

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPEAL (L) NO. 47 OF 2012
IN
COMPANY LAW BOARD NO. 57 OF 2012
ALONGWITH
COMPANY APPLICATION (L) NO. 53 OF 2012
IN
COMPANY APPEAL (L) NO. 47 OF 2012
WITH
COMPANY APPLICATION (L) NO. 56 OF 2012
IN
COMPANY APPEAL (L) NO. 47 OF 2012

Masusmi SA Investment LLC
a company duly organized and existing
under the laws of Mauritius with its
principal office at IFS Court, Mauritius ... Appellant

Versus

1.Keystone Realtors Pvt. Ltd.
A company duly incorporated under the
provisions of the Companies Act, 1956, having
its registered office at 702, Natraj, M.V. Road
Junction, Western Express Highway,
Andheri (East), Mumai 400 069.

2.Mr. Boman R. Irani,
An India Inhabitant of Mumai,
residing at 1601, La Solita, 16th Road,
TPS-III, Off Turner Raod, Bandra (West),
Mumai 400 050.

3.Mr. Chandresh D. Mehta,
An Indian Inhabitant of Mumbai.
Residing at 10th Floor, Buena Vista,
St. Alexium Road, Bandra (West),
Mumbai 400 050.

4.Mr. Percy S. Chowdhary,
An Indian Inhabitant of Mumbai,
residing at Flat No. 1, Rati Manzil, Parsee Colony,

639, Opp. Girls School, Dadar (East),
Mumbai 400 014.

5. Enigma Constructions Pvt. Ltd.
A company duly incorporated under the
Companies Act, 1956 having their office at
702, Natraj, M.V. Road Junction,
Western Express Highway,
Andheri (East), Mumbai 400 069.

6. Kapstone Constructions Pvt. Ltd.
A Company duly incorporated under the
companies Act, 1956 having their office at
702, Natraj, M.V. Road Junction,
Western Express Highway, Andheri (East).
Mumbai 400 069.

7. Credence Property Developers Pvt. Ltd.
A Company duly incorporated under the
companies Act, 1956 having their office at
702, Natraj, M.V. Road Junction,
Western Express Highway, Andheri (East).
Mumbai 400 069.

8. Gemstone Developers Private Limited,
A Company duly incorporated under the
Companies Act, 1956 having their office at
702, Natraj, M.V. Road Junction,
Western Express Highway, Andheri (East).
Mumbai 400 069.

9. Montage Developers Private Limited,
A Company duly incorporated under the
companies Act, 1956 having their office at
702, Natraj, M.V. Road Junction,
Western Express Highway, Andheri (East).
Mumbai 400 069.

10. Nouveau Developers Private Limited,
A Company duly incorporated under the
companies Act having their office at
702, Natraj, M.V. Road Junction,
Western Express Highway, Andheri (East).

Mumbai 400 069.

11.Panchagani Real Estate Private Limited,
A Company duly incorporated under the
companies Act having their office at
702, Natraj, M.V. Road Junction,
Western Express Highway, Andheri (East).
Mumbai 400 069.

12.Paradigm Builders Private Limited,
A Company duly incorporated under the
companies Act having their office at
702, Natraj, M.V. Road Junction,
Western Express Highway, Andheri (East).
Mumbai 400 069.

13.Rustomjee Realty Private Limited,
A Company duly incorporated under the
companies Act having their office at
702, Natraj, M.V. Road Junction,
Western Express Highway, Andheri (East).
Mumbai 400 069.

14.Sanguinity Realty Private Limited,
A Company duly incorporated under the
companies Act having their office at
702, Natraj, M.V. Road Junction,
Western Express Highway, Andheri (East).
Mumbai 400 069.

15.Suranjan Holdings & Estate Developers Private Limited,
A Company duly incorporated under the
companies Act having their office at
702, Natraj, M.V. Road Junction,
Western Express Highway, Andheri (East).
Mumbai 400 069.

16.Xcellent Realty Private Limited,
A Company duly incorporated under the
companies Act having their office at
702, Natraj, M.V. Road Junction,

Western Express Highway, Andheri (East).
Mumbai 400 069.

17.Rustomjee Constructions Private Limited,
A Company duly incorporated under the
companies Act having their office at
702, Natraj, M.V. Road Junction,
Western Express Highway, Andheri (East).
Mumbai 400 069.

18.Mausmi Ventures Ltd.
A Company duly organized and existing under the
laws of Cyprus with its principal office at
Kritonos, 21, Lakatamia, P.C. 2325, Nicosla,
Cyprus.

.. Respondents

**WITH
COMPANY APPLICATION (L) NO. 56 OF 2012
IN
COMPANY APPEAL (L) NO. 47 OF 2012**

Masusmi SA Investment LLC
a company duly organized and existing
under the laws of Mauritius with its
principal office at IFS Court, Mauritius

... Appellant

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A Company duly incorporated under the
companies Act, 1956 having their office at
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Western Express Highway, Andheri (East).
Mumbai 400 069.

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companies Act, 1956 having their office at
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Western Express Highway, Andheri (East).
Mumbai 400 069.

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A Company duly incorporated under the
companies Act, 1956 having their office at
702, Natraj, M.V. Road Junction,
Western Express Highway, Andheri (East).
Mumbai 400 069.

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A Company duly incorporated under the
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A Company duly incorporated under the
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Western Express Highway, Andheri (East).
Mumbai 400 069.

13.Rustomjee Realty Private Limited,
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companies Act having their office at
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Western Express Highway, Andheri (East).
Mumbai 400 069.

14.Sanguinity Realty Private Limited,
A Company duly incorporated under the
companies Act having their office at
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A Company duly incorporated under the
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Mumbai 400 069.

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A Company duly incorporated under the
companies Act having their office at
702, Natraj, M.V. Road Junction,
Western Express Highway, Andheri (East).
Mumbai 400 069.

17.Rustomjee Constructions Private Limited,
A Company duly incorporated under the
companies Act having their office at
702, Natraj, M.V. Road Junction,
Western Express Highway, Andheri (East).
Mumbai 400 069.

18.Mausmi Ventures Ltd.
A Company duly organized and existing under the
laws of Cyprus with its principal office at
Kritonos, 21, Lakatamia, P.C. 2325, Nicosla,
Cyprus.

.. Respondents

AND

Evershine Developers,
a partnership firm registered under the
Indian Partnership Act, 1932 , Veena Beena
Shopping Centre, 2nd Floor, Guru Nanak Road,
Bandra (West), Mumbai 400 050
(Third party)

... Respondent

WITH

COMPANY APPEAL (L) NO. 25 OF 2012

IN

CLB/CA/123/2011

IN

CLB/CP/48/2011/MUMBAI BENCH

WITH

COMPANY APPLICATION (L) NO. 322 OF 2012

IN

COMPANY APPEAL (L) NO. 25 OF 2012
IN
CLB CA NO. 123 OF 2011
IN
CLB/CP/48/2011/MUMBAI BENCH

1.Ruchit Gangar,
residing at 301/248, Leela Baug,
Telang Road, Matunga (CR),
Mumbai 400 019.

2.Mrs. Kavita Kishore Gangar,
w/o. Shri. Kishore Gangar

3.Shri Kishore Gangar,
Both are residing at 502, Amrut Dhara
Heights, Plot No. 591, Jame Jamshed Road,
Matunga (CR), Mumbai 400 019.

... Appellants

Versus

1.M/s. Bialetti Industries S.P.A.
Having its registered office at Via,
Fogliano, N.1, Coccaglio,
(Brescia), Italy.

2.M/s. Triveni Bialetti Industries,
having its registered office at 231,
Kardi, Shahpur, Thane 421 304.

3.Mr. Giuseppe Servidori, residing at
Via Porta, Dipinta 38, 24129,
Bergamo, Italy.

4.Mr. Roberto Serra, residing at
Via Manzoni 34, 15067, Novi Ligure (AL),
Italy.

5.Shri. Venkataraman Rajagopalan,
having his office at 231, Khardi, Shahpur,
Thane 421 304.

6.M/s. Girmi SPA, having its registered
office at Plaza Siro Collini, Omegna,
VB, Italy 2887

... Respondents

WITH
COMPANY APPEAL (L) NO. 4 OF 2011
IN
CLB/CA/139/2009
IN

CLB/69/2009

Ares Investment,
A company incorporated under the
laws of Mauritius, having its registered
office at IFS Court, 28, Cyber City, Ebene,
Mauritius

..... Appellant

Versus

1.Mr. R.S. Sandhu
2.Mrs. G.R. Sandhu
3.Mr. B.S. Sandhu,
4.Mr. N.S. Sandhu,
5.Mrs. Simran Sandhu,
6.Mrs. Gunjan Sandhu,
all adults, Indian Inhabitants,
having their office at 2,
Swaroop Chambers, Opp. AAI Import
Warehouse, Sahar Pipeline Road,
Andheri (East),
Mumbai 400 099
7.Wilson Sandhu Logistics (India) Ltd.
A company incorporated under the provisions of
the Companies Act, 1956 having its registered office
at 2, Swaroop Chambers, Opp. AAI Import Ware House,
Sahar Pipeline Road, Andheri (East),
Mumbai 400 099.

8.Mr. Muneesh Chawla,
Adult, Indian Inhabitant, having
his office at Blue River Capital
Advisors (India) Private Limited,
97, 3rd North Avenue Maker,
Maxity, Bandra Kurla Complex,
Mumbai 400 051.
9.Blue River Captial,
Advisors (India) Private Limited,
a Company incorporated under the
provisions of the Companies Act, 1956,
having its registered office at 97,
3rd North Avenue Maker, Maxity,
Bandra Kurla Complex, Mumbai 400 051 ... Respondents

Appearance in Company Appeal (L) No. 47 of 2012, Company Application

(L) No. 53 of 2012 and Company Application (L) No. 56 of 2012.

Mr.Janak Dwarkadas, Senior Advocate, a/w. Mr. F. D'vitre, Senior Advocate, Mr.Zal Andhiyarujinia, Mr.Sharan Jagtiani, Mr.Sujit Suvarna, Mr.Chirag Mody, Mr.Samit Shukla, Mr.Mujaf Virjee, Ms.Anushka Sarda, i/b. DSK Legal for Applicant/Appellant in Company Appeal (L) No. 47 of 2012.

Mr.S.U.Kamdar, Senior Advocate, Ms.Pooja Patil, i/b. J.Sagar Associates for Respondent No.1.

Mr.Virag Tulzapurkar, Senior Advocate, Mr.Dhawal Mehta, Mr.Denzil Arambhan, Ms.Jasmine Seth, Mr.Krishna B. Moorthy, Ms.Helina Desai, Mr.Gautam Sahni, i/b. Wadia Ghandy & Co. for Respondent No.2.

Mr.Aspi Chinoy, Senior Advocate, Mr.Nikhil Sakhardane, Mr. Dhawal Mehta, Mr.Denzil Arambhan, Ms.Jasmine Seth, Mr.Krishna B. Moorthy, Ms.Helina Desai, Mr.Gautam Sahni, i/b. Wadia Ghandy & Co. for Respondent No.3.

Mr.Pravin Samdhani, Senior Advocate, Mr.Dhawal Mehta, Mr.Denzil Arambhan, Ms.Jasmine Seth, Mr.Krishna B. Moorthy, Ms.Helina Desai, Mr.Gautam Sahni, i/b. Wadia Ghandy & Co. for Respondent No.4.

Mr.Ravi Kadam, Senior Advocate, Mr.Shyam Mehta, Senior Advocate, Mrs.Tanmayi Rajadhyaksha, Mr. Suraj Iyer, i/b. Ganesh & CO. for Respondent Nos. 5, 6 and 13.

Mr.Simil Purohit, i/b. Mr.Kalpesh Joshi for Respondent Nos. 7, 8, 9, 10, 14, 15, 16 and 17.

Ms.Ankita Singhanian, Mr.Ashok Purohit, i/b. Ashok Purohit & Co. for Respondent No.18.

Mr.J.J.Bhatt, Senior Advocate, a/w. Mr.Gaurav Joshi, Mr.N.V.Vimadalal, Mr.Manish Doshi, i/b. Vimadalal & Co. for Evershine Developers, third party.

Appearance in Company Appeal (L) No. 25 of 2012 and Company Appeal (L) No. 4 of 2011 with Company Application (L) No. 322 of 2012:

Mr.Gaurav Joshi, a/w. Mr.Chirag Mody, Ms.Anushka Sarda, i/b. DSL Legal for Applicant in Company Application (L) No. 322 of 2012 and Appellant in Company Appeal (L) No. 25 of 2012.

Mr.Ankit Lohia, a/w. Ms.Nayna Rane, i/b. D.H.Law for Appellant in Company

Appeal No. 4 of 2011.

Mr.Rahul Chitnis, Counsel a/w. Mr.Chakrapani Misra, Mr.Devesh Juvekar, Mr.R.Arunadhri Iyer, Ms.Meghna Rajadhyaksha, i/b. Khaitan & Co. Advocates for Respondent No.1 in Company Application (L) No. 322 of 2012 and Company Appeal No. 4 of 2011, Advocate for the Respondents.

Mr.Harish Pandya, Counsel, a/w. Mr.M.K.Banatwala, i/b. M.K.Banatwala, Advocate for Respondent No.2 in Company Application (L) No. 322 of 2012.

CORAM : R.D. DHANUKA, J.

