JYOTI RAJESH MANE
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION NO. 146 OF 2021
WITH
INTERIM APPLICATION (L) NO. 2785 OF 2024
IN
COMMERCIAL ARBITRATION PETITION NO. 146 OF 2021

Vishal Associates
Proprietorship Concern through its proprietor
Sri. R.S.Singh, s/o. Late Sri. Dashrath Singh,
Having its registered address at MIG-MII A/184
ADA Colony, Naini, Allahabad, Uttar Pradesh. …Petitioner/ (Original Claimant)

Versus

Hindustan Construction Company Limited
Hindon House, Lal Bahadur Shastri Marg,
Vikhroli (West), Mumbai. ...Respondent

Mr. Mutahhar Khan a/w. Ms. Nikita Bordepatil and Ms. Tithi Raut i/b FF and Associates, for Applicant/Petitioner.

Mr. Ashish Kamat Senior Advocate a/w. Mr. Lalit Munshi a/w. Ms. Sailee Dixit and Mr. Anuj V.R. i/b. Samvad Partners, for the Respondent.

CORAM: AARTI SATHE, J.

RESERVED ON: 08 OCTOBER 2026
PRONOUNCED ON: 20 NOVEMBER 2026

JUDGMENT:

1. This petition under Section 34 of the Arbitration and Conciliation Act 1996 (hereinafter referred to as the "**Act**") challenges the arbitral award dated 5th February 2020 (hereinafter referred to as the "**impugned arbitral award**") passed by the learned Sole Arbitrator in the arbitration proceeding filed by the Petitioner

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seeking the claims as made in the statement of claim filed before the learned Sole Arbitrator.

2. By way of the impugned arbitral award the learned Sole Arbitrator dismissed the claim of the Petitioner and imposed a cost of Rs. 1,00,000/-. The learned Sole Arbitrator on the basis thereof did not allow the claim as made by the Petitioner in the statement of claim preferred before the learned Sole Arbitrator.

3. Briefly, the facts are as follows:

i. The Petitioner is a sole proprietary concern engaged in the business of civil engineering works and has been carrying on business in the State of Uttar Pradesh with pan India operations. The Respondent is a Company incorporated under the provisions of the Companies Act, 1956, and is engaged in the business of infrastructure development across India. It is the Petitioner's contention that the parties have successfully executed several projects jointly over the years and have maintained cordial and mutual satisfactory working relations. In recognition of the successful completion of works undertaken by the Petitioner, the Respondent has from time to time issued certificates in favor of the Petitioner confirming such successful completion.

ii. On 30th March 2010, the Petitioner by letter of even date addressed to the Respondent, offered to undertake the Engineering, Procurement and Construction (EPC) works for National Highway (NH)-34 which was to be completed by the Respondent.

iii. On 14th July 2010, Respondent issued a Letter of Intent (LOI) to the Petitioner of even date for construction work on NH-34 in West Bengal and

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Sidpahadi, Jharkhand for a total estimated subcontract value of ₹10,99,50,000/-, with a term of one year.

iv. On 27th July 2010, Petitioner submitted performance bank guarantee of Rs. 22,00,000/- as required by the LOI.

v. On 21st September 2010, Respondent issued an order of even date (hereinafter referred to as the "Work Order") reducing the completion period from one year to six months and total estimated amount of the contract value was reduced from Rs.10,99,50,000/- to Rs.5,72,00,000/-. It is the Petitioner's contention that the Petitioner mobilized their personnel and equipment at the site to ensure timely completion of the Work Order. However, after a few months, it is the Petitioner's contention that the Petitioner realized that the officials of the Respondent were exerting undue pressure upon it in relation to the execution of the work, with the apparent intention of removing the Petitioner and engaging another firm in the place of the Petitioner.

vi. It is the Respondent's contention that in and around October 2010 to May 2011, the Petitioner commenced work and raised seven Running Account (RA) bills on the Respondent from October 2010.

vii. On 11 November 2010, Petitioner submitted a bill for ₹31,61,786.54/- in respect of overburden excavation work carried out during October 2010, in accordance with the terms and conditions of the LOI. The Respondent duly paid the said bill in full, and the Petitioner accepted the payment without any protest.

viii. On 20th December 2010, Petitioner submitted further bills up to January 2011 for the work of overburden excavation, amounting to Rs.29,06,407.62/-

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which was also duly paid in full by the Respondent.

ix. On 22nd February 2011, Petitioner further submitted their bill up to January 2011 for the work of overburden excavation of the similar amount of Rs. 29,06,407.62/-

x. Sometime between March 2011 to July 2011, due to the ban imposed by the Government of Jharkhand on stone mining, the work undertaken by the Petitioner remained idle during the aforesaid period. The officials of the Respondent instructed the Petitioner to remain ready to resume and complete the remaining work at the earliest.

xi. On 12th March 2011, Petitioner submitted a bill for February 2011 for Rs. 1,85,528.70/- towards overburden excavation which was duly paid in full by the Respondent and accepted by the Petitioner without protest. It is the Respondent's contention that the Petitioner delayed completion of the work within the original and extended timelines which was up to 7th April 2011.

xii. On 15th April 2011, Petitioner received a letter bearing No.SC/100/NH34/01 requiring submission of an extended performance bank guarantee of Rs. 22,00,000/-. In response to the aforesaid letter, Petitioner requested the Respondent to consider that, in terms of the value of the Work Order, the applicable performance bank guarantee was Rs. 10,00,000/-.

xiii. On 7th June 2011, Petitioner submitted bills up to May 2011 for the works of "Excavation of Overburden" and "Boulder Protection" amounting to Rs. 2,24,513.19/-. The said amount was duly paid in full by the Respondent and accepted by the Petitioner without protest.

