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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO. 737 OF 2019
WITH
NOTICE OF MOTION NO. 1262 OF 2019
IN
COMMERCIAL ARBITRATION PETITION NO. 737 OF 2019

Nuziveedu Seeds Ltd.
having its Registered Office at Survey No.69, Kandlakoya Gundlapochampally (Panchayat), Medchal Mandal, Ranga Reddy District 501 404, Andhra Pradesh. ... Petitioner/ Applicant

Versus

Mahyco Monsanto Biotech (India) Pvt. Ltd., having its Registered Office at Ahura Centre, B-Wing, 5th Floor, 96, Mahakali Cave Road, Andheri (East),
Mumbai – 400 093. ... Respondent

ALONG WITH
COMMERCIAL ARBITRATION PETITION NO. 738 OF 2019
WITH
NOTICE OF MOTION (STAMP) NO. 937 OF 2019
IN
COMMERCIAL ARBITRATION PETITION NO. 738 OF 2019

Prabhat Agri Biotech Ltd.
havint its Registered Office at 8-2-277/45, 1st Floor, UBI Colony, Road No. 3, Banjara Hills, Hyderabad, Telangana – 500 034. India. ... Petitioner/ Applicant

Versus

Mahyco Monsanto Biotech (India) Pvt. Ltd., having its Registered Office at Ahura Centre, B-Wing, 5th Floor, 96, Mahakali Cave Road, Andheri (East),
Mumbai – 400 093. ... Respondent

ALONG WITH
COMMERCIAL ARBITRATION PETITION NO. 892 OF 2019
WITH
NOTICE OF MOTION NO. 1885 OF 2019
IN
COMMERCIAL ARBITRATION PETITION NO. 892 OF 2019

Pravardhan Seeds Private Limited having its Registered Office at No.8-2-277/45, UBI Colony, Road No. 3, Banjara Hills, Hyderabad – 500 034. ... Petitioner/ Applicant

Versus

Mahyco Monsanto Biotech (India) Pvt. Ltd., having its Registered Office at Ahura Centre, B-Wing, 5th Floor, 96, Mahakali Cave Road, Andheri (East), Mumbai – 400 093. ... Respondent

…....

Mr. Darius Khambata, Senior Advocate along with Mr. Aditya Mehta along with Mr. Anand Desai, Mr. Ravi Prakash, Mr. Ryan Dsouza, Mr.Aditya Sharma and Mr.Aditya Ajay i/by M/s.DSK Legal, Advocate for the Petitioner in CARBP/737/2019.

Mr. Rohan Kadam along with Mr. Varghese Thomas, Mr. Yohaann Limathwalla and Mr. Jash Shah i/by M/s.J.Sagar Associates, for the Petitioner in CARBP/738/2019.

Mr. Navroz Seervai, Senior Advocate along with Ms. Lizum Wangdi, along with Mr. Aditya Mehta, Mr. Anand Desai, Mr. Ravi Prakash, Mr. Ryan Dsouza, Mr.Aditya Sharma and Mr.Aditya Ajay i/by M/s.DSK Legal, for the Petitioner in CARBP/892/2019.

Mr.Iqbal Chagla, Senior Advocate along with Mr.Sharan Jagtiani, Mr.Nirman Sharma, Mr. Shriraj Dhruv, Mr. Rishi Aggarwal, Mr. Karan Luthra, Mr. Shantanu Aggarwal, Mr.Adarsh Ramanujan, Ms.Heenal Desai, Ms. Mansi Chheda i/by M/s.Dhru & Co., for the Respondent in CARBP/737/2019.

Mr. Janak Dwarkadas, Senior Advocate along with Mr.Sharan Jagtiani, Mr.Nirman Sharma, Mr. Shriraj Dhruv, Mr. Rishi Aggarwal, Mr. Karan Luthra, Mr. Shantanu Aggarwal, Mr.Adarsh Ramanujan, Ms.Heenal Desai, Ms. Mansi Chheda i/by M/s.Dhru & Co., for the Respondent in CARBP/738/2019.

Mr. Pravin Samdani, Senior Advocate along with Mr.Sharan Jagtiani, Mr.Nirman Sharma, Mr. Shriraj Dhruv, Mr. Rishi Aggarwal, Mr. Karan Luthra, Mr. Shantanu Aggarwal, Mr.Adarsh Ramanujan, Ms.Heenal Desai, Ms. Mansi Chheda i/by M/s.Dhru & Co., for the Respondent in CARBP/892/2019.

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CORAM : R.D. DHANUKA, J.
RESERVED ON : 6th FEBRUARY, 2020
PRONOUNCED ON : 23rd JULY, 2020

JUDGMENT :

. By Arbitration Petition No.737 of 2019 filed under section 34 of the Arbitration and Conciliation Act, 1996, the petitioner has impugned the majority arbitral award dated 16th January,2019 and order dated 11th May, 2017 passed by the Arbitral Tribunal under section 16 of the Act dismissing the said application.

2. By Arbitration Petition No.738 of 2019, the petitioner has impugned the arbitral award dated 16th January,2019 and the order dated 11th May, 2017 passed by the Arbitral Tribunal under section 16 of the Act dismissing the said application.

3. Commercial Arbitration Petition No.892 of 2019 is filed by the petitioner under section 34 of the Arbitration and Conciliation Act, 1996 *inter alia* praying for setting aside the impugned award dated 30th March,2019 rendered by the sole arbitrator and order dated 11th October,2017 passed by the learned arbitrator rejecting the application filed by the petitioner under section 16 of the Arbitration and Conciliation Act, 1996 (for short the said Arbitration Act). By consent of parties, the aforesaid petitions were heard together finally at the admission stage and are being disposed of by a common order.

FACTS IN COMMERCIAL ARBITRATION PETITION NO. 737 OF 2019

4. In Arbitration proceedings before the Arbitral Tribunal, the petitioner was the original respondent whereas the respondent herein was the original claimant. It was the case of the petitioner that the respondent had developed transgenic cotton variety seeds impregnated with the Bt.genes due to which the variety expresses a trait of producing an endotixin which can be the toxic to certain insects which are referred to as cotton bollworms. The Bt.genes/trait becomes a part of cotton genome and is inherited into the progeny through natural propagation. It was the case of the petitioner that the Bt.trait can be transferred as a part of normal cotton breeding process for developing new cotton varieties which also express Bt. trait.

5. On 20th January,2004, the petitioner and the respondent entered into a Sub-Licence Agreement (hereinafter referred to as the '2004 SLA'). The respondent gave 50 cotton seeds of transgenic variety with Bt.trait to the petitioner with a right to develop new Bt. cotton varieties using proprietary varieties of the petitioner and to sell cotton hybrid seeds with Bt. trait under applicable patent rights for a period of 10 years. The said 2004 SLA was extended from time to time until 10th March,2015 when renamed Bollgard Technology Licence Agreement dated 10th March,2015 was executed between the petitioner and the respondent for continuation of the rights granted under 2004 SLA .

6. It was the case of the petitioner that the said 2015 SLA was continuation of the 2004 SLA. According to the petitioner, the respondent did not transfer any technology, confidential information or

knowhow under 2004 to the petitioner but had only provided 50 Donor seeds of a transgenic variety which was used by the petitioner to develop several new proprietary Bt.cotton varieties which were multiplied under agriculture operations to produce seeds and sell to farmers.

7. It was the case of the petitioner that under the said two agreements, the respondent was liable to pay to the petitioner and has paid one time non-refundable fee of Rs.50 lakhs. The respondent was also required to pay the amount as and by way of royalty fees/trait fees/ trait value on every 450gm packet of Bt.Cotton seeds of the proprietary varieties of the petitioner sold every year.

8. It was the case of the petitioner that since the year 2006-2007, the trait value charged and collected by the respondent had been subject to the various State Government Price Control Notifications. Since the year 2016, the said trait value was being regulated by the Central Government under the Cotton Seeds Price (Control) Order 2015. There were MRTP Proceedings filed against the respondent. Several interventions were made by the State Government in the interest of farmers. The petitioner along with other domestic seed producing companies issued letters to the respondent requesting the respondent to charge the trait value commensurate with the State Government Price Control Notifications as opposed to the contractual trait value under the 2015 SLA and for refund of excess trait value paid during 2010 to 2014 over the State Government Price Control Notifications. Similar letters were also addressed on 23rd July, 2015 and 10th August,2015.

9. The respondent however neither gave any response to the said letters nor refunded any amount. On 1st August,2015, the respondent herein filed a petition under section 9 of the Arbitration Act against the petitioner *inter alia* praying for an order of deposit of the amount claimed against the petitioner under the said 2015 SLA. On 16th October,2015, the petitioner addressed a letter to the respondent demanding refund of the excess trait value paid during 2010 to 2014. On 14th November,2015, the respondent issued a notice thereby terminating the said 2015 SLA. On 23rd November,2015, the petitioner called upon the respondent to withdraw the said notice of termination dated 14th November,2015.

10. On 2nd November,2015, the Government of India filed a reference before the Competition Commission of India (hereinafter referred to as the said CCI) seeking investigation and action against respondent and its group companies for allegedly contravening the provisions of the Competition Act. On 15th December,2015, the petitioner and its two subsidiary companies filed an Information before the said CCI against the respondent and its group companies complaining about several anti-competitive clauses and abusive conduct of the respondent including charge of high trait value over the State Government Price Control Notifications.

11. It is the case of the petitioner that on 10th February,2016, the said CCI passed an order holding that there existed a *prima facie* case of contravention of the provisions of section 3(4) and section 4 of the Competition Act by the respondent and its group companies and directed the Director General to investigate into the matter. The CCI also passed an interim order dated 13th April, 2016 restraining the

respondent from enforcing post termination obligations against the petitioner and its group companies. It is the case of the petitioner that several other parties had also filed complaints with CCI relating to various clauses of SLA so executed alleged to be anti-competitive and alleging abusive conduct of the respondent against them.

12. According to the petitioner, there was delay of over two years in submitting Investigation Report by the Director General to the CCI due to non-cooperation by the respondent and its group companies. The said CCI therefore levied a monetary penalty upon the respondent and its other group companies. On 28th June, 2018, the Director General submitted a Investigation Report before the said CCI. By letter dated 12th March,2019, the said CCI directed the parties including 18 officials of the respondent and Monsanto group companies under section 48 of the Companies Act to collect non-confidential Investigation Report by filing an undertaking that the Investigation Report would not be used for any purpose other than those provided under the Competition Act and Rules thereunder.

13. On 18th February,2016, the respondent and its group companies filed an infringement suit before the Delhi High Court i.e. C.S. (Comm.) No.132 of 2016 alleging that pursuant to the termination of the 2015 SLA, the petitioner had infringed the patent rights of the respondent by selling cotton seeds with Bt. trait. The petitioner filed a counter claim in the said suit *inter alia* praying for invocation of the patent of the respondent on the ground that the plants, plant varieties, seeds, essentially biological processes etc. and the seed production activities of the petitioner were excluded subject matter under the Patents Act, 1970. In the said infringement suit, the learned Single

Judge of the Delhi High Court passed an interim order on 28th March,2017. The said infringement suit is pending before the Delhi High Court.

14. On 23rd February,2016, the respondent invoked the arbitration agreement under the said 2015 SLA to get the disputes settled by way of arbitration having arisen due to non payment of the balance trait value by the petitioner. The respondent nominated a former judge of the Supreme Court as its nominated arbitrator. The petitioner vide its letter dated 9th March,2016 appointed its nominee arbitrator. The nominee arbitrators appointed by the petitioner and the respondent thereafter appointed a former judge of the Supreme Court as the presiding arbitrator. On 31st January,2017, the respondent filed its statement of claim before the Arbitral Tribunal. On 6th July, 2017, the petitioner filed its statement of defence and the counter claim before the Arbitral Tribunal. The respondent filed its reply to the counter claim on 31st July, 2017.

15. The petitioner filed an application under section 16 of the Arbitration Act raising a plea of jurisdiction and praying for dismissal of the claims made by the respondent for want of jurisdiction. Without prejudice to the prayers for dismissal for want of jurisdiction, the petitioner prayed that the arbitral reference be suspended till the final adjudication of the proceedings before the Competition Commission of India. The respondent filed reply to the said application under section 16 of the Arbitration Act filed by the petitioner. By an order dated 5th December,2016, the Arbitral Tribunal dismissed the said application filed by the petitioner under section 16 of the Arbitration Act.

16. In the said order, it was made clear that all the observations made

by the Arbitral Tribunal in the said order had been only for the limited purpose of the deciding application filed by the petitioner under section 16 of the Arbitration Act. The Tribunal did not express any opinion on the merits of the matter. The Tribunal made it clear that it would be open for the parties to raise all objections available to them and the Tribunal would consider and decide such objections in accordance with law without being influenced or inhibited by the observations made in the said order by the Arbitral Tribunal. The said order dated 11th May,2017 passed by the Tribunal is also impugned by the petitioner in this petition along with arbitral award.

17. The Arbitral Tribunal framed about 16 points for determination. Both the parties led oral as well as documentary evidence before the Arbitral Tribunal. The witness examined by the respective party was cross examined by the other party. Both the parties also filed written submissions before the Arbitral Tribunal in the application filed under section 16 as well as after conclusion of the oral submissions. Two of the arbitrators made an arbitral award dated 16th January,2019 allowing the claim of the respondent partly and directed that the respondent (original claimant) is entitled to and the petitioner (original respondent) is liable to pay to the respondent herein a sum of Rs.117.46 crores towards trait value for sales between 1st April, 2015 and 14th November,2015 under Sub-Licence Agreement, 2015 along with interest at the rate of 6% per annum from the date of invocation of the arbitration i.e. 23rd February,2016 till the date of the award and interest at the rate of 12% per annum from the date of the award till the date of payment/realization.

18. The arbitral Tribunal rejected rest of the claims made by the

respondent. The counter claim raised by the petitioner and set off pleaded by the respondent were dismissed as 'not pressed'. The learned third arbitrator delivered a dissenting award dismissing the claims made by the respondent. Being aggrieved by the majority award dated 16th January,2019 and order dated 11th May, 2017 passed by the Arbitral Tribunal, the petitioner filed Commercial Arbitration Petition No.737 of 2019.

SUBMISSIONS MADE BY MR.DARIUS KHAMBATA, LEARNED SENIOR COUNSEL FOR THE PETITIONER IN COMMERCIAL ARBITRATION PETITION NO. 737 OF 2019 :-

19. Mr.Khambata, learned senior counsel for the petitioner invited my attention to various clauses of the agreement entered into between the parties, various averments made by the parties in various pleadings filed before the Arbitral Tribunal, various paragraphs from the oral evidence led by the parties before the Arbitral Tribunal, the orders passed by the CCI, order passed by the Delhi High Court in the infringement suit held by the respondent against the petitioner, the order passed by the Arbitral Tribunal under section 16 of the Arbitration Act, various findings rendered in the majority award rendered by the Arbitral Tribunal and the grounds raised by the petitioner in the arbitration petition.

20. Learned senior counsel placed reliance on Articles 1.3, 1.11, 1.16, 1.22, 1.24, 1.25, 2, 2.05, 3.01, 3.01(v), 9, 11.02 and 11.03. of the said 2015 SLA. Learned senior counsel invited my attention to the preamble of the Competition Act, sections 3, 4, 18 to 20, 26, 26(7), 27(d) (e), 33, 36, 41, 41(2), 45, 53A, 60 to 62 of the Competition Act. He invited my attention to the order passed by the CCI under section

26(2) of the Competition Act and would submit that the said CCI had already rendered various *prima facie* findings about the violation of section 3(4), 4 read with section 19(3) of the Competition Act and has held that in view of the contravention of various provisions of the said Act, case was made out for investigation in the matter. Out of seven members of the said CCI, only one member had differed.

21. It is submitted by the learned senior counsel that the arbitration notice was issued by the respondent on 23rd February,2016 only after such *prima facie* findings were rendered by the said CCI against the respondent. In support of this submission, learned senior counsel invited my attention to paragraphs 16 to 20, 24 and 26 of the order passed by the CCI making various *prima facie* findings against the respondent. Learned senior counsel invited my attention to various points for determination framed by the Arbitral Tribunal and the findings rendered thereon by the Arbitral Tribunal.

22. It is submitted by the learned senior counsel that the dispute between the parties referred to the Arbitral Tribunal arose from a Sub-Licence Agreement dated 10th March, 2015 which was a renewal of Sub-Licence Agreement dated 21st February, 2004. Under the said 2015 SLA, the petitioner was required to pay to the respondent the royalty “Trait Value” or trait fee to the respondent which was to be computed based on the quantity of hybrid cotton seeds containing the Bt. genes sold by the petitioner. The respondent had made a claim before the Arbitral Tribunal for recovery of trait value for the period of 1st April,2015 to 14th November,2015 of which the petitioner had paid Rs.13.24 crores to the respondent leaving a balance of Rs.117.46 crores.

23. It is submitted by the learned senior counsel that the respondent was abusing its dominance by charging an excessive, unreasonable and discriminatory Trait Value under the said 2015 SLA. The said SLA was thus void under sections 3 and 4 of the Competition Act. The issue regarding the validity of the SLA was already a subject matter of the proceedings before the said CCI and was not capable of being adjudicated by the Arbitral Tribunal. The claims made by the respondent was predicated on the enforceability of the said 2015 SLA and thus were not arbitrable. The said agreement was forbidden by section 3(j) of the Patents Act, 1970. The validity of the patent of the respondent which was the subject matter of the said 2015 SLA had been already challenged by the petitioner in the proceedings between the parties before the Delhi High Court. He submits that if the patent of the respondent would be revoked in those proceedings filed before the Delhi High Court, such revocation would operate *in rem* and would result in a complete failure of consideration under the said 2015 SLA.

24. The Government of India also had filed complaints before the said CCI that the said 2015 SLA and other similar agreements were anti-competitive agreements and in abuse of dominance under sections 3 and 4 of the Competition Act. Those proceedings before the CCI were still pending when respondent had invoked the arbitration agreement and had filed its claim before the Arbitral Tribunal. The disputes between the Arbitral Tribunal included the issues relating to competition law which were not arbitrable. The petitioner had already raised a plea before the Arbitral Tribunal that the said 2015 SLA was void under the provisions of the Competition Act.

25. It is submitted by the learned senior counsel that on 27th November,2015, the Government of India had filed a Reference under section 19(1)(b) of the Competition Act with the said CCI. It was a specific case of the Government of India in the said reference that various representations were made by it regarding the unreasonable high prices of Bt. cotton seeds due to charging of high royalties in the name of trait value by the respondent. The said complaint also referred to the dominant position which it was exploiting in an anti-competitive manner. The Government of India requested the said CCI to prescribe appropriate terms including trait value/royalties under the Sub-Licence Agreements so that the technology license was given at reasonable terms to all seed companies.

26. It is submitted by the learned senior counsel that the petitioner and its group companies filed information under section 19(1)(a) of the Competition Act with the CCI placing on record various violations of the provisions of the Competition Act allegedly committed by the respondent. Learned senior counsel invited my attention to the order dated 10th February,2016 passed by the Investigation Officer on the said information filed by the petitioner and the reference filed by the Government of India making various *prima facie* observations against the respondent and holding that the conduct of the respondent *prima facie* appears to be in violation of section 4 of the Act. He submits that the respondent had invoked arbitration clause on 23rd February,2016 only after such *prima facie* findings were rendered by the said CCI by order dated 10th February,2016 against the respondent.

27. Learned senior counsel submits that on 13th April,2016, the said CCI passed an order under section 33 of the Competition Act holding

that the provisions of SLA which required the petitioner to destroy its entire seed, parent lines and germplasm on termination of the SLA were *prima facie* in contravention of sections 3(4) and 4 of the Competition Act. The CCI restrained the respondent from enforcing those onerous post-termination conditions of the said 2015 SLA and directed the Director General to expedite its investigation and submits its report at the earliest.

28. It is submitted that an order under section 33 of the Arbitration Act is definite expression of satisfaction recorded by the CCI upon due application of mind and requires a higher degree of satisfaction than the formation of a *prima facie* view under section 26(1) of the Competition Act. The said CCI considered the present case to be a compelling and exceptional case. The CCI had also directed the Director General to conduct an investigation into all the complaints filed by the petitioner and various other parties including the State of Telangana, All India Kisan Sabha, National Seed Association of India and other domestic seed producing companies. He submits that the Director General after conducting its investigation, filed its Investigation Report with the said CCI on 28th June, 2018.

29. The said Director General also had prepared a non-confidential version of the Investigation Report on 14th February,2019. The respondent had charged a higher trait value than that fixed by certain State Governments on the pretext that there was a litigation pending in relation to the same. The charging of differential trait value by the respondent in various States has also found to be discriminatory and an abuse of monopolistic position. Learned senior counsel placed reliance on the judgment of Supreme Court in case of ***Competition***

Commission of India vs. Steel Authority of India, (2010) 10 SCC 744 and in particular paragraphs 117 and 119 in support of this submission.

30. It is submitted by the learned senior counsel that the entire claim made by the respondent was for recovery of trait value as per the terms of the said 2015 SLA. It was a specific plea raised by the petitioner before the Arbitral Tribunal that the said 2015 SLA was void under the provisions of Competition Act. The validity of the said agreement was pending adjudication before the said CCI even prior to the invocation of the arbitration. He invited my attention to the various averments made in the application filed by his client under section 16 of the Arbitration Act before the Arbitral Tribunal, reply filed by the respondent to the said application before the Arbitral Tribunal and would submit that the dispute before the Arbitral Tribunal and the said CCI were interlinked. He submits that the scheme of the Competition Act expressly and impliedly excludes adjudication of competition law disputes through arbitration.

31. After inviting my attention to various provisions of the said Competition Act already referred to aforesaid, learned senior counsel would submit that the provision of the Competition Act vests vast and plenary powers upon the CCI and empowers to pass various orders/grant reliefs which a civil court or Arbitral Tribunal cannot grant. He relied upon section 27 of the Competition Act and would submit that once the CCI is satisfied that there has been a contravention of sections 3 and 4 of the Competition Act, it may direct that the contract in question “shall stand modified to the extent and in the manner as may be specified” by it. He submits that under section 28, CCI is empowered to pass an order of division of an enterprise

enjoying a dominant position to ensure that it does not abuse its dominant position. CCI is empowered to issue interim orders restraining a party from contravening sections 3 and 4. CCI is conferred with the power to mould and regulate its own procedure under section 36 and has the same powers as are vested in a civil court. He also placed reliance on section 41(2) in support of this submission.

32. Learned senior counsel placed reliance on section 61 of the Competition Act and would submit that the said provision clearly ousts the jurisdiction of a civil court in respect of any matter, which the said CCI is empowered to determine under the Competition Act. There is an implied exclusion of all other forums, including Arbitral Tribunals in respect of the matters which are adjudicated upon exclusively upon by the CCI. Even the Arbitral Tribunal is denuded of its jurisdiction to decide such matters which are to be adjudicated upon exclusively by the said CCI. The said CCI alone is exclusively empowered to determine whether the preliminary state of facts exists or not. The question as to whether the said 2015 SLA is even capable of being impugned under the Competition Act i.e. the existence of the state of facts necessary to invoke the jurisdiction of the said CCI is a jurisdictional fact which can be determined and adjudicated only by the said CCI and not by the Arbitral Tribunal.

33. Learned senior counsel placed reliance on section 62 of the Competition Act and would submit that the provisions of the Competition Act shall be in addition to and not in derogation of the provisions of any other law in force. The said CCI has exclusive jurisdiction to decide issues regarding the validity of an agreement under the Competition Act. The said Competition Act is a complete

code and it excludes the jurisdiction of civil courts and Arbitral Tribunals. The said Act provides a complete statutory framework for adjudication of all disputes pertaining to the matters of competition law and is a complete self-contained code providing the statutory right of protection and remedies against anti-competitive conduct. Learned senior counsel placed reliance on the judgment of Delhi High Court in case of ***Jindal Steel & Power Ltd. vs. Union of India, 2012(127) DRJ 285*** and in particular paragraphs 24, 25 and 28.

34. Learned senior counsel for the petitioner submits that the Arbitration Act carries with it a negative import that only such acts as are mentioned are permissible to be done and acts not mentioned are prohibited. Any remedy would have to be found within that statutory code itself. Since sufficient and adequate remedies are provided under the Competition Act for deciding disputes relating to violation of the provisions of the Competition Act, the remedy to enforce those statutory provisions lies exclusively within the Competition Act and the jurisdiction of an Arbitral Tribunal to decide such disputes is barred. In support of this submission, learned senior counsel placed reliance on the judgment of Supreme Court in case of ***Fuerst Day Lawson vs. Jindal Exports Limited, (2011) 8 SCC 333*** and in particular paragraphs 84, 88 and 89, judgment of Supreme Court in case of ***Vimal Kishor Shah vs. Jayesh Dinesh Shah, (2016) 8 SCC 788*** and in particular paragraphs 50, 51 and 53 and judgment of this court in case of ***Dinesh Jaya Poojary vs. M/s.Malvika Chits India Pvt. Ltd., 2019 SCC Online Bom 1121*** and in particular paragraphs 28 to 35 and 37 to 39.

35. It is submitted by the learned senior counsel that since the validity of the said 2015 SLA itself is under challenge under the

Competition Act, the Arbitral Tribunal can only order recovery of contractual dues under such contract after the CCI first rules on the issue of the validity of the contract. It is submitted that though the petitioner accepts that the CCI cannot pass orders for recovery of contractual dues, that would not detract from the fact that it is only the CCI which can determine whether a contract, on the basis of which a claim for contractual dues is made, is void under section 3 of the Competition Act or not. Learned senior counsel placed reliance on the judgment of Supreme Court in case of ***Girnar Traders vs. State of Maharashtra, (2011) 3 SCC 1*** and in particular paragraphs 79 and 80 and judgment of Delhi High Court in case of ***Union of India vs. Competition Commission of India, 2012 (128) DRJ 301*** and in particular paragraphs 1, 8, 12 to 16.

36. It is submitted by the learned senior counsel that the disputes involving competition law issues are non-arbitrable. He submits that where legislation confers exclusive jurisdiction to special or to the exclusion of ordinary civil courts to decide certain classes of dispute, then none of such disputes concerning such legislature are arbitrable. This would be as a matter of public policy. Since the Competition Act reserves the adjudication of disputes relating to competition law exclusively to the CCI and the National Company Law Appellate Tribunal, such disputes are not arbitrable.

37. The question as to whether or not any conduct constitutes an anti-competitive trade practice prohibited under section 3 of the Competition Act is something which the CCI has exclusive jurisdiction to determine. It is not open for an Arbitral Tribunal to proceed on an assumption that the SLA does not violate section 3 of the Competition

Act, especially when proceedings in this regard were already pending before the CCI. In support of the aforesaid submission, learned senior counsel placed reliance on the judgment of Supreme Court in case of ***A.Ayyasamy vs. A.Paramasivam, (2016) 10 SCC 386*** and in particular paragraph 14, judgment of Supreme Court in case of ***Emaar MGF Land Limited vs. Aftab Singh, 2018 SCC Online SC 2771*** and in particular paragraph 32, judgment of this court in case of ***Kingfisher Airlines Ltd. vs. Capt.Prithvi Malhotra, 2011 SCC Online Bom 1999*** and in particular paragraphs 14, 16, 20 and 21.

38. Learned senior counsel also placed reliance on the judgment of Supreme Court in case of ***Pawan Hans Ltd. vs. Union of India (2003) 5 SCC 71*** and judgment of Delhi High Court in case of ***Telefonaktiebolaget LM Ericsson (PUPL) vs. Competition Commission of India, (2016) SCC Online Delhi 1591***.

39. The next submission of the learned senior counsel for the petitioner is that the proceedings before the CCI were pending even prior to the date of the respondent invoking arbitration agreement relating to the validity of the said 2015 SLA and thus the Arbitral Tribunal ought to have awaited the decision of the said CCI regarding the validity of the said 2015 SLA under the provisions of the Competition Act. The monetary claim made by the respondent under the said 2015 SLA was totally dependent upon the issue of the validity of the said 2015 SLA which was pending before the CCI. The said issue was jurisdictional fact. The existence of the said SLA was a *sine qua non* for the exercise of the jurisdiction by the Arbitral Tribunal.

40. It is submitted that if the said CCI declares the said 2015 SLA as

void under section 3 of the Competition Act, such agreement would not be an enforceable contract. In that event, the respondent could not have made any monetary claim arising under such agreement. The Arbitral Tribunal could not have conferred the jurisdiction upon itself by wrongly assuming the existence of a jurisdictional fact. The cause of action for recovery of contractual dues based on the agreement has to be a valid and enforceable contract in law.

41. Learned senior counsel placed reliance on section 10 of the Specific Relief Act, 1963 and would submit that for enforceability of a contract under the provisions of the Specific Relief Act, there has to be an agreement enforceable by law as provided under section 2(h) of the Contract Act. Anything done in contravention of a statute cannot be made the subject matter of an action. Learned senior counsel for the petitioner placed reliance on the judgment of Supreme Court in case of ***Arun Kumar vs. Union of India (2007) 1 SCC 732*** and in particular paragraphs 74, 76 and 84. Learned senior counsel placed reliance on the judgment of this court in case of ***Sundrabai Sitaram vs. Manohar Dhondu, AIR 1933 Bom.262*** and in particular paragraphs 2, 3, 5 to 9 of the said judgment.

42. It is submitted by the learned senior counsel that since the validity and enforceability of the SLA is an inherent part of the cause of action of the respondent, if the said 2015 SLA is found unenforceable in law, the entire agreement including arbitration clause would not be enforceable. The arbitration agreement itself would not exist in law in such a situation. In support of this submission, learned senior counsel strongly placed reliance on the judgment of Supreme Court in case of ***Garware Wall Ropes Ltd. vs. Coastal Marine***

Constructions & Engineering Ltd., (2019) 9 SCC 209 and in particular paragraphs 16, 17, 19, 20, 22 and 29. He also placed reliance on the judgment of Supreme Court in case of ***Competition Commission of India vs. Bharti Airtel Ltd., (2019) 2 SCC 521*** and in particular paragraphs 100 to 114.

43. It is submitted by the learned senior counsel that in the order dated 11th May, 2017 passed by the Arbitral Tribunal under section 16 of the Arbitration Act, the Tribunal has *prima facie* observed that it did not find merit in the contention raised by the petitioner in respect of the jurisdiction of the Arbitral Tribunal. At the same time, the Arbitral Tribunal noted that several issues raised by the parties which require adjudication at an appropriate stage including the issue whether the provisions of the Competition Act apply to the present case or not. In support of this submission, learned senior counsel placed reliance on paragraphs 46, 47, 51 and 52 of the order dated 11th May, 2017 passed by the Arbitral Tribunal. He submits that it is thus clear that the Arbitral Tribunal accepted the position that it could not proceed with the arbitration without finally deciding the issue of jurisdiction.

44. Learned senior counsel invited my attention to the issue nos. 2, 3, 3(a) to 3(f) framed by the Arbitral Tribunal for determination. He submits that the Arbitral Tribunal does not even purport to determine the plea of jurisdiction raised by the petitioner. Such plea of jurisdiction was not a stand alone plea. It is weeded inextricably to the defence, since the very enforceability and validity of the said agreement depends on it. The case of the petitioner before the Arbitral Tribunal was that the Tribunal had no jurisdiction to adjudicate upon the claim i.e. the dispute and not merely the plea of lack of jurisdiction

etc. Reply to the issue nos. 3(a) to 3(f) by the Arbitral Tribunal are not in any way a determination of the plea of the petitioner as to the jurisdiction of the Arbitral Tribunal.

