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

Judgment pronounced on: 09.05.2025

\+ **OMP (ENF.) (COMM.) 19/2018 &E.X.APPL.(OS) 1806/2024**

ANGLO-AMERICAN METALLURGICAL COAL PVT. LTD.

……Decree Holder

Through: Mr. Jayant K Mehta, Sr. Adv. with Mr. Sumeet Kachwaha, Mr. Samar Kachwaha, Ms. Ankit K, Ms. Akanksha Mohan and Ms. Ananya Saluja, Advs.

versus

MMTC LTD

…….....Judgment Debtor

Through: Mr Chetan Sharma, Ld. ASG with Mr Sanat Kumar, Sr. Adv. with Mr. Akhil Sachar, Ms. Sunanda Tulsyan, Mr R.V. Prabhat, Mr. Amit Gupta, Ms. Kashish Maheshwari, Ms. Shweta Pattnaik, Mr. Vinay Yadav, Mr. Saurabh Tripathi, Mr. Vikramaditya Singh and Mr. Shubham Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: JASMEET SINGH, J

1. Even though the judgment in the main enforcement petition was reserved on 28.10.2024, however, in view of the application being

E.X.APPL.(OS) 1806/2024 filed thereafter, the judgement was not pronounced till the conclusion of hearing in the said application. Hearing in the said application concluded on 07.05.2025.

2. This is a petition filed under section 36 of Arbitration and Conciliation Act, 1996 (***"1996 Act"***) seeking enforcement of Award dated 12th May, 2014 passed by the learned Arbitral Tribunal (***"AT"***) by a majority of 2:1 regarding the disputes between the parties herein.

FACTUAL BACKGROUND

3. On 07.03.2007, the decree holder and the judgment debtor entered into a Long Term Agreement (***"LTA"***) for the sale and purchase of coking coal from decree holder on FOB (trimmed) basis from DBCT Gladstone in Australia. Under the LTA, the decree holder was the Seller and the judgment debtor was the Purchaser of a quantity of coking coal.

4. The LTA encompassed three delivery periods one year each commencing on 1st July, 2004 and ending on 30th June, 2007 and by virtue of Clause 1.3 of LTA, the judgment debtor was given an option to extend the LTA for two more Delivery Periods which was later exercised by the judgment debtor and it was decided that the purchases and deliveries were also to be made in the Fourth Delivery Period (1st July, 2007 to 30th June, 2008) and a Fifth Delivery Period (1st July, 2008 to 30th June, 2009). In these two additional Delivery Periods, it was provided that the judgment debtors would purchase 466,000 MT of coking coal during each Delivery Period (Clause 1.1.1). It is to be noted that till Fourth Delivery Periods, there was no dispute between the parties.

5. The dispute between the parties arises out of the Fifth Delivery Period. As noted above, the Fifth Delivery Period was set to expire on 30th June, 2009, however, the decree holder's letter to the judgment debtor dated 14th August 2008 extended the Fifth Delivery Period till 30th September 2009. The coking coal to be supplied was of two types: Isaac Coking Coal blend and Dawson Valley blend. The agreed price for each for the Fifth Delivery Period was US$ 300 per MT. This price was agreed by the parties in accordance with the LTA, and was confirmed by letter from the judgment debtor to the decree holder dated the 20thNovember 2008.

6. During the Fifth Delivery Period, the judgment debtor lifted two shipments @ US$ 300 per MT. The first was on 30th October, 2008 for a quantity of 2,366 MT and the second was on 5thAugust, 2009 for a quantity of 9,600 MT. The first of these shipments was via the "Furness Hartlepool" and was part of a larger shipment under which 48,655 MT was lifted in respect of balance quantities under the Fourth Delivery Period (at the agreed rate for that period of US$ 96.40 per MT). The Fifth Delivery Period component of this delivery was 2,366 MT and this was transacted at the agreed price of US$ 300 per MT.

7. The second of these shipments was an ad hoc agreement made in a meeting held on 15th July 2009 and confirmed in writing by the judgment debtor on 22ndJuly 2009. That Ad-Hoc Agreement was for 50,000 MT of coal under which 9,600 MT was to be purchased at the contractual price of US$ 300 per MT, but the balance 40,400 MT was to be sold at an ad hoc price of US$ 128.25 per MT.

8. The total quantity lifted in respect of the Fifth Delivery Period was

11,966 MT (2,366 + 9,600MT) as compared to the contracted quantity of 466,000 MT. Accordingly, the quantity not lifted by the judgment debtor amounted to 454,034 MT.

9. The LTA contained an arbitration clause at Paragraph 20 which reads as under:-

> *"PARA 20: ARBITRATION:*
>
> *20.1 All disputes arising in connection with the present Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce, Paris by one or more Arbitrators appointed in accordance with the said Rules and the Award made in pursuance thereof shall be binding on the parties. The Arbitrator shall give a reasoned award. The venue of arbitration shall be New Delhi, India."*

Proceedings before the AT

10. The decree holder's claim before the AT was that the judgment debtor did not lift the contracted coal other than a small quantity of 11,966 MT during the Fifth Delivery Period. Accordingly, the judgment debtor failed in lifting the remaining quantity i.e. 454,034 MT.

11. The crux of the case setup by the decree holder is crystallized in the statement of witness namely Mr Wilcox, (decree holder's Head of Sales).Relevant part is extracted below:-

> *"Soon after MMTC signed the Addendum dated 20th November 2008 (Addendum No. 2 to the Long Term Agreement dated 7th March 2007), it made clear its reluctance to lift any material under the Long Term*

Contract.

MMTC's letter in this regard dated 20th November 2008 is already on record (Annexure C-5). At all relevant times efforts were made by the Claimant to convince MMTC to start lifting at least some quantities under the Long Term Agreement. Besides telephonic discussions, my personal visits to meet MMTC's officials in this regard were on 6th January 2009, 24th February 2009, 21st April 2009 (along with our Mr. Rod H. Elliott, General Manager, Marketing), 12th May 2009 and 15th June 2009.

My visit of 24th February 2009 was followed up by a letter dated 11th March 2009 (Annexure C-6) from Mr. Rod H. Elliott to Mr. H.S. Mann, MMTC's Director Marketing in which we expressed our concern that deliveries under the Fifth Delivery Period remained unperformed and that MMTC had not intimated arrangements for performance of obligations arising under the Agreement. We requested MMTC to propose a Delivery Schedule. The said letter (Annexure C-6) was additionally forwarded by me to Mr. Suresh Babu the very next day i.e. on 12th March 2009 and my letter in this regard is at Annexure C-22. During the subsistence of the Fifth Delivery Period and indeed even thereafter, Anglo continued to push MMTC to honour its contractual commitments but to no avail."

