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## **Reaffirming the Sanctity of Arbitration Agreements: A Comprehensive Analysis of *Hindustan Construction Company Ltd. v. Bihar Rajya Pul Nirman Nigam Ltd.*, 2025 INSC 1365**

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### **I. Introduction**

The Arbitration Act is a self-contained code inter alia with respect to matters dealing with appointment of arbitrators, commencement of arbitration, making of an award and challenges to the arbitral award, as well as execution of such awards. When a self-contained code sets out a procedure, the applicability of a general legal procedure would be impliedly excluded. Being a self-contained and exhaustive code on arbitration law, the Arbitration Act carries the imperative that what is permissible under the law ought to be performed only in the manner indicated, and not otherwise. Accordingly, matters governed by the Arbitration Act such as the arbitration agreement, appointment of arbitrators and competence of the Arbitral Tribunal to rule on its jurisdiction have to be assessed in the manner specified under the law. The corollary is that it is not permissible to do what is not mentioned under the Arbitration Act. Therefore, provisions of other statutes cannot interfere with the working of the Arbitration Act, unless specified otherwise.

The judgment of the Hon'ble Supreme Court in *Hindustan Construction Company Ltd. v. Bihar Rajya Pul Nirman Nigam Ltd.*<sup>1</sup> represents a significant reaffirmation of India's pro-arbitration judicial policy. The dispute arose from Clause 25 of the contract dated 04.03.2014, which contained an arbitration clause with a built-in negative covenant that made the process dependent on appointment by the Managing Director. The subsequent legal developments, particularly the 2015 and 2019 amendments to the Arbitration and Conciliation Act, 1996 (A&C Act), and landmark rulings which rendered such unilateral appointments invalid.

Despite three years of arbitral proceedings with over seventy hearings, the Patna High Court recalled its earlier order passed under Section 11(6), effectively terminating the arbitration. The Supreme Court was called upon to decide whether such recall was permissible and whether Clause 25 constituted a valid arbitration agreement. This judgment resolves crucial questions relating to (i) the scope of review of Section 11 orders, (ii) the effect of unilateral appointment mechanisms post-amendments, (iii) waiver under Sections 4 and 12(5), and (iv) continuity of proceedings under Section 29A.

### **II. Statutory Framework and Provisions Considered**

The Supreme Court analysed several critical provisions of the Arbitration and Conciliation Act. Section 7, especially Section 7(4)(c), was central to determining the existence of a valid arbitration agreement based on the conduct and pleadings of parties. Section 11(6) was examined to clarify that once an arbitrator is appointed by a court, the appointing court becomes *functus officio* and lacks authority to undertake a substantive review of its earlier order. Section 12(5) was invoked to address the respondents claim that unilateral appointment mechanisms invalidate the arbitration clause itself. Sections 4 and 16 were relied upon to examine waiver and acquiescence, given that respondents never objected to jurisdiction at any earlier stage. Section 29A played a pivotal role, as the parties jointly sought extensions of the arbitrator's mandate, reinforcing their acceptance of the arbitral tribunal. Additionally, Sections 31, 34, and 37 of A&C Act were

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<sup>1</sup> 2025 INSC 1365



referenced in light of earlier proceedings under the same clause, further supporting the existence of a valid arbitration agreement.

### **III. Prior Supreme Court Jurisprudence on Related Issues**

The Court situated its decision within the broader framework of previous judicial pronouncements. In *TRF Ltd. v. Energo Engineering*<sup>2</sup>, the Supreme Court held that a person ineligible to act as arbitrator cannot nominate another arbitrator. In *Perkins Eastman v. HSCC*<sup>3</sup>, the Court extended this principle, holding that even the authority interested in the outcome cannot make appointments. Further, *Central Organisation for Railway Electrification (CORE) v. ECI-SPIC-SMO-MCML*<sup>4</sup> reaffirmed that unilateral appointments by government bodies are impermissible. On the issue of review of Section 11 orders, the Court relied on *SBP & Co. v. Patel Engineering*,<sup>5</sup> which clarified the limited nature of judicial intervention at the pre-appointment stage. On waiver, *BSNL v. Nortel*<sup>6</sup> clarified the boundaries of Section 12(5), noting that waiver requires express written consent; however, conduct-based waiver under Section 4 remains intact. These precedents collectively guided the Court's reasoning, ensuring consistency with India's evolving pro-arbitration landscape.

