

Disclosure, Bias and Public Policy in Foreign Award Enforcement: A Case Note on *MSA Global LLC (Oman) v. Engineering Projects (India) Limited*

Introduction

The judgment in *MSA Global LLC (Oman) v. Engineering Projects (India) Limited* was delivered by the High Court of Delhi (“**Court**”) in O.M.P. (EFA) (COMM.) 4/2025. The proceedings arose out of a petition filed by MSA Global LLC (Oman) (“**MSA Global**”/“**Award Holder**”) under Sections 44, 46, 47 and 49 of the Arbitration and Conciliation Act, 1996 (“**Act**”) seeking recognition and enforcement of a First Partial Award rendered in an arbitration conducted under the Rules of Arbitration of the International Chamber of Commerce, 2021 (“**ICC Rules**”). The enforcement proceedings were resisted by Engineering Projects (India) Limited (“**Engineering Projects**”/“**Judgment Debtor**”) under Section 48 of the Act primarily on the ground that one of the members of the Arbitral Tribunal, Mr. Andre Yeap SC (“**Mr. Yeap**”), had failed to disclose a prior professional association with Mr. Manbhupinder Singh Atwal (“**Mr. Atwal**”), the Chairman and promoter of MSA Global, thereby giving rise to justifiable apprehensions regarding his impartiality and independence.

The judgment is significant for the law on enforcement of foreign arbitral awards under Section 48 of the Act. While the settled jurisprudence mandates a pro-enforcement approach with minimal judicial interference, the present case raised an important question: to what extent can allegations of arbitral bias and non-disclosure be examined at the enforcement stage on the touchstone of the “public policy of India”? The Court had to reconcile two competing principles, i.e., the finality of and limited interference in foreign awards, and the fundamental requirement that arbitral proceedings remain impartial and free from any reasonable apprehension of bias.

The dispute also involved parallel proceedings before the ICC Court and the General Division of the High Court of Singapore (“**High Court of Singapore**”), both of which had rejected challenges to the alleged non-disclosure. The Court therefore examined whether those findings could preclude an Indian enforcement court from independently examining objections under Section 48, and analysed the scope of enforcement jurisdiction, transnational issue estoppel,

the meaning of public policy in enforcement proceedings, and the standards governing disclosure and impartiality of arbitrators.

Factual Background

MSA Global is an Oman-based electronic security systems integrator. Engineering Projects is a Public Sector Undertaking under the Ministry of Heavy Industries and Public Enterprises, Government of India, engaged in turnkey and nomination-based projects across sectors including power, steel, petrochemical, civil and infrastructure. On 29 July 2015, the Ministry of Defence, Sultanate of Oman awarded the main contract for the Oman-Yemen border infrastructure project to Engineering Projects. On 21 September 2015, MSA Global and Engineering Projects entered into a subcontract for the design, supply, installation, integration and commissioning of an electronic surveillance system for the Project, with a total value of USD 120,330,627 (“**Agreement**”). Engineering Projects subcontracted the civil works for Sections 3 and 4 to C&C Constructions Ltd. and Sarooj Construction Co. LLC respectively, and MSA Global executed the electronic security system.

The Project was to be completed by 09 July 2019. Owing to delays in the civil works by Engineering Projects and its subcontractors, however, the Project remained incomplete, and MSA Global incurred substantial prolongation and operational costs.

MSA Global invoked arbitration under Article 19 of the Agreement and nominated Mr. Yeap as its arbitrator. In his Statement of Acceptance, Availability, Impartiality and Independence before the International Chamber of Commerce (“**ICC**”), Mr. Yeap declared that he had “nothing to disclose”. Engineering Projects nominated its arbitrator; the ICC Secretariat appointed the presiding arbitrator, and the Arbitral Tribunal was constituted. Singapore was designated as the seat, although Engineering Projects continued to dispute that.

After the first procedural hearing, the Tribunal fixed a schedule for pleadings and evidence. MSA Global sought urgent interim measures, and after hearing the parties the Tribunal passed a First Partial Award directing Engineering Projects to pay monthly operational costs and other outstanding amounts due to MSA Global, however, the Award was later corrected by the Tribunal (“**First Partial Award**”). Engineering Projects then instituted challenge proceedings before the High Court of Singapore seeking partial setting aside.

