2026:DHC:986-DB

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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 21.01.2026***
Judgment pronounced on: 06.02.2026
Judgment uploaded on: 06.02.2026

\+ FAO(OS) (COMM) 230/2024

HALA KAMEL ZABAL .....Appellant
Through: Ms. Mamta Tiwari, Ms. Veronica Mohan and Mr. Vasumitra Gautam, Advs.

versus

ARYA TRADING LTD & ORS. & ORS. .....Respondents
Through: Ms. Ritika Sinha, Adv. for R-1.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE ANISH DAYAL

J U D G M E N T

ANIL KSHETARPAL, J.

1. Through the present Appeal, the Appellant (Petitioner before the learned Single Judge) assails the correctness of the Judgment dated 14.08.2024 [hereinafter referred to as '**Impugned Order**'], whereby the learned Single Judge has adjudicated the issue as to whether, in an International Commercial Arbitration [hereinafter referred to as '**ICA**'], the appointment of an arbitrator by this Court vitiates the resultant Arbitral Award dated 14.02.2012 [hereinafter referred to as '**Arbitral Award**'], if the appointment is in consonance with the arbitration agreement between the parties. Learned Single Judge has unequivocally held that such an appointment does not impair the

validity of the Arbitral Award.

2. Herein, the Appellant contends that the appointment of the learned sole arbitrator, Hon'ble Justice Anil Dev Singh (Retd.), by this Court was contrary to law, as the arbitration constituted an ICA and, therefore, the power under Section 11(6)[1] of the Arbitration and Conciliation Act, 1996[2], could not have been exercised by this Court. It is asserted that such an appointment, being without authority, vitiated the arbitral proceedings and the Arbitral Award.

3. Accordingly, the issue that falls for consideration is whether the exercise of jurisdiction by this Court under Section 11(6), in an ICA, invalidates the appointment of an arbitrator, the arbitral proceedings and the Arbitral Award.

FACTUAL MATRIX:

4. The issue arising for consideration in the present Appeal is predominantly legal in nature. Accordingly, the facts are noticed briefly and only to the extent necessary for adjudication of the said issue.

5. On 23.11.2006, a Shareholders' Agreement came to be executed between the Appellant and Respondent Nos.1 and 2, whereunder each of them acquired 33.33% shareholding in Respondent No. 3 Company [hereinafter referred to as the '**Shareholders' Agreement**']. The Shareholders' Agreement incorporated an arbitration clause as the agreed mechanism for dispute

[1]Section 11(6)
[2]A&C Act

resolution under Article 28 [hereinafter referred to as '**arbitration clause**'], which reads as follows:

> ***"ARTICLE 28 – <u>DISPUTE RESOLUTION</u>***
>
> *28.1 The Parties shall make endeavors to settle any claim, dispute or controversy arising out or in relation to this Agreement, including any dispute with respect to the existence or validity hereof, the activities performed hereunder, or the breach of this Agreement that is a part of such conciliation process, by mutual conciliation. Before arbitration is pursued, the parties shall arrange for one representative of each party to meet in order to assist in reaching a solution to the dispute.*
>
> *28.2 In the event a dispute cannot be resolved through conciliation pursuant to Article 27.1 hereof within (15) days of such extended period as parties may agree, a party may refer the dispute or difference to binding arbitration as hereunder provided in accordance with the Arbitration and Conciliation Act, 1996. The arbitration shall be held in New Delhi.* ***<u>A sole Arbitrator shall be appointed by the Chief Justice of the Delhi High Court upon a reference made to him as per the provision of the Arbitration and Conciliation Act, 1996.</u>*** *The applicable law shall be Indian Law. The costs and expenses of such arbitration shall be borne by the concerned parties to the dispute."*
>
> **(Emphasis supplied.)**

6. Certain disputes arose in relation to the working of the Shareholders' Agreement, pursuant to which the arbitration clause was invoked. Proceedings under Section 9 of the A&C Act were initiated under OMP Nos.496/2008, 544/2009, and 735/2009, seeking interim reliefs. Simultaneously, an application for the appointment of an arbitrator was filed before this Court as A.A. No.75/2009.