RESERVED ON :1st NOVEMBER, 2012

PRONOUNCED ON : 6th NOVEMBER, 2012

ORAL JUDGMENT:

1. By consent of parties, all the aforesaid company appeals were heard together on the preliminary issue raised by the respondents about the maintainability of appeal and are being disposed off by a common order.

FACTS IN COMPANY APPEAL (L) NO. 47 OF 2012 :

2. By this appeal under section 10F of the Companies Act, 1956, the appellant challenges the order dated 12th October, 2012 passed by the Company Law Board (For short “CLB”) by which the CLB allowed the company application filed by respondent No. 2 under section 8 of the Arbitration & Conciliation Act, 1996 (For short “ the Arbitration Act, 1996”) and referred the parties to arbitration as contemplated under Article 58 of the Articles of Association and clause 20.4 contained in the agreement and as per the provisions contained in the Arbitration Act, 1996. Respondent no. 2 had filed application under section 8 in Company Petition No. 57 of 2012 filed by the

appellant under section 397 and 398 read with section 402 of Companies Act, 1956 alleging certain acts of oppression and mismanagement in the affairs of the first respondent company and respondent nos. 5 to 7 by the respondents.

3. At the threshold, the learned counsel appearing for the respondent company in all the three matters raised preliminary objections about maintainability of the appeals under section 10F of the Companies Act, 1956. In view of the preliminary issue raised by the respondents, the learned counsel appearing for parties have addressed this court on the said issue raised by the respondents and have requested this court to decide the same as preliminary issue.

4. Some of the relevant facts for the purposes of deciding the issue involved in these appeals are as under :

(a) It is the case of the appellant that in the year 2009, respondent nos. 2 to 4 approached the appellant and respondent no. 18 with a proposal to invest in the first respondent company which was to be utilized in its subsidiaries. The first respondent applied to the Foreign Investment Commercial Board on 20th November, 2008. The said board accorded its approval on 9th February, 2009 to the

application made by the first respondent. On 12th March, 2009, the appellant, respondent no. 18 and respondent no. 1, respondent nos. 2 to 4 (Promoters) executed Securities, Subscription and shareholders agreement.

(b) The appellant company filed company Petition (57 of 2012) before the CLB, Western Region Bench under section 397 and 398 read with section 402 of the companies Act, 1956 alleging certain acts of oppression and mismanagement in the affairs of respondent no1 and respondent nos. 5 to 7 by the respondents and sought various reliefs.

(c) In the month of August, 2012, respondent no.2 filed an application under section 8 of the Arbitration Act, 1996 (Company Application No. 116 and 120 of 2012) before the CLB relying upon clause 20.4 of the agreement, Article 58 of the Articles of Association and section 8 of the Arbitration Act, 1996. By an order dated 12th October, 2012, CLB allowed the Company

Application No. 116 and 120 of 2012 and referred the parties to arbitration as contemplated under Article 58 of the Articles of Association and clause 20.4 contained in agreement and as per provisions of the Arbitration Act, 1996.

(d) During the pendency of the said application, CLB granted certain ad interim reliefs on 8th August, 2012 in favour of the appellant. The respondent nos. 1, 2, 3, 5 and 7 filed appeal challenging the said interim order in this court under section 10F of the Companies Act. By order dated 14th August, 2012 passed by this court, interim order passed by CLB on 8th August, 2012 came to be set aside without going into the merits of the matters and the matter was remanded back to CLB for passing ad interim orders on all the applications after completion of the pleadings. By the said order, this court restrained respondent nos. 5 and 6 from creating any further third party rights pending the hearing before CLB. On 24th and 31st August and 4th October, 2012 this court modified its earlier order.

5. Clause 20.4 of the agreement dated 12th March, 2009 reads as follows :

“20.4. Arbitration :

20.4.1 Any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity) shall be sought to be resolved and settled amicably within 30 (thirty) days of such dispute arising, failing which it shall be referred to and finally resolved by arbitration under the Arbitration and Conciliation Act, 1996.

20.4.2 The arbitration shall be conducted as follows :

(a) The parties shall mutually appoint a sole arbitrator to resolve the aforesaid disputes or differences. In the event that the parties fail to mutually appoint a sole arbitrator within 15 (fifteen) days, the promoters and the company shall jointly appoint one arbitrator and the Investors shall jointly appoint another arbitrator and the two arbitrators so appointed shall appoint the presiding arbitrator.

(b) All proceedings in any such arbitration

shall be conducted in English.

(c) The seat of the arbitration proceedings shall be Mumbai.

(d) The arbitrator shall be free to award costs as he thinks appropriate.

20.4.3 The arbitration award shall be final and binding on the parties, and the parties agree to be bound thereby and to act accordingly.

20.4.4 For the purposes of this ARTICLE the Promoters and the company shall be deemed to be one party.”

6. Some of the relevant provisions of the Arbitration and Conciliation Act, 1996 for the purpose of deciding the issues involved in this matter are extracted below :-

Section 2 (1) (e)

2 (1) (e) " Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject- matter of a suit, but does not include any civil Court of a grade inferior to such principal civil Court, or any Court of Small Causes;

Section 8

8. Power to refer parties to arbitration where there is an arbitration agreement.

(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in subsection (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

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

Section 9

9. Interim measures etc. by Court. A party may, before, or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court-

(i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely:-

(a) the preservation, interim custody or sale of any goods which are the subject- matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject- matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any part or

authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
(d) interim injunction or the appointment of a receiver;
(e) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

Section 37

37. Appealable orders.

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

- (a) granting or refusing to grant any measure under section 9;
- (b) setting aside or refusing to set aside an arbitral award under section 34.

(2) 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 under section 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.

Section 45

45. 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, when seized of an action in a matter in respect of which the parties have made an agreement referred to in section 44, shall, at the request of one of the parties or any person claiming through or under

him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Section 50

50. Appealable orders.

(1) An appeal shall lie from the order refusing to—
(a) refer the parties to arbitration under section 45;

(b) enforce a foreign award under section 48, 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.

Section 10F of The Companies Act, 1956

[10F. Appeals against the order of the Company Law Board.—

Any person aggrieved by any decision or order of the Company Law Board [made before the commencement of the Companies (Second Amendment) Act, 2002] 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:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.]

7. The learned Senior Counsel Mr.Dwarkadas for the Appellant in Company Appeal (L) No. 47 of 2012 submits as under :-

(a) The appeal filed by the appellant is arising out of the order passed by CLB under Section 8 of the Arbitration and Conciliation Act, 1996 and is appealable under Section 10F of the Companies Act, 1956. The power under Section 8 is exercisable by the judicial authority before which the action is brought in the matter which is a subject of the arbitration agreement.

(b) The expression court is defined under section 2(1) (e) of the said Act to mean the principal civil court of original jurisdiction in a district and includes high court in exercise of its original civil jurisdiction. Therefore, the expression ‘judicial authority’ is wider than expression ‘court’ and therefore must be given a meaning different from the expression “court”. A proceeding under Section 8 is not a proceeding independently instituted under the said Act but has necessarily to be made in a pending action brought before a judicial authority.

(c) Section 37 deals only with appeals from the order passed in proceedings instituted under the

Arbitration Act and that too only from orders **of a court** [as defined 2(1)(e)] **to a court** authorised by law to hear appeals. Since an order passed under Section 8 of the said Act by a judicial authority is not an order **‘of the court’**, the question of such an order not being appealable, in other words the bar of appealability under section 37 of the said Act, will not apply to such orders.

(d) The expression “judicial authority” has not been defined under Arbitration and Conciliation Act, 1996. Section 37 of the Act would not apply to the order passed by the Judicial Authority. The CLB is not a court under Section 2(1)(e) of the Act. The definition of the court does not include judicial authority.

(e) The CLB was ceased of the proceedings filed by the appellant under Sections 397, 398 read with Section 402 of the Companies Act, 1956. The CLB by passing impugned order and referring the dispute to arbitration, has terminated the proceedings under the provisions of the Companies Act, 1956. There is no provision in the Arbitration

Act which takes away the remedy of a party to file appeal under Section 10F.

(f) There is no provision in the Arbitration Act which takes away power of this court to exercise its power to hear the appeal filed under Section 10F arising out of order passed under Section 8 of the Arbitration Act, 1996.

(g) The CLB while deciding the application under Section 8 filed by the 1st respondent was exercising the power under Sections 397, 398 read with Section 402 of the Companies Act, 1956. The proceedings thus filed by the appellant under Sections 397, 398 read with Section 402 were put to an end by passing an order under Section 8 of the Arbitration Act, 1996. If the CLB would have refused to refer the matter to arbitration on the application of the 1st respondent filed under section 8 of the act, the situation would have been different.

8. In the alternate to the aforesaid submissions, Mr.Dwarkadas, the Learned Senior Counsel made the following submissions :-

(a) The judicial authority which exercises powers under section 8 of the said Act is not exercising powers under the said Act, but under the relevant statute, which governs the jurisdiction of the relevant judicial authority. Unless and until there is an express bar appearing in the said Act which takes away the powers of appeal from orders passed by such a judicial authority in exercise of the powers conferred by the special statute the bar under Section 37 of the Act will not apply. An order of a Judicial Authority referring parties to arbitration though passed in exercise of powers under Section 8, would never the less be subject to discipline/hierarchy of appeals as provided by the statute under which judicial authority is constituted and exercises powers.

(b) Section 10F of the Companies Act, 1956 provides for an appeal from any order passed by the Company Law Board albeit on the question of law. When the statute uses expression any order, the appeal shall lie from every order. The learned counsel placed reliance on the judgment of

Supreme Court in case of ***Raj Kumar Shivhare vs. Assistant Director***¹. It is submitted that an order passed by the CLB under section 8 of the Arbitration Act would be appealable under Section 10F of the Companies Act.

(c) The consequences of holding that no appeal would lie from the order passed by the CLB under Section 10F of the Companies Act would render the party aggrieved remediless. It is submitted that on exclusion of a statutory provisions, especially one dealing jurisdiction to hear appeals must be expressly excluded and that the language of such exclusion must be clear and unambiguous. If the argument of the respondent that the appeal filed by the appellant is not maintainable is accepted, it would amount to excluding the court's appellate jurisdiction without any such express provision in the Act.

9.Mr. Dwarkadas, the learned senior counsel then invited my attention to the judgment of the Division Bench of this court in the case of **Conros Steel Pvt.**

¹ (2010) 4 SCC 772

Ltd. Vs. Lu Qin (Hong Kong) Co. Ltd. and Ors.² in which the judgment of the Supreme Court in the case of **Fuerst Day Lawson Limited Vs. Jindal Exports Limited**³ has been considered. It is submitted that the Division Bench of this court has also considered the judgments of the Supreme Court in the case of **Union of India Vs. Mohindra Supply Company**⁴, the judgment of the Punjab & Haryana High Court in the case of **Smt. Sudarshan Chopra and Ors. Vs. Vijay Kumar Chopra and Ors.**⁵, the judgment of the Division Bench of this court in **International Thermal Technology Kircher Italia, Branch, S.P.A. Vs. Esteem Projects Pvt. Ltd.**⁶, the judgment in the case of **Rites Ltd. Vs. JMC Projects (India) Ltd.**⁷, **Jet Airways (India) Ltd. Vs. Sahara Airlines Ltd.**⁸ It is submitted that after considering all these judgments, the Division Bench of this court has held as under :

“5. The question to be considered is "whether against an order passed by the learned Single Judge of this Court in a civil suit terminating that civil suit or refusing to terminate the civil suit because of the provisions of Section 8 of the Arbitration and Conciliation Act, an appeal under Clause 15 of the Letters Patent would lie or it can be said that such an appeal is barred