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xiv. On 12th July 2011, since the work had not been completed in accordance with the terms of the Work Order and the original performance bank guarantee was approaching its expiry date, Petitioner submitted a fresh performance bank guarantee of Rs.10,00,000/- commensurate with the contract value awarded under the Work Order.

xv. Sometime around 15th July 2011, at the request of the Petitioner, the parties conducted a joint inspection of the work executed. Although the Respondent was entitled to levy damages on account of the delay in completion of the work, the parties mutually agreed to short-close the contract on a "No-Claim" basis and enter into a full and final settlement of all claims. Pursuant to the said joint inspection, the final bill dated 16th August 2011 was prepared.

xvi. It is the Petitioner's contention that on 25th July 2011, Respondent coerced the Petitioner into accepting a final bill amount of Rs.34,00,000/- towards the work executed at the site, without terminating the contract or cancelling the Work Order. It is further the Petitioner's contention that the Petitioner was further compelled to sign a "No Claims Certificate" under the threat and apprehension that, in the event the Petitioner refused to do so, the Respondent would withhold or delay payment of the amounts due to the Petitioner and indefinitely delay the release of the performance bank guarantee.

xvii. On 10th August 2011, Petitioner issued another bill for outstanding work. Thereafter on 16th August 2011, the Petitioner submitted a bill of even date of Rs.12,70,145.20/-, which amount was duly paid in full by the Respondent. The said payment was made after the Petitioner once again confirmed its inability to

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complete the balance work and requested the Respondent to release the amount due, particularly in view of the fact that the Petitioner had already submitted a "Work Completion and No Claim Certificate" dated 25th July 2011.

xviii. On 21st September 2011, the Respondent released the performance bank guarantee of Rs. 10,00,000/- dated 12th July 2011, pursuant to the Petitioner's request for its release. The Petitioner had requested that it was unable to complete the balance work on account of its internal difficulties and had, accordingly, shifted its machinery and establishment from the site. It is the Respondent's contention that the Petitioner had also voluntarily issued a "Work Completion and No-Claim Certificate" dated 25th July 2011, confirming that it was not in a position to undertake or execute any further work due to its internal difficulties.

xix. Sometime in December 2011, in view of the No-Claim Certificate and the final bill, the Respondent paid the outstanding amount of Rs. 34,00,000/- to the Petitioner in full and final settlement and the Petitioner had admitted the receipt of the aforesaid amount.

xx. Thereafter on 7th May 2012, after a lapse of more than ten months from the date of the No-Claim Certificate and after having received full and final statement for the work executed by it in December 2011, the Petitioner issued a demand notice to the Respondent alleging that it was entitled to damages and compensation on account of the alleged delay in payment of amounts under the Work Order. The Petitioner thereafter invoked the dispute resolution mechanism stipulated under the Work Order.

xxi. On 12th June 2012, the Respondent replied to the aforesaid demand notice,

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denying the claims raised by the Petitioner and the Respondent pointed out that all claims of the Petitioner had already been fully and finally settled and satisfied. In particular, the Respondent relied upon the No-Claim Certificate dated 25th July 2011, pursuant to which the Petitioner had expressly confirmed that no further claims remained outstanding against the Respondent. The Respondent further contended that the claims raised in the Petitioner's demand notice were an afterthought, raised with *mala fide* intention of extracting further monies from the Respondent.

xxii. On 23rd August 2012, the Petitioner sent a letter of even date to the Respondent for appointment of learned Sole Arbitrator. On 24th September 2012, the Respondent by intimation letter of even date informed the Petitioner of the appointment of learned Sole Arbitrator.

xxiii. Thereafter on 10th October 2012, the learned Sole Arbitrator Mr. P.D. Kulkarni informed the Respondent with intimation to the Petitioner's Advocate, that he was agreeable to act as the learned Sole Arbitrator in response to the Respondent's letter dated 24th September 2012. The Petitioner by their letter dated 10th November 2012, addressed to the learned Sole Arbitrator, *inter alia*, raised an objection to the appointment of the learned Sole Arbitrator on the ground that the said appointment had not been made by the Respondent as required under Clause 32 of the Arbitration Agreement. The said letter was issued in response to the learned Sole Arbitrator's letter dated 10th October 2012, with a copy thereof being forwarded to the Respondent.

