

**IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE DIVISION  
ORIGINAL SIDE**

**APO/48/2021  
WITH AP/590/2011**

**STARLIFT SERVICES PRIVATE LIMITED  
VS  
SYAMA PRASAD MOOKERJEE PORT, KOLKATA**

**AND**

**APO/141/2023  
WITH AP/915/2011**

**STATE OF WEST BENGAL  
VS  
RAJPATH CONTRACTORS AND ENGINEERS LTD AND ANR.**

**BEFORE:**

**The Hon'ble JUSTICE DEBANGSU BASAK**

**-AND-**

**The Hon'ble JUSTICE MD. SHABBAR RASHIDI**

For the Appellant : Mr. Sabyasachi Choudhury, Sr. Adv.  
Mr. Rajarshi Dutta, Adv.  
Mr. Soorjya Ganguli, Adv.  
Mr. Shounak Mukhopadhyay, Adv.  
Ms. Arti Bhattacharyya, Adv.  
...in APO/48/2021.

Mr. Suman Kr. Dutt, Sr. Adv.  
Ms. Noelle Banerjee, Adv.  
Ms. Nilanjana Adhya, Adv.  
Mr. Paritosh Sinha, Adv.  
Mr. Arindam Mandal, Adv.  
Ms. Swagata Ghosh, Adv.  
...in APO/141/2023

For the Respondent : Mr. Tilak Kr. Bose, Sr. Adv.  
Mr. Ashok Kr. Jena, Adv.  
...in APO/48/2021

Mr. Sakya Sen, Sr. Adv.

Mr. Priyankar Saha, Adv.

Ms. Srijani Mukherjee, Adv.

...in APO/141/2023

HEARD ON : April 9, 2026

DELIVERED ON : April 9, 2026

**DEBANGSU BASAK, J.:-**

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**Scope of the Appeals**

1. Two appeals under Section 37 of the Arbitration and Conciliation Act, 1996 are taken up for analogous hearing as some of the issues involved are same.
2. For the sake of convenience the two appeals are referred to as first and second in accordance with the time that they were filed. The impugned judgments and orders in both the appeals emanated from proceeding filed under Section 34 of the Act of 1996 prior to the Act of 2015 coming into force. The two proceedings under Section 34 of the Act of 1996 were pending on the Constitution of the Commercial Division by the High Court. Neither the registry of the High Court nor the parties caused transfer of the two proceedings to the Commercial Division.
3. APO 48 of 2021 (first appeal) is directed against the judgment and order dated December 24, 2020 passed in AP 590 of 2011. By the impugned judgment and order, learned Single Judge allowed the application under Section 34 of the Act of 1996 and set aside the award dated April 18, 2011.
4. APO 141 of 2023 (second appeal) is directed against the judgment and order dated December 24, 2020 passed in AP 590 of 2011.
5. By the impugned judgment and order, learned Single Judge allowed the application under Section 34 of the Act of 1996 and set aside the award dated April 18, 2011.

6. Common issues falling for consideration in the two appeals are as follows :-

“(i) What is the effect of the provisions of the Commercial Courts Act, 2015 on a proceeding under Section 34 of the Arbitration and Conciliation Act, 1996 subsequent to the establishment of the Commercial Division?

(ii) Would a judgment and order passed by a non-Commercial Division Court after the establishment of the Commercial Division, in a proceeding filed before coming into effect of the Act of 2015 and involving a commercial dispute within the meaning of the Act of 2015 be a nullity?

(iii) Can Clause 15 of the Letters Patent, 1865 be involved to assail a judgment and order passed by a non-Commercial Division Single Judge, in a proceeding involving commercial dispute subsequent to the establishment of the Commercial Division?

(iv) To what relief or reliefs are the parties entitled in such situations?

#### **Contentions of the Appellant in First Appeal**

7. Mr. Sabyasachi Choudhury, learned Senior Advocate appearing for the appellant in the first appeal submits that, the dispute involved between the parties is a commercial dispute within the meaning of Section 2 (1) (c) (xviii) of the Act of 2015. He submits that, a contract for operation and maintenance of two Mobile Harbour Cranes with back up

support equipment at the Container Terminal in the Kolkata docks of Syama Prasad Mookerjee Port, Kolkata was entered into between the parties. He submits that, disputes and differences arose between the parties in respect of such contract which was referred to arbitration. Therefore, according to him, the provisions of Section 2 (1) (c) (xviii) of the Act of 2015 stood attracted.

