

**CR-5847-2025 (O&M), CR-8920-2025 (O&M),
CR-8878-2025 (O&M), CR-9445-2025(O&M),
CR-8589-2025 (O&M), CR-6164-2025 (O&M) and
CR-7999-2025 (O&M)**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(I) CR-5847-2025 (O&M)

**PUNJAB STATE CIVIL SUPPLIES CORPORATION LIMITED
...Petitioner(s)**

VERSUS

**M/S GANESH RICE MILLS AND ANOTHER
...Respondent(s)**

(II) CR-8920-2025 (O&M)

**PUNJAB STATE CIVIL SUPPLIES CORPORATION LIMITED AND
ANOTHER
...Petitioner(s)**

VERSUS

**M/S EVERSHINE RICE MILLS AND OTHERS
...Respondent(s)**

(III) CR-8878-2025 (O&M)

**PUNJAB STATE CIVIL WAREHOUSING CORPORATION
...Petitioner(s)**

VERSUS

**M/S UJJAGAR MAL SATPAL AND OTHERS
...Respondent(s)**

(IV) CR-9445-2025 (O&M)

**THE PUNJAB STATE CIVIL SUPPLIES CORPORATION LIMITED
...Petitioner(s)**

VERSUS

**M/S BORDER RICE SHELLERS AND ANOTHER
...Respondent(s)**

CR-5847-2025 (O&M), CR-8920-2025 (O&M),
CR-8878-2025 (O&M), CR-9445-2025(O&M),
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(V) CR-8589-2025 (O&M)

THE PUNJAB STATE COOPERATIVE SUPPLY AND MARKETING
FEDERATION LIMITED

...Petitioner(s)

VERSUS

M/S NANAKSAR RICE AND GEN. MILLS THR. ITS PARTNERS

...Respondent(s)

(VI) CR-6164-2025 (O&M)

PUNJAB STATE CIVIL SUPPLIES CORPORATION LIMITED

...Petitioner(s)

VERSUS

M/S SHIVPAM AGRO FOODS PVT. LTD. AND OTHERS

...Respondent(s)

(VII) CR-7999-2025 (O&M)

HARYANA STATE WAREHOUSING CORPORATION

...Petitioner(s)

VERSUS

JASBIR SINGH

...Respondent(s)

Reserved on: 05.03.2026
Pronounced on: 29.05.2026
Uploaded on: 29.05.2026

*Whether only the operative part of the judgment is pronounced or whether the full judgment is pronounced: **Full***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. R. S. Kalra, Advocate and
Ms. Mona Yadav, Advocate
for the petitioner in CR-5847-2025.

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Mr. A. P. S. Mann, Advocate
for the petitioner in CR-8589-2025.

Mr. Anil Sharma, Advocate
for the petitioner in CR-6164-2025.

Mr. Sharad Aggarwal, Advocate
for the petitioner in CR-7999-2025.

Mr. Manbir Singh Batth, Advocate
for the petitioner in CR-8878-2025 and CR-9445-2025.

Mr. H. S. Randhawa, Advocate
for the petitioner in CR-8920-2025.

Mr. Vikas Mohan Gupta, Advocate
for respondent No.1 in CR-5847-2025.

Mr. Hardik Ahluwalia, Advocate
for the respondents in CR-6164-2025.

Mr. Angrej Singh, Advocate
for the respondent in CR-7999-2025.

Mr. Puneet Kumar Bansal, Advocate
for respondents No.1(iii), (iv) and (v) in CR-8589-2025.

Mr. Mukand Gupta, Advocate
for the respondents in CR-8878-2025 and CR-9445-2025.

Mr. Abhishek Batta, Advocate
for the respondents in CR-8920-2025.

Mr. Naresh Markanda, Senior Advocate as *Amicus Curiae* with
Mr. Rohan Markanda, Advocate.

JASGURPREET SINGH PURI, J.

1. By this common judgment, a bunch of seven Civil Revision
Petitions bearing Nos.CR-5847-2025, CR-8920-2025, CR-8878-2025, CR-9445-



2025, CR-8589-2025, CR-7999-2025 and CR-6164-2025 is being decided. In all the aforesaid revision petitions, an important question of law has arisen because of which the same are being taken up together for adjudication. For the sake of convenience and brevity, the facts are being taken from CR-5847-2025.

2. For the purpose of methodical elucidation and structure, this judgment is arranged under the following heads:-

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F.	ANALYSIS
G.	CONCLUSION

A. FACTUAL MATRIX

3. The present is a Revision Petition under Article 227 of the Constitution of India for setting aside of the order dated 08.07.2025 (Annexure P-1) passed in EXE-173 of 2020, whereby the Learned Executing Court has dismissed the execution application of the petitioners by holding the award passed under Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Arbitration Act”) to be unenforceable with a further prayer for restoration/remanding the execution application with a direction to the learned Executing Court to get the award executed on merits.



4. The petitioners herein entered into an agreement dated 23.10.2006 with the Respondent No.1-Miller for milling of the paddy vide Annexure P-2. Thereafter, when a dispute arose between the parties, an Arbitrator was appointed dated, who passed an award dated 17.07.2012 vide Annexure P-3 in favor of the petitioner to which the respondents filed their objections under Section 34 of the Arbitration Act which were dismissed vide order dated 27.02.2019 (Annexure P-4).

