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

Judgment reserved on: 19.01.2026
Judgment pronounced on: 17 .04.2026

+ O.M.P.(EFA)(COMM.) 4/2025

MSA GLOBAL LLC (OMAN) ...Award Holder

Through: Mr. Akhil Sibal, Sr. Adv. with Mr. Kirat Singh Nagra, Mr. Kartik Yadav, Mr. Pranav Vyas, Ms. Sumedha Chadha, Mr. Sankalp Singh, Ms. Jahnavi Sindhu, Mr. Aditya Raj Patodia, Advs.

Versus

ENGINEERING PROJECTS (INDIA) LIMITED

...Judgement Debtor

Through: Mr. Sandeep Sethi, Sr. Adv. with Mr. Ajit Warrier, Mr. Angad Kochhar, Mr. Himanshu Setia, Mr. Vedari Kashyap, Mr. Krisna Gambhir, Ms. Riya Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

For convenience, this judgment is divided into the following parts:-

TABLE OF CONTENTS

INTRODUCTION

1. Justice, it has long been said since *R v. Sussex Justices ex parte McCarthy*[1], must not only be done but must also be seen to be done. This principle is not a mere formality it lies at the very foundation of natural justice and assumes even greater significance in the realm of arbitration, where parties voluntarily submit their disputes to a private adjudicatory process. The legitimacy of such a process rests entirely on the confidence that the adjudicator is independent, impartial, and free from any form of bias. Yet, modern arbitration practice presents challenges to this ideal.

2. One such case being the present one where inadequate disclosures, have raised legitimate apprehensions about perceived bias. These concerns strike at the root of the arbitral process, for even the appearance of partiality is sufficient to erode confidence in the outcome. It is in this backdrop that the present case calls for a careful examination of whether the Arbitrator has adhered not only to the letter of the law, being the duty to disclose, but also to the higher standard that justice must manifestly appear to have been done.

3. The present petition has been filed under Sections 44, 46, 47 and 49 of the Arbitration and Conciliation Act, 1996 (***"the Act"***) and Order XXI Rule 11 (2) read with Section 151 of the CPC, seeking enforcement and execution of the first Partial Award passed by an Arbitral Tribunal comprising of three Arbitrators (***"Arbitral Tribunal"***) in ICC Arbitration Case No. 27726/HTG/YMK under the ICC Rules as corrected on 09.10.2024.

[1][1924] 1 KB 256.

FACTUAL BACKGROUND AS PER THE PETITION

4. The Award Holder is an Oman-based electronic security systems integrator engaged in the design, supply, installation, testing, commissioning and integration of electronic systems for the Border Security System under the Border Infrastructure Project (Engineer-3 Project, Sections 3 and 4).

5. The Judgment Debtor is a Public Sector Undertaking under the Ministry of Heavy Industries & Public Enterprises, Government of India, engaged in executing turnkey and nomination-based projects in sectors such as power, steel, industrial, petrochemical, civil and infrastructure, both in India and abroad.

6. The Judgment Debtor was awarded the main contract by the Ministry of Defence, Sultanate of Oman on 29.07.2015. Pursuant thereto, the Award Holder and the Judgment Debtor entered into a subcontract dated 21.09.2015 for the design, supply, installation, integration, and commissioning of an electronic surveillance system for a border infrastructure project between Oman and Yemen, with a total contract value of USD 120,330,627.

7. Under the subcontract, the Judgment Debtor further subcontracted the civil works to C&C Constructions Ltd. (Section 3) and Sarooj Construction Co. LLC (Section 4), while the Award Holder was entrusted with the execution of the entire electronic security system.

8. The Project was to be completed by 09.07.2019, but due to delays in completion of civil works by the Judgment Debtor and its subcontractors, the project remained incomplete, causing substantial prolongation and operational costs to the Award Holder.

9. Disputes subsequently arose between the parties, whereupon the Award Holder invoked arbitration under Article 19 of the Agreement on 12.04.2023, in accordance with the ICC Rules. The Award Holder also submitted its Request for Arbitration and nominated Mr. Andre Yeap SC as its Arbitrator.

10. On 19.04.2023, Mr. Yeap submitted his Statement of Acceptance, Availability, Impartiality, and Independence to the ICC, expressly declaring that he had "nothing to disclose" in relation to any facts or circumstances that might give rise to justifiable doubts as to his impartiality or independence. On 09.06.2023, the Judgment Debtor nominated its nominee Arbitrator. Thereafter, on 05.09.2023 the Secretariat of ICC appointed the president and the Arbitral Tribunal was constituted, and Singapore was designated as the seat of arbitration, though the same is disputed by the Judgment Debtor.

11. Following the first procedural hearing on 26.10.2023, the Tribunal set a schedule requiring completion of pleadings and evidence between 03.11.2023 and 23.12.2024. Shortly thereafter, on 03.11.2023, the Award Holder moved an application seeking urgent interim measures.

12. After hearing the parties, the Arbitral Tribunal passed a Partial Award on 19.06.2024, corrected on 09.10.2024, directing the Judgment Debtor to make certain payments including monthly operational costs and other outstanding amounts.

13. On 13.11.2024, the Judgment Debtor challenged the First Partial Award before the General Division of the High Court of the Republic of Singapore (***"High Court of Singapore"***) *vide* Originating Application 1185 of 2024.

14. Thereafter, on 17.12.2024, the Tribunal fixed the evidentiary hearings for the period from 20.01.2025 to 25.01.2025. During this time on 17.01.2025, the Judgment Debtor discovered that Mr. Yeap had previously been involved in arbitral proceedings connected with Mr. Manbhupinder Singh Atwal, the Managing Director, Chairman, and Promoter of the Award Holder. This fact emerged from a judgment dated 05.07.2024 delivered by the High Court of Gujarat in *Neeraj Kumarpal Shah v. Manbhupinder Singh Atwal*, which revealed Mr. Yeap's earlier professional engagement in a matter involving Mr. Atwal and his legal representatives.

15. Consequently on 19.01.2025 the Judgment Debtor filed an application under Article 14 (1) of the ICC Rules (***"Challenge Application"***) before the ICC Court.

16. On 05.02.2025, the Judgment Debtor filed an application (SUM 316) seeking to place on record additional facts and circumstances in support of its plea for partial setting aside of the First Partial Award before the High Court of Singapore.

17. Thereafter, on 14.02.2025, the High Court of Singapore dismissed OA 1185/2024, thereby upholding the First Partial Award. The Court further directed that the adjudication of SUM 316 would remain deferred until the ICC Court renders its decision on the Challenge Application. The grounds of the same were accorded *vide* judgment dated 10.04.2025.

18. On 27.02.2025, the ICC Court found the challenge admissible but rejected it on merits stating that the circumstances were regrettable but on merits the circumstances did not establish justifiable doubts with respect to Mr. Yeap's impartiality or independence, the reasons of the same were declared on 14.03.2025.

19. Around 11.03.2025, the Award Holder initiated proceedings before this Court for the recognition and enforcement of the First Partial Award, which came to be registered as O.M.P. (EFA) (COMM.) 4 of 2025.

20. Even the issue of challenge to impartiality raised by way of SUM 316 in OA 1185/2024 was rejected on merits on 27.03.2025. Thereafter on 27.03.2025 the Judgment Debtor raised the issue of alleged bias of Mr. Yeap before the Hon'ble High Court of Singapore under Sections 3 and 8 of the International Arbitration Act of Singapore read with Articles 6, 12, 13, and 15 of the UNCITRAL Model Law on International Commercial Arbitration by filing OA 317. The same was rejected on 07.07.2025 and the reasons were provided on 24.07.2025.

21. The rejection of OA 1185/2024 was challenged before the Supreme Court of Singapore by way of Notice of Appeal C.A. No. 7, which was withdrawn *vide* Notice of Withdrawal dated 05.05.2025.

22. Despite repeated demand letters, the Judgment Debtor has continued to refuse to comply with the Partial Award, leaving outstanding amounts payable to the Award Holder.

23. Since the arbitration was seated in Singapore (a reciprocating territory under Section 44 of the Act), the Partial Award constitutes a foreign award enforceable in India. The present petition has therefore been filed before the Commercial Division of the High Court seeking enforcement of the Partial Award as a decree of the Court.

24. Additionally, the Judgment Debtor instituted a civil suit on 16.04.2025 titled *Engineering Projects (India) Limited v. MSA Global LLC (Oman)*, being CS (OS) 243 of 2025, inter alia seeking a declaration that the Award Holder was not entitled to continue with the ICC arbitration with the existing composition of Arbitrators. The Court, granted an interim

injunction and accordingly, the proceedings before the Arbitral Tribunal were stayed during the pendency of the suit, and the parties were restrained from participating therein. The injunction application, being I.A. 9724/2025, was thus allowed on 25.07.2025.

25. The said order was challenged by the Award Holder before the Hon'ble Division Bench in FAO (OS) No. 88 of 2025, which affirmed the findings of the learned Single Judge. Thereafter, a Special Leave Petition was preferred before the Hon'ble Supreme Court. The Hon'ble Supreme Court remanded the matter back to the Hon'ble Division Bench for fresh adjudication, taking note of the subsequent development that formed the basis of the earlier orders, namely, Mr. Yeap's decision to resign from his position as an Arbitrator.

26. The relevant portion of the judgment reads as under:

> *"3. During the pendency of these proceedings, Mr Andre Yeap has resigned from his position as a member of the Arbitral Tribunal. A communication dated 13.03.2026, to this effect, of the International Court of Arbitration has been placed on record, which is made part of the judicial record.*
>
> *…*
>
> *5. In this regard, it appears to us that since the primary reason for injuncting the appellant from pursuing his antiarbitration suit seems to have vanished, the validity of the order dated 25.07.2025 of the learned Single Judge can be re-examined by the Division Bench of the High Court. It goes without saying that the legal effect of Mr. Andre Yeap, being one of the*

Arbitrators when the interim award was passed, and/or the reasons assigned by the Division Bench in paragraph 71 of the impugned judgment, founded upon Articles 19.1 and 19.3 of the Arbitration Agreement, are kept open along with all other contentions between the parties.

