
Abb India Limited Vs Bharat Heavy Electricals Limited

Original Miscellaneous Petition (T) (COMM.) No. 48 Of 2020, Miscellaneous Application No. 7876 Of 2020

Court: Delhi High Court

Date of Decision: Nov. 2, 2020

Acts Referred:

Constitution Of India, 1950 " Article 141#Arbitration and Conciliation Act, 1996 " Section 11(6), 12(5), 13, 14, 14(1)(a), 15, 21, 25(a), 34, 85, 85(1), 85(2)(a)#Arbitration and Conciliation (Amendment) Act, 2015 " Section 8, 8(ii), 26

Hon'ble Judges: C. Hari Shankar, J

Bench: Single Bench

Advocate: Mohna M. Lal, Geetali Talukdar, Debasis Modak, Atul Shanker Mathur, Prabal Mehrotra, Umang Katariya

Final Decision: Dismissed

Judgement

C. Hari Shankar, J

1. This petition, under Section 14(1)(a) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the 1996 Act"), seeks a

declaration that the mandate of Mr. A. Muraleedharan, Advocate, who was appointed as sole arbitrator by the respondent, to arbitrate on the disputes

between the petitioner and respondent, stands terminated de jure, and also calls on this Court to appoint a substitute arbitrator, to continue with the

arbitral proceedings.

2. The issue in controversy is purely legal in nature. No detailed allusion to facts is, therefore, necessary.

3. In connection with three Letters of Award, dated 4th November, 2009, whereunder work was awarded, to the petitioner by the respondent, disputes

arose. Clause 33.1 of the General Commercial Terms and Conditions (hereinafter referred to as "GCC"), governing the relationship between the

petitioner and the respondent, provided for resolution of such disputes, and read thus:

33.1 In the event of any dispute or difference arising out of the execution of the Order/Contract or the respective rights and liabilities of the

parties or in relation to interpretation of any provision by the Seller/Contract in any manner touching upon the Order/Contract, such dispute of

difference shall (except as to any matters, the decision of which is specifically provided for therein) be referred to the arbitration of the person

appointed by the competent authority of the Purchaser.

Subject as aforesaid, the provisions of the Arbitration and Conciliation Act, 1996 (India) or statutory modifications or re-enactments thereof and the

rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause.

4. The Senior Deputy General Manager (hereinafter referred to as "the Senior DGM") in the office of the respondent wrote, on 14th March,

2014, to the Executive Director of the respondent (who was the "competent authority" within the meaning of Clause 33.1 of the GCC), alleging

defaults on the petitioner's part, and calling on the Executive Director (hereinafter referred to as "ED") to appoint an arbitrator to adjudicate

the claims of the respondent. A copy of the letter was marked to the petitioner, as "counter party". The petitioner, vide response dated 15th

March, 2014, denied the allegations. The ED of the respondent, thereupon, appointed Mr. Varinder Pandhi, Ex ED (HEEP) of the respondent as the

sole arbitrator, to arbitrate on the dispute. Mr. Pandhi accepted the assignment, vide letter dated 22nd April, 2014, whereafter Statement of Claim was

filed, by the respondent, before Mr. Pandhi on 4th June, 2014, claiming Rs. ₹ 7,38,61,975.43, along with interest, from the petitioner. The petitioner

filed a counterclaim, for Rs. ₹ 1,08,42,788/-, along with interest.

5. Proceedings commenced before Mr. Pandhi, and continued, till, vide e-mail dated 2nd May, 2017, Mr. Pandhi circulated, to the petitioner and

respondent, "final issues", framed by him. It is alleged that the e-mail did not bear the signatures of Mr. Pandhi. The petitioner responded, vide e-

mail dated 5th May, 2017, addressed to Mr. Pandhi, pointing out that the issues, as agreed between the petitioner and respondent, had not been

incorporated in the list of issues framed by him. Mr. Pandhi was, therefore, requested to incorporate the said issues.

6. Mr. Pandhi responded only vide e-mail dated 16th April, 2018, stating that the issues framed were filed, and requesting the parties to fix a

convenient date of hearing.

7. Apparently, after 16th April, 2018, there was no communication, whatsoever, from Mr. Pandhi, despite communications from the petitioner, to him,

on 20th April, 2018, 23rd April, 2018 and 19th August, 2019, and from the respondent on 18th July, 2018, 7th January, 2019 and 4th May, 2019. In

these circumstances, the petitioner submits that the mandate of Mr. Pandhi, as sole arbitrator, stood terminated de facto, under Section 14(1)(a) of the

1996 Act. Further, vide letter dated 11th February, 2020, the respondent terminated the mandate of Mr. Pandhi, under Section 14(1)(a).

8. Vide letter dated 27th July, 2020, the respondent nominated Mr. A. Muraleedharan, Advocate, as Sole Arbitrator, to arbitrate on the disputes

between the petitioner and respondent, in place of Mr. Pandhi. The letter was issued "by way of exercise of the power vested under Clause 33 of

GCC. A copy was marked the petitioner.

9. The petitioner, vide response dated 5th August, 2020, objected to the appointment of Mr. Muraleedharan as Sole Arbitrator, relying, for the purpose,

on Section 12(5) of the 1996 Act. It was pointed out, in the said response, that Clause 33.1 of the GCC made "the provisions of the Arbitration and

Conciliation Act, 1996 or statutory modifications or re-enactments thereof and the rules made thereunder and for the time being in force

applicable to the arbitral proceedings. This, it was contended, resulted in all provisions of the 1996 Act, including amendments and re-enactments

thereof, becoming applicable to the arbitral proceedings between the petitioner and respondent. Section 12(5) of the 1996 Act, as amended (by way of

insertion) by Section 8 of the Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter referred to as "the 2015 Amendment Act") was

also, therefore, applicable. By application of the said amended Section 12(5), the petitioner contended that the respondent stood disabled from

appointing any substitute arbitrator, and the appointment of Mr. Muraleedharan, consequently, stood vitiated. The respondent was, therefore, requested

to withdraw the letter, dated 27th July, 2020, appointing Mr. Muraleedharan as the substitute Sole arbitrator, to arbitrate on the disputes between the

parties.

10. The respondent replied, vide communication dated 24th August, 2020, disputing the petitioner's contention, on the ground that the arbitral

proceedings had commenced prior to the amendment of Section 12(5) of the 1996 Act which, therefore, was not applicable. Reliance was placed, for

the said purpose, on the judgement of the Supreme Court in Rajasthan Small Industries Corporation Ltd v. Ganesh Containers Movers Syndicate

(2019) 3 SCC 282. The appointment of Mr. Muraleedharan as the substitute Sole Arbitrator was, therefore, contended the respondent, legal and valid.

