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(2002) 04 P&H CK 0036

High Court Of Punjab And Haryana At Chandigarh

Case No: Company Appeal No. 2 of 2001

Smt. Sudarshan Chopra and Others		APPELLANT
	Vs	
Vijay Kumar Chopra and Others		RESPONDENT

Date of Decision: April 24, 2002

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 11(6), 11(7), 2, 37, 39
- Companies Act, 1956 - Section 10E, 10F, 397, 398
- Constitution of India, 1950 - Article 226

Citation: (2003) 117 CompCas 660

Hon'ble Judges: V.K. Bali, J; J.S. Khehar, J

Bench: Division Bench

Advocate: A.S. Chandhok, H.L. Tikku, Santosh Paul, Manmeet Arora, Sandeepa Trehan, Kamal Nijhawan and Sumeet Goel, for the Appellant; Arun Kathpalia, S.N. Mukherjee and Jaishree Thakur, for the Respondent

Final Decision: Dismissed

Judgement

J.S. Khehar, J.

The respondents (herein) on the basis of a dispute, which had arisen between them and the appellants, filed Company Petition No. 76 of 1999 before the Company Law Board, Principal Bench, New Delhi, under Sections 397 and 398 of the Companies Act, 1956 praying for relief on account of alleged oppression/mismanagement at the hands of the appellants. During the course of the proceedings before the Company Law Board, the appellants, on 24.08.1999, sought permission of the Company Law Board to move an application u/s 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as ''Arbitration Act 1996'') for reference (of the controversy raised by the respondents in Company Petition No. 76 of 1999) to arbitration. On the aforesaid request, the Company Law Board granted the appellant time up to

04.09.1999 to move an application u/s 8 of the Arbitration Act, 1996. No such application was, however, filed within the allotted time. After all efforts made by the parties to settle their dispute amicably during the subsistence of proceedings before the Company Law Board proved futile, the appellants, on 16.05.2000, presented an application u/s 8 of the Arbitration Act, 1996, before the Company Law Board. It is not necessary for the purposes of this order to refer to any further details of the proceedings before the Company Law Board. It is not necessary for the purposes of this order to refer to any further details of the proceedings before the Company Law Board.

2. The Company Law Board, Principal Bench, New Delhi, while deciding the application moved by the appellants (herein) u/s 8 of the Arbitration Act, 1996, vide its order dated 8.12.2000, arrived at two conclusions ; firstly, that there was no binding arbitration agreement between the parties in the instant case satisfying the provisions of Section 7 of the Arbitration Act, 1996 ; and, secondly, that reference u/s 8 of the Arbitration Act, 1996, can be sought by a party only if it seeks reference before submitting its first statement of defence on the substance of the dispute, and since the application for reference of the dispute (to arbitration u/s 8 of the Arbitration Act, 1996) had been filed by the appellants after they had placed before the Company Law Board their first statement of defence on the substance of the dispute (by way of an interim reply, and also, by way of interlocutory applications), the application was not sustainable. On the aforesaid two counts, the Company Law Board declined to refer the dispute to arbitration.

3. Dissatisfied by the order passed by the Company Law Board, Principal Bench, New Delhi, dated 08.12.2000 [Vijay Kumar Chopra v. Hind Samachar Ltd. (2001) 2 C LJ 133)], the appellants (herein) have challenged the same through the instant appeal. On 22.08.2001, this court passed the following order --

"Having heard learned counsel, appearing for the parties, it appears to us that the questions of law involved in the case will require detail hearing. Admit. Meanwhile, stay further proceedings before the Company Law Board. List the case for hearing on 22.10.2001."

4. It was brought to the notice of this court during the course of subsequent hearings that the order dated 22.08.2001 (extracted above) had been challenged by the respondents (herein) by filing a petition for special leave to appeal before the Supreme Court. Accordingly, further proceedings in the instant appeal were deferred sine die to await the decision of the Supreme Court, so as to --

"be guided in the matter of hearing of the main appeal by such directions as may be given by the Supreme Court."

On 19.11.2001, during the course of hearing, the Supreme Court passed an order expressing its desire that this court should hear objections as to the maintainability of the appeal raised by the respondents (herein) and also to hear the application

seeking vacation/modification of the interim directions issued on 22.08.2001. In its order, the apex court required this court to dispose of the aforesaid two issues by a reasoned order. It is, therefore, that this Bench was specially constituted to hear the instant appeal.

5. Learned counsel have, thus, in the first instance, limited their submissions to the issue of maintainability of the instant appeal and the continuation/vacation/ modification of the interim order dated 22.08.2001. Briefly stated, the contention of the learned counsel for the appellants is that for an answer to the issue of jurisdiction, reference must be made to the provisions of the Companies Act, 1956, whereunder a remedy of appeal against an order passed by the Company Law Board stands provided u/s 10F of the Companies Act, 1956. The contention of the learned counsel for the respondents, on the other hand, is that the answer to the controversy in respect of the issue of jurisdiction must emerge from the provisions of the Arbitration Act, 1996, which exclude the remedy of appeal from an order passed u/s 8 of the Arbitration Act, 1996. Our first endeavour, therefore, is to determine which of the two statutes is applicable to determine the maintainability of the instant appeal.

6. Mr. A.S. Chandhok, learned senior advocate representing the appellants (herein), seriously controverted the pleas advanced by the learned counsel for the respondents, that for determining the maintainability of the instant appeal, reference must be made to the provisions of the Arbitration Act, 1996.

7. It is first submitted by learned counsel, that the impugned order dated 08.12.2000 [Vijay Kumar Chopra v. Hind Samachar Ltd. (2001) 2 Com LJ 133 was passed by the Company Law Board exercising powers vested in it under the Companies Act, 1996, and, therefore, the search for a remedy of appeal, resort must be confined to the provisions of the Companies Act, 1956. According to the learned counsel, the Arbitration Act, 1996, is merely a procedural legislation for enforcement of contractual obligations. It is pointed out that the Arbitration Act, 1996, lays down an alternative procedure for settlement of disputes, arising out of contractual obligations (under the Indian Contract Act 1872), at the option of the contracting parties. It is submitted that the Arbitration Act, 1996, can, therefore, be described as an adjective legislation, which would govern parties to a contract, who had agreed to subject themselves to arbitration for the settlement of their disputes. Illustratively, on the same analogy, reference is made to the connection between the Indian Contract. Act, 1872, and the Specific Relief Act, 1963. In this behalf, it is submitted that ''an agreement to sell'' flows out of the Indian Contract Act, 1872 (which is describable as the substantive law), whereas the enforcement of ''an agreement to sell'' flows from the provisions of the Specific Relief Act, 1963 (which is merely an adjective, incidental, supplemental or procedural law). On the basis of the aforesaid submission, it is contended that the Companies Act, 1956, under which the respondents (herein) had approached the Company Law Board, Principal Bench,

New Delhi, for relief on account of alleged oppression and mismanagement at the hands of the appellants under Sections 397 and 398 of the Companies Act, 1956, must (on the aforesaid analogy), be treated as the substantive law. The application moved by the appellants (herein) u/s 8 of the Arbitration Act, 1996, in the aforesaid proceedings must be considered to be a prayer made by the respondents before the Company Law Board, under a procedural/supplemental/adjective law. It is, therefore, the case of the appellants that the provisions of the Companies Act, 1956, cannot be read subservient to the provisions of the Arbitration Act, 1996. In order to further advance the aforesaid contention, learned counsel for the appellants has placed reliance on Moulvi Ali Hossain Mian and Others Vs. Rajkumar Haldar and Others, , wherein it has been held as under :

"The Specific Relief Act embodies what in essence is adjective law and the substantive law must be looked for elsewhere. In our judgment, the substantive law, the foundation for specific relief provided for in Section 27(b), Specific Relief Act, is to be found in para 2 of the Section 40, Transfer of Property Act." Reliance has also been placed on India Hosiery Works Vs. Bharat Woollen Mills Ltd., , wherein the court observed as under :

"The Arbitration Act does not in fact purport of its own force to restrict the contractual rights of parties, but only gives effect to restrictions which they may choose to impose on themselves as regards the forum to which their disputes shall be taken."

In the same context, reference was also made to the decision rendered by the apex court in K. Sasidharan Vs. Kerala State Film Development Corpn., and the following observations made by the apex court were brought to the notice of this court:

"The arbitration agreement is collateral to the substantial stipulation of the contract. It is merely procedural and ancillary to the contract and it is a mode of settling the disputes, though the agreement to do so is itself subject to the discretion of the court. Arbitration is distinguishable from other clauses in the contract. The other clauses set out the obligations which the parries have undertaken towards each other binding them but the arbitration clause does not impose on one of the parties an obligation towards the other. It embodies an agreement of both parties with consensus ad idem that if any dispute arises with regard to the obligations undertaken therein which one party has undertaken towards the other, such a dispute shall be settled by a tribunal of their own constitution."

Having laid the aforesaid foundation, learned counsel for the appellants submitted that the Company Law Board, Principal Bench, New Delhi, vide its order dated 08.12.2000 [Vijay Kumar Chopra v. Hind Samachar Ltd. (2001) 2 Comp LJ 133] had disposed of an application filed by the appellants during the course of the proceedings in Company Petition No. 76 of 1999 (under Sections 397 and 398 of the Companies Act, 1956) and as such, the order passed by the Company Law Board on

8.12.2000 must be accepted as an order passed under the provisions of the Companies Act, 1956. Additionally, it is contended that where two legislative enactments were involved, the substantive legislation must be resorted to and not the adjective, incidental, supplemental or procedural legislation. Learned counsel for the appellants has drawn the attention of this court to Section 10F of the Companies Act, 1956, wherein, an appeal lies to this court against orders passed by the Company Law Board.

