M/S. EVEREST HOLDING LTD. A

v.

SHYAM KUMAR SHRIVASTAVA & ORS.

(Arbitration Petiton No. 13 of 2007)

OCTOBER 24, 2008

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[DR. MUKUNDAKAM SHARMA, J]

Arbitration and Conciliation Act, 1996:

ss. 2(f), 11(6) and (9) – International Commercial arbitration – Appointment of arbitrator – Joint Venture Agreement C *containing arbitration clause – Joint Venture company constituted – Dispute regarding the amount paid by sister concerns of parties towards equity contribution or working expenses – Respondents pleading that the dispute related to transactions not between parties to agreement but between* D *their sister concerns and, therefore, no reference could be made to arbitrator – HELD: There is a valid arbitration agreement between the parties as contained in the JVA, which the parties are required to adhere to – If there is any dispute between the parties to the agreement arising out of or in relation* E *to the subject matter of the said JVA, all such disputes and differences have to be adjudicated upon and decided through process of arbitration by appointing a mutually agreed arbitrator – Though the JVA may have been terminated and cancelled but it was a valid JVA containing a valid arbitration* F *agreement for settlement of disputes arising out of or in relation to the subject matter of the JVA – Contributions made towards execution of the JVA and for the functioning of the Joint Venture Company by party or on its behalf by its affiliates whether would and should be treated as contributions* G *made by the party in specific term and the clause in the JVA are also matters to be adjudicated upon by the arbitrator – In the JVA it was agreed to by the parties that the equity shares of the Company could be subscribed by either of the parties*

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A *or by its affiliates and that the shareholding of its affiliates should be considered as shareholdings of the party to the extent it is recognized – The affiliates were also made to be bound by the terms and conditions of the agreement – Therefore, the disputes which arise out of JVA, if referred to an arbi-*
B *trator would not in any manner amount to bifurcation of the causes of action or bifurcation of parties – On the parties having mutually agreed, arbitrator appointed who would decide the dispute arising out of the JVA as expeditiously as possible. [para 16-19 and 21]*

C *SBP & CP. v. Patel Engineering Ltd. and Another* **2005 (4) Suppl. SCR 688 = (2005) 8 SCC 618;** *Rashtriya Ispat Nigam Ltd. v. Verma Transport Co.* **2006 (4) Suppl. SCR 332 = (2006) 7 SCC 275 – relied on.**

D *Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya and Another* **2003 (3) SCR 558 = 2003) 5 SCC 531 – distinguished.**

Arbitration – Power of arbitrator to adjudicate with regard to equity contribution towards constitution of company which
E *may be a matter relating to winding up of the company – HELD: Though arbitrator would have no power to order for winding up of the company since such power is conferred on and vested with Court as envisaged under the Companies Act, but in terms of the arbitration agreement, the arbitrator can always find out*
F *and adjudicate as to whether or not a Company is functional and if it was not functional in that event he could always find out the nature and status of its assets and can also issue directions and pass orders regarding dues and liabilities and also for taking recourse to appropriate remedy.* [para 17-18]

G *Haryana Telecom Ltd. v. Sterlite Industries (India) Ltd.* **1999 (3) SCR 861= (1999) 5 SCC 688 – referred to.**

CASE LAW REFERENCE:

2005 (4) Suppl. SCR 688 relied on para 13

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2003 (3) SCR 558	**distinguished**	**para 15**
2006 (4) Suppl. SCR 332	**relied on**	**para 16**
1999 (3) SCR 861	**referred to.**	**Para 18**

ORIGINAL CIVIL JURISDICTION : Arbitration Petition No. 13 of 2007

Rajiv Dutta, Praveen Swarup and M.F. Humayunisa for the Appellant.

Shyam Diwan, Atul Shankar Mathur, Body Rangandhan, Nupur Mukherjee and M/s. Khaitan & Co. for the Respondents.

The Order of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. This Order would dispose of the petition filed by the petitioner praying for appointment of an arbitrator under Section 11(6) and (9) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') in terms of the Arbitration Agreement entered into between the parties.

