IN THE HIGH COURT AT CALCUTTA
COMMERCIAL Division
ORIGINAL SIDE

BEFORE :-
THE HON'BLE JUSTICE SHAMPA SARKAR

AP-COM -96 of 2025

Vijeta Projects and Infrastructures Limited
Vs.
Engineering Projects (India) Limited

For the Applicant/Award holder : Mr. Kishore Datta, Sr. Adv. Ld. AG.
Mr. Altamas Alim, Adv.
Mr. Ankit Agarwalla, Adv.
Ms. Arpita Paul Biswas, Adv.
Ms. Alotriya Mukherjee, Adv.

For the Respondent : Mr. Jayanta Kumar Mitra, Sr. Adv.
Mr. Arnab Chakraborty, Adv.
Ms. Pragya Bhowmick, Adv.
Ms. Rimi Mondal,Adv.
Mr. Banani Samanta, Adv.

Judgment Reserved on : 28.08.2025

Judgment Delivered on : 19.09.2025

Shampa Sarkar, J.

1. This is an application under section 36(2) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'said Act'), for unconditional stay of the award passed by the learned Arbitral Tribunal dated June 17, 2024. The award was passed in connection with differences and disputes which arose between the parties in respect of a tender dated April 11, 2012. The contract was for construction of an administrative complex, training centre, guest house, residence for directors, assistant

directors, support staff, junior and senior officers and support can training facilities for the Bihar Police Academy.

2. According to Mr. Kishore Dutta, learned senior Advocate who appeared on behalf of the petitioner, the award was perpetuated by fraud. The award also suffered from perversity and patent illegality. The counter-claims of the respondent were allowed without any supporting evidence. The claims were not proved. The petitioner examined three witnesses, whereas, the respondent examined only one. The petitioner claimed that an award be passed for a sum of Rs. 87,97,29,242/- along with interest at the rate of 24.75% per annum, from the date of the award till the date of payment for *pendente lite* and post-award interest, cost of the proceedings and further reliefs as the arbitral Tribunal deemed fit and proper. The prayers were as hereunder :-

> "*11. The petitioner in the statement of claim ad made the following prayers:*
>
> *a. An award for a sum of Rs. 81,97,29,242/- as pleaded in the paragraph and also detailed in letter 'C' hereof;*
> *b. An award for interest @24.75% per annum on and from the date of award till payment is made;*
> *c. Pendente lite and post award interest;*
> *d. Costs of the proceedings;*
> *e. Further and/or other reliefs as this Learned Tribunal may deem fit and proper;*"

3. In the statement of claim, the petitioner projected itself to be a well-known engineering and construction company, primarily engaged in construction of irrigation and water supply projects, dams, barrages, pump houses, canals etc. The annual turnover of the petitioner was in excess of Rs. 250 crores.

4. The respondent filed a statement of defence, inter alia, denying the claims and also filed a counter-claim, as hereunder :-

> "…
> *a. "Pass an order inter alia rejecting all claims of the claimant in limine;*
> *b. Pass an award in favour of the respondent inter alia directing the claimant to pay an amount of Rs. 1,46,71,34,397/- (as claimed by the respondent in its counterclaims which are more particularly mentioned in Volume 2 of this SOD) along with;*
> *c. Pass an award for interest @24% on and from the date of award till payment is made;*
> *d. Pendente lite and post award interest;*
> *e. Costs of the proceedings;*
> *f. Pass such order or further order as this Learned Tribunal may fit and proper;"*

5. According to Mr. Datta, a formal agreement was executed between the parties on July 24, 2012. The agreement was a concluded contract, which incorporated and referred to various documents which formed part of the same. The documents referred to in the contract were as follows :-

> "*Instructions to Tenderers and General Conditions of Contract;*
>
> *i. Addendum to Instructions to Tenderers;*
> *ii. Memorandum;*
> *iii. Additional Conditions of Contract;*
> *iv. Integrity Pact;*
> *v. Drawings;*
> *vi. Bihar Police Building Construction Corporation Documents;*
> *vii. Price Bid/Bill of Quantity;*
> viii. *All corrigendum and Addendum;"*

6. It was urged that, the documents governed the contract and that, the additional conditions of the contract were to prevail over the general terms and conditions. The contract provided for reciprocal obligations and the obligations of the respondent were as follows :-

> " *i. Handing over proper site which was to be at level with adjoining road;*
>
> *ii. Making timely payments;*

iii. Approval and issuance of drawings on time;

iv. Payment of mobilization advance within one month from the date of issuance of the letter of intent;"

7. The petitioner claimed to have furnished a performance bank guarantee to the tune of Rs. 2,45,14,000/-. The petitioner also furnished a further bank guarantee for Rs. 13,48,24,000/-. The petitioner also claimed to have duly mobilised men and machinery, and kept the respondent on notice. It was alleged that, although the respondent was under an obligation under the contract to pay mobilisation charges to the tune of Rs. 12.25 crores or 10% of the contract amount in two equal instalments in advance, the said amount was paid to the petitioner much later, i.e. on August 29, 2012 and September 30, 2012. It was also contended that, the contract stipulated completion within 22 months, but time was never the essence. Several delays had taken place at the end of the respondent and six extensions were granted. According to the petitioner, 53% of the work for value of Rs. 65.5 crores had been completed. Such fact would be evident from the measurement book. However, the measurement book was not produced before the arbitral Tribunal. Mr. Datta contended that, an adverse presumption should have been drawn as the burden was on the respondent to disclose the said measurement book. The measurement book was within the exclusive possession of the respondent. The respondent failed to disclose the measurement book despite demands for production during cross-examination of the witness for the respondent. Deliberate withholding of the said measurement book from the Tribunal, was also an instance of suppression of material evidence, which would amount to practising fraud

upon the Tribunal. Mr. Dutta alleged that the learned Tribunal failed to take into account such suppression and erroneously denied the legitimate claim of the petitioner. In the course of cross-examination, the petitioner's witness no. 3 in response to question no. 98, had deposed that, 53% of the work had been completed by the petitioner and the said fact would be recorded in the measurement book. In answer to question no. 173, it was stated by the petitioner's witness no. 3 that, joint measurement was carried out. In his cross-examination the respondent's witnesses accepted that the measurement book had not been disclosed in the proceeding. The learned Tribunal had failed and neglected to consider the above deposition of the parties and had proceeded in a partial and biased manner, thereby, allowing some of the counter-claims and rejecting the claim of the petitioner in toto. It was submitted that the letter dated July 14, 2017, the contents of which are quoted below, were admissions that part of the work had been completed by the petitioner.

