

## Consumer Disputes Excluded from Arbitration: A Case Study Based On Recent Supreme Court Ruling

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### Abstract

The Supreme Court of India has reaffirmed the non-arbitrability of consumer disputes, strengthening consumer protection frameworks under Indian law. The Consumer Protection Act, 1986, and its successor, the Consumer Protection Act, 2019, were designed to provide efficient, cost-effective, and accessible redressal mechanisms. Despite India's pro-arbitration stance, the judiciary has consistently upheld that consumer disputes, being matters of public interest, cannot be subjected to private arbitration agreements. This study examines key Supreme Court rulings, particularly M/S Emmar MGF Land Limited v. Aftab Singh and M. Hemalatha Devi and Ors. v. B. Udayasri, which cement the position that consumer forums retain exclusive jurisdiction over consumer grievances. The analysis traces the evolution of judicial interpretations, beginning with Fair Engineering Pvt. Ltd. v. N.K. Modi, which granted consumers the discretion to choose between arbitration and consumer forums. The Supreme Court's decision in Booz Allen and Hamilton v. SBI Home Finance laid the groundwork for distinguishing between arbitral rights in personal and non-arbitral rights in rem. Subsequently, the Court reinforced the welfare dimension of consumer protection laws, prioritizing consumer rights over contractual arbitration agreements. The ruling in Hemalatha affirms that consumers cannot be compelled into arbitration against their will. While arbitration remains a preferred dispute resolution mechanism globally, India's approach ensures that consumer interests are not undermined by potentially coercive arbitration clauses. This judgment strengthens consumer rights and sets a precedent for future legal discourse on arbitration in consumer law.

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### 1. INTRODUCTION

The Consumer Protection Act, 1986 ("1986 Act") aims to safeguard consumers' interests and mitigate the vulnerability they encounter in relation to dominant enterprises. The 1986 Act aims to provide a redressal procedure for consumers that is superior, more economical, simpler, more prompt, and more successful<sup>1</sup>. Consequently, the provisions therein are to be construed 'broadly', 'positively', and 'purposefully', particularly considering the enhanced authority granted to the Consumer forum under Section 3 of the 1986 Act. The forums established under the 1986 Act possess quasi-judicial authority, enabling

them to provide particular remedies, award compensation, and impose penalties for non-compliance. Consequently, it is clear that the existing legal framework regarding the safeguarding of consumer rights, whether under the 1986 Act or the current Consumer Protection Act of 2019, is both exceptional and advantageous legislation. The remedies outlined above are specific and a customer cannot be denied access to them if they elect to use such a remedy<sup>2</sup>. The Supreme Court has determined in many rulings that consumer disputes are non-arbitrable, even in the presence of an arbitration agreement between the parties. Adjudication in the Consumer Forum functions in rem and should not be readily subordinated to civil actions or other

<sup>1</sup> Lucknow Development Authority v. M.K. Gupta, (1994) 1 SCC 243

<sup>2</sup> Secretary, Thirumurugan Cooperative Agricultural Credit Society v. M. Lalitha, (2004) 1 SCC 305

dispute resolution mechanisms without the consumer's informed assent. In a time where the well-being of consumers is of utmost importance, a recent ruling by the Supreme Court of India has established a standard that is expected to have a significant impact on several industries. The arbitrability of consumer disputes has been a topic of discussion since the inception of the Consumer Protection Act, 1986. This topic is rendered more significant when contextualised inside India's self-identification as a "pro-arbitration" state. The decision of M/S Emmar MGF Land Limited v. Aftab Singh<sup>3</sup> ("Emmar MGF") has effectively resolved this controversy by implicitly excluding consumer disputes from the scope of arbitration procedures under the Arbitration and Conciliation Act, 1996 ("A&C Act"). This comprehensive study seeks to offer a thorough examination of this significant case, with a specific focus on its ramifications for consumer safeguarding and conflict resolution in India.

