REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 11584 OF 2016
(Arising out of SLP(C) Nos. 2865 OF 2015)

MAHANAGAR TELEPHONE NIGAM LTD. Appellant

VERSUS

M/S. APPLIED ELECTRONICS LTD. Respondent

J U D G M E N T

Dipak Misra, J.

Leave granted.

2. The present appeal, by special leave, calls in question the legal tenability of the order dated 28th July, 2014 passed by the High Court of Delhi wherein a Division Bench in CM No. 15530 of 2013 placing reliance on ***Satpal P. Malhotra & Ors. vs. Puneet Malhotra & Ors***.[1] that has followed the decision in ***MCD vs. International Security & Intelligence Agency Ltd.***[2] has

1 Arbitration Appeal No. 12 of 2010 decided on 14th June, 2013
2 (2004) 3 SCC 250

expressed the view that the Code of Civil Procedure, 1908 (for short 'the CPC') would be applicable to the proceedings under the Arbitration and Conciliation Act, 1996 (for short 'the 1996 Act). Be it stated, while expressing the view that the CPC is applicable to an appeal preferred under Section 37 of the Act, the High Court has in the impugned order opined that the cross objection preferred by the respondent herein was maintainable and accordingly entertained the same after condoning the delay.

3. Assailing the said order, it is submitted by Mr. N.K. Kaul, learned Additional Solicitor General, appearing for the appellant, that the scheme of the 1996 Act does not grant any space or make any provision as regards the applicability of CPC unlike the Arbitration Act, 1940 (for short 'the 1940 Act') and in the absence of any express provision, the legislative intendment is not to make it applicable. It is his further submission that Sections 5, 34, 37 and 50 of the 1996 Act constitute a complete code and it clearly provides the measures for adjudging or deciding the validity of an award or even to adjudge the defensibility of an interim order. It is urged by him that recourse to any other mode under the CPC to challenge an order or the award passed under the Act would create an anomalous situation and frustrate

the intention of the legislature.

4. Learned senior counsel would submit that the pronouncement in the ***ITI Ltd. vs. Siemens Public Communications Network Ltd.***[3] holds that the applicability of CPC is not prohibited and, therefore, Section 5 of the 1996 Act would not be attracted and the High Court can exercise the revisional power to rectify an order passed by the District Court, but the said verdict runs counter to the decision of the larger Bench rendered in ***SBP & Co. vs. Patel Engineering Ltd. & Anr.***[4] and other decisions, namely, ***Pandey & Co. Builders (P) Ltd. vs. State of Bihar & Anr***.[5] and ***Fuerst Day Lawson Ltd. vs. Jindal Exports Ltd.***[6]. According to Mr. Kaul, the aggrieved person can prefer an appeal under Section 37 exercising his independent right but cannot be allowed to take recourse to file cross objection to advance his right that has been denied to him by the Court in exercise of power under Section 34 of the 1996 Act. For the said purpose he has drawn immense inspiration from the authority in ***Jamshed Hormusji Wadia vs. Board of Trustees, Port of Mumbai & Anr.***[7].

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3 (2002) 5 SCC 510
4 (2005) 8 SCC 618
5 (2007) 1 SCC 467
6 (2011) 8 SCC 333
7 (2004) 3 SCC 214

5. Mr. Arun Kumar Varma, learned senior counsel appearing for the respondent, per contra, would contend that the decision rendered in ***ITI Ltd.*** (supra) is absolutely unquestionable and a binding precedent on this Court. According to him, the principle stated in ***Jamshed Hormusji Wadia*** (supra) is not applicable, inasmuch as it deals with an appeal preferred after obtaining special leave under Article 136 of the Constitution. It is further propounded by him that the High Court of Bombay as well as the High Court of Delhi has correctly relied on the principle enunciated by the three-judge Bench in ***International Security Inteligence Agency Ltd.*** (supra).

