IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2585 OF 2012

Kingfisher Airlines Limited
Having its Registered Office at
The Qube, CTS No. 1498, A/2,
4th Floor, M.V. Road, Marol,
Andheri (E), Mumbai-400 059 ....Petitioner
V/s.
Capt. Prithvi Malhotra
Instructor (Employee Code No.....)
Residing at A-702, Raj Classic,
Off. Yari Road, Versova, Mumbai-400 061 .....Respondent

ALONGWITH
WRIT PETITION NO. 2586 OF 2012

Kingfisher Airlines Limited
Having its Registered Office at
The Qube, CTS No. 1498, A/2,
4th Floor, M.V. Road, Marol,
Andheri (E), Mumbai-400 059 ....Petitioner
V/s.
Capt. Samir Sheopari
Instructor (Employee Code No.....)
Residing at 803/902, Silver Nest
Mhada, S.V.P. Nagar, Andheri West,
Mumbai-400 061 .....Respondent

ALONGWITH
WRIT PETITION NO. 2587 OF 2012

Kingfisher Airlines Limited
Having its Registered Office at
The Qube, CTS No. 1498, A/2,

4th Floor, M.V. Road, Marol,
Andheri (E), Mumbai-400 059 ....Petitioner
V/s.
Capt. Carl Wykes
Instructor (Employee Code No.....)
Residing at 1101 Aakansha Apartments,
A Wing, Punch Marg,
Yaari Road, Versova, Mumbai-400 061 .....Respondent

* * * * *

Mr. N.H. Seervai, Senior Advocate a/w. Mr. Rohan Cama and Mr. Navraj Jalota i/by. Bachubhai Munim & Co., Advocate for the petitioner.
Mr. S.C. Naidu with Mr. Saurabh Kulkarni i/by. C.S. & Co., Advocate for the respondent.

**CORAM :- SMT. R.P. SONDURBALDOTA, J.**

**20th November, 2012.**

**JUDGMENT :-**

1). The common question of law, that arises for consideration in the above three petitions is, whether a industrial dispute or a dispute relating to enforcement of a right or an obligation created under the Industrial Disputes Act, ("the I.D. Act" for short) is arbitrable, i.e. capable of being adjudicated by a private forum of an arbitrator.

2). The petitioner in all the petitions is a public limited company and a "air transport industry". The respondent

in each petition is employed by the petitioner as a Pilot. All the respondents have filed applications under Section 33(C)(2) of the I.D. Act read with Rule 62(2) of the Industrial Disputes (Central) Rules, 1957 in CGIT-cum-Labour Court for recovery of their earned wages. They also seek interest on the earned wages at the rate of 18% p.a. from the date the wages become due and payable under the Payment of Wages Act read with Rules framed thereunder. After entering its appearance in the proceedings, the petitioner filed identical applications under Section 8 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act" for short) for referring the parties to arbitration in view of Clause-17 in the respective letters of appointment of the respondents. The CGIT-cum-Labour Court by its reasoned order dismissed the applications of the petitioner, which dismissal has led to the present petitions.

3). Clause-17 referred to above reads as follows :

> "**17. DISPUTE RESOLUTION**
> All disputes relating to the validity, interpretation, enforcement or breach of the terms and conditions of appointment arising between you and the Company shall be decided by arbitration in

> accordance with the provisions of the Arbitration and Conciliation Act, 1996, as substituted or amended from time to time. The Chief Operating Officer or such official of the Company or any third party as may be nominated by the Chief Operating Officer shall be the sole arbitrator. The venue of arbitration shall be at Mumbai or any other place designated by the Chief Operating Officer of the Company. The award of the arbitrator shall be binding."

