

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 16<sup>TH</sup> DAY OF FEBRUARY, 2022**



**PRESENT**

**THE HON'BLE MR. RITU RAJ AWASTHI, CHIEF JUSTICE**

**AND**

**THE HON'BLE MR.JUSTICE SURAJ GOVINDARAJ**

**COMMERCIAL APPEAL NO. 32 OF 2022**

**BETWEEN :**

1 . ITI LIMITED  
A COMPANY INCORPORATED UNDER THE  
COMPANIES ACT, 1956  
HAVING ITS REGISTERED ADDRESS AT  
ITI BHAWAN DOORAVANINAGAR  
BANGALORE 560016.  
REP BY ITS AUTHORIZED SIGNATORY  
MR. RAJA RAM PANDEY

...APPELLANT

(By Sri RAGHURAM CADAMBI, VARSHA HITTIHALLI AND SHYAM  
HARINDRA, ADVOCATES)

**AND:**

1 . ALPHION CORPORATION  
IN THE STATE OF DELAWARE  
HAVING ITRS CORPORATE HEADQUARTER AT 196,  
PRINCETON HIGHSTOWN ROAD  
PRINCETON JUNCTION, NJ 08550,  
UNITED STATES OF AMERICA.  
REP BY ITS DIRECTOR.

**AND ANOTHER**

...RESPONDENTS

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT, 1996 PRAYING TO SET ASIDE ARBITRAL AWARD DATED 07.10.2021 AND ETC.

THIS APPEAL COMING ON FOR ORDERS THIS DAY, **SURAJ GOVINDARAJ J** DELIVERED THE FOLLOWING:

**ORDER**

1. Upon the filing of the above matter, the registry has raised an objection as regards how a Commercial Appeal (COMAP) is maintainable when filed under Section 34 of the Arbitration and Conciliation Act, 1996 (***for short, 'A & C Act, 1996'***), since an award dated 07.10.2021 is sought to be set aside.
2. In response to the same, the appellant has filed a memo dated 26.01.2022 stating that the Commercial Division of this Court would have Jurisdiction to determine the dispute raised being a challenge to an award passed in an International Commercial Dispute. It is also stated that if this Court were to be of the opinion that a Commercial Appeal is not maintainable, leave be granted to convert the Commercial Appeal to an Arbitration Case or any such other case type as this Court deems fit.

3. Vide order dated 03.02.2022, a Co-ordinate Bench of this Court considering the submission of Sri.Nanda Kumar C.K., learned Senior Counsel appearing for the appellant that the proceedings of this nature would have to be considered by a Single Bench since the appellant will lose a forum of the appeal under Section 37 of the A & C Act, 1996, directed the Registrar (Judicial) to examine and put up a note on that behalf. Pursuant thereto, the Registrar (Judicial) has submitted a report on 10.02.2022. The said report reads as under:-

**"REPORT**

*This Hon'ble Court vide order dated 03.02.2022 in Commercial Appeal No.32/2022 has passed the following order"*

*"Sri. Nandakumar C.K. learned Senior Advocate appearing for the appellant submits that invide of Section 2(1)€(II) of the Arbitration and Conciliation Act, 1996, a petition will be maintainable before a Court which has original jurisdication. Therefore, the matter will have to be considered by Hon'ble Single Judge, otherwise the appellant will lose a forum of appeal under Section 37 of the Act.*

*The Registrar (Judicial) shall examine and put up a note in this behalf.*

*Call on 10.02.2022".*

*2. Section 4 of the Commerical Courts Act, reads as under:*

**"4(1)** In all High Courts, having (ordinary original civil jurisdiction), the Chief Justice of the High Court may, by order, constitute Commercial Division having one or more Benches consisting of a single Judge for the purpose of exercising the jurisdiction and powers conferred on it under this Act.

**4(2)** The Chief Justice of the High court shall nominate such Judges of the High Court who have experience in dealing with commercial disputes to be Judges of the Commercial Division".

3. Section 10(1) of the Commercial Courts Act reads as under:

**"10. Jurisdiction in respect of arbitration matters.-** Where the subject-matter of an arbitration is a commercial dispute of a Special Value and –

(1) If such arbitration is an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed in a High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court."