² Appeal No. 806 of 2011 decided on 13th March, 2012

³ (2011) 8 Supreme Court Cases 333

⁴ AIR 1962 SC 256,

⁵ 2003 Company Cases Vol.117 660

⁶ Appeal No. 485 of 2005

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⁸ Appeal No. 345 of 2011

by the provisions of Section 37 of the Arbitration and Conciliation Act. Perusal of Section 37 which we have quoted above shows that that provision provides for an appeal against final order passed in the proceedings instituted under Sections 9 and 34 of the Arbitration and Conciliation Act. Subsection 3 of Section 37 lays down that no second appeal shall lie from an order passed in appeal. In so far as section 8 is concerned, perusal of that provision shows that the proceedings because of the provisions of section 8 are not to be instituted necessarily in the Court, they are to be instituted in a pending suit before a judicial authority. That judicial authority may be a Court within the meaning of Section 2(e) of the Arbitration and Conciliation Act or may not be a Court within the meaning of Section 2(e) of the Arbitration & Conciliation Act. Perusal of the definition of term "Court" shows that the Court has been defined to mean a principal civil Court of original jurisdiction in a district and includes the High Court which has original civil jurisdiction. Therefore, in a district, the Court of District Judge would be the Court of original civil Jurisdiction and where the High Court has original civil jurisdiction, the High Court will be the Court of original civil jurisdiction. Perusal of the definition of term "Court" further shows that any court which is inferior to the

principal civil Court or any Small Causes Court is not a court within the meaning of Section 2(e). A civil suit where an application under section 8 of the Arbitration and Conciliation Act can be made, therefore, may not be the Court within the meaning of Section 2(e). For example, if a suit is pending in a small causes court and in that suit if because there is an arbitration clause between the parties in relation to the subject matter of that suit, an application under section 8 is made and an order passed by such a small causes court on that application, terminating the suit, will not be the order passed by the Court. Therefore, such an eventuality would not at all be covered by the provisions of Section 37 of the Arbitration and Conciliation Act because section 37 contemplates that the authority which is passing the order should be "Court" as also the authority which is hearing the appeal should also be "Court", because it says "an appeal shall lie to the Court authorised by law to hear appeals from original decrees of the Court passing the orders. Therefore, if the order under section 8 is not made by the Court, there is no question of section 37 being attracted. Perusal of provisions of section 37 in the scheme of Part I shows that it deals with only those orders which are passed by the Court. Section 9 confers power to make interim orders only on Court. Section 34 confers

power, to entertain an application against an award, only on a Court. Therefore, at least a general statement cannot be made that because of Section 37, appeal against all orders passed under section 8 is barred. Minimum that can be said is that where an order under section 8 is not made by the Court, section 37 will not be attracted. For example, if in a suit in the Court of Civil Judge, Junior Division an order terminating that suit is passed because of section 8 by the Civil Judge, Jr.Division, that order would be appealable before the District Judge and the appeal would not be barred by Section 37 because the Court of Civil Judge, Jr. Division is not "Court" within the meaning of section 2(e). Thus, appeal against order passed because of the provisions of Section in some civil suits by some civil Courts which are not "Court" within the meaning of section 2(e) would be maintainable while appeals against the orders passed by those Courts which are "Court" within the meaning of Section 2(e) because of the provisions of Section 8 in the civil suit would not be maintainable. It appears from section 37 that it may not be the intention of the legislature to bar appeals against the orders passed in the proceedings which are not instituted under the Arbitration and Conciliation Act. As observed above, the proceedings under section 8 are not independently instituted

under the Arbitration and Conciliation Act, an application under section 8 is necessarily to be made in a pending civil suit, and therefore, an order made on that application would be the interim or final order made in the civil suits. In case the application under section 8 is rejected it would be an interim order or it may be the final order made in civil suit if the application is granted. The result of the order may be to terminate the civil suit. From the judgments that have been pointed out to us, it is only the judgment of the Division Bench of this Court in the case of "International Thermal Technology Kircher Italia, Branch, S.P.A. Vs. Esteem Projects Pvt.Ltd. Passed on 19.3.2009 in Appeal no.485 of 2005" which directly deals with the maintainability of an appeal against an order passed under Section 8. Perusal of that judgment, however, shows that it does not take into consideration that an application under section 8 is made in a civil suit and may have the effect of terminating the civil suit itself. The Division Bench relied on the judgment of Division Bench of this Court in the case of "State of Maharashtra and anr. Vs. Ramdas Construction Co. & Anr., 2006(6) Mh.L.J. 678. Perusal of that judgment shows that that judgment relying on the provisions of section 37 holds that an order made by the learned Single Judge refusing to condone

the delay in filing an application under Section 34 is not appealable. That judgment does not take into consideration the provisions of the Letters Patent. It merely holds that because Section 37 does not contemplate an appeal being filed against an order rejecting an application for condonation of delay in filing an application under Section 34, the appeal is not maintainable. It does not examine the question "whether such an order would be appealable under the Letters Patent because the learned Single Judge in considering the application for condonation of delay was exercising original Civil jurisdiction". In our opinion, therefore, the question of maintainability of an appeal against an order passed in a Civil suit needs to be reexamined. Considerable emphasis was placed by the learned Counsel appearing for respondents on the judgment of the Division Bench in the case of "Jet Airways (India) Ltd." referred to above. In that judgment, the Divisions Bench was considering the question of maintainability of an appeal against an order passed by a Single Judge in the proceedings instituted for execution of an Award passed under the Arbitration Act which has become final. The Division Bench has concluded that any order passed in the proceedings filed for execution of an Award made under the Arbitration Act are to be treated as orders

passed under Section 36 of the Arbitration Act and in view of the provisions of Section 37 no appeal lies against any order passed under Section 36. For recording this conclusion, the Division Bench has entirely relied on the judgment of the Supreme Court in the case "Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd." referred to above. We find from the judgment of the Division Bench in the case "Jet Airways (India) Ltd." that the Division Bench has also not taken into consideration the possibility of the execution proceedings being filed before the judicial authority which is not a court within the meaning of Section 2(e) of the Arbitration Act, and therefore, not at all attracting the provisions of Section 37. Under the Civil Procedure Code, an application for execution of a decree can be filed before the Trial Court which can transfer it to the appropriate Court where the property against which the decree is to be executed is situated. Now the Court to which the execution proceedings are transferred may not be the principal civil court of original jurisdiction and if such a court passes an order, the provisions of Section 37 may not be attracted at all. We also find considerable force in the submissions made on behalf of the petitioner that the observations of the Supreme Court in the judgment in the case of "M/s.Sundaram Finance

Ltd. Vs. M/s.NEPC India Ltd." referred to above, have also to be seen before basing any conclusion in relation to the provisions of 1996's Act on the conclusion which are recorded considering the provisions of 1940's Act.

6. Taking overall view of the matter, therefore, in our opinion, considering that the question frequently arises before this Court and non maintainability of an appeal against the order which is passed by the learned Single Judge in a civil suit results in prejudice to the interest of the litigants, it would be appropriate if the question is considered by a larger bench. In our opinion, therefore, the following question can be referred for consideration to a larger bench:-

"Whether an appeal under the provisions of clause 15 of the Letters Patent, against an order passed by the learned Single Judge of this Court in a civil suit in an application filed in that civil suit because of the provisions of section 8 of the Arbitration and Conciliation Act, is maintainable or not?"

The office is, therefore, directed to place the papers before the Hon'ble the Chief Justice for appropriate orders."

10. It is submitted by Mr. Dwarkadas that the Division Bench judgment of this Court has held that if the order under section 8 of the Arbitration Act is not made by the court there is no question of section 37 being attracted. The learned senior counsel emphasized on the observation made by the Division

bench that the at least a general statement can not be made that because of section 37, appeal against all orders passed under section 8 is barred and that where an order under section 8 is made by the court, section 37 will not be attracted. The learned senior counsel invited my attention to the observations made by the Division Bench that it cannot be the intension of the legislature to bar appeals against the orders passed in the proceedings which are not instituted under the Arbitration Act, 1996. The Division Bench has observed that the result of the order passed under section 8 may be to terminate the civil suit. It is submitted that the judgment of the Division Bench of this court is thus binding on the Single Judge of this court while hearing the present appeal under section 10F of the Companies Act, 1956.

11. It is submitted by Mr. Dwarkadas, the learned senior counsel that the reliance placed by the respondents on the judgment of the Supreme Court in the case of **Sumitomo Corporation Vs. CDC Financial Services (Mauritius) Ltd. and others**⁹, is misplaced. It is submitted that there was no issue before the Supreme Court in the said matter regarding maintainability of appeal under section 10F of the companies Act, 1956. According to learned senior counsel the issue was only in respect of the forum which could hear appeal from orders of CLB. It is submitted that there was no issue of termination of the proceedings by virtue of order passed under section 8 of the Arbitration Act, 1996 before the Supreme Court in the said matter.

9 (2008) 4 Supreme Court Cases 91

12. Mr. Dwarkadas, the learned senior counsel submits that even where a question is referred to a larger Bench, the judgment has binding precatial value. The learned senior counsel placed reliance upon the judgment of this Court in the case of **Madhav Atulchandra Bapat Vs. State of Maharashtra and Ors.**¹⁰.

13. The learned senior counsel attempted to distinguish the judgment of the Supreme Court in the case of *Fuerst Day Lawson Limited Vs. Jindal Exports Limited* (supra) on the ground that the Supreme court has recognized that Part I and Part II of the Arbitration Act are not comparable. The supreme Court was concerned with the wording of Section 50 in Part II read with section 45 of Part II of the said Act. Section 50 of Part II does not use expression “of the Court”. Since the words “from the orders” are not qualified by the words “of the Court” in Part II of Section 50, words “from the orders” would mean and include judicial authority. However, the same is not so in the case of section 37 of the Arbitration Act, 1996.

14. The learned senior counsel placed reliance upon the judgment of this court in the case of **Kinetic Engineering Limited Vs. Unit Trust of India and another**¹¹. The learned counsel submits that the Single Judge of this court has taken a view that the order passed by the CLB even though not an order

¹⁰ 2009 (4) Bom. C.R. 32

¹¹ AIR 1995 BOMBAY 194

under the Companies Act but in exercise of powers under some other statutes Securities Contract Regulation Act, 1956 would be appealable under section 10F of the Companies Act. It is submitted that the argument of the party that an appeal under section 10F would not be maintainable since the CLB had passed an order under section 22A of Securities Contract Regulation Act, 1956 and not under the provisions of the Companies Act was repelled.

15. Mr Dwarkadas the learned senior counsel placed reliance on the judgment of the Supreme Court in the case of **P. Anand Gajapathi Raju and Ors. Vs. P.V.G. Raju and Ors.**¹² (2000) 4 Supreme Court Cases 539 in support of his plea that the application under section 8 of the Arbitration Act, 1996 is merely to bring to the notice of the judicial Authority that the subject matter of action before it, is subject matter of arbitration agreement and that would mean that such application was not an application as contemplated under section 42 of the said Act.

16. Mr. Dwarkadas, learned senior counsel appearing for the appellant placed reliance on the judgment of the Supreme Court in the case of **ITI Ltd. Vs. Siemens Public Communications Network Ltd**¹³ and more particularly para 19 in support of his plea that the Supreme Court had considered the effect of section 5 of the Arbitration Act, 1996 and had held that the right of second appeal to the High Court had been expressly taken away by sub section

¹² (2000) 4 Supreme Court Cases 539

¹³ (2002) 5 Supreme Court Cases 510

3 of section 37 of the Arbitration Act, 1996, however, for that reasons it cannot be held that the right of revision has also been taken away. Para 19 of the judgment in the case of ITI Ltd. (*supra*) reads thus :

“19. Revisional jurisdiction of superior court cannot be taken as excluded simply because subordinate courts exercise a special jurisdiction under a special act. The reason is that when a special Act on matters governed by that Act confers a jurisdiction on an established court, as distinguished from a 'persona designata', without any words of limitation, then the ordinary incident of procedure of that Court right of Appeal or revision against its decision is attracted. The right of Second Appeal to the High Court has been expressly taken away by Sub-section (3) of Section [37](#) of the Act, but for that reason it cannot be held that the right of revision has also been taken away. ”

17. Mr.G.R.Joshi, the learned counsel appearing for the Appellant in Company Appeal No. 25/2012 adopted the arguments advanced by the Learned Senior Counsel Mr.Dwarkadas. It is submitted that in the Division Bench Judgment of this Court in case of ***Conros Steels Pvt. Ltd. (supra)***, after referring to the judgment of Punjab and Haryana High Court in case of ***Smt.Sudershan Chopra & Ors. (supra)*** in para 5 of the judgment, the question of law has been kept open. It is submitted that in the event of this court

coming to the conclusion that appeal under Section 10F is not maintainable, the same can be converted into a writ petition.

18. The Learned Counsel appearing for the appellant in company appeal No. 4 of 2011 submits that in his case, the application filed under Section 8 of the Arbitration Act came to be rejected by the CLB. The learned counsel placed reliance on the Division Bench Judgment of this Court in the case of **Conros Steels Pvt. Ltd. (supra)**. It is submitted that when application under Section 8 of the Arbitration Act is rejected by the Company Law Board, appeal under section 10F of the Companies Act is maintainable.

19. On the other hand, the learned senior Counsel Mr. Kamdar and Mr. Aspi Chinoy appearing on behalf of respondent Nos. 1 and 3 respectively submits that the right of appeal is a creature of statute and not an inherent right like that of filing a suit. Its nature, ambit and width are to be determined from the statute itself. It is submitted that the order passed by CLB was on application filed by respondents under section 8 of the Arbitration Act, 1996. The CLB while deciding such application filed under section 8 of the Arbitration Act, 1996 exercises its power as Judicial Authority under the provisions of Arbitration Act, 1996. It is submitted that the remedy of the party aggrieved by such order has thus to be located under the provisions of the Arbitration Act, 1996 and not Companies Act, 1956. It is submitted that on the plain reading of section 37, it is clear that no appeal lies against the order

passed by the Judicial Authority under section 8 referring parties to arbitration or refusing to refer the parties to arbitration. It is submitted that only such orders which are specifically provided under section 37(1)(a) or (1)(b) or under section 37(2)(a) or (b) are appealable and no other orders. It is submitted that the order passed under section 8 by the Judicial Authority is thus not appealable. It is submitted that under section 37 read with section 5 of the Act, the court had no power to intervene in any of the proceedings except so provided in Part I of the Act. It is submitted that in view of the bar under section 37 from entertaining appeal from any other order not provided therein, the appeal filed under section 10F of the Companies Act, 1956 by the appellant is not maintainable.

20. Mr. Kamdar and Mr. Chinoy, the learned senior counsel strongly placed reliance upon the judgment of the Supreme Court in the case of Sumitomo Corporation (supra) and more particularly on para 13, 14, 24 to 29, 32 and 34 which reads as under :

“13. We have carefully perused all the relevant materials, Annexures and considered the rival contentions. The only question to be considered in the present appeal is whether the order dated 26.09.2006 of the CLB refusing to refer parties to arbitration under Section 45 of the Arbitration Act was liable to be challenged to the forum under Section 50 of the Arbitration Act or to the forum under Section 10(1)(a) of the Companies Act.