xxiv. On 3rd December 2012, the Respondent, vide its letter of even date,

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addressed a reply to the Petitioner, with a copy to the learned Sole Arbitrator, clarifying that the learned Sole Arbitrator had been appointed pursuant to the advice of the Respondent's Chairman-cum-Managing Director.

xxv. Thereafter on 20th December 2012, the learned Sole Arbitrator by his letter of even date convened a preliminary meeting on 22nd January 2013 and called upon the parties to attend the said meeting.

xxvi. Sometime in January 2013, Justice Roshan Dalvi (Retd.) was appointed as the learned Sole Arbitrator on 27th February 2013, the Petitioner filed its statement of claim before the learned Sole Arbitrator and claimed Rs. 3,17,46,000/- towards alleged losses and damages suffered by the Petitioner. On 15th May 2013, the Respondent filed their statement of defence along with their counter claim before the learned Sole Arbitrator and claimed Rs. 2,48,82,687/- from the Petitioner under the Work Order. Thereafter, Petitioner filed their reply to the statement of defence along with their counter claim and written and oral evidence of the Petitioner's witnesses Mr. R.S. Singh, sole proprietor of the Petitioner and written and oral evidence of Mr. Ajit Shenoy, General Manager of the Respondent was recorded.

xxvii. The learned Sole Arbitrator passed the impugned award dated 5th February 2020, holding that the work completion and the No-Claim Certificate dated 25th July 2011 was voluntarily executed by the Petitioner and dismissed the Petitioner's claim with costs. It is being aggrieved with the aforesaid impugned arbitral award that the Petitioner has challenged the impugned arbitral award before this Court under Section 34 of the Act.

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4. Mr. Mutahhar Khan along with Ms. Nikita Bordepatil along with Ms. Tithi Raut instructed by F.F. Associates appeared on behalf of the Petitioner. Mr. Ashish Kamat, Senior Advocate along with Mr. Lalit Munshi along with Ms. Sailee Dixit along with Mr. Anuj V. R. instructed by Samvad Partners appeared on behalf of the Respondent.

5. Learned Counsel on behalf of the Petitioner submitted that though the powers under Section 34 of the Act are limited and the Act itself provides for the contours within which the impugned arbitral award ought to be interfered, in the facts of the present case, the findings as rendered by the learned Sole Arbitrator were such which mandated that intervention in the aforesaid award was something which this Court ought to do. The primary challenge to the arbitral proceedings was on the ground that the learned Sole Arbitrator relied solely on the No-Claim Certificate to frame an issue as to whether the No-Claim Certificate was executed under coercion. He further submitted that this approach on the part of the learned Sole Arbitrator was an incorrect approach inasmuch as, the learned Sole Arbitrator conducted a trial only on this issue and rendered a finding that since the No-Claim Certificate was executed without any coercion, the claims of the Petitioner were not to be entertained. He also submitted that this approach of the learned Sole Arbitrator was perverse and did not adjudicate upon the actual claims made by the Petitioner.

6. Learned counsel on behalf of the Petitioner further submitted that on a plain reading of the No-Claim Certificate, it was clear that it pertained only to the work executed by the Petitioner and in that regard, there were RA bills which were

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raised by the Petitioner and duly paid by the Respondent after the execution of the No-Claim Certificate. The No-Claim Certificate according to him could not by itself operate as an estoppel against the Petitioner by making a claim for damages or losses or compensation in the nature as was sought in the statement of claim. He further submitted that the aspect of execution of No-Claim Certificate was explained by the Petitioner by stating that the document was never handed over to the Petitioner, and the same was received by the Petitioner, when it was annexed with the statement of defence in the arbitral proceedings. He further submitted that the learned Sole Arbitrator adopted an approach which was inconsistent with and contrary to any known procedural law and that such infirmity went to the root of the matter and rendered the arbitral proceedings susceptible to interference under Section 34 of the Act by this Court. He further submitted that the Respondent's submission on the basis of merits of the matter ought not to be considered, inasmuch as, the learned Sole Arbitrator had not adjudicated upon the merits of the matter and therefore in view of that the present Petition ought to be allowed. He also submitted that the findings of the learned Sole Arbitrator that the parties had voluntarily signed the No-Claim Certificate, was an incorrect finding inasmuch as, the No-Claim Certificate was in respect of the work completed and did not cover within its ambit any loss/damages which may have been suffered by the Petitioner on account of short closure of the contract or any claim towards extra work which may have been completed/carried out by the Petitioner.

