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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS (COMM) 1521/2016

NBCC (INDIA) LTD

..... Plaintiff

Through: Ms. Ginny J. Rautray with Ms. Bhawna Pal, Advocates.

versus

M/S SHARMA ENTERPRISES

..... Defendant

Through: Ms. Anusuya Salwan with Mr. Kunal Kohli, Mr. Abhishek Pundir, Advocates.

CORAM: JUSTICE S. MURALIDHAR

ORDER

16.03.2017

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1. This is an application under Section 14 of the Arbitration Act, 1940 (hereinafter 'the '1940 Act') filed by the Petitioner, NBCC (India) Limited ('NBCC') praying that this Court should direct the learned Arbitrator appointed by the Supreme Court of India by its order dated 3rd August 2011 in Special Leave Petition (Civil) No. 27203 of 2008 to file the Award dated 28th July 2016.

2. In the present suit, on 22nd November 2016, notice was issued to the learned Arbitrator to file the original arbitral Award as well as the entire arbitral record.

3. At the next date of hearing, i.e., 30th January 2017 Ms. Anusuya Salwan, learned counsel appearing for M/s. Sharma Enterprises ('SE') pointed out that the present petition under the 1940 Act is not maintainable as such. In particular, Ms. Salwan referred to the stand taken by NBCC in its reply to

OMP No. 144 of 2003 filed by SE under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996 (hereinafter the '1996 Act'). Ms. Salwan pointed out that no objection was raised by NBCC to the applicability of 1996 Act proceeding in the said reply. At that stage Ms. Ginny Rautray, learned counsel for NBCC, sought time to examine the said reply. The Court also summed the file of OMP No. 144 of 2003.

4. In the meanwhile, SE filed OMP (ENF) (Comm) No. 164 of 2016 in this Court seeking enforcement of the aforementioned Award dated 28th July 2016 passed by the learned Arbitrator appointed by the Supreme Court of India. The said petition came up for hearing on 23rd December 2016. Ms. Rautray appearing for NBCC on advance notice raised an objection to the said enforcement petition on the ground that the Award dated 28th July 2016 was not passed under the 1996 Act but under the 1940 Act. The Court hearing the enforcement petition then directed that said the petition should be heard together with the present application.

5. In order to appreciate the preliminary objection raised to the maintainability of the present application under the 1940 Act, it is necessary to briefly advert to the background facts.

6. NBCC was awarded the work of construction of Railway Station-cum-Commercial Complex at Vashi Railway Station, Navi Mumbai by IRCON Limited as principal employer. NBCC in turn issued notice inviting tenders for execution of the work. SE submitted its tender and ultimately was declared as successful bidder. A letter of intent was issued to it by NBCC on 7th December 1990. This was followed by a letter of award dated 11th

January, 1991 whereby SE was awarded the work of mobilizing the work site.

7. On 8th June 1992, NBCC served a notice on SE in terms of Clause 60.1 of the General Conditions of Contract ('GCC'). The Petitioner then issued a 48-hour notice upon SE on 15th June 1992 for termination of the work. This was followed by letters dated 27th June 1992, 20th August 1992, 26th August 1992 and 16th September 1992 in relation to withdrawal of the work. Ultimately, NBCC by its letter dated 22nd September 1992 terminated the contract. Following this, the Respondent filed a petition under Section 20 of the 1940 Act in this Court being Suit No. 3446 of 1992 seeking reference of the disputes to arbitration.

8. Meanwhile the Chairman-cum-Managing Director ('CMD') of NBCC appointed one Mr. Daljit Singh as sole Arbitrator. Nevertheless, by an order dated 2nd December 1997, a learned Single Judge of this Court referred the claims of SE to arbitration by Justice G.C. Jain, a former Judge of this Court, as Sole Arbitrator. Importantly, the counter-claims of NBCC were not referred to arbitration. NBCC filed a review application being RA No. 21 of 1998 before the Single Judge seeking recall of the order dated 2nd December 1997 and reference of its counter-claims to arbitration.

9. Aggrieved by the non-reference of its counter-claims to arbitration, NBCC also filed an appeal, FAO (OS) No. 33 of 1998, against the above order dated 2nd December 1997 before the Division Bench (DB) of this Court.

10. Meanwhile, with the passing away of Justice Jain on 9th September 1998,

NBCC filed IA No. 4228 of 1998 in the aforementioned suit for appointment of another arbitrator in his place. By an order dated 9th September 1998, Justice Satpal, a former Judge of this Court, was appointed as sole Arbitrator in place of Justice Jain.