45. Learned senior counsel invited my attention to the findings rendered by the Arbitral Tribunal in paragraph (51) of the impugned award holding that for deciding jurisdiction of a court (Tribunal), what is relevant is the averments made in the plaint (statement of claim) by the plaintiff (claimant) and not what is pleaded by the defendant (respondent) in the written statement (statement of defence). He also invited my attention to the findings of the Arbitral Tribunal in paragraphs 52 to 54 and would submit that the Tribunal has erroneously held that the Tribunal has jurisdiction to consider the case of the claimant on the basis of the averments in the statement of claim. The Tribunal has refused to determine the jurisdiction of the dispute. Though in the impugned award, the Arbitral Tribunal concluded that the issue no.2 could be decided by the CCI as far as issue no.3 is concerned, it did not express any opinion. He submits that it is clear that the Arbitral Tribunal merely assumed the existence of the jurisdictional fact whether the said agreement is valid under the Competition Act which was a *sine qua non* for it to exercise jurisdiction.

46. It is submitted by the learned senior counsel that the Arbitral Tribunal has bifurcated the dispute into the claim and the objection as to the jurisdiction by holding that the issue of jurisdiction about the validity of the agreement can be decided by the said CCI however dispute into the claim could be decided by the Arbitral Tribunal which recourse was not permissible. He submits that even if some aspects of

the disputes are arbitrable but some other aspects are non-arbitrable, the entire dispute become non-arbitrable. In support of this submission, learned senior counsel placed reliance on the judgment of Supreme Court in case of ***Booz Allen Hamilton Inc. vs. SBI Homes Finance Limited, (2011) 5 SCC 532*** and in particular paragraphs 50 to 52 and in case of ***Sukanya Holding vs. Jayesh H. Pandya, (2003) 5 SCC 531*** and in particular paragraphs 16 and 17.

47. It is submitted by the learned senior counsel that though the petitioner had expressly raised various defences under the Competition Act regarding the invalidity of the SLA and the Arbitral Tribunal had framed issues 2 and 3 based on those defences, the Arbitral Tribunal had ignored the defences raised by the petitioner in its statement of defence and has decided those issues by only looking at the averments in the statement of claim. Learned senior counsel invited my attention to the findings rendered by the learned Arbitral Tribunal in paragraphs 78 to 86 of the impugned award rejecting the jurisdictional objection raised by the petitioner by merely stating that the reliefs sought by the respondent only relates to the alleged breaches of the said 2015 SLA and therefore the Arbitral Tribunal had jurisdiction to deal with the same. The Tribunal completely ignored the fact that the jurisdictional plea raised by the petitioner pertained entirely to the enforceability of the claim itself and involved matters relating to the Competition Act which could only be adjudicated by the CCI.

48. It is submitted by the learned senior counsel that even in a civil suit, where a question of jurisdiction is raised, it can either be decided on a demurrer or as an issue in the proceedings. If it is decided on a demurrer, it is to be decided taking the statements contained in the

plaint to be correct. However, where the objection is decided as an issue in the proceedings, it would have to be decided after giving the parties an opportunity to lead evidence. He submits that the Arbitral Tribunal could not have decided issue nos. 2 and 3 on a demurrer based on the statement of claim and ignoring the statement of defence and evidence led by the petitioner. In support of this submission, learned senior counsel placed reliance on the judgment of Supreme Court in case of ***Man Roland Druckimanchinen AG vs. Multicolour Offset Ltd., (2004) 7 SCC 447*** and in particular paragraph 18.

49. It is submitted that it was not the case of the respondent that by deciding issue nos. 3(a) to 3(f), the Arbitral Tribunal in any manner determined the plea of the petitioner on objection as to jurisdiction. It was the case of the respondent itself that there was no requirement in law to even look at the plea of the petitioner as to jurisdiction since only the statement of claim had to be seen by the Arbitral Tribunal.

50. Learned senior counsel invited my attention to section 16 and section 7(1) of the Arbitration Act and would submit that the jurisdictional objection raised under section 16 is not to be determined on a demurrer based only on the pleadings in the statement of claim like under Order 7 Rule11 of the Code of Civil Procedure but is to be decided after considering the defence raised in the statement of defence. He submits that under section 7(1) of the Arbitration Act, it is made clear that an arbitration agreement is an agreement to submit 'disputes' to arbitration whereas section 16(2) requires jurisdictional objection regarding the existence/validity of the arbitration agreement to be raised not later than the submission of the statement of defence. He submits that the Arbitral Tribunal is bound to see whether the

dispute is arbitrable or not. He relied upon paragraph 34 of the judgment of the Supreme Court in case of ***Booz Allen Hamilton Inc.*** (supra).

51. It is submitted by the learned senior counsel that the disputes arises where there is a claim and a denial and repudiation of the claim. There can only be a dispute when claim is asserted by one party and denied by the other. In support of this submission, learned senior counsel placed reliance on the judgment of Supreme Court in case of ***Major (Retd.) Inder Singh Rekhi vs. Delhi Development Authority, (1988) 2 SCC 338*** and in particular paragraph 4. He submits that while ruling on its own jurisdiction, the Arbitral Tribunal may embark upon an inquiry into the issues raised by the parties to the dispute. The issues are the disputed questions upon which the parties are at variance and desirous of obtaining a decision of the court. He relied upon the judgment of the Supreme Court in case of ***Indian Farmers Fertilizer Co-operative Ltd. vs. Bhadra Products, (2018) 2 SCC 534*** and in particular paragraph 18 and in case of ***Gangai Vinayagar Temple vs. Meenakshi Ammal, (2009) 9 SCC 757*** and in particular paragraph 53.

52. It is submitted by the learned senior counsel that the Arbitral Tribunal has permitted the recovery of the trait value in excess of that prescribed under statutory price control notifications issued by the various State Governments from the petitioner. Various State Governments had introduced legislation to *inter alia* regulate the maximum sale price including the trait value charged for the Bt. cotton seed. He relied upon the Andhra Pradesh Cotton Seeds (Regulation pf Supply Distribution, Sale and Fixation of Sale Price) Act, 2007 and the Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale

and Fixation of Sale Price) Act, 2009. He relied upon A.P. Act and the explanatory statement thereto and would submit that the State Government had clearly intended on fixing the maximum sale price of the Bt. hybrid cotton planting seeds including the trait value. Similarly intent could be noticed under section 10 of the Maharashtra Act to fix the maximum sale price of the Bt.cotton seed including the trait value. section 10 of the Maharashtra Act is *pari materia* to section 11 of the AP Act.

53. Learned senior counsel invited my attention to the Article 11.03 of the said 2015 SLA and would submit that under the said Article, the parties are entitled to seek modification of the agreement if it is found to be in conflict with the prevailing laws. He also relied upon the definition of 'law' provided under Article 1.22 of the SLA which includes statutory price control notifications issued by the State Government under the AP Act and Maharashtra Act. State Government had fixed the maximum selling price of cotton seeds and the maximum trait value/royalty that could be charged by the respondent under the 2015 SLA. He submits that the maximum trait value fixed by these notifications was much lower than the trait value prescribed under the said 2015 SLA.

54. Learned senior counsel placed reliance on Article 11.03 of the SLA and would submit that under the said clause any of the party could have pointed out any conflict in any of the provisions with the laws or regulations of any country of any party, then the party concerned shall notify the other parties thereof and appropriate modifications of this agreement shall be made by the parties hereto to avoid such conflict and to ensure lawful performance. Though such request or

modification was made by the petitioner, the respondent rejected the said request and terminated the said agreement on 14th November, 2015.

55. Learned senior counsel placed reliance on the order dated 28th March,2017 passed by the learned Single Judge of the Delhi High Court in the proceedings filed by the respondent against the petitioner i.e. C.S.(Comm.) 132 of 2016 and would submit that while holding that the termination of the agreement by the respondent dated 14th November, 2015 was illegal, considered the impact of the fixation of the maximum trait value by the state price control notifications on the SLA in light of Article 11.03. He submits that Delhi High Court has rendered *prima facie* finding that the termination of the agreement by the respondent was unlawful, agreement stands reinstated but the obligation to pay trait value will have to be in accordance with Indian law.

56. Learned senior counsel invited my attention to the order passed by the Division Bench of the Delhi High Court against the said order passed by the learned Single Judge and would submit that the Division Bench of the Delhi High Court dismissed the appeal filed by the respondent bearing appeal no.FAO (OS) (Comm.) No. 76 of 2016. The petitioner had also filed a separate appeal being FAO (OS) (Comm.) No.86 of 2016 challenging the directions passed by the learned Single Judge. On 11th April, 2018, the Division Bench allowed the appeal filed by the petitioner and revoked the patent of the respondent over Bt.cotton seeds.

57. The respondent filed Special Leave Petition before the Hon’ble

Supreme Court which was converted as Civil Appeal Nos. 4616-4617 of 2018. He submits that the respondent did not challenge the order of dismissal of the appeal filed by the respondent. The Division Bench of the Delhi High Court accepted the finding of the learned Single Judge on the issue of wrongful termination of the said 2015 SLA and the modification of the same in terms of the trait value fixed under the price control modification.

58. Learned senior counsel invited my attention to the order dated 8th January, 2019 passed by the Supreme Court allowing the Civil Appeal Nos. 4616-4617 of 2018 filed by the respondent and setting aside the order passed by the Division Bench of the Delhi High Court. The Supreme Court restored the order passed by the learned Single Judge. He submits that the respondent had conceded before the Supreme Court that the claim of the respondent of trait value had to be in accordance with the trait value fixed by the price control notifications issued under the state cotton seeds Acts.

59. It is submitted by the learned senior counsel that in view of the statements made by the respondent before the Supreme Court and in view of the Supreme Court restoring the order passed by the learned Single Judge of Delhi High Court, the respondent could not maintain a claim for recovery of trait value from the petitioner in excess of that fixed under the state price control notifications i.e. Rs.90/-, Rs.50/- and Rs.20/- per packet in Andhra Pradesh, Telangana and Maharashtra respectively. The Arbitral Tribunal had directed the petitioner to pay trait value of approximately Rs.163/- per packet to the respondent which is clearly in violation of the state price control notification. The Arbitral Tribunal ignored the judgments/orders of the superior courts

and directed the petitioner to pay to the respondent the trait value as per the rates prescribed in the 2015 SLA.

60. Learned senior counsel strongly placed reliance on the judgment of Supreme Court in case of ***Associate Builders vs. DDA, (2015) 3 SCC 49*** and in particular paragraph 27 and judgment of Supreme Court in case of ***Ssangyong Engineering & Construction Co. Ltd. vs. National Highways Authority of India, 2019 9 SCC OnLine SCC 677*** and in particular paragraphs 16 and 17 and would submit that the impugned arbitral award is contrary to the principles of law laid down by the Supreme Court in case of ***Associate Builders*** (supra) and judgment of Supreme Court in case of ***Ssangyong Engineering & Construction Co. Ltd.*** (supra).

61. It is submitted by the learned senior counsel that the trait value sought to be recovered by the respondent from the petitioner in the arbitral proceedings was nothing but a royalty for a licence of purported patent of the respondent granted to the petitioner under the said 2015 SLA and was sought to be claimed as compensation for the use of its patent. In support of this submission, learned senior counsel relied upon Articles 1.24, 1.25, 1.32, 2.01, 2.05(k), 2.05(l), 3.01, 9.02(b)(i), 9.04 and 9.06 of the said 2015 SLA. He submits that the petitioner had urged before the Arbitral Tribunal that the patent of the respondent was invalid in view of section 3(j) of the Patents Act, 1970 which expressly prohibits the patenting of plants, in whole or part thereof including seeds, varieties and essential biological processes.

62. It is submitted that the rights of the respondent if any in respect of its technology could only be protected under the Protection of Plant

Varieties and Farmers Rights Act, 2001 (for short PPVFR Act) which is a sui generis legislation for the protection of plant varieties, farmers rights and breeders' rights. The respondent could not have a valid patent in respect of such technology purportedly licensed under the said 2015 SLA. The said rights claimed by the respondent under the said 2015 SLA are forbidden by law. The said 2015 SLA was void and thus no payment was required to be made by the petitioner to the respondent under the said agreement.

63. It is submitted by the learned senior counsel that the disputes relating to the patent rights are not arbitrable. The Patents Act is also a self contained code and provides for a framework for adjudication of disputes pertaining to patents. He relied upon sections 64, 104 and 107 of the Patents Act. In support of his submission that the remedies of the parties are specifically provided under those provisions of the Patents Act, he relied upon judgment of Supreme Court in case of ***Vimal Kishor Shah*** (supra) and would submit that the claim arising out of the patent under the said 2015 agreements were thus not arbitrable. He also placed reliance on the judgment of Supreme Court in case of ***A.Ayyasamy*** (supra) in support of this plea.

64. It is submitted by the learned senior counsel that since the said 2015 agreement is void being in contravention of the PPVFR Act, no award could have been made directing the petitioner to make payment to the respondent under the said 2015 SLA. He submits that after enactment of section 3(j) of the Patents Act and the PPVFR Act, the respondent's Bt. gene (being a part of seed/plant) could only be protected under the PPVFR Act and not under the Patents Act. The said PPVFR Act seeks not only to establish an effective system of plant

varieties protection but also seeks to encourage the development of new plant varieties and rights of breeders. If the respondent is allowed to enforce the said 2015 SLA which purports to be a patent licence of a part of the seed/plant, it would defeat the provisions of the PPVFR Act.

65. Learned senior counsel relied upon sections 2(r), 2(x), 2(za), section 15, section 26 of PPVFR Act read with Rule 40 to 43 of the PPVFR Rules, section 92 in support of his submission that the said Act is an enactment containing certain safeguards for farmers who have been conferred with the right to use, save, exchange, share, sell, sow and resow farm produce and the same is also applicable to the seeds. He placed reliance on the judgment of the Delhi High Court in case of ***Emergent Genetics India Private Limited vs. Shailendra Shivam, 2011(125) DRJ 173*** and in particular paragraph 36. He submits that the said Act is a legislation enacted as a part of the public policy and is for the benefit of the farming and agricultural community at large.

66. Learned senior counsel invited my attention to the judgment of Supreme Court in case of ***Shri Lachoo Mal vs. Shri Radhey Shyam, (1971) 1 SCC 619*** and in particular paragraphs 6 and 8 which judgment is relied upon by the Arbitral Tribunal to hold that the benefit sharing mechanism under section 26 of the PPVFR Act is a personal benefit available to the petitioner and therefore the petitioner could have waived such personal benefit by electing to enter into the SLA. He submits that this view of the Arbitral Tribunal is totally erroneous and contrary to the provisions of the PPVFR Act. The petitioner could not have waived the benefit, if any available to its under the said PPVFR Act.

67. Learned senior counsel strongly placed reliance on section 92 of

the PPVFR Act and would submit that the said provision gives the Act overriding effect over any law or "instrument" inconsistent with its provisions. He submits that a contract, including the SLA, would be covered under the word 'instrument' used in section 92 and thus the said Act has overriding effect on the said 2015 SLA. Learned senior counsel placed reliance on the judgment of Supreme Court in case of ***Vishnu Pratap Sugar Works (P) Ltd. vs. Chief Inspector of Stamps (U.P.), AIR 1968 SC 102*** and in particular paragraph 3. He also placed reliance on the judgment of Supreme Court in case of ***Murlidhar Aggarwal vs. State of Uttar Pradesh, (1974) 2 SCC 472*** and in particular paragraph 33 and also judgment of Supreme Court in case of ***Nagindas Ramdas vs. Dalpatram Ichharam, 1974 1 SCC 242*** and in particular paragraph 19.

68. Learned senior counsel for the petitioner submits that when the arbitration proceedings proceeded to the stage of final hearing, the respondent's patent had been revoked by the Division Bench of the Delhi High Court. After the final hearing was concluded in the arbitration, but before the impugned award was pronounced, the Supreme Court vide its judgment set aside the judgment of the Division Bench order and remanded the matter to a learned Single Judge of the Delhi High Court, *inter alia* to consider the issue regarding the validity of the patent of the respondent.

69. Learned senior counsel invited my attention to the letter dated 14th January,2019 addressed by the petitioner's advocate to the Arbitral Tribunal requesting the Tribunal for the oral hearing to explain the effect and consequence of the said Supreme Court judgment. However, without hearing the parties on the implications of the Supreme Court

judgment, the Arbitral Tribunal proceeded for rendering of the arbitral award. The Arbitral Tribunal only heard the parties on whether the petitioner was entitled to make submissions on the implications of the Supreme Court judgment. The Arbitral Tribunal clarified that it had decided the disputes which was the subject matter of arbitration on their own merits and based on material placed before it, without prejudice to the rights and contentions of the parties in other proceedings before other fora.

70. Learned senior counsel submitted that since the entire arbitration proceedings were conducted at a time when the order of the Division Bench revoking the respondent's patent over Bt.cotton seed was in operation, the Arbitral Tribunal thus ought to have heard the parties on the effect of the said Supreme Court judgment which had set aside the judgment of the Division Bench of the Delhi High Court. If the Arbitral Tribunal would have granted hearing on those aspect before rendering the arbitral award, the petitioner could have explained the impact of the Supreme Court judgment and would have submitted that the validity of the respondent's patent was pending adjudication in the proceedings before the Delhi High Court and if the respondent's patent was ultimately revoked, then there would be a complete failure of consideration under the said 2015 SLA.

71. Learned senior counsel for the petitioner submits that various findings rendered by the Arbitral Tribunal were based on the factually incorrect premise. Section 2(3) of the Arbitration Act has to be read with sections 60 and 61 of the Competition Act. Section 60 of the Competition Act clearly provides that the provisions of the said Act would have effect notwithstanding anything thereof contacting any

other law for the time being in force. The Arbitral Tribunal ought to have interpreted sections 60 to 62 of the Competition Act harmoniously. Arbitral Tribunal could not have read section 62 in such a way as to render the mandate of sections 60 and 62 of the Competition Act nugatory.

72. Mr.Iqbal Chagla, learned senior counsel for the respondent on the other hand invited my attention to the various paragraphs of the pleadings, documents forming part of the record before the Arbitral Tribunal, evidence led by the parties, various orders passed by the Delhi High Court and the Supreme Court in the infringement suit, order passed by the said CCI, order passed by the Tribunal under section 16 of the Competition Act and the findings recorded by the Arbitral Tribunal in the majority award, various provisions of the 2015 SLA. It is submitted that after realizing the benefit of the technology of the respondent, the petitioner and its associate companies had approached the respondent for the said sub-licence to commercially use the same. The petitioner obtained benefits under the said Sub-Licence Agreement and never avoided the said sub-licence.

73. It is submitted that under the said 2015 SLA, on the sale of a seed packet worth upto Rs.930/-, the petitioner was liable to pay to the respondent approximately Rs.163.28/- per packet exclusive of taxes. This amount claimed by the respondent has already been collected from the farmers and pocketed by the petitioner and its associate companies. Learned senior counsel placed reliance on the paragraph 5.4 of the affidavit in reply dated 20th February, 2019 filed by the petitioner in Commercial Arbitration Petition (L) No.151 of 2019.

74. It is submitted by the learned senior counsel that the relevant

period for the arbitration proceedings was 1st April, 2015 to 14th November, 2015. The respondent had claimed amount of Rs.117 crores with interest. The petitioner had used MMBL Bollgard II ® technology of the respondent to produce Bt. cotton seeds and sell them to the farmers. He submits that for the Draft Red Herring Prospectus of the petitioner of a year prior to the claim period, the Bt. cotton seeds business of the petitioner was 69.73% i.e. approximately 70% of their business. The total revenue of the petitioner for the Financial Year 2015-16 was Rs.1054 crores as is reflected by the petitioner in the affidavit in reply dated 20th February,2019 filed by the petitioner in petition filed by the respondent under section 9 of the Arbitration Act in this court. The net profit for the Financial Year 2015-16 even according to the petitioner was Rs.154 crores as reflected in the said affidavit.

75. It is submitted that on one hand, the petitioner has failed to make payment of trait value under the terms of the contract for the technology of the respondent and on the other hand has used the very same technology to make and sell seeds to farmers at the maximum selling price and has earned huge revenues and profits from it. He submits that one of the components of maximum selling price of cotton seeds is trait value itself. He submits that the petitioner has already paid approximately Rs.14 crores under the said 2015 SLA till June 2015. The petitioner however started raising dispute regarding the quantum of trait value thereafter and stopped making payments to the respondent. The petitioner had also deposited TDS amount with the authorities in favour of the respondent on 24th July, 2015 and 16th May, 2016 without making the payment of the balance amount to the respondent. He submits that the petitioner did not raise any dispute

with regard to the quantum/quantification of the amounts due by the petitioner to the respondent before the arbitral tribunal and even before this court. The contractual rate had been arrived at after extensive negotiations and under legal advice as recorded in Article 11.10 of the 2015 SLA for almost 9 months, with full knowledge of the State Government Notifications.

76. It is submitted that the petitioner and its associate companies were fully aware that the State Government Notifications did not fix the trait value payable by them to the respondent but fixed only the maximum selling price at which the seeds could be sold by the petitioner and its associate companies to farmers. Neither the petitioner nor its associate companies had during the relevant period attempted to avoid the 2015 SLA and had repeatedly sought to avail the benefits thereunder. It is submitted that even before the said CCI, the petitioner and its associate companies had never sought avoidance of the 2015 SLA but had on the contrary, challenged the termination of the 2015 SLA and sought stay of the termination of the 2015 SLA by the respondent and in effect sought performance of the said agreement. He submits that the petitioner and its associate companies were contesting the trait value as being allegedly contrary to the price notifications and at the same time challenged the validity of specific clause of the 2015 SLA before the CCI as being violative of Competition Act, 2002 and sought stay on the termination of the said agreement contrary to their contest to the trait value payable under the said agreement to the respondent. The stand taken by the petitioner is inconsistent and mutually destructive.

77. It is submitted that the petitioner though had initially filed

counter claim before the Delhi High Court in the said infringement suit filed by the respondent, the petitioner withdrew the said counter claim on 15th February, 2017 without leave before the Delhi High Court and thereafter filed a frivolous application under section 16 of the Arbitration Act before the arbitral tribunal alleging invalidity of the 2015 SLA on various grounds. It is submitted by the learned senior counsel that sections 2 to 13 and 95 to 97 of the PPVFR Act were brought into effect on 11th November, 2005. On 19th October, 2006, sections 1, 14 to 94 of the said PPVFR Act were brought into effect. If according to the petitioner, section 26 of the said Act was applicable to the said 2015 SLA, the petitioner was required to register itself under sections 14 and 15 read with section 24 of the said Act for section 26 to trigger. The petitioner as plant breeder, did not obtain registration under section 24 of the said Act to receive the benefits, if any, under the PPVFR Act.

78. It is submitted by the learned senior counsel that on 25th January, 2007, after detailed negotiations, the petitioner and the respondent agreed to amend the 2004 SLA and fixed a trait value of Rs.150/- per packet of BG-I cotton seeds costing Rs.750/- per packet for the period 2006-2008 onwards and Rs.266/- per packet of BG-II cotton seeds costing Rs.950/- per packet for the period 2007-2008 onwards. On 8th May, 2007, in view of the settlement, the State of Andhra Pradesh filed an additional affidavit before the MRTPC bringing on record the (1) Settlement and Release of Claims Agreement and (2) Supplementary and Amendment Agreement executed by and between the parties on 25th January, 2007 and prayed that the matter before the MRTPC had become infructuous. He submits that on 25th May, 2007, the second amendment agreement was executed between the parties under the trait

value for BG-II further reducing the amount to Rs.225/- per packet for a packet costing upto Rs.950/- per packet.

79. It is submitted by the learned senior counsel that on 11th June, 2008, the Andhra Pradesh Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2007 was enacted. Section 11 thereof provides for fixation of the maximum sale price after taking into consideration various factors including trait value of a cotton seed. The Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2009 was enacted. Section 10 thereof provides for fixation of the maximum sale price after taking into consideration various factors including trait value of a cotton seed. He submits that section 11 of the Andhra Pradesh and section 10 of the Maharashtra Act do not empower the respective State Governments to fix trait value. It only provides that the final maximum selling price of the cotton seeds could be fixed under those provisions. Under the said Act, the purpose of such maximum selling price fixation was to secure the interest of famers only. The State did not have any intention/desire to determine/fix trait value.

80. It is submitted by the learned senior counsel that on 11th August, 2009, 29th September, 2009 and 23rd November, 2009, the petitioner paid only a sum of Rs.9 crores to the respondent instead of Rs.89.52 crores under the 2004 SLA and the petitioner retained the said trait value on the ground that the agreed contractual trait value was making its business less profitable. The respondent accordingly issued a notice of termination of the said SLA 2004 by notice dated 19th November, 2009 and demanded the outstanding payment of Rs.89.52 crores approximately under the said 2004 SLA. Learned senior counsel

submits that the respondent had filed a petition under section 9 of the Arbitration Act on 23rd November, 2009 before the Delhi High Court for interim reliefs against the petitioner. By an order dated 8th December, 2009, the MRTP proceedings between the parties were closed by the Competition Appellate Tribunal directing that in view of the amended agreements having been executed, nothing survived in the said reference.

81. The petitioner had thereafter invoked the arbitration clause under the said 2004 SLA on 3rd February, 2010 raising a dispute before the arbitral tribunal concerning the payment of trait value for the Kharif 2009 seasons. The petitioner has filed petition under section 9 of the Arbitration Act on 9th February, 2010 seeking stay of the termination notice dated 19th November, 2009 before Delhi High Court. On 11th February, 2010, Delhi High Court disposed of the said petition filed by the petitioner under section 9. Delhi High Court recorded the statement made by the learned counsel for the petitioner that the petitioner would pay on or before 16th February, 2010, the amount claimed in the notice after deducting Rs.9,49,03,263/- already paid by the petitioner to the respondent. Delhi High Court recorded in the said order that the petitioner had agreed to pay the amount claimed in the termination notice dated 19th November, 2009 within the time period stipulated in it. Delhi High Court accordingly disposed of the said arbitration petition having become infrutuous keeping all the rights and contentions of both the parties left open.

82. In the Writ Petition No.6802 of 2010 filed by the respondent before the Andhra Pradesh High Court challenging the prospective action of the State Government to fix trait value, the State of Andhra

Pradesh stated that neither the 1st nor 2nd respondent expressed any intention/desire to determine/fix trait value. Andhra Pradesh High Court in the said order dated 20th April, 2010 held that after coming into force of the said legislation in terms of the legislative mandate under section 11 of the said Act, the Government fixed the maximum sale price of the several categories of cotton seeds at various rates in the year 2008-2009 duly taking into account the trait value charged which in the opinion of the Government is reasonable. The effort was not for fixing trait value but only for fixing maximum sale price.

83. It is submitted by the learned senior counsel that the said 2015 SLA was executed after detailed negotiations held by the petitioner with full independent legal advice received by the petitioner of its implications. The State Government Price Notifications fixing maximum sale price at which the petitioner could sell the seeds were already existing before the execution of the said 2015 SLA between the parties. The petitioner had obligation to pay license fee to the respondent under the said agreement notwithstanding the existence of the State Government Price Notifications. The petitioner had already made payment of Rs.14 crores under the said agreement to the respondent, however refused payment of the balance contractual license fee on the ground that the contractual amount was contrary to the Price Notifications issued by the State Government.

84. It is submitted that the arbitration clause was invoked in view of the dispute between the parties by the respondent on 23rd February, 2016 which was responded by the petitioner by reply dated 9th March, 2016. The claim made by the respondent before the arbitral tribunal were an “in personam’ contractual claim. The arbitral tribunal has

rendered various findings of fact on interpretation of the said 2015 SLA and has held that the said agreement was contractually enforceable in law. The claims made by the respondent against the petitioner were contractual and were recoverable.

85. It is submitted that the arbitral tribunal had jurisdiction to decide those contractual claims. The agreement was not void under Section 23 of the Contract Act, 1872 as being violative of the Patents Act, 1970 or the PPVFR Act. It is also held by the arbitral tribunal that the State Government Price Notifications did not and could not fix the trait value/license fee. The claims made by the respondent for contractual license fee were not contrary to the State Government Price Notifications. The said 2015 SLA is not vitiated either by fraud or misrepresentation. It is submitted that the view taken by the arbitral tribunal is a plausible view. Even if two views are possible based on the interpretation of the contract, such possible interpretation or such plausible interpretation cannot be substituted by another plausible view or another possible interpretation by this Court under Section 34 of the Arbitration Act.

86. In support of this submission, learned senior counsel placed reliance on the judgment of Supreme Court in case of ***McDermott International Inc v/s. Burn Standard Co. Ltd.***, (2006) 11 SCC 181 and in particular paragraph 111 and judgment of this Court in case of ***Fermenta Biotech Limited v/s. KR Patel*** in Arbitration Petition No. 545 of 2017 and in particular paragraph 10. He also placed reliance on the judgment of this Court in Arbitration Petition No. 1714 of 2014 in case of ***JSW Steel Limited v/s. ICICI Lombard General Insurance Company Limited*** and in particular paragraphs 16 and 17. Learned

senior counsel also placed reliance on the judgment of the Supreme Court in case of ***Associate Builders v/s. Delhi Development Authority, (2015) 3 SCC 49*** and in particular paragraphs 15, 22, 41 and 42 and in case of ***Ssangyong Engineering & Construction Company Limited v/s. National Highways Authority of India, (2019) SCC OnLine SC 677*** and in particular paragraphs 33 to 41 in support of a submission that scope of interference with the Arbitral Award under Section 34 of the Arbitration Act is extremely narrow.

87. It is submitted by the learned senior counsel that even if there is a jurisdictional challenge, it must be confined only under the grounds set out under Section 34 of the Arbitration Act. A jurisdictional challenge is not different from other challenges and are subject to the same limitations. It is submitted that the judgment delivered by a learned single Judge of this Court in case of ***M3NERGY Sdn. Bhd. v/s. Hindustan Petroleum Corporation Limited*** in Arbitration Petition No. 548 of 2014 cited by the learned senior counsel for the petitioner has been already overruled by the Division Bench of this Court in the judgment reported in 2019 SCC OnLine Bom 2915 and in particular paragraphs 17, 21 and 25 to 27. He submits that the Special Leave Petition filed against the said judgment of Division Bench of this Court is dismissed by an order dated 31st January, 2020 in Special Leave Petition No. 7583-7584 of 2019 in case of ***M3NERGY Sdn. Bhd. v/s. Hindustan Petroleum Corporation Limited***.

88. It is submitted by the learned senior counsel that the majority award rendered by the arbitral tribunal is well reasoned award delivered after considering the provisions of the agreement entered into between the parties, pleadings, documents and the evidence led by the

parties. None of the findings rendered by the Tribunal are perverse. The award does not demonstrate any perversity or patent illegality and thus no interference is warranted with the majority award under Section 34 of the Arbitration Act. It is submitted that the issue raised by the petitioner that the arbitral tribunal did not have jurisdiction on the ground that the said 2015 SLA was void under the Competition Act, 2002 was within the exclusive jurisdiction of the Competition Commission and the jurisdiction of the Arbitration Tribunal was ousted is totally misplaced.