> "…..
> *a) Final Bill (containing 114 pages) for a sum of Rs. 5,64,88,075/- was prepared on the basis of Joint Measurement Sheets (containing 4 volumes – 1696 pages) duly signed by engineers of BPBCC and EPIL submitted by letters dated July 3, 2017 and July 12, 2017;"*
> *b) Joint Measurement done with BPBCC Engineers to be submitted shortly by the respondent;*
> *c) Claims for executed work to be submitted separately;*
> *d) Asking for release of payment on priority;*
> e) *Work Done as per Abstract Sheet Rs. 74,00,63,351.66/- total work done – Rs. 68,35,75,276.99/- paid upto 33rd RA Bill = Rs. 5,64,88,075/- outstanding;"*

8. It was further urged that, the work was disrupted due to various reasons, which were not attributable to the petitioner. Moreover, the

respondent being an agent of Bihar Police Building Construction Corporation (BPBCC), a Government of Bihar undertaking, could not have preferred any counter-claim in its individual capacity. BPBCC was described as the owner in the subject contract. The respondent could not contest the proceeding in its individual capacity. The participation of the respondent in the arbitral proceeding initiated by the petitioner, was violative of Section 230 of the Indian Contract Act, 1872. The termination of the contract at the behest of the respondent was illegal, wrongful, null and void. BPBCC was the owner. BPBCC had awarded the contract to the respondent and the respondent had awarded the contract to the petitioner to carry out the works which were awarded by BPBCC to the respondent.

9. It was further contended that, the award was vitiated as it was perpetuated by fraud and misrepresentation. The respondent suppressed vital information and materials from the Tribunal. In another arbitration proceeding between the respondent and BPBCC, the respondent admitted receiving substantial amount from BPBCC on account of the work done. The petitioner being the sub-contractor was entrusted with the self same work and was thus, entitled to a major part of the money received by the respondent from BPBCC. The counter-claim against the petitioner was hit by the doctrine of unjust enrichment. The respondent had admitted to have received substantial payment for the work done. Such work had actually excluded by the petitioner as the sub-contractor. Had such facts been brought on record, the counter claims would not have been allowed.

10. The crux of the argument of Mr. Datta was that, the respondent had made diverse statements in its arbitral proceeding against BPBCC regarding

receipt of payments from BPBCC, on account of the work executed by the petitioner. Whereas, in the statement of defence, it was contended by the respondent that due to delay in the execution of the work by the petitioner, BPBCC had terminated the contract with the respondent and had not paid the pending RA Bills. The respondent adopted contrary stands. The counter-claim should not have been allowed. In the statement of claim filed in the arbitral proceeding against the BPBCC, out of the consolidated claim in respect of 33 RA Bills, to the tune of Rs. 74,00,63,351/-, the respondent claimed Rs. 5,64,88,078/- as outstanding. From the above fact, it could be clearly inferred that the respondent had admittedly received a sum or Rs. 68,35,75,277/-. Such admission by the respondent proved beyond doubt that, the work had been carried out by the petitioner satisfactorily and on account of such work having been executed, the payment of Rs. 68.35 crores had been received from BPBCC. Equity and good conscience demanded disclosure of the parallel arbitral proceeding initiated by the respondent before the arbitral Tribunal against the BPBCC. Had the statement of claim filed in the said proceeding been disclosed, it would be evident that the claim of the respondent against BPBCC and the counter-claim against the petitioner, had overlapped. This was an instance of gross misdemeanour on the part of the respondent. Suppression of the actual payment received from BPBCC, resulted in denial of the rightful claim of the petitioner. The works under the contract awarded by BPBCC to the respondent, were executed by the petitioner as the sub-contractor. Had the petitioner not executed the works, the respondent would not have been paid by BPBCC. The contract price as provided in the agreement dated July 24, 2012, was Rs. 1,22,56,95,908/- and the respondent was only entitled to a service charge from BPBCC, as the agency charges for supervising the work on behalf of BPBCC. From the statement of claim filed in the proceedings against BPBCC, it would become clear that the allegations against the petitioner with regard to the delay in execution of the work were simultaneously levelled against BPBCC. Clearly, the petitioner was not able to complete the work on account of the delay caused by BPBCC with regard to issuance of drawings, issuance of decisions, payment of dues etc. The inconsistent stand taken by the respondent in the two arbitration proceedings was deliberate and misleading. The Tribunal had arrived an incorrect findings, upon being misguided by the respondent's untrue statements and non-disclosure of. material facts. The reasons for termination of the contract of the respondent with BPBCC and consequent termination of the contract between the petitioner and the BPBCC, should have been brought on record, so that the Tribunal could actually understand why the claims of the petitioner were justified. The respondent had admitted in the statement of claim filed in the other arbitral proceeding that work had been done, for which payment had been received. The respondent stated that BPBCC was responsible for non-fulfilment of their obligation in a time bound manner. Such averments would indicate that the claims against the petitioner did not have any foundational basis. The award suffered from patent illegality, which rendered the same as void. Thus, a prayer was made for unconditional stay of the award.

11. Mr. Dutta relied on the following decisions :-

a) ***Venture Global Engineering vs Satyam Computer Services Limited and Anr.*** reported in ***(2010) 8 SCC 660***

b) ***Hindustan Fertilizer Corporation Ltd. Vs Great Eastern Shipping Co. Ltd.*** reported in ***1997 SCC Online Del 493***

c) ***S.P. Singh v. N.B.C.C. New Delhi,*** reported in ***1997 SCC OnLine Del 593***

d) ***Radhakrishna Sivadutta Rai v. Tayeballi Dawoodbhai,*** reported in ***1961 SCC OnLine SC 384***

e) ***S.P. Chengalvaraya Naidu (Dead) by LRS. v. Jagannath (Dead) by LRS and Ors.*** reported in ***(1994) 1 SCC 1***

12. Mr. Jayanta Kumar Mitra, Ld. Senior Advocate submitted that from the very inception the performance of the petitioner was poor and as many as six show cause notices had been issued by the respondent. The consistent poor performances of the petitioner ultimately culminated in the termination of the contract. The dispute between the parties was referred to arbitration, pursuant to an order of this Court in an application under section 11(6).The petitioner was the claimant. The respondent also filed its statement of defence and counter-claim. Upon exchange of pleadings and production of evidence. A detailed hearing was held and the arbitral award was passed. Only four counter-claims of the respondent had been awarded by the arbitral Tribunal. The allegations of non-disclosure of the proceedings against the BPBCC and deliberate suppression of the statement of claim filed in the said proceeding were denied by Mr. Mitra. It was submitted by Mr. Mitra that, in the statement of defence the respondent had specifically stated that the dispute could not be resolved unless the principal employer, BPBCC, was added as a necessary party. It was further averred that the

arbitral proceedings should be dismissed on the ground of non-joinder of necessary party. The respondent stated that, the gamut of the dispute was not restricted to the bipartite agreement between the parties alone. In the rejoinder to the said statement of defence, the categorical statement of the petitioner was that the contract between BPBCC and the respondent was an independent contract and the same had no connection with the subject contract.

