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

% **Date of decision: 05.11.2026**

\# **CNR No. DLHC010518572026**

\+ FAO(OS) (COMM) 294/2026, CM APPL. 74565/2026, CM APPL. 74566/2026 & CM APPL. 74567/2026

RATNAGIRI GAS AND POWER PRIVATE LIMITED .....Appellant

Through: Mr. Puneet Taneja, Sr. Adv. through VC with Mr. Manmohan Singh Narula, Mr. Amit Yadav, Mr. Sarabjeet Singh, Mr. Sidak Singh Narula, Advs.

versus

DINOWIC PTE LTD .....Respondent

Through: Mr. Giriraj Subramanium, Mr. Jaisal Baath, Ms. Bijaharinigm Mr. Prayuj Sharma, Mr. Aditya Sarma, Ms. Miheeka Kapur, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MS. JUSTICE SHAIL JAIN

AVNEESH JHINGAN, J. (ORAL)

1. This appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') against the judgement dated 17.08.2026 passed by the learned Single Judge dismissing the petition under Section 34 of the Act.

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Brief Facts

2. The brief facts are that the appellant, M/s Ratnagiri Gas and Power Private Limited is a joint venture company promoted by NTPC Limited and GAIL (India) Limited and owns and operates a power plant at Dabhol, Maharashtra. The respondent, M/s Dinowic Pte. Ltd. is a company incorporated in Singapore.

2.1 On 19.03.2014, the appellant floated an e-auction tender through MSTC Limited for sale of 40,000 metric tonnes (MT) of Naphtha lying at the Dabhol site. The respondent was the successful bidder and a sale Order (for short 'SO') dated 02.04.2014 for Rs.160,03,40,000/- was issued.

2.2 As per clause 5 of the SO, the respondent was required to lift the entire quantity of Naphtha in two lots. The first lot of minimum 30,000 MT was to be lifted on or before 16.04.2014 and the balance quantity of 10,000 MT was to be lifted on or before 21.04.2014. The respondent was required to make payment through Letters of Credit (LOC) within the stipulated timelines.

2.3 Disputes arose between the parties regarding delay in opening of LOC, remittance of payments and lifting of Naphtha. The appellant contended that the respondent failed to comply with the stipulated timelines and was liable to pay liquidated damages (LD) under clause 9 of the SO. The appellant deducted an amount of USD 714,960.74 from the security deposit towards LD. The respondent disputed the deduction and sought refund of the amount.

2.4 The arbitration under clause 14 of the Special Conditions of

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Contract (for short 'SCC') was invoked at the instance of the respondent *vide* letter dated 31.01.2015. Since the arbitrator was not appointed, a petition under Section 11 of the Act was filed and by order dated 07.04.2015 this court appointed the sole arbitrator. The arbitral proceedings were to be conducted under the aegis of the Delhi International Arbitration Centre (DIAC).

2.5 The respondent raised three claims seeking refund of the amount deducted from the security deposit along with interest. The appellant raised four counter-claims towards interest on delayed remittance, exchange-rate variation, ground rent for delayed lifting of Naphtha and interest thereon. *Vide* award dated 03.09.2019, the arbitrator allowed the claims of the respondent and directed the appellant to refund USD 714,760.74 along with interest at the rate of 6% per annum with effect from 17.06.2014. All the counterclaims raised by the appellant were rejected.

2.6 Aggrieved by the award, the appellant filed a petition under Section 34 of the Act. *Vide* judgment dated 17.08.2026, the learned Single Judge dismissed the petition and held that the arbitration between the parties constituted an International Commercial Arbitration (ICA) and no ground for setting aside the award was made out under Section 34 of the Act. Hence, the present appeal.

Submissions of the appellant

3. Learned counsel for the appellant contends that the application for appointment of the arbitrator was to be dealt with by the authority prescribed under Section 11 of the Act but the arbitrator was

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Signing Date:18.11.2026
15:12:21

appointed by this court. The grievance is that the appointment was without jurisdiction and the proceedings before the tribunal were *non-est*.