5. The petitioners thereafter preferred an execution application before the learned Executing Court seeking execution of the aforesaid award which was dismissed vide impugned order dated 08.07.2025 (Annexure P-1) being unenforceable on the ground that the award was inexecutable due to being in conflict with Section 12(5) of the Arbitration Act.

B. LEGAL ISSUE

6. In the present bunch of seven Revision Petitions, a common issue of law has arisen, whereby the learned Executing Court has dismissed the execution applications of the petitioner(s) on the ground of un-enforceability. Accordingly, the legal issue that falls for consideration before this Court is as follows:

“Whether execution of award in cases where arbitral proceedings were initiated prior to the amendment of the Arbitration and Conciliation Act, 1996, which came into effect on 23.10.2015 is enforceable or not on the ground of being in conflict with Section 12(5) of the Arbitration Act ?”

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C. **ARGUMENTS ADVANCED BY LEARNED COUNSELS FOR THE PETITIONERS**

7. Learned counsels for the petitioners submitted that a short controversy involved in all the petitions is that the learned Executing Court has dismissed the execution application preferred by the decree holders on the ground that the award passed by the Sole Arbitrator is unenforceable due to being in conflict with Section 12(5) of the Arbitration Act and because of this reason, the execution application stood dismissed being unenforceable. They further submitted that the learned Executing Court while dismissing the execution application lost sight of the fact that the agreement between the parties and the arbitral proceedings were governed under the un-amended Arbitration Act, wherein there is no embargo upon appointment of the arbitrator by one of the parties.

8. They submitted that learned Executing Court has not considered the fact that ineligibility under Section 12(5) of the Arbitration Act, came into existence by way of the Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter referred to as “the 2015 Amendment Act”) stood notified on 01.01.2016 and only came into effect on 23.10.2015. Therefore, the same cannot be applied retrospectively to the arbitral proceedings which have commenced prior thereto. They further submitted that in the impugned orders, reliance have been placed on the decisions of the Hon’ble Supreme Court in **Central Organization for Railway Electrification versus M/S ECI SPIC SMO MCML (JV) A joint Venture Company, 2025(4) SCC 641, Perkins Eastman Architects**

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DPC and another versus HSCC (India) Ltd., 2020(20) SCC 760 and TRF Ltd. versus Energo Engineering Projects Ltd. 2017 SCC OnLine SC 692 to hold that the award is inexecutable being in conflict with Section 12(5) of the Arbitration Act. However, they submitted that in the aforesaid judgment of **Central Organization for Railway Electrification (supra)** itself, it was held that the decision of the Hon'ble Supreme Court will be applied prospectively and not be applicable to the ongoing Arbitral proceedings. The relevant portion of the judgment is reproduced hereunder:

*“169. In the present reference, we have upheld the decisions of this Court in TRF (supra) and Perkins (supra) which dealt with situations dealing with sole arbitrators. Thus, TRF (supra) and Perkins (supra) have held the field for years now. However, we have disagreed with Voestalpine (supra) and CORE (supra) which dealt with the appointment of a three-member arbitral tribunal. We are aware of the fact that giving retrospective effect to the law laid down in the present case may possibly lead to the nullification of innumerable completed and ongoing arbitration proceedings involving three-member tribunals. This will disturb the commercial bargains entered into by both the government and private entities. **Therefore, we hold that the law laid down in the present reference will apply prospectively to arbitrator appointments to be made after the date of this judgment.** This direction only applies to three-member tribunals.*

(emphasis supplied)”

9. To further substantiate the aforesaid argument learned counsels for the petitioners referred to a judgment of Hon'ble Supreme Court in **MilkFood**

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Limited versus M/s GMC Ice Cream (P) Ltd., 2004(7) SCC 288, wherein it was held that if the arbitral proceedings have already commenced prior to the commencement of 1996 Act, the same shall be governed under the old Arbitration Act, 1940. They further submitted that in the present bunch of cases since the arbitral proceedings commenced prior to the 2015 amendment Act, the reliance placed by learned Executing Court on the provisions of the 2015 Amendment Act and on the aforesaid judgments is misplaced and therefore, the impugned orders are liable to be set aside on this ground.

10. Learned counsels for the petitioners have also submitted that by way of The Repealing and Amending Bill, 2025, the 2015 Amendment Act has been repealed and therefore, the provisions contained therein are not applicable.

D. **ARGUMENTS ADVANCED BY LEARNED COUNSELS FOR THE RESPONDENTS**

11. Learned counsels for the respondents submitted that the impugned order passed by learned Executing Court is valid and does not deserve to be interfered with. They submitted that the Award is passed by a Sole Arbitrator which was ineligible being hit by the provisions of Section 12(5) of the Arbitration Act, wherein it is so provided that any person who falls under any of the categories in the Seventh Schedule shall be ineligible to be appointed as an arbitrator. Therefore, the learned Executing court while dismissing the execution application has rightly held that an award passed by such Arbitrator is unenforceable.

