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UNION OF INDIA

v.

PRINCE MUFFAKAM JAH AND ORS.

OCTOBER 20, 1994

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[M.N. VENKATACHALIAH, C.J., S. MOHAN
AND DR. A.S. ANAND, JJ.]

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Arbitration Act, 1940—Sections 15, 16 and 17—Private arbitration—Binding effect of—Parties and the arbitrator bound by the agreement—Agreement to refer dispute relating to purchase of jewellery—Agreement provided for approval of the award by the Court—Award challenged in the Court by the parties—Held, award does not become effective till adjudication by the Court.

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Two Jewellery Trusts created by the Nizam of Hyderabad held 173 items of jewellery belonging to the Nizam. In 1972, the Trusts offered the Prime Minister of India to sell the entire jewellery belonging to the Trusts. The jewellery, however, could not be sold due to an injunction of civil court operating against the Trusts. The litigation ultimately reached this court. While the matter was pending before this court, the Central Government decided to acquire the items of jewellery as *art treasures* under sections 19 and 20 of the *Antiquities and Art Treasures Act, 1972*. Pursuant to the said decision, the *Antiquities, and Art Treasures Rules* was suitably amended to provide for constitution of a Committee to examine the items of jewellery to be declared as *art treasures*. This decision of the Central Government as well as the vires and validity of the *Antiquities and Art Treasures Act, 1972* was challenged by the respondent by way of a writ petition under Article 32 of the Constitution of India.

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While the aforesaid writ petition was pending, the parties entered into a compromise and agreed to have their disputes resolved through arbitration. Under clause 7 of the compromise agreement, the arbitrator was to report his Award to this court for appropriate orders and for adjudication of any disputes relating to the Award. This Court disposed of the writ petition in terms of the arbitration agreement.

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The Umpire made his award on 27.7.1991. The Central Government was given the first option to purchase the items of Jewellery and the price

for all 173 items of jewellery was fixed at Rs. 225,37,33,959.80. The Central Government was directed to pay the price within 8 weeks from the date of award failing which it was open to the trusts to sell all items of jewellery. Option was also given to the Central Government to make purchase of selected items from the 173 items of jewellery at mutually agree price. In case no mutual understanding could be reached, the matter was to be resolved through arbitration.

The Award was challenged in this court by both the appellant as well as the Trusts by way of interlocutory applications. These applications were ultimately not pressed. While the applications challenging the Award were pending for disposal, the Central Government represented that it was ready to purchase all 173 items subject to reduction of price to Rs. 180,37,33,959.00 as the price mentioned in the Award erroneously included Rs. 45 crores. The central Government offered to pay the price in six annual instalments of Rs. 30 crores each. The Trusts admitted that Rs. 45 crore had been erroneously included but contended that having failed to purchase the jewellery within 8 weeks from the date of the Award, the Central Government had lost its right to purchase the jewellery. The trusts also objected to the proposal of the Government to pay the purchase price in instalments.

Making the Award rule of the Court with certain modifications, this Court

HELD : 1. The essence of a private arbitration is to honour the decision of the chosen nominee of the parties and to abide by their decision. Unless an arbitration award is questioned on the grounds available under the Arbitration Act, 1940, the arbitration award must be complied with and honoured by the parties to the award. The power of the arbitrator to bind the parties by its Award derives its authority from the consent of the parties themselves and not from any external source. Therefore, where the arbitrators have been appointed as a result of agreement between the parties and have rendered a determination, it is generally speaking binding on the parties. [608-F-G]

Commercial Arbitration by Sir Michael J. Mustill and Stewart C. Boyd, 2nd Edn. P.42 relied upon.

2. The agreement to refer the dispute to the arbitrators being the foundation on which the arbitration proceeds, the terms of the agreement

A continue to govern the arbitrators as well as the parties for making a "binding determination". The arbitration Award given by the Umpire in the instant case was required to be honoured and accepted by the parties. The Award, however, could not become operative immediately on the making of the Award or even within the period of 8 weeks as stipulated in clause (1) of the Award, because of the stipulation in clause (7) of the agreement by which the Award was to be reported to this court for appropriate orders and also for adjudication of the disputes relating to the Award, if any under the Arbitration act, 1940. The "Award" could, therefore, become capable of implementation only after appropriate orders were made by this court. Since the interlocutory applications filed by the parties were pending adjudication the Award could not become enforceable till the same were adjudicated and appropriate orders made by the Court. Since, the validity and correctness of the Award was an issue wide open before the Court after the Award came to be reported to the court for appropriate orders, the Award had remained almost in the state of suspended animation. Therefore, it cannot be said that on account of the failure of the Union of India to purchase 173 items of jewellery within the period of 8 weeks as prescribed by clause (1) of the Award, the Central Government had lost the option to purchase 173 items of jewellery for the price determined by the Umpire. [609-B-H]

E 3.1. There is no reason or justification for not accepting the Award in so far as it fixes the just and fair price of 173 items of jewellery, after deducting the sum of Rs. 45 crores from the quantum of the Award which amount was admittedly deductible on account of a clerical error from the total price fixed by the Umpire. [610-D]

F 3.2. The Union of India has had the use of the money from the date of Award onwards. Had the Central Government accepted the Award and made a submission to the court accordingly, when the award was reported to the Court, appropriate orders could have been made and the sale price would have been received by the Trusts in 1991 itself. Inflation is a phenomenon of which the court can take judicial notice. The Court has to strike a balance between the competing equities. Therefore, it is just and fair, that interest be awarded on the sum of Rs. 180,37,33,959.00 @ 6 per cent per annum from the date of the Award till the payment is made.