3.1 It is canvassed that there is a distinction between the procedure for appointment and the jurisdiction to make the appointment. The submission is that though the parties may agree upon the procedure for appointment of an arbitrator under Section 11(2) of the Act but the agreement cannot confer jurisdiction contrary to the statute. Reliance is on the decision of Madras High Court in ***China Datang Technologies China Datang Technologies*** OnLine Mad 18937 to contend that the freedom of parties under Section 11(2) is subject to the statutory provision under Section 11 of the Act.

3.2 The contention is that the statutory requirement for appointment of an arbitrator in an ICA is non-derogable and cannot be waived under Section 4 of the Act. It is submitted that participation of the parties in the arbitral proceedings cannot cure an appointment made in contravention of Section 11 of the Act. Reliance is on the decision of Madhya Pradesh High Court in ***State of Madhya Pradesh v. M/s SMEC International Pvt. Ltd***., 2026 SCC OnLine MP 5006 wherein it was held that such an appointment suffers from inherent lack of jurisdiction and cannot be validated by the consent of the parties.

3.3 Lastly, it is contended that there can be no estoppel against the statute. Reliance is on the decision of Supreme Court in ***Krishna Rai (Dead) through LRs v. Banaras Hindu University,*** (2022) 8 SCC 713.

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Submissions of the respondent

4. *Per contra,* the appellant raised the objection to the appointment of the arbitrator for the first time in the present appeal despite having participated in the arbitral proceedings. The submission is that the appointment was made by this court in the presence of the appellant and remained unchallenged even in the petition under Section 34 of the Act. Reliance is on the decision of the Supreme Court in ***Hindustan Construction Co. Ltd. v. Bihar Rajya Pul Nirman Nigam Ltd.,*** (2026) 3 SCC 264 to contend that a party having participated in the proceedings cannot later challenge the process merely because the outcome is unfavorable.

4.1 The submission is that the appellant having failed to raise the objection before the arbitral tribunal under Section 16(2) of the Act is deemed to have waived the right to object as contemplated under Section 4 of the Act. The decision of the Supreme Court in ***Narayan Prasad Lohia v. Nikunj Kumar Lohia,*** (2002) 3 SCC 572 is relied upon to buttress the argument that an objection to the composition of the arbitral tribunal must be raised no later than the submission of the statement of defence failing which the party is deemed to have waived the right to object.

4.2 The decision of the Division Bench of this court in ***Hala Kamel Zabal v. Arya Trading Ltd.,*** 2026 SCC OnLine Del 455 is relied upon to submit that an objection to the appointment of an arbitrator in an ICA can be waived under Section 4 of the Act if it is not raised at the appropriate stage.

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15:12:21

4.3 The contention is that the appellant has admitted in ground 'F' of the present appeal that the objection had "inadvertently skipped the attention of the appellant" and that it would otherwise have raised the objection at the stage of appointment of the arbitrator or while challenging the award under Section 34 of the Act.

5. Heard the learned counsel for the parties at length and perused the record with their able assistance. No other contention than those noted above was pressed.

6. Before proceeding further, it would be apposite to reproduce clause 14 of the SCC, Section 2(1)(f), Section 4 and Section 11 of the Act:

> "**Clause 14 – Arbitration**
>
> Unless otherwise specified, the matters where decision of the Engineer-in-Charge is deemed to be final and binding as provided in the Contract and the issues/disputes which cannot be mutually resolved within a reasonable time, all disputes shall be referred to arbitration by Sole Arbitrator.
>
> Within 30 days of notice of arbitration by either party to the other, the PRINCIPAL [RGPPL] shall suggest a panel of three independent and distinguished persons to the bidder/Buyer, as the case may be, to select any one among them to act as the Sole Arbitrator.
>
> The award of sole arbitrator shall be final and binding on the parties and unless directed/awarded otherwise by the sole arbitrator, the cost of arbitration proceedings shall be shared equally by the parties. The Arbitration proceedings shall be in English language and venue shall be New Delhi, India.
>
> Subject to the above, the provisions of (Indian) Arbitration & Conciliation Act 1996 and the Rules framed there under

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shall be applicable. All matter relating to this contract are subject to the exclusive jurisdiction of the court situated in the state of Delhi.