4. It is submitted that in the instant case, the appellant has called in question the International Arbitration Award before this Hon'ble Court Under Section 34 of the Arbitration and Conciliation Act by way of Commercial Appeal.
5. It is submitted that since our High Court does not have original civil jurisdiction, Commercial Division cannot be constituted as contemplated under Section 4 of the Commercial Court Acts and further all applications arising out of International Commercial Arbitration cannot be heard and disposed off by the Commercial Division.
6. It is submitted that Section 34 of the Arbitration and Conciliation Act makes provision for filing of application for setting aside the Arbitral Award. It is further submitted that the word "Court" has been defined under Section 2(1)(e)(ii) of the Arbitration and Conciliation Act as under:-

**"2(1)(e)(ii)** - in the case of international commercial arbitration, the High Court in exercise

*of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court".*

7. *Therefore, on a joint reading of Section 34 and 2(1)(e)(ii), it is clear that the remedy available to the appellant is to file a Arbitration Case (AC) under Section 34 of the Arbitration and Conciliation Act before this Hon'ble Court. If the value of the appeal is less than fifteen lakhs, the said case will be posted before the Single Judge and if the value of the appeal is more than fifteen lakhs, the said case will be posted before the Division Bench.*
  8. *It is further submitted that the Commercial Appeal filed by the appellant under Section 34 is not maintainable".*
4. Sri. Nandakumar, learned Senior counsel submitted that
- 4.1 The above petition has been filed under Section 34 of the A & C Act, 1996, challenging the arbitral award dated 07.10.2021 passed by the Arbitral Tribunal.
  - 4.2 The dispute has arisen out of a Technology Collaboration Agreement (TCA) dated 26.10.2007 executed between the petitioner and the 1<sup>st</sup> respondent for the purpose of developing products and rendering services to prospective customers, including BSNL and MTNL in the telecom sector.

- 4.3 In view thereof, he submits that the dispute is a commercial dispute in terms of 2(c)(xvi) of the Commercial Courts Act, 2015 (for short, 'CC Act') since it relates to "Technology Development Agreement".
- 4.4 The value of the dispute is more than the specified value of Rs.3 lakhs, the claim amount towards principal alone being Rs.1,30,95,59,986.01. Therefore, the dispute is a commercial dispute meeting the threshold requirement under Section 2 (1) of the C.C.Act.
- 4.5 The arbitration is an International Commercial Arbitration in terms of section 2(1)(f)(ii) of the Act since the respondent herein who was the claimant in the arbitral proceedings is a company, which is registered in the United States of America i.e., outside the territory of Republic of India and therefore would come within the purview of Section 2(1)(f)(ii) since one of the parties is a body

corporate incorporated in a country other than India.

4.6 By referring to Clause 19.2 of the TCA, it is contended that the seat of the arbitration is in Bangalore, India, the Courts at Bangalore would have exclusive Jurisdiction and therefore, in terms of Section 2(2) of A & C Act, 1996, the arbitration proceedings between the parties would fall within the scope of Part I of the A & C Act and any challenge to the award passed therein would have to be made under Section 34 of the A & C Act, 1996.

4.7 Referring to Section 2(1)(e) of the A & C Act, he submits that in case of International Commercial Arbitration, the High Court having Jurisdiction to hear appeals from decrees of Courts subordinate to that Court would have Jurisdiction to decide the matter.

4.8 By referring to Section 10(1) of the C.C.Act, he states that the Commercial Division where such Commercial Division has been constituted in the High Court would have the Jurisdiction to decide the applications or appeals arising out of such arbitration.

4.9 By referring to Section 4 and 5 of the C.C.Act, it is contended that a Commercial Division and Commercial Appellate Division in the High Court is required to be established in the High Court and this Court on 30.10.2017 had established a Commercial Appellate Division in terms of Section 5 of the C.C.Act to consider the appeals contemplated under Section 13 of the C.C.Act, 2015 which deals with appeals from decrees of Commercial Courts. In that regard, he submits that Commercial Division is also required to be constituted and established by this High Court.



4.10 As regards classification of cases, he submits that commercial appeals under Section 13 of the C.C.Act insofar as arbitration is concerned is restricted to the proceedings under Section 37 of the A & C Act. There is no separate classification now in existence to cater to the proceedings under Section 34 of the A & C Act filed in regard to an International Commercial Arbitration. There was an earlier classification of Arbitration Cases (AC) prior to coming into force of C.C.Act. Thereafter, on coming into force of C.C.Act, there is no specific type assigned in respect of Challenge to an award in an International Commercial Arbitration proceedings. Therefore, there is a classification required to be made by this Court in respect of such matters.