2. The petitioner is a foreign company incorporated under the laws of China having its office at Hong Kong whereas the respondent no. 1 is a citizen of India and Chairman of respondent no. 2 - Shrivastava Group of Companies. Respondent Nos. 3 to 5 are the companies of Shrivastava Group and respondent nos. 6 and 7 are partnership firms carrying on business under the name of Shrivastava Group. The respondent no. 8, also arrayed as party to the petition, is a company formed under the Joint Venture Agreement (for short 'JVA') between the petitioner and respondent no. 1. The said company was incorporated and registered under the provisions of the Indian Companies Act, 1956. However, during the pendency of the aforesaid proceedings the name of respondent no. 8 was deleted from the array of parties.

3. On 08.09.2003, an agreement of cooperation was entered into between the petitioner on one hand and respondent

A no. 1 on the other hand for the purpose of providing cooperation and also for exports of iron ore from mines belonging to Shrivastava Group. Pursuant to the above agreement, a JVA was executed on 25.09.2003 between the petitioner and respondent no. 1 for the purpose of mining, processing and ex-
B port of iron ore. On 26.03.2004 another JVA was executed between the parties, particularly, to iron out certain controversies in respect of the JVA dated 25.09.2003. Article 14.3 of the said JVA, which is an arbitration clause, reads as follows:

> "If the parties fail to resolve the matter through mutual
> C agreement, the dispute shall be referred to an Arbitrator appointed by mutual agreement of the two parties. Such Arbitrator shall be a retired High Court or Supreme Court Judge; such arbitration proceedings shall be completed and Award be given within three months of the Arbitrator's
> D appointment; the cost of such arbitration would be shared equally by the two parties. The arbitration proceedings shall be in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any subsequent enactment or amendment thereto. The decision of the arbitrator shall
> E be final and binding upon the parties."

4. The stand of the petitioner in the petition is that the whole idea of signing the JVA and constituting a company under the JVA was to promote the business of the petitioner in trading the iron ore in foreign countries and to secure a firm supply base
F for international trade for mining, processing and export of iron ore. Consequent thereto on execution of the aforesaid agreement a company under the name and style of Everest Mining & Mineral Pvt. Ltd. was incorporated on 02.06.2004. The petitioner has stated in the petition that Focus Trading Company
G Ltd., a sister concern of the petitioner company advanced an amount of US $ 450,000 on behalf of the petitioner to respondent no. 3 company towards capital investment on 18.02.2004. Thereafter on 29.07.2004, it is stated that another sister concern of the petitioner, namely, AMJ Marketing paid to respon-
H dent no. 3 on behalf of the petitioner, further amounts of Rs.

51,00,000/-, Rs. 50,00,000/- and Rs. 24,00,000/- totaling to Rs. 1,25,00,000/- towards interest free deposit for the benefit of the newly incorporated company, namely, Everest Mining & Mineral Pvt. Ltd. – respondent no. 8.

It is also the stand of the petitioner that on 20.09.2004 the petitioner was shocked and surprised to receive unwarranted notice for cancellation of JVA from respondent no. 3 on the ground of reduction of FOBT price which according to respondent no. 3 had brought about an alarming situation for the JVA. In the said notice, the petitioner was further informed that Reserve Bank of India had hesitated to consider reduction of aforesaid price and that the Reserve Bank of India would never approve JVA between both the companies. The aforesaid notice was received and rightly replied on 06.10.2004, wherein it was pointed out to respondent no. 3 that reduction of price of the consignment had not only caused loss to respondent no. 3 but also to M/s. Focus Trading Company Ltd. It was further pointed out to respondent no. 3 that future of the JVA should not be jeopardized only on account of the said event, particularly, when both the parties had invested enormous time and energy in establishing the Joint Venture. By the said reply the respondent no. 3 was requested to withdraw the letter of cancellation.

On 04.11.2004, the sister concern of the petitioner, namely, M/s. Focus Trading Company Ltd. and its director Mr. J.M. Sahai received a legal notice from the advocate of respondent no. 2 demanding an amount of rupees US $ 5,03,319 with 14% interest towards the reduction of price in the shipment supplied through the vessel named M.V. LUO – QUING. The petitioner pointed out in the reply to the aforesaid notice that the petitioner is willing to cooperate and resolve the issues provided the said issues are within the JVA. However, the said issues could not be resolved as the respondents were not willing to resolve the same. Consequently on 15.12.2004 the petitioner sent a request to the respondent no. 1 to refund the amount of security deposit of US $ 725,000, US $ 11,000 paid as equity contribution and Rs. 25,00,000/- paid towards working ex-

penses of respondent no. 8 with interest @ 18% per annum within one week from the date of receipt of the aforesaid notice. A lawyers' notice in respect of the same was also sent on 14.05.2005.