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12. Learned counsels for the respondents also referred to a judgment passed by Hon'ble Supreme Court in **Ellora Paper Mills Limited versus State of Madhya Pradesh 2022 SCC OnLine SC 8** to contend that Arbitral Tribunal constituted much prior to 2015 Amendment Act cannot operate if it violates neutrality under Section 12(5) and fresh Arbitrator is to be appointed. Relevant portion of the aforesaid judgment is reproduced as under :

“16. As observed hereinabove, the Arbitral Tribunal - Stationery Purchase Committee consisted of officers of the respondent-State. Therefore, as per Amendment Act, 2015 - Sub-section (5) of Section 12 read with Seventh Schedule, all of them have become ineligible to become arbitrators and to continue as arbitrators. Section 12 has been amended by Amendment Act, 2015 based on the recommendations of the Law Commission, which specifically dealt with the issue of "neutrality of arbitrators". To achieve the main purpose for amending the provision, namely, to provide for "neutrality of arbitrators", sub-section (5) of Section 12 lays down that notwithstanding any prior agreement to the contrary, any person whose relationship with the parties or counsel or the subject matter of the dispute falls under any of the categories specified in the Seventh Schedule, he shall be ineligible to be appointed as an arbitrator. In such an eventuality, i.e., when the arbitration clause is found to be foul with the amended provision, the appointment of the arbitrator would be beyond the pale of the arbitration agreement, empowering the Court to appoint such an arbitrator as may be permissible. That would be the effect of the non obstante clause contained in sub-section (5) of Section 12 and the other party cannot insist upon the appointment of the arbitrator in terms of the arbitration agreement.



17. It cannot be disputed that in the present case, the Stationery Purchase Committee -Arbitral Tribunal comprising of officers of the respondent-State are all ineligible to become and/or to continue as arbitrators in view of the mandate of sub-section (5) of Section 12 read with Seventh Schedule. Therefore, by operation of law and by amending Section 12 and bringing on statute sub-section (5) of Section 12 read with Seventh Schedule, the earlier Arbitral Tribunal - Stationery Purchase Committee comprising of Additional Secretary, Department of Revenue as President and (i) Deputy Secretary, Department of Revenue, (ii) Deputy Secretary, General Administration Department, (iii) Deputy Secretary, Department of Finance, (iv) Deputy Secretary/Under Secretary, General Administration Department and (v) Senior Deputy Controller of Head Office, Printing as Members, has lost its mandate and such an Arbitral Tribunal cannot be permitted to continue and therefore a fresh arbitrator has to be appointed as per Arbitration Act, 1996.

(emphasis supplied)”

13. Learned counsels for the respondents also submitted that the defect in the award is not a mere irregularity but the same goes to the root of the jurisdiction of the Arbitrator and where an award is passed by an Arbitrator who is otherwise ineligible under the statute is *void ab initio* and cannot be accorded any sanctity in law. Consequently, the learned Executing Court was fully justified in dismissing the execution applications on the ground that such an award is unenforceable.

E. **SUBMISSIONS BY LEARNED AMICUS CURIAE**

14. On 26.11.2025, considering the fact that in a large number of cases

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across the States of Punjab and Haryana, learned Executing Courts have been dismissing the execution applications by way of short orders, this court deemed it just and proper to appoint Mr. Naresh Markanda, Senior Advocate as *Amicus Curiae* to assist this Court on the aforesaid legal issue.

15. Learned *Amicus Curiae* submitted that Section 12(5) of the Arbitration and Conciliation Act, 1996 was inserted by way of the 2015 Amendment Act with effect from 23.10.2015 to ensure neutrality, independence and impartiality of the Arbitral Tribunal. Under the aforesaid provision, any person who has relationship with the parties, counsel or the subject-matter of the dispute and falls within any of the categories provided in the Seventh Schedule is rendered ineligible to be appointed as an arbitrator. He further submitted that in view of Section 26 of the 2015 Amendment Act, the amended provision governs only the Arbitral proceedings which have commenced on or after the date of commencement of the 2015 Amendment Act and the question of its application to pending proceedings must be determined in accordance with the statutory scheme of the aforesaid Act and its interpretation by various judgments. To further substantiate his argument he referred to a judgment of Hon'ble Supreme Court in **Board of Control For Cricket in India versus Kochi Cricket Private Limited and Others, (2018) 6 SCC 287**, wherein Section 26 of the 2015 Amendment Act was interpreted and it was held that the same is to be bifurcated into "arbitral proceedings" and "court proceedings". It was held that the reason behind the first part of Section 26 of the 2015 Amendment Act being couched in

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the negative was only to state that the Amendment Act would apply even to arbitral proceedings commenced prior to the 2015 Amendment Act, provided they have agreed to the contrary in writing and further held that the intention of the legislature was that the 2015 Amendment Act is prospective in nature and will apply to:

- (i) Arbitral proceedings commenced as understood under Section 21 of the said Act, on or after the 2015 Amendment Act came into force and
- (ii) Court proceedings which had commenced on or after the 2015 Amendment Act came into force.

16. Learned *Amicus Curiae* further submitted that the legal position crystallised in **Board of Control For Cricket in India (supra)** was subsequently affirmed and reinforced by the Hon'ble Supreme Court in **Hindustan Construction Company Limited and Another versus Union of India and Others, (2020) 17 SCC 324**, wherein the constitutional validity of Section 87 of the Arbitration Act was challenged which was inserted by the Arbitration and Conciliation (Amendment) Act, 2019 (hereinafter referred to as the "2019 Amendment Act"), and the consequential repeal of Section 26 of the 2015 Amendment Act. It was held in the aforesaid judgment that Section 87 of the Arbitration Act was unconstitutional as the provision was manifestly arbitrary and contrary to the object of the principal Act as amended in 2015.