6. For the reasons aforestated, the appeal is allowed in part to the extent that the impugned judgment of the Division Bench of the High Court dated 12.12.2025 is set aside and the FAO(OS) No.88/2025 is restored to its original number and file with a request to the High Court to decide the same afresh uninfluenced of the impugned judgment dated 12.12.2025."

SUBMISSIONS / OBJECTIONS ON BEHALF OF THE JUDGMENT DEBTOR

27. The Judgment Debtor has filed its objections opposing the enforcement under Section 48 of the Act.

28. Mr. Sandeep Sethi, learned senior counsel for the Judgment Debtor, submits that enforcement of a foreign award is not automatic and this Court is required to examine whether the Award falls foul of the provisions contained in Section 48 of the Act and only thereafter proceed to enforce the Award. Reliance is placed on *International Air Transport Association v. Spring Travels Private Limited*[2] *and Government of India v. Vedanta Limited.*[3]

29. It is submitted that under Article 11(2) of the Rules of Arbitration of the International Chamber of Commerce, 2021 (***"ICC Rules"***), every

[2]2024 SCC OnLine Del 7540.
[3](2020) 10 SCC 1.

prospective Arbitrator is required to submit a Statement of Acceptance, Availability, Impartiality and Independence disclosing any facts or circumstances which may give rise to doubts regarding the Arbitrator's impartiality or independence. The object of such disclosure is to ensure transparency in the arbitral process and to enable the parties to raise objections, if any, at the appropriate stage.

30. Learned senior counsel while reiterating the factual position, submits that on 19.04.2023, Mr. Yeap, in his Statement of Acceptance before the ICC Secretariat, declared that he had "nothing to disclose" and that no circumstances existed giving rise to doubts as to his impartiality or independence, upon which the Judgment Debtor raised no objection to his appointment.

31. It is, however, contended that a subsequent judgment of the High Court of Gujarat dated 05.07.2024 revealed that Mr. Yeap had earlier acted as a co-arbitrator in a matter involving Mr. Manbhupinder Singh Atwal, the Chairman and promoter of the Award Holder. The Judgment Debtor submits that this prior association was not disclosed, thereby violating disclosure obligations under the ICC Rules and depriving the Judgment Debtor of the opportunity to challenge the Arbitrator's appointment at the relevant stage.

32. Learned senior counsel has drawn my attention to Annexure-9 filed with the objections wherein Mr. Yeap provided his comments on 23.01.2025 and stated that "*By the time I realized Manbhupinder Singh Atwal was the Chairman of the Claimant, the Judgment Debtor's counsel had at least foreshadowed, if not even confirmed, that the Judgment Debtor was commencing or had commenced proceedings in the Singapore Courts to set aside the First Partial Award. Had I made the disclosure, the*

possibility of the Judgment Debtor seeking to challenge my impartiality could not be discounted."

33. It is submitted that the explanation subsequently offered by Mr. Yeap that he did not notice the reference to Mr. Atwal's email address in the Request for Arbitration, is also wholly untenable. Learned senior counsel contends that the arbitral record contained several references to Mr. Atwal, including the use of his email address, communications addressed to the Tribunal, and documents filed along with the Statement of Claim. These documents were filed through the same counsel, who had earlier represented Mr. Atwal in a prior arbitration where Mr. Yeap had acted as a co-arbitrator. According to the Judgment Debtor, these circumstances clearly establish a nexus between the Award Holder, Mr. Atwal and the Arbitrator which ought to have been disclosed.

34. It is submitted that the non-disclosure constitutes a breach of the mandatory disclosure obligations imposed upon Arbitrators under the Rules of the International Chamber of Commerce. The Judgment Debtor contends that had these facts been disclosed, the Judgment Debtor would have had the opportunity to challenge the appointment of the Arbitrator. In the absence of such disclosure, the Judgment Debtor was deprived of proper notice of material circumstances relevant to the Arbitrator's independence and impartiality.

35. Learned senior counsel, further adds that the ICC Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration applies to all ICC arbitrations unless otherwise stated and requires Arbitrators to disclose circumstances that may raise doubts about their independence or impartiality, including prior appointments by a party or its counsel. It is stated that the Award Holder's reliance on the IBA Guidelines on

Conflicts of Interest in International Arbitration is misplaced, as the IBA guidelines clarify that they do not override applicable arbitral rules or binding instruments such as the Arbitration and Conciliation Act, 1996, under which disclosure by an Arbitrator is a fundamental safeguard to ensure the integrity of arbitration.

36. Learned counsel further submits that the Arbitrator was under a continuing obligation to make disclosures. It is contended that Mr. Yeap's assertion that he became aware of the relationship only in October 2024 is incorrect in light of the material on record. The identity of Mr. Atwal was disclosed at multiple stages of the proceedings, including in the Statement of Claim, which annexed the Agreement bearing the name of the Award Holder's Chairman; in the Statement of Defence; in the additional documents filed by the Award Holder; and during the hearing dated 11.01.2024, which was attended by the Award Holder's Chairman. Further, the Award Holder's Statement in Reply as well as the Partial Award itself expressly mention the full name of the Award Holder's Chairman.

37. Despite the arbitral proceedings continuing thereafter including the filing of written submissions, draft guarantees and witness statements of Mr. Atwal the Arbitrator failed to make any disclosure at any stage.

38. On this basis, it is submitted that the enforcement of the Award is liable to be refused under Section 48(1)(d) of the Act on the ground that the composition of the Arbitral Tribunal and the arbitral procedure were not in accordance with the governing legal framework.

39. Learned senior counsel also submits that enforcement of the Partial Award would be contrary to the public policy of India within the meaning of Section 48(2)(b) of the Act. He states that the concealment of

the prior relationship between the Award Holder's Chairman and the Arbitrator amounts to suppression of material facts affecting the making of the Award. It is submitted that the independence and impartiality of the Arbitral Tribunal constitutes fundamental principles of arbitration and that an Award rendered by a Tribunal tainted by arbitral bias is contrary to the fundamental policy of Indian law and the most basic notions of morality and justice.

40. It is further contended that the conduct of the Arbitrator in consciously refraining from making the disclosure, including the subsequent explanation that disclosure could have led to a challenge to his appointment, reinforces the apprehension of bias. According to the Judgment Debtor, a reasonable third person apprised of these facts would harbour legitimate doubts regarding the Arbitrator's independence and impartiality.

41. Without prejudice to the aforesaid objections, learned senior counsel also submits that the Partial Award is in the nature of an interim award and therefore does not constitute a "foreign award" capable of enforcement under Part II of the Act.

42. With regard to Applicability of Arbitration and Conciliation Act, 1996, it is stated that disclosure under Section 12 of the Act is mandatory and not optional or discretionary, and the absence of such mandatory disclosure vitiates the arbitral award as being against the public policy of India**.**

43. On these grounds, it is submitted that the present enforcement petition is liable to be dismissed.

SUBMISSIONS ON BEHALF OF THE AWARD HOLDER

44. Mr. Akhil Sibal, learned senior counsel for the Award Holder, at the outset states that the Judgment Debtor has admitted that the seat of

arbitration was Singapore, thereby making Singapore law the curial law governing the arbitration, while the procedure was governed by the ICC Arbitration Rules.

45. He further adds that since the Judgment Debtor's objection under Section 48 is based on an alleged non-disclosure by an Arbitrator under the ICC Rules; such a ground does not fall within the limited scope of Section 48(2) of the Act. In any event, the very same challenge was already raised by the Judgment Debtor before both the Singapore High Court, being the curial court, and the ICC Court, and both challenges were rejected. He also states that since the Partial Award was rendered unanimously, it cannot be said that the Award was vitiated on grounds of bias.

46. The second limb of the learned senior counsel's argument concerns the applicability of the Arbitration and Conciliation Act, 1996, particularly Section 12 contained in Part I of the Act. It is submitted that, in terms of Section 2(2), Part I applies only where the seat of arbitration is in India; consequently, Section 12 does not apply to the present arbitration.

47. Even otherwise, and without prejudice to the aforesaid, he states that there is no violation of Section 12 in the facts of the case. The disclosure obligation under Section 12(1)(a) arises only where a past or present relationship is likely to give rise to justifiable doubts as to the Arbitrator's independence or impartiality. Explanation 1 to Section 12, read with the Fifth Schedule, provides guidance in this regard and specifically contemplates a situation where an Arbitrator has been appointed on two or more occasions by a party or its affiliate within the past three years, as a circumstance that may give rise to such doubts.

48. In the present case, the alleged non-disclosure pertains to a single appointment as Arbitrator more than four years prior to the present arbitration, in a matter involving the Chairman of the Award Holder. Such an appointment clearly falls outside the scope of Para 22 of the Fifth Schedule and, therefore, would not warrant disclosure even if Section 12 were applicable. The Arbitrator had, in any event, furnished a disclosure statement under the applicable ICC Rules stating that there was nothing to disclose.

49. Further, the case laws relied upon by the Judgment Debtor pertain to domestic arbitrations and are therefore inapplicable. The ICC Court has also noted the non-applicability of Section 12 as well as the alignment of the Fifth Schedule with the IBA Guidelines. Lastly, although the Judgment Debtor acknowledged that the proceedings in CS(OS) 243/2025 are independent of the present enforcement proceedings, reliance was nevertheless placed on orders passed therein, which is misplaced.

50. In any event, the present proceedings involve a final determination and are not governed by such prima facie observations. Further, while the judgment dated 12.12.2025 in FAO(OS) 88/2025 prima facie observed that the seat of arbitration is India, the admitted position in the present enforcement proceedings is that the seat of arbitration is Singapore, and no objection to the contrary has been raised by the Judgment Debtor under Section 48 of the Act.

51. In view of the above it is prayed that the Award dated 19.06.2024 should be enforced.

ANALYSIS AND FINDINGS

52. I have heard the learned senior counsels for the parties and perused the material on record.

53. Before dealing with the contentions it is apposite to refer to the scope of Section 48 of the Act.

SCOPE AND FRAMEWORK OF SECTION 48 OF THE ACT

54. Section 48 reads as under:

> "***48. Conditions for enforcement of foreign awards***.—*(1) Enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the court proof that—*
>
> *(a) ***.*
>
> *(b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or*
>
> *(c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration : Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be enforced; or*
>
> *(d)-(e) ****

(2) Enforcement of an arbitral award may also be refused if the court finds that—

(a) the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or

(b) the enforcement of the award would be contrary to the public policy of India:

[Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

(3) ....”