11. Aggrieved, the petitioner has moved the present petition before this Court, seeking, as noted hereinabove, a declaration that Mr. Muraleedharan

could not be invested with the mandate to act as Sole arbitrator, to arbitrate on the disputes between the petitioner and respondent. As a consequential

prayer, this Court has been requested to appoint a substitute Sole arbitrator, in place of Mr. Pandhi.

12. Notice was issued, in this petition, on 8th September, 2020, on which date learned counsel for both parties agreed that exchange of pleadings was

not necessary, and that submission of written arguments, along with oral hearing, would suffice. Resultantly, I have heard, at length, Ms. Mohna M.

Lal, learned counsel for the petitioner and Mr. Atul Shanker Mathur, for the respondent. Written submissions have also been filed by both learned

Counsel.

Rival Submissions

13. Relying on the judgements of the Supreme Court in TRF Ltd v. Energo Engineering Projects Ltd (2017) 8 SCC 377, Bharat Broadband Network

Ltd v. United Telecoms Ltd (2019) 5 SCC 755 and Perkins Eastman Architects DPC v. HSCC (India) Ltd 2019 SCC OnLine SC 1517, in conjunction

with Section 12(5) of the 1996 Act, Ms. Lal submits that the respondent could not legally appoint a substitute arbitrator. The arbitration clause, in

Rajasthan Small Industries Corporation¹, she submits, is totally different from the arbitration clause in the present case, and renders the said decision

inapplicable as a precedent in the present matter. Apropos the contention, of the respondent, that Section 12(5) would not apply as the arbitral

proceedings had commenced prior to the insertion of the said provision by the 2015 Amendment Act, Ms. Lal places reliance on the judgement of the

Supreme Court in Thyssen Stahlunion GMBH v. SAIL (1999) 9 SCC 334 and of a Division Bench of this Court in DDA v. Bhai Sardar Singh ILR

(2004) 1 Delhi 341, to contend that, by making the provisions of the 1996 Act, along with statutory modifications and re-enactments thereof, for the

time being in force, applicable to the agreement between the petitioner and respondent, Clause 33.1 of the GCC, ipso facto, made Section 12(5) of the

1996 Act, as amended by the 2015 Amendment Act, also applicable. In this context, Ms. Lal sought to point out that Section 26 of the 2015

Amendment Act was expressly made subject to agreement, between the parties, to the contrary, as it used the expression "unless the parties

otherwise agree". Ms. Lal submitted that the stipulation, in Clause 33.1 of the GCC, that the 1996 Act, with its statutory modifications and re-

enactments, for the time being in force, would apply to arbitration proceedings under the said Clause, amounted to such an agreement, resulting in the

1996 Act, with all its amendments, including the Section 12(5), becoming applicable to the arbitral proceedings between the petitioner and respondent,

even though they commenced prior to 23rd October, 2015. Ms Lal also places reliance on the judgements, of learned Single Judges of this Court in

BVSR-KVR (Joint Ventures) v. Rail Vikas Nigam Ltd 2020 (1) Arb LR 580 (Delhi) and Ashiana Infrahomes Pvt Ltd v. Adani Power Ltd 2018 (3)

Arb LR 270 (Delhi).

14. Responding to the submissions of Ms. Lal, Mr. Mathur, learned Counsel for the respondent, submitted that the issue in controversy stands squarely

covered, in favour of the respondent, by the judgement of the Supreme Court in S. P. Singla Constructions (P) Ltd v. State of Himachal Pradesh

(2019) 2 SCC 488. He also relied on U.O.I. v. Parmar Construction Company (2019) 15 SCC 682 and Rajasthan Small Industries Corporation¹. He

submitted that para 24 of the report in DDA v. Bhai Sardar Singh ILR (2004) 1 Delhi 341, in fact, militated against the stand being adopted by Ms Lal.

Mr. Mathur submitted that the date of invocation of arbitration determined the applicability, or otherwise, of Section 12(5), and that, the present

arbitration having commenced prior to 23rd October, 2015, Section 12(5) was inapplicable. No infirmity, therefore, submits Mr. Mathur, attaches to the

appointment of Mr. Muraleedharan as the substitute Sole Arbitrator, in place of Mr. Pandhi.

15. Ms Lal, in rejoinder, submitted that DDA v. Bhai Sardar Singh ILR (2004) 1 Delhi 341 in no way militated against the stands adopted by her, and

relied, for the purpose, on para-24 of the judgement itself.

Analysis

16. The issue to be determined is, quite obviously, whether Section 12(5) of the 1996 Act would apply to the facts of the present case, or not.

17. Section 12(5) of the 1996 Act, as inserted by Section 8(ii) of the 2015 Amendment Act, reads thus:

“(5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the

dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:

Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in

writing.”

18. Section 26 of the 2015 Amendment Act read as under:

“26. Nothing contained in this Act shall apply to the arbitral proceedings commenced, in accordance with the provisions of section 21 of the

principal Act, before the commencement of this Act unless the parties otherwise agree but this Act shall apply in relation to arbitral proceedings

commenced on or after the date of commencement of this Act.”

(Emphasis supplied)

19. The six judgements of the Supreme Court, addressing, specifically, the applicability of Section 12(5), in the context of the facts, and cited by one

side or the other are, chronologically, TRF (2017) 8 SCC 377, S.P. Singla Constructions Pvt Ltd (2019) 2 SCC 488, Rajasthan Small Industries

Corporation Ltd (2019) 3 SCC 282, Parmar Construction Company (2019) 15 SCC 682, Bharat Broadband Network Ltd (2019) 5 SCC 755 and

Perkins Eastman Architects DPC 2019 SCC ONLINE SC 1517.