## 2. CASE STUDY ANALYSIS

The Supreme Court, for the first time, resolved the issue of the arbitrability of consumer complaints in the case of Fair Engineering Pvt Ltd and Anr v. NK Modi<sup>4</sup> ("Fair Engineering"). Before this case, courts were required to compel the parties to arbitration where a valid arbitration agreement existed, as stipulated by Section 8 of the Arbitration & Conciliation Act. Nonetheless, Fair Engineering weakened this precedent by providing customers the choice to either pursue arbitration procedures or approach the consumer forum. This was based on the premise that the subsequent legislation overrides the preceding one, since the lawmakers of the later Consumer Protection Act ("COPRA") would have considered the provisions of the older law (A&C Act) and so meant to confer it a prevailing effect. The court thus determined that the remedy under COPRA serves as an extra recourse open to consumers, as stipulated in Section 3 of COPRA. In cases such as National Seed Corporation Ltd. and Rosedale Developers Private Limited<sup>5</sup>, the court established that, according to Section 8 of the Arbitration & Conciliation Act, it is not obligatory for the consumer forum to report the disagreement to the Arbitration Tribunal. In Secretary Thirumurugan v. M Lalitha<sup>6</sup>, it was noted that COPRA was established to address conflicts between disparate parties, aiming to protect consumers from exploitation by huge firms in arbitration and civil litigation. The case of Booz Allen and Hamilton v. SBI<sup>7</sup> ("Booz Allen") established a framework for assessing the arbitrability of a dispute.

The court determined that the legislation solely reserves the adjudication of certain types of actions for public forums as a matter of public policy. Consequently, the courts may decline to submit the parties to arbitration under Section 8 of the Arbitration & Conciliation Act, notwithstanding the parties' agreement to arbitrate. The Court enumerated many instances of non-arbitrable conflicts, including marriage problems, testamentary issues, bankruptcy, and winding-up proceedings, thereafter classifying these cases as pertaining to rights in rem. The Court determined that disputes concerning rights in personam (interests enforceable solely against particular individuals) are subject to arbitration, whereas disputes regarding rights in rem (rights enforceable against the general public) are inappropriate for private arbitration and must be

resolved by courts and public tribunals. Nonetheless, disagreements concerning subordinate rights in personam derived from rights in rem are deemed arbitrable and so constitute an exception to the aforementioned norm. Consequent to the aforementioned rule, the Court in A Ayyasamy v. A Paramasivam and Ors<sup>8</sup> ("A. Ayyasamy") categorised consumer disputes as matters pertaining to rights in rem, so deeming them non - arbitrable. It determined that the regular civil court's authority is precluded by the exclusive jurisdiction granted to a consumer court, rendering consumer dispute issues non - arbitrable as a matter of public interest. It was observed that parties are barred from circumventing the legislative mandate in matters controlled by welfare law. The Court thus determined that consumer disputes are entirely non-arbitrable.

## 3. CASE ANALYSIS OF EMMAR MGF LAND LIMITED

### 3.1 Facts of the Case

Prior to exploring the intricacies of the ruling, it is essential to analyze the factual background of the case. A homebuyer filed a complaint against a builder, using the terms of the Consumer Protection Act, 2019. Afterwards, the builder requested the designation of an arbitrator in accordance with Section 11 of the Arbitration and Conciliation Act, 1996, before the Telangana High Court. The High Court dismissed the builder's request, citing that the matter was already under consideration by the District Consumer Disputes Redressal Forum. Notwithstanding this obstacle, the builder tried to bypass the procedure by applying under Section 8 of the Arbitration Act. The Forum rejected this as consumer disputes were deemed non-arbitrable. The builder's following petition for review at the High Court had a similar outcome, resulting in an appeal before the Supreme Court. The primary issue for the Supreme Court in the Emmar MGF case was whether the addition of the phrase "notwithstanding any judgement, decree or order of the Supreme Court or any Court" in Section 8 by the Arbitration and Conciliation (Amendment) Act 2015 mandated the judicial authority to refer a consumer dispute to arbitration proceedings when an arbitration clause exists. In this context, the subsequent matter before the court was whether the amendment aimed to nullify the Supreme Court's rulings that the Consumer Protection Act, as a specialised remedy, may be initiated and pursued regardless of any arbitration agreement between the parties.

### 3.2 Exploration of Legal Questions

The case raised numerous pertinent legal problems, each of which carries importance for consumer safeguarding and arbitration in India:

- Is the nature of consumer disputes inherently non-arbitrable?
- What is the extent of court intervention allowed under Sections 8 and 11 of the Arbitration and Conciliation Act, 1996?

