



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

% Judgement delivered on: 18.08.2025

+ **FAO(OS) (COMM) 23/2024 & CM APPL. 8761/2024**

M/S TECHNO AIRCON INDUSTRIES PVT. LTD

..... APPELLANT

versus

M/S ABB LIMITED

..... RESPONDENT

Advocates who appeared in this case

For the Appellant : Dr. R.K. Yadav, Mr. Nishant Yadav and
Mr. Naman Yadav, Advocates.

For the Respondent : Mr. Nikhilesh Krishnan, Advocate

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT

V KAMESWAR RAO, J.

1. This appeal under filed Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (the A&C Act) lays challenge to the judgment dated 20.12.2023 (impugned judgment) passed by the learned Single Judge in OMP(COMM) 266/2021 captioned *Techno Aircon Industries Private Limited v. ABB Limited* whereby the learned Single Judge has dismissed the



application filed by the appellant herein under Section 34 of the A&C Act impugning the Arbitral Award dated 28.02.2019 (impugned award) passed by the learned Sole Arbitrator.

2. The learned Single Judge while dismissing the application under Section 34 of the A&C Act, stated in paragraph no.18 onwards as under:-

“18. The aforementioned MoMs first and foremost reveal an explicit and undeniable admission by Techno of possessing unutilized raw material initially supplied by ABB. Techno not only acknowledged this fact but also committed to returning the excess materials, as well as outlined the schedule for dispatching supplies to projects like Tata Motors Lucknow. Moreover, these MoMs shed light on the enduring business relationship between the parties, indicating that the purchase order dated 11th September, 2008, was merely one component of their broader and ongoing commercial dealings. Thus, Techno’s engagement and acknowledgment in these meetings, coupled with the absence of substantial challenge to the arbitrator’s jurisdiction over these matters, reinforces the view that the ambit of the arbitration agreement extended beyond just one single transaction, and the disputes arising from these broader dealings are indeed arbitrable.

19. Further, as discussed earlier, the Arbitrator’s mandate, as per the Court’s order of appointment, was to adjudicate ‘all disputes and differences’, implying a comprehensive scope of inquiry covering all aspects of the parties’ commercial relationship, as detailed and acknowledged in the MoMs. As such, any claims related to the excess raw material and the obligations arising from these MoMs fall within the scope of the arbitral proceedings, as they are



intrinsically linked to the parties' overall business dealings. In light of these documents, it is clear that the disputes referred to arbitration extended beyond the 51 MT supplied under the specific purchase order, and included the claims concerning 179.278 MT of raw material, as discussed in these MoMs.

20. Lastly, we must note that there is no cogent refutation to the admissions made in the aforementioned MoMs, which leads to the conclusion that Techno did indeed have the quantity of 179.278 MT of raw material stocked with them, which they had agreed to return. There is also no dispute regarding the rate applied to determine the value of the raw material. Therefore, in the opinion of the Court, the view taken by the Arbitrator is entirely reasonable and cannot certainly be held to be unconscionable, arbitrary or perverse. No ground is made out for this Court to exercise its jurisdiction under any of the grounds specified under Section 34 of the Act to set aside the impugned Award.

21. Dismissed.”

FACTUAL CONTEXT

3. The facts as noted from the records are that the appellant – M/s Techno Aircon Industries Private Limited – is a company incorporated under the provisions of the Companies Act, 1956, which had a contractual relationship with the respondent – M/s ABB Limited – for fabricating the duct profile for respondent’s customers using GSS sheets in coil form provided by the respondent. It was the case of the respondent and also the claim before the learned Arbitrator that the sheets were procured by the respondent at a cost of ₹49,500/- per metric ton (MT), along with taxes and other charges. The appellant who was fabricating the duct profile was responsible for returning unutilized excess materials. On the aforesaid