20. TRF (2017) 8 SCC 377 is not of particular relevance, as it did not address the issue of the applicability of Section 12(5), vis-à-vis the

commencement of the arbitration, or the continuance thereof. The issue before the court, in that case, was quite different. The Managing Director of

the respondent was appointed as sole arbitrator, to arbitrate on the disputes between the appellant and the respondent. The appellant challenged the

appointment, on the ground that, the Managing Director, being ineligible to act as arbitrator, in view of Section 12(5), was also, ipso facto, ineligible to

appoint an arbitrator. The Supreme Court was, therefore, essentially concerned with whether the inability, statutorily cast by Section 12(5), was

restricted to “inability to act”, or extended to “inability to appoint”. The Supreme Court held that a person who had, by operation of law,

become ineligible to act as arbitrator, was also ineligible to appoint any arbitrator, as "one cannot have a building without the plinth". The appellant

before the Supreme Court, therefore, succeeded. In the case before me, Mr. Mathur does not seek to contend that, as Mr. Muraleedharan was

appointed by his client, the appointment was valid. The contention of Mr. Mathur is, rather, that Section 12(5) does not apply, at all, as the arbitral

proceedings had commenced prior to 23rd October, 2015. TRF (2017) 8 SCC 377 does not concern itself with such a dispute.

21. S.P. Singla Constructions Pvt Ltd (2019) 2 SCC 488 is, chronologically, the next decision in sequence but, before examining the said judgement, it

is necessary to take stock of the judgements of a learned Single Judge of this Court, in Ratna Infrastructure Projects Pvt Ltd v. Meja Urja Nigam Pvt

Ltd¹¹, for reasons which will become apparent, presently.

22. Disputes arose, in Ratna Infrastructure Projects Pvt Ltd 2017 SCC OnLine Del 7808, in the context of a contract, dated 21st September, 2010,

between the petitioner and the respondent, in that case. The arbitration clause, in the agreement between the petitioner and the respondent, read thus:

"Except where otherwise provided for in the contract all questions and disputes relating to the meaning of the specifications designs drawings and

instructions herein before mentioned and as of the quality of workmanship or materials used on the work or as to any other question, claim, right,

matter or thing whatsoever in any way arising out of or relating the contract designs, drawing specifications, estimates, instructions orders or these

conditions of otherwise concerning the work or the execution or failure to execute the same whether arising during the progress of the work or after

the completion or abandonment thereof shall be referred to the sole arbitration of the General Manager of NTPC Ltd (formerly National Thermal

Power Corporation Ltd), and if the General Manager is unable or unwilling to act, to the Sole Arbitration of some other person appointed by the

Chairman and Managing Director, NTPC Limited (formerly National Thermal Power Corporation Ltd.) willing to act as such Arbitrator. There will be

no objection if the Arbitrator so appointed is an employee of NTPC Limited (formerly National Thermal Power Corporation Ltd.) and that he had to

deal with the matters to which the contract relates and that in the course of his duties as such he had expressed views on all or any of the matters in

dispute or difference. The Arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any

reason as aforesaid at the time of such transfer vacation of office or inability to act, Chairman and Managing Director NTPC Limited (formerly

National Thermal Power Corporation Ltd.) shall appoint another person to act as arbitrator in accordance with the terms of the Contract. It is also a

term of this contract that no person other than a person appointed by the CMD NTPC Ltd. as aforesaid should act as arbitrator and if for any reason

that is not possible the matter is not to be referred to arbitration at all.

Subject as aforesaid the provisions of Arbitration Act 1940 or any statutory modification or re-enactment thereof and the rules made thereunder and

for the time being in force shall apply to the arbitration under this Clause.

(Emphasis supplied)

Vide Amendment No. 1, the contract was amended to, inter alia, replace the words "Arbitration Act 1940" with the words "Arbitration and

Conciliation Act 1996", in the afore-extracted arbitration clause in the GCC. The same Amendment also replaced the words "shall be referred to

... unable", in the arbitration clause, with the words "shall be referred to the Sole arbitration of the Project-in-Charge concerned of MUNPL and

if the Project-in-Charge is unable".

23. The disputes, which were initiated by the petitioner Ratna Infrastructure Projects Pvt. Ltd (hereinafter referred to as "RIPPL") were referred

to arbitration, and Mr. Narsingh, Project-in-Charge of the Project, was appointed sole arbitrator. During the course of the arbitration proceedings, Mr.

Narsingh ceased to be the Project-in-Charge, w.e.f. 1st June, 2016. This prompted RIPPL to contend that Mr. Narsingh could no longer continue as

the sole arbitrator, as the sole arbitrator was, per contra, required to be the Project In charge. Applications, preferred before Mr. Narsingh, seeking his

recusal as Sole Arbitrator, were rejected by him, resulting in RIPPL petitioning this Court. It was contended, by RIPPL, before this Court, that the

respondent Meja Urja Nigam Pvt. Ltd. (MUNPL) ought to have appointed a substitute arbitrator, in place of Mr. Narsingh, within 30 days from 1st

June, 2016. On MUNPL failing to do so, RIPPL moved this Court.

24. Three days before service of advance notice on MUNPL, Mr. Ramesh Kher, one of its General Managers, was appointed by MUNPL as the

new Sole Arbitrator. RIPPL contended, however, that MUNPL had no authority to do so, in view of the law laid down by the Supreme Court in Datar

Switchgears Ltd v. Tata Finance Ltd (2000) 8 SCC 151. It was also contended that, as the arbitration clause provided for application, to the contract,

of the 1996 Act, with all its statutory modifications and re-enactments, Section 12(5) of the 1996 Act would also apply. In view thereof, the General

Manager of MUNPL, it was contended, could not be appointed as Sole Arbitrator.

25. Taking up, first, the issue of applicability of Section 12(5) of the 1996 Act, to the arbitral proceedings between RIPPL and MUNPL, this Court,

relying on Thyssen Stahlunion GMBH (1999) 9 SCC 334, held that the stipulation, in the arbitration clause, that the 1996 Act, with all its statutory

modifications and re-enactments would apply, clearly operated to make applicable, to the arbitral proceedings, Section 12(5) of the 1996 Act. By virtue

thereof, this Court held that Mr. Kher, who was serving as the General Manager of MUNPL, was disqualified from acting as sole arbitrator. This

Court, therefore, interceded and appointed a retired Hon'ble Judge of the Supreme Court as the Sole Arbitrator, to arbitrate on the disputes

between the parties.

26. The Single Bench of this Court, in Ratna Infrastructure Projects Pvt Ltd 2017 SCC OnLine Del 7808, therefore, clearly held that the stipulation, in

the arbitration clause, that the "1996 Act with all its modifications and re-enactments" for the time being in force would apply, resulted in

Section 12(5) of the 1996 Act (as inserted) also becoming applicable, though the provision was inserted only after the agreement had been executed

between the parties.

27. Having thus noticed Ratna Infrastructure Projects Pvt Ltd 2017 SCC OnLine Del 7808, I turn to S.P. Singla Constructions Pvt Ltd (2019) 2 SCC

488.