14. It is relevant to point out that in a company petition filed by the PTL and 4 others (Respondent

Nos.1-5 herein) before the CLB, Principal Bench, New Delhi, the second respondent therein (appellant herein, namely, SC) filed Company Application No. 259 of 2006 under Section 45 of the Arbitration Act for referring the parties to arbitration. The said Section 45 reads thus:

"45. 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, when seized of an action in a matter in respect of which the parties have made an agreement referred to in section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed."

24. In the light of the said conclusion, in order to ascertain the correctness of the same, it is useful to refer to the provisions of Section 50 of the Arbitration Act and Section 10(1)(a) and Section 10-F and of the Companies Act. "50. Appealable orders.- (1) An appeal shall lie from the order refusing to-

- (a) refer the parties to arbitration under section 45;
- (b) enforce a foreign award under section 48, to the court authorized by law to hear appeals from such order.

(2) xxx xxxx"

"10. Jurisdiction of Courts.- (1) The Court having jurisdiction under this Act shall be-

- (a) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any District Court or District Courts subordinate to that High Court in pursuance of sub-section (2); and

- (b) where jurisdiction has been so conferred, the District Court in regard to matters falling within the scope of the jurisdiction conferred, in respect of companies having their registered offices in the

district." "10F. Appeals against the order of the Company Law Board.- Any person aggrieved by any decision or order of the Company Law Board made before the commencement of the Companies (Second Amendment) Act, 2002 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:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days."

The above provisions make it clear that the forum shall be court authorized by law to hear the appeals from such order. In this regard, it is useful to reproduce the Explanation to Section 47 of the Arbitration Act which reads thus: "47. Evidence.-
xxx xxxx

Explanation.- In this section and all the following sections of this Chapter, "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction over the subject-matter of the award if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes."

25. As rightly pointed out, it is clear that unlike the explanation to Section 47, Section 50 uses the expression "Court" not simpliciter but qualified by the wording "authorized by law to hear appeals from such order." It is not the court having jurisdiction if the subject-matter is a suit where jurisdiction is determined in accordance with the provisions of Sections 16-20 of the Code of Civil Procedure. On the other hand, Section 50 of the Arbitration Act specifically used the word "authorized by law" and not the "Civil Procedure Code" or "suit".

26. In Smt. Ganga Bai vs. Vijay Kumar and Others. (1974) 2 SCC 393, while considering relevant provisions from the Civil Procedure Code in respect of right of appeal against a finding, res judicata etc., this Court in para 15 held thus: "15. It is thus clear that the appeal filed by Defendants 2 and 3 in the High Court was directed originally not against any part of the preliminary decree but against a mere finding recorded by the trial court that the partition was not genuine. The main controversy before us centres round the question whether that appeal was maintainable. On this question the position seems to us well established. There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous to claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute."

27. It is clear that if there is no bar in any statute, no difficulty in filing a suit, on the other hand in the case of appeals for its maintainability there must be a specific provision/clear authority of law. In view of the same, while exercise of original jurisdiction as provided in Section 47 and other similar sections of the Arbitration Act should be by the court within the jurisdiction of which the suit would have been filed, the appeal shall always be to the appellate forum which hears appeals from the order of the forum which passes the order. It is also clear from Section 37 of the Act dealing with appeals. Here also the appeal is to the court which hears the appeal and not the court which exercises original jurisdiction if the subject-matter had been a suit as provided in the explanation to Section 47 or

Section 2(c) of the Arbitration Act.

28.To our mind, the reading of Section 50 clearly suggests that an appeal shall lie from the order of the CLB to the court authorized by law to hear the appeals from such order of the CLB. To make it clear that in the event the order under Section 45 is passed by the CLB, the forum which is provided under law for hearing the appeal from the order of the CLB, will be the Appellate Forum. In other words, while Section 50 of the Arbitration Act provides for the orders which can be made the subject-matter of the appeal, the forum to hear the appeal is to be tested with reference to the appropriate law governing the authority or forum which passed the original order, that is, in the case on hand, the CLB. Section 10F read with Section 10(1)(a) of the Companies Act provides for such forum to hear the appeal from the orders of the CLB as the High Court within the jurisdiction of which the Registered Office of the company in issue is situated.

29.Now let us look into Section 10(1)(a) and Section 10F of the Companies Act. An appeal against any order of the CLB including an order passed refusing reference to arbitration shall lie to the High Court within the jurisdiction of which the Registered Office of the company is situated. That is the reason Section 50 of the Arbitration Act purposively uses the expression "authorized by law to hear the appeal". As rightly pointed out, it cannot be that an order passed by the CLB becomes appealable to a civil court or a court exercising civil jurisdiction when Parliament has chosen to provide for a specific appellate forum which should hear the appeal from the orders of the CLB.

32. A perusal of the said decision shows that the Punjab and Haryana High Court was not considering the issue of territorial jurisdiction on matters arising out of an order passed by the CLB. On the other hand, the High Court was considering the issue whether an appeal is maintainable from an order passed by the CLB rejecting the application under Section 8 of the Arbitration Act when Section

37 of the said Act expressly provides that no appeal shall lie against orders specifically mentioned in Section 37 and from no others and Section 8 is not mentioned in that section. As rightly pointed out by learned senior counsel appearing for the contesting respondents in that case the Punjab and Haryana High Court did not consider the issue that when an appeal lies which Court will have jurisdiction to entertain and decide the appeal. This is clear from the reading of paras 17 and 18 of the judgment of the Punjab and Haryana High Court.

34. In view of our conclusion, we are satisfied that the appellant has wrongly based its arguments on matters such as ouster of jurisdiction, over-riding effect of special statute over general statute, over-riding effect of subsequent statute etc. Since they have no application whatsoever to the matter in issue, there is no need to refer various decisions in those aspects. Ouster of jurisdiction arises only in regard to original jurisdiction and it cannot have any application to appellate jurisdiction as the one provided in Section 50 of the Arbitration Act. The appeal is a statutory remedy and it can lie only to the specified forum. The appellate forum cannot be decided on the basis of cause of action as applicable to original proceedings such as suit which could be filed in any court where part of cause of action arises. In such circumstances, we are unable to accept the lengthy arguments advanced on the above-mentioned subject by learned senior counsel for the appellant. Likewise, the submission of the appellant, namely, the Arbitration Act being a special and subsequent statute has no relevance to the present case.”

21. Both the learned senior counsel submits that section 10F read with section 10(1)(a) of the Companies Act provided for forum to appeal from orders of CLB. It is submitted that appeal under section 10F is not

maintainable. It is submitted that the appellant could have chosen forum for filing appeal before the forum provided under section 10F provided such appeal was maintainable under section 37 of the Arbitration Act, 1996. It is submitted that the Division Bench Judgment relied upon by the petitioner in the case of Conros Steel (supra) is contrary to the law laid down by the Supreme Court in the case of Sumitomo (supra), Union of India Vs Mohindra Supply (supra), Furest Day Lawson (supra), judgment of division bench of this Court in case of International Thermal Technology Kircher Italia (supra), Jet Airways (Supra).

22. The learned counsel for respondents placed reliance on the judgment of the Supreme Court in the case of Furest Day Lawson (supra) and more particularly para 60, 61, 62, 85, 86 and 91 which reads thus :

“60. It is also evident that Part I and Part II of the Act are quite separate and contain provisions that act independently in their respective fields. The opening words of Section 2 i.e. the definition clause in Part I, make it clear that meanings assigned to the terms and expressions defined in that section are for the purpose of that part alone. Section 4 which deals with waiver of right to object is also specific to Part I of the Act. Section 5 dealing with extent of judicial intervention is also specific to Part I of the Act. Section 7 that defines “arbitration agreement” in considerable detail also confines the meaning of the term to Part I of the Act alone. Section 8 deals with the power of a judicial authority to refer parties to arbitration where there is an arbitration agreement and this provision too is relatable to Part I alone (corresponding provisions are independently made in Sections 45 and 54 of Chapters I and II, respectively of Part II). The other provisions in Part I by their very nature shall have no application insofar as the two chapters of Part II are concerned.

61. Making reference to Sections [47](#), [26](#) and [30](#) of the 1940 Act, in paragraph 26 of the judgment, His Lordship concluded as follows:

26. I think I am justified in holding, in view of these provisions, that the Act was intended to be exhaustive of the law and procedure relating to arbitration. I cannot imagine that the words "arbitrations" and "awards" could have been used in such specific provisions without more, specially having regard to the definition of award, if it was intended to leave it open to the parties to an award based upon an oral submission to proceed to enforce it or set it aside by proceedings by way of suit altogether outside the Act. Let us take it then that the Act intended that there should be no such proceedings.

62. In paragraph 33, he further said:

If then, as I have held, the Act is intended to be exhaustive, and contains no provisions for the enforcement of an award based upon an oral submission, the only possible conclusion is that the Legislature intended that such an award should not be enforceable at all, and that no such suit should lie.

85. We have so far seen the decisions of the High Courts holding that a suit for enforcement of an arbitration award made on an oral reference was not maintainable, an arbitral award could only be enforced in terms Section [17](#) of the **Arbitration Act** and a suit for the enforcement of an arbitral award was not maintainable, and third, that no interest could be awarded on the amount adjudged in the award beyond the provisions of Section [29](#) of the **Arbitration Act**.

86. It is seen above that, in Mohindra Supply Co. the court held that a letters patent appeal was not maintainable in view of section (2) of Section [39](#) of the 1940 Act. To that extent, the decision may not have any bearing on the present controversy. But, in that decision observations of great significance were made in regard to the nature of the 1940 Act.

91. In light of the discussions made above, it must be held that no letters patent appeal will lie against an order which is not appeal able under Section [50](#) of the Arbitration and Conciliation Act, 1996.”

23. Alternatively, it is submitted that the order passed by the Division

Bench in the case of Conros Steel does not lay down any law. By the said judgment, the Division Bench of this Court at most expressed its disagreement with the judgment of this court in the case of International Thermal Technology (supra) delivered by another Division Bench and referred the question as to whether the appeal under the provisions of clause 15 of the Letters Patent against the order passed by the learned Single Judge of this court on the application filed in that civil suit on provisions of section 8 of Arbitration Act is maintainable or not to the larger Bench. It is submitted that by the said judgment the only question is referred to the Larger Bench and the said judgment can not be considered laying down any law.

24. Mr. Kamdar and Mr. Chinoy, the learned senior counsel placed reliance on the judgment of the Supreme Court in the case of Union of India Vs. Mohindra (supra) delivered by the Four Judges of the Supreme Court and more particularly para 6, 17 and para 18 which reads thus :

“6. The Punjab High Court in Banwari Lal Ram Dev v. The Board of Trustees, Hindu College and the Lahore High Court in Hanuman Chamber of Commerce Ltd., Delhi v. Jassa Ram Hira Nand , held that the appeals contemplated by section 39 are appeals to superior courts and not "intra-court appeals" and therefore the right to appeal under the Letters Patent was not restricted by sub-sections. (1) and (2). But a little analysis of this argument is likely to exhibit the somewhat startling consequences. If the appeal contemplated by section 39(1) is only an appeal to a superior court, orders passed by a subordinate court decisions whereof are made appealable to the same court will not be appealable at all under the Arbitration Act. For instance, under the Bombay Civil Courts Act, certain decisions of Assistant Judges are made appealable to the District Courts. An Assistant Judge is a Judge of the District Court and under the Bombay Civil Courts Act, appeals against his orders

and decrees in certain cases lie to the District Court. If the argument that an appeal under clause (1) of section 39 means an appeal to a superior court, be accepted, an appeal from an order under section 39(1) by an Assistant Judge will not lie at all. There are similar provisions in the Civil Courts Acts in the other States as well. 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. The argument that the right to file an appeal to the Supreme Court from orders in arbitration proceedings would be seriously restricted has in our view no substance. If an order passed in a proceeding on the original side of the High Court is appealable under section 39(1), an appeal will lie to a Division Bench of the High Court and from the order passed by the Division Bench, an appeal, by the express provision contained in sub-section (2) will lie subject to the restrictions contained in the relevant articles of the Constitution to the Supreme Court. If the order is not one falling within section 39(1), no appeal will evidently lie. It is true that against an order passed in arbitration proceeding, by a Division Bench of a High Court in an appeal, an appeal to this Court as a matter of right may lie, if the requirements of Article 133 are fulfilled; but if the same case is heard by a Single Judge no such appeal will lie. But the right to appeal is a creature of statute; no litigant has an inherent right to appeal against a decision of a court. The anomaly relied upon by the appellant occurs in second appeals, and revision applications as well. If these proceedings are heard and disposed of by Single Judges, there is no right of appeal to this Court but against decisions of Division Benches the right to appeal may be exercised."

17. Prior to 1940 the law relating to contractual arbitration (except in so far as it was dealt with by the Arbitration Act of 1899) was contained in the Code of Civil Procedure 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 Code of Civil Procedure 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 the 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. There is in the Arbitration Act no provision similar to section [4](#) of the Code of Civil Procedure which preserves powers reserved to courts under special statutes. There is also nothing in the expression "authorised by law to hear appeals from original decrees of the Court" contained in section [39\(1\)](#) of the Arbitration Act which by implication reserves the jurisdiction under the Letters Patent to entertain an appeal against the order passed in arbitration proceedings. Therefore, in so far as Letters Patent deal with appeals against orders passed in arbitration proceedings, they must be read subject to the provisions of section [39\(1\)](#) and (2) of the Arbitration Act."