17. Learned *Amicus Curiae* further submitted that the legal position as settled by Hon'ble Supreme Court in the aforesaid judgments is clear and there is no ambiguity that the 2015 Amendment Act applies prospectively to arbitral and court proceedings commenced on or after 23.10.2015 and that Section 12(5) renders any arbitrator falling within the Seventh Schedule ineligible and such ineligibility can only be waived off by an express agreement in writing executed after dispute has arisen.

F. ANALYSIS

18. After having heard the learned counsels for the parties and the learned *Amicus Curiae*, the issue of law that has come up before this Court in the present bunch of Revision Petitions with regard to the applicability of Section 12(5) read with Seventh Schedule which came into existence by way of the 2015 amendment Act needs to be decided. Before adjudicating upon the said legal issue, this Court considers it appropriate to first advert to Section 12 of the 2015 Arbitration Act as it stood before the amendment and after the 2015 amendment Act.

19. Section 12 of the Arbitration Act before the 2015 Amendment Act:

"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 likely to give rise to justifiable doubts as to his independence or impartiality.

(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.

(3) An arbitrator may be challenged only if-

(a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or

(b) he does not possess the qualifications agreed to by the parties.

(4) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.”

Section 12 of the Arbitration Act after the 2015 amendment Act:

“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 1.—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.

(3) An arbitrator may be challenged only if—

(a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or

(b) he does not possess the qualifications agreed to by the parties.

(4) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

[(5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:

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

(emphasis supplied) ”

20. A perusal of the aforesaid Section 12(1) as it stood before the 2015 Amendment Act came into force would show that a person approaching in connection with his possible appointment as an Arbitrator was under an obligation to disclose in writing any of the circumstances likely to give rise to justifiable doubts as to his independence or impartiality. The emphasis therefore was on disclosure and subsequent challenge on the apprehension of bias or on the ground of lack of impartiality. However, the amended provision marks a clear departure from the earlier regime and introduced a significantly stricter regime, whereby in addition to enlarging the scope of disclosure under Section 12(1), the



Legislature incorporated sub-section (5) read with the Seventh Schedule which creates an express statutory bar to the appointment of a person as an Arbitrator where the relationship of such person with the parties, their counsel, or the subject-matter of the dispute falls within any of the categories specified in the seventh schedule. Thus, what was earlier a matter of challenge on the ground of reasonable apprehension has now been transformed to a question of statutory ineligibility. The consequence of the amendment is that the test is no longer confined to examining whether there exists any circumstances which may give rise to justifiable doubts as to independence or impartiality of an already appointed arbitrator but instead whether the proposed arbitrator is by operation of law rendered ineligible to act as an Arbitrator as such. The only exception carved out by the proviso to Section 12(5) is where after the disputes have arisen, the parties expressly waive the applicability of the aforesaid provision by an agreement in writing. The aforesaid transformation by way of the 2015 Amendment Act was intended to strengthen the neutrality of the arbitral process, to enhance confidence in the independence and impartiality of the arbitral tribunal and also to ensure party autonomy is kept intact.

21. Therefore, the question that now arises before this court for consideration is as to the applicability of the said amendment to arbitral proceedings that were already pending or had commenced prior to the coming into force of the 2015 amending Act. In other words, the issue is whether the provisions introduced by the 2015 amendment Act, particularly Section 12(5) is



to be applied retrospectively to arbitral proceedings initiated under the unamended Act or whether they operate only in respect of arbitral proceedings commenced after the amendment came into force.

22. The answer to the aforesaid question depends upon the nature of the amendment, the stage of the arbitral proceedings and the legislative intent manifested in Section 26 of the 2015 amendment Act, which is reproduced as under:

“26. Act not to apply to pending arbitral proceedings.- Nothing contained in this Act shall apply to the arbitral proceedings commenced, in accordance with the provisions of section 21 of the principal Act, before the commencement of this Act unless the parties otherwise agree but this Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this Act.”

23. The aforesaid Section has been interpreted by Hon’ble Supreme Court in **Board of Control For Cricket in India (supra)** to hold that that the Amendment Act is prospective in operation and that Section 26 is bifurcated into two distinct limbs, the first limb governs arbitral proceedings commenced in terms of Section 21 of the principal Act before the commencement of the Amendment Act while the second limb applies the Amendment Act to Court proceedings “in relation to” arbitral proceedings commenced on or after the date of commencement of the Amendment Act. The relevant portion of the aforesaid judgment is reproduced as under:



*“39. Section 26, therefore, bifurcates proceedings, as has been stated above, with a great degree of clarity, into two sets of proceedings - arbitral Proceedings themselves, and court proceedings in relation thereto. The reason why the first part of Section 26 is couched in negative form is only to state that the Amendment Act will apply even to arbitral proceedings commenced before the amendment if parties otherwise agree. If the first part of Section 26 were couched in positive language (like the second part), it would have been necessary to add a proviso stating that the Amendment Act would apply even to arbitral proceedings commenced before the amendment if the parties agree. **In either case, the intention of the legislature remains the same, the negative form conveying exactly what could have been stated positively, with the necessary proviso. Obviously, "arbitral proceedings" having been subsumed in the first part cannot re-appear in the second part, and the expression "in relation to arbitral proceedings" would, therefore, apply only to court proceedings which relate to the arbitral proceedings. The scheme of Section 26 is thus clear: that the Amendment Act is prospective in nature, and will apply to those arbitral proceedings that are commenced, as understood by Section 21 of the principal Act, on or after the Amendment Act, and to court proceedings which have commenced on or after the Amendment Act came into force.***

(emphasis supplied)”

24. Therefore, three distinct situations would arise on the basis of the aforesaid observations of the Hon’ble Supreme Court which are as follows:



(i) Arbitral proceedings commenced and concluded before

the 2015 amendment Act came into force: In such cases where the arbitral proceedings had both commenced and concluded before the commencement of the 2015 amendment Act, the amendment would not operate to revive or alter rights and obligations which had already crystallized upon the conclusion of the arbitral proceedings. Therefore, the 2015 amendment act would not apply retrospectively in such cases.

