

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

+ **OMP (COMM) NO. 427/2017**

Reserved on: 28th November, 2017
Date of decision: 21st December, 2017

WISHWA MITTAR BAJAJ & SONS (Constructions) Pvt. Ltd

..... Petitioner

**Through: Mr.Raghavedra Mohan Bajaj
and Mr.Shreyas Mehrotra,
Advs.**

Versus

BPTP LTD

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner challenging the Arbitral Award dated 14.07.2017 passed by the Sole Arbitrator in Wishwa Mittar Bajaj & Sons (Constructions) Pvt. Ltd vs. BPTP Ltd., DAC/385/03-13 (hereinafter referred to as impugned Award).

2. The respondent vide its Letter of Intent dated 18.04.2007 had awarded the work of construction of Towers (G, H, J & K) for Group Housing Project at Sector-82, Faridabad to the petitioner. A work order dated 19.04.2007 was thereafter issued by the respondent in favour of the petitioner for the above-mentioned work. The stipulated cost of the project was Rs. 16,48,14,449/-

and was to be completed within a period of 21 months from the date of possession of the site. The petitioner claims that there were defaults on the part of the respondent not only in supply of drawings, decisions, steel, Ready Mix Concrete (RMC) etc., but also in release of payments under the Running Bills. The petitioner in this regard has made reference to various correspondence that were exchanged between the parties, however, I need not deal with them in detail as the issue involved is to determine the effect of the execution of the Settlement Agreement dated 10.04.2011 by the petitioner of such purported default of the respondent. The petitioner alleges that it was also forced to sign the “Indemnity-Cum-Undertaking” dated 11.05.2010 for release of the amount that was even otherwise due to it under the agreement. It is submitted that in spite of taking the undertaking, the amount of Rs. 15 lakhs was released only after about 20 days of the same. The petitioner further submits that it had raised a final bill of approx Rs. 90 lakhs on the respondent, which was not accepted by the respondent and the petitioner was forced to submit a revised bill dated 01.06.2010 of Rs. 64,28,369.14/- for the “Tower Area” and Rs. 9,88,628/- for the “Non-Tower Area” totaling to Rs. 74,16,997/-. It is submitted that in terms of the “Indemnity-Cum-Undertaking”, this amount should have been released to the petitioner within a period of 20 days after the submission of the final bill, however, the respondent with malafide intention failed to pay the same forcing the petitioner to make representations dated 28.06.2010 and 05.07.2010 seeking release of the said amount. Instead of releasing the amount, the respondent forced the petitioner to submit a revised bill on 12.08.2010, reducing the amount of final bill to Rs. 40 lakhs. However, the respondent released only a payment of Rs. 4,58,556/- on 14.09.2010 to the

petitioner. The petitioner again requested for release of amount vide its letter dated 20.09.2010 and 22.09.2010. The respondent on 06.10.2010 finally released another sum of Rs. 13 lakhs in favour of the petitioner. On further protest, an amount of Rs. 23,852/- was released in favour of the petitioner on 04.11.2010 and an amount of Rs. 10 lakhs was released in favour of the petitioner on 24.11.2010. Another amount of Rs. 6 lakhs was released in favour of the petitioner on 27.01.2011 by the respondent.

3. It is submitted by the petitioner that on 11.04.2011 the Director of the petitioner company was called by the respondent to its Gurgaon office where he was presented with three documents i.e., Deed of Settlement, Affidavit and Indemnity Bond as full and final settlement and as a pre-condition for releasing further amount of Rs. 3,07,491/-. It is submitted that the petitioner signed the above documents so that the payment can be released in favour of the petitioner and once the said payment was credited to the bank account of the petitioner, the petitioner vide its letter dated 21.04.2011 raised the claim for the balance payment in terms of the original bill and placing on record the fact that all payment subsequent to the Indemnity-Cum-Undertaking bond dated 11.05.2010 has been accepted by it under duress, coercion and protest.