8. Mr. Choudhury, learned Senior Advocate appearing for the appellant in the first appeal submits that, the impugned judgment and order was passed on December 24, 2020. He points out that, the Act of 2015 came into effect from October 23, 2015 by virtue of Section 1 (3) thereof. The proceeding under Section 34 of the Act of 1996 was, however, instituted in 2011. He refers to Section 15 of the Act of 2015 and submits that, with the establishment of the Commercial Division, the proceeding was required to be transferred to the Commercial Division which was not done. He points out that, the Commercial Division of the High Court was constituted by virtue of a Notification dated July 16, 2016. Parties also did not apply under Section 15 (5) of the Act of 2015 for transfer.

#### **Contentions of the Respondent in First Appeal**

9. Mr. Tilak Bose, learned Senior Advocate appearing for the respondent in the first appeal submits that, the institution of the proceedings cannot be said to be without jurisdiction, since, the same was done in 2011. The Act of 2015 became

effective by virtue of Section 1 (3) of the Act of 2015 on and from October 23, 2015.

- 10.** Mr. Tilak Bose, learned Senior Advocate appearing for the respondent in the first appeal submits that, since, no objection with regard to the jurisdiction of the High Court to pass the impugned judgment and order was taken at the first available opportunity, the appellant is precluded from taking the same. In support of his contentions with regard to the inherent lack of jurisdiction and the objection as to jurisdiction to be taken at the first available opportunity, Mr. Bose, relies upon **(1954) 1 SCC 710 (Kiran Singh And Others Vs. Chaman Paswan And Others)**, **1962 (2) SCR 747 (Seth Hiralal Patni Vs. Sri Kali Nath)** and **2007 (13) SCC 650 (Subhash Mahadevasa Habib Vs. Nemasa Ambasa Dharamdas)**.
- 11.** Mr. Tilak Bose, learned Senior Advocate appearing for the respondent in the first appeal refers to a bunch of orders passed from time to time. He submits that, the Single Judge as also the Division Bench passed orders from time to time in the Non-commercial Division. He submits that, the appellant did not object to this lack of jurisdiction at any point of time.
- 12.** Mr. Tilak Bose, learned Senior Advocate appearing for the respondent refers to the provisions of the Act of 2015 as also to the High Court of Calcutta Commercial Courts Practice Directions, 2021. He submits that, neither the Registry of the

High Court, nor the parties caused the transfer of the proceedings from the Non-commercial Division to the Commercial Division in terms of Section 15 of the Act of 2015 prior to the date of impugned judgment and order.

- 13.** Mr. Tilak Bose, learned Senior Advocate appearing for the respondent in the first appeal submits that, there is a fundamental difference between inherent lack of jurisdiction and, the Court loosing jurisdiction during the pendency of the proceedings. In the facts and circumstances of the present case, he submits that, the filing of the proceedings cannot be said to be without jurisdiction or that, the Court lacked inherent jurisdiction when the proceeding was filed. He submits that, the point of jurisdiction is required to be decided taking the date of filing of the proceedings rather than the date, when, the impugned judgment and order was passed. Viewed from such perspective, he submits that, the impugned judgment and order cannot be said to be passed without jurisdiction or that, the same stands vitiated due to inherent lack of jurisdiction.

#### **Contentions of the Appellant in Second Appeal**

- 14.** Mr. Suman Kr. Dutt, learned Senior Advocate appearing for the appellant in the second appeal submits that, the disputes between the parties in the second appeal emanate out of a work's contract. Such disputes and differences were referred to arbitration resulting in an award. The appellant in the

second appeal filed an application under Section 34 of the Act of 1996 before the High Court in 2011 challenging the award. The impugned judgment and order is dated May 4, 2023, passed by the Court in the Non-commercial Division. He submits that, since, the dispute involve a commercial dispute within the meaning of Section 2 (1) (c) (vi) of the Act of 2015, the Court passing the impugned judgment and order, did not possess requisite jurisdiction when it did so.

