

# COURT-UNQUOTE

**Case Title:** Hindustan Construction Company Ltd (HCC) V. Bihar Rajya Pul Nirman Nigam Ltd (BRPNNL),  
SLP (C) No. 4211 of 2025, 2025  
INSC 1385





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The Supreme Court in *Hindustan Construction Company Ltd (HCC) V. Bihar Rajya Pul Nirman Nigam Ltd (BRPNNL)*, **2025 INSC 1385** was posed with a critical question that whether High Court exercising its review jurisdiction, can set-aside the appointment of the Arbitrator on the urged grounds of non-arbitrability of the dispute, where the parties had actively participated in the arbitration process and the parties had sought extension of the arbitration under Section 29A of the Arbitration and Conciliation Act, 1996 (**Act**).

The judgement arises out of a challenge preferred against an order of the Patna High Court, wherein the High Court reviewed its own order appointing a Sole Arbitrator, under Section 11(6) of the Act. The dispute arose from a 2014 bridge-construction contract containing Clause 25 as an arbitration clause where one reference and award were had already been concluded in 2021 and a second reference was later made for subsequent claims wherein the High Court appointed a Sole Arbitrator.

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After 3 years of active participation in the arbitration, the Respondent preferred a Review of the Section 11 appointment on several grounds including non- arbitrability stating that the Clause 25 vested exclusive appointment power in one party and forecloses arbitration in default of such appointment. The Review also claimed that the Sole Arbitrator had been appointed as President of State Consumer Protection Commission, Meghalaya (State Commission).

By an order dated 25.10.2024, the High Court listed the Section 11 Petition for appointment of a new arbitrator, since the Sole Arbitrator had been appointed as President of a State Commission. However, after final arguments, the High Court set-aside the order appointing the Arbitrator, thereby closing the Section 11 application and the arbitration.



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In Appeal, the Supreme Court held:

1. The High Court had no jurisdiction to review or reopen its earlier order passed under Section 11(6), once that order had attained finality and the arbitral proceedings had commenced. The Arbitration Act being a self-contained code with a strict scheme for limited judicial intervention, the referring court becomes functus officio after appointing the arbitrator and cannot, by way of review, convert the Section 11 jurisdiction into an appeal on merits.
2. The power exercised by the High court under Section 11 is rather narrow and there is no statutory provision for review or appeal from an order under Section 11, so as to ensure that the arbitral process remains unhindered.
3. There existed a valid and subsisting arbitration agreement between the parties within the meaning of Section 7 of the Arbitration and Conciliation Act, 1996, and that Clause 25 of the contract, properly construed, satisfies the statutory requirements of an arbitration clause. It also held the parties long-standing and

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unequivocal conduct invoking Clause 25 on two occasions, participating in more than seventy hearings, exchanging pleadings without denial of the agreement, and earlier accepting an award under the same clause. Therefore, the view of the High Court in holding that no arbitration agreement existed was unsustainable.

4. The parties had waived their objections to the arbitral process by their long and active participation, including filing joint applications under Section 29A for extension of the arbitrator's mandate without demur. Waiver, being a foundational principle of arbitration rooted in party autonomy and fairness, precluded the respondents from resurrecting technical objections at a belated stage after having taken full advantage of the arbitral forum.
5. Lastly, it was also held that the appropriate course of action in such circumstances would have been to invoke Section 15(2) of the Act and appoint a substitute arbitrator to continue from the existing stage of the proceedings.



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## **VA View:**

The judgement brings quietus to the issue that once a party has actively participated in the arbitral process, it cannot turn around and question the arbitrability itself. The judgment also affirms judicial discipline of non-interference with orders appointing arbitrators, particularly in review jurisdiction of the High Court.