7. Learned counsel on behalf of the Petitioner also submitted that the learned Sole Arbitrator only on the basis of the fact that No-Claim Certificate was executed

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voluntarily, and since no coercion was proved in the facts of the present case, had come to an erroneous finding that the Petitioner had voluntarily given up its claims and therefore the Petitioner would get money for the work completed and the Petitioner would secure release of its performance bank guarantee and hence, the Petitioner would be absolved of loss/damages of any claim that could have been raised by the Respondent and that the Respondent was free to get the balance work completed through another contractor. He submitted that the No-Claim Certificate did not preclude the Petitioner from raising any of these claims. He submitted that the learned Sole Arbitrator had failed to deal with issues nos. 2, 3 and 4, which had been framed for adjudication, and had failed to furnish any reasons as to how the adjudication of issue no. 1 rendered the determination of the remaining issues unnecessary. He submitted that the learned Sole Arbitrator was under an obligation to give a finding on each of the aforesaid issue and the non-finding of the learned Sole Arbitrator on all the other issues was something which was not analogous to the principles culled out in the Code of Civil Procedure, 1908 ("CPC") that requires a Court/Tribunal to render all findings which are framed for adjudication. He fairly submitted that though arbitral proceedings are not strictly governed by the CPC, the broad principles analogous to CPC are applicable to the facts of the present case.

8. Learned counsel for the Petitioner further submitted that the learned Sole Arbitrator erred in deciding the claims solely on the basis of the No-Claim Certificate, holding that, since the certificate had been executed without coercion, the Petitioner was precluded from pursuing its claims. He contended that the

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learned Sole Arbitrator had thereby failed to adjudicate upon the merits of the claims raised by the Petitioner. He further submitted that the No-Claim Certificate could not, by itself, operate as an estoppel against claims for damages, losses or compensation arising from the short closure of the contract or extra work executed by the Petitioner. He contended that the No-Claim Certificate related only to the work completed and did not encompass such claims. He also pointed out that the Petitioner had stated that the original No-Claim Certificate had not been handed over to them and that they had received only a copy of the same. He therefore argued that the learned Sole Arbitrator had failed to properly appreciate the factual matrix and the scope of the No-Claim Certificate and had erroneously concluded that the Petitioner had voluntarily relinquished their claims. He submitted that the No-Claim Certificate did not bar the Petitioner from pursuing their claims for damages, losses or compensation and that the impugned arbitral award was liable to be set aside.

9. Learned counsel for the Petitioner further submitted that the learned Sole Arbitrator failed to explain how the adjudication of issue no. 1 obviated the necessity of adjudicating upon the remaining issues. He contended that the learned Sole Arbitrator was obligated to return findings on each of the issues framed for determination, and that failure to do so was contrary to the fundamental principles of CPC. He therefore submitted that the impugned arbitral award was liable to be set aside.

10. Learned counsel on behalf of the Petitioner sought to place reliance on the

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following decisions which will be discussed later in support of all the aforesaid contentions:

(a) Ssangyong Engg. & Construction Co. Ltd. Vs. NHAI[1]
(b) Associate Builders Vs. DDA[2]
(c) Union of India Vs. Recon, Mumbai[3]
(d) Mongia Realty and Buildwell Pvt. Ltd. Vs. Manik Sethi[4]
(e) State of Maharashtra Vs. Hindustan Construction Co. Ltd.[5]
(f) Shri. Ravi Raghunath Khanjode Vs. Harsiddh Corporation[6]

11. *Per contra,* learned senior counsel Mr Ashish Kamat appearing on behalf of the Respondent submitted that the execution of the No-Claim Certificate was not in dispute and that the learned Sole Arbitrator had rightly considered the same. He further submitted that, on the basis of the Petitioner's own oral testimony, the learned Sole Arbitrator had concluded that the Petitioner had admitted to the execution of the No-Claim Certificate.

12. Learned senior counsel for the Respondent submitted that the learned Sole Arbitrator had duly considered the Petitioner's oral testimony, wherein the Petitioner had admitted to having been fully paid for the work executed. He submitted that the Petitioner's claim was essentially for the unpaid amount in respect of the work carried out and for compensation on account of the short closure of the contract, which had prevented the Petitioner from executing the remaining work. However, the Petitioner had failed to demonstrate how it

[1] (2019) 15 SCC 131
[2] (2015) 3 SCC 49
[3] 2020 (6) Mh.L.J. 509
[4] (2022) 11 SCC 572
[5] (2010) 4 SCC 518
[6] Judgment dated 19th November 2025 in Arbitration Petition No. 95 of 2024 (Bombay High Court)

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proposed to execute the balance work.

13. He further submitted that the learned Sole Arbitrator had noted that the final bills had been jointly prepared by the parties and constituted an important contemporaneous document. The learned Sole Arbitrator had also observed that the Respondent had admittedly not made any deduction from the amount payable to the Petitioner.

14. Learned senior counsel further submitted that, learned Sole Arbitrator had recorded that the No-Claim Certificate covered all amounts due in respect of the work executed. He therefore contended that the Petitioner's argument that acceptance of Rs. 34,00,000/- could not be construed as a relinquishment of its claims was untenable. He submitted that the impugned arbitral award did not warrant interference under Section 34 of the Act.