15. Mr. Suman Kr. Dutt, learned Senior Advocate appearing for the appellant in the second appeal submits that, the issue of jurisdiction should be decided on the date, when, the impugned judgment and order was passed since, a statute that is the Act of 2015 rendered the Court passing the impugned judgment and order, without jurisdiction on the date, when, it passed such judgment and order.
16. Mr. Suman Kr. Dutt, learned Senior Advocate appearing for the appellant in the second appeal, draws the attention of the Court to **2026:CHC-OS:15-DB (Tractel Tirfor India Pvt. Ltd. Vs. Tractel International S.A.S.)** and submits that, since the impugned judgment and order was passed by a Non-commercial Court, the present appeal is maintainable under Clause 15 of Letters Patent, 1865. The legality and validity of the impugned judgment and order can be tested by the present appeal court in the Non-commercial Division.

17. Mr. Suman Kr. Dutt, learned Senior Advocate appearing for the appellant in the second appeal relies on the judgment and order dated April 1, 2026 passed in APO/144/2023 (**Awam Marketing LLP Vs. M/S Orient Beverages Limited And Ors**) for the proposition that, the Court should set aside the impugned judgment and order and direct the proceedings under Section 34 of the Act of 1996 to be transmitted to the Commercial Division and be disposed of therein on merits.

**Contentions of the Respondent in Second Appeal**

18. Mr. Sakya Sen, learned Senior Advocate appearing for the respondent in the second appeal submits that, the initiation of the proceedings under Section 34 of the Act of 1996 cannot be said to be wholly without jurisdiction. He submits that, the issue of jurisdiction of the Court passing the impugned judgment and order should be decided on the date of the filing of the proceedings and not on the date of the impugned judgment and order.
19. Mr. Sakya Sen, learned Senior Advocate appearing for the respondent in the second appeal relies upon a decision of the Co-ordinate Bench dated August 28, 2019 passed in **GA/938/2019 with APO/82/2019 With CS/26/2005 (Surajit Sen Vs. The Royal Bank of Scotland NV)** and submits that, the rigours of the Act of 2015 will apply notwithstanding the fact, that the impugned judgment and order was passed by a Court in the non-Commercial Division.

He submits that, since, the same learned Single Judge takes up commercial matters as also the non-commercial matters in the same Court room on the same day, such fact, should be taken into consideration while deciding the issue of jurisdiction. He points out that, the intent of the legislature was expeditious disposal of a commercial dispute. Treating the impugned judgment and order as a nullity due to lack of jurisdiction will militate against the intent of the legislature of expeditious disposal of a proceeding involving a commercial dispute. Therefore, he submits that, no interference is called for on the issue of lack of jurisdiction so far as the second appeal is concerned.

20. Mr. Sakya Sen, learned Senior Advocate appearing for the respondent in the second appeal contends that, initially the appeal was admitted with the appellant being required to furnish certain securities. Interim order in the appeal was subsequently vacated expressly when, the appeal was dismissed for default. Although, the appeal was restored, interim order was not restored. He contends that, the respondent is entitled to execute the award before the Executing Court.
21. Mr. Sakya Sen, learned Senior Advocate appearing for the respondent in the second appeal relies upon **(2024) 4 SCC 696 (Asma Lateef And Another Vs. Shabbir Ahmed And Others)** and submits that, error of jurisdiction, if at all, in the

facts and circumstances of the present case, can be said to be an error within the jurisdiction of the learned Single Judge inasmuch as, the original proceeding was instituted before a Court possessing requisite jurisdiction. Therefore, again on such analogy, the impugned judgment and order cannot be classified as one passed without jurisdiction. At best, it would be an error of jurisdiction which does not require setting aside of the impugned judgment and order in its entirety.