4). Though, the only respondent to the present petitions is the employee of the petitioner, the applications filed by the respondents before the CGIT are directed not only against the petitioner, but also against three more persons. They are, the Chairman and Director, Executive Vice-President and Chief Executive Officer of the petitioner-Company. There is no explanation offered by the petitioner for omitting the three persons from the petitions. In their complaints before the CGIT, the respondents have contended that the Payment of Wages Act, mandatorily requires that payment of wages is made within the time stipulated i.e. before the expiry of the seventh day after the last day of the wage period, within which the wages are payable. Non-payment of salary within the stipulated time

attracts not only payment of penalty and compensation, but also interest at the rate of 18% p.a. on the amount due, under the Payment of Wages (Air Transport Services) Rules, 1968. The Chairman and Director, Executive Vice-President and Chief Executive Officer are employers within the meaning of the provisions of Payment of Wages Act and the Rules framed thereunder and as such under legal obligation to pay wages on the date notified for payment. They are thus jointly and severally liable to make payment alongwith the petitioner.

5) The respondents opposed the applications filed by the petitioner under Section 8 of the Arbitration Act, on several grounds, which grounds have been agitated before this Court also. The respondents contended that the subject matter of the dispute between them and the petitioner, has been exclusively reserved by the legislature, as a matter of public policy, for adjudication by the special courts established under the I.D. Act. Therefore, Section 8 of the Arbitration Act, by necessary implication, has no application. Further, the powers exercised by the Courts

constituted under the I.D. Act, cannot be exercised by a private forum of an arbitrator. Therefore, the proceedings pending before the Labour and Industrial Court cannot be referred to private arbitration outside the provisions of the I.D. Act. In addition, all the parties to the application filed by the respondent are not parties to the arbitration agreement contained under Clause-17 of the letter of appointment.

6). The CGIT-cum-Labour Court by the impugned order, has held that in the light of Section 10-A(5) of the I.D. Act, it is clear that a special scheme for arbitration is prescribed under Section 10-A of the I.D. Act. Therefore, the provisions of the Arbitration Act, would not be attracted to an industrial dispute. The Learned Presiding Officer, has also observed that a proceeding under Section 33(C)(2) of the I.D. Act, is an execution proceeding filed for recovery of the amount of salary due and payable to the respondent. Under that provision, the claim is not expected to be adjudicated. It is merely an execution proceeding and an execution proceeding need not be sent

to arbitrator as it requires, no further adjudication.

7). Mr. Seervai, the learned Senior Counsel appearing for the petitioner, submits that, the importance of arbitration as an alternate mechanism for resolution of the disputes has been duly acknowledged and stressed upon by the Apex Court in several of its decisions. The process of arbitration is intended to ensure speedy, efficient and fair resolution of the disputes between parties unhampered by cumbersome procedure of the Courts and technicalities of provisions. Therefore, by Section 8, the Arbitration Act provides for power to a judicial authority to refer parties to arbitration where there is an arbitration agreement. He submits that, the Court is obliged to refer the parties to arbitration where an arbitration agreement exists. In order to support his submission that Section 8 of the Arbitration Act is peremptory in nature, Mr. Seervai relies upon the decision of the Apex Court in the case of **Hindustan Petroleum Corporation Limited V/s. Pinkcity Midway Petroleums reported in (2003) 6 SCC page 503**, wherein it has been held :

> "14. This Court in the case of *P. Anand Gajapathi Raju v. P.V.G. Raju*, (2 (2000) 4 SCC 539) has held that the language of Section 8 is peremptory in nature. Therefore, in cases where there is an arbitration clause in the agreement, it is obligatory for the court to refer the parties to arbitration in terms of their arbitration agreement and nothing remains to be decided in the original action after such an application is made except to refer the dispute to an arbitrator. Therefore, it is clear that if, as contended by a party in an agreement between the parties before the civil court, there is a clause for arbitration, it is mandatory for the civil court to refer the dispute to an arbitrator. "

He points out that there is no dispute between the parties as regards the existence of Clause-17 in the letter of appointment issued to the respondents. The dispute of non-payment of wages, would be covered by Clause-17 and as such the CGIT had infact no alternative, except to refer the parties to the arbitrator under Clause-17 for resolution of the dispute between them. It is also his submission that, the question of arbitrability of the dispute can be left to the arbitrator since an arbitrator is empowered to decide the question of his own jurisdiction.