As no amount was refunded, the petitioner invoked the arbitration clause as contained in the JVA and a notice to that effect was issued requesting for appointment of an arbitrator under letter dated 16.09.2006. In the said letter, the petitioner proposed the name of Justice J.C. Gupta, retired Judge of Allahabad High Court to be the Presiding Arbitrator and respondent no. 1 was requested to concur with the said name proposed by the petitioner. The respondent no. 1, however, through his lawyer's reply dated 12.10.2006 categorically refuted the claim of the petitioner and also refused to refer the matter to arbitration on the ground that the JVA between the petitioner and the respondent no. 1 is not in existence as the same had been terminated by respondent no. 2. It was stated that in view of the aforesaid position there could be no invocation of clause 14.3 of the JVA.

5. In view of the aforesaid position and the stand of the parties, the present petition was filed by the petitioner with a prayer for appointment of an arbitrator and for referring all the disputes between the parties arising out of JVA to the said arbitrator for adjudication and decision.

6. Notice was issued and on receipt the respondents entered appearance. However, during the pendency of the petition, the respondent no. 8 could not be served as the address of respondent no. 8 - the JVA Company, mentioned in the petition was not correct and therefore the name of respondent no. 8 stood deleted from the array of parties by the order of this Court dated 28.02.2008. All the other respondents are represented in the petition through their counsel.

7. I heard the counsel appearing for the parties who drew my attention to various documents on record. According to the petitioner a Long Term Agreement of Co-operation dated

08.09.2003 was executed between the parties, pursuant to which a JVA was entered into and a Joint Venture Company was also incorporated in India. My attention was drawn to the said JVA containing an arbitration clause, in terms of which, any dispute or difference that arises between the parties is required to be adjudicated and decided through the process of arbitration. It was submitted by the counsel for the petitioner that since in the present case disputes have arisen between the parties in connection with the matters pertaining to the JVA, therefore, all the said disputes are required to be referred for adjudication to the arbitration by appointing an arbitrator.

8. Upon careful perusal of the petition filed under Section 11(6) and (9) of the Act and upon hearing the counsel appearing for the parties it could be deduced that the petitioner is mainly confining its claim for refund of the money paid/deposited pursuant to and in execution of JVA and also amount paid towards working expenses of respondent no. 8 with interest @ 18% per annum. In the petition details of the amount as paid by the petitioner towards JVA are also furnished, wherein it is stated that M/s. Focus Trading Company Ltd., a sister concern of the petitioner company even prior to the singing of JVA on 18.02.2004 advanced an amount of US $ 450,000 to respondent no. 3 company i.e. the Deccan Minerals Pvt. Ltd. towards capital investment. The receipt of the aforesaid amount is in fact recorded in the JVA itself, under Article 4, clause 4.2.(b)(i). It is, therefore, contended that the said payment made, also forms part of the dispute pertaining to the JVA. The petitioner has also pleaded that on 29.07.2004 another sister concern of the petitioner, namely, AMJ Marketing paid to the respondent no. 3 on account of interest free deposit an amount of 1,25,00,000/- by making payment in installments in the following manner, vide cheque No. 004442 dated 27.7.2004 an amount of Rs. 50,00,000/-, cheque No. 004443 dated 29.7.2004 an amount of Rs. 51,00,000 and cheque No. 048815 dated 16.9.2004 an amount of Rs. 24,00,000/-.

9. The aforesaid claims of the petitioner are, however, re-

A futed by the respondents contending inter alia that some of the aforesaid claims which are mentioned in the petition and also in the correspondences between the parties do not arise out of the JVA and they are relatable to other agreements and concern dealings between the sister concerns of the petitioner and
B sister concerns of the respondents, and therefore, they cannot be said to be a part of the disputes arising out of the JVA between the parties. It was submitted on behalf of the respondents that there could neither be bifurcation of parties nor of matter and such bifurcation is not permissible under the existing law,
C and therefore, the aforesaid petition cannot be entertained. It was also submitted by the counsel for the respondent that the said JVA although came into existence and in pursuance of the said agreement a company, respondent no. 8, came into existence but there was no transaction at all of the company and the
D said JVA was cancelled and terminated w.e.f. 20.9.2004, and therefore, neither the agreement was in existence nor the arbitration clause, and therefore, invocation of clause 14.3 of the said agreement by the petitioner is wrong and without jurisdiction.