### **Analysis**

#### **Nature of Proceedings**

- 22.** Across the bar in both the appeals, it is admitted that, the disputes involved in the two individual proceedings fell within the meaning of Section 2 (1) (c) of the Act of 2015. In respect of the first appeal, the disputes are within the meaning of Section 2 (1) (c) (xviii) while, in the second appeal, it is within the meaning of Section 2 (1) (c) (vi) of the Act of 2015.
- 23.** In both the appeals, proceedings under Section 34 of the Act of 1996 were instituted before the High Court in 2011. The Act of 2015, delineating commercial disputes came into force on and from October 23, 2015 by virtue of Section 1 (3) of the Act of 2015. Therefore, as on the date of filing of the proceedings under Section 34 of the Act of 1996, the same could not be treated as falling within the Act of 2015 as they were instituted prior to the Act of 2015 coming into force.

**Transfer architecture under Section 15**

**24.** The Act of 2015 contemplates disposal of commercial disputes by the Commercial Courts and Commercial Division constituted under the Act of 2015. It defines commercial disputes in Section 2(1)(c). It provides for identifying and transferring proceedings involving commercial disputes of the Specified value pending before the High Court prior to the Act of 2015 coming into effect, to the Commercial Division in its constitution.

**Jurisdiction of Commercial Division**

**25.** Chapter II of the Act of 2015 which deals with Commercial Courts, Commercial Appellate Courts, Commercial Division and Commercial Appellate Divisions is relevant. Section 3 of the Act of 2015 under Chapter II prescribes the requirement of constitution of Commercial Courts. Section 3A provides for designation of Commercial Appellate Courts. Section 4 prescribes the constitution of Commercial Division of a High Court while Section 5 prescribes the constitution of Commercial Appellate Division. Sections 6 and 7 prescribe the jurisdiction of Commercial Court and the Commercial Division of the High Court respectively. Section 7 prescribes that, all suits and applications relating to commercial disputes of a specified value filed in a High Court shall be heard and disposed of by the Commercial Division of that High Court. Two provisos thereunder prescribe that, all suits and

applications relating to commercial disputes stipulated by an Act to lie in a Court which is inferior to the District Court and filed or pending on Original Side of the High Court shall be heard and disposed of by the Commercial Division of the High Court while the second proviso prescribes that, all suits and applications transferred to the High Court by virtue of Subsection (4) of Section 22 of the Designs Act, 2000 or Section 104 of the Patent Act, 1970 shall be heard and disposed of by the Commercial Division of the High Court in all areas over which the High Court exercises Ordinary Original Civil Jurisdiction.

- 26.** Section 10 of the Act of 2015 assumes significance in these appeals. Section 10 of the Act of 2015 stipulates the jurisdiction in respect of arbitration matters. Subsection (1) deals with international commercial arbitration. Subsection (2) prescribes that if the subject matter of an arbitration is a commercial dispute of a specified value and such arbitration is other than an international commercial arbitration that all applications or appeals arising out of such arbitration under the Act of 1996 filed on the Original Side of the High Court shall be heard and disposed of by the Commercial Division where constituted. Subsection (3) provides filing and hearing by Commercial Courts of arbitration matters other than international commercial arbitration where Commercial Courts stand constituted.

- 27.** Section 10(2) of the Act of 2015 read with Section 15 thereof, in our view, requires an arbitration proceeding other than international commercial arbitration involving a commercial dispute of the specified value within the meaning of the Act of 2015, filed subsequent to the Act of 2015 coming into effect, to be heard and decided by the Commercial Division of the High Court, on its constitution.

**Loss of jurisdiction of non-commercial division Courts to hear matters involving commercial disputes of Specified Value**

- 28.** On the constitution of the Commercial Division of the High Court the Benches of the High Court before which the arbitration proceedings under the Act of 1996 involving commercial disputes of the Specified Value were pending lost jurisdiction to hear and decide the same except exercising powers of transfer under Section 15 of the Act of 2015.
- 29.** So far as this High Court is concerned, the Commercial Division was constituted by a Notification dated July 16, 2016. By a subsequent Notification dated September 5, 2017, the Notification dated July 16, 2016 was amended. The amendment enabled the Hon'ble the Chief Justice of this Hon'ble Court to constitute more than one Single Bench in the Commercial Division.