13. The petitioner specifically stated that the dispute between the parties arose out of a bipartite agreement. The contract between the petitioner and the respondent had a specific arbitration clause. The execution of the subject contract did not require participation of any third-party. It was further stated that, the respondent could not be said to be claiming or participating through BPBCC and therefore, the question of impleading BPBCC as a necessary party would not rise. The petitioner's clear stand was that the Tribunal did not have any authority to adjudicate the dispute with BPBCC. BPBCC was not a necessary party. BPBCC was not a signatory to the subject contract. Therefore, despite insistence of the respondent to bring BPBCC on record as a respondent, the petitioner objected to the same.The petitioner could not approbate and reprobate at the same time. Reliance was placed on the decision of ***Dwijendra Narain Roy v. Joges Chandra De and Ors,*** reported in ***AIR 1924 Cal 600,*** on the point that it was an elementary rule that a party litigant could not be permitted to adopt inconsistent positions in court, to play fast and slow, to blow hot and cold, to approbate and reprobate.

14. It was urged by Mr. Mitra that, the petitioner had filed an application before the learned Tribunal, inter alia, praying for a direction upon the respondent to produce the statement of claim filed in the arbitral proceedings against BPBCC. Upon hearing the parties, the said application was disposed of by order dated April1, 2021 and the prayer was rejected. The Tribunal was of the view that it would not be proper to direct the respondent to produce the statement of claim filed in a proceeding before another forum, especially because the proceeding was pending. No final decision had been rendered with regard to the claim. The petitioner could not be allowed to make a roving enquiry. Therefore, the allegation of the petitioner that the respondent had deliberately suppressed its claims against BPBCC from the present Tribunal, was baseless. The Tribunal's decision was based on the materials on record and would not have been otherwise, even if the statement of claim filed in the other arbitral proceeding had been brought on record. The petitioner's prayer for production of the pleadings of the other arbitral proceeding had been duly considered and rejected with reasons. The Tribunal was alive to the situation and was aware that a parallel arbitral proceeding was going on between the respondent and BPBCC (principal / owner) before another forum with regard to the work in respect of which, the petitioner was engaged as the sub-contractor. The Tribunal did not deem it fit and necessary to proceed to adjudicate the issues relating to the dispute between BPBCC and the respondent. The allegation of fraud was totally baseless and unfounded, according to Mr. Mitra.

15. Mr. Mitra submitted that the contention of Mr. Datta that the Tribunal failed to consider that work for a value of Rs. 74 crores had been executed, was an argument on the merits of the award. The further contention that the Tribunal had allowed the counter-claim to the tune of Rs. 34,14,57,683/-, without giving credit to the petitioner for the work done, were also arguments on merits. While considering the prayer for unconditional stay, the court should not consider the merits of the award. The other contention of the petitioner that, in view of the bar under section 230 of the Indian Contract Act, 1872, the respondent could not have filed a counter-claim against the petitioner, being an agent of BPBCC, was completely misplaced. According to Mr. Mitra, the petitioner sued the respondent independently, on the basis of the arbitration clause contained in the contract dated July 24, 2012. The disputes arose out of the said contract. The petitioner had specifically stated in the rejoinder to the statement of defence that, the contract between the petitioner and the respondent was independent and distinct. BPBCC was neither a necessary nor a proper party to the proceeding. Mr. Mitra also submitted that the contract between the petitioner and the respondent clearly mentioned that the petitioner would execute the works which had been allotted to the respondent by BPBCC. The contract between the parties was independent of the contract with BPBCC. The contract document did not disclose that the said respondent was entering into the contract with the petitioner, either as the agent of BPBCC or on behalf of BPBCC. Mr. Mitra vehemently objected to the prayer for unconditional stay of the award.

16. Considered the rival contentions of the parties. The only question to be determined in this proceeding is, whether the petitioner had been able to prima facie, establish that the contract was liable to be stayed unconditionally in terms of the second proviso to section 36(3) of the said Act. An award can be unconditionally stayed if, either the arbitration agreement or the contract or the award is perpetrated by fraud and corruption. Production of evidence based on forged documents, manipulation of the arbitral proceeding, award being in conflict with Indian law, or award being patently illegal or void or opposed to public, are also some of the other instances when an award can also be unconditionally stayed, as per judicial authorities. The relevant section is quoted below:-

> *"**36(3)** Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:*
> *Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).]*
>
> *Provided further that where the Court is satisfied that a prima facie case is made out that,—*
> *(a) the arbitration agreement or contract which is the basis of the award; or*
> *(b) the making of the award, was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award."*

17. The respondent issued a notice inviting tender on April 11, 2012, for the purpose of construction of an administrative complex, training centre, guest house, residence for directors, assistant directors, support staff, junior and senior officers, support and training facilities, for the Bihar Police Academy. The petitioner submitted its bid at 3% less than the estimated value of Rs. 125.08 crores. The petitioner was the lowest bidder. The

respondent issued the letter of intent on July 13, 2012, for a sum of Rs. 122.56 crores and the contract was concluded. Time for completion of the work was 22 months. To formalise the contract, an agreement was executed on July 24, 2012 between the petitioner and the respondent. The contract incorporated and made reference to various documents which formed part of the contract, namely, i. Instructions to Tenderers and General Conditions of Contract; ii. Addendum to Instructions to Tenderers;iii. Memorandum; iv. Additional Conditions of Contract; v. Integrity Pact; vi. Drawings; vii. Bihar Police Building Construction Corporation Documents; viii. Price Bid/Bill of Quantity; ix. All corrigendum and Addendum;

18. The additional terms and conditions of the contract were to prevail over the general terms and conditions of the contract, which formed part of the original contract of the respondent with BPBCC. The petitioner’s specific case was that, the respondent had reciprocal obligations with regard to the performance of the contract, but had failed to discharge such obligations. The petitioner duly furnished a performance bank guarantee to the tune of Rs. 2,45,14,000/-.

19. The petitioner also furnished a bank guarantee for Rs. 13,48,24,000/. The petitioner alleged that, upon issuance of LOI, the men and machinery had been mobilised and the petitioner had to pay advance to the tune of Rs. 12.25 crores. According to the petitioner, the respondent failed and neglected to provide the “good for construction” drawing within time and delayed considerably in approving such drawings. Due to such delay and other hindrances, it was not possible for the petitioner to perform its obligation. It was found during the initial execution that, several areas were

low lying. The petitioner alleged to have done some of the filling work. The respondent had allegedly represented to the petitioner that the cost for filling the land would be compensated, but the same was not done. Accordingly, the petitioner had to undertake several additional and extra works which were beyond the scope of the contract. Six extensions were granted. The petitioner's version was that the respondent was responsible for the delay and had demonstrated the same by extending the contract. Thus, time was no longer the essence of the contract.

