* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on*: 24.04.2026*
Judgment delivered on*: 14.08.2026*
Judgment uploaded on*: As per Digital Signature~*

\# **CNR No : DLHC010119512020**

\+ **<u>FAO(OS)(COMM) 31/2020</u>**

YES BANK LTD .....APPELLANT

versus

MODI RUBBER LTD & ANR .....RESPONDENTS

<u>Advocates who appeared in this case</u>

For the Appellant	:	Mr. Neeraj Yadav and Ms. Aditi Sharma, Advocates.
For the Respondents	:	Ms. Warisha Farasat, Mr. Nazrul Islam, Mr. Akbar Taj, Ms. Suvarna Swain, Advocates.
		Mr. Jayant Mehta, Senior Advocate-*Amicus Curiae* with Mr. Pallav Arora, Mr. Suvan Jain, Advocates.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA
HON'BLE MR. JUSTICE AMIT MAHAJAN

<u>JUDGMENT</u>

<u>V. KAMESWAR RAO, J.</u>

1. This reference arises from the order dated 08.02.2024 *("Reference Order")* of a Division Bench of this Court, which noted that there are

conflicting opinions given by two earlier Division Benches of this Court in ***Brahmos Aerospace Pvt. Ltd. v. FIIT JEE Ltd. & Anr., 2019 SCC OnLine Del 7282*** and ***Samsung Leasing Ltd. & Ors. v. Samsung Electronics Co. Ltd. & Anr., (2017) 242 DLT 608,*** with regard to the issue whether the provisions of Section 13 of the Commercial Courts Act, 2015 *(hereinafter referred to as the Commercial Courts Act)* would apply to suits instituted prior to the coming into force of the Act is concerned.

2. At the outset, we may narrate the brief factual background of the appeal in question. The appeal has been filed under Section 10 of the Delhi High Court Act, 1966 against the order dated 14.03.2019 passed by the learned Single Judge in CS (OS) 2481/2014 whereby the learned Single Judge has allowed an application filed under Order VI Rule 17 of the Code of Civil Procedure, 1908 *("CPC")* seeking amendment of the plaint filed by the respondent no. 1 in the suit.

3. The appellant and the respondent no. 1 are companies incorporated and registered under the Companies Act, 1956. The respondent no. 2 was a wholly owned subsidiary of the respondent no. 1. On 16.02.2009, the respondent no. 1 and Continental AG entered into a Memorandum of Understanding for a joint venture for the manufacture, sale and marketing of certain products. The joint venture was to take place through the respondent no. 2. In terms of the Memorandum of Understanding, definitive agreements were entered into between the respondent no. 2 and Continental AG. In 2009, the respondent no. 1 approached the appellant for availing credit facility in order to commence the joint venture. The appellant owing to the long business relationship with the respondent no. 1 advanced a credit facility of Rs.100 crore to the respondent no. 2. In furtherance thereof, a

facility letter dated 20.03.2009 and an addendum dated 04.05.2009 were created. The terms of the facility were revised *vide* facility letter dated 27.03.2010 issued by the appellant. The appellant further modified the credit facility sanctioned to the respondent no. 2 thereby increasing the same to an amount of Rs.130 crore *vide* facility letter dated 01.10.2010. By virtue of the facility letters and the addendum, the appellant was *inter-alia* entitled to "Facilities Structuring and Advisory Fee" from the respondent no. 1 and "Renewal/Continuation Fee" from the respondent no. 2. It was stated in the facility letter dated 20.03.2009 that the appellant shall be entitled to 8% of the facility amount plus taxes every year as renewal/continuation fee. From 2009 to 2011, the respondent no. 2 paid renewal fee amounting to Rs.21,65,19,000/- to the appellant. In 2011, Continental BV acquired respondent no. 2, to which the appellant closed the transaction pertaining to the credit facility advanced to the respondents. At the time of closure of the account of the respondent no. 1, the appellant debited a sum of Rs.7,16,00,000/- on 15.07.2011. The said amount was debited from the account of the respondent no. 2, being the facility structural fee and advisory fee. On 14.07.2014, the respondent no. 1 filed a civil suit being CS (OS) 2481/2014 for recovery of an amount of Rs.33,13,05,000/- along with interest and damages. The written statement was filed by the appellant, to which replication was also filed by respondent no.1. On 20.07.2017, the respondent no.1 filed an application under Order VI Rule 17 of the CPC seeking to amend the plaint, which was allowed by the learned Single Judge *vide* order dated 14.03.2019. The appellant preferred the captioned appeal against this order.

4. The appeal was registered as FAO(OS) No. 104/2019. The Division

Bench *vide* order dated 30.01.2020 directed the Registry to re-number the suit as a commercial suit and the appeal as FAO(OS)(COMM). The Division Bench raised a question with respect to the maintainability of the appeal on 15.11.2021, 07.11.2023 and lastly on 08.02.2024. The Reference Order observed that there was a dichotomy in the two judgments of this Court in ***Brahmos Aerospace (supra)*** and ***Samsung Leasing (supra)***. Expressing reservation about the view taken in ***Brahmos Aerospace (supra)***, and noting that the questions raised by the parties were of importance, the Division Bench directed the appeal to be placed before the Hon'ble Acting Chief Justice for reference to a larger Bench.

5. Mr. Neeraj Yadav, learned counsel for the appellant has submitted that the suit having been instituted in the year 2014 i.e., prior to the promulgation of the Commercial Courts Act, the right of appeal which was available to the appellant at the time of institution of the suit cannot be taken away by a subsequent legislation and therefore, the appeal is maintainable. He has referred to the judgment of the Supreme Court in ***Garikapatti Veeraya v. N. Subbiah Choudhary, AIR 1957 SC 540***, wherein according to him, it was observed as under:

a) The legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

b) The right to appeal is not a mere matter of procedure but is a substantive right.

c) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit;

d) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the *lis* commences. Although it may be actually exercised when the adverse judgment is pronounced, such right is to be governed by the law prevailing at the date of institution of such suit or proceeding and not by the law that prevails at the date of its decision or at the date of filing of the appeal.

e) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.

6. He has also made a reference to the judgment of the Supreme Court in ***Videocon International Ltd. v. Securities Exchange Board of India, (2015) 4 SCC 33,*** wherein, in the context of an amendment to the provisions of the Securities and Exchange Board of India Act, 1992, the Court held that by way of an amendment, the right to appeal of a party cannot be reduced adversely. The right to appeal being a vested right would continue to be vested in a party participating in a litigation till the eventual culmination of such litigation. According to Mr. Yadav, as an appeal against an order allowing or dismissing an application under Order VI Rule 17 of the CPC was maintainable on the date of filing of the suit, in terms of the law laid down by the Supreme Court in ***Videocon International (supra)***, the said right could not have been taken away by a subsequent enactment i.e. the Commercial Courts Act.