Section 2(1)(f)

(f) "international commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is—

(i) an individual who is a national of, or habitually resident in, any country other than India; or

(ii) a body corporate which is incorporated in any country other than India; or

(iii) a company or an association or a body of individuals whose central management and control is exercised in any country other than India; or

(iv) the Government of a foreign country.

Section 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 so to object.

Section 11 – Appointment of arbitrators

Unamended provision of the Arbitration and Conciliation Act, 1996 (applicable before the 2015 amendment)

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Signing Date:18.11.2026 15:12:21

*** *** ***

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

*** *** ***

(5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree, the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.

(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, a party may request the Chief Justice or any person or institution designated by him 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 Chief Justice of India or the person or institution designated by him may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.

*** *** ***

(11) Where more than one request has been made under

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sub-section (4) or sub-section (5) or sub-section (6) to the Chief Justices of different High Courts or their designates, the Chief Justice or his designate to whom the request has been first made under the relevant sub-section shall alone be competent to decide on the request.

(12) (a) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in an international commercial arbitration, the reference to "Chief Justice" in those sub-sections shall be construed as a reference to the "Chief Justice of India".

(b) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in any other arbitration, the reference to "Chief Justice" in those sub-sections shall be construed as a reference to the Chief Justice of the High Court within whose local limits the principal Civil Court referred to in clause (e) of sub-section (1) of section 2 is situate and, where the High Court itself is the Court referred to in that clause, to the Chief Justice of that High Court."

Analysis

7. Section 2(1)(f) of the Act defines an ICA as an arbitration arising out of a commercial legal relationship where at least one of the parties is a body corporate incorporated in a country other than India. In the present case, the respondent is a company incorporated under the laws of Singapore and the arbitration is an ICA.

8. Clause 14 of the SCC provides that in case the parties fail to mutually resolve the dispute it shall be referred to a sole arbitrator. Upon issuance of a notice of arbitration by either party, the appellant is required to suggest within thirty days a panel of three independent and distinguished persons to the respondent for selection of the sole arbitrator. The venue of arbitration is New Delhi, India and the

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Signing Date:18.11.2026 15:12:21

contract is governed by Indian law.

9. Section 2(2) of the Act provides that Part I shall apply where the place of arbitration is in India. It shall be fruitful to cite the following decisions of the Supreme Court:

9.1 In ***Balaji Steel Trade v. Fludor Benin S.A.,*** (2026) 5 SCC 802 it was held:

> "25. Section 2(1)(f) of the 1996 Act defines 'international commercial arbitration' as arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is a foreign national, whether that party is an individual, a body corporate, an association or body of individuals or a foreign Government. Respondent 1 being a company incorporated under the laws of Benin, the present dispute squarely falls within the ambit of international commercial arbitration. Once this characterisation is made, Section 2(2) of the Act becomes immediately relevant, for it stipulates that Part I shall apply only where the place of arbitration is in India, thereby mandating that Part I stands excluded where the parties have chosen a foreign seat."

9.2 In ***Amway (India) Enterprises (P) Ltd. v. Ravindranath Rao Sindhia,*** (2021) 8 SCC 465 it was held:

> "16. In this view of the matter, the argument that there is no international flavour to the transaction between the parties has no legs to stand on. Indeed, an analysis of Section 2(1)(f) would show that whatever be the transaction between the parties, if it happens to be entered into between persons, at least one of whom is either a foreign national, or habitually resident in, any country other than India; or by a body corporate which is incorporated in any country other than India; or by the Government of a foreign country, the arbitration becomes

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Signing Date:18.11.2026 15:12:21

> an international commercial arbitration notwithstanding the fact that the individual, body corporate, or government of a foreign country referred to in Section 2(1)(f) carry on business in India through a business office in India…..."
>
> (emphasis supplied)

10. Since the place of arbitration in the present case is India, Part I of the Act applies. Section 11 which forms part of Part I deals with the appointment of arbitrators. Under sub-section (2) the parties can agree on a procedure for appointment of the arbitrator subject to sub-section (6).

