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

Judgment reserved on : 05.05.2025
Judgment pronounced on :15 .07.2025

\+ **O.M.P. (COMM) 142/2020**

UNION OF INDIA .....Petitioner

Through: Ms. Arunima Dwivedi, Ms. Aarti Gupta, Mr. Saiyam Bhardwaj, Advs.

versus

S K SHARMA .....Respondent

Through: Mr. Raghavendra Mohan Bajaj, Ms. Garima Bajaj, Mr. Kanav Agarwal, Mr. Agnish Aditya, Mr. Sajal Awasthi, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH, J**

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("***1996 Act***") seeking to challenge the Arbitral Award dated 11.05.2013 ("***Impugned Award***") passed in Arbitration proceedings bearing No. ARB/RS/S.K.A/S.S/2010 titled *M/s S.K. Sharma vs Union of India*.

FACTUAL MATRIX AS PER THE PETITIONER

2. The respondent firm was awarded a works contract vide letter dated 13.09.2002 with the scheduled date of completion being 12.12.2003, however, the same could not be achieved within the stipulated timeline. Consequently, the time for completion of the work was extended from time to time without levy of any penalty, and the work was completed by the respondent on 31.03.2006.

3. The defect liability period expired on 30.09.2006 without any complaints raised by the petitioner. Following the expiry of the defect liability period, the respondent asked the petitioner to release the security deposit along with the full and final payment. In response, the petitioner prepared the final bill and called upon the respondent to sign it. However, the respondent signed the bill under protest, alleging that the final bill did not account for all the payments to which the respondent was entitled. Since there were disputes between the parties, the respondent invoked arbitration vide letter dated 27.06.2007, raising claims against the petitioner.

4. The petitioner, vide letter(s) dated 12.12.2007 and 24.12.2007, declined the respondents' request for appointment of an arbitrator, on the ground that the respondent had already signed a supplementary agreement dated 07.04.2007 on 31.03.2007 which provided that, in consideration of the payments made by the petitioner, the principal agreement stood finally discharged and rescinded, including the arbitration clause.

5. Subsequently there were numerous communications between the parties regarding the appointment of an arbitrator.

6. The respondent by way of arbitration application, bearing Arb. Appl. No. 211/2008 approached the Hon'ble Delhi High Court seeking appointment of an Arbitral Tribunal for adjudication of disputes between the parties. Vide judgment dated 11.02.2009; the parties were referred to arbitration. This Court was, prima facie, of the view that the supplementary agreement executed between the parties may have been signed under coercion, and therefore, the claims arising under the original contract would remain arbitrable. However, it was observed that, at that stage, it would be inappropriate to record a

conclusive finding on whether undue influence or coercion was exercised upon the respondent. The issue was accordingly left open for examination and determination by the Arbitral Tribunal. The relevant findings are as under:

> *"I am prima facie of the view that the present case does not fall in the class of cases as P.K. Ramaiah, Nav Bharat Builders, Harivansh Chawla and Nathani Steels Ltd. and rather, falls in the class of cases as in Reshmi Constructions. The settlement agreement appears to have been signed under coercion, meaning that the claims shall remain arbitrable under the original agreement.*
>
> *.....*
>
> *19. I, however, at this stage do not deem it appropriate to return a positive finding on this aspect. In my view a positive binding finding on the averments of coercion, undue influence, etc. in the face of a written document ought not to be returned without examination of witnesses. Though it is permissible to examine witnesses while adjudicating an application under Section 11(6) of the Act but in my view if the said exercise is undertaken here, the same will lead to further delays. The parties having agreed to arbitration, it is apposite that the said claims/disputes are also adjudicated by the arbitrator only. Another single judge of this court recently in M/s Hero Exports Vs. M/s Tiffins Barytes, A.A No.121/2008 decided on 2nd September, 2008 left the questions of coercion and extortion to be decided by arbitrator.*

7. Pursuant thereto, the petitioner challenged the judgment dated 11.02.2009 before the Hon'ble Supreme Court of India. Vide order dated 05.01.2010, the Hon'ble Supreme Court dismissed the SLP filed by the petitioner. The relevant extract is as under:

> *"The High Court has recorded only a prima facie finding about the suspicious circumstances and has left the matter open for decision by the Arbitral Tribunal as to whether the supplementary agreement is voluntary or under coercion. The arbitration proceedings cannot be proceeded with, if the Arbitral Tribunal comes to the conclusion that supplementary agreement was not obtained by coercion or under influence. Hence, the petitioner is not prejudiced."*

8. In compliance with the orders passed by the Hon'ble Supreme Court and this Court, the matter was referred to the Arbitral Tribunal vide letter No. 74-W/6/149/WA/TKJ/ARB dated 21.04.2010 issued by the Headquarters Office, Kashmere Gate, Delhi. Thereafter, the Impugned Award came to be passed on 11.05.2013, whereby the Arbitral Tribunal inter alia observed as under:

> *"On going through the records and evidence produced by the claimant & respondent, the Arbitrators are of the view that although there is no proof of obtaining the signatures of the claimant on the supplementary agreement under coercion or under undue influence, but since the claimant has signed the final bill 'under protest' there seems to be dispute of claims which have not been settled and hence the same can be arbitrable.*
>
> *The claimant may approach to respondent for fresh legitimate genuine claims as per due procedure."*

9. With this order/Award, the Arbitral Tribunal without adjudicating the merits of the claims of the respondent or counter claims, if any of the petitioner, closed the arbitral proceedings.

10. Aggrieved, the petitioner has filed the present petition seeking setting aside of the Impugned Award.

11. When the matter came up for hearing on 29.01.2014, this court expressed an inclination to set aside the Impugned Award as the Impugned Award did not give any cogent reasons in support of its findings, however this court gave an opportunity to the Arbitral Tribunal to take such other measures as the Arbitral Tribunal may deem necessary to eliminate the grounds for setting aside the Impugned Award. The operative portion of the order dated 29.01.2014 reads as under:

> *"……*
>
> *The impugned order/Award is patently laconic in as much, as, it does not contain reasons for the findings returned by the Tribunal with regard to exercise of undue influence or coercion by the petitioner by the respondent in the execution of the supplementary agreement. It also does not examine the interplay of the fact-that the respondent had signed the final bill under protest, and thereafter signed the supplementary agreement. The impugned Award would, therefore, be liable to be set aside. However, I am not inclined to set aside the award at this stage, as I propose to give an opportunity to the tribunal to resume the proceedings, to take such other action as, in the opinion of the Arbitral Tribunal will eliminate the grounds for setting aside the impugned award. I, therefore, adjourn the*

proceedings for a period of four months and during this period, the Arbitral Tribunal is granted an opportunity to resume the proceedings or to take such other action as in the opinion of the Arbitral Tribunal will eliminate the grounds for setting aside of the Arbitral Award."

12. In compliance with the order dated 29.01.2014, passed by this court, the Arbitral Tribunal clarified its findings in the Impugned Award vide order dated 13.11.2014. The order dated 13.11.2014 is reproduced below:

Annexure-A

Northern Railway
(Construction Organization)

Head Quarter Office
Kashmere Gate, Delhi

No. ARB/RS/S.K.A/S.S/2010

Dated: 13.11.2014

IN THE MATTER OF ARBITRATION BETWEEN

M/s S.K. Sharma,
R-11/2, Raj Nagar,
Ghaziabad (U.P.) ------ Claimant

AND

UNION OF INDIA
Dy.Chief Engineer/Const. ------- Respondent
Northern Railway, Tilak Bridge,
New Delhi

Sub: Arbitration in c/with Construction of all Civil Engineering works i.e. pile foundation, A.C roofing of (24x30+60x30m size) in inspection shed, inspection pits (3 Nos.) and 150m long washing line, building work, road work, earth work in filling/cutting etc. and other allied works in connection with provision of additional facilities required to maintain 16 car EMU/MEMU coaches in EMU Car shed at Ghaziabad.

Ref: Hon'ble Mr. Justice Vipin Sanghi, High Court, Delhi's order dated 29.01.2014.

In compliance to Judgment of Hon'ble High Court Delhi dated 29.01.2014, the Arbitral Tribunal conducted hearings on 08.05.2014, 21.05.2014 and 11.09.2014 at Kashmere Gate, Delhi. However neither the contractor was able to submit any additional documents in support of its claim of coercion, nor was the Railway able to produce any document supporting that disputes/ protest claimed by contractor were suitably addressed. Therefore the Arbitral Tribunal examined the documents and submissions of the Claimant and the Respondent afresh. The Arbitral Tribunal heard both the parties. On a detailed perusal of the relevant documents and the submissions made by both the parties the following is observed:

Arguments of the Claimant:

i. The contractor vide his letter dated 20.02.2008, has stated that the final bill has been signed under protest since the dispute had not been settled.
ii. Subsequently in his letter dated 06.05.2008, the contractor has stated that the supplementary agreement was not signed at the time of final bill and that his signature was taken on a blank format of the supplementary bill at the time of tendering or at the time of preparation of final bill.
iii. The contractor in his submission to the Arbitral Tribunal dated 21.05.2014 and 17.09.2014 has stated that the supplementary agreement was made on 07.04.2007 on an undated blank form signed by the claimant and the date 31.03.2007 has been put to coincide with the date of the final bill.

