Arabian Exports Private Ltd vs National Insurance Co. Ltd on 6 May, 2025

Author: Abhay S. Oka

Bench: Abhay S. Oka

2025 INSC 630

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6372-6373 OF 2025
(@ SPECIAL LEAVE PETITION (CIVIL) NOS. 16907-16908 OF 2012)

ARABIAN EXPORTS PRIVATE LIMITED APPELLANT(S)

VERSUS

NATIONAL INSURANCE COMPANY LTD. RESPONDENT(S)

JUDGMENT

UJJAL BHUYAN, J.

Leave granted.

2. These appeals by special leave are directed against the order dated 02.12.2011 passed by the High Court of Judicature at Bombay in Arbitration Application Nos. 186-187 of 2011.

3. In this case, delay was condoned and notice was issued on 11.05.2012.

4. The short issue for consideration in these appeals is whether a dispute raised by an insured after giving a full and final discharge voucher to the insurer can be referred to arbitration.

5. As we shall deliberate upon, this issue is no longer res integra.

6. However, for a proper perspective, relevant facts may be briefly noted.

7. Appellant is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of exporting meat and meat products. For this purpose, appellant used to process the meat and store the same at its factory premises at Taloja in the State of Maharashtra.

8. On 08.10.2004, appellant took a comprehensive Standard Fire and Special Perils Policy bearing No. 260301/11/04/3100585 from the respondent towards insuring the meat processing and cold storage unit as also the building, plant and machinery, furniture, fixtures and fittings in the Taloja plant for an amount of Rs.3,28,55,000.00 which was for the period from 09.10.2004 to 03.10.2005.

9. Appellant also took a Fire Declaration Policy bearing No. 260301/11/04/3301441 insuring all its stock-in-trade and finished products stored in the cold storage facility at its factory premises at Taloja. This policy was for an amount of Rs.5,76,85,000.00 and covered the period from 15.03.2005 to 15.03.2006.

10. It is stated that appellant had paid the insurance premium towards both the insurance policies.

11. On 26.07.2005, there was very heavy and unprecedented rainfall in several parts of Maharashtra including at Taloja. Because of such unprecedented and very heavy rainfall, the factory premises at Taloja was completely flooded and got submerged under water for several hours. It is stated that all communication lines had broken down and there were no means of communication to and fro the Taloja plant leaving the incident unnoticed till 28.07.2005. It is further stated that appellant had suffered severe loss due to the damage caused to the factory building, plant and machinery, furniture, fixtures and accessories as well as the stock lying at the Taloja plant.

12. Appellant had informed the respondent on 29.07.2005 regarding the damage suffered at the Taloja plant and requested the respondent to depute a surveyor to assess the damage. Appellant claimed loss and damage to the plant and machinery etc. under the Standard Fire and Special Perils Policy for an amount of Rs. 56,07,027.00. Appellant also claimed loss and damage qua the stock in cold storage under the Fire Declaration Policy for an amount of Rs. 5,15,62,527.00

13. It is stated that on 28.07.2005, Dr. A.S. Patil (it is not stated who he was or who had authorized him) had inspected the factory premises at Taloja and after inspecting the stock-in-trade certified that the same was unfit for human consumption. On 29.11.2005, Chempro Inspection Private Limited, the surveyor appointed by the respondent, conducted a survey at the Taloja plant. In its report dated 29.11.2005, the surveyor acknowledged the loss suffered by the appellant.

14. Unfortunately, despite repeated requests and reminders by the appellant, respondent failed to settle the claims of the appellant.

15. After a considerable delay, appellant was presented with an undated and standardized voucher/advance receipt for a sum of Rs. 1,88,14,146.00 sometime in December, 2008.

16. Due to financial strain caused by the delay on the part of the respondent to settle the claims coupled with the pressure exerted by various bankers and creditors, appellant was left with no other option but to sign and submit to the respondent the said undated and standardized voucher/advance receipt on 12.12.2008 for an amount of Rs. 1,88,14,146.00 being claimed under the Fire Declaration Policy. Pursuant thereto, appellant received the cheque issued by the respondent for a sum of Rs. 1,88,14,146.00 on 19.12.2008.