10.1 Under sub-section (5) in the absence of an agreement referred to in sub-section (2) and on failure of the parties to agree on the appointment of a sole arbitrator within thirty days of receipt of a request by one party from the other party, the Chief Justice (for short 'CJ') or any person or institution designated by the CJ shall appoint the arbitrator.

10.2 Clause (a) of sub-section (6) provides that on failure of the party to act as required under the agreed procedure for appointment of an arbitrator, a request for appointment is to be made to the CJ or any person or institution designated by the CJ to take the necessary measure unless the agreement on the appointment procedure provides other means for securing the appointment.

10.3 Sub-section (9) provides that in the case of appointment of a sole or third arbitrator in an ICA, the Chief Justice of India (for short 'CJI') or the person or institution designated by the CJI may appoint an arbitrator of a nationality different from that of the parties in

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Signing Date:18.11.2026 15:12:21

dispute.

10.4 Clause (a) of sub-section (12) provides that in an ICA the reference to the CJ in sub-sections (4), (5), (6), (7), (8) and (10) shall be construed as a reference to the CJI.

11. In the present case, on failure of the appellant to act in accordance with the procedure laid in clause 14 of the SCC, the respondent filed an application under Section 11 of the Act before this court for appointment of the arbitrator. It is an admitted fact that no other means for securing the appointment of the arbitrator was agreed upon between the parties. The language of clause 14 clearly indicates that a panel of three names was to be proposed by the appellant within thirty days of issuance of notice from either of the parties. This procedure read with sub-section (6) and clause (a) of sub-section (12) of Section 11 provides that on failure to act in accordance with the agreed procedure, a request for appointment was to be made to the CJI.

12. The obvious conclusion is that in an ICA the power to appoint an arbitrator under Section 11 read with clause (a) of sub-section (12) is vested in the CJI. More so, when there was no separate agreement between the parties for appointment of the arbitrator by this court. It was not a case of merely recording the consensus arrived at between the parties regarding the appointment of the arbitrator in terms of the agreement. The appointment of the arbitrator by this court was without jurisdiction.

13. The Supreme Court in ***Tata Sons Pvt. Ltd. v. Siva Industries***

Signature Not Verified
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Signing Date:18.11.2026
15:12:21

and Holdings Ltd., (2023) 5 SCC 421 held that in the case of an ICA, the Supreme Court has exclusive jurisdiction to entertain a petition under Section 11 of the Act. The relevant paragraph reads as under:

> "9. The respondents did not appoint their nominee arbitrator despite the service of the arbitration notice. The applicant filed a petition before this Court under Section 11(6) of the Arbitration and Conciliation Act 1996 for the constitution of an arbitral tribunal in an international commercial arbitration. The Supreme Court had exclusive jurisdiction to entertain the arbitration petition since the proposed arbitration between the applicant and the respondents, of whom the second respondent is a foreign party, was an international commercial arbitration in terms of Section 2(1)(f) of the Arbitration Act."
>
> (emphasis supplied)

14. Before proceeding further to decide the issue as to whether there was waiver of the objection to the appointment of the arbitrator under Section 4 of the Act, the objection that the appointment was void *ab-initio* though not raised either before the arbitrator or the learned Single Judge needs to be dealt with.

15. It is trite law that an objection of inherent lack of jurisdiction can be raised at any stage including during execution proceedings. Reference in this regard be made to the decision of the Supreme Court in ***Hindustan Zinc Ltd. v. Ajmer Vidyut Vitran Nigam Ltd.,*** (2019) 17 SCC 82 wherein it was held:

> "17. We are of the view that it is settled law that if there is an inherent lack of jurisdiction, the plea can be taken up at any stage and also in collateral proceedings. This was held by this Court in Kiran Singh v. Chaman Paswan [Kiran Singh v. Chaman Paswan, (1955) 1 SCR 117 : AIR 1954

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Signing Date:18.11.2026 15:12:21

SC 340] as follows : (SCR p. 121 : AIR p. 342, para 6)

> "6. … It is a fundamental principle well-established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non judice, and that its judgment and decree would be nullities."