4. As the respondent did not pay the amount claimed by the petitioner, the petitioner filed an application under Section 11(5) of the Act before this Court, being Arbitration Petition No. 353/11 on which this Court, vide order dated 28.09.2012, was pleased to appoint the present arbitrator.

5. It is submitted that the arbitrator has failed to take into account the above facts and documents that were placed before him while rejecting the

claim of the petitioner under the impugned award on the ground that having signed the Settlement Agreement dated 10.04.2011, the petitioner was not entitled to raise the present claim. Placing reliance on the judgment of the Supreme Court in **ONGC Vs. Western Geco International Limited**, (2014) 9 SCC 263, it is submitted that the impugned award is perverse and is liable to be set aside as the Arbitrator has failed to take note of the above referred documents, especially the representations of the petitioner and has wrongly, therefore, concluded that there was a full and final settlement of all the disputes between the parties in the Settlement Agreement.

6. I have considered the submissions made by the counsel for the petitioner, however, I am unable to agree with the same. The learned Arbitrator in its impugned award, after referring to the exchange of documents between the parties and the submissions made before him, has held as under:-

“26. In my view, as stated above, the controversies in regard to the work/payments prior to fore-closure of the Contract are not at all material for adjudication of the dispute between the parties in regard to the alleged coercion, pressure or undue influence by the Respondent for making the Claimant sign Settlement Documents dated 11.04.2011. For appreciating as to whether the Claimant was a victim or not of coercion or undue pressure or undue influence of the Respondent, it is seen that after presenting the final bill dated 01.06.2010 for Rs. 64, 28,369,14 ps, the Claimant was revising and reducing the amount of

Final Bill. Bill dated 05.06.2010 was for Rs. 63,54,500/-. Thereafter another Bill dated 14.06.2010 was issued demanding Rs. 58,30,114.15

27. Vide email dated 12.08.2010, the Claimant was asking for Rs. 40 Lakhs only, as total outstanding payment for Tower and Non-Tower area and in response, thereto, an email dated 19.08.2010 from the Respondent was issued disputing the said figure of Rs. 40 Lakhs. There were some debit notes also raised by the Respondent, which were to be deducted from the final payment.

28. The Respondent made certain payments to the Claimant on 09.09.2010 and 30.09.2010, on account, which were acknowledged by the Claimant vide a Letter dated 20.10.2010 in which it was stated that a sum of Rs. 22.25lacs and Rs. 5 Lacs was still due. Thereafter on 19.11.2010, the Respondent released a sum of Rs. 10 Lakhs to the Claimant. Vide a Letter dated 23.11.2010, the Claimant acknowledged the Receipt of Rs. 10 Lakhs and stated that balance payment of Rs.10 lakhs was left. Vide a letter dated 07.01.2011, the Claimant asked for release of Rs. 6 lakhs out of the balance of Rs. 10 Lakhs, which was paid by the Respondent on 13.01.2011 and vide Letter dated 14.02.2011, the Claimant admitted that balance of Rs. 4.09 Lakhs only was outstanding and requested the Respondent to release the same.

29. The aforesaid clearly shows that after the fore-closure of the Contract, which was mutually agreed to by both the parties, the Claimant was continuously reducing the final Bill and scaling down the amount due to it, from the Respondent. It cannot be said that

this was being done by the Claimant under any pressure or coercion, exercised by the Respondent. It appears to be a case of negotiations between the parties. The Respondent was not satisfied with the demands being raised by the Claimant and on account of negotiations between them the Claimant was lowering the amount, which was due. Such negotiations do take place between the parties and is a common trade practice in business dealings. Mere scaling down of Demand, therefore, cannot be made a ground for holding that a party was under pressure, coercion or duress, particularly when it happens over a long period. Moreover, this Tribunal finds that ultimately the Claimant's Demand had watered down to Rs. 4.9 Lakhs only out of which a payment of Rs. 3, 07,491/- was made vide the Settlement dated 11.04.2011. The difference between the Demand of Rs. 4.09 Lakhs raised vide letters dated 14.02.2011, 30.03.2011 and 05.04.2011 and the amount received on 11.04.2011, by virtue of Settlement, was not so large that the Tribunal should hold that the Respondent had exercised pressure, coercion or duress upon the Claimant for signing the Settlement documents.

