**LANDMARK JUDGMENTS UNDER ARBITRATION ACT.**

 **I] SEC.7 -ARBITRATION AGREEMENT AND SEC.8 POWER TO REFER PARTIES TO ARBITRATION**

**1. AIR 2011 SC 2507**

|  |
| --- |
| **Booz Allen and Hamilton Inc**v. **SBI Home Finance Ltd. and Ors** |

|  |
| --- |
| Suit for enforcement of mortgage by sale - Is enforcement of right in rem - Suit should be tried by Civil Court and not by arbitral tribunal - Reference to arbitration, not tenable. |

- enumerated some of non arbitrable disputes and held that such action would be an action in rem and not in personam

- Adjudication of certain categories of proceedings are reserved by the Legislature exclusively for public fora as a matter of public policy. Certain other categories of cases, though not expressly reserved for adjudication by a public fora (courts and Tribunals), may by necessary implication stand excluded from the purview of private fora. Consequently, where the cause/dispute is inarbitrable, the court where a suit is pending, will refuse to refer the parties to arbitration, under section 8 of the Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes. The well recognized examples of non-arbitrable disputes are: (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences;

 (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody;

 (v) testamentary matters (grant of probate, letters of administration and succession certificate); and

 (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes.

**2. AIR 2016 SC 4675**

|  |
| --- |
| **A. Ayyasamy**v. **A. Paramasivam**and Ors. |

|  |
| --- |
| Reference to arbitrator - Mere allegations of fraud by one party against other - Would not nullify effect of arbitration agreement between parties - Such issues can be determined by Arbitral Tribunal. |

- where there are serious allegations of fraud, they are to be treated as non-arbitrable and it is only the civil court which should decide such matters. However, where there are allegations of fraud simplicitor and such allegations are merely alleged, we are of the opinion it may not be necessary to nullify the effect of the arbitration agreement between the parties as such issues can be determined by the Arbitral Tribunal.

**3. AIR 2017 SC 2105**

|  |
| --- |
| **Indus Mobile Distribution Pvt. Ltd**v. **Datawind Innovation Pvt. Ltd**and Ors. |

|  |
| --- |
| 'Seat of arbitration' - 'Neutral venue' can be chosen by parties to arbitration - Even if no cause of action may have arisen at neutral venue, not having jurisdiction in classical sense. |

 Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to seat is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction - that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Section 16 to 21 of the CPC be attracted. In arbitration law however, as has been held above, the moment seat is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.

**4. 2018 DGLS(SC) 338**

Cheran Properties Limited
 Versus
 Kasturi and Sons Limited and Others

Section 7 - Arbitral agreement - Binding on non-signatory - Circumstances in which parties entered into arbitral agreement may reflects intention to bind both signatory and non-signatory entities - Factors such as relationship of non-signatory to party which is signatory to agreement, commonality of subject matter and composite nature of transaction weigh in balance - Group of companies doctrine is essentially intend to facilitate fulfilment of mutually held intent between parties, where circumstances indicate that intent was to bind both signatories and non-signatories.

**5.AIR 2016 SC 5359**

|  |
| --- |
| **Ananthesh Bhakta Represented by Mother Usha A. Bhakta**and Ors. v. **Nayana S. Bhakta**and Ors. |

|  |
| --- |
| Reference to arbitration - Original or certified copy of arbitration agreement though not accompanied with application - But filed at time of consideration of such application by court - Does not entail rejection of application under S. 8(2). |

**6.2017 SCC(2) 268 Greaves Cotton Limited** Versus
 United Machinery and Appliances

Right to seek reference of dispute to arbitration - When cannot be said to be waived - Application under section 8 of defendant is rejected on ground that defendant sought further time to file written statement and there by waived his right to refer dispute to arbitration - Held, seeking further time to file written statement does not amount to making first statement on substance of dispute. Hence, order rejecting application under section 8, set aside

**7. 2006 SCC (7) 275 Rashtriya Ispat Nigam Limited & Anr** Versus
 Verma Transport Company

App u/s 8 can be made even after filing of say to interim appn

**8.2003 SCC (5) 531 Sukanya Holdings Pvt.Ltd.** Versus
 Jayesh H.Pandya and another

- A matter is not required to be refferred to arbitration if no applicatn is made

- app u/s8 is mandatory

- the court has no suo-moto jurisdiction to refer the dispute between the parties to arbitration.

Power to refer to Arbitration -- Whether the Cause of Action can be bifurcated to be tried in part by the Court and in part by the Arbitration Tribunal -- Civil Procedure Code, 1908, Section 89 cannot be used to interpret Section 8 -- Reasons: (1) If bifurcation of the subject matter of a Suit was contemplated, the legislature would have used appropriate language to permit such a course -- (2) Bifurcation will delay the proceedings -- (3) Cost of litigation would increase -- (4) Parties will be harassed more -- (5) Bifurcation of Cause of Action may result in possibility of conflicting judgements and orders by two different forums.

**9. 2018 DGLS(SC) 165 Kerala State Electricity Board and Another** Versus
 Kurien E.Kalathil and Another

 Code of Civil Procedure, 1908, Section 89 - Arbitration and Conciliation Act, 1996, Section 7 - Absence of arbitral agreement - Reference to arbitration - Since referring parties to arbitration has serious consequences of taking them away from stream of civil courts and subject them to rigour of arbitration proceedings - In absence of arbitration agreement - Court can refer them to arbitration only with written consent of parties either by way of joint memo or joint application.