17. It may be mentioned that the two insurance policies had identically worded arbitration clause.

18. On 24.12.2008, appellant while reserving its right to invoke the aforesaid arbitration clause called upon the respondent to settle and pay the balance amount of Rs. 3,83,55,408.00 being the difference between the claim lodged by the appellant and the amount paid by the respondent. Appellant also sought for a copy of the surveyor's report.

19. By letter dated 21.03.2009, respondent provided the appellant with a copy of the surveyor's report giving details of the respondent's assessment of the appellant's claim.

20. Though the appellant made repeated attempts to resolve the matter but the respondent did not cooperate. Consequently, appellant addressed letter dated 17.04.2009 to the respondent invoking the arbitration clause contained in the insurance policy and at the same time nominated Mr. Ramakant W. Gudal, a retired Joint Commissioner and Controlling Authority, Food and Drugs Administration, Maharashtra as the sole arbitrator. It is stated that this letter was hand delivered to the respondent on 20.04.2009.

21. Respondent issued letter dated 18.05.2009 to the appellant through its lawyer denying its liability and refusing to accept arbitration and failed to nominate an arbitrator in terms of Clause 30 of the insurance policy. Respondent vide further letter dated 12.10.2009 stated that it was not agreeable to refer the matter to arbitration.

22. Thereafter, appellant filed applications under Section 11 of the Arbitration and Conciliation Act, 1996 (briefly, 'the 1996 Act' hereinafter) before the High Court of Judicature at Bombay for appointment of an arbitrator to arbitrate the claims of the appellant. Thus two arbitration applications were filed in respect of the two policies which were registered as arbitration application Nos. 186 of 2011 and 187 of 2011.

23. Learned Single Judge of the High Court of Judicature at Bombay (briefly, 'the High Court' hereinafter) observed that the amount paid by the respondent was accepted by the appellant in full and final settlement of the claim. It was accepted without any demur and after encashing the cheque, the dispute was raised on 24.12.2008. Therefore, vide the impugned order dated 02.12.2011, learned Single Judge held that no arbitrator could be appointed in view of acceptance of the amount in full and final settlement. Both the arbitration applications were accordingly dismissed.

24. Mr. Kavin Gulati, learned senior counsel for the appellant has drawn our attention to the relevant facts and submits that learned Single Judge had rejected the applications under Section 11 of the 1996 Act on the ground that the discharge voucher signed by the appellant in favour of the respondent constituted full accord and satisfaction having accepted the amount paid by the respondent without demur. 24.1. Learned senior counsel submits that in the present case, 'accord and satisfaction' is not voluntary but under compulsion. Appellant was under financial duress on account of the huge loss caused by the rainwater and flooding; additionally, there was long delay on the part of the respondent in processing the claim. That apart, appellant was pressurized by the banks and creditors for repayment of credit. In such circumstances, appellant had no other option

but to sign the undated and standardized voucher/advance receipt for a wholly inadequate amount of Rs. 1,88,14,146.00 against the bona fide claim of Rs. 5,71,69,554.00. In this connection, learned senior counsel has drawn the attention of the Court to the letter dated 24.12.2008 and the pleadings in the applications under Section 11 of the 1996 Act which reads thus:

> The fact that the voucher relating to payment of our claim under the Standard Fire and Special Perils Policy refers to article/property "stolen" clearly establishes the complete non application of mind and disregard by your company to our repeated representations and the nature of our loss. Looking to the financial strain cast on us by virtue of the willful delay on the part of your organization in settlement at our claims coupled with the pressure exerted by our bankers and creditors, we were left with no option but to sign and submit to you the said undated and standardized voucher on December 12th 2008, for the grossly inadequate amount of Rs. 1,88,14,146.00.
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> 24.2. Learned senior counsel submits that the case of the appellant is squarely covered by the decision of this Court in National Insurance Company Limited Vs. Boghara Polyfab Private Limited1. He has also distinguished the decision of this Court in Nathani Steels Ltd. Vs. Associated Constructions 2 relied upon by the respondent. He submits that in Nathani Steels (supra), there were negotiations between the parties culminating in a voluntary negotiated settlement of all pending disputes. Contract was thus discharged by 'accord and satisfaction'. This is not so in the present case. He further submits that issue in question is covered by the decision of this Court in Boghara Polyfab (supra).
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> 24.3. In any event, the discharge voucher was in relation to only one policy i.e. Fire Declaration Policy. It did not cover the Standard Fire and Special Perils Policy. Learned senior counsel has referred to and relied upon the circular dated (2009) 1 SCC 267 (1995) Supp (3) SCC 324 24.09.2015 issued by the Insurance Regulatory and Development Authority of India clarifying that execution of vouchers as full and final discharge did not foreclose the rights of the policy holders to seek higher compensation before any judicial fora or any other fora established by law. This has been endorsed and reiterated vide subsequent circular dated 07.06.2016 issued by the Insurance Regulatory and Developmentary Authority of India. He, therefore, submits that learned Single Judge erred while rejecting the applications for appointment of arbitrator. Therefore, the impugned order is liable to be set aside.

25. Per contra, Dr. Manish Singhvi, learned senior counsel for the respondent submits that a three Judge Bench of this Court in Nathani Steels (supra) has clearly held that once a dispute or difference between the parties arising out of a contract is amicably settled by the parties, unless such settlement is set aside in proper proceedings, it is not open to one of the parties to the settlement to further seek arbitration. According to him, this case is squarely covered by Nathani Steels Ltd. (supra).

25.1. Learned senior counsel submits that Nathani Steels Ltd. (supra) is a decision of a three Judge Bench whereas Boghara Polyfab (supra) is by a two Judge Bench. Therefore, the conflict between Nathani Steels (supra) and Boghara Polyfab (supra) needs to be resolved by referring the matter to a larger Bench.

25.2. He submits that in so far the present case is concerned, there is no question of any fraud. In fact, there was no pleading and argument as regards fraud. There is also no pleading as to duress or coercion. Mere citation of the expressions fraud, duress or coercion will not make it a case of fraud, duress or coercion. There has to be adequate pleadings. That apart, appellant has not produced any document to even prima-facie show that the appellant was being pressurized by the respondent to enter into a settlement. 25.3. In so far letter of the appellant dated 24.12.2008 is concerned, learned senior counsel submits that the said letter mentioned about the policies but did not contain any statement to the effect that the settlement was only for one policy. Respondent had processed the claim of the appellant on the basis of the report of the surveyor. The figure of Rs. 1.88 crores was not an imaginary or illusory figure but based on the assessment of the surveyor.

25.4. Dr. Singhvi also argued an alternative prayer. If the Court is of the opinion that the High Court had not considered the aspect of duress and coercion, then the matter may be referred back to the High Court. In that event the High Court would consider the aspect of duress and coercion. Otherwise, no case for arbitration is made out. Therefore, he seeks dismissal of the appeals.

26. Submissions made by learned counsel for the parties have received the due consideration of the Court.

27. The two insurance policies contain an identically worded arbitration clause which read as follows:

> 13. If any dispute or difference shall arise as to the quantum to be paid under this policy liability being otherwise admitted such difference shall independently of all other questions be referred to the decision of sole arbitrator to be appointed in writing by the parties to or if they cannot agree upon a single arbitrator within 30 days of any party invoking arbitration, the same shall be referred to a panel of three arbitrators, comprising of two arbitrators, one to be appointed by each of the parties to the dispute/difference and the third arbitrator to be appointed by such two arbitrators and arbitration shall be conducted under and in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as hereinbefore provided, if the Company has disputed or not accepted liability under or in respect of this policy.

It is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon this policy that the award by such arbitrator/arbitrators of the amount of the loss or damages shall be first obtained.