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Observation of the Arbitral Tribunal:

1. The contractor in his letter dated 20.02.2008 did not make any mention of the Supplementary Agreement.
2. The Arbitral Tribunal is of the opinion that had the contractor signed under coercion, he should have specifically remembered to having signed under coercion. Moreover the contractor's claim that he had been made to sign on a blank format does not appear to hold merit since the signature on the Supplementary agreement also bears the date of 31.03.2007 and on an examination of the Supplementary agreement it appears that the signature and date have been done at the same time and that the date has not been entered after taking the signatures. Other than this, only a detailed forensic examination may reveal, whether the signature on the supplementary agreement was taken under coercion. This was however beyond the scope of arbitral tribunal.
3. The arbitral Tribunal observed that the contractor had submitted Bank Guarantee amounting to Rs. 12,00,000/- (issued by Central Bank of India bearing number 22/02 dated 15.09.2003) with an extended validity up to 13.03.2007 and another Bank Guarantee amounting to Rs. 3,00,000/-(issued by Central Bank of India bearing number 21/03 dated 07.11.2003) with an extended validity up to 04.05.2007.

   It is important to note that the currency of BG bond of Rs. 12,00,000/- had already expired at the time of signing the final bill as well as Supplementary Agreement i.e. 31.03.2007. Thus the contention of the contractor that the Railways exercised undue influence by sending the BGs for encashment is not tenable since at the time of signing of the final bill the currency of the BG no. 22/02 valid up to 13.03.2007 had already expired and was thus technically not available for encashment. Thus coercion on the basis of encashing the Bank Guarantee as stated by contractor, was also not substantiated. Moreover the respondent wrote to the Associate Finance on 12-02-2007 not to encash the BG amounting to Rs. 12 lakhs as the work had been completed and the maintenance period was over. Thus it appears that the respondent did not have the intention to exercise coercion on the contractor by holding the Bank Guarantee.

   The currency of BG no. 21/03 dated 07.11.2003 was still available up to 04.05.2007. Moreover Arbitral Tribunal has observed that the respondent vide letter dated 04.10.06 had conveyed to its Associate Finance that the extension of BG no. 21/03 for an amount of Rs. 3,00,000 was not required beyond maintenance period i.e. 30.09.2006. Despite this the respondent forwarded the extended BG to the Associate Finance for safe custody on 20.11.2006 even when the maintenance period was over and clause 5.1 of the agreement was satisfied. The respondent was asked to explain the same. However the respondent has not been able to submit an explanation to this effect. This Bank Guarantee was sent to the Bank for encashment by the Associate Finance on 20.03.2007. During the course of the various hearings it was stated by the respondent that the Bank Guarantees are kept in the custody of the Associate Finance and that if the BG nears its validity period and the same is not extended by the contractor the same is sent to the Bank for encashment about 3 months prior to the expiry of its validity as a routine practice. The respondent further stated that the act of

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sending the BG no. 21/03 for encashment by the Associate Finance was not an exception and therefore not an act of coercion.

In view of the above, the claim of the contractor that the Supplementary Agreement was signed by him under coercion has not been substantiated although the Arbitral Tribunal noted that there appears to be a dispute between the parties which has been brought out in the letter of the contractor dated 27.06.2007 and also by the fact that the final bill was signed under protest.

(Sudhir Singh)	(Abhilasha Jha Misra)	(Rajeev Saxena)
Presiding Arbitrator & Director/QAC, RDSO/LKO	Co-Arbitrator & Dy.CAO/TA/NDLS/NR	Co-Arbitrator & Dy.CE/C/Plg-I, K.Gate,N.Rly. Delhi

Copy to:-

Dy.CE/C/G-I, K.Gate, N.Rly., Delhi-6 for information.

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RIVAL SUBMISSION(S) ON BEHALF OF THE PARTIES

On behalf of the Petitioner

13. The case of the petitioner is that, based on the material available on record, the Arbitral Tribunal arrived at the conclusion that the supplementary agreement was executed by the respondent voluntarily and of his own free will, without any coercion or undue influence. Accordingly, there is no ground for this Court to interfere with the said conclusion. It is a settled principle, reiterated in a series of judgments by this Court as well as the Hon'ble Supreme Court, that where two possible interpretations exist, and the Arbitral Tribunal adopts one of them, the courts should not substitute their own view unless it is demonstrated that the Tribunal's conclusion is perverse and unreasonable. The judicial approach under Section 34 of the 1996 Act does not permit re-examination or re-appreciation of the evidence. However, after recording such a finding, there was no occasion for the Arbitral Tribunal to further hold that, since the final bill had been signed under protest, the claims were arbitrable. The petitioner is aggrieved only to the extent that the Impugned Award records that "*since the claimant has signed the final bill 'under protest', there seems to be dispute of claims which have not been settled and hence the same can be arbitrable"*.