15. He further submitted that the Petitioner had suppressed relevant facts before the learned Sole Arbitrator and that by itself was a ground to dismiss the claim of the Petitioner. He submitted that the Petitioner had suppressed the execution of the work completion and the No-Claim Certificate, in their demand notice dated 7th May 2012 as well as in the statement of claim dated 27th February 2013 and reply to the counterclaim in the arbitration proceedings. He submitted that it is a well settled principle of law that suppression of material facts by litigant and approaching a Court or Tribunal with unclean hands, disentitles the litigant to reliefs. The Petitioner's repeated suppression of the No-Claim Certificate coupled with their belated plea of coercion, according to him squarely attracted this

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principle, and this by itself was a ground for dismissal of statement of claim filed before the learned Sole Arbitrator. He submitted that in any event the learned Sole Arbitrator permitted the Petitioner to lead evidence on coercion and render a reasoned award on merits, and therefore the award withstands challenge both on the Petitioner's suppression and on independent appreciation of the merits. He sought to place reliance on the following decisions in support of his aforesaid contention which will be discussed later:

i. **Dalip Singh vs. State of Uttar Pradesh & Ors**[7].
ii. **Ramjas Foundation & Ors. vs. UOI & Ors.**[8]
iii. **Bhaskar Laxman Jadhav& Ors. vs. Karamveer Kakasaheb Wagh Education Society and Ors.**[9]
iv. **Nagina Ramsagar Choube vs. Ajay Mohan & Ors.**[10]
v. **Shantappa vs Anna**[11]
vi. **Oswal Fats and Oils Ltd. vs. Addl. Commr., Bareilly Division**[12]

16. He further submitted that the present award ought not to be set aside, considering the well-established principles under Section 34 of the Act in the decisions of **SsangYong** (supra), **M/s. Dyna Technologies Pvt. Ltd. Vs. Crompton Greaves Ltd.**[13], **Rishabh Kumar s/o Babulal Jejani Vs. Secretary to the Government of India, Ministry of Road Transport and Highways and Ors.**[14], **New DelhiProject Director NHAI v. M. Hakeem & Anr**[15], **OPG Power Generation Private Limited vs. Enexio Power Cooling Solutions India Private Limited & Anr.**[16], **Somdatt**

[7] (2010) 2 SCC 114
[8] (2010) 14 SCC 38
[9] (2013) 11 SCC 531
[10] 2025:BHC-OS-10176
[11] (2025) SCC OnLine Bom 2566
[12] 2010 4 SCC 728
[13] AIRONLINE 2019 SC 1928
[14] 2016 SCC OnLine Bom 4392
[15] (2021) 9 SCC 1
[16] (2025) 2 SCC 417

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Builders-NCC-NEC (JV) v. National Highways Authority of India & Ors.[17], **MMTC Ltd. v. Vedanta**[18] and **Ramesh Kumar Jain Vs. Bharat Aluminium Company Limited (BALCO)**[19], wherein Supreme Court has time and again held that an award cannot be set aside simply because another view may be possible or on the basis that the learned Arbitrator(s) had arrived at a wrong conclusion. He submitted that an award should not be interfered with in a casual manner unless there is some perversity which goes to the root of the matter, which in the present facts of the case was plainly absent and not even seriously alleged in the instant case. He therefore submitted that the present case does not warrant any interference under Section 34 of the Act.

ANALYSIS AND FINDINGS

17. I have heard learned counsel on behalf of the parties and perused the papers and proceedings with their assistance. At the core of the dispute lies execution of the No-Claim Certificate which was executed between the parties, and it is on the basis of the execution of the No-Claim Certificate that the learned Sole Arbitrator has come to the conclusion that the Petitioner would therefore be estopped from claiming any further damages which is the primary finding which is sought to be challenged by the Petitioner in the present facts of the case and needs to be tested on the anvil of Section 34 of the Act. On a perusal of the impugned arbitral award, it is clear that the learned Sole Arbitrator after framing issues, chose to give a finding on issue number one on which the entire dispute hinges, inasmuch as, the

[17] (2025) SCC OnLine SC 710

[18] 2019 (4) SCC 163

[19] 2025 SCC OnLine SC 2857

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No-Claim Certificate was a document which according to learned Sole Arbitrator was executed voluntarily by the Petitioner as a settlement of the dispute. To my mind, this finding, under Section 34 of the Act cannot be interfered with. The discussion in the ensuing paragraphs will aid the conclusion that I have reached at.

18. On a perusal of the impugned arbitral award and on appreciation of the facts, it is clear that the No-Claim Certificate which was executed between the parties was executed sometime in the year 2011. The learned Sole Arbitrator after examining the parties and after recording evidence has come to the conclusion that the proprietor of the Petitioner had admitted in his oral evidence that he had been fully paid for the work done. The learned Sole Arbitrator on the basis of the aforesaid has come to a correct finding that once that being the position and the payment having been accepted by the Petitioner as full and final settlement, and the No-Claim Certificate also being signed, precludes the Petitioner from raising the bogey that the No-Claim Certificate was in fact not signed by them voluntarily and hence their claim for damages cannot be rejected. The learned Sole Arbitrator has also returned a finding that it is also pertinent to note that the No-Claim Certificate which was executed on 25th July 2011 was accepted by the Petitioner for a long period of time and in fact on 16th August 2011, the Petitioner submitted a final bill which amount was also duly paid by the Respondent to the Petitioner. Even post that payment the Petitioner had not raised any claim towards damages which the Petitioner had suffered, if at all. Further on 21st September 2011, the Respondent had released the performance bank guarantee dated 12th July 2011 and even then, the Petitioner had not raised any claim towards damages. The Petitioner

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had in fact voluntarily issued a work completion and No-Claim Certificate dated 25th July 2011 confirming that they were not in a position to undertake or execute any further work due to their internal difficulties. In view of the No-Claim Certificate and the final bill, the Respondent had paid the outstanding amount of Rs. 34,00,000/- as full and final settlement to the Petitioner.

