

**IN THE HIGH COURT AT CALCUTTA  
(Ordinary Original Civil Jurisdiction)**

**ORIGINAL SIDE**

**Present:**

**The Hon'ble Justice Krishna Rao**

**AP 206 of 2013**

**West Bengal Tourism Development Corporation Limited**

**Versus**

**Supratik Banerjee & Anr.**

Mr. Indranil Ray

Mr. Sunit Kr. Ray

.....For the petitioner

Mr. Sabyasachi Chowdhury

Mr. Triptimoy Talukder

Mr. Arjun Mookherjee

Mr. Diptomoy Talukder

Mr. Deborshi Das

.....For the respondents

Heard on : 16.06.2022

Judgment on : 20.07.2022

**Krishna Rao, J.:**

This is an application under Section 34 of the Arbitration & Conciliation Act, 1996 for setting aside the award passed by the Ld. Sole Arbitrator dt. 24.11.2012.

On 16.06.2008, the petitioner had published a tender notice for renovation and interior design works at Bishnupur Tourist Lodge, Bishnupur, District - Bankura. The respondent had participated in the said tender process and accordingly on the recommendation of Project Management Consultant (PMC), the respondent was empanelled to participate in the Price Bid by depositing 2 % earnest money. After negotiation with the respondent, the petitioner accepted the rate quoted by the respondent and awarded the said work to the respondent. As per the tender, the stipulated date of commencement of the work was 17.07.2008 and time for completion of the work was 180 days. The date of completion was 13.01.2009 and the actual date of completion was 20.12.2008.

During the execution of the work, the respondent on instructions from the petitioner executed various extra item works total amounting to Rs. 2,06,95,041.24/- After considerable delay for making the payment, the petitioner agreed to pay a sum of Rs. 84,15,886.94/- on the condition that the respondent should give an undertaking indicating that the respondent will not make any further claim. The respondent had submitted and undertaking dt. 13.07.2009 in which it is mentioned that the respondent will have no further claim beyond the amount of Rs. 84,15,886.94/- and after submission of the undertaking the petitioner has paid an amount of Rs. 80,17,981.00/- out of the total amount of Rs. 84,15,886.94/-.

On 07.12.2009, the respondent has made request to the petitioner for release of the bill amount and again on 25.01.2010, the respondent had requested for release of amount in favour of the respondent and when the

petitioner has not released the amount, the respondent had invoked the provision of Arbitration and Conciliation Act, 1996 for appointment of Arbitrator and accordingly by the order of this Court the Ld. Sole Arbitrator was appointed.

The respondent has filed the statement of claim before the Ld. Sole Arbitrator claiming altogether seven claims which are as follows:-

SCHEDULE OF CLAIM

<u>Sl. No.</u>	<u>Description of Items</u>	<u>Amount Due (Rs.)</u>
1.	<i>Amount payable for short payment in respect of tender Items of works as indicated in Annexure 'A'</i>	3,28,617.75
2.	<i>Amount payable for short payment in respect of extra items of works executed by us as indicated in Annexure 'B'</i>	1,15,87,672.27
3.	<i>Refund of amount recovered as Cess from our Bill</i>	80,179.00
4.	<i>Compensation and/or interest payable on account of delayed payment of even admitted dues</i>	9,06,625.00
5.	<i>Refund of balance security deposit.</i>	4,00,900.00
6.	<i>Interest @ 12 % p.a. on the due amount from 1<sup>st</sup> April, 2009 till payment.</i>	<i>As accrued.</i>
7.	<i>Cost of Arbitration</i>	<u><i>On Actual</i></u>
		1,33,03,994.02 =====

The petitioner while filing the statement of defence against the claim made by the respondent have claimed the following amount by way of counter claim:-

**SCHEDULE OF CLAIM**

<b><u>Sl. No.</u></b>	<b><u>Description of Items</u></b>	<b><u>Amount Due (Rs.)</u></b>
1.	<i>Loss and Damages as detailed in paragraph 45 above</i>	85,00,000.00
2.	<i>Loss of prestige in the business community and public as detailed in paragraph 45 above.</i>	1,00,00,000.00
3.	<i>Interest @ 12 % p.a. on the due amount from 01.12.2009 till payment.</i>	<i>As may be accrued</i>
4.	<i>Cost of arbitration</i>	<i>On actual</i>
		-----
		Rs. 1,85,00,000.00
		=====