(ii) Arbitral proceedings commenced prior to the 2015

amendment Act but are still ongoing on the date of commencement of the 2015 amendment Act: This category

creates a distinction to be drawn between provisions which are procedural in nature and those which create substantive rights, liabilities or disqualifications. Therefore, procedural provisions such as Section 34/36 etc. would be applicable to the Court proceedings in relation to the arbitral proceedings, however provisions which impose a statutory ineligibility such as Section 12(5) read with the Seventh Schedule, would operate prospectively unless the parties otherwise agree and would not operate retrospectively to the arbitral proceedings which are still ongoing on the date of commencement of the 2015 amendment Act.

(iii) Arbitral proceedings commenced before, but Court



proceedings (Section 34/36 etc.) instituted after the 2015 amendment Act came into force: Section 26 of the Amendment Act envisages a clear legislative intent to bifurcate “arbitral proceedings” as commenced under Section 21 and “court proceedings in relation thereto.” Therefore, amended provisions relating to Court related remedies such as the amended Section 36 and Section 34 would apply to Court proceedings filed after the amendment came into force even though the arbitral proceedings had commenced prior to the amendment. In contrast, provisions affecting the conduct of arbitral proceedings themselves would operate prospectively and would govern only those arbitrations commenced after the amendment, provided the parties have otherwise expressly agreed. This approach preserves finality of the arbitral tribunal’s mandate while also allowing the Legislature’s intent to apply the provisions of the 2015 Amendment Act to court proceedings in relation to the arbitral proceedings.

25. Hon’ble Supreme Court in **Board of Control for Cricket in India (supra)**, had well-advised the Government in keeping the Statement of object and reasons in the forefront that if it proposed to enact Section 87, the immediate effect of the same would be to put all the important amendments made by the 2015 Amendment Act on a back-burner. The relevant portion is reproduced as under:



“75. The Government will be well-advised in keeping the aforesaid Statement of Objects and Reasons in the forefront, if it proposes to enact Section 87 on the lines indicated in the Government's Press Release dated 7th March, 2018. The immediate effect of the proposed Section 87 would be to put all the important amendments made by the Amendment Act on a back-burner, such as the important amendments made to Sections 28 and 34 in particular, which, as has been stated by the Statement of Objects and Reasons, "...have resulted in delay of disposal of arbitration proceedings and increase in interference of courts in arbitration matters, which tend to defeat the object of the Act", and will now not be applicable to Section 34 petitions filed after 23rd October, 2015, but will be applicable to Section 34 petitions filed in cases where arbitration proceedings have themselves commenced only after 23rd October, 2015. This would mean that in all matters which are in the pipeline, despite the fact that Section 34 proceedings have been initiated only after 23rd October, 2015, yet, the old law would continue to apply resulting in delay of disposal of arbitration proceedings by increased interference of Courts, which ultimately defeats the object of the 1996 Act.^[4] It would be important to remember that the 246th Law Commission Report has itself bifurcated proceedings into two parts, so that the Amendment Act can apply to Court proceedings commenced on or after 23rd October, 2015. It is this basic scheme which is adhered to by Section 26 of the Amendment Act, which ought not to be displaced as the very object of the enactment of the Amendment Act would otherwise be defeated.”*

26. However, by way of the Arbitration and Conciliation (Amendment) Act, 2019 (hereinafter referred to as “the 2019 Amendment Act”) omission of



Section 26 was done and Section 87 was introduced with effect from 23.10.2015.

27. The aforesaid Section 87 was introduced to make the 2015 Amendment Act inapplicable to arbitral proceedings commenced prior to 23.10.2015, as well as to all court proceedings arising out of or in relation to such arbitral proceedings irrespective of whether such court proceedings were instituted before or after the commencement of the 2015 Amendment Act. The provision further provided that the amendments would apply only to arbitral proceedings commenced on or after the said date and to Court proceedings arising therefrom. The aforesaid provision is reproduced as under:

“[87. Effect of arbitral and related court proceedings commenced prior to 23rd October, 2015.—Unless the parties otherwise agree, the amendments made to this Act by the Arbitration and Conciliation (Amendment) Act, 2015 shall—

(a) not apply to—

(i) arbitral proceedings commenced before the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 (23rd October, 2015);

(ii) court proceedings arising out of or in relation to such arbitral proceedings irrespective of whether such court proceedings are commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015;

(b) apply only to arbitral proceedings commenced on or after the commencement of the Arbitration and Conciliation (Amendment)



Act, 2015 and to court proceedings arising out of or in relation to such arbitral proceedings.]”

