



2026:DHC:9562



\$~

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 30.09.2026**Judgment pronounced on: 29.10.2026**

CNR No. DLHC010099092020

+ O.M.P. (COMM) 51/2020

M/S SHIVDEI AUTOMOBILES & ORS. Petitioner

Through: Sh. R.K. Jain and Mr. Ayush
Behl, Mr. Anirudh Kumar,
Advs.

versus

CNH INDUSTRIAL (INDIA) PVT. LTD. Respondent

Through: Mr. Yamandeep Kumar, Ms.
Samiksha Goel, Advs.**CORAM:****HON'BLE MR. JUSTICE OM PRAKASH SHUKLA****JUDGMENT**

%

29.10.2026

1. The present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996¹, seeking to set aside the Arbitral Award dated 09.01.2006² passed by the learned Sole Arbitrator in disputes arising out of the Dealership Agreement dated 01.01.2002 executed between the parties.

FACTUAL MATRIX

2. Petitioner No. 1, M/s. Shivdei Automobiles, is a partnership

¹ "the Act" hereinafter

² "impugned Award" hereinafter



2026:DHC:9562



firm of which Petitioner Nos. 2 and 3 are partners. The Respondent is a Private Limited company engaged in the manufacture and sale of tractors and various agricultural and industrial equipment.

3. In September 1998, Petitioner No. 1 approached the Respondent seeking appointment as its dealer. Pursuant to this request, the Respondent issued a Letter of Intent³ dated 23.09.1998, proposing to appoint Petitioner No. 1 as its dealer for the sale and after-sales service of its products in the areas of Sirsa and Fatehabad in Haryana. The said LOI was stated to be valid until 23.03.1999.

4. Thereafter, on 01.01.2002, the parties entered into a Dealership Agreement appointing Petitioner No. 1 as the Respondent's dealer for the aforesaid territories for a period of three years. In terms of the Dealership Agreement, the Respondent supplied tractors, spare parts and other products to Petitioner No. 1 on credit from time to time and raised invoices for such supplies.

5. According to the Respondent, the supplies made to the Petitioners resulted in outstanding dues, as on 31.03.2003, of Rs.1,19,25,768/-, inclusive of interest. In this regard, meetings were held on 22.04.2003 and 23.04.2003 to discuss the accounts and the outstanding liability.

6. By letter dated 01.11.2003, the Petitioners disputed their liability under various heads, questioned the accounts maintained by the Respondent, and raised objections regarding the interest charged and the expenditure incurred on the infrastructure. The Respondent

Signature Not Verified³ "LOI" hereinafter

Signed By: PRAAGYA
ARORA
Signing Date: 29.10.2026
19:43:17

O.M.P. (COMM) 51/2020

Page 2 of 26



2026:DHC:9562



replied on 28.11.2003, reiterating the correctness of its accounts.

7. The Respondent, thereafter, issued a legal notice dated 15.04.2004, calling upon the Petitioners to pay the outstanding dues and the liability towards C-Forms, along with interest. The Petitioners replied on 04.05.2004, disputing the claims.

8. As the dispute remained unresolved, the Respondent, *vide* letter dated 01.06.2004, invoked Clause 25 of the Dealership Agreement, which provided for the resolution of disputes through arbitration, and appointed Hon'ble Mr. Justice G.T. Nanavati (Retd.) as the Sole Arbitrator.

9. Before the learned Arbitral Tribunal, the Respondent sought recovery of Rs.1,29,68,643/- towards the outstanding amount. It also claimed Rs.38,62,148/- towards C-Forms, Rs.5,00,000/- as compensation, and Rs.1,00,000/- towards arbitration costs and legal expenses, in addition to *pendente lite* and future interest.

10. The Petitioners disputed the amounts claimed by the Respondent and denied their liability. They also raised a preliminary objection to the arbitrability of the claims, contending that the claims substantially pertained to transactions undertaken between 24.03.1999 and 31.12.2001, a period during which no agreement existed between the parties, and therefore the claims raised are outside the scope of the arbitration clause contained in Dealership Agreement. The Petitioners also raised the following counterclaims:

“COUNTER CLAIM

a) Rs. 1,15,50,000/- towards user charges w.e.f. 24.3.1999 to 31.12.2001 @Rs.3.50 lakh p.m as per detail explained above.

Signature Not Verified

Signed By: PRAAGYA ARORA
O.M.P. (COMM) 51/2020
Signing Date: 29.10.2026
19:43:17

Page 3 of 26



2026:DHC:9562



- b) Rs. 2,21,321/- as credit balance as on date in Tractor A/cs.
- c) Rs. 5,00,000/- towards the Security deposit with interest @18% p.a.
- d) Rs. 10,00,000/- as damages for harassment and filling false claim and filling the fabricated documents.”

11. By way of the impugned Award, the learned Arbitrator adjudicated the claims and objections raised by the parties and the awarded an amount of Rs.1,29,68,643/- in favour of the Respondent along with interest at 12% p.a. from 01.08.2004 till the date of the payment.

12. At the outset, learned Counsel for the Petitioners challenged the validity of the impugned Award on the ground that the Sole Arbitrator was appointed unilaterally by the Respondent, without the consent of the Petitioners, in violation of Section 12 of the Act. It was further contended that no notice invoking arbitration under Section 21 of the Act was issued and, therefore, the arbitral proceedings were not validly commenced. On these grounds, it was argued that the impugned Award was passed without jurisdiction, and liable to be set aside.