8). Placing heavy reliance upon another decision of the Apex Court in the case of **Booz Allen and Hamilton**

**Inc. V/s. SBI Home Finance Limited and Others, reported in (2011) 5 SCC page 532,** Mr. Seervai submits that, every civil or commercial dispute is, in principle, capable of being adjudicated by arbitration, unless the jurisdiction of the Arbitral Tribunals is excluded either expressly or by necessary implication. There is no express exclusion of industrial dispute from the purview of arbitration. Such a dispute is also not covered by the "excepted matters" enumerated and elaborated by the Apex Court in the judgment cited. Mr. Naidu, the learned Counsel for the respondents, counters with a submission that, an industrial dispute is excluded from the jurisdiction of Arbitral Tribunal by necessary implication since the specified Courts i.e. Industrial Court and Labour Court have been conferred jurisdiction to resolve industrial disputes. He seeks to draw support for his submission from **(i) The Rajasthan State Road Transport Corporation and another etc. Vs. Krishna Kant etc.** reported in **AIR 1995 S.C. page 1715, (ii) D.P. Maheshwari V/s. Delhi Administration and Ors. reported in AIR 1984 S.C. page**

**153 and (iii)** unreported decision of Nagpur Bench of this Court in the case of **General Manager, Western Coalfields Ltd, Wani North Area, At post-Ukni, Tq. Wani, Dist. Yavatmal and anr. Vs. 1. Shri. Sumit Mullick, Div. Commissioner, Amravati Division, Amravati, passed in Writ Petition No. 2613 of 2001 dated 28th September, 2012**.

**9).** Before touching upon the merits of the issue of arbitrability, it would be appropriate to find out as to who should decide that issue. Should it be decided by the court before whom the judicial proceedings are pending, or should it be left to the decision of the Arbitrator. The answer to this question is found in the decision of the Apex Court in *Booz Allen (supra)* cited by Mr. Seervai. In the decision, the Apex Court has quoted with approval its earlier decisions in **Haryana Telecom Ltd Vs. Sterlite Industries (India) Ltd. reported in (1999) 5 SCC page 688** and **SBP Company Vs. Patel Engineering Ltd, reported in (2005) 8 SCC page 618,** wherein it has been held that, what can be referred to the arbitrator is only that dispute

or matter which the arbitrator is competent or empowered to decide. The judicial authority, in the absence of a restriction in the Arbitration Act, has to necessarily decide whether, infact there is any existence of a valid agreement and whether the dispute that is sought to be raised before it, is covered by the arbitration clause. The judicial authority is not expected to act mechanically while deciding application under Section 8 of the Arbitration Act. This has been further been elaborated at paragraphs-32 and 33 of the decision which read as follows :

> "32. The nature and scope of issues arising for consideration in an application under Section 11 of the Act for appointment of arbitrators, are far narrower than those arising in an application under Section 8 of the Act, seeking reference of the parties to a suit to arbitration. While considering an application under Section 11 of the Act, the Chief Justice or his designate would not embark upon an examination of the issue of "arbitrability" or appropriateness of adjudication by a private forum, once he finds that there was an arbitration agreement between or among the parties, and would leave the issue of arbitrability for the decision of the Arbitral Tribunal. If the arbitrator wrongly holds that the dispute is arbitrable, the aggrieved party will have to challenge the award by filing an application under Section 34 of the Act, relying upon sub-section 2(b)(i) of that section."

> "33. But where the issue of "arbitrability" arises in the context of an application under Section 8 of the Act in a pending suit, all aspects of arbitrability will have to be decided by the court seized of the suit, and cannot be left to the decision of the arbitrator. Even if there is an arbitration agreement between the parties, and even if the dispute is covered by the arbitration agreement, the court where the civil suit is pending, will refuse an application under Section 8 of the Act, to refer the parties to arbitration, if the subject matter of the suit is capable of adjudication only by a public forum or the relief claimed can only be granted by a special court or Tribunal."