8. In our view, in order to adjudicate upon the aforesaid contention, it would be imperative for us to first determine the legislative provision under which the impugned order dated 08.12.2000 has been passed. If in the aforesaid determination, this court arrives at the conclusion that the order was passed by the Company Law Board in exercise of its jurisdiction to settle a dispute flowing out of the provisions of the Companies Act, 1956, then and only then, the instant plea advanced on behalf of the appellants would merit acceptance. In such an eventuality, it would have to be concluded that the search for the appellate forum would have to be restricted to the Companies Act, 1956. However, if this court arrives at the conclusion that the impugned order dated 08.12.2000 had been passed by the Company Law Board in its capacity of ''judicial authority'' in exercise of obligations flowing out of the Arbitration Act, 1996, in furtherance of the provisions of the Arbitration Act, 1996, then certainly, the remedy must be searched for, from within the provisions of the Arbitration Act, 1996. In such an eventuality, the contention advanced on behalf of the appellants would not merit acceptance.

9. Undoubtedly, when the petition was filed by the respondents (herein) before the Company Law Board, the Company Law Board was exercising jurisdiction under the provisions of Sections 397 and 398 of the Companies Act, 1956. However, when the appellants (herein) moved an application u/s 8 of the Arbitration Act, 1996, before the Company Law Board, the Company Law Board while deciding the said application acted in its capacity as judicial authority'' u/s 8 of the Arbitration Act, 1996. There can be no doubt that the impugned order determines rights flowing out of the provisions of the Arbitration Act, 1996, and not the provisions of the Companies Act, 1956. Since the Company Law Board did riot adjudicate the dispute between the parties under Sections 397 and 398 of the Companies Act, 1956 (which was really the subject matter of Company Petition No. 76 of 1999) through the order impugned before us it is not possible for us to accept the contention advanced on behalf of the appellants that in disposing of the application filed u/s 8 of the Arbitration Act, 1996, the Company Law Board was exercising jurisdiction vested in it under the Companies Act, 1956. The conclusion has to be, as noticed in the foregoing paragraphs, that the right to prefer an appeal against an order passed by the Company Law i3oard in its capacity as ''judicial authority'' while deciding an application filed u/s 8 of the Arbitration Act, 1996, must be searched for, from within the provisions of the Arbitration Act, 1996, more so, because the impugned order is not referable to any provision of the Companies Act, 1956.

10. We find no merit also in the submission relating to grant of preference to the statute laying down substantive law over a statute laying down adjective, incidental, supplemental or procedural law. In our view, there is no conflict between the provision of the Companies Act, 1956, and the Arbitration Act, 1996, therefore, the question whether the Companies Act, 1956, would have an overriding effect over the provisions of the Arbitration Act, 1996, does not arise. In our view, in order to ascertain substantive rights, reference must be made to the statute laying down substantive rights ; and likewise, for determination of procedural rights, one must resort to the enactment laying down the procedure. In the absence of conflict between the two, it is unnecessary to determine which of the two would have over-riding effect over the other. By our aforesaid conclusion, it must not be assumed that we have accepted the submission that the Arbitration Act, 1996, is merely an adjective, incidental, supplemental and procedural legislation, when compared with the Companies Act, 1956. The instant question simply does not arise and, therefore, need not be gone into.

11. Despite having already drawn a conclusion on the first submission advanced by learned counsel for the appellant, we consider it our duty to notice one of the contentions advanced by learned counsel for the respondents connected therewith. Learned counsel for the respondents has placed reliance on the decision rendered by the Supreme Court in Allahabad Bank Vs. Canara Bank and Another, , wherein while interpreting Sections 17 and 18 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the RDB Act), the Supreme Court arrived at the conclusion that the aforesaid provisions vested in the [Debt Recovery] Tribunal jurisdiction to decide applications of banks and financial institutions for recovery of debts due to them and further that the jurisdiction of the Company Court to proceed with or to examine issues which were vested with the Debts Recovery Tribunal stood excluded. In the aforesaid case, the apex court had interpreted Sections 17, 18 and 34 of RDB Act. It was on the basis of the aforesaid provisions that the jurisdiction of the Company Court under the provisions of the Companies Act, 1956, was held to be excluded. It is, therefore, necessary to extract hereunder the aforesaid provisions :

"17. Jurisdiction, powers and authority of Tribunal - (1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions.

(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act.

18. Bar of jurisdiction - On and from the appointed day, no court or other authority shall have, or be entitiled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under Articles 226 and

227 of the Constitution) in relation to the matters specified in Section 17.

34. Act to have overriding effect - (1) Save as provided under Sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

(2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984) and the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986)."

11.1 In addition, it is emphasised that the Allahabad Bank v. Canara Bank (2000) 2 Comp LJ 170 (SC), supra, accepted the conclusions drawn by the Supreme Court in Damji Valji Shah and Another Vs. Life Insurance Corporation of India and Others, , while interpreting the provisions of Life Insurance Corporation Act, 1956, wherein there was no provision similar to Section 34 of the RDB Act The overriding effect was given to the Life Insurance Corporation Act by holding that the same was a ''special Act'' and would override the provisions of the ''general Act''. In doing so, the provision of the Companies Act, 1956, was held to be a ''general Act'' in relation to the provisions of the Life Insurance Corporation Act. Despite the fact that the provisions of the Companies Act, 1956, on which reliance has strongly been placed by the learned counsel for the appellant has been described as a ''general Act'', it is conceded by the learned counsel for the respondents that it is only on a comparison between the two conflicting statutes that a conclusion has to be drawn which of the enactments answers the description of a ''special Act'' and ''general Act. And, further, that the same statute may, in comparison with a particular legislative enactment, be considered as a ''general Act'' but may be considered as a ''special Act'' when compared with another statute. In this behalf, relying on Allahabad Bank v. Canara Bank (2000) 2 Comp LJ 170 (SC), supra, learned counsel for the appellants has drawn the attention of this court to the following observations made therein:
"There can be a situation in law where the same statute is treated as a special statute vis-a-vis one legislation and again as a general statute vis-a-vis yet another legislation. Such situations do arise as held in Life Insurance Corporation of India Vs. D.J. Bahadur and Others, . It was there observed :

'' ... ... for certain cases, an Act may be general and for certain other purposes, it may be special and the court cannot blur a distinction when dealing with the finer points of law''."

11.2 Various illustrations in this behalf as noticed in the aforesaid judgment were also brought to our notice. Insofar as the present case is concerned, it is asserted by the learned counsel for the respondents that the issue under controversy relates to arbitration and, therefore, the Arbitration Act, 1996, can alone be described as the

''special Act'' when compared with the Companies Act, 1956.

11.3 In view of the law laid down by the apex court in the aforesaid judgment, it is, therefore, sought to be concluded that, in such a situation, the ''special Act'', i.e., the Arbitration Act, 1996, would have overriding effect over the ''general Act'', i.e., the Companies Act, 1956. On the basis of the aforesaid conclusion, learned counsel for the respondents rules out the reliance on the provisions of the Companies Act, 1956, for the determination of the present controversy. Additionally, it is contended that the judgment in Allahabad Bank v. Canara Bank (2000) 2 Comp LJ 170), supra, also recognises a situation where both statutes may be classified as ''special Acts''. In this behalf, it is the contention of the learned counsel for the respondents that even if the Companies Act, 1956, for the sake of arguments, is taken as a ''special Act'', the issue of supremacy of one over the other would have to be resolved in view of the following observations made by the apex court in Allahabad Bank Vs. Canara Bank and Another, , (para 43, at page 188, of Comp LJ):

"Special Law v. Special Law

40. Alternatively, the Companies Act, 1956, and the RDB Act can both be treated as special laws, and the principle that when there are two special laws, the latter will normally prevail over the former, if there is a provision in the latter special Act giving it overriding effect, can also be applied. Such a provision is there in the RDB Act namely, Section 34. A similar situation arose in Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of Maharashtra Ltd. and Another, , where there was inconsistency between two special laws, the State Financial Corporations Act, 1951, and the Sick Industrial Companies (Special Provisions) Act, 1985. The latter contained Section 32 which gave overriding effect to its provisions and was held to prevail over the former. It was pointed out by Ahmadi, J., that both special statutes, contained non obstante clauses, but that the --

''1985 Act being a subsequent enactment, the non obstante clause therein would ordinarily prevail over the non obstante clause in Section 46B of the 1951 Act, unless it is found that the 1985 Act is a general statute and the 1951 statute is a special one.''

Therefore, in view of Section 34 of the RDB Act, the said Act overrides the Companies Act, to the extent there is anything inconsistent between the Acts."

11.4 On the basis of the aforesaid conclusion, learned counsel for the respondents asserts that the Arbitration Act, 1996, which came to be promulgated later in point of time, viz., the Companies Act, 1956, the former would have an overriding effect.

12. We find no substance in the aforesaid contention of the learned counsel for the respondents. In our view, the judgment rendered in Allahabad Bank''s case (2000) 2 Comp LJ 170), supra, caters to a situation where two different statutory provisions legislate in respect of a common issue. The aforesaid judgment resolves conflicts in

the provisions contained in two different statutes on the same subject matter. It is not understandable how the aforesaid proposition can be applied to the present controversy. Neither the subject matter of the two statutes under reference is the same, nor is there any apparent overlapping or conflict between them, accordingly, in the absence of any conflict between the two provisions, in our view, the judgment rendered in Allahabad Bank''s case (2000) 2 Comp LJ 170 supra, is not relevant to resolve the controversy before us.

13. In the same strain and in order to arrive at the same conclusion, namely, that for the determination of the remedy of appeal in the present case, reference must be made to the provisions of the Companies Act, 1956, and not to the Arbitration Act, 1996, learned counsel for the appellants has advanced another independent submission.

