# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
# NAGPUR BENCH : NAGPUR

**Misc. Civil Application (ARBN) No. 1213 of 2019**

M/s Anoj Kumar Agarwala
**Versus**
National Highways Authority of India, New Delhi

| Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order | Court's or Judge's Order |
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Shri S.P. Dhole, Advocate for the applicant.
Shri A.A. Kathane, Advocate for the non-applicant.

**CORAM : NIVEDITA P. MEHTA, J.**

**Reserved on : 10th OCTOBER, 2025.**
**Pronounced on : 17th OCTOBER, 2025.**

The applicant has preferred the present application under Sections 9 and 11 of the Arbitration and Conciliation Act, 1996, seeking the appointment of an arbitrator to adjudicate disputes which are stated to have arisen between the applicant and the non-applicant, purportedly arising from the alleged misrepresentation of contractual obligations by the non-applicant under the agreement dated 16.09.2013.

**2.** Briefly stated, the applicant is a contractor engaged in toll collection projects awarded by the National Highways Authority of India (NHAI), an instrumentality of the Government of India. Pursuant to a tender process initiated by the non-applicant through

Tender Notice bearing NIT No. NHAI /13013 /547/ CO/ 13-14/ Competitive Bidding dated 25.07.2013, the applicant participated in the bidding process for engagement as a toll fee collection agency at Daroda Toll Plaza located at Km 92.500, for the Borkhedi-Wadner section from Km 36.600 to Km 94.000 on National Highway No. 7 (NH-7), in the State of Maharashtra, for a contractual period of one year.

**3.** An addendum to the said tender notice was issued on 07.08.2013, modifying Clauses 2.7 and 2.8. The applicant's financial bid was accepted by the non-applicant on 06.09.2013, and consequently, the parties entered into a formal agreement dated 16.09.2013. As per the terms of the agreement, the applicant was required to remit a total amount of Rs. 13,75,29,999/- (Rupees Thirteen Crores Seventy-Five Lakhs Twenty-Nine Thousand Nine Hundred Ninety-Nine only) for the period from 18.09.2013 to 17.09.2014, along with 2% Tax Collected at Source (TCS). The applicant duly furnished the requisite security deposit, both in the form of Demand Draft and Bank Guarantees, in compliance with the contractual requirements.

4. Subsequently, a Settlement and Close Out Agreement was executed between the parties on 12.06.2014, effectively foreclosing the contract. The said agreement was duly signed and acted upon by both the applicant and the non-applicant.

**5.** The present application has been filed by the applicant alleging that the Settlement and Close Out Agreement was executed by the applicant under circumstances of extreme financial, emotional, and social distress. It is the case of the applicant that the said agreement was signed under duress and mental pressure, and hence, does not bar the applicant from asserting his rights under the original agreement. The applicant contends that the execution of the settlement does not extinguish the right to claim compensation arising out of the alleged misrepresentation and unfair conduct of the non-applicant.

**6.** The applicant further contends that Clause 27 of the agreement dated 16.09.2013, which provides for arbitration, remains operative and has been validly invoked for the resolution of the present dispute. It is in this context that the applicant seeks the appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996.

7. Submissions on behalf of the Applicant.

7.1 Shri Dhole, learned counsel appearing on behalf of the applicant, submitted that the Settlement and Close Out Agreement dated 12.06.2014 was executed under circumstances of duress, coercion, and undue influence exerted by the non-applicant, a public authority in a dominant position. He submitted that the applicant was operating the toll plaza under extreme financial stress and was compelled to continue the toll collection operations to safeguard the livelihood of the employees working under him. It was in these distressing circumstances, he argued, that the applicant was constrained to sign the said settlement agreement.

7.2 Learned counsel further submitted that Section 28 of the Indian Contract Act, 1872 renders void any agreement that restrains a party from enforcing their rights through legal proceedings. He argued that the stipulations in the Settlement Agreement attempting to oust the applicant's right to approach a legal forum, including arbitration, is therefore hit by Section 28 and is unenforceable. According to him, Clause 27 of the original agreement dated 16.09.2013, which contains the arbitration clause, continued to survive and was not expressly revoked or overridden by the subsequent settlement agreement.

7.3 It was further submitted that the non-applicant adopted a deceptive and unfair strategy to force the applicant into surrendering his legal rights under the original agreement. The condition imposed in the Settlement Agreement barring recourse to courts or arbitration, according to him, violates the principles of natural justice and should be struck down as being against public policy.