The Ld. Sole Arbitrator had passed an award on 24.11.2012 by allowing the following claim of the respondent and had rejected the counter claim made by the petitioner:-

<b><u>Sl. No. of the Claim</u></b>	<b><u>Amount Awarded</u></b>
1. CLAIM NO. 1	Rs. 3,28,617.75
2. CLAIM NO. 2	Rs. 56,22,507.51
3. CLAIM NO. 3	<i>Rejected.</i>
4. CLAIM NO. 4	<i>Rejected.</i>
5. CLAIM NO. 5	Rs. 4,00,900.00
6. CLAIM NO. 6	-
	<i>i) Interest @ 12% p.a. on the Amount of Award from 1<sup>st</sup> January, 2010 till</i>

*the Date of this Award.*

*ii) If the awarded sum with Interest is not paid within 120 days from the Date of Award, further interest on the sum awarded will be paid @ 18 & p.a. from the Date following Award till payment as per Section 31 7(B) of the Arbitration and Conciliation Act, 1996.*

7. CLAIM NO. 7

-

Rs.4,00,000.00

Mr. Indranil Ray representing the petitioner submits that the Ld. Sole Arbitrator ignored certain material evidences and documents which were disposed during the arbitration proceedings and the reason assigned by the Ld. Arbitrator in the award are not based on the materials and the documents available on record.

Ld. Counsel for the petitioner submits that in the absence of the oral evidence, Ld. Arbitrator has passed the impugned award on the basis of presumption and assumption without determining the admissibility, relevance and weight of the documentary evidence available on record.

Ld. Counsel for the petitioner submits that the finding of the Ld. Arbitrator that the undertaking dt. 13.07.2009 submitted by the respondent was under pressure is patently illegal in view of the facts that the Ld. Arbitrator has based its finding almost on the fact that the letter dt.

01.07.2009 submitted by the respondent to the petitioner was not replied by the petitioner and therefore, the statement made in the letter dt. 01.07.2009 specially regarding the meeting dt. 30.06.2009, was uncontroverted.

Ld. Counsel for the petitioner submits that the reason in view of the fact that the final bill with remark "Without prejudice" on 10.09.2009, there could be no full and final settlement between the parties is erroneous. Ld. Counsel for the petitioner submits that the Ld. Arbitrator has merely accepted the analysis of rates supplied by the respondent with regard to supplementary bills relating to extra items of work without considering the facts that the said analysis of rates were given without any supporting and authenticated documents with respect of materials of labours and VAT etc.

Ld. Counsel for the petitioner submits that the findings of the Ld. Arbitrator with regard to compulsion, coercion and undue influence regarding the issuance of undertaking dt. 13.07.2009 submitted by the respondent is based on surmises and conjecture.

Ld. Counsel for the petitioner submits that the Project Management Consultant vide its letter dt. 14.12.2009 had informed the petitioner that based on the erroneous and unjustified rates, contractor had submitted bill which was not acceptable to the Department and during checking of the bill it was find that the contractor has wrongly claims item either included in previous bill and or not payable.

Ld. Counsel for the petitioner submits that the award passed by the Ld. Arbitrator against the public policy, without any reason and is patently illegal.

Per contra, the Ld. Counsel for the respondent submits that both the parties have placed their respective cases with supportive documents and record before the Ld. Arbitrator and the Ld. Arbitrator had considered each and every document and have passed a reasoned award.

Ld. Counsel for the respondent submits that Ld. Arbitrator is the Sole Judge of both the quality and quantity of evidence required for approving or disapproving the contentions of the respective disputing parties.

Ld. Counsel for the respondent submits that on 13.07.2009, the respondent had informed the petitioner that the petitioner is ready to accept the bill as settled by the petitioner as the petitioner is dire need of money and his family and others are suffering very much for the huge crisis of money. In the said letter it is further stated that the suppliers, labour contractors are pressing hard for their payment, for which the respondent had submitted an undertaking which is speak that the said undertaking was not voluntarily and was on compelling circumstances.

Ld. Counsel for the respondent submits that the Ld. Arbitrator while considering the claim of the respondent has found that in the tender item nol. G/2, payment of sliding window in room no. 3 was not considered without any reason as the same is appearing from page no. 19 of the 2<sup>nd</sup> RA

Bill but the said windows in room no. 3 have been supplied, fitted and fixed and are still existing.