7. He has submitted that a Division Bench of this Court in ***Eros Resorts and Hotels Ltd. v. Explorer Associates Pvt. Ltd. & Anr., 2018 SCC OnLine***

Del 8945 refuted the contentions raised by the respondent therein that the appeal was not maintainable, as the impugned order had been passed by the Commercial Division and an appeal arising therefrom could only lie under Section 13 of the Commercial Courts Act. Relying upon ***Videocon International (supra)***, the Division Bench held as under:

> *"23. This Court is of the opinion that the appellant's argument is merited. Though no vested right to procedure exists, Videocon is a clear authority that the right to an appellate remedy is not extinguished by the enactment of a new statute; a previously instituted litigant's right to appeal is preserved intact. It is therefore, held that the present appeal is maintainable."*

8. According to him, in ***Brahmos Aerospace (supra)*** though the Division Bench held that since the appeal was filed by the appellant therein before the matter was transferred to the Commercial Division, the provisions of the Commercial Courts Act would not be applicable, it also held by relying upon ***Videocon International (supra)*** and ***Eros Resorts and Hotels (supra)*** that an appellate remedy becomes vested in a party on the date on which the litigation is instituted. In fact, the Division Bench had held the appeal therein to be maintainable. Merely because one of the two reasons given by the Division Bench is contrary to the principles laid down by a Co-ordinate Bench, the said judgment would not be a nullity.

9. He has stated that ***Samsung Leasing (supra)*** on which much reliance has been placed by the respondent is *sub-silentio* on the issue of maintainability of the appeal in view of the suit having been filed prior to the promulgation of the Commercial Courts Act and whether the right to appeal being a substantive right vested in a party on the day of institution of

the suit could have been taken away by the enactment. As such, the judgment cannot be considered a precedent in view of the law laid down by the Supreme Court in ***State of U.P. v. Synthetics and Chemical Industry, (1991) 4 SCC 139*** and ***Municipal Corporation of Delhi v. Gurnam Kaur, (1989) 1 SCC 101***.

10. He has argued that the Commercial Courts Act does not expressly or by necessary implication, bar the right of appeal available to the parties prior to its enactment. He has endeavored to buttress his submission by stating that in ***Videocon International (supra)***, the Supreme Court while dealing with an express provision which altered the court to which the appeal earlier laid and also the scope of the appeal, held that the vested right of a party which was available earlier cannot be taken away.

11. He has also referred to the judgment of the Madras High Court in ***Rubinetterie Bresciane Bonomi SPA v. Lehry Instrumentation & Valves Private Limited, 2019 SCC Online Mad 29916***, wherein the Court after going through the scheme of the Commercial Courts Act held the appeals in question in the said judgment to be maintainable.

12. Ms. Warisha Farasat, learned counsel for the respondents submitted that the appeal is not maintainable as it challenges an order under Order VI Rule 17 of the CPC, which is not specifically enumerated in Order XLIII of the CPC and hence, is not appealable under Section 13 of the Commercial Courts Act. According to her, the Registry committed an error in not re-numbering the suit upon the promulgation of the Commercial Courts Act and the consequent constitution of Commercial Division, even though the underlying *lis* was clearly a commercial dispute.

13. She stated that the language of Section 15 of the Commercial Courts

Act provides for pending commercial disputes to be automatically transferred to the Commercial Division and any appeals arising therefrom shall be governed by the provisions of the Commercial Courts Act. Such a transfer is only a ministerial act and does not require any judicial intervention. Therefore, on the date of constitution of Commercial Division / Commercial Court i.e. 15.11.2015, is the only 'trigger date' and pending suits relating to commercial disputes stood automatically transferred on this date. According to her, the word *"pending"* in Section 15(1) & 15(2) covers all commercial suits filed as non-commercial suits before the Civil Court in any District or High Court on the date when the Act came into force and was therefore, pending on the said date.

14. It is her contention that the Commercial Courts Act being a commercial statute must be strictly / literally interpreted when the language is clear and unambiguous. The words "*shall be transferred*" in Section 15(1) & 15(2) and the words "*shall apply*" in Section 15(3) must be strictly interpreted to be automatic transfer of pending suits and automatic application of the Act to the appeals therefrom. Reliance in this regard is placed on the judgments in the cases of ***Competition Commission of India v. Steel Authority of India Limited, (2010) 10 SCC 744*** and ***Padma Sundara Rao v. State of Tamil Nadu, (2002) 3 SCC 533***.

15. She stated that Section 15 of the Commercial Courts Act is the anchoring provision which ensures a smooth transition for pending commercial disputes from Civil Courts to Commercial Courts. If Section 15 is not followed strictly, it would lead to a situation where several commercial disputes and matter incidental thereto remain outside the purview of the Act. According to her, Section 13 of the Act cannot be read

de hors Section 15. If done so, it would lead to a situation as in the present case where an appeal filed after the promulgation of the Act would be governed by Rules applicable to the regular first appeal to a civil suit. Such a situation cannot be permitted as it would be in contravention with Section 21 of the Act, which provides for the Commercial Courts Act to have an overriding effect in trying commercial suits and appeals therefrom.

16. She has placed much reliance on the judgment in ***Samsung Leasing (supra)*** to state that when the plaint raises a commercial dispute the error made by the Registry in not notifying the suit as a commercial dispute could not be of any consequence and would not negate the applicability of the Commercial Courts Act. Reference is also made to a judgment in ***Micromax Informatics Ltd. v. Vijay Jain, 2017 SCC OnLine Del 12408***.

17. She has also stated that the nomenclature of the case does not affect the nature of the *lis*. The purpose of the Commercial Courts Act being to constitute Commercial Courts to adjudicate Commercial Disputes and any issues related and incidental thereto, the provisions of the Act is applicable if the *lis* is commercial in nature.

18. She stated that the vested right to appeal of a party is subject to amendment or repeal of statutory provisions. Even though the right to appeal vests at the initiation of a suit under the statute, it can be taken away by a subsequent amendment or repeal of the statute. While enacting a statute, the legislature is aware of the existing provisions which are addressed by the 'repeal and savings' clause. Section 23 of the Commercial Courts Act, which is the 'repeal and savings' clause does not save any right that may have accrued prior to the enactment of the Act. In this regard, she has referred to the judgment in ***JAYCEE Housing Pvt. Ltd. v. Registrar***

General, High Court of Orissa, Cuttack, (2023) 1 SCC 549. She has contested the reliance placed by the appellant on ***Videocon International (supra)***, by stating that the judgment in fact, holds that the right to appeal can be taken away by an amendment in the statute, when the amended provision expressly or by necessary intendment so provides. According to her, ***Videocon International (supra)*** deals with a situation where amendment to the statute i.e. the SEBI Act, 1992 came into effect during the pendency of the appeal and the amendment act does not expressly or impliedly make the amendment applicable to pending matters pertaining to the SEBI Act. However, in the case of the Commercial Courts Act, Section 15 clearly provides that all pending commercial suits filed before the enactment shall be transferred to the Commercial Division and the Act from the time of its enforcement shall be applicable to such suits and matters incidental thereto.