55. Part I of the Act deals with Domestic Awards and Part II governs the enforcement of certain foreign arbitral awards, with Chapter I specifically addressing awards falling within the ambit of the New York Convention Awards. Section 46 thereof provides that a foreign award enforceable under this Chapter shall, as between the parties to the arbitration, be binding for all purposes. Section 47 prescribes the

conditions requisite for the production of evidence in support of an application for enforcement of such a foreign award. Section 48 enumerates the limited grounds upon which a court may refuse enforcement of a foreign award. Finally, Section 49 mandates that, where a Court is satisfied that a foreign award is enforceable under this Chapter, the Award shall be deemed to be a decree of that Court.

56. In ***Vijay Karia v. Prysmian Cavi E Sistemi SRL***[4]**,** it has been held as under:

> ***"58.*** *When the grounds for resisting enforcement of a foreign award under Section 48 are seen, they may be classified into three groups — grounds which affect the jurisdiction of the arbitration proceedings; grounds which affect party interest alone; and grounds which go to the public policy of India, as explained by Explanation 1 to Section 48(2). Where a ground to resist enforcement is made out, by which the very jurisdiction of the Tribunal is questioned — such as the arbitration agreement itself not being valid under the law to which the parties have subjected it, or where the subject-matter of difference is not capable of settlement by arbitration under the law of India, it is obvious that there can be no discretion in these matters. Enforcement of a foreign award made without jurisdiction cannot possibly be weighed in the scales for a discretion to be exercised to enforce such award if the scales are tilted in its favour.*
>
> ***59.*** *On the other hand, where the grounds taken to resist enforcement can be said to be linked to party interest alone, for*

[4](2020) 11 SCC 1.

example, that a party has been unable to present its case before the arbitrator, and which ground is capable of waiver or abandonment, or, the ground being made out, no prejudice has been caused to the party on such ground being made out, a court may well enforce a foreign award, even if such ground is made out. When it comes to the "public policy of India" ground, again, there would be no discretion in enforcing an award which is induced by fraud or corruption, or which violates the fundamental policy of Indian law, or is in conflict with the most basic notions of morality or justice. It can thus be seen that the expression "may" in Section 48 can, depending upon the context, mean "shall" or as connoting that a residual discretion remains in the court to enforce a foreign award, despite grounds for its resistance having been made out. What is clear is that the width of this discretion is limited to the circumstances pointed out hereinabove, in which case a balancing act may be performed by the court enforcing a foreign award.

…

***81.** Given the fact that the object of Section 48 is to enforce foreign awards subject to certain well-defined narrow exceptions, the expression "was otherwise unable to present his case" occurring in Section 48(1)(b) cannot be given an expansive meaning and would have to be read in the context and colour of the words preceding the said phrase. In short, this expression would be a facet of natural justice, which would be breached only if a fair hearing was not given by the*

arbitrator to the parties. Read along with the first part of Section 48(1)(b), it is clear that this expression would apply at the hearing stage and not after the award has been delivered, as has been held in Ssangyong [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] . A good working test for determining whether a party has been unable to present his case is to see whether factors outside the party's control have combined to deny the party a fair hearing. Thus, where no opportunity was given to deal with an argument which goes to the root of the case or findings based on evidence which go behind the back of the party and which results in a denial of justice to the prejudice of the party; or additional or new evidence is taken which forms the basis of the award on which a party has been given no opportunity of rebuttal, would, on the facts of a given case, render a foreign award liable to be set aside on the ground that a party has been unable to present his case. This must, of course, be with the caveat that such breach be clearly made out on the facts of a given case, and that awards must always be read supportively with an inclination to uphold rather than destroy, given the minimal interference possible with foreign awards under Section 48.

…

***83.** Having said this, however, if a foreign award fails to determine a material issue which goes to the root of the matter or fails to decide a claim or counterclaim in its entirety, the award may shock the conscience of the Court and may be set*

aside, as was done by the Delhi High Court in Campos [Campos Bros. Farms v. Matru Bhumi Supply Chain (P) Ltd., 2019 SCC OnLine Del 8350 : (2019) 261 DLT 201] on the ground of violation of the public policy of India, in that it would then offend a most basic notion of justice in this country [In Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213 this Court cautioned that this ground would only be attracted with the following caveat: (SCC pp. 199-200, para 76)

"76. However, when it comes to the public policy of India argument based upon "most basic notions of justice", it is clear that this ground can be attracted only in very exceptional circumstances when the conscience of the Court is shocked by infraction of fundamental notions or principles of justice. ... However, we repeat that this ground is available only in very exceptional circumstances, such as the fact situation in the present case. Under no circumstance can any court interfere with an arbitral award on the ground that justice has not been done in the opinion of the Court. That would be an entry into the merits of the dispute which, as we have seen, is contrary to the ethos of Section 34 of the 1996 Act, as has been noted earlier in this judgment."] . It must always be remembered that poor reasoning, by which a material issue or claim is rejected, can never fall in this class of cases. Also, issues that the Tribunal considered essential and has addressed must be given their due weight — it often happens that the Tribunal considers a particular issue as essential and answers it, which by

implication would mean that the other issue or issues raised have been implicitly rejected. For example, two parties may both allege that the other is in breach. A finding that one party is in breach, without expressly stating that the other party is not in breach, would amount to a decision on both a claim and a counterclaim, as to which party is in breach. Similarly, after hearing the parties, a certain sum may be awarded as damages and an issue as to interest may not be answered at all. This again may, on the facts of a given case, amount to an implied rejection of the claim for interest. The important point to be considered is that the foreign award must be read as a whole, fairly, and without nit-picking. If read as a whole, the said award has addressed the basic issues raised by the parties and has, in substance, decided the claims and counterclaims of the parties, enforcement must follow.

(***emphasis added)***

57. At the outset it is clarified that one of the contentions advanced by the Award Holder pertains to the characterization of Singapore as the seat of arbitration, relying upon the judgment of the curial Court, i.e., the High Court of Singapore. This position is, however, disputed by the Judgment Debtor, who contends that Singapore was merely the place of arbitration.

58. This controversy is not determinative for the present purpose. An enforcement Court exercises a distinct and limited, yet independent, jurisdiction and is concerned solely with testing the foreign award on the grounds enumerated under Section 48 of the Act. The scope of such examination is not circumscribed by the findings of the curial court but is guided by Section 48, which governs enforcement. The Hon'ble

Division Bench in FAO (OS) No. 88 of 2025 had given a finding that the seat of Arbitration is at New Delhi. Since the said matter was remanded back for reconsideration by the Hon'ble Supreme Court, the said issue will be adjudicated by the Division Bench accordingly.

EFFECT OF SINGAPORE COURT'S JUDGMENT/ ICC CHALLENGE ON THE PRESENT ENFORCEMENT PROCEEDINGS

59. Having dealt with the scope of Section 48 of the Act, I shall now deal with the maintainability aspect of the present petition. Learned senior counsel for the Award Holder has argued at length that the plea of bias had already been raised before the Singapore Courts as well as before the ICC, and therefore ought not to be reconsidered at the stage of enforcement. This contention, however, does not merit acceptance. A bare reading of Section 48 of the Act indicates that there is no embargo on the enforcement Court from examining grounds for refusal of enforcement merely because such issues may have been considered by the courts at the seat of arbitration, (though the Judgment Debtor disputes Singapore as the seat of arbitration).

60. On the contrary, it is well settled that the jurisdiction of the enforcement court under Section 48 is independent in nature and actually acts as a secondary jurisdiction. Therefore the question that arises is whether such prior consideration precludes this Court from independently examining the issue. In this regard it is apposite to refer to the following judgments.

61. In ***Nagaraj V. Mylandla v. PI Opportunities Fund-I and others Etc***[5] held as under:

[5]2026 INSC 298.

"76. The application of the doctrine of 'transnational issue estoppel' would effectively curb the propensity of parties to relitigate settled factual issues taking advantage of the fact that they are before a different court in a different jurisdiction, viz., the enforcement court in a country other than the situs of the seat court. This would invariably narrow the scope of interference by the enforcement court with an arbitral award that has already passed muster with the seat court. This would add value and augment the efficiency of arbitration as a dispute resolution mechanism to settle trans-border commercial disputes. However, as noted by the Singapore Court of Appeal in Republic of India (supra), opposition to enforcement of a foreign arbitral award on 'public policy' violation grounds would necessarily stand on a different footing. Notwithstanding the decision of the seat court upholding an arbitral award, the same can still be subjected to examination by the enforcement court against the parameters of the 'public policy' of the State in which enforcement of such award is sought…."

(emphasis added)

62. In ***Vedanta Ltd (supra),*** the Hon'ble Supreme Court held that the enquiry by the enforcement court under Section 48 of the Act is not to be constrained by findings of the seat court. The relevant paragraph reads as under:

"94. The enforcement court would, however, examine the challenge to the award in accordance with the grounds available under Section 48 of the Act, without being

constrained by the findings of the Malaysian Courts. Merely because the Malaysian Courts have upheld the award, it would not be an impediment for the Indian courts to examine whether the award was opposed to the public policy of India under Section 48 of the Arbitration Act, 1996. If the award is found to be violative of the public policy of India, it would not be enforced by the Indian courts. The enforcement court would however not second-guess or review the correctness of the judgment of the seat courts, while deciding the challenge to the award."

(emphasis added)

63. Similarly in ***Mercator Ltd. v. Dredging Corpn. of India Ltd.,***[6] a Coordinate bench has succinctly explained the principles governing enforcement which read as follows:

"12. Before dealing with these grounds in detail, certain legal principles relating to the exercise of jurisdiction under Section 48 of the Arbitration Act may be summarised:

A. The power to set aside an award vests only in the Courts at the seat of arbitration, which exercise "supervisory" or "primary" jurisdiction over the award.

B. The jurisdiction of the Court in which enforcement is sought is a secondary jurisdiction, limited to the question of whether the award is enforceable in that particular jurisdiction.

C. A judgment of the seat Court rejecting a challenge to the award is not binding under Section 48 of the Arbitration

[6]2024 SCC OnLine Del 3075.

Act, but can be considered while deciding whether to permit relitigation of the issue before the enforcement court.