30. Learned Counsel for the Respondent has rightly contended that the plea of the Claimant in regard to the coercion, duress or pressure is negated, not only by the conduct of the Claimant in scaling down the amount of the Final Bill but also by the fact that in the Statement of Claims filed before the Tribunal, the Claimant has raised Claims for several Crores of rupees against the Respondent. It is submitted that the Claims as raised by the Claimant in the Statement of

Claims must have been in existence on the date of fore-closure of the Contract and settlement also and if the Claimant was entitled to all these amounts, there was no earthly reason for it to go for a settlement by accepting a small sum of Rs. 3,07,491/- only and give up his large Claims which are to the tune of Rs. 5 / 6 Crores.

31. I agree with Learned Counsel for the Respondent that after entering into a Settlement with the Respondent on 11.04.2011 and receiving the payment on 13.04.2011, the claimant issued a Notice dated 21.04.2011, disputing the Settlement only with a view to extract some more money from the Respondent. It appears that the Claimant was under no pressure, coercion or duress of the Respondent but had plans to get as much as possible from the Respondent by dragging it into Litigation.

32. The Claimant has also failed to establish on record that its financial condition was so precarious that that for getting a small sum of Rs. 3,07,491/-, it agreed to sign the Settlement with the Respondent and jeopardize its large Claims as set out in the Statement of Claims. Neither the testimony of CW-1 nor the copy of the Bank Statement placed on record establish that the Claimant was facing any acute financial crisis.

33. The letters sent by the Claimant to the Respondent since beginning that the Sub-Contractors and Labourers were on its neck, demanding payments, cannot be taken as gospel truth. Such excuses are often given for obtaining the payments from an Employer. The Claimant has not placed on record its Books of Accounts to show as to what was the

position of its Assets and Liabilities nor it has established on record that except the Bank Account, of which the Bank Statement has been filed, the Claimant had no other Bank Account. In the said Bank Statement, even certain heavy transactions are reflected, which remain unexplained.

34. Learned Counsel for the Claimant has relied upon a Judgment of the Apex Court in National Insurance Company Vs. Boghara Polyfab Private Limited reported in 2009 1 SCC 267 in which the question of “accord and satisfaction” and “Non-Due Certificate” was discussed and it was held that it is a mixed question of fact and law. This judgment was primarily in regard to the arbitrability of the dispute in regard to accord and satisfaction. In para 52, while giving illustrations at para (iii), the case of a Contractor accepting Rs. 6 Lakhs in lieu of a Claim of Rs. 10 Lakhs and giving discharge Voucher was discussed and it was held that when a Contractor, who is hard-pressed for funds and keen to get the admitted amount released, signs on the dotted lines recording accord and satisfaction, he can question the Settlement as not voluntary and such an accord will not bar arbitration. The facts of this case are of no help to the Claimant. It is difficult for this Tribunal to hold that even under pressure Claimant could have accepted a sum of Rs. 3,07,491/- in full and final Settlement, foregoing the balance payment as well as its Claims against the Respondent as detailed in the Statement of Claims.

