



2025:DHC:1032



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

Date of decision: 13th FEBRUARY, 2025

IN THE MATTER OF:

+ **O.M.P. (COMM) 25/2025 & I.A. 995/2025, I.A. 996/2025, I.A. 3251/2025**

NEW INDIA ASSURANCE CO. LTD

.....Petitioner

Through: Mr. Salil Paul, Mr. Sahil Paul, Mr. Sandeep Dayal, Advocates

versus

SHREE RAM POLYMER

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 has been filed Petitioner against the Award dated 12.10.2024 passed by the Ld. Arbitral Tribunal in Arbitration Petition No.841/2022 while adjudicating the disputes that have arisen between the parties on an Insurance Claim made by the Respondent herein against the Petitioner.

2. Shorn off unnecessary details, the facts in brief, leading to the instant petition are as under:-

a. The Respondent is a registered partnership firm which had obtained a Standard Fire and Special Perils Policy from the Petitioner for a sum of Rs.5,89,00,000/- i.e. Rs.1,70,00,000/- on building and superstructure; Rs.2,42,00,000/- on furniture and fittings and Rs.1,75,00,000/- on stock and stock-in-progress.



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b. It is stated that a fire broke out in the premises of the Respondent due to short circuit. The Respondent made a claim under the Policy with the Petitioner. It is stated that JSR Insurance Surveyors and Loss Assessors was appointed by the Petitioner to assess the loss suffered by the Respondent and Interim Survey Report dated 20.10.2020 was furnished and Account Survey Report and Final Survey Report was furnished on 12.07.2021 and 27.01.2022 respectively.

c. It is the case of the Petitioner herein that an Affidavit-cum-Consent Letter dated 12.03.2022 duly notarized by the Respondent was submitted to the Petitioner wherein the Respondent agreed to accept a sum of Rs.1,53,04,403/- as full and final settlement of the claim. It is stated that immediately within seven days, the Respondent issued a protest letter dated 04.04.2022, repudiating the discharge voucher. It is stated that the said amount was accepted because of certain shortcomings pointed out by the Surveyor for example the Respondent did not have a no-objection certificate from Fire Department Authority and it had not taken adequate safety measures, which resulted in aggravation of loss. It is stated that a discharge voucher dated 28.03.2022 was submitted by the Respondent towards the full and final settlement of the claim. It is also stated that after accepting the said amount of money, the Respondent raised a claim with the Petitioner seeking further amount of money under the Insurance Contract entered into between the parties.

d. It is stated that since the disputes have arisen between the



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parties, an application under Section 11 of the Arbitration and Conciliation Act, 1996 being Arbitration Petition No.841/2022 was filed by the Respondent before this Court seeking appointment of an Arbitrator. *Vide* Order dated 09.01.2023, this Court has appointed Mr. Justice S. P. Garg, former Judge of this Court as the Arbitrator to adjudicate upon the disputes between the parties. It is stated that *vide* Order dated 17.07.2023, five issues were framed by the Arbitrator, which reads as under:-

" 1. Whether the petitioner suffered loss on account of Fire Loss as claimed in the claim petition? OPP.

2. Whether the petitioner is entitled for balance sum of Rs.339,90,299/- along with interest @ 18 % p.a., as claimed in the claim filed ? OPP.

3. Whether the Arbitral Tribunal has no jurisdiction to entertain the claim raised by claimant in the claim petition ? OPR.

4. Whether the respondent is not liable to pay the amount claimed in view of affidavit cum consent letter dated 12.3.2022, executed by petitioner ? OPR.

5. Relief."

e. After considering all the material available before the Arbitrator, an Award dated 12.10.2024 (which is under challenge herein) was passed by the Arbitrator wherein the Petitioner was directed to pay an amount of Rs.52,95,529/- with 9% p.a.

3. The matter came up for hearing before this Court on 16.01.2025.



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4. The main contention of the learned Counsel for the Petitioner is that there are discrepancies in the settlement letter which had been filed before the Arbitrator and which had actually been signed by the Respondent. It is contended that after having accepted a sum of Rs.1,53,04,403/- in full satisfaction and discharge of all the claims, the Respondent is not entitled to any further amount. It is contended that the Respondent is aware of the Surveyor's Report and also the shortcomings pointed out by the Surveyor. It is contended that after having given a Affidavit-cum-Consent Letter dated 12.03.2022, it does not lie in the mouth of the Respondent to raise any other further claim and that there was just no arbitral dispute before the Arbitrator.