28. However, Hon’ble Supreme Court in **Hindustan Construction Company Limited and Another (supra)**, struck down Section 87 of the Arbitration Act as being unconstitutional while holding that the provision was manifestly arbitrary and contrary to the object of the principal Act as amended in 2015. Hon’ble Supreme Court held that Section 87 of the Arbitration Act had the effect of reviving the very problem which the 2015 Amendments had intended to cure thereby frustrating the legislative policy of expeditious and efficacious arbitral proceedings. Accordingly, it was declared that the deletion of Section 26 and the insertion of Section 87 was unsustainable in law and that the legislative intent underlying the 2015 Amendments would continue to govern all court proceedings initiated post 23.10.2015. The effect of the judgment was to restore the position laid down in **Board of Control For Cricket in India (supra)** and to ensure that the amendments brought about in 2015 by way of the 2015 Amendment Act would not be defeated. The relevant portion of the aforesaid judgment in **Hindustan Construction Company Limited and Another (supra)** is reproduced as under:

“63. Also, it is important to notice that the Srikrishna Committee Report did not refer to the provisions of the Insolvency Code. After the advent of the Insolvency Code on 01.12.2016, the consequence of applying Section 87 is that due to the automatic-stay doctrine laid down by judgments of this Court - which have only been reversed today by the present judgment - the award-holder may



*become insolvent by defaulting on its payment to its suppliers, when such payments would be forthcoming from arbitral awards in cases where there is no stay, or even in cases where conditional stays are granted. Also, an arbitral award-holder is deprived of the fruits of its award - which is usually obtained after several years of litigating - as a result of the automatic-stay, whereas it would be faced with immediate payment to its operational creditors, which payments may not be forthcoming due to monies not being released on account of automatic stays of arbitral awards, exposing such award-holders to the rigors of the Insolvency Code. **For all these reasons, the deletion of Section 26 of the 2015 Amendment Act, together with the insertion of Section 87 into the Arbitration Act, 1996 by the 2019 Amendment Act, is struck down as being manifestly arbitrary under Article 14 of the Constitution of India.***

xxx-xxx-xxx-xxx

66. The result is that the Kochi Cricket judgment (supra) will therefore continue to apply so as to make applicable the salutary amendments made by the 2015 Amendment Act to all court proceedings initiated after 23.10.2015.

(emphasis supplied)”

29. The effect of the commencement of arbitral proceedings prior to the 2015 Amendment Act has also been authoritatively considered by Hon’ble Supreme Court in **Union of India versus Parmar Construction Co., (2019) 15 SCC 682**, wherein it was categorically held that the provisions of the 2015 Amendment Act are prospective in nature and do not apply to arbitral proceedings commenced in accordance with Section 21 of the principal Act prior to 23.10.2015, unless the parties otherwise agree. It has further been held that under



the unamended Act, primacy must be accorded to the appointment procedure contractually agreed upon between the parties. The relevant extracts have been reproduced herein below:

“26. The conjoint reading of Section 21 read with Section 26 leaves no manner of doubt that the provisions of the 2015 Amendment Act shall not apply to such of the arbitral proceedings which have commenced in terms of the provisions of Section 21 of the principal Act unless the parties otherwise agree. The effect of Section 21 read with Section 26 of the 2015 Amendment Act has been examined by this Court in Aravali Power Co. (P) Ltd. v. Era Infra Engg. Ltd., (2017) 15 SCC 32 and taking note of Section 26 of the 2015 Amendment Act laid down the broad principles as under:

22. The principles which emerge from the decisions referred to above are:

22.1. In cases governed by the 1996 Act as it stood before the Amendment Act came into force:

22.1.1. The fact that the named arbitrator is an employee of one of the parties is not ipso facto a ground to raise a presumption of bias or partiality or lack of independence on his part. There can however be a justifiable apprehension about the independence or impartiality of an employee arbitrator, if such person was the controlling or dealing authority in regard to the subject contract or if he is a direct subordinate to the officer whose decision is the subject-matter of the dispute.

22.1.2. Unless the cause of action for invoking jurisdiction under clauses (a), (b) or (c) of sub-section (6) of Section 11 of the 1996 Act arises, there is no question of the Chief Justice or his designate exercising power under sub-section (6) of



Section 11.

22.1.3. The Chief Justice or his designate while exercising power under sub-section (6) of Section 11 shall endeavour to give effect to the appointment procedure prescribed in the arbitration clause.

22.1.4. While exercising such power under sub-section (6) of Section 11, if circumstances exist, giving rise to justifiable doubts as to the independence and impartiality of the person nominated, or if other circumstances warrant appointment of an independent arbitrator by ignoring the procedure prescribed, the Chief Justice or his designate may, for reasons to be recorded ignore the designated arbitrator and appoint someone else.

22.2. In cases governed by the 1996 Act after the Amendment Act has come into force: If the arbitration clause finds foul with the amended provisions, the appointment of the arbitrator even if apparently in conformity with the arbitration clause in the agreement, would be illegal and thus the court would be within its powers to appoint such arbitrator(s) as may be permissible."