19. She submitted that the reliance placed by the appellant on ***Eros Resorts & Hotels (supra)*** is misconceived as the judgment makes no mention to the principles laid down in ***Videocon International (supra)*** that the vested right to appeal can be taken away by amendment during the pendency of the suit. She further stated that as such, the judgment is *per incuriam* and hence, has no authority. Even ***Brahmos Aerospace (supra)*** is also *per incuriam* as it relies upon ***Eros Resorts & Hotels (supra)***.

20. Ms. Farasat also stated that in reading the provisions of a statute, the context and legislative intent has to be kept in mind. The Commercial Courts Act was passed acknowledging the need for an independent mechanism for early resolution of commercial disputes. The purpose of the Act would be defeated if suits and appeals pertaining to commercial disputes continue to

remain outside the purview of the Act and be dealt with as regular civil suits or appeals even after commencement of the Act.

21. She stated that the present appeal has already been re-numbered as a commercial appeal within the purview of the Commercial Appellate Division *vide* order dated 11.10.2019 in FAO(OS) 104/2019 i.e. prior to the re-numbering. According to her, if the appeal is held to be maintainable, consequently, it would be referred to the Roster Bench having civil appellate jurisdiction, which would lead to an absurd consequence wherein an appeal arising out of a commercial suit is tried as a regular first appeal under the CPC.

22. Mr. Jayant Mehta, learned senior counsel and *amicus curiae*, has submitted his report. He has identified the following aspects that need consideration for deciding the present controversy:

i. Is nomenclature of a suit determinative of what statute would apply to its adjudication i.e. the CPC or the Commercial Courts Act.

ii. The rights of a litigant crystallise on the date of initiation of the *lis*. This includes the right of an appeal. That being so, in a situation where the Commercial Courts Act came into force while the suit was pending, would the right of appeal be conditioned or limited by Section 13 of the Act.

23. According to Mr. Mehta, generally the nomenclature of a petition is not relevant and does not debar the Court from exercising jurisdiction which it otherwise possess, as held by the Supreme Court in ***Kiran Devi v. Bihar State Sunni Wakf Board, (2021) 15 SCC 15***.

24. He submitted that Section 2(c) of the Act defines a commercial dispute. Sections 3, 3A, 4 & 5 deal with the constitution of Commercial

Courts and Commercial Appellate Courts/Divisions. Section 6 deals with the jurisdiction of Commercial Courts and Section 7 deals with jurisdiction of Commercial Divisions of High Courts. Section 15 deals with transfer of pending cases and provides that "*all suits and applications ..... relating to a commercial dispute .... pending in a High Court where a Commercial Division has been constituted, shall be transferred to the Commercial Division*".

25. The Commercial Division of this Court was constituted *vide* notifications dated 06.11.2015 and 17.11.2015 w.e.f. 15.11.2015.

26. Chapter VI of the Commercial Courts Act deals with the amendments made by the Commercial Courts Act to the CPC. It provides that the CPC "*shall .... stand amended in the manner specified in the Schedule*". Section 21 provides that the Commercial Courts Act shall have overriding effect over "*anything inconsistent ..... contained in any other law for the time being in force....*".

27. Section 13 provides for appeals from the decrees or orders of Commercial Court / Division to the Commercial Appellate Court / Division within the prescribed period. The proviso to Section 13(1A) limits the appeals to the orders enumerated under Order XLIII of the CPC as amended by the Commercial Courts Act and those under Section 37 of the Arbitration and Conciliation Act, 1996. He has laid special emphasis on Section 13(2) of the Commercial Courts Act, which reads as under:-

> *"(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court*

otherwise than in accordance with the provisions of this Act."

28. Mr. Mehta submitted that on a conspectus of the provisions of the Commercial Courts Act, it is evident that it would apply even to suits of a commercial nature that were pending before this Court on the date it was brought in to force. Section 15 specifically provides for 'transfer' of such suits to the Commercial Division. It is axiomatic that upon transfer, the suits would be renumbered as a commercial suit. The question, however, is whether the Commercial Courts Act applies to such suits before their formal transfer to the Commercial Division.

29. According to him, there is a dichotomy of views on this. A Single Judge of this Court in ***Oxbridge Associates Ltd. v. Atul Kumra, 2023 SCC OnLine Del 3791*** and a Division Bench in ***Micromax Informatics (supra)*** have held that nomenclature of a suit as a commercial suit is ministerial. However, the Single Judge in ***Oxbridge Associates (supra)*** relied upon an order of a Co-ordinate Bench in ***Gulf DTHFZ LLC v. Dish TV India Ltd., 2016 SCC OnLine Del 5005***, which was overturned by a Division Bench of this Court in ***Dish TV India Ltd. v. Gulf DTH FZ LLC, 2024 SCC OnLine Del 4844***. The Division Bench relied on a judgment of another Co-ordinate Bench in ***Nirman Consultants Pvt. Ltd. v. NNE Ltd., 2019 SCC OnLine Del 11088*** which held that the Commercial Courts Act would not curtail the right of appeal in respect of an order that was passed in a suit yet to be converted in to a commercial suit.

30. Mr. Mehta submitted that if the view of the Division Bench in ***Dish TV India (supra)*** is accepted, it would lead to an anomaly of two suits, both of which were pending as on the date of the Commercial Courts Act coming

in to force, being treated differently merely because one of them is not re-numbered as a commercial suit. This cannot be the legislative policy. Thus, the view in ***Micromax Informatics (supra)*** ought to be accepted, also for the following additional reasons;

(i) Section 15 mandates transfer. It does not leave any space for a suit filed for a commercial cause to be retained as an ordinary suit.

(ii) Date of transfer of a suit to the Commercial Division has no bearing on the applicability of the Commercial Courts Act. In other words, transfer is only a ministerial act to be undertaken by the Registry of a court.

(iii) Holding otherwise would lead to an absurdity where for any delay by the Registry in re-numbering of a suit, the provisions of the Commercial Courts Act would be defeated.

31. With regard to the question whether the right to appeal can be taken away midway in a *lis*, he submitted that while the right of an appeal accrues at the initiation of a litigation in accordance with the applicable law, it can be subsequently taken away by an amendment/ repeal of such law. In this regard, he referred to the judgments in ***Glaxo Smith Kline Plc & Ors. v. Controller of Patents and Designs & Ors.: (2008) 17 SCC 416, Neena Aneja & Anr. v. Jai Prakash Associates Ltd.: (2022) 2 SCC 161, Garikapati Veeraya v. N. Subbiah Choudhary & Ors.: 1957 SCC OnLineSC 28, Maria Cristina De Souza Sodder & Ors v. Amria Zurana Pereira Pinto & Ors.: (1979) 1 SCC 92***, and ***M/s Bajaj Overseas Impex v. The Special Commissioner-I & Anr.: 2013:DHC:2381-DB.***

32. He has drawn our attention to Section 6 of the General Clauses Act,

1897, which reads as under:

> *"6. Effect of repeal.—Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-*
> *(a) revive anything not in force or existing at the time at which the repeal takes effect; or*
> *(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or*
> *(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or*
> *(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or*
> *(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;*
> *and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."*

33. He submitted that Section 23 of the Commercial Courts Act that deals with 'Repeal and savings' does not save any remedy accrued under the law existing prior to Act coming into force. On the contrary, Section 13(2) expressly excludes the remedy of an appeal as may have been available prior to 23.10.2015. It reads as follows:

> *"(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of*

this Act."