12. Relying on the letter dated 4th March 2010, the decree holder claims that the judgment debtor had breached the terms of the LTA and

claimed the difference between the contract price (US$ 300) and the market price. The market price as on the date of breach (30th September 2009) was said by the decree holder to be US$ 128.25 per MT for Isaac hard coking coal and US$ 125 per MT for Dawson Valley blend. On the basis of the average price (US$ 126.62) damages amounting to US$ 78,720,414.92 were claimed. Further, the decree holder also sought interest at 12% per annum from 30th September 2009 to the date of payment.

13. The judgment debtor disputed the claims of the decree holder on various ground *inter alia*, non-availability of contracted goods, crash of Lehman Brothers causing drastic fall in prices. However, it is important to mention that the plea of Addendum dated 20.11.2008 read with LTA being vitiated by fraud and collusion between the officials of the judgment debtor and the decree holder has neither been taken nor adjudicated upon by any of Courts.

14. The AT, after evidence led by both the parties and hearing arguments, passed the Award dated 12.05.2014 by a majority of 2:1. Relevant paragraphs of the said Award read as under:-

> *"**Summary***
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> *180. Having read heard and considered the evidence and submissions of the parties and for the reasons given above the Tribunal finds, and holds, unanimously save where indicated, as follows:*
>
> *(a) The Respondent committed a breach of contract by not lifting 454,034 MT of coking coal within the Fifth Delivery Period, which expired on 30th September2009.*

(b) The Claimant was not in breach of contract in failing to supply goods to the Respondent during the Fifth Delivery Period.

(c) The Claimant was, at all material times in a position to perform its obligations under the Agreement by supplying the requisite quantities in a timely manner in accordance with the Agreement.

(d) The Claimant's claims are not barred by limitation.

Dispositive Section

181. For the above reasons the Tribunal Orders and Directs that:

(1) By a majority, the Claimant is entitled to damages from the Respondent in the sum of US$ 78,720,414.92.

(2) By a majority the Tribunal concludes that the Claimant is entitled to simple interest on such damages in the sum of US$27,239,420.29 in respect of interest up to the date of this Award, and at a rate of 15% p.a. on the principal sum from the date of this Award until payment.

(3) The Claimant is entitled to its costs of the arbitration which, by a majority we assess in the amount of US$ 977,395.00.

(4) The sums set out above as being due to the Claimant are due as at the date of this Award and are to be paid by the Respondent.

(5) This Award is final as to the matters in dispute between the parties and referred to arbitration before us. All other

requests and claims by the parties are dismissed."

Proceedings post passing of the Award before the HC and SC

15. The said Award was assailed by the judgment debtor by way of filing a petition under section 34 of 1996 Act being O.M.P. 790 of 2014 which was dismissed by a co-ordinate bench of this Court *vide* judgment 10.07.2015.

16. The said judgment was further assailed by the judgment debtor by way of filing a petition under section 37 of 1996 Act being FAO (OS) 532 of 2015.The Division Bench of this Court *vide* judgment dated 02.03.2020 set aside the above judgment dated 10.07.2015 and the Award passed by the learned AT.

17. The judgment passed by the Division Bench was challenged by the decree holder before the Hon'ble Supreme Court by way of filing SLP (C) No. 11431 of 2020. The said petition was decided in ***Anglo American Metallurgical Coal Pty. Ltd. v. MMTC Ltd., (2021) 3 SCC 308*** and the Hon'ble Supreme Court set aside the judgment dated 02.03.2020 passed by the Division Bench and restored the Award passed by the learned AT. Relevant portion of the judgment dated 17.12.2020 reads as under:-

"23. However, Shri Rohatgi invited us to look at the unequivocal language contained in the three emails relied upon by the Division Bench, namely, the emails dated 2-7-2007, 22-7-2009 and 7-9-2009, which stated that not only were no stems available for August/September 2009, but that also there was no coal left for the remainder of the year, making it clear that this was an admission on the part

of the appellant that it was unable to supply the contracted quantity of coal during the remainder of the fifth delivery period. However, what is missed by Shri Rohatgi is the crucial fact that no price for the coal to be lifted was stated in any of the emails or letters exchanged during this period. This is in fact what the majority award adverts to and fills up by having recourse to the evidence given by Mr Wilcox, stating that the ambiguity qua price was resolved by the fact that no coal was available for lifting at a price lower than the contractual price. The majority award found, relying upon Mr Wilcox's evidence, that the supplies that were sought to be made in August and September 2009 were therefore, also in the nature of "mixed" supplies i.e. coal at the contractual price, as well as coal at a much lower price. This is a finding of fact that cannot be characterised as perverse, as it is clear from the evidence led, the factual matrix of the setting of there being a slump in the market, in which the performance of the contract took place, as well as the ambiguity as to whether the correspondence referred to contractual price or "mixed" price, and thus, is a possible view to take.

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42. Shri Rohatgi's argument in support of the impugned judgment of the Division Bench that there is no evidence to demonstrate proof of damage suffered as on the date of breach, is also factually incorrect. It is well established that

the Arbitral Tribunal is the final judge of the quality, as well as the quantity of evidence before it (see Sudarsan Trading Co. v. State of Kerala [Sudarsan Trading Co. v. State of Kerala, (1989) 2 SCC 38] , SCC in para 29, at pp. 53-54). As was correctly pointed out by Shri Sibal, the majority award has taken into account Mr Wilcox's affidavit dated 10-7-2013 and additional affidavit dated 3-9-2013 detailing the prices at which sales of coal were made to Chinese purchasers during the fifth delivery period, which ended on 30-9-2009, being the date of breach as found by the majority award. In addition, contemporaneous correspondence, including letters dated 27-11-2009 and 3-12-2009 were also relied upon to show that the respondent was itself seeking coal at roughly the price of US $128 per metric tonne, at around the same time. Hence, the difference between the contractual price and market price was arrived at as US $173.383 per metric tonne, in accordance with the law laid down by this Court……

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54. All the aforesaid judgments are judgments which, on their facts, have been decided in a particular way after applying the tests laid down in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] and its progeny. All these judgments turn on their own facts. None of them can have any application to the case before us, as it has been found by us that in the fact

situation which arises in the present case, the majority award is certainly a possible view of the case, given the entirety of the correspondence between the parties and thus, cannot in any manner, be characterized as perverse.

55. Accordingly, the appeal stands allowed. The judgment of the Division Bench dated 2-3-2020 [MMTC Ltd. v. Anglo American Metallurgical Coal Pty. Ltd., 2020 SCC OnLine Del 1659] is set aside, thereby restoring the majority award dated 12-5-2014 and the Single Judge's judgment dated 10-7-2015 [MMTC Ltd. v. Anglo American Metallurgical Coal Pty. Ltd., 2015 SCC OnLine Del 10250 : (2015) 221 DLT 421] dismissing the application made under Section 34 of the Arbitration Act by the respondent."