**Specified Value**

- 30.** Specified value as noted in sub-section (1) of Section 15 is defined in Section 2 (1) (i) of the Act of 2015 to mean, the value of the subject matter in respect of a suit or proceeding as determined in accordance with Section 12 and which shall not be less than Rs.3 lakhs or such other value as may be notified by the Central Government.
- 31.** There are two notifications on the pecuniary jurisdiction of the Commercial Courts issued by this High Court being dated November 15, 2018 and March 20, 2020. By the Notification dated November 15, 2018, the specified value was prescribed to be not less than Rs.1 crore for the Commercial Division of this Hon'ble Court. The Notification dated March 20, 2020 reduced the specified value in the case of Commercial Division of this Hon'ble Court to an amount exceeding Rs.10 lakhs.
- 32.** In both the two appeals concerned, the value of the subject matter of the two proceedings, are in excess of Rs.10 lakhs. Therefore, pecuniary jurisdiction aspect along with the specified value aspect of the Act of 2015 stands satisfied in both the two appeals. As already noted and held earlier, the disputes involved in the two appeals are commercial disputes within the meaning of the Act of 2015.

**Practice Directions 2021**

- 33.** Since, proceedings under Section 34 of the Act of 1996 were pending when, the Act of 2015 came into being, the provisions

of Section 15 (1) of the Act of 2015 became operative in respect of the two proceedings. The High Court framed The High Court at Calcutta Commercial Courts Practice Directions, 2021 in exercise of powers conferred under Section 18 of the Act of 2015. These practice directions were notified in the Official Gazette on October 13, 2023. By virtue of Section 1 (2) of the Practice Directions, 2021, such Practice Directions came into effect on October 13, 2023. The Practice Directions of 2021 deals with identification and transfer of pending commercial disputes in Part-II. It provides for transfer of pending cases in Section 4 and transfer of records in Section 5.

- 34.** In the proceedings under Section 34 of the Act of 1996, involved in the two appeals, both the impugned judgments and orders were passed prior to the Gazette notification of the Practice Directions of 2021. In the first appeal, the impugned judgment and order is dated December 24, 2020 while, in the second appeal, the impugned judgment and order is dated May 4, 2023.
- 35.** Notwithstanding the Practice Directions of 2021 coming into effect on October 13, 2023, the transfer mechanism prescribed under Section 15 existed. It was the incumbent duty of the Court to transfer all pending proceedings involving commercial disputes to the Commercial Division. In the event, the Court failed to do so, Section 15 (5) of the Act of 2015

allowed the parties to the proceedings to draw the attention of the Court for transfer. In both the appeals, none of the parties, invoked Section 15 (5) of the Act of 2015 before the learned Single Judge.

- 36.** Section 15 of the Act of 2015 provides for transfer of pending proceedings involving commercial disputes to the Commercial Division or the Commercial Court or the Commercial Appellate Division as the case may be subsequent to the establishment of the same by the respective High Courts.
- 37. *Tractel Tirfor India Pvt. Ltd. (Supra)*** considered the issue of transfer architecture enshrined in Section 15 of the Act of 2015. It held as follows:-

*“27. Legislature noted that there would be cases involving commercial dispute as defined in Section 2 (1) (c) pending on the date of the Act of 2015 coming into force. In order to deal with such pending cases Section 15 of the Act of 2015 has put in place a transfer architecture for the transfer of pending cases involving commercial disputes to the Commercial Courts or the Commercial Division of the Commercial Appellate Court or the Commercial Appellate Division as the case may be.*

*28. Sub-sections (1), (2), and (5) of Section 15 of the Act of 2015 which has provided for transfer of suits, applications and arbitration proceedings to the Commercial Division contemplate that such suits, applications and arbitration proceedings which are pending as on the date of the Act of 2015 coming into force, for its transfer. Transfer of a pending suit or proceeding under the transfer architecture of Section 15*

*of the Act of 2015 has to be of a suit or an application therein or an arbitration proceeding which is capable of being transferred as it is pending. For example, a disposed of suit or application or arbitration proceeding cannot be transferred. So also a suit or an application or an arbitration proceeding not involving commercial dispute as defined in Section 2 (1) (c ) can be transferred.*