[611-B-C]

H 3.3. There is no justification to direct the payment of the price in

instalments as requested by the counsel for the Central Government. A

[611-D]

3.4. The Trustees shall be entitled to be reimbursed from the Central Government, in the event of its purchasing the 173 items of jewellery, the amount spent by it for the safe custody of the jewellery and the insurance premium from the date of the Award till payment is made. [611-F] B

3.5. The Central Government shall also have the right of partial purchase of the jewellery, at the price as determined for each item by the umpire in the Schedule to the Award. On such intimation being given to the Trustees, the other items of jewellery in respect of which the Central Government does not exercise the option to purchase, shall become available to the Trustees and they shall be free to sell the same and if necessary even export the same for sale, subject to provisions of the existing law. C

[613-G, 614-B]

CIVIL ORIGINAL JURISDICTION : I.A. Nos. 8-9/93.

IN D

Writ Petition No. 1429/79.

(Under Article 32 of the Constitution of India.)

Dipankar P. Gupta, Solicitor General of India, V. Gaurishankar, B.K. Prasad and S. Rajappa for the Petitioner. E

G.L. Sanghi, J.B. Dabadadachanji, Mrs. A.K. Verma, Manmohan, Raian Karanjawala, Ms. Suruchi Aggarwal, Mrs. M. Karanjawala and O.P. Verma for the Respondent. F

The Judgment of the Court was delivered by

DR. ANAND, J. The controversy before us revolves around the valuation of 173 items of jewellery belonging to the erstwhile Nizam of Hyderabad and held by the two jewellery Trusts created by the Nizam. The controversy reached this Court through writ petition No. 1429/79 filed by Prince Muffakam Jah and others. The circumstances under which the writ petition came to be filed need notice. G

In July, 1972 a memorial was submitted on behalf of the jewellery Trusts of the Nizam to the then Prime Minister of India requesting her to H

- A consider the purchase of the entire jewellery of the Nizam by the Union of India so that the jewellery could be *retained* in India and its value distributed to various beneficiaries under the Trusts and to discharge other liabilities of the Trusts. In August, 1973, the Ministry of Education and Social Welfare, Government of India set up an Expert Committee to assess and evaluate the items of jewellery which could be taken over by the Union
- B of India, keeping in view the provisions of Antiquities and Art Treasures Act, 1972 (hereinafter the Antiquities Act). The Expert Committee inspected the jewellery in the presence of the Deputy Secretary, Ministry of Education and in August, 1975 the Government of India conveyed to the
- C Trustees its intention to acquire 18 selected pieces of Jewellery at a mutually negotiated price. A further inspection was conducted in December, 1975 by Government officials. In August, 1977, a decision was taken by the Government of India to set up a Gems and Jewellery Museum and another Expert Committee was constituted for making fresh selection of the jewellery. In November, 1977, the committee inspected the jewellery
- D and selected 41 items of jewellery and classified the same in three different grades, approximately valued at about Rs. 16 crores. In February, 1978 the Director General, Archeological Survey of India inspected the jewellery and on 22.2.1978 granted a non-antiquities certificate in respect of 65 items of jewellery out of the total of 89 items of jewellery inspected by him. Out
- E of the remaining 24 items, the Director General declared 23 as antiquities. It appears that the Ministry of Finance sent a communication to the Trustees in March, 1978 indicating therein that the Government of India was not interested in the purchase of the Jewellery and that the Trustees were free to sell the same, keeping in view the legal provisions. However,
- F the attempt of the Trustees to sell the Jewellery was halted on account of a case filed by princess Fatima Fouzia (hereinafter the Princess). She had filed an original petition No. 141/78 in the Court Chief Judge, City Civil Court for removal of the Trustees under Section 74 of the Indian Trusts Act and had also sought as an interim relief, to restrain the trustees from selling the jewellery or finalisation of any tender in respect thereof. On
- G 14.3.1978, the Chief Judge, City Civil Court passed an *ex parte ad interim* injunction restraining the Trustees from finalising the tenders. But on 27.3.1978 after hearing both the sides the application for interim relief was dismissed. The order of dismissal was taken up in appeal by the Princess to the High Court of Andhra Pradesh. On 30.3.1978 in Civil Misc. Appeal
- H No. 147/78 the High Court directed *status quo* to be maintained by the

parties in respect of 37 items of jewellery. Some more proceedings took place between different beneficiaries, the Trustees and prospective purchasers but it is not necessary for us to refer to all those proceedings except to notice that when permission was granted by the High Court to one Peter Fernandez to purchase 37 items of jewellery, the order of the High Court was challenged in this Court. C.A. 1105/78 was filed by Shantivijay & Co. a prospective buyer against the order of A.P. High Court allowing the application of Peter Fernandez permitting him to purchase 37 items of Jewellery for Rs. 20.25 crores. The Trustees also filed C.A. 1266/78 while one Kesholal Dalpatbhai Zhaveri, another prospective buyer filed SLP No. 3649/78. On 31.8.1979 this Court disposed of all the cases and directed that the jewellery be sold by auction to be conducted in the Supreme Court itself. Shri R.N. Malhotra, the then Finance Secretary was directed to act as an officer of the Court and advertise for the sale of Jewellery. The auction was directed to be held on 20.9.1979 in Court Room No.7. On 20.9.1979, the Union of India filed an application before this Court seeking stay of the auction in order to enable it to take a decision whether it would allow the export of the items of jewellery. The Court was informed by the Additional Solicitor General on 21.9.1979 that the Cabinet Committee on Political Affairs had decided that the jewels of the Nizam, including the items in question, were *art treasures* and in *national interest* they should not be allowed to be taken out of the country. The cabinet on 24.10.1979 decided that the Antiquities and Art Treasures Rules be amended with a view to declare the identified pieces of jewellery as art treasures and appointed an Expert Committee to assess the value of 37 items of jewellery and *acquire* them as *art treasures* under Sections 19 and 20 of the Antiquities Act. Pursuant to this decision, the Rules were amended. Rule 2A, as amended, provided that a Committee would be set up to examine the items of jewellery to be declared as art treasures. It was this decision of the Government of India which was challenged through writ petition No. 1429/79 by Prince Muffakam Jah and thorough writ petition No. 1185/79 by the Princess. The petitioners sought that the Government of India be directed to withdraw and cancel its decision dated 24.10.1979 and that the Trustees be directed to give possession of 37 items of the jewellery to the highest bidder at an auction of the jewellery and if necessary, the highest bidder be also permitted to export the jewellery, if it was so inclined. The vires and validity of the Antiquities Act, was also put in issue in the writ petition. Since, in the meantime the non-antiquities certificate issued by the