On behalf of the Respondent

14. Per Contra, the gist of the respondents' argument is that the Impugned Award is a preliminary decision rendered pertaining to the Arbitral Tribunal's jurisdiction and on the arbitrability of the claims. The Arbitral Tribunal has not passed a final award, any substantive

challenge at this stage may be premature. The letter dated 13.11.2014 issued by the Arbitral Tribunal in response to the order dated 29.01.2014, passed in the present petition, cannot be treated as an 'order' of the Arbitral Tribunal, as it does not contain the essential attributes of an 'order'. At best, it can be construed as a communication setting out the reasons for the finding given in the Impugned Award. Further, it is stated that the Impugned Award is a decision of the Tribunal in favour of its own jurisdiction and hence cannot be set aside under section 34. The said decision can only be assailed once the final award has been passed. Reliance is placed on section 16(5) and (6) of the 1996 Act. In addition, the matter was listed for clarification on 02.07.2025, whereby the respondent argued that the respondent must be granted benefit of the limitation under Section 43(4) of the 1996 Act as the respondent did not have an opportunity to challenge the Impugned Award due to the finding that since the final bill was signed under protest there seems to be dispute of claims which have not been settled and hence the same can be arbitrable.

ANALYSIS AND CONCLUSION

15. At the outset, it is pertinent to outline the scope of interference with the arbitral awards under section 34 of the 1996 Act. The scope of interference by a court under Section 34 of the 1996 Act, is statutorily limited and judicially well-settled. It has time and again been held that section 34 of the 1996 Act does not envisage a review of the arbitral award on merits, nor does it permit re-appreciation of evidence. The Court's intervention is confined to limited grounds such as lack of jurisdiction, breach of principles of natural justice, patent illegality, or if the award is contrary to the fundamental policy of Indian law or

public policy. Reliance is placed on the following judgment(s) – (1) ***Associate Builders v. Delhi Development Authority***, (2015) 3 SCC 49; (2) ***Delhi Airport Metro Express (P) Ltd. v. Delhi Metro Rail Corporation Limited***, (2022) 1 SCC 131; (3) ***Oil and Natural Gas Corporation Ltd. v. Saw Pipes Ltd.***, (2003) 5 SCC 705.

16. Further, it is a trite law that where the Arbitral Tribunal has adopted a view that is plausible, based on the evidence before it, interference by the court is unwarranted, even if an alternative view is available. In this regard, reliance is placed on the judgment passed by the Hon'ble Supreme Court in ***NTPCLtd. v. Deconar Services (P) Ltd.***, (2021) 19 SCC 694. The operative portion reads as under:

> *"12. Further, it is also a settled proposition that where the arbitrator has taken a possible view, although a different view may be possible on the same evidence, the court would not interfere with the award. This Court in Arosan Enterprises Ltd. v. Union of India [Arosan Enterprises Ltd. v. Union of India, (1999) 9 SCC 449], held as follows: (SCC p. 475, paras 36-37)*
>
> > *"36. Be it noted that by reason of a long catena of cases, it is now a well-settled principle of law that reappraisal of evidence by the court is not permissible and as a matter-of-fact exercise of power by the court to reappraise the evidence is unknown to proceedings under Section 30 of the Arbitration Act. In the event of there being no reasons in the award, question of interference of the court would not arise at all. In the event, however, there are reasons, the interference would still be not available within the jurisdiction of the court unless of*

course, there exist a total perversity in the award or the judgment is based on a wrong proposition of law. In the event however two views are possible on a question of law as well, the court would not be justified in interfering with the award.

37. The common phraseology "error apparent on the face of the record" does not itself, however, mean and imply closer scrutiny of the merits of documents and materials on record. The court as a matter of fact, cannot substitute its evaluation and come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. If the view of the arbitrator is a possible view the award or the reasoning contained therein cannot be examined."

17. The first issue for determination before the Arbitral Tribunal, was whether the supplementary agreement had been executed under coercion or undue influence and in the event the Arbitral Tribunal found the supplementary agreement to be valid and not vitiated by coercion or undue influence, the arbitral proceedings were not to be continued (Ref. Order dated 05.01.2010 passed by the Hon'ble Supreme Court).

18. In the Impugned Award, even though the Arbitral Tribunal concluded that the supplementary agreement was not executed under coercion or under undue influence, however the arbitral tribunal also recorded that since the final bill was signed by the respondent under 'protest', the claims were arbitrable. The said finding has further been clarified in the order dated 13.11.2014.