20. The petitioner further contended to have completed 53% of the work for a value of Rs. 65.5 crores approximately, which would be evident from the measurement book. The petitioner alleged that the respondent not only failed to perform its obligations under the contract, but also failed to supply the drawings and designs on time. The payments were not made on time. The petitioner was asked to carry out additional work, approvals for which also were inordinately delayed.

21. According to the petitioner, the respondent was also fully aware of the breach committed by it. Payments for the extra work were promised, but never released. Alleging a delay of 5 years, the respondent terminated the contract and invoked clause 72 of the GCC. The respondent also encashed the bank guarantee. The petitioner issued a letter requesting conciliation. Despite receipt of such letter, the respondent terminated the contract illegally and invoked the bank guarantee. The petitioner invoked the arbitration clause under clause 76.1 of the GCC by a letter dated December 16, 2016, requesting the respondent to nominate and appoint an arbitrator in terms of the arbitration clause. The Tribunal was ultimately constituted

on September 7, 2017. The petitioner contended that an application under the Right to Information Act was issued to BPBCC and BPBCC revealed letters written by the respondent which disclosed that the claims made by the petitioner in the instant proceedings, were similar to the claims made by the respondent against BPBCC, and that the claims overlapped.

22. The petitioner's specific contention was that the respondent was getting the work executed through the petitioner as a sub-contractor and was claiming payment from BPBCC, for the work which had been executed by the sub-contractor. Moreover, the respondent also admitted to have received certain payments for the work actually executed by the sub-contractor. The sub-contractor was to be paid its share from the payments received from BPBCC. Such payments were not made to the petitioner. It was further contended that, the respondent was keeping a mark-up of 11% on the bills of the petitioner and accordingly had raised demands on BPBCC. Such factors would be available from the letters disclosed, which were also part of the evidence. The learned Tribunal had allegedly ignored such evidence. On the above grounds, the prayer for unconditional stay was made.

23. The first contention of Mr. Datta was that, the award was void *ab initio* and a nullity, as it was made in contravention to section 230 of the Indian Contract Act. In this case, the petitioner had entered into a contract with the respondent for carrying out the work awarded by BPBCC. The respondent's contract with the petitioner was independent of the respondent's contract with BPBCC. Even though BPBCC has been mentioned as the owner, the contract does not disclose that the respondent was either entering into the

subject contract on behalf of BPBCC, or that the respondent was acting as the agent of BPBCC. It appears that the respondent had independently awarded the work to the petitioner, by an independent tendering process. The relevant portions of the contract are quoted below, which would indicate that the subject contract was independent of BPBCC.

> *"This agreement made on 24/07/2012, between THE ENGINEERING PROJECTS- (INDIA) LIMITED (EPI), (A Govt of India Enterprise) a company incorporated under the Companies Act, 1956 having its Registered and Corporate Office at Core-3, Scope Complex, 7, Institutional area, Lodhi Road, New Delhi : 110003 (hereinafter referred to as the "EPI" which expression shall include its administrators, successors, executors and assigns) of the one part and M/s Vijeta Projects & Infrastructures Ltd, West Morabadi Maidan, Ranchi, Jharkhand 834008, (hereinafter referred to as the 'Contractor' which expression shall unless the context requires otherwise include its administrators, successors, executors and permitted assigns) of the other part*
>
> *WHEREAS, EPI, is desirous of Construction of Administrative Complex, Training Centre, Guest House, Residence of Director, Assistant Director and supporting staff, Jr. and Sr. Officer Mess, Public Bullding Sports and training fields including site development work to make Academy functional and other green building related works for Construction of Bihar Police Academy, Rajgir, District Nalanda (Bihar), (hereinafter referred to as the "PROJECT"). on behalf of the BIHAR POLICE BUILDING CONSTRUCTION CORPORATION (hereinafter, referred to as OWNER"), and had invited Tenders as Tender Documents vide NIT No: DLI/CON/633/329 DATED 11.04.2012.*
>
> *AND WHEREAS M/s. Vijeta Projects & Infrastructures Ltd. had participated in the above referred Tender vide their Letter dated 27.04. 2012 and EPI has accepted their aforesaid Tender and award the contract for 'Construction of Administrative Complex, Training Centre, Guest House, Residence of Director, Assistant Director and supporting staff, Jr. and Sr. Officer Mess, Public Building, Sports and training fields including site development work to make Academy functional and other green building related works for construction of Bihar Police Academy, Rajgir, District Nalanda (Bihar) on the terms and condition contained in its Letter of Intent No. DLI/CON/633/329 DATED 13.07.2012 and the documents referred to therein, which have been unequivocally and unconditionally accepted by M/s Vijeta Projects & Infrastructures Ltd. Vide their Letter of Undertaking dated 26.04.2012 resulting into a contract.*
>
> *NOW THEREFORE THIS DEED WITNESSETH AS UNDER:*
>
> *ARTICLE 1.0 - AWARD OF CONTRACT*
>
> *1.1 SCOPE OF WORX*
>
> *EPI has awarded the contract to M/s Vijeta Projects & infrastructures Ltd. for the work of 'Construction of Administrative Complex, Training Centre, Guest House, Residence of Director, Assistant Director and supporting staff, Jr. and*

Sr. Officer Mess, Public Building, Sports and training fields including site development work to make Academy functional and other green building related works for Construction of Bihar Police Academy, Rajgir, District Nalanda (Bihar) on the terms and conditions in its Letter of Intent No. DLI/CON/633/329 DATED 13.07.2012 and the documents referred to therein. The award of work has taken effect from 13.07.2012 i.e., the date of issue of aforesaid letter of intent. The terms and expressions used in this agreement shall have the same meanings as are assigned to them in the "Contract Documents" referred to in the succeeding Article.

ARTICLE 2.0- CONTRACT DOCUMENTS

2.1 The contract shall be performed strictly as per the terms and conditions stipulated herein and in the following documents attached herewith (hereinafter referred to as "Contract Documents”).

a) EPI Notice Inviting Tender vide No. DLI/CON/633/329 DATE 11.04.2012 and EPI's Tender Documents consisting of:

SL No.	Volume	Description
i)	Vol-I	Instructions to Tenderers & General Conditions of Contract
ii)		Addendum to Instructions to Tenderers
iii)		Memorandum
iv)	Vol-2	Additional Conditions of Contract
v)		Integrity Pact
vi)		Drawings
vii)	Vol-3	Bihar Police Construction Corporation Documents- Technical Specifications of BPBCC
viii)	Vol-4	Price Bid/Bill of Quantity
ix)		All Corrigendum & Addendum
x)		EPI’s comments and M/s Vijeta Projects & Infrastructures Ltd.’s Clarification/Confirmation at various stages.

b) M/s Vijeta Projects & Infrastructures Ltd. letter/ proposal No. NIL dated 27.04.2012 including all enclosures and their subsequent communication:

I) Letter of Undertaking of Tender Conditions dated 26.04.2012

II) M/s Vijeta Projects & Infrastructures Ltd.'s Accept and Acknowledgement of the work order vide letter No: NIL dated 13.07.2012

2.2 EPI's detailed Letter of Intent No. DLI/CON/633/329 DATED 13.07.2012 including Bill of Quantities.

Agreed time schedule, Contractor's Personal List and list of Plant and Equipment's submitted by Contractor.