understanding, the case of the respondent is that it issued multiple purchase orders over the period of time including the purchase order dated 11.09.2008, which contained an arbitration clause. It was the case of the respondent before the learned Arbitrator that despite the explicit terms of the agreement, the appellant's performance fell short and it only partially completed the supplies by October 2009, and subsequently delayed further deliveries beyond the agreed schedule. It was the case of the respondent that the Minutes of Meeting (MoM) dated 10.10.2009 was issued wherein the appellant acknowledged the discrepancies in the raw material stock and unauthorized use of excess material for other purposes. It was the case of the respondent that the appellant was required to provide the material reconciliation statements along with the bills. Further, the MoM dated 20.01.2010 wherein the appellant accepted the liability to return the excess quantity of 179.278 MT of GSS sheets to the respondent. Despite these MoMs, the appellant had failed to fulfill their commitments. It is in these background, the demand notice dated 10.08.2010 was issued. The legal notice was also got issued by the respondent on 27.10.2011 invoking the arbitration clause specified in the purchase order dated 11.09.2008. The appellant failed to respond to the legal notice issued by the respondent. Consequently, the respondent filed the petition under Section 11 of the A&C Act (Arb P. 502/2012) before this Court, which resulted in the appointment of the learned Arbitrator vide order dated 08.02.2013.

4. Suffice to state that the learned Arbitrator had allowed the claims filed by the respondent to the extent of ₹92,29,230/- with interest @ 9% per annum from 01.11.2011 till actual full payment is made. Be it noted that the



claim no.2 of the respondent was rejected. In so far as the claim no.3 is concerned, the learned Arbitrator awarded a sum of ₹3,75,000/- in favour of the respondent.

5. The case of the appellant before the learned Single Judge can be seen from the paragraph no.6.1 to 6.5, which we reproduce as under:-

“6.1. The Arbitral Tribunal lacked territorial jurisdiction to adjudicate the disputes. The purchase order dated 11th September, 2008 – the foundational basis of ABB’s case – contains an explicit jurisdictional clause (Clause 4) which provides exclusive jurisdiction relating to dispute adjudication to the courts of Bangalore. Despite this stipulation, this Court exercised its jurisdiction under Section 11 of the Act to constitute the Arbitral Tribunal, thereby deviating from the jurisdictional clause agreed upon by the parties and compromising the legitimacy of the appointment. Techno raised this jurisdictional objection under Section 16 of the Act before the Arbitral Tribunal, but the application was decided against them through order dated 20th November, 2013. An appeal under Section 37 of the Act against this decision was also dismissed by this Court on 24th January, 2014. However, the appellate court observed that grievances arising out of Section 16(2) and Section 16(3) dismissals could be raised at the stage of challenging the final award under Section 34 of the Act. The issue of jurisdiction was also raised during final arguments before the Arbitrator, which was once again wrongly rejected. Nonetheless, Techno is entitled to assail the impugned Award on this ground in the present proceedings. Therefore, since Clause 4 of the purchase order is a fundamental term governing the contract between



*the parties which has been overlooked by this Court in appointing the Sole Arbitrator, the very foundation of the Arbitrator's authority is flawed. Thus, the impugned Award is devoid of jurisdiction, and on this basis alone, the impugned Award should be set aside. In support of this contention, reliance is placed upon the rulings in *Airports Authority of India v. Hindustan Steel Works Construction Ltd.* : 2009 SCC OnLine Del 3250 and *Ravi Ranjan Developers Pvt. Ltd. v. Aditya Kumar Chatterjee* : 2022 SCC OnLine SC 568.*

6.2. The initiation of the claim before the arbitrator was procedurally flawed and thus without jurisdiction. ABB relied upon Power of Attorney dated 7th January, 2013, submitted along with Statement of Claim, wherein Mr. B. Gururaj (Company Secretary of ABB) purportedly authorized Mr. Vivek Kier to file the claim on ABB's behalf. This document references Power of Attorney dated 17th February, 2012, granted to Mr. B. Gururaj, however, this foundational document was never presented to the Arbitrator. When Techno raised an objection to this procedural lapse, it was rejected by the Arbitrator solely on the ground that no such objection was mentioned in the Statement of Defence. Arbitrator's failure to properly address their objection undermines the legitimacy of the entire arbitral process. As a result, this oversight regarding the lack of valid authorization significantly compromises the impugned Award, and renders it liable to be set aside.