35. Learned Counsel for the Respondent has cited various Judgments which are under:-

1. *Double Dot Finance Ltd. Vs. Goyal MG Gases Ltd & Anr* reported in 117 (2005) Delhi Law Times p.330.
2. *Essar Projects (India) Ltd. & Ors Vs. Gail (India) Ltd.* reported in 2009 (2014) Delhi Law Times 754.
3. *Union of India and Ors Vs. Master Construction Company* reported in (2011) 12 SCC 349.
4. *New India Assurance Company Limited Vs. Genus Power Infrastructure Ltd* reported in (2015) 2 SCC 424.
5. *Prabhu Dayal Trilok Chand Vs. Oriental Insurance Co. Ltd* reported in 217 (2015) Delhi Law Times 121.
6. *Unikol Bottlers Ltd. Vs. Dhillion Kool Drinks* reported in 1994 IAD (Delhi) 613.
7. *M/s. P.K. Ramaiah and Company Vs. Chairman & Managing Director, National Thermal Power Corpn.* Reported in 1994 Supp (3) SCC 126.
36. *In the case of P.K Ramaiya as well as those referred to above, the Courts have held that a subsequent allegation of coercion can be an afterthought and a device to get over a settlement after acceptance of the payment and voluntarily issuing receipt.*
37. *In the case of Double Dot Finance Ltd (Supra), I had the occasion to discuss the question of coercion and duress and in para 9 thereof, I had held that the coercion or duress required for vitiating free-consent has to be of the category under which the person under duress is left with no other option but to give consent and is unable to take an independent decision, which is in his interest. It was held that bargaining and thereafter accepting an Offer by*

'Give and Take' to solve one's financial difficulties cannot be treated as coercion or duress for the reason that be treated as coercion or duress for the reason that in Trade & Commerce, everyday, such situations arise and decisions are taken by the parties some of which they might not have taken, but for their immediate financial requirements and economic emergency.

38. In view of the foregoing, I have no hesitation in holding that the Claimant has failed to establish on record that the Settlement dated 11.04.2011, entered into by it, was under any coercion, duress or undue pressure exercised by the Respondent. This settlement was arrived at by the Claimant voluntarily inasmuch as, as against its demand of Rs. 4.9 Lakhs, the Respondent agreed to pay Rs. 3,07,491/- and as such there was no big difference between the amount demanded by the Claimant and amount received by it through Settlement dated 11.04.2011.

39. The Claimant has failed to prove on record by satisfactory evidence that on the said date, it was facing acute financial emergency. The Claimant itself kept on revising and reducing its demand for a period of about 1 year, which is consistent with the possibility of negotiations between the parties. It cannot be believed that during this 1 year period even the Claimant was under coercion, duress or pressure of the Respondent.

40. In the result, the question in regard to the execution of the Settlement Deed dated 11.04.2011 and other documents by the Claimant under coercion, duress or pressure of the Respondent, is answered

against the Claimant. It is held that the settlement documents were executed by the Claimant voluntarily with a view to finally settle its account with the Respondent.

41. In view of the Settlement between the parties dated 11.04.2011 which had resolved all the disputes between the parties; nothing remained due to the Claimant from the Respondent and as such the Claims filed by it before this Tribunal are neither maintainable nor arbitrable”.

7. The reading of the above shows that the Arbitrator has duly taken into account the correspondence that were exchanged between the parties leading up to the Settlement Agreement dated 10.04.2011. As noted above, work for an amount of Rs. 16,48,14,449/- had been awarded by the respondent to the petitioner. It is true that the petitioner in its letters had complained of default on the part of the respondent, however, the contract was finally foreclosed on 11.05.2010. Though it is submitted by the counsel for the petitioner that the Letter of Foreclosure dated 10.05.2010 was taken under coercion by the respondent on 11.05.2010 and for this purpose he draws my attention to the cutting of the date of the said letter, the date 10.05.2010 is also mentioned under the signature of the Sr.G.M. (Contracts) of the petitioner. In any case, the subsequent letters written by the petitioner do not show that the petitioner protested against such foreclosure of the Agreement.