Evidentiary hearings were fixed for January 2025. Shortly before, Engineering Projects discovered from the Gujarat High Court judgment in Neeraj Kumarpal Shah v. Manbhupinder Singh Atwal that Mr. Yeap had earlier been involved in arbitral proceedings connected with Mr. Atwal (the Managing Director, Chairman and promoter of MSA Global) and his legal representatives. Mr. Yeap had not disclosed this association at appointment or during the proceedings. Engineering Projects accordingly filed an application under Article 14(1) of the ICC Rules before the ICC Court challenging Mr. Yeap's continuance ("**Challenge Application**"), and moved Originating Application No. 1185 of 2024 before the High Court of Singapore to place on record additional facts in support of its plea for partial setting aside.

The High Court of Singapore dismissed Originating Application No. 1185 of 2024 and upheld the First Partial Award, deferring SUM 316 pending the Challenge Application before the ICC Court. The ICC Court admitted the Challenge Application but rejected it on merits, observing that although the non-disclosure was regrettable, it did not establish justifiable doubts as to Mr. Yeap's impartiality or independence.

Around March 2025, MSA Global initiated enforcement proceedings before the Court, registered as O.M.P. (EFA) (COMM.) 4/2025. During the same period, the High Court of Singapore rejected SUM 316 on merits. Engineering Projects then filed Originating Application No. 317 of 2025 before the High Court of Singapore under Sections 3 and 8 of the International Arbitration Act of Singapore read with Articles 6, 12, 13 and 15 of the UNCITRAL Model Law alleging bias and seeking termination of Mr. Yeap's mandate, however, this too was rejected. Engineering Projects continued to refuse compliance despite repeated demand letters. MSA Global asserted that since the arbitration was seated in Singapore, a reciprocating territory under Section 44 of the Act, the Award was a foreign award enforceable in India.

Engineering Projects also instituted CS(OS) 243/2025 before the Court, seeking inter alia a declaration that MSA Global could not continue with the ICC arbitration with the existing Tribunal. The Single Judge granted an interim anti-arbitration injunction staying the arbitral proceedings and restraining the parties from participating. The Division Bench affirmed that order in FAO(OS) No. 88/2025. MSA Global approached the Supreme Court by Special Leave Petition during its pendency and Mr. Yeap resigned from the Tribunal. Taking note of that development, the Supreme Court observed that the principal basis for the injunction no longer

survived, set aside the Division Bench judgment and remanded FAO(OS) No. 88/2025 for fresh adjudication with all questions kept open.

Submissions by the Parties

Submissions by Engineering Projects/Judgment Debtor

The Judgment Debtor opposed enforcement under Section 48 and contended that enforcement of a foreign award is not automatic merely because the award has attained finality before the supervisory court. The enforcement court must independently examine whether the Award falls foul of any ground under Section 48 before enforcing it. Reliance was placed upon *International Air Transport Association v. Spring Travels Private Limited*¹ and *Government of India v. Vedanta Limited*².

Article 11(2) of the ICC Rules casts a mandatory obligation upon every prospective arbitrator to submit a statement of acceptance, availability, impartiality and independence disclosing any fact or circumstance likely to give rise to doubts regarding impartiality or independence. The purpose is transparency, and to enable parties to raise objections at the appropriate stage. In his statement before the ICC Secretariat, Mr. Yeap expressly declared that he had nothing to disclose, and no objection was therefore raised to his appointment.

It later came to light from the Gujarat High Court judgment in *Neeraj Kumarpal Shah v. Manbhupinder Singh Atwal* that Mr. Yeap had earlier acted as co-arbitrator in proceedings involving Mr. Atwal. This prior association was not disclosed at appointment or during the proceedings, violating the disclosure obligations under the ICC Rules and depriving the Judgment Debtor of the opportunity to challenge the appointment in time. In the Challenge Application before the ICC Court, Mr. Yeap admitted that by the time he realised Mr. Atwal was the Claimant's Chairman, proceedings for setting aside the First Partial Award had been commenced or were contemplated in Singapore, and that disclosure could have invited a challenge to his impartiality.

Mr. Yeap's explanation that he had failed to notice references to Mr. Atwal in the arbitral record was untenable. The record contained multiple references including his email address,

¹ *International Air Transport Association v. Spring Travels Private Limited* , 2024 SCC OnLine Del 7540.

² *Government of India v. Vedanta Limited* , (2020) 10 SCC 1.

communications to the Tribunal, and documents filed with the Statement of Claim through the same legal representatives who had earlier represented Mr. Atwal. These circumstances established a nexus that ought to have been disclosed under the continuing obligation cast upon an arbitrator.