34. The learned *amicus curiae* submitted that therefore, in respect of suits instituted prior to the promulgation of the Commercial Courts Act on 23.10.2015, the provisions of the Commercial Courts Act, Section 13 in particular thereof, would apply notwithstanding that such suit was re-numbered as a commercial suit at a later date.

ANALYSIS AND CONCLUSION

35. We have heard the learned *amicus curiae* and the learned counsel for the parties. In the Reference Order, the Division Bench of this Court has expressed doubts about the view taken in ***Brahmos Aerospace (supra)*** observing that it appears to be contrary to the view expressed in ***Samsung Leasing (supra).***

36. This appeal was filed before the Division Bench on 17.05.2019 under Section 10 of the Delhi High Court Act, 1966 challenging the order dated 14.03.2019 passed by a Single Judge in an application filed by the respondent herein under Order VI Rule 17 of the CPC in CS (OS) No. 2481/2014. The appeal was initially numbered FAO (OS) No. 104/2019. On 30.01.2020, the Division Bench directed the Registry of this Court to convert the suit before the Single Judge into a Commercial Suit and place the consequent commercial appeal before the Roster Bench. Pursuant thereto, the suit was re-numbered as CS (COMM) No. 55/2020, and the appeal as FAO(OS)(COMM) 31/2020.

37. On 15.11.2021, the Division Bench observed that in view of the judgment in the case of ***Odeon Builders Pvt. Ltd. v. NBCC (India) Ltd.,***

2021 SCC OnLine Del 4390, the appeal may not be maintainable, since the dispute in question is a commercial cause governed by the Commercial Courts Act. Thereafter the parties led their arguments, with the appellant relying upon the judgments in ***Brahmos Aerospace (supra)*** and ***Eros Resorts & Hotels (supra)***, which were both passed in situations where suits had come to be instituted prior to the promulgation of the Commercial Courts Act, and wherein it was held that the rights and remedies of a party to such proceedings would be *"preserved"* rather than being *"extinguished"*. The respondent, on the other hand, relied upon ***Samsung Leasing (supra)*** to contend that once the suit comes to be transferred, by virtue of the provisions of Section 15 of the Commercial Courts Act, it is liable to be *"tried"* in accordance with its provisions, making the appeal not maintainable.

38. It is not in doubt that Section 13 of the Commercial Courts Act, as can be seen from the proviso to Section 13(1A), contemplates appeals against those orders enumerated under Order XLIII of the CPC. An order under Order VI Rule 17 of the CPC does not find mention in Order XLIII of the CPC, thereby ousting it from the purview of Section 13 of the Commercial Courts Act.

39. In ***Brahmos Aerospace (supra)*** the Division Bench held that on the date when the appeal was instituted, the suit had not been transferred to the Commercial Division and as such, the provisions of Section 13 of the Commercial Courts Act were not applicable to the proceedings. Relevant part of the judgment is reproduced below:

"...

11. Coming to the facts of the present case, this appeal was instituted on 10.03.2017. The Commercial Courts Act, 2015 came into force on 23.10.2015, and the Commercial Division was notified in this Court by an order dated 17.11.2015. Section 15 of the Commercial Courts Act requires transfer of suits pending in a High Court to the Commercial Division if the suit relates to a "commercial dispute" of "specified value", as defined in Sections 2(1)(c) and 2(1)(i) respectively. In the present case, the renumbering of the suit in the Commercial Division of this Court has occurred only on 16.02.2018 pursuant to an order of the Joint Registrar dated 06.02.2018.

12. It is evident from the above that, on the date when the present appeal was instituted by Brahmos, the suit had not been transferred to the Commercial Division and the provisions of Section 13 of the Commercial Courts Act were therefore, not attracted to these proceedings. In view of the clear pronouncement of the Supreme Court in Videocon (supra) to the effect that an appellate remedy becomes vested in a party on the date when the dispute/lis is instituted, and the consequent judgment of this Court in Eros Resorts (supra), we, therefore, hold that the present appeal at the instance of Brahmos is maintainable."

(Emphasis supplied)

40. On the other hand, in ***Samsung Leasing (supra)*** the Division Bench discussed the provisions of the Act to hold that the error and lapse on part of the Registry in not making the necessary corrections and notifying the suit as a commercial dispute cannot negate the effect of the Commercial Courts Act. As such, it held the appeal therein to be not maintainable. We reproduce the relevant part of the judgment as under:-

"12. The plaint raises a commercial dispute. This is undisputed. The application for amendment was

decided by the Commercial Division of the High Court as notified. <u>The error made by the Registry in not making necessary corrections and notifying the suit as a commercial dispute could not, therefore, be of any consequence. At best, it would be a technical objection. For the said lapse and failure of the Registry, we would not negate the effect and consequence of the Commercial Courts Act.</u>

13. This being the position, we do not think the present appeal would be maintainable as it has been held in HPL (India) Limited and Others (supra), as under:-

> *"35. Reading the entire section 13 of the said Act the clear position is that an appeal lies from an order which is specifically enumerated under Order XLIII CPC. Furthermore, no appeal would lie from an order not specifically enumerated in Order XLIII CPC because of the incorporation of the expression "from no other orders" appearing in section 104 CPC (which is clearly applicable by virtue of section 16(2) of the said Act). And, Section 10 of the Delhi High Court Act, 1966 would not come to the rescue because of the non obstante provision contained in section 13(2) of the said Act.*
>
> *36. Therefore, as the impugned order does not find place in the orders specifically enumerated in Order XLIII CPC, no appeal could lie against it and the present appeal is not maintainable. But, as the learned counsel for the appellants have made several submissions to the contrary we shall have to deal with them."*

An order allowing the application under Order VI, Rule 17 for amendment of the plaint has not been specifically made appealable under Order XLIII of the Code. Even otherwise, looking at the nature of the amendment, we are not satisfied that the matter requires consideration.