13. Reliance was placed on ***Bhadra International (India) (P) Ltd. v. Airports Authority of India***⁴, ***M/s ABL Biotechnologies Ltd. v. M/s Technology Development Board & Anr.***⁵, ***M/s Supreme Infrastructure India Limited v. Freyssinet Menard India Pvt. Ltd.***⁶, ***Bharat Forge Limited v. Tarsem Jain & Anr.***⁷, ***Dharma***

⁴ 2026 SCC OnLine SC 7

⁵ O.M.P. 607/2010

⁶ O.M.P. (COMM) 395/2024

⁷ O.M.P. (COMM) 378/2019

Signature Not Verified

Signed By: PRAAGYA ARORA

Signing Date: 29.10.2026

19:43:17

O.M.P. (COMM) 51/2020



2026:DHC:9562



Prathishthanam v. Madhok Construction Pvt. Ltd.⁸ and M/s Mahavir Prasad Gupta and Sons v. Government of NCT of Delhi⁹.

14. Learned Counsel for the Petitioners further contended that disputes pertaining to the period preceding 01.01.2002 were not covered by any valid arbitration agreement. According to the Petitioners, no agreement governed the relationship between the parties from 24.03.1999 to 31.12.2001, as the Dealership Agreement was executed only on 01.01.2002 and, in terms of Clause 3.1 thereof, took effect from that date. It, was, therefore, contended that Clause 25 of the Dealership Agreement could not be invoked to refer disputes arising out of transactions undertaken before the Dealership Agreement came into effect.

15. It was further contended that Clause 1.4 could not be relied upon to bring the earlier transactions within the scope of the Dealership Agreement, because, according to the Petitioners, the clause merely preserved accrued and outstanding financial obligations under previous agreements, whereas no agreement subsisted between the parties during the relevant period for which claims were raised.

16. *Per contra*, learned Counsel for the Respondent submitted that Section 12(5) of the Act could not be applied to the present case, as the learned Sole Arbitrator had been appointed and the arbitral proceedings had commenced well before the provision was introduced

⁸ 2005 9 SCC 686
⁹ FAO (COMM) 170/2023



2026:DHC:9562



by the Arbitration and Conciliation (Amendment) Act, 2015.

17. Learned Counsel further submitted that Clause 1.4 of the Dealership Agreement expressly preserved the accrued and outstanding financial liabilities under the earlier agreement. It was further contended that the Petitioners' own counterclaim for user charges for the period from 24.03.1999 to 31.12.2001 supported the Respondent's case that the parties' dealings continued during that period and therefore, the learned Arbitrator had rightly rejected the Petitioners' objection that the claims relating to the said period fell outside the scope of the arbitration agreement.

18. I have heard learned Counsel for both parties and perused the material on record.

19. The principal grievance of the Petitioners pertains to the unilateral appointment of the learned Arbitrator by the Respondent. According to the Petitioners, such appointment was in violation of Section 12(5) of the Act and, therefore, the learned Arbitrator was ineligible to act as the arbitrator and adjudicate the disputes between the parties.

20. Before considering this objection, it is necessary to note the dates relevant to the applicability of Section 12(5) of the Act. Section 12(5) was introduced by the Arbitration and Conciliation (Amendment) Act, 2015¹⁰ and came into force on 23.10.2015. In the present case, the arbitral proceedings commenced in 2004 and the



2026:DHC:9562



impugned award was passed in 2006. Therefore, the appointment of the learned Arbitrator and the passing of the impugned Award both preceded the date on which Section 12(5) came into force.

21. The issue as to the applicability of the 2015 Amendment Act to arbitral proceedings commenced prior to its coming into force is no longer *res integra*. The Supreme Court in ***Board of Control for Cricket in India v. Kochi Cricket Pvt. Ltd.***¹¹, has held that the 2015 Amendment is prospective in nature. The same position has been reiterated in subsequent decisions, including ***Kamal Kumar v. Municipal Corporation of Delhi***¹², ***Rajasthan Small Industries Corporation Ltd. v. Ganesh Containers Movers Syndicate***¹³ and ***D.V. Anand v. Hindustan Petroleum Corporation Ltd***¹⁴.

22. Recently, this Court in ***Hanson Agro Ltd. v. Gail (India) Ltd.***¹⁵ examined the identical issue i.e. the validity of unilateral appointment of an arbitrator in proceedings commenced prior to the 2015 Amendment Act and held that the validity of the constitution of the Arbitral Tribunal must be examined with reference to the law applicable on the date of commencement of the arbitral proceedings. The relevant observations are as follows:

“2. During the course of hearing, learned counsels for the parties submitted that, for the purposes of adjudication, the petitions may conveniently be classified into distinct categories depending upon the stage at which the Arbitral proceedings, the Arbitral Award and the court proceedings occurred vis-à-vis the coming into force

¹¹ (2018) 6 SCC 287

¹² 2023 SCC OnLine Del 6515

¹³ (2019) 3 SCC 282

¹⁴ FAO(OS) (COMM) 139/2018

¹⁵ 2026 SCC OnLine Del 6894



2026:DHC:9562



of the Arbitration and Conciliation (Amendment) Act, 2015 (“**2015 Amendment Act**”) on 23.10.2015. Accordingly, the petitions have been grouped as under:

Category A: Cases where both the commencement of Arbitral proceedings and the Arbitral Award preceded 23.10.2015, whereas the proceedings under Section 34 were instituted after the 2015 Amendment Act came into force.

Category B: Cases where the Arbitral proceedings commenced prior to 23.10.2015, but the Arbitral Award and the proceedings under Section 34 of the Act were instituted after the commencement of the 2015 Amendment Act.

