2026:DHC:8624-DB

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

Date of decision:01.10.2026

\# **CNR No. DLHC010726262025**

\+ FAO(OS) (COMM) 150/2025 & CM APPL. 60540/2025

TARSEM JAIN .....Appellant

Through: Mr. Challa Kodanda Ram, Senior Adv. with Mr. Nikunj Dayal, Mr. Pramod Dayal, Mr. Ashwani Kumar Sharma, Mr. Prashant Joshi, Mr. Virat Singhal, Mr. Rakesh Kumar, Mr. Angad Mehta & Mr. Arsh, Advs.

versus

BHARAT FORGE LIMITED AND ANR. .....Respondents

Through: Mr. Nakul Dewan, Senior Adv. with Ms. Ashima Sharma, Mr. Parag Khandhar, Mr. Krishan Kumar, Mr. Satyender & Ms. Ananya Patwardhan, Advs. for R- 1 & 2.

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

AVNEESH JHINGAN, J. (ORAL)

1. The present composite appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') against the common judgement dated 26.05.2025 (hereinafter 'the impugned judgment') passed by the learned Single Judge.

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1.1 By the impugned judgement the learned Single Judge allowed the petitions under Section 34 of the Act filed by Bharat Forge Limited (for short 'BFL') and BF Infrastructure Limited (for short 'BF Infra') (hereinafter collectively referred to as 'the respondents') and set aside the award dated 10.05.2019. It was held that the sole arbitrator was appointed unilaterally. The execution petition filed by Tarsem Jain (hereinafter 'the appellant') was dismissed. The impugned judgement disposed of two Section 34 petitions and an enforcement petition all arising out of the same award and involving the same parties and hence, this composite appeal is being entertained.

2. The factual matrix is that the appellant entered into a Share Purchase Agreement dated 18.12.2010 (for short 'SPA') with BF Infra, a subsidiary company of BFL. 100% of the equity share capital of Coal Columbia SAS, Mines and Minerals Company of Columbia SAS and Multitex Africa SA (hereinafter 'the companies') was to be transferred to Aggressive Projects Private Limited (for short 'APPL') and also 90% of the nominal value of the equity shares of APPL was to be transferred to BF Infra. The transaction was followed by an engagement letter dated 18.01.2011 whereunder the appellant was appointed as the 'Advisor- Global Mining' by BFL.

2.1 Dispute arose between the parties and BF Infra on 16.08.2012 terminated the SPA consequent thereto BFL terminated the engagement of the appellant. Clause 20 of the SPA provided for dispute resolution through arbitration. The appellant invoked arbitration on 03.06.2013 calling upon BF Infra to appoint a sole arbitrator with consent of the appellant. A reminder dated 24.07.2014 was sent by the appellant for nomination of the arbitrator

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and stating that on failure the appellant would make the appointment. On 15.12.2014 the appellant nominated the sole arbitrator.

2.2 BF Infra *vide* reply dated 23.12.2014 raised a counter-claim of Rs.51,28,423/-. The statement of claim (SOC) was filed before the arbitrator on 12.08.2015. After the service of the SOC, BF Infra on 09.09.2015 objected to the unilateral appointment of the sole arbitrator and an affidavit raising the objection was filed on 25.09.2015. On the same day BFL filed an application under Section 16 of the Act contending that BFL was not a signatory to the SPA and was not bound by the arbitration agreement. On 16.12.2015 the arbitrator rejected the objection raised by BF Infra and dismissed the Section 16 application of BFL holding that *prima facie* BFL was also a party to the dispute. BF Infra filed a memo on 09.01.2016 stating that BF Infra is participating in the proceedings under protest and objects to the to the unilateral appointment of the arbitrator.

2.3 The proceedings culminated in award dated 10.05.2019. The arbitrator allowed the claim of the appellant and awarded compensation of Rs.77,00,00,000/- and the counter claims were dismissed. The BF Infra and BFL filed petitions under Section 34 of the Act challenging the award on merits and the unilateral appointment of the arbitrator. The learned Single Judge held the appointment of the sole arbitrator to be void *ab-initio* and the proceedings a nullity, the award was set aside. Hence, the present appeal.