4.11 He submits that there are certain other classifications of cases in respect of International Commercial Arbitration namely:

4.11.1 Arbitration Petition Interim Measure (APIM) is the classification that had been made in respect of proceedings where a party to an international arbitration can seek for interim measure/s in respect of International Commercial Arbitrations.

4.11.2 Arbitration Petition Enforcement of Foreign Arbitral Award (AP.EFA) is the classification that had been made in respect of proceedings where an International Commercial Arbitral Award is sought to be enforced.

4.12 In the above background, he submits that the petitioner is left with no classification under which a proceedings under Section 34 could be filed and since the registry is classifying the same as Commercial Appeal (COMAP) which comes up before a Division Bench in the event of a judgment being passed by a Division

Bench, there is no intra court appeal provided from the Judgement of the Division Bench in COMPA in the High Court of Karnataka. Therefore, denying the benefit under Section 37 of the A & C Act to the petitioner.

5. It is in the above background that the following aspects are required to be determined by this Court:
  - 5.1 Whether a challenge to an award passed in an International Commercial Arbitration can be made before the High Court of Karnataka?
  - 5.2 If so made, would it have to be considered by a Single Judge or Division Bench?
  - 5.3 Is there any limitation on the basis of the pecuniary Jurisdiction for the exercise of powers by the Single Judge or a Division Bench?
  - 5.4 In respect of a challenge to an International Commercial Arbitral Award, would a party to the

same have the benefit of Section 37 of the A & C Act? If so, where would the appeal lie?

5.5 Is the classification of cases now existing sufficient to cater to the Challenge made to an award in any International Commercial Arbitration. If so, which classification would apply? If not, is there a requirement for a new classification?

5.6 Would the above be applicable to other proceedings arising out of International Commercial Arbitration viz., execution of an International Commercial Arbitral Award or interim relief in respect of International Commercial Arbitration?

6. The question as to whether a proceeding challenging an International Commercial Arbitral Award can be instituted in India is no longer *res integra*. The Apex Court in the case of ***BHARAT ALUMINIUM COMPANY VS. KAISER ALUMINIUM TECHNICAL SERVICES INC. reported in [(2012) 2 SCC 552]***, at Para 123 has held as under:-

*123. Thus, it is clear that the regulation of conduct of arbitration and challenge to an award would have to be done by the courts of the country in which the arbitration is being conducted. Such a court is then the supervisory court possessed of the power to annul the award. This is in keeping with the scheme of the international instruments, such as the Geneva Convention and the New York Convention as well as the UNCITRAL Model Law. It also recognizes the territorial principle which gives effect to the sovereign right of a country to regulate, through its national courts, an adjudicatory duty being performed in its own country. By way of a comparative example, we may reiterate the observations made by the Court of Appeal, England in C Vs. D (supra) wherein it is observed that*

*"it follows from this that a choice of seat for the arbitration must be a choice of forum for remedies seeking to attack the award."*

*In the aforesaid case, the Court of Appeal had approved the observations made in A Vs. B wherein it is observed that:-*

*".....an agreement as to the seat of an arbitration is analogous to an exclusive jurisdiction clause. Any claim for a remedy.....as to the validity of an existing interim or final award is agreed to be made only in the courts of the place designated as the seat of arbitration."*

7. From perusal of the above, it is clear that an International Commercial Arbitral Award can be challenged in Indian Courts so long as the arbitral proceedings were held in India even though the arbitration may be an International Commercial Arbitration.

8. In the present case, the arbitration was held in India. The venue and the seat of arbitration is in Bangalore. Therefore, in terms of Para 123 of **BALCO's** case supra, this Court would have the jurisdiction to entertain any challenge to an International Commercial Arbitral Award.
9. What is required to be ascertained is as to before which Bench of this Court, the same has to be allotted.
10. An International Commercial Arbitration Award is defined under Section 2(f) of A & C Act as under:

*(f) "international commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is—*

*(i) an individual who is a national of, or habitually resident in, any country other than India; or*

*(ii) a body corporate which is incorporated in any country other than India; or*

*(iii) <sup>2</sup> \*\*\* an association or a body of individuals whose central management and control is exercised in any country other than India; or*

*(iv) the Government of a foreign country;*

11. 'Court' is defined under Section 2(e) of A & C Act as under:-

<sup>1</sup>[(e) "Court" means—

*(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original Jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil Jurisdiction, having Jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;*

*(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil Jurisdiction, having Jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having Jurisdiction to hear appeals from decrees of courts subordinate to that High Court;]*

12. Thus from the above, it is clear that if in an arbitral proceedings, one of the parties is a national of or is a resident in a country other than India, is a body corporate, which is incorporated in any country other than India or an association whose central management and control is exercised in any country other than India or is a government of a foreign country, the same would be an International Commercial Arbitration. Provided

further that the dispute arises out of legal relationship whether contractual or not considered to be commercial under the law in force in India.