6.3. Purchase order dated 11th September, 2008, explicitly covered the supply of only 51 MT of GSS Sheets under eight invoices. The entire quantity of raw material was fully utilised for manufacturing the finished goods, and supplies



were duly made to the vendors of ABB. Thus, Techno's obligations under the said purchase order had been completed, which renders ABB's claim fundamentally misconceived.

6.4. ABB's reliance on MoM dated 20th January, 2010, as the sole piece of evidence is misplaced. This document was not corroborated or supported by any other evidence to substantiate the claims made by ABB. Further, ABB failed to produce any additional invoices or documents from other purchase orders to validate the existence of surplus materials with Techno. Thus, the Arbitrator's conclusions premised on this document are untenable, and the findings rendered in the impugned Award, in light of judgments of Supreme Court, are liable to be set aside under Section 34 of the Act.

6.5. Arbitration agreement between the parties is contained only in purchase order dated 11th September, 2008, against which admittedly only 51 MT of raw material was supplied. Therefore, any dispute referred for arbitration should arise solely from this purchase order and claims raised must be limited to the specified 51 MT quantity, which Techno asserts was fully utilized for manufacturing the finished goods. Thus, the claim for 179.278 MT, based on the MoM, falls outside the scope of the arbitration agreement, and such a claim should not have been adjudicated by the Arbitral Tribunal."

6. The case of the respondent before the learned Single Judge is as follows:

"8. Mr. Nikhilesh Krishnan, counsel for ABB, staunchly defends the impugned Award. He submits that under Section 34 of the Act, this Court does not sit as an appellate body over the



decision of the Arbitrator. Consequently, this Court should refrain from re-appreciating the evidence already considered by the Arbitral Tribunal. Further, he argues that the Sole Arbitrator was appointed by this Court under Section 11 of the Act, and Techno did not object at that relevant time. Thus, the objection of territorial jurisdiction cannot be raised at this juncture.

9. Addressing the substantive aspects of the case, Mr. Krishnan points out that Techno effectively failed to present any substantial defence during the arbitral proceedings. According to him, Techno merely provided vague denials without contesting the specific admissions recorded in the MoMs dated 29th October, 2009, and 20th January, 2010. On this basis, he asserts that the impugned Award does not suffer from any infirmity, and therefore must be upheld by this Court.”

7. The learned Single Judge in paragraph no.10-17 of the impugned judgment has held as under:-

“10. The Court has considered the aforementioned contentions. Firstly, we shall address the objection concerning territorial jurisdiction. To properly evaluate this objection, it is essential to understand the manner in which the Arbitral Tribunal was constituted. This was carried out by this Court on 8th February 2013, under Section 11 of the Arbitration and Conciliation Act, 1996. The relevant portion of the order is extracted hereunder:

“The petitioner has filed the abovementioned petition under Section 11(5) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator. This petition



was listed before the Court on 20th December, 2012. Notice was issued to the respondent for today's date. Mr. Mohan Shandilya, Advocate appears on behalf of the respondent. He does not dispute the arbitration clause contained in the Purchase Order dated 11th September, 2008.

Considering the overall facts and circumstances, as agreed, Smt. Kawal Inder Kaur, Retd. Additional District Judge (Mobile No.9810125754) is appointed as a sole Arbitrator to adjudicate all the disputes and differences between the parties as mentioned in this petition, including their claims and counter-claims, arising out of the certain Purchase Order. The Arbitrator shall conduct the proceedings under the provisions of the Arbitration and Conciliation Act, 1996 and shall give prior notice before commencing the proceedings. Total fee of the learned Arbitrator shall be payable to the tune of ₹1.5 lac which shall be borne by both the parties in equal proportion. The petition is accordingly disposed of.