3. Learned counsel for the appellant submits that the appointment of the arbitrator cannot be termed unilateral. The respondents failed to respond to the notices invoking arbitration and did not object to nomination of the sole arbitrator. The objection against the appointment was raised for the first time

on 09.09.2015 but was rejected by the arbitrator on 16.12.2015 yet the respondent chose not to file petition under Section 11 of the Act for fresh appointment.

3.1 It is contended that the objection to the unilateral appointment was rightly rejected as no ground under Section 12(3) of the Act was made out.

3.2 It is submitted that the objections filed by BFL and BF Infra were rightly rejected by the arbitrator. It is emphasised that Section 18 of the Act has no application to the appointment of arbitrator and operates only during the arbitral proceedings.

3.3 The argument is that the learned Single Judge ignored applicability of Section 4 of the Act and the fact that the respondent failed to object to appointment of arbitrator at the appropriate stage and having participated in the proceedings waived right to object. It is argued that the learned Single Judge wrongly relied upon the decision of the Supreme Court in ***Dharma Prathisthanam v. Madhok Construction (P) Ltd.*** (2005) 9 SCC 686 wherein Section 8 of Arbitration Act, 1940 Act was dealt with and not Section 4 of Act.

3.4 The submission is that the amendment to Section 12 by the 2015 Amendment Act is inapplicable as the arbitration proceedings commenced prior to the year 2015 i.e. in 2013. The contention is that the petitions filed under the Section 34 of the Act were to be examined under the unamended Act and the ground mentioned therein. Patent illegality and against public policy of India were not the grounds available.

4. *Per contra* the scope of interference under Section 37 of the Act is narrow and circumscribed. The contention is that the appointment of the sole

arbitrator is in violation of the procedure agreed between the parties under Clause 20.4 of the SPA and the statutory procedure under Section 11 of the Act. The respondents had not consented for the appointment of the sole arbitrator and there was no question of respondent having waived the right to object. The reliance of the learned counsel for the appellant on Section 12 and Section 13 of the Act is refuted stating that these provisions do not deal with an appointment made unilaterally and contrary to the agreed procedure. The learned counsel contends that after the award was set aside, the appellant has already initiated fresh arbitration proceedings by issuing a notice under Section 21 of the Act.

4.1 The plea made is that patent illegality and contravention of public policy were the grounds available under the unamended Section 34 of the Act, reliance in this regard is on the decision of the Supreme Court in ***ONGC Ltd. v. Saw Pipes Ltd.,*** (2003) 5 SCC 705. It is further argued that the amended Section 34 of the Act applies to the petitions instituted on or after 23 October 2015 even if the arbitration proceedings were initiated prior to the appointment. Reliance is placed on the decision of ***BCCI v. Kochi Cricket (P) Ltd.,*** (2018) 6 SCC 287.

5. Heard learned counsel for the parties at length. No other issue than those noted above were pressed during the course of the arguments.

6. Before proceeding further, it would be relevant to quote Section 11 and 18 of the Act and Clause 20 of SPA:

> "**Section 11. Appointment of arbitrators.—**
>
> (1) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.
>
> (2) Subject to sub-section (6), the parties are free to agree on a

procedure for appointing the arbitrator or arbitrators.

(3) Failing any agreement referred to in sub-section (2), in an arbitration with three arbitrators, each party shall appoint one arbitrator and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.

(4) If the appointment procedure in sub-section (3) applies and—

(a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or

(b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment,

the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.

(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.

(7) A decision on a matter entrusted by sub-section (4) or sub-section (5) or sub-section (6) to the Chief Justice or the person

or institution designated by him is final.

(8) The Chief Justice or the person or institution designated by him, in appointing an arbitrator, shall have due regard to—

(a) any qualifications required of the arbitrator by the agreement of the parties; and

(b) other considerations as are likely to secure the appointment of an independent and impartial arbitrator.

(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.