13. The Court which would have Jurisdiction as regards an international commercial arbitral award would be in the event of the Court exercising Ordinary Original Civil Jurisdiction like the presidency Courts of Bombay, Calcutta, Madras and the High Court of Delhi, the said High Courts and in all other cases, the High Court having Jurisdiction to hear appeals from decrees of Courts subordinate to that High Court.
  
14. The High Court of Karnataka does not exercise Ordinary Original Civil Jurisdiction and therefore, it is the later portion of Section 2(e)(ii) which would be applicable and the Roaster judge of this Court having Jurisdiction to hear the appeals from decrees of Courts sub-ordinate to it, is the Roaster Judge who would have the Jurisdiction to consider any aspect relating to International Commercial



Arbitration. Suffice it to say that in respect of an International Commercial Arbitration it is only the High Court which could exercise Jurisdiction and not the District Court or a Commercial Court constituted under the C.C.Act, 2015.

15. Section 3 of the C.C.Act reads as under:

***Section 3: Constitution of Commercial Courts.***

<sup>1</sup>***[3. Constitution of Commercial Courts.--*** (1) *The State Government, may after consultation with the concerned High Court, by notification, constitute such number of Commercial Courts at District level, as it may deem necessary for the purpose of exercising the Jurisdiction and powers conferred on those Courts under this Act:*

<sup>2</sup>*[Provided that with respect to the High Courts having Ordinary Original Civil Jurisdiction , the State Government may, after consultation with the concerned High Court, by notification, constitute Commercial Courts at the District Judge level:*

*Provided further that with respect to a territory over which the High Courts have Ordinary Original Civil Jurisdiction , the State Government may, by notification, specify such pecuniary value which shall not be less than three lakh rupees and not more than the pecuniary Jurisdiction exercisable by the District Courts, as it may consider necessary.]*

<sup>3</sup>*[(1A) Notwithstanding anything contained in this Act, the State Government may, after consultation with the concerned High Court, by notification, specify such pecuniary value which shall not be less than three lakh rupees or such higher value, for whole or part of the*

*State, as it may consider necessary.];*

*(2) The State Government shall, after consultation with the concerned High Court specify, by notification, the local limits of the area to which the Jurisdiction of a Commercial Court shall extend and may, from time to time, increase, reduce or alter such limits.*

*(3) The <sup>4</sup>[State Government may], with the concurrence of the Chief Justice of the High Court appoint one or more persons having experience in dealing with commercial disputes to be the Judge or Judges, of a <sup>5</sup>[Commercial Court either at the level of District Judge or a court below the level of a District Judge].*

16. Section 3 of C.C.Act deals with the Constitution of Commercial Courts and envisages the creation of such number of commercial courts at District level as deemed necessary by the State Government in consultation with the concerned High Court.
17. In terms of Sub-Section 3 of Section 3, the State Government may with the concurrence of the Chief Justice of the High Court appoint one or more persons having experience in dealing with commercial disputes to be a Judge or Judges of a Commercial Court either at the level of District Judge or a Court below the level of a District Judge. In Karnataka the Commercial Courts are

constituted at the District level and not below the District level, this aspect would also have to be considered on the Administrative side if Commercial Courts are required to be established at the Taluka level as also the modalities thereof.

18. Section 3A of C.C.Act reads as under:

***Section 3A: Designation of Commercial Appellate Courts.***

***<sup>1</sup>[3A. Designation of Commercial Appellate Courts.-- Except the territories over which the High Courts have Ordinary Original Civil Jurisdiction , the State Government may, after consultation with the concerned High Court, by notification, designate such number of Commercial Appellate Courts at District Judge level, as it may deem necessary, for the purposes of exercising the Jurisdiction and powers conferred on those Courts under this Act.]***

19. In terms of Section 3A of C.C. Act, the State Government may after consultation with the concerned High Court by a notification, designate such number of Commercial Appellate Courts at District Judge level in the territories over which the High Court does not exercise Ordinary Original Civil Jurisdiction .