5. Learned Counsel for the Petitioner draws attention of this Court to two documents which are both purportedly Affidavit-cum-Consent letters of the same date dated 12.03.2022 one notarized and one not notarized stating that the non-notarized one, which is not a correct document has been filed by the Respondent before the Arbitrator. He further draws attention of this Court to paragraph No.19 of the Award dated 12.10.2024 to contend that only reason why the Arbitrator awarded a sum of Rs.52,95,529/- with 9% p.a was deductions by the Petitioner herein on account of loss on non-standard basis due to non-existence of fire NOC and other safety measures without prior notice to the claimant was arrived at without affording an opportunity of being heard to the Respondent herein which cannot be accepted.

6. In view of this Court, the objections raised by the Respondent are not tenable.

7. It is the contention of the learned Counsel for the Petitioner that the consent letters having a notarized stamp which was the correct consent letter



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was not filed with the application and that the one without notarized stamp has been filed which vitiates the award. In the opinion of this Court, the contention is liable to be rejected. In both the documents, the Respondent has given a consent letter, accepting a sum of Rs.1,53,04,403/- in full satisfaction and discharge of all the claims.

8. The issue as to whether giving of consent letter would stop an insured to raise a further claim is no longer *res integra* and has been dealt with by the Apex Court in plethora of judgments.

9. The Apex Court in Oriental Insurance Company Limited and Another v. Dicitex Furnishing Limited, (2020) 4 SCC 621, has held that the fact that a consent letter has been given by the insured cannot be determinative and that an insured cannot in all cases be denied of extra amount of money if they are otherwise entitled to. After relying on all the judgments and after analyzing the case laws, the Apex Court in Oriental Insurance Company Limited and Another v. Dicitex Furnishing Limited (supra) has held as under:-

"22. It is clear that in Boghara Polyfab [National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267 : (2009) 1 SCC (Civ) 117] , no rule of universal application was indicated. No doubt, subsequent judgments which followed it, were in the context of the facts as were presented to the court. Proposition (iii) of the conclusions recorded in Boghara Polyfab [National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267 : (2009) 1 SCC (Civ) 117] visualise duress or coercion on account of withholding of payments due. The court — in more places than one, recognised that an aggrieved party can be the victim of economic coercion which results in its signing a document which discharges the



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other party of its obligations. Master Construction [Union of India v. Master Construction Co., (2011) 12 SCC 349 : (2012) 2 SCC (Civ) 582] placed the matter in perspective, when the Court enunciated the principle in the following terms : (Master Construction case [Union of India v. Master Construction Co., (2011) 12 SCC 349 : (2012) 2 SCC (Civ) 582] , pp. 355-56, para 18)

“18. In our opinion, there is no rule of the absolute kind. In a case where the claimant contends that a discharge voucher or no-claim certificate has been obtained by fraud, coercion, duress or undue influence and the other side contests the correctness thereof, the Chief Justice/his designate must look into this aspect to find out at least, prima facie, whether or not the dispute is bona fide and genuine. Where the dispute raised by the claimant with regard to validity of the discharge voucher or no-claim certificate or settlement agreement, prima facie, appears to be lacking in credibility, there may not be necessity to refer the dispute for arbitration at all.”

Likewise, in Genus Power [New India Assurance Co. Ltd. v. Genus Power Infrastructure Ltd., (2015) 2 SCC 424 : (2015) 2 SCC (Civ) 130] , the Court cautioned that a “bald plea” of coercion, without any supporting material is insufficient for a court to hold that the accord/satisfaction or no-dues certificate was involuntarily given.”

