IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF NOVEMBER, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE T.P.VIVEKANANDA

COMMERCIAL APPEAL NO.455 OF 2024

BETWEEN:

VELANKANI INFORMATION SYSTEMS
PRIVATE LIMITED
NO.43, ELECTRONICS CITY
PHASE-II
HOSUR ROAD
BENGALURU 560 100
REPRESENTED BY ITS AUTHORIZED SIGNATORY
MRS. ANJU PRAKASH

...APPELLANT

(BY SRI. BASAVA PRABHU S. PATIL, SR. COUNSEL A/W
SRI. AJAYKUMAR M., ADVOCATE)

Digitally signed by PAVITHRA N
Location: High Court of Karnataka

AND:

1. INTER CONTINENTAL HOTELS GROUP
   (INDIA) PRIVATE LIMITED
   TOWER C, 11TH FLOOR BUILDING NO.10
   DLF CYBERCITY
   DLF PHASE 2
   GURGAON -122 002
   HARYANA

2. INTER CONTINENTAL HOTELS GROUP
   (ASIA PACIFIC) PTE. LTD.

230 VICTORIA STREET
NO.13-00, BUGIS JUNCTION TOWERS
SINGAPORE 188 240

…RESPONDENTS

(BY SRI. DHYAN CHINNAPPA, SR. COUNSEL A/W
SRI. AJAY J. NANDALIKE, ADVOCATE FOR R1 & R2)

THIS COMAP IS FILED UNDER SECTION 37 OF THE ARBITRATION AND CONCILIATION ACT, 1956, PRAYING TO ALLOW THE APPEAL AND SET ASIDE THE IMPUGNED ORDER DATED 13.09.2024 IN COM.S.NO.2 OF 2022 AND CONSEQUENTLY SET ASIDE THE PARTIAL ARBITRAL AWARD DATED 12.06.2019 AND FINAL AWARD DATED 28.12.2020, BOTH PASSED BY THE ARBITRAL TRIBUNAL COMPROMISING MR. BENJAMIN HUGHES.

THIS COMAP HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 22.09.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN J.,** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
AND
HON'BLE MR. JUSTICE T.P.VIVEKANANDA

CAV JUDGMENT

(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)

This Commercial Appeal is filed challenging the order dated 13.09.2024 passed by the learned Single Judge in Com.S.No. 2/2022. The suit was filed under Section 34 of the Arbitration and Conciliation Act, 1996 ('Arbitration Act' for short) challenging the Partial Award on Jurisdiction dated 12.06.2019 and the Final Award dated 28.12.2020, passed by the learned Sole Arbitrator in SIAC Arbitration No.014 of 2018. By the impugned order, the learned Single Judge rejected the challenge to the Partial Award on Jurisdiction and directed that the challenge to the Final Award be heard on merits.

2. We have heard Shri. Basava Prabhu S. Patil, learned Senior Counsel as instructed by Shri. Ajaykumar M., learned Advocate appearing for the appellant, and Shri. Dhyan Chinnappa, learned Senior Counsel as instructed by Shri. Ajay J. Nandalike, learned counsel appearing for respondents No.1 and 2.

3. The learned Senior Counsel appearing for the appellant submits that the appellant - Velankani Information Systems Private Limited, and the respondents- Inter Continental Hotels Group (India) Private Limited and Inter Continental Hotels Group (Asia Pacific) Private Limited, entered into a Management Agreement dated 26.11.2009 with respondent No.1, as Manager, and the predecessor of respondent No.2, as Licensor. Under the Agreement, the respondents were to operate and manage the appellant's hotel.

4. Clause 18.2 of the Management Agreement provides that disputes between the parties shall be referred to arbitration under the Arbitration Act and the Arbitration Rules of the Singapore International Arbitration Centre ('SIAC' for short) for the time being in force. The Tribunal is to consist of a sole Arbitrator appointed by mutual agreement, failing which the appointment is to be made by the Chairman of SIAC. The seat of arbitration was Bengaluru. Disputes arose between the parties regarding the payment of management fees, licence fee, system fund

contributions and other charges under the Management Agreement. On 15.12.2017 the respondents suspended the hotel's access to their reservation system, and on 10.01.2018 the appellant terminated the Management Agreement. The respondents invoked arbitration by filing a Notice of Arbitration with SIAC in January, 2018. On 17.12.2018 the Vice President of the Court of Arbitration of SIAC appointed the Sole Arbitrator.