E 10. The aforesaid submissions of the parties have been noticed by me and I have carefully perused the various documents which are placed on record. The JVA, which is the subject matter of the disputes between the parties was dated 26.03.2004 and the same was entered into and between M/s.
F Everest Holding Ltd. and Shri Shyam Kumar Shrivastava along with the Mining Companies as indicated in Article 1 constituting the Shrivastava Group. In the said JVA "Mining Companies" which are referred to in the agreement, are the following companies owned/controlled by Shrivastava Group: (a) M/s. The
G Deccan Minerals Private Limited; (b) M/s. New India Mining Corporation Pvt. Ltd. (c) Minerals and Metals; (d) M/s. Raw and Finished Product; and (e) M/s. The Champion India Industries Pvt. Ltd. By the aforesaid JVA the parties have expressed their intention to form and register a Joint Venture Company with equal equity participation at the earliest possible date for the
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purposes of carrying on the business as mentioned in the said agreement. The incorporation of the company was in the name of "Everest Mining & Mineral Pvt. Ltd." which was incorporated with initial authorized capital of Rs. 50,00,000/-. Both the parties, namely, Shrivastava Group and M/s. Everest Holding Ltd. agreed to capitalize the Joint Venture Company up to Rs. 10,00,000/- and that each party was required to subscribe to 50,000 equity shares of Rs. 10/- each. In the said clause, namely, clause 3.3, the parties also agreed that the aforesaid shares could be subscribed by either of the parties itself or by its affiliates and that the shareholding of the affiliates should be included in the shareholding of the party and each party should ensure that each such affiliates would be bound by and comply with the terms and conditions of the agreement. Therefore, in the said JVA not only the parties are recognized but their affiliates are also recognized as it is intended that the affiliates also could make the subscription on behalf of the parties.

11. The said JVA, which is an admitted document on behalf of the parties also stipulates that an amount of Rs. US $ 450,000 had already been deposited by M/s. Everest Holding Ltd. with Shrivastava Group, paid by Telegraphic Transfer to Deccan Minerals Pvt. Ltd., which is one of the mining companies owned and controlled by respondent no. 1 and the receipt of the said amount is also acknowledged by respondent no. 1.

12. There is another clause in the Agreement, namely, 14.2 which stipulates that the parties agreed that they would use all reasonable efforts to resolve the dispute, controversy or claim arising out of or relating to this agreement, other than a dispute, the resolution of which is specifically provided for in that Agreement. I have already extracted clause 14.3 of the JVA, which stipulates that if there is any dispute or difference between the parties and they fail to resolve the matter through mutual agreement, the dispute shall be referred to an arbitrator appointed by mutual agreement of the two parties. It is also stated that the venue for arbitration will be New Delhi and the language used shall be English, which is clause 14.4 of the JVA.

A 13. When a petition is filed under Section 11 of the Act, particularly, under sub-sections (6) and (8), certain preliminary matters are required to be determined by the Chief Justice or his designate. In *SBP & CP. v. Patel Engineering Ltd. and Another* reported in (2005) 8 SCC 618, per majority (6:1) it was B held that the powers to be exercised by the Chief Justice of the High Court or the Chief Justice of India under Section 11(6) of the Act are not an administrative power and it is judicial power. It was also held in the said decision that while exercising power of performing the duty under Section 11(6) of the Act, the Chief C Justice has to consider whether the conditions laid down by the section for the exercise of that power or the performance of that duty, exists or not and consequent thereto a Chief Justice or the person or institution designated by him, is bound to decide whether he has jurisdiction to entertain the request, in the sense, whether the parties making the motion has approached the right D High Court, whether there is a valid arbitration agreement in terms of Section 7 of the Act and whether the person before him with the request is a party to the arbitration agreement or whether there was no dispute subsisting which was capable of being arbitrated upon. It was also held in the said decision that E the Chief Justice can also decide the question whether the claim was a dead one; or a long barred claim that was sought to be resurrected and whether the parties have concluded the transaction by recording satisfaction of their mutual rights and obligations or by receiving the final payment without objection. This F Court, however, issued a caution that at that stage it may not be possible to decide whether a live claim made is one which comes within the purview of the arbitration clause and that it would be appropriate to leave that question to be decided by the Arbitral Tribunal on taking evidence, along with the merits of G the claims involved in the arbitration. The decision further laid down that on coming to a conclusion on these aspects, the Chief Justice or his designate has to enquire whether the conditions for exercise of his power under Section 11(6) of the Act have been fulfilled; and if an arbitrator is to be appointed, who is the H fit person, in terms of the provision.