14. It is contended by the learned counsel for the appellants that whenever an issue is referred for adjudication to an established court under a statute, the ordinary incidence of procedure of the court to which reference is made, would automatically get attached, including the right of appeal from its decision. Stated in reference to the present controversy, the instant contention is sought to be explained by pointing out, that the impugned order has been passed by the Company Law Board on the basis of authority vested in it u/s 8 of the Arbitration Act, 1996 (i.e., the referring statute) ; in such a case, according to the learned counsel for the appellants, the procedure of the court to which reference is made, i.e., the procedure of the Company Law Board would get attached, and that would include the right of appeal (as laid down by law) against an order passed by the Company Law Board. Learned counsel for the appellant wished this Court to accept that the search for the appellate remedy must, therefore, be confined to the provision of the Companies Act, 1956. If the submission is accepted, all ordinary incidence of procedure of the Company Law Board including the general right of appeal from its decision would get attached to a decision rendered by the Company Law Board while dealing with an application u/s 8 of the Arbitration Act, 1996. To substantiate the aforesaid contention, learned counsel for the appellant has placed reliance, first of all, on a decision rendered by the House of Lords in National Telephone Company Limited (In liquidation) and Anr. v. Postmaster General (1913) AC 546), wherein the aforesaid rule was expressed by Viscount Haldane L.C., in the following terms :
"When a question is stated to be referred to an established court, without more, it, in my opinion, imports that the ordinary incidents of the procedure of that court are to attach, and also that any general right of appeal from its decision likewise attaches."

14.1 Reliance was also placed on a decision of the Privy Council in AIR 1948 12 (Privy Council) , wherein the principle enunciated in National Telephone Company Limited (1913) AC 546), supra, was reiterated in the following terms:

"Where a legal right is in dispute and the ordinary courts of the country are seized of such dispute, the courts arc governed by the ordinary rules of procedure applicable thereto and an appeal lies if authorised by such rules, notwithstanding that the legal right claimed arises under a special statute which does not, in terms, confer a right of appeal. "

14.2 It is submitted that the legal position of the rule enunciated by the House of Lords as well as the Privy Council noticed above find affirmation in the decision rendered by the Supreme Court in National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee), wherein (after placing reliance on the aforesaid judgments), the apex court observed :

"Though the facts of the cases laying down the above rule were not exactly similar to the facts of the present case, the principle enunciated therein is one of general application and has an apposite application to the facts and circumstances of the present case. Section 76 of the Trade Marks Act confers a right of appeal to the High Court and says nothing more about it. That being so, the High Court being seized as such of the appellate jurisdiction conferred by Section 76 it has to exercise that jurisdiction in the same manner as it exercises its other appellate jurisdiction and when such jurisdiction is exercised by a Single Judge, his judgment becomes subject to appeal under Clause 15 of the Letters Patent, there being nothing to the contrary in the Trade Marks Act."

14.3 It is further submitted that the aforesaid principle was reiterated by the Supreme Court in Vanita M. Khanolkar v. Pragna M. Pai and Ors. AIR 1998 SC 424, wherein the question under consideration was whether an appeal would lie to a Division Bench of the High Court against an order passed by a Single Judge u/s 6 of the Specific Relief Act, 1963. In examining the aforesaid issue, a Division Bench of the Bombay High Court had held that an appeal would not lie before the Division Bench. The Bombay High Court after interpreting Sub-section (3) of Section 6 of the Specific Relief Act, 1963, arrived at conclusion that the aforesaid provision barred any appeal or revision against an order passed u/s 6 of the Specific Relief Act, 1963. The aforesaid judgment of the Division Bench was set aside after holding that a statutory provision contained in a legislative enactment could not override the constitutional power of the High Court. In arriving at the aforesaid conclusion, the court observed as under :

"Now it is well settled that any statutory provision barring an appeal or revision cannot cut across the constitutional power of a High Court, Even the power flowing from the paramount character under which the High Court functions would not get excluded unless the statutory enactment concerned expressly excludes appeals under Letters Patent. No such bar is discernible from Section 6(3) of the Act. It could not be seriously contended by learned counsel for the respondents that if Clause 15 of the Letters Patent is invoked then the order would be appealable. Consequently, in our view, on the clear language of Clause 15 of the Letters Patent which is

applicable to Bombay High Court, the said appeal was maintainable as the order under appeal was passed by learned Single Judge of the High Court exercising original jurisdiction of the court. Only on that short ground, the appeal is required to be allowed."

14.4 Reliance was also placed on another judgment of the apex court in State of Orissa and Ors. v. Commission of Land Records and Settlement, Cuttack, and Ors. AIR 1998 SC 3067, wherein the apex court had concluded as under :

"Learned senior counsel for respondent 2, Shri T.L. Vishwanath Iyer, argued that the same conclusion can be reached by the application of another well-known principle, namely, that if a court is constituted by law and matters go before it under a special law, then that court can also exercise various other general powers attached to the court by other statutes. In National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee), - it was held by this court that once a matter under the Trade Marks Act, 1940, comes before the High Court, the powers available to the High Court under Letters Patent can also be exercised by the High Court to correct errors in orders passed by the learned Single Judges of that court. The same principle, it is contended, will apply to quasi-judicial tribunals also. Once the revision goes to the Board u/s 15 of the 1958 Act, the Board can, it is contended, exercise its review powers under the 1951 Act. This submission, in our view, is correct and is required to be accepted as an additional ground to support the review powers of the Board."

15. The question to be determined by us, therefore, is whether the appellate remedy provided u/s 10F of the Companies Act, 1956, would get attached to the proceedings which came to be decided by the Company Law Board u/s 8 of the Arbitration Act, 1996 ? So far as the decision rendered by the House of Lords in National Telephone Company Ltd. (1913) AC 546supra, is concerned, it is also necessary to notice the observations of Lord Shaw of Dunfermline, while dealing with the issue presently under consideration, he made the following observations :

"The argument is that the Railway and Canal Commission only became possessed of the reference as arbitrators privately agreed to by the parties. It would, of course, have been open under the indenture for the parties to put such limits upon the powers of their arbitrator, namely, the Commission thus selected, or to settle the points of finality or procedure which they agreed to be specially observed, and it would have been open to Parliament to permit the Commission to Act within such limits. But where these things have not been done, the court of record must follow its own and its authorised lines."

15.1 From the aforesaid, it is evident that it would be permissible under the refering legislative enactment (in the present case, the Arbitration Act, 1996) to limit/exclude the rules of attachment. This conclusion is clearly discernible from the words " . . . and it would have been open to Parliament to permit the Commission to act within

such limits .." In National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee), , wherein the Supreme Court, while affirming the rule of attachment, clearly recorded the exception to the aforesaid rule through the following observations :

"It is a well-known rule of construction that when a power is conferred by a statute, that power may be exercised from time to time when occasion arises unless a contrary intention appears."

15.2 In fact, even the judgment in Vanita M. Khanolkar''s case, supra, which, according to the counsel for the appellants, completely covers the controversy in the present case, it is apparent from the extract already reproduced above that the procedure including the fight of appeal would not get attached '' . . unless the statutory enactment concerned expressly excludes appeals . . ''. Additionally, in Vanita M. Khanolkar''s case AIR 1998 SC 424, supra, the observations of the Supreme Court in respect of the jurisdiction of the High Court must necessarily be noticed to the limited scope of its examination by the Supreme Court, namely, whether a legislative enactment could override the constitutional power of the High Court In the instant appeal, the appellants are seeking to invoke Section 10F of the Companies Act, 1956, in order to substantiate their plea in respect of the legality of appellant jurisdiction said to be vested in this court against the impugned order passed by the Company Law Board u/s 10F of the Companies Act, 1956, and not the constitutional authority vested in this court under Article 226 of the Constitution of India. It would be pertinent to notice that despite suggestions of the counsel representing the respondents to the appellants, during the proceedings before us, the appellants did not make a prayer, that the instant appeal be treated as a writ petition. Therefore, while deciding the issue of jurisdiction in the present case, we are certainly not dealing with the constitutional authority vested in this court to examine the validity of an order passed by a judicial authority while deciding a claim u/s 8 of the Arbitration Act, 1996. Since the parameters of the issue decided in Vanita M. Khanolkar''s case, supra, were clearly different from the issue before us in view of the fact that constitutional authority of this court is not an issue at all, in our view, the aforesaid case is not relevant for adjudication of the dispute before us. Shorn of the conclusion drawn by the Supreme Court in Vanita M. Khanolkar''s case, supra, it is clear that the rule of attachment canvassed on behalf of the appellants would be subject to a contrary intention in the referring statute. It would also be pertinent to mention that the decision rendered by the apex court in Vanita M. Khanolkar''s case, supra, is under reconsideration in view of the order passed by the Supreme Court in Orma Impex Pvt. Ltd. Vs. Nissai Asb Pte. Ltd., wherein the court in the short order passed by it noticed as under :

"In State of West Bengal Vs. Gourangalal Chatterjee, this court relied upon an earlier decision of the Court in Union of India (UOI) Vs. Mohindra Supply Company, . The said decision was rendered with reference to the appealability of an order passed by

the High Court in an appeal from the order of the subordinate court and not from the order passed by a learned Single Judge sitting on the original side of the High Court. There is also another decision of a two-Judge Bench of this court in Vinita M. Khanolkar Vs. Pragna M. Pai and Others, which appears to have taken a contrary view relying upon Clause 15 of the Letter Patent applicable to the High Court of Bombay. Thus, there appears to be conflict of decisions on this question."

15.3 In view of the legal position noticed above, it is imperative for us to arrive at the following conclusions : Firstly, when an issue is stated to be referred to an established court ''without more'', the ordinary incidence of procedure of that court will get attached including the general right of appeal from its decision ; secondly, the ordinary incidence of procedure including the right of appeal flowing out of the rule of attachment can be excluded, expressly or impliedly, by the referring statute.