### **IV. Whether the High Court Could Review the Section 11 Arbitration and Conciliation Act Order**

The Supreme Court held that the High Court's recall of its earlier Section 11(6) order was unsustainable. The High Court's while deciding the Application based their order on subsequent legal developments and lack of clarity in the arbitration clause which did not fall within the limited grounds on which review is permissible. Once the arbitrator was appointed and had conducted extensive proceedings, the Section 11 court became *functus officio*. The Supreme Court stressed that allowing such a review after years of substantive proceedings would undermine the finality of judicial orders and encourage parties to seek review whenever legal interpretations evolved.

Importantly, the Court observed that the respondents never brought to the High Court's attention the extensive proceedings already conducted under the tribunal, including multiple extensions. The omission was characterised as suppression of material facts, further weakening the legitimacy of the recall order.

### **V. Existence of a Valid Arbitration Agreement Under Section 7**

The respondents argued that Clause 25 was contingent and became unenforceable after unilateral appointments were declared invalid. The Supreme Court rejected this, holding that ineligibility of the appointing authority does not invalidate the arbitration agreement itself. Section 7 does not require intricate formalities; intention is the key factor. The conduct of the parties demonstrated clear intent: they participated in arbitration for years, filed multiple Section 29A petitions, and even complied with an earlier arbitral award under the same clause. Under Section 7(4)(c), such conduct creates a valid arbitration agreement.

Thus, the Court held that Clause 25 continued to operate as a binding arbitration agreement, with only the appointment mechanism requiring judicial substitution.

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<sup>2</sup> (2017) 8 SCC 377

<sup>3</sup> (2019) SCC OnLine SC 1517

<sup>4</sup> (2025) 4 SCC 641

<sup>5</sup> (2005) 8 SCC 618

<sup>6</sup> (2021) 5 SCC 738



## **VI. Effect of Section 12(5) and Waiver Through Conduct**

Section 12(5) renders certain categories of arbitrators ineligible. While the respondents argued that this invalidated the arbitration clause itself, the Court clarified that Section 12(5) affects the appointment mechanism, not the underlying agreement. Moreover, waiver under Section 4 was established, as the respondents fully participated in the proceedings without objection. Their conduct appearing before the tribunal, filing pleadings, submitting evidence, and jointly seeking extensions—constituted a conscious acceptance of the tribunal's jurisdiction.

## **VII. Section 29A and Continuity of Proceedings**

The Court placed substantial weight on the parties joint applications under Section 29A. The High Court had extended the mandate of the arbitrator twice, signalling judicial acceptance and further reinforcing parties consent. The Court held that allowing a fresh arbitration after such extensive proceedings would result in wastage of judicial effort, party resources, and time.

Accordingly, the Supreme Court invoked Section 29A(4) to direct that a substitute arbitrator be appointed who must continue from the exact stage previously reached.

## **VIII. Directions Issued by the Supreme Court**

The Court set aside the High Court's recall order and restored the arbitral process. It directed:

- Appointment of a substitute arbitrator within two weeks.
- Continuation of proceedings from the stage they were halted.
- Conclusion of arbitration within one year, subject to consensual extension under Section 29A.

The Court also admonished the conduct of the respondent government entity, emphasising that State bodies must act as model litigants.

## **IX. Conclusion**

The judgment strengthens the jurisprudence governing arbitration in India. It clarifies that technical objections cannot override substantive intent, unilateral appointment mechanisms do not invalidate arbitration clauses, and courts must resist re-opening settled orders under Section 11. By aligning with established precedents and the legislative aim of promoting arbitration, the Supreme Court ensures that arbitral proceedings remain efficient, final, and autonomous. This ruling will serve as a guiding precedent for future disputes involving appointment mechanisms, waiver, and judicial review of Section 11 orders.

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