28. In its letter dated 24.12.2008 addressed to the respondent, appellant stated that after an inordinate delay of 42 months, a grossly inadequate amount of Rs.1,88,14,146.00 was offered by the respondent in response to the bona fide and genuine claim of the appellant for the aggregate sum of Rs.5,71,69,554.00. Appellant further stated that because of the financial strain caused due to the delay on the part of the respondent in settling its claims coupled with the pressure exerted by its bankers and creditors, appellant was left with no other option but to sign and submit to the respondent the undated and standardized voucher forwarded by it on 12.12.2008 for Rs.1,88,14,146.00. Appellant further stated that it received a cheque for the aforesaid amount on 19.12.2008. Referring to the arbitral clause in the insurance policies, appellant stated that there is an arbitrable dispute in the context of the quantum of claim, the liability being admitted by the respondent. Appellant called upon the respondent to pay the balance amount of Rs.3,83,55,408.00 with interest at the rate of 18 percent. Respondent was put to notice that if the said amount was not paid, appellant would invoke the arbitration clause not only claiming the balance amount but also damages and compensation.

29. Finally, appellant through its advocate issued notice to the respondent on 17.04.2009 invoking the arbitration clause and nominated Mr. Ramakant W. Gudal, retired Joint Commissioner and Controlling Authority, Food & Drugs Administration, Maharashtra as the Sole Arbitrator. Respondent was called upon to concur with the said nomination or alternatively to nominate its own arbitrator in which event the two nominated arbitrators would appoint a presiding arbitrator.

30. However, respondent informed the appellant vide letter dated 12.10.2009 that it was not agreeable to refer the matter to arbitration as the appellant had accepted the amount offered in full and final settlement which amounted to ‘accord and settlement’.

31. It was thereafter that appellant approached the High Court by filing applications under Section 11 of the 1996 Act. The relevant pleadings have already been extracted and noted.

32. Learned Single Judge vide the impugned order observed that the amount offered by the respondent was accepted by the appellant in full and final settlement of the claim. The acceptance was not without prejudice to the rights and contentions of the appellant or reserving the right to challenge the amount that was being paid. The payment was made on 19.12.2008. It was accepted without any demur and after encashing the cheque the dispute was raised on 24.12.2008. Learned Single Judge referred to one of his previous orders where he had taken a view that if such a receipt is issued which accepts the payment in full and final settlement, then a dispute cannot be raised. He therefore held that no arbitrator can be appointed in view of acceptance of the amount in full and final settlement.

33. In Nathani Steels (supra), a three-Judge Bench of this Court opined that once the parties reach a settlement in respect of any dispute or difference arising under a contract and that dispute or difference is amicably settled by way of a final settlement by and between the parties, unless that settlement is set aside in proper proceedings it cannot lie in the mouth of one of the parties to the settlement to spurn it on the ground that it was a mistake and thereafter proceed to invoke the arbitration clause.

33.1 Of course the Bench held that unless the settlement is set aside in proper proceedings, it would not be open to one of the parties to the settlement to invoke arbitration. But at the same time, it needs to be pointed out that this view was taken in the context of an amicable settlement arrived at between the parties in the presence of a third party and reduced to writing. If there is an amicable settlement of the dispute between the parties unless such settlement is set aside in proper proceedings, it would not be open to one of the parties to invoke arbitration. Therefore, the crucial expression here is 'amicable settlement'.

34. This decision was explained by this Court in Boghara Polyfab (supra). A two-Judge Bench of this Court noted that in Nathani Steels (supra) this Court on examination of the facts of that case was satisfied that there were negotiations leading to voluntary settlement between the parties in all pending disputes. Thus the contract was discharged by 'accord and satisfaction'. The Bench categorized such claims under two categories. In the first category there would be cases where there is bilateral negotiated settlement of pending disputes, such settlement having been reduced to writing either in the presence of witnesses or otherwise. Nathani Steels (supra) falls in this category. In the second category of cases, there would be 'no dues/claims certificate' or 'full and final settlement discharge vouchers' insisted upon and taken, either in a printed format or otherwise, as a condition precedent for release of the admitted dues. In the latter group of cases, the disputes are arbitrable. Mere execution of a full and final settlement receipt or a discharge voucher cannot be a bar to arbitration even when validity thereof is challenged by the claimant on the ground of fraud, coercion or undue influence. The Bench further distinguished Nathani Steels (supra) by clarifying that the observations made that unless the settlement is set aside in proper proceedings, it would not be open to a party to the settlement to invoke arbitration was with reference to a plea of 'mistake' taken by the claimant and not with reference to allegations of fraud, undue influence or coercion. Further, the said decision was rendered in the context of the provisions of the Arbitration Act, 1940. The perspective of the 1996 Act is different from the Arbitration Act, 1940.

