

If the agreement provides a named adjudicator for deciding certain matters, those matters are “excepted matters”, and not arbitrable. (Supreme Court)

Update by Editor

Published on 16 December 2019

Mitra Guha Builders (India) Company v. Oil and Natural Gas Corporation Limited

Court: Supreme Court of India | **Case Number:** CA No. 005511-005511 of 2012 | **Citation:** 2019 SCC OnLine SC 1442 | **Bench:** R Banumathi, A S Bopanna & Hrishikesh Roy JJ | **Date:** 08 November 2019

In the construction contract that Mitra Guha had with ONGC, a clause empowered the Superintending Engineer (“SE”) of ONGC to levy compensation if Mitra Guha delayed performance. That clause also set out a mechanism for determining the compensation and specified that the determination would be final.

When disputes arose, Mitra Guha initiated arbitration and got an award in its favour. ONGC’s set-aside application was dismissed. ONGC went to the Supreme Court.

Accepting on facts that the award was on “excepted matters”, the court made the following decision: –

- (a) Once the parties decided that certain matters are to be decided by the SE and his decision would be final, they cannot be the subject matter of the arbitration. Any other meaning to the finality clause would make the agreed provisions meaningless and redundant. [relying on *Vishwanath Sood Union of India* (1989) 1 SCC 657, Supreme Court, Sabyasachi Mukharji & S Ranganathan JJ.]
- (b) “Excepted matters” do not require further adjudication. The remedy, if any, will arise in the ordinary course of law. [relying on *Food Corporation of India Sreekanth Transport* (1999) 4 SCC 491, Supreme Court, V. N. Khare and Umesh C. Banerjee, JJ.]
- (c) *Bharat Sanchar Nigam Limited Motorola India (P) Ltd.* (2009) 2 SCC 337 is distinguishable. Adjudication of delay was arbitrable in that case. Here it is not.