16. Another submission advanced in continuation of the aforesaid contention, by the learned counsel for the appellants, is that the impugned order dated 28.12.2000 passed by the Company Law Board cannot relate for the purpose of jurisdiction to the Arbitration Act, 1996. Pointed attention of this court has been invited to Section 10E(1A) of the Companies Act. The aforesaid provision is being reproduced hereunder:

"10E(1A). The Company Law Board shall exercise and discharge such powers and functions as may be conferred on it, by or under this Act or any other law, and shall also exercise and discharge such other powers and functions of the Central Government under this Act or any other law as may be conferred on it by the Central Government, by notification in the Official Gazette under the provisions of this Act or that other law."

On the basis of Section 10E(1A) of the Companies Act, 1956, it is submitted that the Company Law Board has been vested with the authority under the Companies Act, 1956, itself to discharge powers/functions conferred on it by any other law. It is the contention of the appellants and rightly so, that the authority to decide an application u/s 8 of the Arbitration Act, 1996, flows jointly from the provisions of Section 10E(1A) of the Companies Act, 1956, and Section 8 of the Arbitration Act, 1996. On the basis of the aforesaid contention, it is sought to be concluded that the order passed in exercise of such authority must be deemed to be an order passed on the basis of jurisdiction vested in the Company Law Board by Section 10E(1A) of the Companies Act, 1956, and not by any provision under the Arbitration Act, 1996. In this behalf, reliance has been placed by learned counsel for the appellants on a decision rendered by a learned Single Judge of Bombay High Court in Kinetic Engineering Limited Vs. Unit Trust of India and another, wherein, dealing with a controversy similar to one in hand, the court observed as under (para 6 at page 84 of the Comp LJ) :

"On behalf of the respondents, the maintainability of the appeal itself is challenged, and, therefore, it would be proper to decide the said question before I go to the merits of the appeal. On behalf of the respondent, it is contended that the appeal is purported to have been filed u/s 10F of the Companies Act. According to the respondents, the right of appeal has to be restricted to the statute which gives the right of appeal. Under the Companies Act also, the Company Law Board is assigned several functions under the Companies Act. The present impugned order is obviously an order passed u/s 22A of the Securities Contracts (Regulation) Act, 1956, as amended in 1985, and, therefore, it is tried to be contended that Section 10F provides that any person aggrieved by any decision or order of the Company Law Board may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order, which, apparently, would cover the impugned order being an order passed by the Company Law Board, but as a right of appeal has to be restricted to the statute which gives the right of appeal, the impugned order being not an order passed under the Companies Act, but under the Securities Contracts (Regulation) Act, it would not be covered under the said Section 10F of the Companies Act. Thereafter, it is contended that even if Section 10E of the Companies Act is taken into consideration, it is clear that the said section is only to provide jurisdiction to the Company Law Board. For this purpose, reliance is placed on the wording of Sub-section (1A) of Section 10E that the Company Law Board shall exercise and discharge such powers and functions as may be conferred on it, by or under the Companies Act or any other law and shall also exercise and discharge such other powers and functions of the Central Government under the Companies Act or any other law as may be conferred on it by the Central Government, by notification in the Official Gazette under the provisions of this Act or that other law. The submission tried to be made is that the said provision only gives power to the Company Law Board of exercising and discharging the powers and functions as may be conferred on it by or under the Companies Act or any other law, but that would not mean that the decision given by the Company Law Board under any other law could be appealed against u/s 10F of the Companies Act According to Shri Kapadia appearing for the respondents, if the impugned decision is under the Companies Act, then an appeal would lie u/s 10F, but if the impugned decision is under any other law, that law must provide for an appeal and, in the present case, admittedly, the decision is under the Securities Contracts (Regulation) Act, 1956, and, under the said law, there is no provision of appeal against the decision of the Company Law Board arrived at u/s 22A of the said Act. It is also pointed out that this becomes clear if one looks at the provisions of Section 55 of the Monopolies and Restrictive Trade Practices Act, 1969, which provides for an appeal. It is contended that under the said Section 55 of the said Act, an appeal is provided against the decision of the Company Law Board taken under the said Act. Shri Kapadia contended that if under the said Act also the decision is taken by the Company Law Board, then if an appeal was envisaged to be provided u/s 10F of the Companies Act, being a decision of the

Company Law Board, there was no necessity of providing any appeal u/s 55 of the Monopolies and Restrictive Trade Practices Act, 1969. Now it is true that the provision of Section 10E of the Companies Act gives jurisdiction to the Company Law Board and the Company Law Board is by the said provision empowered with a jurisdiction to exercise and discharge such powers and functions as may be conferred upon it by or under the Companies Act, and also any other law. The said section, according to the appellants, has to be read with Section 10F of the Companies Act and when, under the Securities Contracts (Regulation) Act, 1956, the Company Law Board has been conferred with a power of confirmation of the opinion of the Board of directors u/s 22A(4)(c) of the Securities Contracts (Regulation) Act and, therefore, the decision given by the Company Law Board in exercise of the said powers under the said provisions of the said Act would in any event become a decision of the Company Law Board, and, therefore, according to the appellants, Section 10F of the Companies Act which provides for an appeal against any decision or order of the Company Law Board is wide enough to cover such a decision also. On behalf of the appellants, it is contended that merely because in the Monopolies and Restrictive Trade Practices Act 1969, a provision for appeal is made u/s 55 against the decision of the Company Law Board, it would not necessarily mean that if in any other law no such provision is made, then no appeal would lie u/s 10F. Now even if the provision of Sub-section (1A) of Section 10E is considered as a section empowering the Company Law Board to take a decision in respect of any Other law, also, it would become a decision of the Company Law Board and then, normally, one would consider that the said decision is appealable u/s 10F. Though the argument sought to be advanced by Shri Kapadia is no doubt attractive, on reading Sections 10E and 10F together, I find that the appeal would be maintainable u/s 10F of the Companies Act against the decision of the Company Law Board under the powers conferred on it under any other also. Hence, I am answering in favour of the appellants on this point."

17. It is not possible for us to accept the conclusion drawn above, since neither the contention canvassed on behalf of the respondents was dealt with, nor the principle on the basis of which the court arrived at the conclusion that the appeal was maintainable, was spelt out. In view of the able assistance afforded to us by the learned counsel representing the parties, we have been able to examine the scope of the aforesaid contention closely. The only rule/principle which can be invoked to accept that an appeal would be maintainable against an order passed by the Company Law Board u/s 10F is the rule of attachment (already deliberated upon above). The conclusions drawn therein as recorded above, therefore, must follow.

18. The submissions advanced by the learned counsel for the appellants renders it obligatory on our part to consider all the contentions raised on behalf of the respondents based on the provisions of the Arbitration Act, 1996, in order to arrive at the conclusion whether or not the Arbitration Act, 1996, excludes the general right of appeal claimed by the learned counsel for the appellants, based on the rule

of attachment on account of express and/or implied exclusion of the remedy of appeal under the Arbitration Act, 1996. In case, in the process of our deliberation, we arrive at the conclusion that the remedy of appeal against an order passed u/s 8 of the Arbitration Act is not excluded either expressly or impliedly by the Arbitration Act, 1996, the instant plea based on the rule of attachment would merit acceptance. In such an eventuality, the instant appeal would be maintainable in view of Section 10F of the Companies Act, 1956. If the conclusion, however, is to the contrary, the contention advanced on the basis of the rule of attachment would be liable to be rejected.

19. Mr. Arun Kathpalia, learned counsel representing the respondents, has vehemently contended that the answer to the question whether the instant appeal is maintainable against the order dated 8.12.2000 [Vijay Kumar Chopra v. Hind Samachar Ltd. (2001) 2 Comp LJ 133)] passed by the Company Law Board must flow from the provisions of the Arbitration Act, 1996, alone, In this behalf, he has made the following submissions.

19.1 Attention of this court has been invited to the statement of objects and reasons of the Arbitration Act, 1996, wherein the Parliament has described the aforesaid legislation as :

"An Act to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental thereto."

It is pointed out from the statement of objects and reasons that the Arbitration Act 1996, is a consolidating and amending statute through which the legislature repealed the Arbitration Act, 1940, which in turn and in the same manner, had repealed the Arbitration Act, 1899, Schedule 2 of the Code of Civil Procedure, and Clauses (a) to (f) of Section 104(1) of the Code of Civil Procedure. The point canvassed is that if a statute is a complete code all remedies, from orders passed and actions taken thereunder must flow from the statute itself. Learned counsel for the respondents in this behalf has extensively read to as observations made in Union of India (UOI) Vs. Mohindra Supply Company, wherein the historical advancement of the law of arbitration in this country has been traced and, on the basis thereof, the apex court concluded that the Arbitration Act, 1940, was a consolidating and amending statute (relevant extracts from the aforesaid judgment have been reproduced in this order at a later stage). Bringing to the notice of this court, the objects and reasons of the Arbitration Act, 1996, extracted above, it is submitted that if the Arbitration Act, 1940, was considered as an exhaustive and comprehensive code by the apex court, the same conclusion deserves to be drawn even for the Arbitration Act, 1996, since the instant act is clearly and unambiguously an effort on the part of the legislature to amend and further consolidate the Arbitration Act, 1940.

20. In order to substantiate his submission that the Arbitration Act, 1996, is an exclusive code governing the subject of arbitration, learned counsel has invited the attention of this court to Section 5 of the Arbitration Act, 1996, which is extracted hereunder:

"5. Extent of judicial intervention. -- Notwithstanding anything contained in any other law for the time being in force, in matters covered by this Part, no judicial authority shall intervene except where so provided in this part."