6. In course of hearing, we have been apprised that the decision rendered by the High Court of Bombay has been challenged before this Court and leave has been granted, and the matter is pending for adjudication. However, we intend to express our view with regard to the submissions advanced at the Bar. The statement of objects and reasons of the 1996 Act read as follows:-

> "The law on arbitration in India is at present substantially contained in three enactments, namely, the Arbitration Act, 1940, the Arbitration (Protocol and Convention) Act, 1937 and the Foreign Awards (Recognition and Enforcement) Act, 1961. It is widely felt that the 1940 Act, which contains the general law

of arbitration, has become outdated. The Law Commission of India, several representative bodies of trade and industry and experts in the field of arbitration have pro-posed amendments to this Act to make it more responsive to contemporary requirements. It is also recognised that our economic reforms may not become fully effective if the law dealing with settlement of both domestic and international commercial disputes remains out of tune with such reforms. Like arbitration, conciliation is also getting increasing worldwide recognition as an instrument for settlement of disputes. There is, however, no general law on the subject in India.

2. The United Nations Commission on International Trade Law (UNCITRAL) adopted in 1985 the Model Law on International Commercial Arbitration. The General Assembly of the United Nations has recommended that all countries give due consideration to the said Model Law, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice. The UNCITRAL also adopted in 1980 a set of Conciliation Rules. The General Assembly of the United Nations has recommended the use of these Rules in cases where the disputes arise in the context of international commercial relations and the parties seek amicable settlement of their disputes by recourse to conciliation. An important feature of the said UNCITRAL Model Law and Rules is that they have harmonised concepts on arbitration and conciliation of different legal systems of the world and thus contain provisions which are designed for universal application.

3. Though the said UNCITRAL Model Law and Rules are intended to deal with international commercial arbitration and conciliation, they could, with appropriate modifications, serve as a model for legislation on domestic arbitration and conciliation. The present Bill seeks to consolidate and amend the law relating to domestic arbitration, international commercial arbitration, enforcement of foreign arbitral

awards and to define the law relating to conciliation, taking into account the said UNCITRAL Model Law and Rules.

4. The main objectives of the Bill are as under:--

(i) to comprehensively cover international and commercial arbitration and conciliation as also domestic arbitration and conciliation;

(ii) to make provision for an arbitral procedure which is fair, efficient and capable of meeting the needs of the specific arbitration;

(iii) to provide that the arbitral tribunal gives reasons for its arbitral award;

(iv) to ensure that the arbitral tribunal remains within the limits of its jurisdiction;

(v) to minimise the supervisory role of courts in the arbitral process;

(vi) to permit an arbitral tribunal to use mediation, conciliation or other procedures during the arbitral proceedings to encourage settlement of disputes;

(vii) to provide that every final arbitral award is enforced in the same manner as if it were a decree of the court;

(viii) to provide that a settlement agreement reached by the parties as a result of conciliation proceedings will have the same status and effect as an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal; and

(ix) to provide that, for purposes of enforcement of foreign awards, every arbitral award made in a country to which one of the two international Conventions relating to foreign arbitral awards to which India is a

party applies, will be treated as a foreign award.

5. The Bill seeks to achieve the above objects."

7. Section 5 of the 1996 Act provides the extent of judicial intervention. It reads as follows:-

> "Extent of judicial intervention.—Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."

The aforesaid provision is specific and has a definite purpose. The language employed in the aforesaid provision provides the exclusive path for judicial intervention and does not countenance any other method. The same would be clearly demonstrable when we appreciate the scheme of the Act.

8. Section 9 of the 1996 Act provides for interim measures etc. by Court. Section 11 of the 1996 Act deals with appointment of Arbitrators. Chapter 4 that contains Sections 16 & 17 deals with jurisdiction of the Arbitral Tribunals. Section 34 provides for application for setting aside arbitral Award. Section 37 stipulates about the appealable orders. It reads as follows:-

> "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)refusing to refer the parties to arbitration under section 8;

(b)granting or refusing to grant any measure under section 9;

(c)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."

9. Part II of the 1996 Act provides for enforcement of certain Foreign Awards. Section 50 of the said part provides for appealable orders. The said provision reads as follows:-

"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."