5. Before the learned Arbitrator, the appellant raised objections to jurisdiction on 14.02.2019, to which the respondents replied on 27.02.2019, and the objections were heard on 27.03.2019. The appellant contended that SIAC, having accepted by its letters dated 12.06.2018 and 22.06.2018 that its Chairman was conflicted and that it was unable to appoint a sole arbitrator unless the parties varied their agreement, had become *functus officio* and lacked the power to review that decision. It was further contended that since the Management Agreement provided for appointment by the Chairman of SIAC, the President of SIAC could not make the appointment. By a Partial Award on Jurisdiction

dated 12.06.2019, the learned Arbitrator rejected the objections. It was held that SIAC as an institution was neither conflicted nor disqualified. It was further held that there was no impediment to SIAC revisiting its own decision, and that it therefore never became *functus officio*. It was also held that the respondents had not waived their right to seek reconsideration, and that the Tribunal had been constituted in accordance with Clause 18.2 of the Management Agreement and the SIAC Rules, 2016.

6. Thereafter, the respondents filed their Statement of Claim on 30.08.2019, and the appellant filed its Statement of Defence and Counterclaim on 11.10.2019. The learned Arbitrator heard final oral submissions on 28.06.2020 and 29.06.2020. By the Final Award dated 28.12.2020, the learned Arbitrator dismissed the appellant's further jurisdictional objections. Those objections were founded on the appointment of the respondents' counsel as a member of the SIAC Court during the pendency of the proceedings.

7. On merits, the learned Arbitrator held that the respondents had not breached the Management Agreement and were not liable to account for the system fund contributions. It was held that the appellant's failure to pay the management fees, licence fee, system fund contributions and reimbursable charges, and its termination of the Management Agreement on 10.01.2018, constituted material breaches. The appellant was accordingly directed to pay the respondents the outstanding amounts under the Management Agreement, together with USD 100,000/- towards the incentive and INR 14,02,96,782/- towards loss of profit, with interest at 12% per annum from 10.01.2018 until payment. The appellant's counterclaims were dismissed. The appellant was further directed to bear the costs of the arbitration and to reimburse the respondents' legal costs of USD 2,52,602.63/- and INR 16,04,100/-.

8. The appellant challenged the Partial Award dated 12.06.2019 and the Final Award dated 28.12.2020 by filing Com.S.No.2/2022 under Section 34 of the Arbitration Act in March 2021 before this Court. By the impugned order dated

13.09.2024, the learned Single Judge held that since the SIAC Rules, 2016 were in force when the disputes arose, the reference of the appointment to the President could not be said to be erroneous. It was further held that the communication dated 22.06.2018 was not a decision of either the President or the Court of SIAC, and that Rules 28.1 and 40.1 of the SIAC Rules, 2016 were therefore inapplicable. The appointment by the President was held not to amount to a review of the earlier decision that the Chairman was unable to act.

9. The learned Single Judge also held that the decision in ***SBP & Co. v. Patel Engineering Ltd.*** reported in ***(2005) 8 SCC 618*** was distinguishable on facts. It was further held that the appellant had not alleged any personal bias against the Chairman, the President or the learned Arbitrator, and had not demonstrated that any ground under Section 12(3)(a) or Section 12(5) read with the Seventh Schedule to the Arbitration Act was attracted. The learned Single Judge accordingly declined to interfere with the Partial Award under Section 34(2)(a)(v) of the Arbitration

Act and directed that the challenge to the Final Award be posted for consideration on merits. Aggrieved by the said order, the appellant has preferred the present appeal.