18. With this background, the Award passed by the learned AT was upheld by the Hon'ble Supreme Court.

19. During the pendency of the present enforcement petition, the judgment debtor moved objections under section 47 of Code of Civil Procedure, 1908 (***"CPC"***) to urge that the Award dated 12.05.2014 passed by the learned AT is not executable on the ground of "fraud" as Mr. Suresh Babu, the then GM (Coking Coal) acted in collusion with the decree holder to provide advantage to them. This conspiracy led to wrongful gain to the decree holder and wrongful loss to the judgment debtor. Relevant paragraphs of the objections are extracted below:-

"8. In a note dated 03.06.2008, Shri. Suresh Babu, the then GM (Coking Coal) proposed for finalization of price for

long term agreement for the 5th delivery period at the rate of US$ 300 per Metric Ton (FOB). Shri Suresh Babu also mentioned in the said note that since the 2007-08 contract cargo was to be delivered till 30.09.2008 (typographical error of 30.09.2009 in the Note), the Decree Holder had suggested that the quantity for 01.07.2008 to 30.06.2009 be proportionately reduced, considering the nine months' time left for supply of coal under the 5th delivery period.

9. It is apposite to refer to a global event of which judicial notice can be taken of. On 15.09.2008, crash of Lehman Brothers introduced worldwide economic recession and volatility thereby also crashing/reduction of prices of commodities including coal. This event was also taken note of by the Hon'ble Arbitral Tribunal.

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12. However, in the Agenda Note dated 29.09.2008 of 1103rd meeting of SPCoD (i.e. Sale/Purchase Committee of Directors) prepared by Shri Suresh Babu and placed before the SPCoD, he neither proposed to reduce the quantity nor defer the finalization of price of coal at USD 300 PMT up to March 2009 (as NINL was having sufficient coal stock to meet the requirement up to March, 2009) despite being duty bound to place the entire material, including the noting of the Director (Mktg), MMTC in the Agenda Note.

13. Further, on perusal of the Minutes of 1103rd Sale Purchase Committee of Directors (SPCoD), meeting held on

06.10.2008, it is evident that dealing officials were aware of the deadlock issues (like MMTC not be able to lift the entire quantity of Anglo Coal under agreement for the 4th delivery period i.e. 2007-08 period by 30.6.2008, spot price of hard coking coal reaching to US$ 400/MT FOB, high demurrage rates offered by Anglo and BHP Mitsubishi Alliance (BMA) for Indian importers etc.) with M/s. Anglo Coal, and also the recent fall in prices of Pig Iron and Steel products (coking coal being raw material for producing LAM coke which is used in production of pig iron at NINL) during the relevant point of time.

14. Despite such adverse market conditions prevailing and without adequate assessment of viability of high-priced raw material for NINL's production, the dealing officials proposed and SPCoD approved the proposal to purchase 4,66,000 MTs, at price US$ 300PMT FOB basis, valuing Rs. 615 Crores approx. (@Rs. 44/$) for the fifth delivery period from the Decree Holder.

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16. That therefore, this shows that the the dealing officials who proposed and SPCoD approved the proposal to obtain pecuniary advantage for the Decree Holder by abusing their offices.

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19. That it is indeed shocking that the officials of the Judgment Debtor, despite being fully aware that the price of

Coking Coal had drastically fallen, proceeded to execute the Addendum No.2 dated20.11.2008. It is important to note that on 20.11.2008 i.e: date of signing of the Addendum, MMTC officials knew about the drastic fall in price, which is evident from the letter of Shri Ved Prakash above.

20. That any attempt to justify the fixation of price at US$ 300 per MT under the subterfuge of the contracts/agreements entered by Steel Authority of India Limited (SAIL)/Rashtriya Ispat Nigam Limited(RINL) shall be a gross misrepresentation of the gamut of facts, which also deserves to be clarified. SAIL had executed the contract with the Decree Holder on 30.07.2008 at a price which was close to the then prevailing market price i.e. US$ 300 per metric tonne. However, in the month of September, 2008, there was a massive crash in the price of coal, steel and other such products due to the collapse of the Lehman Brothers leading to a financial crisis in the United States of America, which later on spread to the rest of the world. Despite the fact that the then erring officials of the Judgment Debtor had an option not to execute the Second Addendum, it indeed shocks one's conscience that the said erring officials chose to execute the Second Addendum at a price of US$ 300 per Metric Tonne on 20.11.2008, which was more than the prevailing market price in the month of September to November, 2008. This prima-facie shows fraudulent conduct on the part of the then erring officials,

which has caused wrongful pecuniary advantage to the Decree Holder at the expense of the Judgment Debtor. Further investigation qua the collusion between the officials of the Judgment Debtor and the Decree Holder is pending with the CBI."

20. On perusal, despite knowing the change in market and the fall in coal prices, in the September 2008 SPCoD meeting, Shri. Suresh Babu intentionally did not propose a reduction in quantity or defer the price finalization at US$ 300 per MT, even though Neelanchal Ispat Nigam Limited (***"NINL"***) had sufficient coal stock until March 2009. The officials did not mention the Director's note in the meeting. Shri. Suresh Babu continued to approve a deal at an inflated price, benefiting the decree holder.

SUBMISSIONS ADVANCED BY THE PARTIES

(On behalf of the Judgment Debtor)

21. *On maintainability of the objections*, Mr. Sharma, learned ASG and Mr. Kumar, learned senior counsel appearing for the judgment debtor submits that the Award passed by the learned AT, as per section 36 of 1996 Act, is to be enforced in accordance with the provisions of the CPC in the same manner as if it were a decree of the Court. Thus, the Award rendered by the AT is in effect a decree and it is enforceable as a "Decree" in terms of the CPC. Reliance is placed on ***Union of India v. Jagat Ram Trehan & Sons, 1996 SCC OnLine Del 20.*** Further, in ***Bijendra Kumar v. Pradeep Kumar, 2014 SCC OnLine Del 2042***, this Court observed that an Award, which is a nullity, being against public policy, can always be challenged, even at the stage of

execution. Hence, the provisions of CPC are squarely applicable in execution proceedings.

22. In light of the same, learned senior counsels placed reliance on section 47 of CPC to *inter-alia*, contend that all questions relating to execution, discharge or satisfaction of a decree and arising between the parties to the suit in which a decree is passed, shall be determined in the execution proceedings. Reliance is also placed on ***Jini Dhanrajgir v. Shibu Mathew, 2023 SCC OnLine SC 643***.

23. Learned senior counsels further submit that once a plea of fraud has been set up by the judgment debtor before the Executing Court and credible evidence in support of such plea has also been placed, it is imperative for the Executing Court to examine the issue of fraud on merits. In this regard, reliance is placed on ***Kishan Lal Barwa v. Sharda Saharan, 2015 SCC OnLine All 4980***. The said judgment is upheld by the Hon'ble Supreme Court *vide* orders dated 12.10.2015 and 06.01.2017 in SLP (C) No. 23823 of 2015. Relying on the aforementioned judgments, learned senior counsels urge that the present objections are maintainable.

