



\$~30

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ O.M.P. (COMM) 205/2024  
M/S PRADEEP VINOD CONSTRUCTION CO. .... Petitioner

Through:

versus

UNION OF INDIA ..... Respondent

Through: Ms.Pratima N Lakra CGSC(VC) with  
Mr. Chandan Prajapati, Advs.

**CORAM:**  
**HON'BLE MR. JUSTICE DINESH KUMAR SHARMA**

**ORDER**

**07.05.2024**

%

**I.A. 10279/2024 (exemption)**

Exemption is allowed subject to all just exceptions.

**O.M.P. (COMM) 205/2024**

1. The present objection petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 against the award dated 08.02.2024.
2. The facts as briefly stated in the petition are that the Respondent invited open tenders for work for construction of Office Building and Rest House at New Delhi. Pursuant to its bid submission, the petitioner was awarded the subject work vide an acceptance letter 74-W/1/Misc./TKJ dated 25.01.2012 with a completion period of fifteen months i.e., the work awarded was to be completed by 24.04.2013. The petitioner also submitted the performance bank guarantee dated



16.02.2012 amounting to Rs 28,82,410.00 bearing no. 00505112 BG0003525 issued by State Bank of India, Parliament Street, New Delhi. Subsequently, the work agreement was executed on 13.06.2012 which was to be governed by the General Conditions of Contract-1999, which inter-alia provided for settlement of disputes by way of arbitration. However, in view of the work not being completed in the stipulated period of time, the deadline for completion was extended up to 15.09.2019 under clause 17A(i)&(iii) of GCC-1999 i.e., on railway's ground.

3. The petitioner submits that there were several letters sent to the respondent wherein they have registered their grievances with respect to the issues. Further disputes arose out of the no claim certificate required by the Respondent. The parties also entered into a Supplementary agreement on 15.05.2019 which was executed on 23.05.2019. Such disputes led to the petitioner invoking arbitration vide letter dated 18.07.2019. Consequently, the coordinate bench of this court allowed the Arbitration Petition no. 683/2019 vide order dated 22.03.2022 and appointed the sole Arbitrator to adjudicate the disputes inter se the parties. Learned sole arbitrator passed the impugned arbitral award dated 08.02.2024. The arbitral award dated 08.02.2024 is mainly challenged on the grounds of being against the public policy of India and that the same has ignored certain vital evidence placed on record such as the petitioner's protest letters against the no claim and signing of supplementary agreement.
4. It is submitted that the tribunal has not correctly adjudicated the issue no.3 i.e. *"Whether the claims are not maintainable in view of*



*supplementary agreement executed by the claimant? OPR” in such that clause 9.8 of the agreement has not been appreciated as the same provides for the execution of supplementary agreement only after payment of the entire dues of the contractor, which requirement was overlooked by the tribunal especially in view of the fact that the Petitioner had already paid Rs. 1,10,69,914/- which should have been released prior to signing of supplementary agreement.*

5. It is further submitted that the ‘no claim certificate’ obtained by the respondent does not hold any ground as the Clause 64 of GCC provides for settlement of disputes through Arbitration. Learned counsel for the petitioner has also submitted that the present case is distinguishable from ***M/s AKG Infrastructure vs Union of India (Arb P 257/2019)*** and ***M/s Conarch Associates Vs Union of India (Arb P 258/2019)***, wherein allegedly an identical award has been granted.
6. I have heard all submissions.
7. The scope of the enquiry that a court may undertake under the jurisdiction of Section 34 is well defined by a Catena of judgements of the Apex court and coordinate benches of this court. This court cannot exercise any appellate jurisdiction at this stage and must confine itself to the grounds as mentioned in Section 34 of the Arbitration and Conciliation Act which are very clear. The Supreme Court further elucidated upon the scope of the court’s powers under Section 34 in ***PSA SICAL Terminals (P) Ltd. v. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin***, 2021 SCC OnLine SC 508, where it was inter-alia held that:

*“43. It will thus appear to be a more than settled legal position,*



*that in an application under Section 34, the court is **not** expected to act as an **appellate court and reappreciate the evidence**. The scope of interference would be limited to grounds provided under Section 34 of the Arbitration Act. The interference would be so warranted when the award is in violation **of “public policy of India”**, which has been held to mean **“the fundamental policy of Indian law”**. A judicial intervention on account of interfering on the merits of the award would not be permissible. However, the principles of **natural justice** as contained in Section 18 and 34(2)(a)(iii) of the Arbitration Act would continue to be the grounds of challenge of an award. The ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the **“most basic notions of morality or justice”**. It is only such arbitral awards that shock the conscience of the court, that can be set aside on the said ground. An award would be set aside on the ground of **patent illegality** appearing on the face of the award and as such, which goes to the roots of the matter. However, an illegality with regard **to a mere erroneous application of law would not be a ground for interference**. Equally, reappreciation of evidence would not be permissible on the ground of patent illegality appearing on the face of the award.”*

8. Hence, the principles governing the grounds that may be entertained under Section 34 are well-settled. Moreover, in order to address the contentions raised by the petitioner, it is pertinent to peruse the impugned arbitral award dated 08.02.2024. The relevant portions of the same are as follows:

*“161. I am of the view that the legal position, as can be culled out from the judgments referred to hereinabove, is that the plea taken by a party that a document, agreement, certificate has been signed under coercion, duress or fraud or undue influence is a question of fact which has to be proved by a party who sets up such a plea. A bald plea of coercion, duress or fraud or undue influence cannot be accepted without any proof. If such a plea that a document,*



*agreement, certificate etc. was obtained by coercion, duress or fraud or undue influence is taken by a party then the court or arbitral tribunal, as the case may be, will first decide the veracity of such a plea and if the court or arbitral tribunal comes to a conclusion that such a plea has remained unproved and documents were signed/executed voluntarily and there was a valid discharge of contract, it will refrain from examining the claims on merits and to reject the claims as not maintainable; however if the court or arbitral tribunal comes to the conclusion that such documents have been signed under coercion, duress or fraud or undue influence, then it will proceed to examine and decide the claims on merit.*

*162. In the backdrop of the above settled legal position now I proceed to examine the merits of the stand taken by the claimant that S.A., final bill, final PVC bill etc. were signed and 'no claim certificate' was appended under protest and under pressure or duress or were signed/executed/issued voluntarily resulting in valid discharge of the contract.*

*xxx*

*167. A perusal of the above quoted documents clearly show that the same have been signed by the claimant's representative without any demur and protest. At the bottom of the final bill the claimant has written in his hand above his signatures thus "measurement accepted. No claim" in as much claimant's representative has signed the "No claim certificate".*

*168. Learned counsel for the claimant has placed on letters dated 21.08.2018, 02.02.2019, 22.02.2019, 01.05.2019 and 26.06.2019 to buttress his arguments that the documents, that is, SA and 'No Claim Certificate' were signed under protest. I have gone through these letters but do not find much force in the contention of the learned counsel in this regard. Letters dated 02.02.2019 and 22.02.2019 do not refer to the execution of SA and 'No claim Certificates' and are in the different context. Less said is better about the letter dated 21.08.2018, since as on that day even works under the contract were not completed, therefore process of closure of contract was not in the offing. Admittedly, the extension was applied and granted by the respondent, whereby DOC was extended till 15.09.2018. The contract was completed only on 15.09.2018. This letter appears to has been created as a paper*



*trail. Similarly, the letter dated 01.05.2019, written about three weeks prior to execution of SA and 'No claim certificate'.', will be sufficient to hold that these documents were executed/signed under protest. No letter was written immediately after 22.05.2019, when the documents were executed, that same were signed under duress and under protest. In fact the letters written thereafter are silent in this regard. In the letter dated 26.06.2019 no such protest has been recorded. There is no whisper in this letter that SA was executed and 'no claim certificate' was given under duress and coercion. It is further noted that even in the letter written on 12<sup>th</sup> July 2019 it is not alleged that aforesaid documents were executed/signed due to coercion and with protest.*

*169. It is noted here that not only on the documents any demur or protest has been recorded by the claimant's representative by making an endorsement to this effect; but at the same time no independent letter was written immediately after such documents were signed by the claimant to the respondent, that the S.A. and 'No Claim Certificate' were signed under protest and due to coercion, duress or pressure exerted by the respondent.*

*170. No cogent and convincing evidence has been lead by the claimant that the Supplementary Agreement and 'No Claim Certificate' were signed by the claimant under economic or financial duress. On the contrary from the documents reproduced hereinabove it is clear that the same were signed by the claimant's partner*

*voluntarily and of its own free will and accord. It is further noted that from the Audit reports placed on record by the claimant it is clear that the claimant had all along been earning profits during the assessment years 2014-2015 to 2020-2021 and was not running in losses. It can't be, thus concluded that the claimant had executed/signed these documents under the financial duress.*

*xxx*

*172. In the light of above discussion, I am of the view that the claimant having accepted measurements and final bills and given no claim certificate and having received the amount in full of its own understanding, accord and satisfaction now can not take a turn around and raise claims; more particularly having signed the*



*Supplementary Agreement without any demur and protest and of its own fee will has given discharge of the original agreement including the arbitration clause and is debarred from raising any claim, in respect of the works done under the original contract, which stands superceded by the Supplementary Agreement 173. This issue, accordingly, decided in favour of the respondent and against the claimant.”*

9. A perusal of the award as reproduced herein above demonstrates that the learned arbitrator has deliberated upon all contended points quite meticulously. The award on the face of it is well-reasoned and finds footing in records and reports as admitted in evidence by the parties. The tribunal has gone into examination of the letters of protest, and the ground of coercions and found them to be baseless in view of the claimant's Audit reports and lack of independent letter claiming coercion or duress being applied in their signing of the documents.
10. As stated, the court can interfere in an arbitral award only if the same was induced or affected by fraud or corruption or was in violation of Section 75 and Section 81 of the Arbitration and Conciliation Act. The award may also be set aside if it is in conflict with the fundamental policy of Indian law or if it is in conflict with the most basic notions of the morality or justice. I find that none of the grounds as stipulated under Section 34 have been fulfilled and this court is satisfied that the impugned arbitral award is sound.
11. Hence, the present petition stands dismissed.

**DINESH KUMAR SHARMA, J**

**MAY 7, 2024**

*Pallavi*