



An ISO 9001:2008 & ISO 27001:2013 certified Law Firm

NEWSLETTER

ANA/NL/July 2016

**Arbitration proceedings are not covered u/s 69(3) of
Partnership Act**

<p>Appellant: M/s Umesh Goel Versus Respondent: Himachal Pradesh Cooperative Group Housing Society Ltd.</p>	<p>Court: Supreme Court of India Date of Judgment: June 29, 2016 Case No.: Civil Appeal No.7916 OF 2009</p>
--	--

The present Appeal was filed against the High Court judgment holding that the counter claim in an Arbitral Proceedings is covered by the expression "other proceedings" contained in Section 69(3) of the Partnership Act. Section 69(1) of the Partnership Act bans filing a suit in a Court by any person as a partner of an unregistered firm against the firm itself or any of its partner, and under sub-section (2) such a ban in the same form of a suit in the Court will also operate against any third party at the instance of such an unregistered firm.

The Supreme Court in this case held that the expression "other proceedings" in Section 69(3) of the Partnership Act does not include Arbitration Proceedings and the ban imposed under the said

Section to can have no application to Arbitral proceedings as well as the Arbitration Award.

Referring to Sections 35 and 36 of the Arbitration and Conciliation Act, 1996, the Apex Court said that: "The deeming fiction is specifically restricted to treat the Award as a decree of a Court, exclusively for the purpose of execution, though as a matter of fact, it is only an Award of Arbitral proceeding. It is a settled proposition, that a statutory provision will have to be construed from the words that are expressly used and it is not for the Court to add or substitute any word to it. Therefore, going by Sections 35 and 36 it cannot be held that the entire Arbitral proceeding is a Civil Court proceedings for the purpose of applicability of Section 69(3) of the Partnership Act."

Provisions of SICA prevail over those of the Companies Act

Petitioner: M/s. Madura Coats Limited Versus Respondent: M/s. Modi Rubber Ltd. & Anr.	Court: The Supreme Court Of India Date of Judgment: June 29, 2016 Case no: Civil Appeal No. 1475 OF 2006
--	---

The present petition was filed against the judgment and order of the High Court of Allahabad which allowed the Appeal of the Respondent herein, to stay the proceedings before the Company Court consequent upon a winding up order passed against the Respondent. The stay was granted till a final decision was taken on the reference made by the Respondent to the Board for Industrial and Financial Reconstruction. Dismissing the appeal, the Apex Court held that: 'it is quite clear that different situations can arise in the process of winding up a company under the Companies Act but

whatever be the situation, whenever a reference is made to the Board of Industrial and Financial Reconstruction under Sections 15 and 16 of the SICA, the provisions of the SICA would come into play and they would prevail over the provisions of the Companies Act and proceedings under the Companies Act must give way to proceedings under the SICA.”

**Right to file first appeal is valuable right of litigant u/s
96 of CPC**

Appellant: Union of India Versus Respondent: K.V. Lakshman & Ors.	Court: The Supreme Court of India Date of Judgment: June 29, 2016 Case No.: Civil Appeal No. 920 OF 2008
--	---

The Supreme Court in this case held that it is a settled principle of law that a right to file first appeal against the decree under Section 96 of the Civil Procedure Code is a valuable legal right of the litigant. The jurisdiction of the first appellate Court while hearing the first appeal is very wide like that of the Trial Court and it is open to the appellant to attack all findings of fact or/and of law in first appeal. It is the duty of the first appellate Court to appreciate the entire evidence and may come to a conclusion different from that of the Trial Court.

The Court further added as follows “Order 41 Rule 27 of the Code is a provision which enables the party to file additional evidence at the first and second appellate stage. If the party to appeal is able to satisfy the appellate Court that there is justifiable reason for not filing such evidence at the trial stage and that the additional evidence is relevant and material for deciding the rights of the parties which are the subject matter of the list, the Court should allow the party to file such additional evidence. After all, the Court has to do substantial justice to the parties. Merely because the

Court allowed one party to file additional evidence in appeal would not by itself mean that the Court has also decided the entire case in his favour and accepted such evidence. Indeed once the additional evidence is allowed to be taken on record, the appellate Court is under obligation to give opportunity to the other side to file additional evidence by way of rebuttal”.

An application for Rejection of Pleat can be filed at any stage before conclusion of the trial

Petitioner: R. K. Roja Versus Respondent: U. S. Rayudu And Another	Court: The Supreme Court Of India Date of Judgment: July 4, 2016 Case No: Civil Appeal No. 5540 Of 2016 (Arising out of S.L.P.(C) No. 15474 of 2016)
---	---

The Supreme Court in this case observed that “An application under Order VII Rule 11 of the CPC can be filed at any stage ... “The trial court can exercise this power at any stage of the suit – before registering the pleat or after issuing summons to the defendant at any time before the conclusion of the trial. ...”. The only restriction is that the consideration of the application for rejection should not be on the basis of the allegations made by the defendant in his written statement or on the basis of the allegations in the application for rejection of the pleat. The court has to consider only the pleat as a whole, and in case, the entire pleat comes under the situations covered by Order VII Rule 11 (a) to (f) of the CPC, the same has to be rejected.”