16. It would be relevant to refer to the decision of the Supreme Court in ***Lion Engineering Consultants v. State of M.P.*** (2018) 16 SCC 758 wherein it was held that a plea of jurisdiction can be raised in a petition under Section 34 of the Act even if no such objection was raised under Section 16 of the Act. The relevant paragraph reads as under:

> "4. We find merit in the contentions raised on behalf of the State. We proceed on the footing that the amendment being beyond limitation is not to be allowed as the amendment is not pressed. We do not see any bar to plea of jurisdiction being raised by way of an objection under Section 34 of the Act even if no such objection was raised under Section 16."
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> (emphasis supplied)

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Signing Date:18.11.2026
15:12:21

17. The contention of learned counsel for the respondent that the appellant had waived the right to object to the appointment, lacks merit. Under Section 4(a) of the Act, a party having knowledge that a provision of Part I from which the parties may derogate has not been complied with and yet proceeds with the arbitration without raising an objection within the prescribed time, is deemed to have waived the right to so object. Clause (b) of Section 4 deals with non-compliance with any requirement under the arbitration agreement. The present controversy relates to clause (a) of Section 4 of the Act. The question is whether the statutory requirement as to the authority competent to appoint an arbitrator in an ICA is a provision from which the parties may derogate.

18. Under Section 11(2) of the Act, there is a leverage with the parties to agree upon the procedure for appointment of an arbitrator subject to sub-section (6). In other words, even where a procedure for appointment has been agreed upon between the parties, on failure to comply with the agreed procedure, a request for appointment of the arbitrator is to be made in accordance with sub-section (6) i.e. to the CJ in the case of a domestic arbitration and to the CJI in the case of an ICA.

19. The statutory requirement cannot be derogated by the parties. The waiver contemplated under Section 4 of the Act cannot be extended to confer jurisdiction upon a court that is not vested with the power to appoint the arbitrator under the Act. The failure to raise an objection to the appointment cannot cure the inherent lack of

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Signing Date:18.11.2026
15:12:21

jurisdiction of the court.

20. The Supreme Court in ***Dr. Jagmittar Sain Bhagat v. Director, Health Services, Haryana,*** (2013) 10 SCC 136 held that jurisdiction cannot be conferred upon a court by mutual consent of the parties. The relevant paragraph reads as under:

> "9. Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior Court, and if the Court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the root of the cause. Such an issue can be raised at any stage of the proceedings. The finding of a Court or Tribunal becomes irrelevant and unenforceable/ inexecutable once the forum is found to have no jurisdiction. Similarly, if a Court/Tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetuate and perpetrate, defeating the legislative animation. The Court cannot derive jurisdiction apart from the Statute. In such eventuality the doctrine of waiver also does not apply."
>
> (emphasis supplied)

21. Applying the above principle, the participation of the appellant in the arbitration proceedings cannot be construed as a waiver under Section 4 of the Act. The inherent lack of jurisdiction in the appointment of the arbitrator vitiates the entire proceedings.

22. The reliance placed by learned counsel for the respondent on the decision of the Division Bench of this court in ***Hala Kamel Zabal*** (supra) to contend that the procedure under Section 11(6) of the Act and objections to the forum of appointment are subject to waiver under Section 4, does not enhance the case of the respondent. The

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Signing Date:18.11.2026 15:12:21

decision was on the facts of that case where the parties had expressly agreed that the sole arbitrator would be appointed by the CJ of this court. There is no such agreement between the parties in the present case. It was in the backdrop of the express term in the arbitration agreement that the Division Bench applied the principle of waiver under Section 4 of the Act.

23. The decision of the Supreme Court in ***Amway India Enterprises Pvt. Ltd.*** (supra) wherein it was held that the court at New Delhi lacked jurisdiction to appoint an arbitrator in an ICA, was distinguished by the Division Bench in ***Hala Kamel Zabal*** (supra). It was considered by the Division Bench that the appointment under challenge was in accordance with the arbitration clause expressly agreed upon between the parties which provided for appointment of the arbitrator by the CJ of this court.