<sup>3</sup> (2019) 12 SCC 751

<sup>4</sup> (1996) 6 SCC 385

<sup>5</sup> Rosedale Developers Private Ltd v. Aghore Bhattacharya,(2018) 11 SCC 337.

<sup>6</sup> Supra No. 2

<sup>7</sup> (2011) 5 SCC 532

<sup>8</sup> (2016) 10 SCC 386

- Consumer Protection and Arbitration: What is the relationship between the Consumer Protection Act, 2019, and arbitration provisions in contracts?

The Supreme Court, examining the aforementioned contentions, determined that the phrase “notwithstanding any judgement, decree or order of the Supreme Court or any other Court” was incorporated by amendment in Section 8 to reduce judicial intervention regarding arbitration agreements. The court is limited to conducting a *prima facie* examination of the arbitration agreement's legality, and the modification aims to restrict judicial participation in this regard. It said that: “Regardless of any previous judicial precedents mentioned, Section 8(1) pertains to those precedents that elucidate the discretion and authority of the judiciary to scrutinise various elements while exercising power under Section 8.” The legislative goal and objective were limited only to the aforementioned features and did not pertain to those matters where arbitration was unnecessary for certain conflicts.

### 3.3 Observations made by the judge

The Welfare Dimension refers to a certain aspect or component related to the well-being and quality of life of individuals or communities. Justice Dhulia, who wrote the opinion, emphasized the focus on the well-being aspect of the Consumer Protection Act. The Court states that the Act is primarily intended to protect consumer interests. Consumer disputes are intended to be resolved in public forums, in accordance with legislative purpose and reflecting public policy concerns. The Court also examined the issue of arbitrability with regard to contractual commitments. The statement highlights that being a party to an arbitration agreement does not necessarily imply that one can be forced to engage in arbitration. It is crucial to carefully analyze the arbitrability of disputes, particularly when they stem from welfare laws such as the Consumer Protection Act. Arbitrability is a principle that excludes some matters from being resolved by arbitration. A noteworthy observation from the ruling is the Court's elucidation on the matter of exclusion from arbitration. Exclusion can be either explicitly stated, as stipulated in the contractual provisions, or implicitly drawn from the nature of the legislation and the issue itself. This point is crucial because it establishes the limits for arbitration and litigation, guided by the intentions of the legislature and the principles of public policy.

### 3.4 Analysis of the Judgment

- The right to choose as a consumer

The Court observed that although consumers have the right to select between arbitration and consumer forums, this choice does not apply to companies such as builders, who are not considered 'consumers' under the Consumer Protection Act, 2019. This fact strengthens the consumer-focused position of the judgment even more.

- Subtle variations in legal authority

The Court highlights that the act of applying under Section 11 of the Arbitration Act does not invalidate or undermine the authority of consumer forums. These elements, such as the

nature of the dispute, public policy concerns, and the legislative intent, have an impact on jurisdiction.

### • Preceding legal judgments

The Court referenced previous rulings, including *Emaar MGF Land Ltd. v. Aftab Singh*, to clarify the restricted extent of judicial interference outlined in Sections 8 and 11 of the Arbitration Act. The clarification said that these revisions do not intend to impose arbitration in situations that are fundamentally non-arbitrable or regulated by specific laws such as the Consumer Protection Act.

### 3.5 Significance and Prospects for the Future

This ruling is a significant turning point in the field of arbitration in India. It strengthens the equilibrium between arbitration as a preferred method for resolving disputes and the need of upholding consumer protection regulations. The verdict confirms that the Consumer Protection Act is a unique law that provides specialized solutions for customers, which cannot be replaced by arbitration agreements. For corporations and construction companies, it acts as a warning, emphasizing the restrictions of contractual arbitration agreements when consumer interests are at stake. The court upheld the judicial precedents relating to the categorization of certain disputes as non-arbitrable and observed that a legislative intent to reverse such precedents was not present. Thus, the judicial approach laid down in the cases of *Booz Allen* and *A Ayyasamy* was adopted by holding that disputes dealing with matters related to public policy, which also include consumer disputes, fall outside the purview of arbitration. The court also realized the special nature of the Consumer Protection Act, which aims to provide a specific remedy to a consumer who is placed at a lower bargaining power with respect to the large corporates. The instances of *A. Ayyasamy* and *Emmar MGF* represent a setback in positioning India as a pro-arbitration nation, presenting a stringent approach to the arbitration of consumer disputes.