2.3 All the aforesaid contract documents referred to in Para 2.1 and 2.2 above shall form an integral part of this Agreement, in so far as the same or any part thereof conform, to the Tender Documents and what has been specifically agreed to by EPI in Its Letter of Intent. Any matter Inconsistent therewith, contrary or repugnant thereto or deviations taken by the Contractor In its "TENDER" but not agreed to specifically by EPI in its Letter of Intent, shall be deemed to have been withdrawn by the Contractor without any cost implication to EPI. For the sake of brevity, this Agreement along with its aforesaid contract documents and Letter of intent shall be referred to as the "Contract".

ARTICLE 3.0 - CONDITIONS & CONVENANTS

3.1 The scope of Contract, Consideration, Terms of Payments, Advance, Retention Moneys, Taxes wherever applicable, insurance, Agreed Time Schedule, Compensation for delay and all other terms and conditions contained in EPI's Letter of Intent No. DLI/CON/633/329 DATED 13.07.2012 are to be read in conjunction with other aforesaid Contract Documents. The contract shall be duly performed by the Contractor strictly and faithfully in accordance with the terms of this contract.

3.2 The scope of work shall also include all such items which are not specifically mentioned in the Contract Documents but which are reasonably Implied for the satisfactory completion of the entire scope of work envisaged under this contract unless otherwise specifically excluded from the scope of work in the Letter of Intent.

3.3 Contractor shall adhere to all requirements stipulated in the Contract documents.

3.4 Time is the essence of the Contract and it shall be strictly adhered to. The progress of work shall conform to agreed works schedule/contract documents and Letter of Intent.

3:5 This agreement constitutes full and complete understanding between the parties and terms of the presents. It shall supersede all prior correspondence to the extent of inconsistency or repugnancy to the terms and conditions contained in Agreement. Any modification of the Agreement shall be effected only by a written instrument signed by the authorized representative of both the parties

3.6. The total contract price for the entire scope of this contract as detailed in Letter of Intent is Rs. 122,56,95,908/- (Rs. One Hundred Twenty Two Crores, Fifty Six Lakhs, Ninety Five Thousand, Nine Hundred Eight only) which shall be governed by the stipulations of the contract documents."

24. The above conditions and covenants were exclusive to the parties and BPBCC was not bound by any of them. The petitioner has failed to establish before this Court that the award was made in violation of section 230 of the Indian Contract Act and was thus, a nullity. Section 230 of the Indian Contract Act is quoted below :-

> "***230***.*Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.—In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them. Presumption of contract to contrary—Such a contract shall be presumed to exist in the following cases:— (1) where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad; (2) where the agent does not disclose the name of his principal; (3) where the principal, though disclosed, cannot be sued."*

25. This challenge fails and as such, the prayer for unconditional stay on this ground also fails. The respondent did not enter into the contract with the petitioner on behalf of BPBCC. Moreover, it was the petitioner which had initiated the arbitration proceeding against the respondent.

26. With regard to the allegation of suppression of the other arbitral proceeding against the BPBCC, this Court finds that the petitioner had prayed before the Tribunal for production of the relevant statement of claim. Such prayer was rejected. The fact that another arbitral proceeding had been initiated by the respondent against BPBCC, was within the knowledge of the Tribunal, but the learned Tribunal by an order dated April 1, 2021, had decided as follows :-

> *"This Tribunal is of the view that the statement of claim filed by the Respondent in a different arbitration proceeding altogether against BPBCC need not be looked into by this Tribunal and the Claimant is required to prove its case on the basis of the documents produced and the evidence adduced in the present arbitration proceeding. That apart, the statement of claim is a pleading after all and pleadings are susceptible to amendments. Even if a copy of the statement of claim in another arbitration proceeding is directed to be produced in the present arbitration proceeding, it cannot be said with*

finality that such statement of claim stood till the award is made in such different arbitral proceeding. There is no verdict as yet by the Tribunal concerned with regard to the outcome and/or the result of such different arbitral proceeding pending between the Respondent and BBCC and, as such, this Tribunal is of the view that the statement of claim filed by the Respondent against BBCC is not relevant in so far as the present arbitration proceeding is concerned. Even if, for the sake of argument, such statement of claim filed by the Respondent against BBCC is looked into by this Arbitral Tribunal, it will not be proper for this Arbitral Tribunal to make any observation on the same when such statement of claim filed by the Respondent against BPBCC is clearly beyond the purview and jurisdiction of the present Arbitral Tribunal. Thus, to direct that a copy of the statement of claim filed by the Respondent against BBCC in a different arbitral proceeding to be produced in the present proceeding would result in an act without jurisdiction. This Tribunal is not at all in seisin of the arbitration proceeding pending between the Respondent and BBCC and, thus, this Tribunal is of the view that it will not be proper on its part to direct the Respondent to produce a copy of its pleadings filed before another Arbitral Tribunal. Also it has to be remembered that the evidence in the present arbitral proceeding has been closed quite some time back and the learned Advocate for the Claimant has also argued on a number of days before proposing to file the present application under consideration. The most important question in the present discussion is as to whether or not this Tribunal feels it necessary to consider the copy of the statement of claim filed by the Respondent against BPBCC in a different arbitration proceeding. This Tribunal is of the view that it will not be proper to do so and the Claimant cannot be permitted to make a roving enquiry for the purpose of proving its case.

In view of the discussions made above, the application filed by the Claimant for, inter alia, directing the Respondent to produce before this Tribunal a copy of the statement of claim filed by the Respondent against BPBCC in a different arbitral proceeding is dismissed."

27. Thus, this Court does not find that the respondent had deliberately withheld information with regard to the proceedings before another Tribunal and had suppressed the claims made against BPBCC, which if disclosed, would persuade the Tribunal to hold otherwise. The plea of overlapping of the claims of the respondent was considered to be irrelevant for the purpose of adjudication of the dispute between the parties. The learned Tribunal did not deem it fit and necessary to direct the respondent to produce the pleadings of another proceeding and held that the Tribunal neither had the authority nor the jurisdiction to decide the issue. The correctness of such

decision of the Tribunal can be looked into at the stage of hearing the application for setting aside the award.