(10) The Chief Justice may make such scheme as he may deem appropriate for dealing with matters entrusted by sub-section (4) or sub-section (5) or sub-section (6) to him.

(11) Where more than one request has been made under 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 situated and, where the High Court itself is the Court referred to in that clause, to the Chief Justice of that High Court.

Section 18. Equal treatment of parties.—

The parties shall be treated with equality and each party shall be given a full opportunity to present his case."

"Clause 20. GOVERNING LAW AND JURISDICTION

20.1 This Agreement shall be governed by the laws of India.

20.2 If any dispute, controversy or claim arises out of or in connection with this Agreement, including the breach, termination or invalidity thereof ('Dispute"), any party may serve formal written notice on the other parties that a Dispute has arisen ('Notice of Dispute').

20.3 The parties shall use all reasonable efforts for a period of 15 days from the date on which the Notice of Dispute is served (or such longer period as may be agreed writing between the parties) to resolve the Dispute on amicable basis.

20.4 If the parties are unable to resolve the Dispute by amicable negotiation within the time period referred to in clause 20.3, the Dispute shall be submitted to Arbitration before a single arbitrator appointed in accordance with the Arbitration and Conciliation Act, 1996, upon the request of either party. Seat of arbitration shall be New Delhi, India. The language to be used in the arbitral proceedings shall be English. The award delivered in such Arbitration shall be final and binding upon the parties.

20.5 For all purposes in relation to this Agreement, the Courts at New Delhi alone shall have exclusive jurisdiction. No other Courts shall have jurisdiction to deal with any dispute or any other matter between the Parties arising out of this Agreement."

7. The scope of interference under Section 37 of the Act is well settled. The court has to satisfy that the impugned decision is within the parameters provided under Section 34 of the Act. *Albeit* under Section 37 of the Act an

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appeal is provided but it cannot be equated with a regular appeal and the limited scope of interference under Section 34 of the Act applies to Section 37 of the Act also. The issues not raised in Section 34 petitions cannot be raised for the first time in the appeal under Section 37 of the Act. Reference in this regard be made to the following decisions:

7.1 In ***Bombay Slum Redevelopment Corpn. (P) Ltd. v. Samir Narain Bhojwani*, (2024) 7 SCC 218** it was held:

> "**23.** We need not dwell on the limited scope of interference in the petition under Section 34 of the Arbitration Act. That position is very well settled. However, as far as the appeal under Section 37(1)(*c*) of the Arbitration Act is concerned, in *MMTC Ltd.* v. *Vedanta Ltd.* [*MMTC Ltd.* v. *Vedanta Ltd.*, (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293] , in para 14, this Court held thus : (SCC p. 167)
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> > "*14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision*. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."
>
> **24.** In another decision of this Court in *UHL Power Co. Ltd.* v. *State of H.P.* [*UHL Power Co. Ltd.* v. *State of H.P.*, (2022) 4 SCC 116 : (2022) 2 SCC (Civ) 401] , in para 16, it was held thus : (SCC pp. 124-25)

> "*16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed.* In *MMTC Ltd.* v. *Vedanta Ltd.* [*MMTC Ltd.* v. *Vedanta Ltd.*, (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293] , the reasons for vesting such a limited jurisdiction on the High Court in exercise of powers under Section 34 of the Arbitration Act have been explained in the following words : (SCC pp. 166-67, para 11)
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> **26.** The jurisdiction of the appellate court dealing with an appeal under Section 37 against the judgment in a petition under Section 34 is more constrained than the jurisdiction of the Court dealing with a petition under Section 34. It is the duty of the appellate court to consider whether Section 34 Court has remained confined to the grounds of challenge that are available in a petition under Section 34. The ultimate function of the appellate court under Section 37 is to decide whether the jurisdiction under Section 34 has been exercised rightly or wrongly. While doing so, the appellate court can exercise the same power and jurisdiction that Section 34 Court possesses with the same constraints."

7.2 In ***Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills, 2024 SCC OnLine SC 2632*** it was held:

> "**16.** It is seen that the scope of interference in an appeal under Section 37 of the Act is restricted and subject to the same grounds on which an award can be challenged under Section 34 of the Act. In other words, the powers under Section 37 vested in the court of appeal are not beyond the scope of interference provided under Section 34 of the Act.