11. By its judgment dated 9th July 1999 in FAO (OS) No. 33 of 1998, the DB set aside the order dated 2nd December 1997 as well as the order 9th September 1998 passed by the learned Single Judge. It referred both the claims of SE and the counter-claims of NBCC to Mr. Daljit Singh who had been appointed as sole Arbitrator by the CMD of the NBCC.

12. Aggrieved by the above order of the DB, SE filed SLP (Civil) No. 12813 of 1999. By a final judgment dated 18th October 2000 in the said SLP, the Supreme Court set aside the order dated 9th July 1999 of the DB. It was, however, left open to NBCC to pursue RA No. 21 of 1998 before the learned Single Judge.

13. On 15th September 2001, NBCC filed an application before the learned Arbitrator, Justice Satpal, for taking on record its counter-claims. The said application was dismissed by Justice Satpal on 6th February 2003.

14. On 7th February 2003 NBCC requested its CMD to appoint an arbitrator to adjudicate its counter-claims. The CMD then appointed Mr. A.K. Gupta, Deputy General Manager ('DGM') as sole Arbitrator. Aggrieved by this action, SE filed OMP No. 144 of 2003 in this Court under Sections 14 and 15 of the 1996 Act *inter alia* praying that the Court should declare that the mandate of Mr. A.K. Gupta (impleaded as Respondent No. 2) stood

terminated as he was *dejure* or *defacto* unable to perform his functions.

15. Notice was issued in the said petition on 3rd April 2003 and further proceedings before Mr Gupta were stayed. A reply was filed by NBCC in the said petition OMP 144 of 2003 in which no objection was raised as regards its maintainability under the 1996 Act. It was in fact stated by NBCC that pursuant to the letter dated 18th February 2003 of the CMD, Mr. Gupta had entered upon reference and required the parties to file their statements of claim and counter-claims. It was denied that the learned Arbitrator had become *de jure* or *de facto* unable to perform his functions or failed to act as contemplated under Sections 14 and 15 of 1996 Act. In the said reply, NBCC is also mentioned that Review Application No. 20 of 1998 filed by it before the learned Single Judge seeking recall of the order dated 2nd December 1997 was dismissed as not pressed on 16th February 2000 since NBCC was by then participating in the proceedings before the learned Arbitrator (Justice Satpal).

16. OMP No. 144 of 2003 ultimately came to be dismissed by a judgment dated 20th August 2008 by a learned Single Judge of this Court. The opening paragraph of the judgment noticed that the said petition had been filed under Sections 14 and 15 of the 1996 Act. The judgment then explained the history of litigation between the parties. It noticed in para 13, the principal contention of learned counsel for SE as under:

“13. The principal contention of the counsel for the Petitioner is that the claim of the Respondent emanates from the agreement which was terminated on 22nd September 1992. As such, the requisition of the Respondent on 7th February 2003 to the person designate in the agreement as the authority for the appointment of arbitrator was

highly belated and time barred. It was further the contention that in the face of the proceedings aforesaid, Shri A.K. Gupta was not entitled to perform his function as an Arbitrator. On the contrary, the counsel for the Respondent urged that all the said pleas should be taken by the Petitioner before the arbitrator, under Section 16 of the Act and ought not to be entertained in a petition under Sections 14 and 15 of the Act.”

17. The judgment then discussed the scope of the powers of the Court under Sections 14 and 15 of the 1996 Act. It concluded in para 28 that the case did not fall in the exceptional category where the power under Section 14 of the 1996 Act to terminate the mandate of an arbitrator could be invoked. It was observed that “it is appropriate to leave the question to be decided by the arbitral tribunal.”

18. Thus, it is seen that as far as OMP No. 144 of 2003 was concerned, there was no objection by NBCC to the maintainability of the said petition under the 1996 Act. All that was submitted by NBCC was that no ground under Section 14 of the 1996 Act had been made out by SE for terminating the mandate of the sole Arbitrator, Mr. A.K. Gupta.

19. Aggrieved by the above order dated 20th August 2008 of the learned Single Judge in OMP No. 144 of 2003, SE filed SLP (Civil) No. 27203 of 2003 in the Supreme Court of India.