10. Applying the said dictum to the facts of this case, though the consent letter was given on 12.03.2022, a repudiation was given on 28.03.2022. Further, within six days of the repudiation, a protest letter was given by the Respondent on 04.04.2022. It cannot therefore be said that there was an unilateral acceptance by the Respondent, or that after waiting for a long



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time, the Respondent had raised the issue. The said letter dated 04.04.2022 categorically states that the said consent letter was given only because there was duress and coercion on the part of the Petitioner. The facts of the present case is covered by the judgment of the Apex Court in Oriental Insurance Company Limited and Another v. Dicitex Furnishing Limited (supra). Other than the said argument, no other argument has been raised by the Petitioner. The fact that there was a notarized stamp in the document as filed by the Petitioner and there is no notarized stamp in the document filed by the Respondent before the Arbitrator does not alter the case of the Respondent which is primarily barred on the fact that after having accepted the claim, it was not open for the Petitioner to raise further claim. The said contention has not been accepted by the Arbitrator. This Court while proceeding under Section 34 of the Arbitration and Conciliation Act, 1996 is also not inclined to come to a different conclusion to the one arrived at by the Arbitrator on the facts of the present case.

11. A perusal of the Award dated 12.10.2024 shows that the Arbitrator has considered the claim. *Vide* Award dated 12.10.2024, the Arbitrator has held as under:-

"27. Rival contentions of the parties have been considered. It is a matter of record that the respondent had moved an application under Section 16 of the Act challenging the jurisdiction of the Arbitral Tribunal. It was urged that the claimant could not invoke arbitral dispute as it had executed a full and final discharge voucher. Vide order dated 04.07.2023, the Tribunal did not accede to the contention of the respondent to reject the claims at the very threshold. It was observed that the question of jurisdiction of the Arbitral Tribunal to adjudicate the dispute as preliminary issue did not



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arise. The issue will be decided after obtaining evidence of the parties to prove their respective contentions. The respondent did not challenge the said order and it has attained finality. It is also a matter of record that after the settlement of issues, none of the parties produced oral evidence; both the parties based arguments on the documents filed on record.

28. The burden to establish that the claimant had executed the discharge voucher dated 28.03.2022 and un-dated affidavit-cum-consent letter of its free consent was apparently upon the respondent as it was enjoying dominant and superior position. On scanning the entire record, it reveals that the respondent has failed to establish if the discharge voucher executed by the claimant was with free consent. Undisputably, the surveyor in its final survey report dated 27.01.2022 had assessed the loss of Rs.2.89/- crore on RIV basis and Rs.2.06/- crore on MV basis. The respondent did not accept the recommendation of the surveyor without plausible reasons. It informed the surveyor to reassess the loss after taking into consideration the various breaches whereby the claimant had failed to obtain fire NOC and comply with the other statutory provisions of various enactments. The surveyor thereafter assessed the loss to be Rs.1,53,04,403/- which was approved by the respondent. Vide email dated 21.03.2022, the respondent informed the claimant about approval of Rs.1,53,04,403/- and asked it to execute affidavit-cum-consent letter before release of the said amount. The claimant, in its desire to obtain the amount admittedly executed the affidavit-cum-consent letter and agreed to accept the amount of Rs.1,53,04,403/- as full and final settlement of the claims. The surrounding circumstances leading to the execution of consent letter reveal that this amount was arrived at by the respondent unilaterally without informing



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the claimant. The respondent did not furnish any basis to the claimant for arriving at this lower amount of Rs.1,53,04,403/- as full and final settlement. In view of the Tribunal, there was no occasion for any negotiation or settlement between the parties when the

respondent without any inkling to the claimant had already decided to approve Rs.1,53,04,403/- on Non-Standard Basis. Record reveals that the claimant from the very inception was insisting for the payment of its loss of Rs.4,92,94,702/- which was not acceded to by the respondent. So much so, the respondent did not release the 'on-account' payment to the claimant to enable it to re-instate the machinery; it also did not grant extension beyond one year to re-instate the property knowingly that the claimant had already re-instated major part of the property and was in the process of reinstating the remaining one. At no stage prior to sending the email dated 21.03.2022, the claimant had agreed or given its consent to the amount of Rs.1,53,04,403/- approved by the respondent. Affidavit-cum-consent letter (at page 142 of SOC) executed by the claimant records that keeping in mind the deficiencies pointed out by the surveyor about inadequate safety measures and absence of fire NOC, the claimant was agreeable to give a unconditional and free consent to accept the loss assessed by the company on Non-Standard Basis on Rs.1,53,04,403/- as full and final settlement of their claim and not to raise any issue in future about the claim. This consent letter was on a printed pro-forma/format furnished by the respondent as averred. From this document, it reveals that for the first time the claimant was informed about the assessment of loss of Rs.1,53,04,403/- by the respondent. It is on record that the respondent had not shared the final survey report with the claimant and had not given any basis for arriving at the said amount of settlement. No reasons have been given by the



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respondent as to why the claimant would voluntarily give up its original claim.