> **21.** It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement."

7.3 ***In Larsen Air Conditioning & Refrigeration Co. v. Union of India, (2023) 15 SCC 472*** it was held:

> "**15.** The limited and extremely circumscribed jurisdiction of the court under Section 34 of the Act, permits the court to interfere with an award, sans the grounds of patent illegality i.e. that "*illegality must go to the root of the matter and cannot be of a trivial nature*"; and that the Tribunal "*must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground*" [ref : *Associate Builders* [*Associate Builders* v. *DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , SCC p. 81, para 42]. The other ground would be denial of natural justice. In appeal, Section 37 of the Act grants narrower scope to the appellate court to review the findings in an award, if it has been upheld, or substantially upheld under Section 34."
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> (*emphasis supplied*)

8. The appellant during the Section 34 proceedings pressed only the following objections: -

(i) that even after rejection of the request for termination of the arbitration *vide* order dated 16.12.2015, no steps were taken by BF Infra either under Section 11(6) or under Section 14 of the Act rather BF Infra participated in the arbitration proceedings.

(ii) that the challenge to the appointment on the ground of want of

proper notice was not sustainable as there was evidence to show that notice was issued to BFL.

(iii) Other arguments were *vis-à-vis* the merits of the claim.

9. From this it is evident that the issues now being argued in the present appeal were never pressed before the learned Single Judge in the Section 34 petitions. It is not pleaded in the present appeal that these issues were raised but remained unconsidered.

10. Be that as it may, the procedure under Clause 20 of the SPA provided for reasonable efforts to be made for amicable settlement. On failure to resolve, the dispute was to be referred to a sole arbitrator to be appointed in accordance with the Act upon the request of either party. The seat of arbitration was Delhi. Section 11(2) of the Act provides that subject to sub-Section 6 parties are free to agree on the procedure for appointing the arbitrator. Section 11(3) & (4) deals with a three member arbitral tribunal and have no application to the present case. Under Section 11(5) on failure of the parties to agree upon the sole arbitrator within thirty days of receipt of the request from either of the parties, the Chief Justice or a person or a institution designated by the Chief Justice shall make an appointment upon the request of a party.

11. It is not the case of the appellant that the respondents expressly consented to the appointment of the arbitrator. It is an admitted fact that the arbitrator was appointed by the appellant. The initial two notices dated 03.06.2013 and 24.07.2014 were issued by the appellant. In the latter notice the procedure agreed between the parties under Clause 20 of SPA was unilaterally altered by the appellant. It was stated in notice dated 24.07.2014

that on failure of the respondents to appoint an arbitrator with the consent of the appellant within fifteen days, the appellant would appoint the sole arbitrator and eventually this was done so. This is contrary to the unambiguous language of Clause 20.4 of SPA and the statutory procedure prescribed under Section 11 of the Act. The learned Single Judge rightly held the appointment of the arbitrator to be *void*.

12. The participation of the respondents in the arbitral proceedings will not ratify the unilateral appointment made contrary to Clause 20 of the SPA and the statutory provisions of the Act. Moreover, the participation of the respondents in arbitration was under protest. It would not be out of place to mention that both BF Infra and BFL at the very first instance before the arbitrator objected to unilateral appointment. The objections under Section 16 of the Act were rejected by the arbitrator and the remedy against orders rejecting objections was under Section 34 of the Act after passing of the final award.

13. The argument that the respondent not resorted to the remedy under Section 11(6) even after rejection of the objections, is noted to be rejected. The arbitration was initiated at the instance of the appellant. As per the Clause 20 of the SPA and Section 11 of the Act, in absence of consent between the parties on appointment of arbitrator the court had to appoint the arbitrator. The party invoking arbitration was the appellant and had to approach the Court under Section 11 of the Act for appointment of the arbitrator and not *vice-versa*.