19. These facts to my mind have been considered by the learned Sole Arbitrator to come to the conclusion that once the Petitioner have themselves accepted that the No-Claim Certificate was executed by them on 25th July 2011, then to raise a plea that the same was obtained under coercion or duress was an incorrect/wrong bogey, which the Petitioner has now sought to raise. The learned Sole Arbitrator on consideration of these facts has rightly held that the Petitioner never raised this issue even in the initial notice and the statement of claim filed by them or in reply to the counterclaim as made by the Respondent. The Petitioner have also accepted the Respondent's submission in reply to their notice that the amount of Rs. 34,00,000/- has been paid as full and final settlement and there too the Petitioner had not raised any claim regarding the No-Claim Certificate being obtained from them under coercion and duress. The relevant findings of the learned Sole Arbitrator in respect of the aforesaid are reproduced below:-

> "24. The final payment was Rs. 34L. The Claimant has admitted in para 23 of his oral evidence that he has been fully paid for the work done. The evidence runs thus: It is correct that the payment of Rs.1.30 Cr. was for the work done by me worth 1.30 Cr. and further in the same para 23: I was paid about Rs. 1 Crore. I had done the work of about Rs. 1.30 Crores. I got Rs. 34 Lakhs as the last payment. So I received full payment for the work done.
> 25. After such specific, express admission, the Claimant has made much ado about nothing. The sole proprietor of the Claimant deposed that the final bill is not shown to have been signed by him. Nevertheless, he accepted the payment as per the final bill. He never raised any dispute for additional work or non-payment. In fact, the Advocate on behalf of the Respondent pointed out that the affidavit of admissions and denials shows the final bill as the admitted

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document including the contents thereof. The payment has been delayed, albeit by some months.

26. The Claimant has not mentioned any other aspect that transpired between the parties. The Respondent has brought the entire chronology in this arbitration.

27. The Claimant has made no reference to the return of the PBG and giving of the extended PBG. The Respondent has produced the correspondence in that behalf which is admitted by the Claimant and marked Ex 4 in evidence.

28. A more important aspect is the execution of the NCC. It is akin to a receipt in full and final settlement, except that it precedes the payment. The payment is admittedly made by the Respondent and accepted by the Claimant. The Claimant has made no reference to the NCC in his initial notice claiming damages, Ex-C in evidence, dated 14.5.2012, sent 9 months after the joint measurement and preparation of the final bill and 5 months after the payment was stated to have been made in December, 2011. The respondent replied to the notice setting out the execution of the NCC for a full and final settlement by the Claimant on 25.7.2012, Ex D in evidence. The statements of the Respondent in the said reply to the Claimant's notice remain undenied and uncontroverted. The settlement has been acted upon by the parties; the Respondent has paid the amount of the final bill and the Claimant has accepted it.

29. Not only has the Respondent fairly paid all the amounts due to the Claimant for the work done, but on 21.9.2011 the Respondent has also returned / released the extended PBG given by the Claimant on 12.7.2011 for the lesser amount of Rs. 10L. The letter dated 21.9. 2011 is marked Ex 6 in evidence upon admission of the document.

30. Upon such circumstantial evidence the oral case of the Claimant of coercion and duress practised upon him by the Respondent must be seen. It is not made in the initial notice. It is shown to the Claimant in the reply to the notice as the full and final settlement done. The reply is received, but not denied. It is completely absent in the SOC. There is no mention of the NCC and hence no mention of the coercion. It is repeatedly stated in the SOD and CC (as specified above). The sole proprietor of the Claimant has deposed in para 6 of his cross examination that he had discussed the SOD with his lawyer, and thus came to know its contents. Yet coercion is not alleged in the Reply of the Claimant to the Counter claim of the respondent. After the Respondent objected to allow the arbitration to proceed upon the full and final settlement reached between the parties, the jurisprudence in respect of the claim of coercion was considered. It was seen that if economic or financial duress is seen between parties such as the Govt., or the PSU on the one hand and a small-time contractor on the other, power balancing would have to be done by the adjudicating authority. If coercion is prima facie seen, the entire, arbitration cannot be set at naught. The Claimant must be given an opportunity to prove the same. Since the averments in para 11 of the claim showed the alleged pe illegal and unauthorised manner of the Respondent's officials in the meeting dated 15.7. 2011, in order to give the Cl such opportunity, the issue in that regard was framed as issue No. 1. The Claimant was allowed to lead oral evidence. The oral evidence has not taken its case further. It has been word against word. No corroborating evidence is produced.