Ld. Counsel for the respondent submits that similarly, with respect of tender item no. H/1, the payment have been kept pending with the observation "Hold" at page 4 of the 2<sup>nd</sup> RA Bill. It is further submitted that the Ld. Arbitrator while passing the award has duly considered that the respondent was not made aware of the item allowed or paid under the 2<sup>nd</sup> RA Bill as only ad hoc payments were made and the respondent was deprived of the legitimate due of Rs. 3,21,617.75/-.

Ld. Counsel for the respondent further submits that the Ld. Sole Arbitrator inspected the site on 29.09.2012 in presence of both the parties and during the inspection it was seen that the almirah sliding windows were fixed and concealed electric wiring were done in all rooms of the lodge. The said fact was recorded by the Ld. Sole Arbitrator in his minutes of meeting dt. 29.09.2012, which proves that the respondent has completed the said work in all respect and the petitioner has not objected the said minutes of meeting.

The Counsel for the respondent submits that in the letter dt. 01.07.2009, the respondent has categorically mentioned that "In the course of the said meeting we were intimated from your end that unless and until we accept in full whatever the payment that will be found due to us by WBTDCL, no payment will be made to us'. In the said letter, the respondent further mentioned that "In the circumstances, we have no other alternative but to agreed to your instructions and directions." By referring the said

letter, the Ld. Counsel for the respondent submits that the letter dt. 01.07.2009, itself speaks that the alleged undertaking is not voluntarily and is being taken by coercion or threat.

The respondent had made all together 7 claims before the Ld. Arbitrator out of which 5 claims (Claim Nos. 1, 2, 5, 6 and 7 ) were allowed and 2 claims (Claim nos. 3 and 4) were rejected.

The respondent had claimed Rs. 3,28,617.75/- being the short payment in respect of tender items of works as indicated in Annexure "A". This claim is in respect of execution of tender item no. G/2 providing aluminum sliding windows in room no 3 and also tender item no. H-1. While deciding the said claim, the Ld. Arbitrator had considered that the petitioners have measured and paid the amount with respect of aluminum windows in other rooms except room no. 3 and the respondents have not considered the same without assigning any reasons which appears in 2<sup>nd</sup> running account bill. The Ld. Arbitrator also considered with regard to payment of item no. H-1 as the petitioners have kept the said claim under hold in the 2<sup>nd</sup> R.A .Bill. The Ld. Arbitrator had inspected the site on 29<sup>th</sup> September, 2012 in presence of both the parties and found that almirah sliding windows were fixed and concealed electric wiring was done in all the rooms of the lodge and none of the parties have disputed the same. Ld. Arbitrator also considered the submissions made by the counsel for the petitioner before the Ld. Arbitrator and during the 18<sup>th</sup> sitting, the Counsel for the petitioner submits that "If the claimant have done the work, they will get the payment. Of course the concluding stage the Claim nos. 1 and 5 is

payable by the respondent to the claimant. The Id. Arbitrator while deciding the said issue held that the petitioners have admitted the claim of the respondent and accordingly claim no. 1 was allowed in favour of the respondent.

The respondent has claimed Rs. 1,15,87,672.27/- being the amount for short payment in respect of extra item works executed by the claimant as indicated in Annexure "B". The Ld. Arbitrator while considering the said claim held that extra item at serial no. 3 of revised Annexure "B" and rate for 2<sup>nd</sup> supplementary tender in serial item nos. 18, 19, 20, 21, 22 and 23 at pages 9 and 10 of Annexure B have already been paid on the basis of PWD Schedule rates and the claimant is not entitled to get any extra claim with respect of the aforementioned extra items. In respect of and item at serial no. 6 and 7 at page 4 of revised Annexure "B" and serial nos. 8 and 9 at page 5, serial no. 16 and 17 at page 8 of the revised annexure "B" the petitioners have already included in the tender work and not an extra work and the respondent is not entitled to get any claim with respect of the said claim.