10. The learned Senior Counsel appearing for the appellant contends that Clause 18.2(b) of the Management Agreement designates only the Chairman of SIAC as the appointing authority. Once the Chairman was found to be conflicted and the appellant declined to vary the agreement, the agreed appointment procedure stood exhausted. SIAC by its communications dated 12.06.2018, 22.06.2018 and 06.08.2018, ruled that neither its Chairman nor its President could make the appointment. The last of these specifically rejected the respondents' request of 05.07.2018 for appointment by the President under Rules 9.2 and 10.2 of the SIAC Rules, 2016.

11. It is contended that neither the Management Agreement nor the SIAC Rules, 2016 empowers SIAC to review its decisions. Rule 28.1 contemplates termination of the arbitration, and Rule 40.1 makes decisions of the President, the Court and the Registrar "conclusive and

binding upon the parties and the Tribunal". SIAC thus became *functus officio*. These Rules, being incorporated into the arbitration clause, constitute the agreed procedure under Section 19 of the Arbitration Act. Any reconsideration in derogation of them was void, and the composition of the Tribunal was therefore not in accordance with the agreement of the parties under Section 34(2)(a)(v) of the Arbitration Act. The Tribunal's view that Rule 40.1 of the SIAC Rules binds the parties but not SIAC itself is self-contradictory and would permit the institution to reverse its decisions at will.

12. It is further contended that an appointing authority which decides a contested objection to its own competence performs a judicial or quasi-judicial function, relying on ***SBP & Co. v. Patel Engineering Ltd.****'s case* (supra). Such an authority has no inherent power of review. The learned Single Judge erred in confining ***SBP & Co. v. Patel Engineering Ltd.****'s case* (supra) to Section 11(6) of the Arbitration Act. In any event, it is contended that the doctrine of *functus officio* would apply even to an administrative decision on contested claims. It is contended

that the impugned order is internally inconsistent. The learned Single Judge recorded SIAC's own statement that the SIAC Court had "initially" decided the matter and later reconsidered it. However, later the learned Single Judge held that the decision dated 22.06.2018 was not that of the Court. This finding is contrary to SIAC's letter dated 13.12.2018. The further finding that there was no review, is equally untenable, since the earlier rulings were rendered after hearing both parties and were later reversed. It is further contended that Rules 9.2, 9.3 and 10.2 of the SIAC Rules do not empower the President to act in substitution of a disqualified appointing authority designated by the parties, which is why SIAC itself had invited the parties to vary the Agreement.

13. It is further contended that the appellant's objection was to the neutrality of SIAC as an Institution, since the respondents' counsel was on its panel of arbitrators. SIAC conceded a conflict without confining it to the Chairman. As the SIAC Court and President are instrumental in empanelling counsel, the conflict extended to

them as well. Applying the reasonable-apprehension test in ***Ranjit Thakur v. Union of India*** reported in ***(1987) 4 SCC 611***, and the analogy of Articles 124(7) and 220 of the Constitution of India, the appellant's contentions are justified. The ineligibility of the appointing authority extends to its nominee as well. The learned Single Judge therefore erred in requiring the appellant to bring its case within Section 12(3)(a) or the Seventh Schedule of the Arbitration Act. It is also contended that the respondents, having accepted SIAC's inability and proposed an ad hoc appointment on 28.08.2018, were estopped from seeking reconsideration.

14. It is further submitted that the learned Arbitrator assumed, on facts privately known to him and never disclosed to the parties, that the Chairman's conflict was merely personal. This violates principles of natural justice and the learned Single Judge erred in declining to examine it, since it formed the substratum of the Partial Award. The appointment of the respondents' counsel to the SIAC Court on 06.06.2019, while the Partial Award was under scrutiny,

further eroded the institution's neutrality, and the learned Single Judge did not advert to it. It is further contended that arbitration was invoked before exhausting the amicable resolution process under Clause 18.2(a) of the Management Agreement, and that the proceedings are vitiated by want of independence and fairness, contrary to the public policy of India under Section 34(2)(b)(ii) of the Arbitration Act.