Mr. Yeap's non-disclosure breached the mandatory disclosure obligations under the ICC Rules and the ICC Note to Parties and Arbitral Tribunals on the Conduct of Arbitration, which require disclosure of any circumstance capable of giving rise to doubts about an arbitrator's independence or impartiality, including prior appointments by a party or its counsel. Had these facts been disclosed in time, the Judgment Debtor could have challenged the appointment, however, in their absence, it was deprived of notice of material circumstances affecting the arbitrator's neutrality. The Award Holder's reliance on the IBA Guidelines on Conflicts of Interest in International Arbitration ("**IBA Guidelines**") was misplaced since the IBA Guidelines themselves clarify that they do not override binding arbitral rules or statutory instruments such as the Act, under which disclosure by an arbitrator constitutes a fundamental safeguard for preserving the integrity of the arbitral process.

The duty to disclose is continuing, and Mr. Yeap's claim that he became aware of the relationship only in October 2024 was contrary to the record. Mr. Atwal's identity featured at multiple stages including the Statement of Claim (which annexed the Agreement bearing his name as Chairman), the Statement of Defence, additional documents filed by the Award Holder, and the hearing he himself attended. Both the Statement in Reply and the First Partial Award named him expressly. Despite further pleadings, witness statements and draft guarantees involving him, no disclosure was made. Enforcement was therefore liable to be refused under Section 48(1)(d) on the ground that the composition of the Tribunal and the arbitral procedure were not in accordance with the governing legal framework.

Enforcement would also be contrary to the public policy of India under Section 48(2)(b). Concealment of the prior relationship amounted to suppression of material facts affecting the making of the Award. Independence and impartiality are foundational to arbitral proceedings, and an award tainted by arbitral bias offends both the fundamental policy of Indian law and the most basic notions of morality and justice. Mr. Yeap's conscious refusal to disclose, coupled with his admission that disclosure could have invited challenge, itself reinforced the apprehension of bias. Any reasonable observer apprised of these facts would harbour legitimate doubts regarding his independence and impartiality.

Further, the First Partial Award was in the nature of an interim award and did not constitute a foreign award capable of enforcement under Part II. Disclosure under Section 12 is mandatory, not discretionary and its absence vitiates the arbitral proceedings and renders the Award unenforceable as contrary to the public policy of India.

Submissions on behalf of the Award Holder

The Award Holder contended that the Judgment Debtor had admitted that Singapore was the seat of arbitration and Singapore law was therefore the curial law, while the procedure was governed by the ICC Rules. The objections under Section 48 of the Act rested entirely on alleged non-disclosure under the ICC Rules and fell outside the limited scope of Section 48(2) of the Act. The same allegations had already been raised before the High Court of Singapore (the curial court) and the ICC Court, and both rejected the challenge. The First Partial Award was unanimous; it could not be said to stand vitiated by bias.

Section 12, forming part of Part I, did not apply by virtue of Section 2(2), since Part I applies only where the seat is in India. In any event, no violation of Section 12 had occurred. Explanation 1 to Section 12 of the Act read with its Fifth Schedule contemplates justifiable doubts arising where an arbitrator has been appointed on two or more occasions by a party or its affiliate within the preceding three years. The alleged non-disclosure here concerned a single appointment made more than four years before the present arbitration, in proceedings involving the Chairman of the Award Holder which is outside Paragraph 22 of the Fifth Schedule. Even if Section 12 applied, the circumstance did not warrant disclosure. Mr. Yeap had in any event furnished the requisite ICC disclosure statement.

The judgments relied upon by the Judgment Debtor concerned domestic arbitrations and had no application to a foreign-seated ICC arbitration. The ICC Court had itself noted the non-applicability of Section 12 and the alignment of the Fifth Schedule with the IBA Guidelines. Although the Judgment Debtor had acknowledged that CS(OS) 243/2025 was independent of the present proceedings, it nevertheless relied on orders passed therein impermissibly. Unlike the anti-arbitration suit, the present enforcement proceedings required a final determination and were not governed by prima facie observations in interlocutory orders. While the judgment dated 12 December 2025 in FAO(OS) No. 88/2025 had prima facie observed that the seat was India, the admitted position here was that the seat was Singapore, and no objection to the contrary had been raised under Section 48 of the Act.

Analysis & Findings

Scope of Enforcement under Section 48 of the Act

At the outset, the Court examined the statutory framework governing enforcement of foreign awards under Part II of the Act. The Court noted that while Part I deals with domestic arbitrations and awards, Part II governs enforcement of certain foreign awards, with Chapter I specifically dealing with New York Convention Awards. In this regard, reference was made to Sections 46 to 49 of the Act, which collectively provide that a foreign award, once found enforceable, becomes binding between the parties and is deemed to be a decree of the Court, subject only to the limited grounds of refusal contemplated under Section 48 of the Act.