28. The next contention of Mr. Datta was that, a perusal of the statement of claim filed by the respondent against BPBCC, would clearly disclose the admission of the respondent to the effect that the work had been executed through the sub-contractor and payments had been received. This Court finds that in the statement of defence, the respondent contended as follows:-

> *"(ix) - Further, in the peculiar facts and circumstances of the case, the present reference apropos several claims of the claimant, is not maintainable in the present form nor such dispute can be resolved by way of Arbitration between the parties inasmuch as the Principal Employer viz; Bihar Police Building Construction Corporation, A Government of Bihar Undertaking, is a necessary party in the case. The present reference is not maintainable for non-joinder of necessary party……………………..Therefore the gamut of the dispute in the peculiar facts and circumstances of the case, do not at all restricted within the mere bipartite arrangement between the parties herein."*

29. The petitioner filed a rejoinder and controverted the above pleadings by stating as follows :-

> *"**18.** ….. I state that the contract awarded by BPBCC upon the claimant is an independent contract and has no connection with the contract which the respondent had with the said BPBCC. .*
> *"**19.** ….. I further deny that the present reference is not maintainable for non-joinder of necessary party………….. It is denied that the role and responsibilities of the claimant requires any investigation and that any Principal Employer is required to be impleaded as a Party to the instant arbitral reference, as alleged or at all. It is further denied that the gamut of the dispute between the parties do not remain restricted within the bipartite agreement between the parties hereto as alleged or at all. I state that the present arbitral reference arises out of the Arbitration Clause contained in the contract between the parties before the Ld. Tribunal. The said Arbitration clause as contained in the contract did not include the participation of interference of any third party inasmuch as the contract entered upon as between the said BPBCC and the Respondent and that the contract entered upon by the Claimant with the Respondent are different and independent to each other. Moreover, the Respondent cannot be said to be claiming and/ or participating under and/or through the said BPBCC and therefore, the question of impleading BPBCC as a necessary party to the instant Arbitral proceeding does not arise. The Ld. Tribunal has no power to adjudicate the dispute between the parties and therefore the addition of the said BPBCC is absolutely unnecessary and dehors the agreement between the parties. The Claimant does not claim anything which involves the participation and/or*

contribution of the said BPBCC. Further, the Arbitration Clause as contained in the contract does not cover the dispute which may arise between the parties to the contract with any third party"

30. Thus, from the analysis of the above facts and respective averments of the parties, it cannot be concluded that the respondent deliberately suppressed the proceeding with BPBCC and had misled the Tribunal.

31. Fraud has been defined under the Indian Contract Act as follows :-

*"**17. "Fraud" defined.**—"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent2 , with intent to deceive another party thereto of his agent, or to induce him to enter into the contract:—*
(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
(2) the active concealment of a fact by one having knowledge or belief of the fact;
(3) a promise made without any intention of performing it;
(4) any other act fitted to deceive;
(5) any such act or omission as the law specially declares to be fraudulent."

32. The threshold to prove fraud is very high. The petitioner has to, prima facie, demonstrate that, deliberate suppression and misrepresentation of facts by the respondent, resulted in the making of the award. The petitioner could not establish that there was any collusive act between the respondent and the arbitral Tribunal. In this case, fraud is not, prima facie, available from the face of the records. The allegation of misrepresentation by the respondents is totally misconceived. There was nothing deceitful in the way the respondent conducted itself before the Tribunal. The respondent had submitted before the Tribunal that BPBCC was a necessary party. It was the petitioner's contention that the contract between the respondent and the petitioner was independent of the contract between the respondent and BPBCC. Moreover, the Tribunal had dismissed the application of the petitioner on the ground that, the proceeding between BPBCC and the

respondent was a separate and independent proceeding, which was on going and had not been concluded. As the claim of the respondent had not crystallized, the issue was not relevant. Thus, the questions as to whether the claims overlapped and whether part of the claim of the respondent against BPBCC was to be paid to the petitioner or whether part of the payment received by the respondent from BPBCC was receivable by the petitioner, are all questions on the merit of the award. Whether the arbitral Tribunal erred in rejecting the claims of the petitioner, or whether the proceeding between the respondent and BPBCC was relevant for the adjudication of the dispute between the parties, will be decided in the application under Section 34 of the Arbitration and Conciliation Act, 1996. Whether the award is bad for non-joinder of parties, is also a question on the merits of the award and shall be decided at the appropriate stage.

33. When the Court considers a prayer for unconditional stay of the award, a cursory look at the award should indicate that either the making of the award was perpetuated by fraud or corruption, or that the award was in violation of any law or was based on forged documents, which were used in evidence or there had been violation of the principles of natural justice. Here, the case of the parties were considered, the relevant documents filed by the parties were taken into account, the deposition i.e. the examinations in chief and cross-examinations were also taken into account and the Tribunal came to the conclusion, with reasons. Thus, at this stage, it cannot be said that the Tribunal proceeded illegally and in a fraudulent manner, in making the award. It also does not appear that the Tribunal had been either influenced or misled by the respondent. Unconditional stay of an arbitral

award is a very narrow exception to the general rule that, when an award is for a money decree, stay can only be granted when the 'sum' awarded (principal + interest) is secured. Before the amendment of 2015, mere filing of a petition under Section 34, would automatically stay its enforcement. After the amendment of 2015, which came into effect from October 23, 2015, filing of an application under Section 34 of the said Act, will not by itself operate as a stay of the award. The award debtor has to apply separately for a stay and the Court has the discretion to impose conditions for grant of stay. In case of an award for payment of money, the law mandates that the principles of Civil Procedure Code, shall be taken into consideration. Thus, the principles of Order 41 Rule 5 of the Code of Civil Procedure has been made applicable by law. Order 41 Rule 5 of the Code is quoted below :-

> *"**5. Stay by Appellate Court.—**(I) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.*
> ***(2) Stay by Court which passed the decree.**—Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.*
> *(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied—*
> *(a) that substantial loss may result to the party applying for stay of execution unless the order is made;*
> *(b) that the application has been made without unreasonable delay; and*
> *(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.*
> *(4) 1 [Subject to the provision of sub-rule (3),] the Court may make an ex parte order for stay of execution pending the hearing of the application.*
> *[(5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security*

> *specified in sub-rule (3) of rule 1, the Court shall not make an order staying the execution of the decree.]"*

34. For unconditional stay, a special case has to be made out. Such provision was brought in by the amendment of 2021, which is the second proviso to Section 36(3). The petitioner failed to prove that the making of the award was induced by fraud and corruption. In ***NTPC Limited vs. Voith Hydro Joint Venture,*** decided in ***OMP (COMM) 16/2017 & I.A No. 528/2017,*** the Delhi High Court held that the threshold to establish, prima facie, fraud or corruption was very high. Mere allegations were insufficient and specific credible materials were to be shown. Unless the courts could, prima facie, find evidence of fraud and corruption or violation of any law, the question of unconditional stay did not arise.