15. The learned counsel appearing for the appellant places reliance on the following decisions:-

- ***Patel Narshi Thakershi & Ors. v. Shri Pradyumansinghji Arjunsinghji,*** reported in **(*1971) 3 SCC 844;***

- ***Dr. (Smt.) Kuntesh Gupta v. Management of Hindu Kanya Maha Vidyalaya, Sitapur (U.P.) and Others,*** reported in ***(1987) 4 SCC 525;***

- ***TRF Ltd. v. Energo Engineering Projects Ltd.*** reported in ***(2017) 8 SCC 377;***

- ***Perkins Eastman Architects DPC & Anr. v. HSCC (India Ltd),*** reported in ***(2020) 20 SCC 760;***

- ***Bharat Broadband Network Ltd. v. United Telecoms Ltd,*** reported in ***(2019) 5 SCC 755;***

- ***Chintels (India) Ltd. v. Bhayana Builders (P) Ltd.,*** reported in ***(2021) 4 SCC 602;***

- ***National Highway Authority of India v. Oriental Structure Engineers Ltd.- Gammon India Ltd. (JV),*** reported in ***2013 (3) CTC 709;*** and

- ***National Highway Authority of India V. AFCONS Infrastructure Ltd.*** reported in ***2024 SCC Online Del 4491.***

16. The learned Senior Counsel appearing for the respondents contends that a preliminary objection to the maintainability of the appeal was raised, relying on ***Landmark Housing Projects Pvt. Ltd. v. Savithri Naidu*** reported in ***2021 SCC OnLine Mad 723***. This Court overruled the objection by order dated 10.07.2025, following ***Chintels India Ltd. v. Bhayana Builders (P) Ltd.*** reported in ***(2021) 4 SCC 602***. It is contended that interference under Section 37 of the Arbitration Act is even more circumscribed than under Section 34 of the Arbitration Act, and is confined to perversity going to the root of the matter or conflict with public policy.

17. It is contended that the jurisdiction of the Court under Section 34 of the Arbitration Act is narrow, and that the jurisdiction of the appellate Court under Section 37 of the Arbitration Act is all the more circumscribed. It is contended that the appellant must demonstrate that the impugned order suffers from perversity going to the root of the matter or is contrary to the public policy of India, or that the learned Single Judge exceeded or failed to exercise the jurisdiction under Section 34 of the Arbitration Act.

18. It is contended that the grounds raised in the appeal are a mere reiteration of those taken in the Section 34 petition, and that the impugned order is a detailed and reasoned order which has considered each of the appellant's objections. It is submitted that the learned Single Judge rightly held that the communication dated 22.06.2018 merely intimated that the Chairman was unable to act due to a conflict, the subsequent decision of the President to appoint the arbitrator did not constitute a review, as the two decisions pertained to different functionaries within SIAC and Rules 28.1 and 40.1 of the SIAC Rules were

inapplicable, as SIAC had not recorded any satisfaction that the arbitration was not entitled to proceed. It is further submitted that the learned Single Judge rightly held that no personal bias was alleged against the President or the learned Arbitrator and that the mere inability of the Chairman did not preclude SIAC from referring the matter to the President under Rule 10.2 of the SIAC Rules and that the appellant had failed to demonstrate that any of the categories in the Seventh Schedule to the Arbitration Act was attracted.

19. The learned Senior Counsel places reliance on the following decisions:-

- ***UHL Power Company Ltd v. State of Himachal Pradesh,*** reported in ***(2022) 4 SCC 116;***

- ***Somdatt Builders- NCC- NEC (JV) V. National Highways Authority of India,*** reported in ***(2025) 6 SCC 757;***

- ***C&C Construction Ltd. v. IRCON International Ltd, (2025),***reported in ***4 SCC 234;***

- ***Dharamvir & Co. v. Delhi Development Authority,*** reported in ***2022 SCC Online Del 2311;***

- ***Haryana Tourism Ltd v. Kandhari Beverages Ltd,*** reported in ***(2022) 3 SCC 237;***

- ***Union of India v. Reliance Industries Ltd.,*** reported in ***(2025) SCC Online Del 841;***