D. The public policy grounds for resisting enforcement of a foreign award under Section 48(2) of the Arbitration Act are limited to "narrow and international standards" of public policy, in contrast with the grounds available for challenging a domestic award under Section 34 of the Arbitration Act.

E. Similarly, while deciding questions of bias also, internationally recognised narrow standards of public policy, which reference the most basic notions of morality or justice, or shock the conscience of the Court, alone can be considered.

F. The Court can take into consideration the fact that a challenge on the ground in question was not raised before the seat Court.

G. Even when the grounds under Section 48 of the Arbitration Act are made out, the Court has discretion as to whether enforcement should be refused.

H. A review on the merits of the dispute does not fall within the jurisdiction of the Court under Section 48 of the Arbitration Act."

(emphasis added)

64. A perusal of the above judgments show that it has been categorically held that the enquiry undertaken by the enforcement court under Section 48 of the Act is not constrained by the findings of the seat court.

65. Further, the inquiry that the Court will take during this stage would be testing the Foreign Award on the public policy of India, which has not been done either by the High Court of Singapore or the ICC.

66. The ICC in its reasons observed as under:

> *"33. For completeness, the court also noted that this arbitration is governed by Omani law, the place of arbitration is Singapore, and Judgment Debtor is an Indian entity. Although the Indian Arbitration and Conciliation Act, 1996 ("Indian Arbitration Act") does not apply to arbitrations seated outside India, it contains provisions and standards for disclosure by arbitrators, which may form relevant considerations for an Indian court as potential courts of enforcement. For example, one of the grounds giving rise to justifiable doubts as to the independence or impartiality of an arbitrator is if "The arbitrator has within the past three years been appointed as arbitrator on two or more occasions by one of the parties or an affiliate of one of the parties", which is identical to Article 3.1.3 under the Orange List of the IBA Guidelines.*
>
> *34. The Court noted that in the absence of any other material to demonstrate bias or partiality, Mr Yeap's non-disclosure would be inconsequential and insufficient to create justifiable doubt as to his independence or impartiality under Indian law."*
>
> ***(emphasis added)***

67. The relevant portion of the High Court of Singapore judgment's reads as under:

> *"165 Relying on the ICC Guidelines, the Sub-Contractor submitted that the subject arbitrator had correctly decided that it was unnecessary to disclose the Prior Arbitration (and, by*

implication, the ICC Court was wrong to reach the opposite conclusion). However, as foreshadowed above (at [136]), this was not an issue that I had to decide, given my finding that the circumstances of the case (including the circumstances of the alleged failure to disclose) did not amount to apparent bias. For the present, it sufficed to say that I agreed with the ICC Court that the subject arbitrator had acted properly and reasonably in evaluating the necessity of disclosure, having regard to the ICC Guidelines in the process.

…

175… The issue before me was whether the subject arbitrator's conduct in relation to disclosure supported an inference of apparent bias, and it did not. …

180. Thus, any apparent bias stemming from the subject arbitrator's realisation in or around October 2024 that the claimants in the two arbitrations were related, had not occurred "in connection with the making of [any] award by which the rights of [the Contractor] (Plaintiff herein) have been prejudiced"; s 24(b) of the IAA.

181 If, however, the subject arbitrator had known about the connection between the claimants in the two arbitrations prior to the issuance of the First Partial Award (a contention made by the Contractor, which both the ICC Court and I rejected), the question remained whether any part of the First Partial Award should be set aside, considering that the Tribunal comprised three arbitrators who reached a unanimous decision, and that there was no allegation of bias against the

other two arbitrators. …

186 I concluded that apparent bias as a new basis of setting-aside could not succeed: it was hopeless, and as such the Contractor should not be allowed to introduce it. I dismissed SUM 316 accordingly. Consequently, I dismissed the application to set aside the Lump Sum Payment decision, unreservedly."

68. From a perusal of the above paragraphs it is clear that the test employed and reasoning provided, though mention the Indian law, but do not consider public policy of India at all in order to invoke the doctrine of Transnational Issue Estoppel. The case of ***Nagraj (Supra)*** becomes relevant in this context as in that particular case the Tribunal had appreciated the issue with reference to the public policy of India and an Indian senior counsel was present in the panel due to which the same was not reappreciated by the Hon'ble Supreme Court amongst other reasons.

69. In view of the above, it is clear that under Section 48 of the Act, enforcement of a foreign award may be refused only on the limited and narrowly construed grounds expressly provided therein, and the burden lies upon the party resisting enforcement to establish that such grounds are made out. The Court exercising jurisdiction at the enforcement stage cannot undertake a review of the merits of the arbitral award and must adopt a pro-enforcement approach, interfering only where the objections fall squarely within the statutory exceptions contemplated under Section 48 of the Act.

70. Accordingly, while there is no dispute that the foreign award has attained finality, this Court retains the jurisdiction to examine whether the case

falls within the confines of Section 48 of the Act and if so then whether to refuse the enforcement of the Award or not.

71. Further the contention of the Award Holder that Mr. Yeap became aware of the identity of Mr. Atwal in October 2024 was rejected by the ICC and same was not pleaded before the Hon'ble High Court of Singapore but is now being pleaded before this Court to enlarge the ambit is meritless as a party cannot be precluded from raising a contention merely because it was not urged earlier, particularly when the present proceedings involve scrutiny of the Award on a distinct and independent threshold.

INTERPRETATION OF "PUBLIC POLICY" AND "BIAS"

72. It is a settled position that bias form a key component in public policy of India as held in ***Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd.***[7]. The relevant findings read as under:

> *" **20.** Against this background, the consideration to be made in these matters is whether the High Court was correct in its decision to reject the objection under Section 48(2)(b) of the Indian Arbitration Act against enforcement of the foreign award on the grounds of arbitral bias and violation of public policy. This raises a further question as to whether the ground of bias could be raised at the enforcement stage under Section 48(2)(b) for being violative of the "public policy of India" and the "most basic notions of morality or justice"?*
>
> ***28.** At this point, we may also benefit by noting that the International Law Association issued recommendations [Committee on International Commercial Arbitration,*

[7](2024) 7 SCC 197.

"Application of Public Policy as A Ground for Refusing Recognition or Enforcement of International Arbitral Awards" in International Law Association Report of the Seventieth Conference (New Delhi, 2000).] at a conference held in New Delhi in 2002 on international commercial arbitration and advocated using only narrow and international standards, while dealing with "public policy". The recommendations have been regarded as reflective of best international practices. The ILA also defined international public policy as follows:

"(i) fundamental principles, pertaining to justice or morality, that the State wishes to protect even when it is not directly concerned;

(ii) rules designed to serve the essential political, social or economic interests of the State, these being known as "lois de police" or "public policy rules"; and

(iii) the duty of the State to respect its obligations towards other States or international organisations."

***29.** Being a signatory to the New York Convention, we must therefore adopt an internationalist approach [Fali Nariman and others, "The India Resolutions for the 1958 Convention on the Recognition and Enforcement of Foreign Awards" in Dushyant Dave and others (Ed.) Arbitration in India (Kluwer, 2021).] . What follows from the above is that there is a clear distinction between the standards of public policy applicable for domestic arbitration and international commercial arbitration. Proceeding with the aforedeclared proposition to have a narrow meaning to the doctrine of public policy and*

applying an international outlook, let us now hark back to whether a foreign award can be refused enforcement on the ground of bias.

30. *Even though the New York Convention does not explicitly mention "bias", the possible grounds for refusing recognition of a foreign award are contained in Article V(1)(d) (irregular composition of Arbitral Tribunal), Article V(1)(b) (due process) and the public policy defence under Article V(2)(b). Courts across the world have applied a higher threshold of bias to prevent enforcement of an award than the standards set for ordinary judicial review [Reinmar Wolff (Ed.), A Review of New York Convention : Article-by-Article Commentary (2nd Edn., Beck/Hart, 2019) p. 352.] . Therefore, arbitral awards are seldom refused recognition and enforcement, considering the existence of a heightened standard of proof for non-recognition and enforcement of an award, based on alleged partiality [Stavroula Angoura, "Arbitrator's Impartiality Under Article V(1)(d) of the New York Convention" (2019) 15 (1) AIAJ 29.] . It invokes a higher threshold than is applicable in cases of removal of the arbitrator. [Gary Born, International Commercial Arbitration (3rd Edn., 2021) p. 3937.] This is for the reasons that, greater risk, efforts, time, and expenses are involved in the non-recognition of an award as against the removal of an arbitrator during the arbitral proceedings.*

31. *What is also essential to note is that Courts across the world do not adopt a uniform test while dealing with*

allegations of bias [William W. Park, "Arbitrator Bias", 2015 TDM 12; Sumeet Kachwaha, "The Rule Against Bias and the Jurisprudence of Arbitrator's Independence and Impartiality", (2021) 17(2) AIAJ 104.] . The standards for determining bias vary across different legal systems and jurisdictions [Vibhu Bakhru J, "Impartiality and Independence of the Arbitral Tribunal" in Shashank Garg (Ed.), Arbitrator's Handbook (Lexis Nexis, 2022).] . English Courts [Halliburton Co. v. Chubb Bermuda Insurance Ltd., 2021 AC 1083 : (2020) 3 WLR 1474 (SC) : 2020 UKSC 48] , for instance, adopt the "informed or fair minded" observer test to conclude whether there is a "real possibility of bias". Australia [Hancock v. Hancock Prospecting Pty. Ltd., 2022 NSWSC 724 (Aust)] adopts the "real danger of bias" test and Singapore [Shankar Alan, In re, (2007) 1 SLR(R) 85 at paras 75-76] prefers the standard of "reasonable suspicion" rejecting the "real danger of bias" test. Therefore, the outcome of a challenge on the ground of bias would vary, depending on domestic standards.

***33.** Embracing international standards in arbitration would foster trust, certainty, and effectiveness in the resolution of disputes on a global scale. The above discussion would persuade us to say that in India, we must adopt an internationally recognised narrow standard of public policy, when dealing with the aspect of bias. It is only when the most basic notions of morality or justice are violated that this ground can be attracted. This Court in SsangyongEngg. &*

Construction Co. Ltd. v. NHAI [SsangyongEngg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213.] ("NHAI") had noted that the ground of most basic notions of morality or justice can only be invoked when the conscience of the Court is shocked by infraction of fundamental notions or principles of justice.