20. In the meanwhile, Justice Satpal concluded the proceedings and passed an Award on the claims of SE on 22nd September 2005. Thereupon, SE filed CS (OS) No. 259 of 2006 in this Court under Sections 14 and 17 of the 1940 Act seeking a direction to Justice Satpal to file the Award. In the said

petition, the following order was passed by a learned Single Judge on 13th February 2006:

“This is a petition under Sections 14 and 17 of the Arbitration Act, 1940 for direction to Respondent No. 2 to file the award. It is stated that parties had participated in the arbitration proceedings and the learned Arbitrator has made and published his award dated 12th September 2005 under the provisions of Arbitration Act, 1940.

This petition is disposed of with a direction to the learned Arbitrator to file his award as well as the arbitration proceedings in this Court within four weeks from today. The parties would be entitled to the notice, in accordance with law, of filing of the award. The Registry shall despatch copy of this order to the learned Arbitrator as well as to Respondent No. 1.

The petition is disposed of with the above directions. Copy of the order be given *dasti* to counsel for Petitioner.”

21. Thereafter, Justice Satpal filed the Award in this Court. Objections to the said Award were filed by NBCC under Sections 30 and 33 of the 1940 Act in CS (OS) No. 1420 of 2006. During the pendency of the above proceedings in this Court, SLP (C) No. 27203 of 2006 was taken up for hearing in the Supreme Court on 3rd August 2011 and the following order was passed:

- “1. Leave granted.
2. We have heard learned counsel appearing for the parties at length.
3. It is an admitted position that the counter-claim filed by Respondent No. 1 herein was not entertain and hence, not decided by Hon’ble Mr. Justice Satpal, learned Arbitrator on the ground that the same was not referred to him. Respondent No. 1 has, therefore, taken steps for reference out of which the present proceedings have arisen.
4. Learned counsel for the parties agree that the matter can be referred back to a new Arbitrator for deciding the counter-claim also and he

should be requested to dispose of the whole controversy involved, i.e., the claim and the counter-claim within a specific time frame.

5. With the consent of the parties, we appoint Hon'ble Mr. Justice R.C. Chopra, a former Judge of Delhi High Court to be a new sole Arbitrator who will decide the arbitration dispute in the light of the observations made by us after considering the claim and counter-claim of the parties. However, we make it clear that the learned Arbitrator shall proceed from the last steps taken by Justice Satpal before writing the award and the proceedings already conducted shall be retained so that the parties are not required to give fresh evidence all over again in regard to the claim.

Learned Arbitrator shall, however, be free to allow the parties to lead fresh evidence in respect of the claim as well as the counter-claim, if so required. Respondent No. 1 is granted four weeks' time to file counter-claim.

6. With these observations, we set aside the arbitration award dated 12th September 2005 made by Justice Satpal on the ground of non-consideration of the counter-claim of the Respondent No.1. We make it clear that this order shall not be viewed as an expression of opinion on the merits of the award one way or the other.

7. The arbitration proceedings before the High Court at the instance of Respondent No. 1 for setting aside of the award made by Justice Satpal have become infructuous in the light of this order and stand disposed of as such.

8. Needless to mention here that the appointment of Justice R.C. Chopra will result to the cancellation of appointment of Mr. A.K. Gupta made by the Chairman-cum-Managing Director of Respondent No. 1.

9. Hon'ble Mr. Justice R.C. Chopra shall be free to decide his remuneration. Registry is directed to send a copy of this order to Hon'ble Mr. Justice R.C. Chopra for information. We request Hon'ble Mr. Justice R.C. Chopra to dispose of the arbitration preferably within six months from the date of communication of this order.

10. The appeal stands disposed of accordingly.”

22. Following the above order, the arbitration proceedings resumed before Justice R.C. Chopra who passed the Award dated 28th July 2016.

23. Ms. Rautray, learned counsel appearing for NBCC, submitted as under:

(a) The arbitration clause in the contract between the parties makes it explicit that “Arbitration Act 1940 and the Rules thereunder and any statutory modification thereof shall apply to the arbitration proceedings under this Clause.” In the absence of the words “any enactment thereof” occurring in the said clause, it is only the 1940 Act which will continue to govern the arbitration proceedings between the parties. Reliance was placed on the decisions in *Thyssen Stahlunion GMBH v. Steel Authority of India Limited* (1999) 9 SCC 334 (hereafter referred to as *Thyssen*); *M. Nanikutty v. T.C. Mukunda & Ors.* 2016 (2) KLT 431, and *Vijay Industries & Projects Limited v. National Thermal Power Corporation Limited* 2003 (2) Arb.LR 493 (Del) (DB).