8. The petitioner further submits that even the Indemnity-Cum-Undertaking dated 11.05.2010 had gotten executed from it by exercising coercion inasmuch as, not only the petitioner was under financial duress, but also there were allegations of physical threats to the directors of the

petitioner. The fact remains that the petitioner in its subsequent correspondence, lasting for almost one year, for making its claims against the respondent, had relied upon this Indemnity-Cum-Undertaking. I do not, therefore, find any force in the submission of the petitioner. Some of the terms agreed under the Indemnity-Cum-Undertaking are reproduced herein:-

“WHEREAS the indemnifier has expressed its inability to proceed with the contract and has requested the indemnified vide its letter dated 10th May, 2010 to foreclose the contract and upon the said request, the indemnified has agreed to foreclose the contract vide its letter dated 11th May, 2010.

WHEREAS pending joint measurement of the work in order to ascertain the work completed by indemnifier and the reconciliation of accounts, the Indemnifier has requested the indemnified to release/pay an amount of Rs. 15,00,000/- (Rupees Fifteen Lakhs Only) to settle the accounts with labour/staff, suppliers, sub-contractors etc in respect of the said Contract.

AND WHEREAS on such request the Indemnified has agreed to pay the amount of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) in two installments of Rs.10, 00,000/- (Rupees Ten Lakhs Only) and Rs.5, 00,000/- (Rupees Five Lakhs Only) each to the indemnifier. The Indemnified is handing over a cheque of amount of Rs.10, 00,000/- (Rupees Ten Lakhs Only) vide cheque no. 368046 dated 11th May 2010 drawn on Punjab National Bank, Connaught Place, New Delhi-110001 Branch to the Indemnifier at the time of execution of the present Indemnity cum undertaking.

The balance amount of Rs.5, 00,000/- (Rupees Five Lakhs Only) shall be released and paid by the Indemnified on the Documentary proof shown by the Indemnifier to the Indemnified that the earlier amount of Rs.10,00,000/- (Rupees Ten Lakhs Only) was utilized by the Indemnifier for the purpose meant for as per the Terms of present Deed.

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1. That Indemnifier undertakes to utilize the amount of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) received from the Indemnified, exclusively to settle the accounts with labour/staff, suppliers, sub-contractors etc and that the amount shall be utilized for the said purpose only.

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6. That the Indemnifier undertakes that it shall fully co-operate with the Indemnified for joint measurements, reconciliation of RMC and steel and shall assist the Indemnified to prepare the Final Bill. The Indemnifier undertakes that it shall assist the Indemnified in order to ensure that the joint measurements, reconciliation of RMC and steel and the final bill is prepared/completed within 30 days from the date of the present deed. The Indemnifier agrees, understands and undertakes that it shall receive the payments as per joint measurements and as per the terms and conditions of the Contract within 20 days after the signing of the final bill. The Indemnifier undertakes that it shall not approach the Indemnified with any request for release of any further amount before the terms and procedure, as stated herein above, are completed and fulfilled”.

9. Reading of the above Indemnity-Cum-Undertaking would show that the amount of Rs. 15 lakhs was released to the petitioner to settle the cost of labour/staff, suppliers, sub-contractors etc. It had been further agreed that a joint measurement of the work and reconciliation of accounts will be done

for preparation of the final bill. As noted above, by subsequent letters, the petitioner had made claims, relying upon this Indemnity-Cum-Undertaking and therefore, cannot turn around to now contend that the same was taken from the petitioner under duress and coercion.

10. By the e-mail dated 12.08.2010 the petitioner has claimed Rs. 33,24,311/- for the “Tower Area” and Rs. 6,73,187/- for “Non-Tower Area” making a total of approx Rs. 40 Lakhs. The e-mail records that these final bills were submitted with the respondent on 27.06.2010. What is to be noted is that the letter thanked the respondent for its cooperation in the month of May, 2010, leave alone making any protest of getting any documents signed under coercion.