On the strength of the aforesaid provision, it is submitted that Part I of the Arbitration Act, 1996 (which deals with domestic arbitration and awards) excludes all judicial authorities (including this court) from intervening in matters provided for under Part I of the Arbitration Act, 1996, except to the extent permissible under Part I itself. It is the submission of the learned counsel for the respondents that even Section 5 of the Arbitration Act, 1996, leaves no room for doubt that all judicial authorities are restrained from intervening in matters governing domestic arbitration except where so provided. It is, therefore, contended that an order passed in response to an application filed u/s 8 of the Arbitration Act, 1996 (which falls in Part I thereof) would be appealable only if a specific provision for appeal therefrom is provided in Part I of the Arbitration Act, 1996, and not otherwise.

21. Having laid down the aforesaid foundation, it is submitted that the right of appeal must necessarily flow out of the statute, under which the order sought to be appealed from has been passed. Relying on a decision of the Constitution Bench of the Supreme Court in Union of India (UOI) Vs. Mohindra Supply Company, it is emphasised that the right to appeal is a creature of a statute and further that no litigant has an inherent right to appeal against a decision of a court unless provided for by law. Reliance has also been placed on Upadhyaya Hargovind Devshanker Vs. Dhirendrasinh Virbhadrasinhji Solanki and Others, In the aforesaid judgment, the question considered was, whether a Division Bench of a High Court could hear an appeal against an order of a Single Judge against an interlocutory order passed in the course of the trial of an election petition (by the Single Judge). In this behalf, it would be pertinent to mention that under the Representation of People Act, 1951, the High Court is vested with the right to decide election petitions (under Sections 98 and 99). Section 116(A)(1) of the Representative of People Act, 1951, provides as under :

"116A. Appeal to Supreme Court. --(1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie to the Supreme Court on any question (whether of law or fact) from every order made by a High Court u/s 98 or Section 99."

In the aforesaid judgment, relying on an earlier decision rendered by it in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, , the apex court noticed the following observations from N.P. Ponnuswami''s case :

"Obviously, the Act is a self contained enactment so far as elections are concerned, which means that whenever we have to ascertain the true position in regard to any matter connected with election. We have only to look at the Act and the rules made thereunder."

And also:

"It is now well-recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of."

Thereupon, it referred to the conclusions drawn in Shah Babulal Khimji Vs. Jayaben D. Kania and Another, wherein it was held :

"An appeal no doubt lies under that clause from an order of a Single Judge of the High Court exercising original jurisdiction to the High Court itself irrespective of the fact that the judgment is preliminary or final or that it is one passed at an interlocutory stage provided it satisfies the conditions set out in the above decision, but the said provision cannot be extended to the election petition filed under the Act."

On the basis of the judgments, referred to above, the apex court in Upadhyaya Hargovind Devshanker Vs. Dhirendrasinh Virbhadrasinhji Solanki and Others, declared the following view as the correct expression of law :

"We are of the view that as regards the jurisdiction to try an election petition and the right of appeal of the parties to an election petition, the provisions of the Act (apart from the provisions in the Constitution) constitute a complete code and no other Judge or Judges other than the Single Judge of the High Court who is asked to try an election petition and the Supreme Court exercising appellate powers u/s 116-A of the Act in respect of orders passed u/s 98 or Section 99 of the Act or under Article 136 of the Constitution in respect of other orders can have any jurisdiction to deal with any matter arising out of an election petition filed under the Act."

22. The contention of the learned counsel for the appellants in response to the submissions of the learned counsel for the respondents is that the Arbitration Act, 1996, cannot be treated as a complete and exhaustive code. In this behalf, the stance adopted is that the Arbitration Act, 1996, is merely a procedural law, whereas the substantive law is contained in the Indian Contract Act, 1872. To substantiate the aforesaid aim, he has placed reliance on National Thermal Power Corporation Vs. The Singer Company and others, wherein the court has observed as under (para 44 at page 267 of Comp LJ) :

"It is true that an arbitration agreement may be regarded as a collateral or ancillary contract in the sense that it survives to determine the claims of the parties and the mode of settlement of their disputes even after the breach or repudiation of the main contract. But it is not an independent contract, and it has no meaningful

existence except in relation to the rights and liabilities of the parties under the main contract. It is a procedural machinery which is activated when disputes arise between parties regarding their rights and liabilities. The law governing such rights and liabilities is the proper law of the contract, and unless otherwise provided, such law governs the whole contract including the arbitration agreement, and particularly so, when the latter is contained not in a separate agreement, but, as in the present case, in one of the clauses of the main contract."

In order to controvert the submission advanced by the learned counsel for the respondents and more particularly, to overcome the judgments relied upon by him, learned counsel for the appellants has referred to the decision rendered in M/s. Sundaram Finance Ltd. Vs. M/s. NEPC India Ltd., . In order to assert that the provisions of the Arbitration Act, 1940, are substantially distinct and different from the provisions of the Arbitration Act, 1996, and as such, the provisions of the 1940 Act could not be taken into consideration while arriving at a conclusion in the instant case. On the same basis, it is submitted that any judgment rendered by any court in respect of the interpretation of the provisions of the Arbitration Act, 1940, cannot be taken into consideration. It is pointed out that the judgments relied upon by the counsel representing the respondents (herein) are primarily in respect of the provisions of the Arbitration Act, 1940. Attention of this court has been invited to the observations made by the apex court in paragraphs 8 and 9 of the aforementioned judgment (paras 8 and 9 at pages 209-210 of Comp LJ):

"8. Prior to the promulgation of the 1996 Act the law on arbitration in India was substantially contained in three enactments, namely, the Arbitration Act, 1940, the Arbitration (Protocol and Convention) Act, 1937, and the Foreign Awards (Recognition and Enforcement) Act, 1961. In the Statement of Objects and Reasons appended to the Bill, it was stated that the 1940 Act which contained the general law of arbitration had become outdated. The said objects and reasons noticed that the United Nations Commission on International Trade Law (UNCITRAL) adopted in 1985 the Model Law on International Commercial Arbitration. The General Assembly had recommended that all countries give due consideration to the said Model Law which, along with the Rules, was stated to have harmonised concepts on arbitration and conciliation of different legal systems of the world and thus contained provisions which were designed for universal application. The abovesaid statement of objects and reasons in para 3 states that :

''3. Though the said UNCITRAL Model Law and Rules are intended to deal with international commercial arbitration and conciliation, they could, with appropriate modifications, serve as a model for legislation on domestic arbitration and conciliation. The present Bill seek to consolidate and amend the law relating to domestic arbitration, international commercial arbitration, enforcement of foreign arbitral awards and to define the law relating to conciliation, taking into account the said UNCITRAL Model Law and Rules.''

9. The 1996 Act is very different from the Arbitration Act, 1940. The provisions of this Act have, therefore, to be interpreted and construed independently, and in fact, reference to the 1940 Act may actually lead to misconstruction. In other words, the provisions of the 1996 Act have to be interpreted being uninfluenced by the principles underlying the 1940 Act. In order to get help in construing these provisions, it is more relevant to refer to the UNCITRAL Model Law rather than the 1940 Act."

22.1 Reliance has also been placed on the judgment rendered by the Supreme Court in Smt. Kalpana Kothari v. Smt. Sudha Yadav and Ors. (2002) 1 SCC 203, wherein it has been observed in paragraph 8 :

". . . . We are of the view that the High Court did not properly appreciate the relevant and respective scope, object and purpose as also the consideration necessary for dealing with and disposing of the respective application envisaged u/s 34 of the 1940 Act and Section 8 of the 1996 Act. Section 34 of the 1940 Act provided for filing an application to stay legal proceedings instituted by any party to an arbitration agreement against any other party to such agreement, in derogation of the arbitration clause and attempts for settlement of disputes otherwise than in accordance with the arbitration clause by substantiating the existence of an arbitration clause and by the judicial authority concerned may stay such proceedings on being satisfied that there is no sufficient reason as to why the matter should not be referred to for decision in accordance with the arbitration agreement, and that the applicant seeking for stay was at the time when the proceedings were commenced and still remained ready and willing to do all things necessary to the proper conduct of the arbitration. This provision under the 1940 Act had nothing to do with actual reference to the arbitration of the disputes and that was left to be taken care of under Sections 8 and 20 of the 1940 Act. In striking contrast to the said scheme underlying the provisions of the 1940 Act, in the new 1996 Act, there is no provision corresponding to Section 34 of the old Act and Section 8 of the 1996 Act mandates that the judicial authority before which an action has been brought in respect of a matter, which is the subject matter of an arbitration agreement shall refer the parties to arbitration if a party to such an agreement applies not later than when submitting his first statement."
And further in paragraph 9 as under:

".. .. having regard to the distinct purposes, scope and object of the respective provisions of law in these two Acts, the plea of estoppel can have no application to deprive the appellants of the legitimate right to invoke an all comprehensive provisions of mandatory character like Section 8 of the 1996 Act to have the matter relating to the disputes referred to arbitration, in terms of the arbitration agreement."

It is, therefore, pointed out that the provisions of the Arbitration Act, 1940, and those of the Arbitration Act, 1996, are not comparable, and specially for interpreting the provisions of Section 8 of the 1996 Act, the provisions of the 1940 Act cannot be relied upon.