Copies of this order be given dasti to the learned counsels for the parties. A copy of the order be also communicated to the learned sole Arbitrator.”

11. The order clearly indicates that both parties admitted the existence of the arbitration agreement contained in the purchase order dated 11th September, 2008. Therefore, Techno's jurisdictional objections do not pertain to the existence or validity of the arbitration agreement itself. Instead, their challenge is specifically directed at the appointment of the Arbitral Tribunal on territorial grounds. Notably, Techno



did not contest this Court's order of appointment, instead invoking Section 16 of the Act in the course of the arbitration process. The Court concurs with the Arbitrator's assessment that, since the Tribunal's constitution was by an order of this Court, any challenge to same on territorial jurisdiction ought to have been promptly addressed by directly contesting the appointment order itself, and not by raising the issue later under Section 16 of the Act. By failing to challenge the jurisdiction of this Court to entertain the Section 11 petition at the outset, Techno has forfeited the opportunity to question the territorial jurisdiction.

12. Furthermore, Techno's failure to contest the Court's jurisdiction at the appropriate juncture would also invoke the doctrine of waiver. By choosing to raise the issue only during the arbitral proceedings, and misconstruing it as a jurisdictional challenge under Section 16, Techno demonstrates a fundamental misunderstanding of the provision. This approach not only weakens their position but also suggests an acquiescence to the Court's jurisdiction, which, under the doctrine of waiver, significantly undermines their late-stage jurisdictional challenge. The caselaw cited by the Petitioner in support of their jurisdictional objection is entirely inapplicable in the present context. The factual disparities between the referenced cases and the current situation are significant, rendering them inapplicable. Thus, Techno's challenge on territorial grounds is not maintainable at this point in the present proceedings.

13. We now move to the objection raised by Techno concerning the alleged lack of proper authorisation in filing the claim. As noted in the impugned Award, there is a Power of Attorney on



*record, whereby Mr. B. Gururaj, Company Secretary of ABB, has authorised Mr. Vivek Kier to institute a claim. However, Techno's objection is directed towards the authority of Mr. Gururaj to sub-delegate the power to institute, arguing that since the Power of Attorney in favour of Mr. Gururaj was not presented to the Arbitral Tribunal, the claim was not properly instituted. In the opinion of this Court, this objection is hyper-technical and misconceived, particularly within the context of arbitration proceedings. Arbitration, by its nature, is intended to be a more flexible mechanism of dispute resolution, and therefore is not strictly bound by the procedural rigors of the Code of Civil Procedure, 1908. The questioning of the internal authorisation processes of a corporate entity, especially when there is no clear evidence of impropriety or harm, places an undue emphasis on procedural technicalities and diverts from the substantive issues at hand. It would be inappropriate for this Court to invalidate the entire arbitral proceedings and all the substantive legal actions taken thus far, solely on the ground of a procedural irregularity. This understanding is supported by the judgement of the Supreme Court in *Union Bank of India v. Naresh Kumar* : (1996) 6 SCC 660, which noted as follows:*

“9. ... Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the courts, under the Code of Civil Procedure, to ensure that injustice is not done to any party who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable.

10. ... A person may be expressly authorised



to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a Corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied. The Court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer.”

14. Furthermore, ABB has been consistently represented throughout the arbitration proceedings as well as before this Court. This continuous appearance by ABB through their authorized representative substantiates their deliberate and knowing participation in the proceedings, and in keeping with the above extracted holding of the Supreme Court, this effectively ratifies the fact that the person who filed the claim was duly authorized to do so. It is also pertinent to note that the arbitral proceedings in this case were effectively initiated when this Court allowed ABB's application under Section 11 of the Act. Techno did not raise any objections at that crucial juncture. The subsequent filing of claims by ABB was in furtherance of the Court's initiation of proceedings. Thus, the authorized representative merely signed on behalf of ABB in compliance with procedural requirements, while the actual institution of proceedings was done prior in time through this Court's order. This distinction



highlights that Techno's objection lacks substantive grounds, further reinforcing the validity of the arbitral proceedings initiated through the order of the Court. Thus, even if Techno's hyper-technical objection regarding the scope of Order XXIX Rule 1 of the CPC is entertained, it lacks merit, as the same serves no purpose other than to complicate and protract the proceedings, contrary to the objectives of arbitration.