(b) The Supreme Court had in the aforementioned order dated 3rd August 2011 directed that the arbitration proceedings would resume from the stage at which they were prior to Justice Satpal passing the final Award. Therefore, the arbitration proceedings continued under the 1940 Act.

(c) SE had itself filed a petition under Sections 14 and 17 of the 1940 Act praying that Justice Satpal should be directed to file the Award in this Court. Therefore, both parties proceeded on the basis that the 1940 Act continued to apply.

(d) Paras 32, 53, 96 and 140 of the Award dated 28th July 2016 of Justice R.C. Chopra adverted to the scope of the reference to arbitration, which in turn related to the provisions of the 1940 Act. The arbitration proceedings before Justice R.C. Chopra were therefore under the 1940 Act and not the 1996 Act.

24. In reply, Ms. Salwan submitted that under Section 85 (2) (a) of the 1996 Act the parties could agree not to have the 1940 Act apply to the arbitral proceedings, notwithstanding that they may have commenced under the 1940 Act. According to Ms. Salwan, the order passed by the Supreme Court was a consent order and arose from the proceedings initiated by SE under Sections 14 and 15 of the 1996 Act. At no stage in those proceedings did

NBCC raise an objection to the applicability of the 1996 Act.

25. Ms. Salwan submitted that there could be no doubt that after the Supreme Court recorded the consent of the parties to go before Justice Chopra as sole Arbitrator, the arbitration proceedings continued only under the 1996 Act. After the order dated 3rd August 2011 of the Supreme Court, no proceedings were initiated by either party under the 1940 Act. Reliance was placed by Ms. Salwan on the decisions in *Delhi Transport Corporation v. Rose Advertising AIR 2003 SC 2523*, *DDA v. Bhai Sardar Singh & Sons 115 (2004) DLT 415 (DB)*, *Kusuma Constructions, Vijayawada v. Union of India rep. by the General manger, South Central Railway 2002 (3) Arb.LR 268 (AP)* and *The Shivalik Cooperative Labour and Construction Society Limited v. The Punjab State 2012 (3) Arb.LR 190 (P&H)*.

26. The above submissions have been considered. In the first instance, the Court would like to refer to the relevant clause in the agreement between the parties, which reads thus:

62.3 a) Matter in question, dispute or difference to be arbitrated upon shall be referred for decision to :-

(i) The managing Director shall appointed as Arbitrator in cases where the claim in question is below Rs.5 lacs and in cases where the issues involved are not of a complicated nature. The Managing Director shall be the sole judge to decide whether or not the issues involved are of a complicated nature.

(ii) Two arbitrators, who shall be Company (IRCON) officers of equal status to be appointed in the manner laid down in Clause (3) (b) for all claims of Rs.5 lacs and above, and for all claims irrespective of the amount or value of such claims if the issues involved are of a complicated nature. The Managing Director shall be the sole judge to

decide whether the issues are of a complicated nature or not. In the event of the two Arbitrators being divided in their opinions the matter under dispute will be referred to an Umpire to be appointed by the Managing Director for his decision.

b) for the purposes of appointing two arbitrators as referred to in sub-clause (a) (ii) above, the Company (IRCON) will send a panel of more than three names of officers of the appropriate status of the Company (IRCON) to the contractor, who will be asked to suggest a panel of three names out of the list so sent by the Company (IRCON). The Managing Director will appoint one arbitrator out of the panel as the contractor's nominee, and then appoint a second arbitrator of equal status as the Company's (IRCON) nominee either from the panel or from outside the panel ensuring that one of the two arbitrators so nominated is from Accounts Deptt.

c) The Arbitrator or Arbitrators or the Umpire shall have power to call for such evidence by way of affidavits or otherwise as the Arbitrator or Arbitrators or Umpires shall think proper, and it shall be the duty of the parties hereto do or cause to be done all such things as may be necessary to enable the Arbitrator or Arbitrators or Umpire to make the award without any delay. It will be no objection that the person appointed as Arbitrator, Arbitrators, Umpire are servants, and that in the course of, their duties as servants they have expressed views on all or any of the matters in dispute.

Subject as aforesaid, Arbitration Act, 1940 and the Rules thereunder and any statutory modification thereof shall apply to the Arbitration proceedings under this Clause".