**29.** *Two jurisdictional facts have to exist simultaneously before the transferee Court for a valid exercise of powers under Section 15 of the Act of 2015. Firstly, the Court exercising powers under Section 15 of the Act of 2015 has evaluate as to whether or not the subject of the suit or the application or the arbitration proceeding involve a commercial dispute in terms of Section 2 (1) (c) of the Act of 2015 and secondly whether or not such proceeding is pending before it. By pendency before the transferee Court one understands that the suit or application or arbitration proceeding is in law capable of being considered as pending in such transferee Court. In other words, in order to ascertain the pendency of the suit or application or arbitration proceeding sought to be transferred the transferee Court has to evaluate as to whether or not any procedural law giving rise to any substantive right required the dismissal of such suit or application or arbitration proceeding by the transferee Court and not done by such Court.”*

- 38.** In ***Awam Marketing LLP (Supra)***, this Bench noted various authorities and held that since the suit in that appeal involved a commercial dispute, directed transfer of such suit to the Commercial Division. The impugned judgment and order in

that appeal being passed by the Non-commercial Court in a suit involving a commercial dispute within the meaning of the Act of 2015, the same was set aside, due to lack of jurisdiction. The suit involved therein, was filed subsequent to the Act of 2015 coming into force.

- 39.** As rightly pointed out by Mr. Tilak Bose, learned Senior Advocate, the Act of 2015 makes a distinction between the pending proceedings and proceedings which are filed subsequent to October 23, 2015. Section 15 of the Act of 2015 deals with the proceedings pending prior to October 23, 2015. Sub-section (1) of Section 15 provides for all suits and applications including applications under the Act of 1996 relating to a commercial dispute of specified value pending in a High Court where a Commercial Division is constituted to be transferred to the Commercial Division.
- 40.** Viewed from such perspective, both the impugned judgments and orders were passed by a Court which lacked jurisdiction on the respective dates of the impugned judgments and orders.

#### **Objections as to Jurisdiction**

- 41.** *Kiran Singh And Others (Supra)* considered valuation of a suit which was subsequently questioned. It noticed Section 11 of the Suit Valuation Act, 1887 which provides that objection to the jurisdiction of a Court passed on overvaluation or undervaluation shall not be entertained by an Appellate Court

except in the manner and to the extent mentioned in the Section. In the facts and circumstances of the present case, none of the parties in the two appeals questioned the valuation of the two initial proceedings.

**42. *Hiralal Patni (Supra)*** considered an objection under Section 47 of the Code of Civil Procedure, 1908 objecting to the execution of the decree. It held that, when, the Court in which the suit was originally instituted was entirely lacking jurisdiction, whatever happens subsequently was null and void and that, consent of the parties will not vest a Court lacking inherent jurisdiction.

**43.** In the facts and circumstances of the two appeals before us, the initial filing cannot be said to be without jurisdiction or that, the High Court was incompetent to receive any of the two proceedings or to adjudicate thereon. However, with the Act of 2015 coming into effect on and from October 23, 2015 and by reason of Section 7 read with Sections 10 and 15 of the Act of 2015 thereof, the Non-commercial Division of the Calcutta High Court lost the jurisdiction to hear and decide the two proceedings. Therefore, when the two impugned judgment and orders were passed, the Court lacked competence to do so.

**44. *Subhash Mahadevasa Habib (Supra)*** considered Section 21 and 21A of the Code of Civil Procedure, 1908. It noted the distinction between the lack of inherent jurisdiction and lack

of territorial or pecuniary jurisdiction. In the facts and circumstances of the present case, the two appeals do not involve lack of inherent jurisdiction or pecuniary jurisdiction at the time when, the two proceedings were instituted. However, by virtue of Sections 7, 10 and 15 of the Act of 2015 when, the impugned judgment and orders in the two proceedings were passed, the Court did not possess requisite competence to hear and decide such proceedings.