33.It is also a matter of record that this issue of jurisdiction was raised by the respondent at the time of contesting the petition under Section 11 of the Act before the Hon'ble High Court. However, with the consent of the parties, the instant Arbitral Tribunal was constituted vide order dated 09.01.2023 to adjudicate the disputes between the parties. The respondent was, of course, given liberty to file an application under Section 16 of the Act. As observed above, the application under Section 16 was disposed of vide order dated 04.07.2023. No explanation has been offered by the respondent during arguments as to how this amount of Rs.1,53,04,403/- was assessed by the respondent to be the loss actually suffered by the claimant. The claimant was not given any basis for arriving at the figure of Rs.1,53,04,403/- before seeking consent letter. Apparently, the respondent had made up its mind to pay the said amount of Rs.1,53,04,403/- towards full and final settlement prior to issuance of the email dated 21.03.2022 asking the claimant to furnish the affidavit-cum-consent letter. Since the claimant was under financial duress and had invested huge amount in reinstatement of the property after borrowing money from ICICI Bank and wives of the promoters; it was left with no alternative but to accept the amount being paid by the respondent at that stage. The issuance of the protest letter dated 04.04.2022 soon thereafter lends credence to the contention of the claimant that while executing the affidavit-cum-consent letter, it had no free consent or willingness. Had the claimant accepted the amount approved by the respondent with its free consent, there was no occasion for it to raise further grievance on



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*04.04.2022 particularly when the claimant was no aware as to on what account the respondent had made the deductions. **The Tribunal is of the firm view that if the respondent was satisfied that the actual loss suffered by the claimant was to the tune of Rs.1,53,04,403/- only, where was the occasion for the respondent to obtain 'consent' of the claimant or to seek discharge voucher. To seek affidavit that the claimant shall not raise any claim in future reflects that the respondent itself was having apprehension that the amount assessed by it was not as per the satisfaction of the claimant. Mere acceptance of Rs.1,53,04,403/- deposited by the respondent, doesn't debar the claimant from availing its legal remedies to seek further claim if it is otherwise payable. There can't be any embargo upon the claimant from exercising legal remedies to seek actual loss suffered by him due to the fire incident. It is the legal obligation of the respondent to compensate the insured for the loss suffered by it, irrespective of the execution of any consent letter. Release of the approved amount was not dependent upon execution of any consent letter or discharge voucher.***"

(emphasis supplied)

12. The Arbitrator was of the opinion that no valid reasons have been given by the Surveyor to exclude the assessment of loss regarding the sheds constructed on the third floor of the property. The Arbitrator has not accepted the Report of the Surveyor. All other grounds raised by the Petitioner in the Petition under Section 34 of the Arbitration and Conciliation Act, 1996 are purely factual in nature and an attempt by the Petitioner is to persuade this Court to arrive at a different conclusion to the one arrived at by the Arbitrator.



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13. The scope of Section 34 of the Arbitration and Conciliation Act has been analysed by the Apex Court in number of times. In Dyna Technologies Private Limited Vs. Crompton Greaves Limited, (2019) 20 SCC 1, the Apex Court has held as under:-

"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.

35. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would



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be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards.

14. Similarly, the Apex Court in Batliboi Environmental Engineers Limited v. Hindustan Petroleum Corporation Limited and Another, (2024) 2 SCC 375 has observed as under:-

"35. Sub-section (1) to Section 34 of the A&C Act requires that the recourse to a court against an arbitral award is to be made by a party filing an application for setting aside of an award in accordance with sub-sections (2) and (3) of Section 34. Sub-section (2) to Section 34 of the A&C Act stipulates seven grounds on which a court may set aside an arbitral award. Sub-section (2) consists of two clauses, (a) and (b). Clause (b) consists of two sub-clauses, namely, sub-clause (i) which states that when the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time



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being in force, and sub-clause (ii), which states that the court can set aside an arbitral award when the award is “in conflict with public policy of India”. We shall subsequently examine the decisions of this Court interpreting “in conflict with public policy of India” and the explanation.