20. Section 4 of CC Act reads as under:-

**Section 4: Constitution of Commercial Division of High Court.**

*(1) In all High Courts, having <sup>2</sup>[Ordinary Original Civil Jurisdiction ], the Chief Justice of the High Court may, by order, constitute Commercial Division having one or more Benches consisting of a single Judge for the purpose of exercising the Jurisdiction and powers conferred on it under this Act.*

*(2) The Chief Justice of the High Court shall nominate such Judges of the High Court who have experience in dealing with commercial disputes to be Judges of the Commercial Division.]*

21. In terms of Section 4 of C.C.Act, in all High Courts, having Ordinary Original Civil Jurisdiction , the Chief Justice of the High Court may constitute Commercial Division having one or more Benches consisting of a single Judge for the purpose of exercising the Jurisdiction and powers conferred on it under the Act. This Section applies only to High Courts exercising Ordinary Original Civil Jurisdiction and not to Courts which do not exercise such Ordinary Original Civil Jurisdiction. Thus a

Commercial Division is contemplated only as regards courts that exercise Ordinary Original Civil Jurisdiction .

22. Section 5 of the CC Act reads as under:-

***Section 5: Constitution of Commercial Appellate Division.***

*(1) After issuing notification under subsection (1) of section 3 or order under sub-section (1) of section 4, the Chief Justice of the concerned High Court shall, by order, constitute Commercial Appellate Division having one or more Division Benches for the purpose of exercising the Jurisdiction and powers conferred on it by the Act.*

*(2) The Chief Justice of the High Court shall nominate such Judges of the High Court who have experience in dealing with commercial disputes to be Judges of the Commercial Appellate Division.*

23. In terms of Section 5, the Chief Justice of the concerned High Court may constitute Commercial Appellate Division having one or more Division Benches for the purpose of exercising the Jurisdiction and powers conferred under the Act. This Section, however, does not make a distinction as regards High Courts exercising Ordinary Original Civil Jurisdiction and those that do not. Thus a Commercial Appellate Division can be established both in

High Courts exercising Ordinary Original Civil Jurisdiction and those that do not.

24. Reading of all the above provisions would indicate that

24.1 In the event of a Commercial Court being created at a level below that of a District Judge, the initial filing will be before the said Commercial Court being a Court at a level below the District Judge and the appeal would be to the District Court exercising appellate Jurisdiction.

24.2 In the event of a Commercial Court being created at the level of a District Judge, the initial filing will be before the said Commercial Court at the level of the District Judge and the appeal would be to the Commercial Appellate Division of the High Court.

24.3 If a High Court exercises Ordinary Original Civil Jurisdiction the initial filing will be before the Commercial Division of a Single Judge of the High

Court having Ordinary Original Civil Jurisdiction, the appeal shall lie to the Commercial Appellate Division, consisting of a Division Bench.

25. This being the Jurisdiction in respect of the commercial matters, Section 10 of C.C.Act makes a special demarcation in respect of arbitration matters, international and domestic.
26. Section 10 reads as under:

***Section 10: Jurisdiction in respect of arbitration matters.***

*Where the subject-matter of an arbitration is a commercial dispute of a Specified Value and--*

*(1) If such arbitration is an International Commercial Arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed in a High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.*

*(2) If such arbitration is other than an International Commercial Arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.*

*(3) If such arbitration is other than an International Commercial Arbitration, all applications or appeals arising*

*out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that would ordinarily lie before any principal civil court of original Jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial Jurisdiction over such arbitration where such Commercial Court has been constituted.*

27. In terms of sub-clause (1) of Section 10, where a Commercial Division is constituted in the High Court, all applications or appeals arising out of International Commercial Arbitration would have to be filed in the Commercial Division where such Commercial Division has been constituted by such High Court as regards arbitration other than International Commercial Arbitration.
28. In terms of Sub-clause (2) of Section 10, if arbitration is other than an International Commercial Arbitration, all applications or appeals would have to be filed on the original side of the High Court which shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in the High Court.