7.4 Shri Dhole also relied upon a communication dated 26.12.2016 addressed by the applicant to the non-applicant wherein he alleged that the road conditions were not as per contractual assurances, resulting in significant financial losses to the applicant. In the said communication, the applicant raised a claim of Rs.12,97,63,577/- and simultaneously invoked Clause 27 of the agreement dated 16.09.2013, treating the said letter as a formal invocation of the arbitration clause.

7.5 He submitted that the jurisdiction of the Arbitral Tribunal to rule on its own jurisdiction, as contemplated under Section 16 of the Arbitration and Conciliation Act, 1996, includes questions regarding the validity of a settlement agreement alleged to be executed under coercion. He relied upon the decisions of the Hon'ble Supreme Court in ***NTPC Limited v. SPML Infra Limited, (2023) 9 SCC 385 and the Special Leave Petition (C) No. 22579 of 2025 – National Highways Authority of India v. O.J. Janeesh & Ors.***, to argue that where there are allegations of coercion and misrepresentation, the matter ought to be referred to arbitration.

8. Submissions on behalf of the Non-Applicant.

8.1 Per contra, Shri Kathane, learned counsel appearing for the non-applicant, opposed the application and submitted that the Settlement and Close Out Agreement dated 12.06.2014 was executed voluntarily by the applicant after the applicant requested to be discharged from the contract owing to financial difficulties. It was submitted that the said agreement was duly acted upon by both parties and there is no iota of evidence to suggest that it was signed under duress or undue influence.

8.2 Learned counsel emphasized that under the terms of the Settlement Agreement, the applicant had categorically and unconditionally discharged the non-applicant from all disputes, claims, and liabilities of any nature, and had agreed not to raise any claims or initiate any proceedings before any forum, including arbitration or court.

8.3 He further submitted that in accordance with the said Settlement Agreement, the applicant continued toll collection operations temporarily, paid the stipulated charges, and subsequently issued a No Due Certificate, a Discharge Certificate, and a No Claim Certificate, all dated 22.09.2014, thereby acknowledging full and final settlement of all claims arising out of the contract dated 16.09.2013.

8.4 Refuting the allegations of coercion and misrepresentation, learned counsel submitted that the applicant did not raise any objection or protest at the time of signing the Settlement Agreement or at any reasonable time thereafter. The first communication raising grievances came more than two years later, in 2016, which according to the non-applicant is an afterthought and an attempt to reopen a settled matter.

8.5 He submitted that once the parties entered into a binding and fully acted upon settlement and close out agreement thereby terminating the original contract, the arbitration clause in the original agreement stands extinguished, and no arbitrable dispute survives. It was his contention that Clause 27 cannot be invoked after the contract was foreclosed by mutual agreement and fully settled.

8.6 In support of his contentions, learned counsel relied on the decision of the Hon'ble Supreme Court in ***NTPC Limited v. SPML***

***Infra Limited, (2023) 9 SCC 385***, where it was held that where parties have entered into a valid and enforceable settlement agreement and reaped the benefits thereunder, subsequent invocation of arbitration alleging coercion or duress without evidence is not tenable. He also relied on the judgments of the ***Delhi High Court in Hari Vansh Chawla v. Prem Kutir Co-op. Group Housing Society,*** reported in ***2008 (106) DRJ 257 (DB),*** and ***Shankar Global Limited v. National Highways Authority of India,*** reported in ***2016 SCC OnLine Del 5622,*** to support the proposition that once a discharge certificate or settlement agreement is executed without protest, arbitration cannot be invoked on vague allegations of coercion.

9. Analysis and Conclusion

9.1 The applicant has invoked the jurisdiction of this Court under Sections 9 and 11 of the Arbitration and Conciliation Act, 1996, seeking the appointment of an arbitrator to adjudicate the disputes allegedly arising out of the Agreement dated 16.09.2013 entered into between the parties for toll collection at the Daroda Toll Plaza. The central issue for consideration is whether any arbitrable dispute survives in light of the subsequent Settlement and Close Out Agreement dated 12.06.2014, which, on its face, records a full and final settlement of all claims and liabilities between the parties.

9.2 The applicant contends that the said Settlement Agreement was signed under duress, coercion, and undue influence, and that Clause 27 of the principal agreement containing the arbitration clause was never waived, modified, or extinguished. It is urged that the Settlement Agreement is vitiated due to the non-applicant's dominant bargaining position, and therefore, the arbitration clause continues to survive. Clause 27 of the said agreement refers to arbitration if dispute or difference arose between the parties.