- ***Bharat Broadband Network Ltd. v. Paramount Communications Ltd.,*** reported in ***(2024) SCC OnLine Del 7754;***

- ***L&T Infra Investment Partners Advisory Private Ltd v. Bhoruka Power Corporation Ltd.*** dated ***26.09.2025, COMAP NO.261/2025;***

- ***Konkan Railway Corporation Ltd. & Ors. v. Rani Construction Pvt. Ltd,*** reported in ***(2002) 2 SCC 388;***

- ***Gas Authority of India Ltd. and Anr. v. Keti Construction (I) Ltd,*** *reported in* ***(2007) 5 SCC 38;***

- ***Food Corporation of India v. Indian Council of Arbitration and Ors.*** reported in ***(2003) 6 SCC 564;***

- ***JEPH Bev Pvt. Ltd & Ors. v. Delhi International Arbitration Centre & Ors.,*** reported in ***(2021) SCC Online Del 1980;***

- ***Steel Authority of India Ltd v. Indian Council of Arbitration and Anr.,*** reported in ***(2016) SCC Online Del 1921;***

- ***Narayan Prasad Lohia v. Nikunj Kumar Lohia and Ors.,*** reported in ***(2002) 3 SCC 572;***

- ***Oil & Natural Gas Corporation Ltd v. Oil Field Instrumentation,*** reported in ***2004 (4) Mh.L.J.;***

- ***Sachdeva & Co. v. Delhi- Gurgaon Super Connectivity Ltd.,*** reported in ***(2016) SCC Online Del 4873;***

- ***Transair & Ors. v. M/s. Kuwait Airways,*** reported in ***(2013) SCC Online Del 4184;***

- ***HRD Corporation (Marcus Oil & Chemical Division) v. GAIL (India) Ltd.,*** reported in ***(2018) 12 SCC 471;***

- ***Hunt v. Mobil Oil Corp,*** reported in ***654 F.Supp.1487 (S.D.N.Y 1987);***

- ***Tamari v. Bache Halsey Stuart Inc.,*** reported in ***(1980) 619 F.2d 1196;*** and

- ***CFJ & Anr. v. CFL & Anr & Other Matters,*** *reported in* ***[2023] SGHC (I) 1.***

20. We have considered the contentions advanced. We notice that Dispute Resolution Clause of the Management Agreement dated 26.11.2009, reads as follows:-

> ***"18. APPLICABLE LAW & DISPUTE RESOLUTION***
>
> ***18.1 x x x x x***
>
> ***18.2 Dispute Resolution***

(a) All disputes, controversies or claims arising out of or in connection with this Agreement will first be discussed by the Owner and the Manager with the objective of resolving such dispute, controversy or claim in a friendly manner. If such efforts fail to bring a resolution within ten (10) Business Days of receipt of a notice issued by one party to the other seeking resolution, such disputes, controversies or claims will be finally determined by arbitration pursuant to the Arbitration and Conciliation Act 1996 of India and under the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC") for the time being in force, which rules are deemed incorporated by reference into this clause.

(b) The tribunal shall consist of one arbitrator to be appointed by mutual agreement, and failing agreement within thirty (30) days by the Chairman of the SIAC. The place of arbitration will be in Bangalore, India and the official language of the arbitration will be English. In reaching a decision, the arbitrator will be bound by the terms and provisions of this Agreement. The decision and award of the arbitrator will be final and binding and shall be enforceable in any court of competent jurisdiction in accordance with the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards or any applicable national law.

(c) Clauses 18.2(a) and (b) will not prevent either Party from obtaining injunctive relief in the courts of the Country, including in the case of the Manager, to prevent the unauthorised use of the Marks or the continued operation of the Hotel in the event of threatened eviction of the Manager and/or employees employed by Manager during any dispute arising out of this Agreement. Subject to compliance with the terms of any order of a court of the Country obtained pursuant to the terms of this Agreement, during any controversy, claim, disagreement or dispute, including a dispute as to the validity of this Agreement, the Manager will continue to operate the Hotel as the Manager pursuant to this Agreement."