28. The arbitration clause [Clause 65], of the General Conditions of Contract between the appellant and the respondent in S. P. Singla Constructions

Pvt Ltd (2019) 2 SCC 488 read as under:

"Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, designs drawings and

instructions therein before mentioned and as to the quality of workmanship of materials used on the work or as to any other question, claim, right,

matter or thing whatsoever in any way arising out of or relating to the contract designs drawings, specification and estimates, instructions, orders or

these conditions otherwise concerning the works of the execution or failure to execute the same whether arising during the progress of the work or

after the completion or abandonment thereof shall be referred to the sole arbitration of the person appointed by the Engineer-in-Chief/Chief Engineer,

Himachal Pradesh Public Works Department. It will be no objection to any such appointment that the arbitrator so appointed is a Government servant

that he had to deal with the matters to which the contract relates, and that in the course of his duties as government servant he had expressed views

on all or any of the matters in dispute or different. The arbitrator to whom the matter is originally referred being transferred or vacating his office or

being unable to act for any reason that the Chief Engineer, H.P. PWD, at the time of such transfer, vacation of office or inability to act, shall appoint

another person to act as arbitrator in accordance with the terms of the contract. Such person shall be entitled to proceed with the reference from the

stage at which it was left by his predecessor. It is also a term of this contract that no person other than a person appointed by the Chief Engineer,

H.P. PWD should act as arbitrator and if for any reason that is not possible, the matter is not to be claim in dispute is Rs. 50,000/- (Rupees fifty

thousand) and above, the arbitrator shall give reasons for the award.

Subject as aforesaid the provision of the Arbitration Act, 1940 or any statutory modification or re-enactment thereof and the rules made thereunder

and for the time being shall apply to the arbitration proceeding under this clause.

(Emphasis supplied)

29. Disputes arose between the appellant S.P. Singla Constructions Pvt Ltd. (hereinafter referred to as "SPSCL") and the State of Himachal

Pradesh, relating to a contract awarded to the former by the latter. The dispute was referred, on 30th October, 2013, to the Superintendent Engineer,

Arbitration Circle, H.P. PWD, Solan as the Sole Arbitrator appointed by the Chief Engineer, H.P. PWD in accordance with Clause (65). The Sole

Arbitrator entered upon reference on 11th November, 2013. SPSCL remained absent from the arbitration proceedings, and defaulted in filing

statement of claim, as a result of which the proceedings were terminated under Section 25(a) of the 1996 Act.

30. SPSCL petitioned the High Court, under Section 11(6) of the 1996 Act, praying for appointment of an independent arbitrator. The petition was

dismissed, by the High Court, on the ground that the remedy, for any party aggrieved by the appointment of the arbitrator in terms of the agreement

between the parties, was by way of a petition under Section 13 or, after passing of the Award, by way of challenge under Section 34. Reliance was

placed, for so holding, on the judgement of the Supreme Court in Antrix Corporation Ltd v. Devas Multimedia (P) Ltd (2014) 11 SCC 560. The Sole

Arbitrator having been appointed in accordance with Clause (65), the High Court opined that the appointment could not be challenged under Section

11(6). SPSCL appealed, against the decision, to the Supreme Court.

31. Before the Supreme Court, SPSCL argued that appointment of the Superintendent Engineer as the Sole Arbitrator was impermissible. Two

reasons were cited; firstly, that the Sole Arbitrator could not be appointed by the office, but had to be appointed by name and, secondly, that the

appointment was in violation of Section 12(5). Reliance was placed on the judgement of this Court in Ratna Infrastructure Projects (P) Ltd 2017 SCC

OnLine Del 7808. The first argument is of no relevance to the present controversy, though the second, undoubtedly, is.

32. The Supreme Court set out the submission, of SPSCL, on the second aspect, thus (in para 15 of the report):

"Drawing our attention to the wordings in Clause (65) that the agreement is subject to any statutory modification or re-enactment thereof and

the rules made thereunder and for the time being shall apply to the arbitration proceeding under this clause, the learned Senior Counsel contended

that these words would certainly attract Section 12(5) of the Act as amended with effect from 23-10-2015. In this regard, the learned Senior Counsel

placed reliance upon the Delhi High Court judgment in Ratna Infrastructure Projects (P) Ltd. v. Meja Urja Nigam (P) Ltd., 2017 SCC OnLine Del

7808 wherein interpreting the similar words in a contract, the Delhi High Court held that those words satisfy the requirement of Section 26 (amended

Act of 2015) of there being an agreement between the parties that the Act as amended with effect from 23-10-2015 will apply

(Emphasis in original)

33. Having thus set out the contention of SPSCL, advanced before it, the Supreme Court went on, in para 16 of the report, to hold thus:

“Considering the facts and circumstances of the present case, we are not inclined to go into the merits of this contention of the appellant nor

examine the correctness or otherwise of the above view taken by the Delhi High Court in Ratna Infrastructure Projects case; suffice it to note that as

per Section 26 of the Arbitration and Conciliation (Amendment) Act, 2015, the provisions of the Amended Act, 2015 shall not apply to the arbitral

proceedings commenced in accordance with the provisions of Section 21 of the principal Act before the commencement of the Amendment Act

unless the parties otherwise agree. In the facts and circumstances of the present case, the proviso in Clause (65) of the general conditions of the

contract cannot be taken to be the agreement between the parties so as to apply the provisions of the amended Act. As per Section 26 of the Act, the

provisions of the Amendment Act, 2015 shall apply in relation to arbitral proceedings commenced on or after the date of commencement of the

Amendment Act, 2015 (w.e.f. 23-10-2015). In the present case, arbitration proceedings commenced way back in 2013, much prior to coming into

force of the amended Act and therefore, provisions of the amended Act cannot be invoked.”

(Emphasis supplied)

34. Para 25 of the report went on to observe that “in this case, the agreement between the parties is dated 19-12-2006 and the relationship

between the parties are governed by the general conditions of the contract dated 19-12-2006, the provisions of the Amendment Act, 2015 cannot be

invoked.”

35. The observations and findings of the Supreme Court, in S.P. Singla Constructions Pvt Ltd (2019) 2 SCC 488, may be enumerated thus:

(i) In view of the facts and circumstances of the case before it, the Supreme Court did not enter into the merits of the contention, of SPSCCL, that the

concluding caveat, in Clause (65) of the GCC, made Section 12(5) of the 1996 Act applicable to the arbitral proceedings between SPSCCL and the

State of Himachal Pradesh. Nor did the Supreme Court examine the correctness, or otherwise, of the judgement of this Court in Ratna Infrastructure

Projects (P) Ltd 2017 SCC OnLine Del 7808.