7. It is the case of the Appellant that she received notice only in respect of OMP No.496/2008, and that the arbitral proceedings were conducted without her knowledge, as no notice under the A&C Act, from the Court, or from the arbitrator was ever served upon her. According to the Appellant, she first became aware of the arbitral

proceedings and the Arbitral Award on 10.02.2015, upon receiving an email from the Power of Attorney holder of Respondent No.2 and the authorised representative of Respondent No.3, seeking details of her personal assets for filing before the Court. Thereafter, upon making inquiries, she learnt that the Arbitral Award had already been passed and that challenges thereto were pending in O.M.P.(COMM) Nos.254/2016 and 262/2016.

8. Consequently, the Appellant filed a petition under Section 34[3] of the A&C Act, being OMP No.252/2016. Thereafter, all three OMPs, i.e., 252/2016, 254/2016 and 262/2016, were taken up together for final disposal as they all assail the Arbitral Award. During the course of the hearing on 11.08.2023, the learned Single Judge framed the following preliminary issue, which is reproduced hereunder:

> *"1. In these matters, the appointment of the Learned sole arbitrator and reference to arbitration was pursuant to an order dated 13.08.2009 passed by this Court in a petition under Section 11(5) of the Arbitration and Conciliation Act, 1996 filed in this Court vide Arb. P. No. 75/2009.*
>
> *2. Respective counsel for the parties point out that the aforesaid order was passed by this Court even though the claimant i.e. M/s. Arya Trading Limited is a company incorporated in Hong Kong. Also, one of the respondents in the arbitration i.e. Hala Kamel Zabal is a citizen of Canada. As such, under Section 11(12) of the Arbitration and Conciliation Act, 1996, only the Supreme Court could have entertained the petition under Section 11; the petition filed before this Court was evidently not maintainable.*
>
> *3. In the circumstance, it is necessary to examine whether appointment of an arbitrator by this Court in the above context invalidates the resultant arbitration proceedings. It would be appropriate to decide this aspect as a preliminary issue."*

[3]Section 34

9. Learned Single Judge *vide* the Impugned Order rejected the challenge to the appointment of the arbitrator by this Court, while keeping the Petition under Section 34 pending, on the following grounds:

i. The issue was held to be squarely covered by the judgment of the Supreme Court in ***Narayan Prasad Lohia v. Nikunj Kumar Lohia Ors.***[4], wherein Section 10[5] of the A&C Act was held to be a derogable provision, and the reasoning therein was held to apply equally to Section 11(6), even in the context of an ICA.

ii. A challenge under Section 34(2)(a)(v)[6] of the A&C Act would not be maintainable unless the Shareholders' Agreement itself was in conflict with a non-derogable provision of Part I of the A&C Act, even if the composition of the arbitral tribunal were assumed not to be in accordance with the Shareholders' Agreement.

iii. A challenge under Section 34(2)(b)(ii)[7] of the A&C Act could not be sustained, since the infirmity contemplated under the said provision attaches to the award itself. The legality or otherwise of the appointment of the arbitrator, or the composition of the arbitral tribunal, would not render the award contrary to the fundamental policy of Indian law.

10. Aggrieved thereby, the Appellant has preferred the present Appeal.

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[4](2002) 3 SCC 572
[5]Section 10
[6]Section 34(2)(a)(v)
[7]Section 34(2)(b)(ii)

CONTENTION OF THE PARTIES:

11. Heard learned Counsel for the parties at length and, with their able assistance, perused the paperbook.

12. Learned Counsel for the Appellant, while contending that the Impugned Order suffers from manifest errors, submitted that:

i. Section 11(6) mandates that, in an ICA, the arbitrator must be appointed by the Supreme Court, and Section 11(2)[8] of the A&C Act is subject thereto; the learned Single Judge failed to give full effect to this statutory scheme.

ii. Section 11(6) reflects a mandatory legislative intent from which parties cannot derogate; consequently, the decision in ***Narayan Prasad Lohia*** *(supra)* is inapplicable where appointment is required to be made by the Supreme Court alone. Reliance is placed upon ***Lion Engineering Consultants v. State of Madhya Pradesh & Ors.***[9]; ***Central Organisation for Railway Electrification v. M/s ECI SPIC SMO MCML (JV) A Joint Venture Company***[10]; and, ***M/s. China Datang Technologies and Engineering Company Limited v. M/s. NLC India Limited***[11].

iii. An appointment made in violation of Section 11(6) renders the Arbitral Award liable to be set aside under Section 34(2)(a)(v).

iv. The learned Single Judge failed to give full effect to the

[8]Section 11(2)
[9](2018) 16 SCC 758
[10]Civil Appeal Nos.9486-9487/2019
[11]2025:MHC:2716

arbitration clause by relying only on its first part.