14. In view of the aforesaid position, we dismiss the *present appeal as not maintainable. This order would not affect the right of the appellants to challenge the impugned order in accordance with law at an appropriate stage, if required and necessary (see Rule 1A to Order XLIII of the Code). No costs."*

(Emphasis supplied)

41. For adjudication of the issue, it is necessary to examine various provisions of the Commercial Courts Act, which we reproduce as under:

> *"**7. Jurisdiction of Commercial Divisions of High Courts.**—All suits and applications relating to commercial disputes of a Specified Value filed in a High Court having ordinary original civil jurisdiction shall be heard and disposed of by the Commercial Division of that High Court:*
>
> *Provided that all suits and applications relating to commercial disputes, stipulated by an Act to lie in a court not inferior to a District Court, and filed or pending on the original side of the High Court, shall be heard and disposed of by the Commercial Division of the High Court:*
>
> *Provided further that all suits and applications transferred to the High Court by virtue of sub-section (4) of section 22 of the Designs Act, 2000 (16 of 2000) or section 104 of the Patents Act, 1970 (39 of 1970) shall be heard and disposed of by the Commercial Division of the High Court in all the areas over which the High Court exercises ordinary original civil jurisdiction.*
>
> *...*
>
> ***13. Appeals from decrees of Commercial Courts and Commercial Divisions.**—(1) 1[Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order.*
>
> *(1A) Any person aggrieved by the judgment or order of*

a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]

(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.

...

15. Transfer of pending cases.—*(1) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of a Specified Value pending in a High Court where a Commercial Division has been constituted, shall be transferred to the Commercial Division.*

(2) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of a Specified Value pending in any civil court in any district or area in respect of which a Commercial Court has been constituted, shall be transferred to such Commercial Court:

Provided that no suit or application where the final judgment has been reserved by the Court prior to the constitution of the Commercial Division or the Commercial Court shall be transferred either under sub-section (1) or sub-section (2).

(3) Where any suit or application, including an application under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of Specified Value shall stand transferred to the Commercial Division or Commercial Court under sub-section (1) or sub-section (2), the provisions of this Act shall apply to those procedures that were not complete at the time of transfer.

(4) The Commercial Division or Commercial Court, as the case may be, may hold case management hearings in respect of such transferred suit or application in order to prescribe new timelines or issue such further directions as may be necessary for a speedy and efficacious disposal of such suit or application in accordance 3[with Order XV-A] of the Code of Civil Procedure, 1908 (5 of 1908):

Provided that the proviso to sub-rule (1) of Rule 1 of Order V of the Code of Civil Procedure, 1908 (5 of 1908) shall not apply to such transferred suit or application and the court may, in its discretion, prescribe a new time period within which the written statement shall be filed.

(5) In the event that such suit or application is not transferred in the manner specified in sub-section (1), sub-section (2) or sub-section (3), the Commercial Appellate Division of the High Court may, on the application of any of the parties to the suit, withdraw such suit or application from the court before which it is pending and transfer the same for trial or disposal to the Commercial Division or Commercial Court, as the case may be, having territorial jurisdiction over such suit, and such order of transfer shall be final and binding.

...

21. Act to have overriding effect.—*Save as otherwise provided, the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force* *or in any instrument having effect by virtue of any law for the time being in force other than this Act.*

...

23. Repeal and savings.—*(1) The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015 (Ord. 8 of 2015) is hereby repealed.*

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act."

42. The long title of the Commercial Courts Act describes it as "*An Act to provide for the constitution of Commercial Courts, Commercial Appellate Courts, Commercial Division and Commercial Appellate Division in the High Courts for adjudicating commercial disputes of specified value and matters connected therewith or incidental thereto*". The purpose of the Act, therefore is to bring all commercial disputes and all related matters within the purview of Commercial Courts and Commercial Division/Commercial Appellate Division in High Courts set up exclusively for adjudication of such disputes and matters.

43. The Act has come into force with effect from 23.10.2015. A Commercial Division has been constituted in this Court *vide* notifications dated 06.11.2015 and 17.11.2015, with effect from 15.11.2015.

44. Section 2(1)(c) of the Act defines a "commercial dispute". It is an admitted position that the disputes between the parties are commercial in nature, within the ambit of Section 2(1)(c).

45. Section 15 of the Act mandates that all suits and applications relating to commercial disputes of Specified Value pending in the High Court be transferred to the Commercial Division. The language of the provision,

particularly the use of the words *"shall be transferred"* makes it apparent that all pending suits and applications that are of a commercial nature, should necessarily be transferred to the Commercial Division of the High Court. Thus it is clear that the intent of the legislature in enacting Section 15 is to make the provisions of the Commercial Courts Act applicable to all pending suits. Consequently, the Registry of the High Court would need to formally convert the pending suits (or applications) into commercial suits (or applications) by re-numbering them.

46. The attempt of the learned counsel for the appellant is to establish that it is only upon such formal act of re-numbering that the provisions become applicable to the pending suits. However, this argument is oblivious to the fact that the jurisdiction to hear and try commercial disputes has been vested exclusively with Commercial Courts and Commercial Division/ Commercial Appellate Division of the High Court from 23.10.2015, i.e., the date on which the Commercial Courts Act came into force. The formal conversion and re-numbering of suits (and applications) pending as on 23.10.2015 is merely a ministerial/clerical act to be carried out by the Registry of the Court, as a natural corollary of the binding mandate of the said provision. The applicability of Section 15(1) cannot be said to be contingent upon re-numbering of the suit or application. To hold so would amount to artificially creating a discretion which has not been contemplated by the legislature.

47. Put succinctly, any suit (or application) which entails a commercial dispute as defined under Section 2(c) of the Commercial Courts Act shall be regulated by the provisions of the Commercial Courts from the date of operation of the Act, irrespective of whether they have been formally transferred to the Commercial Division of the High Court by changing the

nomenclature of such suit (or application) or its number.

48. At this juncture, it is apposite to highlight a few more provisions, some of which we have already reproduced above. Chapter VI of the Commercial Courts Act (Section 16) provides for amendments to the CPC. Section 21 provides that the Commercial Courts Act shall have an overriding effect over anything inconsistent contained in any other law for the time being in force. Further, Section 13(2) of the Act states that notwithstanding anything contained in any other law for the time being in force or the Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of the Commercial Courts Act. A meaningful reading of these provisions makes it apparent that for a case arising out of a commercial dispute, it is only the provisions of the Commercial Courts Act that shall be applicable from 23.10.2015, and not any other law.

49. The Division Bench in ***Micromax Informatics (supra)*** has rightly held that even though the nomenclature of a commercial suit has not been assigned to the suit therein, since the subject matter of the suit comes within the purview of Section 2(c) of the Commercial Courts Act, the non-registration of the suit as a commercial suit is merely a ministerial omission.

50. Similarly, in ***Samsung Leasing (supra)***, the Division Bench after discussing the provisions of the Act observed that the application for amendment under Order VI Rule 17 of the CPC was decided by the Commercial Division of the High Court, even though the suit was not registered as a commercial dispute. Such an error on part of the Registry cannot be of any consequence, and it cannot negate the effect and

consequence of the Commercial Courts Act.

51. We are in agreement with the views taken by the Division Benches in ***Samsung Leasing (supra)*** and ***Micromax Informatics (supra).***

52. If the view taken by the Division Bench in ***Brahmos Aerospace (supra)*** is accepted as submitted on behalf of the appellant, it would lead to an incongruity, wherein two suits, both of which were pending as on the date of commencement of the Commercial Courts Act, being treated differently under different statutes, merely because one of them has not been re-numbered as a commercial suit. Needless to state, this cannot be the legislative policy.