(ii) Section 26 of the 2015 Amendment Act makes the provisions of Section 12(5) inapplicable to arbitral proceedings commenced before 23rd

October, 2015.

(iii) The arbitral proceedings, between SPSCCL and the State of Himachal Pradesh had commenced in 2013, much prior to 23rd October, 2015.

(iv) “In the facts and circumstances of the case before it, the proviso in Clause (65) of the GCC could not be regarded as an “agreement

between the parties”, so as to make Section 12(5) applicable.

36. While examining the applicability, to the present case, of S.P. Singla Constructions Pvt Ltd (2019) 2 SCC 488, it has to be remembered that, unlike

the present case, the caveat in the arbitral Clause (65) of the GCC, in that case, made “the Arbitration Act, 1940 or any statutory modification or

re-enactment thereof” for the time being applicable. On the strength of this clause, SPSCL was seeking, not only to make the 1996 Act applicable,

but to also make, applicable, Section 12(5) of the 1996 Act, which came into effect only on 23rd October, 2015. The issue before the Supreme Court

was, therefore, whether Section 12 (5) of the 1996 Act, which came into effect only on 23rd October, 2015, could be regarded as a “provision of

the Arbitration Act, 1940 or any statutory modification or re-enactment thereof ... for the time being”.

37. The arbitration clause in Rajasthan Small Industries Corporation¹, which is the next judgement chronologically arising for consideration, did not

specify that the Arbitration Act, 1940 or the 1996 Act, would apply. Nor did it contain any caveat, such as that which existed in Ratna Infrastructure

Projects Pvt Ltd 2017 SCC OnLine Del 7808, S.P. Singla Constructions Pvt Ltd (2019) 2 SCC 488 or in the present case, to the effect that the

statute, with future modifications, amendments, etc., would be applicable. In the circumstances, the Supreme Court merely held that, as the arbitral

proceedings had commenced prior to 23rd October, 2015, Section 12(5) would not apply. How, and whether, this position would change, if the 1996

Act, with its amendments and modifications, had been made applicable, never came up for examination. This decision cannot, therefore, assist in

resolution of the present controversy. The reliance, by the respondent, on the judgement in Rajasthan Small Industries Corporation¹ is, therefore,

misplaced.

38. Parmar Construction Company (2019) 15 SCC 682 is a decision which considerably impacts the outcome of these proceedings. The Supreme

Court, in the very first para of the judgment, delineated three issues, arising for consideration, of which the first issue was worded thus:

“(1) The High Court was justified in invoking amended provision which has been introduced the Arbitration and Conciliation (Amendment Act),

2015 with effect from 23rd October, 2015 (hereinafter being referred to as “Amendment Act, 2015”) ?

Clearly, therefore, the very first issue, identified by the Supreme Court, as arising before it, was the issue with which we are concerned in the present

case. We may turn, therefore, to the facts.

39. The relevant sub-clauses of Clause 64 of the agreement between Parmar Construction Company (hereinafter referred to as “PCC”) and the

UOI, which provided for the resolution of disputes by arbitration, may be reproduced thus:

“64. (1) Demand for Arbitration:

64.(1) (i) In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective

rights and liabilities of the parties on any matter in question, dispute or difference on any account or as to the withholding by the Railways of any

certificate to which the contractor may claim to be entitled to, or if the Railways fails to make a decision within 120 days, then and in any such case,

but except in any of the "excepted matters" referred to in Clause 63 of these Conditions, the contractor, after 120 days but within 180 days of his

presenting his final claim on disputed matters shall demand in writing that the dispute or difference be referred to arbitration.

xxx

64. (3) Appointment of Arbitrator:

64.(3)(a)(i) In cases where the total value of all claims in question added together does not exceed Rs.25,00,000 (Rupees twenty-five lakhs only), the

Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a gazetted Officer of the Railways not below JA Grade, nominated by the General

Manager. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by GM.

(Authority: Railway Board's Letter no. 2012/CEI/CT/ARB./24, Dated 22-10-2013/5-11-2013)

xxx

64.(7) Subject to the provisions of the aforesaid Arbitration and Conciliation Act, 1996 and the Rules thereunder and any statutory modifications

thereof shall apply to the arbitration proceedings under this Clause.

(Emphasis supplied)

40. PCC sent a notice, invoking arbitration, to the appellant-Union of India, for appointment of an arbitrator, on 23rd December, 2013. On the appellant

failing to do so, PCC moved the Rajasthan High Court under Section 11(6).

41. The High Court rejected the petition of PCC, preferred under Section 11(6), relying, for the purpose, on Section 12(5), observing that Section

12(5), as inserted by the 2015 Amendment Act, would apply to all pending proceedings. As the arbitral proceeding, between PCC and the UoI, was

pending on 23rd October, 2015 [when the Section 12(5) came into force], the High Court applied the provision and appointed a retired Judge of the

High Court as the Sole Arbitrator, to arbitrate on the disputes. Aggrieved thereby, the UoI appealed to the Supreme Court.

42. The Supreme Court, in paras 26, 27 and 28 of the report rejected, in so many words, the contention of the UoI and held that, as the arbitral

proceedings had commenced prior to 23rd October, 2015, Section 12(5) would not apply. Paras 26, 27 and 28, to the extent they are relevant, may be

reproduced thus:

"26. The conjoint reading of Section 21 read with Section 26 leaves no manner of doubt that the provisions of the 2015 Amendment Act shall not

apply to such of the arbitral proceedings which have commenced in terms of the provisions of Section 21 of the Principal Act unless the parties

otherwise agree.

27. We are also of the view that the 2015 Amendment Act which came into force, i.e. on 23-10-2015, shall not apply to the arbitral proceedings which

have commenced in accordance with the provisions of Section 21 of the principal Act, 1996 before the coming into force of 2015 Amendment Act

unless the parties otherwise agree.