35. Fraud would mean a deliberate deception in the arbitral process, which affected the award as a whole. It must be, prima facie, shown that the Tribunal's decision was tainted on account of either suppression or deliberate concealment of material facts or misrepresentation. The Tribunal must be misled into making an award, being influenced by false statements or misrepresentation. It must be shown that the decision was an outcome of collusion between the arbitrators and one of the parties, or that there was witness tampering. None of these instances could be, prima facie, established.

36. Meaning of the expression corruption in the making of the award would be that, the decision of the Tribunal was influenced by illegal gratification or by abuse of power. There are no such allegations of corruption against the Tribunal.

37. In ***Venture Global Engineering vs. Stayam Computer Services Limited and Anr.*** reported in ***(2010) 8 SCC 660,*** fraud was defined in terms of concealment of material fact and misrepresentation. In ***Avitel Post Studioz Limited and Ors. vs. HSBC PI Holdings (Mauritius) Limited.*** reported in ***(2021) 4 SCC 713,*** the Hon'ble Apex Court defined fraud as trickery and concealment of material facts.

38. This Court does not find that the arbitral award was induced by fraud, upon considering the facts and the cited decisions. The award is not vitiated on account of deliberate act of deception by the respondent. The respondent has not secured any unfair and unlawful gain.

39. ***Radhakrishna Sivadutta (supra)*** was referred in aid of the contention of the respondent that the statutory bar under section 230 of the Indian Contract Act, would vitiate the contract. In the facts of the case, as has already been discussed hereinabove, the decision does not have any application. The decision in ***S.P. Chengalvaraya Naidu (supra)*** has been relied upon in connection with the allegation of fraud. This Court does not, prima facie, find that the award was induced by fraud and corruption. In this case, the arbitral Tribunal dismissed the petitioner's application for production of the statement of claim filed by the respondent against BPBCC, in the other proceeding, with reasons. This is not a case of non-disclosure of material evidence before the learned Tribunal. ***Venture Global Engineering (supra)***, has been cited on the issue of concealment of relevant and material facts from the Tribunal. The facts of the said case were completely different and thus the same is not relevant.

40. This court holds that this is not a case for grant of unconditional stay of the award. This court does not find that the making of the award was induced by fraud and corruption.

41. The various contentions of Mr. Datta that, the statement of claim filed in the other proceeding ought to have been brought on record, or that the learned Tribunal had failed to take into account that 53% of the construction allegedly done by the petitioner etc., will be decided in the application under section 34 of the Arbitration and Conciliation Act, 1996.

42. In the decision of ***Karur Vysya Bank vs Srei Equipment Finance Limited*** decided in ***AP-COM 947 of 2024***, this Court had discussed the law relating to unconditional stay as hereunder:-

> *"**25**. The parties made elaborate submissions both for and against the award. The second proviso to Section 36(3) required a primary satisfaction on the part of the court that the making of the award as alleged by the petitioner was induced or affected by fraud or corruption. The award-debtor could seek stay of operation of the award upon discharging the burden of at least, prima facie, showing that the award was induced by fraud or corruption. Fraud and corruption have not been defined in the said Act.*
>
> ***26**. The Oxford dictionary defines fraud as here under :-*
>
> *"/n. 1. Criminal deception; the use of the false misrepresentations to gain an unjust advantage. 2. A dishonest article or trick. 3. A person or thing not fulfilling what is claimed or expected of him, her, or it."*
>
> ***27.** From the legal standpoint Black's law dictionary (9th Edition) defines fraud as here under:-*
>
> *"fraud, n. 1. A Knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. Fraud is usually a tort, but in some cases (es.p when the conduct is willful) it may be a crime. – Also termed intentional fraud."*
>
> ***28.** In the decision of **SP Chengalvaraya Naidu (Dead) By LRs. Vs. Jagannath (Dead) by LRs and other** reported in **(1994) 1 SCC 1,** fraud was defined as here under:-*
>
> *"an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage."*

29. *In **Venture Global Engineering LLP vs. Tech Mahindra Limited** reported in **(2018) 1 SCC 656** deliberation on the meaning of fraud was as follows:-*

"76. The expression "fraud", what it means and once proved to have been committed by the party to the lis against his adversary then its effect on the judicial proceedings was succinctly explained by this Court in Ram Chandra Singh v. Savitri Devi [Ram Chandra Singh v. Savitri Devi, (2003) 8 SCC 319] in the following words : (SCC p. 322b-d)

"Fraud as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by word or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata."

77. Similarly, how the leading authors have dealt with the expressions "fraud", "misrepresentation", "suppression of material facts" with reference to various English cases also need to be taken note of. This is what the learned author Kerr in his book Fraud and Mistake has said on these expressions.

78. While dealing with the question as to what constitutes fraud, the learned author said, "What amounts to fraud has been settled by the decision of House of Lords in Derry v. Peek [Derry v. Peek, (1889) LR 14 AC 337 (HL)]

'… fraud is proved when it is shown that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false."

79. The author has said that, Courts of Equity have from a very early period had jurisdiction to set aside awards on the ground of fraud, except where it is excluded by the statute. So also, if the award was obtained by fraud or concealment of material circumstances on the part of one of the parties so as to mislead the arbitrator or if either party be guilty of fraudulent concealment of matters which he ought to have declared, or if he wilfully mislead or deceive the arbitrator, such award may be set aside.

80. The author said that, if a man makes a representation in point of fact, whether by suppressing the truth or suggesting what is false, however innocent his motive may have been, he is equally responsible in *a civil proceeding as if he had while committing these acts done so with a view to injure others or to benefit himself. It matters not that there was no intention to cheat or injure the person to whom the statement was made."*

30. Admittedly, it is not the petitioner's case that either the arbitration agreement or the contract was induced by fraud or corruption. The entire allegation of the petitioner is against the learned Arbitrator and the process of making of the award. The sum and substance of the submissions of Mr. Ghosh was that the learned Arbitrator proceeded in an unfair and biased manner in order to hurriedly allow the claim of the respondent. The decision was premeditated and the learned Arbitrator proceeded in a preconceived manner. The learned Arbitrator disregarded the defense case completely and ignored vital evidence. The learned Arbitrator refused to allow the petitioner to adduce vital evidence.