53. Hence, it must be held that from 23.10.2015, in respect of a suit instituted prior to the operation of the Commercial Courts Act, the provisions of the Act, including Section 13, would apply, notwithstanding the date on which the suit was converted or re-numbered into a commercial suit.

54. Now, the issue arises as to whether despite the operation of Section 13 of the Commercial Courts Act, the right to an appeal, which has accrued to the appellant when it originally filed the suit is "preserved" or "extinguished". The stand of the appellant is that the Supreme Court has conclusively laid down the law in this regard in ***Videocon International (supra)*** by holding that the right to appeal accrues to a litigant when the *lis* commences and would continue to be vested in him till the eventual culmination of the dispute. It has been submitted that applying the ratio of the Supreme Court in the present matter would mean that since an appeal against an order allowing or dismissing an application under Order VI Rule 17 was maintainable on the date of filing of the appeal, the promulgation of

the Commercial Courts Act could not have taken away this right.

55. We have to disagree. The right to appeal is neither a natural nor an inherent right vested in a party. It is a creation of a statute, which grants the right a substantive nature. As held by the Supreme Court in ***Competition Commission of India (supra)***, the right to appeal is not a right which can be assumed by logical analysis, much less by exercise of inherent jurisdiction. It essentially must be provided by the law in force. In the absence of any specific provision creating right in a party to file an appeal, such right cannot be assumed or inferred in favour of a party.

56. Section 21 of the Commercial Courts Act, as mentioned above is an overriding provision which gives effect to the provisions of the Act notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Further Section 13(2) of the Commercial Courts Act specifically prohibits, appeals from orders of a Commercial Court otherwise than in accordance with the provisions of the Commercial Courts Act, notwithstanding anything contained in any other law or Letters Patent of a High Court. The above provisions make it clear that the intent of the legislature in promulgating the Commercial Courts Act was to bring all suits and applications that are commercial in nature, including the suits and applications pending, exclusively within the purview of Commercial Courts/Commercial Divisions. As already held, from 23.10.2015, it is only the Commercial Courts Act that shall apply to a commercial cause within the meaning of Section 2(c) of the Act and all matters incidental thereto. Neither the CPC nor the Delhi High Court Act, 1966 nor the Letters Patent of the High Court shall govern such matters from the date of commencement of the Commercial Courts Act.

57. Further, Section 23 which is the repeal and savings clause of the Commercial Courts Act does not save any remedy accrued under the law existing prior to the Act coming into force.

58. There is a clear intention manifested by the legislature in these provisions, particularly, Section 13, to exclude appeals from all orders other than those orders specifically enumerated under Order XLIII of the CPC. A conjoint reading of Section 13(2), Section 15, Section 21, and Section 23 of the Act would therefore, lead to the conclusion that the right of an appeal against an order not enumerated under Order XLIII of the CPC which may have been available to the litigant prior to 23.10.2015, has been taken away by the Commercial Courts Act.

59. In ***Videocon International (supra)***, the Supreme Court was dealing with an amendment made to Section 15Z of the SEBI Act, altering the forum of second appeal against the decision of SAT from the High Court to the Supreme Court. It held that if by way of an amendment, the appellate package being reduced adversely, it amounts to curtailing the right vested in a party at the commencement of proceedings. Though the learned counsel for the appellant has heavily relied upon this judgment in support of his submission that such a right cannot be taken away by an amendment, he seems to have overlooked the complete ratio of the Supreme Court, contained in paragraph No.41 of the judgment which reads as under:

> *"41. In the facts and circumstances of this case, it is apparent that Section 15-Z of the SEBI Act prior to the amendment, postulated that the appellate remedy would extend to "… any question of fact or law arising out of such order". Whereas, the appellate remedy was curtailed consequent upon the amendment, whereunder the appellate right was limited to, "… any question of*

law arising out of such order". Accordingly, by the amendment, the earlier appellate package stands reduced, because under the amended Section 15-Z, it is not open to an appellant, to agitate an appeal on facts. That being the position, it is not possible for us to accept the contention advanced at the hands of the learned counsel for the appellant, that the amendment to Section 15-Z of the SEBI Act, envisages only an amendment of the forum, where the second appeal would lie. In our considered view, the amendment to Section 15-Z of the SEBI Act, having reduced the appellate package, adversely affected the vested appellate right of the litigant concerned. The right of appeal being a vested right, the appellate package, as was available at the commencement of the proceedings, would continue to vest in the parties engaged in a lis, till the eventual culmination of the proceedings. ***<u>Obviously, that would be subject to an amendment expressly or impliedly, providing to the contrary.</u>*** *Section 32 of the Securities and Exchange Board of India (Amendment) Act, 2002, which has been extracted in para 13 hereinabove reveals, that the "repeal and saving" clause, neither expressly nor impliedly, so provides. Thus viewed, we are constrained to conclude, that the assertion advanced at the hands of the learned counsel for the appellant, that the instant amendment to Section 15-Z of the SEBI Act, does not affect the second appellate remedy, but merely alters the forum where the second appellate remedy would lie, is not acceptable."*

(Emphasis supplied)

60. Though in the facts of the case, the Supreme Court held that the right of appeal available at the start of the proceedings would continue throughout the proceedings, it also held that such continuance of the right would be subject to an amendment expressly or impliedly providing to the contrary.

61. Section 6 of the General Clauses Act, 1897 provides governing

principles with regard to the impact of the repeal of a statute or regulation. However, as can be seen from the provision itself, these governing regulations would apply only *'unless a different intention appears'*. In the present case, the intention of the legislature, as held above, is to limit the appealable orders of Commercial Courts to those enumerated under Order XLIII of the CPC, thereby taking away the right to appeal against all other orders.

62. Upon a careful consideration of the provisions of the Act and the dicta of the Supreme Court, we are of the view that through Section 13(2), Section 15, Section 16, Section 21 and Section 23, the Commercial Courts Act has, by necessary intendment, taken away the right to appeal that was available to the appellant prior to the commencement of the Act. We are fortified in our view by the ratio of the Supreme Court in ***Videocon International (supra)*** relied upon by the appellant itself, that the availability of a prior right in law would be subject to an amendment providing to the contrary either expressly or impliedly.

63. As submitted by Mr. Mehta, the position of law with regard to the issue whether the right to appeal can be taken away by way of an amendment or repeal of the law has been dealt with by the Supreme Court in a catena of judgments cited *supra*, which hold that such a right can be taken away by a subsequent enactment/amendment expressly or by necessary implication.

CONCLUSION

64. In view of the discussion above, we are of the view that ***Brahmos Aerospace (supra)*** is not a good law, to the extent that it holds Section 13 of the Commercial Courts Act is not applicable to suits which were pending at

the time of commencement of the Act and were re-numbered as commercial suits at a later date.

65. We hold that the provisions of the Commercial Courts Act shall be applicable to suits filed prior to its commencement, even if the suits were converted or re-numbered into commercial suits only on a later date. We affirm the view taken by the Division Bench in ***Samsung Leasing (supra)***.