34. *In view of the above discussion, there can be no difficulty in holding that the most basic notions of morality and justice under the concept of "public policy" would include bias. However, Courts must endeavour to adopt international best practices instead of domestic standards, while determining bias. It is only in exceptional circumstances that enforcement should be refused on the ground of bias."*

(emphasis added)

73. At this stage, it is important to highlight the contours of the public policy exception. While the expression "public policy" remains undefined in the statute, its scope has been consciously narrowed by the 2016 amendment to the Act, which introduced Explanations to confine its ambit and curb excessive judicial intervention. Broadly, public policy connotes matters affecting the public good and public interest; however, Courts have repeatedly cautioned that it is an "unruly horse," incapable of precise definition and liable to misuse if left unchecked.

74. Judicial interpretation has therefore evolved to limit "public policy application" to fundamental policy of Indian law, basic notions of morality and justice, and interest of India without permitting a review on merits. In this backdrop, when assessing allegations such as bias or

improper disclosure by an Arbitrator, the inquiry must be narrowly tailored: it is not every procedural lapse that attracts the public policy bar, but only such exceptional circumstance that strikes at the root of the arbitral process and renders the award fundamentally unfair. Thus, what needs to be seen is whether the Arbitrator's action such as a cryptic or inadequate disclosure gives rise to justifiable doubts as to independence and impartiality of such a nature that the award itself stands vitiated, offending the most basic notions of justice and undermining the integrity of the arbitral process.

75. The most basic notions of justice and morality have been elucidated in ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***[8]**.** While the Court consciously refrained from laying down an exhaustive definition, it clarified that the test is narrow in scope and can be invoked only in exceptional circumstances, namely, where the impugned act or award results in such a grave infraction of fundamental principles of justice that it shocks the conscience of the Court. The application of this test is inherently contextual and must be assessed in light of the facts and circumstances of each case. The relevant portion reads as under:

> *"58. Justice is the virtue by which the society/ court / tribunal gives a man his due, opposed to injury or wrong.…*
>
> *62….Dispensation of justice in its quality may vary, dependent on person who dispenses it…*

[8] *(2025) 2 SCC 417.*

> *63. In our view, therefore, considering that the concept of justice is opentextured, and notions of justice could evolve with changing needs of the society, it would not be prudent to cull out "the most basic notions of justice". Suffice it to observe, they ought to be such elementary principles of justice that their violation could be figured out by a prudent member of the public who may, or may not, be judicially trained, which means, that their violation would shock the conscience of a legally trained mind."*

76. Now coming to the concept of bias. As per Oxford dictionary, bias means "*inclination or prejudice for or against one person or group, especially in a way considered to be unfair*." The jurisprudence on bias has evolved significantly across jurisdictions. In ***Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV)***[9] ***("CORE II")***, the Court was dealing with the issue of unilateral appointments in public-private contracts by a government entity, emphasised that a member of a judicial or quasi-judicial body must not have any predisposition in favour of or against a party. If circumstances exist which give rise to a reasonable apprehension of lack of impartiality, such a person ought not to be part of the adjudicatory process.

77. Courts have developed multiple tests to determine bias, which lie along a spectrum.[10] At one end is the requirement of proving actual bias, which is rarely established in practice. Moving along the spectrum are the tests of real likelihood of bias andreasonable suspicion of bias, which focus not on proof of actual prejudice, but on the probability or possibility of

[9](2025) 4 SCC 641.
[10]Bihar State Mineral Development Corpn. v. Encon Builders (I) (P) Ltd., (2003) 7 SCC 418.

bias inferred from surrounding circumstances. The recent approach, particularly in the United Kingdom, has crystallised into the "real possibility of bias" test.

78. Internationally, the European Court of Human Rights (***"ECtHR"***), while interpreting Article 6, applies a two-fold test to assess impartiality: (i) a subjective test**,** which examines whether the decision-maker harbours any personal prejudice or bias; and (ii) an objective test, which considers whether the institutional framework and surrounding circumstances provide sufficient guarantees to exclude any legitimate doubt as to impartiality.

79. Even the Indian jurisprudence has aligned itself with these evolving global standards. In ***Government of Haryana v. G.F. Toll Road (P) Ltd.,***[11] the Hon'ble Supreme Court held that the appropriate test is whether a fair-minded and informed person would conclude that there exists a real likelihood of bias. The Court clarified that actual proof of bias is not necessary; rather, the existence of justifiable doubts as to independence and impartiality is sufficient.

80. The relevant paragraphs from ***CORE II (supra)*** read as under:

> *"49. The disclosure requirement helps prevent the appointment of an unacceptable candidate. The duty of disclosure is a continuing requirement to: (i) provide the information to any party who did not obtain it before the arbitrator's appointment; and (ii) secure information about circumstances that only arise at a later stage of the arbitral proceedings, that is, new business affiliations or share acquisitions.*

[11](2019) 3 SCC 505.

…

55. Article 18 constitutes a fundamental principle that is "applicable to the entire arbitral proceedings." The Working Group has also stated that the principles of equality and fairness "should be observed not only by the arbitral tribunal but also by the parties when laying down any rules of procedure." It was the understanding of the Working Group that the principle of equality of parties applies to arbitral proceedings in general, including aspects such as the composition of arbitral tribunal. Article 18 also operates as a limitation on Article 19 which provides broad autonomy to both the parties and, in the absence of an arbitration agreement, to the arbitral tribunal when determining the procedure to be followed in conducting the arbitral proceedings. It imposes a duty on the arbitral tribunal to ensure fairness in the arbitral process.

…115. The consideration of possible "doubts" must be undertaken from the perspective of a "fair-minded and informed person" rather than the subjective views of the parties or the arbitrators. According to Gary Born, the standard of proof adopted under Article 12 of the Model Law is relatively low to ensure "the integrity of the arbitral tribunal and arbitral process, particularly given the extremely limited review available for substantive or procedural errors by the arbitrators." The issue of arbitrator bias is to be

resolved by applying the test of the real likelihood of bias in the given facts and circumstances.

…

124. The doctrine of bias as evolved in English and Indian law emphasizes independence and impartiality in the process of adjudication to inspire the confidence of the public in the adjudicatory processes. Although Section 12 deals with the quality of independence and impartiality inherent in the arbitrators, the provision's emphasis is to ensure an independent and impartial arbitral process.

125. Fali Nariman, distinguished lawyer and erudite jurist, in an article on "Standards of Behaviour of Arbitrators", opined that the level of probity expected of arbitrators is no less, and perhaps more stringent than what is expected of Judges:

"Though litigation is compulsory and arbitration is consensual, both are judicial processes of an adversarial character. That is why arbitration has always been regarded as quasi-judicial. Standards of behaviour expected of arbitrators-with reference to their impartiality and their independence-are no less stringent than that demanded of Judges; in fact, arbitrators are expected to behave a shade better since Judges are institutionally insulated by the established court system, their judgments being also subjected to the corrective scrutiny of an appeal.

…

128. If a person having a financial interest in the outcome of the arbitral proceedings unilaterally nominates a sole arbitrator, it is bound to give rise to justifiable doubts on the independence and impartiality of the arbitrator. The possibility of bias by the arbitrator is real because the person who has an interest in the subject matter of the dispute can chart out the course of the entire arbitration proceeding by unilaterally appointing a sole arbitrator. A party may select a particular person to be appointed as a sole arbitrator because of a quid pro quo arrangement between them. Moreover, the fact that the sole arbitrator owes the appointment to one party may make it difficult to decide against that party for fear of displeasure. It is not possible to determine whether the sole arbitrator will be prejudiced, but the circumstances of the appointment give rise to the real possibility of bias."

(emphasis added)

81. With the aforesaid legal position in mind, I shall now examine the controversy in the present case, namely, whether the conduct of Mr. Yeap, the Award Holder's nominee Arbitrator, in not disclosing his involvement in a previous arbitration, gives rise to a reasonable apprehension/justifiable doubt of bias so as to attract the public policy exception under Section 48(2)(b) of the Act.

PRINCIPLE OF DISCLOSURE, NEUTRALITY AND IMPARTIALITY IN INDIAN LAW

82. I am cognizant that bias and non-disclosure are distinct concepts, though they may at times overlap. Mere disclosure of circumstances does not automatically lead to a conclusion of partiality. However, to prevent situations that may give rise to apprehensions of bias, the requirement of disclosure has been incorporated across jurisdictions.

83. The question of whether an Arbitrator is in fact biased arises at a later stage; the first step is to see whether the obligation of disclosure has been duly complied with. This requirement finds recognition across jurisdictions, including under the UNCITRAL Model Law, which mandates disclosure prior to the constitution of the tribunal, with analogous provisions reflected in various legal frameworks. The rationale for this insistence lies in the fact that non-disclosure, in itself, can undermine the integrity of the arbitral process and, in certain circumstances, prove fatal to its validity.

84. It is important to note that impartiality and independence have always been one of the important hallmarks of any adjudicatory process and the same has been emphasised time and again by the Hon'ble Supreme Court and various High Courts.

85. In ***CORE II (Supra),*** as discussed above the Court observed that the duty of disclosure is a continuing obligation which ensures that parties are made aware of any circumstances that may affect the neutrality of the Arbitrator, both at the stage of appointment and during the course of the proceedings. The underlying objective of such disclosure is to prevent the appointment of an unacceptable candidate and to safeguard the fairness of the arbitral process.

86. The Hon'ble Supreme Court further noted that arbitration, though founded on party autonomy, nevertheless possesses the "trappings of a court" and therefore requires the arbitral tribunal to act objectively and in accordance with the principles of natural justice. The principles of equality, fairness and neutrality are not confined to any single stage of the proceedings but operate throughout the arbitral process, including the composition of the tribunal. Indeed, the independence and impartiality of the Arbitrator form the cornerstone of procedural equality between the parties, ensuring that both sides participate on a level playing field in the adjudicatory process.

87. Thus, the statutory scheme governing arbitration makes it abundantly clear that impartiality and independence of the Arbitrator constitute a golden thread that runs through the entire arbitral framework**.** Any circumstance which undermines this neutrality strikes at the very legitimacy of the adjudicatory process. Even a slight infraction in this regard has the potential to erode party confidence in the arbitral process and may consequently vitiate the fairness of the proceedings and precisely why this idea was codified under Section 12 of the Act which mandates that an Arbitrator discloses any circumstances likely to give rise to justifiable doubts as to his or her independence or impartiality.