24. *Merits of the Objections*, learned senior counsels draw my attention to various clauses of LTA to urge that with respect to Fourth and Fifth delivery periods, discretion was reserved with the judgment debtor, whether to place firm orders on the decree holder for purchase of coking coal but there was no such firm agreement binding for the Fourth and Fifth delivery periods. The quantity of coal and fixation of price were to be discussed and mutually settled between the parties.

25. Shri. Suresh Babu, the then GM (Coking Coal) of the judgment debtor

in a Note dated 03.06.2008 proposed for finalization of price for LTA for the Fifth delivery period at the rate of US$ 300 per MT. The said note also recorded that the supplies against the fourth delivery period from 01.07.2007 to 30.6.2008 had not been completed and had been extended till 30.09.2008. Hence, the judgment debtor ought not to have been in a hurry to enter into a binding agreement with respect to the Fifth Delivery Period from 01.07.2008 to 30.06.2009, but still the note was nevertheless prepared for obtaining sanction of Sale/Purchase Committee of Directors (***"SPCoD"***) for entering into a binding contract for the period 01.07.2008 to 30.06.2009. There was however, no mention in the said note, of the quality of coking coal to be transacted during the said Fifth delivery period. Shri H.S. Mann, the then Director (Marketing) of the judgment debtor on 04.06.2008 endorsed thereon that the judgment debtor "should try to avoid/defer US$ 300 price coal to be finalized for 2008-2009", till March, 2009. Thus, he was of the opinion that considering the international markets, judgment debtors should not commit to the price of USD 300 per MT in advance, before the need for coal arise.

26. On 15.09.2008, there was a sudden turmoil in the international markets, owing to a global financial crisis due to Lehman Brothers crash. This aspect was known to the decree holder as there was a press release note by the judgment debtor dated 20.02.2009. Despite knowing fully well, the erring officials of the judgment debtor collusively and fraudulently with the decree holder executed the Addendum-2 dated 20.11.2008 for 300 USD per MT which was more than 3 times the price fixed for the Fourth Delivery Period i.e. 96.40

USD per MT and caused a massive loss to the public exchequer.

27. However, in the Agenda Note dated 29.09.2008 of 1103rd meeting of SPCoD prepared by Shri Suresh Babu and placed before the SPCoD, Shri Suresh Babu neither proposed to reduce the quantity nor defer the finalization of price of coal at USD 300 per MT up to March 2009 despite NINL was having sufficient coal stock to meet the requirement up to March, 2009 and despite being duty bound to place the entire material, including the noting of the Director (Mktg), MMTC in the Agenda Note.

28. Learned senior counsels drawing my attention to Minutes of 1103rd SPCoD meeting held on 06.10.2008urge that despite such adverse market conditions prevailing and without adequate assessment of viability of high-priced raw material for NINL's production, the erring officials of judgment debtor, approved the proposal to purchase 4,66,000 MTs, at price US$ 300 per MT, valuing Rs. 615 Crores approx. (@ Rs.44/$) for the Fifth delivery period from the decree holder.

29. On 14.10.2008, NINL sent a letter to Mr. Suresh Babu wherein a special request was made with respect to cooking coal restricted to 12.66 lakh MT. Another letter was addressed by NINL on 16.10.2008, drawing to the notice of Mr. Suresh Babu specifically that they need coal around 9 lakh MT only and requiring the judgment debtor to get only 2.2 lakh MT so far as Anglo-American Coal is concerned. The Addendum to the LTA for the Fifth Delivery Period was signed on 20.11.2008. Thus, on the signing and execution of the Second Addendum to the LTA, the decree holder and the judgment debtor agreed to the price and quantity of coking coal for the Fifth Delivery

Period. On the same day, a communication was issued by Shri Ved Prakash, the then CGM, MMTC to the decree holder seeking reduction in price of coal.

30. Learned Senior counsels urge that it is indeed shocking that the officials of judgment debtor, despite being fully aware that the price of coking coal had drastically fallen, proceeded to execute the Addendum No.2 dated20.11.2008. Further, officials of the judgment debtor on the date of signing the Addendum, knew about the drastic fall in price, which is evident from the letter of Shri Ved Prakash above.

31. In light of this, learned senior counsels submit that there was neither any plausible reason nor justification for procurement of 4.46 lakh MT and that too at a price of US$ 300 per MT. Since the execution of the Addendum-2 on 20.11.2008 was the result of fraud, collusion, conspiracy and corruption, fraud is clearly visible on the face of record. Therefore, this reveals that the dealing officials of the judgment debtor who proposed the price @ US$ 300 per MT for 4,66,000 MT of coking coal, did so by deliberately ignoring market realities for the sole purpose of providing pecuniary advantage to themselves and to the decree holder by abusing their official position. If a non-executable award is permitted to be executed, it will lead to a massive expenditure of public funds to a humongous extent, in the name of import of coal, which was never shipped by the decree holder. In other words, the Award was obtained by playing fraud on the learned AT. The same is a nullity, inexecutable and non est in the eyes of law.

32. Reliance is also placed to an Order dated 15.02.2023 passed by this Court wherein it was held that huge public money is involved and serious charges of fraud and corruption are being investigated by the CBI. It has been argued that the said order has not been challenged or taken to the Supreme Court.

(On behalf of the Decree Holder)

33. Refuting the above submissions, Mr Mehta, learned senior counsel appearing for the decree holder at the outset, submits that the judgment debtor's challenge is barred by section 5 of 1996 Act. The Arbitration Act is a complete code. By a "non-obstante" provision, judicial intervention is barred, unless specifically provided for by the 1996 Act itself. The 1996 Act does not contemplate any challenge to an Award being raised post conclusion of section 34 of 1996 Act stage. The Enforcement Court under section 36 has not been conferred with any jurisdiction to adjudicate on any such challenge or question the Award. Judgment debtor's challenge is thus legally barred, by section 5 of 1996 Act.

34. The judgments cited by the judgment debtor to justify their objections only provide that an Executing Court can refuse to execute a decree, if on the face of it, the same is a 'nullity', i.e. where there is an inherent lack of jurisdiction, or ex-facie, it can be shown that fraud was played on the Court itself.

35. He further submits that the objections set up by the judgment debtor ae of an alleged fraud on itself, as opposed to a fraud on the Court. The submissions advanced by the judgment debtor that its officers should not have signed the Addendum for the Fifth delivery period

and should not have agreed to the price of US$ 300 per MT. The said contentions clearly amount to a fact-based challenge to the formation and validity of the underlying Agreement, on its merits. Such a challenge could have only been raised before the AT. Admittedly, no such challenge was raised by the judgment debtor in the decade long litigation, and is dishonestly sought to be raised at the final stage of execution, only to frustrate the Award.

