

## **LEGAL UPDATES**

### **❖ In the absence of written consent, courts cannot refer parties to arbitration on oral consent given by their counsel: SC**

- In Kerala State Electricity Board v Kurien E Kalathil, the Supreme Court has observed that “Arbitrator/Tribunal is a creature of the contract between the parties.”
- Since referring the parties to arbitration has serious civil consequences of taking them away from the stream of civil courts, Civil Procedure Code, 1908 and the Indian Evidence Act, 1972, in the absence of an arbitration agreement, joint memo or joint application of the parties, the courts is not to refer the parties to arbitration based only on the oral consent of the legal counsels of the parties.

<http://www.livelaw.in/courts-cant-refer-parties-arbitration-oral-consent-given-counsel-sc-read-judgment/>

### **❖ Consumer Forums Need not Refer Parties to Arbitration in terms of valid arbitration agreement: SC Upholds NCDRC Order**

- Dismissing the appeals filed by a group of builders, the Supreme Court has upheld the order of the National Consumer Dispute Redressal Commission (NCDRC) and has held that an arbitration clause in agreements cannot circumscribe the jurisdiction of a consumer fora, notwithstanding the amendments made to Section 8 of the Arbitration Act.
- Further, a three member bench of the NCDRC, presided by Justice DK Jain made the following observations:
  - The disputes which are to be adjudicated and governed by statutory enactments, established for specific public purpose to sub-serve a particular public policy are not arbitrable;
  - There are vast domains of the legal universe that are non-arbitrable and kept at a distance from private dispute resolution;
  - The subject amendment was meant for a completely different purpose, leaving status quo ante unaltered and subsequently reaffirmed and restated by the Hon’ble Supreme Court;
  - Section 2(3) of the Arbitration Act recognizes schemes under other legislations that make disputes non-arbitrable;
  - In light of the overall architecture of the Consumer Act and Court-evolved jurisprudence, amended sub-section (1) of Section 8 cannot be construed as a mandate to the consumer forums, constituted under the Act, to refer the parties to Arbitration in terms of the Arbitration Agreement.

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