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- A Director General was expiring, this Court extended the period of that certificate till further orders. On 13.2.1981, another committee was set up by the Government of India to examine the 37 items of jewellery. The committee recommended 7 items, out of those items to be acquired as art treasures. On 17.9.1984, on an application filed by the Addl. Solicitor General this Court authorised the Government to take action under Sections 19 and 20 of the Antiquities Act for acquisition of some more items of jewellery in addition to the seven items declared as *art treasures*.

- On 12.10.1984 a Notification for *compulsory acquisition* of the 7 items identified as art treasures was issued under Section 19(1) of the Antiquities Act. Accordingly, a notice was issued on 31.1.1986 inviting objections, within a period of 30 days by the Collector, city of Bombay. The Trustees filed their objections. On 28.5.1986, an order was made by the competent authority confirming the acquisition of the seven items as art treasures under section 19(4) of the Act. The Trustees, there upon filed an application in this Court seeking setting aside of the order of the Government made under Section 19(4) of the Act. In the meantime the Government of India also set up another Committee under the Chairmanship of Shri Sharda Parshad, which recommended that instead of limiting the acquisition to the items which have been declared as art treasures, all the items of jewellery belonging to the Trust, alongwith 84 items of jewellery belonging to the Supplemental Trust be acquired by the Government of India as the items of jewellery were of '*Historic interest*'. Based on the report of the Sharda Parshad Committee negotiations were conducted with the trustees for purchase, of all the 173 items of jewellery belonging to both the trusts i.e. the Trust and the Supplemental Trust, when the parties entered into a compromise which was filed in this court on 14.2.1989. The court was informed that the parties had agreed to settle as a 'package deal' all the issues relating to the jewellery of the Late Nizam which was held in trust by the two Trusts. The parties agreed to have the disputes resolved through arbitration. Each of the parties was to nominate one arbitrator. It was agreed that arbitrators shall appoint an Umpire by mutual consent at the time of entering upon the reference and that the matter shall be referred to the Umpire in case of difference of opinion between the two arbitrators. The terms of reference were detailed in the agreement itself. Para 6 of the agreement provided that the Central Government shall accord necessary permits and facilities for the purpose of facilitating the various procedures under Clause (c) of Section 20(1) of the Antiquities Act and Clause (7)

provided that the Arbitrators shall report the Award to this Court for appropriate orders and also for adjudication of any disputes relating to the Award under the Arbitration Act, 1940.

On 25.4.1989 this Court accepted the agreement and directed the writ petitions to be disposed of in terms of the agreement. The petition of compromise (agreement) formed a part of the order. Learned counsel for the Princess, one of the several beneficiaries in respect of the Trust assets, submitted before this Court that she had some disputes pending in this Court regarding the subject matter and be given a hearing before the *settlement* was recorded as she was not a party in the writ proceedings. The Court did not accept her prayer but left it open to her to present her case before the Board of Arbitrators to be appointed under the terms of the settlement. Each of the parties, nominated their arbitrators in terms of the settlement. The Arbitrators (Mr. Justice V. Khalid and Mr. Justice H.C. Goel) entered upon the reference and on a difference of opinion between them, the following two questions, on which there was divergence of opinion, were referred to the Umpire, Mr. Justice A.N. Sen:

(1) Whether the third-parties who approached the applicant Trusts can be permitted to inspect the jewellery involved in the arbitration proceedings under certain conditions;

(2) whether Clause (2) of the agreement has become inoperative since the time stipulated in the said clause has expired.

The Umpire answered both the question and recorded findings thereon in the award and reported the same to this Court in accordance with clause (7) of the agreement (*supra*). After the award of the Umpire was received, parties were out on notice and after hearing them it was directed by this Court that the *entire matter* (disputes between the parties) should be dealt with by the Umpire and accordingly the entire matter was remitted to the Umpire to be dealt with by him. The principal question which fell for determination of the Umpire was the fixation of a just and fair price of the jewellery agreed to be sold by the Trusts and purchased by the Union of India in accordance with the provisions contained in Clause (2) of the agreement. In determining the just fair price, the other relevant provisions contained in the agreement were required to be kept in view by the Umpire. After the matter was remitted to him, the Umpire directed the Trusts as well as the Union of India to file the statement of valuation.

A Opportunity was also given to the Princess, on certain conditions, to file her statement of valuation. However, inspite, of repeated opportunities given to her, the Princess could not comply with the conditions stipulated by the Umpire and confirmed by this Court and therefore, could not avail herself of the opportunity to inspect the jewellery and file a statement of valuation. The Princess, as already noticed, was not a party to the arbitration proceedings but had been granted this indulgence by the Umpire in view of the orders made by this Court. During the pendency of the proceedings before the Umpire, an application was moved by the Union of India seeking orders to the effect that the scope of arbitration proceedings be limited to the items of jewellery which are the Trust's property and

B *not* to include those which are *State's property*. The application was based on the plea that some of the items of jewellery comprised in the two Trusts i.e. the main Trust and the supplemental Trust, *did not belong to the Nizam and had vested in the nation*, after the merger of Hyderabad and therefore, the Nizam had no right to execute any Trust in respect of those items of jewellery and therefore, the Trust could not claim any compensation for the said items of jewellery. It was brought to the notice of the Umpire that an application had earlier been moved before this Court by the Union of India with the following prayers :

E "(1) Clarify that the scope of the arbitration proceedings extend only to the items of jewellery which were the personal property of the former Nizam;

F (2) Direct the opposite parties to hand over in accordance with Article-II (3) of the Merger Agreement with the Nizam seven such items of gems and jewellery as are property of the State and are in their possession and ;

(3) Pass such further and other orders as may be deemed fit and proper on the facts and circumstances of the case."