15. As regards the claims being beyond the scope of reference, it is crucial to recognize the breadth of claims referred to arbitration when this Court appointed an arbitrator under Section 11 of the Act. The Court's order categorically stated that all claims and disputes presented in the Section 11 petition were referred to arbitration, which specifically included the claim for the entire quantity of 179.278 MT of raw material, a fact to which Techno raised no objections at the time of the Arbitrator's appointment. Furthermore, upon examination of Techno's Statement of Defence, which the Arbitrator duly considered, there appears to be no substantial contest to the Arbitrator's authority to adjudicate the full range of claims presented. While Techno did make a jurisdictional objection in Paragraph No. 21 of their Statement of Defence, it lacks the substance to challenge the clearly defined scope of arbitration as laid out in the Court's order dated 8th February, 2013. Therefore, Techno's contention that claims related to the quantity of raw material exceeding the 51 MT supplied under the purchase order dated 11th September, 2008, are non-arbitrable, is unfounded.

16. Now, let us examine the MoM dated 23rd October, 2009, which is the fulcrum of the dispute. The same records as follows:



Sl. No.	Gauge	Physical stock confirmed by M/s Techno	Physical stock showed by M/s Techno to M/s ABB	
1	18G	25068.89	$= (3*5 + 1.529) = 16,529$	16.529
2	20G	42668.45	$= (10*5) = 50,000$	50,000
3	22G	5312	$= (1*5) = 5$	5,000
4	24G	5900		0
5	26G	9677		0
		88626.34		71.529

10. M/s ABB expressed that, failing to fulfill the commitment date given by M/s Techno will leads to take serious action in course of time.”

17. Further, the subsequent MoM dated 20th January, 2010, also records the agreement between parties as regards the stock of raw material which is to the following effect:

“Minutes of Meeting held between M/S ABB and M/s Techno Aircon, Greater Noida on dispatch of balance Ducting and Sheets for Tata Motors and other projects, held on 20.01.10 at the M/s Techno’s Factory

Present:

M/s Techno Aircon
Mr. Faran Ali (MD)

M/s ABB
Mr. Somnath Gupta
Mr. Srinivasan KS
Mr. Debasis Modak

1. For Tata Motors, following are the total Requirement and dispatch Programme

Duct Type/ Thickness	Balance Requirement in Sq. m	Qty To be dispatched on 20 th & 21 st Jan '10	Qty To be dispatched on 25 th & 27 th Jan '10	Remarks
L Profile- all gauges as per drg	2400	1000	1400	All Drgs and mfg.clearances are available with M/S Techno
L Profile – all gauges for one balance system	1000	0	0	Mfg. clearance will be given before 31.01.10 and ducts to be dispatched by 10.02.10
24 G -Sheets of 2500 x 1220 size	2550	1250	1300	M/s Techno to cut the sheets to size of 2500 x 1220
24 G -Sheets of 2500 x 1220 size	1550	500	1050	-Do-

2. For Balance Sheets of all the projects, following are the schedule of dispatch.



Wt in Kgs.

Project	18G	20G	22G	24G	26G	Total	Remarks
Tata Motors & Jubilant	34083	129151	0	5396	20690	189320	Stock position as on 31.12.09
Less to be consumed in Tata Motors	0	1500	15200+9600 (Sheets)	2900+11000 (Sheets)	0	40200	The requirement of 22/24G shall be replaced by 20G by weight
Balance	34083	127651	-24800	-8504	20690	149120	
Festival Cuty	6083	5416	0	0	0	11499	Current stock. This materials can be lifted from M/S Techno immediately
Wockhardt	6485	6862	5312	0	0	18659	-Do-

TOTAL 179,278 Kg

M/s Techno will return 139 MT immediately and balance 40 MT shall be returned after reconciliation of payment with M/S ABB. Materials can be lifted from M/s Techno from 27th Jan 2010.