10. Relying on the aforesaid provisions, it is proponed by Mr. Kaul that it is a complete code from all angles and hence, the CPC would not have any application and once CPC is not applicable, entertaining a cross objection under Order XLI Rule 22 is totally impermissible. In this context, we may usefully refer to Section 41(a) of the 1940 Act. The said provision dealt with procedure and powers of court. For the sake of completeness, we extract the same:-

> "41 Procedure and powers of Court – Subject to the provisions of this Act and of rules made thereunder –
>
> (a) the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the Court, and to all appeals, under this Act, and
>
> (b) ……

11. On a perusal of the said provision, in juxtaposition with the provisions contained in 1996 Act, it seems to us that the legislature has intentionally not kept any provision pertaining to the applicability of the CPC. On the contrary, Section 5 of 1996 Act lays the postulate, that notwithstanding anything contained in any other law for the time being in force in matters covered by Part I, no judicial authority shall intervene except so provided

wherever under this Act.

12. In ***ITI Ltd.*** (supra) the assail was to the judgment and order of the 10th Additional City Civil Judge, Bangalore passed in a Misc. Appeal. The said appeal was preferred against an interim order passed by the arbitral tribunal. The principal question that emerged for consideration before this court is whether a revision petition under Section 115 of the CPC lies to the High Court against an order made by the Civil Court in an appeal preferred under Section 37 of the Act. It is necessary to note here that the appellant therein instead of moving the High Court had approached this court directly. Be that as it may. Hegde, J in his opinion, analysing the scope of Section 5 has opined thus:-

> "We also do not find much force in the argument of learned counsel for the appellant based on Section 5 of the Act. It is to be noted that it is under this Part, namely, Part I of the Act that Section 37(1) of the Act is found, which provides for an appeal to a civil court. The term 'Court' referred to in the said provision is defined under Section 2(e) of the Act. From the said definition, it is clear that the appeal is not to any designated person but to a civil court. In such a situation, the proceedings before such court will have to be controlled by the provisions of the Code, therefore, the remedy by way of a revision under Section 115 of the Code will not amount to a judicial intervention not provided for by Part I of the Act. To put it in other words, when the Act under Section 37 provided for an appeal to the civil court and the application of Code not having been expressly barred, the revisional jurisdiction of the High Court gets

attracted. If that be so, the bar under Section 5 will not be attracted because conferment of appellate power on the civil court in Part I of the Act attracts the provisions of the Code also."

13. Thereafter the learned judge has expressed as follows:-

"For the aforesaid reasons, while holding that this Court in an appropriate case would entertain an appeal directly against the judgment in first appeal, we hold that the High Court also has the jurisdiction to entertain a revision petition, therefore, in the facts and circumstances of this case, we direct the appellant to first approach the High Court. For the said reasons, this appeal fails and the same is hereby dismissed. We, however, make it clear that should the appellant present a revision petition within 30 days from today, the same will be entertained by the High Court without going into the question of limitation, if any."

14. Dharmadhikari, J in his concurring opinion stated that:-

"Provisions of Section 37 of the Act of 1996 bar second appeal and not revision under Section 115 of the Code of Civil Procedure. The power of appeal under Section 37(2) of the Act against order of the Arbitral Tribunal granting or refusing to grant an interim measure is conferred on the court. "Court" is defined in Section 2(e) meaning the "Principal civil court of original jurisdiction" which has "jurisdiction to decide the question forming the subject matter of the arbitration if the same had been the subject-matter of the suit". The power of appeal having conferred on a civil court all procedural provisions contained in the Code would apply to the proceedings in appeal. Such proceedings in appeal are not open to second appeal as the same is clearly barred under sub- section(3) of Section 37. But I agree with the conclusion reached by Brother Hegde, J. 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 Act. Section 19(1) under Chapter V of Part I of the Act merely states that the Arbitral Tribunal shall not be bound by the Code of Civil Procedure. The said action has no application to the proceedings before the civil court in exercise of powers in appeal under Section 39(2) of the Act."