G and that while rejecting the application, this Court had left those questions open to be raised before the Umpire. The application was hotly contested by the Trustees. The Umpire accepted the contentions raised on behalf of the Trusts and held that the application could not be entertained. The Umpire noticed that in the reference before him, he was bound by the terms of the arbitration agreement between the parties and did not have

H any power or jurisdiction to modify the scope of the arbitration agreement.

It was noticed that the arbitration agreement had proceeded clearly on the basis that *all* the items of jewellery comprised in the two Trusts *belonged to the said two Trusts* and the Umpire held that he had to proceed on the basis of that agreement only. A

The Umpire thereafter dealt with the question of fixation of the just and fair price of 173 items of jewellery comprised in the two Trusts and after referring to the oral and documentary evidence led by the parties as also the valuation charts, by a detailed Award, determined the just and fair price of each item of the jewellery and fixed the just and fair price of all the 173 items of jewellery quantified as Rs. 225,37,33,959.00 and made an Award accordingly on 27.7.1991. The Umpire gave the following directions in the award : B C

"1. The Central Government will pay to the Trusts the sum of Rs. 225,37,33,959.00 which is fixed as the just and fair price/compensation of the 173 items of jewellery within 8 (eight) weeks from the date of the Award; D

2. On receipt of the said sum of Rs. 225,37,33,959.00, the Trustees will make over possession of the said 173 items of jewellery to the Central Government which will then become the owner of the said 173 items of jewellery. E

3. If the Central Government be not willing or agreeable to purchase/acquire all the 173 items of jewellery by paying the said sum of Rs. 225,37,33,959.00 as just and fair price/compensation within the stipulated period of 8 (eight) weeks and the Central Government intends to exercise its option of acquiring some of the items in terms of the option given to the Central Government under clause 5(b) of the Agreement, the Central Government within 6 (six) weeks from the date of the Award will inform the Trustees accordingly and the Central Government will intimate to the Trustees the particular items the Central Government wishes to purchase/acquire. F G

4. In the event of the Central Government intimating to the Trustees the items of jewellery the Central Government wishes to purchase/acquire in terms of the option under Clause 5(b) the matter may be decided by mutual consent as contemplated in the H

A Agreement and such decision by mutual consent is to be arrived at within 2 (two) weeks thereafter.

5. If the matter be not decided by mutual consent within the said period of 2 (two) weeks the difference between the parties shall be referred to arbitration in terms of clause 5(b) of the Agreement.

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6. In the event of the Central Government not purchasing/acquiring all the 173 items of jewellery in terms of the Award and exercising its option with regard to some of the items of jewellery, the other items in respect of which no such option is exercised by the Central Government will be available to the Trustees for sale and the Trustees shall have the right to export for sale all the items not acquired/purchased by the Central Government at the time.

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7. With regard to items the Central Government chooses to acquire by exercising its option in terms of clause 5(b) and with regard to which dispute may be raised for lack of mutual agreement, such disputes will be resolved by arbitration in terms of clause 5(b) of the Agreement and appropriate Orders or Award may be filed in the arbitration with regard to these items which however will not be available to the Trustees for sale till the disputes are resolved. Excepting these items which may form the subject-matter of any dispute between the parties in terms of clause 5(b) the Trustees will be free to sell all the other items and will also have the right to export them for sale.

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8. In the event of Trustees exporting for sale any or all the items not acquired by the Central Government the appropriate authorities will give all necessary facilities to the Trustees to export such items subject to existing laws. All appropriate authorities concerned including the Central Government, the Reserve Bank of India, the Customs and Tax authorities are accordingly so directed.

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9. In the event of the Central Government exercising its option under clause 5(b) and any dispute arising in consequence thereof, the dispute will be referred to arbitration within 10 (ten) weeks from the date of the Award and the dispute will be decided in terms of clause 5(b).

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10. In the event of the Central Government acquiring/purchasing all the 173 items of jewellery in terms of this Award each party will pay and bear its own costs and all costs and charges including the remuneration paid to the Arbitrator/Umpire and other incidental expenses of the arbitration shall be borne by the parties in equal shares. A

11. In the event of the Central Government not acquiring all the 173 items of jewellery in terms of this Award the Central Government will pay to the Trustees a sum of Rs. 1,50,000.00 only towards the cost of the arbitration proceeding. This Order for costs is made in view of the fact that the Union in course of the proceedings has reiterated that the Union intends to buy to the entire lot and the reference has continued for determination of the just and fair value of the 173 items of jewellery." B

The award dated 27.7.1991, was submitted to this Court for appropriate orders. Parties had the notice of the filing of the Award. The award was not implemented and the Union of India, filed I.A. No. 8 of 1991 on 29.8.1991, being a petition under Section 15/16 of the Arbitration Act, 1940, questioning the validity and correctness of the award. The following prayers were made in the said I.A. : C

"(A) Set aside the Award of the Ld. Umpire dated 27th July 1991 and remit the same back to him for a fresh determination of the values; D

(B) Stay the operation of the award of the Ld. Umpire till the disposal of this Petition" E

The Trustees also filed a petition under Section 15/16 of the Arbitration Act, 1940, being I.A. No. 9 of 1991 on 6.9.1991. The following prayers were made in the said I.A. F

"It is, therefore, respectfully prayed that this Hon'ble Court be pleased to : G

(a) remit the Award of the Hon'ble Umpire dated 27th July 1991 for reconsideration under Section 16 of the Arbitration Act on the grounds submitted herein; H

A (b) pass such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(c) awards costs of the petition."