89. It is submitted that the petitioner had admitted during the course of arguments that the monetary relief claimed by the respondent before the arbitral tribunal could not be granted by the said CCI. Under Section 61 of the Competition Act, jurisdiction of an arbitral tribunal is ousted only in respect of the matters which the commission or the Appellate Tribunal is empowered by or under the Competition Act to determine. He submits that since the CCI or the Appellate Tribunal is not empowered to determine the monetary claims made by the respondent, such claims made by the respondent before the arbitral tribunal were within the jurisdiction of the arbitral tribunal and could not be ousted. The petitioner had never challenged the said 2015 SLA as void *ab-initio* before the said CCI. On the contrary, the petitioner had prayed for specific performance of the said 2015 SLA before the said CCI. He submits that the proceedings before the said CCI predominantly dealt with post-termination obligations. The interim order passed by the said CCI on 13th April, 2016 also was confined itself only with post-termination obligations of the parties.

90. It is submitted by the learned senior counsel that for deciding the

issue of jurisdiction, triple test under Section 16 of the Arbitration Act applies only to three things: (1) whether there is in existence a valid arbitration agreement, (2) whether the arbitral tribunal is properly constituted and (3) whether the matters submitted to arbitration are within the scope of the arbitration agreement. He submits that in this case such triple test of initial jurisdiction is completely satisfied. The petitioner has not disputed the existence of validity of arbitration agreement. It is not the case of the petitioner that the arbitral tribunal is not properly constituted. The monetary claim made by the respondent before the arbitral tribunal is within the scope of and in accordance with the arbitral clause contained in the 2015 SLA.

91. It is submitted that since the arbitral tribunal had inherent jurisdiction to decide the claims made by the respondent, the questions that remains to be decided is whether the jurisdiction of the Tribunal was ousted in view of Section 61 of the Competition Act, 2002. Learned Senior Counsel placed reliance on the judgment of Supreme Court in case of ***Indian Farmers Fertiziler Cooperative Limited v/s. Bhadra Products, (2018) 2 SCC 534*** and in particular paragraph 20.

92. It is submitted by the learned senior counsel that since the provisions of the said Competition Act did not afford any remedy to allow the monetary claims and which were within the exclusive jurisdiction of the Civil Courts or as the case may be, the jurisdiction of Civil Court or Arbitral Tribunal is not ousted. He strongly placed reliance on the judgment of Supreme Court in case of ***Dhulabhai v/s. State of Madhya Pradesh, (1960) 3 SCR 662*** and in particular paragraph 35 and would submit that the principles of law laid down by the Supreme Court in the said judgment would squarely apply to an

arbitral proceedings also. He also placed reliance on the judgment of Supreme Court in case of ***Vimal Kishore Shah v/s. Jayesh Dinesh Shah, (2016) 8 SCC 788*** and in particular paragraphs 47 and 48.

93. It is submitted by the learned senior counsel that the arbitral tribunal rightly determined whether its jurisdiction was ousted by looking at the arbitrability of the claim and therefore the averments contained in the statement of claim. The claims made by the respondent were 'in personam' and admittedly not capable of being adjudicated or being granted by the said CCI. The non-arbitrable defence raised by the petitioner does not, in law, determine or oust the jurisdiction of the arbitral tribunal. Learned senior counsel placed reliance on the judgment of Supreme Court in case of ***Church of North India v/s. Lavajibhai Ratanjibhai, (2005) 10 SCC 760*** and in particular paragraphs 38 and 39, judgment of Supreme Court in case of ***Abdulla v/s. Galappa, (1985) 2 SCC 54*** and in particular paragraphs 5, 7 and 9 and judgment of Andhra Pradesh High Court in case of ***Sangnbhotla Venkatramaiah v/s. Kallu Venkataswamy, (1976) 2 APLJ 28*** and in particular paragraphs 1, 3 and 6.

94. Learned senior counsel distinguished the judgments of the Supreme Court in case of ***A. Ayyasamy*** (supra) and paragraphs of the judgment in case of ***Vimal Kishore Shah*** (supra) relied upon by the petitioner and judgment of this Court in case of ***Dinesh Jaya Poojary*** (supra) on the ground that the Supreme Court and this Court in those judgments has held that the claims made by the claimant himself were non-arbitrable in the fact situation of those matters. He submits that those judgments are clearly distinguishable in the facts of this case.

95. Learned senior counsel invited my attention to Section 61 of the Competition Act and would submit that the jurisdiction of the arbitral tribunal is ousted only in respect of any matter which the commission or the appellate tribunal is empowered by or under the Competition Act to determine. If any matter is incapable of being determined under the Competition Act, such a matter is not excluded under Section 61 of the Competition Act to be ousted by the arbitral tribunal. The petitioner has already conceded this position in law during the course of the arguments.

96. It is submitted by the learned senior counsel that there are several instances where civil disputes have continued in tandem with statutory remedies under specific laws. He relied upon the judgment of Delhi High Court in case of ***Shoes East Limited v/s. Subhash Dalal, (2010) SCC OnLine Del 4292*** and in particular paragraph 11 and would submit that in the said judgment the provisions under SEBI Act which contains a provision similar to Section 61 of the Competition Act were considered. Delhi High Court allowed the plaintiff to proceed with the Civil Suit since that relief prayed in the said Civil Suit could not be determined under the provisions of SEBI Act. He also relied upon the judgment of this Court in case of ***Asha Kataria v/s. Ashok Kumar, 2007 (5) Mah LJ 149*** and in particular paragraphs 10 and 15 and would submit that the said judgment also dealt with a provisions under the SEBI Act which provision is similar to Section 61 of the Competition Act and allowed the Civil Suit to continue. He also relied upon the judgment of Supreme Court in case of ***Ramesh Gobindram v/ s. Sugra Humayun Mirza Wakf, (2010) 8 SCC 726*** and in particular paragraphs 24, 25, 28 and 35. He submits that in the said judgment, the Supreme Court had considered a provision of Wakf Act, 1995 which

provision is similar to Section 61 of the Competition Act and has allowed the suit for eviction under the Wakf Act to continue in view of the fact that the said Wakf Act did not contain a provision for granting such relief.

97. It is submitted by the learned senior counsel that the Competition Act is not a self-contained code. The scheme, object and the purpose of the Competition Act, 2002 is to protect competition and not the rights inter se amongst competitors. The Scheme of the Competition Act does not contemplate a machinery for seeking relief under a contract. The scope/ purpose of proceedings before the said CCI are different and distinct from recovery proceedings. Since the respondent could not seek any relief from CCI and since the said CCI does not provide a remedy to respondent, the jurisdiction of the arbitral tribunal to determine the claims made by the respondent cannot be ousted. He submits that since the respondent does not have a remedy under the Competition Act for recovery of its contractual dues, the Competition Law can never be regarded as a self-contained code *qua* such contractual claims.

98. In support of the aforesaid submissions, learned senior counsel placed reliance on the following Judgments :-

(a) Judgment of Supreme Court in case of ***Saurabh Prakash v/s. DLF Universal Limited, (2007) 1 SCC 228*** and in particular paragraphs 34 and 35.

(b) Judgment of Supreme Court in case of ***Pawan Hans Limited v/s. Union of India, (2003) 5 SCC 71*** and in particular paragraph 9.

(c) Judgment of Delhi High Court in case of ***Telefonaktiebolaget LM Ericson (PUBL) v/s. CCI, (2016) SCC OnLine Del 1951*** and in particular paragraphs 153, 154, 168, 173, 175, 176 and 180 to 182.

(d) Judgment of Supreme Court in case of ***Balawaa v/s. Hasanabi, (2000) 9 SCC 272*** and in particular paragraphs 7 and 8.

(e) Judgment of Supreme Court in case of ***Girnar Traders v/s. State of Maharashtra, (2011) 3 SCC 1*** and in particular paragraphs 79 &d 80.

99. It is submitted by the learned senior counsel that the said 2015 SLA has not been admittedly declared to be void till date. The petitioner in the said proceedings before the said CCI has sought a continuation of the said 2015 SLA and not for declaration of the said agreement as void. In the infringement proceedings filed by the respondent before the Delhi High Court for post termination period, the petitioner had filed a counter claim seeking a declaration that the termination of the said 2015 SLA was bad in law and that the said 2015 SLA was valid and still subsisting. The petitioner is thus estopped from contending that the said 2015 SLA is void. The petitioner cannot be allowed to approbate and reprobate. Learned senior counsel submits that the said 2015 SLA has to be treated and is presumed to be valid unless it is declared to be void. Assumption of a future declaration that the said 2015 SLA would be void cannot denude the jurisdiction of the arbitral tribunal to adjudicate upon the monetary claims made by the respondent.

100. Learned senior counsel placed reliance on the judgment of Supreme Court in case of ***Nathani Steels Limited v/s. Associated Constructions, (1995) Supp (3) SCC 324*** and in particular paragraph 3 thereof. The petitioner having paid substantial amount to the respondent under the said 2015 SLA and having taken benefit under the said agreement cannot be allowed to challenge the validity of the said 2015 SLA which is pending before the said CCI and is within the exclusive jurisdiction of the said authority.

101. Learned senior counsel placed reliance on Section 27 of the Competition Act and would submit that if the said CCI finds that there is contravention of Sections 3 or 4, the said CCI has vide powers to pass various orders under the said Section including an order for discontinuance of objectionable agreements, imposition of penalties, modification of agreements etc. If the contract is void *ab-initio* as canvassed by the petitioner, the question of its discontinuance, modification etc. could never arise. The existence of such possible remedies under Section 27 itself indicates that even where there is a contravention of Section 3 or Section 4, the contract is not void *ab-initio*. He submits that under the Competition Law, the concept of voidness has always been considered to be “transient” and not absolute and, thus, curable. In support of this submission, learned senior counsel placed reliance on the judgment of Supreme Court in case of ***Mahindra and Mahindra Limited v/s. Union of India, (1979) 2 SCC 529*** and in particular paragraphs 10 and 14. He also relied upon the judgment of Court of Appeal in case of ***David John Passmore v/s. Morland, (1999) 1 CMLR 1129*** and in particular paragraphs 7, 27, 28, 34 and 50.

102. In so far as the reliance placed by the learned senior counsel for the petitioner on the order dated 10th February, 2016 passed by the said CCI is concerned, it is submitted by the learned senior counsel for the respondent that the said order has been challenged by the respondent in Writ Petition No. 1776 of 2016. By an order dated 29th February, 2016, the Delhi High Court has directed that no final order should be passed by the said CCI and that any interim order under Section 33 shall not be given effect to without the leave of the Delhi High Court. The said Writ Petition filed by the respondent is still pending before the High Court.

103. It is submitted that the said order passed under Section 26(1) of the Competition Act is merely an administrative direction which is internally issued without any adjudicatory process and it does not effectively determine any right or obligation of the parties. Such order does not entail any civil consequences. In support of this submission, learned senior counsel placed reliance on the judgment of Supreme Court in case of ***CCI v/s. SAIL, (2010) 10 SCC 744*** and in particular paragraph 38. He also placed reliance on the judgment of this Court in case of ***Vision Millenium Exports Private Limited v/s Stride Multitrade Private Limited, (2017) SCC OnLine Bom 9307*** and in particular paragraphs16F and 25 to 27.

104. It is submitted by the learned senior counsel that the order dated 13th April, 2016 passed by the CCI cannot be given effect to in view of the order dated 29th February, 2016 passed by the Delhi High Court. In any event, the said order dated 13th April, 2016 is merely an interim order and does not determine the rights of parties and can never bind or prevent passing of contrary order at the stage of final hearing much less

operate as *res judicata* or issue estoppel. He relied upon the judgment of Supreme Court in case of ***Amrish Tewari v/s. Laltaprasad Dubey, (2000) 4 SCC 440*** and in particular paragraph 10 and the judgment of Supreme Court in case of ***State of Assam v/s. Barak Upatyaka D.U. Karmachari Sanstha, (2009) 5 SCC 694*** and in particular paragraphs 21 and 22.

105. In so far as the Issue Nos. 2 and 3 are concerned, it is submitted by the learned senior counsel that those issue were framed because the petitioner had raised Competition Law issue in the statement of defence. Each of those issues are carefully prefaced by "as alleged in the defence". The arbitral tribunal was not obliged to decide those issue nor would it mean that a decision on those issues was necessary to decide other issues or to grant the award in favour of the respondent. Learned senior counsel invited my attention to the ground (A) raised by the petitioner at page 25 of the arbitration petition and would submit that the petitioner itself has admitted that in the said ground that the issue regarding the validity of the SLA under the Competition Act was not capable of being adjudicated by the arbitral tribunal and was to be exclusively adjudicated by the Competition Commission of India.

106. Learned senior counsel invited my attention to ground (F) and would submit that it was contended by the petitioner itself that the those issues which the CCI was seized were only capable of being decided by the CCI exclusively. He submits that the arbitral tribunal rightly has not decided those issues and not expressed any opinion on those issues. Learned senior counsel placed reliance on the judgment of Supreme Court in case of ***Harsha Constructions v/s. Union of India, (2014) 9 SCC 246*** and in particular paragraphs 2 and 16 to 20. He

submits that if the arbitral tribunal would have rendered a decision on issue nos. 2 and 3, it would have clearly exceeded its jurisdiction and such award would have been set aside under Section 34(2)(b)(i) of the Arbitration Act. In support of this submission, learned senior counsel placed reliance on the judgment of this Court in case of ***Union of India v/s. Sarthi Enterprises, (2015) SCC OnLine Bom 1511*** and in particular paragraph 27. The said judgment of learned Single Judge has been upheld by the Division Bench in case of ***Sarthi Enterprises v/s. Union of India, (2016) 6 MHLJ 598***.

107. It is submitted by the learned senior counsel that whilst deciding its jurisdiction as well as whilst deciding on the exclusion of its jurisdiction, the arbitral tribunal also considered the defence raised by the petitioner that raises issue of competition law and rightly held that those issue cannot be determined by the arbitral tribunal but can be determined by the said CCI under the competition law. The arbitral tribunal rightly did not express any opinion on issue nos. 2 and 3 and ensured that the proceedings of the petitioner before the said CCI could be decided on its own merits. The arbitral award did not operate as *res-judicata* against the petitioner in those proceedings.

108. It is submitted by the learned senior counsel that if the submissions of the petitioner are correct and if the claims made by the respondent are rejected on the ground that those claims are not arbitrable, the respondent would be remediless. The respondent would have no forum to approach for its contractual dues. If the respondent are required to wait till the outcome of the CCI proceedings, its claim would be clearly barred under limitation. On the other hand, if the said CCI were to declare the said 2015 SLA as void *ab-initio,* the petitioner

in that event would have multiple remedies. Learned senior counsel placed reliance on Section 53N of the Competition Act, 2002 and would submit that amongst several remedies the petitioner will invoke the provisions of Section 53N of the Competition Act, 2002 and can seek refund of the amounts paid under the Award as compensation to the respondent. Since, the petitioner is not rendered remediless, principles of *res-judicata* are not attracted.

109. Learned senior counsel invited my attention to some of the paragraphs of the arbitral award and would submit that the arbitral tribunal has determined all the issues that were within its jurisdiction and did not determine the issues under the Competition Law and has kept open all the rights and remedies available to the petitioner under the Competition Law. He submitted that even if the said CCI were to hold that the said 2015 SLA is unenforceable, since the petitioner has acted upon and received benefits under the said 2015 SLA, it would be liable to pay the license fee to the respondent. He relied upon by the judgment of Supreme Court in case of ***Piloo Dhuinshaw Sidhwa v/s. Municipal Corporation of City of Poona, (1970) 1 SCC 213*** and in particular paragraphs 6, 7, 9 and 10.

110. During the course of the arguments advanced by the learned senior counsel for the petitioner, this Court inquired as to the option if any available to the arbitral tribunal to deal with the claims made by the respondent on its own merit or whether the arbitral Tribunal could suspend the arbitral proceedings and wait for outcome of the proceedings before CCI. The learned senior counsel for the petitioner made three possible recourse which according to him, the arbitral tribunal could have adopted i.e. (a) to dismiss the entire claim of the

respondent. The respondent in that event should initiate arbitration after a final order in its favour under the Competition Act is passed by the said CCI or (b) to stay the arbitral proceedings under Section 9 and/or Section 17 of the Arbitration Act and (c) to seek a indefinite extension of time under Section 29A of the Arbitration Act.

111. It is submitted by the learned senior counsel for the respondent that the option (a) suggested by the learned senior counsel for the petitioner is untenable in law on the ground that the claim of the respondent was arbitrable and was not capable of being granted by the said CCI, (ii) claim of the respondent would be extinguished by the law of limitation if the respondent were to await the final order of the CCI. In so far as the suggestion of the learned senior counsel for the petitioner that the arbitral proceedings were liable to be stayed under Section 9 and/or Section 17 of the Arbitration Act is concerned, it is submitted by the learned senior counsel that the said contention raised by the petitioner is untenable. There is no provision in the Arbitration Act to stay the arbitral proceedings by the arbitral tribunal itself. On the contrary, it is settled law that there is no jurisdiction under Section 17 of the Arbitration Act to stay the arbitration proceedings. He submits that the proposition of law canvassed by the learned senior counsel for the petitioner that the Court has jurisdiction under Section 9 of the Arbitration Act to grant stay of proceedings is also doubtful.

112. Learned senior counsel placed reliance on the judgment of Delhi High Court in case of ***Shree Tirupathi Udyog v/s. Indraprastha Gas Ltd.***, decided on 1st March, 2018 in Arbitration Application (Commercial) No. 8 of 2018. He submits that in any case the petitioner did not file any proceedings either under Section 9 or under Section 17

of the Arbitration Act seeking stay of the arbitral proceedings either in Court or before the arbitral tribunal as the case may be. He submits that where stay/suspension of proceeding was contemplated, the legislature has expressly provided so in limited context i.e. under Section 38 of the Arbitration Act.

113. In so far as the option (c) suggested by the learned senior counsel for the petitioner i.e. to seek an indefinite extension of time under Section 29A of the Arbitration Act is concerned, it is submitted by the learned senior counsel that the legislative intent underlying Section 29A of the Arbitration Act is to ensure timely disposal of arbitral proceedings. While a short extension of time for making of the award is contemplated under the said tribunal, the Court has no jurisdiction to grant an indefinite extension. He submits that if indefinite extension is permitted, the purpose and object of deciding the arbitral proceedings expeditiously would be frustrated.

114. In so far as issue of jurisdiction raised by the petitioner on the ground that the issue of patentability of the technology of the respondent is pending adjudication before the Delhi High Court, the arbitral tribunal has no jurisdiction to decide the claim of the respondent is concerned, it is submitted by the learned senior counsel that the patent remains valid and enforceable till the time it is revoked. On the date of the claim as well as on the date of the award, the patents covering the technology of the respondent were and even today are valid and enforceable. The award cannot be challenged on the basis of alleged assumed invalidity of patents. It is submitted that no other arguments regarding Patent Act was argued during the course of arguments by the learned senior counsel for the petitioner and are

therefore deemed to have been given up. The petitioner has simplicitor raised a plea that the said 2015 SLA is forbidden by Section 3(j) of the Patents Act and thus is void under Section 23 of the Indian Contract Act, 1872. He submits that this argument of the petitioner is totally untenable. Section 3(j) of the Patents Act does not prohibit any type of agreement or declare any type of agreement void.

115. It is submitted that the claim of the respondent in the arbitral proceedings were not for recovery of patent fees but was for recovery of contractual payment of trait fees. Unless the patent of the respondent is set aside, the respondent has right to claim under the said patent of the respondent. Learned senior counsel invited my attention to the findings rendered by the arbitral tribunal in paragraphs 159 and 161 of the arbitral award and would submit that the arbitral tribunal has clearly recorded a finding that the claims made by the respondent were not based on the patent right. Such findings of fact in paragraph 161 of the arbitral award have not been challenged by the petitioner in the arbitration petition.

116. In so far as the submission of the learned senior counsel for the petitioner that the said 2015 SLA is contrary to the Section 26 read with Section 92 of the PPVFR Act is concerned, it is submitted by the learned senior counsel for the respondent that the arbitral tribunal has given a finding of fact that the petitioner did not possess any certificate of registration under Section 24 of the PPVFR Act prior to the date of termination of the said 2015 SLA, which is a mandatory pre-condition to trigger Section 26 of the said PPVFR Act. He submits that since the provisions of the said PPVFR Act are not triggered, the contention is academic, moot and deserves to be rejected.

117. It is submitted that the petitioner is a commercial breeder with revenue over Rs.1,000 crores and not a farmer. The respondent is also not a farmer. No rights of farmers are being waived by virtue of 2015 SLA. The petitioner has been exploiting the farmers and has recovered substantial amount from the farmers with trait value and has retained such amount with themselves illegally. The petitioner sells seeds etc to the farmers and has not been espousing the cause of farmers. He relied upon the findings of the arbitral tribunal on those issues in paragraph 212 of the arbitral award and would submit that the said finding of fact cannot be interfered with by this Court in this petition under Section 34 of the Arbitration Act.

118. In so far as the challenge arising out of the notifications issued by the State Government of Andhara Pradesh is concerned, it is submitted by the learned senior counsel that the relevant State Legislation did not empower the State Government to fix of trait value/ license fee. Under Section 11, the Government has to fix maximum sale price after taking into consideration the trait value. The Andhra Pradesh Government has fixed the maximum sale price and not the trait value under the said notifications.

119. Learned senior counsel also invited my attention to the notifications issued by the State of Maharashtra and would submit that the State of Maharashtra also has not fixed the trait value/license fee but has only fixed the maximum sale price of cotton seeds. He submits that the State Government of Andhra Pradesh has infact admitted before the Andhra Pradesh High Court in a writ petition by filing an affidavit that it did not intent to fix the trait value/license fee. State of

Telangana had also fixed Maximum Sales Price under the AP Cotton Seeds Act. The Andhra Pradesh High Court has stayed the Government notification issued by the State of Andhra Pradesh. On 31st March, 2016, the said notification issued by the State of Andhra Pradesh has lapsed. On 20th April, 2016, a Division Bench of the Andhra Pradesh High Court stayed the operation of the judgment delivered by the learned single Judge but made it clear that stay order would not affect the arbitrations.

120. Learned senior counsel invited my attention to various findings rendered by the arbitral tribunal in the majority award in paragraphs 204, 210, 211, 213 and 215 and would submit that these findings of fact being not perverse cannot be interfered with by this Court. The arbitral tribunal has not followed the orders passed by the Delhi High Court. The Delhi High Court has considered the notifications issued by the Central Government on 1st April, 2016 whereas in this case the respondent had made a claim only upto 14th October, 2015. The said judgment delivered by the Delhi High Court was not relevant. The directions issued by the Delhi High Court were for the financial year 2016-2017 whereas the transactions between the parties in this case were prior to the financial year 2016-2017.

121. It is submitted that the said infringement suit filed by the respondent was initially dismissed by the Delhi High Court. The said judgment of the learned single Judge was set aside by the Division Bench. The Supreme Court passed an order thereby setting aside the order passed by the Delhi High Court restored the judgment delivered by the learned single Judge of the Delhi High Court dated 28th March, 2017 and remanded the said suit back to the Delhi High Court. The said

suit is pending before a learned Single Judge of Delhi High Court.

122. It is submitted by the learned senior counsel that the arbitral tribunal has rendered a finding of fact in paragraphs 203 to 206 of the arbitral award and has come to the conclusion that the said Price Notifications did not fix the trait value but only the maximum sell price at which the petitioner could sell the seeds. During the course of oral arguments, the petitioner did not challenge those findings rendered by the arbitral tribunal in the majority award. In support of this submission, learned senior counsel placed reliance on the judgment of Supreme Court in case of ***Amrish Tewari v/s. Laltaprasad Dubey, (2000) 4 SCC 440*** and in particular paragraph 10. He also placed reliance on the judgment of Supreme Court in case of ***State of Assam v/s. Barak Upatyaka D.U. Karmachari Sanstha, (2009) 5 SCC 694*** and in particular paragraphs 21 and 22.

123. It is submitted by the learned senior counsel that the order passed by the Delhi High Court as well as by the Supreme Court was for a period post termination when the Central Price Control regime under the Cotton Seeds (Price Control) Order, 2015 was in place. Under the said Cotton Seeds (Price Control) 2015, the Central Government was empowered to and had fixed the trait value. He submits that even in the said judgment of Delhi High Court and more particularly in paragraphs 131 and 134(8), this position was confirmed by holding that the order will apply only to financial year 2016-2017.

124. In so far as the issue as to whether the arbitral tribunal ought to have given hearing to the petitioner to make submissions on the order dated 14th January, 2019 passed by the Supreme Court or not is concerned, learned senior counsel for the respondent invited my

attention to the minutes of meeting dated 16th January, 2019 on page 531 of the Convenient Compilation No.II of the documents. No prejudice of any nature was caused to the petitioner. The arguments were already concluded between the parties before the arbitral tribunal when such request was made by the petitioner.

125. In so far as the issue nos. 2 and 3 framed by the arbitral tribunal is concerned, it is submitted that the arbitral tribunal could not have gone into and decided whether the said 2015 SLA was void or not based on the provisions of the Competition Act. He submits that the petitioner has not challenged the amounts awarded by the arbitral tribunal on merits in the arbitration petition. In so far as the alleged concession made by the respondent before the Supreme Court recorded in paragraph 10 of the order dated 1st January, 2019 passed by the Supreme Court is concerned, it is submitted by the learned senior counsel that the said alleged concession was specifically qualified by the phrase ‘at this stage’ which demonstrates that it was a statement applicable at the interim stage only. In any event, the said concession has to be read in the context of the post termination period when the CSPCO was in force and was being observed. During the arguments, the petitioner did not question the award as regards the findings on the issues of fraud/misrepresentation/coercion/undue influence and thus those findings are deemed to be final and binding.

126. It is submitted by the learned senior counsel that the petitioner had entered into a valid contractual commitment in the form of the 2015 SLA and had undertaken obligations thereunder. The petitioner has acted upon the said agreement and has received benefits under the said agreement. The petitioner had sold 7,39,818 seeds packets

containing the technology of the respondent during the period 1st April, 2015 to 14th November, 2015 and received an aggregate amount of Rs.740 crores approximately from the farmers/consumers. The arbitral tribunal however has only allowed the claim of Rs.117.46 crores with interest which the petitioner had contractually agreed to pay to the respondent. The retention of the said amount by the petitioner amounts to unjust enrichment by the petitioner, which cannot be permitted.

127. Mr. Chagla, learned senior counsel for the respondent while distinguishing the judgment of Delhi High Court in case of ***Jindal Steel & Power Ltd.*** (supra) invited my attention to the paragraphs 1, 24 and 28 of the said judgment and would submit that a MOU dated 1st February, 2003 was challenged before the Delhi High Court in a writ petition filed under Article 226 of the Constitution of India before the Competition Act came into force. The same party had filed a parallel proceedings before the CCI after the said Competition Act came into force for the same relief. Delhi High Court adjourned the writ proceedings awaiting the decision of the CCI on the basis that the writ petitioner could achieve full relief before the CCI. He submits that the said judgment would not apply to the facts of this case. In this case, the proceedings before the arbitral tribunal and before the CCI were filed by the two opposite parties. The CCI has no power to grant monetary relief in favour of the respondent. He submits that in any event, the said judgment would assist the case of the respondent on the issue that parallel proceedings are maintainable but unlike writ proceedings. There being no power granted to the arbitral tribunal to adjourn the arbitral proceedings *sine die*. The powers of Writ Court cannot be compared with the powers of the arbitral tribunal.

128. Learned senior counsel for the respondent distinguished the judgment of Supreme Court in case of ***Fuerst Day Lawson Ltd.*** (supra) on the ground that the Supreme Court in that judgment had considered the issue whether the appeal was maintainable under Section 50 of the Arbitration Act by exercising powers under Letters Patent. In that context, the Supreme Court held that the provisions of Arbitration and Conciliation Act, 1996 being a self-contained code the Letters Patent Appeal would be excluded. He submits that the said judgment would infact support the case of the respondent and not the petitioner on the issue that the Arbitration and Conciliation Act is a self-contained code. He submits that the claim that cannot be entertained by the Competition Act but only by the arbitral tribunal, the arbitral tribunal only has exclusive jurisdiction to consider and grant monetary relief in favour of the respondent. There is no provisions in the Competition Act provide for adjudication of contractual disputes/civil action *in personam.*

129. Learned senior counsel for the respondent distinguished the judgment of Supreme Court in case of ***Vimal Kishor Shah*** (supra) by referring to the paragraphs 4, 36, 46, 50 and 51 of the said judgment and would submit that the said judgment dealt with the non-arbitrable claims and not arbitrable defence. The Supreme Court in the said judgment held that Clause 20 of the Trust Deed did not constitute an arbitration agreement under Section 7 of the Arbitration Act. The Competition Act does not provide for any adequate and sufficient remedies to the respondent to seek recovery of unpaid contractual consideration.

130. Learned senior counsel distinguished the judgment of Supreme

Court in case of ***A. Ayyasamy*** (supra) by inviting my attention to the paragraphs 6 to 9, 35, 38, 43 and 45 of the said judgment and would submit that in the said matter, the plaintiff had filed a Civil Suit regarding disputes with his partners pertaining to administration of a hotel. There were allegations of fraud made by the defendant in the application filed under Section 8 of the Arbitration Act and had contended that such allegations of fraud could not be adjudicated by the arbitral tribunal. The Supreme Court held that since the claims raised did not involve any serious allegations of fraud, those claims were arbitrable. He submits that the said judgment would support the case of the respondent and not the petitioner since the Supreme Court has held that the jurisdiction of the arbitrator is akin to that of the Civil Court. Mere allegations of statutory violation would not detract from the jurisdiction of the arbitral tribunal to resolve a dispute arising out of a civil or contractual relationship.

131. Learned senior counsel for the respondent distinguished the judgment of Supreme Court in case of ***Emaar MGF Land Ltd.*** (supra) by inviting my attention to the paragraph 55 of the said judgment. It is submitted that the Supreme Court in the said judgment did not hold that the consumer disputes are non-arbitrable. It is held that the remedy under the Consumer Protection Act was available to a consumer in addition to the general remedy and once he had invoked that special remedy, he could not be relegated to arbitration. He submits that in this case since the CCI has no jurisdiction to award any monetary claim in favour of the respondent, the respondent had rightly invoked the arbitration agreement.

132. Learned senior counsel distinguished the judgment of this Court

in case of ***Dinesh Jaya Poojary*** (supra). He invited my attention to the paragraphs 3, 28, 33, 34, 37, 38 and 39 of the said judgment and would submit that admittedly the CCI is not empowered to adjudicate upon the contractual claim of the respondent for unpaid trait value. The claimant in that case had approached the arbitral tribunal for a claim which should have been filed before the Registrar under the Chit Funds Act. The dispute raised and the relief claimed in the statement of claim fell exclusively within four corners of the said Act as it was touching the management of a chit business.