15. In ***International Security & Intelligence Agency Ltd.*** (supra), a three- Judge bench was dealing with maintainability of a cross objection under Order XLI Rule 22 of the CPC. It is apt to mention here that the controversy arose in the context of 1940 Act. While dealing with the same, the three-Judge bench ruled thus:-

> "14.Right of appeal is creature of statute. There is no inherent right of appeal. No appeal can be filed, heard or determined on merits unless the statute confers right on the appellant and power on the Court to do so. Section 39 of the Act confers right to file appeal, in so far as the orders passed under this Act are concerned, only against such of the orders as fall within one or other of the descriptions given in clauses (i) to (vi) of sub-Section (1) of Section 39. The Parliament has taken care to specifically exclude any other appeal being filed, against any order passed under the Act but not covered by clauses (I) to (vi) abovesaid, by inserting the expression "and from no others" in the text of sub-Section (1). Clause (a) of Section 41 extends applicability of all the provisions contained in the Code of Civil Procedure, 1908 to (i) all proceedings before the Court under the Act, and (ii) to all the appeals, under the Act. However, the applicability of such of the provisions of the Code of Civil Procedure shall be excluded as may be inconsistent with the provisions of the Act and/or of

rules made thereunder. A bare reading of these provisions show that in all the appeals filed under Section 39, the provisions of the Code of Civil Procedure, 1908 would be applicable. This would include the applicability of Order 41 including the right to take any cross objection under Rule 22 thereof to appeals under Section 39 of the Act.

15. Right to prefer cross objection partakes of the right to prefer an appeal. When the impugned decree or order is partly in favour of one party and partly in favour of the other, one party may rest contended by his partial success with a view to giving a quietus to the litigation. However, he may like to exercise his right of appeal if he finds that the other party was not interested in burying the hatchet and proposed to keep the lis alive by pursuing the same before the appellate forum. He too may in such circumstances exercise his right to file appeal by taking cross objection. Thus taking any cross objection to the decree or order impugned is the exercise of right of appeal though such right is exercised in the form of taking cross objection. The substantive right is the right of appeal; the form of cross objection is a matter of procedure.

20. Once we hold that by taking cross objection what is being exercised is the right of appeal itself, it follows that the subject-matter of cross objection and the relief sought therein must conform to the requirement of Section 39(1). In other words, a cross objection can be preferred if the applicant could have sought for the same relief by filing an appeal in conformity with the provisions of Section 39(1) of the Act. If the subject-matter of the cross objection is to impugn such an order which does not fall within the purview of any of the categories contemplated by clauses (i) to (vi) of sub-Section (1) of Section 39 of the Act, the cross objection shall not be maintainable."

16. After so stating, the Court adverted to the fate of cross-objections if the appeal itself is held not competent or not maintainable. We are not concerned with the aforesaid delineation and, therefore, construe it inessential to advert to the said facet. Suffice it to mention that the decision was rendered in the backdrop of 1940 Act and hence, it is distinguishable.

17. In ***Pandey & Co. Builders (P) Ltd.*** (supra), the Court reproduced a passage from the treatise "Law and Practice of Arbitration and Conciliation" wherein the learned authors have stated thus:-

> "In the context of this Act, Section 37(3) barring second appeal against an appellate order under Section 37(1) and (2) is really superfluous. This Act has not enacted any provision analogous to s 41 of the previous Act. It is radically different from the Act of 1940. Therefore, the Code of Civil Procedure 1908 proprio vigore does not apply to the proceedings before the court in its original or appellate jurisdiction. Section 5 imposes a blanket ban on judicial intervention of any type in the arbitral process except 'where so provided under Part I of this Act. Pursuant to this provision, Section 37(1) provides appeals against certain orders of the court, while s 37(2) provides appeal against certain orders of the arbitral tribunal. However, Section 37(3) prohibits a second appeal against the appellate order under Section 37(1) and (2). However, in view of the provisions of s 5, a second appeal against the appellate order under s 37(1) and (2) would not be permissible, even if s 37(3) had not been enacted. It was, therefore, not really necessary to enact this provision, and it seems to have been enacted by way of abundant caution."

18. We may immediately state that Mr. Kaul has commended the said passage to highlight that the same has been given the stamp of approval by this Court. We have referred to the said passage only to emphasise the effect and impact of Section 5 of 1996 Act. In the said decision, it has also been ruled that even if the bar under Section 37(3) of 1996 Act would not have been provided by the legislature, Section 5 would have been adequate enough to bar a second appeal.