30. A similar position was reiterated by the Hon'ble Supreme Court in **S.P. Singla Constructions (P) Ltd. v. State of H.P.,(2019) 2 SCC 488**, wherein while dealing with an appointment made prior to the 2015 Amendment Act, the Hon'ble Supreme Court held that the amended provisions could not be invoked to invalidate an appointment made in accordance with the contractual terms governing the parties prior to 23.10.2015. It was further reaffirmed that departmental or unilateral appointments made under pre-amendment agreements



cannot be retrospectively invalidated by invoking the 2015 Amendment Act. The relevant paragraphs of the said judgment read as follows:

"16. Considering the facts and circumstances of the present case, we are not inclined to go into the merits of this contention of the appellant nor examine the correctness or otherwise of the above view taken by the Delhi High Court in Ratna Infrastructure Projects (P) Ltd. v. Meja Urja Nigam (P) Ltd., 2017 SCC Online Del 7808; suffice it to note that as per Section 26 of the Arbitration and Conciliation (Amendment) Act, 2015, the provisions of the amended 2015 Act shall not apply to the arbitral proceedings commenced in accordance with the provisions of Section 21 of the principal Act before the commencement of the Amendment Act unless the parties otherwise agree. In the facts and circumstances of the present case, the proviso in Clause (65) of the general conditions of the contract cannot be taken to be the agreement between the parties so as to apply the provisions of the amended Act. As per Section 26 of the Act, the provisions of the Amendment Act, 2015 shall apply in relation to arbitral proceedings commenced on or after the date of commencement of the Amendment Act, 2015 (w.e.f. 23-10-2015). In the present case, arbitration proceedings commenced way back in 2013, much prior to coming into force of the amended Act and therefore, provisions of the amended Act cannot be invoked.

17. In BCCI v. Kochi Cricket (P) Ltd., (2018) 6 SCC 287, this Court has held that the provisions of the Amendment Act, 2015 (with effect from 23-10-2015) cannot have retrospective operation in the arbitral proceedings already commenced unless the parties otherwise agree and held as under : (SCC p. 313, para 37)

"37. What will be noticed, so far as the first part is concerned, which states-



'26. Act not to apply to pending arbitral proceedings.-Nothing contained in this Act shall apply to the arbitral proceedings commenced, in accordance with the provisions of Section 21 of the principal Act, before the commencement of this Act unless the parties otherwise agree.....'is that: (1) 'the arbitral proceedings' and their commencement is mentioned in the context of Section 21 of the principal Act; (2) the expression used is 'to' and not 'in relation to'; and (3) parties may otherwise agree. So far as the second part of Section 26 is concerned, namely, the part which reads, '.... but this Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this Act' makes it clear that the expression 'in relation to' is used; and the expression 'the' arbitral proceedings and 'in accordance with the provisions of Section 21 of the principal Act' is conspicuous by its absence."

21. In the present case, the arbitrator has been appointed as per Clause (65) of the agreement and as per the provisions of law. Once, the appointment of an arbitrator is made at the instance of the Government, the arbitration agreement could not have been invoked for the second time.

25. In spite of extension of time, since the appellant contractor had not filed statement of claim, the arbitrator terminated the proceedings under Section 25(a) of the 1996 Act by proceedings dated 6-8-2014. The appellant contractor did not file his statement of claim before the arbitrator since the appellant had approached the High Court by filing petition under Section 11(6) of the 1996 Act, probably under the advice that the appellant can get an independent arbitrator appointed. The appellant had been writing letters to the arbitrator before the hearing seeking adjournment. However, on the fourth occasion, proceedings were simply terminated; since no



hearings were held on earlier occasions, he expected that his request might be accepted. The arbitrator could have issued a notice warning the appellant that no adjournment would be granted under any circumstances. Since, no such warning was given, we deem it appropriate to set aside the order of termination. The appellant had made a claim on account of delay as indicated in his letter dated 18-10-2013 under various heads. In the interest of justice, in our considered view, an opportunity is to be afforded to the appellant to go before the departmental arbitrator (as agreed by the parties in Clause (65) of the general conditions of contract) and the proceedings of the arbitrator dated 6-8-2014 terminating the proceedings is to be set aside. We are conscious that after the Amendment Act, 2015, there cannot be a departmental arbitrator. As discussed earlier, in this case, the agreement between the parties is dated 19-12-2006 and the relationship between the parties are governed by the general conditions of the contract dated 19-12-2006, the provisions of the Amendment Act, 2015 cannot be invoked."

31. Recent judgment of Hon'ble Delhi high court in **Avneet Soni versus Kavita Agarwal, 2026 NCDHC 658** while dealing with a similar situation held that when the arbitral proceedings have commenced prior to the 2015 amendment Act, unilateral appointment of a Sole Arbitrator must necessarily be examined in the context of the law as it stood on the date of commencement of the arbitral proceedings having due regard to Section 21 of the arbitration and conciliation act and the express mandate of Section 26 of the 2015 amendment act. The relevant portion of the judgment is reproduces hereinunder:



“72. It is well settled that an executing court cannot go behind the award and is bound to execute it "as is". The arbitral award in the present case has not only been passed but has also been upheld at every stage, including by the Hon'ble Supreme Court. The courts have specifically examined the challenge to the award on the ground of alleged "unilateral appointment" of the arbitrator. The Hon'ble Supreme Court has categorically held that the amendments to the A&C Act as done in 2015 are prospective in nature.

73. While it is true that an executing court may examine whether an award is a nullity or non est in cases where there exists an inherent lack of jurisdiction in the court or tribunal that rendered the decision, no such infirmity arises in the present case. On the contrary, all courts have consistently held that there is absolutely no defect in the award, particularly on the ground of "unilateral appointment". In these circumstances, there being no inherent lack of jurisdiction in the arbitral tribunal, this Court, acting as the executing court, is bound to execute the award as it stands.”