The Court further observed that: “Once an application is filed under Order VII Rule 11 of the CPC, the court has to dispose of the same before proceeding with the trial. There is no point or sense in proceeding with the trial of the case, in case the pleat is only to be rejected at the threshold. Therefore, the defendant is entitled to file

the application for rejection before filing his written statement. In case, the application is rejected, the defendant is entitled to file his written statement thereafter. But once an application for rejection is filed, the court has to dispose of the same before proceeding with the trial.”

Admission of statements would operate as an estoppel

Petitioner: Deccan Chronicle Holdings Limited and Anr. Versus Respondent: Tata Capital Financial Services Ltd.	Court: The High Court Of Judicature At Bombay Date of Judgment: June 23, 2016 Case No.: Arbitration Petition No. 1839 OF 2015
---	--

During the pendency of the arbitral proceedings between the parties herein, the Respondent filed an application inter alia praying for passing an interim award against the Petitioners in view of the alleged admission by the petitioner no.1 towards its liability to the Respondent by applying the principles of Order 12 Rule 6 of the Code of Civil Procedure, 1908. The said application was based on the premise that the petitioners herein had admitted and acknowledged their liabilities to the respondent in the principal amount of Rs.100 crores in various documents and pleadings filed in various courts.

The present petition was filed against the interim award passed by the arbitrator directing the petitioners herein to pay to the respondent a sum of Rs.100 crores and directing that the balance claim made by the respondent and interest payable if at all would be considered at the time of final award.

The Court observed that, since the petitioners have not withdrawn the statement made in the company application filed before the

High Court of Andhra Pradesh or the statements made in the audited balance sheet and in the application filed before the CDR Cell and other related documents, the statements made in those proceedings and in the financial documents would operate as an estoppel against the petitioners and would be the decisive factor for passing a decree for admission by applying the principles of Order 12 Rule 6 of the Code of Civil Procedure, 1908.

The Court held that, "the principles of Order 12 Rule 6 of the CPC can be applied by the learned arbitrator for making an interim award under section 31(6) of the Arbitration Act if the learned arbitrator comes to the conclusion that the Respondent in the arbitration proceedings has admitted and acknowledged their liability to the petitioners which admission and acknowledgment of the liability is clear and unambiguous the learned arbitrator has rightly exercised the discretion after considering the undisputed documents and pleadings filed before the High Court of Andhra Pradesh and before CDR Cell filed by the petitioners in making an interim award in the sum of Rs.100 crores. "

Legal Updates

- Vide Companies (Share Capital and Debentures) Third Amendment Rules, 2016], the Ministry of Corporate Affairs has amended certain provisions of Companies (Share Capital and Debentures) Rules, 2014 and among other amendments Startup company (as defined in the Notification number GSR 180(E) dated 17th February,2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry Government of India,, Government of India) may issues sweat equity shares not exceeding fifty percent of its paid up capital up to five years from the date of its incorporation or registration [Click [here](#) for copy of Companies (Share Capital and Debentures) Third Amendment Rules, 2016]

- Vide Companies (Acceptance of Deposits) Amendment Rules, 2016, the Ministry of Corporate Affairs has amended the Companies (Acceptance of Deposits) Rules, 2014 and among other amendments an amount of Rs. 25 lakhs or more received by Startup company by way of convertible note (convertible into equity shares or repayable within period not exceeding five years from the date of issue) in single tranche, from a person shall not be considered as 'deposit' under the provisions of the Companies Act, 2013 [Click [here](#) for copy of Companies (Acceptance of Deposits) Amendment Rules, 2016]
- Vide Press Note 5 (2016 Series) the Ministry of Commerce and Industry, Department of Industrial Policy & Promotion has amended Consolidated FDI Policy Circular of 2016 issued on June 07, 2016 and among other amendments in Single Brand Retail Trading Sector 100% FDI is allowed with automatic route up to 49% and beyond 49% with Government approval. [Click [here](#) for copy of Press Note 5 (2016 Series)]

Prepared By:

The Team of Lawyers at **Abhay Nevagi & Associates, Advocates**

Disclaimer:

This newsletter provides general information and guidance as on date of preparation and does not express views or expert opinions/advice of Abhay Nevagi & Associates, Advocates. Contents of this Newsletter should neither be regarded as comprehensive nor sufficient for making any decisions. No one should act on the basis of information provided in this newsletter without obtaining proper expert professional advice. Abhay Nevagi & Associates, Advocates disclaims any responsibility and hereby accept no liability for consequences of any person acting or omitting or refraining to act on the basis of any information contained herein.