3. M/s Techno has pointed out that C-form against materials supplied to Festival City has not been issued by M/S ABB. M/S will revert back on this issue within 10 days time.

4. It has been observed that there is some mistake in the invoices submitted by M/s Techno, they will correct the bill and resubmit the same within 25th Jan' 10. They will also submit the reconciliation statement of the payable invoices and MS ABB will arrange to release payment within 10th of Feb'10."

[Emphasis Supplied]

8. Even before this Court, the submissions of Mr Yadav are the following:

- a. The Arbitral Tribunal lacked territorial jurisdiction to adjudicate the disputes. The purchase order dated 11th September, 2008 contains an explicit jurisdictional clause (Clause 4) which provides exclusive jurisdiction relating to dispute adjudication to the courts of Bangalore.



Despite this stipulation, this Court exercised its jurisdiction under Section 11 of the Act to constitute the Arbitral Tribunal, thereby deviating from the jurisdictional clause agreed upon by the parties and compromising the legitimacy of the appointment.

- b. the finding of the learned Arbitrator is not only perverse, but also contrary to the evidence led by the respondent;
- c. the learned Single Judge has failed to appreciate that the respondent had not produced any evidence with respect to the alleged claim of ₹92,29,231.44 in lieu of the material weighing 179.278MT of GSS sheets. In other words, the claim of the respondent is not supported by any document, therefore, the learned Arbitrator could not have awarded the claim of ₹92,29,231.44;
- d. the learned Single Judge has failed to appreciate that as per the documents relied upon by the respondent, the respondent has supplied only 51MT of GSS on 30.10.2008 and as such to say that the appellant is liable to pay the cost of 179.278MT is totally without any basis;
- e. the learned Single Judge failed to appreciate that the appellant has stated that only purchase order dated 11.09.2008 had the arbitration clause and as per the case of the respondent also substantial dispute has arisen from the purchase order dated 11.09.2008;
- f. assuming, but not admitting that all purchase orders could have been considered then also the respondent has failed to prove that it had ever supplied the material weighing 179.278MT of GSS Sheets to the appellant. In absence of the same, the learned Arbitrator could not have granted the amount as has been granted, which has been upheld



- by the learned Single Judge erroneously;
- g. the learned Single Judge has failed to appreciate that the MoM dated 23.10.2009 and 20.01.2010 are contrary and mutually destructive. In any case, as per the case of the respondent itself, the MoM dated 23.10.2009, the appellant has excess material of 148.6MT and as per the MoM dated 20.01.2010, the appellant has excess 179.278MT, but the said minutes does not justify as to how the said material got accumulated over the period of time; and
- h. it was the case of the appellant that it has always supplied the duct as per the specification of the respondent and on the basis of the material supplied to it by the respondent.
9. The learned counsel for the appellant, in support of his submissions has relied upon the decision in the case of *National Insurance Company Limited v. Boghara Polyfab Private Limited : (2009) 1 SCC 267*; *SBI General Insurance Company Limited v. Krish Spinning : 2024 SCC OnLine SC 1754*; *M Dayanand Reddy v AP Industrial Infrastructure Corporation Limited : (1993) 3 SCC 137*; *K K Modi v. K N Modi & Others : (1998) 3 SCC 573*; *Bihar State Mineral Development Corporation v. Encon Builders (I) (P) Limited : (2003) 7 SCC 418*; and *Jagdish Chander v. Ramesh Chander & Others : (2007) 5 SCC 719*.
10. On the other hand, Mr Nikhilesh Krishnan, learned counsel appearing for the respondent has justified the order of the learned Single Judge to say that given the scope of interference under Section 34 of the A&C Act, the learned Single Judge has rightly rejected the broad case set up by the appellant. He stated that the plea of non-arbitrability of disputes, except in