As regard the extra items under serial no. 1 at page 2, serial no. 2 and 4 at page 3, serial no. 5 at page 4, serial no. 10 at page 5, serial no. 11, 12 and 13 at page 6, serial no. 14 at page 7 of the revised annexure "B" is not appearing either in the tender schedule or in the PWD schedule of rates for the year 2007. While considering the said claim the Ld. Arbitrator held that the claimant had submitted analysis of rates for all the aforesaid items during the execution of work and the petitioners herein have not raised any

objection to the said analysis of rates during the execution of work and the petitioner have not submitted any separate analysis of rate. The Ld. Arbitrator has further held that the petitioners did not made any attempt to point out any error or omission in the analysis of the rate submitted by the claimant and accordingly the Ld. Arbitrator has awarded an amount of Rs. 52,20,979.89/- in favour of the claimant. Ld. Arbitrator has not granted any claim with respect of 2<sup>nd</sup> Supplementary at page 9 and 10 of the revised Annexure "B".

As regard 3<sup>rd</sup> supplementary tender of electric works, the Ld. Arbitrator found that the petitioner effected the following material changes in the scope of work:

- a. In place of surface wiring, concealed wiring was provided;*
- b. The diameter of the electrical wire were increased;*

Ld. Arbitrator while deciding the said claim of the claimant recorded that the petitioners have not made any submissions with regard to the post contract changes and remained silent with regard to the 3<sup>rd</sup> supplementary tender though there was post contract changes. Ld. Arbitrator further held that the petitioners have paid at the tender rate which was not justified and accordingly as per the analysis rate, the Ld. Arbitrator determined the claim of the respondent and awarded Rs. 4,01,527.62/- after deducting an amount of Rs. 41,395/- which was already paid by the petitioner to the respondent. In total, the Ld. Arbitrator had awarded an amount of Rs. 56,22,507.51/- out of the total Claim of Rs. 1,15,87,672.27 with respect of claim no. 2.

Claim no. 5 is for refund of Security Deposit of Rs. 4,00,900.00/-. As per admission made by the petitioner before the Ld. Arbitrator, the Ld. Arbitrator has awarded an amount of Rs. 4,00,900/- in favour of claimant being refund of security deposit. In the instant application also the petitioner has not challenged the said claim.

Claim no. 6 is with respect of interest and the Ld. Arbitrator has awarded interest at the rate of 12% per annum from 1<sup>st</sup> January, 2010 till the date of award on a total sum of Rs. 63,52,025.26/-. The Ld. Arbitrator has awarded the interest taking into account of the last payment made by the petitioner to the respondent on 7<sup>th</sup> December, 2009.

Claim no. 7 is with regard to cost and the Ld. Arbitrator has awarded an amount of Rs. 4,00,000/- taking into account of the proceedings and the cost incurred by the claimant for site inspection.

In the case reported in (2006) 11 SCC 181 (McDermott International INC. – versus- Burn Standard Co. Ltd. and Ors.), the Hon'ble Supreme Court in the case reported in held that:-

***112.** It is trite that the terms of the contract can be expressed or implied. The conduct of the parties would also be relevant factor in the matter of construction of contract. The construction of contract agreement is within the jurisdiction of the arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement and they cannot be said to have misdirected themselves in passing the award by taking into consideration the conduct of the parties. It is also trite that correspondences exchanged by the parties are required to be taken into consideration for the purpose of construction of contract. Interpretation of a contract is a matter for the arbitrator to determine, even if it gives rise to determination of a question of law.*

***113.** Once, thus, it is held that the arbitrator had the jurisdiction, no further question shall be raised and the court will not exercise its*

*jurisdiction unless it is found that there exists any bar on the face of the award.”*

In the case reported in (2015) 3 SCC 49 (Associate Builders – versus- Delhi Development Authority) the Hon’ble Supreme Court held that :

*“33. It must clearly be understood that when a court is applying the “public policy” test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts.”*

In the case reported in (2019) 15 SCC 131 (Ssangyong Engineering and Construction Company Limited – versus- National Highways Authority of India (NHAI)), the Hon’ble Supreme Court held that :

*“41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of the Associate Builders, while no longer being a ground for challenge under “public policy of India”, would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality.”*

In the present case, the Ld. Arbitrator while deciding the claims of the respondent has considered the documents relied by the parties, the agreement and the submissions made by the parties. To ascertain the factual fact with regard to the work executed by the respondent, the Ld. Arbitrator has also inspected the site and while passing award has assigned appropriate reasons as mentioned in the above mentioned paragraphs.

