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**Documents having genesis with only a conciliation proceedings are Confidential in India**

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In India Arbitration and Conciliation felids are governed by Arbitration and Conciliation Act,1996 (The Act). The said Act determines the procedural aspect of Arbitration and Conciliation proceedings seated in India including the confidentiality of the documents. Most of the conciliations and mediation fail because parties do not open-up and confidently disclose their settlement options, on the fear that those proposals or documents might be used against them in some other proceedings. In a recent Judgment, delivered on 23<sup>rd</sup> September 2017, reported in SSC Online 2017, Page 1001 **Govind Prasad Sharma and others Vs Doon Valley Officers Co-operative Housing Society Supreme Court of India**, dealt with the permissibility of using a document in a subsequent litigation, which was a part of an earlier Conciliation Proceedings. The Supreme Court of India held that the document having Genesis only from the Conciliation Proceedings are confidential documents and neither the parties nor the arbitrator can rely on those documents, in any other proceedings, in view of the restrictions provided in S.75 and 81 of the Arbitration and Conciliation act,1996.

**Facts & contentions:** The Respondent relied upon a demarcation report made by a Government agency for an earlier Conciliation Proceedings in a later suit, which was objected by the Appellant. The Special Judge in Dehradun specifically referring to Sections 75 and S.81 of the Arbitration and Conciliation Act,1996 dismissed the revision petition filed by the Respondent against an order of refusal to take the above said report as record in a suit. The Respondent filed a Writ petition in the High Court of Uttarakhand at Nainital and the High Court reversed the order of the Special Judge and allowed the document to be produced in the Suit. Against the said order of the High Court, the present Special Leave petition was filed in the Supreme Court of India.

**Legal Provisions:** The Act provides for a confidentiality provision in S.75 by which all matters relating to conciliation are confidential and a provision in S.81 which

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specifies the admissibility of evidence in other proceedings. For the convenience, we reproduce the sections below:

**75. Confidentiality** - *Notwithstanding anything contained in any other law for the time being in force, the conciliator and the parties shall keep confidential all matters relating to the conciliation proceedings.*

*Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purpose of implementation and enforcement.*

**81. Admissibility of evidence in other proceedings** – *The parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings, -*

- a) *views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;*
- b) *admissions made by the other party in the course of the conciliation proceedings;*
- c) *proposals made by the conciliator;*
- d) *the fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator.*

**Conclusion of the Court:** The court rejected the contention that the said document does not fall in to the four categories of documents specified in S.81 and held that the document which was specifically prepared for the conciliation is also covered under S.75 since it has genesis only to conciliation.

**Comments of the Author:** The above said Judgment will surely ensure confidence on the parties, who submit themselves to conciliation proceedings and disclose certain documents and proposals, on the belief that those documents shall not go against them in another proceedings.