24. It would be apposite to mention the decision of the Madras High Court in ***China Datang Technologies and Engineering Co. Ltd.*** (supra) wherein the decision of the Single Judge in ***Hala Kamel Zabal*** 2024 SCC OnLine Del 5604 was distinguished. It was held that the appointment of an arbitrator by the High Court in an ICA contrary to the statutory scheme under Section 11 of the Act is null and void and the waiver under Section 4 of the Act is not applicable.

25. The Madhya Pradesh High Court in ***State of Madhya Pradesh v. M/s SMEC International Pvt. Ltd.*** (supra) also distinguished the decision of the Single Judge in ***Hala Kamel Zabal*** (supra) and held that appointment of an arbitrator by the High Court in an ICA is not a

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Signing Date:18.11.2026
15:12:21

mere procedural lapse but a case of inherent lack of jurisdiction.

26. The reliance placed by learned counsel for the respondent on the decision of the Supreme Court in ***Narayan Prasad Lohia v. Nikunj Kumar Lohia*** (supra) to contend that failure to raise an objection within the time prescribed under Section 16(2) of the Act amounts to deemed waiver, is not applicable to the facts of the present case. The decision was not a case of an ICA and dealt with the composition of the arbitral tribunal which was held to be derogable and the failure to raise an objection under Section 16(2) was considered to be deemed waiver under Section 4 of the Act. However, in the present appeal the issue relates to the inherent lack of jurisdiction to appoint an arbitrator in an ICA and the appointment being contrary to a mandatory statutory provision.

27. The Supreme Court in ***Krishna Rai (Dead) through LRs v. Banaras Hindu University*** (supra) has reiterated that the principle of estoppel cannot override the law. The relevant paragraphs read as under:

> "24. The case laws relied upon by the Division Bench would have no application in the facts of the present case as none of the judgments relied upon by the Division Bench laid down the principle that estoppel would be above law. It is a settled principle that the principle of estoppel cannot override the law. The manual duly approved by the Executive Council will prevail over any such principle of estoppel or acquiescence.
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> *** *** ***
>
> 32. Further in Tata Chemicals Ltd. v. Commr. of Customs, it has been laid down that there can be no estoppel against

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Signing Date:18.11.2026 15:12:21

law. If the law requires something to be done in a particular manner, then it must be done in that manner, and if it is not done in that manner, then it would have no existence in the eye of the law. Para 18 of the said judgment is reproduced below: (SCC p. 636)"

> "18. The Tribunal's judgment has proceeded on the basis that even though the samples were drawn contrary to law, the appellants would be estopped because their representative was present when the samples were drawn and they did not object immediately. This is a completely perverse finding both on fact and law. On fact, it has been more than amply proved that no representative of the appellant was, in fact, present at the time the Customs Inspector took the samples. Shri K.M. Jani who was allegedly present not only stated that he did not represent the clearing agent of the appellants in that he was not their employee but also stated that he was not present when the samples were taken. In fact, therefore, there was no representative of the appellants when the samples were taken. In law equally the Tribunal ought to have realised that there can be no estoppel against law. If the law requires that something be done in a particular manner, it must be done in that manner, and if not done in that manner has no existence in the eye of the law at all. The Customs Authorities are not absolved from following the law depending upon the acts of a particular assessee. Something that is illegal cannot convert itself into something legal by the act of a third person."
>
> (emphasis supplied)

28. The decision of the Supreme Court in ***Hindustan Construction Co. Ltd. v. Bihar Rajya Pul Nirman Nigam Ltd.*** (supra) relied upon by learned counsel for the respondent is not applicable to the case in

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Signing Date:18.11.2026
15:12:21

hand. It was not a case where the appointment of the arbitrator was vitiated by an inherent lack of jurisdiction. The Supreme Court held that an order passed by the High Court under Section 11(6) of the Act cannot be retrospectively invalidated in review sought on the strength of an interpretation of a similar clause in a subsequent case.

29. In view of the above, the appointment of the arbitrator being contrary to the mandatory statutory provision is void *ab initio*. The impugned award is a nullity.

30. The appeal is allowed. The impugned judgment and the arbitral award are set aside.

31. All pending applications are also disposed of.

AVNEESH JHINGAN, J

SHAIL JAIN, J

NOVEMBER 5, 2026
Ch

Reportable: **Yes**

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15:12:21