11. This brings me to the Deed of Settlement dated 11.04.2011. The Deed of Settlement is accompanied with an affidavit of the Director of the petitioner as also an Indemnity Bond executed by him on behalf of the petitioner. It is of some relevance to note that under the said Settlement Agreement only an amount of Rs. 3,07,491/- was found due and payable by the respondent to the petitioner. Surely, the petitioner could not have been in such grave financial distress, so as to agree to sign this Deed of Settlement only for a meager amount of Rs. 3,07,491/-. The fact that petitioner protested against the settlement on credit of amount of Rs. 3,07,491/- in its bank account is of no consequences.

12. In the *National Insurance Company Limited Vs. Boghara Polyfab Private Limited*, AIR 2009 SC 170, Supreme Court considering the consequences of discharge of a contract had held that where a contract has been fully performed, there is a discharge of a contract by performance, and

the contract comes to an end. Whether the contract has been discharged by performance or not is a mixed question of facts and law. Where both the parties to a contract confirm in writing that the contract has been fully and finally discharged by performance of all obligations and there are no outstanding claim or disputes, the agreement by which the original obligation is discharged is the 'accord' and the discharge of the substituted obligation is 'satisfaction'. A contract can be discharged by the same process by which it is created i.e., by Mutual Agreement. A contract may be discharged by the parties to the original contract, either by entering into a new contract in substitution of the old contract or by acceptance of performance of modified obligation in lieu of the obligation stipulated in the contract. After referring to various judgments of the Supreme Court, ***Boghara Polyfab Private Limited*** (Supra) held as under:-

“52. Some illustrations (not exhaustive) as to when claims are arbitrable and when they are not, when discharge of contract by accord and satisfaction are disputed, to round up the discussion on this subject are:

- (i) A claim is referred to a conciliation or a pre-litigation Lok Adalat. The parties negotiate and arrive at a settlement. The terms of settlement are drawn up and signed by both the parties and attested by the conciliator or the members of the Lok Adalat. After settlement by way of accord and satisfaction, there can be no reference to arbitration.*
- (ii) A claimant makes several claims. The admitted or undisputed claims are paid. Thereafter negotiations are held for settlement of the disputed claims resulting in an agreement in writing settling all the pending claims and disputes. On such settlement, the amount agreed is paid and the contractor also issues a discharge voucher/no-*

claim certificate/full and final receipt. After the contract is discharged by such accord and satisfaction, neither the contract nor any dispute survives for consideration. There cannot be any reference of any dispute to arbitration thereafter.

- (iii) *A contractor executes the work and claims payment of say rupees ten lakhs as due in terms of the contract. The employer admits the claim only for rupees six lakhs and informs the contractor either in writing or orally that unless the contractor gives a discharge voucher in the prescribed format acknowledging receipt of rupees six lakhs in full and final satisfaction of the contract, payment of the admitted amount will not be released. The contractor who is hard-pressed for funds and keen to get the admitted amount released, signs on the dotted line either in a printed form or otherwise, stating that the amount is received in full and final settlement. In such a case, the discharge is under economic duress on account of coercion employed by the employer. Obviously, the discharge voucher cannot be considered to be voluntary or as having resulted in discharge of the contract by accord and satisfaction. It will not be a bar to arbitration.*
- (iv) *An insured makes a claim for loss suffered. The claim is neither admitted nor rejected. But the insured is informed during discussions that unless the claimant gives a full and final voucher for a specified amount (far lesser than the amount claimed by the insured), the entire claim will be rejected. Being in financial difficulties, the claimant agrees to the demand and issues an undated discharge voucher in full and final settlement. Only a few days thereafter, the admitted amount mentioned in the voucher is paid. The accord and satisfaction in such a case is not voluntary but under duress, compulsion and coercion. The coercion is subtle, but very much real. The “accord” is not by free*

consent. The arbitration agreement can thus be invoked to refer the disputes to arbitration.