36. Further, the judgment debtor's challenge is also barred by limitation. Judgment debtor seeks to challenge a 2007 Agreement, after 15 years of its execution, and 8 years after an Award has been rendered. The Limitation Act, *vide* Section 17 and Articles 58/59 bars any such challenge. MMTC has not put forth any proper explanation as to why it could not have, with ordinary diligence, discovered the alleged fraud earlier, especially when it was well represented in all legal forums right upto the Hon'ble Supreme Court and all relevant facts now urged were known to it.

37. He vehemently urges that judgment debtor's objections are an abuse of process. If such objections are held to be maintainable, no Award (despite attaining finality) will ever be executed. Such a course would be unjust and unknown to arbitration jurisprudence and is in fact not countenanced even in the much less rigorous civil jurisprudence.

ANALYSIS AND FINDINGS

38. I have heard the rival submissions advanced by the learned senior counsel for the parties.

39. The question which falls for my consideration is whether the judgment debtor is entitled to move objections under section 47 of CPC against

the execution of the Award under section 36 of 1996 Act.

40. The 1996 Act is a self-contained code meaning thereby an exhaustive legislation to establish a robust arbitral mechanism for which purpose it is enacted. It gives a complete set of procedures to deal with the purpose sought to be achieve by the statute. Further, its dependence on the general law is either minimal or absent. Therefore, unless specifically stated in any sections of 1996 Act, the aid and use of general laws is not permissible and must be excluded.

41. The principle of limited court interference, *inter alia*, is one of the fundamental feature of 1996 Act as it ensures that the arbitration process remains an efficient and autonomous mechanism for resolving disputes without unnecessary interference by the Courts.The Hon'ble Supreme Court in ***Vidya Drolia v. Durga Trading Corpn., (2021) 2*** **SCC 1** has held that the principle of party autonomy goes hand in hand with the principle of limited court intervention, this being the fundamental principle underlying modern arbitration law. For the sake of perusal, relevant portion is extracted below:-

> *"72. ……..By putting party autonomy on a high pedestal, the Act mandates that the parties to a valid arbitration agreement must abide by the consensual and agreed mode of dispute resolution. The courts must show due respect to arbitration agreements particularly in commercial settings by staying the court proceedings, unless the legislative language is to the contrary. The principle of party autonomy goes hand in hand with the principle of limited court intervention, this being the fundamental principle*

underlying modern arbitration law……"

42. In 1996 Act, section 5 deals with limited court interference. The said section is extracted below:-

> *"5. Extent of judicial intervention.—Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."*
>
> ***(Emphasis added)***

43. On perusal, the said section begins with the non-obstante clause and by using the phrase "no judicial authority shall intervene" restrains the interference of judicial authority to the extent provided under Part I. The Hon'ble Supreme Court in ***Interplay Between Arbitration Agreements under Arbitration, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1*** has extensively dealt with *inter alia*, section 5 and observed as under:-

> *"81. One of the main objectives of the Arbitration Act is to minimise the supervisory role of Courts in the arbitral process. Party autonomy and settlement of disputes by an Arbitral Tribunal are the hallmarks of arbitration law. Section 5 gives effect to the true intention of the parties to have their disputes resolved through arbitration in a quick, efficient and effective manner by minimising judicial interference in the arbitral proceedings. [Food Corpn. of India v. Indian Council of Arbitration, (2003) 6 SCC 564.] Parliament enacted Section 5 to minimise the supervisory role of Courts in the arbitral process to the bare minimum,*

and only to the extent "so provided" under the Part I of the Arbitration Act. In doing so, the legislature did not altogether exclude the role of Courts or judicial authorities in arbitral proceedings, but limited it to circumstances where the support of judicial authorities is required for the successful implementation and enforcement of the arbitral process……

82. ……. It is of a wide amplitude and sets forth the legislative intent of limiting judicial intervention during the arbitral process. In the context of Section 5, this means that the provisions contained in Part I of the Arbitration Act ought to be given full effect and operation irrespective of any other law for the time being in force. It is now an established proposition of law that the legislature uses non obstante clauses to remove all obstructions which might arise out of the provisions of any other law, which stand in the way of the operation of the legislation which incorporates the non obstante clause. [State of Bihar v. Bihar Rajya M.S.E.S.K.K. Mahasangh, (2005) 9 SCC 129 : 2005 SCC (L&S) 460]

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88. One of the main objectives behind the enactment of the Arbitration Act was to minimise the supervisory role of Courts in the arbitral process by confining it only to the circumstances stipulated by the legislature. For instance, Section 16 of the Arbitration Act provides that the Arbitral

Tribunal may rule on its own jurisdiction "including ruling on any objection with respect to the existence or validity of the arbitration agreement". The effect of Section 16, bearing in view the principle of minimum judicial interference, is that judicial authorities cannot intervene in matters dealing with the jurisdiction of the Arbitral Tribunal. Although Sections 8 and 11 allow Courts to refer parties to arbitration or appoint arbitrators, Section 5 limits the Courts from dealing with substantive objections pertaining to the existence and validity of arbitration agreements at the referral or appointment stage. A Referral Court at Section 8 or Section 11 stage can only enter into a prima facie determination. The legislative mandate of prima facie determination ensures that the Referral Courts do not trammel the Arbitral Tribunal's authority to rule on its own jurisdiction.

89. ……. Section 5 contains a general rule of judicial non-interference. Therefore, every provision of the Arbitration Act ought to be construed in view of Section 5 to give true effect to the legislative intention of minimal judicial intervention."

44. Section 5 of 1996 Act aims to minimize the interference/supervisory role of court in arbitration process. The provisions of Part I of 1996 Act ought to be construed in consonance with section 5 to give its true effect. Furthermore, it is important to note that section 5 is mentioned under Part I which also includes section 36 which reads as under:-

"36. Enforcement.—(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court."

(Emphasis added)

45. On plain reading, when the period for challenging an Award under section 34 has expired and/or challenge made under section 34 has failed, then such an Award is enforceable. Further, an Award shall be enforced in accordance with the provisions of the CPC in the same manner "as if it were a decree of the court". The legislature has clearly indicated that an Award intends to be a deemed decree only for the purposes of enforcement. Once the limitation period for challenging an Award under section 34 has expired and/or challenge under section 34 has failed, then the Award has to be enforced.

46. The judgment debtor has argued that the legislature by using the phrase "as if it were a decree of the court" gives liberty to the judgment debtor to file an objection under section 47 of CPC against the enforcement of an Award like a decree passed by a Civil Court.

47. For ease of reference, section 47 of CPC is extracted below:-

"47. Questions to be determined by the Court executing decree.—(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court

executing the decree and not by a separate suit."