The main question raised by the petitioner in the instant application with regard to the undertaking furnished by the respondent dt. 13<sup>th</sup> July, 2013 and as per the said undertaking full and final settlement has been arrived between the parties which read as follows:

“UNDERTAKING

*That Rohit Construction Sonatorepara, Suri, Dist, Birbhum was entrusted with the work captioned as “Renovation and Interior Works at Bishnupur Tourist Lodge, Bishnupur in the district of Bankura vide work order No. 878/WBTDC/IX-388 (Part-B) dated 07.07.2008 at an estimated value of Rs. 37,47,523/- with tender stipulation as 3.33 % below thereby making the value of work order of Rs.36,22,730/-.*

2. *That the work as stated here that was supervised by Project Management Consultants “M/s. Coordinate Techno-Consultants (P) Ltd.”, 10/2 c. N. Roy road, Kolkata – 700039 vide engagement letter No. 2675/WBTDC dated 28.01.2008.*

3. *The work was taken up, true to terms of the tender agreement by Rohit Construction and completion was accomplished in due time.*

4. *During the period of execution by Rohit Construction as per necessity some additional works were found to be essential by the management of West Bengal Tourism Development Corporation Ltd. beyond the scope of existing contract and accordingly a claim has been generated for doing such works as detailed here under.*

a) *Supplementary Bill -1* *Rs. 18,14,038.00 dated*  
*16.02.2009*

b) *Supplementary Bill – 2* *Rs. 8,29,478.00 dated*  
*16.03.2009*

c) *2<sup>nd</sup> Supplementary Bill 2<sup>nd</sup> Phase* *Rs. 30,01,371.00 dated*  
*16.03.2009*

d) *Supplementary Bill – 3 (Electrical)* *Rs.2,76,331.60 dated*  
*21.04.2009*

5. *That the rate of supplementary claims has been checked by PMC and has been accepted by Rohit Construction within the scope of existing tender contract.*

6. The total original bill value of Rs. 24,94,664.34 as per following table has been checked by PMC and subsequently has been accepted by Rohit Construction.

	<b><u>Bills</u></b>	<b><u>Amount</u></b>
a)	1 <sup>st</sup> R/A	Rs. 3,72,906.00 dated 16.02.2009
b)	2 <sup>nd</sup> R/A	Rs. 19,26,338.00 dated 03.04.2009
c)	3 <sup>rd</sup> R/A	Rs. 1,95,420.34 dated 16.04.2009

However, amount payable to Rohit Construction after conventional checking by WBTDC Ltd.

7. That the management of WBTDC allowed an advance payment of Rs. 12,00,000/- dated 17.11.2009 as prayed by Rohit Construction duly recommended by PMC.
8. Rohit Construction, in full and final settlements the works "Renovation and Interior Works at Bishnupur Tourist Lodge, Bishnupur, in the district Bankura" as entrusted to him, has accepted the decided amount as under with no provision for claim in any manner in futures.

A) Total Value of Original Work	Rs. 24,94,668.34 (1 <sup>st</sup> , 2 <sup>nd</sup> & 3 <sup>rd</sup> R/A)
B) Total value of supplementary	<u>Rs. 59,21,218.60</u>
Total (A+B)	Rs. 84,15,886.94
Less advance payment made	Rs. 12,00,000.00
Amount due to payment	Rs. 72,15,886.96
	And to be paid after conventional checking by WBTDC Ltd.

9. In case of any claim from suppliers/sub-contractors/labours or any other claim. WBTDC will not have any liability and the entire responsibility will rest with Rohit Construction.
10. All representations as submitted by Rohit Construction from time to time prior to the present undertaking in respect of instant work stand withdrawn.

Rohit Construction.

Proprietor

Signature"

After submission of the above mentioned undertaking, on the same day the respondent has submitted an application which reads as follows :

*“To  
The Managing Director,  
West Bengal Tourism Development Corporation Ltd.,  
Hemanta Bhawan (4<sup>th</sup> Floor),  
12 B. B. D. Bag (East),  
Kolkata – 700001.*

*Sub.: Prayer for release of Rs. 30,00,000/-against  
my claim as agreed between WBTDC Ltd. and  
Rohit Construction.*

*Sir,*

*I have already submitted the undertaking to you. I am ready to accept bills as settled by you. Sir, I am dyre need of money. My family and others are suffering very much for the huge crisis of money. My suppliers labour contractor are pressing hard for their payment.*

*I am earnestly requesting y our goodself to kindly release Rs. 40,00,000/- on urgent basis so that I can pay to Bank and other suppliers.*

*Thanking You,*

*Yours faithfully,  
Rohit Construction  
Proprietor”*

Before submission of the undertaking, the respondent had submitted a representation to the petitioner on 1<sup>st</sup> July 2009 which reads as follows :

*“To  
The General Manager (Tech.)  
West Bengal Tourism Development Corporation Ltd.  
Hemanta Bhawan (4<sup>th</sup> Floor)  
12. B.B.D. Bag (East)  
Kolkata : 700 001*

Sub. : *Renovation and Interior works of Bishnupur Tourist Lodge, Bishnupur, Bankura.*  
- *Finalisation of my Dues.*

Dear Sir.

