

## IN BRIEF

### WHEN PARTICIPATION BARS OBJECTION: FORUM BASED CHALLENGES TO ARBITRATOR APPOINTMENTS POST *HALA KAMEL ZABAL v. ARYA TRADING LTD.*



#### Introduction

Challenges to arbitral awards frequently rely on technical objections relating to the constitution of the arbitral tribunal. A recurring question in such challenges is whether an award may be invalidated on the ground that the arbitrator was appointed by an allegedly incorrect forum.

In *Hala Kamel Zabal v. Arya Trading Ltd.*, 2026<sup>1</sup> (Hala Kamel Zabal), the Delhi High Court (Division Bench) considered precisely this issue. The dispute arose from an International Commercial Arbitration (ICA), where the arbitrator had been appointed by the Delhi High Court rather than the Supreme Court, which ordinarily exercises jurisdiction in appointment matters under Section 11 of the Arbitration and Conciliation Act, 1996 (A&C Act).

The Court rejected the challenge, holding that a belated objection directed solely at the forum exercising the appointing authority cannot ordinarily invalidate an arbitral award where the parties have participated in the proceedings without timely protest. In doing so, the judgment reinforces two foundational principles of Indian arbitration law: party autonomy in constituting

the tribunal and waiver of procedural objections under Section 4 of the A&C Act.

#### Appointment of Arbitrators as Procedural Mechanisms

Under the scheme of the A&C Act, provisions governing the appointment of arbitrators operate primarily as procedural mechanisms designed to facilitate the constitution of the arbitral tribunal. These provisions ensure that arbitration can proceed even where the parties fail to operationalise the agreed appointment process.

This procedural character reflects the statute's broader emphasis on party autonomy. Several provisions recognise that parties are free to determine key procedural aspects of arbitration, including the appointment process. The A&C Act frequently employs formulations such as “*unless otherwise agreed by the parties,*” “*failing any agreement,*” and “*the parties are free to agree.*”

Such expressions appear across provisions governing the appointment of arbitrators (Section 11), challenges to arbitrators (Section 13), arbitral procedure (Sections 19, 23 and 24), the seat and venue of arbitration (Section 20), language of proceedings (Section 22), and the form of arbitral awards (Sections 29, 31 and 33).

The Supreme Court has emphasised this autonomy-centric framework in *Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV<sup>2</sup>)*, 2025 describing party autonomy as the “*brooding and guiding spirit*” and the “*backbone*” of arbitration. Courts therefore intervene only where the statute expressly permits, while arbitral tribunals are expected to follow procedures agreed between the parties.

#### The Forum Question in Hala Kamel Zabal

Against this statutory backdrop, the Delhi High Court (the Court) was confronted with a challenge based not on the appointment mechanism itself, but on the identity of the forum that exercised the appointing power.

Under the statutory framework of the A&C Act, the power to appoint arbitrators in the Indian Council of Arbitration (ICAs) seated in India ordinarily lies with the

<sup>1</sup> SCC Online Del 455

<sup>2</sup> 4 SCC 641

Supreme Court. In contrast, High Courts exercise appointment jurisdiction in domestic arbitrations. The objecting party therefore argued that the arbitrator's appointment by the Delhi High Court, rather than the Supreme Court, rendered the arbitral proceedings and the resulting award invalid.

A critical feature of the case, however, was that the objecting party had participated in the arbitral proceedings without raising any objection to the appointment process at the relevant stage.

The Court was therefore required to determine whether such a forum-based objection, raised only after full participation in the arbitration, could invalidate the award.

### **The Court's Approach**

The Court rejected the challenge. While recognising the statutory allocation of appointment jurisdiction under Section 11 of the A&C Act, the Court emphasised that the objection raised in the case was directed solely at the identity of the appointing forum, rather than at any breach of the agreed appointment mechanism or any demonstrated prejudice.

The Court observed that the appointing authority designated in an arbitration clause performs a function similar in nature to that contemplated under Section 11(6) of the A&C Act. Both mechanisms ultimately serve the same purpose: giving effect to party autonomy and ensuring that the arbitral tribunal is constituted.

In this context, the Court indicated that a belated challenge based solely on the identity of the appointing forum cannot ordinarily invalidate an arbitral award where the parties have participated in the proceedings without timely objection.

On this reasoning, the Court held that forum-based objections raised after the conclusion of arbitral proceedings, and unaccompanied by proof of prejudice, are insufficient to unsettle a concluded arbitral award.

### **Waiver by Conduct under Section 4 of the A&C Act**

Pertinently, the Court's reasoning is closely tied to the waiver principle embodied in Section 4 of the A&C Act. This provision stipulates that a party which proceeds with arbitration without raising a timely objection, despite being aware of non-compliance with non-mandatory provisions of the A&C Act or the arbitration agreement, is deemed to have waived its right to object.

The Court relied upon the Supreme Court's decision in *Narayan Prasad Lohia v. Nikunj Kumar Lohia, 2002*<sup>3</sup> where it was held that parties who participate in arbitration despite irregularities in the constitution of the tribunal cannot later challenge the award on that ground if no timely objection was raised.

Seen in this light, Hala Kamel Zabal reinforces the principle that procedural objections to the constitution of the tribunal must be raised promptly. Silence, combined with participation, may operate as a waiver.

### **Conclusion**

The decision in Hala Kamel Zabal highlights the following important principles governing challenges to the constitution of arbitral tribunals under the A&C Act:

- (i) Procedural objections relating to the appointment or constitution of the arbitral tribunal must be raised at the earliest stage.
- (ii) Belated challenges based solely on the identity of the appointing forum are unlikely to succeed.
- (iii) Procedural irregularities in the appointment process do not automatically vitiate arbitral proceedings.

Taken together, the judgment reinforces the principle that technical procedural objections should not be permitted to unsettle arbitral awards after the parties have fully participated in the arbitral process, thereby strengthening the finality and stability of arbitral outcomes.

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<sup>3</sup> 3 SCC 572