The Court places its reliance on the judgment of the Supreme Court in *Vijay Karia v. Prysmian Cavi E Sistemi SRL*³ (“**Vijay Karia**”), where in the Supreme Court had classified objections under Section 48 of the Act into three broad categories, namely, objections affecting the jurisdiction of the arbitral tribunal; objections affecting party interest alone; and objections involving the public policy of India. The judgment also recognised that while the expression “may” under Section 48 of the Act confers limited discretion upon the enforcement court, such discretion is narrowly structured and must be exercised keeping in view the pro-enforcement object underlying the New York Convention regime.

The Court further noted the observations in *Vijay Karia* that a foreign award must be read as a whole, fairly and supportively, with courts adopting an inclination to uphold rather than destroy foreign awards. Interference would arise only in exceptional circumstances involving denial of natural justice, lack of jurisdiction or violation of the fundamental policy of Indian law and the most basic notions of morality or justice. Mere erroneous reasoning or dissatisfaction with the findings of the arbitral tribunal could not justify refusal of enforcement under Section 48 of the Act.

While dealing with the issue of juridical seat of arbitration, it was noted that while the Award Holder relied upon the findings of the High Court of Singapore to contend that Singapore constituted the seat of arbitration, the Judgment Debtor argued that Singapore was merely the venue or place of arbitration. The Court held that the said controversy was not determinative

³ *Vijay Karia v. Prysmian Cavi E Sistemi SRL* , (2020) 11 SCC 1.

for the purposes of the present enforcement proceedings since an enforcement court exercises a distinct, limited yet independent jurisdiction under Section 48 of the Act. The scope of examination at the enforcement stage is governed solely by the parameters contained in Section 48 and is not circumscribed by findings rendered by the curial court. Moreover, the fact that although the Division Bench in FAO(OS) No. 88/2025 had earlier observed that New Delhi constituted the seat of arbitration, the said issue remained open for reconsideration pursuant to the remand ordered by the Supreme Court.

Independent Jurisdiction of the Enforcement Court under Section 48

The Court then considered the Award Holder's maintainability objection that the plea of bias and non-disclosure had already been examined by the High Court of Singapore and the ICC Court and could not be reopened at the enforcement stage. The Court rejected this contention. A plain reading of Section 48 of the Act places no embargo on the enforcement court independently examining grounds for refusal merely because the courts at the seat of arbitration may have already considered them.

The enforcement court's jurisdiction under Section 48 of the Act is distinct and a secondary jurisdiction, independent of the supervisory jurisdiction exercised at the seat. In *Nagaraj V. Mylandla v. PI Opportunities Fund-I*⁴, the Supreme Court recognised the doctrine of transnational issue estoppel while clarifying that objections founded on violation of the enforcing State's public policy stand on a different footing and may still be independently examined by the enforcement court, notwithstanding any decision of the seat court upholding the award.

In *Government of India v. Vedanta Limited*⁵, the Supreme Court held that the enforcement enquiry under Section 48 is not constrained by the findings of the seat court. Further, even where the supervisory court has upheld the award, the enforcement court may still examine whether enforcement would violate the public policy of India. In *Mercator Ltd. v. Dredging Corporation of India Ltd*⁶, a Coordinate Bench of the Court explained that while the courts at the seat exercise primary or supervisory jurisdiction, the enforcement court exercises only a secondary jurisdiction confined to determining whether the award is enforceable within that

⁴ *Nagaraj V. Mylandla v. PI Opportunities Fund-I*, 2026 INSC 298.

⁵ *Supra* 2

⁶ *Mercator Ltd. v. Dredging Corporation of India Ltd*, 2024 SCC OnLine Del 3075.

jurisdiction and that public-policy or bias challenges at the enforcement stage must be tested against narrow international standards, not through a review on merits.

On these authorities, the Court held that the enforcement enquiry under Section 48 of the Act is not constrained by the findings of the seat court, and the present proceedings required examination of the Award on the touchstone of the public policy of India, which neither the High Court of Singapore nor the ICC Court had undertaken. The ICC Court had itself noted that although the Act does not apply to arbitrations seated outside India, its standards on disclosure may nevertheless become relevant before an Indian enforcement court. The High Court of Singapore had confined itself to whether Mr. Yeap's conduct gave rise to apparent bias under Singapore law and warranted setting aside under the International Arbitration Act of Singapore.