48. The Executing Court while executing a decree passed in a suit can determine all the questions relating to the parties to the suit, or their representatives, or relating to the execution, discharge, or satisfaction of the decree.

49. Section 2(2) of CPC defines 'decree' which reads as under:-

"(2) "decree" means the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include—

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation.—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;"

50. A decree is passed by a Court after adjudicating the rights of the parties with regard to all or any of the matters in controversy arising in the suit. In ***Paramjeet Singh Patheja v. ICDS Ltd., (2006) 13 SCC 322,*** the Hon'ble Supreme Court has observed as under:-

21. The words "court", "adjudication" and "suit"

conclusively show that only a court can pass a decree and that too only in a suit commenced by a plaint and after adjudication of a dispute by a judgment pronounced by the court. It is obvious that an arbitrator is not a court, an arbitration is not an adjudication and, therefore, an award is not a decree.

28. It is settled by decisions of this Court that the words "as if" in fact show the distinction between two things and such words are used for a limited purpose. They further show that a legal fiction must be limited to the purpose for which it was created.

29. …….

In fact, Section 36 goes further than Section 15 of the 1899 Act and makes it clear beyond doubt that enforceability is only to be under CPC. It rules out any argument that enforceability as a decree can be sought under any other law or that initiating insolvency proceeding is a manner of enforcing a decree under CPC. Therefore the contention of the respondents that, an award rendered under the Arbitration and Conciliation Act, 1996 if not challenged within the requisite period, the same becomes final and binding as provided under Section 35 and the same can be enforced as a decree as it is as binding and conclusive as provided under Section 36 and that there is no distinction between an award and a decree, does not hold water.

42. The words "as if" demonstrate that award and decree

or order are two different things. The legal fiction created is for the limited purpose of enforcement as a decree. The fiction is not intended to make it a decree for all purposes under all statutes, whether State or Central.

43. For the foregoing discussion we hold:

…….

(iv) An arbitration award is neither a decree nor an order for payment within the meaning of Section 9(2). The expression "decree" in the Court Fees Act, 1870 is liable to be construed with reference to its definition in CPC and hold that there are essential conditions for a "decree":

(a) that the adjudication must be given in a suit,

(b) that the suit must start with a plaint and culminate in a decree, and

(c) that the adjudication must be formal and final and must be given by a civil or Revenue Court.

An award does not satisfy any of the requirements of a decree. It is not rendered in a suit nor is an arbitral proceeding commenced by the institution of a plaint.

(v) A legal fiction ought not to be extended beyond its legitimate field. As such, an award rendered under the provisions of the Arbitration and Conciliation Act, 1996 cannot be construed to be a "decree" for the purpose of Section 9(2) of the Insolvency Act."

51. The Hon'ble Supreme Court in ***Union of India v. Vedanta Ltd., (2020) 10 SCC 1*** and more particularly in paragraphs 69 and 70 has

held as under:-

> *"69. Section 36 of the Arbitration Act, 1996 creates a statutory fiction for the limited purpose of enforcement of a "domestic award" as a decree of the court, even though it is otherwise an award in an arbitral proceeding [Umesh Goel v. H.P. Coop. Group Housing Society Ltd., (2016) 11 SCC 313 : (2016) 3 SCC (Civ) 795] . By this deeming fiction, a domestic award is deemed to be a decree of the court [Sundaram Finance Ltd. v. Abdul Samad, (2018) 3 SCC 622 : (2018) 2 SCC (Civ) 593] , even though it is as such not a decree passed by a civil court. The Arbitral Tribunal cannot be considered to be a "court", and the arbitral proceedings are not civil proceedings. The deeming fiction is restricted to treat the award as a decree of the court for the purposes of execution, even though it is, as a matter of fact, only an award in an arbitral proceeding. In Paramjeet Singh Patheja v. ICDS Ltd. [Paramjeet Singh Patheja v. ICDS Ltd., (2006) 13 SCC 322] , this Court in the context of a domestic award, held that the fiction is not intended to make an award a decree for all purposes, or under all statutes, whether State or Central. It is a legal fiction which must be limited to the purpose for which it was created.*
>
> *70. A Constitution Bench of this Court in BengalImmunity Co. Ltd. V. State of Bihar [Bengal Immunity Co.Ltd. V. State of Bihar, (1955) 2 SCR 603 : AIR 1955 SC661] , held that*

legal fictions are created only for somedefinite purpose. A legal fiction is to be limited to the purpose for which it was created, and it would not be legitimate to travel beyond the scope of that purpose, and read into the provision, any other purpose how so attractive it may be. ……."

52. What transpires from the above is that the legal fiction created under section 36 of 1996 Act is to be read in such a manner and for the limited purpose, for which it is created. It should not be read in manner that other provisions of the statute are rendered otiose. Section 36 of 1996 Act has to be interpreted in view of the other provisions of 1996 Act such as section 5, 34 and 35. It is evident from ***Paramjeet Singh Patheja (supra)*** that an Award cannot be termed as a decree as the same is passed only in a suit commenced by a plaint and after adjudication of a dispute by a Court. Furthermore, the AT is not a "Court", and the arbitral proceedings are not civil proceedings. An Award does not fulfill any conditions of section 2(2) which defines 'decree'. The words "as if" used in section 36 of 1996 Act itself denotes that an "Award" and "decree" are two different things. By virtue of using this phrase "as if it were a decree of the Court" does not render an Award akin to a decree but only permits the Court to execute an Award in the same manner as it was a decree passed by a Civil Court. It only means that all the powers of the Executing Court will be available to a Court towards "enforcing" an Award and nothing more.

53. The legislature by using the phrase "such award shall be enforced in accordance with the provisions of the Code of Civil Procedure" only

intends to "enforce" an Award in the same manner and procedure as contemplated in CPC without altering the nature and character of an Award. The provisions of CPC are only applicable to the extent of "enforcement" of an Award such as attachment, sale, auction, detention, etc. which are reflected in Order XXI of CPC. The legislature did not intend to permit a challenge to an Award during enforcement proceedings again on merits as this would be contrary to the objectives of the 1996 Act which aim to ensure finality and limited judicial interference. The challenge to an Award is only to be made under section 34 of 1996 Act. Once the Award passes the scrutiny under section 34 or the period to challenge an Award under section 34 lapses, the Award becomes final and binding to the parties therein by virtue of section 35 of 1996 Act.

54. If the objections under section 47 of CPC are allowed to be entertained during the enforcement proceedings of an Award, it would effectively open a second round for challenging the Award which the legislature did not intend to do as the same would undermine the provision of section 34 i.e. challenge to Award on limited grounds available as mentioned therein and render the finality granted by section 35, meaningless. Further, if such interpretation is allowed, the same would defeat the purpose of 1996 Act which is to streamline arbitration and reduce the prolonged litigation. In addition, allowing objections would not only delay the finality of disputes but would also nullify the basic contours of 1996 Act. Any particular provision of a statute has to be harmoniously construed so as not to render any other provisions of the statue otiose/inconsistent with the other provisions.