28. In the instant case, the request was made and received by the appellants in the appeal concerned much before the 2015 Amendment Act came into

force. Whether the application was pending for appointment of an arbitrator or in the case of rejection because of no claim as in the instant case for

appointment of an arbitrator including change/substitution of arbitrator, would not be of any legal effect for invoking the provisions of 2015 Amendment

Act in terms of Section 21 of the principal Act, 1996. In our considered view, the applications/requests made by the respondent contractors deserve to

be examined in accordance with the principal Act, 1996 without taking resort to the 2015 Amendment Act which came into force from 23-10-2015. ¶

(Emphasis supplied)

43. Parmar Construction Company (2019) 15 SCC 682, therefore, was categorical in holding that, in respect of arbitration proceedings which had

commenced prior to 23rd October, 2015, Section 12(5) would not apply. In doing so, the Supreme Court placed reliance on S. P. Singla Constructions

(P). Ltd. (2019) 2 SCC 488.

44. It is also significant that, unlike S. P. Singla Constructions (P). Ltd. (2019) 2 SCC 488, the caveat contained in Clause 64(7) of the agreement

between the parties in Parmar Construction Company (2019) 15 SCC 682 made the 1996 Act, and statutory modifications thereof, applicable to the

arbitration proceedings between the parties. As against this, the arbitration clause in S. P. Singla Constructions (P). Ltd. (2019) 2 SCC 488 it may be

recollected, made the 1940 Act, with its modifications, etc., applicable to the arbitral proceedings.

45. Parmar Construction Company (2019) 15 SCC 682 is, therefore, more directly on the point, insofar as the present controversy is concerned.

46. Bharat Broadband Network Ltd (2019) 5 SCC 755, like Rajasthan Small Industries Corporation Ltd (2019) 3 SCC 282, involved an arbitration

clause which did not contain any caveat, similar to that which was to be found in in Ratna Infrastructure Projects Pvt Ltd 2017 SCC OnLine Del 7808,

S. P. Singla Constructions (P). Ltd. (2019) 2 SCC 488, Parmar Construction Company (2019) 15 SCC 682 or the present case.

47. Clause 20.1 of the contract, in Bharat Broadband Network Ltd (2019) 5 SCC 755, required disputes to be referred to the sole arbitration of the

CMD of Bharat Broadband Network Limited (hereinafter referred to as "BBNL") or to the officer entrusted to perform the functions of CMD.

48. Disputes arose, resulting in invocation of the arbitration clause by the respondent-United Telecoms Limited (hereinafter referred to as "UTL")

vide letter dated 3rd January, 2017. The CMD of BBNL appointed Mr. K.H.Khan as the Sole Arbitrator vide letter dated 17th January, 2017.

Thereafter, consequent on the rendition of the judgment in TRF Ltd (2017) 8 SCC 377, by the Supreme Court, on 3rd July, 2017, BBNL applied, to the

Sole Arbitrator, requesting him to withdraw from the proceedings, as he had become de jure unable to act as arbitrator.

49. The application was rejected by the Sole Arbitrator, on 21st October, 2017, prompting BBNL, to approach this Court, under Sections 14 and 15 of

the 1996 Act, for termination of the mandate of Mr. Khan and for appointment of a substitute arbitrator in his place.

50. The arbitration clause, in the agreement between BBNL and UTL, read thus:

“20. ARBITRATION

20.1 In the event of any question, dispute or difference arising under the agreement or in connection therewith (except as to the matters, the decision

to which is specifically provided under this agreement), the same shall be referred to the sole arbitration of the CMD, BBNL or in case his designation

is changed or his office is abolished, then in such cases to the sole arbitration of the officer for the time being entrusted (whether in addition to his own

duties or otherwise) with the functions of the CMD, BBNL or by whatever designation such an officer may be called (hereinafter referred to as the

said officer), and if the CMD or the said officer is unable or unwilling to act as such, then to the sole arbitration of some other person appointed by the

CMD or the said officer. The agreement to appoint an arbitrator will be in accordance with the Arbitration and Conciliation Act 1996. There will be no

objection to any such appointment on the ground that the arbitrator is a government servant or that he has to deal with the matter to which the

agreement relates or that in the course of his duties as a government servant/PSU Employee he has expressed his views on all or any of the matters in

dispute. The award of the arbitrator shall be final and binding on both the parties to the agreement. In the event of such an arbitrator to whom the

matter is originally referred, being transferred or vacating his office or being unable to act for any reason whatsoever, the CMD, BBNL or the said

officer shall appoint another person to act as an arbitrator in accordance with terms of the agreement and the person so appointed shall be entitled to

proceed from the stage at which it was left out by his predecessors.”

51. Clearly, there was, in the arbitration agreement forming subject matter of consideration in Bharat Broadband Network Ltd (2019) 5 SCC 755, no

provision, akin to the second para of Clause 33.1 of the GCC in the present case, or to similar clauses, as existed in Ratna Infrastructure Projects Pvt

Ltd 2017 SCC OnLine Del 7808, S. P. Singla Constructions (P). Ltd. (2019) 2 SCC 488 and Parmar Construction Company (2019) 15 SCC 682.

52. In the circumstances, the Supreme Court held that the case was squarely covered by Section 12(5) of the 1996 Act, as the arbitral proceedings

had commenced after 23rd October, 2015 and that, therefore, Mr. Khan had become de jure unable to perform his functions as arbitrator. The High

Court was, therefore, directed to appoint a substitute arbitrator with consent of parties.

53. Unlike the present case, Bharat Broadband Network Ltd (2019) 5 SCC 755 relates to an arbitration which commenced after 23rd October, 2015

and cannot, therefore, impact the outcome of the present proceedings. Besides, as noticed hereinabove, there was no provision, in the agreement

between BBNL and UTL, similar to the second paragraph of Clause 33.1 of the GCC between the present petitioner and respondent.

54. Perkins Eastman Architects⁴ is, similarly, of little significance, insofar as the present controversy is concerned, as the appointment of the sole

arbitrator took place, in that case, on 30th July, 2019. The applicability of Section 12(5) of the 1996 Act, as inserted by the 2015 Amendment Act, was,

therefore, not in dispute. The Supreme Court, following its earlier decisions, including TRF Ltd (2017) 8 SCC 377, annulled the appointment of the

arbitrator and appointed a retired Hon'ble Judge of the Supreme Court as the arbitrator, in his place.

55. The above study reveals that the facts which obtained, and the dispute which arose, in Parmar Construction Company (2019) 15 SCC 682, were

substantially akin to the facts, and the dispute, in the present case. For all intents and purposes, the arbitration clause, in that case, was also similar to

the one before the petitioner and the respondent, with a caveat, akin to the caveat contained in the second paragraph of clause 33.1 of the GCC in the

present case. A specific contention was taken, before the Supreme Court, that, in view of the said caveat, Section 12(5), as inserted by the 2015

Amendment Act, would apply. The Supreme Court rejected the contention and held that the benefit of the Section 12(5) of the 1996 Act was not

available to PCC.