B Notices were issued by this Court in both the applications on 5.9.1991. I.A. 8 of 1991 was directed to be listed on 10.9.1991 and the time granted by the Umpire for the purpose of jewellery in the award dated 27.7.1991 was extended till that date and thereafter it was extended till further orders. The non-applicants, Prince Muffakam Jah & Ors. filed their counter to I.A.8/1991 and asserted that no case had been made out for the remission of the award to the Umpire and that the application be dismissed with costs in favour of the Trusts. To the application filed by the Trust, I.A. No. 9, Union of India filed their counter. During the pendency of I.A. Nos. 8 and 9 in this Court, learned counsel appearing for the Union of India sought various adjournments on the plea that the Government of India was actively considering the question of purchasing the jewellery in terms of the award and that a final decision was likely to be taken by the Cabinet. On 4.5.1993 this Court made the following order.

E "Dr. Gauri Shankar, the learned counsel for the Union of India states that the Union of India is seriously considering to purchase the property in question for the amount determined by the Arbitrators (subject to adjustment of Arithmetic errors). He states that Cabinet's decision in this behalf is required and it would be taken within 4 weeks from today. However, since the courts are closed for the summer vacation, we adjourn the matter beyond the summer vacation but that should be understood to mean that process of taking the decision should not be pursued vigorously. Let the matter come up in the first week after the summer vacation. After the decision is taken any time before the re-opening of the Court, that may be communicated to Mr. G.L. Sanghi."

G On 12.7.1993, when the applications were fixed for hearing, it was submitted on behalf of the Union of India that the Government of India had decided to accept the Umpire's Award regarding 173 items of jewellery comprised in the two Trusts subject to the correction of a clerical mistake in respect of the valuation of the award. It was stated that an H affidavit on behalf of the Union of India conveying the undertaking to

purchase 173 items of jewellery would be filed in this Court. An affidavit was accordingly filed on behalf of the Union of India by Shri G. Venkataswamy, Director, Department of Culture, Human Resource Development Ministry. In the said affidavit it was *inter alia* stated :

"That it is submitted that the statement made on 12.7.1993 before this Hon'ble Court was made after the Cabinet had approved that the Government of India can accept the learned Umpire's verdict. Save for Rs. 45 crores being the unintended typographical error placed as against item No. 33 of Schedule of valuation of the Award. It is further submitted it is an admitted position between parties that in item No. 33 of the Schedule of valuation in the Award, a typographical error has been committed.

That it is submitted the Government of India is willing to purchase all the 173 items of jewellery comprised in the two Trusts for Rs. 180,37,33,959 (being the amount reduced by Rs. 45 crores which represents the typographical error in item No. 33 of the Schedule of valuation of the Award) and pay the same in six equal annual instalments of Rs. 30 crores each, the first instalment commencing before the end of the financial year.

That it is submitted since the custody of the jewellery items are with the trustees of the two Trusts, the trustees have to necessarily hand over possession of the jewellery items which are the subject matter of arbitration to the Government of India so that the Central Government can become the owner of the said 173 items of jewellery on payment of the first instalment of Rs. 30 crores.

In the circumstances it is therefore prayed that this Hon'ble Court may be pleased to permit the Central Government to pay a sum of Rs.180,37,33,959 in six equal instalments of Rs. 30 crores each, the first instalment commencing before the end of the financial year, and direct the trustees of the two Trusts to hand over possession of all the 173 items of jewellery to the Central Government on payment of the first instalment of Rs. 30 crores so that the Central Government can become the owner of the said items of jewellery and pass such further or other orders and thereby render justice."

- A A counter was filed to the above affidavit on behalf of the Trustees in which it was stated that the beneficiaries of the Trusts were of the view that they *could not accept any payment in instalments* and that the Award must be respected in its entirety. It was also averred in the Counter affidavit that the Government of India had not only to take a decision about the purchase of the jewellery within eight weeks from the date of the Award but had also to make *payment in full* within the same period and on making the full payment only the ownership of the jewellery could pass on to them. The Trustees further asserted that the Government of India was not abiding by the conditions laid down in the Award and that after two years from the date of the Award, they were still undecided. It was maintained that the
- B Trustees, at no stage, had admitted that the items of jewellery were of national and cultural heritage. The counter then specifically added :
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"the Government has irretrievably lost the right to purchase the items of jewellery both under the agreement and award and clauses 6 and 7 (sic 8) of the award had become operative".

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According to the Trustees, because of their dilatory tactics, the Government of India, had lost its right to purchase the items of jewellery, for the reasons stated in the affidavit, and it was prayed that in the facts and circumstances, the Government's right to purchase the 173 items of jewellery in terms of the Award should be held to have lapsed and clauses 6 and 8 of the award should be hold to have become operative.

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- F On 28.9.1994, when the case was fixed for final arguments on the applications I.A. 8/91 and I.A. 9/91, learned counsel for the parties did not press the applications and the following proceedings were recorded :

"We have heard Sri G.L. Sanghi, learned senior counsel for the Trustees and Sri D.P. Gupta, learned Solicitor General for the Union of India. Sri Sanghi submitted that he does not press I.A. No.9. Learned Solicitor General submitted that I.A. No. 8 filed by the Union of India is also not pressed. However, both the counsel submitted that so far as the quantum of award is concerned there is an error of calculation to the extent of Rs. 45 crores which requires to be deducted from the quantum of the award. Sri Sanghi submitted this without prejudice to the contentions urged by the Trustees."