66. The reference is answered accordingly.

67. The appeal is directed to be listed before the Roster Bench on 02.09.2026 for further proceedings.

68. We record our appreciation for the valuable assistance rendered by Mr. Jayant Mehta, learned *amicus curiae*. We also thank Mr. Neeraj Yadav, learned counsel and Ms. Warisha Farasat, learned Senior Counsel (as of today), for the parties for their assistance as well.

V. KAMESWAR RAO, J

CHANDRASEKHARAN SUDHA, J

AUGUST 14, 2026
rt

per **AMIT MAHAJAN, J.**

1. Grappling with issue of maintainability of the subject appeal and taking note of the conflicting opinions in ***Brahmos Aerospace Pvt. Ltd. v. FIIT JEE Ltd. & Anr.* : 2019 SCC OnLine Del 7282** and ***Samsung Leasing Ltd. & Ors. v. Samsung Electronics Co. Ltd. & Anr.* : (2017) 242 DLT 608**, a reference was made to this Bench by the Division Bench on 08.02.2024 *qua* the narrow issue as to whether the provisions of Section 13

of the Commercial Courts Act, 2015 (hereafter '**the Commercial Courts Act**') would apply to suits instituted *prior* to the Act coming into force (that is, 23.10.2015) and to what extent.

2. To avoid repetition, the detailed facts of the case as well as the submissions made before this Court, as narrated in the opinion of learned V. Kameswar Rao, J. (with which my learned sister Chandrasekharan Sudha, J. concurs), are not reiterated. It is only germane to note that the subject suit [initially numbered as CS(OS) No. 2481/2014] was filed by Respondent No.1/ plaintiff on 14.07.2014. During the pendency of the suit, the Commercial Courts Act came into force on 23.10.2015, however, the suit proceeded as an ordinary suit without any objection from either side. An application under Order VI Rule 17 of the Code of Civil Procedure, 1908 ('**CPC**') for amendment of the plaint was thereafter filed by Respondent No.1 on 20.07.2017. The said application was allowed by the learned Single Judge *vide* order dated 14.03.2019, which has been challenged by the appellant in appeal [initially numbered as FAO(OS) No. 104/2019] filed under Section 10 of the Delhi High Court Act, 1966 on 17.05.2019. Pertinently, on 30.01.2020, the Division Bench directed the Registry to number the main original suit as a commercial suit and the appeal as FAO(OS)(COMM), pursuant to which, the suit was re-numbered as CS(COMM) No. 55/2020 and the appeal as FAO(OS)(COMM) No. 31/2020.

3. By way of his separate opinion, learned V. Kameswar Rao, J. proposes to answer the reference by affirming the view taken in ***Samsung Leasing Ltd. & Ors. v. Samsung Electronics Co. Ltd. & Anr.*** (*supra*) and holding that the provisions of the Commercial Courts Act shall be applicable

to suits filed prior to its commencement, even if the same were re-numbered as commercial suits on a later date.

4. Having had the advantage of perusing the judgment penned by my learned brother V. Kameswar Rao, J., though I agree with the decision that the present appeal is not maintainable in terms of Section 13 of the Commercial Courts Act, I lament my inability to agree in entirety with the erudite reasoning which led to the said decision, and find myself compelled to succinctly pen down my reasons for the same.

5. The main gravamen that compelled this separate opinion lies in appraisal of the decision in the case of ***Shri Balaji Industrial Engineering Ltd. v. Steel Authority of India Limited* : 2026 SCC OnLine SC 1264**. In this case, the Hon'ble Apex Court was dealing with a challenge to an order through which a Division Bench of Calcutta High Court had set aside the impugned judgment in exercise of jurisdiction under Section 37 of the Arbitration and Conciliation Act, 1996 (hereafter '**A&C Act**') and remitted the matter for fresh hearing after renumbering as the petition under Section 34 of the A&C Act, 1996 had not been transferred to the Commercial Division. The Hon'ble Apex Court found that though any adjudication made by a Bench acting outside the assigned roster would be a nullity, since the Single Judge who decided the petition under Section 34 of the A&C Act, 1996 was also designated as a Commercial Court, the judgment rendered by him could not be treated as a nullity and set aside on account of lack of jurisdiction. The Hon'ble Apex Court took specific notice of Section 15(5) of the Commercial Courts Act and observed that the respondent had not made any application for transfer of the matter, and it had participated in the

proceedings without objection. The relevant portion of the aforesaid judgment reads as under:

> *"**11.** The legal position concerning allocation of business and authority of the Chief Justice as the master of roster is well-settled. A two-Judge Bench of this Court in **Garden Reach Shipbuilders and Engineers Ltd.** (supra), by placing reliance on the earlier decisions of this Court [**State of Rajasthan v. Prakash Chand, (1998) 1 SCC 1 and Campaign for Judicial Accountability and Reforms v. Union of India; (2018) 1 SCC 196 : (2018) 1 SCC (Cri) 327**] reiterated that any adjudication by a Bench in a matter not assigned to it by the Chief Justice would be without jurisdiction and in nullity. The mandate that a Bench acting outside the roster would lack jurisdiction is a salutary principle, integral to maintaining judicial discipline and institutional coherence. We are in agreement with the view expressed by a two-Judge Bench of this Court in **Garden Reach Shipbuilders and Engineers Ltd.** (supra).*
>
> ***12. We may advert to the facts of the case in hand. The cause list annexed with the Special Leave Petition clearly indicates that the learned Single Judge who decided the petition under Section 34 of the 1996 Act, was designated as a Commercial Court.***
>
> ***13.** It is also pertinent to take note of Section 15 of the 2015 Act which contemplates transfer of pending cases to the Commercial Division. Sub-section (5) thereof, expressly provides that where such transfer has not taken place, the Commercial Appellate Division may, upon application of any party, withdraw and transfer the matter. Section 15 (5) reads as under:*
>
> > *"In the event that such suit or application is not transferred in the manner specified in sub-section (1), sub-section (2) or sub-section (3), the Commercial Appellate Division of the High Court may, on the application of any of the parties to the suit, withdraw such suit or application from the court before which it is pending and transfer the same for trial or disposal to the Commercial Division or Commercial Court, as the case may be, having territorial jurisdiction over such suit, and such order of transfer shall be final and binding."*
>
> *Thus, Section 15(5) of the 2015 Act requires parties also to seek transfer.*
>
> ***14. In the instant case, admittedly, the respondent did not file any such application before the learned Single Judge dealing with the petition under Section 34 of the 1996 Act. The respondent participated in the proceeding without demur and invited a decision on merits.***

*15. Thus, in the facts of the case, **it can safely be concluded that the learned Single Judge was designated as Commercial Court** and the judgment rendered by him cannot be treated either as a nullity or one passed without jurisdiction."*

(emphasis supplied)

6. The decision of the Hon'ble Apex Court thus makes it clear that even though the case may not have been transferred to Commercial Division and numbered as a commercial suit, the decision/ order will not be a nullity if the Bench was also designated as a Commercial Court. In effect, though some irregularity in procedure may persist, the decision implies that the date of renumbering of a suit involving a commercial dispute will pale into insignificance as long as the trying Court is also designated as a Commercial Court. In such cases, the suits will be governed by the provisions of the Commercial Courts Act from the outset due to an effective deemed transfer rendering nomenclature change as cosmetic. The said decision lends credence to the contention of the learned *amicus* that nomenclature of a petition is not determinative and the same does not debar the Court from exercising jurisdiction which it otherwise possesses. Pertinently, one of the factors which weighed the Court in ***Samsung Leasing Ltd. & Ors. v. Samsung Electronics Co. Ltd. & Anr.*** (*supra*) was also that the subject application had been decided by the Commercial Division of the High Court as notified.