25. Relying upon this judgment of the Supreme Court in the case of Union of India Vs. Mohindra (supra), it is submitted that section 10F thus merely indicates forum of appeal and does not right of appeal against the order of CLB passed under section 8 of the Arbitration Act, 1996.

26. The learned senior counsel for the respondents also placed reliance on the judgment of Punjab & Haryana High Court in the case of Smt. Sudarshan Chopra (supra) and more particularly pages 684, 685, 686,. 693 and 694 which reads thus :

“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 Mohindra Supply Company's case [MANU/SC/0004/1961](#), supra, 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.”

“.....In reference to Section [5](#) of the **Arbitration Act**, 1996, the Apex Court in Konkan Railway Corporation Ltd. and Ors. v. Mehul Construction Co. : [MANU/SC/0523/2000](#) 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.*, 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 not 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 under Section 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

"37. 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 under Section [9](#);

(b) setting aside or refusing to set aside an arbitral award under Section [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 under Section 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 under Section [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 under Section [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.

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 under Section [8](#) of the **Arbitration Act**, 1996, because an order passed under Section [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 the 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' under Section [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' under Section [8](#) of the **Arbitration Act**, 1996, is not included therein, it would be inevitable to conclude that the remedy of appeal therefrom is expressly excluded.

27. The learned senior counsel placed reliance upon the judgment of the Delhi High Court in **Vijay Sekhri and anr. Vs. Tinna Oils & Chemicals & Ors**¹⁴. Delhi High Court has after considering the judgment of the Punjab & Haryana High Court in the case of **Sudarshan Chopra, Sumitomo Corporation, Kinetic Engg. Ltd. Union of India Vs. Mohindra Supply Co.** and held thus :

“6. It is admitted case of the parties that the appellants herein had filed two petitions under Sections [397-398](#) of the Companies Act alleging oppression and mismanagement before the CLB in the affairs of M/s Tinna Agro Industries Limited and Tinna Oil and Chemicals Limited. During the pendency of the said petitions, applications under Sections [8](#) and [45](#) of the Arbitration Act were filed and by the impugned orders dated 20th July, 2010 passed by the CLB, the applications have been allowed and the matters have been referred to arbitration to be conducted in accordance with the rules of the conciliation and arbitration of the International Chamber of Commerce in London. What has been decided by the CLB are the applications filed under Sections [8](#) and [45](#) of the Arbitration Act and not the petitions under Section [397-398](#) of the Companies Act. The disputes raised in the main petitions under Sections [397-398](#) of the Companies Act have not been adjudicated. Rights of the parties under the Companies Act have not been decided. The CLB while passing the impugned orders dated 20th July, 2010 has adjudicated these applications under Sections [8](#) and [45](#) of the Arbitration Act and whether in view of the conditions stipulated in the aforesaid Sections, the applications should be allowed. While doing so, CLB may have incidentally examined the provisions of the Companies Act but only for the purpose of deciding whether or not conditions stipulated in Sections [8](#) and [45](#) of the Arbitration Act are satisfied or not; and not for deciding the petitions under Sections [397-398](#) of the Companies Act.

7. A similar question had arisen before Punjab and Haryana High Court in *In Re. Hind Samachar Limited: Sudershan Kumar Chopra and Ors. v. Vijay Kumar Chopra and Ors.* 2003 (117) Company Cases 660. In the said case, the CLB had dismissed an application under Section [8](#) of the Arbitration Act, which was made subject matter of an appeal under Section [10F](#) of the Companies Act. It was contended that the appeal was maintainable under Section [10F](#) of the Companies Act in view of the language of the said section and for this purpose and to answer to the issue reference must be made to the provisions of the Companies Act itself and not to Section [37](#) of the Arbitration Act. These contentions were rejected.

8. It may be noted that Arbitration Act in Section [37](#) does not provide for an appeal against an order rejecting or accepting an application under Section [8](#) of the said Act. Under the said Section, appeals can be filed only against the orders specified in Section [37](#) of the Arbitration Act. Division Bench of the Punjab and Haryana High Court after examining the provisions of the Companies Act and the Arbitration Act has opined as under:

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 under Section [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' under Section [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 not 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 under Section 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 Board in its capacity as 'judicial authority' while deciding an application filed under Section 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.

9. The Punjab and Haryana High Court also rejected the contention that the ordinary incident of procedure of the Court, including right to appeal, where proceedings

were/are pending would automatically get attached with the decision. The Punjab and Haryana High Court has held that the rule of attachment is not applicable in view of the express provisions and the bar under Section [37](#) of the Arbitration Act. It was observed:

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 right 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 under Section [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 under Section [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 (P) Ltd. v. Nissai Asb Pte. Ltd. [MANU/SC/0887/1999](#) : (1999)2 SCC 541, wherein the court in the short order passed by it noticed as under:

In State of W.B. v. Gaurangalal Chatterjee [MANU/SC/0509/1993](#) : (1993) 3 SCC 1, this Court relied upon an earlier decision of the Court in Union of India v. Mohindra Supply Co. [MANU/SC/0004/1961](#) : AIR 1962 SC 256. The said decision was rendered with reference to the appeal ability 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 Vanita M. Khanolkar v. Pragna M. Pai [MANU/SC/0867/1998](#) : (1998)1 SCC 500 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.

10. The Punjab and Haryana High Court has further held that the Arbitration Act is an exclusive, exhaustive and comprehensive code as the said Act is a consolidating and an amending Act relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards and for matters connected with or incidental thereto. The High Court relied upon observations of the Supreme Court in Union of India v. Mohindra Supply Co. [MANU/SC/0004/1961](#) : AIR 1962 SC 256 with reference to enactment of Arbitration Act, 1940, which was again a consolidating and an amending statute. It was accordingly held that the remedy by way of appeal would be permissible only if expressed, specifically or by necessary implication in Part I of the Arbitration Act and not otherwise. The legislative intent is to provide remedy of appeal in Section [37](#) against a limited category of orders and exclude remedy of appeal against an order not specified in Section [37](#). Accordingly, it has been observed by the Punjab and Haryana High Court in In Re. Hind Samachar Limited (supra) as under:

38. Based on the issues dealt with above, we have already recorded our conclusions which we again endeavour to summaries 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 under Section [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 under Section [8](#) of the Arbitration Act, 1996, is clearly in the affirmative.

11. Unlike Section [37](#) of the Arbitration Act which applies to Part I, Section [50](#) of the Arbitration Act applies to international arbitration covered by New York Convention. Section [50](#) of the Arbitration Act stipulates that an appeal shall lie against an order refusing to refer the parties to arbitration under Section [45](#) or to enforce an award under Section [48](#) of the Arbitration Act. In the present case we are concerned with Section [50](#) of the Arbitration Act. Division Bench of Delhi High Court in *Jindal Exports Ltd. v. Fuerst Day Lawson* [MANU/DE/2572/2009](#) : (170)2010 DLT 628 has examined Section [50](#) of the Arbitration Act and has held that in view of the statutory bar and prohibition a Letters Patent Appeal would not be maintainable except against orders mentioned in Section [50](#) of the Arbitration Act. In other words, in respect of international awards/arbitrations covered by New York Convention, an appeal can be filed against the orders passed by the Trial Court/first forum only against an order refusing to refer the parties to

arbitration or an order refusing to enforce an award under Section [48](#) of the Arbitration Act and not against other orders. Section [50](#) of the Arbitration Act creates the said bar. Similar view has been taken in *Shivnath Rai Harnarain India Co. V. G.G. Rotterdam* [MANU/DE/2802/2009](#) : 164 (2009) DLT 197 and in *Usha Drager Pvt. Ltd. v. Dragerwerk AG*, [MANU/DE/2572/2009](#) : 2010 (170) DLT 628.

12. In *Sumitomo Corporation v. CDC Financial Services (Mauritius) Limited and Ors.* [MANU/SC/1101/2008](#) : (2008) 4 SCC 91, the CLB had refused to refer the parties to arbitration under Section [45](#) of the Arbitration Act. An appeal was filed before the Delhi High Court under Section [50](#) of the Arbitration Act and was registered as FAO. This FAO was dismissed by the Delhi High Court for lack of territorial jurisdiction holding that Section [10\(1\)\(a\)](#) of the Companies Act will take precedence over Section [50](#) of the Arbitration Act. The question, which arose before the Supreme Court was whether the order passed by the CLB refusing to refer the parties to arbitration under Section [45](#) of the Arbitration Act was liable to be challenged to the forum under Section [50](#) of the Arbitration Act or to the forum under Section [10\(1\)\(a\)](#) of the Companies Act.

13. It was observed that Section [50](#) uses the expression 'court' but is followed by the words 'authorised by law to hear appeals from such order'. It was held that the expression 'court' does not refer to 'court' simpliciter but has to be construed and interpreted with reference to the subsequent words. Accordingly, it is not the court having jurisdiction if the subject matter is a suit, where jurisdiction is determined in accordance with the provisions of Sections [16-20](#) of the Code of Civil Procedure, 1908. On the other hand, Section [50](#) of the Arbitration Act uses the words "authorised by law" and not Civil Procedure Code or suit. Reference was made by the Supreme Court to *Ganga Bai v. Vijay Kumar* [MANU/SC/0020/1974](#) : (1974) 2 SCC 393 that the right of appeal inheres in no one and, therefore, an appeal for its maintainability must have the clear authority of law. The right to appeal is a creature of statute. The Supreme Court in *Sumitomo Corporation* (supra) has held as under:

28. To our mind, the reading of Section [50](#) clearly

suggests that an appeal shall lie from the order of CLB to the court authorised by law to hear the appeals from such order of CLB. To make it clear that in the event the order under Section [45](#) is passed by CLB, the forum which is provided under law for hearing the appeal from the order of CLB, will be the appellate forum. In other words, while Section [50](#) of the Arbitration Act provides for the orders which can be made the subject-matter of the appeal, the forum to hear the appeal is to be tested with reference to the appropriate law governing the authority or forum which passed the original order, that is, in the case on hand, CLB. Section [10-F](#) read with Section [10\(1\)\(a\)](#) of the Companies Act provides for such forum to hear the appeal from the orders of CLB as the High Court within the jurisdiction of which the registered office of the company in issue is situated.

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34. In view of our conclusion, we are satisfied that the appellant has wrongly based its arguments on matters such as ouster of jurisdiction, overriding effect of special statute over general statute, overriding effect of subsequent statute, etc. Since they have no application whatsoever to the matter in issue, there is no need to refer various decisions in those aspects. Ouster of jurisdiction arises only in regard to original jurisdiction and it cannot have any application to appellate jurisdiction as the one provided in Section [50](#) of the Arbitration Act. The appeal is a statutory remedy and it can lie only to the specified forum. The appellate forum cannot be decided on the basis of cause of action as applicable to original proceedings such as suit which could be filed in any court where part of cause of action arises. In such circumstances, we are unable to accept the lengthy arguments advanced on the abovementioned subject by learned Senior Counsel for the appellant. Likewise, the submission of the appellant, namely, the Arbitration Act being a special and subsequent statute has no relevance to the present case.

14. Thus, the Supreme Court has held that Section [50](#) of the Arbitration Act stipulates the orders that can be made subject matter of appeal but does not prescribe or fix the forum which will hear the appeal. The forum to which an appeal will lie, is determined and decided with reference

to appropriate law governing the authority of the forum which has passed an order which is appealable under Section [50](#) of the Arbitration Act. Accordingly, an appeal will lie under Section [10F](#) of the Companies Act against an appealable order under Section [50](#) of the Arbitration Act passed by the CLB. The aforesaid decision does not help the appellants but supports the contention raised by the applicant-respondent No. 2. As per the said decision, statutory appeal is maintainable if it is permitted under Section [50](#) of the Arbitration Act. In such cases an appeal can be filed under Section [10F](#) of the Companies Act. The Supreme Court had not held that an appeal under Section [10F](#) would be maintainable even if an appeal is not maintainable under Section [50](#) of the Arbitration Act.

15. Decision in the case of *In Re. Hind Samachar Limited* (supra) was also referred before the Supreme Court but it was held that the issue raised before the Supreme Court was different as the question was whether appeal under Section [10F](#) should have been filed before the High Court as specified in Section [10\(1\)\(a\)](#) of the Companies Act, i.e., Punjab and Haryana High Court and not High Court of Delhi.

16. Learned Counsel for the appellants has relied upon a decision of a single Judge of High Court of Bombay in *Kinetic Engineering Limited v. Unit Trust of India* [MANU/MH/0037/1995](#) : AIR 1995 Bombay 194. This decision was also cited before the Punjab and Haryana High Court in *In Re Hind Samachar Limited* (supra) and was dissented from. I am not expressing any opinion in this regard as I feel that the decision in the case of *Kinetic Engineering* (supra) is distinguishable. In the case before the Bombay High Court, proceedings were initiated before the CLB under the Securities Contracts (Regulation) Act, 1956 on the question whether the Board of Directors have power to refuse registration of shares under Section [22A\(3\)](#) of the said Act. It has been held by the Bombay High Court that the order passed by the CLB can be assailed in an appeal under Section [10F](#) as the CLB while passing the impugned order had exercised jurisdiction under Section [10E\(1A\)](#) of the Companies Act. It was further observed that in the Securities Contract (Regulation) Act, 1956, there is no provision for appeal. In other words, the said Act did not bar or prohibit any

appeal. Accordingly, it was observed that the appeal would lie under Section [10F](#) of the Act as there was no express or implied bar under the Securities Contract (Regulation) Act, 1956. Thus it appears that the Bombay High Court, had accepted that the doctrine of attachment was applicable.