10). It is thus seen that the Apex Court has drawn clear distinction between the provisions of Sections 8 and 11 of the Arbitration Act to hold that in case of an application under Section 8 filed in a pending suit, all aspects of arbitrability will have to be decided by the Court seized of the suit. In the light of this specific decision of the Apex Court, in my considered opinion, the CGIT has correctly gone into the issue of arbitrability of the dispute between the parties and not left it to the decision of the arbitrator.

11). In the case of *Booz Allen (supra)*, the Apex Court was required to consider arbitrability of a mortgage suit

for sale of the mortgaged property. At paragraphs-35 and 36, it noted the general position in law on the issue of arbitrability and cited examples of non-arbitrable disputes. The Apex Court has observed :-

> "35. The Arbitral Tribunals are private for a chosen voluntarily by the parties to the dispute, to adjudicate their disputes in place of courts and tribunals which are public fora constituted under the laws of the country. Every civil or commercial dispute, either contractual or non-contractual, which can be decided by a court, is in principle capable of being adjudicated and resolved by arbitration unless the jurisdiction of the Arbitral Tribunals is excluded either expressly or by necessary implication. Adjudication of certain categories of proceedings are reserved by the legislature exclusively for public fora as a matter of public policy. Certain other categories of cases, though not expressly reserved for adjudication by public fora (courts and tribunals), may by necessary implication stand exclude from the purview of private fora. Consequently, where the cause/dispute is inarbitrable, the Court where a suit is pending, will refuse to refer the parties to arbitration, under Section 8 of the Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes."

> "36. The well-recognised examples of non-arbitrable disputes are : (I) disputes relating to rights and liabilities which give rise to or arise out criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (ii) guardianship matters ; (iv) insolvency and winding-up matters; (v) testamentary matters (grant of probate, letters of administration and succession

> certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes."

**12).** Mr. Seervai, argues that "industrial dispute" is not found in examples of non-arbitrable disputes enumerated in the decision by the Apex Court. He has extensively submitted that, action-in-rem alone can be justifiably put in the category of non-arbitrable disputes, it being concerned with a right exercisable against the world at large. The dispute in the proceedings between the petitioner and the respondent, according to him, is an action-in-personam in which the rights and interests of the parties themselves in the subject matter of the case, are determined. Therefore, the dispute between the parties is arbitrable.

**13).** In my opinion, the test to be applied for the disputes of the nature in the present proceedings is not, whether, the action therein is in-rem or in-personam. The test would be whether adjudication of such disputes is reserved by the legislature exclusively for public fora as a

matter of public policy. Because even an action-in-personam, if reserved for resolution by a public fora as a matter of public policy would become non-arbitrable. For that purpose, it will be necessary to look into the object, as well as, broad scheme of the I.D. Act.

**14).** The preamble of the I.D. Act, shows that it is enacted to provide a machinery and forum for the investigation of industrial disputes and for the settlement thereof and for the purposes analogous and incidental thereto. If one goes through the scheme of the I.D. Act, it becomes clear that it's object is to improve the service conditions of the industrial workers and to bring about industrial peace which in turn can accelerate productive activity in the country resulting in its prosperity. In other words, the I.D. Act is a beneficial legislation, This aspect of the legislation has been noted by the Apex Court in its decision in **Life Insurance Corporation of India V/s. D.J. Bahadur, 1980 Lab IC page 1218** as follows :

". The personality of the whole statute, ……has a welfare basis, it being a beneficial legislation which

protects labour, promotes their contentment and regulates situations of crisis and tension where production may be imperiled by untenable strikes and blackmail lockouts. The mechanism of the Act is geared to conferment of regulated benefits to workmen and resolution, according to a sympathetic rule of law, of the conflicts, actual or potential, between managements and workmen. Its goal is amelioration of the conditions of workers, tempered by a practical sense of peaceful co-existence, to the benefit of both-not as in a neutral position, but with restraints on *laissez faire* and concern for the welfare of the weaker lot."