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Mr. Sanghi, the learned senior counsel appearing for the Trusts submitted that in the agreement entered into between the Union of India and the Trustees, as incorporated in the order of this Court dated 25.4.1989, it was stipulated that the Central Government would have the first option to purchase the items of jewellery in the two Trusts at a just and fair price to be fixed through arbitration as a package deal failing which the Trustees would have the right to sell the same and if necessary to export the items for sale. Argued Mr. Sanghi that the Umpire had determined the just and fair price of 173 items of jewellery payable within eight weeks by the Central Government, but the failure of the Central Government to purchase the items of jewellery by tendering the price as determined by the Umpire within the prescribed period, had disentitled the Central Government to exercise the option to purchase the 173 items of jewellery and that on account of the inaction of the Central Government Clauses 6 and 8 of the Award had become operative. Learned counsel emphasised that the failure of the Central Government to demonstrate its *readiness* and *willingness* to purchase the items of jewellery by making full payment therefor or at least tendering the same even after the expiry of about three years from the date of the Award, completely disentitled the Central Government to exercise its option to purchase 173 items of jewellery on the price as determined by the Umpire. Referring to the affidavit filed by the Union of India on 30.7.1993, offering to purchase the items of jewellery by making payment in *instalments*, learned counsel submitted that the proposal was contrary to the stipulations in the agreement and the Award and demonstrated the continuous unwillingness on the part of the Central Government to honour the Award and as such the Trustees had acquired the right, stipulated by Clauses 6 and 8 of the Award, to sell, and even export, the items of jewellery to fetch the best possible price therefor. Mr. Sanghi, however, admitted that in the event the Trustees have to export the items of jewellery for sale outside the country, the export shall be subject to the laws of the land.

Mr. D.P. Gupta, the learned Solicitor General in reply submitted that the argument on behalf of the Trustees to the effect that clauses 6 and 8 of the award had become operative was fallacious. The learned Solicitor General referred to para (7) of the agreed terms of reference and submitted that the award of the Umpire was not capable of implementation,

A till it was reported to this Court and appropriate orders were made thereon after "adjudication of the dispute relating to the award". The submission of the learned Solicitor General precisely is that since I.A. 8/91 and I.A. 9/91, filed by the parties challenging the validity and correctness of the award and seeking its remission to the Umpire were pending adjudication in this

B Court, the Award could not *enforced* till "adjudication of the disputes" relating to the award by this Court. Accordingly to the learned Solicitor General, the period of 8 weeks fixed in clause (1) of the Award was incapable of being adhered to, as the Award, to become enforceable, was required to have appropriate orders of this Court. Learned Solicitor

C General, therefore, submitted that after the adjudication of I.A. 8/91 and I.A. 9/91, this Court may prescribe time within which the option can be exercised by the Central Government in terms of the Award and that since the Central Government is willing to purchase 173 items of jewellery, for the valuation determined by the Umpire, after deducting the amount of Rs. 45 crores which was added as a result of the clerical mistake, they may be

D granted sufficient time to purchase the items of jewellery, which are items of *national heritage and culture*. Mr. Gupta seriously controverted the submission made on behalf of the Trustees that because of the delay on the part of the Central Government to purchase the items of jewellery paragraphs 6 and 8 of the award had become operative.

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We have given our thoughtful considerations to the submissions raised at the bar and have gone through the record.

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The essence of a private arbitration is to honour the decision of the chosen nominees of the parties and to abide by their decision. Unless an arbitration award is questioned on the grounds available under the Arbitration Act, 1940, the arbitration award must be complied with and honoured by the parties to the award. The power of the arbitrators to bind the parties by its Award derives its authority from the consent of the parties themselves and not from any external source. Therefore, where the arbitrators have been appointed as a result of agreement between the parties and have rendered a determination, it is generally speaking, binding on the parties, Mustill and Boyd in their treaties on Commercial Arbitration (Commercial Arbitration by Sir Michael J. Mustill and Stewart C. Boyd Second Edition,

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P.42) have observed :

"The essence of a submission to arbitration is that it comprises a contract *to honour* the decision of the arbitrator, and a mandate to the arbitrator to make a *binding determination* of the legal rights of the parties." (Emphasis ours). A

The agreement to refer the disputes to the arbitrators being the foundation on which the arbitration proceeds, the terms of the agreement continue to govern the arbitrators as well as the parties for making a "binding determination". B

The arbitration Award given by the Umpire in the instant case was required to be honoured and accepted by the parties. The award, however, could not become operative immediately on the making of the award or even within the period of 8 weeks as stipulated in clause (1) of the Award, because of the stipulation in clause (7) of the agreement, by which the disputes had been referred for arbitration to the Umpire. Clause (7) of the agreement provided : C

"The Arbitrators shall report the Award to this Hon'ble Court for appropriate orders and also for adjudication of any disputes relating to the Award under the Arbitration Act, 1940." D

The above clause of the agreement/terms of reference required the Award to be reported to this Court for appropriate orders and also for adjudication of the disputes relating to the Award if any under the Arbitration Act, 1940. The 'award' could, therefore, become capable of implementation *only after* appropriate orders were made by this Court. Since I.A. 8 and I.A. 9 filed by the parties were pending adjudication in this Court, the Award could not become enforceable till the same were adjudicated and appropriate orders made by this Court. The prescription of the period of 8 weeks in clause (1) of the Award has, of necessary, to be read as subject to clause (7) of the agreement. Since, the validity and correctness of the award was an issue wide open before this Court after the Award came to be reported to this Court for appropriate orders, the Award had remained almost in the state of suspended animation. We, therefore, cannot accept the submission of Mr. Sanghi that on account of the failure of the Union of India to purchase 173 items of jewellery within the period of 8 weeks as prescribed by Clause (1) of the Award, Clauses (6) and (8) of the Award had become operative and that the Central Government had lost the option E