- 45. *Asma Lateef And Another (Supra)*** held that, jurisdiction of a Civil Court means the entitlement of the Civil Court to embark upon an enquiry as to whether the cause brought before it by the plaintiff in a manner prescribed by law and whether a good cause for grant of interim relief was set up by the plaintiff. The question of jurisdiction is to be determined at the commencement and not at the conclusion of the enquiry. It noticed various authorities. One of the authorities noticed was **(2004) 1 SCC 287 (*Rafique Bibi Vs. Sayed Waliuddin*)** where, it was held that, a decree can be said to be without jurisdiction and hence a nullity if the Court passing the decree usurped a jurisdiction which it did not possess. Applying such test in the facts and circumstances of the two appeals, with the deepest of respect, the two Courts which passed the two impugned judgment and orders, did not possess requisite jurisdiction on the date of delivery of the two impugned judgment and orders by virtue of the Act of 2015.

46. The contention that, the same learned Single Judge, was vested with jurisdiction both of Commercial Division as also the non-Commercial Division, and therefore, the impugned judgments and order cannot be said to be a nullity, cannot be accepted. The question is not of a particular Hon'ble Judge being vested with both the jurisdictions or not. The question is as to whether, the concerned Hon'ble Judge, dealt with the matter in terms of the Act of 2015 or not.

**Validity of the orders passed by the transferee Court**

47. With the constitution of the Commercial Division, in terms of the Act of 2015, matters pending before the High Court, involving commercial dispute of the specified value were required to be transferred to the Commercial Division. On the Constitution of the Commercial Division the jurisdiction of the non-Commercial Division stood limited to decide whether or not such matters involved commercial dispute of the specified value as prescribed and whether or not, the same were capable of being transferred to the Commercial Division. In a given case, a party to a proceeding involving a commercial dispute of the specified value, filed prior to the constitution of the Commercial Division, may have expired and the heirs and legal representatives of such party not brought on record. At the time of exercise of powers under Section 15 of the Act of 2015, the transferee Court will be empowered to consider whether the proceedings stood abated by reason of non-

impleadment of the surviving heirs and legal representative of the deceased party or whether, the cause of action survived such death, rendering the proceedings in capable of being transferred to the Commercial Division. Therefore, a non-Commercial Court considering a proceeding involving a commercial dispute of the specified value, pending before it, subsequent to the constitution of the Commercial Division, possess the limited jurisdiction of transferring such proceedings and deciding as to whether or not, such proceedings capable of being transferred.

- 48.** The orders passed by the transferee Court, while exercising such limited powers, are amenable to an appeal under Clause 15 of the Letters Patent, 1865 inasmuch as, the transferee Court is neither a Commercial Division Court constituted under the Act of 2015 nor is it shackled by the provisions of appeal under the Act of 2015. Rigours of appeals as enshrined in the Act of 2015 are applicable to orders passed by the Commercial Division constituted under the Act of 2015 and are not applicable to any other Court or its orders.
- 49.** The Act of 2015 puts in place a different procedural regime for the expeditious disposal of a commercial dispute of a specified value. Substantial rights of the parties are created by the procedure prescribed by the Act of 2015 governing the treatment and disposal of commercial dispute of specified value by a Commercial Division or a Commercial Court or

Commercial Appellate Division. Such procedural regime as prescribed under the Act of 2015, creating substantial rights, involving all the parties, is not available to a non-Commercial Division or a non-Commercial Court. Therefore, if a non-Commercial Court or a non-Commercial Division proceeds to decide a commercial dispute involving a specified value, subsequent to the constitution of the Commercial Division, in which such proceedings was pending before the Court, then, on the score that such non-Commercial Court decided the rights between the parties on a procedural regime different to those prescribed under the Act of 2015, the decision rendered would be vitiated. As noted above, the procedural regime introduced by the Act of 2015, creates substantial rights for the parties governed thereunder. This decision making process of a non-Commercial Court deciding a commercial dispute of a specified value in respect of a proceeding which was pending before it, subsequent to the constitution of the Commercial Division stands vitiated since, the procedural regime introduced by the Act of 2015 is not applicable. Therefore the contention that, the same judge was capable of hearing both the matters, is of no consequence. The procedures for hearing in the two jurisdictions are different. Procedural regime in the Commercial Division is distinct and different from the procedural regime of a non-Commercial Division.