Category C: Cases where the Arbitral proceedings and the challenge thereto arose prior to the 2015 Amendment Act, but the arbitration agreement expressly stipulated that any statutory modification or re-enactment of the arbitration law would govern the Arbitral proceedings, thereby raising the issue whether the provisions introduced by the 2015 Amendment Act would nevertheless become applicable by virtue of such contractual stipulation.

124. The validity of appointments prior to cut off date has to be examined with reference to the law applicable on the date on which the appointment was made. The subsequent introduction of Section 12(5) and the Seventh Schedule cannot, merely by characterising the underlying principles as having existed implicitly, retrospectively convert an appointment which was not statutorily prohibited when made into one which is now void in law. Such an interpretation would effectively give retrospective operation to a statutory disqualification which Parliament expressly made applicable from 23.10.2015.

127. The contrary interpretation would lead to an anomalous consequence. An appointment validly made under the statutory regime existing on the date of appointment could subsequently be rendered void solely because Parliament, several years later, introduced an express disqualification. Such an approach would not merely apply the 2015 Amendment to pending proceedings; it would retrospectively alter the legal character of an act completed before the amendment came into force. In the absence of clear legislative language evincing such an intention, such retrospective operation cannot be attributed to the 2015 Amendment Act.

128. To read **Bhadra International** (supra) otherwise would be to read isolated observations dehors their context and to attribute to the Supreme Court a conclusion which it did not expressly reach.

Signature Not Verified

Signed By: PRAAGYA ARORA
Signing Date: 29.10.2026 19:43:17
O.M.P. (COMM) 51/2020

Page 8 of 26



2026:DHC:9562



129. The correct approach, therefore, is to examine the applicability of the 2015 Amendment with reference to the statutory regime governing the arbitration and, in particular, the date on which the relevant appointment was made. Where the appointment of the Arbitral Tribunal was made prior to 23.10.2015, the subsequent insertion of Section 12(5) cannot, by itself, render that appointment invalid. If the appointment was liable to challenge under the unamended Act on the ground of lack of independence, impartiality or other statutory infirmity, the remedy had to be pursued in accordance with the law then prevailing. What cannot be done is to retrospectively substitute the post-amendment statutory consequence for the legal position which existed on the date of appointment.

130. Accordingly, **Bhadra International** (supra) does not lay down that every Arbitral Tribunal constituted prior to 23.10.2015, but whose constitution would have been impermissible under Section 12(5) read with the Seventh Schedule, stood rendered illegal by the 2015 Amendment.

131. In this view of the matter, in terms of Category A and B it is clear that Section 34 filed raising the ground of unilateral appointment, filed after the cutoff date will be analysed on the pre amendment regime and not the post amended regime.”

23. Recently, the Division Bench of this Court in **DMRC Ltd. v. Pankaj**¹⁶, also considered the issue of whether the appointment of the arbitrator prior to the commencement of the 2015 Amendment Act can be rendered invalid on account of the subsequent insertion of Section 12(5) read with the Seventh Schedule by the 2015 Amendment Act. In this regard, the following observations were made:

“II. The position prior to 23-10-2015:

33. Prior to 23-10-2015, the A&C Act accorded considerable weight to party autonomy in matters relating to the constitution of the Arbitral Tribunal. Section 11(2) of the A&C Act expressly recognised the parties' freedom to agree upon a procedure for the appointment of arbitrators. At that stage, the Act did not contain the statutory prohibition subsequently introduced by Section 12(5), read with the Seventh Schedule. Consequently, the mere fact that one party was contractually entrusted with a role in the



2026:DHC:9562



appointment of the arbitrator did not, by itself, render such appointment statutorily impermissible under the law then in force.

34. This does not mean that every unilateral appointment was valid under the pre-2015 regime. The distinction is between a unilateral appointment which was not authorised by the arbitration agreement and a unilateral appointment which was expressly contemplated by the arbitration agreement but is subsequently challenged merely because the appointee was an employee of one of the parties.

35. The first situation is governed by the principle stated in *Dharma Prathishthanam v. Madhok Construction (P) Ltd.* The Supreme Court emphasised that where the arbitration agreement prescribes the manner in which the arbitrator is to be appointed, the parties are bound by that agreed procedure. A party cannot, therefore, unilaterally constitute the Arbitral Tribunal in a manner which is not contemplated by the arbitration agreement. The defect in such a case lies in the absence of contractual authority for the appointment and reference, and not in any statutory disqualification of the arbitrator on account of his relationship with either party. The latter concept, in its present statutory form, was introduced only subsequently through Section 12(5) read with the Seventh Schedule. It is pertinent to refer to the relevant extracts of the said decision, which are as under:

“11. In the background of the abovesaid provisions, the question which arises for consideration is whether, in the light of a general provision as in Clause 35, the respondent could have unilaterally appointed an arbitrator without the consent of the appellant and could have made a reference to such arbitrator again without the reference of disputes having been consented to by the appellant.