1. We recall with pleasure the discussion which we had the privilege to have with your Managing Director in his chamber on 30<sup>th</sup> June, 2009 regarding settlement off our Final Bill dated 21<sup>st</sup> April, 2009. In the said meeting your goodself. Sub Assistant Engineer and representative of your Project Management Consultant (M/s. Mukherjee & Roy) were also present.

2. In the course of the said meeting we were intimated from your end that unless and until we accept in full whatever payment that will be found due to by WBTDCL. no payment will be made to us.

3. Sir, we have already represented that we are in dire need of money and are unable to wait any further for payment of our dues.

4. The situation have been further aggravated by our financing banker, State Bank of India. Dubarajpur Branch, calling upon us to liquidate the overdraft amount of Rs. 20.00 Lacs immediately or to pay the monthly interest of Rs. 24,000/- per month. Since we are unable to make any payment to our Banker due to our dues being retained by WBTDCL, we have been compelled to request our banker to adjust our TDR (Term Deposit Receipt) and also our equipment i.e. 1 No. Dumper and 1 No. JCB Excavator All these facts regarding our banker, we have intimated to the General Manager, Department of Banking Supervision, Reserve Bank of India, Kolkata, vide, our letter No. RC-44/2009 on 30<sup>th</sup> June, 2009, a copy of the said letter is enclosed for your kind perusal.

5. Sir, we have practically bankrupt and under constant threat of physical violation by our creditors.

In the circumstances we have no other alternative but to agree to your instruction and directions.

6. We accordingly record that we shall accept in full settlement of our dues the amount which will be paid to us by WBTDCL in connection with the above work.

7. In view of the above, we will request you to kindly arrange payment of the admitted dues within 10 days from the date of receipt of this letter. We repeat that we shall accept in full payment of our dues the amount which will be paid to us by WBTDCL in respect of the above work in full settlement of our dues.

Thanking you,

enclo. :

*Copy of the Letter*

*No. RC-44/2009*

*dt. 30.06.2009.*

*Yours faithfully,*

*Rohit Construction*

*Proprietor*

*Copy forwarded for kind*

*Information and necessary*

*action to :-*

- 1. The Sub-Assistant Engineer  
W.B.T.D.C. Ltd.  
Hemanta Bhawan, 4<sup>th</sup> Floor  
12. B.B.D. Bag (East)  
Kolkata : 700 001*
- 2. The Director  
Co-ordinate Techno Consultant Pvt. Ltd.  
10/2. C.N. Roy Road.  
Kolkata : 700 039*

*Rohit Construction*

*Proprietor”*

The communication made by the respondent to the petitioner on 1<sup>st</sup> July, 2009 in paragraph 2 it is specifically mentioned that in the meeting, the respondents have intimated to the petitioner that unless and until the respondent will not accept in full whatever payment that will be found due to the respondent, the petitioner will not made any payment to the respondent. From the said paragraph it is clear that the petitioners have put pressure upon the respondent for accepting the amount decided by the petitioner.

In the letter dt. 13<sup>th</sup> July, 2009 also it is indicated that the respondent was in urgent need of money for payment to the supplier and for labour contractor as well as for his domestic use. Even after receipt of the undertaking the petitioners have not made full payment to the respondent.

Section 15 of the Contract act reads as follows :

**“15. “Coercion” defined.** – “Coercion” is the committing, or threatening to commit, any act forbidden by the Indian Penal Code (XIV of 1860), or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

*Explanation.- It is immaterial whether the Indian Penal Code (XIV of 1860), is or is not in force in the place where the coercion is employed.”*

In the instant case from the letter dt. 01.07.2009, it is clear that in the meeting, the petitioners have stated to the respondent that unless and until the respondent will not accept in full whatever payment that will be made by the petitioners, no payment will be made to the respondent. This statement fulfills the ingredients of Section 15 of the Contract Act and thus it is established that the petitioners have obtained undertaking from the petitioners by way of coercion.

