

# Dispute Resolution Hotline

November 09, 2005

## SUPREME COURT REDEFINES SECTION 11 OF ARBITRATION AND CONCILIATION ACT, 1996

In a landmark judgment delivered on October 26, 2005 by a seven judge bench of the Supreme Court of India, ("Court") in the matter of S.B.P. and Co. V/s Patel Engineering Ltd. and Another, the Court, inter alia, held that the power exercised by the Chief Justice of the High Court or the Chief Justice of India under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("Act") is not an administrative power but a judicial power. The judgment overrules the judgment delivered in the matter of Konkan Railway Corporation Ltd. and Another v. Rani Construction Pvt. Ltd. It is clarified that the judgment will not have a retrospective effect but from the date of the judgment, the position as adopted in the judgment will govern even pending applications under Section 11(6) of the Act.

The Court observed that whether there was an arbitration agreement, was not merely a jurisdictional fact for commencing the arbitration itself, but it was also a jurisdictional fact for appointing an arbitrator on a motion under Section 11(6) of the Act. A Chief Justice could appoint an arbitrator in exercise of his power only if there existed an arbitration agreement and without holding that there was an agreement, it would not be open to him to appoint an arbitrator saying that he was appointing an arbitrator since he has been moved in that behalf and the applicant before him asserts that there is an arbitration agreement. The Court further observed that acceptance of such an argument, with great respect, would reduce the high judicial authority entrusted with the power to appoint an arbitrator, an automaton and sub-servient to the arbitral tribunal, which he himself brings into existence.

The Court held that power under Section 11(6) could be delegated, by the Chief Justice of the High Court only to another judge of that court and by the Chief Justice of India to another judge of the Supreme Court contrary to the existing power of delegation to any institution as per the Act. The Court further held that Chief Justice or the designated judge will have the right to decide the preliminary aspects such as his own jurisdiction, the existence of a valid arbitration agreement, the existence or otherwise of a live claim, the existence of the condition for the exercise of his power and on the qualifications of the arbitrator or arbitrators. The appeal against the Order passed under section 11 (6) of the Act, will lie under Article 136 of the Constitution of India to the Supreme Court. No appeal against an order of the Chief Justice of India or a judge of the Supreme Court designated by him while entertaining an application under Section 11 (6) of the Act.

*This judgment will have a far-reaching impact on the scope of adjudication of the applications for appointment of arbitrators filed under section 11 (6) of the Act. The judgment reduces the length of arbitration proceedings as it limits the number of appeals against order passed under section 11 (6) of the Act but increases the judicial intervention at the stage of appointment of arbitrators.*

-Vyapak Desai & Vivek Kathpalia

Source: S.B.P. and Co. V/s Patel Engineering Ltd. and Another

## DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

## Research Papers

### Little International Guide (India) 2024

November 08, 2024

### Unmasking Deepfakes

October 25, 2024

### Are we ready for Designer Babies

October 24, 2024

## Research Articles

### The Bitcoin Effect

November 14, 2024

### Acquirers Beware: Indian Merger Control Regime Revamped!

September 15, 2024

### Navigating the Boom: Rise of M&A in Healthcare

August 23, 2024

## Audio

### Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

### Renewable Roadmap: Budget 2024 and Beyond - Part I

August 26, 2024

### Renewable Roadmap: Budget 2024 and Beyond - Part II

August 26, 2024

## NDA Connect

Connect with us at events, conferences and seminars.

## NDA Hotline

Click here to view Hotline archives.

## Video

### "Investment return is not enough" Nishith Desai with Nikunj Dalmia (ET Now) at FI18 event in Riyadh

October 31, 2024

### Analysing SEBI's Consultation Paper on Simplification of registration for FPIs

September 26, 2024

