International Journal of Leading Research Publication
IJLRP

© IJLRP | ISSN (O) - 2582-8010
March 2021 | Vol. 1 Issue. 10
www.ijlrp.com

ARBITRABILITY OF CONSUMER DISPUTES: AN INSIGHT

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ABSTRACT

The Preamble of the "Consumer Protection Act, 1986" announces that the act had been enacted to shield the interest of the consumers from misuse and to introduce the consumer grumblings in proper consumer court so the goal of the Act is accomplished and equity is done to the consumers. In the case of Lucknow Development Authority v. M.K. [1] ***it was stated,*** *"The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful business, described as, 'a network of rackets' or a society in which, 'producers have secured power' to 'rob the rest' and the might of public bodies which are degenerating into storehouses of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked"8****". Then again, Arbitration can be an alternative dispute resolution and has been used by individual parties and various corporations. As per "Section 7 of the Arbitration and Conciliation Act, 1996", "arbitration agreement" signifies an agreement by the parties to submit to arbitration all or certain disputes which have emerged or which may emerge between them in regard of a characterized legal relationship, if contractual.***

1. AN INSIGHT

The instance of "Emaar MGF v Aftab Singh"[2] was a milestone in the issue of arbitrability of consumer disputes. Nonetheless, with India endeavoring towards a favorable to arbitration system, diving into the chance of arbitration of consumer disputes in India gets basic. This post will investigate whether the Emaar case was a botched chance for India to adjust itself to worldwide ways to deal with consumer dispute arbitration. It will investigate how other customary law wards have tended to this issue and how India can adjust pushing ahead.

2. FACTS

A consumer dispute with respect to the conveyance of ownership of a level by "M/s Emaar MGF Land Limited (Appellant)" and insufficiency of administrations coming from the equivalent was brought before a "Single Bench" of the "NCDRC" by "Aftab Singh (Respondent)". The Appellant, thus, recorded an application before the "Single Bench of the NCDRC under Section 8(1) of the Arbitration Act" to allude the dispute to arbitration on account of the presence of an arbitration proviso in the agreement from which the dispute emerged. A few comparable applications under "Section 8(1) of the Arbitration Act" were gathered with it. The "Single Bench of the NCDRC" alluded every one of these applications to a "three-member Bench of the NCDRC" in light of the fact that it was of the assessment that the dispute suggested a critical conversation starter of law in regards to the "arbitrability of consumer disputes".

The "three-member Bench of the NCDRC" concluded that "consumer disputes" were not equipped for being submitted to arbitration in light of the fact that the "Consumer Protection Act, 1986 (CPA)" was enacted considering certain public strategy concerns and to serve consumers. In like manner, it excused the Appellant's application. The Appellant recorded associated offers under the steady gaze of the "Delhi High Court", however the "Delhi High Court" didn't engage it for need of purview. Every one of the Civil Appeals recorded under the steady gaze of the Supreme Court were excused in light of the fact that the Supreme Court found no grounds to meddle with the criticized request of "the NCDRC". Thusly, the Appellant documented a "Review Petition" under the steady gaze of the "Supreme Court" expressing that the matter offered a huge conversation starter of law regarding whether "consumer disputes are arbitrable" and whether a legal authority may excuse an application under the corrected "Section 8(1) of the Arbitration Act" on the ground that a dispute isn't arbitrable.

3. CONTENTIONS ADVANCED

The Appellant's principle conflict on the side of its application was the phrasing of "Section 8(1) of the Arbitration Act after the 2015 Amendment". The corrected "Section 8(1) of the Arbitration Act" unequivocally expresses that a legal authority will

© IJLRP | ISSN (O) - 2582-8010
March 2021 | Vol. 1 Issue. 10
www.ijlrp.com

undoubtedly allude a dispute to arbitration except if it finds that by all appearances no legitimate arbitration agreement exists, "despite any judgment, pronouncement or request of the Supreme Court or any Court" Therefore, some other ground, like the arbitrability of the topic, is unimportant for the reasons for the "NCDRC's" thought of an application under "Section 8(1) of the Arbitration Act".

Then again, the "Respondent's" dispute depended on the "CPA" being an enactment enacted in public revenue, which imagines advantageous remedies that are discrete from those that are accessible in private arbitration. He further fought that it was never the administrative intent for the revised arrangements of "Section 8(1) of the Arbitration Act" to supersede any remaining rules which give such explicit remedies and make disputes identified with c"riminal law, trusts, occupancy, family law, telecom, IPR", and so forth, "arbitrable" subjects, in opposition to milestone decisions like "*A Ayyasamy v A Parasivam and Ors ((2016) 10 SCC 729) (Ayyasamy) and Booz Allen Hamilton Inc v SBI Home Finance Limited and Ors ((2011) 5 SCC 532) (Booz Allen)*".

4. PERSPECTIVE ON THE SUPREME COURT

The Supreme Court completely broke down the law of "Section 8(1) of the Arbitration Act", both preceding and post the "2015 Amendment", and that of the reference of consumer disputes to arbitration. Preceding "the 2015 Amendment", it was all around settled law, as set down in "Fair Air Engineering Pvt. Ltd and Anr v N K Modi ((1996) 6 SCC 385), National Seeds Corporation Limited v Madhusudhan Reddy and Anr ((2012) 2 SCC 506) and Rosedale Developers Private Limited v Aghore Bhattacharya and Ors ((2018) 11 SCC 337)", that regardless of whether a dispute emerged from a contract with an arbitration provision, the proviso's presence won't hinder a gathering's entitlement to record a grievance under the CPA before a consumer discussion. The reasoning of these decisions was that "Section 3 of the CPA" expresses that the arrangements of the "CPA" are "notwithstanding, and not in discrediting of some other law for the time being in power."