14. Therefore, the present enquiry, which is entrusted to me in the present case, under the provisions of Section 11 (6) of the Act would revolve around the aforesaid aspects which are dealt with in the aforesaid decision. There is no dispute raised by the respondents that this Court has no jurisdiction to decide the issues raised in the petition. There is also a valid arbitration agreement. Clause 14.3 of the JVA requires that if there is any dispute between the parties in respect of the matters relating the JVA, the same is required to be adjudicated upon and decided through the process of arbitration and the decision of the arbitrator shall be final and binding upon the parties. The aforesaid clause is neither disputed nor questioned before me.

15. The dispute is in relation to the amount which is stated to be paid by the petitioner or its sister concerns. It is contended on behalf of the respondents that the said issues cannot be a part of the Arbitration Agreement and the same are not subject matter of disputes arising out of the JVA. According to the respondents, the said disputes relate to transactions not between the parties to the agreement but between other parties, namely, sister concerns of the petitioner and respondents, and therefore, they cannot form part of the dispute arising out of or in relation to the JVA. In support of the said contention the counsel for the respondents relied upon the decision of this Court in *Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya and Another* reported in (2003) 5 SCC 531. In the said decision it was held that when the subject matter of the suit includes subject matter of the arbitration agreement as well as other disputes, there is no requirement under the Act that even such matter is required to be referred to arbitration. There is also no provision for splitting the causes of action or parties and referring the subject matter of the suit to the arbitrators. The learned counsel appearing for the party, particularly, relied upon paragraph 16 of the judgment which reads as under:

> "The next question which requires consideration is – even if there is no provision for partly referring the dispute to

A arbitration, whether such a course is possible under Section 8 of the Act. In our view, it would be difficult to give an interpretation to Section 8 under which bifurcation of the cause of action, that is to say, the subject-matter of the suit or in some cases bifurcation of the suit between parties
B who are parties to the arbitration agreement and others is possible. This would be laying down a totally new procedure not contemplated under the Act. If bifurcation of the subject-matter of a suit was contemplated, the legislature would have used appropriate language to
C permit such a course. Since there is no such indication in the language, it follows that bifurcation of the subject-matter of an action before a judicial authority is not allowed".

In paragraph 17 of the said judgment it was held as follows:

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"Secondly, such bifurcation of suit in two parts, one to be decided by the Arbitral Tribunal and the other to be decided by the civil court would inevitably delay the proceedings. The whole purpose of speedy disposal of dispute and decreasing the cost of litigation would be frustrated by
E such procedure. It would also increase the cost of litigation and harassment to the parties and on occasions there is possibility of conflicting judgments and orders by two different forums".

F It was also contended that return of the amount paid by the petitioner as equity contribution towards constitution of the JVC is a matter relating to winding up of the company, and therefore, the arbitrator will have no jurisdiction to order winding up of a company since such power is conferred on and vested on
G a court as envisaged under the Companies Act, 1956.

16. The decision of this Court in *Sukanya Holdings (P) Ltd.* (supra), however, came to be distinguished in a subsequent decision of this Court in *Rashtriya Ispat Nigam Ltd. v. Verma Transport Co.,* reported in (2006) 7 SCC 275. In order
H to pinpoint the distinction drawn, it is necessary to extract para-

graphs 23, 45 and 47 of the Judgment, which are as under:

> "23.....Once the conditions precedent contained in the said proceedings are satisfied, the judicial authority is statutorily mandated to refer the matter to arbitration. What is necessary to be looked into therefore, inter alia, would be as to whether the subject-matter of the dispute is covered by the arbitration agreement or not.
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> 45. Reliance placed by the learned counsel on *Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya* is misplaced. Therein, not only a suit for dissolution of the firm was filed, but a different cause of action had arisen in relation whereto apart from the parties to the arbitration agreement, other parties had also been impleaded. In the aforementioned fact situation, this Court held: (SCC p. 535, para 13)
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> > "13. Secondly, there is no provision in the Act that when the subject-matter of the suit includes subject-matter of the arbitration agreement as well as other disputes, the matter is required to be referred to arbitration. There is also no provision for splitting the cause or parties and referring the subject-matter of the suit to the arbitrators."
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> 47. Such a question does not arise herein as the parties herein are parties to the arbitration agreement and the question in regard to the jurisdiction of the arbitrator, if any, can be determined by the arbitrator himself in terms of Section 16 of the 1996 Act".