31. The direct, oral evidence of the Claimant now deserves to be analysed. In para 12. of the cross examination, the Claimant's proprietor accepted that he signed the NCC. He volunteered to state that he was not paid his money. The Respondent got the NCC prepared. Everything was written by

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the Respondent. He was asked to sign. He questioned the Respondent why he should sign that NCC. He deposed that the Respondent told him that it will not make any payment to him unless he signed it. Hence, he signed it. This demonstrates that the NCC was fully typed / printed by the Respondent and then the Claimant was asked to sign.

32. Upon the Tribunal's request, the Respondent's General Manager has produced 2 other: NCCs executed by another contractor. The contents of all the NCCs are largely similar. The contractors are not expected to draft the NCCs. Even if the Respondent has drafted the, NCC in their usual format, the material thing to consider is whether that draft reflected the agreement between the parties to mutually settle for the benefit of both parties.

33. In the later paras 13 and 14 of the cross, examination the Claimant was asked who told him to sign on the blank letterhead. Instead of reiterating that he signed on the already prepared NCC, he stated that one Dilbaug Singh, the then General Manager of the Respondent and Anil Kumar, Project Manager had asked him to get a blank signed letterhead. The Claimant thus turned turtle. He gave completely contradictory evidence. The Claimant further stated that he gave his letterhead to the Respondent in blank to print the NCC. If that was so, his question to the Respondent's officials Why 'this' NCC should be signed could not have been put to them. Consequently, it is seen that the direct oral evidence of the execution of the NCC cannot be accepted as truthful evidence.

34. The Claimant's proprietor was asked whether he demanded a copy of the NCC. He could not produce it. In para 16 of the evidence he stated that the Respondent never gave him a copy though he demanded it. He was asked how many times he demanded the copy. He deposed that he demanded the copy 2 or 3 times verbally and in writing. He stated that that was not acknowledged or signed by the Respondent. That request letter was made on 25.7.2011 itself. Hence his attendance in the office of the Respondent on 25.7.2011 is proved. If the parties had met on 15.7.201 and taken joint measurement and he was to take final payment upon making the final bill only, there was no need for him to go to the Respondent on 25.7.2011. It would be only if the parties agreed that he would be paid for all the work done and he would execute the NCC showing full and final settlement, he would again go to the office of the Respondent. The next aspect to consider is that if the Claimant demanded a copy of the NCC orally and in writing 2 or 3 times from 25.7.2011 itself, how did he not mention that fact in his notice dated 14.5.2012? Why did he not allege coercion immediately when he was not given a copy? The Claimant would claim that even the final bill amount would not be paid to him if he challenged the Respondent. But the Claimant has done nothing for 5 months even after receiving the payment. The Claimant has not claimed coercion practised upon him even in the claim and the reply to the SOD and CC."

(emphasis supplied)

20. It is clear that the learned Sole Arbitrator had led evidence on appreciation of facts to come to a conclusion that the No-Claim Certificate dated 25th July 2011 was voluntarily executed by the parties, and hence, the settlement had been arrived at and acted upon of the parties. The learned Sole Arbitrator had also taken note of

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the fact that the issue regarding the No-Claim Certificate being obtained under coercion or duress was in fact never taken as a ground in the statement of claim or the reply to the counterclaim and was not even a ground which was made out before the learned Sole Arbitrator at the time of the hearing. Reliance on the decisions referred in paragraph (15) above would be apposite to the facts of the present case. The relevant paragraphs of the aforesaid decisions/judgments are reproduced below:

i. **Dalip Singh** (supra):

> 20. We have heard the learned counsel for the parties and scrutinised the record. In our opinion, the appeal is liable to be dismissed only on the ground that the tenure-holder Shri Praveen Singh did not state correct facts in the application filed by him on 8-7-1976 before the prescribed authority for setting aside the ex parte order and the appellant did not approach the High Court with clean hands inasmuch as, by making a misleading statement in Para 3 of the writ petition, an impression was created that the tenure-holder did not know of the proceedings initiated by the prescribed authority. By making the said statement, the appellant succeeded in persuading the High Court to pass an interim order which resulted in frustrating the efforts made by the authority concerned to distribute the surplus land among landless persons. Even before this Court, a patently false statement has been made in the rejoinder-affidavit on the issue of receipt of notice dated 29-11-1975 by Shri Praveen Singh.
>
> 21. A perusal of the application dated 8-7-1976 submitted by Shri Praveen Singh for setting aside the ex parte order dated 27-12-1975 passed by the prescribed authority makes it clear that he had pleaded his continuous illness for ten months as the cause for his inability to file objection. In Para 2 of the application, Shri Praveen Singh made a suggestive assertion that he had no knowledge of the proceedings initiated by the prescribed authority and he came to know about the case having been decided ex parte only on 7-7-1976 when he went to Lekhpal to procure memo. There was not even a whisper in the application that notice dated 29-11-1975 issued by the prescribed authority under Section 10(2) of the Act had not been served upon him and on that account he could not file objections within 15 days.
>
> 22. The application filed by Shri Praveen Singh was not supported by any medical certificate or other evidence which could prima facie establish that he was really sick for ten months. This is the reason why the prescribed authority refused to reconsider the order dated 27-11-1975 and the appellate authority declined to entertain his prayer for remand of the case to the prescribed authority for the purpose of fresh determination of surplus area case. Notwithstanding this, in the writ petition filed before the High Court a misleading statement was made that due to serious illness, Shri Praveen Singh could not file objection and, as a matter of fact, he did not have any knowledge of the dates of proceedings which were conducted by the prescribed