ROLE OF SECTION 12

88. Under Section 12(1) of the Act, any person approached in connection with a possible appointment as an Arbitrator *shall disclose* in writing all circumstances whether financial, professional, business, or otherwise which are likely to give rise to justifiable doubts as to his or her

independence or impartiality. This obligation is not confined to the pre-appointment stage but continues throughout the arbitral proceedings.

89. The 2015 Amendment Act significantly strengthened this framework by introducing a structured disclosure and ineligibility regime through the Fifth, Sixth, and Seventh Schedules. The Fifth Schedule provides a non-exhaustive list of circumstances that may give rise to justifiable doubts regarding the Arbitrator's neutrality and serves as a guide under Explanation 1 to Section 12(1). The Sixth Schedule prescribes the form and manner of disclosure, thereby standardising the obligation and ensuring transparency. The Seventh Schedule, read with Section 12(5), identifies specific relationships and situations that render a person *de jure ineligible* to act as an Arbitrator, notwithstanding any prior agreement to the contrary, subject only to an express post-dispute waiver in writing by the parties.

90. The statutory scheme makes it abundantly clear that the duty of disclosure is mandatory and rests solely upon the Arbitrator. The use of the expression "he shall disclose" leaves no room for discretion. Courts have consistently held that the burden does not lie upon the parties to discover potential conflicts; rather, full and frank disclosure is a prerequisite to a valid appointment.

91. The underlying test is not proof of actual bias but the existence of circumstances giving rise to *justifiable apprehension of bias*. As elucidated in the 246th Report of the Law Commission of India, neutrality of Arbitrators is fundamental to arbitration as a quasi-judicial process, and the standard is whether a reasonable person would perceive a likelihood of bias. This principle reflects the broader principle that justice must not only be done but must also be seen to be done.

92. The law in recent times has further evolved to address structural bias in arbitral appointments. In ***TRF Ltd. v. Energo Engineering Projects Ltd***.[12] and ***Perkins Eastman Architects DPC v. HSCC (India) Ltd***.[13], the Hon'ble Supreme Court held that a person who is himself ineligible under Section 12(5) is equally disqualified from appointing an Arbitrator. This principle was extended to invalidate unilateral appointments by interested parties. Further, in ***Bharat Broadband Network Ltd. v. United Telecoms Ltd.***,[14] it was clarified that waiver of ineligibility under Section 12(5) must be express and in writing after disputes have arisen, and cannot be inferred from conduct.

93. The cumulative effect of the 2015 amendment and judicial pronouncements thereafter is that an arbitral award rendered in breach of the disclosure obligation or by an ineligible Arbitrator lacks legal sanctity. Such an award is liable to be set aside, as it undermines the foundational requirement of neutrality which is indispensable to the arbitral process.

94. In ***Lanco-Rani v. National Highways Authority of India Limited***[15], the Arbitrator had appeared in one other arbitration consisting of one of the parties and later on when objections were raised as to his impartiality, he had resigned from one of the proceedings. The relevant paras read as under:

> *"18. Recently, in Union of India v. U.P. State Bridge Corporation Ltd. (supra), the Supreme Court explained that the English Arbitration Act, 1996 (EAA) was enacted on the*

[12](2017) 8 SCC 377.
[13](2020) 20 SCC 760.
[14](2019) 5 SCC 755.
[15]2016 SCC OnLine Del 6267.

lines of the UNCITRAL Model Law, i.e. in the same year as the Act now applicable in India. Commenting upon the structure of the EAA, Mustill and Boyd in their "Commercial Arbitration, 2001 Companion Volume to the Second Edition" noted that it was founded on four pillars, and the first of these pillars comprised 'three general principles' on which the entire edifice of the said legislation was said to be structured. In Department of Economics Policy and Development of the City of Moscow v. Bankers Trust Co. (2004) EWCA Civ 314 it was explained, thus, in relation to the EAA:

> *"...Parliament has set out, in the Arbitration Act, 1996, to encourage and facilitate a reformed and more independent, as well as private and confidential, system of consensual dispute resolution, with only limited possibilities of court involvement where necessary in the interests of the public and of basic fairness'. Section 1 of the Act sets forth the three main principles of arbitration law, viz. - (i) speedy, inexpensive and fair trial by an impartial tribunal; (ii) party autonomy; and (iii) minimum court intervention. This provision has to be applied purposively. In case of doubt as to the meaning of any provision of this Act, regard should be had to these principles."*

19. The emphasis therefore is on "a fair trial by an impartial Tribunal".

...

25. Turning to the facts of the present case, it is plain that there was a mandatory requirement that Mr. Basant Kumar should have made a disclosure in terms of Section 12(2) of the Act to the parties about him being engaged as an advisor/technical expert in some other arbitration cases of NHAI. Those arbitration cases may have nothing to do with the case in which he was acting as an Arbitrator but that is not the point. This was a circumstance that certainly would give rise to "justifiable doubts as to his independence and impartiality."In fact, as the proceedings dated 19th January, 2007 at the 34th hearing of the arbitration in the dispute between PCL and NHAI show, Mr. Basant Kumar himself referred to Section 12 of the Act and thought it necessary to make the disclosure. He obviously realised that this was a case of 'apparent bias' which was anticipated by the legislature in enacting Sections 12(1) and 12(2) of the Act. No sooner had he made the disclosure, the representatives of PCL objected to his continuation as an Arbitrator. He then had no hesitation in announcing his resignation. This was at the time when the arbitration in the present case was in progress. Therefore, there was no excuse for Mr. Basant Kumar to not have made a similar voluntary disclosure when the proceedings in the present arbitration were in progress.

…

27. The fact that the Award may have been unanimous and that Mr. Basant Kumar was only one of the Members of the AT does not make even one bit of a difference to the above conclusion.

This aspect of the matter has already been dealt with by the Supreme Court in A.K. Kraipak v. Union of India (supra). There again, it was urged that the "mere fact that one of the Members of the Board was biased against some of the Award Holders cannot vitiate the entire proceedings." The Supreme Court negated this plea since the Court was essentially concerned with the question whether the "decision taken by the Board can be considered as having been taken fairly and justly." This was because of the "conflict between duty and interest."In other words, even if one of the Members of the AT has compromised the essential requirement of fairness by failing to disclose the circumstances which may give rise to justifiable doubts as to independence and impartiality, the Award of the AT would get vitiated."

(emphasis added)

95. Another pertinent case is of ***Vinod Bhaiyalal Jain v. Wadhwani Parmeshwari Cold Storage (P) Ltd.***[16] wherein the Court observed that whenever the Arbitrator comes to know of any such information which may lead to a justifiable doubt of his partiality he should refrain from proceeding further. Relevant findings read as under:

"9….However, in the above background, what is to be seen is that there has been a reasonable basis for the appellants to make a claim that in the present circumstance the learned Arbitrator would not be fair to them even if not biased. It could no doubt be only a perception of the appellants herein. Be it so, no room should be given for even

[16](2020) 15 SCC 726.

such a feeling more particularly when in the matter of arbitration the very basis is that the parties get the opportunity of nominating a judge of their choice in whom they have trust and faith unlike in a normal course of litigation where they do not have such choice.

96. Further in ***Pallav Vimalbhai Shah* v. *Kalpesh Sumatibhai Shah***[17], Gujarat High Court has explained why the requirement of disclosure is sacrosanct. The relevant findings read as under:

" 36. In context of such provisions contained in section 12 of the Act, the requirement of disclosure in terms of the Sixth Schedule assumes significance. We have noticed that even as per the unamended subsection (1) of section 12, a person who was approached with his possible appointment as an arbitrator, had to disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality. In the amended form, subsection (1) of section 12 makes this requirement more elaborate and more definitive. As per Explanation 2, such disclosure has to be made in the form specified in Sixth Schedule. It can thus be seen that the requirement of this disclosure is of considerable importance. Unless the person who is approached for his possible appointment as an arbitrator, makes necessary disclosure of any circumstances which may give rise to justifiable doubts as to his independence or impartiality, it would not be possible for the parties to the arbitral proceedings to evaluate this position and decide for themselves whether on account of such

[17]O/IAAP/15/2017 dated 04.08.2017.

circumstances, he should be ineligible for appointment. If even after disclosure of existence of such circumstances, the parties consciously appoint or participate in appointment of a person as an arbitrator, the statute prevents the person concerned from challenging such appointment.

37. As observed by the Supreme Court in a recent judgment in case of Voestalpine Schienen Gmbh v. Delhi Metro Rail Corporation Limited reported in (2017) 4 Supreme Court Cases 665, the three main principles of the Arbitration law are (i) speedy, inexpensive and fair trial by an impartial tribunal; (ii) party autonomy; and (iii) minimum Court intervention….

38. In this context, the necessity of disclosure envisaged in subsection (1) of section 12 becomes important. Only when such a disclosure is made, that the parties can judge for themselves, if circumstances exist to give justifiable doubts as to the impartiality of an arbitrator. Upon disclosure being made any one of the following situations may arise. First is, where the parties may agree that no such circumstances giving rise to justifiable doubts as to the impartiality of the arbitrator exist or the parties may despite such circumstances existing, go ahead and appoint him as an arbitrator or in face of disagreement between the parties on this issue, one of them, as per the procedure envisaged in the arbitration clause, may proceed to appoint such a person as an arbitrator. Whatever be the fall out, it cannot be denied that disclosure of existence of any circumstance likely to give rise to justifiable doubts as to independence or impartiality of an arbitrator, would be of

great importance. Not making any disclosure even though such circumstances exist, would render the appointment of an arbitrator without following the mandatory procedure…. This is only to suggest that if circumstances exist and disclosure is not made, appointment of an arbitrator would be wholly non est."

97. Therefore, the principle laid down as evident from the above judgments is that the Arbitrator should make a full and complete disclosure as mandated by Section 12 read with the schedules and if the same is not done, the same is fatal.

98. In the present case, the Award Holder has argued that (i) since the Award was unanimous, no doubts can be attached to the Partial Award (ii) Section 12 of the Act is wholly inapplicable to a foreign-seated arbitration, and therefore any alleged non-compliance therewith is inconsequential, and (iii) while dealing with foreign awards, international standards should be applied while construing public policy.