- 50.** The Co-ordinate Bench in *Surajit Sen (supra)* noted that, upon the Act of 2015 coming into effect and a Commercial Division or a Commercial Appellate Division, being set up by the High Court, it was the duty of the Court or its department to indicate matters which pertain to the commercial dispute. It also noted that the fact that no such bifurcation of matters were done would not imply that upon the setting up of a Commercial Division the Act of 2015 would not affect matters pertaining to commercial disputes.
- 51.** The failure to identify and transfer pending matters involving commercial disputes of the specified value to the Commercial Division on its constitution, does not empower the Court in which such proceeding is pending to decide the same on the basis of the procedural regime introduced by the Act of 2015. A decision by such Court rendered in such proceeding would not attract the rigours of appeal provisions enshrined in the Act of 2015 as the proceeding was not dealt with by the designated Court under the Act of 2015. The decision rendered by such Court being not a designated Court under the Act of 2015, is therefore, governed by the laws other than the Act of 2015 and consequently, in the context of the High Court, would be governed by Clause 15 of the Letters Patent, 1865, so far appeals are concerned.

**Answer to Issue (i)**

**52.** In view of the discussions above, issue No. (i) is decided by holding that on a Commercial Division or a Commercial Appellate Division being established by the High Court, a proceeding under Section 34 of the Act of 1996, pending on the date of such constitution, was required to be transferred to the Commercial Division as the case may be in terms of Section 15 of the Act of 2015. The provisions of the Act of 2015 stands attracted to the pending proceedings when, such proceeding involve a commercial dispute of a specified value, upon the constitution of the Commercial Division.

**Answer to Issue (ii)**

**53.** Issue No. (ii) is decided by holding that, a judgment and order passed by a non-Commercial Division Court in a proceeding filed before it prior to the Act of 2015 coming into effect, involving a commercial dispute of the specified value subsequent to the constitution of the Commercial Division is a nullity.

**Answer to Issue (iii)**

**54.** Issue No. (iii) is answered by holding that, an Appeal Court in the non-Commercial Division can invoke Clause 15 of the Letters Patent, 1865 to interfere with the judgment and order of a non-Commercial Division Single Judge passed in a proceeding involving a commercial dispute of the specified

value subsequent to the establishment of the Commercial Division.

**Answer to Issue (iv)**

- 55.** Issue No. (iv) is answered by holding that, since the proceeding under Section 34 of the Act of 1996 was filed before a Court of competent jurisdiction and since, subsequent to the constitution of the Commercial Division under the Act of 2015, the non-Commercial Division lost jurisdiction, the impugned judgment and order is required to be set aside and the proceedings remanded for fresh consideration by the Commercial Division. Necessary direction should be issued to the department to effect the same.

**Conclusion**

- 56.** In view of the discussions above, both the impugned judgment and orders are held to be a nullity.
- 57.** AP/590/2011 being the proceeding under Section 34 of the Act of 1996 is transferred to the Commercial Division, so also AP/915/2011 involved in the second appeal.
- 58.** The department will renumber both the proceedings in the Commercial Division. Department will transmit all records relating to the two proceedings to the Commercial Division. Upon the same being done, the department will treat AP/590/2011 and AP/915/2011 as disposed of in the Non-commercial Division.

- 59.** The learned Single Judge in the Commercial Division is at liberty to hear and decide AP/590/2011 and AP/915/2011 from such stage as such Court may deem fit and proper. The respective parties in the two proceedings will not be prejudiced by any of the observations made in the respective impugned judgments and orders as also this judgment and order in any manner, whatsoever. All points raised by the respective parties including the issue as to the maintainability of the two proceedings are kept open to be decided.
- 60.** APO/48/2021 and APO/141/2023 are disposed of, without any order as to costs.

**(DEBANGSU BASAK, J.)**

- 61.** I agree.

**(MD. SHABBAR RASHIDI, J.)**

- 62.** Prayers for stay of the judgment and order made on behalf of the respondents in the two appeals, are considered and rejected.

**(DEBANGSU BASAK, J.)**

**(MD. SHABBAR RASHIDI, J.)**