56. Reliance was placed, for this purpose, by the Supreme Court, on its earlier decision in S. P. Singla Constructions Pvt Ltd (2019) 2 SCC 488 There,

again, the dispute was similar to that in the present case. The second para of Clause (65) was similar to the caveat contained in Clause 64(7) in

Parmar Construction Company (2019) 15 SCC 682 and in the second para of Clause 33.1 of the GCC in the present case, the sole difference being

that, whereas the clause in Parmar Construction Company (2019) 15 SCC 682 and in the present case made the provisions of the 1996 Act, with

statutory modifications, applicable to the arbitral proceedings, the clause in S. P. Singla Constructions Pvt Ltd (2019) 2 SCC 488 made the provisions

of the 1940 Act, along with statutory modifications and re-enactments thereof, applicable to the arbitral proceedings.

57. No doubt, in S. P. Singla Constructions Pvt. Ltd⁹, the Supreme Court observed, towards the commencement of para 16 of the report, that it was

not inclined to go into the merits of the contentions, of SPSCCL, relying the applicability of the earlier decisions of this Court in Ratna Infrastructure

Projects Pvt Ltd 2017 SCC OnLine Del 7808, or to examine the correctness of the said decision. Had the Supreme Court not chosen to enter any

further observations or findings, the matter might have been different. As it is, however, the Supreme Court proceeded, in the same paragraph, to hold

that the proviso to Clause 65 of the GCC in that case, could not be taken as an agreement between the parties, so as to make Section 12(5) of the

1996 Act, applicable.

58. What is said by the Supreme Court constitutes declaration of the law under Article 141 of the Constitution of India, and not what is unsaid. It is the

exposition of the law, by the Supreme Court, which binds.

59. The discipline of Article 141 does not permit me, therefore, to ignore the declaration of the law, contained in para 16 of S.P. Singla Constructions

Pvt Ltd (2019) 2 SCC 488, merely because of the cautionary opening sentences in the said paragraph. The Supreme Court, in the said paragraph,

categorically held that "the proviso in clause 65 of the General Conditions of Contract cannot be taken to be the agreement between the parties so

as to apply the provisions of the Amended Act. Additionally, the Supreme Court has observed, in the very same paragraph, that the applicability of

Section 12(5) of the 1996 Act also stood ruled out by Section 26 of the 2015 Amendment Act, as the arbitral proceedings, had commenced in 2013,

i.e., much prior to 23rd October, 2015. The Supreme Court having, in Parmar Construction Company (2019) 15 SCC 682, found the decision in S.P.

Singla Constructions Pvt Ltd (2019) 2 SCC 488 to constitute a valuable precedent, the reliance, by the respondent, on the said decision, must be taken

to be justified.

60. In any event, as already noted hereinabove, the present case is, in any event, covered by Parmar Construction Company (2019) 15 SCC 682.

61. Ms. Lal sought to distinguish the decision in Parmar Construction Company (2019) 15 SCC 682 on the ground that the arbitration clause in that

case did not contain the words "and for the time being in force".

62. In my view, this distinction, even if semantically significant, is of no real conceptual consequence. I do not find any significant difference between

a provision which makes the 1996 Act, with its statutory modifications and enactments, applicable, and, a provision which makes the 1996 Act, with its

statutory modifications and enactment, for the time being in force, applicable. The expression "with its statutory modifications and enactments", or

any other such like expression, itself glances towards the future. The words "for the time being in force" appear to me, to be practically in the

nature of a superfluity, probably inserted ex abundanti cautela. It is axiomatic that only those provisions can apply, which are in force at the time of

application. A provision which has ceased to be in force cannot be made applicable, even by contract between the parties.

63. Though Ms. Lal is, strictly speaking, correct in her submission that the arbitration clause, in Parmar Construction Company (2019) 15 SCC 682, did

not contain the words "for the time being in force", the arbitration clause in S.P. Singla Constructions Pvt Ltd (2019) 2 SCC 488 "on which

Parmar Construction Company (2019) 15 SCC 682 relied" did contain the words "and for the time being", which, quite obviously, bear the same

connotation as the words “for the time being in force”. This semantic distinction, to which Ms. Lal drew my especial attention, cannot, therefore,

in my opinion, wish away the applicability, to the present case, of the judgment in *Parmar Construction Company* (2019) 15 SCC 682.

64. Ms. Lal relied on the judgment of the Supreme Court in *Thyssen Stahlunion GMBH* (1999) 9 SCC 334, as well as three decisions of this Court,

namely, *DDA v. Bhai Sardar Singh* ILR (2004) 1 Delhi 341, *BVSR-KVR (Joint Ventures)* 2020 (1) Arb LR 580 (Delhi) and *Ashiana Infrahomes Pvt*

Ltd 2018 (3) Arb LR 270 (Delhi).

65. In *Thyssen Stahlunion GMBH* (1999) 9 SCC 334, the controversy before the Supreme Court was, essentially, regarding the applicability of Section

85 of the 1996 Act, which reads thus:

“85. Repeal and savings.

(1) The Arbitration (Protocol and Convention) Act, 1937 (6 of 1937), the Arbitration Act, 1940 (10 of 1940) and the Foreign Awards (Recognition and

Enforcement) Act, 1961 (45 of 1961) are hereby repealed.

(2) Notwithstanding such repeal,

(a) the provisions of the said enactments shall apply in relation to arbitral proceedings which commenced before this Act came into force unless

otherwise agreed by the parties but this Act shall apply in relation to arbitral proceedings which commenced on or after this Act comes into force;

(b) all rules made and notifications published, under the said enactments shall, to the extent to which they are not repugnant to this Act, be deemed

respectively to have been made or issued under this Act.

66. Civil Appeal 61/1999, which was one of the appeals decided by *Thyssen Stahlunion GMBH* (1999) 9 SCC 334, was filed by M/s Rani

Construction (P) Ltd. (hereinafter referred to as “Rani Construction”). Clause 25 of the contract between Rani Construction and SAIL

constituted the arbitration agreement, and contained the following recital:

“Subject to the provisions of the contract to the contrary as aforesaid, the provisions of the Indian Arbitration Act, 1940 or any statutory

modification or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to all arbitration proceedings under this

clause.