- (v) *A claimant makes a claim for a huge sum, by way of damages. The respondent disputes the claim. The claimant who is keen to have a settlement and avoid litigation, voluntarily reduces the claim and requests for settlement. The respondent agrees and settles the claim and obtains a full and final discharge voucher. Here even if the claimant might have agreed for settlement due to financial compulsions and commercial pressure or economic duress, the decision was his free choice. There was no threat, coercion or compulsion by the respondent. Therefore, the accord and satisfaction is binding and valid and there cannot be any subsequent claim or reference to arbitration.”*

Illustration (ii) and (v) given in para 52 of the above judgment, in my view, would be fully applicable to the present petition.

13. In ***Union of India and Others Vs. Master Construction Company***, (2011) 12 SCC 349, the Supreme Court held that a bald plea of fraud, coercion, duress or undue influence is not enough. Para 23 of the judgment is quoted herein below:

“The present, in our opinion, appears to be a case falling in the category of exception noted in Boghara Polyfab (P) Ltd. (p. 284, para 25). As to financial duress or coercion, nothing of this kind is established prima facie. Mere allegation that no-claim certificates have been obtained under financial duress and coercion, without there being anything more to suggest that, does not lead to an arbitrable dispute. The conduct of the contractor clearly shows that “no-claim certificates” were given by it voluntarily; the contractor accepted the amount voluntarily and the contract was discharged voluntarily”.

14. In *New India Assurance Company Limited Vs. Genus Power Infrastructure Limited* (2015) 2 SCC 424, Supreme Court relied upon the above judgments and reiterated that a bald plea of fraud, coercion, duress or undue influence is not enough to undo the Settlement Agreement. In the facts of that case the Court rejected the plea of undue influence and coercion holding as under:-

“In our considered view, the plea raised by the respondent is bereft of any details and particulars, and cannot be anything but a bald assertion. Given the fact that there was no protest or demur raised around the time or soon after the letter of subrogation was signed, that the notice dated 31.03.2011 itself was nearly after three weeks and that the financial condition of the respondent was not so precarious that it was left with no alternative but to accept the terms as suggested, we are of the firm view that the discharge in the present case and signing of letter of subrogation were not because of exercise of any undue influence. Such discharge and signing of letter of subrogation was voluntary and free from any coercion or undue influence. In the circumstances, we hold that upon execution of the letter of subrogation, there was full and final settlement of the claim. Since our answer to the question, whether there was really accord and satisfaction, is in the affirmative, in our view no arbitrable dispute existed so as to exercise power under Section 11 of the Act. The High Court was not therefore justified in exercising power under Section 11 of the Act”.

15. In the present case, as noted above, the settlement process between the parties started with the execution of the Indemnity-Cum-Undertaking on 11.05.2010 culminating into a Deed of Settlement dated 11.04.2011 i.e., for a period more than one year. The amount involved in the Indemnity-Cum-Undertaking and the final Settlement Agreement cannot be said to be such

that would justify a presumption of undue influence and coercion being exercised on the petitioner for executing the same. The correspondence addressed by the petitioner to the respondent between the two agreements also does not even give a hint of any coercion being exercised upon the petitioner. It may be true that the petitioner was under some financial stress and wanted its payments to be released expeditiously, however, this alone cannot be a proof of coercion and undue influence.

16. In any case, this Court in exercise of its power under Section 34 of the Arbitration and Conciliation Act, 1996 cannot act as a Court of appeal. In *Associate Builders vs. Delhi Development Authority*, (2015) 3 SCC 49, Supreme Court reiterated that none of the ground mentioned under Section 34 allows the Court to act as a Court of appeal or to correct errors of facts.

17. In my view, the petitioner has been unable to make out any ground that would persuade me to conclude that the Arbitral Award is in any manner arbitrary or perverse.

18. In view of the above I find no merit in the present petition. The same is accordingly dismissed with no order as to costs.

NAVIN CHAWLA, J

DECEMBER 21, 2017/rv