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**Order refusing to refer a matter to arbitration by the National Consumer Commission can be challenged only in Supreme Court**

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In a recent Judgement of the Delhi High Court dated 07<sup>th</sup> November 2017 in a case between Emaar MGF land Limited Vs Aftab Singh reported as 2017 SCC Online Del 11437, High court dealt with an application filed under S.37(1) of the Arbitration and Conciliation Act,1996. In the said matter, there was an arbitration clause in the contract between the parties. But the Respondent approached the National Consumer Redressal Commission claiming himself to be a consumer under Consumer Protection Act,1986 seeking immediate delivery of the properties booked by the respondent with alternative prayers of compensation etc., from the Appellant. Since there was an arbitration clause in the contract between the parties, the Respondent filed an application under S.8 of the Arbitration and Conciliation Act,1996 as amended in 2015 seeking to refer the matter to arbitration. It is important to note here that Section. 8 as amended by the 2015 amendment mandates any judicial authority (not only court as it was earlier) to refer the matter to arbitration if there is an arbitration clause between the parties in the contract. Hence National Consumer Disputes Redressal Commission (NCDRC) being a tribunal is also expected to be covered under the said term “Judicial Authority”. But NCDRC refused to entertain the application filed under S.8 relying on an earlier judgment of the tribunal of three judges’ in another matter. Challenging the said order refusing to refer the matter to arbitration, the appellant approached High Court of Delhi under S.37(1) of the Arbitration and Conciliation Act,1996.

**Contention of the Parties:** The Appellant contended that the 2015 amended S.8(1) of the Act, has mandated all the courts and tribunals to refer matters to arbitration if there is an arbitration clause in the contract. Since NCRDC is also a tribunal NCRDC is also bound by the mandate of the amending Act. Moreover, since the power exercised by NCRDC in refusing to refer the matter to arbitration is a power exercised under Arbitration and Conciliation Act,1996 and not under Consumer Protection Act,1986, the application under S.37(1) challenging the above said order of NCRDC refusing to refer the matter to arbitration will lie not before Supreme Court of India but in the High Court of Delhi.

**Decision of the Court:** The Delhi High court did not decide the appeal on merits since it found that the appeal is not maintainable before the High Court since the appeal from the order of the NCDRC is maintainable only before the Supreme Court of India, in view of S.23 of Consumer Protection Act,1986. The said section. 23 provides for an appeal before the Supreme Court on all the orders passed by NCRDC exercising its original jurisdiction.

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**Comments of the Author:** It is important and mandatory that the courts and tribunals refer the matters to arbitration when the contract between the parties has an arbitration clause, since the 2015 Amending Act was brought in to ensure the same. Hopefully the Supreme Court of India will settle the law soon to avoid ambiguity created by the judgment of NCRDC.