55. A Co-ordinate bench of this Court in ***Hindustan Zinc Ltd. v. National Research Development Corporation, 2023 SCC OnLine Del 330*** dealing with the same issue in controversy, has observed as under:-

> *"20. ……. It would be pertinent to note that the Act envisages a challenge to an arbitral award being mounted solely within the contours of Section 34. Section 34 not only constructs the forum but also creates the right to question an arbitral award on grounds specified in that provision itself. This is manifest from the use of the expression "only if…." as occurring in Section 34(2). Accepting the contention of learned counsel for the objector that a challenge to the award on merits would also be permissible in proceedings referable to Section 36 would clearly amount to recognizing the same being an avenue available to be invoked in addition to the limited right which stands conferred by Section 34. Bearing in mind the principal objectives of the Act as well as the legislative policy underlying Sections 34 and 36, the Court finds itself unable to countenance the submission as addressed at the behest of the objector.*
>
> *21. It would be pertinent to note that Order XXI of the Code compendiously deals with the subject relating to execution of decrees. Those provisions extend from attachment of properties to sale and auction thereof. It also envisages the trial of questions that may arise in the course of execution as would be evident from the various provisions contained*

in that chapter such as Order XXI Rule 46C as well as Rules 58 to 63 and 101. As this Court reads those provisions, they clearly appear to be restricted to questions that would be indelibly connected with actions and steps that may be taken by a court in the course of execution of a decree. Even those provisions cannot possibly be construed as extending to a challenge to the validity or correctness of the original judgment and decree that may be rendered. While it may be open the Court to draw sustenance and guidance from the principles underlying the provisions contained in Order XXI in the course of enforcement of an arbitral award, it would be wholly incorrect to understand or interpret Section 36 as envisaging the adoption of its various provisions. The principles which inform the various provisions of Order XXI can at best only act as a guide for the trial of various questions that may arise in the span of enforcement of an arbitral award.

22. In summation, it must be held that a challenge to an award on the ground that it is a "nullity" or is otherwise illegal can be addressed only in proceedings that may be initiated in accordance with Section 34 of the Act. The grounds on which an award can possibly be assailed are comprehensively set out in Section 34(2). A challenge mounted on those lines in proceedings duly instituted under Section 34 alone can be recognised to be the remedy available to a judgment debtor. The Act neither envisages

nor sanctions a dual or independent challenge to an award based on the various facets of nullity as legally recognised being laid in enforcement proceedings. The conclusion of the Court in this respect stands fortified from a conjoint reading of Sections 5, 35 and 36 of the Act as well as the precedents noticed hereinabove. The aforesaid statement of the law would necessarily be subject to the caveat which is liable to be entered in respect of foreign awards and which are governed by Part II of the Act. Insofar as enforcement proceedings are concerned, while the Court would be obliged to deal with all questions that may relate to or arise out of steps that may be taken in the course of execution, it would be wholly incorrect to understand the scope of those proceedings as extending to the trial of questions touching upon the merits of the award.

23. Accordingly, and for all the aforesaid reasons, the Court comes to conclude that the challenge to the award on merits as is sought to be raised by learned counsel for the objector cannot be countenanced in these enforcement proceedings in light of the observations as made hereinabove. The objection to the enforcement of the arbitral award on that score is consequently negated."

56. A similar view has also been taken by various other High Courts in ***Bellary Nirmithi Kendra v. Capital Metal Industries; 2024 SCC OnLine Kar 51*** (Karnataka HC), ***State of U.P. v. Raj Veer Singh; 2024 SCC OnLine All 1094*** (Allahabad HC).

57. Reliance placed on ***Jini Dhanrajgir (supra)*** and ***Kishan Lal Barwa (supra)*** are misplaced as both the judgments are not under the 1996 Act. Reliance placed on ***Bijendra Kumar (supra)*** is also misplaced as the Court therein was of the view that section 34 petition was dismissed on the ground of being time barred but not on merits. Hence, the Executing Court therein was right in not enforcing the Award. However, in the present case, section 34 petition was decided on merits and the judgment passed in section 34 petition was upheld by the Hon'ble Supreme Court.

58. Even on merits, the acts of the officers of the Corporation bind the Corporation. Corporation is a separate legal entity and only functions through its officers. As of today, CBI has only registered a Preliminary Enquiry bearing No. PE2l72023A0001 and there is no finding of fraud, cheating, collusion against the then officers of the judgment debtor with the officers of the decree holder.

59. Learned senior counsels for the judgment debtor placed reliance on the order dated 15.02.2023 passed in this present petition to urge that huge public money is involved and serious charges of fraud and corruption are being investigated by the CBI. I am of the view that said observations were only made on an application and will not have a bearing on the final adjudication on merits of the present petition.

E.X.APPL.(OS) 1806/2024

60. After the judgment was reserved in the main enforcement petition, the present application has been filed by the judgment debtor on 11.11.2024 under Order XXI Rule 29 of CPC seeking stay of the present enforcement proceedings during the pendency of the Suit i.e.

CS (Comm) No. 959 of 2024 titled as "***MMTC Limited v. Anglo American Metallurgical Coal Ptv. Ltd.***".

61. Mr Salve, learned senior counsel for the judgment debtor submits that the decree holder has been secured as the awarded amount has already been deposited with this Court. The decree holder has no assets in this Country and if the pending suit is decreed in favour of the judgment debtor (Plaintiff in the Suit) then the awarded amount may not be payable. Reliance is placed on ***Shaukat Hussain v. Bhuneshwari Devi, (1972) 2 SCC 731.***

62. He further states that the suit being CS (Comm) No. 959 of 2024 has been filed seeking following reliefs:-

> *"a) To pass a decree of declaration in favour of the Plaintiff and against the Defendants to declare and hold that the Addendum No. 2 dated 20.11.2008 executed between the Plaintiff and the Defendants is vitiated by fraud and tainted by corruption and is thus void ab initio;*
>
> *b) Pass a decree of declaration to declare that the Award dated 12.05.2014 passed by the International Chamber of Commerce, International Court of Arbitration in ICC Arbitration Reference 18968/CYK titled as Anglo-American Coal Metallurgical Coal Pty Limited versus MMTC Limited is obtained/tainted by fraud as it is based on the Addendum No.2 dated 20.11.2008, which itself is void ab initio and thus the Award dated 12.05.2014 itself is void and unenforceable and is liable to be set aside;*
>
> *c) Pass a decree of declaration to declare and set aside the*