27.1 A distinction has been drawn by the Supreme Court between two kinds of clauses, One which simply state that the 1940 Act would apply and those clauses which state that the 1940 Act "or statutory modification or enactment thereof" would apply. In *Thyssen* (supra), the Supreme Court took note of the facts in *Rani Constructions (P) Limited v. H.P. SEB 1999 (3) Arb. LR 532 SC* which formed part of the batch of cases in which the *Thyssen* judgment came to be passed. The relevant clause in that case stated that the 1940 Act "or statutory modification or enactment thereof" would

apply. In that case, therefore, it was held that the 1996 Act would apply to the arbitration proceedings that commenced under the 1940 Act.

27.2 In *Thyssen (supra)*, the Supreme Court interpreted Section 85 (2) (a) of the 1996 Act and in particular the expression “in relation to” occurring therein. *Inter alia* it was concluded that “in cases where arbitral proceedings have commenced before coming into force of the new Act (1996 Act) and are pending before the Arbitrator, it is open to the parties to agree that new Act be applicable to such arbitral proceedings and they can so agree even before the coming into force of the new Act.” It was observed that Section 85 (2) (a) prevents the “accrued right under the old Act from being affected”. In that context, it was further observed that “enforcement of the award, therefore, has to be examined on the touchstone of the proceedings held under the old Act.”

27.3 The following portions of the decision in *Thyssen (supra)* are relevant for the issue that has arisen in the present petition:

“32. Principles enunciated in the judgments show as to when a right accrues to a party under the repealed Act. It is not necessary that for the right to accrue that legal proceedings must be pending when the new Act comes into force. To have the award enforced when arbitral proceedings commenced under the old Act under that very Act is certainly an accrued right. Consequences for the parties against whom award is given after arbitral proceedings have been held under the old Act though given after the coming into force of the new Act, would be quite grave if it is debarred from challenging the award under the provisions of the old Act. Structure of both the Acts is different. When arbitral proceedings commenced under the old Act it would be in the mind of everybody, i.e., arbitrators and the parties that the award given should not fall foul of Sections 30 and 32 of the old Act. Nobody at that time could have thought that Section 30 of the old Act

could be substituted by Section 34 of the new Act. ... We are, therefore, of the opinion that it would be the provisions of the old Act that would apply to the enforcement of the award in the case of Civil Appeal No. 6036 of 1998. Any other construction on the Section 85(2) (a) would only lead to the confusion and hardship. This construction put by us is consistent with the wording of Section 85(2)(a) using the terms "provision" and "in relation to arbitral proceedings" which would mean that once the arbitral proceedings commenced under the old Act it would be the old Act which would apply for enforcing the award as well.

33. Because of the view of Section 85(2)(a) of the new Act which we have taken, it is not necessary for us to consider difference in the repealing provisions as contained in Section 48 of the old Act and Section 85 of the new Act. We may, however, note that under Section 48 of the old Act concept is of "reference" while under the new Act it is "commencement". Section 2(c) of the old Act defines "reference". Then under Section 48 the word used is "to", and under Section 85(2)(a) the expression is "in relation to". It, therefore, also appears that it is not quite relevant to consider the provision of Section 48 of the old Act to interpret Section 85(2)(a).

35. Parties can agree to the applicability of the new Act even before the new Act comes into force and when the old Act is still holding the field. There is nothing in the language of Section 85(2)(a) which bars the parties from so agreeing. There is, however, a bar that they cannot agree to the applicability of the old Act after the new Act has come into force when arbitral proceedings under the old Act have not commenced though the arbitral agreement was under the old Act. Arbitration clause in the contract in the case of **Rani Constructions** (Civil Appeal 61 of 1999) uses the expression "for the time being in force" meaning thereby that provision of that Act would apply to the arbitration proceedings which will be in force at the relevant time when arbitration proceedings are held.. Expression "unless otherwise agreed" as appearing in Section 85(2)(a) of the new Act would clearly apply in the case of **Rani Construction** in Civil Appeal No. 61 of 1999. Parties were clear in their minds that it would be the old Act or any statutory modification or re-enactment of that Act which would

govern the arbitration. We accept the submission of the appellant Rani Construction that parties could anticipate that the new enactment may come into operation at the time the disputes arise.

... When the agreement uses the expressions "unless otherwise agreed" and "law in force" it does give option to the parties to agree that new Act would apply to the pending arbitration proceedings. That agreement can be entered into even before the new Act comes into force and it cannot be said that agreement has to be entered into only after coming into force of the new Act."

