

**ARBITRATION TO SURVIVE AFTER THE DEMISE OF THE NAMED
ARBITRATOR**

**By
G.ASHOKAPATHY
SECRETARY GENERAL, CNICA**

<u>COURT :</u>	THE SUPREME COURT OF INDIA
<u>JUDGMENT :</u>	ACC Limited (formerly known as the Associated Cement Co. Ltd.) Vs. Global Cements Ltd.
<u>JUDGES::</u>	Their Lordship Justice Mr.K.S. Radhakrishnan and Mr.Jagdish Singh Khehar.JJ

BRIEF FACTS :

The parties to the dispute entered into an agreement dated 16.12.1989 which contained the following arbitration clause "21. If any question or difference or dispute shall arise between the parties hereto or their representatives at any time in relation to or with respect to the meaning or effect of these presents or with respect to the rights and liabilities of the parties hereto then such question or dispute shall be referred either to Mr. N.A. Palkhivala or Mr. D.S. Seth, whose decision in the matter shall be final and binding on both the parties."

A dispute arose between the parties after the demise of both the named Arbitrators. The named arbitrators were Chairman and Directors respectively of the company. They were appointed considering their eminence, impartiality and familiarity of commercial transactions and commercial laws. They can not be replaced by any other person was the argument placed by the appellant in the application preferred under section 11 of the Arbitration and Conciliation Act 1996 by the respondent before the Hon'ble High Court at Bombay.

The Hon'ble Bombay High Court took the view that the arbitration clause constitutes was valid and that the court cannot, when there is no express prohibition, presume that a vacancy of the named arbitrator cannot supplied by the Court under section 11 of the Act.

LAW LAID DOWN:

The Apex Court after going through the facts of the case, Sections 14 and 15 of the Act and various the judicial precedence came to the following conclusions:-

- a) The words "at any time" has to be interpreted contextually and reasonably taking note of the intention of the parties.
- b) In the present arbitration agreement the words "at any time" had nexus to the reference of dispute and not to the life time of the named arbitrators.
- c) Further clause 21 of the agreement did not prohibit or debar the parties in approaching the court for substituting an arbitrator on the vacancy of the name arbitrators.
- d) The view of the Bombay High Court was upheld.