Award dated 12.05.2014 and all/any consequential orders based on the said Award on the ground that the Award is obtained/tainted by fraud and/or was vitiated by the acts of corruption of the Defendants in securing the Plaintiff's consent to enter into the Addendum No.2 dated 20.11 .2008;

d) To pass a decree in favour of the Plaintiff and against the Defendants, jointly and severally, for recovery of a sum of Rs. 8,95,29,612/- (Rupees Eight Crores Ninety-Five Lakhs Twenty-Nine Thousand Six Hundred and Twelve Only) along with interest@ 18% per annum calculated from the date of commencement of cause of action i.e. 16.08.2022 till the date of its realization;

e) To pass a decree of Permanent injunction in favour of the Plaintiff and against the Defendants, its legal heirs, successors, legal representatives, administrators, executors, nominees and assigns or anybody acting on their behalf, thereby restraining the Defendants from acting/ relying upon the Addendum No.2 dated 20.11.2008 and the Award dated 12.05.2014 in any manner whatsoever;

f) Pass any other such order as this Hon'ble Court may deem fit in the facts and circumstances of the present case."

63. In this regard, he urges that if the suit of the judgment debtor was to be decreed then the Award itself will be set aside and no amount would be due and payable by the judgment debtor. Hence, till the suit is pending, no judgment should be pronounced in the enforcement petition.

64. *Per contra,* Mr. Mehta, learned senior counsel for the decree holder has urged the following submissions:-

A. Order XXI Rule 29 of CPC is applicable where a Court has passed a decree and in the same Court, a suit is also pending. The same is not in the present case.

B. An Arbitral Award is not a decree of any Court.

C. Order XXI Rule 29 of CPC can only be resorted to where the suit has been filed prior in time, to the execution petition.

D. The bar under section 5 read with section 34 of 1996 Act makes Order XXI Rule 29 of CPC inapplicable.

65. I have heard learned senior counsels for the parties.

66. In the present case, admittedly, the Award dated 12.05.2014 passed by the learned AT in favour of the decree holder has been upheld till the Hon'ble Supreme Court. During the pendency of the enforcement proceedings, the judgment debtor has filed a suit against the decree holder which is pending before this Court and whether summons are to be issued or not is to be adjudicated upon its own merits in the suit. The fact before me today is whether the present application under Order XXI Rule 29 of CPC will lie once the suit being CS (Comm) No. 959 of 2024 is pending in this Court.

67. To my mind, the present application is without any merit.

68. For sake of perusal, Order XXI Rule 29 of CPC is extracted below:-

> *"29. Stay of execution pending suit between decree-holder and judgment-debtors.—Where a suit is pending in any Court against the holder of a decree of such Court [or of a decree which is being executed by such Court, on the part of*

the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided:

[Provided that if the decree is one for payment of money, the Court shall, if it grants stay without requiring security, record its reasons for so doing.]"

69. The said Rule has been interpreted by the Hon'ble Supreme Court in ***Shaukat Hussain (supra)*** and observed as under:-

"6. ……..

It is obvious from a mere perusal of the rule that there should be simultaneously two proceedings in one court. One is the proceeding in execution at the instance of the decree-holder against the judgment-debtor and the other a suit at the instance of the judgment-debtor against the decree-holder. That is a condition under which the court in which the suit is pending may stay the execution before it. If that was the only condition, MrChagla would be right in his contention, because admittedly there was a proceeding in execution by the decree-holder against the judgment-debtor in the Court of Munsif 1st, Gaya and there was also a suit at the instance of the judgment-debtor against the decree-holder in that court. But there is a snag in that rule. It is not enough that there is a suit pending by the judgment-debtor, it is further necessary that the suit must be against the holder of a decree of such court. The words "such court"

are important. "Such court" means in the context of that rule the court in which the suit is pending. In other words, the suit must be one not only pending in that court but also one against the holder of a decree of that court. That appears to be the plain meaning of the rule."

70. As observed above, I have already held that section 5 of 1996 Act aims limited judicial interference. The legal fiction created by section 36 of 1996 Act, allowing an Award to be enforced "as if it were a decree," is limited solely to its "enforcement" and does not equate an Award with a decree in substance. Further, the arbitral proceedings are distinct from civil suits/proceedings. The use of CPC provisions is confined to enforcement mechanisms under Order XXI, and does not allow a re-challenge to the Award on merits, which is exclusively governed by section 34 of 1996 Act. In this backdrop, the Award cannot be termed as a decree as the same is not passed by a Court. Also, the AT is not a "Court" and an Award does not satisfy any conditions of section 2(2) of CPC which defines a 'decree'. For the said reasons and relying on the observations of ***Shaukat Hussain (supra)***, it is clear that the Award which is sought to be enforced as a decree and is not a "decree" passed by this Court where the suit is pending.Hence, on this ground, Order XXI Rule 29 of CPC is not applicable.

71. The present enforcement proceedings pending in this Court arises from the Arbitral Award passed by the learned AT and not from a decree passed by any Civil Court. The Award is passed under the 1996 Act which is a special act and a self-contained code. All the

challenge procedures and mechanism are exhaustively provided for within the 1996 Act itself and have duly been exhausted by the judgment debtor. If the enforcement of the Award is stayed due to filing of a suit by the judgment debtor against the decree holder, then the very purpose of passing of an Award under 1996 Act would be defeated and no Award passed by the AT would ever be executed. The said interpretation cannot be accepted by this Court.

72. Further, the 1996 Act provides for stay of enforcement of an Award under section 36(2) of 1996 Act. Relevant part of section 36 is extracted below:-

> *"(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.*
>
> *(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:*
>
> *Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the*

Code of Civil Procedure, 1908 (5 of 1908).]

[Provided further that where the Court is satisfied that a Prima facie case is made out that,—

(a) the arbitration agreement or contract which is the basis of the award; or

(b) the making of the award,

was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award."

73. When the statute itself provides the said relief as prayed in the present application then the provisions of other statute cannot be taken into consideration. In the present case, the judgment debtor has availed all the opportunities to challenge the Award on merits and the Award has been upheld by the Hon'ble Supreme Court. Hence, the Order XXI Rule 29 of CPC cannot be relied upon.

CONCLUSION

74. For the foregoing reasons, the objections filed by the judgment debtor are dismissed, the application under Order XXI Rule 29 of CPC is also dismissed. Consequently, the present petition is allowed and the Award dated 12th May, 2014 passed by the learned AT is to be enforced.

75. The judgment debtor has already deposited the awarded amount by virtue of Order dated 28.09.2021, 06.05.2022 and 07.07.2022 passed by this Court.

76. It is directed that the decree holder shall be entitled to withdraw the said amount along with up-to-date accrued interest after the expiry of

two weeks from today.

77. The petition is disposed of alongwith pending applications, if any.

JASMEET SINGH, J

MAY 09th, 2025 / (MSQ)