14. The contention the unilateral appointment does not violate Section 12(3) of the Act, deserves rejection. Section 12 of the Act casts an obligation

on the arbitrator to disclose the circumstances likely to give rise to justifiable doubts to the independence or impartiality of the arbitrator. Sub-Section 3(a), permits a challenge to an appointment of the arbitrator in case the circumstances exist giving rise to justifiable doubts for the independence and impartiality. The unilateral appointment of an arbitrator itself casts a doubt on its independence and impartiality. The Supreme Court in ***Central Organisation for Railway Electrification*** v. ***ECI SPIC $ SMO MCML (JV) A Joint Venture Co., (2025) 4 SCC 641*** held as under:

> "170.3 A clause that allows one party to unilaterally appoint a sole arbitrator gives rise to justifiable doubts as to the independence and impartiality of the arbitrator. Further, such a unilateral clause is exclusive and hinders equal participation of the other party in the appointment process of the arbitrators;"

15. Even though the decision in ***Central Organisation for Railway Electrification*** (supra) deals with the post-2015 Amendment Act provisions but the principle with regard to requirement of an independent and impartial or a mutually appointed arbitrator shall remain unaffected by the amendment of the provisions.

16. The submission of the appellant that the equal treatment of the parties as stipulated under Section 18 of the Act shall apply only during the proceedings of the arbitration and not at the time of the appointment, is against the spirit of the arbitration. Section 18 provides that equal treatment and full opportunity be given to the parties to present their case. An arbitrator appointed by one particular party may find it difficult to displease or act against the appointing party and therefore may not treat both the parties with equality resulting in violation of Section 18 of the Act.

17. There cannot be a quarrel with the proposition that Section 12(5) of the 2015 Amendment Act shall not apply to the cases where arbitration commenced prior to October, 2015 but this in itself shall not validate the unilateral appointment of the arbitrator by the appellant in contravention to Clause 20 of the SPA and Section 11 (6) of the Act.

18. The plea of waiver under Section 4 of the Act that the respondent had waived the right to object to the appointment of the arbitrator need not be dilated upon as this plea was not pressed before the learned Single Judge. Section 4 of the Act applies in case the party knowing that a requirement of an arbitration agreement was not complied with, raises no timely objection and proceeds with the arbitration. In the case in hand, the respondent objected that on the receipt of the first notice by the arbitrator and thereafter filed application under Section 16 of the Act raising objections. Even the memo filed was under protest. No case of waiver is made out.

19. The contention that against public policy of India and patent illegality was not a ground available under the unamended Section 34 of the Act was also not raised before the learned Single Judge. The case in hand is of void appointment of arbitrator and the award passed is nullity. This was a ground available both under amended and unamended Act.

20. It would be apposite to note that the Supreme Court in ***BCCI V. Kochi Cricket Association*** (supra) held that the amended Section 34 of the Act applies to the Section 34 objections filed after the amendment even in cases where the arbitration proceedings commenced before the amendment. The relevant para is reproduced below:

> "58. From a reading of Section 26 as interpreted by us, it thus

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> becomes clear in all cases where the Section 34 petition is filed after the commencement of the Amendment Act, and an application for stay having been made under Section 36 therein, will be governed by Section 34 as amended and Section 36 as substituted. But, what is to happen to Section 34 petitions that have been filed before the commencement of the Amendment Act, which were governed by Section 36 of the old Act? Would Section 36, as substituted, apply to such petitions? To answer this question, we have necessarily to decide on what is meant by "enforcement" in Section 36. On the one hand, it has been argued that "enforcement" is nothing but "execution", and on the other hand, it has been argued that "enforcement" and "execution' are different concepts, "enforcement" being substantive and "execution" being procedural in nature.
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> (emphasis supplied)

21. In view of the above discussion, no case is made out for interference in the judgement of the learned Single Judge. The appointment was rightly held to be void being in violation of Clause 20 of SPA and Section 11 of the Act.

22. The appeal is dismissed.

23. Pending application stands disposed of.

AVNEESH JHINGAN, J

SHAIL JAIN, J

OCTOBER 01, 2026
'JK'

Reportable: **Yes**

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