



CNICA Arbitration Reporter

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EDITOR'S DESK



It takes immense pleasure for me to resume the reporter. CNICA hopes to march ahead in its objective in the year 2010.

It is incumbent to state that in 2009 CNICA has administered 12 arbitration case and provided arbitration services for about 200. case.

CNICA has also successfully conducted conciliation for Bank, in which about 85 % of the cases, where attended got settled and an award in terms of settlement was been passed.

This year we in CNICA wish to scale greater heights with your help and patronage.

Regards

G.Ashokapathy

Season's Greetings



D. SARAVANAN
Chairman

World's Trusted Arbitration Centre

G. ASHOKAPATHY
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CASE STUDY

COURT : SUPREME COURT OF INDIA

**Parties to the Case : M/s. S.B.P. and Company
VS
M/s.Patel Engineering Ltd. & another**

Case No: Civil Appeal No:4168 of 2003

Judgment Date 21.10.2009

FACTS OF THE CASE

The Appellant and the Respondent had entered into a piece work agreement. The said agreement provided for an arbitration clause which reads as follows:-

"The Continuance of this piece work agreement/contract or at any time after the termination thereof, any difference or dispute shall arise between the parties hereto in relation to this agreement/contract, such difference shall be forthwith with referred to two arbitrators for Arbitration in Bombay one to be appointed by each party with liberty to the arbitrators in case of difference or their failure to reach an agreement within one month of the appointment, to appoint an umpire residing in Bombay and the award which shall be made by two Arbitrators or Umpire as the case may be shall be final, conclusive and binding on the parties hereto.

If either party to the difference or dispute shall fail to appoint an arbitrator within 30 calendar days after notice in writing having been given by the parties by the other party shall be entitled to proceed with the reference as Sole Arbitrator and to make final decision on such difference or dispute and the award made as a result of such arbitration shall be condition precedent to any right of action against any two parties hereto in respect of any such difference and dispute"

Dispute arose between the parties who appointed their respective arbitrators. The arbitrator appointed by the respondent declined as he had remained associated with a project. The respondent hence sought to appoint a substituted arbitrator and the substituted arbitrator had sought to appoint the third arbitrator. This was objected and the appellant claimed that as per the contract on the respondent's arbitrator refusing to arbitrate, the appellant's arbitrator became the

sole arbitrator. The respondent had filed section 11 application for appointment of a third arbitrator. The High Court found that section 15 of the Act would be applicable and hence the substitution is proper and further appointed the third arbitrator. Against the said order the above appeal has been preferred to the Supreme Court.

RATIO DECIDENDI

The Apex court after considering the various provisions of the Act and the meaning of the words "refuse" and "withdraw" had come to the conclusion that substitution of Arbitrator under section 15 of the Act shall not be applicable in case the arbitrator has refused. Substitution would arise only when the arbitrator has consented for the appointment and there after becomes unavailable. The Court further having regard to the contract held that on refusal of the arbitrator to arbitrate the arbitrator appointed by the appellant shall be the sole arbitrator.

We appreciate your inputs, suggestions and contributions. We would publish articles provided to us and request for contribution of the same. We shall also appreciate if you could furnish us the email address persons interested in receiving our reporter.