13. *Per contra*, learned Counsel for the Respondent supported the Impugned Order, submitting that the learned Single Judge correctly upheld the appointment of the arbitrator in accordance with terms of the arbitration clause, rightly relied on ***Narayan Prasad Lohia (supra)***, and correctly gave effect to the arbitration clause, with no grounds for setting aside the Arbitral Award under Section 34(2)(a)(v). Reliance is also placed upon ***Anees Bazmee v. Roptonal Ltd.***[12]

14. No other submissions were advanced by the learned counsel appearing for the parties.

ANALYSIS AND FINDINGS:

15. This Court has carefully examined the submissions advanced by the learned Counsel for the parties and has perused the record.

16. At the outset, it is necessary to lay down the legal framework governing the present dispute. Section 11[13] of the A&C Act, as it stands after the 2015 and 2019 amendments, delineates the statutory framework governing the appointment of arbitrators, with a clear distinction between domestic arbitrations and ICAs. In reference to the present matter, sub-Sections (2), (6) and (9) of Section 11 are reproduced hereinbelow:

[12]2018 SCC OnLine SC 3945
[13]Section 11

"11. Appointment of arbitrators.—

(2) Subject to sub-section (6), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.

***

(6) Where, under an appointment procedure agreed upon by the parties,—

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

***

(9) In the case of appointment of sole or third arbitrator in an international commercial arbitration, the arbitral institution designated by the Supreme Court may appoint an arbitrator of an nationality other than the nationalities of the parties where the parties belong to different nationalities."

(Emphasis supplied.)

17. Section 11(2) embodies the principle of party autonomy by recognising the freedom of the parties to agree on a procedure for appointing the arbitrator(s). However, this autonomy is not unbridled and operates subject to the other provisions of Section 11, including sub-section (6). In the context of an ICA, the legislative scheme reflects a conscious choice to vest the power of appointment, in the event of failure of the agreed procedure, with the Supreme Court or the person or institution designated by it.

18. Equally relevant is Section 4[14] of the A&C Act, which embodies the principle of waiver.The same is reproduced hereinbelow:

> ***"4. Waiver of right to object.—****A party who knows that—*
>
> *(a) any provision of this Part from which the parties may derogate, or*
>
> *(b) any requirement under the arbitration agreement,*
>
> *has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object."*

19. A careful reading of Section 4 makes it manifest that the statute expressly contemplates waiver of a party's right to object to non-compliance with any provision of Part I of the A&C Act and/or any requirement under the arbitration agreement, from which the parties may derogate. The underlying object of Section 4 is to ensure expeditious adjudication by discouraging parties from raising belated technical objections after having consciously participated in the arbitral process.

20. Applying the aforesaid principle to the facts of the present case, it is evident that the Appellant, having full knowledge of the appointment of the sole arbitrator by the Chief Justice of this Court, proceeded with the arbitral process without raising any objection to the competence of the appointing authority at the relevant stage. The Appellant contested the proceedings on other grounds, participated in the arbitration, and filed counterclaims, but did not object to the

[14]Section 4

appointment on the ground now sought to be urged. The objection, having not been raised without undue delay when the opportunity was available, must therefore be held to have been waived in terms of Section 4.

21. At this juncture, it is also material to note that the appointment of an arbitrator is merely a step towards the constitution of the arbitral tribunal, intended to facilitate adjudication of disputes through the alternative dispute resolution mechanism chosen by the parties, or mandated by statute. The act of appointment, by itself, only sets the arbitral process in motion. The statutory provisions governing the appointment of arbitrators operate in a field distinct from the provisions governing challenges to the arbitral award. Significantly, the mechanism for appointment of an arbitrator is not linked to the grounds available for setting aside an award under Section 34.

22. Pertinently, Section 34(2)(a)(v) does not contemplate the setting aside of an arbitral award solely on the ground that the arbitrator was appointed by an authority allegedly lacking competence. The said provision is narrowly tailored and permits interference only where the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement itself is in conflict with a non-derogable provision of Part I of the A&C Act. In the absence of such a conflict, irregularities, if any, in the appointment process do not, *ipso facto*, vitiate the arbitral award. The statutory scheme thus clearly maintains a distinction between the procedure for appointment of arbitrators and the limited grounds on which an arbitral award may be set aside.