Global trends indicate that the legal frameworks of the United States and the European Union include arbitration provisions in consumer contracts. To address the Indian judiciary's concerns about uneven bargaining power and non-consensual arbitration conflicts, Indian lawmakers should follow the EU legislation's approach of prohibiting pre-dispute binding arbitration agreements. The courts must assume the arbitration agreement is inequitable if the parties did not negotiate it separately after the emergence of the dispute. Upon submission to a consumer forum, a party must adhere to its established procedures, so restricting party liberty. Conversely, arbitration ensures party liberty while offering safeguards, such as the authority to dismiss the Arbitrator if their performance is inadequate<sup>9</sup>. Moreover, in instances of cross-border consumer disputes, venues such as Online Consumer Dispute Resolution may be quite beneficial. Such procedures may only be implemented when the courts permit the arbitration of consumer complaints. In this context, the National Seeds Corporation case is very significant since it empowers consumers to choose the venue for dispute settlement. This flexibility is counterbalanced by rigidity, since once a customer decides, it cannot be reversed, therefore providing equal chance to both processes.

<sup>9</sup> *Arbitration and Conciliation Act 1996, s 12.*

### 3.6 Recent judgment of Supreme Court

The Supreme Court (“SC”), in *M. Hemalatha Devi and Ors. v. B. Udayasri*, (2024) 4 SCC 255, reiterated that consumer disputes are non-arbitrable and should not be referred to private forums unless the consumer consents. While arbitration has gained prominence as an efficient method of dispute resolution, the judiciary has firmly opposed the inclusion of specific matters in arbitration, asserting that such disputes should not be subjected to arbitration proceedings. The origin of this dispute is in an Agreement for Sale (“AFS”) entered between the Respondent – Purchaser and the Appellants – Builders for the construction and sale of a villa on a specific parcel of land to the Respondent by the Appellants. The Respondent filed a consumer complaint under the Consumer Protection Act, 2019 (“2019 Act”) with the relevant District Consumer Disputes Redressal Commission (“consumer forum”) following a termination notice issued by the Appellants regarding the aforementioned AFS. The Appellants applied under section 11 of the Arbitration Act to the High Court, seeking the appointment of an arbitrator to resolve issues between the parties, referencing the arbitration provision in the AFS. By a ruling dated 19.05.2022, the High Court denied the application for the appointment of an arbitrator on the basis that the issue was within the jurisdiction of a Judicial Authority (i.e., the consumer forum). Consequently, the Appellants should have used their option under section 8 of the Arbitration Act before reaching the consumer forum. The Appellants applied under section 8 of the Arbitration Act to the consumer forum. The consumer forum rejected the plea, citing the pivotal ruling of the Supreme Court in *Emaar MGF Land Ltd. v. Aftab Singh*<sup>10</sup>, which asserts that an arbitration provision between parties does not negate the authority of a consumer forum.

The Appellants requested a review of the ruling of May 19, 2022, before the High Court. Nonetheless, this was rejected by a ruling dated 25.11.2022, which said that the Appellants had already acted in accordance with the previous decision, so using the law of estoppel against them. The Appellants, dissatisfied with the previous refusal, filed the current appeal before the Supreme Court. The Supreme Court clearly established that consumer disputes are consistently deemed non-arbitrable. The justifications for doing this action are as follows:

- Arbitration is not appropriate for every case. Some conflicts may inherently be unsuitable for arbitration. The Supreme Court established the same principle in *Booz Allen and Hamilton Inc. v. SBI Home Finance Limited and Ors*<sup>11</sup>. In this context, consumer conflicts are inherently non-arbitrable.
- Section 8 of the Arbitration Act must not be used to displace the authority of consumer forums established under the Consumer Protection Act of 1986<sup>12</sup>. The Supreme Court similarly noted this in *Fair Air Engineers (P) Ltd. v. N. K. Modi*<sup>13</sup> and *National Seeds Corporation Limited v. M. Madhusudhan Reddy and Anr*<sup>14</sup>.