23. We shall first make an endeavour to determine on the basis of the submissions advanced before us whether or not the Arbitration Act, 1996, is an exclusive, exhaustive and comprehensive code. For the aforesaid issue, it is not necessary to examine the differences between the provisions of the Arbitration Act, 1940, and the Arbitration Act, 1996. It is also not necessary to examine the scope of any particular provision contained in the aforesaid statute including Section 8 of the Arbitration Act, 1996. The Supreme Court in Union of India (UOI) Vs. Mohindra Supply Company, , had held that the Arbitration Act, 1940, was an exhaustive and comprehensive code, which had consolidated the law relating to arbitration in this country. Since the Arbitration Act, 1996, is another effort on the part of the legislature to further consolidate and amend the provisions of the Arbitration Act, 1940, it must necessarily follow that the law in respect of arbitration has been further crystallised, after the coming into force the Arbitration Act, 1996. It must, therefore, follow that the amendment in 1996 has taken the process of consolidation even further. In view of the above stated consideration, there is no doubt in our mind that the Arbitration Act, 1996, is, indeed, an exhaustive and comprehensive code. Section 5 of the Arbitration Act, 1996, makes the Act exclusive in respect of the subject of domestic arbitration, which has been dealt with in Part I of the said Act, since by a non obstante clause it excludes all judicial authorities from intervention in matters regulated under Part I of the Arbitration Act, 1996.

24. It would, however, be pertinent to mention that learned counsel for the appellants has also disputed the conclusions which were sought to be drawn on the basis of Section 5 of the Arbitration Act, 1996. In this behalf, it is the contention of the learned counsel for the appellants that Section 5 excludes the right only of a judicial authority to intervene in matters covered by-Part I of the Arbitration Act, 1996. It is submitted that the expression ''judicial authority'' would not include an appellate court. And since an appellate court is separate and distinct from judicial authority referred to in Section 5 of the Arbitration Act, 1996, Section 5 would not have the effect on ousting the jurisdiction of an appellate court.

25. To understand the scope of the instant contention, it is necessary to understand the exact purport of the term ''judicial authority''. The term ''judicial authority'' has not been defined under the provisions of the Arbitration Act, 1996. One of the means to understand the scope of the term ''judicial authority'' is by reference to judicial precedent. Reference in this behalf, therefore, may be made to the decision rendered by the Supreme Court in Thakur Das (Dead) by Lrs. Vs. State of Madhya Pradesh and Another, wherein the term ''judicial authority'' came to be interpreted by the apex court. In reference to the term ''judicial authority'' the court observed as

under :

"The appellate authority u/s 6C must be a judicial authority. By using the expression ''judicial authority'' it was clearly indicated that the appellate authority must be one such pre-existing authority which was exercising judicial power of the State. If any other authority as persona designata was to be constituted -- there was no purpose in qualifying the word ''authority'' by the specific adjective ''judicial''. A judicial authority exercising judicial power of the State is an authority having its own hierarchy of superior and inferior court, the law of procedure according to which it would dispose of matters coming before it depending upon the nature of jurisdiction exercised by it acting in judicial manner. In using the compact expression ''judicial authority'' the legislative intention is clearly manifested that from amongst several pre-existing authorities judicial powers of the State and discharging judicial functions, one such may be appointed as would be competent to discharge the appellate functions as envisaged by Section 6C"

In reference to Section 5 of the Arbitration Act, 1996, the Apex Court in Konkan Railway Corpn. Ltd. and Others Vs. M/s. Mehul Construction Co., made the following observations (para 4 at page 278 of Comp LJ):

". . . . A bare comparison of different provisions of the Arbitration Act of 1940 with the provisions of the Arbitration and Conciliation Act, 1996, would unequivocally indicate that the 1996 Act limits intervention of court with an arbitral process to the minimum and it is certainly not the legislative intent that each and every order passed by an authority under the Act would be a subject-matter of judicial scrutiny of a court of law."

In Modi Korea Telecommunication Ltd. v. Appcon Consultants (P) Ltd. (2000) Suppl. ALR 618 , a Division Bench of the Calcutta High Court has also in paragraph 28 opined that the term ''judicial authority'' expressed in Section 5 of the Arbitration Act, 1996, refers to a court.

26. There can be no room for any doubt specially in view of the judgments referred to above, that ''judicial authority'' is an authority . . . exercising judicial power of the State . . / and''... discharging judicial functions ....''. In the aforesaid view of the matter, it is evident that the term ''judicial authority'' will necessarily include ''court'' as defined in Section 2(e) of the Arbitration Act, 1996, as well as an appellate court. In such a situation, while interpreting Section 5 of the Arbitration Act, 1996, it is evident that the remedy of appeal to an appellate court would be permissible only if so expressed, specifically or by necessary implication, in Part I of the Arbitration Act, 1996, and not otherwise.

27. Having arrived at the conclusion that the Arbitration Act, 1996, is an exclusive, exhaustive and comprehensive code and further that the mandate of Section 5 of the Arbitration Act, 1996, does no permit any judicial authority which as noticed above would include a court or an appellate court to intervene in a matter specified

under the provisions of the Arbitration Act, 1996, except where so provided. It, therefore, becomes imperative to determine whether or not the Arbitration Act, 1996, provides for a remedy of appeal against an order passed by a judicial authority while deciding a claim for reference to an arbitrator made u/s 8 of the Arbitration Act, 1996. Reference in this behalf has been made to Section 37 of the Arbitration Act, 1996, by learned counsel for the respondents. The aforesaid provision is reproduced hereunder :

"3. Appealable order. --(1) An appeal shall lie from the following orders (and from no others) to the court authorised by law hear appeals from original decrees of the court passing the order, namely :

(a) granting or refusing to grant any measure u/s 9;

(b) setting aside or refusing to set aside an arbitral award u/s 34.

(2) An appeal shall also lie to a court from an order of the arbitral tribunal --

(a) accepting the plea referred to in Sub-section (2) or Sub-section (3) of Section 16; or

(b) granting or refusing to grant an interim measure u/s 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

While interpreting Section 37(1) of the Arbitration Act, 1996, learned counsel for the respondents has made out the following points :

27.1 Firstly, appeals from orders passed under the provisions of Part I of the Arbitration Act, 1996, are only permissible against orders specified in Section 37. In this behalf, it is pointed out that remedy by way of appeal has not been provided for against an order passed u/s 8 of the Arbitration Act, 1996.

27.2 Secondly, the expressions used in Sub-section (1) of Section 37 of the Arbitration Act, 1996, clarifies the legislative intent to exclude the remedy of appeal against an order passed by a judicial authority u/s 8 of the Arbitration Act, 1996. In this behalf, it is pointed out that any other interpretation would render the words ''(and from no others)'' used in Section 37 nugatory.

27.3 To buttress the aforesaid submission, reliance has been placed on a decision rendered by a Constitution Bench of the apex court in Union of India v. Mohindra Supply Co. AIR 1962 SC 256. In the aforesaid case, the apex court was to determine a controversy arising out of the interpretation of Section 9 of the Arbitration Act, 1940. The pointed question was whether a Letter Patent appeal was competent against an order passed by a Single Judge of the High Court, in terms of the provisions of Section 39(2) of the Arbitration Act, 1940. The Supreme Court in the aforesaid case

examined the validity of the conclusions drawn in the judgment rendered by a Full Bench of this court in Mohindra Supply Co. v. Governor General in Council AIR 1954 Punj 211, wherein this court had held that a Letter Patent appeal was merely a inter-court appeal and not an appeal to a superior court and was as such not barred u/s 39 of the Arbitration Act, 1940. In order to fully understand the conclusion drawn by the apex court in the aforesaid case, it is necessary to extract herein Section 39 of the Arbitration Act, 1940, which reads as under :

"39. Appealable Orders. --(1) An appeal shall lie from the following orders passed under this Act (and from no others) to the court authorised by law to hear appeals from original decrees of the court passing the order :

An order --

(i) superseding an arbitration;

(ii) on an award stated in the form of a special case ;

(iii) modifying or correcting an award ;

(iv) filing or refusing to file an arbitration agreement;

(v) staying or refusing to stay legal proceedings where there is an arbitration agreement;

(vi) setting aside or refusing to set aside an award :

Provided that the provisions of this section shall not apply to any order passed by a small cause court.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

27.4 While examining rival contentions, the apex court in the aforesaid case, inter alia, noticed, firstly, that Arbitration Act, 1940, was a consolidating and a amending statute ; secondly, the said Act was enacted in order to set up an alternative machinery for all contractual arbitration and its provisions would apply (subject to some exceptions) even to arbitration under any other enactment as if the arbitration was pursuant to an arbitration agreement; thirdly, that the Arbitration Act, 1940, specifically provided for a remedy by way of appeal from orders passed in arbitration proceedings, whereas Section 39(2) expressly barred second appeals except to the Supreme Court ; fourthly, if the legislature intended by enacting Section 39(2) merely to prohibit the appeals u/s 100 of the Code of Civil Procedure, it was unnecessary to enact an express provision showing appeals only to the Supreme Court. On the basis of the aforesaid conclusions, the apex court in Mohindra Supply Co.''s case AIR 1962 SC 256 , supra, while reversing the judgment rendered by a Full Bench of this court [in Mohindra Supply Co., Kashmere Gate,

Delhi Vs. Governor General in Council, held that the expression "second appeal" used in Section 39(2) of the Arbitration Act, 1940, meant a further appeal from an order passed in appeal u/s 39(1) and not an appeal u/s 100 of the Code of Civil Procedure. It, therefore, concluded that the term second appeal refers to a further appeal which numerically would be a second appeal. In arriving at the aforesaid conclusions, the Supreme Court in paragraph 5 noted as under :

"Under Section 39(1), an appeal lies from the orders specified in that subsection and from no others. The legislature has plainly expressed itself that the right of appeal against orders passed under the Arbitration Act may be exercised only in respect of certain orders. The right to appeal against other orders is expressly taken away. If by the express provision contained in Section 39(1), a right to appeal from a judgment which may otherwise be available under the Letters Patent is restricted, there is no ground for holding that Clause (2) does not similarly restrict the exercise of appellate power granted by the Letters Patent."