Said Clause 27 of Arbitration Agreement is reproduced as under:

> (a) All disputes and/or difference except those which are mentioned in the matters non-arbitral under Clause 26 above arising between the parties out of this Contract shall be settled by Arbitration under and in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The Chairman of the Authority or his nominee shall be the sole Arbitrator. The award made and published in pursuance of such Arbitration proceedings shall be final and binding on both the parties.
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> (b) The proceedings of the Arbitration shall be held in English language and shall be held at such place as may be decided by the Chairman of the Authority or his nominee. The award of the Arbitration shall be final and binding on both the parties to the Contract.
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> (c) Pending resolution of any dispute pursuant to Arbitration, under all circumstances the Contractor shall continue to remit the agreed instalments of money to the Authority as prescribed in this Contract including when the dispute is about the amount to be remitted.

9.3. However, this Court cannot overlook the fact that the Settlement and Close Out Agreement dated 12.06.2014 was unconditionally signed by both parties.

The relevant clause of the said Settlement and Close Out Agreement is reproduced below :

(i) The contractor discharges the Authority from all its disputes claims and liabilities of whatever kind and nature and would not arise any dispute or claim in any form and before any forum like Court. Arbitration etc. relating to the above.

(ii) The Contractor agrees to continue with user fee collection of the quoted remittance in the Contract Agreement dated 16.09.2013 till handing over the toll plaza to a new Agency. The bidding process likely to be completed within 60 days from the date of this agreement.

(iii) The Contractor agrees to foreclose the Contract and the Contractor shall have to pay to Authority an amount proportionate to 25% of the Performance Security considering the balance (left out) period of Contract dated 16.09.2013, for the avoidance of doubt, the likely amount payable by the Contractor to the Authority is Rs.2.83 lacs (Rs. Two Lakhs and Eighty Three Thousand only) (25% of 36/365 X 1.14,66,833) considering continuance of the existing contract for another 60 days period from the date of this Agreement (dated 12.06.2014). The amount shall be enhanced proportionately for the number of days in balance period of existing contract dated 16.09.2013, in case, the toll plaza is handed over to the new Agency earlier. The balance amount of Performance Security shall be released to the Contractor on handing over of toll plaza in terms of the contract Agreement dated 16.09.2013 after closing of Accounts and No dues Certificate.

(iv) The Stamp Duty, if any, applicable on this Settlement and Close Out agreement shall be paid by the Contractor.

(v) The parties shall fully honour their respective commitments as per the terms of the settlement contained in aforesaid clauses and release each other from the claims pertaining to the contracts. On compliance of the terms agreed herein the parties shall provide no claim certificate to each other.

> (vi) Nothing in this Agreement shall confer any right upon any person or entity who is not a party to this agreement, nor shall anything in this agreement be construed as creating any obligation by either NHAI or Contractor to any none party to this Agreement.

The recitals therein categorically state that the contractor (i.e., the applicant) had voluntarily sought to foreclose the contract, and agreed not to initiate any proceedings, including arbitration, in respect of the contract dated 16.09.2013. The operative clauses of the settlement further record that upon compliance with its terms, both parties would issue No Due Certificate and No Claim Certificate, which were in fact issued by the applicant on 22.09.2014.

9.4. It is a trite principle of law that when parties voluntarily enter into a settlement agreement and act upon it by issuing discharge certificates, accepting release of security amounts, and taking no steps to challenge its validity for a considerable period then, in the absence of contemporaneous protest, a subsequent challenge based on vague allegations of coercion is not tenable. The burden lies heavily on the party alleging coercion to demonstrate that such influence was exercised in a manner that vitiates the free will required for a valid contract.

9.5. In the present case, the applicant has not produced any contemporaneous material to support the claim of coercion or misrepresentation at the time of execution of the settlement agreement. The communication dated 26.12.2016, by which the applicant sought to raise certain grievances and invoke arbitration, was issued more than two years after the settlement agreement and after issuance of the no-claim and discharge certificates. The delay is significant and undermines the credibility of the allegations.