17. In the light of the aforesaid factual and legal position, I am of the considered opinion that there is a valid arbitration agreement between the parties as contained in the JVA, which the parties are required to adhere to and are bound by the same. In other words, if there is any dispute between the parties to the agreement arising out of or in relation to the subject matter of the said JVA, all such disputes and differences have to be adjudicated upon and decided through the process of arbitration

A by appointing a mutually agreed arbitrator. Pursuant to the aforesaid JVA dated 26.03.2004 Everest Mining & Mineral Pvt. Ltd. was incorporated and various amounts were also deposited by the petitioner through sister concerns for the incorporation and functioning of the said company. The said company could B not function due to disputes which arose between the parties. Such disputes which relate to the working of JVA and various deposits made and which arose out of and in relation to the said JVA are required to be considered and decided through the process of arbitration as envisaged under clause 14.3 of C the JVA. Though the JVA may have been terminated and cancelled as stated but it was a valid JVA containing a valid arbitration agreement for settlement of disputes arising out of or in relation to the subject matter of the JVA. The argument of the respondent that the disputes cannot be referred to the arbitration as the agreement is not in existence as of today is there- D fore devoid of merit.

18. It is true that the arbitrator would have no power to order for winding up of the company as such power is conferred on and vested with a court as envisaged under the Companies E Act in view of the decision of this Court in *Haryana Telecom Ltd. v. Sterlite Industries (India)* Ltd. [(1999) 5 SCC 688]. But in terms of the arbitration agreement, the arbitrator can always find out and adjudicate as to whether or not a Company is functional and if it was not functional in that event he could always F find out the nature and status of its assets and can also issue direction and pass orders regarding dues and liabilities and also for taking recourse to appropriate remedy.

19. All such disputes whether relating to payment towards security deposit, deposited by the petitioner or on its behalf G and also relating to contribution made towards equity contribution or working expenses, if any, to be returned or not and if so, what amount should be returned are to be decided and adjudicated upon through the process of arbitration as agreed upon by the parties in the JVA. Contributions made towards execu- H tion of the JVA and for the functioning of the Joint Venture Com-

pany by party or on its behalf by its affiliates whether would and should be treated as contributions made by the party in specific term and clause in the JVA are also matters to be adjudicated upon by the arbitrator. It is to be noted at this stage that in the JVA it was agreed to by the parties hereto that the equity shares of the Company could be subscribed by either of the parties or by its affiliates and that shareholding of its affiliates should be considered as shareholdings of the party to the extent it is recognized. The affiliates were also made bound by the terms and conditions of the agreement. Therefore, in my considered opinion, the disputes which arise out of JVA, if referred to an arbitrator would not in any manner amount to bifurcation of the causes of action or bifurcation of parties.

20. There could be other disputes between the sister concerns of the petitioner and the respondent arising out of separate and independent agreements. Such disputes would have to be decided and adjudicated upon in accordance with law. But all such disputes which are identified and mentioned hereinbefore and which arise out of and in relation to JVA have to be and must be decided by appointing an arbitrator in terms of the arbitration agreement.

21. During the course of the arguments the parties have agreed that in case the Court decides to refer the disputes to the arbitrator in that event the same may be referred to Justice V.N. Khare, retired Chief Justice of this Court for adjudication and decision. The parties mutually agreed for him as the arbitrator for deciding these issues. Consequent to the said agreement, I appoint Justice V.N. Khare, retired Chief Justice of this Court as the sole arbitrator with a request to him to decide the disputes between the parties arising out of the JVA as expeditiously as possible. It shall be open for the learned Arbitrator to fix his remunèration after discussing with the parties.

22. Accordingly, the petition is disposed of. It goes without saying that the observations made herein are only for the purpose of deciding the issue as to whether or not the disputes

A should be referred to the arbitrator. Necessarily any observation made herein would not be construed as any views or opinion expressed on the merit of the claims.

R.P. Arbitration Petition disposed of.