7. In such limited category of cases like those pending before Delhi High Court where the Court in question is vested with jurisdiction to try both original side matters as well as matters which are to be heard by the Commercial Division, it would not be remiss to state that the non-registering

of the suit as a commercial suit will be merely a ministerial omission. However, in my considered opinion, the same is by virtue of the concurrent jurisdiction vested in the trying Court and not because re-numbering of a suit as a commercial suit is *ipso facto* a mere clerical action by its very nature because of transfer mandated in Section 15 of the Commercial Courts Act, especially since the same does not envisage an automatic transfer in my opinion.

8. Rather, Section 15(5) of the Commercial Courts Act provides that in the event such suit or application is not transferred in the manner specified in the provision, the Commercial Appellate Division of the High Court may transfer the same on an application filed by any of the parties to the suit. Further, Section 15(4) of the Commercial Courts Act provides for conduction of case management hearings for prescription of new timelines for efficacious disposal after transfer, and it is explicitly provided that the mandatory time limit for filing of written statement as prescribed under Order V Rule 1(1) of the CPC will have no applicability to transferred suits and the transferee Court may in its discretion prescribe a new time period for filing of written statement. While it is argued that the same would lead to incongruity where two similar suits will be treated differently under different statutes, however, unless the suit is renumbered, the suits will be treated differently regardless in respect of procedural timelines and the said argument thus does not find favour with me. Further, Section 15(3) of the Commercial Courts Act specifically provides that it is only when the suit shall stand transferred to the Commercial Division or Commercial Court that the provisions of the Act shall apply to those procedures which were not complete at time of transfer, which makes it clear that date of transfer is of

significant relevance. A conjoint reading of the aforesaid provisions reflects that the issue is thus not of mere technical nomenclature but one which goes to the root of jurisdiction and has substantial effect on procedural timelines, which can only be excused if the trying Court is also a Commercial Court. This is especially so because holding otherwise irrespective of concurrent jurisdiction will result in adjudication of purportedly deemed commercial suits by Courts which are only vested with original side jurisdiction.

9. I find myself compelled to carve the said exception in view of my second major points of dissensus, which is based in the interpretation of scope of appeal expounded in Section 13 of the Commercial Courts Act. A great deal of arguments were addressed before the Bench in respect to whether the right to appeal would be preserved or not after Commercial Courts Act came into force. My learned brother V. Kameswar Rao, J. has aptly appraised the *dictum* in ***Competition Commission of India v. Steel Authority of India Limited*** **: (2010) 10 SCC 744** and ***Videocon International Ltd. v. Securities Exchange Board of India*** **: (2015) 4 SCC 33** to find that right to appeal can be adversely reduced by way of an amendment or repeal of law. While I agree that right to appeal stands restricted in commercial disputes by way of the Commercial Courts Act, however, in my opinion, one crucial aspect bears notice.

10. *Ex facie*, the applicability of the restriction on the right to appeal as encompassed in Section 13 of the Commercial Courts Act is limited to only those orders and judgments which are passed by a Commercial Court or Commercial Division. The very language employed in the said provision coupled with the title of the provision lends to this interpretation. Thus, prior to transfer and renumbering of the suit, any order which is passed in the suit

would be passed by a Court exercising original civil jurisdiction, and the same in my opinion would fall outside the bar prescribed in Section 13 of the Commercial Courts Act. That is to say, if an order is passed after the Commercial Courts Act coming into force, but before the suit is transferred to Commercial Court, the remedy of a party against the same under CPC would not be affected due to the deliberate phrasing employed in Section 13 of the Commercial Courts Act, which only governs appeals from orders and judgments of Commercial Courts and Commercial Divisions. Thus, while it may be correct that the legislature is empowered to curb the right to appeal by subsequent amendment and even though one of the objectives behind the Commercial Courts Act was to expedite disposal of commercial disputes, I find that perusal of the Commercial Courts Act rather preserves remedies in respect of orders passed prior to transfer of the subject suit.

11. Though the same will be of no consequence in the case of suits pending before this Court where the orders and judgments passed by Commercial Division (irrespective of nomenclature) would be covered under the ambit of Section 13 of the Commercial Courts Act, the said distinction will gain relevance in respect of suits pending before the District Courts, where there are different Benches for adjudication of original side suits and separate specified Commercial Courts. There, the orders passed by a Court exercising original civil jurisdiction prior to renumbering of the Act shall not be covered by the bar under Section 13 of the Commercial Courts Act, and right to appeal will remain unaffected.

12. The question put to us in this reference is not limited to the facts of the present case or mere suits pending before High Court, but rather, pertains to applicability of Section 13 of the Commercial Courts Act to all

suits (including those pending before the District Courts where there are separate Benches for commercial suits and original side civil suits) involving commercial disputes which were not transferred, which bears consideration on the tenets enumerated above.

13. Thus, my decision in the reference is as follows:

a. The decision in ***Brahmos Aerospace Pvt. Ltd. v. FIIT JEE Ltd. & Anr.*** (*supra*) that applicability of provisions of Section 13 of the Commercial Courts Act is contingent on transfer of the suit to the Commercial Division is incorrect when the Court trying the suit is also vested with jurisdiction to adjudicate matters which are to be heard by the Commercial Division. The decision in ***Samsung Leasing Ltd. & Ors. v. Samsung Electronics Co. Ltd. & Anr.*** (*supra*) is correct insofar as the same deems change in nomenclature to be merely technical when determining applicability of provisions of Commercial Courts Act when the impugned order in question has been passed by the Commercial Division; and

b. If a suit continues as an ordinary civil suit without any objection despite undisputedly involving a commercial dispute, any order passed by the Civil Judge before transfer will not be subject to provisions of Section 13 of the Commercial Courts Act, even if the suit is subsequently transferred. The only exception where such orders passed prior to transfer and renumbering of suit as a commercial suit will be subject to provisions of Section 13 of the Commercial Courts Act will be when the Court trying the dispute is also vested with the jurisdiction to determine commercial disputes.

14. I answer the reference accordingly.

AMIT MAHAJAN, J

AUGUST 14, 2026
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