to the award of the arbitrators. The words used in the Urdu petition are jo jaisla sadar jamain ham ko har tareh bila uzar manzur hoga. It may be translated as 'whatever award they might give, shall be acceptable to us in every way without objection'. I wonder if it was present to the minds of the parties that this clause might be relied upon later as basis for the argument that, even if the arbitrators or the umpire who could be appointed in accordance with law were to be guilty of misconduct, the party against whom the award was given would be precluded from objecting to it. The clause seems to have been more or less of a formal nature implying the readiness of the parties to abide by the decision of the arbitrators. It is doubtful if it was intended to shut out all objections on whatever ground they may be based. Even learned counsel for the appellant concedes that if the award had been tainted with fraud, objection on that score could not be ruled out.

6. The above ruling was noticed in the Sind Judicial Commissioner's Court by Crouch A.J.C. in Naraindas v. Kewalram, 421,C,706: AIR 940 1917 Sind 38. In the Sind case the reference to arbitration included a clause which concluded with the words "the arbitrators are authorized in all respects." The learned A.J.C. pointed out that the case of "Tullis v. Jacson,)1892-3-Ch.441: 61 L.J. Ch. 655), whose authority had been relied upon by Rattigan, J., was a different type of case. That was a case where a builder sued his employers for an account of what was due to him in respect of a certain contract containing a clause that the certificate of the architect shall be accepted as final as to the amount due. The plaintiff sought to impeach the certificate of the architect on the ground of fraud. Chitty J., held in that case that the agreement was not void as against public policy and the plaintiff was entitled to the amount certified and no more. The question was thus one of contract. In cases of the kind under discussion, however, the question is somewhat different. <u>The award, if made rule of the court, has to be followed by a decree. The discretion of the Court to set aside the award on any valid ground could not be controlled by an agreement between the parties as was pointed out by the Crouch A.J.C. in the Sind case</u>. The learned Judge remarked as follows:-

(emphasis supplied)

"The question is not whether a party shall be compelled to carry out the terms of his contract but whether the court would be exercising a proper discretion in conferring on the award the efficacy of one of its own decrees."

The learned Judge further referred to Section 28, Contract Act, and observed that an agreement which restricts a party absolutely from enforcing his rights in respect of a contract by the usual proceedings in the ordinary tribunals is void to that extent. In the commentary on the Contract Act by Pollock and Mulla (Edn. 7) I find the following point at p. 207:

"But a stipulation that parties to a reference shall not object at all to the validity of the award on any ground whatsoever before any Court of law does restrict a party absolutely from enforcing his rights in the ordinary tribunals, and, as such, is void. The Courts have powers, in spite of such a stipulation, to set aside an award on the ground of misconduct on the part of the arbitrator."

The learned Commentators have referred in that connection to an authority of the Madras High Court reported as Burla Ranga Reddi vs.Kalapalli Sithaya, 6 Mad. 368. That was a case of an agreement to submit to arbitration filed in Court under the provisions of Section 523 of the Old Code of Civil Procedure. It was stipulated therein that the decision of the arbitrator shall be accepted as final by the parties and that no appeal therefrom shall be made. It was held that the stipulation did not prevent the Court from setting aside the award on the ground of misconduct on the part of the arbitrator. The learned Judges observed in that case that the very filing of the agreement in Court gives it jurisdiction to set aside the award on the ground of the arbitrator's misconduct. The learned Commentators have added that the decision ought not to be different even if the agreement was not filed in Court, for, although, in that case, the provisions of the Code would not apply, the award may be set aside in a regular suit on that ground. A party undoubtedly has the right under the Arbitration Act, 1940, to have an award set aside on the ground of misconduct on the part of the arbitrator: (See Sections 30 and 25) I am inclined to agree with this view in preference to that expressed in Kahan Singh vs. Mohan Lal: (AIR (3) 1915 Lah. 80: 34 I.C. 177)."

20. After considering the judgments relied upon by the appellant and discussed by us above, we are of the opinion that a person may waive his rights. Such waiver of rights is permissible even in relation to a benefit conferred under the law. But it is trite that no right can be waived where public policy or public interest is involved. The contract between the parties must be in obedience to law and not in derogation thereof. Contracting out is permissible provided it does not deal with a matter of public policy. An agreement under no circumstances can violate the public policy **(*Centrotrade Minerals & Metal Inc. v. Hindustan Copper Ltd. 2006(11) SCC 245).***

21. Section 28 of the Contract Act which provides for agreements in restraint of legal proceedings as void, the parties cannot by a contract seek to exclude the application of a statutory provision as it is not valid (***Mukul Dutta Gupta v. Indian Airlines Corpn. AIR 1962 CAL 1311)***. The most obvious and direct form of contracting out of a statute is where a party agrees not to make a claim for a benefit for which a statute provides. But it may take many other forms, varying with the nature, subject matter and the object or purpose of the statute, and the means selected to escape from its provisions or its operations. Express statutory prohibitions against contracting out renders void an agreement or clause that is inconsistent with it. But when there is no express prohibition in the statute, an agreement; the operation of which defeats or circumvents the purpose or policy of the

statute, would also be barred.