99. The Award Holder's primary contention that the First Partial Award, being unanimous, cannot be tainted by bias, does not merit acceptance. In light of the principle laid down in ***A.K. Kraipak v. Union of India***[18], as reiterated in ***Lanco-Rani (supra)*** and ***CORE II (supra)***, it is well-settled that even the participation of a single member of the Arbitral Tribunal who has compromised the essential requirement of fairness by failing to disclose circumstances giving rise to justifiable doubts regarding independence and impartiality vitiates the integrity of the entire proceeding. Consequently, the Award rendered by such a Tribunal cannot be sustained merely on the ground of unanimity.

[18](1969) 2 SCC 262.

100. As regards the second and third contention, I am conscious that Section 12 which falls under Part I does not apply *proprio vigore* by virtue of Section 2(2). The present matter is not one of applicability of Section 12 per se but whether the arbitral process adhered to the fundamental requirement of independence and impartiality, a breach of which would fall within the limited contours of the public policy exception under Section 48.

101. The standards or the principles embodied in Section 12, including the duty of disclosure, are reflective of well-settled international norms. The duty to disclose is continuous and must be assessed from the standpoint of whether the circumstances are likely to give rise to justifiable doubts in the mind of a reasonable party thereby rendering the award vulnerable to refusal of enforcement under Section 48 as being contrary to the fundamental policy of Indian law and the basic notions of justice and morality.

102. That being said, the crux of the above analysis is that while Section 12 *per se* is not applicable, it is the principle of impartiality which goes hand in hand with non-disclosure, which forms part of the Indian law and therefore falls within the contours of public policy. It is against this principle that the foreign Award shall be tested with the threshold being, shocking the conscience of the Court. Had the arbitration been domestic arbitration then the Award would have been rejected simply on the ground of non-compliance of Section 12 of the Act. Therefore the entire discussion in the present case is in view of the fact whether the award is liable to be set aside in view of being violative of public policy.

103. Without prejudice, the Award Holder has further contended that even if Section 12 were applicable, no disclosure was warranted, as the

requirement under Section 12 read with Entry 22 of the Fifth Schedule is triggered only where the prior arbitration was conducted within the preceding three years, on 2 or more occasions, whereas in the present case it was conducted four years earlier. This submission, however, fails to take into account the mandate of continuous disclosure.

104. The factual narration in the present case shows that on 12.04.2023, the Request for Arbitration (***"RFA"***) was submitted, wherein the details of the Award Holder and its counsel were duly disclosed. The relevant portion reads as under:

> *"9. The claimant is engaged in the business of designing, integrating, and commissioning security systems and solutions, both off-the-shelf and customized for government and private sector clients. MSA is a company incorporated under the laws of Oman. MSA's address is:*
> *P.O. BOX: 1372,*
> *Postal Code : 130, Azaiba*
> *Muscat,*
> *Sultanate of Oman*
> *Email:* a.atwal@msa-global.com
> ms.atwal@msa-global.com

105. Prior to this, in November 2018, the Award Holder had nominated Mr. Andre Yeap, senior counsel from Singapore, as its co-arbitrator in a separate arbitration proceeding involving Mr. Atwal, who is the Managing Director, Chairman and Promoter of MSA Global LLC (Oman).

106. On 19.04.2023, Mr. Yeap signed the ICC Arbitrator Statement of Acceptance, Availability,Impartiality and Independence ("the Disclosure

Statement") and stated, "Nothing to disclose". The same is reproduced as under:

3. INDEPENDENCE and IMPARTIALITY

(Tick one box and provide details below and/or, if necessary, on a separate sheet)

In deciding which box to tick, you should take into account, having regard to Article 11(2) of the Rules, whether there exists any past or present relationship, direct or indirect, whether financial, professional or of any other kind, between you and any of the parties, their lawyers or other representatives, or related entities and individuals. Any doubt must be resolved in favour of disclosure. Any disclosure should be complete and specific, identifying *inter alia* relevant dates (both start and end dates), financial arrangements, details of companies and individuals, and all other relevant information. In deciding which box to tick and as the case may be in preparing your disclosure, you should also consult with care the relevant sections of the Note.

(●) **Nothing to disclose**: I am impartial and independent and intend to remain so. To the best of my knowledge, and having made due enquiry, there are no facts or circumstances, past or present, that I should disclose because they might be of such a nature as to call into question my independence in the eyes of any of the parties and no circumstances that could give rise to reasonable doubts as to my impartiality.

( ) **Acceptance with disclosure**: I am impartial and independent and intend to remain so. However, mindful of my obligation to disclose any facts or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the parties or that could give rise to reasonable doubts as to my impartiality, I draw attention to the matters below and/or on the attached sheet.

Use one of the following options to sign the document:

1) *Copy your signature from a Word document and paste it in this form.*
2) *Draw your ink signature (click here for further assistance).*
3) *Add your electronic signature.*
4) *Print the form, sign it and scan it.*

Date: 19 April 2023 **Signature:**

107. The Arbitral Tribunal was constituted on 05.09.2023 and the Award was subsequently rendered on 19.06.2024 (corrected on 09.10.2024). Thereafter, on 17.01.2025, the Judgment Debtor's counsel came across a

judgment of the Gujarat High Court which revealed that Mr. Andre Yeap had previously acted as an Arbitrator in another arbitration involving the Award Holder's Chairman, Mr. Manbhupinder Singh Atwal, wherein the same counsel representing the Award Holder in the present ICC arbitration had also appeared. Upon the Judgment Debtor raising a challenge on 23.01.2025, Mr. Yeap, in his response, stated that although he had become aware of this potential conflict in October 2024, he had chosen not to disclose the same on the ground that such disclosure could potentially invite a challenge to his impartiality. The relevant extract reads as under:

> *"Dear Sirs and Mesdames*
>
> *1. I refer to the the Respondents application under A14(1) of the ICC Rules to challenge the independence and impartiality of Andre Yeap as co-arbitrator. By the Secretariats letter dated 20 January 2025, the arbitrators were invited to provide their response by 31 January 2025. My response is as follows.*
>
> *2. At the time when I signed ICCs Statement of Acceptence, Availability, Impartiality and Independence on 19 April 2023 (the Statement of Acceptance), ICC had provided me its Case Information setting out the identities of the parties as well as other relevant entities, which did not include Manbhupinder Singh Atwal. My conflict search was done and cleared on this basis.*
>
> *3. As I recall, the Request for Arbitration (RFA), the Statement of Claim and subsequent pleadings did not make reference to Manbhupinder Singh Atwal, let alone*

show that Manbhupinder Singh Atwal either owned or controlled the Claimant. I did not pay attention to the Claimants email address as provided in the RFA, which in any event did not carry the full name of Manbhupinder Singh Atwal.

4. By a partial award dated 19 June 2024 (the Partial Award) the Tribunal had ordered, inter alia, that the Respondent made certain monthly payments to the Claimant provided that the Claimant shall first provide a corporate guarantee to secure the sum in the event the repayment is subsequently ordered, agreeable to the Respondent, whose agreement shall not be unreasonably withheld.

5. It became apparent to me that Manbhupinder Singh Atwal was Chairman of the Claimant by the time he sought to provide a personal guarantee in an effort to resolve the Respondents allegations regarding the inadequacy of the Claimants corporate guarantee. This was sometime in or around October 2024.

6. As a result, I decided to refresh my memory on the IBA Guidelines on Conflict of Interest in International Arbitration (the IBA Guidelines) and noted the following matters in the Orange List (which required disclosure)

3.1.3: where the arbitrator has within the past 3 years, been appointed as arbitrator on 2 or more occasions by one of the parties, or an affiliate of one of the parties;

3.2.8; where the arbitrator has, within the past 3 years, been appointed as arbitrator on more than 3 occasions by the same counsel, or the same law firm.

7. Whilst paragraph 27 of the ICC Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration Under the ICC Rules of Abitration (the ICC Note) sets out a list of circumstances which an arbitrator should consider. I also gave due consideration to the orange list in the IBA guidelines.

8. Given that:

(1) the Claimant in this case was a different party from Manbhupinder Singh Atwal (who was the Claimants Chairman)

(2) I had been appointed co-arbitrator by Manbhupinder Singh Atwal/DSK Legal in the previous arbitration sometime in or around November 2018, more then 4 years prior to my signing of the Statement of Acceptance, and

(3) the aforesaid appointment by DSK Legal in the previous arbitration was my only previous appointment by DSK;

I came to the conclusion that the circumstances concerning my appointment in the previous arbitration by Manbhupinder Singh Atwal/DSK Legal were nowhere near and indeed far away from the matters set out in the Orange List and that it was unnecessary, unwarranted and even possibly inappropriate for me to make any disclosure that I had previously been

nominated/appointed arbitrator by Manbhupinder Singh Atwal/DSK Legal.

9. By the time I realized Manbhupinder Singh Atwal was the Chairman of the Claimant, the Respondents counsel had at least foreshadowed, if not even confirmed that the Respondent was commencing or had commenced proceedings in the Singapore Courts to set aside the Partial Award. Had I made the disclosure, the possibility of the Respondent seeking to challenge my impartiality could not be discounted.

10. I have always acted independently and impartially as arbitrator in all arbitrations, including this arbitration, and will continue to do so in this arbitration if the Respondents challenge is dismissed.

11. I would be happy to address any queries which the ICC may have.

Your sincerely,
Andre Yeap, SC
Co-arbitrator"

108. A perusal of paragraph No. 9 clearly shows that the Arbitrator was aware of his previous engagement and even expressed apprehension that disclosure of the same to the Judgment Debtor might give rise to concerns. This clearly demonstrates that the Arbitrator himself considered the prior engagement to be a circumstance relevant to his independence and impartiality. However, despite such knowledge, the Arbitrator failed to make a proper disclosure as required under the rules governing international arbitration.

109. It is not in dispute that the Arbitrator had previously acted in an arbitration involving one of the parties approximately four years prior. While such prior engagement may not, in itself, be disqualifying, it undoubtedly triggered a continuing obligation of disclosure under principles mentioned under Section 12 of the Act.

