

- Pertinently, a similar issue had already arisen before two co-ordinate benches of the Court in *Shapoorji Pallonji and Co. Pvt. Ltd. v. Jindal India Thermal Power Limited*³ (**Shapoorji Pallonji**) and in *MBL Infrastructures Ltd. v. Rites Ltd.*⁴ (**MBL Infrastructure**). In *Shapoorji Pallonji*, it was held that the amendments introduced to Section 29A by the 2019 Amendment Act were retrospective in nature. However, in the later judgement of *MBL Infrastructures*, by referring to the notification dated August 30, 2019⁵, it was held that the 2019 Amendment Act would not have retrospective effect and the amended Section 29A would be prospective. It may be noted that the judgement in *MBL Infrastructures* had failed to consider *Shapoorji Pallonji*.

ARGUMENTS ADVANCED BY THE PARTIES

- On behalf of the Petitioner, the following contentions were raised:
 - As a result of Section 26 of the Arbitration and Conciliation (Amendment) Act, 2015 (**2015 Amendment Act**), Section 29A was introduced w.e.f. from October 23, 2015 to set out the statutory time limits for all India seated arbitrations commenced on or after this date. When the petition under Section 29A of the Act was filed on May 31, 2019 (later refiled on June 17, 2019), the time limits imposed under Section 29A were applicable to it. However, subsequent to the changes brought about to Section 29A by the 2019 Amendment Act⁶, the statutory time limit for making an award has become inapplicable to ICAs.
 - Section 29A has been classified as a procedural law since its inception vide the 2015 Amendment Act and that it does not create any vested rights in the parties to the arbitration proceedings. In support of the said contentions the Petitioner relied upon the judgement in *BCCI v. Kochi Cricket (P) Ltd.*⁷ (**BCCI**). Reliance was also placed on the judgements in *Thirumalai Chemicals Ltd. v. Union of India*⁸ (**Thirumalai Chemicals**) and *Rajendra Kumar v. Kalyan (D) by Lrs.*⁹ to differentiate between substantive and procedural laws.
 - Since the 2019 Amendment Act did not contain a provision akin to Section 26 of the 2015 Amendment Act and since the 2019 Amendment Act to Section 29A didn't create any rights/liabilities, the changes brought about to Section 29A by the 2019 Amendment Act will have a retrospective effect. To support its contention, the Petitioner relied upon *Sudhir G. Angur and Ors v. M.Sanjeev and Ors.*¹⁰ (**Sudhir G. Angur**) which had held that all procedural laws and amendment to procedural laws to be retrospective in nature, unless the statute expressly stated to the contrary. The Petitioner also contended that the exceptions to the principle that procedural laws are retrospectively applicable as elaborated in *Hitendra Vishnu Thakur and Ors. v. State of Maharashtra and Ors.*¹¹ were not applicable to the present case.
 - By relying upon the judgement in *National Insurance Co. Ltd. v. Pranay Sethi*¹² (**National Insurance**), the Petitioner argued that the Court would be well within its power to hold *MBL Infrastructures* as *per incuriam* since it was made contrary to and without considering the position laid down in *Shapoorji Pallonji*. The Petitioner also relied upon *Sundeep Kumar Bafna v. State of Maharashtra & Ors.*¹³ (**Sundeep Kumar Bafna**), wherein it was held that even High Courts when faced with conflicting decision of the Supreme Court, should follow the decision earlier in time since the latter decision would be *per incuriam*.
- The Respondent too agreed to the stand taken by the Petitioner. However, without prejudice to the same, it relied upon the decision in *State of Assam v. Ripa Sharma*¹⁴, in which, the petitioner had relied upon a subsequent judgment

³ O.M.P.(MISC.) (COMM.) 512/2019 decided on January 23, 2020

⁴ O.M.P.(MISC)(COMM) 56/2020, decided on February 10, 2020

⁵ Notification No. S.O. 3154(E) dated August 30, 2019.

⁶ Notified vide No. S.O. 3154(E) dated August 30, 2019.

⁷ (2018) 6 SCC 287

⁸ (2011) 6 SCC 739

⁹ (2000) 8 SCC 99,

¹⁰ (2006) 1 SCC 141

¹¹ (1994) 4 SCC 602)

¹² (2017) 16 SCC 680

¹³ (2014) 16 SCC 623

¹⁴ (2013) 3 SCC 63

of the Supreme Court for contesting a law point as against the position of law settled by prior judgments. Therein, it was clarified by the court that the subsequent judgment relied upon by the petitioner was *per incuriam*.

FINDINGS OF THE COURT

- Agreeing, with the petitioner's reliance on *National Insurance* and *Sundeeep Kumar Bafna*, the Court held that decision in *MBL Infrastructures* was *per incuriam*.
- Further, the Court also held that the conclusions reached by *Shapoorji Pallonji* were correct since:
 - *BCCI* had held that Section 29A of the Act (as incorporated by the 2015 Amendment Act) was procedural law, one which did not create new rights and liabilities but, the amendment was to be prospective in view of Section 26 of the 2015 Amendment Act, which provided that the 2015 Amendment Act shall apply in relation to arbitration proceedings commenced on or after the date of the commencement of the said Act. There exists no provision akin to Section 26 of the 2015 Amendment Act in the 2019 Amendment Act.¹⁵
 - It is settled law that amendments to substantive laws affecting the rights and liabilities of a party or imposing a disability are prospective in nature whereas amendments to the provisions of statute dealing merely with matters of procedure or procedural laws are retrospective in nature, unless there exists a contrary intention of the legislature. The Court referred to the decisions in *Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd.*¹⁶, *BCCI*, *Sudhir G. Angur*, and *Thirumalai Chemicals Ltd.*
 - The prescription of time limit by the 2015 Amendment Act had not conferred any rights or liabilities on a party, rather it was a procedural law establishing a mechanism for the Tribunal to render the award in twelve months and the removal thereof did not confer/affect rights of any party to be given effect prospectively.
- In view of the above, the Court held that the amended Section 29A (1) would be applicable to all pending arbitrations seated in India as on 30 August 2019 and commenced after October 23, 2015. The Court also clarified that there would be no strict timeline of 12 months in respect of ICAs seated in India.
- The Court thus held that the Tribunal would not be bound by the timeline prescribed vide the Order, in case the proceedings were found to qualify as an ICA.

CONCLUSION AND ANALYSIS

The decision in *Shapoorji Pallonji* was welcomed by many for conclusively clarifying that the changes introduced to Section 29A by the 2019 Amendment Act would have a retrospective effect. However, with its subsequent contradicting decision in *MBL Infrastructures*, the Court had unknowingly revived the said debate. By upholding the findings of *Shapoorji Pallonji* over *MBL Infrastructures*, we believe that the Court has rightly interpreted the test of retrospectivity as elaborated by *BCCI*.

That being said, it must be remembered that except *BCCI*, there have been no material observations from the Supreme Court on this subject and thus it remains to be seen how the issue shall be dealt by it.

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¹⁵ It is also pertinent to note that the deletion of Section 26 of the 2015 Amendment Act vide the 2019 Amendment Act was set-aside by the Supreme Court in *Hindustan Construction Company Limited and Ors. v. Union of India (UOI) and Ors.*, AIR 2020 SC 122.

¹⁶ (1973) 1 SCC 813.