And in para 6 :

"The qualifying expression "to the court authorised by law to hear appeals from original decrees of the court passing the order" in Section 39(1) does not import the concept that the appellate court must be distinct and separate from the court passing the order or the decree. The legislature has not so enacted and the context does not warrant such an interpretation. The clause merely indicates the forum of appeal. If from the decision of a court hearing a suit or proceeding an appeal will lie to a judge or more judges of the same court, by virtue of Section 39(1) the appeal will lie from the order passed under the Arbitration Act, if the order is appealable, to such judge or judges of that court."

And again in para 6 :

"If the order is not one falling within Section 39(1), no appeal will evidently lie."

27.5 After making a reference to the legislative history in respect of the law of arbitration, in paragraphs 16 and 18, the Supreme Court observed :

"16. Prior to 1940, the law relating to contractual arbitration (except insofar as it was dealt with by the Arbitration Act of 1899) was contained in the CPC and certain orders passed by courts in the course of arbitration proceedings were made appealable under the Code of 1877 by Section 588 and in the Code of 1908 by Section 104. In 1940, the legislature enacted Act X of 1940, repealing Schedule 2 and Section 104(1) Clauses (a) to (f) of the CPC 1908 and the Arbitration Act of 1899. By Section 39 of the Act, a right of appeal was conferred upon litigants in arbitration proceedings only from certain orders and from no others and the right to file appeals from appellate orders was expressly taken away by Sub-section (2) and the clause in Section 104 of the Code of 1908 which preserved the special jurisdiction under any other law was incorporated in Section 39. The Section was enacted in a

form which was absolute and not subject to any exceptions. It is true that, under the Code of 1908, an appeal did lie under the Letters Patent from an order passed by a Single Judge of a Chartered High Court in arbitration proceedings even if the order, was passed in exercise of appellate jurisdiction, but that was so, because the power of the court to hear appeals under a special law for the time being in operation was expressly preserved.

18. Under the Code of 1908, the right to appeal under the Letters Patent was saved both by Section 4 and the clause contained in Section 104(1), but by the Arbitration Act of 1940, the jurisdiction of the court under any other law for the time being in force is not saved ; the right of appeal can, therefore, be exercised against orders in arbitration proceedings only u/s 39, and no appeal (except an appeal to this court) will lie from an appellate order."

27.6 And in ultimate analysis concluded in the following manner :

"The Arbitration Act which is a consolidating and amending Act, being substantially in the form of a code relating to arbitration must be construed without any assumption that it was not intended to alter the law relating to appeals. The words of the statute are plain and explicit and they must be given their full effect and must be interpreted in their natural meaning, uninfluenced by any assumptions derived from the previous state of the law and without any assumption that the legislature must have intended to leave the existing law unaltered. In our view, the legislature has made a deliberate departure from the law prevailing before the enactment of Act X of 1940 by codifying the law relating to appeals in Section 39."

28. Learned counsel for the respondents has also invited the attention of this court to the similarities of Section 39 of the Arbitration Act, 1940, and Section 37 of the Arbitration Act, 1996 (both of which have been extracted above). Learned counsel has also relied upon the decision rendered by the Supreme Court in State of West Bengal Vs. Gourangalal Chatterjee, on the basis of which he has tried to bridge the gap between the present controversy and the determination of the apex court in Union of India (UOI) Vs. Mohindra Supply Company, . While referring to Mohindra Supply Co.''s case, supra, the apex court in State of West Bengal Vs. Gourangalal Chatterjee, observed :

"The learned counsel for the appellant vehemently argued that since the decision by the Supreme Court was in respect of an appeal directed against an State of West Bengal Vs. Gourangalal Chatterjee, order passed by a learned Single Judge in exercise of appellate jurisdiction, no second appeal lay but that principle could not be applied where the order of learned Single Judge was passed not in exercise of appellate jurisdiction but original jurisdiction."

28.1 The Supreme Court on the basis of the provisions of Section.39(1) arrived at the conclusion that the aforesaid argument was without substance. In the same context, learned counsel has also placed reliance on Gauri Singh Vs. Ramlochan Singh and

Others, S.N. Srikantia and Co. v. Union of India AIR 1967 Bom 47 and Surekha Steel Ltd. v. Union of India (1998) CWN 287.

29. Conclusions drawn in Union of India (UOI) Vs. Mohindra Supply Company, , have been extensively reproduced above, lest counsel may have an impression that all their submissions have not been noted. According to learned counsel for the respondents, the present controversy is squarely covered by the aforesaid decision in his favour, whereas, counsel for the appellants pleads that it has no nexus therewith, Portions of the extracts from the aforesaid judgment may be relevant for other issues dealt with in this order, but does the judgment deal with the issue before us ? The answer to the aforesaid query in our view is in the negative. The issue under consideration in this case is whether an appeal against the impugned order is at all competent. In the aforesaid case, there was no dispute that an appeal was competent. The question deliberated upon in the aforesaid case pertained to the permissibility of an appeal against the appellate order, i.e., a second remedy of appeal. That is certainly not the issue before us, we, therefore, are in agreement with learned counsel for the appellants that the decision in Union of India (UOI) Vs. Mohindra Supply Company, , would not be sufficient by itself to arrive at a final conclusion in the instant case.

30. We have yet to notice the solitary contention advanced by the learned counsel for the appellants in order to substantiate his claim that the order passed u/s 8 of the Arbitration Act, 1996, as per legislative intent, is not meant to be final. In this behalf, learned counsel for the appellants has placed reliance on Section 11(7) of the Arbitration Act, 1996. The aforesaid provision is being extracted hereunder :

"11(7). A decision on a matter entrusted by Sub-section (4) or Sub-section (5) or Sub-section (6) to the Chief Justice or the person or institution designated by him is final."

31. Learned counsel for the appellants has required us to read Section 8 as well as Section 11(7) of the Arbitration Act, 1996, in conjunction with one another. Placing reliance on the words used in Sub-section (7) of Section 11, it is submitted that finality has been given to an order passed by the Chief Justice (or the person designated by him). In the absence of a similar expression in Section 8 of the Arbitration Act, 1996, it is the contention of the learned counsel for the appellants, that it must be assumed that it was not the legislative intent to give finality to the order passed by a ''judicial authority'' u/s 8 of the Arbitration Act, 1996. It is further argued that there was no difficulty at all for the legislature to have recorded a similar finality in respect of an order passed by a ''judicial authority'' deciding a claim for reference to arbitration u/s 8 of the Arbitration Act, 1996.

32. Learned counsel for the respondents seeks to distinguish an order passed u/s 11(7) of the Arbitration Act, 1996, from other orders (passed under Part 1 of the aforesaid Act) by submitting that the order passed by the Chief Justice (or by the

person designated by him) to appoint an arbitrator u/s 11(6) of the Arbitration Act, 1996, is merely an administrative function assigned to the Chief Justice. An order passed u/s 11(6) of the Arbitration Act, 1996, cannot be treated as a judicial or a quasi-judicial order. It is, therefore, submitted that an order passed by "judicial authority" u/s 8 of the Arbitration Act, 1996, cannot be compared with an order passed by the Chief Justice (or by the person designated by him) u/s 11(7) of the Arbitration Act, 1996, Reliance in this behalf has been placed by the learned counsel for the appellants on a decision rendered by the apex court in Konkan Railway Corpn. Ltd. and Others Vs. M/s. Mehul Construction Co., . Certain observations made in the aforesaid judgment is paragraph 4 are being reproduced hereunder (para 4 at pages 278, 279 and 280 of Comp LJ):

". . . . Courts must not ignore the objects and purpose of the enactment of the 1996 Act. A bare comparison of different provisions of the Arbitration Act of 1940 with the provisions of the Arbitration and Conciliation Act 1996, would unequivocally indicate that the 1996 Act limits intervention of court with an arbitral process to the minimum and it is certainly not the legislative intent that each and every order passed by an authority under the Act would be a subject-matter of judicial scrutiny of a court of law. Under the new law, the grounds on which an award of an arbitrator could be challenged before the court have been severely cut down and such challenge is now permitted on the basis of invalidity of the agreement, want of jurisdiction on the part of the arbitrator or want of proper notice to a party of the appointment of the arbitrator or of arbitral proceedings. The powers of the arbitrator have been amplified by insertion of specific provisions of several matters. Obstructive tactics adopted by the parties in arbitration proceedings are sought to be thwarted by an express provision inasmuch as if a party knowingly keeps silent and then suddenly raises a procedural objection, it will not be allowed to do so. The role of institutions in promoting and organising arbitration has been recognised. The power to nominate arbitrators has been given to the Chief Justice or to an institution or person designated by him. ..... Under the new law, unless the agreement provides otherwise, the arbitrators are required to give reasons for the award. The award itself has now been vested with the status of a decree, inasmuch as the award itself is made executable as a decree and it will no longer be necessary to apply to the court for a decree in terms of the award. All these aim at achieving the sole object to resolve the dispute as expeditiously as possible with the minimum intervention of a court of law so that the trade and commerce is not affected on account of litigations before a court. .... The Statement of Objects and Reasons of the Act clearly enunciates that the main objective of the legislation was to minimise the supervisory role of courts in the arbitral process. .... Conferment of such power on the arbitrator under the 1996 Act indicates the intention of the legislature and its anxiety to see that the arbitral process is set in motion. This being the legislative intent, it would be proper for the Chief Justice or his nominee just to appoint an arbitrator without wasting any time or without entertaining any contentious issues

at that stage, by a party objecting to the appointment of an arbitrator. If this approach is adhered to, then there would be no grievance of any party and in the arbitral proceeding, it would be open to raise any objection, as provided under the Act. But certain contingencies may arise where the Chief Justice or his nominee refuses to make an appointment of an arbitrator and in such a case, a party seeking appointment of an arbitrator cannot be said to be without any remedy. Bearing in mind the purpose of legislation, the language used in Section 11(6) conferring power on the Chief Justice or his nominee to appoint an arbitrator, the curtailment of the powers of the court in the matter of interference, the expanding jurisdiction of the arbitrator in course of the arbitral proceeding, and above all the main objective, namely, the confidence of the international market for speedy disposal of their disputes, the character and status of an order appointing an arbitrator by the Chief Justice or his nominee u/s 11(6) has to be decided upon. If it is held that an order u/s 11(6) is a judicial or quasi-judicial order, then the said order would be amenable to judicial intervention and any reluctant party may frustrate the entire purpose of the Act by adopting dilatory tactics in approaching a court of law even against an order of appointment of an arbitrator. Such an interpretation has to be avoided in order to achieve the basic objective for which the country has enacted the Act of 1996 adopting the UNCITRAL Model. If on the other hand, it is held that the order passed by the Chief Justice u/s 11(6) is administrative in nature, then in such an event in a case where the learned Chief Justice or his nominee refuses erroneously to make an appointment, an intervention could be possible by a court in the same way as an intervention is possible against an administrative order of the executive. In other words, it would be a case of non-performance of duty by the Chief Justice or his nominee, and therefore, a mandamus would lie. If such an interpretation is given with regard to the character of the order that has been passed u/s 11(6), then in the event an order of refusal is passed u/s 11(6), it could be remedied by issuance of a mandamus. We are persuaded to accept the second alternative inasmuch as in such an event, there would not be inordinate delay in setting the arbitral process in motion."

