

ARBITRATION BUSINESS & COMMERCIAL LAWS. (2010). By A.R. Lakshmanan. Universal Law Publishing Co. Pvt. Ltd., C-FF-1A, Dilkhush Industrial Estate, Delhi-110033. Pp. xxii + 326. Price Rs.550/-.

INDIA BEING a country with vibrant globalised economy, the alternative dispute resolution mechanism in business and commercial transactions has played a significant role in resolving disputes amicably in a judicious manner. The knowledge of commercial laws is indispensable for every one as international trade and corporate laws are applied in a regular manner in the day to day commercial transactions. As such, the need to have a lucid understanding of the intricacies of commercial and arbitration laws is truly realized with a view to attend to the needs of the International market and to provide Indian legal perspective of business laws.

The author of the present book under review¹ has come out with an outstanding compilation of a series of Supreme Court judgments with good piece of writing; fostering the growth of alternate dispute resolution in commercial and business laws in this country. It clearly portrays the author's insight into corporate and financial matters. On the law of arbitration business commercial laws, this is the first book of its kind and a comprehensive authoritative work in the country. The first edition of this book brought out in 2010, the author, former Chairman of Law Commission of India and Judge of the Supreme Court, with his four decades of professional experience, has given special attention to arbitration, business and commercial law. It is a self-contained work, a classic in itself, compiling a series of Supreme Court judgments delivered during the tenure of the author as a judge of the Supreme Court of India. The discussions by the author have a human touch with insight into financial matters involving national and international trade law. The work is enriched with profound knowledge of the author who is a jurist of eminence. It is a ready referencer with thought provoking text of daily use for imbibing knowledge of commercial and arbitration laws. It gives a perfect understanding of complicated and intricate propositions of the fast changing commercial world.

1. A.R. Lakshmanan, *Arbitration Business & Commercial Laws* (2010).

The book is a compilation of Supreme Court judgments delivered by the author relating to arbitration, business and commercial laws. The book is broadly divided in two parts. The first part traces the case law on various aspects of arbitration law like the issue of appointment of arbitrator by the court, *etc.* and the second part focuses on case law on business and commercial laws. The book also contains one appendices running into thirty pages containing the legislation viz: the Arbitration and Conciliation Act, 1996.

Some of the remarkable judgments of the author in the first part of the book are noteworthy including the one, on least judicial intervention in the matter of appointment of arbitrators, is *National Highways Authority of India v. Bumibiway DDB (IV) Ltd.*,² where the court had held, curtailing the powers of the High Court, that the High Court cannot assume jurisdiction when the Indian Roads Congress, which was supposed to appoint the presiding arbitrator when the nominated arbitrators failed to appoint the presiding arbitrator within thirty days of appointment of second arbitrator, had not declined or refused to appoint the presiding arbitrator. In *Hari Shankar Singhania v. Gaur Hari Singhania*,³ the author had held that family settlement must be treated differently from any other formal commercial settlement and as such settlement in the eyes of law ensures peace and good will among the family members. The author further substantiated this proposition by holding that the application under section 20 of the Arbitration Act, 1940 was not barred by limitation as the right to apply under section 20 accrued to the appellant on the date of last correspondence between the parties. It was further held that the technicalities of procedural laws, *etc.* should not be put at the risk of implementation of a settlement drawn by a family. In *Jindal Vijaynagar Steel v. Jindal Praxiar Oxygen Co. Ltd.*,⁴ it is held by the author that on the question of jurisdiction; the jurisdiction of the High court under the letters patent appeal is different from the jurisdiction of civil courts under section 20 of Code of Civil Procedure, 1908 and same rules cannot be applied between unlikes. A very interesting observation has been made by the author in *Paramjeet Singh Patheja v. ICDS Ltd.*,⁵ that an arbitral award is neither a decree nor an order of payment under section 9(2) of the Presidency Towns Insolvency Act, 1909. Further, the author,

2. 2006 (4) ARB LR 1 (SC).

3. JT 2006 (4) SC 251.

4. 2006 (3) ARB LR 340 (SC).

5. AIR 2007 SC 168.

in this inflationary age, finds escalation to be normal and allowed the arbitrator to go into the question of escalation and award payment even in the absence of an arbitration clause in the agreement.⁶ Another judgement of import given by the author noted in this part is *Ravi Prakash Goel v. Chandra Prakash Goel*,⁷ in which he had held that a legal heir by the virtue of the will in his favour derives the legal right to commence arbitration by moving an application for the appointment of an arbitrator in view of the provisions of sections 40 and 46 of Partnership Act, 1932 read with section 40 of the Arbitration Act, 1940. In effect, it was held that the word “party” as used in the Partnership Act, 1932 did not exclude the legal heirs, legal representatives, etc.

The second half of the book deals with some noteworthy decisions of the author from cases where market fee levied on the sale and purchase of “certified seeds” was dismissed holding that they were non-agricultural produce.⁸ Another landmark judgment of the author was *O. Konavalov v. Commander Coast Guard Region*,⁹ where full wages and perquisites were awarded to all sea men on board from the sale proceeds of the ship which was confiscated by the Government of India. This was in lieu of basic human rights afforded under the Constitution of India and section 445 of the Merchant Shipping Act, 1958. In *Percept D’marker (India) Pvt. Ltd. v. Zabeer Khan*,¹⁰ the court quashed the clause in the agreement which contained a first refusal clause pursuant to which the appellant was to be given an opportunity to match any third party offer made to the respondent before he could be permitted to enter into an agreement with any third party. The clause was deemed to be in violation of section 27 of the Contract Act, 1872. In *The Chairman SEBI v. Shriram Mutual Fund*,¹¹ it was laid down by the author that imputing *mens rea* into the provisions of chapter VIA of the SEBI Act was against the plain language of the statute and frustrated the entire purpose and object of introducing the chapter as the penalty was mandatory on the contravention of the provisions.

It is apparent that case law in this book has been lucidly, intelligibly and compositely discussed while making it interesting with relevant

6. *Food Corporation of India v. A.M. Ahmed and Co.* AIR 2007 SC 829.

7. JT 2007(4) SC 523.

8. *Krisi Utpadan Mandi Samiti v. Pilibhit Pant Nagar Beej Ltd.* 2004 (1) AWC 605 (SC).

9. JT 2006 (3) SC 567.

10. JT 2006 (11) SC 596.

11. JT 2006 (11) SC 164.

provisions of law. Further, it reflects that the author held humanitarian values very close to him while pronouncing the judgments. His judgments are marked with exceptional court craft and the insight into the myriad facets of the law on the subject which is praise worthy. The author's experience and wisdom in his writing will definitely go a long way in illuminating the readers to comprehend the growth of ADR in the present era.

The book, with the collection of judgments authored by a former judge of the apex court with diverse shades and complexions, is an innovative and an exemplary exercise. It is a very informative, useful and handy reference book in the realm of commercial law; it is practical oriented with innate understanding of trade law and arbitration law. The work is a ready reckoner for professionals, law teachers, students, corporate organizations and the litigants. The book would serve the ultimate goal of educating arbitration law which will go a long way in attaining the faster judicial delivery system. The book would have been of far reaching importance had the series of judgments been accompanied with short commentaries in brief. Moreover, the work may be enriched with case law on the latest international developments in arbitration commercial business/trade laws. The book is moderately priced, rich bound, well presented and useful for all the readers and it is hoped that the author shall keep it up-dated in future.

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