15). The different authorities established for resolution of the disputes under the I.D. Act are,(i) Works Committee consisting of representatives of the employers and workmen engaged for the establishment in the establishment specified under Section 3, (ii) Conciliation Officers appointed by appropriate government (Section 4), (iii) Board of Conciliation appointed by the appropriate government (Section 5), (iv) Courts of enquiry constituted by the appropriate government (Section 6), (v) Labour Courts (Section 7) and (vi) Industrial Tribunals (Section 7A). Section 10 provides for reference of disputes to the Board, Courts and Tribunals. The procedure for making a reference is to make an application, in the prescribed

form to the appropriate Government. The reference could be of an existing industrial dispute or of the one which is apprehended. Section **13** casts duty upon the conciliation officer to hold conciliation proceedings in case of the industrial dispute that exists or is apprehended. The duty is mandatory where the dispute relates to a public utility service. He is required to try to promote a settlement between the parties. If he succeeds in his attempt, he sends a report to the appropriate government alongwith memorandum of settlement signed by the parties to the dispute. In case of failure in promoting settlement, he submits a failure report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about the settlement. The report is also required to state the reasons on account of which, in his opinion, a settlement could not be arriverd at. On receipt of the failure report from the conciliation officer, the appropriate government, if satisfied, makes a reference either to a Board or to the Labour Court or to the Industrial Tribunal or National Tribunal. Section **12(6)**

provides that report under Section 12 shall be submitted within 14 days from the commencement of the conciliation proceedings which time can be extended by the agreement between the parties to the dispute. Similarly, Sections 14 and 15 require the Court of Enquiry, the Labour Courts and the Industrial Tribunals to complete the proceedings before them within the specified time. Sections 16 to 19 provide for submission of the Award by Courts, it's publication and it's effect. Chapters V, VA, VB and VC covering Sections 22 to 25U, create rights and obligations and Chapter VI deals with penalties. Section 10A of the I.D. Act provides for voluntary reference of an industrial dispute to arbitration with a separate and specific procedure prescribed for it. The scheme of the I.D. Act thus indicates that, an otherwise private dispute between the employer and employee, has been placed on a different plane. The obvious reason therefor is that, the dispute and it's resolution, impacts not just the concerned individual employee, but has a potential to impact the other employees and consequently the industry. Therefore, the

emphasis under the I.D. Act is for resolution of dispute by conciliation.

**16).** As has been submitted by Mr. Naidu, the Apex Court has already placed industrial disputes in a category separate from the suits tried in a Civil Court in its decision in *Rajasthan S.R.T. Corporation* **(**supra**).** The core question arising for consideration of the Apex Court in that case was : Where a dispute between the employer and employee involves the recognition or enforcement of a right or obligation created by I.D. Act and where such dispute amounts to industrial dispute within the meaning of I.D. Act, whether civil court's jurisdiction to entertain a suit with respect to such dispute is barred. The Apex Court, after referring to the principles enunciated in its decision in **Dhulabhai Vs. State of M.P. reported in AIR 1969 S.C. page 78** for deciding questions of jurisdiction, observed as follows **:-**

> ". At the same time, we must emphasise the policy of law underlying the Industrial Disputes Act and the host of enactments concerning the workmen made by Parliament and State legislatures. The whole idea has been to provide a speedy, inexpensive