21. The following are the relevant SIAC Rules applicable in the instant case:-

"28. Jurisdiction of the Tribunal

28.1 If any party objects to the existence or validity of the arbitration agreement or to the competence of SIAC to administer an arbitration, before the Tribunal is constituted, the Registrar shall determine if such objection shall be referred to the Court. If the Registrar so determines, the Court shall decide if it is prima facie satisfied that the arbitration shall proceed. The arbitration shall be terminated if the Court is not so satisfied. Any decision by the Registrar or the Court that the arbitration shall proceed is without prejudice to the power of the Tribunal to rule on its own jurisdiction

40. Decisions of the President, the Court and the Registrar

40.1 Except as provided in these Rules, the decisions of the President, the Court and the Registrar with respect to all matters relating to an arbitration shall be conclusive and binding upon the parties and the Tribunal. The President, the Court and the Registrar shall not be required to provide reasons for such decisions, unless the Court determines otherwise or as may be provided in these Rules. The parties agree that the discussions and deliberations of the Court are confidential.

40.2 Save in respect of Rule 16.1 and Rule 28.1, the parties waive any right of appeal or review in respect of any decisions of the President, the Court and the Registrar to any State court or other judicial authority."

(emphasis supplied)

22. We notice that the order under challenge in this Commercial Appeal is the order passed by the learned Single Judge in Commercial Suit No.2/2022 with regard to the jurisdictional objection to the arbitral proceedings. After having found that the apprehension of institutional bias raised by the appellant is unfounded and that the President of the SIAC is not disabled from nominating an arbitrator to

adjudicate the dispute between the parties, the partial award on jurisdiction was upheld and the appeals were posted for consideration on merits. It is as against the said order that the present appeal is filed.

23. The partial award was rendered on 12.06.2019 by the Arbitrator. It refers to the series of communications between the SIAC and the parties with regard to the appointment of the Arbitrator. The appellant on 10.05.2018, had addressed the respondent stating as follows;

> *"2. We wish to point out that though clause 18.2 of the Management Agreement provide for arbitration under [the SIAC Rules], recently while perusing the Panel of Arbitrators of SIAC for proposing the name/s for appointment by mutual consent, we noticed that you [Mr. Sumeet Kachwaha] being the counsel for [Claimants] are one of the SIAC Arbitrators. According to us, in view of your ongoing business / professional relationship with SIAC, SIAC is not neutral entity qualified for nominating an arbitrator / administering arbitration under the Management Agreement."*

24. On 14.05.2018, the respondents had denied any disqualification of the SIAC on account of one of its counsel being an arbitrator with the SIAC. On 15.05.2018, the

appellant had written both to the respondent as well as to the SIAC, pointing out that the counsel for the respondent herein is associated with the SIAC as one of its panel arbitrators and that the SIAC is disqualified from nominating an arbitrator. By the letter dated 12.06.2018, the SIAC informed the parties that the Chairman is unable to proceed with the appointment and the parties were invited to agree to vary their arbitration agreement to provide for appointment of the sole arbitrator to be made by the President of the Court of Arbitration of SIAC. On further objections being raised on 22.06.2018, the SIAC wrote to the parties *inter alia* stating that absent the variation of the arbitration agreement to specifically provide for the President of the Court of SIAC to make the appointment, the President is unable to act under the SIAC Rules. After considering all the communications between the parties, the provisions of the SIAC Rules as well as the decisions relied on, the arbitrator came to the conclusion that the SIAC as an Institution, was not disabled from appointing an arbitrator and the contentions to the contrary were

incorrect. Further, it was found that the absence of power to review would apply only to judicial or quasi-judicial actions of any of the entities of the SIAC and would not apply to an administrative correspondence. It was therefore found that there was no lack of neutrality, disabling the SIAC as an Institution from making the appointment of the Arbitrator.