31. It was argued that the assignment agreement and designated agreement were both subservient to the loan agreements entered into between the petitioner and the respondent and the amounts deposited by Mahalaxmi were rightly appropriated to the petitioner, to service the dues payable by the petitioner to the respondent under the working capital consortium loan agreement. This vital fact, according to the petitioner, was ignored by the learned Arbitration.

32. The minutes of the meeting dated May 18, 2024, recorded as follows:-

***"...**The respondent resumes its arguments and refers to its original loan agreement with the claimant. The document has not been disclosed nor has been appended to the pleadings. The respondent refers to a letter dated May 30, 2017 issued by the respondent to the claimant sanctioning a loan Rs100 crore. The respondent places a clause at page 29 of the sanction letter which provides that the respondent would have a right to set off all money held on account of the claimant in respect of any sum outstanding in any other account. The relevant clause is no more than what Section 171 of The Contract Act, 1872 confers on a banker by way of a general lien. The respondent also seeks to rely on a circular issued by the Reserve Bank of India but submits that the relevant circular is not in possession of counsel at the moment. The date of the circular is also not indicated.*

The claimant, quite understandably, takes serious objection to documents being referred to without such documents having been appended to the pleadings or otherwise disclosed. However, in the interest of justice, the respondent is permitted time till all of May 19, 2024 to forward copies of the sanction letter and the RBI circular that it seeks to rely on the advocates for the claimant. No further surprises should be thrown by the respondent by way of any further document which is not already on record..."

***30.** The minutes of the meeting dated May 22, 2024, recorded as follows:-*

"...1. The respondent has been heard at length and even after the claimant concluded its rejoinder. The principal submission on behalf of the respondent today is that it adjusted the two amounts against its cash

credit account with the claimant under a consortium agreement. The respondent relies on the particulars submitted by it in Form C in course of the preparation and approval of the corporate insolvency resolution plan pertaining to the claimant.

2. According to the respondent, it will be evident from the particulars under serial number 4A indicated in the chart which forms a part of the Form C declaration, that the respondent's claim on account of the credit facilities granted to the claimant under the consortium agreement was frozen to Rs.18,41,06,736.35p. This figure of Rs.18,41,06,736.35p was arrived at after considering the adjustments made against the payments made by Mahalakshmi into the designated account. It is the assertion of the respondent that since the adjustments had taken place prior to when the Form C was filed, the adjustment is deemed to have been accepted and no question arises of the same being re-opened now.

3. Though the arbitrator had made it clear in course of the preliminary hearing that all documents that the parties sought to rely on must be disclosed along with the pleadings, the respondent has been particularly remiss in such regard. Quite unprofessionally, in the middle of arguments, a particular document not on record is sought to be relied upon without such document having been disclosed or even prior notice in such regard having been issued to the other side. In similar vein, a statement of accounts, which has been unilaterally prepared by the respondent and is not a part of any correspondence exchanged with the claimant or any other person, is sought to be placed on behalf of the respondent after unusual leave was granted to the respondent to make further submission despite the conclusion of the claimant's rejoinder. Such unilateral statement of accounts has not been looked into…"

34. The award discloses that both parties agreed to the reference of the dispute to the learned Arbitrator. No dispute had been raised as to the existence of the arbitration agreement. At no stage of the reference, had the petitioner raised any claim that the dispute was not capable of adjudication in terms of the arbitration agreement between the parties. The arbitration clause was considered. Both the parties agreed before the learned Arbitrator that no witnesses would be called. The dispute could be adjudicated on the basis of the documents that would be disclosed and the correspondence exchanged."

43. In the decision of ***Union of India and Ors. vs Rahul Kumar Thakur*** decided in ***AP-COM 657 of 2024***, this Court held as follows:-

"20. Ventura Global Engineering (supra) *also propounded that, that concealment of material circumstances on the part of one of the parties to an arbitration agreement, thereby, leading the arbitrator to pass an award, was fraud. Therefore, if the party which ought to have disclosed material, wilfully withheld the same in order to deceive the arbitrator, such award should be set aside on the ground of fraud. These aspects are not available from the documents relied upon by the petitioners. The circumstances which led to the making of the award, prima facie, do not* *appear to be fraudulent. The definition of law as per the Indian law, does not apply to this case.*

21. *Section 17 of the Indian Contract Act, defines fraud as follows:-*

***17. 'Fraud' defined**.—*

"Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent', with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:—

(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2)the active concealment of a fact by one having knowledge or belief of the fact;

(3)a promise made without any intention of performing it;

(4)any other act fitted to deceive;

(5)any such act or omission as the law specially declares to be fraudulent. Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speaks, or unless his silence, is, in itself, equivalent to speech. Illustrations (a) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.(b) B is A's daughter and has just come of age. Here the relation between the parties would make it A's duty to tell B if the horse is unsound.(c) B says to A—"If you do not deny it, I shall assume that the horse is sound". A says nothing. Here, A's silence is equivalent to speech.(d) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B."

22. *The expression "making of the award" would mean that, the award must have been obtained by a party to the arbitration upon suppressing material evidence or by making false statements before the learned arbitrator in order to take an unfair advantage over the other party. The petitioners have not been able to, prima facie, establish that any of these situations had arisen in the making of the award. There is nothing on record to show that vital documents had been either concealed or false statements had been made before the learned Arbitrator, which had a causative link with the facts constituting and culminating in the award.*

* * *

24. *Corruption of the learned Arbitrator should be such, that it would be, prima facie, evident from the award itself that the learned Arbitrator had tried to curb or prevent the course of justice. The burden of proof is rather high. The petitioners were required to discharge the burden by at least bringing to the notice of this court from the records and from the award that, either the respondent had concealed relevant materials or had made false statements, which led the arbitrator to pass the award in their favour. The petitioners would have to show, prima facie, that*

the learned Arbitrator deliberately passed the award in abuse of the process of law and had illegally obstructed the course of justice. "

44. The prayer for unconditional stay is thus rejected.

45. There shall be unconditional stay of the award for a period of 8 weeks. Within such time, the petitioner will furnish security to the tune of Rs. 60,07,48,229/-, 50% of which shall be deposited by demand draft and 50% by furnishing an unconditional bank guarantee to the satisfaction of the learned Registrar Original Side. In case of any fraction, the same shall be added to the demand draft. The bank guarantee shall be kept renewed from time to time. The demand draft shall be encashed and deposited in an interest bearing auto renewable fixed deposit with any nationalised bank, until further orders.

46. In the event the deposit is made as directed hereinabove, the unconditional stay will continue till disposal of the application under section 34 of the Arbitration and Conciliation Act, 1996. In case of default, the execution case will proceed and the stay will stand automatically vacated, without further reference to this Court.

47. With the above mentioned direction, AP-COM- 96 of 2025 stands disposed of.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfilment of requisite formalities.

(**Shampa Sarkar, J.**)