19. The position of law with regard to whether the disputes or claims arising under an agreement, in respect of which a receipt for full and final settlement has been given or a settlement agreement has been executed, are arbitrable or not, has undergone a substantial change over the period. The Courts have consistently held that a claim for arbitration cannot be rejected merely on the ground that a settlement agreement or discharge voucher has been executed by either of the parties, particularly where the validity of such settlement is disputed. If there is an allegation that the discharge or settlement was obtained through coercion, undue influence, fraud, or economic duress, the existence of such agreement cannot, by itself, be treated as conclusive bar to arbitration. In such cases, the question of whether the settlement is valid and binding is itself an arbitrable issue that must be determined by the arbitral tribunal. In this regard, the Hon'ble Supreme Court in ***SBI General Insurance Co. Ltd vs Krish Spinning***2024 SCC OnLine SC 1754 while relying on the judgment of ***National Insurance Company Limited vs Boghara Polyfab Private Limited*** (2009) 1 SCC 267 inter alia held as under:

> *"…….*
>
> *48. Arbitration for the purpose of resolving any dispute pertaining to any claim which has been "fully and finally settled" between the parties can only be invoked if the arbitration agreement survives even after the discharge of the substantive contract.*
>
> *……*
>
> *53. Thus, even if the contracting parties, in pursuance of a settlement, agree to discharge each other of any obligations arising under the contract, this does not ipso facto mean*

that the arbitration agreement too would come to an end, unless the parties expressly agree to do the same. The intention of the parties in discharging a contract by "accord and satisfaction" is to relieve each other of the existing or any new obligations under the contract. Such a discharge of obligations under the substantive contract cannot be construed to mean that the parties also intended to relieve each other of their obligation to settle any dispute pertaining to the original contract through arbitration.

54. Although ordinarily no arbitrable disputes may subsist after execution of a full and final settlement, yet any dispute pertaining to the full and final settlement itself, by necessary implication being a dispute arising out of or in relation to or under the substantive contract, would not be precluded from reference to arbitration as the arbitration agreement contained in the original contract continues to be in existence even after the parties have discharged the original contract by "accord and satisfaction".

……

55. The aforesaid position of law has also been consistently followed by this Court as evident from many decisions. In Boghara Polyfab (supra), while rejecting the contention that the mere act of signing a "full and final discharge voucher" would act as a bar to arbitration, this Court held as follows:

> *"44. ... None of the three cases relied on by the appellant lay down a proposition that mere execution of a full and final settlement receipt or a discharge voucher is a bar to arbitration, even when the validity thereof is challenged*

by the claimant on the ground of fraud, coercion or undue influence. Nor do they lay down a proposition that even if the discharge of contract is not genuine or legal, the claims cannot be referred to arbitration. […]"

57. The position that emerges from the aforesaid discussion is that there is no rule of an absolute kind which precludes arbitration in cases where a full and final settlement has been arrived at. ***In Boghara Polyfab (supra), discussing in the context of a case similar to the one at hand, wherein the discharge voucher was alleged to have been obtained on ground of coercion, it was observed that the discharge of a contract by full and final settlement by issuance of a discharge voucher or a no-dues certificate extends only to those vouchers or certificates which are validly and voluntarily executed. Thus, if the party said to have executed the discharge voucher or the no dues certificate alleges that the execution was on account of fraud, coercion or undue influence exercised by the other party and is able to establish such an allegation, then the discharge of the contract by virtue of issuance of such a discharge voucher or no dues certificate is rendered void and cannot be acted upon.***

58. It was further held in Boghara Polyfab (supra) that the mere execution of a full and final settlement receipt or a discharge voucher would not by itself operate as a bar to arbitration when the validity of such a receipt or voucher is challenged by the claimant on the ground of fraud, coercion or undue influence. In other words, where the

parties are not ad idem over accepting the execution of the no-claim certificate or the discharge voucher, such disputed discharge voucher may itself give rise to an arbitrable dispute.

59. Once the full and final settlement of the original contract itself becomes a matter of dispute and disagreement between the parties, then such a dispute can be categorised as one arising "in relation to" or "in connection with" or "upon" the original contract which can be referred to arbitration in accordance with the arbitration clause contained in the original contract, notwithstanding the plea that there was a full and final settlement between the parties.

(emphasis supplied)

20. More recently, the Hon'ble Supreme Court in ***Arabian Exports Private Limited vs National Insurance Company Ltd***2025 SCC OnLine SC 1034 inter alia held as under:

"34. This decision was explained by this Court in Boghara Polyfab (supra). A two-Judge Bench of this Court noted that in Nathani Steels (supra) this Court on examination of the facts of that case was satisfied that there were negotiations leading to voluntary settlement between the parties in all pending disputes. Thus the contract was discharged by 'accord and satisfaction'. The Bench categorized such claims under two categories. In the first category there would be cases where there is bilateral negotiated settlement of pending disputes, such settlement having been reduced to writing either in the presence of witnesses or

otherwise. Nathani Steels (supra) falls in this category. ***In the second category of cases, there would be 'no dues/claims certificate' or 'full and final settlement discharge vouchers' insisted upon and taken, either in a printed format or otherwise, as a condition precedent for release of the admitted dues. In the latter group of cases, the disputes are arbitrable. Mere execution of a full and final settlement receipt or a discharge voucher cannot be a bar to arbitration even when validity thereof is challenged by the claimant on the ground of fraud, coercion or undue influence.*** *The Bench further distinguished Nathani Steels (supra) by clarifying that the observations made that unless the settlement is set aside in proper proceedings, it would not be open to a party to the settlement to invoke arbitration was with reference to a plea of 'mistake' taken by the claimant and not with reference to allegations of fraud, undue influence or coercion. Further, the said decision was rendered in the context of the provisions of the Arbitration Act, 1940. The perspective of the 1996 Act is different from the Arbitration Act, 1940."*

(emphasis supplied)

21. From the aforesaid judgment(s), the position of law that emerges is that the execution of a no-dues certificate/settlement agreement does not, by itself, preclude arbitration of disputes, particularly when either of the parties alleges that such execution was not voluntary and was induced by duress, coercion, or undue influence. In such circumstances, the arbitration clause embedded in the underlying contract continues to operate, and the question of whether the

settlement or discharge was validly and voluntarily executed becomes a matter to be determined during the arbitral proceedings. The existence of the settlement agreement, when disputed, cannot be treated as conclusive proof of accord and satisfaction at the threshold stage.

22. However, it is significant to note that the aforesaid judgment(s) have been delivered in the context of Section 11 of the 1996 Act and not Section 34. At the stage of Section 11, the Court is only required to examine the existence of an arbitration agreement and subsistence of an arbitrable dispute. The question whether a settlement agreement was executed voluntarily or under duress involves appreciation of facts and evidence and cannot be conclusively adjudicated at the stage of Section 11. The same squarely falls within the domain of the arbitral tribunal. The controversy at hand is a challenge to the Impugned Award under section 34 of the 1996 Act, i.e. the Impugned Award has been passed after the pleadings, the documents and hearing the parties. The contours of Section 34 do not permit the Court to re-assess or re-appreciate the factual findings of the Arbitral Tribunal. Interference is warranted only if the findings are perverse, irrational, or in disregard of material evidence. In this regard, a coordinate bench of this court in ***Union of India through Sr. Divisional Engineer-I Northern Railway vs B.S Sangwan*** 2024 SCC OnLine Del 6734 inter alia held as under:

> *"…….*
>
> *81. While examining the impact of the decisions cited earlier, on the issue in controversy, one distinction has to be borne in mind. Most of the decisions, except Ambica Constructions, relate to the issue of whether the dispute*

ought, or ought not, to have been referred to arbitration. The appeal to the Supreme Court arose out of a decision of the High Court either referring the disputes to arbitration or refusing to refer the dispute under Section 11 of the 1996 Act. Ambica Constructions is the only case in which the controversy arose out of an arbitral award in a Section 34 challenge - as in the present case. It is important to note this distinction for the simple reason that the scope of enquiry by the Court under Section 11 and under Section 34 is radically different. Even at the time of rendition of the above decisions, the Section 11 Court was only required to satisfy itself as to whether there existed an arbitration agreement and whether there existed an arbitrable dispute. With the recent decision in SBI General Insurance, the Section 11(6) Court is not entitled to enquire into the latter aspect and has to satisfy itself by examining whether there exists an arbitration agreement between the parties. Even at the time of the rendition of the decisions cited supra, which was in the pre-SBI General Insurance era, the Court was only concerned with whether an arbitrable dispute existed. The decisions hold that if there was any scope for enquiring into whether the NCC or discharge voucher had been furnished under duress or coercion, then irrespective of the merits of the challenge, the dispute had to be referred to arbitration. Where however, the challenge was found to be a complete afterthought with no supportive material whatsoever to indicate that there was any economic duress or coercion

which vitiated the NCC or discharge voucher, the Court could refuse to refer the disputes to arbitration.

82. Which brings us to the second aspect. ***We are, however, in the present case, not at the Section 11 stage. The disputes stand referred and an arbitral award stands rendered. The challenge before this Court is a challenge under Section 34 to the arbitral award. The limits of Section 34 jurisdiction are well known. The issue of whether the facts before the Arbitral Tribunal made out a case of economic duress, coercion or compulsion, under which the NCC was furnished by the respondent, was clearly a question of fact. The finding of the Arbitral Tribunal in that regard is also a finding of fact. The scope of interference by the Court under Section 34 of the 1996 Act, with findings of fact rendered by the Arbitral Tribunal, is all but completely foreclosed. It is only where the "finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse", then, the finding, merits intervention under Section 34 as being "perverse"****."*

(emphasis supplied)

23. Coming to facts at hand, it is an admitted position that the final bill was signed under 'protest' which has been noted in the judgment dated 11.02.2009 and also the Impugned Award dated 11.05.2013. Going further, the Arbitral Tribunal, after considering the entire material on record has also returned a finding that there is no proof of

obtaining the signature of the respondent on the supplementary agreement under coercion or under undue influence.