The Supreme Court proceeded to recognize that "the 2015 Amendment" had seriously confined any legal position's ability to decline to allude a dispute to arbitration under "Section 8(1) of the Arbitration Act" or select a judge under "Section 11(6A) of the Arbitration Act". Such refusal can be made just if the legal authority establishes that at first sight no legitimate arbitration agreement exists between parties. Considering the expression "despite any judgment, declaration or request of the Supreme Court or any Court", a legal authority may presently don't decide if different conditions are satisfied by the "arbitration agreement" (like legitimate and essential parties, various issues, just one of which is to be alluded to arbitration, and so forth), along these lines discrediting prior point of reference, for example, "Sukanya Holdings (P) Ltd v Jayesh H Pandya and Anr ((2003) 5 SCC 531)".

Nonetheless, the "Supreme Court" additionally remembered "Section 2(3) of the Arbitration Act", which expresses that "Part I of the Arbitration Act", "will not influence some other law for the time being in power, by ethicalness of which certain disputes may not be submitted to arbitration." Accordingly, this section unmistakably offers supremacy to the arbitrability of a topic over some other arrangement in "Part I, including Section 8(1) and 11(6A) of the Arbitration Act". The Supreme Court has effectively held in milestone decisions, for example," Lucknow Development Act v M K Gupta ((1994) 1 SCC 243)", that "the CPA" is an advantageous enactment that gives speedy and affordable remedies to abused consumers. Notwithstanding, in the current case, "the Supreme Court" went above and beyond by asserting the choice of "the NCDRC" and explicitly expressing that consumer disputes are additionally a topic wherein disputes can't be alluded to arbitration since it relates to "rights in rem (public rights)". At the end of the day, the "Supreme Court" has brought consumer disputes inside the ambit of "non-arbitrable" disputes, as characterized in "Booz Allen and Ayyasamy", for example, disputes identified with criminal law, trusts, occupancy, family law, telecom, indebtedness and wrapping up, IPR, and in specific cases, misrepresentation. The "Supreme Court" additionally proceeded to express that the authoritative intent of "the 2015 Amendment" couldn't have been to supersede "Section 2(3) of the Arbitration Act", and different resolutions with public remedies like "the CPA".

It should likewise be noticed that at the finish of its judgment, the "Supreme Court" additionally communicated that its choice ought not to be deciphered to be a bar against "consumer disputes" being submitted to "arbitration" when all is said in done, yet just a bar against arbitration when a consumer documents a consumer objection.

5. CONCLUSION

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www.ijlrp.com

The European Union ("EU") has tended to the issue through enactment on the security of consumers' privileges in arbitration agreements. EU precludes pre-dispute restricting arbitration agreements and embraces a supposition that all planned arbitration agreements in consumer contracts are out of line, if not haggled by the parties after the dispute emerges. A few EU nations have received a 'pick in' framework as a norm in consumer class actions, which permits parties to select arbitration after the consumer dispute, has emerged.

The USA has likewise seen the threat of multimillion-dollar corporations cryptically adding arbitration provisions in standard agreements with the consumers and constraining them into arbitration as opposed to giving them a choice to quit the interaction. The methodology received by the USA is not quite the same as the EU as it doesn't accept every arbitration condition as inalienably unreasonable. They have made an arrangement in law for consumer arbitration by presenting an Arbitration Fairness Act, like the law winning in the EU, which denies pre-dispute arbitration agreements in consumer rights disputes. The USA follows a 'quit' framework in consumer dispute cases, which permits parties to quit previous arbitration agreements and bring the matter under the watchful eye of regular courts.

India has additionally seen ongoing advancements in the statute around consumer disputes in arbitration and isn't a long ways behind its western partners. Beforehand the Indian courts have managed such disputes in cases, which held that an arbitration proviso alone doesn't expel the authority of consumer discussions. Be that as it may, if a consumer decides on arbitration prior to recording a protest they will be limited by the honor. Notwithstanding, there stays an absence of clearness as these post dispute arrangements are not upheld by authoritative structure. By examining the wards referenced above, it is seen that both EU and the USA are not unwilling to the possibility of arbitration of consumer disputes, significantly as a result of the massive advantages of the arbitration interaction, However, they have defended the privileges of consumers in the arbitration cycle by widely administering on the issue.

The Court's inflexible methodology towards arbitration agreements in the Emaar case doesn't furnish India with the adaptability to adjust itself to worldwide patterns that accommodate arbitration in consumer contracts. India ought to likewise deliver enactments that incorporate an arbitration cycle for consumer disputes and layout the securities granted to a consumer. The Consumer Protection Act, 2019 was an invited activity by the assembly as it included intercession as a type of dispute resolution for consumer disputes. Henceforth, one can trust that with expanding mindfulness about the significance of arbitration, the governing body will remember arbitration as a type of dispute system for Consumer Protection Act, 2019 too.

[1] 1994 AIR 787

[2] "REVIEW PETITOIN (C) Nos. 2629-2630 OF 2018)"