32. Therefore, this Court is of the considered view that where the arbitral proceedings had commenced prior to the enforcement of the 2015 Amendment Act, the mere institution of an execution petition subsequent thereto would not, by itself, attract the amended provisions at the stage of enforcement. The execution petition being a post award proceeding would be governed by the law applicable to the arbitral proceedings and the award as it stood when the arbitral proceedings commenced. Consequently, the amended provision of Section 12(5) of the Arbitration Act cannot be made applicable retrospectively.



33. So far as judgment of *Ellora Paper Mills Limited (supra)* relied upon by learned counsel for the respondents is concerned, the same is distinguishable on facts, as in that case there was a stay on the arbitral proceedings and the Hon'ble Supreme Court held that the Tribunal had lost its mandate under Section 12(5) read with the Seventh Schedule and fresh Arbitrator was to be appointed. Consequently, instead of remanding the matter to the High Court to name the arbitrator, the Hon'ble Supreme Court appointed a fresh Arbitrator to adjudicate upon/resolve the dispute between the parties. Therefore, in that case the arbitral proceedings effectively commenced after the 2015 Amendment Act came into force and because of aforesaid reasons the reliance placed on the said judgment is misplaced.

34. So far as the argument raised by the learned counsel for the petitioners with regard to repealing of 2015 amendment Act by way of the Repealing and Amending Act, 2025 is concerned, the same is unsustainable because this exercise by the Parliament is one of those periodical measures by which amendments which have ceased to be in force or have become obsolete or the retention whereof as separate Acts is unnecessary are repealed and by which certain amendments and formal defects detected in enactments are amended and corrected. The 2015 Amendment Act, having been incorporated into the Arbitration Act in its entirety, does not fall within that category.



G. CONCLUSION

35. In the light of the aforesaid analysis, it is held that the 2015 Amendment Act applies prospectively and its applicability depends on the stage of proceedings, which is categorized as follows:-

(i) Where the arbitral proceedings have both commenced and concluded prior to 23.10.2015, the amendment does not affect rights that have already been crystallized. Therefore, the 2015 Amendment Act would not apply retrospectively to the arbitral proceedings which already stand concluded on passing of the award.

(ii) Where the arbitral proceedings are pending as on the date of the amendment and the award is passed post 2015 Amendment Act, the provision pertaining to ineligibility under Section 12(5) read with the Seventh Schedule of the Arbitration Act would not apply retrospectively to such proceedings unless the parties otherwise agree.

(iii) Where the arbitral proceedings have both commenced and concluded prior to the 2015 Amendment Act but Court proceedings in relation thereto such as Sections 34 and 36 of the Arbitration Act are instituted post the 2015 Amendment Act, the amended provisions governing such Court proceedings would be applicable but so far as the execution of the award arising from the arbitral proceedings commenced prior to the 2015 Amendment Act is concerned, the same would not fall within the ambit of Court proceedings “in



relation to arbitral proceedings” as provided under Section 26 of the 2015 Amendment Act. Once the award has been passed by an Arbitrator who was eligible to pass the same in view of the law as it stood at the time of his appointment, it is well settled that the learned Executing Court at the time of execution of such an award cannot go behind the same to apply the provisions of the 2015 Amendment Act retrospectively and is bound to execute it as it is.

36. In view of the above, it is further held that execution of the awards arising from arbitral proceedings commenced prior to the 2015 Amendment Act cannot be said to be unenforceable on the ground of being in conflict with the amended Section 12(5) of the Arbitration Act, which is prospective in nature unless otherwise agreed between the parties.

37. This Court now deems it proper to examine facts and circumstances of the present batch of Revision Petitions in light of the aforesaid conclusion. The relevant dates which are material for adjudication of the controversy are tabulated hereunder :

CR NO.	IMPUGNED ORDER	AGREEMENT	APPOINTMENT OF ARBITRATOR	AWARD
CR-5847-2025	08.07.2025	23.10.2006	----	17.07.2012
CR- 8920-2025	10.09.2025	21.10.2010	04.06.2015	06.03.2017
CR- 8878-2025	30.09.2025	19.10.2011	15.03.2015	08.05.2018
CR-9445-2025	09.09.2025	02.11.2010	08.05.2015	21.08.2015
CR-8589-2025	09.09.2025	09.10.2009	07.08.2012	05.05.2014
CR-7999-2025	07.07.2025	04.10.2012	19.03.2014	10.11.2014
CR- 6164-2025	01.08.2024	11.10.2011	Notice of appearance 12.02.2013	29.04.2014



38. A perusal of the aforesaid would show that in all the cases the arbitral proceedings had commenced prior to the 2015 Amendment Act and therefore the aforesaid Amendment Act would not be applicable to the aforesaid arbitral awards for the purpose of execution thereof and the same deserves to be examined in the context of the pre-amendment Act as it stood on the date of commencement of the arbitral proceedings having due regard to Section 21 of the Arbitration act and the express mandate of Section 26 of the 2015 Amendment Act.

39. Consequently, all the Civil Revision Petitions stand allowed. The impugned orders in all the set of cases are hereby set aside and the matters are remitted to the learned Executing Courts for proceeding further in respective execution applications in accordance with law in light of the present judgment.

40. Before parting with this judgment, this Court records its appreciation towards Mr. Naresh Markanda, Senior Advocate, learned *Amicus Curiae* and Ms. Surpreet Kaur, Law Researcher of this Court for their valuable assistance.

41. A photocopy of this judgment be placed on the files of other connected cases.

(JASGURPREET SINGH PURI)
JUDGE

29.05.2026
Chetan Thakur

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No