Neither the ICC Court nor the High Court of Singapore had examined the issue from the perspective of Indian public policy, so transnational issue estoppel was not attracted. Nagaraj was distinguished as there the issue had already been appreciated in the context of Indian public policy before the foreign tribunal and did not warrant re-examination. Notwithstanding finality before the curial court, the enforcement court retained jurisdiction to independently examine whether the objections fell within the limited grounds under Section 48 of the Act and whether enforcement should be refused on that basis.

The Court also rejected the Award Holder's contention that the plea regarding when Mr. Yeap became aware of Mr. Atwal's identity could not be raised at the enforcement stage because it had allegedly not been urged before the High Court of Singapore. A party cannot be precluded from raising a contention merely because it was not urged earlier, particularly where the enforcement proceedings involve examination of the Award on a distinct and independent threshold under Section 48.

Interpretation of “Public Policy” and “Bias”

The Court examined the scope of “public policy” and “bias” under Section 48(2)(b) of the Act, relying on the Supreme Court's judgment in *Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd.*,⁷ (“**Avitel**”), which recognised that allegations of arbitral bias fall within the ambit of “public policy of India” and may be examined at the enforcement stage. Avitel

⁷ *Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd.*, (2024) 7 SCC 197.

emphasised India's obligation as a New York Convention signatory to adopt an internationalist, pro-enforcement approach to foreign awards, and clarified that domestic arbitration standards cannot mechanically be imported into international commercial arbitration. While bias may justify refusal of enforcement, refusal arises only in exceptional circumstances involving violation of the most basic notions of morality or justice.

Avitel further noted that international jurisprudence applies a heightened threshold to allegations of arbitral bias at the enforcement stage, with courts across jurisdictions applying narrow public-policy standards to preserve finality. The varying tests, i.e. real possibility of bias, reasonable suspicion of bias and real danger of bias were noted. The Supreme Court ultimately held that India must adopt internationally recognised narrow standards under Section 48 of the Act, and that enforcement of a foreign award may be refused only where the alleged bias shocks the conscience of the Court and violates the most basic notions of morality or justice.

Although "public policy" remains undefined under the Act, its scope was consciously narrowed by the 2016 amendment to curb excessive judicial intervention. Judicial interpretation has confined the expression to the fundamental policy of Indian law, the interests of India and the most basic notions of morality and justice, without permitting a review on merits. Not every procedural irregularity or inadequate disclosure attracts the exception; the inquiry is confined to exceptional circumstances striking at the root of the arbitral process. The determinative question was whether the arbitrator's conduct gave rise to justifiable doubts regarding independence and impartiality of such a nature as to vitiate the award and undermine the integrity of the arbitral process.

The Court referred to *OPG Power Generation (P) Ltd. v. Enxio Power Cooling Solutions (India) (P) Ltd*⁸, where the expression "most basic notions of justice and morality" was held to be inherently narrow, invoked only where the impugned act results in a grave infraction that shocks the conscience of the Court. The test is contextual and depends on the facts of each case.

⁸ OPG Power Generation (P) Ltd. v. Enxio Power Cooling Solutions (India) (P) Ltd , (2025) 2 SCC 417.

Tracing the doctrine of arbitral bias across domestic and international jurisprudence, the Court relied on Central Organisation for *Railway Electrification v. ECI SPIC SMO MCML (JV)*⁹ (“**CORE II**”), where the Supreme Court emphasised that the duty of disclosure is a continuing obligation that exists to preserve confidence in the arbitral process. CORE II held that arbitral bias is assessed from the perspective of a fair-minded and informed observer; actual proof of bias is not necessary so long as the surrounding circumstances give rise to justifiable doubts regarding the arbitrator’s independence or impartiality.

Reference was also made to the jurisprudence of the European Court of Human Rights (“**ECtHR**”), which applies both a subjective and objective test while examining allegations of impartiality, as well as the decision of the Supreme Court in *Government of Haryana v. G.F. Toll Road (P) Ltd*¹⁰, where the Supreme Court held that the test is whether a fair-minded and informed person would conclude that there is a real likelihood of bias. CORE II further observed that the doctrine of bias in Indian and English law is directed at preserving confidence in the adjudicatory process and ensuring that arbitration remains independent, impartial and free from any legitimate apprehension of prejudice.

On these principles, the controversy was whether Mr. Yeap’s non-disclosure of his involvement in a prior arbitration connected with Mr. Atwal gave rise to justifiable doubts regarding his independence and impartiality so as to attract the public policy exception under Section 48(2)(b) of the Act.