110. Section 12 reads as under:

> *"12. Grounds for challenge.— [(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances,—*
>
> *(a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and*
>
> *(b) which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.*
>
> *Explanation.—The grounds stated in the Fifth Schedule shall guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator.*
>
> *Explanation 2.—The disclosure shall be made by such person in the form specified in the Sixth Schedule.]*
>
> *(2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub-section (1) unless they have already been informed of*

them by him

…"

Entry 22 reads as under:

"The arbitrator has within the past three years been appointed as arbitrator on two or more occasions by one of the parties or an affiliate of one of the parties."

111. What needs emphasis is that the principle of disclosure under the Act identifies circumstances that an Arbitrator is obliged to disclose; it does not, by itself, render the Arbitrator biased. Disclosure serves as a mechanism to ensure transparency and to enable parties to assess potential conflicts.

112. In the present case the core of the controversy lies in the erroneous equation sought to be drawn between the existence of bias and the obligation of disclosure**.** These two operate at fundamentally different but overlapping sphere. What is not being assessed here is whether the learned Arbitrator was, in fact, biased. What actually needs to be seen is whether he disclosed all material circumstances as and when they arose. It is in this context that the requirement of disclosure assumes an entirely independent footing and is not contingent upon any other consideration of bias or its likelihood. If this initial step of disclosure is not undertaken, the aggrieved party is deprived of the opportunity to assess the existence or likelihood of bias. The cart cannot be put before the horse.

113. The duty to disclose is absolute in character. It is intended to ensure transparency in the constitution of the arbitral tribunal and to preserve the confidence of the parties in the adjudicatory process. This obligation cannot be diluted on the ground that the

circumstance in question may appear trivial, remote, or insufficient to establish justifiable doubts. The statutory scheme does not permit the Arbitrator to assume the role of a judge in his own cause by determining whether a particular fact warrants disclosure. Such an approach would defeat the very purpose of the concept of disclosure, which is to enable the parties to make an informed assessment of the Arbitrator's independence and impartiality.

114. The distinction becomes particularly significant in the context of enforcement of foreign awards. It is no doubt correct that the specific provisions of Section 12 of the Act, fall within Part I and are not directly applicable to proceedings under Part II. However, the principles underlying Section 12 cannot be viewed in isolation or as confined merely to domestic arbitrations.

115. This principle also finds recognition in institutional frameworks such as the ICC Rules, which similarly impose a continuing duty upon Arbitrators to disclose any circumstances that may give rise to doubts as to their independence. Thus, the obligation of disclosure is not a creature of Indian law alone but is reflective of a widely accepted international standard governing arbitral conduct.

116. At this juncture it is also important to peruse the ICC framework with respect to disclosure, as the parties had agreed to be bound by the same.

ICC FRAMEWORK ON NEUTRALITY AND IMPARTIALITY OF ARBITRATORS

117. Article 11 of ICC Rules reads as under:

> *"ARTICLE 11*
>
> *General Provisions*
>
> *1. Every arbitrator must be and remain impartial and independent of the parties involved in the arbitration.*

2. Before appointment or confirmation, a prospective arbitrator shall sign a statement of acceptance, availability, impartiality and independence. The prospective arbitrator shall disclose in writing to the Secretariat any facts or circumstances which might be of such a nature as to call into question the arbitrator's independence in the eyes of the parties, as well as any circumstances that could give rise to reasonable doubts as to the arbitrator's impartiality. The Secretariat shall provide such information to the parties in writing and fix a time limit for any comments from them.

3. An arbitrator shall immediately disclose in writing to the Secretariat and to the parties any facts or circumstances of a similar nature to those referred to in Article 11(2) concerning the arbitrator's impartiality or independence which may arise during the arbitration.

…"

(emphasis added)

118. A perusal of the above shows that Article 11 of the ICC Rules encapsulates the foundational requirement that an Arbitrator must be, and remain, independent and impartial. It mandates a written declaration prior to appointment, requiring disclosure of any circumstances that may reasonably give rise to doubts as to such independence or impartiality. This obligation is continuous, extending throughout the arbitral proceedings, and ensures that any supervening circumstances are promptly brought to the notice of the parties and the ICC Court, which retains final authority on issues of confirmation, challenge, or replacement.

119. Importantly, the standard for disclosure is objective - centred on whether circumstances may reasonably give rise to doubts in the eyes of the parties, rather than the Arbitrator's own assessment. The ICC Note reinforces this framework by requiring a rigorous and comprehensive disclosure of all potentially relevant facts, including prior arbitral engagements involving a party or its affiliates, thereby ensuring informed decision-making and transparency in the constitution of the tribunal. The Statement of Acceptance, Availability, Impartiality and Independence submitted by the Arbitrator also fortifies the same. The said disclosure statement does not put any restriction on the year/ number of arbitrations as contained in Entry 22 of Schedule V, of the Act. Further there is a clarification that a doubt must be resolved in favour of disclosure clearly showing the high threshold required to be maintained by the Arbitrator towards disclosure of past relationships.

120. Needless to add, the ICC itself, in its Statement of Reasons, in the ICC challenge has characterised the circumstances as "regrettable" and expressly observed that the issue would be more appropriately examined by enforcement courts. This observation assumes significance inasmuch as it underscores that the question of Arbitrator impartiality was not inconsequential, but one warranting judicial scrutiny at the enforcement stage.

121. The ICC findings read as under:

> *"V. COURT'S DECISION ON MERITS OF THE CHALLENGE*
>
> *24. The Court considered whether the failure to disclose Mr Atwal's appointment of Mr Yeap in the Prior Arbitration raises*

doubts about his impartiality and independence, such that the Challenge should be accepted on its merits.

25. The Court began by considering whether Mr Yeap should have disclosed the prior appointment. The Court concluded that, on balance, Mr Yeap should have disclosed the prior appointment after considering the following:

(a) Mr Yeap acted reasonably when making inquiries prior to signing his Statement of Acceptance, Availability, Impartiality and Independence.

(b) The Court accepts that Mr Yeap became aware of the potential disclosure in or around October 2024 and he had considered at this time whether a disclosure should be made.

(c) The ICC Note states at paragraph 25 that an arbitrator must disclose "any circumstance that might be of such a nature as to call into question his or her independence in the eyes of any of the parties or give rise to reasonable doubts as to his or her impartiality. Any doubt must be resolved in favour of disclosure."

(d) Mr Yeap properly considered paragraph 27 of the ICC Note, which further requires arbitrators to make their decision on disclosure based on an assessment of the circumstances, including whether the arbitrator "acts or has acted as arbitrator in a case involving one of the parties or one of its affiliates" and that the arbitrator "has in the past been

appointed as arbitrator by one of the parties or one of its affiliates, or by counsel to one of the parties or the counsel's law firm." The ICC Note does not specify any specific time periods for past appointments.

(e) While Mr Yeap acted reasonably in considering other guidance, including the IBA Guidelines, an arbitrator's duty of disclosure under the ICC Rules is separate and distinct, and the IBA Guidelines do not override that duty.

(f) Mr Yeap was entitled to consider the four-year period between the appointments in the Prior Arbitration and this arbitration, although he may also have considered that the challenge to the award in the Prior Arbitration had only concluded in July 2024.

(g) The possibility that the Partial Award may be challenged by the Judgment Debtor, or that the Judgment Debtor may have sought to challenge Mr Yeap's impartiality following the disclosure, is not a relevant consideration to be taken into account when deciding whether to make a disclosure.

(h) The ICC Note requires arbitrators to err on the side of disclosure. Therefore, any doubt ought to have been resolved in favour of disclosure.

…

29. Mr Yeap decided not to disclose the Prior Arbitration after consulting relevant guidance. His decision was based on the

length of time between the appointments. While this decision was open to him on the facts, the more prudent course of action would have been to err on the side of disclosure and inform the parties of the Prior Arbitration."

(emphasis added)

122. A perusal of above clearly shows that there is a finding of non-disclosure, it has been observed that he came to know about the circumstance around October 2024 and yet decided not to disclose on the basis that it may be challenged by one of the parties which is not something an Arbitrator should take into consideration.

123. Accordingly, this Court is of the view that the obligation of disclosure is autonomous and non-derogable, and its breach cannot be justified on the ground that the circumstances, if disclosed, may not have ultimately established bias. The legitimacy of the arbitral process rests not merely on actual impartiality, but equally on the perception of impartiality, and it is this perception that the duty of disclosure is designed to safeguard.

124. In this regard, the Statement to be furnished by Mr. Yeap as a prospective Arbitrator specifically required him to take into account, whether there existed any past or present relationship, direct or indirect, whether financial, professional, or of any other kind, between him and any of the parties, their lawyers or other representatives, or related entities and individuals.

125. Therefore, the disclosure required to be made by Mr. Yeap was couched in the widest possible terms and was not confined to any specific time period prior to the present appointment, nor was it limited to a minimum number of prior engagements. The obligation was thus a continuing and

broad duty of disclosure intended to ensure complete transparency and to enable the parties to assess any circumstance that could reasonably give rise to doubts regarding the Arbitrator's independence or impartiality.

126. Despite such awareness, the Arbitrator consciously chose not to disclose the said circumstance on the premise that such disclosure might invite a challenge to his impartiality.

CONCLUSION

127. By withholding such information, the Arbitrator effectively deprived the Judgment Debtor of the opportunity to assess the circumstances and to raise a timely challenge to the composition of the tribunal. Consequently, such a defect transcends a mere procedural irregularity and amounts to a violation of the most basic notions of justice and morality, as well as the fundamental policy of Indian law.

128. This Court is cognizant of the fact that the ground of bias, as subsumed within the public policy exception, ought not to be invoked lightly or routinely to refuse enforcement of arbitral awards, particularly having regard to the time, cost, and finality associated with arbitral proceedings. However, there always exist rare and exceptional cases where the circumstances are so egregious that judicial intervention becomes imperative. Where the arbitral process is vitiated by a clear infraction of the most basic notions of justice and morality, the Court would be failing in its duty were it to enforce such an award. The present case, in my considered view, constitutes one such instance warranting refusal of enforcement.

129. For the said reasons the objections under Section 48 of the Act are allowed and the present petition is dismissed.

130. Pending applications, if any, also stand disposed of.

JASMEET SINGH, J

APRIL 17th, 2026/DE