The Supreme Court examined the framework of the Arbitration Act in relation to the 1986 Act in *Emaar MGF*. The finding was that the 1986 Act, as beneficial legislation for consumers, does not mandate the referral of consumer problems to arbitration under section 11 of the Arbitration Act, even in the presence of a valid arbitration agreement. In conclusion, the Supreme Court determined that consumer disputes are inherently non-arbitrable. Judicial authorities, including consumer forums and other courts handling petitions for arbitrator appointments, should dismiss any such applications pertaining to consumer disputes. The customer is the principal benefit of the Acts of 1986 and 2019. Consequently, consumers cannot be compelled to relinquish their remedies under the 2019 Act, even if they have entered into a valid arbitration agreement.

## 4. CONCLUSION

Under Indian law, it is now an established concept that an arbitration agreement does not negate the jurisdiction of consumer courts, should the consumer want to pursue remedy via these courts after the issue arises. In *Hemalatha*, the Supreme Court emphasised that the primary rationale for conferring such discretion to consumers is that consumer courts had more authority than arbitral tribunals to provide specific remedies and impose penalties for non-compliance with their directives. An arbitral tribunal has the authority to provide various remedies available to consumers under the Consumer Protection Act, such as compensation, refunds, or injunctions to rectify deficiencies in products or services. Moreover, arbitrators and courts possess the authority to sanction and deter non-compliance with arbitral rulings. This encompasses the arbitrator's authority to impose costs for interim awards, together with the court's jurisdiction to commence contempt actions after the enforcement of a judgement as a court order. Consequently, arbitration often provides the remedies desired by a customer. Nonetheless, certain conditions may make arbitration inappropriate for addressing specific consumer issues. For example, incidents concerning the supply of potentially dangerous products or services may impact public welfare. In these situations, the fundamentally confidential character of arbitration in India may inhibit these issues from being publicly known. While arbitration processes are not inherently secret, some stipulations, such as Section 42A of the Arbitration Act and/or confidentiality clauses in the regulations of certain arbitral institutions, safeguard the secrecy of arbitration proceedings and verdicts.

The autonomy afforded to customers, whether in *Emaar* or *Hemalatha*, to choose arbitration may inadequately protect the public's right to be informed about conflicts with wider social implications. The stance adopted in *Emaar* or *Hemalatha* particularly addresses situations when consumers, often disadvantaged by their diminished negotiating power, agree to arbitration provisions. These contracts, usually standard-form agreements, require customers to consent to arbitration as a prerequisite for receiving goods or services. By allowing consumers to access consumer courts post-dispute, the courts seek to rectify the inherent imbalances of such agreements. This aims to guarantee that customers are not permanently obligated by prior arbitration agreements, which they may have accepted under coercion or without the ability

<sup>10</sup> (2019) 12 SCC 751.

<sup>11</sup> (2011) 5 SCC 532, pp. 35 – 36.

<sup>12</sup> Despite the repeal of the 1986 Act, the Supreme Court, referencing the 2019 Act, concluded that this change is inconsequential, as the fundamental objective of both legislations is to safeguard consumers

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and offer them a straightforward and cost-effective mechanism for addressing grievances.

<sup>13</sup> (1996) 6 SCC 385, p. 16.

<sup>14</sup> (2012) 2 SCC 506, pp. 64 – 66.

to negotiate equitable terms. The Supreme Court's verdict establishes a clear precedent in favor of consumer welfare above contractual freedoms in the area of dispute resolution, within a legal environment that is becoming more intricate. This is a notable advancement in aligning the objectives of streamlined arbitration with strong consumer safeguard measures. This significant ruling, which provides thorough justification and consequences, is expected to provide the foundation for future legal conflicts at the complex intersection of consumer law and arbitration in India.

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Conflict of interest declared none.

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2. Secretary, Thirumurugan Cooperative Agricultural Credit Society v. M. Lalitha, (2004) 1 SCC 305
3. Rosedale Developers Private Ltd v. Aghore Bhattacharya, (2018) 11 SCC 337
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