17. In view of the aforesaid discussion, the present applications are allowed and it is held that the appeals under Section [10F](#) of the Companies Act are not maintainable against the impugned orders allowing applications under Section [45](#) of the Arbitration Act.

18. It is clarified that this Court has not expressed any opinion on the merits of the impugned orders dated 20th July, 2010 allowing the applications and referring the matter to International Arbitration as this Court has no jurisdiction to entertain the present appeals under Section [10F](#) of the Companies Act. It is clarified that this Court has not expressed any opinion whether the appellants have remedy to challenge the said orders by way of writ petitions or in some other appropriate proceedings. This question has not been raised and argued before me.”

28. The learned senior counsel for the respondents placed reliance upon the judgment of this court in the case of International Technology Kirchner Italia Branch, S.P.A. (supra). The Division Bench of this court has interpreted section 37 of the Arbitration Act and after referring to the judgment of the Punjab & Haryana High Court in the case of Sudarshan Chopra, has held thus :

“3. Aggrieved thereby, the defendant has filed the present appeal. Ms Shah, the learned Counsel for the respondent raised a preliminary objection about the maintainability of this appeal. According to the learned Counsel for the respondent, the present appeal is against an order from which

no appeal lies under section 37 of the Arbitration and Conciliation Act, 1996, which reads as follows:-

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

- (a) granting or refusing to grant any measure under section 9;
- (b) setting aside or refusing to set aside an arbitral award under section 34.

(2) An appeal shall also lie to a Court from an order granting of the arbitral tribunal.

- (a) accepting the plea referred in sub-section (2) or sub-section (3) of section 16; or
- (b) granting or refusing to grant an interim measure under section 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. On a plain construction of the provision it is clear that an appeal is provided only from the orders specified therein i.e. (a) granting or refusing to grant any measure under section 9 or setting or refusing to set aside the arbitral award under section 34, (b) from an order accepting plea that the arbitral tribunal has no jurisdiction and (c) an order granting or refusing to grant an interim measure under section 17.

4. The words in parenthesis (and from no others), are equally important. These words are intended to remove any doubt that might arise about the maintainability of an appeal from any order other than those specified. The words emphasise that an appeal only lies from orders specified in the section and no others. The only thing that needs to be seen therefore is whether an appeal lies from an order under section 8 of the Arbitration and Conciliation Act, 1996. It is clear that an appeal is not provided under section 37. An order refusing to refer the dispute to arbitration under section 8 is not an order which falls in any of the categories specified in section 37 and therefore is not appealable.

5. The view taken by us finds support in a decision of a Division Bench of the Punjab and Haryana High Court in the

case of Hind Samachar Limited, Jalandhar – Smt. Sudarshan Chopra and others V. Vijay Kumar Chopra and others, reported in (2002) 4 Company Law Journal 1, pointed out by Ms Shah, the learned Counsel for the respondent. The Division Bench of Punjab and Haryana High Court observed in para 36 as follows:-

"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 the 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 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" under section 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" under section 8 of the Arbitration Act, 1996, is not included therein, it would be inevitable to conclude that the remedy of appeal therefrom is expressly excluded."

6. Ms Shah further submitted that in the context of an appeal arising out of another kind of order the Division Bench of this Court construed the provisions strictly in State of Maharashtra and another V. Ramdas Construction Co. and another, reported in 2006 (6) Mh.L.J. 678. An appeal was preferred against an order refusing to condone the delay in making an application for setting aside the arbitral award. It was contended that since the appeal lay against an order setting aside or refusing to set aside the arbitral award, an appeal against an order is an application for condonation of delay in making such application for setting aside the award must be construed to be tenable. The Division Bench held that section 37 does not permit the appeal against the order rejecting an

application for condonation of delay even if an order on the application for condonation of delay would result in an order on the application for setting aside an award against which an appeal is tenable. The Division Bench held that an order on an application for condonation of delay is not an appealable order. We are in respectful agreement with the view of the Division Bench.

7. We therefore, conclude that no appeal is provided for in section 37 of the Arbitration and Conciliation Act, 1996 against the order under section 8 of that Act.”

29. The learned counsel submits that the judgment of the Division Bench of this court holding that no appeal is provided under section 37 of the Act against the order passed under section 8 of the Act is binding on this court. It is submitted that by the said judgment, the law is laid down after interpreting section 37 and 8 of the Act that no appeal is provided under section 37 against the order under section 8 of the Act whether referring the parties to arbitration or refusing to refer the parties to arbitration.

30. The learned senior counsel also placed reliance upon the judgment of this court delivered by the division Bench of this Court on 8th August, 2011 in the case of Jet Airways and another Vs. Subrato Roy in Appeal No. 345 of 2011. This court after considering the judgment of the Supreme Court in Fuerst Day Lawson Limited (supra) has held that LPA is not maintainable. Para 21, 22 30 to 34 of the said judgment reads thus :

“21. In Sharda Devi, the Court pointed out that in South Asia Industries, the Court had examined Sections [39](#) and [43](#) of the Delhi Rent Control Act and held that a combined reading of the

two sections showed that an order passed by the High Court in an appeal under Section [39](#) was to be final. It was held that the provision of finality was intended to exclude any further appeal. This decision was, thus, based on interpretation of Sections [39](#) and [43](#) of the Delhi Rent Control Act. Section [54](#) of the Land Acquisition Act, has no similarity with Sections [39](#) and [43](#) of the Delhi Rent Control Act. Hence, the decision in South Asia Industries had no relevance to decide the question whether a letters patent appeal is maintainable against the judgment passed by a single judge under Section [54](#) of the Land Acquisition Act.

22. In regard to the Letters Patent jurisdiction of the High Court, this Court in Sharda Devi made the following observation in paragraph 9:

9. A Letters Patent is the charter under which the High Court is established. The powers given to a High Court under the Letters Patent are akin to the constitutional powers of a High Court. Thus when a Letters Patent grants to the High Court a power of appeal, against a judgment of a Single Judge, the right to entertain the appeal would not get excluded unless the statutory enactment concerned excludes an appeal under the Letters Patent.

30. Having, thus, put the controversy in the historical perspective, the Court referred to Sections [4](#) and [104](#) of the Code and made the following observation in paragraph 6 of the judgment:

6. To be immediately noted that now the legislature provides that the provision of this Code **will not affect or limit special law unless specifically excluded**. The legislature also **simultaneously saves, in Section [104\(1\)](#), appeals under "any law for the time being in force". These would include letters patent appeals.** (emphasis supplied)

The above is really the kernel of the decision in P.S. Sathappan and the rest of the judgment is only an elucidation of this point.

26. In P.S. Sathappan, on a consideration of a number of earlier decisions, the Constitution Bench concluded that till 1996, the unanimous view of all courts was that Section [104\(1\)](#) Code of Code of Civil Procedure specifically saved

letters patent appeals and the bar under Section [104\(2\)](#) did not apply to letters patent appeals. Thereafter, there were two decisions in deviation from the accepted judicial view, one by a bench of two judges of this Court in *Resham Singh Pyara Singh v. Abdul Sattar* [MANU/SC/1019/1996](#) : (1996) 1 SCC 49 and the other by a bench of three judges of this Court in *New Kenilworth Hotel (P) Ltd. v. Orissa State Finance Corporation* [MANU/SC/0220/1997](#) : (1997) 3 SCC 462. P.S. Sathappan, overruled both these decisions and declared that Resham Singh Pyara Singh and New Kenilworth Hotel (P) Ltd. laid down wrong law. It further pointed out that even after the aforementioned two decisions this Court had continued to hold that a Letters Patent Appeal is not affected by the bar of Section [104\(2\)](#) Code of Code of Civil Procedure. In this connection, it referred to Vinita M. Khanolkar (supra), under Section [6](#) of the Specific Relief Act, *Chandra Kanta Sinha v. Oriental Insurance Co. Ltd. and Ors.* [MANU/SC/0339/2001](#) : (2001) 6 SCC 158, under Section [140](#) of the Motor Vehicles Act, 1988, Sharda Devi (supra), under Section [54](#) of the Land Acquisition Act and Subal Paul (supra), under Section [299](#) of the Indian Succession Act, 1925 and came to the conclusion that the consensus of judicial opinion has been that Section [104\(1\)](#) Code of Code of Civil Procedure expressly saves the letters patent appeal and the bar under Section [104\(2\)](#) Code of Code of Civil Procedure does not apply to letters patent appeals. In paragraph 22 of the judgment, the Court observed as follows:

22. ...The view has been that a letters patent appeal cannot be ousted by implication but the right of an appeal under the Letters Patent can be taken away by an express provision in an appropriate legislation. The express provision need not refer to or use the word "letters patent" but if on a reading of the provision it is clear that all further appeals are barred then even a letters patent appeal would be barred.

27. Further, analysing the two Sub-sections of Section [104\(2\)](#) along with Section [4](#) Code of Code of Civil Procedure , this Court in paragraph 30 of the judgment observed as follows:

30. ...Section [104](#) must be read as a whole and harmoniously. If the intention was to exclude what is specifically saved in Sub-section (1), then there had to be a specific exclusion. A general exclusion of this nature would not be sufficient. We are not saying that a general exclusion would never oust a

letters patent appeal. However, when Section 104(1) specifically saves a letters patent appeal then the only way such an appeal could be excluded is by express mention in Section 104(2) that a letters patent appeal is also prohibited....”

31. Mr. Chinoy, learned senior counsel submits that section 37 sub section (1) is in two parts. First part “appeal shall lie” from the following orders indicates the orders set out in sub section (a) and (b) of section 37(1) and sub section (2) which are appellable and no other orders whereas expression used in second part “court authorised by law to hear appeals from the original decrees of the court passing order” indicates forum which could hear such appeals which are provided in the first part of section 37(1). It is submitted that the court authorised by law to hear the appeal does not mean the court defined under section 2(e) of the Arbitration Act. It is submitted that if section 37 of the Act does not apply, the applicant cannot invoke section 10F. Section 10F is not remedy of appeal.

32. Mr. V.V. Tulzapurkar, learned senior counsel appearing for respondent No.2 submits that section 10F of the Companies Act can only be invoked for the purpose of finding out the forum and not for substantive right of appeal. It is submitted that no rights are decided by the CLB under section 397 and 398 of the companies Act while referring the parties to arbitration while allowing section 8 application filed by the respondent. The learned senior counsel invited my attention to section 37, 45 and section 50 of the Arbitration Act, 1996. It is submitted that section 45 read with section 50 makes it clear that it

was intended by the Legislature that if application under section 45 is made before the Judicial Authority which is seized of the action in the matter in respect of which parties have made agreement referred to in section 44, at the request of one of the parties to refer the parties to arbitration is rejected by the Judicial Authority, such order is specifically appealable under section 50(1)(a) of the Act. It is submitted that there is no such provision made by the legislature under section 37(1) or (2) in respect of the order passed by the Judicial Authority under section 8 of the Arbitration and Conciliation Act, 1996. The learned counsel submits that the legislative intent of the Parliament is absolutely clear that no remedy of appeal is provided under section 37 against the order passed by the Judicial Authority under section 8 of the Act. It is submitted that the remedy of appeal is provided by the statute and since no such appeal is provided against the order passed by the Judicial Authority under section 8, appeal filed by the appellant under section 10F is not maintainable. The learned senior counsel submits that there is no merit in the submissions made by Mr. Dwarkadas, that appeal is maintainable as the proceedings filed by the appellant under section 397 and 398 read with section 402 are terminated by virtue of order passed by CLB under section 8. The learned senior counsel placed reliance upon the judgment of P. Anand Gajapati (*supra*) and more particularly paragraph 8 which reads thus :

“8. In the matter before us, the arbitration agreement covers all the disputes between the parties in the proceedings before us and

even more than that. As already noted, the arbitration agreement satisfies the requirements of Section [7](#) of the new Act. The language of Section [8](#) is per-emptory. It is therefore, obligatory for the Court to refer the parties to arbitration in terms of their arbitration agreement. Nothing remains to be decided in the original action or the appeal arising therefrom. There is no question of stay of the proceedings till the arbitration proceedings conclude and the Award becomes final in terms of the provisions of the new Act. All the rights, obligations and remedies of the parties would now be governed by the new Act including the right to challenge the Award. The Court to which the party shall have recourse to challenge the Award would be the Court as defined in Clause (e) of Section [2](#) of the new Act and not the Court to which an application under Section [8](#) of the new Act is made. An application before a Court under Section [8](#) merely brings to the Court's notice that the subject matter of the action before it is the subject matter of an arbitration agreement. This would not be such an application as contemplated under Section [42](#) of the Act as the Court trying the action may or may not have had jurisdiction to try the suit to start with or be the competent Court within the meaning of Section [2\(e\)](#) of the new Act.”