23. Viewed thus, objections relating to the forum or manner of appointment of the arbitral tribunal, even if assumed to disclose some procedural irregularity, fall outside the scope of Section 34(2)(a)(v), unless the arbitration agreement itself is shown to be in conflict with a non-derogable provision of Part I of the A&C Act. In the absence of such conflict, and particularly where no timely objection was raised, such objections cannot be permitted to unsettle a concluded arbitral award.

24. It is not in dispute that the arbitration clause contained in the Shareholders' Agreement expressly provided for resolution of disputes by a sole arbitrator to be appointed by the Chief Justice of this Court. Pursuant thereto, Respondent No.1 invoked the arbitration clause and instituted proceedings under Section 11 seeking the appointment of an arbitrator. The said application was contested by the Appellant as well as Respondent Nos.2 and 3. By order dated 13.04.2009, the Chief Justice of this Court appointed Hon'ble Mr. Justice Anil Dev Singh (Retd.) as the sole arbitrator, strictly in accordance with the agreed procedure between the parties.

25. Significantly, at the stage of appointment, the Appellant did not raise any objection to the competence of the Chief Justice of this Court to appoint an arbitrator on the ground that the arbitration constituted an ICA. The objection raised by the Appellant was confined to the plea that Respondent No.2 was not a signatory to the Shareholders' Agreement and, therefore, that no valid arbitration agreement existed. The arbitration clause itself was never challenged as being contrary to any non-derogable provision of Part I of the A&C

Act.Once the agreement itself is not under challenge, Section 34(2)(a)(v) cannot be invoked merely to question the forum which effectuated the appointment.

26. It is also not in dispute that Respondent No.1, the claimant before the arbitral tribunal, is a company incorporated in Hong Kong. The Appellant, along with Respondent Nos.2 and 3, participated in the arbitral proceedings and filed counterclaims before the learned arbitrator. The arbitral proceedings culminated in the Arbitral Award, which is the subject matter of challenge in Section 34 Petitions.

27. Pertinently, the Appellant's contention that she had no notice of the proceedings is belied by the record. The Appellant, along with Respondent Nos.2 and 3, was represented by a common counsel at the time when the order dated 13.04.2009 appointing the sole arbitrator was passed. The same representation continued before the arbitral tribunal, and all three filed counterclaims. Before the arbitrator also, the Appellant did not question the appointment of the Arbitrator. The Appellant was thus duly represented at the stage of appointment of the arbitral tribunal and participated in the arbitral proceedings without demur.

28. Moreover, the objection raised by the Appellant essentially proceeds on the premise that, in an ICA, appointment by the Supreme Court alone is permissible and that any deviation therefrom renders the arbitral proceedings void *ab initio*. Such an interpretation is inconsistent with the scheme of the A&C Act. Section 11 governs the stage of constitution of the arbitral tribunal and provides a mechanism

to secure appointment; it does not declare that an appointment made by a different forum, particularly one agreed to by the parties, is a nullity incapable of waiver or ratification.

29. Further, as relied upon by the learned Single Judge, the Supreme Court in ***Narayan Prasad Lohia*** *(supra)* authoritatively held that objections relating to the composition of the arbitral tribunal are subject to waiver. The Court clarified that even where statutory provisions are involved, failure to raise objections at the earliest stage precludes a party from challenging the award after its pronouncement. The principle laid down therein squarely applies to the present case, where the Appellant seeks to invalidate the award on a procedural objection pertaining to appointment, without assailing the arbitration agreement or demonstrating any prejudice.

30. Additionally, the submission that ***Narayan Prasad Lohia*** *(supra)* is confined only to Section 10 is untenable. The ratio of the decision rests on the broader doctrine that defects in the composition of the arbitral tribunal, unless expressly made non-derogable, do not *ipso facto* vitiate the arbitral proceedings. Section 11, like Section 10, does not find a place among the non-derogable provisions of Part I, nor does it exclude the application of Section 4. The learned Single Judge was therefore correct in extending the reasoning of ***Narayan Prasad Lohia*** *(supra)* to the present context.

31. It is also relevant to note that the decisions relied upon by the Appellant do not advance her case. In ***Lion Engineering Consultants*** *(supra)*, the Supreme Court held that there is no bar to the plea of

jurisdiction being raised by way of an objection under Section 34, even if such objection was not raised under Section 16 of the A&C Act. However, the judgment does not lay down that every irregularity in appointment automatically invalidates the award, irrespective of waiver or consent.