35. In Duro Felguera, S.A. Vs. Gangavaram Port Ltd.3, a two-Judge Bench of this Court examined Section 11(6) of the 1996 Act as well as Section 11(6A) inserted in the 1996 Act by way of the Arbitration and Conciliation (Amendment) Act 2015 and concluded that courts should look into only one aspect:

> existence of an arbitration agreement. Already the width of jurisdiction under Section 11(6) of the 1996 Act was considerably wide following judicial dicta but post the aforesaid amendment, all that the courts need to see is whether an arbitration agreement exists – nothing more, nothing less. The legislative policy and purpose is essentially to minimize the court's intervention at the stage of appointing the arbitrator.
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> (2017) 9 SCC 729

36. A three-Judge Bench of this Court in Vidya Drolia Vs. Durga Trading Corporation 4 held that subject matter qua arbitrability cannot be decided at the stage of Sections 8 or 11 of the 1996 Act unless it is a clear case of dead wood. The court under Sections 8 and 11 has to refer a matter to

arbitration or to appoint an arbitrator, as the case may be, unless a party has established a prima facie case of non- existence of a valid arbitration agreement. The court should refer a matter if the validity of the arbitration agreement cannot be determined on a prima facie basis. The rule should be: when in doubt, do refer.

37. In Oriental Insurance Company Ltd. Vs. Dicitex Furnishing Ltd.5, a two-Judge Bench of this Court considered the objection of the insurer about maintainability of the application under Section 11(6) of the 1996 Act in which the High Court had appointed an arbitrator. The objection was that the claimant had signed the discharge voucher and had accepted the amount offered, thus signifying 'accord and (2021) 2 SCC 1 (2020) 4 SCC 621 satisfaction' which in turn meant that there was no arbitrable dispute. This Court rejected the objection of the insurer and held thus:

> 26. An overall reading of Dicitex's application [under Section 11(6)] clearly shows that its grievance with respect to the involuntary nature of the discharge voucher was articulated. It cannot be disputed that several letters — spanning over two years—stating that it was facing financial crisis on account of the delay in settling the claim, were addressed to the appellant. This Court is conscious of the fact that an application under Section 11(6) is in the form of a pleading which merely seeks an order of the court, for appointment of an arbitrator. It cannot be conclusive of the pleas or contentions that the claimant or the party concerned can take in the arbitral proceedings. At this stage, therefore, the court which is required to ensure that an arbitrable dispute exists, has to be prima facie convinced about the genuineness or credibility of the plea of coercion; it cannot be too particular about the nature of the plea, which necessarily has to be made and established in the substantive (read : arbitration) proceeding. If the court were to take a contrary approach and minutely examine the plea and judge its credibility or reasonableness, there would be a danger of its denying a forum to the applicant altogether, because rejection of the application would render the finding (about the finality of the discharge and its effect as satisfaction) final, thus, precluding the applicant of its right even to approach a civil court. There are decisions of this Court (Associated Construction v. Pawanhans Helicopters Ltd. and Boghara Polyfab) which upheld the concept of economic duress. Having regard to the facts and circumstances, this Court is of the opinion that the reasoning in the impugned judgment cannot be faulted.
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> 37.1. Thus, this Court held that at the stage of Section 11(6) of the 1996 Act, court is required to ensure that an arbitrable dispute exist; it has to be prima facie convinced about the genuineness or credibility of the plea of coercion; it cannot be too particular about the nature of the plea which naturally has to be made and established in the arbitral proceeding. If the courts were to take a contrary approach, there would be the danger of denying a forum to the claimant altogether. This Court upheld the concept of economic duress and held that notwithstanding signing of discharge voucher and accepting the amount offered, the dispute is still arbitrable. Pleading in a Section 11(6) application cannot be conclusive whether there is fraud, coercion or undue influence or otherwise.