12. On a plain reading of the several provisions referred to hereinabove, we are clearly of the opinion that the procedure followed and the methodology adopted by the respondent is wholly unknown to law and the appointment of the sole arbitrator Shri Swami Dayal, the reference of disputes to such arbitrator and the ex parte proceedings and award given by the arbitrator are all void ab initio and hence nullity, liable to be ignored. **In case of arbitration without the intervention of the court, the parties must rigorously stick to the agreement entered into between the two. If the arbitration clause names an arbitrator as the one already agreed upon, the appointment of an arbitrator poses no difficulty. If the arbitration clause does not name an arbitrator but provides for the manner in which the arbitrator is to be chosen and appointed, then the parties are bound to act accordingly. If the parties do not agree then arises the complication which**



2026:DHC:9562



has to be resolved by reference to the provisions of the Act. One party cannot usurp the jurisdiction of the court and proceed to act unilaterally. A unilateral appointment and a unilateral reference — both will be illegal. It may make a difference if in respect of a unilateral appointment and reference the other party submits to the jurisdiction of the arbitrator and waives its rights which it has under the agreement, then the arbitrator may proceed with the reference and the party submitting to his jurisdiction and participating in the proceedings before him may later on be precluded and estopped from raising any objection in that regard. According to Russell (Arbitration, 20th Edn., p. 104)—

“An arbitrator is neither more nor less than a private judge of a private court (called an Arbitral Tribunal) who gives a private judgment (called an award). He is a judge in that a dispute is submitted to him; ... He is private insofar as (1) he is chosen and paid by the disputants (2) he does not sit in public (3) he acts in accordance with privately chosen procedure so far as that is not repugnant to public policy (4) so far as the law allows he is set up to the exclusion of the State courts (5) his authority and powers are only whatsoever he is given by the disputants' agreement (6) the effectiveness of his powers derives wholly from the private law of contract and accordingly the nature and exercise of these powers must not be contrary to the proper law of the contract or the public policy of England, bearing in mind that the paramount public policy is that freedom of contract is not lightly to be interfered with.”

31. Three types of situations may emerge between the parties and then before the court. Firstly, an arbitration agreement, under examination from the point of view of its enforceability, may be one which expresses the parties' intention to have their disputes settled by arbitration by using clear and unambiguous language, then the parties and the court have no other choice but to treat the contract as binding and enforce it. Or, there may be an agreement suffering from such vagueness or uncertainty as is not capable of being construed at all by culling out the intention of the parties with certainty, even by reference to the provisions of the Arbitration Act, then it shall have to be held that there was no agreement between the parties in the eye of the law and the question of appointing an arbitrator or making a reference or disputes by reference to Sections 8, 9 and 20 shall not arise. **Secondly, there may be an arbitrator or arbitrators named, or the authority may be named who shall appoint an arbitrator, then the parties have already been ad idem on the real identity of the arbitrator as appointed by them beforehand; the consent is already spelled**



2026:DHC:9562



out and binds the parties and the court. All that may remain to be done in the event of an occasion arising for the purpose, is to have the agreement filed in the court and seek an order of reference to the arbitrator appointed by the parties. Thirdly, if the arbitrator is not named and the authority who would appoint the arbitrator is also not specified, the appointment and reference shall be to a sole arbitrator unless a different intention is expressly spelt out. The appointment and reference — both shall be by the consent of the parties. Where the parties do not agree, the court steps in and assumes jurisdiction to make an appointment, also to make a reference, subject to the jurisdiction of the court being invoked in that regard. We hasten to add that mere inaction by a party called upon by the other one to act does not lead to an inference as to implied consent or acquiescence being drawn. The appellant not responding to the respondent's proposal for joining in the appointment of a sole arbitrator named by him could not be construed as consent and the only option open to the respondent was to have invoked the jurisdiction of court for appointment of an arbitrator and an order of reference of disputes to him. It is the court which only could have compelled the appellant to join in the proceedings.”

(Emphasis supplied.)

36. The present case, however, stands on a materially different footing from Dharma Prathishthanam (supra). Clause 45 did not merely provide for arbitration in the event of disputes. It specifically contemplated reference to a Sole arbitrator nominated by DMRC. More significantly, the clause expressly stipulated that no objection would be raised if the Conciliator or Sole arbitrator so nominated or appointed was an employee of DMRC. The appointment of a DMRC employee was, therefore, not an act undertaken contrary to the agreed contractual mechanism. It was an eventuality expressly contemplated and accepted by the parties when they entered into the agreement.”

24. In view of the above, Section 12(5) of the Act cannot be applied retrospectively to invalidate the appointment in the present case and the objection of the Petitioners has to be examined in the light of the law as it stood at the time of the appointment of the learned Arbitrator. The mere fact that the learned Arbitrator was appointed by the Respondent is therefore not, by itself, sufficient to hold that the



2026:DHC:9562



constitution of the Arbitral Tribunal was invalid or that the impugned Award was passed without jurisdiction.

25. The judgment of **DMRC Ltd. (supra)** also makes it clear that prior to the 2015 Amendment Act, the parties were entitled to agree upon the manner in which the Arbitrator was to be appointed, and the agreed procedure was required to be given effect to. The Supreme Court itself in **Datar Switchgears Ltd. v. Tata Finance Ltd.**¹⁷, recognised the significance of the agreed procedure for appointment of an arbitrator and considered it while examining the validity of the appointment. It was held as follows:

“23. When parties have entered into a contract and settled on a procedure, due importance has to be given to such procedure. Even though rigor of the doctrine of “freedom of contract” has been whittled down by various labour and social welfare legislation, still the court has to respect the terms of the contract entered into by parties and endeavour to give importance and effect to it. When the party has not disputed the arbitration clause, normally he is bound by it and obliged to comply with the procedure laid down under the said clause.”