32. Similarly, ***Central Organisation for Railway Electrification*** *(supra)* arose in the context of unilateral appointment clauses and the independence and impartiality of arbitrators under the Seventh Schedule of the A&C Act. The said decision turned on the ineligibility of the appointing authority itself and the resultant lack of neutrality. The present case stands on an entirely different footing, as no issue of bias, ineligibility, or lack of independence of the arbitrator has been pleaded or established.

33. In ***China Datang*** *(supra)*, the Madras High Court examined the legality of the appointment of a sole arbitrator by the learned Single Judge in proceedings under Section 9 of the A&C Act in an ICA. Although the arbitration agreement contemplated a three-member tribunal and the appointment of a sole arbitrator was made pursuant to a subsequent memo and consent of the parties, the Court, raising a jurisdictional objection *suo motu*, held that the appointment suffered from an inherent lack of jurisdiction under Section 11(6).

34. Likewise, in ***Amway India Enterprises Private Limited v. Ravindranath Rao Sindhia & Anr.***[15], the arbitration clause merely conferred exclusive jurisdiction on the courts at New Delhi, without

[15] (2021) 8 SCC 465

specifying any authority for appointment, and the Supreme Court held that this Court lacked jurisdiction to appoint an arbitrator in an ICA. The present case stands on a fundamentally different footing, as the appointment was made strictly in accordance with the arbitration clause, which expressly designates the Chief Justice of this Court as the appointing authority, thereby conferring only a limited procedural role. Consequently, neither ***China Datang*** *(supra)* nor ***Amway India*** *(supra)* applies to the facts of the present case.

35. On the other hand, the reliance placed by the Respondents on ***Anees Bazmee*** *(supra)* is apposite. The Supreme Court has reiterated that where arbitration proceedings have progressed without any objection to the appointment of the arbitrator or the conduct of the proceedings, parties are deemed to have waived such objections and cannot raise them belatedly to challenge the arbitral process. The decision reinforces the principle that arbitration law does not countenance belated technical objections aimed at unsettling final awards.

36. This Court is conscious of the fact that the A&C Act is both substantive and procedural in character. While the A&C Act protects substantive rights of parties in relation to the adjudication of disputes, it also lays down procedural mechanisms to facilitate the arbitral process. Section 11, in its entirety, operates at the threshold stage of the constitution of the arbitral tribunal and is concerned with enabling the arbitral process to commence.

37. Section 11(6), in particular, does not confer or take away any substantive right of the parties. It merely provides a procedural safeguard to ensure that an arbitral tribunal is constituted where the agreed appointment mechanism fails. The power exercised under Section 11(6) is thus facilitative in nature and is intended to remove procedural impediments, rather than to determine rights or liabilities of the parties.

38. Although Section 11(6) contemplates judicial intervention, the nature of such intervention is limited and procedural. The Court, while acting under the said provision, does not adjudicate the merits of the dispute, nor does it decide any substantive issue between the parties. Its role is confined to securing an appointment so that arbitration may proceed.

39. In the circumstances of the present case, the appointing authority specified in the arbitration clause performs a function of the same character as that contemplated under Section 11(6). Both operate to give effect to party autonomy and ensure constitution of the arbitral tribunal. The forum exercising the appointing power, therefore, does not affect the substantive rights of the parties, so long as the appointment is in accordance with the agreed mechanism.

40. Once Section 11(6) is understood as a procedural provision, any objection to the forum of appointment is necessarily subject to waiver under Section 4. A party that allows the arbitral proceedings to continue without raising a timely objection cannot, at the post-award stage, seek to invalidate the proceedings on such procedural grounds.

41. Correspondingly, Section 34 does not permit reopening of procedural issues relating to appointment unless the same results in a composition of the arbitral tribunal or arbitral procedure contrary to the arbitration agreement or a non-derogable provision of the A&C Act. In the absence of any impact on substantive rights or demonstrable prejudice, a procedural objection under Section 11(6) cannot furnish a ground for setting aside the Arbitral Award.

42. This Court is also conscious of the concern that characterising Section 11(6) as procedural and capable of waiver may give rise to doubts regarding the appointment mechanism in domestic arbitrations and ICAs. It is, therefore, necessary to clarify the limited scope of the present reasoning.