19. In ***Fuerst Day Lawson Limited*** (supra), the issue that arose for consideration is whether an order, though not appealable under Section 50 of the 1996 Act, could nevertheless be subject to appeal under the relevant provisions of the Letters Patent of the High Court. We are absolutely conscious that the said judgment was delivered in the context of Part II of the Act. Section 5, as noticed earlier, does not relate to Part II. However, analysing various authorities relating to maintainability of Letters Patent Appeal, the court pointed out the distinction between the language of the 1940 Act and the 1996 Act. In this context, it is profitable to quote para 89 in its entirety:-

> "89. It is thus, to be seen that Arbitration Act, 1940, from its inception and right through to 2004 (in P.S.

> Sathappan) was held to be a self-contained code. Now, if the Arbitration Act, 1940 was held to be a self-contained code, on matters pertaining to arbitration, the Arbitration and Conciliation Act, 1996, which 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. Once it is held that the Arbitration Act is a self-contained code and exhaustive, then it must also be held, using the lucid expression of Tulzapurkar, J., that it carried 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". In other words, a letters patent appeal would be excluded by the application of the 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."

20. Slightly earlier, we have mentioned that the court has referred to a series of decisions with regard to the maintainability of a Letters Patent Appeal. The two-Judge Bench has referred to the Constitution Bench decision in ***P.S. Sathappan (dead) by Lrs. vs. Andhra bank Ltd. And Others***[8] and other decisions. In paragraph 36 of the judgment, the Court has culled out certain principles. For the present case, the sub clause (vii) of paragraph 36 is significant. It reads as follows:

> "36(vii) The exception to the aforementioned rule is where the special Act sets out a self-contained code and in that event the applicability of the general law procedure would be impliedly excluded. The express

8 (2004) 11 SCC 672

> provision need not refer to or use the words "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."

21. It is interesting to note that in ***ITI Ltd.*** (supra) the two-Judge bench has held that solely because a second appeal is not maintainable, it would not debar the exercise of jurisdiction under Section 115 of the CPC, because under Section 115 of the CPC the court exercises its power of supervisory or revisional jurisdiction.

22. In ***Patel Engineering Ltd.*** (supra) the majority, while dealing with the power under Articles 226 and 227 of the Constitution, has ruled that:-

> "45. It is seen that some High Courts have proceeded on the basis that any order passed by an arbitral tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution of India. We see no warrant for such an approach. Section 37 makes certain orders of the arbitral tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating his grievances against the award including any in-between orders that might have been passed by the arbitral tribunal acting under Section 16 of the Act. The party aggrieved by any order of the arbitral tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The arbitral tribunal is after all, the creature of a contract between the parties, the arbitration agreement, even though if the occasion arises, the Chief Justice may constitute it

> based on the contract between the parties. But that would not alter the status of the arbitral tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the arbitral tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution of India. Such an intervention by the High Courts is not permissible.
>
> 46. The object of minimizing judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 of the Constitution of India or under Article 226 of the Constitution of India against every order made by the arbitral tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the arbitral tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage."

23. We are absolutely conscious that the principle stated in the aforesaid verdict pertaining to interference of exercise of jurisdiction was in relation to any order passed by the arbitral tribunal. However, we have referred to the same to exposit and underline the stress on the minimal intervention of the court. In essence it has to be remembered that the concept of dispute resolution under the law of arbitration, rests on the fulcrum of promptitude.

24. In ***ITI Ltd.*** (supra), it has been held that the jurisdiction of

the civil court to which a right to decide a *lis* between the parties has been conferred can only be taken away by a statute in specific terms and exclusion of such right cannot be inferred because there is always a strong presumption, that the civil courts have the jurisdiction to decide all questions of civil nature and on that basis the court held that it cannot draw inference merely because the Act has not provided CPC to be applicable and thus it should be held that the CPC is inapplicable.

25. In ***Fuerst Day Lawson Ltd.*** (supra), the two-Judge Bench placing reliance on a series of authorities has drawn a distinction between the 1940 Act and 1996 Act and has opined that once the 1996 Act is regarded as a self contained and exhaustive code, it should be held that it carries with it a negative import that only such acts either mentioned in the Act are permissible to be done and acts or things not mentioned therein are not permissible to done. The 1996 Act, as it manifests, provides restrictions for challenging the award. It also lays the postulate to assail the award and thus emphasis is on expeditious disposal. It does not permit a second appeal to be entertained as per the language employed in Section 37(3) and also under Section 5 of the 1996 Act. The two-Judge Bench has reproduced a lucid expression of

Tulzapurkar, J. to make home the point — "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".