26. That brings this Court to the arbitration clause agreed between the parties i.e. Clause 25 of the Dealership Agreement which read as follows:

“25 Arbitration

*Any dispute arising out of or in relation to the breach of the working of, to the interpretation of to the constructive meaning effect in relation to, in respect of this agreement shall be referred to arbitration under a sole arbitrator. **The arbitrator shall be a retired court judge appointed by the Managing Director of New Holland Tractors (India) Private Ltd. to whom the Dealer has no objection, and shall not object in the future also to this appointment of sole arbitrator by the Managing Director of New***

¹⁷ (2000) 8 SCC 151



2026:DHC:9562



Holland Tractors (India) Private Ltd., including for the reasons that the said Managing Director is connected to New Holland Tractors (India) Private Ltd. The costs of Arbitration will be equally appointed between the company and the dealer.”

27. This clause specifically provides that the dispute shall be referred to a Sole Arbitrator, who shall be a retired Court Judge, to be appointed by the Managing Director of New Holland Tractors (India) Private Limited, i.e., the Respondent. Further, it provides that dealer can raise no objection to the appointment of the Arbitrator in the future for the reason that appointing authority is connected with the Respondent.

28. The parties had expressly agreed to this appointment procedure, and the Respondent appointed the learned Arbitrator *vide* letter dated 01.06.2004. The appointment was, therefore, made in accordance with Clause 25 of the Dealership Agreement. At the time of the appointment, Section 12(5), read with the Seventh Schedule, had not come into force.

29. However, the fact that the appointment was made in accordance with the agreed procedure does not, by itself, conclude the inquiry. The Court must still consider whether any prohibition or disqualifying circumstance under the law then applicable has been shown. In the present case, the Petitioners’ challenge rests only on the unilateral nature of the appointment and does not identify any independent circumstance giving rise to justifiable doubts as to the independence or impartiality of the learned Arbitrator.



2026:DHC:9562



30. In these circumstances, the Petitioners cannot rely on Section 12(5), which came into force more than a decade after the appointment and commencement of the arbitral proceedings, to retrospectively invalidate the appointment. This conclusion is confined to the facts of the present case, having regard to Clause 25, the date of appointment and the grounds actually raised by the Petitioners. It does not lay down that unilateral appointments are valid in every circumstance, nor does it preclude scrutiny of a pre-amendment appointment for any distinct statutory infirmity or established lack of independence or impartiality under the law then in force.

31. Reliance placed on *Bhadra International (supra)*, *M/s ABL Biotechnologies Ltd. (supra)*, *M/s Supreme Infrastructure India Limited (supra)*, *Bharat Forge Limited (supra)* and *M/s Mahavir Prasad Gupta and Sons (supra)* is of no avail to the Petitioners, as the issues involved in these cases are distinguishable from the facts of the present case.

32. In *Bhadra International (supra)*, although the Supreme Court examined the object and scope of Section 12(5) of the Act in great detail, the issue before it was not whether the provision would apply to proceedings in which the arbitration had commenced, the Award had been rendered and proceedings under Section 34 had also been initiated before the 2015 Amendment Act came into force. The observations in the said judgment, therefore, have to be read in the context of the issue that arose for consideration before the Supreme Court.

Signature Not Verified

Signed By: PRAAGYA
ARORA
Signing Date: 29.10.2026
19:43:17

O.M.P. (COMM) 51/2020

Page 15 of 26



2026:DHC:9562



33. In **ABL Biotechnologies Ltd. (supra)**, this Court set aside the Award on the ground of unilateral appointment, relying upon **Dharma Prathishthanam (supra)**. However, in the present case, Clause 25 of the Agreement itself provided for appointment of the Arbitrator by the Managing Director of the Respondent. This distinction was not considered in **ABL Biotechnologies (supra)**. The Bombay High Court, in **S.E. Investments Ltd. v. Star Bazaar (P) Ltd¹⁸**, while considering **Bhadra International (supra)** and **Dharma Prathishthanam (supra)**, has also explained why the law laid down in these decisions cannot be understood as invalidating every unilateral appointment made before the 2015 Amendment Act came into force. The relevant observations are reproduced below:

“43. “Analysis of paragraph Nos. 32 to 39 of Bhadra International (India) Pvt. Ltd. (supra)”

(i) *The learned Senior Counsel, Mr Kamat has placed heavy reliance on above paragraphs to contend that by virtue of these paragraphs all types of unilateral appointment made prior to 23-10-2015 is without jurisdiction. In my view, the said submission cannot be accepted for more than one reason.*

(ii) *The first issue, as per para 29 of the said decision, which was framed by the Hon'ble Supreme Court, was whether the sole arbitrator could be said to have become ineligible to be appointed as an arbitrator by virtue of Section 12(5) of the Act, 1996. The contention of the appellant was that the sole arbitrator appointed by the chairman of the respondent was ineligible to act as an arbitrator as he was appointed unilaterally post 23-10-2015 and such an appointment was void ab initio by virtue of Section 12(5) of the Act, 1996.*

(iii) *While adjudicating the provisions of Section 12(5) of the Act, 1996 as applicable to the facts before the Court, Hon'ble Supreme Court analysed the provisions of Section 18 under the*



2026:DHC:9562



caption “Interplay Between Equal Treatment of Parties and Autonomy”.

(iv) In paras 32 to 35, the Hon'ble Supreme Court analyses Section 18 in the context of Section 12(5) of the Act, 1996 and relies upon the decision in CORE (supra) which was again a decision concerning the provisions of Section 12(5) of the Act, 1996. After interpreting Section 18 in the context of Section 12(5) of the 1996, Act, the Hon'ble Supreme Court states that equal treatment has long been recognised in the constitution of the Arbitral Tribunal for ensuring impartiality and preserving fairness of the arbitral process.

