

**MITRA GUHA BUILDERS (INDIA) COMPANY V. OIL AND NATURAL
GAS CORPORATION LIMITED 2019 SCC
ONLINE SC 1442**

Supreme Court of India, 3-judge bench, **R. Banumathi**, A.S. Bopanna and
Hrishikesh Roy JJ, decided on 08 November 2019

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

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 determination of the compensation, and also specified that the determination would be final.

When disputes arose, Mitra Guha initiated arbitration and got an award in its favor. 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: –

- (i) Once the parties decided that certain matters are to be decided by the S.E. 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 v. Union of India* (1989) 1 SCC 657, Supreme Court, Sabyasachi Mukharji and S. Ranganathan JJ]
- (ii) "Excepted matters" do not require a 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]
- (iii) *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.