9.6. The Supreme Court in ***NTPC Limited v. SPML Infra Ltd., (2023) 9 SCC 385,*** *has held thus:*

> "46. We will now examine whether the allegations of coercion and economic duress in the execution of the Settlement Agreement are bona fide or not. This inquiry has a direct bearing on the arbitrability of the dispute. It was during the subsistence of the Writ Petition and the High Court's interim order, when SPML had complete protection of the Court, that the parties entered into the Settlement Agreement. This agreement was comprehensive. It inter alia provided for (i) the release of Bank Guarantees by NTPC, (ii) the withdrawal of SPML's Writ Petition, (iii) restraining NTPC from filing contempt proceedings against SPML for letting the Bank Guarantees expire, and finally, (iv) restraining SPML from initiating any proceedings under the subject contract, including arbitration. The settlement agreement also recorded that there were no subsisting issues pending between the parties.
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> 47. The plea of coercion and economic duress must be seen in the context of the execution of the Settlement Agreement not being disputed, and its implementation leading to the release of the Bank Guarantees on 30.06.2020 also not being disputed. Almost three weeks after the release of the Bank Guarantees, a letter of repudiation was issued by SPML on 22.07.2020. This letter was issued about two months after the Settlement Agreement was executed and in fact during the subsistence of the Writ Petition. After reaping the benefits of the Settlement Agreement, the Writ Petition was withdrawn on 21.09.2020. It is thereafter that the present application under Section 11(6) of the Act was filed. The sequence of events leads us to conclude that

> the letter of repudiation was issued only to wriggle out of the terms of the settlement agreement.
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> 48. The foregoing clarifies beyond doubt that the claims sought to be submitted to arbitration were raised as an afterthought. Further, SPML's allegations of coercion and economic duress in the execution of the Settlement Agreement lack bona fide. They are liable to be knocked down as ex facie frivolous and untenable.
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> 49. In view of the abovereferred facts, which speak for themselves, we are of the opinion that this is a case where the High Court should have exercised the prima facie test to screen and strike down the ex-facie meritless and dishonest litigation. These are the kinds of cases where the High Court should exercise the restricted and limited review to check and protect parties from being forced to arbitrate."

It has laid down that where a party, after enjoying the benefits of a settlement agreement, subsequently repudiates the agreement on the ground of coercion, such conduct amounts to an afterthought, unless there is strong contemporaneous evidence to the contrary. It has been further observed that in such situations, courts are not precluded from applying a prima facie test to determine whether a genuine arbitrable dispute exists before referring the matter to arbitration.

9.7. The reliance placed by the applicant on Section 28 of the Indian Contract Act, 1872 is also misplaced. The exception under Section 28 specifically saves agreements referring disputes to arbitration from being declared void. However, in the present case, it is not a bar to arbitration that is being enforced but rather the fact that the entire contractual relationship was foreclosed and discharged by a mutually agreed settlement, which includes a waiver of recourse to arbitration.

9.8. Further, the argument invoking Section 16 of the Arbitration and Conciliation Act, 1996, does not aid the applicant in the facts of the present case. While it is true that an arbitral tribunal is empowered to rule on its own jurisdiction, the judicial authority, while exercising power under Section 11 of the Act, is not denuded of the ability to undertake a limited and prima facie examination of whether an arbitrable dispute exists. In cases such as the present one, where the existence of a binding and unchallenged settlement agreement is established on record, courts are justified in refusing to refer the matter to arbitration.

9.9. Therefore, in view of the documents on record particularly the Settlement and Close Out Agreement dated 12.06.2014, the No Due Certificate, the No Claim Certificate, and the Discharge Certificate dated 22.09.2014 as well as the applicant's conduct in not taking any steps to challenge the validity of the said settlement before a competent forum, this Court is of the considered view that no live arbitrable dispute survives between the parties.

9.10. The present application thus appears to be an afterthought and an abuse of the arbitral process. Permitting arbitration in such circumstances would run counter to the objective of finality of settlements and the sanctity of contracts voluntarily entered into and acted upon.

10. In light of the above analysis, this Court finds that the applicant has failed to establish the existence of a live arbitrable dispute. The Settlement and Close Out Agreement dated 12.06.2014 stands as a conclusive bar to any claim being raised under the arbitration clause of the original agreement dated 16.09.2013. The allegations of coercion and misrepresentation are not substantiated by any credible or contemporaneous evidence, and appear to be raised belatedly as an afterthought.

Accordingly, the present application filed under Sections 9 and 11 of the Arbitration and Conciliation Act, 1996 is dismissed, being devoid of merits. No order as to costs.

**[NIVEDITA P. MEHTA, J.]**