133. Learned senior counsel distinguished the judgment of this Court in case of ***Kingfisher Airlines Ltd.*** (supra) on the ground that this Court had dealt with a claim for unpaid wages. The dispute for recovery of unclaimed wages was an industrial dispute for which exclusive remedies were provided under the Industrial Disputes Act and thus non-arbitrable. In this case, admittedly monetary claim cannot be awarded by the CCI and could be dealt with and considered exclusively by the arbitral tribunal.

134. Learned senior counsel distinguished the judgment of Supreme Court in case of ***Competition Commission of India*** (supra) and in particular paragraphs 100, 103, 104, 109, 113, 114 and 116 and would submit that the Supreme Court had considered the jurisdiction of two regulatory bodies i.e. TRAI under the Telecom Regulatory Authority of India Act, 1997and CCI under the Competition Act, 2002 both containing exclusive jurisdiction provisions. In that context, the Supreme Court held that telecom sector’s primary jurisdiction was with the TRAI/TDSAT. It was held that the claim of the respondent for breach of contract and for recovery of unpaid license fees does not

involve any such jurisdictional aspects of violation of Competition Act. He submits that in that case both the remedies under the TRAI and the Competition Act were invoked by the same party. The said judgment would assist the case of the respondent and not the petitioner since according to the learned senior counsel, the Supreme Court found that while the CCI has exclusive jurisdiction to determine whether there is violation of Competition Act, it did not oust the jurisdiction of other forums/bodies on other matters relegated to such forum/body, even if the issues are related. The Supreme Court held that the both legislative schemes must be read in their context. He submits that the contractual reliefs are within the domain of the arbitral tribunal, whereas adjudication on violation of Competition Act are within the domain of CCI. Both the schemes operate independently and parallelly.

135. Learned senior counsel distinguished the judgment of Supreme Court in case of ***Arun Kumar and Ors.*** (supra) on the ground that the said judgment is not at all applicable to the facts of this case. He submits that the alleged invalidity of a contract or violation of the Competition Act is not a 'jurisdictional fact' for the arbitral tribunal under Section 16 of the Arbitration Act. Invalidity of a contract is a arbitral dispute by itself on merits and is not a jurisdictional fact. Statutory remedies against validity of contract provide a 'jurisdictional fact' but restricts itself to the aspects mentioned in the statute. The question as to whether contract being void or not is not a jurisdictional fact.

136. Learned senior counsel for the respondent distinguished the judgment of Supreme Court in case of ***Competition Commission of India*** (supra) relied upon by the learned senior counsel on the ground

that the said judgment support the case of the respondent and not the petitioner. It was held by the Supreme Court in the said judgment that an order under Section 26(1) of the Competition Act is only akin to a departmental function and does not affect rights and liabilities of parties. He submits that while the Court has imposed restrictions on the CCI while passing interim orders under Section 33 of the Competition Act, that would not convert an interim order into an order of a final nature. The interim orders passed by the CCI was even otherwise not binding on the arbitral tribunal and does not constitute *res-judicata* in the arbitral proceedings.

137. Learned senior counsel distinguished the judgment of Supreme Court in case of ***Gangai Vinayagar Temple and Ors.*** (supra) on the ground that the provisions of Order XLI Rule 1 of Code of Civil Procedure, 1908 does not apply to arbitrations. Even if issues are framed by the arbitral tribunal, the arbitral tribunal does not decide every such issues. If a particular issue is incapable of decision, the arbitral tribunal will not decide such issue.

138. Learned senior counsel distinguished the judgment of Supreme Court in case of ***Inder Singh Rekhi*** (supra) on the ground that the said judgment is not at all applicable to the facts of this case. The Supreme Court in the said judgment had only held that the dispute requires denial/repudiation of the claim i.e. difference from a ‘defence’ in a statement of defence. The term ‘dispute’ does not concern itself with the reasons/contentions in the denial/ repudiation of the claim. He submits that in this case, the ‘dispute’ that was referred to the arbitral tribunal was the ‘dispute’ contained in the invocation letter dated 23rd February, 2016 which did not involve any issue under the Competition

Law.

139. Learned senior counsel distinguished the judgment of Supreme Court in case of ***Booz Allen*** (supra) on the ground that the Supreme Court in the said judgment had considered a claim relating to a mortgage which involved issues in rem and therefore held that the said claim was not arbitrable. In the present case, the claim for recovery of the amount under the said 2015 SLA was arising out of the contractual rights and was an action in personam and not touching any issue in rem. He strongly placed reliance on the paragraph 38 of the said judgment and would submit that even in the said judgment, the Supreme Court has made it clear that the disputes relating to subordinate rights in personam arising from rights in rem have always been considered to be arbitrable.

140. Learned senior counsel distinguished the judgment of this Court in case of ***Sundrabai Sitaram*** (supra) on the ground that in the said judgment this Court came to a conclusion that the contract in question was void as it was prohibited by the Bombay District Police Act. In this case, no Court or Tribunal has declared the 2015 SLA to be void. The said agreement is not forbidden by a law. It is not even the case of the petitioner before the said CCI that the said 2015 SLA is forbidden by law. He submits that unless the petitioner would have produced any order from the said CCI holding the 2015 SLA as void or forbidden by law, the arbitral tribunal was not bound to stay its all proceedings and had jurisdiction to proceed on the premise that the said 2015 SLA was valid and enforceable.

141. In so far as the judgment of this Court in case of ***M3NERGY***

SDN. BHD. (supra) is concerned, it is submitted by the learned senior counsel that the said judgment has been set aside by the Division Bench of this Court reported in 2019 SCC Online Bom 2915. The Special Leave Petition filed against the said judgment of the Division Bench of this Court has been dismissed. The judgment of the learned Single Judge thus cannot be relied upon by the petitioner.

142. Learned senior counsel distinguished the judgment of Delhi High Court in case of ***Telefonaktiebola get LM Ericsson*** (supra) on the ground that the said judgment is not applicable to the facts of this case since the claim of the respondent was referred to arbitration and did not involve enforcement of right or any obligation under the Patent Act. He submits that on the contrary, the said judgment supports the case of the respondent since it holds that the Competition Act does not oust the jurisdiction of other forum/bodies on other matters relegated to other forum/body, even if the issues are related. He submits that the provisions of Arbitration and Conciliation Act, 1996 and the Competition Act must be read in their respective context and both the schemes must be given effect to. The said judgment was delivered by a learned Single Judge of Delhi High Court is under challenge before the Division Bench of High Court in LPA No. 246 of 2016. The Division Bench of Delhi High Court has directed that no final report shall be filed by the Director General till the next date of hearing.

143. Learned senior counsel distinguished the judgment of Supreme Court in case of ***Murlidhar Aggarwal*** (supra) on the ground that in this case, the arbitral tribunal has rendered a finding that the conditions to trigger the PPVFR Act did not arise in the relevant period and this finding has not been challenged by the petitioner in the arbitration

petition. He submits that the said judgment is even applicable to the facts of this case because even assuming the said PPVFR Act is to the benefit of farmers as was contended by the petitioner, the agreement in this case is between the technology provider and a commercial seed company. There is no farmer in the equation and no rights/benefits of farmers are waived. The petitioner has not even chosen to seek registration under the provisions of the said Act and thus question of the petitioner receiving any benefits under the said Act did not arise. The petitioner has not challenged the findings rendered by the arbitral tribunal on waiver in the arbitration petition. Learned senior counsel distinguished the judgment of Supreme Court in case of ***Vishnu Pratap Sugar Works*** (supra) on the ground that the petitioner has not challenged the finding of the arbitral tribunal on waiver in the arbitration petition.

144. Mr. Khambata, learned senior counsel for the petitioner appearing for the petitioner in Commercial Arbitration Petition No. 737 of 2016 in rejoinder submits that the Competition Act is a self-contained code. Till the issue of validity of the said 2015 SLA was decided by the said CCI, the arbitral tribunal could not have entertained the monetary reliefs claimed by the respondent. The claim in monetary relief was depending upon the issue of validity of the 2015 SLA. The issue of validity of the said 2015 SLA is a jurisdictional fact. Learned senior counsel placed reliance on Section 2(4) of the Contract Act, 1872 and Section 10 of the Specific Relief Act, 1963 and would submit that the claims made by the respondent for recovery of the amount was depending upon the validity and enforceability of the said 2015 SLA.

145. It is submitted that since the validity of the said 2015 SLA which

was challenged before the said CCI, the arbitral tribunal could not have proceeded on the premise that there was a valid agreement between the parties and based thereon could not have awarded any reliefs in favour of the respondent. Learned senior counsel invited my attention to the paragraph 5 of the judgment of Supreme Court in case of ***Vallabhdas v/ s. Dr. Madanlal, (1970) 1 SCC 761*** and submits that the arbitral tribunal ought to have considered whether there was a jural relationship between the petitioner and the respondent or not, before granting any relief in favour of the respondent. In support of this submission, learned senior counsel placed reliance on the judgment of Supreme Court in case of ***Prabhakaran and Ors. v/s. M. Azhagiri Pillai (Dead) by LRs. and Ors., (2006) 4 SCC 484*** and in particular paragraph 20.

146. Learned senior counsel invited my attention to the findings rendered by the arbitral tribunal in paragraph 51 of the arbitral award holding that the jurisdiction of the arbitral tribunal has to be considered only on the basis of the averments made in the statement of claim and not in the written statement. He relied under Sections 21, 23(3), 34(2)(iv) and 34(2)(b)(i) of the Arbitration Act and would submit that the dispute arose and referred to the arbitral tribunal was not the averments made in the statement of claim but the dispute between the parties which would include the plea raised in the written statement by the respondent. If the Court finds that the subject matter of dispute is not capable for settlement by arbitral tribunal, the Court has ample power to set aside the said award under Section 34(2)(b)(i) of the Arbitration Act. The Court can apply its mind to the case or parties before the arbitral tribunal i.e. case of both the parties raised in their respective pleadings.

147. Learned senior counsel relied upon the explanation II to Section 34 and would submit that the Court has to see the merits of the matter in context. He relied upon the Section 16(1) of the Arbitration Act and would submit that the claimant would not raise any issue of jurisdiction. Issue of jurisdiction can be raised only by the respondent in so far as claims filed by the claimant is concerned. Learned senior counsel placed reliance on the judgment of Supreme Court in case of ***State of Goa v/s. Praveen Enterprises, 2012 (12) SCC 581*** and in particular paragraphs 11, 14, 18,19, 20, 26, 27 and 41 of the said judgment and would submit that what is stated in the notice issued under Section 21 of the Arbitration Act is not relevant for the purpose of deciding the jurisdiction under the arbitration agreement. Such plea was specifically raised by the petitioner in the written statement filed before the arbitral tribunal. Section 21 has to be read with Section 43 of the Arbitration Act. Once notice under Section 21 is received by the other side, limitation in respect of such dispute stops.

148. It is submitted that the dispute in arbitral proceedings would be raised in the statement of claim and also in the written statement. Even under Section 34(2)(b) of the Arbitration Act Court has to see the subject matter of dispute while hearing of the application under Section 34 impugning the arbitral award. Learned senior counsel placed reliance on the judgment of Supreme Court in case of ***Prabhakaran and Ors. v/s. M. Azhagiri Pillai (Dead) by LRs. and Ors., (2006) 4 SCC 484*** and in particular paragraph 21 and would submit that the arbitral tribunal cannot decide the issue of jurisdiction purely on the averments made in the plaint but has to decide the said issue based on the difference. The Competition Commission of India has already taken a *prima-facie* view on the issue of validity of the said 2015 SLA

against the respondent and in favour of the petitioner herein.

149. Learned senior counsel placed reliance on the judgment of Supreme Court in case of ***Man Roland Druckimachinen AG v/s. Multicolour Offset Ltd. and Anr., 2004 (7) SCC 447*** and in particular paragraphs 18 and 46, in support of submission that issue of jurisdiction can be either taken by way of demurrer or at the time of trial. The arbitral tribunal in this case had not decided the issue of jurisdiction under Section 16 of the Arbitration Act immediately on demurrer but had postponed the said issue and decided the same finally in the impugned award only on the basis of the averments made in the statement of claim.

150. Learned senior counsel distinguished the judgment of Supreme Court in case of ***Indian Farmers Fertiziler Cooperative Limited*** (supra) on the ground that the jurisdictional issue under Section 10 has to be decided based on the issues raised by both the parties and not only on the basis of the averments made and the contentions raised in the statement of claim by the claimant. He relied upon the paragraphs 20 of the said judgment and would submit that the arbitrability in respect of a claim as to the subject matter dispute also fall under Section 16.

151. Learned senior counsel placed reliance on the judgment of Supreme Court in case of ***Garware Wall Ropes Ltd. v/s. Coastal Marine Constructions and Engineering Ltd., 2019 (9) SCC 209*** and in particular paragraphs 16, 19, 20 and 22 on the issue of jurisdiction and would submit that the Supreme Court has clearly held in the said judgment that if the document which require payment of stamp duty

compulsory and is not stamped, such documents comprising of arbitral agreement would not be enforceable in law.

152. Learned senior counsel invited my attention to Section 3(1), Section 3(2) and Section 27 of the Competition Act and would submit that in appropriate cases, the CCI has power to modify the agreement. Under Section 3(2) of the Competition Act, an agreement would be void falling under the said provision unless saved by modification. Learned senior counsel distinguished the judgment of Supreme Court in case of ***Nathani Steels Limited*** (supra) cited by the learned senior counsel for the respondent on the ground that the Supreme Court in the said judgment had considered the issue of accord and satisfaction and is thus not applicable to the facts of this case.

153. Learned senior counsel for the petitioner distinguished the judgment of Court of Appeal (Civil Division) in case of ***David John Passmore*** (supra) on the ground that the provisions of law considered by the Court of Appeal in the said judgment were totally different. Section 3(1) of the Competition Act prohibits the entry itself and provides for permanent prohibition. Learned senior counsel distinguished the judgment of Supreme Court in case of ***Mahindra and Mahindra Limited*** (supra). He submits that Section 13(2) considered by the Supreme Court in the said judgment is not similar to any of the provisions of the Competition Act.

154. Learned senior counsel distinguished the judgment of Supreme Court in case of ***Pankaj Mehra*** (supra) and would submit that the powers of Companies Court under Section 536 (3) of the Companies Act, 1956 to declare a transaction as void *ab-initio* unless otherwise

rectified by the Companies Court is different then the powers of CCI under Section 3(2) of the Competition Act.

155. Learned senior counsel for the petitioner cited judgment of Supreme court in case of ***Tarsem Singh v/s. Sukhminder Singh, 1998 (3) SCC 471*** and in particular paragraphs 30 to 33 and would submit that since the said 2015 SLA itself was void since inception, no relief could have been granted by the arbitral tribunal arising out of the said 2015 SLA. The arbitral tribunal could not have awarded any monetary relief under the said 2015 SLA unless the said agreement was found legally enforceable and valid agreement by the said CCI.

156. Learned senior counsel for the petitioner distinguished the judgment of Supreme Court in case of ***Piloo Dhuinshaw Sidhwa*** (supra) on the ground that the Supreme Court in the said judgment had considered a claim for compensation under Section 70 of the Contract Act on the basis of quantum meruit. In this case the arbitral tribunal has not allowed the claims made by the respondent on the basis of quantum meruit under Section 70 of the Contract Act but has allowed the said claim on the basis of the said 2015 SLA as enforceable in law.

157. Learned senior counsel for the petitioner distinguish the judgment of Supreme Court in case of ***Hansraj Gupta & Co. vs. Union of India, 1973 (2) SCC 637*** cited by Mr. Dwarkadas, learned senior counsel for the respondent in Commercial Arbitration Petition No. 738 of 2019 on the ground that the Supreme Court had awarded compensation to the party by exercising powers under Article 142 of the Constitution of India.

158. It is submitted by the learned senior counsel that even if the said CCI could not have granted any monetary relief in favour of the respondent, the arbitral tribunal would not have jurisdiction to grant such relief on that ground. The arbitral tribunal in that situation either ought to have dismissed the claim as premature or to grant stay of the arbitral proceedings. In support of this submission, learned senior counsel placed reliance on the judgment of this Court in case of ***Maharashtra State Electricity Board v/s. Datar Switchgear Ltd., 2002 SCC OnLine Bom 983*** and in particular paragraphs 59 and 61. He submits that in the said judgment, this Court had held that under Section 9 of the Arbitration Act, Court has power to stay the arbitral proceedings in limited circumstances. He submits that under Section 17(1)(e) of the Arbitration Act, the arbitral tribunal also shall have similar powers of Court and to grant stay of the proceedings before itself. If the arbitral tribunal would not have decided the matter within the time prescribed under Section 29(A)(1), the Court has ample power to grant extension of time to make an award under Section 29(A)(iv) of the Arbitration Act.

159. It is submitted by the learned senior counsel for the petitioner that the petitioner has collected the trait value as per the price control order and not as per the provisions of the said 2015 SLA. The petitioner has deposited the amount in this Court pursuant to the order passed by this Court in the arbitration petition filed by the respondent under Section 9 of the Arbitration Act in this Court. The amount collected by the petitioner for the subsequent period has been deposited before the Delhi High Court by the petitioner. The petitioner has merely developed seeds by biological process and has sold such seeds to large number of farmers. He submits that the Arbitration Act is a

complete code.

160. It is submitted that the claim made by the respondent before the arbitral tribunal was based on such patent. These facts are admitted by the respondent in the pleadings filed before the arbitral tribunal. The respondent did not make any complaint against the petitioner for supply of seeds. The petitioner did not apply for declaration of the said 2015 SLA as void before the said CCI but had applied for modification of the said agreement. The said CCI can still declare the said 2015 SLA as void. The petitioner had applied for relief before the said CCI not to terminate the said 2015 SLA but had prayed for stay of termination. Learned senior counsel did not dispute that the petitioner is not register under the PPVFR Act. He submits that the provisions of the said Act are also self-contained. The respondent had not taken action against the petitioner for not registering itself under the said Act.

161. Learned senior counsel placed reliance on the judgment of Supreme Court in case of ***Mahavir J. Patil vs. Director of Resettlement and others, 2009 (12) SCC 625*** and in particular paragraphs 6 and 9 and would submit that the principles of law laid down by the Supreme Court in the said judgment would apply to the facts of this case. Learned senior counsel invited my attention to the averments made in paragraph 21 at page 119 of the convenient compilation no.1 and would submit that the petitioner has not prayed for restoration of the new SLA.

162. Learned senior counsel invited my attention to the minutes of meeting dated 16th January, 2019 issued by the arbitral tribunal and would submit that the petitioner was not allowed to make any

submissions relating to the order passed by the Supreme Court regarding the concession made by the learned senior counsel for the respondent in patent case. Though respondent had applied for clarification of the order before the Supreme Court, respondent did not seek clarification that notification referred in the said order was only the notification issued by the Central Government and not by the State Government.

163. Mr. I.M.Chagla, learned senior counsel for the respondent distinguished the judgment of this Court in case of ***Maharashtra State Electricity Board*** (supra) on the ground that the issue in the said judgment whether till the time the respondent therein complied with the order of the arbitral tribunal under Section 17 of the Arbitration Act, the arbitration proceedings could be suspended by the arbitral tribunal. The Court held while relying upon the judgment of Supreme Court in case of ***Bhatia International vs. Bulk Trading S.A., (2002) 4 SCC 105*** held that under Section 17 of the Arbitration Act such power existed with the arbitral tribunal, in order to direct the parties, in a given situation, till the order of the arbitral tribunal was complied with not to suspend the arbitral proceedings under Section 9 of the Arbitration Act.

164. Learned senior counsel placed reliance on paragraphs 50 and 55 of the said judgment. He submits that the facts before this Court in the said judgment and in this matter are totally different. He relied upon Section 17(2) of the Arbitration Act and would submit that in view of the amendment to Section 17, orders of arbitral tribunal under Section 17 are enforceable as a decree of the Court and thus arbitral tribunal cannot exercise the powers to suspend the proceedings before the

arbitral tribunal for non compliance of the order under Section 17.

165. Learned senior counsel placed reliance on the judgment of Delhi High Court in case of ***Shree Tirupathi Udyog v/s. Indraprastha Gas Ltd. in Arb.(Comm.) No.8 of 2018 dated 1st March, 2018,*** it has been held that there is no power/ provisions in the Arbitration Act empowering the arbitral tribunal to stay the proceedings before it. Learned senior counsel distinguished the judgment of Supreme Court in case of ***Prabhakaran and Ors.*** (supra) and would submit that the said judgment explains the meaning of "jural relationship" between the parties which would mean the rights and obligations of both against each other in the context of Section 29 of the Limitation Act. The jural relationship between the parties is undisputed and was subject matter of the arbitral proceedings.

166. Learned senior counsel distinguished the judgment of Supreme Court in case of ***State of Goa v/s. Praveen Enterprises*** (supra) on the ground that the said judgment lays down the proposition that the counter claim ought to be considered by the arbitral tribunal if raised by the respondent in the arbitration proceedings, even though the same does not form the part of notice invoking arbitration agreement. The said judgment does not lay down a law that the defence of the respondent is a part of the reference to the arbitral tribunal.

167. Learned senior counsel distinguished the judgment of Supreme Court in case of ***Ram Singh and Ors.*** (supra) on the ground that the claim of the plaintiff in that case itself pertained to "shamlet de" land. The Court in paragraph 5 came to the conclusion that the plaintiff therein avoided to seek a declaration that the suit land was not "shamlet

de" and by clever drafting sought to confer jurisdiction on the civil court. He submits that in this case, the claim of the respondent is a simplicitor contractual claim and does not pertain to or relate to the Competition Act. In so far as the judgment of Supreme Court in case of ***Man Roland Druckimachinen AG*** (supra) relied upon by the learned senior counsel for the petitioner is concerned, it is submitted that the said judgment support the case of the respondent and not the petitioner. He relied upon the paragraph 10 of the said judgment and would submit that the Supreme Court in the said judgment has clearly held that the proceedings under the MRTP Act were in addition to the arbitration proceeding and the jurisdiction of two forums is separate and distinct.

168. In so far as the judgment of Supreme Court in case of ***Garware Wall Ropes Ltd.*** (supra) relied upon by the learned senior counsel for the petitioner is concerned, learned senior counsel for the respondent distinguished the said judgment on the ground that the said judgment was dealing with the validity of the arbitration agreement contained in an unstamped and unregistered contract. The Supreme Court in that context held that in an unstamped contract, the arbitration agreement would be void since stamping of arbitration agreement is mandatory. However, in case of an unregistered contract, the arbitration agreement would be valid and binding on the parties. In this case, no determination has been made in relation to the said 2015 SLA that the arbitration was unenforceable after adjudication. In that judgment before the Supreme Court, the question was related to the existence and invalidity of the arbitration agreement, which is a jurisdictional fact under Section 16 of the Arbitration Act. In this case, existence and validity of the arbitration agreement is not disputed by the petitioner.

169. Learned senior counsel distinguished the judgment of Supreme Court in case of ***Tarsem Singh*** (supra) on the ground that the said judgment is not applicable to the facts of this case since the said 2015 SLA has not been declared void or discovered to be void as on date. Under Section 3 of the Competition Act an agreement is not void per se on account of the various reliefs possible under Section 27 of the Competition Act including modification of the agreement. He relied upon paragraphs 32 of the said judgment and would submit that the Supreme Court infact rejected the argument that Section 65 of the Contract Act was not applicable to void contracts. He relied upon the judgment of Supreme Court in case of ***Mahindra and Mahindra Limited v/s. Union of India, (1979) 2 SCC 529*** and judgment in case of ***Passmore v/s. Morland, (1999) 1 CMLR 1129*** holding that voidness under Competition Law is transient or temporal and is therefore curable.

Facts and Submissions in Commercial Arbitration Petition No. 738 of 2019 :-

170. The petitioner in this case has impugned the order dated 11th May, 2017 passed by the arbitral tribunal dismissing the application filed by the petitioner under Section 16 of the Arbitration Act and the impugned award dated 16th January, 2019 allowing some of the claims made by the respondent. Some of the relevant facts for the purpose of deciding this petition are as under:-

171. It is the case of the petitioner that on 9th March, 2004, a Special Licence Agreement (for short “2004 SLA”) was executed between the petitioner and the respondent wherein 50 cotton seeds transgenic

variety with Bt. Trait were given to the petitioner with a right to respondent to develop new Bt. Cotton varieties and to sell cotton hybrid seeds with Bt. Trait under applicable patent rights for a period for 10 years and on the terms and conditions more particularly set out therein. The said 2004 SLA was extended from time to time until 10 March, 2015. On 10th March, 2015, the parties entered into Bollguard Technology Licence Agreement for continuation of the rights granted under 2004 SLA to develop and sell cotton hybrid seeds with Bt. trait. It is the case of the petitioner that the respondent purported to grant a patented technology as defined in the 2004 SLA and 2015 SLA as "Monsanto Tecnology" by way of a licence.

172. It is the case of the petitioner that under the said 2004 SLA, the respondent did not transfer any technology, confidential information or know how that would enable the petitioner to either manufacture the Bt. Genes or to insert Bt. Genes into the hybrid cotton seeds of the petitioner in a laboratory through any scientific procedure. The respondent was liable to pay to the petitioner and has paid one time non refundable fee of Rs.50 lakhs. The respondent was also to pay an amount as and by way of royalty fees/trait fees/trait value on every 450 gm packet of Bt cotton seeds on properties varieties of the petitioner sold every year.

173. On 16th October, 2015, the petitioner issued a letter demanding a refund of amount of Rs.74,24,00,000/- along with interest thereon @ 18% p.a. under the "on account of" arrangement of the years 2010-2014 in light of the various State Government Price Control Notifications. The respondent by its letter dated 28th October, 2015 denied the demand for refund raised by the petitioner. By notice dated

14th November, 2015, the respondent terminated the said 2015 SLA. By letter dated 23rd November, 2015, the petitioner called upon the respondent to withdraw the letter of termination of the said 2015 SLA.

174. On 2nd November, 2015, the Government of India filed a report before the Competition Commission of India (hereinafter referred to as "the said CCI") seeking investigation and action against the respondent and its group companies for alleged contravention of the provisions of the Competition Act. On 15th December, 2015, the petitioner in Commercial Arbitration Petition No. 737 of 2019 filed an Information before the said CCI against the respondent and its group companies challenging several alleged anti-competing clauses and alleged abusive conduct of the respondent including charge of high trait value over the State Government Price Control Notifications. On 10th February, 2016, the said CCI passed an order holding that there is then existed a *prima-facie* case of contravention of the provisions of Section 3(4) and Section 4 of the Competition Act by the respondent and its group of companies and directed the Director General to investigate into the matter.

175. The said CCI also passed an interim order on 13th April, 2016 thereby restraining the respondent from enforcing post termination obligation against the petitioner in this Commercial Arbitration Petition and also against others. The Director General thereafter submitted a report on 28th January, 2008 before the said CCI. The said CCI by a letter dated 12th March, 2019 directed the parties including 18 official of the respondent to collect the non-confidential Investigation Report by filing undertaking that the investigation report would not be used for any purpose other than those provided under the Competition Act and

Rules thereunder.

176. On 18th February, 2016, the respondent terminated the said 2015 SLA and thereafter filed a suit before the Delhi High Court namely C.S. (Comm) No. 132 of 2016 on 18th February, 2016 alleging that pursuant to the termination of the said 2015 SLA, the sale of cotton seeds by the petitioner with Bt. trait *inter-alia* infringed the patent rights of the respondent. The petitioner filed a counter-claim for revocation of the patent of the respondent in the said suit. The said suit is pending before the learned Single Judge of the Delhi High Court.

177. On 23rd February, 2016, the respondent invoked the arbitration agreement and nominated a former Judge of the Supreme Court as its nominee arbitrator. The petitioner appointed a former Chief Justice of this Court as its nominee arbitrator. Learned arbitrators appointed by the parties, appointed a former Judge of the Supreme Court as the presiding arbitrator. The parties thereafter filed their respective pleadings before the arbitral tribunal. The petitioner filed counter claim dated 11th July, 2017 before the arbitral tribunal. The petitioner also filed an application under Section 16 of the Arbitration Act raising various issues of the jurisdiction. Both the parties filed detailed submissions before the arbitral tribunal.

178. The arbitral tribunal rejected the said application filed by the petitioner under Section 16 by an order dated 11th May, 2017 and allowed part of the claims made by the respondent by an arbitral award dated 16th January, 2019. Majority of the arbitrators directed the petitioner to pay an amount of Rs.117.46 crores trait value for sales between the 1st April, 2015 and 14th November, 2015 under the said

2015 Special Licence Agreement with interest at different rates from the date of invocation of the arbitration till payment/realization and dismissed the counter claim made by the petitioner for refund of Rs.19.51 crores. The 3rd arbitrator made a dissenting award and dismissed the claims made by the respondent. Being aggrieved by the said majority award, the petitioner has filed this Commercial Arbitration Petition No. 738 of 2019.

179. Mr. Rohan Kadam, learned counsel for the petitioner adopted the submission made by Mr. Khambata, learned senior counsel for the petitioner in Commercial Arbitration Petition No. 737 of 2019.

180. Mr. Dwarkadas, learned senior counsel for the respondent on the other hand adopted the submission made by Mr. I. M. Chagla, learned senior counsel for the respondent in Commercial Arbitration Petition No. 737 of 2019 and made additional submissions. He submitted that trait value claimed by the respondent in the arbitration petition has already been collected by the petitioner from the farmers and has been retained by the petitioner. The petitioner did not seek any interim stay against the respondent from enforcing any claim for money or stay of the trait value clause under Article 3.01 of the said 2015 SLA. The claim for recovery of money under the said 2015 SLA made by the respondent was for recovery of contractual dues in view of the petitioner being in breach of the said 2015 SLA. There was no dispute with regard to the quantum of dues under the invoices raised by the respondent on the submission.

181. Learned senior counsel invited my attention to paragraph 52 of the statement of defence filed by the petitioner and would submit that it

was the case of the petitioner that if the issue "whether the agreement is violative of Sections 3 and 4 of the Competition Act can only be decided by the CCI under the Competition Act, then the jurisdiction of the arbitral tribunal to decide the same would stand ousted". The Tribunal has to see the request for the dispute raised by the claimant while determining the existence of jurisdiction to dispute is exercised by a notice invoking arbitration agreement given by one party to another party and does not depend upon the defence/response as given by the other party. The findings rendered by the tribunal on this issues are consistent with the principles laid down by the Supreme Court and this Court in catena of decisions. He also placed reliance on Section 65 of the Contract Act and would submit that the petitioner having recovered the entire trait value from the farmers cannot be allowed to retain the such benefit under the said 2015 SLA and is bound to restore it by making payment to the respondent. He strongly placed reliance on Section 53N of the Competition Act and would submit that even if the said 2015 SLA is subsequently held to be void, the petitioner would have the contingent right of seeking remedies under the said provisions of the Competition Act. On the other hand, in the event if the CCI decides in the favour of the respondent and if the respondent is denied its claim at this stage, it shall have no remedy under the Competition Act or the Contract Act.