(v) The Hon'ble Supreme Court, thereafter, in para 36 observes that even prior to Amendment Act, 2015, the Hon'ble Supreme Court in Dharma Prathishthanam(supra) held that unilateral appointment without the consent of the other party is illegal and alien to law. When Bhadra International (India) Pvt. Ltd. (supra), refers to unilateral appointment by referring to the decision in the case of Dharma Prathishthanam (supra) one has to go to the facts of Dharma Prathishthanam(supra) wherein the arbitration clause did not provide for a named arbitrator or an arbitrator appointed by designation or authorised a person to appoint an arbitrator but it simply said disputes will be resolved as per the Arbitration Act. It is in that context that para 37 has to be read along with other previous paragraphs, to mean that unilateral appointments of the nature referred to in Dharma Prathishthanam (supra) have now been articulated with greater clarity through the Amendment Act, 2015.

(vi) Therefore, from a reading of paras 30 to 37 one cannot come to a conclusion that ratio of Bhadra International (India) Pvt. Ltd. (supra) is that even prior to 2015, unilateral appointments made in scenarios other than those which was in the nature of Dharma Prathishthanam (supra) are void ab initio. It is neither a ratio nor an obiter of the Hon'ble Supreme Court but is a misreading of the said decision to contend that Bhadra International (India) Pvt. Ltd. (supra) lays down, through ratio or through obiter that all types of unilateral appointments made prior to 2015 of the nature not that of Dharma Prathishthanam (supra) are also void ab initio.

(vii) Paragraphs 32 to 37 have to be read with para 38 and para 38 states that even though the parties may have unbridled freedom regarding the procedure for appointing an arbitrator, the exercise of such freedom must not be in conflict with mandatory provisions of the Act. When the Hon'ble Supreme Court refers to mandatory provisions of the Act, it refers to the provisions of Section 12(5) of the Act, 1996 because these observations are made while dealing



2026:DHC:9562



with first issue with regard to the provision of Section 12(5) of the Act, 1996.

(viii) Therefore, in my view, the submission made that by virtue of *Bhadra International (India) Pvt. Ltd. (supra)* all types of unilateral appointments which are not even of the nature of unilateral appointments referred to in *Dharma Prathishthanam (supra)* are void *ab initio* is incorrect.

(ix) When *Bhadra International (India) Pvt. Ltd. (supra)* refers to implicit provisions prior to 2015 having been made explicit, it cannot be treated as obiter in the sense that in all cases of unilateral appointments contrary to the implicit provisions prior to 2015, are bad in law.”

34. In view of the above, ***Dharma Prathishthanam (supra)*** does not assist the Petitioners on the facts presented here because the appointment clause in that case did not confer on a named person or designated office-holder the specific appointment power found in Clause 25. As far as ***Bharat Forge Ltd. (supra)*** is concerned, the issue before that Court was whether valid consent had been given for the appointment, as the arbitration clause itself provided for appointment of a Sole Arbitrator in accordance with the Arbitration and Conciliation Act, 1996. In ***S.K. Builders v. CLS Construction Pvt. Ltd.***¹⁹, and ***Mahavir Prasad Gupta and Sons (supra)***, the arbitral proceedings themselves commenced after the 2015 Amendment came into force and therefore, they are also no relevance for the present case. Therefore, none of the decisions relied upon dealt with the temporal question arising in this case.

35. ***Supreme Infrastructure India Limited (supra)*** would also not assist the Petitioner, as already noted by this Court in ***Hanson Agro Ltd. (supra)***, the factual position therein was materially different,



2026:DHC:9562



since the Petitioner was neither served with notice nor informed of the appointment of the Arbitrator, resulting in an *ex parte* award. In the present case, the Petitioner was informed of the appointment in terms of Clause 25 and further participated in the arbitral proceedings.

36. Accordingly, in view of the law applicable in the present case and considering the procedure agreed between the parties for appointment of an Arbitrator, the challenge to the impugned Award on the ground that the learned Arbitrator was unilaterally appointed by the Respondent is rejected.

37. Further, it is argued on behalf of the Petitioners that no notice under Section 21 of the Act was ever issued. In this regard, I find it relevant to first consider the object of such notice and whether its non-issuance, in itself, would be fatal to the arbitral proceedings.

38. Recently, the Hon'ble Supreme Court in ***Bhagheeratha Engg. Ltd. v. State of Kerala***²⁰, explained that the purpose of Section 21 is to determine the commencement of arbitral proceedings, primarily for the purpose of reckoning limitation. It was further held that the absence of such notice would not be fatal to a claim which is otherwise valid and arbitrable. The relevant observations are as follows:

*“39. Secondly, the object of Section 21 of A&C Act, is only for the purpose of commencement of arbitral proceedings is also well settled. Section 21 is concerned only with determining the commencement of the dispute for the purpose of reckoning limitation. **There is no mandatory prerequisite for issuance of a Section 21 notice prior to the commencement of Arbitration.**”*



2026:DHC:9562



Issuance of a Section 21 notice may come to the aid of parties and the arbitrator in determining the limitation for the claim. Failure to issue a Section 21 notice would not be fatal to a party in Arbitration if the claim is otherwise valid and the disputes arbitrable.”