67. The Division Bench of this Court, in an appeal from the judgement of the learned Single Judge, had held that Clause 25 did not operate to make the

provision of the 1996 Act applicable to the arbitral proceedings between the parties. The Supreme Court, in para 11 of the report, therefore identified

one of the key issues arising before it, for consideration, as whether, by operation of the afore-extracted clause, the 1996 Act could be made

applicable to the arbitral proceedings between Rani Construction and SAIL.

68. The Supreme Court was required to decide the controversy in the light of sub-sections (1) and (2)(a) of Section 85 of the 1996 Act.

69. The issue that arose before the Supreme Court (apropos Rani Construction) was whether Clause 25, in the Arbitration Agreement, amounted to

agreement "otherwise" by the parties, within the meaning of Section 85(2)(a), so as to render the 1940 Act inapplicable to the arbitral

proceedings. Ms. Lal relies on the following words, as contained in para 35 of the report:

"Parties can agree to the applicability of the new Act even before the new Act comes into force and when the old Act is still holding the field.

There is nothing in the language of Section 85(2)(a) which bars the parties from so agreeing. There is, however, a bar that they cannot agree to the

applicability of the old Act after the new Act has come into force when arbitral proceedings under the old Act have not commenced though the

arbitral agreement was under the old Act. Arbitration clause in the contract in the case of Rani Constructions (Civil Appeal 61 of 1999) uses

the expression "for the time being in force" meaning thereby that provision of that Act would apply to the arbitration proceedings which will be in force

at the relevant time when arbitration proceedings are held. We have been referred to two decisions- one of Bombay High Court and the other of

Madhya Pradesh High Court on the interpretation of the expression "for the time being in force" and we agree with them that the expression

aforementioned not only refers to the law in force at the time the arbitration agreement was entered into but also to any law that may be in force for

the conduct of arbitration proceedings, which would also include the enforcement of the award as well. Expression "unless otherwise agreed" as

appearing in Section 85(2)(a) of the new Act would clearly apply in the case of Rani Construction in Civil Appeal No. 61 of 1999. Parties were clear in

their minds that it would be the old Act or any statutory modification or re-enactment of that Act which would govern the arbitration. We accept the

submission of the appellant Rani Construction that parties could anticipate that the new enactment may come into operation at the time the disputes

arise. We have seen Section 28 of the Contract Act. It is difficult for us to comprehend that arbitration agreement could be said to be in restraint of

legal proceedings. There is no substance in the submission of respondent that parties could not have agreed to the application of the new Act till they

knew the provisions thereof and that would mean that any such agreement as mentioned in the arbitration clause could be entered into only after the

new Act had come into force. When the agreement uses the expressions "unless otherwise agreed" and "law in force" it does give option to the parties

to agree that new Act would apply to the pending arbitration proceedings. That agreement can be entered into even before the new Act comes into

force and it cannot be said that agreement has to be entered into only after coming into force of the new Act. "otherwise"

(Emphasis supplied)

70. Ms. Lal, seeks to draw an analogy from the opinion expressed in Thyssen Stahlunion GMBH (1999) 9 SCC 334, to contend that the use of the

expression "all statutory modifications or amendments thereof and the rules made thereunder and for the time being in force", as employed in the

second para in Clause 33.1 of the GCC in the present case, would result in making Section 12(5) of the 1996 Act, as inserted by the 2015 Amendment

Act, applicable to the present proceedings. The submission is superficially appealing but, on a deeper analysis, cannot be accepted. In the first place,

Parmar Construction Company (2019) 15 SCC 682 operates as a direct authority, against the petitioner, on similar facts, the only difference being that

the arbitration clause did not contain the words "for the time being in force". I have already opined, hereinabove, that the absence of these words

cannot dilute the applicability, to the present case, of the decision in Parmar Construction Company (2019) 15 SCC 682.

71. Besides, in Thyssen Stahlunion GMBH (1999) 9 SCC 334, there was no provision, similar to Section 26 of the 2015 Amendment Act, which is

crucial to adjudication of the dispute in the present case. In this context, it is necessary to distinguish the structure of Section 85(2)(a) of the 1996 Act,

with Section 26 of the 2015 Amendment Act. Whereas Section 85 (2)(a) of the 1996 Act made, inter alia, the 1940 Act applicable to arbitral

proceedings which commenced before the coming into force of the 1996 Act, unless otherwise agreed by the parties. Section 26 of the 2015

Amendment Act starts with a negative covenant, to the effect that nothing contained in the 2015 Amendment Act "which would include the

insertion of Section 12(5) of the 1996 Act" would apply to arbitral proceedings, commenced before the 2015 Amendment Act came into force, i.e.

before 23rd October, 2015. This negative covenant was subject to an exception in the case of agreement, otherwise, by the parties. Structurally and

conceptually, therefore, Section 26 of the 2015 Amendment Act is fundamentally different from Section 85(2)(a) of the 1996 Act, and requires,

therefore, to be interpreted, keeping this distinction in mind.

72. In the light of Parmar Construction Company (2019) 15 SCC 682, which was rendered in the wake of Section 26 of the 2015 Amendment Act,

this Court is bound to hold that the second para of Clause 33.2 of the GCC, in the present case, cannot result in Section 12(5) of the 1996 Act,

becoming applicable. Thyssen Stahlunion GMBH (1999) 9 SCC 334 cannot, therefore, come to the aid of the petitioner.

73. The judgments of this Court in DDA v. Bhai Sardar Singh ILR (2004) 1 Delhi 341, BVSR-KVR (Joint Ventures) 2020 (1) Arb LR 580 (Delhi) and

Ashiana Infrahomes Pvt Ltd 2018 (3) Arb LR 270 (Delhi) were all rendered prior to S.P. Singla Constructions Pvt Ltd (2019) 2 SCC 488 and Parmar

Constructions Company (2019) 15 SCC 682. I do not deem it necessary, therefore, to burden this judgment with any reference to the said decisions,

which have inevitably to cede place to the enunciation of the law in S.P. Singla Constructions Pvt Ltd (2019) 2 SCC 488 and, even more significantly,

in Parmar Constructions Company (2019) 15 SCC 682.

Conclusion

74. Resultantly, I am constrained to reject the submission, of Ms. Lal, that the appointment of Mr. A. Muraleedharan, Advocate, stood vitiated on

account of Section 12(5) of the 1996 Act, as inserted by the 2015 Amendment Act.

75. The petition, therefore, fails and is dismissed, with no orders as to costs.