182. It is submitted by the learned senior counsel that the cause of action of the respondent before the arbitral tribunal was arising out of sale and delivery and the amount due thereon and under a case of specific performance. Such cause of action has nothing to do with any possible defence that may be raised by the petitioner. An agreement is presumed to be valid unless proved otherwise. The burden of proving

the fact that an agreement is void was on the petitioner. He submits that even if the said 2015 SLA is held unenforceable on account of the findings if any rendered by the said CCI in future, the petitioner is nevertheless liable to pay the undisputed invoice amount since it has obtained benefits under the said 2015 SLA.

183. It is submitted by the learned senior counsel that in the interim application filed by the petitioner before the said CCI, under Section 33 of the Competition Act, the petitioner had prayed for an injunction against the respondent not to terminate the said 2015 SLA and applied for enforcement of the said 2015 SLA. The petitioner did not challenge the validity of the said 2015 SLA as void and prayed that the respondent shall not terminate the said 2015 SLA.

184. It is submitted by the learned senior counsel that the arbitral tribunal is not bound to wait for outcome of the proceedings under Section 3 of the Competition Act and to stay the arbitral proceedings during the pendency of the said proceedings under Section 3 of the Competition Act before the said CCI.

Facts and Submissions in Commercial Arbitration Petition No. 892 of 2019 :-

185. The petitioner has impugned the order dated 11th October, 2017 passed by the learned arbitrator rejecting his application filed under Section 16 of the Arbitration and Conciliation Act, 1996 filed by the petitioner and also has impugned the arbitral award dated 30th March, 2011 passed by the learned arbitrator allowing part of the claims made by the respondent. Some of the relevant facts for the purpose of

deciding this Commercial Arbitration Petition are as under :-

186. On 9th March, 2004, the petitioner and the respondent entered into a Special Licence Agreement ("2004 SLA") wherein the respondent gave 50 Cotton seeds with Bt. trait to the petitioner with a right to develop and sale Cotton Hybrid seeds with Bt. trait using the propriety varities of the petitioner and to sale cotton hybrid seeds with Bt. trait under applicable patent rights for a period of 10 years on the terms and conditions stated therein. The said 2004 SLA was extended from time to time until 10th March, 2015. On 10th March, 2015, the parties entered into Bollguard Technology Licence Agreement (the said "2015 SLA") on the terms and conditions set out therein. It was the case of the petitioner that the trait value charged and collected by the respondent became the subject matter of various State Government Price Control Notifications and since the year 2016 has been regulated by the Central Government under the Cotton Seeds (Price Control) Order, 2015. By an order dated 17th June, 2015, the Nagpur Bench of this Court upheld the power of the State Government of Maharashtra to reduce the price of Bt. Cotton Seeds Kharif for the season 2015-16 in the interest of farmers.

187. The petitioner by their letters dated 19th July, 2015, 23rd July, 2015 and 10th August, 2015 addressed to the respondent requested to consider the lower trait value commensurate with the State Government Price Control Notifications and opposed the contractual trait value under the said 2015 SLA and asked to refund the excess of trait value collected during the period 2010-2014 over and above the rate prescribed under the State Government Price Control Notifications. The respondent however unilaterally terminated the said

2015 SLA by notice dated 14th November, 2015.

188. On 23rd November, 2015, the petitioner issued a letter of demand seeking refund amount of Rs.28.50 crores along with interest @ 18% p.a. under the "own account" arrangement for the years 2010-2014 in light of various State Government Price Control Notifications. On 27th November, 2015, the Government of India filed a reference before the said CCI seeking investigation and action against the respondent and its group companies for alleged contravention of the provisions of the Competition Act. On 15th December, 2015, the petitioner along with its associate companies filed an information before the said CCI against the respondent and its group companies challenging several alleged anti-competitive clauses and alleged abusive conduct of the respondent including charge of high trait value over the State Government Price Control Notifications.

189. It is the case of the petitioner that on 10th February, 2016, the said CCI passed an order after hearing the parties holding that there existed a *prima-facie* contravention of provisions of Section 3(4) and Section 4 of the Competition Act by the respondent and its group companies and directed the Director General to investigate into the matter. On 18th February, 2016, the respondent and its group companies filed an infringement suit before the Delhi High Court bearing No. 132 of 2016 *inter-alia* alleging that pursuant to the termination of the said 2015 SLA, the petitioner's sale of all cotton seeds with Bt. trait infringed its patent rights in the said proceedings.

190. The petitioner filed a counter claim for revocation of the patent of the respondent in the said suit. The said suit is still pending before

the Delhi High Court. On 23rd February, 2016, the respondent invoked the arbitration agreement recorded in the said 2015 SLA for settling the dispute by way of arbitration. In the month of April, 2016, CCI passed an order restraining the respondent from enforcing post termination obligation against the petitioner and its group companies. On 11th October, 2017, the learned arbitrator dismissed the said application filed under Section 16 of the Arbitration Act filed by the petitioner. On 30th March, 2019, the learned arbitrator made a final award thereby allowing the claims made by the respondent partly. The respondent did not challenge any part of the arbitral award by filing a separate petition. Being aggrieved by the said order dated 30th March, 2019, the petitioner filed this petition under Section 34 of the Arbitration Act.

191. Mr. N.H. Seervai, learned senior counsel for the petitioner invited my attention to the averments made in various paragraphs of the pleadings and some of the findings rendered by the learned arbitrator in the impugned award. He relied upon Article 3.01-3.03 of the said 2015 SLA providing for payment of trait value based on sales of Bt. cotton seeds. He submits that the respondent did not transfer any technology or know-how to enable the petitioner to either manufacture the Bt. Genes or to insert Bt. genes into the Hybrid Cotton Seeds of the petitioner in a laboratory through any scientific procedure.

192. It is submitted by the learned senior counsel that the said 2015 SLA relied upon by the respondent was void under Sections 3 and 4 of the Competition Act, 2002 since the said agreement contravened the provisions of the Competition Act and on the ground that the respondent was abusing its dominant position by charging an excessive, unreasonable and discriminatory trait fee. The issue

regarding the validity of the said 2015 SLA was a subject matter of the proceedings before the said CCI and was not capable of being adjudicated by the sole arbitrator. The entire dispute between the parties was not arbitrable. The learned arbitrator however allowed the claim of the respondent in the sum of Rs.13.23 crores with interest towards trait fees demanded by the respondent under the said agreement.

193. It is submitted by the learned senior counsel that the impugned award is in contravention of Section 34(2)(b)(i) of the Arbitration Act on the ground that the validity of the said 2015 SLA was challenged before the said CCI and the same is still pending. On 27th November, 2015, the Ministry of Agricultural and Farmer Welfare, Government of India filed a reference under Section 19(1)(b) of the Competition Act with CCI regarding alleged unreasonable high price of Bt. cotton seeds charged by the respondent and others. The petitioner had filed an information under Section 19(1)(a) of the Competition Act with the CCI against the respondent alleging violation of the Competition Act on various grounds. The investigation officer submitted a report and recorded that the CCI was of a view there exist a *prima-facie* case of contravention under Sections 3 and 4 of the Competition Act by the respondent and thus was a fit case for investigation by the Director General to conduct the investigation.

194. It is submitted that only after such investigation order was passed by the CCI, the respondent invoked the arbitration agreement recorded under Article 11.02 of the said 2015 SLA to recover the trait value allegedly due from the petitioner to it. He relied upon the interim order passed by the said CCI on 13th April, 2016 under Section 33 of the

Competition Act thereby restraining the respondent from enforcing certain post termination obligation under the said 2015 SLA. The Director General submitted its investigation report with the said CCI on 28th June, 2018.

195. In support of his submission that the dispute pertaining to competition are non arbitrable, learned senior counsel placed reliance on paragraph 14 of the judgment of Supreme Court in case of ***A. Ayyaswamy v/s. Paramasivam & Ors, (2016) 10 SCC 386***. He submits that the Supreme Court in the said judgment had observed that although the Arbitration Act does not make any provision excluding any category of dispute treating them as non arbitrable, Court has held that certain kinds of disputes in pursuant are capable of adjudication through the means of arbitration.

196. Learned senior counsel placed reliance on the judgment of Supreme Court in case of ***Emaar MGF Land Ltd. v/s. Aftab Singh, (2018) SCC Online SC 2378*** and in particular paragraph 32 in support of the submission that the disputes under Competition Law are non arbitrable. He submits that learned arbitrator has erroneously proceeded to exercise its jurisdiction and pass the impugned award on the basis that the proceedings before the CCI were not pending proceedings. He submits that the learned arbitrator failed to appreciate that the proceedings before the CCI and the arbitral tribunal proceedings before the learned arbitrator were in respect of the same 2015 SLA entered into between the parties and were pending proceedings before the CCI and at the same time before the learned arbitrator. The finding of the learned arbitrator that the proceedings before the CCI were not pending is *ex-facie* perverse and shows patent illegality. He submits that the

said CCI having found that there exist a *prima-facie* case under Section 26(1) and (2) of the Competition Act, it directed the Director General to pass an order for investigation to be made. If there would not have been *prima-facie* case, the tribunal ought to have closed the matter forthwith and to pass an appropriate order in that behalf.

197. Learned senior counsel placed reliance on Regulation 18(2) of the Competition Commission of India (General) Regulation 2009 promulgated under Section 64 of the Competition Act and would submit that under the said Regulation, if the commission is of the opinion that a *prima-facie* case exists, the Secretary of the commission shall convey the direction of the commission within seven days to the Director General to investigate the matter. Such direction for investigation to the Director General shall be the deemed commencement of the enquiry under Section 26 of the Act.

198. Learned senior counsel invited my attention to the findings rendered by the learned arbitrator in paragraph 58 of the impugned award and would submit that the finding of the learned arbitrator that the learned arbitrator did not have jurisdiction is fallacious, erroneous and requires to be rejected. Learned senior counsel placed reliance on Section 61 of the Competition Act and would submit that the said provisions expressly oust the jurisdiction of the Civil Court to entertain any proceedings in respect of any matter which the CCI was empowered to determine. He relied upon the judgment of Supreme Court in case of ***Dhulabhai v/s. State of Madhya Pradesh*** (supra) and in particular paragraph 35 in support of the submission that since there was a ouster of the jurisdiction of the Special Court to entertain any proceedings in support of any matter which the CCI was empowered to

determine under Section 61, the Civil Court or the learned arbitrator had no jurisdiction to decide the claims made by the respondent.

199. Learned senior counsel placed reliance on the judgment of Supreme Court in case of ***Booz Allen Hamilton Inc. v/s. SBI Home Finance Limited, (2011) 5 SCC 532*** and in particular paragraphs 35, in support of his submission that the adjudication of certain categories of proceedings are reserved by the legislature exclusively for public fora as a matter of public policy. Learned senior counsel placed reliance on an unreported the judgment of this Court in case of ***Kingfisher Airlines Ltd. v/s. Capt. Prithvi Malhotra,*** in Writ Petition No. 2585 of 2012 delivered on 20th November, 2012 and in particular paragraph 13. He submits that since the dispute arising out of the Competition Act, can be decided only by the CCI, the claims for recovery of money by the respondent before the learned arbitrator were not at all arbitrable. He submits that the Competition Act itself is a complete code.

200. It is submitted that the finding of the learned arbitrator that the disputes that fell for determination before him and before the CCI did not overlap is erroneous, perverse and discloses patent illegality on the face of the impugned award. Similarly, the finding of the learned arbitrator that the issues of the contravention of the Competition Act may be incidentally to the claims raised by the respondent but does not form nucleus of the dispute is also perverse and discloses patent illegality. The learned arbitrator ought to have considered the provisions of the Competition Act to ascertain whether the said Act creates any special rights and liabilities not found in the General law. The finding of the learned arbitrator in paragraphs 58 of the impugned award to decide on ouster of jurisdiction is itself patently erroneous.

The learned arbitrator had to determine the said issue solely on the wording of the relevant provisions/provisions of the concerned statute.

201. It is submitted by the learned senior counsel that Sections 3 and 4 of the Competition Act are to regulate the commercial dealings in the interest of the general public and prohibit the execution and/or performance of agreement that are likely to cause adverse effects of competition or an abusive of dominance. Thus, prohibition of agreements effect the general public interest. Statutory prosecution under Section 3 against anti-competitive agreement is not prospective i.e. from the date the said CCI is seized all the matter. The CCI has wide powers under Section 19(1) to enquire into any alleged contravention of the provisions contained in Section 3(1) or 4(1) on its own motion or upon receipt of information from any person or through their association or trade association. Under Section 27(d) of the Competition Act, CCI may even direct that the contract in question stands modified to the extent and in the manner as may be specified by it.

202. In support of the submission that the Competition Act is a complete self-contained code providing the statutory right of protection and remedies against anti-competitive conduct, learned senior counsel placed reliance on the judgment of Delhi High Court in case of ***Jindal Steel & Power Ltd. v/s. Union of India, 2012 (127) DRJ 285*** and in particular paragraphs 24.

203. Learned senior counsel for the petitioner placed reliance on Section 2(3) of the Competition Act which provides that the part 1 shall not affect any other law for the time being in force by virtue of which

certain disputes may not be submitted to the arbitration. He submits that if Sections 60 and 61 of the Competition Act and Section 2(3) of the Competition Act are read together, it is clear that jurisdiction of the arbitral tribunal is ousted while dispute pertaining to Competition Law arising between the parties is concerned.

204. Learned senior counsel for the petitioner submits that there can be no bifurcation of causes of action. He submits that it is not permissible to decide part of the issues as arbitrable and other part not arbitrable. Even if some aspects of a disputes are arbitrable and some other aspects are non arbitrable, all disputes become non arbitrable. In support of this submission, learned senior counsel placed reliance on the judgment of this Court in case of ***Kingfisher Airlines Ltd. v/s. Capt. Prithvi Malhotra, (2011) SCC Online BOM 1999*** and in particular paragraph 24 and judgment of Supreme Court in case of ***Booz Allen Hamilton Inc.*** (supra) and in particular paragraphs 52.

205. Learned senior counsel placed reliance on the judgment of Supreme Court in case of ***Competition Commission of India v/s. Bharti Airtel, (2019) 2 SCC 521*** and in particular paragraphs 100 to 114. He submits that in the said judgment, the Supreme Court held that it was for Telecom Regulatory Authority of India in the first instance to decide whether there had been any delay on denial of points of interconnection. He submits that only when the jurisdictional fact was determined by the Telecom Regulatory Authority of India, the CCI could decide whether the delay or denial of points of interconnection was the violation of the Competition Act. He submits that in this case also the adjudication of the said 2015 SLA's enforceability as a contract under the Competition Act is pending before the CCI which authority is

a statutory authority vested with exclusive jurisdiction to determine the same. These issues were raised prior to the date of commencement of arbitral proceedings and their determination was pending prior thereto.

206. It is submitted that the learned arbitrator lacked jurisdiction to decide on the live controversy in issue between the parties. He invited my attention to the paragraphs 78 and 109 of the impugned award and would submit that the jurisdiction of the learned arbitrator to entertain the claim of the respondent would only spring forth after a determination of the issue whether the SLA's are valid under the Competition Act or not. It is only then the arbitral tribunal would possess the jurisdiction to enforce the SLA as a contract and grant relief thereon. He submits that if the sole arbitrator would not exercise its jurisdiction in adjudicating the claims made by the respondent, the respondent would not be remediless. Even if the CCI would have decided in favour of the respondent, the respondent could have always invoked arbitration after its final order would have been passed by the said CCI.

207. Mr. Pravin Samdhani, learned senior counsel for the respondent on the other hand adopts the submission made by the Mr. Chagla, learned senior counsel for the respondent in Commercial Arbitration Petition No. 737 of 2019 and Mr. Dwarkadas, learned senior counsel for the respondent in Commercial Arbitration Petition No. 738 of 2019 and made additional submissions. The facts in Commercial Arbitration Petition No. 892 of 2019 are identical to the facts in other two matters. The petitioner had not disputed the existence of the 2015 SLA. The petitioner has also not raised any dispute about the quantum and the trait value under the said 2015 SLA. He submits that the petitioner had

made a counter claim against the respondent under 2004 SLA which was rejected by the arbitral tribunal. The petitioner has challenged the said part of the award.

208. It is submitted that the only remedy available to the respondent in law for recovery of the amount payable under the said 2015 SLA was by invoking the arbitration agreement and not by filing any application for recovery of amount before the said CCI. The petitioner has not disputed that the said 2015 SLA has been already terminated by the respondent on 14th November, 2015. The petitioner has also not disputed that the said CCI cannot entertain the monetary claim made by the respondent before the learned arbitrator. The monetary claim made by the respondent before the learned arbitrator does not fall under Section 61 of the Competition Act, 2002. The learned arbitrator has not rendered any finding on the differences raised by the petitioner under Section 3(4) of the Competition Act. The learned arbitrator only directed the petitioner to pay the contractual trait value in terms of the said 2015 SLA for the period of 1st April, 2015 to 14th November, 2015 and has specifically left the assertions of the petitioner under the Competition Act untouched for being decided by the CCI.

209. It is submitted by the learned senior counsel that since the monetary claim made by the respondent did not fall within the exclusive jurisdiction of the said CCI under Section 61 of the Competition Act, the arbitrator has rightly exercised its jurisdiction to entertain the monetary claims made by the respondent. The jurisdiction of the learned arbitrator to decide such monetary claims under the said 2015 SLA is not ousted. Since, the learned arbitrator has not decided the issue which fall under the exclusive domain of the said CCI under

the provisions of the Competition Act, no grounds under Section 34(2)(b)(i) of the Arbitration Act is made out by the petitioner. The learned arbitrator has only directed the petitioner to pay the contractual dues of the respondent arising out of the sale of seeds having technology of the respondent, which amount has been already received by the petitioner from the farmers/respective customers. The amount directed to be paid by the award is a fraction from the sale price already received by the petitioner.

210. It is submitted by the learned senior counsel that mere pendency of proceedings before the CCI cannot oust the jurisdiction of the arbitral tribunal. There is no final determination of the issue whether the said 2015 SLA or any clauses under the 2015 SLA is in breach of Section 3 or 4 of the Competition Act. No final order under Section 27 of the Competition Act has been passed by the said CCI till date. By filing or pendency of a complaint before the said CCI by the petitioner cannot result in either a declaration of voidness under Section 3 or the passing of an order under Section 27 of the Competition Act, 2002. The said 2015 SLA is accordingly deemed to be valid and enforceable unless expressly declared to be void.

211. It is submitted by the learned senior counsel that the stand of the petitioner that in view of the pendency of the complaint filed by the petitioner against the respondent under the provisions of the Competition Act, 2002, such allegations cannot be looked into by the learned arbitrator and on that ground itself the monetary claim made by the respondent ought to have rejected is concerned, he submits that this stand is dishonest, absurd and baseless. The entire defence of the petitioner is based on assumption that the said 2015 SLA is void. No

such declaration has been rendered by the said CCI till date.

212. It is submitted by the learned senior counsel that the entire award must be read as a whole and the exercise of cherry picking stray observation in one of the paragraphs of the different context cannot be adopted to challenge an arbitral award. He submits that it is clear that the arbitral tribunal has concluded that no pendency of the CCI proceedings can divest, the arbitral tribunal of its jurisdiction to entertain and try a contractual claim. The arbitral tribunal recommended that in the event, the said CCI were to hold the said 2015 SLA was void, the petitioner was having remedies, which would determine based on the situation prevailing on such time. Learned senior counsel placed reliance on the paragraphs 58, 59, 63, 64, 71, 74, 75, 76, 78 and 109 of the impugned award and would submit that the learned arbitrator has clearly held that mere pendency of the CCI cannot divest the arbitral tribunal of its jurisdiction to entertain and try a contractual claim.

213. It is submitted by the learned senior counsel that it is not permissible to grant stay of arbitral proceedings pending complaint before the CCI by the learned arbitrator. In any event, such plea for seeking stay of the arbitral proceedings was destructive of its contention that an arbitral tribunal had no jurisdiction. There is no provision under the Arbitration Act empowering the arbitral tribunal to stay its own proceedings. The tribunal is not conferred with powers similar to Section 10 of Code of Civil Procedure, 1908. The said provision is not attracted to proceedings initiated under other statutes.

214. It is submitted by the learned senior counsel that even if the

analogy of Section 10 of the Code of Civil Procedure is attracted in the present case, under the said provision, subsequent proceedings could be stayed only if the tribunal trying the earlier proceedings was competent to try the subsequent proceedings. In this case, admittedly the said CCI did not have jurisdiction to try the contractual claims of the respondent which was the subject matter of the arbitral proceedings. The learned arbitrator thus could not have granted any stay of the proceedings before him by applying the analogy of the Section 10 of the Code of Civil Procedure, 1908. In any event, the decision whether or not to stay the proceedings is a discretional decision and cannot be questioned under Section 34 of the Arbitration Act.

215. It is submitted by the learned senior counsel that the petitioner is unjustly enriching itself of the amount recovered by the petitioner from the farmers including the contractual trait value of Rs.13,23,39,225/-. He submits that the view taken by the learned arbitrator is a plausible view on the facts and in law and thus cannot be interfered with by this Court in this Commercial Arbitration Petition filed under Section 34 of the Arbitration Act. Learned senior counsel invited my attention to paragraphs 47, 48, 57, 59, 63, 68 to 71, 74, 78 and 190 of the impugned award and would submit that various findings of fact rendered by the learned arbitrator being not perverse cannot be interfered with by this Court. Learned senior counsel distinguished the judgment of Supreme Court in case of ***A. Ayyasamy*** (supra). He relied upon the judgment of Supreme Court in case of ***National Institute of Mental health and Neuro Science v/s. C. Parameshwara***, ***2005 (2) SCC 256*** and in particular paragraphs 8 to 10. Learned senior counsel relied upon paragraph 48 of the judgment of Supreme Court in case of ***Vimal Kishore Shah*** (supra) and would submit that the Supreme Court has

considered the principles of general applicability in the said judgment.

216. Mr. N. H. Seervai, learned senior counsel for the petitioner in rejoinder submits that the learned arbitrator ought to have dismissed the claims made by the respondent in view of the pending enquiry before the said CCI depending upon the outcome of the said complaint filed by the petitioner and could have granted liberty to the petitioner to revise its claim if the respondent would have succeeded in the said proceedings before the said CCI. The remedy of the respondent to seek monetary claim was thus not taken away.

REASONS AND CONCLUSIONS :

217. Some of the admitted facts are that by an agreement dated 21st February, 2004 entered into between the petitioner and the respondent, the petitioner was granted a licence to use the monsanto technology and to sell the resultant hybrid seeds on the terms and conditions setout in the said agreement. The trait fee was to be calculated on the basis of the sale report submitted by the petitioner for each month. The quantum of trait fee payable by the petitioner to the respondent in respect of the said technology was from time to time modified as mutually agreed. The said 2004 agreement was amended by the supplementary and amended agreement dated 24th January,2007 and second agreement dated 25th May, 2007. On 10th March, 2015, the parties entered into a new Sub-Licence Agreement dated 10th March,2015 effective from 1st April, 2015 (hereinafter referred to as '2015 SLA').

218. It is the case of the respondent that the said 2015 SLA entered

into on 10th March, 2015 was after extensive negotiations between the parties. Clause 11.10 of the said agreement provided that each of the parties acknowledge that they had read the said agreement and understood all of its terms, and that, the said agreement was being executed voluntarily without duress and with full knowledge of its legal significance. The parties also acknowledged that they had received independent legal advice from their respective attorneys with respect to the legal consequences of entering into the said agreement. The said clause recorded the arbitration agreement under Article 11.02.

219. The dispute arose between the parties. It was the case of the respondent that under the said 2015 SLA, the petitioner paid an amount of Rs. 9 crores towards the trait value in or around June 2015. Out of the said amount of Rs.9 crores, the respondent on first in first out basis appropriated Rs.80,38,636/- towards outstanding dues under 2004 SLA and Rs.8,19,61,637/- towards dues under 2015 SLA. It was the case of the respondent that the petitioner failed to make payment of the balance amount of trait value and raised frivolous issues by letter dated 19th July, 2015 thereby refusing to make payment of the trait value.

220. It was contended by the petitioner that the petitioner was entitled to challenge the trait fee recovered by the respondent from the petitioner as specified under Article 3 of the respective SLA statutorily modified in the light of the Andhra Pradesh, Gujarat and Maharashtra Cotton Seeds (Regulation of Supply Distribution, Sale and Fixation of Sale Price) Act along with notification thereunder and that the respondent should have challenged the trait fee accordingly since 2010. Prior to issuance of the said letter dated 19th July, 2015, several proceedings had been filed by various Seed Associations of which the

petitioner or its group companies were members challenging those Cotton Seeds Act and notifications in various fora. It was the case of the respondent that various seed companies including the petitioner and/or the NSL Group had unequivocably accepted that the trait value payable by the seed companies including the petitioner to the respondent was a matter of contract. After failing in their challenge, the petitioner and the other seed companies addressed a letter dated 19th July, 2015.

221. Prior to the said letter, the petitioner had made substantial payment of trait fees to the respondent without demur, pending the challenge to those notifications. There was further correspondence exchanged between the parties. The respondent denied the contention raised by the petitioner in the said letter dated 19th July, 2015 by various letters. The respondent thereafter by its letter dated 14th November, 2015 terminated the said 2015 SLA and also terminated the said trade market SLA. The respondent thereafter invoked the arbitration agreement by letter dated 23rd February, 2016 through its advocate's letter.

222. According to the respondent, on 30th January,2017, the outstanding amounts which were payable by the petitioner to the respondent under the said SLA was Rs.117,39,38,943/- for sales made between 1st April, 2015 and 31st October, 2015 and Rs.6,90,249/- for the sales made in the month of November 2015. In response to the said notice dated 23rd February, 2016, the petitioner through their advocate's reply dated 9th March, 2016, denied the contentions raised by the respondent in the notice dated 23rd February, 2016 and contended that the dispute between the parties were not arbitrable.

However, without prejudice to their rights that the disputes were not arbitrable and without prejudice to their rights to challenge the jurisdiction of the arbitral tribunal, owing to the fact that during the course of the hearing of the pending application under section 9 of the Arbitration Act before this court, the respondent had suggested converting the said application under section 9 to application under section 17 of the Act, the petitioner was agreeable to refer the dispute between the parties to the arbitral tribunal comprising of three arbitrators.

223. The petitioner nominated a former Judge of the Supreme Court as its nominee arbitrator. In the said reply, the petitioner reserved its right to initiate appropriate legal proceedings against the respondent for recovery of the claim against the petitioner in the sum of Rs.308.95 lacs and any further/other claims as may be advised together with all damages, costs and expenses.

224. The respondent filed a detailed statement of claim before the arbitral tribunal *inter alia* praying for an amount of Rs.117,39,38,943/- as and by way of trait value against the petitioner for the sales between 1st April, 2015 and 31st October, 2015 and a sum of Rs.690,249/- as and by way of trait value on 1st November, 2015 and 14th November, 2015 under the 2015 Sub-Licence Agreement. The said claim was resisted by the petitioner by filing written statement. Alongwith the said written statement, the petitioner had also filed a counter claim against the respondent *inter alia* praying for refund of the total amount of Rs.14,29,39,990/- paid by the petitioner to the respondent from 1st April, 2015 till the date of the filing of the said counter claim alongwith a sum of Rs.52205858/- for interest.

225. The petitioner also filed an application under section 16 of the Arbitration Act before the arbitral tribunal on 21st February, 2017 contending that the arbitral tribunal did not have jurisdiction to determine the claim and prayed for dismissal of the claim of the respondent for want of jurisdiction. In prayer clause (b) of the said application, without prejudice to and in the alternate to prayer (a) for the dismissal for want of jurisdiction, the petitioner prayed for suspension of the arbitral proceedings till the final adjudication of the competition commission proceedings before the Competition Commission of India.

226. In the said application filed under section 16, it was contended by the petitioner that the Competition Act exclusively vest jurisdiction in the CCI to entertain and try various issues including the issue regarding the validity and legality of contractual provisions relating to the payment of trait fees and/or the subject agreement had arisen under the provisions of the Competition Act. The CCI was seized of those issues. It was contended that an order to carry out an enquiry under the said Act was already passed by the CCI. It was urged that the jurisdiction of the Civil Court is expressly barred under section 61 of the Competition Act. The said application was opposed by the respondent by filing a detailed affidavit in reply.

227. By a separate order passed by the arbitral tribunal, the said application under section 16 filed by the petitioner came to be rejected. However, in the said order, the tribunal directed that the tribunal had not expressed any opinion on one way or the other on the merits of the matter. As and when the matter would come up for hearing, it would

be open for the parties to raise all objections available to them and the tribunal will consider and decide such objections in accordance with law without being influenced or inhabited by the observations made in the said order. The arbitral tribunal accordingly decided the said issue of jurisdiction again in the final award rendered in the matter.

228. The arbitral tribunal framed 16 issues. Issue no.3 was divided in 6 sub-parts. The first issue was 'whether present dispute was not arbitrable as alleged in the statement of defence ?' The arbitral tribunal held that the dispute was arbitrable. The arbitral tribunal has adverted to various judgments of Supreme Court while dealing with the said issue of arbitrability of the dispute. The arbitral tribunal interpreted the arbitration agreement forming part of the said 2015 SLA and rightly held that the claims made by the respondent were arbitrable. The arbitral tribunal also interpreted section 61 of the Competition Act which provides for exclusion of jurisdiction of Civil Court in respect of any matter which the Commission or the Appellate Tribunal is empowered by or under the Competition Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the said Act. Arbitral tribunal held that section 62 clarifies that the provisions of the Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

229. The arbitral tribunal rejected the contention of the learned counsel for the petitioner that the CCI had found *prima facie* case in favour of the petitioner and had directed enquiry under section 26 and that all those questions can be decided by the CCI alone and not by any

authority or forum. The arbitral tribunal rightly held that section 61 is expressly clear that it excludes the jurisdiction of the civil Court in entertaining any suit or proceeding in respect of any matter which the Commission or the Appellate Tribunal is empowered by or under the Act to determine. It is held by the tribunal that insofar as the dispute before the arbitral tribunal was concerned, it relates to right and liability of the parties and performance of reciprocal promises under 2015 SLA.

230. It is held that by resolving decision or adjudicating such dispute or differences, the arbitral tribunal was not dealing with 'any matter which the Commission is empowered or by under the Act to determine'. The tribunal has clearly held that it was called upon to consider and adjudicate the disputes and differences between the parties under 2015 SLA and not on any question issued or whether covered or falling under Competition Act, 2002. Certain issues relating to the Competition Act had been raised by the petitioner and also by the other parties before the CCI and they are pending. The CCI will adjudicate upon them.

231. The respondent (original claimant) had approached the arbitral tribunal merely for adjudication of the rights and liability under 2015 SLA which has nothing to do with the Competition Act. The respondent had approached the tribunal with limited ground that the petitioner had not acted as per the terms and conditions laid down in 2015 SLA which agreement provides for referring the disputes and differences between the parties to arbitration. The dispute was only between the parties to the agreement and the tribunal was called upon to decide whether the petitioner had failed to act in accordance with the

various clauses of the agreement and whether the respondent was entitled to any relief from the petitioner for alleged breach of SLA or not.