29. In all other cases, where such arbitration is other than an International Commercial Arbitration, where there is no Commercial Division created, all applications or appeals would lie before any Principal Civil Court of original Jurisdiction in a district shall be heard and disposed by the Commercial Court exercising territorial Jurisdiction over such arbitration where such commercial Court has been constituted.

30. Thus, it is clear that

30.1 Any challenge to an arbitral award other than an International Commercial Arbitration, for convenience, referred to as a Domestic Arbitral Award would have to be made before the Commercial Court or a Commercial Division of the High Court if created.

30.2 In respect of International Commercial Arbitration, the same would have to be filed before a Commercial Division where it has been constituted.

31. The problem arises on account of Section 10 not advertent to a situation where a Commercial Division has not been constituted. As referred to supra, a Commercial Division is required to be constituted in all High Courts exercising Ordinary Original Civil Jurisdiction in terms of Section 4 of C.C.Act. Neither Section 4 of CC Act nor any other provision provides for the constitution of a Commercial Division by High Court not having Ordinary Original Civil Jurisdiction.
32. It is due to this that confusion has been created in the State of Karnataka. Since the High Court of Karnataka does not exercise Ordinary Original Civil jurisdiction and as such, no Commercial Division has been established. However, a Commercial Appellate Jurisdiction has been established in terms of Section 5 of the C.C.Act.
33. In view of the same, the registry has been posting all challenges made to an International Commercial Arbitral Award before the Division Bench, which is exercising

powers in terms of Section 5 of C.C.Act being the Commercial Appellate Division.

34. The classification sought to be made is also that of a Commercial Appeal (COMAP) so as to be placed before the Commercial Appellate Division.
35. In the result, the proceedings under section 34 challenging the International Commercial Arbitration are being heard and disposed of by a Division Bench.
36. Section 37 of the A & C act reads as under:-

**Section 37: Appealable orders**

*(1) <sup>1</sup>[Notwithstanding anything contained in any other law for the time being in force, 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:--*

*2[(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) Appeal shall also lie to a court from an order of the arbitral tribunal--*

*(a) accepting the plea referred to 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.*

37. Section 37 of the A & C Act commences with a non-*abstente* clause "*Notwithstanding anything contained in any other law for the time being in force*" and goes on to mandate that an appeal "*shall*" lie from an order setting aside or refusing to set aside an arbitral award under Section 34 to the Court authorised by law to hear appeals from original decrees of the Court passing the order.
38. In the event of a Commercial Court passing an order, there is no confusion inasmuch as it is the Commercial Appellate Division constituted under Section 5 of CC Act, which will have Jurisdiction to hear and decide an appeal under Section 37 of A & C Act.
39. If the Challenge to an International Commercial Arbitral Award is required to be considered by the Commercial Appellate Division consisting of a Division Bench Section

37 which refers to a Court authorised by law to hear appeals from original decrees of the Court would get frustrated inasmuch as it is a Single Judge of this Court who is authorised to hear appeals from original decrees upto a pecuniary limit of Rs.15 lakhs and beyond that by a Division Bench.

40. The anomaly that gets created is that the order passed by the Commercial Appellate Division would have to be challenged either before a single judge if the pecuniary value is less than 15 lakhs or by a division bench if it is more than 15 lakhs which is completely illogical. In the above background there is meaning which needs to be attributed to the various provisions under the A and C Act and also the CC Act referred to supra.

41. Section 10 refers to applications or appeals arising out of International Commercial Arbitration to be filed before the Commercial Division, which in terms of Section 4 is a single judge. Unfortunately, in the year 2018, when an amendment was made to Section 4, the words "*Ordinary*

*Civil Jurisdiction*” was replaced with “*Ordinary Original Civil Jurisdiction*”, which has resulted in this anomaly.

42. Insofar as the State of Karnataka, the High Court of Karnataka does not exercise Ordinary Original Civil Jurisdiction. Section 4 of CC Act, though provides for the establishment of a Commercial Division in the High Court exercising Ordinary Original Civil Jurisdiction, does not bar such establishment in a High Court not exercising Ordinary Original Civil Jurisdiction. More so when section 4 of the CC Act deals with the Challenge to a Domestic Arbitral Award.
  
43. Section 10 of CC Act requires an application or an Appeal as regards an International Commercial Arbitration to be filed before the Commercial Division. Section 10 of the CC Act, does not distinguish between a High Court exercising Ordinary Original Civil Jurisdiction from a High Court, which does not so exercise.

