

23rd September, 2020

CONSUMER PROTECTION ACT, 1986 AND THE ARBITRATION AND CONCILIATION ACT, 1996



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A The Arbitration and Conciliation Act, 1996:

¹ The arbitration agreement provides the basis for arbitration. It is defined as an agreement to submit present or future disputes to arbitration and the arbitration agreement is governed by the Arbitration and Conciliation Act, 1996 (for short “**the Arbitration Act**”).

² An arbitration agreement may be in the form of an arbitration clause in an underlying main contract or in the form of a separate agreement. The legal status of both are same. In practice, in more than 95% cases, the arbitration agreement is contained in the underlying main contract as an arbitration clause.

³ Section 5 of the Arbitration Act limits the scope of Judicial Intervention and Section 8 of the Arbitration Act, ousts the intervention of any Judicial forum once there is existence of the Arbitration Agreement between the parties.

B Consumer Protection Act, 1986 – Special Legislation:

¹ The Consumer Protection Act, 1986 (for short “**the Consumer Act**”) is a special social legislation enacted to protect the rights and the interest of the consumers.

² Section 3 of the Consumer Act in clear and unambiguous terms provides that the provisions of the Consumer Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

³ The interest of the customers is protected by setting up, the three-tier quasi-judicial consumer forums which is at national, state and district levels as per section 9 of the Consumer Act.

⁴ For example – A Flat Buyers agreement was executed between the Builder and the Buyer and the Builder has failed to deliver the possession of flat to the buyer. Then in that case, the Buyer has 2 remedies available, either to invoke arbitration under the Arbitration Act, subject to there being a subsisting arbitration agreement, or to file the complaint before the appropriate consumer forum under the Consumer Act on the ground of deficiency of services.

⁵ If the aggrieved party decides to file the complaint before the appropriate consumer forum under the Consumer Act. Then, the question which generally arises before the adjudicating authority is “Whether the Arbitration Act mandates Consumer Forums, constituted under the Consumer Act, to refer parties to arbitration in terms of a valid arbitration agreement, notwithstanding other provisions of the Arbitration Act and the Consumer Act?”

c Arbitration Agreement cannot oust jurisdiction of consumers forums:

¹ Section 8 of the Arbitration Act states that, on the basis of the arbitration agreement between the parties, a judicial authority is bound to refer the parties to go for arbitration.

² However, Section 2 (3) of Arbitration Act provides that “*This Part shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration.*”

³ It means that Section 2 (3) of the Arbitration Act, itself excludes from its purview certain disputes which fall within the public law regime and with respect to which statutory remedies are put into place to sub-serve a welfare purpose/ public policy. Since consumer disputes would fall within the umbrella of the said provision, there has been consistent confusion as to whether Arbitration Agreement in Consumer disputes would be compulsorily covered by the Section 8 of the Arbitration Act.

⁴ The Hon’ble Supreme Court in “*National Seeds Corporation Limited v. M. Madhusudhan Reddy and Anr.*”, (2012) 2 SCC 506 has laid down that:

- The remedy of arbitration is not the only remedy available to a person. Rather, it is an optional remedy and the person can either seek reference to an arbitrator or file a complaint under the Consumer Act.

- If the person opts for the remedy of arbitration, then it may be possible to say that he cannot, subsequently, file complaint under the Consumer Act.

- However, if he chooses to file a complaint in the first instance before the competent consumer forum under the

Consumer Act, then the Arbitration Act does not mandates consumer forums, to refer parties to arbitration by virtue of section 8 of the Arbitration Act.

⁴ The Hon'ble Supreme Court in *Emaar MGF Land Limited v. Aftab Singh*, (2019) 12 SCC 751 cleared out the battle between the Arbitration Act and the statutory remedy when it comes upon solving the consumer disputes under the Consumer Act and had laid down that:

- If a dispute is brought before the consumer forum, then the consumer forum will be the appropriate forum for hearing the dispute, despite their being an Arbitration Agreement between the parties.
- Section 8 of the Arbitration Act does not apply to the consumer forums, as they are the special courts set up for the public purpose.
- The consumer disputes cannot be compulsorily referred to arbitration as it pertains to rights in rem i.e., rights available against all.
- Consumer seeking the remedy under Consumer Act could not be compulsorily forced to go for Arbitration even though the parties may have an Arbitration agreement.
- Thus, only once the remedy under Consumer Act is preferred the disputes shall become non-arbitrable.

⁵ Moreover, a dispute would not be arbitrable if the jurisdiction of the ordinary civil court is done away with by giving exclusive jurisdiction to a tribunal or special court (*A. Ayyasamy v. A Paramasivam*, 2016 SCC Online SC 1110).

⁶ Thus, it can be said that the Arbitration Agreement does not bars and/or oust the jurisdiction of the consumer forums, i.e. the consumer forums continue to hold and enjoy the jurisdiction irrespective of the presence of an arbitration agreement.

D Conclusion:

¹ Even if there exists an arbitration agreement and a complaint is made by the consumer under the Consumer Act, then the existence of an arbitration agreement will not be a bar to the entertainment of the complaint by the consumer forums, constituted under the Consumer Act.

² The remedy provided under the Consumer Act is in addition to the provisions of any other law for the time being in force.

³ Thus, it's at the discretion of a complainant whether he opts for a complaint under the Consumer Act or refer the matter to arbitration. But once he opted either of remedy, he is not allowed to take himself back and he is bound by estoppel.