232. In my view, the tribunal rightly held that the adjudication by the tribunal shall be in the nature of the right and liability of the parties to the agreement and would relate to right in personam and not right in rem. If the arbitral tribunal would have held that it had no jurisdiction in the matter and would have dismissed the claim of the respondent, the respondent would not have any remedy at all. In the proceedings before the CCI, whatever may be the outcome, the respondent would not be able to get any effective relief or decree or award directing the petitioner herein to pay the particular amount to the respondent. The arbitral tribunal rightly held that the respondent had certain rights under the 2015 SLA and thus it must also have remedy for enforcement of such rights. If the challenge to the jurisdiction of the tribunal by the respondent is upheld, it would result in dismissal of the claim without adjudication of the merits and without granting any relief to him. The tribunal accordingly rightly held that wherever there is right, there is a remedy or where there is no wrong without remedy.

233. In paragraph 85 of the impugned award, the arbitral tribunal rightly held that the tribunal has jurisdiction to entirely deal with and decide the dispute raised by the respondent against the petitioner. In paragraph 86 of the impugned award, the arbitral tribunal rightly held that apart from the dispute by the respondent against the petitioner under 2015 SLA, the petitioner had also raised some disputes against the respondent arising out or in connection with 2015 SLA by challenging the termination thereof Agreement by the respondent by

letter dated 14th November, 2015 and has claimed the damages in the counter claim to the tune of Rs.2,500 crores, subsequently reduced to Rs.56.90 crores.

234. The petitioner has also claimed refund of trait value of Rs.19.59 crores paid by the petitioner to the respondent under the said 2015 SLA. Those counter claims also could not have been decided by the CCI and were rightly filed before the arbitral tribunal. The arbitral tribunal interpreted the said SLA and has rightly held that the said SLA contained the arbitration clause of wide amplitude which required the aggrieved party to refer its dispute to the arbitral tribunal.

235. The jurisdiction of CCI under Competition Act and jurisdiction of the arbitral tribunal under the 2015 SLA are altogether different and distinct and are not overlapping. The parties to the contract having considered business efficacy and practicability of implementation and enforceability of the rights and liabilities under the agreement which included arbitration clause for resolving such disputes and differences. It is the duty of the tribunal to allow the parties to invoke such remedy and adjudicate upon such disputes and differences in accordance with law.

236. Insofar as issue nos. 2 and 3 are concerned, the arbitral tribunal has dealt with these two issues together in paragraphs 88 to 96. Issue nos. 2 and 3A to 3F which are also relevant for the purpose of deciding contentious issues raised by the petitioner are extracted as under :-

“Issue No.2 – Does the Competition Act apply to the 2015 Sub-license Agreement ?

Issue No.3(a) – Whether the claimant is in a dominant position in the market as alleged in the Defence reas with Paragraphs 9.1 to 9.23 of the Information dated 15th December 2015 (the Information) ?

Issue No.3(b)- Whether the claimant has overcharged and/or claimed excess trait value under the Subject Agreement in violation of Section 4(2)(a)(ii) of the Competition Act, 2002 as alleged in the Defence read with Paragraphs 9.25 to 9.38 of the Information ?

Issue No.3(c)- Whether the Claimant has imposed unfair conditions under the Subject Agreement in violation of Section 4(2)(a)(i) of the Competition Act, 2002 as alleged in the Defence read with Paragraphs 9.39 to 9.48 of the Information ?

Issue No.3(d)- Whether the Claimant has discriminated in favour of Affiliates in contravention of Section 4(2)(a)(ii) and 4(2)(i) of the Competition Act, 2002 as alleged in the Defence read with Paragraphs 9.49 of the Information ?

Issue No.3(e)- Whether the Claimant via the Subject Agreement has leveraged its dominant position in violation of Section 4(2)(e) of the Competition Act, 2002 as alleged in the Defence read with Paragraphs 9.54 to 9.56 of the Information ?

Issue No.3(f)-Whether the Subject Agreement is violative of Section 3(1) and 3(4) of the Competition Act, 2002 as alleged in the Defence read with the Information ?"

237. Insofar as issue no.2 is concerned, arbitral tribunal held that it

was clear that the question whether or not Competition Act, 2002 applies to 2015 SLA can and is to be decided only by the CCI. It is rightly held that once the CCI is empowered to determine the said question, section 61 of the Competition Act bars the arbitral tribunal from considering the said question and also the supplemental or consequential question is embedded in issue nos. 3(A) to 3(F) which also the CCI is empowered to determine. After adverting to section 61 of the Competition Act and after noticing the admitted facts that the CCI is still investigating the matter and no orders have yet been passed by the CCI under Section 26 or under Section 27, the arbitral tribunal rightly held that that issue will be decided by the CCI. Accordingly, insofar as the issue nos. 3A to 3F are concerned, in view of the findings rendered by the arbitral tribunal on issue no.2, the arbitral tribunal rightly did not express any opinion on those issues.

238. I shall first deal with the rival submissions made by the learned senior counsel for the parties on issue nos. 1 to 3 together. Mr. Darius Khambata, learned senior counsel for the petitioner could not dispute that the CCI does not have jurisdiction to allow any monetary claim under the arbitration agreement entered into between the parties under the provisions of the Competition Act, 2002. The question thus arises for the consideration of this Court is whether the arbitral tribunal did have jurisdiction to consider the monetary claim made by the respondent for recovery of the payment of the trait fee payable under the provisions of 2015 SLA on not.

239. The petitioner in the application filed under section 16 of the Arbitration Act had not only prayed for dismissal of the claim made by the respondent on the ground that the arbitral tribunal did not have

jurisdiction to entertain such claim in view of the pendency of the complaint filed by the Central Government and also by the petitioner against the respondent before the CCI under the provisions of Competition Act, 2002 but had also in the alternate had prayed for suspension of the arbitral proceedings. Learned senior counsel for the parties addressed this court also on the issue whether during the pendency of the proceedings filed by the petitioner before the CCI under the provisions of Competition Act against the respondent, the arbitral tribunal ought to have dismissed the claim or in the alternate ought to have suspended the arbitral proceedings filed by the petitioner and the authority before the CCI under the provisions of Competition Act was disposed of on one way or the other.

240. It is not in dispute that the petitioner had also filed a counter claim against the respondent for recovery of the substantial amount before the same arbitral tribunal under the same 2015 SLA. Substantial part of the counter claim was subsequently withdrawn by the petitioner before the arbitral tribunal. The arbitral tribunal rejected the counter claim of Rs.19.51 crores which was for the refund claimed by the petitioner against the respondent under the said 2015 SLA.

241. Learned senior counsel for the parties also addressed before this court on the issue whether the Competition Commission of India would be empowered to direct the respondent to refund the amount if paid by the petitioner to the respondent under the impugned award in the event of the Competition Commission of India rendering any finding against the respondent and in favour of the petitioner about the validity of the 2015 SLA or not. Section 2(e) defines “Commission” i.e. Commission means the Competition Commission of India established under sub-

section(1) of section 7. Section (3) deals with 'anti-competitive agreements.' The said provision prohibits any enterprise or association of enterprises or person or association of persons from entering into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.

242. Section 3(2) provides that any agreement entered into in contravention of the provisions contained in sub-section (1) shall be void. Section 7 provides for establishment of commission. Section 19 of the Act empowers the commission to enquire into any alleged contravention of the provisions of section 3(1) or section 4(1) either on its own motion or on receipt of any information or a reference made to it by the Central Government or a State Government or a statutory authority. It further provides for various other powers of the commission while dealing with the issues whether there was any alleged contravention of the provisions of the section 3(1) or 4(1) of the Act.

243. Section 26 of the Competition Act provides that on receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under section 19, if the Commission is of the opinion that there exists a *prima facie* case, it shall direct the Director General to cause an investigation to be made into the matter. Based on such report to be submitted by the Director General, further action can be taken by the Commission including conducting an enquiry into such contravention in accordance with the provisions of the Act.

244. Under section 27 of the Competition Act, if after inquiry the Commission finds that any agreement referred to in section 3 or an action of an enterprise in a dominant position, is in contravention of section 3 or section 4, as the case may be, it may pass all or any of the order as may setout therein. The Commission has power to direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission. The Commission may direct such enterprises to discontinue and not re-enter such agreement or discontinue such views of dominant position as the case may be, can impose the penalty upon such enterprises as the Commission may deem fit. Section 61 of the Commission Act provides that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Commission or the Appellate Tribunal is empowered by or under the said Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the said Act.

245. The question that arises for consideration of this court is whether section 61 of the Competition Act would exclude the jurisdiction of the Arbitral Tribunal in entertaining monetary claim arising out of the 2015 SLA though CCI has no jurisdiction to entertain any such monetary claim made by one party against another party to the SLA under the provisions of the Competition Act or not.

246. A perusal of the record clearly indicates that it is not in dispute that the parties had agreed to amend 2004 SLA after detailed negotiations and fixed a trait value of Rs.150/- per packet of BG-I

cotton seeds costing Rs.750/- per packet for the period 2006-08 onwards and Rs.266/- per packet of BG-II cotton seeds costing Rs.950/- per packet for the period 2007-08 onwards. There are proceedings filed before the different High Courts including MRTPC wherein the State of Andhra Pradesh filed an additional affidavit bringing on record (i) Settlement and Release of Claims Agreement and (ii) Supplementary and Amendment Agreement executed by and between the parties on 25th January, 2007. The second Amendment Agreement was executed between the parties under the trait value for BG-II further reducing the amount to Rs.225/- per packet for a packet costing upto Rs.950/- per packet.

247. It is not in dispute that the respondent had issued a notice of termination of SLA 2004 by notice dated 19th November, 2009 and demanded the outstanding payment of Rs.89.52 crores approximately under the said 2004 SLA. A dispute had arisen between the parties also under the said agreement. However, in view of the Amendment Agreement having been executed, nothing survived in the reference made before the Competition Appellate Tribunal.

248. The petitioner did not dispute before this Court that the said 2015 SLA was executed after detailed negotiations held by the petitioner with full independent legal advice received by the petitioner of its implications. There is also no dispute that various State Government Price Notifications relied upon by the petitioner before this Court fixing maximum sale price at which the petitioner could sell the seeds were already existing before the execution of the said 2015 SLA between the parties. No objection about the rate was however raised by the petitioner at that stage. The trait value in respect of

which the dispute between the parties arose was one of the components of maximum selling price of cotton seeds prescribed under those State Government Price notifications referred to and relied upon by the petitioner.

249. The petitioner had already made payment of Rs.14 crores under the said 2015 SLA to the respondent, however refused payment of the balance contractual license fee on the ground that the contractual amount was contrary to the Price Notifications issued by the State Government. It is not in dispute that those State Government Price Notifications were already issued prior to the date of execution of 2015 SLA between the parties.

250. In so far as the submission of Mr.Khambata, learned senior counsel for the petitioner that under the provision of the 2015 SLA, any of the parties could apply for modification of any part of the SLA on the ground that the same was contrary to any of the provisions of law is concerned, there is no dispute about such provisions of the said agreement. The petitioner however did not invoke the said provisions before making payment of Rs.14 crores to the respondent under the said 2015 SLA. Be that as it may, issue as to whether the said SLA is in violation of the provisions of the Competition Act or not and requires any modification or not is the issue pending before the CCI.

251. In my view, Mr.Chagla, learned senior counsel for the respondent is right in his submission that Section 11 of the Andhra Pradesh Cotton Seeds (Regulation pf Supply Distribution, Sale and Fixation of Sale Price) Act, 2007 and Section 10 of the Maharashtra

Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2009 does not empower the respective State Governments to fix trait value but empower to fix maximum sale price of the cotton planting seeds. There is no dispute between the parties that the purpose of such maximum selling price fixation was to secure the interest of farmers only.

252. Mr.Khambata, learned senior counsel for the petitioner did not dispute that one year prior to the claim period, the Bt. cotton seeds business of the petitioner was 69.73% i.e. approximately 70% of their total business. The total revenue of the petitioner for the Financial Year 2015-16 was Rs.1054 crores as is apparent from the affidavit in reply dated 20th February,2019 filed by the petitioner in the petition filed by the respondent under Section 9 of the Arbitration Act in this Court. The net profit of the petitioner for the Financial Year 2015-16 even according to the petitioner was Rs.1054 crores as reflected in the said affidavit.

253. Learned senior counsel also did not dispute that under the said 2015 SLA, on the sale of seed packets worth upto Rs.930/-, the petitioner was liable to pay to the respondent approximately Rs.163.28/- per packet exclusive of taxes. Learned senior counsel could not dispute that the petitioner and its associate companies have already collected the amount claimed by the respondent from the farmers on the sale of those seeds. The averments made by the petitioner in paragraph 5.4 of the affidavit in reply dated 20th February, 2019 filed by the petitioner in Commercial Arbitration Petition (L) No.151 of 2019 would support the case of the respondent in this respect.

254. A perusal of the record clearly indicates that neither the petitioner nor its associate companies had during the relevant period even made any attempt to avoid the said 2015 SLA and had availed off the benefits under the said agreement. Even before the CCI, the petitioner and its associate companies had never sought avoidance of 2015 SLA but had challenged the termination of notice issued by the respondent thereby terminating the 2015 SLA and had prayed for the stay of termination of 2015 SLA. However, contrary to this position taken by the respondent before the CCI, the petitioner has raised self-destructive arguments before the arbitral tribunal and before this Court that the said SLA was violating the provisions of the Competition Act and has raised a plea of jurisdiction of the arbitral tribunal to entertain the claims made by the respondent. In my view, the stand taken by the petitioner is totally inconsistent with each other and is mutually destructive. Even during the course of the arguments, none of the counsel appearing for the petitioner addressed this Court on the issue of quantification of the amount awarded by the arbitral tribunal or on the merit of the claim decided by the arbitral tribunal in the impugned award but addressed only on the issue of jurisdiction of the arbitral tribunal.

255. It was vehemently urged by the learned senior counsel for the petitioner that the monetary claims made by the respondent before the arbitral tribunal were not arbitrable. By a detailed order passed by the arbitral tribunal in the application filed by the petitioner under Section 16 of the Arbitration Act, the arbitral tribunal rightly rejected the said application. On the issue of arbitrability, the arbitral tribunal has recorded a detailed reason while dealing with Issue No.1 in the

impugned arbitral award. Mr.Khambata, learned senior counsel for the petitioner could not dispute the existence of the arbitration agreement recorded in the said 2015 SLA. He also could not dispute that the arbitral tribunal was properly constituted. For deciding the issue of jurisdiction of the arbitral tribunal under Section 16 of the Arbitration Act, the arbitral tribunal has rightly applied the triple test : (1) whether there is in existence a valid arbitration agreement, (2) whether the arbitral tribunal is properly constituted or not and (3) whether the matters submitted to arbitration are submitted within the scope of the arbitration agreement or not. The only question thus remains for consideration of this Court is whether the monetary claims made by the respondent before the arbitral tribunal were arbitrable or not.

256. The submission of the learned senior counsel for the petitioner before this Court is that though CCI has no jurisdiction to award any monetary claim under the provisions of the Competition Act, the monetary claims made by the respondent before the arbitral tribunal however, could not have been granted in violation of the provisions of the Competition Act. In my view, since CCI did not have jurisdiction to grant any monetary claim for the sale of seeds under the 2015 SLA in favour of the respondent, the claims made by the respondent before the arbitral tribunal being an action in personam, exclusive jurisdiction to entertain such claim in the nature of an action in personam would vest only with the Civil Court or with the arbitral tribunal, as the case may be. There being an existence of arbitration agreement between the parties, such claim could be granted only by the arbitral tribunal.

257. Merely because the issue of validity of 2015 SLA having been

raised by the petitioner before the CCI in the information filed by it or the complaint filed by the Central Government under the provisions of the Competition Act, the arbitral tribunal was not obliged to proceed on the premise that the provisions of the said 2015 SLA were void or were contrary to any of the provisions of the Competition Act. Admittedly, no such declaration was rendered by the CCI declaring that the said 2015 SLA entered into between the parties was void being anti-competitive or required modification.

258. During the course of the arguments, Mr. Khambata, learned senior counsel for the petitioner gave three options which according to the learned senior counsel, the arbitral tribunal could have exercised in the proceedings before them. In my view, there is no merit in the submission of the learned senior counsel for the petitioner that in view of pendency of the complaint filed by the Central Government or the information filed by the petitioner before the CCI alleging various breaches on the part of the respondent under the provisions of the 2015 SLA on such grounds, the arbitral tribunal ought to have dismissed the claims made by the respondent. There was no dispute about the existence of arbitration agreement or that the constitution of the arbitral tribunal was proper and there being no dispute on the quantification of the claim.

259. There is also no merit in the submission of the learned senior counsel for the petitioner that the arbitral tribunal ought to have suspended the arbitral proceedings in view of the pendency of the proceedings regarding validity of the said 2015 SLA before the CCI. The only provision which empowers the arbitral tribunal to suspend or to terminate the arbitral proceedings on the ground that none of the

party paid his share in respect of his claim or counter claim, as the case may be, is found in Section 38(2) of the Arbitration Act. The legislative intent is thus clear that where the powers for suspension was to be provided, it was specifically inserted in the Act. No other provision for termination or suspension of the arbitral proceedings due to the situation contemplated therein, can be exercised.

260. In so far as reliance placed by the learned senior counsel on Section 9 of the Arbitration Act in support of the submission that the Court has ample power to suspend the arbitral proceedings under the said provision is concerned, under the said provision, the arbitral tribunal empowers to grant interim measures on various grounds and circumstances specifically set out therein. None of those grounds and circumstances set out therein would include the power to suspend the arbitral proceedings by the Court under Section 9. There is thus no merit in this submission of the learned senior counsel for the petitioner.

261. Reliance placed on Section 17 of the Arbitration Act in support of the submission that the arbitral tribunal is empowered to suspend the arbitral proceedings is misplaced. Under Section 17, the arbitral tribunal is empowered to grant interim measures on the grounds and the circumstances set out in the said provision. In my view, Section 17 does not empower the arbitral tribunal to suspend the arbitral proceedings.

262. In my view, there is no merit in the submission of the learned senior counsel for the petitioner that the arbitral tribunal after dismissal of the monetary claim made by the respondent in view of

pendency of the proceedings before the CCI, at the most could have granted liberty to the respondent to file fresh arbitral proceedings depending upon the outcome of the proceedings before the CCI. If the arbitral tribunal would have dismissed the proceedings for recovery of the monetary claim in view of pendency of the proceedings before the CCI, if the respondent would have succeeded in those proceedings and if the respondent would have filed the arbitral proceedings again, the claims then it made by the respondent would have been barred by law of limitation.

263. The answer to all these submissions made by the learned senior counsel for the petitioner on the issues of jurisdiction and arbitrability is also found in Section 53(N) of the Competition Act, 2002 which reads thus :-

"53N ---- Awarding compensation.

(1) Without prejudice to any other provisions contained in this Act, the Central Government or a State Government or a local authority or any enterprise or any person may make an application to the Appellate Tribunal to adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any finding of the Commission or under section 42A or under sub-section (2) of section 53Q of the Act, and to pass an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by the Central Government or a State Government or a local authority or any enterprise or any person as a result of any contravention of the provisions of Chapter II, having been committed by the enterprise.

(2) Every application made under sub-section (1) shall be accompanied by the findings of the Commission, if any, and also be accompanied with such fees as may be prescribed.

(3) The Appellate Tribunal may, after an inquiry made into the allegations mentioned in the application made under sub-section (1), pass an order directing the enterprise to make payment to the applicant, of the amount determined by it as realisable from the enterprise as compensation for the loss or damage caused to the applicant as a result of any contravention of the provisions of Chapter II having been committed by such enterprise: Provided that the Appellate Tribunal may obtain the recommendations of the Commission before passing an order of compensation.

(4) Where any loss or damage referred to in sub-section (1) is caused to numerous persons having the same interest, one or more of such persons may, with the permission of the Appellate Tribunal, make an application under that sub-section for and on behalf of, or for the benefit of, the persons so interested, and thereupon, the provisions of rule 8 of Order 1 of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to the application before the Appellate Tribunal and the order of the Appellate Tribunal thereon.

Explanation. – For the removal of doubts, it is hereby declared that –

(a) an application may be made for compensation before the Appellate Tribunal only after either the Commission or the Appellate Tribunal on appeal under clause (a) of sub-section (1) of section 53A of the Act, has determined in a proceeding before it that violation of the provisions of the Act has taken place, or if provisions of section 42A or sub-section (2) of section 53Q of the Act are attracted.

(b) Enquiry to be conducted under sub-section (3) shall be for the purpose of determining the eligibility and quantum of compensation due to a person applying for the same, and not for examining afresh the findings of the Commission or the Appellate Tribunal on whether any violation of the Act has taken place."

264. A perusal of the said provision clearly indicates that an application can be made for compensation before the Appellate tribunal only after either the Commission or the Appellate Tribunal on appeal under clause (a) of sub-section (1) of section 53A of the Act, has determined in a proceeding before it that violation of the provisions of the Act has taken place, or if provisions of section 42A or sub-section (2) of section 53Q of the Act are attracted. The Appellate Tribunal, in that event, is empowered to conduct an enquiry under clause (b) of sub-section (4) of Section 53N for the purpose of determining the eligibility and quantum of compensation due to a person applying for the same, and not for examining afresh the findings of the Commission or the Appellate Tribunal on whether any violation of the Act has taken place or not.

265. In my view, it is thus clear beyond reasonable doubt that the arbitral tribunal could neither terminate nor suspend the arbitral proceedings before the CCI under the provisions of the Competition Act nor could refuse to deal with the monetary claims arising out of the 2015 SLA merely on the ground that the issue of validity of the 2015 SLA by the Central Government by filing a reference or in view of the information filed by the petitioner before the CCI under provisions of the Competition Act is pending before the CCI. Even if the amount awarded by the arbitral tribunal in the impugned award is

paid by the petitioner to the respondent thereby implementing the impugned arbitral award, if the CCI comes to the conclusion in the pending proceedings that the said 2015 SLA is in violation of the provisions of the Competition Act, 2002, based on such finding of the CCI or the order of the Appellate Tribunal in an appeal against any finding of the CCI or under Section 42 A or Section 53Q (2) of the Act, the petitioner in that event, would entitled to seek claim for compensation against the respondent including the amount paid, if any, by the petitioner by implementing the impugned arbitral award.

266. Mr. Khambata, learned senior counsel for the petitioner in Commercial Arbitration Petition No.737 of 2019, Mr. Seervai, learned senior counsel for the petitioner in Commercial Arbitration Petition No.892 of 2019 and Mr.Rohan Kadam, learned counsel for the petitioner in Commercial Arbitration Petition No.738 of 2019 could not demonstrate before this Court that even if the amount awarded by the arbitral tribunal if paid by the petitioner to the respondent and if the petitioner ultimately succeeds in the proceedings before the CCI, the petitioner would not be able to seek any compensation by filing an application under Sections 53N(3) and 53N(4) of the Competition Act read with explanation thereto.

267. In my view, there is no substance in the submission made by the learned senior counsel for the petitioner that the arbitral tribunal ought to have awaited for the outcome of the pending proceedings before the CCI and could not have made an arbitral award though admittedly there was no dispute on the merits of the claim. There is no substance in the submission that the issues in the arbitral proceedings being related to the issues pending before the CCI and thus even if the part of

the claims were arbitrable and other part was not arbitrable, the entire proceedings before the arbitral tribunal became non-arbitrable. Since the CCI has no power to grant any monetary claim arising out the said 2015 SLA for the seeds supplied by the petitioner to the respondent simplicitor, powers of the arbitral tribunal and CCI are not overlapping. The respondent has no remedy to seek any monetary claim under 2015 SLA by filing any application under any of the provision of the Competition Act though the petitioner has a remedy available under Sections 53N(3) and 53N(4) of the Competition Act read with explanation thereto and seek compensation against the respondent based on the findings rendered by the CCI or the Appellate Tribunal, as the case may be.

268. There is no merit in the submission of the learned senior counsel for the petitioner that the respondent could have applied for extension of time for indefinite period for making an arbitral award or for some period beyond the date of disposal of proceedings before CCI under Section 29A(4) of the Arbitration Act. This submission is in the teeth of Section 29A(4). Court has no power to grant such extension for indefinite period or to indirectly suspend the arbitral proceedings under Section 29A (4) of the Arbitration Act.

269. In so far as the reliance placed by the learned senior counsel on Section 61 of the Competition Act in support of the submission that the powers of the Civil Court or the arbitral tribunal, as the case may be, are excluded under the said provision to determine any matter which the CCI or the Appellate Tribunal is empowered to determine under the provision of the Competition Act is concerned, in my view, reliance placed on the said provision to exclude the powers of the

arbitral tribunal to decide the monetary claim in this case is totally misplaced. The arbitral tribunal cannot decide the issue whether the said 2015 SLA was anti-competitive or was in violation of Section 3 of the Competition Act or not and deserves to be declared as void or required modification but has power to award monetary claim under such agreement.

270. The powers of the arbitral tribunal and the powers of the CCI are different and are not overlapping. In this case, the arbitral tribunal has not decided the issue as to whether the said 2015 SLA entered into between the parties was anti-competitive or not or whether the said 2015 SLA is in breach of any of the provision of the Competition Act or not or the respondent was in a dominant position or had committed the abuse of dominant position contemplated under Section 27 of the Competition Act. The arbitral tribunal in the impugned award has recorded a finding that the arbitral tribunal has jurisdiction in the matter, Subject-Agreement is neither void nor voidable under the Contract Act, 1872 and on the facts of the case, the respondent had not avoided the agreement. It is held that the petitioner was not entitled to withhold or refuse payment of the trait value payable under the Subject-Agreement and was liable to make such payment. The respondent was entitled to demand the trait value from the petitioner.

271. While dealing with issue nos.3(a) to 3(f) which deal with the issue of alleged violation of various provisions of the Competition Act alleged to have been committed by the respondent which were framed on the basis of the pleadings filed by the petitioner, the arbiral tribunal has clarified that the question whether or not the Competition Act applies to the 2015 SLA is to be decided by the CCI. The arbitral

tribunal has thus rightly held that once the CCI empowers to decide that question, Section 61 of the Competition Act bars the arbitral tribunal from considering the said question and also the supplementary and consequential question embodied the issue nos.3(a) to 3(f) which also the CCI is empowered to determine. The arbitral tribunal accordingly expressed no opinion on issue nos.3(a) to 3(f).

272. It is thus clear beyond reasonable doubt that the arbitral tribunal has not determined any of the issues which are determinable exclusively by the CCI under the provisions of the Competition Act, 2002 and has not exceeded its jurisdiction to deal with any issue which would be an action in rem. The arbitral tribunal has only interpreted the terms of the agreement and based on the evidence led by both the parties found that there was no dispute about the amount payable under that agreement on merit and has directed the petitioner to pay the amount found due and payable to the respondent under the said SLA. Various powers of the CCI prescribed under the provisions of the Competition Act are not disputed by the respondent. I am not inclined to accept the submission of Mr.Khambata, learned senior counsel for the petitioner that the arbitral tribunal has conferred jurisdiction by itself by assuming the existence of jurisdictional facts.

273. The arbitral tribunal in this case has not encroached upon the powers of the CCI though such issues were raised by the petitioner. In my view, if the arbitral tribunal would have rendered a finding one way or the other on the issue nos.3(a) to 3(f) as formulated based on the pleadings filed by the respondent, that would have amounted to the arbitral tribunal exceeding its jurisdiction and would have been in

violation of Section 61 of the Competition Act and not otherwise. The decision of the arbitral tribunal awarding the monetary claims made by the respondent under the said 2015 SLA would not amount to the arbitral tribunal wrongly assuming the existence of jurisdictional facts. The arbitral tribunal is empowered to exercise powers in view of the existence of arbitration agreement and to find out whether the claims made before it are arbitrable or not. Such exercise would not amount to assuming the existence of the jurisdiction facts.

274. Reliance placed by the learned senior counsel on Section 10 of the Specific Relief Act, 1963 in support of the submission that the said 2015 SLA itself being not enforceable in law could not have been relied upon by the respondent for seeking enforcement thereof while seeking monetary claim is misplaced in the facts of this case. The issue as to whether any part of 2015 SLA is void or not or is contrary to any of the provisions of the Competition Act or not, is the issue pending before the CCI. The petitioner will have a remedy under Section 53N of the Competition Act, if the petitioner succeeds in those proceedings before the CCI to seek adequate compensation based on such findings if rendered by the CCI or the Appellate Tribunal, as the case may be.

275. In so far as the submission of Mr.Khambata, learned senior counsel for the petitioner that the arbitral tribunal has decided the issue nos.2 and 3 ignoring the statement of defence filed by the petitioner and has considered only the averments made in the statement of claim is concerned, in my view the arbitral tribunal has not only considered the statement of claim but has also dealt with the objection raised by the petitioner in the statement of defence as well

as the application filed under Section 16 of the Arbitration Act in the impugned award as well as in the order passed under Section 16. However, in paragraphs 51 and 54 of the impugned award, the arbitral tribunal has observed that for deciding jurisdiction of a court (Tribunal), what is relevant is the averments made in the plaint (statement of claim) by the plaintiff (claimant) and not what is pleaded by the defendant (respondent) in the written statement (statement of defence). The petitioner had itself filed counter claim relying upon the same arbitration agreement recorded in Article 11.02 of the said 2015 SLA.

276. Be that as it may, in my view, the arbitral tribunal has considered the plea of jurisdiction raised in the application filed under Section 16 and also in the statement of defence as a plea challenging the jurisdiction of the arbitral tribunal. In any event, the Court has to read the entire arbitral award to appreciate the reasons recorded and the conclusion drawn by the arbitral tribunal and cannot set aside the arbitral award based on an isolated observation made in the context in one of the paragraphs of the arbitral award.

277. The petitioner had also filed a petition under Section 9 of the Arbitration Act on 9th February, 2010 seeking stay of the termination notice dated 19th November, 2009 before Delhi High Court. The said petition was disposed of by the Delhi High Court in view of the said arbitration petition having become infructuous by recording a statement made by the petitioner that the petitioner had agreed to pay the amount claimed in the termination notice dated 19th November, 2009.

278. Supreme Court in case of ***Indian Farmers Fertiziler Cooperative Limited*** (supra) has held that the arbitral tribunal may rule on its own jurisdiction under Section 16(1) which makes it clear that it refers to whether the arbitral tribunal may embark upon an enquiry into the issues raised by the parties to the dispute. The Supreme Court held that kompetenz principle, which is also followed by the English Arbitration Act, 1996 is that the "jurisdiction" mentioned in Section 16 refers to three things (i) as to whether there is an existence of a valid arbitration agreement, (ii) whether the arbitral tribunal is properly constituted and (iii) matters submitted to arbitration should be in accordance with the arbitration agreement. In the said judgment, Supreme Court held that the Court having jurisdiction over the subject matter of the suit and over the parties thereto, though bound to decide right may decide wrong, and that even though it decided wrong it would not be doing something which it had no jurisdiction to do. It had jurisdiction over the subject matter, it had the jurisdiction over the party and therefore merely because it made an error in deciding a vital issue in the suit, it cannot be said that it had acted beyond its jurisdiction. It is held that the Courts have jurisdiction to decide right or to decide wrong even tough they decide wrong, the decree is rendered by them cannot be treated as nullities.