24. Vide order dated 13.11.2014, the Arbitral Tribunal gave detailed reasons (pursuant to the direction on 29.01.2014) regarding its findings that the supplementary agreement was without coercion or undue influence. The Arbitral Tribunal found no substance in the respondent's claim of coercion. It noted that the respondent did not mention the Supplementary Agreement at all in his letter dated 20.02.2008 (by which the respondent had stated that the final bill was signed under 'protest' since the dispute had not been settled), something that would be expected if he had signed it under pressure. It also observed that the signature and the date on the supplementary agreement by the respondent are same i.e. 31.03.2007, which contradicted the claim that the contractor was made to sign a blank document. Further, the Arbitral Tribunal found no merit in the respondents' allegation of coercion based on the encashment of the Bank Guarantees. It observed that the Bank Guarantee of Rs. 12,00,000 had already expired prior to the execution of the final bill and Supplementary Agreement on 31.03.2007, and was thus not available for encashment.

25. These findings, in my view are pure findings of fact. These conclusions are at the very least, plausible and reasonable interpretation of the material presented before the Arbitral Tribunal.

26. However, there is also a second aspect in the Impugned Award where the Arbitral Tribunal has recorded "*but since the claimant has signed the final bill 'under protest' there seems to be dispute of claims which have not been settled and hence the same can be arbitrable".* Once the Arbitral Tribunal concluded that the supplementary agreement was

not executed under duress, coercion, or undue influence, in my view, it was not open to the Tribunal to then hold that since the final bill was signed "under protest," certain claims appeared to remain unsettled and were, therefore, arbitrable. Having upheld the validity of the supplementary agreement, there were no arbitrable disputes pending between the parties. The arbitration clause contained in the agreement has perished. The supplementary agreement categorically records as under:

> *"Now it is hereby agreed by and between the parties in the consideration of sums already paid by the part hereto of the first part to the party hereto of the second part against all-outstanding dues and claims for all works done under the aforesaid principal agreement including excluding the security deposit the party hereto of the second part have no further dues of claims against the party herein the first part under the said Principal Agreement. It is further agreed by and between the parties that the party hereto of the second part has accepted the said sums mentioned above in full and final satisfaction of all its dues and under the said Principal Agreement.*
>
> *It is further agreed and understood by and between the parties that in consider whom of the payment already made under the agreement, the said Principal Agreement shall stand finally discharged and rescinded all the terms and conditions including the arbitration clause.*
>
> *It is further agreed and understand by and between the parties that in consideration of the payment already made under the agreement, the said Principal Agreement shall*

stand finally discharged and rescinded all the terms and conditions including the arbitration clause.

It is further agreed and understood by and between the parties that the arbitration clause contained in the said principal agreement shall cease to have any effect and/or shall be deemed to be non-existent for all purposes."

27. The law in this regard is well settled.

28. A Coordinate Bench of this Court, in ***B.L. Kashyap and Sons Ltd. v. Mist Avenue Private Ltd.***, 2023 SCC OnLine Del 3518, while considering a petition under Section 34, examined the issue of whether the original agreement would continue to subsist in light of a subsequent agreement (supplementary agreement in the present case) entered into between the parties. The Court enunciated certain principles governing the circumstances in which the original agreement containing the arbitration clause will cease to subsist. The operative portion of the judgment reads as under:

"24. For the purposes of the present case, the following principles emerge from these authorities:

a. An arbitration clause contained in an agreement which is void ab initio cannot be enforced as the contract itself never legally came into existence.

b. A validly executed contract can also be extinguished by a subsequent agreement between the parties.

c. If the original contract remains in existence, for the purposes of disputes in connection with issues of repudiation, frustration, breach, etc., the arbitration

clause contained therein continues to operate for those purposes.

d. Where the new contract constitutes a wholesale novation of the original contract, the arbitration clause would also stand extinguished by virtue of the new agreement.

25. An application of these principles requires an interpretation of the subsequent agreement between the parties-in this case, the MoU-to determine whether the arbitration clause in the original agreement remains enforceable."

(emphasis supplied)

29. In the present case, the finding by the Arbitral Tribunal in the Impugned Award that there was no coercion/undue influence exercised by the petitioner on the respondent to execute the supplementary agreement and that there seems to be dispute of claims which have not been settled are mutually inconsistent findings and cannot be reconciled.