and effective forum for resolution of disputes arising between workmen and their employers. The idea has been to ensure that the workmen do not get caught in the labyrinth of Civil Courts with their layers upon layers of appeals and revisions and the elaborate procedural laws, which the workmen can ill afford. The procedures followed by Civil Courts, it was thought, would not facilitate a prompt and effective disposal of these disputes. As against this, the Courts and Tribunals created by the Industrial Disputes Act are not shackled by these procedural laws nor is their award subject to any appeals or revisions. Because of their informality, the workmen and their representatives can themselves prosecute or defend their cases. These forums are empowered to grant such relief as they think just and appropriate. They can even substitute the punishment in many cases. They can make and re-make the contracts, settlements, wage structures and what not. Their awards are no doubt amenable to jurisdiction of the High Court under Article **226** as also to the jurisdiction of this Court under Article **32**, but they are extra-ordinary remedies subject to several self-imposed constraints. It is, therefore, always in the interest of the workmen that disputes concerning them are adjudicated in the forums created by the Act and not in a Civil Court. That is the entire policy underlying the vast array of enactments concerning workmen. This legislative policy and intendment should necessarily weigh with the Courts in interpreting these enactments and the disputes arising under them."

**17).** There are two more distinctive features of the trial of industrial disputes by the fora provided under the I.D. Act. The Act empowers the adjudicating authorities

under it, to give reliefs such as, reinstatement of wrongfully dismissed or discharged workmen, which may not be permissible in common law or for that matter not justified under the terms of the contract between the employer and the employee. Therefore, the types of the remedies that the arbitrator can award in the matters of industrial disputes is also required to be looked into, whether the remedies that can be awarded by him is limited by considerations of public policy and whether the remedies that can be awarded by him are same as the remedies that can be awarded by an Industrial Court. In case of an industrial dispute relating to dismissal or discharge of an employee, the arbitrator would be powerless in granting the relief of reinstatement, outside of I.D. Act.

**18).** The second distinctive feature, is the voluntary arbitration provided for under Section **10**A of the I.D. Act. Section **10**A provides, a detailed procedure on how the arbitration thereunder shall proceed, which includes mandatory forwarding of the arbitration to the appropriate government and the Conciliation Officer. It also includes,

publication of notification thereafter so that the employers and workmen not parties to the arbitration agreement, but are concerned in the dispute, get an opportunity of presenting their case before the arbitrator. The Section does not entirely leave the matter in the hands of the parties to the arbitration agreement and the private fora of their choice. This shows that an industrial dispute is not treated solely as an individual dispute, but is always approached from the context of the larger picture of the industry as a whole. The status of the arbitrator appointed under Section 10A of the I.D. Act, is also different. To put it in the words of the learned Single Judge of this Court from Nagpur Bench in the unreported decision in *Western Coalfield's* case (supra), he falls "within the rainbow of statutory tribunals". The relevant observations from the decision read as follows :

> "The Act seeks to achieve social justice on the basis of collective bargaining. Collective bargaining is a technique by which dispute as to conditions of employment is resolved amicably by agreement rather than coercion. The dispute is settled peacefully and voluntarily although reluctantly between labour and management. The voluntary

> arbitration is a part of infrastructure of dispensation of justice in the industrial adjudication. The arbitrator thus falls within the rainbow of statutory tribunals."

Further, Section 10A(5) of the I.D. Act, specifically excludes application of the Arbitration Act to the arbitrations under the Section.

19). In the decision in the *Western Coalfield's* case (supra), the learned Single Judge of this Court was considering challenge to an arbitration Award on the ground of non-compliance with the procedure envisaged by Section 10A(3) and (3A) of the I.D. Act. One of the arguments made before the Court, was that it was required to be challenged by filing proceedings before the District Court under Section 34 of the I.D. Act for setting the same aside. The argument was held to be misconceived with an observation that the Award could not be treated as an Award under the Arbitration Act and that the industrial dispute cannot be settled in any other mode or manner or *de-hors* Section 10A of the I.D. Act. In the same decision, at paragraph-22 the learned Single Judge after noting the

decision of the Apex Court in *Rajasthan S.R.T. Corporation* (supra) has held that an industrial dispute cannot be subject to the Arbitration Act. The observations read as follows :-

> "This judgment of the Hon'ble Apex Court, therefore shows that the Industrial Dispute between parties before this Court could not have been placed before the Civil Court under Section 9 of the Code of Civil Procedure. It is, therefore obvious that the said dispute could not have been subjected even to the Arbitration and Conciliation Act, 1996. The Industrial Dispute and its resolution is the exclusive province and necessary mechanism including forums therefor are provided under the Industrial Disputes Act, 1947."