37. Explanation to sub-clause (ii) to clause (b) to Section 34(2) of the A&C Act, as quoted above and before its substitution by Act 3 of 2016, had postulated and declared for avoidance of doubt that an award is “in conflict with the public policy of India”, if the making of the award is induced or affected by fraud or corruption, or was in violation of Sections 75 or 81 of the A&C Act. Both Sections 75 and 81 of the A&C Act fall under Part III of the A&C Act, which deal with conciliation proceedings. Section 75 of the A&C Act relates to confidentiality of the settlement proceedings and Section 81 deals with admissibility of evidence in conciliation proceedings. Suffice it is to note at this stage that while “fraud” and “corruption” are two specific grounds under “public policy”, these are not the sole and only grounds on which an award can be set aside on the ground of “public policy”.

45. Referring to the third principle in Western Geco [ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] , it was explained that the decision would be irrational and perverse if (a) it is based on no evidence; (b) if the Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or (c) ignores vital evidence in arriving at its decision. The standards prescribed in State of Haryana v. Gopi Nath



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& Sons [State of Haryana v. Gopi Nath & Sons, 1992 Supp (2) SCC 312] (for short Gopi Nath & Sons) and Kuldeep Singh v. Delhi Police [Kuldeep Singh v. Delhi Police, (1999) 2 SCC 10 : 1999 SCC (L&S) 429] should be applied and relied upon, as good working tests of perversity. In Gopi Nath & Sons [State of Haryana v. Gopi Nath & Sons, 1992 Supp (2) SCC 312] it has been held that apart from the cases where a finding of fact is arrived at by ignoring or excluding relevant materials or taking into consideration irrelevant material, the finding is perverse and infirm in law when it outrageously defies logic as to suffer from vice of irrationality. Kuldeep Singh [Kuldeep Singh v. Delhi Police, (1999) 2 SCC 10 : 1999 SCC (L&S) 429] clarifies that a finding is perverse when it is based on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it. If there is some evidence which can be acted and can be relied upon, however compendious it may be, the conclusion should not be treated as perverse. This Court in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] emphasised that the public policy test to an arbitral award does not give jurisdiction to the court to act as a court of appeal and consequently errors of fact cannot be corrected. Arbitral Tribunal is the ultimate master of quality and quantity of evidence. An award based on little evidence or no evidence, which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Every arbitrator need not necessarily be a person trained in law as a Judge. At times, decisions are taken acting on equity and such decisions can be just and fair should not be overturned under Section 34 of the A&C Act on the ground that the arbitrator's approach was arbitrary or capricious. Referring to the third ground of public policy, justice or morality, it is observed that these are two different concepts. An award is against justice



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when it shocks the conscience of the court, as in an example where the claimant has restricted his claim but the Arbitral Tribunal has awarded a higher amount without any reasonable ground of justification. Morality would necessarily cover agreements that are illegal and also those which cannot be enforced given the prevailing mores of the day. Here again interference would be only if something shocks the court's conscience. Further, "patent illegality" refers to three sub-heads : (a) contravention of substantive law of India, which must be restricted and limited such that the illegality must go to the root of the matter and should not be of a trivial nature. Reference in this regard was made to clause (a) to Section 28(1) of the A&C Act, which states that the dispute submitted to arbitration under Part I shall be in accordance with the substantive law for the time being in force. The second sub-head would be when the arbitrator gives no reasons in the award in contravention with Section 31(3) of the A&C Act. The third sub-head deals with contravention of Section 28(3) of the A&C Act which states that the Arbitral Tribunal shall decide all cases in accordance with the terms of the contract and shall take into account the usage of the trade applicable to the transaction. This last sub-head should be understood with a caveat that the arbitrator has the right to construe and interpret the terms of the contract in a reasonable manner. Such interpretation should not be a ground to set aside the award, as the construction of the terms of the contract is finally for the arbitrator to decide. The award can be only set aside under this sub-head if the arbitrator construes the award in a way that no fair-minded or reasonable person would do."

15. Applying the said dictum to the facts of this case, this Court is of the opinion that the Award is not vitiated by patent illegality, the Award is not perverse and the Award is not in conflict with the public Policy of India.



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16. In view of the above, the challenge filed by the Petitioner against the Award dated 12.10.2024 is not accepted.

17. The Petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

FEBRAURY 13, 2025

RJ

Signature Not Verified

Digitally Signed By: HARIOM
SINGH KIRMOZIYA
Signing Date: 16.02.2025
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