In the judgment reported in (2009) 1 SCC 267 (National Insurance Company Limited – versus- Boghara Polyfab Private Limited) held that :

**“25.** *We may next examine some related and incidental issues. Firstly, we may refer to the consequences of discharge of a contract. When a contract has been fully performed, there is a discharge of the contract by performance, and the contract comes to an end. In regard to such a discharged contract, nothing remains - neither any right to seek performance nor any obligation to perform. In short, there cannot be any dispute. Consequently, there cannot obviously be*

reference to arbitration of any dispute arising from a discharged contract. Whether the contract has been discharged by performance or not is a mixed question of fact and law, and if there is a dispute in regard to that question, that is arbitrable. But there is an exception. Where both the parties to a contract confirm in writing that the contract has been fully and finally discharged by performance of all obligations and there are no outstanding claims or disputes, courts will not refer any subsequent claim or dispute to arbitration. Similarly, where one of the parties to the contract issues a full and final discharge voucher (or no-dues certificate, as the case may be) confirming that he has received the payment in full and final satisfaction of all claims, and he has no outstanding claim, that amounts to discharge of the contract by acceptance of performance and the party issuing the discharge voucher/certificate cannot thereafter make any fresh claim or revive any settled claim nor can it seek reference to arbitration in respect of any claim.

**26.** When we refer to a discharge of contract by an agreement signed by both parties or by execution of a full and final discharge voucher/receipt by one of the parties, we refer to an agreement or discharge voucher which is validly and voluntarily executed. If the party who has executed the discharge agreement or discharge voucher, alleges that the execution of such discharge agreement or voucher was on account of fraud/coercion/undue influence practiced by the other party and is able to establish the same, then obviously the discharge of the contract by such agreement/voucher is rendered void and cannot be acted upon. Consequently, any dispute raised by such party would be arbitrable.

**42.** We thus find that the cases referred fall under two categories. The cases relied on by the appellant are of one category where the Court after considering the facts, found that there was a full and final settlement resulting in accord and satisfaction, and there was no substance in the allegations of coercion/ undue influence. Consequently, this Court held that there could be no reference of any dispute to arbitration. The decisions in *Nav Bharat* and *Nathani Steels* are cases falling under this category where there were bilateral negotiated settlements of pending disputes, such settlements having been reduced to writing either in the presence of witnesses or otherwise. *P.K. Ramaiah* is a case where the contract was performed and there was a full and final settlement and satisfaction resulting in discharge of the contract. It also falls under this category.

**43.** The cases relied on by the respondent fall under a different category where the Court found some substance in the contention of the claimants that “no due/claim certificates”, or “full and final settlement discharge vouchers” were insisted and taken (either in a printed format or otherwise) as a condition precedent for release of the admitted dues. Alternatively, they were cases where full and final discharge was

*alleged, but there were no documents confirming such discharge. Consequently, this Court held that the disputes were arbitrable.”*

In the present case even after completion of the actual work awarded as well as the extra work as directed by the petitioners, the respondent has completed the said work. The petitioners have not made full payment to the respondent. The petitioners have threatened the respondent that if the respondent will not accept the payment, the respondent will not get any payment. The petitioners even after the receipt of under taking have not paid the full amount to the respondent. Ld. Arbitrator before entering into the claims raised by the respondent had decided the said issue and come to the conclusion that the letter dt. 1<sup>st</sup> July, 2009 was received by the petitioners and even after receipt of the said letter, the petitioners have not denied the contents of the same and petitioners have not made the full and final payment to the respondent. The Ld. Arbitrator has also considered the last payment was made to the petitioner on 9<sup>th</sup> August 2009 and while receiving the said amount the petitioner has made an endorsement “without prejudice”.

In view of the above this court find that the Ld. Arbitrator has considered the issue raised by the petitioner and has appropriately decided the same and come to conclusion that dispute raised by the respondent is arbitrable and had decided accordingly.

This Court finds that while deciding the claims and counter claims made by the parties, the Ld. Arbitrator has decided each and every issues

raised by the parties and has passed an reasoned order thus the Award dt. 24.11.2012 does not required any interference.

**AP 206 of 2013 is dismissed.**

**(Krishna Rao, J.)**