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A to purchase 173 items of jewellery for the price determined by the Umpire. The submission of Mr, Sanghi that the Union of India could not avoid compliance with the Award by merely filing I.A. 8/91 in this Court overlooks the fact that it was not only the Union of India which had questioned the correctness of the Award but also the Trusts which had filed I.A.9/91 seeking remission of the Award. The enforceability of the Award was, in view of clause (7) of the Agreement contingent upon the orders of this Court on those applications. We, therefore, hold that clauses (6) and (8) of the Award did not come into operation, after the expiry of the period prescribed under clause (1) of the Award, automatically and that till the adjudication of I.A.8 and I.A.9 the Award could not be said to be capable of implementation and enforceable.

We have perused the Award of the learned Umpire which is detailed, explicit, clear and based on proper appreciation of the material placed before the Umpire. We do not find any reason or justification not to accept the award in so far as it fixes the just and fair price of 173 items of jewellery, of course, after deducting the sum of Rs. 45 crores from the quantum of the Award, which amount was accepted by learned counsel for the parties, to be deductible on account of a clerical error from the total price fixed by the Umpire. The correct valuation would, thus, come to Rs. 180,37,33,959.00, (Rs. 225,37,33,959, minus Rs. 45 crores). The learned Umpire has found the price to be just and fair on the basis of relevant material and we find no reason to take a contrary view.

Mr. Sanghi, learned counsel for the Trustees, then submitted that since the valuation had been fixed by the Umpire in 1991, therefore keeping in view the rate of inflation, that valuation had now become unrealistic and, therefore, to compensate the beneficiaries of the Trusts, this Court may award suitable interest on the amount from the date of the arbitration agreement till the payment is made, in the event, the Central Government exercises its option to purchase the 173 items of jewellery within the time fixed by this Court. The learned Solicitor General in reply, submitted that no interest could be granted from the date of the agreement and that interest, if at all may be granted only from the date of the order of this Court, when alone the Award becomes operative and enforceable.

H Though it is true that both parties had challenged the correctness of

the Award and had sought its remission to the learned arbitrator by filing applications in this Court before the period prescribed in clause (1) of the Award had expired but it cannot be lost sight of that the Union of India has had the use of the money from the date of Award onwards. Had the Central Government accepted the award and made a submission to this Court accordingly, when the Award was reported to this Court, appropriate orders could have been made and the sale price would have been received by the Trusts in 1991 itself. Inflation is a phenomenon of which this Court take judicial notice. The Court has to strike a balance between the competing equities. It appears to us, therefore just and fair, that interest be awarded on the sum of Rs. 180,37,33,959.00 @ 6 (six) per cent per annum from the date of the Award till the payment is made. Thus, the Central Government shall pay to the Trusts the sum of Rs. 180,37,33.00 with interest @ 6 (six) per cent annum from 27.7.1991, as the price/compensation of the 173 items of jewellery in the event it exercises its option to purchase the same. We do not find any justification to direct the payment of the price in instalments as requested for by Mr. Gupta. The Central Government is granted time to purchase the said items of jewellery by making payment in lump sum by the 31st of December, 1994. On receipt of the price with interest as noticed above, the Trustees will make over possession of the said 173 items of jewellery to the Central Government, which will then become the owner of the said 173 items of jewellery.

The Trustees have incurred some expenses for the safe custody and insurance of the items of jewellery during this period. The Trustees shall therefore be also entitled to be reimbursed from the Central Government, in the event of its purchasing the 173 items of jewellery, the amount spent by it for the safe custody of the jewellery and the insurance premium from the date of the Award till the payment is made. The payment on that count shall be made to the Trustees on the production of a certificate to be issued by the Bank of Hongkong where the jewellery is reported to be kept in safe custody certifying the exact expense incurred by the Trustees for safe custody and insurance.

Clause 5(b) of the agreed terms of reference provided :

5.(b) "In the event of the Central Government not acquiring all the items as agreed then, the items to be acquired by the Central

A Government shall be decided upon by mutual consent failing which the differences shall be referred to the Arbitrators whose decision shall be final and binding on both the parties. It is further agreed that the Trustees, of the above Trusts shall have the right to export for sale all the items not acquired by the Central Government at the time; *subject to the* existing laws relating thereto and that the

B Arbitrators shall give appropriate directions to the concerned authorities for this purpose."

Taking note of the above clause, the Umpire in clauses 3, 4, 5, 7, and 9 of the Award directed :

C 3. It the Central Government be not willing or agreeable to purchase/acquire all the 173 items of jewellery by paying the said sum of Rs. 225,37,33,959.00 as just and fair price/compensation within the stipulated period of 8 (eight) weeks and the Central Government intends to exercise its option of acquiring some of the items

D in terms of the option given to the Central Government under Clause 5(b) of the Agreement, the Central Government within 6 (six) weeks from the date of the Award will inform the Trustees accordingly and the Central Government will intimate to the Trustees the particular items the Central Government wishes to purchase/acquire.

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4. In the event of the Central Government intimating to the Trustees the items of jewellery the Central Government wishes to purchase/acquire in terms of the option under Clause 5(b) the matter may be decided by mutual consent as contemplated in the

F Agreement and such decision by mutual consent is to be arrived at within 2 (two) weeks thereafter.

5. If the matter be not decided by mutual consent within the said period of 2 (two) weeks the difference between the parties shall be referred to arbitration in terms of clause 5(b) of the Agreement.