33. Mr. Tulzapurkar, the learned senior counsel submits that in view of the order passed by CLB referring the parties to arbitration nothing remains to be decided in Company petition filed by the appellant under section 397 and 398 read with 402 of the Act. All the rights, obligations and remedies of the parties would now be governed by the Arbitration Act, 1996 including right to challenge the award. It is submitted that once the conditions provided under section 8 are satisfied, CLB was bound to refer the parties to arbitration under section 8 of the Act. Since there is no appeal provided under section 37, the appellant could not have recourse to section 10F which is only for the purpose of finding forum provided right of appeal is provided under section 37 of the Act.

34. The learned senior counsel submits that the language of section 37(1) is very clear that the only orders passed by the court under section 9 or section 34, appeal is maintainable before the court and thus does not include any order passed by the Judicial Authority. It is submitted that from the perusal of section 37(2) it is clear that appeal lies to court against the order passed by the arbitral tribunal under section 16(2) or (3) and against the interim measures passed under section 17 which also does not include any order passed by the judicial authority. It is submitted that the legislative intent is very clear that with a view to minimise judicial intervention of the court, court's intervention is minimal. The learned senior counsel has adopted the other submissions made by Mr. Kamdar and Mr. Chinoy. It is submitted that the Judgment of this

court in Jet Airways and in the case of International Thermal is still in force and is binding.

35. The learned counsel placed reliance upon the judgment of the Supreme Court reported in **Harbhajan Singh and another Vs. State of Punjab and another**¹⁵, and more particularly para 14 and 15. It has been held by the Supreme Court that merely because the issue is pending before the larger bench, the court need not wait for its outcome of the decision. Para 14 and 15 reads thus :

“14. In the aforementioned decision, the learned Judges had referred to a judgment of this Court in the case of Rakesh and Anr. v. State of Haryana MANU/SC/0390/2001 : 2001CriLJ3511 : (2001) 6 SCC 248 wherein it was held that even without cross-examination on the basis of a prima facie material which would enable the Sessions Court to decide whether the power under Section 319 of the Code should be exercised or not stating that at that stage evidence as used in Section 319 of the Code would not mean evidence which is tested by cross-examination.

15. Even if what is contended by the learned Counsel is correct, it is not for us to go into the said question at this stage; herein cross-examination of the witnesses had taken place. The Court had taken into consideration the materials available to it for the purpose of arriving at a satisfaction that a case for exercise of jurisdiction under Section 319 of the Code was made out. Only because the correctness of a portion of the judgment in the case of Mohd. Shafi (supra) has been doubted by another bench, the same would not mean that we should wait for the decision of the larger bench, particularly when the same instead of assisting the appellants runs counter to their contention.”

36. The learned counsel appearing for the respondents pointed out that the judgment delivered by the Supreme Court in the case of Fiersday Lawson is not based on any concession as canvassed by Mr. Dwarkadas, learned senior

counsel for the appellant. Attention of this court is invited to para 61 and 62 of the said judgment which reads thus .

“61. Once it is seen that Part I and Part II of the Act are quite different in their object and purpose and the respective schemes, it naturally follows that Section [37](#) in Part I (analogous to Section [39](#) of the 1940 Act) is not comparable to Section [50](#) in Part II of the Act. This is not because, as Mr. Sundaram contends Section [37](#) has the words in parentheses "and from no others" which are not to be found in Section [50](#) of the Act. Section [37](#) and Section [50](#) are not comparable because they belong to two different statutory schemes. Section [37](#) containing the provision of appeal is part of a much larger framework that, as seen above, has provisions for the complete range of law concerning domestic arbitration and international commercial arbitration. Section [50](#) on the other hand contains the provision of appeal in a much limited framework, concerned only with the enforcement of New York Convention awards. In one sense, the two sections, though each containing the appellate provision belong to different statutes.

62. Having come to this conclusion, it would appear that the decisions rendered by the Court on the interplay between Section [39](#) of the 1940 Act and the Letters Patent jurisdiction of the High Court shall have no application for deciding the question in hand. But that would be only a superficial view and the decisions rendered under Section [39](#) of the 1940 Act may still give the answer to the question under consideration for a very basic and fundamental reason.

37. It is submitted that reliance placed by the appellant on the judgment of Conros (supra) is totally misplaced. There is no issue arising in this matter as to whether the appeal under clause 15 of Letters Patent lies or not.

38. Mr. Samdani, learned counsel for respondent no. 4 submits that under section 37 of the Arbitration Act, the appeal is provided only against the order of court or arbitral tribunal and not against the orders passed by the judicial

authority. It is submitted that all other orders which are not specifically included under section 37(1) and (2) are not appealable and are barred. It is submitted that the reliance placed by the appellants on order passed by the Division Bench in the case of Conros is totally misplaced. It is submitted that any observations made by the Division Bench in the case of Conros de hors the question referred to larger bench had to be considered as obiter not ratio.

39. Mr. Rahul Chitnis, the learned counsel for the respondent in Company Appeal No. 4 of 2011 adopts the argument of Mr. Kamdar, Mr. Chinoy and Mr. Samdani. It is submitted that there is no appeal provided under section 37 against the order passed by the Judicial Authority under section 8 even if such application is rejected by the Judicial authority. It is submitted that CLB has rightly rejected the application made by the appellant under section 8 in view of the appellant not having satisfied the condition under section 8. It is submitted that since the appeal is not maintainable under section 37 of the Arbitration, recourse to section 10F is not permissible. The learned counsel placed reliance upon the judgment of the Supreme Court and Punjab & Haryana High Court.

40. In rejoinder Mr. Dwarkadas, learned counsel made attempt to distinguish the judgment relied upon by Mr. Kamdar, Mr. Chinoy, Mr. Samdani and Mr. Tulzapurkar, the learned senior counsel appearing for various respondents. It is submitted that there was no issue of maintainability of appeal before the

Supreme Court in the case of Sumitomo (supra). It is submitted that the judgment of the Supreme Court in the case of Fuerst Day Lawson is not applicable as the Supreme Court was seized of the matter arising under Part II of the Arbitration Act and not Part I. It is submitted that no reliance can be placed on the judgment of the Punjab & Haryana High Court in the case of Sudarshan as well as Delhi High Court in the case of Vijay Shekri (supra) as this court is bound by the judgment delivered by the Division Bench of this court in the case of Conros. It is submitted that bar under section 5 of the Arbitration Act, has been considered by the Supreme Court in the case of ITI Vs. Siemens (supra) and inspite of such bar, it has been held by the Supreme Court that the revision under section 115 of the Code of Civil Procedure is maintainable. It is submitted that appeal under section 10F is not expressly or impliedly taken away under the Arbitration Act and thus appeal filed by the appellant under Section 10F is maintainable and shall be heard on merits.

41. I have heard the learned counsel appearing for the parties at length on the issue of maintainability of the present appeal and have given my anxious consideration to the rival submissions made by the learned counsel.

42. The Supreme Court in the case of *Fuerst Day Lawson Limited (supra)* after referring to the decision of the Constitution Bench in the case of *P.S. Sathappan Vs. Andhra Bank Ltd.*¹⁶, the judgment of the Supreme Court in the

case of *Mohindra Supply Company (supra)* held that the Arbitration and Conciliation Act, 1996 is a self contained and exhaustive code in itself. Arbitration and Conciliation Act, 1996 consolidates, amends and designs the law relating to arbitration to bring it as much as possible, in harmony with the UNCITRAL Model must be held only to be more so. It is observed that once it is held that the Arbitration Act of 1996 is a self contained code and exhaustive, then it must also be held that it carries with it a negative import that only such acts as are mentioned in the Act are permissible to be done and acts or things not mentioned therein are not permissible to be done. By laying down these principles, the Supreme Court held that letters Patent Appeal would be excluded by application of one of the general principles that where the special Act sets out a self contained code the applicability of the general law procedure would be impliedly excluded. It has been held that no Letters Patent Appeal would lie against the order which was not appealable under section 50 of the Arbitration Act, 1996.

43. The question that arises for consideration of this court is whether the appeal filed under section 10F of the Companies Act, 1956 against the order passed by CLB allowing the application made by a party under section 8 who is party to the arbitration agreement and referring the dispute between the parties filed under section 397 and 398 of the Companies Act to arbitration is maintainable? The question arises is whether the said order is

appeallable under section 37 of the Arbitration Act, 1996 or even if not maintainable, whether appeal can be independently filed under section 10F of the Companies Act, 1956? Whether appeal u/s. 10F of the Companies Act provides for forum or provides for substantive right of appeal?

44. Perusal of the order passed by CLB and the pleadings filed by the parties indicates that the appellant had filed petition under section 397 and 398 read with 402 of the companies Act, 1956 before CLB on the ground of alleged oppression and mismanagement in the affairs of the first respondent company by the other respondents. In the said proceedings one of the respondent had moved an application under section 8 of the Arbitration Act, 1996 before CLB under section 8 of the Arbitration Act, 1996. From the perusal of the order it is clear that CLB while allowing the application filed by the respondent decided the said application exercising powers under section 8 of the Arbitration Act as judicial authority and did not exercise any jurisdiction under section 397 and 398 read with section 402 of the Companies Act, 1956. It is clear that by the impugned order CLB has determined the rights of the parties flowing out of the provisions of the Arbitration Act, 1996 and not the provisions of the Companies Act, 1956. In my view, CLB did not adjudicate any disputes between the parties under section 397 and 398 of the Companies Act, 1956 while referring the parties to Arbitration under section 8 of the Arbitration Act, 1996. In my view, remedy of appeal if any, thus has to be

traced out from within the provisions of the Arbitration Act, 1996 and not under any other provisions of law including Companies Act, 1956. From the perusal of the pleadings including appeal memo in the present proceedings, it is clear that the order passed by CLB is under section 8 of the Arbitration Act, 1996 and not under the provisions of the Companies Act, 1956. I am of the view that since the Arbitration Act, 1996 is a self contained, complete and exhaustive code in all respects, all the remedies from the orders passed and action taken in Arbitration Act, 1996 must flow from the said statute itself. It carries negative import and thus only such acts which are mentioned to be done under the said Act are permissible and all other acts or things not mentioned are not permissible.

45. The Supreme Court in the case of *Union of India Vs. Mohindra Supply Co.* has considered and interpreted section 39 of the Indian Arbitration Act, which reads thus :

" (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) superceding an arbitration;
- (ii) on an award stated in the for of a special case;
- (iii) modifying or correcting a award;
- (iv) filing or refusing to file a arbitration agreement;
- (v) staying or refusing to stay legal proceedings where there is an

arbitration agreement;

(vi) setting aside 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. "

46. In my view section 39 of Indian Arbitration Act is para materia to section 37 of the Arbitration Act, 1996. Supreme Court has held that 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. The Supreme Court has held that under Code of Civil Procedure, 1908, right of 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 under section 39, and no appeal (except an appeal to that Court) will lie from an appellate order. The Supreme Court held that it is so done with a view to restrict right of appeal within the strict limits defined by Section 39 and to take away the right

conferred by other statutes. It has been held that 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 as not intended to alter the law relating to appeals. The Supreme Court held that the Letters Patent Appeal was not maintainable.

47. The Division Bench of this Court in the case of *Jet Airways (supra)* after considering the judgments of the Supreme Court and various other provisions of the Arbitration Act and Letters Patent Act held that perusal of Arbitration Act, 1996 indicate that it provides for filing of appeal against only some specified orders and do not provide for appeal against every order passed in the proceedings under 1996 Act. It has been held that the general law can not defeat the provisions of special law to the extent to which they are in conflict; else effort has to be made on reconciling the two provisos by homogeneous reading. It has been held that the provisions of section 37 (the relevant portion of which is para materia relevant portion of section 39 of 1940 Act) leave no manner of doubt that the provisions of the special enactment will prevail over the general law namely, the 1908 Code. It has been held that statutory scheme of 1996 Act and the Letters Patent Act and the binding precedents of Supreme Court and this lead the Court to only one conclusion that clause 15 of the Letters Patent are impliedly excluded by the 1996 Act. The Division Bench in the said judgment after considering the

judgment of the Supreme Court in *Fuerst Day Lawson* (supra) held that the Supreme Court in the case of *Fuerst Day Lawson* conclusively determines the question of maintainability and the observations in Paragraphs 70 to 73 constitute a binding precedent even in respect of the maintainability of an appeal against an order passed in the proceedings arising out of a domestic award under Part I of the 1996 Act and the submissions of the learned Counsel for the appellants to the effect that the said judgment of the Supreme Court determines the issue of only an appeal against proceedings under Part II for New York Convention foreign awards or the submission that the said judgment does not constitute a binding precedent cannot be accepted.

48. The Supreme Court in the case of *Sumitomo Corporation* (supra) considered the provisions of section 45 of the Arbitration Act, 1996, Section 45 and 50 of the Arbitration Act, 1996 and section 10(1)(a) of the Companies Act, 1956. After considering these provisions, the Supreme Court held that in the case of appeals for its maintainability, there must be specific provision or clear authority of law. It is held that while exercising the original jurisdiction as provided under section 47 and other similar sections of Arbitration Act, should be by the court within the jurisdiction of which the suit would have been filed; the appeal shall always be to the appellate forum which hears appeals from the order of the forum which passes the order. It is held that it was clear from section 37 of the Act dealing with appeals that the appeal was

to the court which hears the appeal and not the court which exercises original jurisdiction, if the subject matter had been a suit as provided in the explanation to section 47 or section 2(c) of the Arbitration Act. It is held that reading of section 50 clearly suggests that an appeal shall lie from the order of CLB to the court authorised by law to hear the appeals from such order of CLB. In the event the order under section 45 is passed by CLB the forum which is provided under law for hearing the appeal from the order of CLB, will be the appellate forum. The Supreme Court held that while section 50 of the Arbitration Act provides for the orders which can be made the subject matter of the appeal, the forum to hear the appeal is to be tested with reference to the appropriate law governing the authority of forum, which passed the original order, that is, in the case on hand before Supreme Court was CLB. It is held that section 10F read with section 10(1)(a) of the Companies Act provides for such forum to hear the appeal from the orders of CLB as the high Court within the jurisdiction of which the registered office of the company in issue is situated. It has been held that the appeal is a statutory remedy and it can lie only to the specified forum. The appellate forum cannot be decided on the basis of cause of action as applicable to original proceedings such as suit which could be filed in any court where part of cause of action arises.