39. In the present case, the material recited above records a legal notice dated 15.04.2004, a reply dated 04.05.2004, and a subsequent letter dated 01.06.2004 invoking Clause 25 and communicating the appointment of the Sole Arbitrator. Even assuming that no separate notice expressly invoking Section 21 of the Act was issued, ***Bhagheeratha Engineering (supra)*** makes it clear that such omission does not, by itself, invalidate an otherwise arbitrable claim. Section 21 remains relevant to the commencement of arbitral proceedings and limitation, and its non-compliance does not dispense with the applicable limitation requirements or enlarge the scope of the arbitration agreement.

40. As far as the objection of the Petitioners is concerned, it is confined to the non-issuance of a separate notice under Section 21. They had neither contended that the claims were time-barred nor demonstrated any procedural prejudice arising from the absence of such notice. Accordingly, the objection to the impugned Award solely on the ground of non-issuance of a separate notice under Section 21 of the Act is rejected, particularly when the appointment procedure prescribed under the arbitration clause was duly followed and complied with.

41. Another limb of the Petitioners' contention is that the disputes relating to the period between 24.03.1999 and 31.12.2001 were not



2026:DHC:9562



covered by any arbitration agreement contained in Dealership Agreement between the parties and therefore, the learned Arbitrator lacked jurisdiction to decide those claims. The said preliminary objection was also raised before the learned Arbitrator who rejected it and rendered the following findings:

"9. Point/Issue No.7 has been raised for determination in view of the - second preliminary objection raised by the respondents. It is their contention that for the period between 24.3.1999 and 31.12.2001, there was no written agreement between the parties and the amount of Rs.1,15,12,941/- claimed by the Claimant is in respect of the transactions of that period. The dispute with respect to the same is therefore not a dispute arising under or in respect of the agreement dated 1.1.2002 and as such is outside the purview of the Dealership Agreement and the arbitration clause contained therein. In support of this contention, the respondents reply upon the LOI, the agreement and the admission made by the Claimant's witnesses. What is admitted by Mr.Lalit is that there was no other written agreement between 24.3.1999 and 1.1.2002. He has stated that the transactions in between were on the basis of Letter of Intent and that the Letter of Intent was treated as continuing. Claimant's other witness Shri Rahul Sanon, Deputy General Manager (Finance and Accounts) has also stated so. Thus, according to both the witnesses, the previous agreement as evidenced by the LOI continued during the period between 24.3.1999 and 31.12.2001. According to the respondents, LOI having ceased to be valid after 23.3.1999, there was no written agreement thereafter for the said period.

10. The LOI, though in the form of a letter written by the Claimant to respondent No.1, is also signed by respondent No.2 as the authorized signatory of respondent No.1. Two witnesses have also attested the same. It contains the writing: "AGREED AS AFORESAID BETWEEN NEW HOLLAND TRACTORS (INDIA) PVT LTD AND M/s SHIVDEI AUTOMOBILES". This writing and other contents of the LOT clearly indicate that it was an agreement between the two parties and there is no dispute on this point. Pursuant to this agreement, the Claimant had started supplying tractors to the respondents from 24.9.1998 and the respondents used to make payments for the same. This course of dealing had continued between 24.3.1999 and 31.12.2001. The LOT reflects an agreement between the parties that on fulfillment of the conditions mentioned therein, supplies of the tractors was to start and on compliance with all other requirements, a formal agreement was to be executed and the terms mentioned therein would supersede the

Signature Not Verified

Signed By: PRAAGYA ARORA
Signing Date: 29.10.2026
19:43:17

O.M.P. (COMM) 51/2020

Page 21 of 26



2026:DHC:9562



terms of the LOI. The conditional offer made therein was to remain valid upto 23.3.1999 unless withdrawn earlier. Reasonably read what it means is that if all the requirements which were to be fulfilled by the respondents after 23.9.1998 but before 23.3.1999 are fulfilled, then the agreement would survive otherwise not. It does not say that the contractual relationship would come to an end on 23.3.1999. If that was the intention of the parties, the Claimant would have stopped supplying tractors to the respondents from 24.3.1999 and the respondents in their turn would not have accepted the same and incurred and fulfilled obligations arising as a result thereof.

11. The Dealership Agreement (C-2) substituted the previous agreement as stated in Clause 1.4. The said clause further provides that "all accrued and outstanding rights and liabilities as to any payment or other financial obligation, arising under such agreements, shall remain in full force and effect and be fully enforceable until satisfied. By this Clause of the Dealership Agreement, this new agreement is substituted for the previous agreement and like a saving Clause all accrued rights and liabilities as to payment or other financial obligation are saved and made enforceable under the new agreement. If that was not the intention of the parties, this Clause would not have found its place in the Dealership Agreement. 'Respondents' defence that they had signed this agreement without reading it cannot be believed. The respondents had not objected to inclusion of dues for the pre-dealership agreement period in the statements of account sent by the Claimant on the ground that they were not covered by that agreement, till almost the end of 2003.

12. On consideration of the LOI, dealings between the parties and Dealership Agreement it would be reasonable to come to the conclusion that the agreement between the parties as evidenced by the LOI continued till it was superseded by the Dealership Agreement of 1. 1 .2002 and whatever amount was due and payable by the respondents on 31. 12.2001 continued to be their effective financial obligation and enforceable under the Dealership Agreement of 1.1.2002. For all these reasons, I hold that the claim made by the claimant, in other words, the dispute raised by it, falls squarely within the purview of the Dealership Agreement and therefore, this Tribunal has jurisdiction to entertain the same."

