

## SPECIAL LEGISLATION OVERRIDES ARBITRATION LAW OF INDIA

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Arbitration and Conciliation Act 1996 is the procedural law that governs all the arbitrations having the seat of arbitration in India. But at the same time there are some special legislations that provides for a separate procedure and mechanism of arbitration for certain categories of persons/ entities covered under the said legislation. Hence in such cases, there arise conflict between the laws of the country. Supreme Court of India in a recent judgment in the case of chief general manager MP power trading company limited case<sup>2</sup> reaffirmed that in such cases the special legislation overrides the general legislation which is Arbitration and Conciliation Act 1996. The Supreme Court held that the electricity act 2003 being a special legislation and providing an exclusive mechanism of arbitration to adjudicate upon the disputes between licensees and power generating companies, it overrides the provisions of the general procedural law of India, Arbitration and Conciliation Act,1996.

The Genesis of the matter is from the power purchase agreement entered into between Madhya Pradesh electricity board with Narmadha Equipment and later disputes arose between the parties. Hence the respondent Narmadha approached the High Court under section 11(6) of the Arbitration and Conciliation Act, 1996 seeking the High Court to appoint an arbitrator to resolve disputes between the parties. This application was opposed by the MP Power trading company, on the ground that in view of the provisions of section 86 (1) (f) of the electricity act 2003, it was the state electricity Commission which has vested with the exclusive jurisdiction to adjudicate upon disputes between the licensees and the power generating companies. The High Court allowed the application under section 11(6) of the Act which came to be challenged before the Supreme Court of India.

While considering the above said case, Supreme Court of India followed The Judgment of the Supreme Court in the matter of Gujarat Urja case<sup>3</sup> in which it was held that section 86(1)(f) of the act of 2003 is a special provision for adjudication of disputes between the licensee and the power generating companies. Such disputes can be adjudicated upon either by the state Commission or the person or persons to whom it is referred for arbitration. Hence it was further held that 86(1)(f) is a special provision and hence overriding the general provision section 11 of the 1996 act. It also further held that it is well settled that the special law overrides the general law. Hence it was held that Section 11

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<sup>2</sup> Chief General Manager (IPC) MP Power Trading Company Limited Vs Narmada Equipment Pvt Limited (2021) SCC Online SC 225

<sup>3</sup> Gujarat Urja Vikas Nigam Limited Vs Essar Power Limited (2008) 4 SCC 755

of the 1996 act has no application to the question who can adjudicate/arbitrate disputes between licensees and power generating companies and only section 86 (1)(f) shall apply in such a situation.

The above said legal position is approved in two three Judges Judgment of Supreme Court of India in Hindustan Zinc case<sup>4</sup> and NHAI Vs Sayedabad case<sup>5</sup>. Hence, it is well settled that Arbitration and Conciliation Act,1996 shall not be applicable to arbitration cases that are covered under the procedure prescribed in a Special Legislation.



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<sup>4</sup> Hindustan Zinc Limited Vs Ajmer Vidyut Vitran Nigam Limited (2019)17 SCC 82

<sup>5</sup> NHAI Vs Sayedabad Tea Company Limited (2020)15 SCC 161