



2024:DHC:7277



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **O.M.P. 607/2010****M/S ABL BIOTECHNOLOGIES LTD & ORSPetitioners****Through: Mr. Abid Ali Beeran, Advocate****versus****M/S TECHNOLOGY DEVELOPMENT BOARD****& ANR****.....Respondents****Through: Mr. Jivesh Mehta, Mr. Nihit
Dalmia and Mr. Bhavya Bathla, Advocates
for R1****CORAM:****HON'BLE MR. JUSTICE C.HARI SHANKAR****JUDGMENT (ORAL)****%****19.09.2024**

1. Mr. Abid Ali Beeran, learned counsel for the petitioners, points out that the Arbitrator, who has passed the impugned award in the present case, was unilaterally appointed by Respondent 1.

2. This position is not disputed by Mr. Jivesh Mehta, learned counsel for Respondent 1, who, however, seeks to submit that the appointment took place prior to the insertion, in the Arbitration and Conciliation Act, 1996¹, of sub-section (5) by Section 8(2) of the Arbitration and Conciliation (Amendment) Act, 2015, with effect from 23 October 2015.

3. It is now settled by the judgment of the Supreme Court in



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Dharma Prathishthanam v. Madhok Construction Pvt Ltd², which has been followed by this Bench in ***S.K. Builders v CLS Construction Pvt Ltd***³ that, even in respect of arbitrations which commenced prior to introduction of sub-section (5) and Section 12 of the 1996 Act, arbitrators could not be unilaterally appointed and any arbitration by a unilaterally appointed arbitrator would be a nullity *ab initio*.

4. Accordingly, as the impugned award has been passed by an Arbitrator who was unilaterally appointed by the respondents, the award stands vitiated in its entirety.
5. The award is accordingly quashed and set aside.
6. The petition is allowed in the aforesaid terms.

C.HARI SHANKAR, J

SEPTEMBER 19, 2024/yg

Click here to check corrigendum, if any

² (2005) 9 SCC 686

³ 2024 SCC OnLine Del 5498