> 38. A three-Judge Bench of this Court in SBI General Insurance Co. Ltd. Vs. Krish Spinning 6 held that even if the contracting parties in pursuance to a settlement agree to discharge each other of any obligations arising under the contract it is does not ipso facto mean that the arbitration agreement too would come to an end, unless the parties expressly agree to do the same. The Bench also explained the concept of 'accord and satisfaction' under Section 63 of the Indian Contract Act, 1872. Any dispute pertaining to the full and final settlement itself by necessary implication being a dispute arising out of or in relation to or under the substantive contract would not be precluded from reference to arbitration as the arbitration agreement contained in the original contract continues to be in existence even after the parties have 2024 SCC OnLine SC 1754 discharged the original contract by 'accord and satisfaction'.

This Court held thus:

> 53. Thus, even if the contracting parties, in pursuance of a settlement, agree to discharge each other of any obligations arising under the contract, this does not ipso facto mean that the arbitration agreement too would come to an end, unless the parties expressly agree to do the same. The intention of the parties in discharging a contract by "accord and satisfaction" is to relieve each other of the existing or any new obligations under the contract. Such a discharge of obligations under the substantive contract cannot be construed to mean that the parties also intended to relieve each other of their obligation to settle any dispute pertaining to the original contract through arbitration.
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> 54. Although ordinarily no arbitrable disputes may subsist after execution of a full and final settlement, yet any dispute pertaining to the full and final settlement itself, by necessary implication being a dispute arising out of or in relation to or under the substantive contract, would not be precluded from reference to arbitration as the arbitration agreement contained in the original contract continues to be in existence even after the parties have discharged the original contract by "accord and satisfaction".

> 39. Again, in the case of Aslam Ismail Khan Deshmukh Vs. Asap Fluids Pvt. Ltd.7, a three-Judge Bench of this Court reiterated the above proposition and held as under:

> 51. It is now well-settled law that, at the stage of Section 11 application, the referral courts need only to examine whether the arbitration agreement exists - nothing more, nothing less. This approach upholds the intention of the parties, at the time of entering into the agreement, to refer all disputes arising between themselves to arbitration. However, some parties might take undue advantage of such a limited scope of judicial interference of the referral courts and force other parties to the agreement into participating in a time-consuming and costly arbitration process. This is especially possible in instances, including but not limited to, where the claimant

> canvasses either ex facie time-barred claims or claims which have been discharged through "accord and satisfaction", or cases where the impleadment of a non-signatory to the arbitration agreement is sought, etc. (2025) 1 SCC 502
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> 52. In order to balance such a limited scope of judicial interference with the interests of the parties who might be constrained to participate in the arbitration proceedings, the arbitral tribunal may direct that the costs of the arbitration shall be borne by the party which the tribunal ultimately finds to have abused the process of law and caused unnecessary harassment to the other party to the arbitration
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> 40. Thus, the doctrine of Kompetenz-Kompetenz is now firmly embedded in the arbitration jurisprudence in India. This doctrine is based on the principle that an arbitral tribunal is competent to rule on its own jurisdiction including on the issue of existence or validity of an arbitration agreement. The object is to minimize judicial intervention which is an acknowledgment of the concept of party autonomy.
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> 41. In view of the clear legal proposition, we have no hesitation in holding that the High Court was wrong in rejecting the Section 11(6) applications of the appellant.

The question as to whether the appellant was compelled to sign the standardized voucher/advance receipt forwarded to it by the respondent out of economic duress and whether notwithstanding receipt of Rs.1,88,14,146.00 as against the claim of Rs. 5,71,69,554.00 the claim to arbitration is sustainable or not are clearly within the domain of the arbitral tribunal.

42. That being the position, the impugned order of the High Court dated 02.12.2011 is set aside.

43. Having regard to the long lapse of time we are of the view that it would be appropriate for this Court to appoint a retired Judge of the Bombay High Court as the sole arbitrator. Accordingly, we appoint Justice (Retd.) Suresh Chandrakant Gupte (Mobile No.- 9821010104) as the sole arbitrator. Parties to report to the sole arbitrator by 15.05.2025.

44. Appeals are accordingly allowed. However, there shall be no order as to costs.

.....J. [ABHAY S. OKA] .....J. [UJJAL BHUYAN] NEW DELHI;

MAY 06, 2025.