

101. **R.A.-CR No.233-CII of 2015 in C.R. No.6260 of 2014 and
R.A.-CR No.234-CII of 2015 in C.R. No.6257 of 2014**

Ashwani Kumar Gupta and others Vs. Union of India and others

Present: Mr. Gourav Chopra, Advocate
amicus curiae.

I have the able assistance of Mr. Gaurav Chopra, Advocate who points out to me that the initial appointment of Arbitrator ought to be taken as the commencement of arbitral proceedings in terms of Section 85(2) of the Arbitration and Conciliation Act, 1996 and since in this case, the original appointment had taken place on 09.09.1993 that is before the commencement of the 1996 Act, the said date would be relevant notwithstanding the fact that the said appointment did not result in conclusion of arbitral proceedings and therefore, appointment came to be done later after the commencement of the Act. The counsel points out to judgment in **Milkfood Ltd. Vs. M/s GMC Ice Cream (P) Ltd. 2004(7) SCC 288** at paragraph 68 and 70 which are reproduced:-

68. Keeping in view the fact that in all the decisions, referred to hereinbefore, this Court has applied the meaning given to the expression 'commencement of the arbitral proceeding' as contained in Section 21 of the 1996 Act for the purpose of applicability of the 1940 Act having regard to Section 85(2)(a) thereof, we have no hesitation in holding that in this case also, service of a notice for appointment of an arbitrator would be the relevant date for the purpose of commencement of the arbitration proceeding.

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70. It may be true that before the High Court apart from Shri

H.L. Aggarwal, Shri Uday Sinha also came to the appointed; but the change in the constitution of the arbitral tribunal is irrelevant for the purpose of determining the question as to when the arbitration proceeding commenced within the meaning of Section 21 of the 1996 Act. The purported reference to the dispute to the arbitrator was merely a reference to new arbitral tribunal which concept is separate and distinct from that of commencement of arbitration proceeding.”

I am of the view that dismissal of the revisions petitions summarily for want of assistance would require to be recalled and I recall the order already passed as having been rendered against the judgment of the Supreme Court which has interpreted Section 85(2) of the Arbitration and Conciliation Act.

Issue notice of motion in both the civil revisions for hearing date on 10.08.2016.

I place on record my appreciation for the sincere effort done by the amicus curiae to render assistance to this Court.

A photostat copy of this order be placed on connected case.

**(K. KANNAN)
JUDGE**

May 23, 2016
Pankaj*