43. The conclusion that Section 11(6) is procedural does not imply that parties are free to disregard the statutory framework governing the appointment of arbitrators or to confer appointing power upon a forum contrary to the scheme of the A&C Act. The distinction drawn by the legislature between domestic arbitrations and ICAs, and the corresponding allocation of appointing authority, continues to govern the appointment stage and remains enforceable at the threshold.

44. The present analysis is confined to the consequence of an alleged irregularity in appointment once the arbitral tribunal has been constituted, the proceedings have been carried to their logical conclusion, and an arbitral award has been rendered. The A&C Act does not contemplate that every deviation relating to the forum of appointment, particularly one not objected to at the relevant time,

renders the arbitral proceedings void or furnishes an automatic ground for setting aside the award under Section 34.

45. The statutory scheme itself provides adequate safeguards at the pre-arbitral stage. An objection to the competence of the appointing forum is capable of being raised at the time of appointment or immediately thereafter. However, where a party allows the arbitral process to proceed without demur and seeks to raise such an objection only at the post-award stage, the challenge stands on an entirely different footing and is subject to the principles of waiver embodied in Section 4.

46. It is also of relevance that Section 11(6) contemplates appointment not only by the Supreme Court or the High Court, as the case may be, but also by any person or institution designated by such Court. This reinforces the position that the provision is concerned with facilitating the constitution of the arbitral tribunal, rather than conferring a substantive or exclusive jurisdiction whose infraction would, by itself, vitiate the award.

47. It is also significant, in the facts of the present case, that the Appellant has not demonstrated that any prejudice was occasioned by the appointment of the arbitrator by this Court. The arbitrator appointed was a former Judge of this Court, whose independence, impartiality, or eligibility was never questioned at any stage. The objection raised is thus purely technical and bears no nexus to the fairness or integrity of the arbitral proceedings.

48. Accordingly, the present reasoning does not dilute the statutory appointment framework applicable to domestic arbitrations or ICAs. It merely recognises that, in the circumstances of the present case, an objection relating to the forum of appointment, being procedural in nature, waived by conduct, and unaccompanied by any demonstrated prejudice, cannot be permitted to unsettle a concluded arbitral award.

49. Furthermore, if the submission advanced by the Appellant were to be accepted, it would permit a party to acquiesce in the arbitral process, allow the proceedings to culminate in an award, and thereafter seek its annulment on procedural objections relating to appointment.

50. Such an approach would run counter to the statutory scheme and underlying object of the A&C Act. The A&C Act is founded on the principles of party autonomy, efficiency, and finality, and consciously limits judicial intervention to clearly defined stages and grounds. In the circumstances of the present case, where the appointment was made in terms of the agreed arbitration clause, the arbitral proceedings were allowed to progress to conclusion, and no infirmity affecting the merits, fairness, or integrity of the process has been established, interference at the post-award stage would defeat the legislative intent. Entertaining a challenge of the present nature would not only dilute the finality of arbitral awards but also undermine certainty and predictability in arbitral proceedings, which the A&C Act seeks to promote.

51. Lastly, although no reliance has been placed on the recent decision of the Supreme Court in ***Bhadra International (India) Pvt. Ltd. & Ors. v. Airports Authority of India***[16], the said judgment, being a recent pronouncement on the issue of composition of the arbitral tribunal, merits brief consideration. In this judgment, the Supreme Court was concerned with the validity of a unilateral appointment of an arbitrator, and the analysis was confined to whether such an appointment could be sustained in view of the insertion of sub-Section 5 in Section 12 of the A&C Act. The threshold examined in the said decision was, therefore, specific to cases where the appointment emanates from a unilateral act of one of the parties and not from a judicial or institutional process contemplated under the A&C Act.

52. The present case stands on a distinct footing. The arbitral tribunal was constituted pursuant to an order passed by this Court under Section 11. The question of testing the appointment against the requirement of an express written agreement permitting unilateral appointment, as considered in ***Bhadra International*** *(supra)*, does not arise. The ratio of the said decision, therefore, has no application to the facts at hand.

CONCLUSION:

53. In view of the foregoing discussion and for the reasons recorded hereinabove, we are of the considered opinion that no ground is made

[16]Civil Appeal Nos. 37-38 of 2006

out for interference with the Impugned Order passed by the learned Single Judge.

54. The Appeal is, accordingly, found to be devoid of merit.

55. In consequence thereof, the present Appeal stands dismissed.

ANIL KSHETARPAL, J.

ANISH DAYAL, J.

FEBRUARY 06, 2026/sp/sh