32.1 Reliance was also placed on the decision rendered by the apex court in Konkan Railway Corporation Ltd. and Another Vs. Rani Construction Pvt. Ltd., . It is not necessary to extract the conclusion drawn by the apex court in the aforesaid judgment in view of the fact that the view earlier expressed in Konkan Railway Corpn. Ltd. and Others Vs. M/s. Mehul Construction Co., was endorsed by the Supreme Court in the instant case by a Constitution Bench.

33. We have deliberated on the effect of Section 11(7) of the Arbitration Act, 1996. We arc, however, not in agreement that an inference can be drawn therefrom that it was not the legislative intent to attach finality to the order passed by a "judicial authority" u/s 8 of the Arbitration Act, 1996. The observations made in Konkan Railway Corporation Ltd."s case, supra, extracted above delineate one of the primary objectives of the Arbitration Act, 1996, i.e., to minimise the supervisory role

of courts. The aforesaid intent is apparent from Section 5 of the Arbitration Act, 1996, in respect of which conclusions have already been drawn hereinabove, and also from conclusions independently drawn in respect of Section 37 of the Arbitration Act, 1996.

34. Learned counsel for the appellants has strongly contested the conclusion drawn by the learned counsel for the respondents on the basis of the interpretation of Section 37(1) of the Arbitration Act, 1996. Striking at the root of the argument, counsel for the appellants has submitted that a closer examination of the provisions of Section 37 of the Arbitration Act, 1996, reveals that appealable orders referred to in Section 37(1) can only be such orders which have been passed by a court; and cannot be an order passed by a ''judicial authority''. In order to arrive at the aforesaid conclusion, reliance has been placed by learned counsel for the appellants on the following words used in Section 37(1) of the Arbitration Act, 1996 : ''. . . from decrees of the court passing the order...''. Inviting the attention of the court to Section 2(e) of the Arbitration Act, 1956, wherein the word ''court'' has been defined, learned counsel for the appellants vehemently argued that the term ''court/ used in Section 37(1) would include a civil court of original jurisdiction in a district, and the High Court in exercise of its original civil jurisdiction, and no other ''court''. It is submitted that the orders passed by a ''judicial authority'' are clearly not within the ambit of Section 37(1) of the Arbitration Act, 1996. It is, therefore, suggested that the expression ''orders'' used in Section 37(1) will not include an order passed u/s 8 of the Arbitration Act, 1996, because an order passed u/s 8 is not passed by a court as defined in Section 2(e) of the Arbitration Act, 1996.

35. The aforesaid argument, on first blush, seems to be attractive. It is, however, clearly misconceived. In our view, the words relied on by learned counsel for the appellants (extracted above) are being read out of context. In order to examine the exact effect of the aforesaid words, it is necessary to notice the following words in conjunction with the words relied upon by the learned counsel for the appellants,'' . . to the court authorised by law to hear appeals from original decrees of the court passing the order. . .''. It is evident from the above reproduced extract that the instant portion of Section 37(1) of the Arbitration Act, 1996, is merely limited to determine the forum of appeal and not the authority which passed the orders which are appealable. In our view, the term order used in Section 37(1) of the Arbitration Act, 1996, would necessarily include all orders which can be based under Part I of the Arbitration Act, 1996. It is not possible for us to accept the contention of the learned counsel for the appellants that the impugned order under reference having not been passed by a court, but having been passed by a ''judicial authority'', would not be governed by Section 37 of the Arbitration Act, 1996.

36. Having dealt with all issues canvassed by learned counsel, we now endeavour to draw conclusions based on our interpretation of Section 37 of the Arbitration Act, 1996. In the absence of judicial precedent on the pointed issue, we will embark upon

file controversy on first principles. We have already concluded above that even a remedy of appeal would not be available unless expressly provided for, while interpreting Section 5 of the Arbitration Act, 1996. We have also concluded that the term ''orders'' referred to in Section 37 of the Arbitration Act, 1996, refers to orders passed under Part I of the Arbitration Act, 1996. The question then is whether the remedy of appeal is excluded against an order passed by a ''judicial authority'' u/s 8 of the Arbitration Act, 1996 ? In our view, it is. The reason for the aforesaid conclusion are the words ''and from no others'' qualifying the word ''orders'' [it] leaves no doubt that Section 37(1) of the Arbitration Act, 1996, does not delineate an inclusive list of appealable order, but defines the exhaustive list of orders from which an appeal under the provisions of the Arbitration Act, 1996, is competent. Since the list is exhaustive, and since an order passed by a ''judicial authority'' u/s 8 of the Arbitration Act, 1996, is not included therein, it would be inevitable to conclude that the remedy of appeal thereform is expressly excluded.

37. Learned counsel for the respondents (independent of the submissions noticed above), advanced yet another argument to substantate his claim that an appeal from an order u/s 8 of the Arbitration Act, 1996, was excluded by the legislature consciously and deliberately. In this behalf, attention of this court has been invited to Part II of the Arbitration Act, 1996 (which deals with the enforcement of certain foreign awards). It would be relevant to notice that Part I and Part II are two exclusive self-contained and independent parts of the Arbitration Act, 1996. Placing reliance on Section 54 of Arbitration Act, 1996, it is submitted that Section 54 in Part II of the Arbitration Act 1996, has the same scope and effect as Section 8 has in Part I of the Arbitration Act, 1996. In order to ascertain the similarity between the two provisions, Section 54 is being reproduced below :

"54 Power of judicial authority to refer parties to arbitration. -- Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, on being seized of a dispute regarding a contract made between persons to whom Section 53 applies and including an arbitration agreement, whether referring to present or future differences, which is valid under that section and capable of being carried into effect, shall refer the parties on the application of either of them or any person claiming through or under him to the decision of the arbitrators and such reference shall not prejudice the competence of the judicial authority in case the agreement or the arbitration cannot proceed or becomes inoperative."

37.1 A plain reading of Section 8 and Section 54 leaves no doubt that the scope of these two provisions is similar ; while the former applies to the domestic arbitration, the latter applies to foreign arbitrations. It is pointed out that Section 59 provides for appeals in respect of orders passed under Part II. Section 59 is also being reproduced hereunder:

"59 Appealable orders. -- (1) An appeal shall lie from the order refusing --

(a) to refer the parties to arbitration u/s 54 ; and

(b) to enforce a foreign award u/s 57, to the court authorised by law to hear appeals from such order.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

37.2 The contention of the learned counsel for the respondents is that when an appeal has been provided for against an order passed u/s 54 and not an order passed u/s 8 of the Arbitration Act, 1996, it is clear that it was the legislative intent not to provide for an appeal against an order passed u/s 8 of the Arbitration Act, 1996.

38. Based on the issues dealt with above, we have already recorded our conclusions which we again endeavour to summerise as under :

38.1 Firstly, the Arbitration Act, 1996, is an exhaustive and comprehensive code on the Jaw of arbitration in India, and Section 5 of the Arbitration Act, 1996, makes it exclusive on matters contained in Part I of the Arbitration Act, 1996, by excluding intervention of ''judicial authorities'' on matters regulated therein through a non obstante clause.

38.2 Secondly, Section 37 of the Arbitration Act, 1996, excludes, by use of the words ''and from no others'', the remedy of appeal, against an order passed by a ''judicial authority'' while deciding the claim for reference to an arbitrator made u/s 8 of the Arbitration Act, 1996.

38.3 Thirdly, on a conjoint reading and comparison of Sections 8 and 37 of the Arbitration Act, 1996, on the one hand, with Sections 54 and 57 of the said Act, on the other, the legislative intent to exclude the remedy of appeal against an order passed by a ''judicial authority'' while deciding a claim for reference to an arbitrator u/s 8 of the Arbitration Act, 1996, is clearly in the affirmative.

39. By the order of the Supreme Court dated 19.11.2001, referred to above, we were required to hear and decide objections as to the maintainability of the instant appeal raised by the respondents and also to hear and decide the application seeking vacation modification of the interim directions issued on 22.8.2001, by a reasoned order. Through the aforesaid deliberations, we have concluded that the instant appeal is not maintainable. It is, therefore, not necessary to dwell upon the second aspect of the matter.

40. For the reasons recorded above, the instant appeal is dismissed as not maintainable.

41. Since the proceedings before the Company Law Board had been stayed, parities through their counsel are directed to appear before the Company Law Board on

1.5.2002.