respect of the purchase order dated 11.09.2008 has rightly been rejected by the learned Arbitrator, in view of the order of the learned Single Judge appointing the Arbitrator. He has submitted that even on merits, the Arbitrator in the impugned award has rightly awarded the amount of ₹92,29,230/-, that is, the cost of material weighing 179.278MT of GSS sheets. The finding of the learned Arbitrator and the learned Single Judge is based on right interpretation /cogent material. The Single Judge has rightly not interfered with the award. He has relied upon the decision in the case of ***SBP & Company v. Patel Engineering Limited & Another : (2005) 8 SCC 618; State of West Bengal v. Sarkar & Sarkar : (2018) 12 SCC 736; and N. S. Atwal v. Jindal Steel & Power Limited : (2011) 178 DLT 454 (DB).***

REASONS AND CONCLUSION

11. Having heard the learned counsel for the parties, we shall now proceed to decide the issue.

12. Though, Mr Yadav has made some elaborate submissions, the crux can be summed up in two points - firstly, with regard to the arbitrability of the disputes, as much as the arbitral tribunal had no jurisdiction to adjudicate the matter. Secondly, with regard to the claim pertaining to the material weighing 179.278MT of GSS sheets. We may now proceed to answer these two issues.

13. In so far as the first submission of Mr Yadav on the jurisdiction of the arbitral tribunal and arbitrability of the dispute is concerned, suffice it to state that the Arbitrator was appointed by this Court in the petition under Section 11 of the Act. A perusal of the said order would reveal that the



learned Single Judge of this Court noted that the learned counsel appearing for the appellant had not disputed the arbitration clause contained in the purchase order dated 11.09.2008. The only issue is whether the dispute with regard to all the purchase orders which did not had arbitration clause need to be decided by the Arbitrator.

14. We agree with the conclusion drawn by the learned Arbitrator as regards the objection to claim no.2. The learned Single Judge has rightly upheld the same. We reproduce the relevant reasoning given by the learned Arbitrator as follows:

“As regards the objection that the claimant has fraudulently, unlawfully invoked jurisdiction of this Tribunal and has fraudulently obtained order of Hon'ble High Court dated 08.02.2013, this is not the Forum to challenge that order and in fact Preliminary Objection dated 20.09.2013 initially raised in this connection has already been dealt with vide order dated 20.11.2013 whereby the respondent was called upon to file Statement of Defence.

xxxx xxxx xxxx

Further objection is that there is no valid arbitration agreement between the parties. The respondent is not entitled to raise this submission as the petition of the claimant under Section 11 (5) of The Arbitration and Conciliation Act has been allowed by Hon'ble High Court vide orders dated 08.02.2013 after hearing Ld. Counsel for the parties.”

15. Mr Yadav in support of his contentions has relied upon the case of ***National Insurance Company*** (*supra*) wherein it was held as under:



“22. Where the intervention of the court is sought for appointment of an Arbitral Tribunal under section 11, the duty of the Chief Justice or his designate is defined in *SBP & Co.* This Court identified and segregated the preliminary issues that may arise for consideration in an application under section 11 of the Act into three categories, that is (i) issues which the Chief Justice or his Designate is bound to decide; (ii) issues which he can also decide, that is issues which he may choose to decide; and (iii) issues which should be left to the Arbitral Tribunal to decide.

22.1) The issues (first category) which Chief Justice/his designate will have to decide are:

(a) Whether the party making the application has approached the appropriate High Court.

(b) Whether there is an arbitration agreement and whether the party who has applied under section 11 of the Act, is a party to such an agreement.

22.2) The issues (second category) which the Chief Justice/his designate may choose to decide (or leave them to the decision of the arbitral tribunal) are:

(a) Whether the claim is a dead (long barred) claim or a live claim.

(b) Whether the parties have concluded the contract/transaction by recording satisfaction of their mutual rights and obligation or by receiving the final payment without objection.”