44. A meaningful reading when given to the said provisions would lead to the irresistible conclusion that even in so far as the High Court not exercising Ordinary Original Civil Jurisdiction, a Commercial Division is required to be established for purposes of consideration of applications and appeals arising out of International Commercial Arbitrations.
45. Such Commercial Divisions would have to be constituted comprising of Single Judges which would give meaning and purport to clause (1) of Section 10 of C.C.Act, thereby any application or appeal in respect of International Commercial Arbitration could be filed before the Commercial Division and in the event of Challenge required to be made to the orders passed by the Commercial Division, the same could be filed before the Commercial Appellate Division constituted under Section 5 of CC Act.
46. The statutory appellate remedy mandated to be provided under Section 37 of the A & C Act, 1996 would also be

available to the parties, and they would not be deprived of such statutory appeal.

47. Prior to coming into force of the C.C.Act, the appeal against the order under Section 34 of A & C Act was provided to this Court as a Miscellaneous First Appeal (Arbitration Act), which was being heard by a Division Bench. On the CC Act coming into force, this Jurisdiction is exercised by the Commercial Appellate Division. This has resulted in two classifications Miscellaneous First Appeal (Arbitration Act) and Commercial Appeals (COMAP), it would be required that proceedings under both these classifications are heard and disposed of by the same Bench, namely the Commercial Appellate Division created in the High Court.

48. This brings us to the other question of pecuniary Jurisdiction, the Single Judge of this Court exercising Jurisdiction over Appeals from Decrees up to Rs. 15,00,000 and any amount over it is the Jurisdiction of the Division Bench.



49. Reading of Section 4 of CC Act with Sub Section (1) of Section 10, any application or appeal arising out of the International Commercial Arbitration would have to be filed before a Commercial Division i.e., a Single Judge Bench of this Court performing the duties of a Commercial Division. In view thereof, we are of the considered opinion that the bifurcation of appeals on the basis of pecuniary value being Rs.15 lakhs and below or Rs.15 lakhs and above would not apply to a Commercial Division constituted and as such, any proceedings where an application or appeal or a petition arising out of an International Commercial Arbitration would have to be placed before a Commercial Division of a Single Judge Bench of this Court.
50. In the event of an appeal required to be filed as regards setting aside or refusing to set aside an International Commercial Arbitral Award under Section 34, as also any appeal to be filed as regards the grant or refusing to

grant any measure under Section 9, an appeal would lie to the Commercial Appellate Division.

51. Hence, we answer the questions raised as under:

51.1. A challenge to an award passed in an International Commercial Arbitration can be made before the High Court of Karnataka in view of Section 2 (e) (ii) of the A & C Act 1996.

51.2. In terms of Section 10 (1) of the CC Act, a challenge to an International Commercial Arbitral Award would have to be considered by a Commercial Division established in the High Court consisting of a Single Judge.

51.3. The Commercial Divisions were constituted as a special Division, the ordinary limitation of the pecuniary Jurisdiction for the exercise of powers of the Single Judge would not apply and the pecuniary jurisdiction would be unlimited.

51.4. Section 37 of the A & C Act mandates the provision of an Appellate remedy, the Commercial Appellate Division which exercises Jurisdiction under Section 37 of the A & C Act 1996 would also be the forum for challenging a decision of the Commercial Division of the High Court.

51.5. The classification of cases now existing is not sufficient to cater to the Challenge made to an award in any International Commercial Arbitration. A fresh Classification would have to be made as regards such proceedings. One relating to proceedings under Section 34 as regards the Challenge to an International Commercial Arbitral Award and another relating to the orders of the Commercial Divisions challenging the Order passed under Section 9 of the A & C Act as regards International Commercial Contracts or Arbitral Proceedings.

51.6. Any Proceedings seeking for the execution of an International Commercial Arbitral Award or seeking for interim relief in respect of International Commercial Arbitration would also have to be dealt with by the Commercial Division comprising of a Single Judge.

51.7. All pending proceedings which meet the above criteria pending before the Commercial Appellate Division are directed to be reclassified and transferred to the Single Judge exercising jurisdiction over the Commercial Division.

52. Registry is directed to place this order before the Hon'ble Chief Justice on the administrative side for passing necessary orders relating to the above.

53. List on 25.02.2022.

**Sd/-  
CHIEF JUSTICE**

**Sd/-  
JUDGE**