25. The learned Single Judge had also considered the entire factual aspects in detail. The series of communications exchanged between the parties were also considered. Thereafter, it was found that in view of the fact that no specific allegation has been made regarding any personal bias entertained by the Chairman or the President of the SIAC or by the Arbitrator, the contention of institutional bias, which was raised by the appellant was completely devoid of merits. It was also found that the fact that the Chairman was unable to appoint an arbitrator due to conflict does not preclude the SIAC from referring the matter to the President in terms of Rule 10.2 of the SIAC Rules. It was therefore, found that the decision of the SIAC to refer the matter to the President, who proceeded to appoint an

Arbitrator, does not in any manner, review the earlier communication dated 22.06.2018 that the Chairman of the SIAC was unable to act due to conflict.

26. In ***Steel Authority of India Ltd. v. Indian Council of Arbitration*** reported in ***2015 SCC OnLine Del 13394***, the Delhi High Court held that Section 11(6) of the Arbitration Act applies only where the Arbitral Tribunal cannot be constituted because a party, the arbitrators, or a person or institution has failed to act under the agreed appointment procedure. It has no application where the Tribunal has been constituted under the procedure agreed to between the parties. It was further held that an arbitral institution appointing an arbitrator acts in terms of the contract between the parties, and its decision to appoint neither determines the rights of either party nor bears any trappings of a judicial or quasi-judicial function.

27. The learned Senior Counsel for the appellant relied on ***SBP & Co.'s*** *case* (supra), in which a Bench of seven Judges of the Apex Court held that the power of the Chief Justice under Section 11(6) of the Arbitration Act is a

judicial power and not administrative power. The Apex Court found the power under Section 11(6) of the Arbitration Act to be judicial because the Chief Justice, when confronted with two points of view presented by the rival parties, is called upon to decide between them and the decision vitally affects the rights of the parties. That decision also attains finality under Section 11(7) of the Arbitration Act. It was further held that no person other than a Judge and no non-judicial body can be designated for entertaining an application for appointing an arbitrator under Section 11(6) of the Arbitration Act, because judicial powers are to be exercised by the judicial authorities and not by non-judicial authorities. It was also held that a non-judicial body or institution cannot be equated with a Judge of the High Court or a Judge of the Supreme Court and that a non-judicial authority cannot exercise judicial powers. It was further held that where the Tribunal has been constituted by the parties without having recourse to Section 11(6) of the Arbitration Act, the Arbitral Tribunal will have the jurisdiction to decide

all matters as contemplated by Section 16 of the Arbitration Act.

28. We notice that ***SBP & Co.****'s case* (supra) relates to the power of the Chief Justice when a party invokes Section 11(6) of the Arbitration Act. In the instant case, the parties agreed to arbitration under the SIAC Rules, and the Vice President of the SIAC Court appointed the learned Sole Arbitrator on 17.12.2018 under Rules 1.3, 9.3 and 12.1 of the SIAC Rules. In making that appointment, SIAC decided no dispute or right of either party, and its decision had no finality under Section 11(7) of the Arbitration Act. The question of jurisdiction remained open before the Tribunal, which decided it in the Partial Award dated 12.06.2019. SIAC therefore exercised a power the parties gave it, not the judicial power of the Chief Justice.

29. In ***Narayan Prasad Lohia v. Nikunj Kumar Lohia*** reported in ***(2002) 3 SCC 572***, the Apex Court held that Section 34(2)(a)(v) of the Arbitration Act applies only if the composition of the Arbitral Tribunal or the arbitral procedure was not in accordance with the Agreement of the

parties. Where the composition is in accordance with the Agreement, there can be no challenge under that provision. Even where the composition is not in accordance with the agreement but is in accordance with the Arbitration Act, the award cannot be challenged. The Apex Court also emphasised that arbitration is a creature of agreement, and that a challenge to the composition of the Tribunal must be taken before the Tribunal itself under Section 16(2) of the Arbitration Act. In the instant case, the Vice President, who is included in "President" by Rule 1.3, appointed the learned Sole Arbitrator under Rules 9.3 and 12.1 of the SIAC Rules. The composition of the Tribunal was therefore, in accordance with the Agreement between the parties.