Principle of Disclosure, Neutrality and Impartiality in Indian Law

The Court distinguished between bias and non-disclosure and while the two may overlap, they remain distinct in law. Mere disclosure does not establish partiality, but the obligation has been incorporated across jurisdictions precisely to prevent apprehensions about the neutrality of the arbitral process. Before examining whether an arbitrator is in fact biased, the first inquiry is whether the duty of disclosure has been complied with. The UNCITRAL Model Law and analogous provisions across legal systems all recognise disclosure as a foundational safeguard, and non-disclosure itself may in certain circumstances undermine the legitimacy of arbitral proceedings.

⁹ Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV) , (2025) 4 SCC 641.

¹⁰ Government of Haryana v. G.F. Toll Road (P) Ltd (2019) 3 SCC 505

Impartiality and independence are essential hallmarks of every adjudicatory process and have been recognised as foundational principles by the Supreme Court and the High Courts. In CORE II, the Supreme Court observed that the duty of disclosure is continuing, intended to keep parties aware of any circumstance affecting the arbitrator's neutrality at appointment and throughout the proceedings. Its object is to prevent appointment of an unacceptable candidate and preserve fairness and procedural equality.

Although arbitration is founded on party autonomy, the arbitral process bears the trappings of a court and requires the tribunal to act objectively and in conformity with natural justice. Equality, fairness and neutrality are not confined to any particular stage and they permeate the entire arbitral framework, including the composition of the tribunal. Independence and impartiality are thus the cornerstone of procedural equality between the parties and an essential requirement for confidence in the adjudicatory process.

On these principles, the Court held that impartiality and independence form a golden thread running through the entire arbitral regime. Any circumstance undermining neutrality strikes at the legitimacy of the adjudicatory process, and even a slight infraction can erode party confidence. It is for this reason that Section 12 of the Act mandates disclosure of any circumstance likely to give rise to justifiable doubts regarding an arbitrator's independence or impartiality.

Role of Section 12

Section 12(1) of the Act mandates that any person approached for a possible appointment as arbitrator must disclose in writing any circumstance whether financial, professional, business or otherwise which is likely to give rise to justifiable doubts regarding independence or impartiality. The obligation is not confined to the pre-appointment stage and continues throughout the arbitral proceedings.

The 2015 Amendment Act substantially strengthened the disclosure regime by introducing the Fifth, Sixth and Seventh Schedules to the Act. While the Fifth Schedule of the Act provides illustrative circumstances capable of giving rise to justifiable doubts regarding neutrality, the Sixth Schedule of the Act standardises the form and manner of disclosure and the Seventh Schedule of the Act identifies relationships rendering an arbitrator de jure ineligible to act. The

statutory framework was therefore described as a structured mechanism intended to preserve transparency, fairness and confidence in the arbitral process.

The duty of disclosure under Section 12 of the Act is mandatory and rests solely on the arbitrator. The expression “he shall disclose” leaves no discretion, and the burden cannot be shifted to the parties. Full and frank disclosure is a prerequisite to a valid arbitral appointment. The test is not proof of actual bias but existence of circumstances giving rise to justifiable apprehension of bias from the standpoint of a reasonable person. The 246th Report of the Law Commission of India recognised neutrality and impartiality as foundational requirements of arbitration as a quasi-judicial process.

The Court thereafter referred to the evolution of Indian jurisprudence concerning arbitral neutrality and impartiality. Reliance was placed upon *TRF Ltd. v. Energo Engineering Projects Ltd.*¹¹ and *Perkins Eastman Architects DPC v. HSCC (India) Ltd*¹², wherein the Supreme Court held that a person who is himself ineligible under Section 12(5) cannot appoint an arbitrator and that unilateral appointments by interested parties are incompatible with the requirement of neutrality. Reference was also made to *Bharat Broadband Network Ltd. v. United Telecoms Ltd.*¹³, wherein it was clarified that waiver under Section 12(5) of the Act must be express, in writing and post-dispute. The cumulative effect of the statutory amendments and subsequent judicial pronouncements, according to the Court, is that an arbitral award rendered in breach of disclosure obligations or by an ineligible arbitrator lacks legal sanctity since it undermines the foundational requirement of neutrality inherent in arbitration.