42. A perusal of the aforesaid findings shows that the learned Arbitrator considered the LOI dated 23.09.1998, the subsequent conduct of the parties, and Clauses 1.4 and 25 of the Dealership Agreement dated 01.01.2002. The Petitioners contend that the LOI

Signature Not Verified

Signed By: PRAAGYA ARORA
Signing Date: 29.10.2026
19:43:17

O.M.P. (COMM) 51/2020

Page 22 of 26



2026:DHC:9562



expired on 23.03.1999 and that no agreement subsisted between the parties until the Dealership Agreement was executed. The issue, therefore, is whether the parties' commercial dealings continued after 23.03.1999 so as to establish a subsisting agreement between them and, if so, whether the arbitration clause in the Dealership Agreement extends to disputes concerning dues arising during that period.

43. The learned Arbitrator reasoned that the date of 23.03.1999 mentioned in the LOI related to the fulfilment of the conditions stipulated therein and did not necessarily bring the parties' commercial relationship to an end. This finding was based not merely on the LOI read in isolation, but also on the parties' conduct thereafter. The Respondent continued to supply tractors to the Petitioners after 23.03.1999, and the Petitioners continued to accept the supplies and discharge their corresponding payment obligations. These dealings continued until the Dealership Agreement was executed on 01.01.2002. Such conduct supports the finding that the parties' commercial relationship and corresponding obligations continued beyond the stated validity date of the LOI.

44. The learned Arbitrator also noted that, until almost the end of 2003, the Petitioners did not object to the inclusion of dues relating to the intervening period in the statements of account on the specific ground that such dues fell outside the Dealership Agreement. This circumstance further supports the inference drawn from the parties' course of dealing, though it cannot, by itself, amount to a acceptance of jurisdiction of the Arbitrator or substitute for the written arbitration agreement required under Section 7 of the Act.

Signature Not Verified

Signed By: PRAAGYA
ARORA
Signing Date: 29.10.2026
19:43:17

O.M.P. (COMM) 51/2020

Page 23 of 26



2026:DHC:9562



45. In view of the above, the learned Arbitrator found that the agreement between the parties continued to subsist even after 23.03.1999 and remained in operation until it was superseded by the Dealership Agreement dated 01.01.2002. This finding is supported by the continued supplies, acceptance of goods, corresponding payments and subsequent treatment of outstanding accounts. In the opinion of this Court, the finding represents a plausible view of the evidence on record and does not warrant interference under Section 34 of the Act.

46. However, the continuation of the commercial arrangement does not, by itself, establish that the dispute arising from it can be referred to arbitration. It remains necessary to examine whether the arbitration agreement contained in Dealership Agreement extends to the financial liabilities arising during the intervening period.

47. In this regard, Clause 1.4 expressly provides that accrued and outstanding rights and liabilities relating to payment and other financial obligations arising under the earlier agreement shall remain in force and enforceable until satisfied, notwithstanding its substitution by the Dealership Agreement. Although Clause 1.4 preserves these financial liabilities, it does not, by itself, provide for arbitration. It must, therefore, be read with Clause 25, which provides for arbitration of disputes arising under or in connection with the Dealership Agreement.

48. Read together, Clause 1.4 preserves the specified financial liabilities, while Clause 25 provides the mechanism for resolving



2026:DHC:9562



disputes falling within its scope. Accordingly, disputes concerning financial liabilities preserved under Clause 1.4 can be referred to the arbitration to the extent that they fall within the scope of Clause 25.

49. The Petitioners also rely on Clause 3.1, which provides that the Dealership Agreement takes effect from 01.01.2002. However, Clause 3.1 merely governs the commencement date of the Dealership Agreement and must be read alongside Clause 1.4, which expressly preserves accrued and outstanding financial liabilities under the earlier agreement. The two provisions can be reconciled by giving effect to Clause 3.1 as governing the commencement of the new agreement, while treating Clause 1.4 as a saving provision for the specified pre-existing financial obligations. This conclusion is confined to the payment and other financial liabilities expressly saved by Clause 1.4 and does not extend the arbitration clause to every unrelated dispute or claim predating 01.01.2002.

50. It is also relevant that the Petitioners themselves raised a counterclaim for user charges for the period from 24.03.1999 to 31.12.2001. While this counterclaim does not, by itself, establish that every claim arising during the same period is arbitrable or create a written arbitration agreement where none exists, it is a relevant circumstance showing that the Petitioners themselves recognised the subsistence of an agreement between the parties during the intervening period. This further supports the finding that the parties' contractual relationship did not automatically cease upon expiry of the LOI's stated validity.



2026:DHC:9562



51. For these reasons, and on a combined reading of the LOI, the parties' subsequent conduct, and Clauses 1.4 and 25 of the Dealership Agreement, the learned Arbitrator's conclusion that the financial liabilities accrued during the relevant period were preserved and could be adjudicated under the arbitration clause contained in Dealership Agreement represents a plausible interpretation of the contractual arrangement. The scope of interference under Section 34 is limited, and this Court cannot substitute its own interpretation for a plausible view taken by the learned Arbitrator merely because another interpretation may also be possible. No ground warranting interference with this finding has been made out.

52. In view of the foregoing discussion, this Court finds no merit in the present petition. The Petitioners have failed to establish any ground for setting aside the impugned Award under Section 34 of the Act. The objections concerning the appointment of the learned Arbitrator and the non-issuance of a separate notice under Section 21 of the Act also fail for the reasons set out above.

53. Accordingly, the present petition is dismissed, and the impugned Award dated 09.01.2006 is upheld.

54. There shall be no order as to costs.

OM PRAKASH SHUKLA, J

OCTOBER 29, 2026/at/pa/gunn