16. Similarly, he has relied upon *SBP & Company* (*supra*) wherein it was observed as follows:

“17. Section 11(6) does enable the Chief Justice to designate any person or institution to take the necessary measures on an



application made under Section 11(6) of the Act. This power to designate recognized in the Chief Justice, has led to an argument that a judicial decision making is negated, in taking the necessary measures on an application, under Section 11(6) of the Act. It is pointed out that the Chief Justice may designate even an institution like the Chamber of Commerce or the Institute of Engineers and they are not judicial authorities. Here, we find substance in the argument of Mr. F.S.Nariman, learned senior counsel that in the context of Section 5 of the Act excluding judicial intervention except as provided in the Act, the designation contemplated is not for the purpose of deciding the preliminary facts justifying the exercise of power to appoint an arbitrator, but only for the purpose of nominating to the Chief Justice a suitable person to be appointed as arbitrator, especially, in the context of Section 11(8) of the Act. One of the objects of conferring power on the highest judicial authority in the State or in the country for constituting the arbitral tribunal, is to ensure credibility in the entire arbitration process and looked at from that point of view, it is difficult to accept the contention that the Chief Justice could designate a non-judicial body like the Chamber of Commerce to decide on the existence of an arbitration agreement and so on, which are decisions, normally, judicial or quasi judicial in nature. Where a Chief Justice designates not a Judge, but another person or an institution to nominate an arbitral tribunal, that can be done only after questions as to jurisdiction, existence of the agreement and the like, are decided first by him or his nominee Judge and what is to be Page 1808 left to be done is only to nominate the members for constituting the arbitral tribunal. Looking at the scheme of the Act as a whole and the object with which it was enacted, replacing the Arbitration Act of 1940, it seems to be proper to view the conferment of power on the Chief Justice as the conferment of a judicial power to decide on the existence of the conditions justifying the constitution of an arbitral tribunal. The departure from the UNCITRAL model regarding the conferment of the power cannot be said to be conclusive or significant in the circumstances. Observations of this Court in paragraphs 389 and 391 in Supreme Court



Advocates on Record Association v. Union of India support the argument that the expression chief justice is used in the sense of collectivity of judges of the Supreme Court & the High Courts respectively.”

17. We have already observed that the learned counsel for the appellant before the learned Single Judge of this Court in the petition under Section 11 of the A& C Act did not contest the issue regarding maintainability of the petition and had carried out extensive arguments, pursuant to which this Court passed the order dated 08.02.2013. If that be so, though there is no dispute with regard to the law laid down by the Supreme Court in the cases of *National Insurance Company Limited (supra)* *SBI General Insurance Company Limited (supra)* *M Dayanand Reddy (supra)* *K K Modi (supra)*; *Bihar State Mineral Development Corporation (supra)* and *Jagdish Chander (supra)*, the judgments would have no applicability in the facts of this case.

18. That apart, the order dated 08.02.2013 stated that “xxxxxx; xxxxxx all the disputes and difference between the parties as mentioned in this petition including their claims and counter claims arising out of certain purchase orders” which would clearly reveal that the appointment of the Arbitrator by the learned Single Judge was not on the basis of the purchase order dated 11.09.2008 only but also in respect of the claims and counter claims, arising out of ‘certain purchase orders’. Surely, the purchase orders of which reference has been made by the learned Single Judge of this Court would include all the purchase orders, including the purchase order dated 11.09.2008.

19. In so far as the grant of claim of ₹92,29,230/- by the learned



Arbitrator is concerned, the arguments of Mr Yadav as noted above, are devoid of merit. The learned Arbitrator has relied upon the MoM dated 20.01.2010 wherein the appellant has acknowledged the liability to return 179.278MT of GSS Sheets. If that be so, we cannot find fault with the learned Arbitrator awarding the said amount. The learned Single Judge is right in upholding said conclusion in paragraphs 18-20 of the impugned judgment, which we have already reproduced above.

20. In view of the above, we find no merit in the present appeal. The same is dismissed accordingly.

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21. In view of the above order, this application does not survive and stands dismissed.

V. KAMESWAR RAO, J

VINOD KUMAR, J

AUGUST 18, 2025

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