The Court also relied upon *Lanco-Rani v. National Highways Authority of India Limited*¹⁴, (“**Lanco Rani**”) wherein the Court had held that failure to disclose prior arbitral engagements capable of giving rise to justifiable doubts regarding impartiality constitutes apparent bias and vitiates the arbitral process itself. Particular emphasis was laid upon the observations that even where the award is unanimous and the concerned arbitrator is only one member of the tribunal, failure to disclose circumstances affecting impartiality nevertheless vitiates the award since the issue concerns fairness of the adjudicatory process itself. Similar reliance was placed upon *Vinod Bhaiyalal Jain v. Wadhvani Parmeshwari Cold Storage (P) Ltd.*¹⁵, wherein the Supreme

¹¹ TRF Ltd. v. Energo Engineering Projects Ltd. (2017) 8 SCC 377.

¹² Perkins Eastman Architects DPC v. HSCC (India) Ltd (2020) 20 SCC 760.

¹³ Bharat Broadband Network Ltd. v. United Telecoms Ltd (2019) 5 SCC 755.

¹⁴ Lanco-Rani v. National Highways Authority of India Limited , 2016 SCC OnLine Del 6267.

¹⁵ Vinod Bhaiyalal Jain v. Wadhvani Parmeshwari Cold Storage (P) Ltd (2020) 15 SCC 726.

Court observed that no room should be left even for a perception of unfairness in arbitral proceedings, and *Pallav Vimalbhai Shah v. Kalpesh Sumatibhai Shah*¹⁶, wherein the Gujarat High Court described disclosure under Section 12 of the Act as sacrosanct since parties cannot assess the independence or impartiality of an arbitrator unless complete disclosure is first made.

The Court thereafter examined the principal objections advanced by the Award Holder. The contention that the First Partial Award could not be tainted merely because it had been rendered unanimously was rejected in light of the principles laid down in *A.K. Kraipak v. Union of India*¹⁷, *Lanco-Rani* and *CORE II*, wherein it had consistently been held that participation of even a single member whose neutrality stands compromised is sufficient to vitiate the integrity of the entire adjudicatory process. The Court also clarified that although Section 12 forms part of Part I of the Act and therefore does not apply proprio vigore to foreign seated arbitrations by virtue of Section 2(2), the present controversy did not concern direct applicability of Section 12 as a statutory provision. Rather, the issue concerned whether the arbitral process complied with the fundamental requirement of impartiality and disclosure, which forms part of the public policy of India under Section 48.

The principles embodied in Section 12 of the Act reflect internationally recognised standards governing arbitral conduct. The obligation is continuous, and is assessed by whether the circumstances are likely to give rise to justifiable doubts in the mind of a reasonable party. While Section 12 of the Act may not directly apply to a foreign-seated arbitration, the principle of impartiality underlying it forms part of Indian public policy and becomes relevant when testing a foreign award under Section 48(2)(b) of the Act. Had this been a domestic arbitration, the award would have been liable to be set aside solely for non-compliance with Section 12 of the Act.

The Court further rejected the Award Holder's contention that no disclosure was required since Entry 22 of the Fifth Schedule of the Act contemplates repeated appointments within the preceding three years whereas the prior arbitration in question had occurred more than four years earlier. The Court held that such a submission ignores the broader and continuing nature of the disclosure obligation itself. In this regard, the Court examined the factual matrix and noted that the Request for Arbitration itself contained references to Mr. Atwal, including the

¹⁶ *Pallav Vimalbhai Shah v. Kalpesh Sumatibhai Shah*, O/IAAP/15/2017 dated 04.08.2017.

¹⁷ *A.K. Kraipak v. Union of India* (1969) 2 SCC 262.

Award Holder's email addresses linked to him, while Mr. Yeap had earlier been nominated as co-arbitrator in another arbitration involving Mr. Atwal in 2018. Despite this, Mr. Yeap signed the ICC Statement of Acceptance, Availability, Impartiality and Independence declaring that he had "nothing to disclose".

Particular emphasis was laid upon the subsequent response furnished by Mr. Yeap during the ICC challenge proceedings, wherein he acknowledged that by October 2024 he had become aware of the connection between Mr. Atwal and the Award Holder, had revisited the IBA Guidelines and consciously decided against disclosure partly because such disclosure might invite challenge to his impartiality. The Court held that the said explanation itself demonstrated that the arbitrator considered the prior engagement to be a circumstance relevant to his independence and impartiality. Yet, despite such awareness, no disclosure was made.