30. Once the supplementary agreement is held to be valid and legal, all claims under the principal agreement stood discharged including the arbitration clause. In case, the finding by the Arbitral Tribunal that the dispute of the claims have not settled and hence are arbitrable is to be accepted, then the first part of the Impugned Award i.e., the supplementary agreement was signed voluntarily and without any coercion/undue influence becomes nugatory and of no effect.

31. To my mind, the Impugned Award is patently illegal and perverse. The concept of patent illegality and perversity has been elaborated upon in a catena of judgments by various courts. It has been

consistently held that an arbitral award suffers from patent illegality when it is perverse, based on no evidence, ignores vital evidence, or records findings that are internally contradictory or against the terms of the contract. In this regard, the Hon'ble Supreme Court in ***Delhi Metro Rail Corporation Limited vs Delhi Airport Metro Express Private Limited*** (2024) 6 SCC 357 inter alia held as under:

> *"34. The contours of the power of the competent court to set aside an award under Section 34 has been explored in several decisions of this Court. In addition to the grounds on which an arbitral award can be assailed laid down in Section 34(2), there is another ground for challenge against domestic awards, such as the award in the present case. Under Section 34(2-A) of the Arbitration Act, a domestic award may be set aside if the Court finds that it is vitiated by "patent illegality" appearing on the face of the award.*
>
> *35. In Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , a two-Judge Bench of this Court held that although the interpretation of a contract is exclusively within the domain of the arbitrator, construction of a contract in a manner that no fair-minded or reasonable person would take, is impermissible.* ***A patent illegality arises where the arbitrator adopts a view which is not a possible view. A view can be regarded as not even a possible view where no reasonable body of persons could possibly have taken it****. This Court held with reference to Sections 28(1)(a) and 28(3), that the arbitrator must take into account the terms of the contract and the usages of trade applicable to the*

transaction. The decision or award should not be perverse or irrational. An award is rendered perverse or irrational where the findings are:

(i) based on no evidence;

(ii) based on irrelevant material; or

(iii) ignores vital evidence.

.....

39. ***In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view****. [Patel Engg. Ltd. v. North Eastern Electric Power Corpn. Ltd., (2020) 7 SCC 167 : (2020) 4 SCC (Civ) 149.] A "finding" based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside under the head of "patent illegality". An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within his jurisdiction or violating a fundamental principle of natural justice.*

(emphasis supplied)

32. In this regard, this court further places reliance on the judgment passed by the Hon'ble Supreme Court in ***McDermott International Inc. v. Burn Standard Co. Ltd***., (2006) 11 SCC 181 and a coordinate

bench of this court in ***Jaiprakash Associates Ltd. v. NHPC Ltd.***, 2023 SCC OnLine Del 3295.

33. In my view, the finding that "since the claimant has signed the final bill under protest there seems to be dispute of claims which have not been settled and hence the same can be arbitrable" is perverse and patently illegal. Once the Arbitral Tribunal had already concluded that the supplementary agreement was validly executed without coercion or undue influence, then as per the terms of the supplementary agreement all prior claims stood settled and the arbitration clause was discharged. Reopening the same claims on the basis of an "under protest" remark not only contradicts the earlier finding but also undermines the sanctity of the supplementary agreement. Such a finding goes to the root of the matter.

34. In this view of the matter, the petition is allowed and the Impugned Award is set aside.

35. However, having said that I also find force in the submission of the respondent that the respondent could not have challenged the Impugned Award especially the finding that the supplementary agreement was not executed under coercion or undue influence as it held that the claims of the respondent were arbitrable. In this regard, reliance on Section 16 (5) and (6) of the 1996 Act is well placed.

Section 16 (5) and (6) of the 1996 Act reads as under:

> *"16. Competence of arbitral tribunal to rule on its jurisdiction*
>
> *……*
>
> *(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral*

tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34

……"

36. Hence, there was no occasion for the respondent to assail the Impugned Award dated 11.05.2013 and the order dated 13.11.2014 by which the Arbitral Tribunal gave its reasoning. The respondent vide Impugned Award dated 11.05.2013 was permitted to pursue its claims through arbitral process and hence, there was no reason for the respondent to challenge the same.

37. In view of my findings above, the respondent is now free to avail of all its legal remedies, including but not limited to challenging the Impugned Award dated 11.05.2013 and the order dated 13.11.2014 on all grounds and shall be entitled to the benefit of limitation under Section 43 (4) of the 1996 Act. The findings returned by me in this judgment, will not affect the merits of the petition filed by the respondent, if and when filed and the same shall be adjudicated on its own merits.

38. With the above directions, the present petition, along with pending applications, if any, are disposed of.

JASMEET SINGH, J

JULY 15, 2025 / *P*

Click here to check corrigendum, if any