49. The Judicial Authority has not been defined in any of the provisions of Arbitration Act, 1996. In my view the court may in appropriate matter act as

judicial authority under section 8 whereas the judicial authority may not be the court as defined under section 2(1)(e). From perusal of section 37 of the Arbitration Act, 1996 it is clear that section 37(1) is in two parts. First part indicates the maintainability of appeal against specific orders and not others set out in section 37(1)(a), (b), 2(a) and 2(b). Second part under section 37(1) reflects forum which is authorized by law to hear appeals from original decrees. In my view, only such specified orders passed by the court under section 9 or under section 34 as set out in 37(1)(a) and (b) and orders passed by the arbitral tribunal under section 16(2) or (3) or under section 17 are appealable under section 37 and not other orders. In my view, the order passed by the judicial authority or even by court whether by such order passed under section 8 the parties are referred to Arbitration or refuses to refer parties to arbitration, is not an appealable order under section 37 of the Arbitration Act, 1996.

50. The Division Bench of this court in its judgment dated 19th March, 2009 in the case of *International Technology (supra)* has considered the appeal arising out of the order passed by the Single Judge of this court under section 8 of the Arbitration Act, 1996 refusing to refer the dispute to arbitration. After considering the judgment of Punjab & Haryana High Court in the case of *Hind Samachar Limited and Smt. Sudarshan (supra)*, this court took a view that on above construction of section 37 of Arbitration Act, 1996, it is clear

that the appeal is provided only from the orders specified therein. The words in parenthesis (and from no others) emphasizes that the appeal only lies from the orders specified in the section and not others. The Division Bench held that the appeal is not provided under section 37 against the order refusing to refer the dispute to arbitration under section 8 and such order does not fall in any of the categories specified in section 37 and thus appeal is not maintainable. In my view the judgment of the Division Bench in the case of International Technology (supra) holds the field and is binding on this court.

51. In my view on conjoint reading of Section 5 with Section 37 of the Arbitration Act, 1996, it is clear that judicial authority is barred from intervening in any proceeding which are not otherwise provided in Part I of the Arbitration Act, 1996. In my view, the Arbitration Act, 1996 being a self contained code and the order under Section 8 passed by the judicial authority or by the court is not appealable under Section 37, the present appeal under Section 10F is not maintainable. In my view, there is no merit in the submission of Mr.Dwarkadas, the Learned Senior Counsel that there is no bar under Section 37 from hearing appeal against any other order nor specifically mentioned in Sections 37(1) (a) and (b) and 37(2) (a) and (b). In my opinion, from the expression used “and from no others”, it is clear beyond reasonable doubt that appeal is not maintainable against any other order other than what is mentioned in Section 37 (1) (a) and (b) and 37 (2) (a) and (b). In my view there is clear bar under Section 37 restricting right of appeal only against

specified orders set out therein and no other orders. In my view, Section 5 of the Arbitration Act, 1996 leave no room for doubt that judicial authorities and court is restrained from intervening in matters governing domestic arbitration “except where so provided”. In my view, an order passed under Section 8 of the Arbitration Act, not having been provided as appealable order under under Section 37, recourse to Section 10F of the Companies Act is not permissible.

52. In my view, the impugned order is passed by the Company Law Board under Section 8 of the Arbitration Act, 1996 and thus all rights, obligation and liabilities of the parties are created and/or arising out of Arbitration Act, 1996 and therefore, remedy if any provided under Arbitration Act, 1996 only can be invoked. In my view, the provisions of the Arbitration Act, 1996 are exhaustive and it is comprehensive code and in view of non obstinate clause under Section 5 of the Arbitration Act, 1996, it excludes all judicial authorities from intervention in matters regulated under Part I of the Arbitration Act, 1996. The intention of the legislature is clear that the provision of Arbitration Act, 1996 limits intervention of court with an arbitral process to the minimum. Supreme Court in case of Konkan Railway Corporation Ltd. and others vs. Mehul Construction Co. (2000) 7 SCC 201 has held that it is not legislative intent that each and every order passed by the authority under the Act would be a subject-matter of judicial scrutiny of a court of law. In my view, interpreting Section 5 of the Arbitration Act, 1996, it is clear that the remedy of an 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.

53. Punjab High Court in case of **Smt.Sudershan Chopra (supra)** after considering the judgment of the Supreme Court in case of **Mohindra Supply and others (supra)** and other judgments has held that order passed by the judicial authority under Section 8 of the Arbitration Act is not appealable under Section 37 (1) of the Arbitration Act, 1996. Delhi High Court in case of Vijay Sekhri and anr. (supra) after following judgment of the Supreme Court and after referring the judgment of the Punjab High Court in case of Smt.Sudershan Chopra & Ors. (supra) has taken a view that appeal under Section 10F of the Companies Act is not maintainable against the order allowing the application under Section 45 of the Arbitration Act, 1996.

54. In my view on conjoint reading of Section 45 with Section 50 of the Arbitration Act 1996, it is clear that order passed by the judicial authority which is seized of an action which is subject matter of the arbitration agreement if refuses application under Section 45 to refer parties to arbitration is expressly appealable under Section 50(1) (a). It is thus clear that in case of proceedings falling under Part II of the Arbitration Act, 1996, the legislature had intended clearly to provide for the appeal in case of an order refusing to refer parties to the arbitration under Section 45 of the Act. If legislature

intended to provide appeal in case of similar situation in respect of the proceedings falling under Part I of the Arbitration Act 1996, legislature would have provided for an appeal also in respect of order passed by the judicial authority under Section 8 refusing or referring parties to arbitration under Section 8. It is thus clear that in case of proceedings covered by Part I of the Arbitration Act, the legislature has intended the minimum interference of court by not providing any appeal against order passed by the judicial authority or court under section 8 of the Arbitration Act, 1996. In my opinion, the legislature has consciously taken away the right to appeal against all other orders which are not provided in Section 37 of the Arbitration Act, 1996 had so far as proceedings falling under Part I of the Arbitration Act, 1996 are concerned.

55. Supreme Court in case of ITI Ltd. vs. Siemens Public Communications Network Ltd. (supra) has considered the revisional jurisdiction of the superior court while interpreting Section 37(3) of the Arbitration Act, 1996. The Supreme Court has held that under Section 37(3) of the Arbitration Act, second appeal is barred from the order passed in appeal under Section 37(1) or 37(2). It is held that the supervisory and revisional jurisdiction of the High Court under Section 115 of the Code of Civil Procedure is neither expressly nor impliedly barred either by the provisions of Section 37 or Section 19(1) of the Arbitration Act, 1996. In my view, reliance placed by the Learned Senior

Counsel Mr. Dwarkadas appearing for the Appellant on this judgment in support of his proposition that after considering Section 5 of the Arbitration Act, 1996, the Supreme Court still took a view that though the second appeal is not maintainable under Section 37(3), the revision under Section 115 of the Code of Civil Procedure is still maintainable, is misplaced. In my view from reading of Section 37(3), it is clear that no second appeal is maintainable against the order passed by the Court under Section 37 (1) or 37(2) of the Arbitration Act, 1996. In my view the expression “and from no other orders”, used in Section 37(1) of the Arbitration Act, indicates that the court is not authorised to hear appeals other than which are specifically appealable and provided under Section 37(1) (a) and (b) and 37(2) (a) and (b). The Supreme Court was not considering the issue of maintainability of the appeal under Section 37(1) or (2) in case of **ITI Ltd. (supra)**. In my view, the facts before the Supreme Court in case of **ITI Ltd.** are thus clearly distinguishable in the facts of this case.

56. In my view, there is no merit in the submission made by Mr.Dwarkadas, the learned Senior Counsel that the Respondents cannot place reliance upon the judgment of the Supreme Court in case of Mohindra Supply and others (supra) or any other judgments which have dealt with the provisions of the Indian Arbitration Act or Arbitration Act, 1940 by referring upon the observations made by the Supreme Court in case of M/s.Sundaram Finance Ltd. Vs.

M/s.NEPC. The Supreme Court in case of Fuerst Day Lawson Limited, in para (62) has held that decisions rendered under Section 39 of the 1940 Act may still give, the answer to the question under consideration for a very basic and fundamental reason. In my view, the provisions under Section 39 of the Indian Arbitration Act is in paramateria with section 37 of the Arbitration Act, 1996. In my view, the ratio laid down by the Supreme Court in case of Mohindra Supply and others (*supra*) would clearly attract to the facts of this case and I am bound by such precedent.

57. In my view, there is no merit in the submission of Mr.Dwarkadas, the Learned Senior Counsel that by virtue of the order passed by the CLB under Section 8 of the Arbitration Act, 1996, the proceeding filed by the appellant under Sections 397, 398 read with Section 402 of the Companies Act, 1956 is terminated and is put to an end and thus the Appellant would be without any remedy in law. The Supreme Court in case of ***P. Anand Gajapathi Raju (supra)*** has held that language of Section 8 is peremptory and is thus obligatory for the Court to refer the parties to arbitration in terms of their arbitration agreement. Nothing remains to be decided in the original action or the appeal arising therefrom. It is held that all the rights, obligations and remedies of the parties would now be governed by the Arbitration Act, 1996 including the right to challenge the award. In my view, once the judicial authority has referred the matter to arbitration, the judicial authority cannot continue its jurisdiction over the subject matter of such proceedings and

nothing remains to be decided in the original action once parties are referred to arbitration.

58. In case of Conros Steel Pvt. Ltd. (supra) heavily relied upon by the Appellant in support of the plea that after considering the judgment in Supreme Court in case of Mohindra Supply (supra), Sudarshan Chopra (supra), International Thermal Technology Kircher Italia (supra), Jet Airways (India) Ltd. (supra), Fuerst Day Lawson Limited (supra), the Division Bench has referred the issue whether Clause 15 against the Letters Patent against the order passed by the learned single judge of this court in the Civil suit in an application filed in that civil suit because of Section 8 of the Act can maintainable or not to the larger bench. Mr. Dwarkadas, the learned senior counsel submits that Division Bench of this court has already considered and interpreted various judgments of the Supreme Court and has come to the conclusion that matter requires reconsideration by a larger bench and thus this judgment decides the law and is binding on the single Judge of this court. In my view, the order passed by the Division Bench in case of Conros Steel Pvt. Ltd. (supra) does not lay down any ratio but by the said order the Division Bench has expressed its dis-agreement on the issue already decided by the Supreme Court as well as the Division Bench of this Court and has referred the issue about maintainability of appeal under clause 15 of the Letters Patent to the larger bench. In my view, the law already laid down by the Supreme Court as well as Division Bench of this Court will prevail and is binding on the single

Judge of this court. In my view, order referring certain issues to be decided by larger bench does not lay down any law. In any event, in this matter, no issues arises as to whether any appeal under clause 15 of the Letters Patent is maintainable against the order passed under Section 8 of the Arbitration Act or not. In my view, the Division Bench in case of International Thermal Technology Kircher Italia (supra) has already held that appeal under Section 37 is not maintainable against an order passed under Section 8 of the Arbitration Act, 1996. I am bound by the said judgment delivered by the Division Bench of this Court. In my view reliance placed by the Learned Senior Counsel Mr.Dwarkadas on the order dated 13th March, 2012 in case of Conros Steel Pvt. Ltd. (supra) is thus misplaced and the said order is of no assistance to the appellant.

59. In my view, the learned Senior Counsel Mr. Kamdar is appearing for one of the Respondent is right in placing reliance on the judgment of the Supreme Court in case of **Harbhajan Singh and another (supra)** that only because of the correctness of a portion of the judgment has been doubted by another bench, the same would not mean that this court should wait for the decision of the larger bench.

60. In my view, since the order passed by the CLB under Section 8 of the Arbitration Act referring parties to the arbitration is not appealable order under

Section 37 of the Arbitration Act, 1996, appellant cannot invoke Section 10F of the Companies Act, 1956. In my view, Section 10F provides for forum of appeal, provided an appeal is maintainable under Section 37 of the Arbitration and Conciliation Act, 1996. I am, therefore, of the opinion that all the aforesaid appeals filed under Section 10F of the Companies Act are not maintainable in view of bar under Section 37 of the Arbitration Act, 1996 and are dismissed.

61. In view of the order passed in Company Appeals by this Court holding that appeals under Section 10F of the Companies Act, 1956 is not maintainable, reliefs claimed in Company Applications does not survive and are accordingly disposed of. It is made clear that this court has not expressed any views on the merits of the order passed by the CLB referring and/or refusing to refer parties to arbitration.

There shall be no order as to costs.

(R.D. DHANUKA, J.)