The Court thereafter drew a distinction between existence of bias and the obligation of disclosure and observed that the controversy in the present case was not whether Mr. Yeap was actually biased, but whether all material circumstances had been disclosed as and when they arose. Disclosure was described as an autonomous and independent obligation intended to ensure transparency and enable parties to assess potential conflicts for themselves. If such disclosure is withheld, the aggrieved party is deprived of the opportunity to evaluate the existence or likelihood of bias. The Court observed that the statutory framework does not permit an arbitrator to decide for himself whether a circumstance is sufficiently serious to warrant disclosure since such an approach would defeat the very object underlying disclosure obligations.

The Court also examined the ICC framework governing disclosure and neutrality and referred extensively to Article 11 of the ICC Rules, which mandates that every arbitrator must remain impartial and independent and disclose any circumstance capable of giving rise to doubts regarding impartiality or independence. The Court observed that the ICC Rules impose a continuing obligation of disclosure and that the relevant standard is objective in nature, namely whether the circumstances may reasonably give rise to doubts in the eyes of the parties rather than in the subjective opinion of the arbitrator himself. The Court further noted that unlike Entry 22 of the Fifth Schedule of the Act, the ICC framework does not prescribe any rigid time limitation or minimum number of prior appointments and instead requires arbitrators to err on the side of disclosure wherever doubt exists.

Particular significance was attached to the findings recorded by the ICC Court itself during the challenge proceedings. The ICC Court had expressly observed that Mr. Yeap ought to have disclosed the prior appointment, that the possibility of challenge to impartiality was not a relevant factor while deciding whether disclosure should be made, and that any doubt ought to have been resolved in favour of disclosure. The ICC Court had further characterised the circumstances as “regrettable” and observed that the more prudent course would have been to disclose the prior arbitration. The Court held that these findings clearly established existence of non-disclosure and also demonstrated that Mr. Yeap consciously refrained from disclosure despite being aware of the relevant circumstances.

The Court ultimately held that the obligation of disclosure is autonomous and non-derogable; it cannot be diluted merely because the undisclosed circumstance may not establish actual bias. The legitimacy of arbitration rests not only on actual impartiality but on the perception of it, which the duty of disclosure exists to protect. The disclosure statement signed by Mr. Yeap was couched in the widest terms, requiring disclosure of any past or present relationship, direct or indirect, with parties, representatives or related entities. Despite this broad and continuing obligation, the arbitrator consciously chose not to disclose, on the premise that disclosure might invite a challenge to his impartiality. By withholding the information, the Judgment Debtor was deprived of the opportunity to raise a timely challenge to the composition of the tribunal. The defect therefore transcended a mere procedural irregularity and amounted to a violation of the most basic notions of justice and morality and of the fundamental policy of Indian law.

Verdict

Although the scope of interference under Section 48 of the Act is limited, the enforcement court exercises an independent jurisdiction to examine whether enforcement would violate the public policy of India. The findings of the curial court or the ICC Court do not preclude that examination.

On the principles of arbitral neutrality, disclosure and procedural fairness, the Court held that the obligation of disclosure is a foundational component of the arbitral process and part of the fundamental policy of Indian law. Mr. Yeap had failed to disclose his prior arbitral engagement involving Mr. Atwal despite becoming aware of the connection during the proceedings, depriving the Judgment Debtor of the opportunity to raise a timely challenge to the composition of the Tribunal.

The defect was not cured by the unanimity of the Award and the non-disclosure violated the most basic notions of justice and morality, attracting the public policy exception under Section 48(2)(b) of the Act. Enforcement of the First Partial Award was accordingly refused and the petition dismissed.

Conclusion

The judgment marks an important development in Indian jurisprudence on the enforcement of foreign arbitral awards under Section 48. While reaffirming the pro-enforcement approach to New York Convention Awards, the Court clarified that enforcement cannot come at the cost of fairness, neutrality and impartiality, which are the foundations of the arbitral process. It balances minimal judicial interference with the equally important requirement that arbitral proceedings remain free from any legitimate apprehension of bias.

Findings of the curial court or institutional bodies such as the ICC Court do not bar an Indian enforcement court from independently examining whether enforcement would violate the public policy of India. The judgment thereby clarifies the limited yet substantive role of Indian courts in dealing with objections founded on arbitral bias and non-disclosure.

The judgment also reinforces the growing importance of disclosure obligations and arbitral neutrality in international commercial arbitration. By holding that the duty of disclosure is autonomous, continuous and foundational, the Court underscored that even perceived lack of impartiality may, in exceptional circumstances, undermine confidence in arbitration. The decision reflects the increasing alignment of Indian arbitration jurisprudence with internationally recognised standards on fairness and impartiality.