26. In ***Arun Dev Upadhyaya vs. Integrated Sales Service Ltd. and Anr.***[9], the issue that arose for consideration is whether an arbitration appeal was maintainable from an order passed by the learned single Judge pertaining to execution of the award. It was urged before the Division Bench of the High Court, that an appeal under Clause 10 was not available in arbitration matters and Section 13 of the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015 would not be applicable to an arbitration appeal. The High Court opined that the appeal was maintainable. A two-Judge Bench of the Court analyzing various provisions and the earlier precedents came to hold that:-

> "23. The aforesaid provision clearly lays down that a forum is created, i.e., Commercial Appellate Division. Section 50(1)(b) of the 1996 Act provides for an appeal. Section 50(1)(b) has not been amended by the Act that has come into force on 23.10.2015. Thus, an appeal under Section 50(1)(b) of the 1996 Act before the Division Bench is maintainable.
>
> 24. Thus analysed, we find that the impugned

9 2016 (9) SCALE 427

> judgment of the learned Single Judge under Section 50(1)(b) of the 1996 Act is passed in the original side of the High Court. Be that as it may, under Section 13 of the Act, the single Judge has taken the decision. Section 13 bars an appeal under Letters Patent unless an appeal is provided under the 1996 Act. Such an appeal is provided under Section 50 of the Act. The Letters Patent Appeal could not have been invoked if Section 50 of the 1996 Act would not have provided for an appeal. But it does provide for an appeal. A conspectus reading of Sections 5 and 13 of the Act and Section 50 of the 1996 Act which has remained unamended leads to the irresistible conclusion that a Letters Patent Appeal is maintainable before the Division Bench. It has to be treated as an appeal under Section 50(1) (b) of the 1996 Act and has to be adjudicated within the said parameters."

The said decision was rendered in respect of appeal under Section 50 which occurs in Part II but emphasis has been laid with regard to adjudication of an appeal within the parameters of Section 50(1)(b) of the 1996 Act.

27. As is manifest, a person grieved by the award can file objection under Section 34 of the 1996 Act, and if aggrieved on the order passed thereon, can prefer an appeal. The court can set aside the award or deal with the award as provided by the 1996 Act. If a corrective measure is thought of, it has to be done in accordance with the provision as contained in Section 37 of the 1996 Act, for Section 37(1) stipulates for an appeal in case of any grievance which would include setting aside of an arbitral

award under Section 34 of the Act.

28. Section 5 which commences with a non-obstante clause clearly stipulates that no judicial authority shall interfere except where so provided in Part 1 of the 1996 Act. As we perceive, the 1996 Act is a complete Code and Section 5 in categorical terms along with other provisions, lead to a definite conclusion that no other provision can be attracted. Thus, the application of CPC is not conceived of and, therefore, as a natural corollary, the cross-objection cannot be entertained. Though we express our view in the present manner, the judgment rendered in ***ITI Ltd.*** (supra) is a binding precedent. The three-Judge Bench decision in ***International Security & Intelligence Agency Ltd.*** (supra) can be distinguished as that is under the 1940 Act which has Section 41 which clearly states that the procedure of CPC would be applicable to appeals. The analysis made in ***ITI Ltd.*** (supra) to the effect that merely because the 1996 Act does not provide CPC to be applicable, it should not be inferred that the Code is inapplicable seems to be incorrect, for the scheme of the 1996 Act clearly envisages otherwise and the legislative intendment also so postulates.

29. As we are unable to follow the view expressed in ***ITI Ltd.***

(supra) and we are of the considered opinion that the said decision deserves to be re-considered by a larger Bench. Let the papers be placed before the Hon'ble the Chief Justice of India for constitution of an appropriate larger Bench.

30. The interim order to continue.

.....J.
(DIPAK MISRA)

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J.
(AMITAVA ROY)

NEW DELHI
November 24, 2016