279. Supreme Court has adverted to the judgment of privy council in case of ***Maqbul Ahmad v/s. Onkar Pratap Narain Singh***, ***AIR 1935 PC 85*** which did not say that where the Court fails to perform its duty, it acts without jurisdiction. If it fails to do its duty, it makes an error of law and an error of law can be corrected only in the manner laid down in the Civil Procedure Code. In my view, principles of law laid down by the Supreme Court in the case of ***Indian Farmers Fertiziler***

Cooperative Limited (supra) applies to the facts of this case. The respondent has clearly satisfied all the ingredients of kompetenz principles in this case. I am respectfully bound by the said judgment. Merely because the arbitral tribunal has held that it does not express any opinion on issue nos. 3A to 3F, it cannot be urged by the petitioner that the arbitral tribunal has neither exhausted its jurisdiction by forming such opinion nor has decided the plea of jurisdiction raised by the petitioner in the statement of defence or in the application made under Section 16 of the Act before the arbitral tribunal. In my view, Mr.Chagla, learned senior counsel has rightly relied upon the judgment of Supreme Court in case of ***Dhulabhai*** (supra) on this issue.

280. The arbitral tribunal has rightly decided whether its jurisdiction was ousted by looking at the pleadings filed by the parties. Non-arbitrable defence raised by the petitioner did not determine or oust the jurisdiction of the arbitral tribunal. Supreme Court in case of ***Church of North India*** (supra) has held that a plea of bar to jurisdiction of a Civil Court must be considered having regard to the contentions raised in the plaint. In the said judgment, the Supreme Court adverted to the earlier judgment in case of ***Dhulabhai*** (supra) in which it is held that where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the Particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the Civil Court. An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions set out in the said judgment would apply.

281. Supreme Court in case of ***Abdulla Bin Ali and Ors.*** (supra) has held that there is no denying the fact that the allegations made in the

plaint decide the forum. The jurisdiction does not dependent upon the defence taken by the defendants in the written statement. It is evident that the Supreme Court by reading of the plaint as a whole came to the conclusion that the plaintiffs had filed a suit giving rise to the appeal treating the defendants as tresspassers as they had denied the title of the plaintiff. It is held that a suit against the tresspasser would lie only in the Civil Court and not in the Revenue Court. In paragraph 7 of the said judgment, it is held that on the allegations made in the plaint the suit was cognizable by the Civil Court and that the High Court had erred in law in non-suiting the plaintiffs on the ground that the Civil Court had no jurisdiction.

282. A full Bench of Andhra Pradesh High Court in case of ***Sangnbhotla Venkatramaiah*** (supra) has held that where the subject matter of the suit falls outside the exclusive jurisdiction of the special tribunal or where the reliefs sought in the suit is one which the special tribunal is incapable of granting, the jurisdiction of the Civil Court is not ousted merely because the question which has to be incidentally but necessarily decided is a question within the competence of the special tribunal. The forum has to be determined by the plaint. If the allegations in the plaint and the reliefs sought did not bring the action within the jurisdiction of the special tribunal, there is no reason to exclude the Civil Court from taking the action merely because the defence putforth involves the adjudication of matters within the competence of special tribunal.

283. In my view, merely because the petitioner had raised an issue that the 2015 SLA was void or anti-competitive or that the respondent no.1 had abused the dominant position and those issues could be

decided only by the CCI, it would not preclude the arbitral tribunal from deciding the monetary claims made before it which were not within the jurisdiction of the CCI. In my view, the jurisdiction of the arbitral tribunal to grant monetary claim is not excluded merely because the defence putforth by the petitioner involves the adjudication of matters within the competence of CCI. It is also held by the Andhra Pradesh High Court in the said judgment that where the Court is satisfied that the plaint is but a trick to invoke the jurisdiction of the Civil Court and to oust the jurisdiction of the special tribunal, the Civil Court will naturally dismiss the suit. No such case is made out by the petitioner in this case before the arbitral tribunal to dismiss the monetary claims made by the respondent. The principles of law laid down by the Andhra Pradesh High Court in case of ***Sangnbhotla Venkatramaiah*** (supra) squarely apply to this case. I am in respectful agreement with the views expressed by the Andhra Pradesh High Court in the said judgment.

284. In so far as the reliance placed by the learned senior counsel for the petitioner on the judgment of Supreme Court in case of ***A. Ayyaswamy*** (supra), in case of ***Vimal Kishore Shah*** (supra) and the judgment of this Court in case of ***Dinesh Jaya Poojary*** (supra) relied upon by the learned senior counsel for the petitioner is concerned, in the facts of those judgments, it was held that the claims made by the claimant were not arbitrable. In this case, the learned senior counsel for the petitioner could not satisfy this Court as to how the monetary claims made by the respondent under 2015 SLA were not arbitrable. Learned Senior Counsel could not dispute that the monetary claims made by the respondent could not have been considered by the CCI. The aforesaid three judgments thus relied upon by the learned senior

counsel for the petitioner would not assist the case of the petitioner and are clearly distinguishable in the facts of this case.

285. Delhi High Court in case of ***M/s. Shoes East Limited*** (supra) while dealing with the provisions of Securities and Exchange Board of India Act, 1992 held that there was no question of bar of jurisdiction of Civil Court in a suit for recovery where the company seeks to invoke a contractual obligation against the person who promises to bring a particular amount of subscription but fails to do so. It is held that there is no provision in the SEBI Act or its regulation for an adjudicating officer of the board or the Appellate Court to pass a decree for recovery in case at hand before the Delhi High Court. Delhi High Court rejected the contention of the respondent that there was bar under the provisions of SEBI Act against the Civil Court from dealing with a monetary claim by enforcing a contractual obligation. The principles laid down by the Delhi High Court in case of ***M/s. Shoes East Limited*** (supra) apply to the facts of this case. I am in respectful agreement with the views expressed by the Delhi High Court in the said judgment.

286. In this case also since the respondent had filed the claim before the arbitral tribunal for recovery of monetary claim by seeking enforcement of contractual obligation under the said 2015 SLA, the jurisdiction of the arbitral tribunal was not ousted to decide such monetary claim under Section 61 of the Competition Act. This Court in case of ***Asha Kataria*** (supra) after considering the provisions of Section 20A and 15Y of SEBI Act and Section 22E of the Securities Contracts (Regulation) Act held that none of those provisions would enable either of the authorities such as adjudicating officers, securities Appellate Tribunal and the Board to resolve the dispute regarding non

payment between the client and sub-broker (much less unregistered sub-broker). In my view, the principles laid down by this Court in the said judgment would clearly apply to the fact of this case. I am respectfully bound by the said judgment.

287. Supreme Court in case of ***Ramesh Gobindram*** (supra) has considered the issue whether the Wakf tribunal constituted under Section 83 of the said Wakf Act, 1995 was competent to entertain and adjudicate the dispute regarding the eviction of the appellants who were occupying Wakf properties. Supreme Court held that Section 85 of the said Act bars jurisdiction of Civil Court to entertain any suit or proceedings in relation to orders passed by the Wakf Tribunal or proceedings that may be commenced before the Wakf Tribunal. It is held that the exclusion of jurisdiction of Civil Court even under Section 85 was not absolute but was limited only to matters that are required by the said Act to be determined by the Wakf tribunal. So long as the dispute or question raised before the Civil Court does not fall within the four corners of the powers vested in the Wakf Tribunal, the jurisdiction of the Civil Court to entertain a suit or proceedings in relation to any such question cannot be said to be barred. The principles of law laid down by the Supreme Court in case of ***Ramesh Gobindram*** (supra) squarely applies to the facts of this case. I am respectfully bound by the said judgment.

288. Arbitral Tribunal in this case has only allowed the monetary claim made by the respondent by seeking enforcement of a contractual obligation which claim could not have been entertained or adjudicated upon by the CCI. The powers of CCI as well as the arbitral tribunal are different and not overlapping. A perusal of the provisions of the

Competition Act clearly indicates that the scheme of the said Act does not contemplate a machinery for seeking relief under a contract. The purpose of the proceedings filed by the parties before the CCI is different and distinct from the recovery proceedings filed by a party to agreement for seeking enforcement of a contractual obligation. The CCI cannot decide the monetary claim made by the respondent and at the same time, the arbitral tribunal cannot decide the issue whether the 2015 SLA was void being allegedly violative of Section 3 and other provisions of the Competition Act. Both the proceedings can be conducted parallelly and does not oust the jurisdiction of each other in respect of the issues which can be exclusively decided by each of this forum.

289. In that context, in my view, Mr. Chagla, learned senior counsel for the respondent is right in his submission that the Competition Act is not a self-contained code. Supreme Court in case of ***Saurabh Prakash*** (supra) dealt with the issue of jurisdiction of Monopolies and Restrictive Trade Practices Commission and held that the power of MRTP Commission to award compensation is restricted to a case where a loss or damage had been caused as a result of the monopolistic or unfair trade practices. It had no jurisdiction where damages was claimed for mere breach of contract. It is held that the power of the commission is not in addition to the power of the Civil Court. The principles laid down by the Supreme Court in case of ***Saurabh Prakash*** (supra) applies to the facts of this case. The monetary claim filed by the respondent before the arbitral tribunal alleging the breach of the contract committed by the petitioner by refusing to pay the contractual dues under the said 2015 SLA could not have been gone into by the CCI. I am respectfully bound by the principles laid down by

the Supreme Court in the said judgment. Similar view is taken by the Supreme Court in case of ***Pawan Hans Limited*** (supra).

290. Delhi High Court in case of ***Telefonaktiebolaget Lm Ericsson (Publ)*** has interpreted Sections 60 and 62 of the Competition Act and has held that the provisions of any statute must be read in the context of the statute as a whole. Section 60 is enacted only to reinstate and emphasize that notwithstanding agreements, arrangements, practices and conduct which may otherwise be legitimate under the general laws would nonetheless be subject to rigors of the Competition Act. Section 60 cannot be read to curtail or whittle down the full scope of other law. Those interpretation would also be in sync with the provisions of Section 62 of the Competition Act.

291. Supreme Court in case of ***Balawaa and Ors.*** (supra) has considered the provisions of the Karnataka Land Reforms Act and has held that the Civil Court cannot be said to be ousted of the jurisdiction in granting the reliefs sought for. When a special tribunal is created under a special statute and the jurisdiction of the Civil Court is sought to be ousted under the said statute, it is only in respect of those reliefs which could be granted by the special tribunal under the special statute, a jurisdiction of the Civil Court can be said to be ousted. Supreme Court accordingly held that already the Civil Court had jurisdiction to entertain the suit for partition and not the authorities under the Karnataka Land Reforms Act. The principles of law laid down by the Supreme Court would applies to the facts of this case. I am respectfully bound by the said judgment.

292. Supreme Court in case of ***Girnar Traders*** (supra) has held that

for an Act to be "self contained code" it is required to be shown that it is a complete legislation for the purpose for which it is enacted. The provisions of the enactment in question should provide for a complete machinery to deal with various promises that may arise during its execution. Sufficient powers should be vested in the authority/forum created under the Act to ensure effectual and complete implementation of the Act. There should be complete and coherent scheme of the statutory provisions for attainment of the object and purpose of the Act. It essentially should also provide for adjucatory scheme to deal with the grievance/claims of the persons affected by enforcement of the provisions of the Act, preferably, including an appellate forum within the frame work of the Act. In another words, the Act in itself should be a panacea to all facets arising from the implementation of the Act itself. The principles of law laid down by the Supreme Court in case of ***Girnar Traders*** (supra) applies to the facts of this case.

293. Learned senior counsel for the petitioner could not point out any provision under the Competition Act providing for a remedy to recover monetary claim arising out of a contractual obligation under an agreement. Thus, the provisions of the Competition Act cannot be considered as a self-contained code in so far as the remedy of recovery of monetary claim for enforcement of contractual obligation is concerned. In my view, the arbitral tribunal was thus not bound to suspend the proceedings or could not have rejected the monetary claim merely on the ground that the complaint filed by the Central Government as well as the information filed by the petitioner were pending before the CCI.

294. In my view Mr. Chagla, learned senior counsel for the

respondent is right in his submission that even if the CCI finds that there is contravention of Sections 3 or 4 of the Competition Act, the CCI has vide powers to pass various orders under the Competition Act including an order for discontinuance of objectionable agreements, imposition of penalties, modification of agreement etc. If the contract is void *ab-initio* as canvassed by the petitioner, the question of its discontinuance, modification etc. could never arise. Learned senior counsel rightly placed reliance on section 27 of the Competition Act in support of his submission that under the provisions of the Competition Law, the concept of voidness has always been considered to be "transient" and not absolute and is curable. The judgment of Supreme Court in case of ***Mahindra and Mahindra Limited*** (supra) and also the judgment of Court of Appeal in case of ***David John Passmore*** (supra) would assist the case of the respondent.

295. Learned senior counsel for the petitioner did not dispute that the interim order dated 10th February, 2016 passed by the CCI was impugned by the respondent in the writ petition bearing no. 1776 of 2016 before the Delhi High Court. The Delhi High Court by order dated 29th February, 2016 directed that no final order shall be passed by the CCI in that matter and any interim order under section 33 shall not be given effect to without the leave of the Delhi High Court. The said writ petition is still pending before the Delhi High Court.

296. A perusal of section 26(1) of the Competition Act clearly indicates that the directions issued by the CCI under the said provision while conducting an enquiry under section 19 to the Director General to cause an investigation into the matter is an administrative direction and is not an order on adjudication. Any such order passed under

section 26(1) does not determine any right or obligation of the party or does not entail any civil consequences. The judgment of Supreme Court in case of ***CCI v/s. SAIL,*** (supra) and the judgment of this Court in case of ***Vision Millenium Exports Private Limited*** (supra) would clearly assist the case of the respondent. The principles of law laid down by the Supreme Court and this court in these cases are applicable to the facts of this case. I am respectfully bound by the said judgments.

297. In my view the order dated 13th April, 2016 passed by the CCI even otherwise cannot be given effect in view of the order dated 29th February, 2016 passed by the Delhi High Court and is even otherwise an interim order and did not determine the rights of the parties and would not operate as res-judicata or issue estopple in the matter. Supreme Court in case of ***Amrish Tewari*** (supra) has held that interim orders were passed before any order or statements had been recorded and were passed only on the basis of the contentions of the parties. It is held that the interim orders even though they may have been confirmed by the higher Courts, never bind and do not prevent passing of contrary order at the stage of final hearing. In my view, the principles laid down by the Supreme Court in the said case clearly applies to the facts of this case. The reliance placed by the learned senior counsel for the petitioner on various interim orders thus passed by the CCI were neither binding on the arbitral tribunal nor are binding on this court as the same were subject to the final orders as may be passed by the CCI.

298. The Supreme Court in case of ***State of Assam v/s. Barak Upatyaka D.U. Karmachari Sanstha,*** (supra) has held that an interim order which does not finally and conclusively decide an issue cannot be

a precedent. Any reasons assigned in support of such non-final interim order containing *prima facie* findings, are only tentative. Any interim directions issued on the basis of such *prima facie* findings are temporary arrangements to preserve the status quo till the matter is finally decided, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing. The principles laid down by the Supreme Court in the said judgment clearly applies to the facts of this case. I am respectfully bound by the principles laid down in the said judgment. Neither the arbitral tribunal nor this court thus can take any cognizance of the interim order passed by the CCI being a *prima facie* view taken and being not conclusive and final.

299. The Division Bench of this court in case of ***Vision Millenium Exports Private Limited*** (supra) has held that the report of the Director General, CCI submitted after enquiry under section 27 of the Competition Act is preliminary fact finding enquiry and is not by way of *quasi* judicial order. In the said fact finding enquiry, there is no opportunity given to the concerned parties to make submission, but only statements are recorded and materials considered. No evidentiary value could be attached to the said report of the Director General of CCI. In my view, the reliance placed by the learned senior counsel for the petitioner on the preliminary report submitted by the Director General under section 26 of the Competition Act before the CCI cannot be relied upon as a piece of evidence before the arbitral tribunal or this Court.

300. A perusal of the ground (A) raised by the petitioner in the said arbitration petition clearly indicates that the petitioner itself has admitted that the issue regarding the validity of the 2015 SLA under

the Competition Act was not capable of being adjudicated upon by the arbitral tribunal and was to be exclusively adjudicated upon by the CCI. Similar ground is also raised by the petitioner in ground (F) of the petition. In my view, the petitioner thus cannot be allowed to now urge across the bar that the arbitral tribunal ought to have rendered decision/conclusion of those issues framed under paragraphs 3(A) to 3(F). This submission made by the learned senior counsel for the petitioner across the bar is contrary to the grounds raised by the petitioner itself in the arbitration petition.

301. The Supreme Court in case of ***Harsha Constructions*** (supra) has held that if a non-arbitrable dispute is referred to an arbitrator and even if an issue is framed by the arbitrator in relation to such a dispute, there cannot be a presumption or a conclusion to the effect that the parties had agreed to refer the issue to the arbitrator. In that matter, the respondent had raised an objection relating to the arbitrability of the issue before the arbitrator and yet the arbitrator has rendered his decision on the said "excepted" dispute. It is held by the Supreme Court that the arbitrator could not have decided the said "excepted" dispute. It was not open to the arbitrator to decide the issues which were not arbitrable and the award, so far as it relates to disputes relating to the arbitrability is bad in law and is accordingly quashed.

302. A perusal of the impugned award clearly indicates that the arbitral tribunal has not rendered any finding on the non-arbitrable issue i.e. issue nos. 3(A) to 3(F). It is not the case of the arbitral tribunal deciding those issues but is clear case of the arbitral tribunal not deciding those issues in view of those issues being capable of being adjudicated upon only by the CCI. No grievance thus can be made by

the petitioner about this part of the arbitral award. The principles of law laid down by the Supreme Court in case of ***Harsha Constructions*** (supra) clearly applies to the facts of this case. I am respectfully bound by the said judgment. This court in case of ***Union of India v/s. Sarthi Enterprises,*** (supra) would also assist the case of the respondent. In my view, Mr.Chagla, learned senior counsel for the respondent is right in his submission that the decision of the arbitral tribunal in not expressing any opinion on the issue nos. 2 and 3 on the ground that the proceedings filed by the petitioner challenging the validity of the 2015 SLA are pending before the CCI and that those issues could be decided by the CCI exclusively on its own merits, would not operate as res-judicata against the petitioner in those proceedings pending before the CCI.

303. If the arbitral tribunal would have rejected the claim of the respondent on the ground that those claims were not arbitrable, the respondent would be without any remedy in law and would not have any forum to approach for recovery of its contractual dues. The respondent is not required to wait till the outcome of the CCI proceedings and if would have waited, the claim of the respondent would have become barred by law of limitation. In my view, Mr.Chagla, Mr.Dwarkadas and Mr. Samdhani, learned senior counsels for the respondent are right in their submission that amongst several remedies available to the petitioner, the petitioner would be able to invoke the provisions of section 53N of the Competition Act and can seek refund of the amount paid under the award as compensation to the respondent if the CCI holds the said 2015 SLA as void. Since the petitioner is not rendered without any remedy even if payment of the awarded amount by the arbitral tribunal to the respondent is made and

thus the principles of res-judicata cannot stand in this situation. The arbitral tribunal has determined all the issues which could be exclusively determined only by the arbitral tribunal and within its jurisdiction and rightly did not determine the issues under the Competition Act and has kept all those issues and rights and remedies available to the petitioner under the Competition Act open. The judgment of Supreme Court in case of ***Piloo Dhuinshaw Sidhwa*** (supra) which deals with the right of the party to claim compensation in case of breach of the contract under section 70 of the Contract Act applies to the fats of this case.

304. In my view, there is no substance in the submission of the learned senior counsel for the petitioner that the parties to the arbitral proceedings also could have sought an indefinite extension of time under section 29A of the Arbitration Act during the pendency of the complaint filed by the Central Government and the information filed by the petitioner before the CCI. The legislative intent for inserting section 29A clearly mandates that the arbitral proceedings have to be disposed of expeditiously and if for any reason set out in the said provision the proceedings are not disposed of within the time prescribed, the application for extension of time can be made under section 29A(4). The court in that event is empowered to grant further extension of time to complete the arbitral proceedings subject to various safeguards provided therein.

305. The court is also empowered to order the reduction of fees of the arbitrator(s) in the event of the court finding that the proceedings have been delayed for the reasons attributable to the arbitral tribunal by not by not exceeding five percent for each month of such delay. The court

has power to substitute one or all of the arbitrators in such a situation and to terminate the mandate of the arbitrators. The submission of the learned senior counsel that the parties could have applied for an indefinite extension of time by invoking the provisions of section 29A(4) of the Arbitration Act is totally untenable in the teeth of the said provision and contrary to the legislative intent for inserting section 29A for the purpose of conclusion of arbitral proceedings expeditiously and within the time prescribed.

306. In my view, Mr.Chagla, learned senior counsel for the respondent has rightly placed reliance on the judgment of Delhi High Court in case of ***Shree Tirupathi Udyog*** (supra) in support of the submission that in this case, the petitioner did not file any proceedings either under section 9 or section 17 of the Arbitration Act seeking stay of the arbitral proceedings either in court or before the arbitral tribunal as the case may be. A perusal of section 14 of the Arbitration Act clearly provides for the circumstances in which the mandate of the arbitrator shall stand terminated. Section 25 of the Act provides as to when the arbitral tribunal shall terminate the proceedings. Section 32 of the Act also provides as to when the arbitral proceedings shall be terminated by the arbitral tribunal. None of the circumstances set out in the aforesaid three provisions were applicable to the facts of this case nor it was the case of the petitioner that the arbitral tribunal could have terminated the proceedings under any of those provisions.

307. Insofar as the submission of the learned senior counsel for the petitioner that the proceedings could have been suspended by the arbitral tribunal is concerned, a perusal of 2nd proviso of section 38(2) of the Arbitration Act clearly indicates the legislative intent that the

arbitral tribunal may suspend or terminate the arbitral proceedings if one party does not pay the share of deposit of the other party with the arbitral tribunal in respect of the claim or the counter claim as the case may be. It is clear that only in the specific circumstances set out under the provisions of the said Act, the legislature wanted to empower the arbitral tribunal to terminate the proceedings or to suspend the proceedings. The powers are specifically prescribed under one of those provisions set out aforesaid.

308. In view of the limited judicial intervention prescribed under section 5 of the Arbitration Act, the arbitral tribunal or this Court could not have either terminate or suspend the arbitral proceedings in view of there being no such power available or prescribed under the Arbitration Act for either termination of the arbitral proceedings or for suspension thereof in view of the pendency of the complaint filed by the Central Government or the information filed by the petitioner before the CCI.

309. Insofar as the submission of the learned senior counsel for the petitioner that the arbitral tribunal did not have jurisdiction to decide the claim of the respondent on the ground that the issue of patentability of the technology of the respondent is pending adjudication before the Delhi High Court is concerned, it is not in dispute that the patent of the respondent which is subject matter of the said suit before the Delhi High Court is not revoked in the said proceedings or in any of the proceedings so far and is valid and enforceable. The arbitral tribunal thus even otherwise could not have assumed the alleged invalidity of the patent of the respondent and could not have refused to entertain the monetary claim made by the respondent on that ground. The petitioner cannot be allowed to challenge the arbitral award on the basis of the

alleged assumed invalidity of the patents.

310. A perusal of the statement of defence filed by the petitioner before the arbitral tribunal indicates that the petitioner has raised a simplicitor plea that the said 2015 SLA is forbidden by Section 3(j) of the Patents Act and thus was void under Section 23 of the Indian Contract Act, 1872. In my view, section 3(j) of the Patents Act does not prescribe any prohibition in respect of any type of agreement or does not empower to declare any provision of agreement as void. A perusal of the statement of claim filed by the respondent before the arbitral tribunal clearly indicates that the respondent had not filed the statement of claim for recovery of any patent fees but had only filed the claim for recovery of the contractual payment of the trait fees and for enforcement of contractual obligation under 2015 SLA on the part of the petitioner. A perusal of the findings rendered by the arbitral tribunal in paragraphs 159 and 161 of the impugned award clearly indicates that it has been rightly recorded by the arbitral tribunal that the claims made by the respondent were not based on the patent right. The petitioner has not even challenged the said finding recorded in paragraph 161 of the arbitral award in this petition.

311. Insofar as the submission of the learned senior counsel for the petitioner that the said 2015 SLA is contrary to section 26 read with section 92 of the PPVFR Act is concerned, a perusal of the impugned award clearly indicates that the arbitral tribunal has rendered a finding of fact that the petitioner did not possess any certificate of registration under section 24 of the said PPVFR Act prior to the date of termination of the said 2015 SLA which is a mandatory precondition for invoking section 26 of the said Act. In my view, since the provision of the said

PPVFR Act is not triggered, the submission of the learned senior counsel for the petitioner is academic and thus deserves to be rejected on that ground itself.

312. Be that as it may, it is an undisputed position that the petitioner is a commercial breeder with revenue over Rs.1,000 crores and is not a farmer. Learned senior counsel for the petitioner also could not dispute before this court that the entire amount claimed by the respondent before the arbitral tribunal for recovery of trait fees which amount was part of the maximum sales price was already recovered by the petitioner from the farmers who were sold the seeds and other items. The finding rendered by the arbitral tribunal on this issue in paragraph 212 of the arbitral award being not perverse and not showing any patent illegality, cannot be interferred with by this court. Similar findings rendered by the arbitral tribunal in paragraphs 204, 210, 211, 213 and 215 also being not perverse and do not disclose any patent illegality, cannot be interfered with by this court.

313. A perusal of the record further indicates that the said suit filed by the respondent against the petitioner before Delhi High Court alleging infringement of the patents right of the respondent was initially dismissed by the Delhi High Court. The said judgment of the Delhi High Court was set aside by the Division Bench of the Delhi High Court. Supreme Court by a judgment has set aside the order passed by the Division Bench of the Delhi High Court and restored the judgment delivered by the Delhi High Court on 28th March, 2017 and remanded the said suit back to the learned Single Judge of the Delhi High Court. The said suit is still pending before the Delhi High Court. A perusal of the record further indicates that the order passed by the Delhi High

Court which was subject matter of the civil appeal before the Supreme Court and also the order passed by the Supreme Court was for a period post termination of 2015 SLA when the Central Price Control regime under the Cotton Seeds (Price Control) Order, 2015 was in place. The Central Government was empowered to and had fixed the trait value under the said provision. The said order would apply only to financial year 2016-17.

314. Insofar as the submission of the learned senior counsel for the petitioner that the arbitral tribunal ought to have given further hearing to the petitioner to make submissions on the order dated 14th January, 2019 passed by the Supreme Court is concerned, a perusal of the minutes of the meeting dated 16th January, 2019 issued by the arbitral tribunal would clearly indicate that the arguments advanced by the parties were already concluded between the parties before the arbitral tribunal. The arbitral tribunal thus rightly did not fix the matter again for hearing. Be that as it may, no prejudice of any nature is caused to the petitioner on that ground. The alleged concession made by the learned senior counsel on behalf of the respondent before the Supreme Court will have to be read in context and was specifically qualified by the phrase “at this stage” which would mean at 'interim stage' only. The said concession has to be read in the context of the post termination period when the CSPCO was in force and was being observed by the parties. The petitioner had sold 7,39,818 seeds packets containing the technology of the respondent during the period 1st April, 2015 to 14th November, 2015 and received an aggregate amount of Rs.740 crores approximately from the farmers/consumers. The arbitral tribunal however has allowed only the claim of Rs.117.46 crores with interest which the petitioner had contractually agreed to pay to the

respondent under the said 2015 SLA. In my view, Mr.Chagla, learned senior counsel for the respondent is right in his submission the retention of the unjust and undisputed amount was rightly not permitted by the arbitral tribunal.

315. In my view, the judgment of Delhi High Court in case of ***Jindal Steel & Power Ltd.*** (supra) would not assist the case of the petitioner on the ground that the MOU which was challenged before the Delhi High Court in the writ petition was executed before the Competition Act came into force. The said party had also filed a parallel proceedings before the CCI after the said Competition Act came into force for the same relief. Delhi High Court accordingly adjourned the writ proceedings awaiting the decision of the CCI on the basis that the writ petitioner could achieve full relief before the CCI. It is clear that however in this case, the proceedings filed before the arbitral tribunal and before the CCI have been filed by two opposite parties. The CCI has no power to grant monetary relief in favour of the respondent admittedly. In my view, there is no power granted to the arbitral tribunal to adjourn the arbitral proceedings sine-die. The powers of Writ Court cannot be compared with the powers of the arbitral tribunal. The judgment of Delhi High Court in case of ***Jindal Steel & Power Ltd.*** (supra) thus is clearly distinguishable in the facts of this case and would not assist the case of the petitioner.

316. In my view, the learned senior counsel for the respondent has rightly distinguished the judgment of Supreme Court in case of ***Fuerst Day Lawson Ltd.*** (supra) on the ground that the Supreme Court in that judgment had considered the issue whether the appeal was maintainable under Section 50 of the Arbitration Act by exercising

powers under Letter Patent or not. In that context, the Supreme Court had held that the provisions of Arbitration Act being self-contained code, the Letters Patent appeal would be excluded. Learned senior counsel for the respondent also rightly distinguished the judgment of Supreme Court in case of ***Vimal Kishor Shah*** (supra) on the ground that the said judgment dealt with the issue of the non-arbitrable claims and not dealt with 'non-arbitrable defence'. In the said judgment, the Supreme Court considered a clause of the Trust Deed and interpreted that the said clause did not constitute an Arbitration Agreement under Section 7 of the Arbitration Act. The said judgment is not at all applicable to the facts of this case and would not assist the case of the petitioner.

317. Similarly, judgment of Supreme Court in case of ***A. Ayyaswamy*** (supra) is also not applicable to the facts of this case. There were no serious allegations of fraud made by the defendant in that matter against the applicant in the application filed under Section 8 of the Arbitration Act and had contended that such allegations of fraud could not be adjudicated by the arbitral tribunal. In that context, the Supreme Court held that since the claims raised by the claimant did not involve serious allegations of fraud, those claims were arbitrable. In my view, the said judgment would not assist the case of the petitioner but would assist the case of the respondent.

318. In so far as the judgment of Supreme Court in case of ***Emaar MGF Land Ltd.*** (supra) relied upon by the learned senior counsel for the petitioner is concerned, a perusal of the said judgment clearly indicates that the Supreme Court in the said judgment did not hold that the consumer disputes are non-arbitrable. It is held by the Supreme

Court in the said judgment that Section 3(2) of the Consumer Protection Act does not contain any definition but contain a general provision which clarifies that "this part shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration." It is held that complaints filed under Consumer Protection Act can also be proceeded with despite there being an arbitration agreement between the parties.

319. The judgment of this Court in case of ***Dinesh Jaya Poojary*** (supra) also would not assist the case of the petitioner on the ground that the CCI before whom a complaint filed by the Central Government and the information filed by the petitioner is pending, is not empowered to adjudicate upon the contractual claims made by the respondent for unpaid trait value. In my view, the disputes raised by the respondent in the statement of claim before the arbitral tribunal were exclusively within the four corners of the Arbitration Act and did not seek any adjudication of the issues which are subject matter of the said complaint and the information filed by the Central Government and the petitioner respectively before the CCI.

320. The judgment of this Court in case of ***Kingfisher Airlines Ltd.*** (supra) is also distinguishable on the ground that the issue before this Court in the said judgment was in respect of a claim for unpaid wages and whether such unclaimed wages dispute was an industrial dispute or not, which could be adjudicated upon under the provisions of the Industrial Dispute Act and thus non-arbitrable or not.