28. The decision in *Thyssen* (*supra*) recognised that the parties can agree to the applicability of the 1996 Act notwithstanding that the arbitral proceedings commenced under the 1940 Act. In the absence of such an agreement between the parties, the Court will have to examine the clause in question to ascertain whether the parties intended the 1996 Act to apply.

29. In that context, the absence of the words 'or re-enactment thereof' in the clause at hand becomes critical. The decision of the DB of this Court in *Vijay Industries & Projects Limited v. National Thermal Power Corporation Limited* (*supra*) while interpreting an arbitration clause similar to the one in the present case held that in the absence of the words 'or re-enactment thereof', it is the 1940 Act which would continue to govern the arbitration proceedings. Therefore, Ms. Rautray appearing for NBCC is right in her contention that the clause, taken as it is, implies that it is only the 1940 Act that should apply.

30. However, the above submissions overlook one crucial aspect of the matter. Section 85 (2) (a) of the 1996 Act envisages that the parties can agree to the contrary viz., that notwithstanding the arbitral proceedings having commenced under the 1940 Act, it is the 1996 Act that would apply to the further proceedings. The question that survives for consideration in

the present case is whether it can be said that the parties agreed to the applicability of the 1996 Act?

31. There is nothing in the Award dated 28th July 2016 of Justice R.C. Chopra which indicates that he was conducting the proceedings either under the 1940 Act or the 1996 Act. The Court has examined carefully paras 32, 53, 96 and 140 of the said Award. It is unable to agree with Ms. Rautray that there is anything therein to show that the Award was passed under the 1940 Act. The mere reference in para 32 of the Award to the fact that NBCC raised an objection that certain claims were not part of the reference would not lead to the conclusion that the Award passed by Justice R.C. Chopra was under the 1940 Act.

32. The fact remains that the order dated 3rd August 2011 by the Supreme Court of India was in a petition that arose from proceedings initiated by SE under Sections 14 and 15 of the 1996 Act. The fact also remains that NBCC participated in the said proceedings and did not object either before this Court or the Supreme Court to the maintainability of the petition on the ground that the 1996 Act did not apply. The only objection was that no ground under Section 14 of the Act was made out for terminating the mandate of the Arbitrator. Further, a submission was made by NBCC before the learned Single Judge, as noted in para 13 of the order dated 20th August 2008, that any challenge to the learned Arbitrator (Mr. A.K. Gupta) should be raised by SE before the learned Arbitrator under Section 16 of the 1996 Act. Therefore, plainly NBCC also proceeded at that stage on the basis that the 1996 Act applied to the proceedings.

33. The order before the Supreme Court is a consent order. It reflects the

agreement between the parties that both the claims and counter-claims should be referred to Justice R.C. Chopra as sole Arbitrator for adjudication. Considering that this is an order passed in an SLP that emanated from a petition under Sections 14 and 15 of 1996 Act, the inevitable conclusion is that there was an agreement between the parties to continue the arbitration proceedings under the 1996 Act and not the 1940 Act.

34. The direction in the said order of the Supreme Court that the proceedings would continue from the stage at which it was prior to the Award of Justice Satpal cannot be understood to mean that the proceedings had to continue under the 1940 Act. If that was the intention of the parties, then the Supreme Court's attention ought to have been specifically drawn to that aspect. Considering that the order itself was passed in a petition that arose under the 1996 Act, there had to be a clear indication in the order that the 1940 Act would apply. It was not a matter for inference or presumption.

35. The intention of the parties that the 1996 Act applied to proceedings that continued after the order of the Supreme Court is further made clear by the fact that neither party initiated any proceedings under the 1940 Act thereafter. It was pointed out by Ms. Rautray that NBCC withdrew its objections under Sections 30 and 33 of the 1940 Act to Justice Satpal's Award after the order of the Supreme Court. That withdrawal, in any event, was only a formality since the said Award was set aside by the Supreme Court itself.

36. For all of the above reasons, the Court rejects the submission on behalf of NBCC that the 1940 Act, and not the 1996 Act, continued to apply to the

arbitral proceedings and the Award of Justice R.C. Chopra.

37. Consequently, the Court concludes that the present petition, CS (Comm) No. 1521 of 2016 filed by NBCC under Section 14 of the 1940 Act is dismissed as not maintainable with no order as to costs.

S.MURALIDHAR, J

MARCH 16, 2017

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