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7. With regard to items the Central Government chooses to acquire by exercising its option in terms of clause 5(b) and with regard to which dispute may be raised for lack of mutual agreement, such disputes will be resolved by arbitration in terms of clause 5(b) of the Agreement and appropriate Orders or Award may be filed in

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the arbitration with regard to these items which however will not be available to the Trustees for sale till the disputes are resolved. Excepting these items which may form the subject-matter of any dispute between the parties in terms of clause 5(b) the Trustees will be free to sell all the other items and will also have the right to export them for sale.

9. In the event of the Central Government exercising its option under Clause 5(b) and any dispute arising in consequence thereof, the dispute will be referred to arbitration within 10 (ten) weeks from the date of the Award and the dispute will be decided in terms of clause 5(b).

The above directions in the Award show that the Central Government has been given the option of partial purchase of the jewellery also on terms to be settled by mutual consent between the parties and in case no such consent is arrived at, then through arbitration. Pending arbitration, the items of jewellery which are not decided to be purchased by the Central Government, shall be available to the Trustees for sale including sale by export. It appears to us that since the Umpire has also determined the fair and just price of each of the items of jewellery, as given in the schedule to the award, the question of settling the *matter* again by mutual consent and in the event of the a dispute, to have the matter resolved through arbitration is not justified and leaves scope for further litigation between the parties. The question of purchase/acquisition of jewellery has been pending since 1972 when the Trustees made their first offer to the Prime Minister of India to purchase the items of jewellery. More than two decades have gone by. This Court directed the resolution of the disputes through arbitration to avoid the proverbial law's delays through litigation. The parties had also agreed to settle all issues relating to the jewellery through arbitration. The provision for further arbitrator would frustrate the objective which was sought to be achieved by the parties and sanctioned by this Court. The matter having reached us again after protracted proceedings before the arbitrators and the Umpire needs to be given a quietus and finality now. In our opinion, the Central Government should have the right of partial purchase of the jewellery, at the price as determined for each item by the Umpire in the schedule to the Award. The Central Government may exercise the option of partial purchase, on the determined price, by intimating to the Trustees, the identified items of jewellery which the

A Central Government wishes to purchase within a period of one month from the date of this order. On such an intimation being given to the Trustees, the other items of jewellery in respect of which the Central Government does not exercise the option to purchase, shall become available to the Trustees and they shall be free to sell the same and if necessary even the same for sale, subject to the provisions of the existing law. After exercising the option within the period of one month from the date of this order, the Central Government will pay to the Trustees the total price of the selected items of jewellery at the determined price, in lump sum, by 31.12.1994. The Award, therefore, needs, to be modified accordingly.

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C Clause (10) of the Award, also requires to be modified to include the parties purchase of the items of jewellery.

However, in all other respect we accept the Award and place on record our deep sense of appreciation to the learned Arbitrators and the Umpire for assisting this Court in resolving the controversy.

D With the modifications as discussed above the Award of the umpire shall *now* read as follows :

E "1. The Central Government will pay to the Trusts the sum of Rs. 180,37,33,959.00 which is fixed as the just and fair price/compensation of the 173 items of jewellery till 31.12.1994.

F 2. On receipt of the said sum of Rs. 180,37,33,959.00 the trustees will make over possession of the said 173 items of jewellery to the Central Government which will then become the owner of the said 173 items of jewellery.

G 3. If the Central Government be not willing or agreeable to purchase/acquire all the 173 items of jewellery by paying the said sum of Rs.180,37,33,959.00 as just and fair price/compensation till 31.12.1994 and the Central Government intends to exercise its option of acquiring some of the items in terms of the option given to the Central Government under Clause 5(b) of the Agreement, the Central Government shall within one month from the date of the order of this Court inform the Trustees accordingly and the Central Government will intimate to the Trustees the particular items of jewellery which the Central Government wishes to purchase.

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chase/acquire.

4. On the intimation by the Central Government of the selected items of jewellery within one month of the date of the order of this Court, the remaining items of jewellery in respect of which the option has not been exercised by the Central Government, shall be available to the Trustees for sale and if necessary by export also subject to the existing law.

5. The Central Government shall pay to the Trustees the price calculated for each item selected by it for purchase, on the basis of the price determined for those items in the schedule to the Award of the umpire on or before, 31.12.1994.

6. In the event of Trustees exporting for sale any or all the items not acquired by the Central Government the appropriate authorities will give all necessary facilities to the Trustees to export such items subject to existing laws. All appropriate authorities concerned including the Central Government, the Reserve Banking of India, the Customs and Tax authorities are accordingly so directed.

7. In the event of the Central Government acquiring/purchasing all or the selected items out of the 173 items of jewellery each party will pay and bear its own costs and all costs and charges including the remuneration paid to the Arbitrator/Umpire and other incidental expenses of the arbitration shall be borne by the parties in equal shares.

8. In the event of the Central Government not acquiring all the 173 items of jewellery in terms of the Award the Central Government will pay to the Trustees a sum of Rs. 1,50,000.00 only towards the cost of the arbitration proceeding. This Order for costs is made in view of the fact that the Union in course of the proceedings before the Umpire has reiterated that the Union intends to buy the entire lot and the reference has continued for determination of the just and fair value of the 173 items of jewellery."

Before parting with the order, we would also like to clarify that in the event the items of jewellery, all or selected items, are not purchased by

A the Central Government as per the modified Award made by us, the rights in the items of jewellery shall stand crystallised in favour of the Trustees and they shall be entitled to deal with the jewellery in any manner they should choose, subject, however, to the provisions of the existing law/laws.

I.A. No. 8/91 and I.A. No. 9/91 are hereby dismissed as not pressed.

B The modified Award as detailed above is directed to be made a Rule of the Court. Decree in terms of the Award shall follow. The parties shall bear their own costs in so far as the proceedings in this Court are concerned.

B.K.M.

Petition disposed of.