321. The judgment of Supreme Court in case of ***Competition Commission of India*** (supra) relied upon by the learned senior counsel

for the petitioner is distinguishable in the facts of this case. The Supreme Court in the said judgment had considered the jurisdiction of two regulatory bodies i.e. TRAI under the Telecom Regulatory Authority of India Act, 1997 and CCI under the provisions of Competition Act, both containing exclusive jurisdiction provisions. The Supreme Court in the said judgment held that Telecom Sector's primary jurisdiction was with the TRAI/TDSAT. It is held that the claim of the respondent for breach of contract and for recovery of unpaid licence fees does not involve any such jurisdictional aspects of violation of Competition Act. In the said judgment, the Supreme Court had considered that both the remedies under the TRAI and the Competition Act were invoked by the same party. However, in this case, the respondent has invoked the arbitration agreement for recovery of its monetary claim whereas the petitioner has filed information before the CCI for various other reliefs.

322. I am not inclined to accept the submission of the learned senior counsel for the petitioner that the respondent ought to have waited for indefinite period till those proceedings before CCI were first disposed of and only depending upon the outcome of those proceedings, the respondent could have filed arbitral proceedings for recovery of monetary claim. In my view, the contractual reliefs are within the domain of the arbitral tribunal and on the other hand issue whether any violation of the provisions of Competition Act including Section 3 thereof has been committed or not are within the exclusive domain of CCI.

323. The judgment of Supreme Court in case of ***Arun Kumar and Ors.*** (supra) relied upon by the learned senior counsel for the petitioner

is distinguishable on the ground that the facts before the Supreme Court in the said judgment were totally different and are not applicable to the facts of this case at all. In my view, the issue of the alleged invalidity of a contract or violation of Competition Act is not a jurisdictional fact for the arbitral tribunal under Section 16 of the Arbitration Act. Invalidity of a contract is an arbitrable dispute by itself on merits and is not a jurisdictional fact. The question as to whether a contract is void or not is not a jurisdictional fact.

324. The judgment of Supreme Court in case of ***Competition Commissioner of India*** (supra) relied upon by the learned senior counsel for the petitioner is clearly distinguishable in the facts of this case on the ground that in that judgment an order under Section 26(1) of the Competition Act was held akin to a departmental function and did not affect the rights and liabilities of parties. The interim order passed by the CCI under Section 33 of the Competition Act cannot be converted into an order of a final nature by this Court.

325. Judgment of Supreme Court in case of ***Gangai Vinayagar Temple and Ors.*** (supra) is distinguishable on the ground that the provisions considered by the Supreme Court in the said judgment under Order XLI Rule 1 of the Code of Civil Procedure does not apply to arbitration proceedings even though the issues were framed by the arbitral tribunal. Arbitral tribunal has no jurisdiction to decide every such issue itself if such issues were not within the jurisdiction of arbitral tribunal or such issues could be decided by some other judicial authority or Court. In this case, the arbitral tribunal has clearly held that it did not express any opinion on issues nos. 3A to 3F though framed in view of the pleadings filed by the parties in that regard.

326. The judgment of Supreme Court in case of ***Inder Singh Rekhi*** (supra) relied upon by the learned senior counsel for the petitioner is not applicable to the facts of this case. The Supreme Court in the said judgment had considered the issue as to when the dispute arises for the purposes of filing of an application under Section 20 of the Arbitration Act, 1940. The scheme of Section 16 of the Arbitration and Conciliation Act, 1996 is totally different. The said judgment thus would not assist the case of the petitioner.

327. The judgment of Supreme Court in case of ***Booz Allen Hamilton Inc.*** (supra) relied upon by the learned senior counsel for the petitioner also would not assist the case of the petitioner on the ground that the Supreme Court in the said judgment had considered a claim relating to a mortgage which was an action in *rem* and accordingly had held that the said claim was not arbitrable. However, in this case, the claim for recovery of the balance amount of trait fees filed by the respondent was for enforcement of the contractual rights and was an action in *personam* and not action in *rem*. Paragraph 38 of the said judgment on the contrary holds that the disputes relating to subordinate rights in *personam* arising from rights in *rem* have always been considered to be arbitrable.

328. In my view, judgment of this Court in case of ***Sundrabai Sitaram*** (supra) is distinguishable on the ground that in the said judgment this Court had held that the contract in question was void as it was prohibited by the Bombay District Police Act. In this case, the CCI has not declared the said 2015 SLA to be void so far. It is also not held by the CCI till date that the said 2015 SLA is forbidden by any

law. It is also not the case of the petitioner before the said CCI that the said 2015 SLA is forbidden by law.

329. The judgment of this Court in case of ***M3NERGY SDN. BHD.*** (supra) relied upon by the learned senior counsel for the petitioner has been already set aside by a Division Bench of this Court in a judgment reported in 2019 SCC OnLine Bom 2915. Learned senior counsel for the petitioner did not dispute that the Special Leave Petition filed against the said judgment of Division Bench of this Court has been already dismissed. Judgment of Delhi High Court in case of ***Telefonaktiebola get LM Ericsson*** (supra) is also distinguishable on the ground that in this case the respondent had applied for recovery of monetary claim and such dispute did not involve enforcement of right or obligation under the Patents Act. Delhi High Court in the said judgment has clearly held that the Competition Act does not oust the jurisdiction of other forum/body on other matters relegated to other forum/body even if the issues are related. The view taken by the Delhi High Court about the jurisdiction of CCI and the jurisdiction of other forum/body to deal with the issue of enforcement of a right or other obligation under the Patents Act would support the case of the respondent and not the petitioner.

330. In my view, Mr. Chagla, learned senior counsel for the respondent is right in his submission that the provisions of the Arbitration and Conciliation Act, 1996 and the Competition Act must be read in their respective context and both the schemes must be given effect to accordingly. A Division Bench of Delhi High Court while hearing the appeal against the order of a Single Judge in case of ***Telefonaktiebola get LM Ericsson*** (supra) in LPA No. 246 of 2016 has

directed that no final report shall be filed by the Director General appointed under the provisions of Competition Act by the CCI till the next date of hearing.

331. Judgment of Supreme Court in case of ***Murlidhar Aggarwal*** (supra) is distinguishable on the ground that in this case the arbitral tribunal has clearly held that the conditions to trigger the PPVFR Act. did not arise in the relevant period. The said finding rendered by the arbitral tribunal has not been challenged by the petitioner in the arbitration petition. Be that as it may, the said PPVFR Act is for the benefit of farmers. The 2015 SLA was entered into between the technology provider and a commercial seed company. No benefit of frarmer was waived in this case. The learned senior counsel for the petitioner could not dispute that the petitioner was not even registered under the provisions of the said PPVFR Act. Thus, the question of the petitioner receiving no benefit under the said Act did not arise. The judgment of Supreme Court in case of ***Vishnu Pratap Sugar Works*** (supra) relied upon by the learned senior counsel for the petitioner is also distinguishable on the ground that the petitioner has not challenged the findings of the arbitral tribunal on waiver in arbitration petition.

332. In so far as the reliance placed on Section 2(4) of the Contract Act and Section 10 of the Specific Relief Act, 1963 by the learned senior counsel for the petitioner in support of the submission that the claims made by the respondent for recovery of the amount was depending upon the validity and enforceability of the said 2015 SLA is concerned, in my view there is no merit in this submission. CCI was admittedly not empowered to consider and grant any monetary claim

filed for enforcement of contractual dues. In so far as the judgment of Supreme Court in case of ***Vallabhdas*** (supra) relied upon by the Mr. Khambata, learned senior counsel for the petitioner in his rejoinder arguments is concerned, learned senior counsel could not demonstrate even before this Court as to how there was no jural relationship between the petitioner and the respondent which has not been allegedly considered by the arbitral tribunal before granting any relief in favour of the respondent.

333. The judgment of Supreme Court in case of ***Prabhakaran and Ors.*** (supra) relied upon by the learned senior counsel for the petitioner is distinguishable on the ground that the facts before the Supreme Court in the said judgment were totally different. No such plea of lack of jural relationship between the parties was raised by the petitioner before the arbitral tribunal nor was demonstrated by the petitioner either before the arbitral tribunal even before this Court. The learned senior counsel could not dispute the existence of the arbitration agreement, existence of the said 2015 SLA between the parties and the fact that under the same agreement substantial amount of the payment of trait fees was already paid by the petitioner to the respondent. The petitioner itself had made counter claim under the same agreement. In my view, there is thus no substance in the submission of the learned senior counsel for the petitioner that there was no jural relationship between the petitioner and the respondent.

334. The judgment of Supreme Court in case of ***State of Goa v/s. Praveen Enterprises*** (supra) relied upon by the learned senior counsel for the petitioner would not assist the case of the petitioner. The issue before the Supreme Court in that judgment was whether in arbitration

agreement referred to specific disputes, both i.e. claimant and the respondent were entitled to make any claims or counter-claims and rather also entitled to add or amend claims and counter-claims or not. In my view, the said judgment would not assist the case of the petitioner. The arbitral tribunal in this case has not only referred to the statement of claim but also statement of defence/written statement and also the plea raised in the application filed by the petitioner under Section 16 of the Arbitration Act and has rightly taken a view that no opinion was expressed on issues nos. 3A and 3F.

335. In my view, the arbitral tribunal not expressing any opinion on those issue on the ground that the same would be exclusively within the domain of the CCI being not perverse and not showing any patent illegality, no interference under Section 34 of the Arbitration Act is warranted with such decision of the arbitral tribunal under Section 34(2)(a) of the Arbitration Act or any other ground under Section 34 of the Act.

336. In so far as the reliance placed by the learned senior counsel for the petitioner on the judgment of Supreme Court in case of ***Man Roland Druckimachinen AG*** (supra) in support of the submission that the issue of jurisdiction can be taken away by way of demurrer or at the time of trial is concerned, a perusal of the record clearly indicates that the arbitral tribunal in this case has not decided the issue of jurisdiction under Section 16 of the Arbitration Act immediately on demurrer but had postponed the said issue and decided the same finally in the impugned award on the basis of the averments made in the statement of claim and the written statement as well as in application under Section 16 of the Arbitration Act. Learned senior counsel could not distinguish

the judgment of Supreme Court in case of ***Indian Farmers Fertiziler Cooperative Limited*** (supra). The principles laid down by the Supreme Court in the said judgment applies to the facts of this case.

337. In so far as the reliance placed by the learned senior counsel for the petitioner on the judgment of Supreme Court in case of ***Garware Wall Ropes Ltd.*** (supra) is concerned, Supreme Court in the said judgment has held that if the documents which requires payment of stamp duty compulsorily is not stamped, such document comprising of arbitral agreement would not be enforceable in law. In my view, this judgment of the Supreme Court would not apply to the facts of this case at all. The arbitral tribunal has not decided any issue which were exclusively within the domain of the CCI.

338. In so far as the reliance placed by the learned senior counsel on Section 3(2) and Section 27 of the Competition Act is concerned, there is no dispute that in appropriate cases, the CCI has power to modify the agreement and that under Section 3(2) of the Competition Act, an agreement would be void falling under the said provisions unless saved by modification. It is however not in dispute that so far the said 2015 SLA has not been declared as void under Section 3(2) or under any other provisions of the said Competition Act nor has been modified till date.

339. Learned senior counsel for the petitioner could not distinguish the principles of law laid down by the Court of Appeal (Civil Division) in case of ***David John Passmore*** (supra). The principles laid down by the Court of Appeal in the said judgment would assist the case of the respondent. Learned senior counsel also could not distinguish the

judgment of Supreme Court in case of ***Mahindra and Mahindra Limited*** (supra) relied upon by the learned senior counsel for the respondent.

340. In so far as the judgment of Supreme Court in case of ***Tarsem Singh*** (supra) relied upon by the learned senior counsel for the petitioner is concerned, Supreme Court in the said judgment has considered the Section 65 of the Contract Act and held that Section 65 of the Contract Act is based on equitable doctrine which provides for the restitution of any benefit received under a void agreement or contract and therefore mandates that any "person" which obviously would include a party to the agreement, who has received any advantage under an agreement which is discovered to be void or not a contract which becomes void, has to restore such advantage or to pay compensation for it, to the person from whom he received that advantage or benefit. It is held that the words "discovered to be void" comprehend a situation in which the parties were suffering from a mistake of fact from the very beginning but had not realized, at the time of entering into the agreement or signing of the document, that they were suffering from any such mistake and had, acted bonafide on such agreement.

341. It is held by the Supreme Court that the agreement in such a case would be void from its inception though discovered to be so at a much later stage. It is not the case of the petitioner that it was suffering from a mistake of fact from the very beginning and realized such mistake of fact at the later stage. Learned senior counsel could not distinguish the judgment of Supreme Court in case of ***Piloo Dhuinshaw Sidhwa*** (supra). Supreme Court in the said judgment has considered the issue

whether the party who has carried out the work and when no terms and conditions of contract were arrived at was entitled to recover the amount on the basis of quantum meruit.

342. The judgment of Supreme Court in case of ***Hansraj Gupta & Co.*** (supra) has held that Section 70 of the Contract Act enables the person who actually supplies goods or renders some services, not intending to do so gratuitously, to claim compensation from the person who enjoys the benefit of supply made or services rendered. It is a liability which arises on equitable ground even though express agreement on a contract may not be proved. In my view, the principles laid down by the Supreme Court in the said judgment would squarely apply to the facts of this case. The petitioner had availed of various benefits under the said 2015 SLA and had recovered the amount from its customers i.e. farmers for supply of seeds. The arbitral tribunal rightly rejected the counter claims made by the petitioner for refund of various amounts. Mr. Khambata, learned senior counsel for the petitioner could not distinguish the said judgment in case of ***Hansraj Gupta & Co.*** (supra).

343. In so far as the judgment of this Court in case of ***Maharashtra State Electricity Board*** (supra) relied upon by the learned senior counsel for the petitioner in support of the submission that the Court has ample power under Section 9 of the Arbitration Act to suspend the arbitral proceedings is concerned, the said judgment would not assist the case of the petitioner. The order passed by the arbitral tribunal under Section 17 of the Arbitration Act was not complied with by the respondent in the arbitral proceedings before the arbitral tribunal. In paragraph 50 of the said judgment, it is held by this Court that the

arbitral tribunal does not have the power to suspend the arbitral proceedings before it as a step in add of an execution of an interim order passed by the arbitral tribunal. In view of the fact that the CCI had no jurisdiction to grant any monetary claim in favour of the respondent, neither the arbitral tribunal nor this Court under Sections 9 or 17 respectively could suspend the proceedings.

344. Under Section 17(2) of the Arbitration and Conciliation Act, 1996 and more particularly in view of the amendment to the said provisions inserted w.e.f. 23rd October, 2015, the orders passed by the arbitral tribunal under Section 17 are enforceable as a decree of the Court. In my view, the arbitral tribunal thus cannot exercise any power to suspend the arbitral proceedings for non-compliance of any order passed by it under Section 17. The party who has succeeded before the arbitral tribunal in the application under Section 17 for seeking interim measures can always apply for the enforcement of the said order passed under Section 17 if the same has attained the finality. In my view, Mr. Chagla, learned senior counsel for the respondent right in his submission that arbitral tribunal cannot exercise powers to suspend the proceedings for non-compliance of the order passed under Section 17.

345. Delhi High Court in case of ***Shree Tirupathi Udyog*** (supra) has held that a reading of Section 17 of the Arbitration Act will clearly show that the interim measures provided for in Section 17 of the Act relates to the protection of the property or the amount in dispute in the arbitration proceedings and not to the arbitration proceedings itself. There is no provision in the Arbitration Act which provides for the stay of the arbitration proceedings upon its commencement. Delhi High Court in the said judgment has held that the sole arbitrator was right in

dismissing the application filed by the appellant seeking stay of the arbitral proceedings till the final disposal of the arbitral proceedings between the respondent and the another party was pending before another arbitrator and the criminal investigation that had been lodged against the petitioner was disposed off. In my view, the principles laid down by the Delhi High Court in the said judgment which has considered the amendment to Section 17 inserted by Arbitration and Conciliation (Amendment) Act, 2015 applies to the facts of this case. I am in respectful agreement with the view expressed by the Delhi High Court in the said judgment in case of ***Shree Tirupathi Udyog*** (supra).

346. In so far as the issue raised by the learned senior counsel for the petitioner that the claims made by the respondent before the arbitral tribunal was based on the patent rights of the respondent or that such facts are allegedly admitted by the respondent in the pleading filed before the arbitral tribunal is concerned, there is no merit in this submission of the learned senior counsel. A perusal of the pleadings filed by the respondent before the arbitral tribunal clearly indicates that the respondent had not filed a monetary claim for enforcement of any patent rights. The respondent has already filed a separate proceedings before Delhi High Court which are pending. Learned senior counsel urged across the bar at the stage of rejoinder that the petitioner did not apply for declaration of 2015 SLA as void before the CCI but had applied for modification of the said agreement. In my view, the submission made by the learned senior counsel on behalf of the petitioner across the bar as well as before the arbitral tribunal and his client before the CCI are inconsistent, contradictory and are self-destructive.

347. In my view, the judgment of Supreme Court in case of ***Mahavir J. Patil*** (supra) relied upon by the learned senior counsel for the petitioner is clearly distinguishable in the facts of this case. Supreme Court in the said judgment had considered Section 12 of the Resettlement Act, 1976 and held that it was the clear legislative intent as Section 12 of the Resettlement Act clearly stipulated that any transfer by way of sale, partition, etc after the date of notification under Section 11 would be void. It is held that where the statue itself is against a transfer, it is the statue which will pre-dominate *vis-a-vis* the other consideration. In my view, the said judgment would not apply to the facts of this case even remotedly.

348. The judgment of Supreme Court in case of ***Ram Singh and Ors.*** (supra) is distinguishable on the ground that the claim of the plaintiff in that case itself pertained to “shamlet de” land. The Supreme Court in the said judgment came to the conclusion that the plaintiff had avoided to seek a declaration that the suit land was not “shamlet de” and by clever drafting had sought to confer jurisdiction on the Civil Court. In this case, the claim of the respondent was for enforcement of the contractual obligation and for recovery of the balance amount of trait fees.

349. A perusal of the award clearly indicates that the arbitral tribunal has rightly allowed the monetary claims made by the respondent after considering the pleadings, evidence, oral and written arguments advanced by the parties. In so far as the merit of the claim is concerned, the petitioner did not raise any dispute on the quantification nor agitated any submission across the bar while arguing the arbitration petition at length before this Court. None of the findings rendered by

the arbitral tribunal shows any perversity or any patent illegality in the impugned award. Mr. Chagla, learned senior counsel for the respondent rightly placed reliance on the judgment of Supreme Court in case of ***Ssangyong Engineering & Construction Co. Ltd.*** (supra), in case of ***McDermott International Inc*** (supra) in support of his submission that the scope of challenge of an arbitral award under Section 34 of the Arbitration Act is limited. The principles of law laid down by the Supreme Court in case of ***Ssangyong Engineering & Construction Co. Ltd.*** (supra) and in case of ***McDermott International Inc*** (supra) applies to the facts of this case. I am respectfully bound by the said judgments. In my view, no case is thus made out by the petitioner for intervention with the impugned award in Commercial Arbitration Petition No. 737 of 2019 and thus the said petition deserves to be dismissed.

REASONS AND CONCLUSIONS IN COMMERCIAL ARBITRATION PETITION NO. 738 OF 2019 :-

350. The facts and the legal submissions made by the parties in this0 case are identical to the facts to the facts and submission in Commercial Arbitration Petition No. 737 of 2019. Mr. Rohan Kadam, learned counsel for the petitioner adopted all the submissions made by Mr.Khambata, learned senior counsel for the petitioner in Commercial Arbitration Petition No. 737 of 2019 such submissions are already dealt with by this Court at length in the earlier paragraphs of this judgment. The reasons recorded by this Court while dismissing the Commercial Arbitration Petition No. 737 of 2019 would apply to the Commercial Arbitration Petition No. 738 of 2019.

351. Mr. Dwarkadas, learned senior counsel for the respondent

adopted the submissions made by Mr. Chagla, learned senior counsel for the respondent in Commercial Arbitration Petition No. 737 o 2019 and made additional submissions. In my view, Mr. Dwarkadas, learned senior counsel for the respondent is right in his submissions that the petitioner already having collected the trait value from the farmers which was claimed by the respondent and had been retained by the petitioner was estopped from defending the monetary claim made by the respondent. Under Section 65 of the Contract Act, the petitioner having recovered entire trait value from the farmers could not be allowed to retain such benefits under the said 2015 SLA and was bound to restore it by making payment to the respondent.

352. Learned senior counsel rightly placed reliance on Section 53N of the Competition Act in support of his submission that even if the said 2015 SLA is subsequently held to be void, the petitioner would have contingent right of seeking remedy under the provisions of the Competition Act. In the event of the said CCI deciding in favour of the respondent and if the respondent is denied its claim at this stage, it shall have no remedy under the provisions of the Competition Act or the Contract Act. In view of the fact that CCI has not declared the said 2015 SLA as void or anti-competitive or that the respondent had abused its dominant position, the said 2015 SLA was presumed to be valid.

353. Learned senior counsel for the petitioner could not dispute that the petitioner had filed an interim application before CCI under Section 33 of the Competition Act *inter-alia* praying for an injunction against the respondent not to terminate the said 2015 SLA and had infact applied for enforcement of the said 2015 SLA. The petitioner did not

challenge the validity of the said 2015 SLA as void and prayed that the respondent shall not terminate the said 2015 SLA. Learned counsel for the petitioner could not dispute the correctness of this argument advanced by the learned senior counsel for the respondent. The Commercial Arbitration Petition No. 738 of 2019 thus deserves to be dismissed.

REASONS AND CONCLUSIONS IN COMMERCIAL ARBITRATION PETITION NO. 892 OF 2019 :-

354. The facts and the legal submissions made by the parties in this case are also identical to the facts and legal submissions in Commercial Arbitration Petition No. 737 of 2019 except few additional legal submissions advanced by Mr. Seervai, learned senior counsel for the petitioner which are being dealt with in the later part of this judgment. The issue as to whether the said 2015 SLA was void under Sections 3 and 4 of the Competition Act or not or that whether the said agreement contravened the provisions of the Competition Act or not is pending before the CCI. In this case, the arbitral award is rendered by the sole arbitrator.

355. The claim made by the respondent was for an amount of Rs.13,20,79,537/- towards trait value for sales between 1st April, 2015 and 31st October, 2015 and the sum of Rs.2,89,688/- for the period between 1st Novembers, 2015 and 14th November, 2015 under the said 2015 SLA. The arbitral tribunal has awarded a sum of Rs.13,23,39,225/- in favour of the respondent with interest @ 18% p.a. from the date of termination of contract till date of payment. The arbitral tribunal had framed about 18 issues for determination. In that matter also the petitioner had filed an application under Section 16 of

the Arbitration Act and had also filed counter claim before the learned arbitrator.

356. The learned arbitrator by an order dated 11th October, 2017 dismissed the application filed by the petitioner under Section 16 by recording detail reasons, however kept all the objections available to the parties during final arguments open in accordance with the law. The learned arbitrator held that the tribunal was duly vested with powers to decide the claims raised before it by the claimant. He held that there was no pending proceeding as postulated in Section 26(1) of the Competition Act, which would require the arbitral tribunal not to exercise jurisdiction, assuming for the sake of argument that CCI proceedings possess pre-eminence and exclusivity.

357. The learned arbitrator relied upon the judgment of Supreme Court in case of ***Competition Commission of India v/s. Steel Authority of India*** (supra) and held that mere fact that an investigation has been ordered by the CCI does not, *ipso facto,* inexorably lead to the conclusion that the CCI has formed even a *prima-facie* opinion as to the existence of any contravention of the provisions of the Competition Act, such an order is akin to a departmental proceedings and thus, the only tenable assumption is that at this juncture no definite conclusion or finality had been presently arrived at. The pendency of the proceedings before CCI thus would not oust the jurisdiction of the arbitral tribunal. It is rightly held that the issues before the CCI and before the arbitral tribunal were substantially disparate and different, operating in different fields and orbits. The purpose of two Acts are different.

358. Mr. Seervai, learned senior counsel for the petitioner strenuously

urged that the finding of the arbitral tribunal that there were no pending proceedings before the CCI was factually incorrect. In my view, the said observation of the learned arbitrator cannot be read in isolation. The Court has to read the entire award and to find out whether the petitioner has made out any ground for setting aside the award under Section 34 of the Arbitration Act. An isolated observation in the award even if based on a factual error which has ultimate no barring on the outcome of the impugned award has to be ignored.

359. The learned arbitrator in this case also has rightly held that he was not considering or adjudicating any dispute relating to competition laws, all disputes relating to rights in *personam* are amenable to arbitration while all disputes relating to right in *rem* can only be adjudicated by Courts or statutorily constituted Fora. In my view, the learned arbitrator rightly held that the claims made by the respondent emanated from a commercial contract between the two parties and concerning rights in *personam* and not in *rem* and thus arbitrable. Section 61 does not prohibit an arbitral tribunal from determining contractual disputes under an arbitration agreement. In my view, learned arbitrator rightly held that in any event the disputes fell for determination by the arbitral tribunal and the CCI were distinct and did not overlap. The respondent had made its claims based on the contract in the arbitral proceedings whereas the petitioner has alleged abuse of dominance against the respondent before the CCI.

360. In the operative part of the award, the learned arbitrator clarified that in the event the CCI has views disparate or irreconcilable to that of the arbitral tribunal, it will create a legal nodus which the appropriate forum will have to unravel. In my view, this clarification and safeguard

provided by the learned arbitrator would sufficiently protect the interest of the petitioner. As already held by this Court in the earlier paragraphs of this judgment that petitioner would have a right to claim compensation under Section 53N of the Competition Act, in the event of the petitioner succeeding in the proceedings before the CCI. In my view, the learned tribunal was right in not dismissing the claim of the respondent and not suspending the arbitral proceedings.

361. In so far as the submission of the learned senior counsel for the petitioner that the CCI having found *prima-facie* violation of the provisions of Competition Act which led to an investigation by the Director of General is concerned, in my view the said order passed by the CCI directing the Director of General to make an investigation and to submit report under Section 26(1) and (2) of the Competition Act is administrative in nature and would not declare the said 2015 SLA as void or anti-competitive or that the respondent had abused its alleged dominant position against the petitioner. The judgment of Supreme Court in case of ***Dhulabhai*** (supra) would not assist the case of the petitioner in view of the fact that the jurisdiction of the arbitral tribunal to decide the monetary claim in absence of any declaration of the 2015 SLA as void being not barred. Similarly, judgment of Supreme Court in case of ***Booz Allen Hamilton Inc.*** (supra) pressed in service by the learned senior counsel for the petitioner also would not assist the case of the petitioner.

362. In so far as the judgment of this Court in case of ***Kingfisher Airlines Ltd.*** (supra) relied upon by the learned senior counsel for the petitioner is concerned, the said judgment would not assist the case of the petitioner. There is no merit in the submission of the learned senior

counsel for the petitioner that the finding of the learned arbitrator in paragraph 58 of the impugned award or in any other paragraph shows any patent illegality or perversity. The powers of CCI under Sections 19(1), 27(d) or under various other provisions of the Competition Act are not in dispute. At the same time, the fact that the CCI does not have power or jurisdiction to award monetary claims as made by the respondent before the arbitral tribunal for enforcement of the contractual obligation under 2015 SLA also has to be kept in mind. In so far as the submission of the learned senior counsel for the petitioner that the cause of action could not be bifurcated in two parts is concerned, there is no dispute about this proposition of law However, in this case, the arbitral tribunal has decided only the monetary claims which were within its jurisdiction exclusively and has not decided any issues which would fall exclusively within the domain of the CCI.

363. In so far as the judgment of Supreme Court in case of ***Competition Commission of India v/s. Bharti Airtel Ltd.*** (supra) relied upon by the learned senior counsel for the petitioner is concerned, the said judgment is clearly distinguishable in the facts of this case. The petitioner in this case had already raised an issue of arbitrability even in the correspondence at the stage of the respondent invoking arbitration agreement. It is not the case of the petitioner that the learned arbitrator has decided the issues which would exclusively fall within the domain of the CCI in the impugned award.

364. In my view, Mr. Samdani, learned senior counsel for the respondent is right in his submission that the monetary claim made by the respondent does not fall within the jurisdiction of the CCI under

Section 61 of the Competition Act. The learned arbitrator has rightly exercised its jurisdiction to entertain the monetary claims made by the respondent and has not exceeded his jurisdiction. The learned arbitrator has only directed the petitioner to pay the contractual dues of the respondent arising out of the sale of seeds.

365. Mr. Samdani, learned senior counsel for the respondent is right in his submission that the Court has to read the entire award as a whole. An exercise of cherry picking stray observations in one of the paragraphs cannot be permitted for setting aside an arbitral award. Mr.Samdani, learned senior counsel rightly invited my attention to various findings of fact rendered by the learned arbitrator in the impugned award in support of the submission that those findings not being perverse and not showing any patent illegality, no interference of this Court is warranted under Section 34 of the Arbitration Act with the impugned award.

366. In my view, the powers vested in Civil Court under Section 10 of the Code of Civil Procedure, 1908 are not vested in the arbitral tribunal for stay of the earlier proceedings. As already observed in the earlier paragraphs of this judgment, stay of the arbitral proceedings is permissible only in a limited circumstances set out in Section 38 of the Arbitration Act and not otherwise. The legislative intent in this regard is absolutely clear and does not admit any other interpretation. Mr.Samdani, is rightly distinguished the judgment of Supreme Court in case of ***A. Ayyasamy*** (supra).

367. The learned arbitrator has considered the pleadings, evidence, oral and written arguments advanced by the parties and have rightly

allowed the monetary claims made by the respondent. The learned arbitrator has interpreted various provisions of the 2015 SLA. The interpretation of the learned arbitrator being a possible interpretation cannot be substituted by another possible interpretation under Section 34 of the Arbitration Act. This Court does not find any infirmity with the impugned award nor any patent illegality in the impugned award. The petition is totally devoid of merit and deserves to be dismissed.

368. I therefore pass the following order :-

(a) Commercial Arbitration Petition Nos. 737 of 2019, 738 of 2019 and 892 of 2019 are dismissed.

(b) In view of the dismissal of the aforesaid commercial arbitration petitions, pending Notice of Motions do not survive and are according dismissed.

(c) There shall be no order as to costs.

(d) The parties to act on the authenticated copy of this judgment.

(R.D. DHANUKA, J.)

At this stage, Mr. Khambata, learned senior counsel appearing for the petitioner in Commercial Arbitration Petition No. 737 of 2019, Mr. Seervai, learned senior counsel appearing for the petitioner in Commercial Arbitration Petition No.892 of 2019 and Mr. Kadam, learned counsel appearing for the petitioner in Commercial Arbitration Petition No. 738 of 2019,

jointly pray for continuation of the interim protection granted by this Court on 16th April, 2019 clarified by order dated 18th April, 2019 and modified by the order dated 3rd June, 2019.

Interim protection granted by this Court to continue for a period of six weeks from today.

(R.D. DHANUKA, J.)