22. In ***Raja Ram Pal v. Hon'ble Speaker, Lok Sabha 2007(3) SCC 184*** , it was held that :

> "An ouster clause attaching finality to a determination does ordinarily oust the power of the court to review the decision but not on grounds of lack of jurisdiction or it being a nullity for some reason such as gross illegality, irrationality, violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity."

23. The relevant provisions of the Arbitration and Conciliation Act, 1996 for the purpose of deciding the present appeal are as follows:-

> ***Section 2(1)*** In this Part, unless the context otherwise requires,—
> (***a***)"arbitration" means any arbitration whether or not administered by permanent arbitral institution;
> (***d***) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;
>
> (**2**) This part shall apply where the place of arbitration is in India.
>
> (**4**) This Part except sub-section (1) of section 40, sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of this Part are inconsistent with that other enactment or with any rules made there under.
>
> (**5**) Subject to the provisions of sub-section (4), and save in so far as is otherwise provided by any law for the time being in force or in any agreement in force between India and any other country or countries, this Part shall apply to all arbitrations and to all proceedings relating thereto.
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> **Section 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.
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> **Section 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.

Section 35. Finality of arbitral awards.—Subject to this Part an arbitral award shall be final and binding on the parties and persons claiming under them respectively.

Section 36. Enforcement.—Where the time for making an application to set aside the arbitral award under Section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (V of 1908) in the same manner as if it were a decree of the Court.

24. Resolution of disputes by arbitration is now governed by the Arbitration and Conciliation Act, 1996, under which parties may by means of agreement in writing, agree to refer 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. It also makes provisions about composition of the Arbitral Tribunal, its jurisdiction, the conduct of arbitral proceedings, the making of arbitral award and termination of proceedings, the recourse against the award.

25. If by an agreement the parties exclude the provisions of an Act they can easily escape the clutches of law without any difficulty. Every jural relationship has to be governed by some law of the land and the parties cannot contract out of statute.

26. It is well established that a statute ousting jurisdiction of a civil court must be strictly constructed, and it is for the party seeking to oust the jurisdiction of an ordinary civil court to establish that there is no jurisdiction. (see AIR 1966 SC 1718 para 9; AIR 1967 SC 781 Para 13). In the case of **Smt. Ganga Bai v. Vijay Kumar AIR 1974 SC 1126** the Supreme Court held :

> "There is an inherent right in every person to bring a suit of a civl nature and unless the suit is barred by any statute one may, at one's 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 maintainability requires no authority of law and it is enough that no statute bars the suit."

27. The object of the rule is, that no party/person should be left remedy less. Necessary corollary to this would be that, if no adequate remedy is provided for by a special statute through the Forum established under it for a particular purpose/situation, civil courts remedy to administer justice cannot be said to be ousted to deal with even such cases.

28. So far as the part in the arbitration clause in the said agreement regarding the non-applicability of the Act of 1996 is concerned, we consider that it is void and the parties cannot by themselves exclude the statute itself which is being drafted by the Legislature to look after the arbitration matters.

29. On one hand the respondent has referred the dispute before Arbitrator under the arbitration agreement who has given an Award and on the other hand, in the minutes of the meeting held on 21st October, 2003, it was also decided that the appellant may pursue the matter further before an appropriate judicial forum for resolution of the dispute. And when the execution is filed for recovery on the basis of an Award passed, an objection is taken that the execution is not maintainable on account of ouster provision contained in the arbitration agreement. We consider that the said clause is irrational

and is in violation of constitutional mandate.

30. In view of our above said discussion and the facts and circumstances of the present case, we hold that the finding of the learned single Judge that the execution proceedings are not maintainable as there is no adjudication which civil court can recognize in view of the ouster clause in the arbitration agreement between the parties are not correct.

31. For the reasons stated hereinabove, the appeal hereby succeeds. The impugned order passed by the learned Single Judge is set aside. The execution petition filed by the appellant is restored. Parties are directed to appear before the learned Trial Court on 16th January, 2009 for further directions.

No costs.

MANMOHAN SINGH, J.

November 28, 2008 **A.K. SIKRI, J.**
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