**20).** It is thus seen that, adjudication of industrial disputes is reserved by the legislature exclusively for the authorities established under the I.D. Act, as a matter of public policy. Therefore, by necessary implication the same stands excluded from the purview of the private fora of the arbitrator. Consequently, the industrial dispute is rendered inarbitrable outside the I.D. Act. In such a case, the Court where the dispute is pending, must refuse to refer the parties to arbitration, under Section 8 of the Arbitration Act, even if they have agreed upon arbitration as the

forum for settlement of disputes between them.

**21).** It has been the contention of the respondent that, there can be no reference of the dispute in their applications to the arbitration under Section **8** of the Arbitration Act because Opponents No.**2** to **4** to their application are not parties to the arbitration agreement contained under Clause **17** of the letter of appointment. Mr. Naidu, submits that the Apex Court in its decision in **Sukanya Holdings Pvt. Ltd Vs. Jayesh H. Pandya and another, reported in AIR 2003 S.C. page 2252**, has held that when the Court is required to refer the parties to arbitration, the reference must be in respect of the entire subject matter of the suit. There can be no bifurcation of the cause of action, as also the bifurcation of the proceedings between parties, who are parties to the arbitration agreement and others. The relevant observations of the Apex Court are found at paragraph**-16** of the judgment.

> "**16**. The next question which requires consideration is**-** even if there is no provision for partly referring the dispute to arbitration, whether such a course is

> possible under Section 8 of the Act ? In our view, it would be difficult to give an interpretation to Section 8 under which bifurcation of the cause of action that is to say the subject matter of the suit or in some cases bifurcation of the suit between parties who are parties to the arbitration agreement and others is possible. This would be laying down a totally new procedure not contemplated under the Act. If bifurcation of the subject matter of a suit was contemplated, the legislature would have used appropriate language to permit such a course. Since there is no such indication in the language, it follows that bifurcation of the subject matter of an action brought before a judicial authority is not allowed."

The decision in *Sukanya Holdings* (supra) have been approved and confirmed by the Apex Court in paragraph 52 of the decision in *Booz Allens* case. As already seen above, opponents no. 2 to 4, who are not parties to the arbitration agreement are parties to the complaint filed by the respondents. In that circumstance, there cannot be bifurcation of the proceedings between the petitioner on the one hand and opponents no. 2 to 4 on the other. Mr. Seervai seeks to submit that opponents no. 2 to 4 are infact not necessary parties to the complaint. They have been impleaded to the proceedings for the purpose of defeating the arbitration clause in the letter of

appointment. I find no merit in the submission advanced, since the complaint as filed by the respondent sets out sufficient material therein for impleading opponents no.2 to 4 thereto. The liability of opponents no. 2 to 4 to pay the dues to the respondents would be a matter of enquiry by the Court. He then submits that the correctness of law stated in Sukanya's case (supra) was questioned before the Apex Court in Civil Appeal No.7134 of 2012 in **Chloro Controls (I) P. Ltd. vs. Severn Trent Water Purification Inc. & Ors**. However in it's decision, in that appeal, the Apex court at paragraph 133 has observed that in the facts of that case it was not necessary for it to examine the correctness or otherwise of the judgment in the case of Sukanya (supra). This would mean that the law laid down in Sukanya's case still holds the field. Therefore, for this another reason also, it must be held that the dispute raised by the respondents in the complaints filed by them is not arbitrable.

22. For the reasons stated above, the petitions are dismissed with costs. The petitioners may file their written

statement or affidavit-in-reply to the interim application filed by the respondents by 30th November, 2012.

(Smt. R.P. SondurBaldota, J.)