30. The appellant also contends that SIAC was biased as an institution, because the learned counsel for the respondents was on SIAC's panel of arbitrators and was appointed to the SIAC Court on 06.06.2019. In ***HRD Corporation v. GAIL (India) Ltd.*** reported in ***(2018) 12 SCC 471***, the Apex Court held that the Fifth and Seventh Schedules to the Arbitration Act are not to be construed in

the most expansive manner, so that the remotest likelihood of bias gets removed. Doubts are justifiable only if a reasonable third person would conclude that the arbitrator is likely to be influenced by factors other than the merits, and that test requires taking a broad commonsensical approach.

31. The learned Senior counsel also places reliance on ***TRF Ltd. v. Energo Engineering Projects Ltd.*** reported in ***(2017) 8 SCC 377***, and ***Perkins Eastman Architects DPC v. HSCC (India) Ltd***., reported in (**2020) 20 SCC 760**. In both cases, a party to the dispute itself appointed the arbitrator, and the Apex Court held that the person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator.

32. In ***Tamari v. Bache & Co. (Lebanon) S.A.L., 619 F.2d 1196 (7th Cir. 1980)*** a challenge was made to arbitration before a panel drawn from members of the Chicago Board of Trade, on the ground that such a panel was inherently biased. The Court of Appeals for the Seventh Circuit in the United States rejected the challenge and held that a party who had agreed to arbitration before that body

could not complain of a feature inherent in the very forum it had chosen, and that the charge of bias has a hollow ring, when made by a party who had agreed to it. It further held that bias must be direct, definite and capable of demonstration rather than remote, uncertain, or speculative.

33. The concept of neutrality and disclosure in arbitral proceedings is intended to protect fairness and impartiality of the arbitral proceedings. In the instant case, the parties have expressly agreed that the SIAC would be the entity to appoint an arbitrator if disputes arose. The fact that the respondents' counsel was an arbitrator included in the panel of arbitrators of the SIAC or that another counsel had later been appointed to the SIAC Court cannot be reasons to state that the SIAC, as an Institution, is rendered conflicted and disabled to appoint an arbitrator. The real test to be applied would be whether the Arbitrator has a disclosable connection with a party or its counsel. There are no allegations as to any bias or interest of the arbitrator.

34. In the instant case, the arbitrator was appointed by SIAC and SIAC is an independent institution, which is not

a party to the dispute, has no interest in the outcome, and both the parties have chosen the SIAC. The appellant shows no relationship between the learned Sole Arbitrator and the respondents or their counsel that falls under either Fifth or Seventh Schedule of the Arbitration Act. The learned counsel appearing for the respondent was one of more than 500 arbitrators on SIAC's panel, and became a member of the SIAC Court only on 06.06.2019, after the appointment of the learned Sole Arbitrator on 17.12.2018. Therefore, the mere fact that counsel for the respondents was on SIAC's panel of arbitrators, or later became a member of the SIAC Court, does not mean that the learned Sole Arbitrator would be biased.

35. Having considered the contentions advanced and the decisions relied on by both the parties, we are unable to agree with the proposition that the appointment of the respondents' counsel on the panel of arbitrators by the SIAC or the later appointment of another counsel as a member of the Court would amount to the SIAC harbouring any institutional bias, which would preclude the appointment of

an arbitrator by it. The SIAC was suggested as the authority to nominate an arbitrator by the parties by their own free will. There was no change in circumstances or supervening disability, which prevented the SIAC from functioning as the authority to nominate an arbitrator.

36. Having given our anxious consideration to the entire arguments, we find no reason to disagree with the findings of the learned Single Judge that the appellant had failed to substantiate its contention or even an apprehension of institutional bias as against the SIAC. We find no reason to interfere with the order of the learned Single Judge.

37. Accordingly, the Commercial Appeal stands ***dismissed.***

All pending Interlocutory Applications shall stand *disposed of.*

Sd/-
(ANU SIVARAMAN)
JUDGE

Sd/-
(T.P.VIVEKANANDA)
JUDGE

PN