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authority and the appellate authority which, as mentioned above, resulted in frustration of the action to be taken by the authority concerned for distribution of the surplus land to landless persons for a good period of more than eleven years and enabled the heirs of Shri Praveen Singh to retain possession of the surplus land and enjoy the same. Before the High Court also, no evidence was produced in support of the assertion regarding serious illness of Shri Praveen Singh.

23. Insofar as this Court is concerned, Shri Sunil Kumar Singh, grandson of Shri Praveen Singh and son of the appellant, boldly made a false statement that his grandfather did not receive notice dated 29-11 -1975 along with the statement of surplus land prepared under Section 10(1) and he could not file any show cause without going through the statement. We are amazed at the degree of audacity with which Shri Sunil Kumar Singh could make a patently false statement on oath.

24. From what we have mentioned above, it is clear that in this case efforts to mislead the authorities and the courts have transmitted through three generations and the conduct of the appellant and his son to mislead the High Court and this Court cannot, but be treated as reprehensible. They belong to the category of persons who not only attempt, but succeed in polluting the course of justice. Therefore, we do not find any justification to interfere with the order under challenge or entertain the appellant's prayer for setting aside the orders passed by the prescribed authority and the appellate authority.

25. In the result, the appeal is dismissed. We would have saddled the appellant with exemplary costs but, keeping in view the fact that possession of the surplus land was taken in 2002 and the same has been distributed among landless poor persons, we refrain from doing so.

ii. **Ramjas Foundation & Anr.** (supra):

21. The principle that a person who does not come to the court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have a bearing on adjudication of the issue(s) arising in the case.

25. The same rule was restated by Scrutton, L.J. in R. v. Kensington Income Tax Commr." The facts of that case were that in April 1916, the General Commissioners for the purposes of the Income Tax Acts for the district of Kensington made an additional assessment upon the applicant for the year ending 5-4-1913, in respect of profits arising from foreign possessions. On 16-5-1916 the applicant obtained a rule nisi directed to the Commissioners calling upon them to show cause why a writ of prohibition should not be awarded to prohibit them from proceeding upon the assessment upon the ground that the applicant was not a subject of the King nor resident within the United Kingdom and had not been in the United Kingdom, except for temporary purposes, nor with any view or intent of establishing her residence therein, nor for a period equal to six months in any one year. In the affidavit on which the rule was obtained the applicant stated that she was a French subject and resident in France and was not and had not been a subject of

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the United Kingdom nor a resident in the United Kingdom; that during the year ending 5-4-1913, she was in the United Kingdom for temporary purposes on visits for sixty-eight days; that she spent about twentyof these days in London at her brother's house, 213, King's Road, Chelsea, generally in company with other guests of her brother; that she was also in the United Kingdom during the year ending 5-4-1914, for temporary purposes on visits, and spent part of the time at 213, King's Road aforesaid; and that since the month of November 1914, she had not been in the United Kingdom.

26. From the affidavits filed on behalf of the Commissioners and of the surveyor of taxes, who showed cause against the rule nisi, and from the affidavit of the applicant in reply in Kensington case®, it appeared that in February 1909, a leasehold house, 213, King's Road, Chelsea, had been taken in the name of the applicant's brother. The purchase money for the lease of the house and the furniture amounted to 4000 l, and this was paid by the applicant out of her own money. The accounts of household expenses were paid by the brother and subsequently adjusted between him and the applicant. The Divisional Court without dealing with the merits of the case discharged the rule on the ground that the applicant had suppressed or misrepresented the facts material to her application. The Divisional Court observed that the Court, for its own protection is entitled to say

> "we refuse this writ of prohibition without going into the merits of the case on the ground of the conduct of the applicant in bringing the case before us".

27. On appeal, Lord Cozens-Hardy, M.R. and Warrington, L.J. approved the view taken by the Divisional Court. Scrutton, L.J. who agreed that the appeal should be dismissed observed: (Kensington case®, KB p. 514)

> ... and it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts-facts, not law. He must not misstate the law if he can help it - the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement."

28. The abovenoted rules have been applied by this Court in a large number of cases for declining relief to a party whose conduct is blameworthy and who has not approached the Court with clean hands 29. In the last mentioned judgment, the Court lamented on the increase in the number of cases in which the parties have tried to misuse the process of court by making false and/or misleading statements or by suppressing the relevant facts or by trying to mislead the court in passing order in their favour and observed: (Dalip Singh case®, SCC pp. 116-17, paras 1-2)

30. In our view, the appellants are not entitled to any relief because despite strong indictment by this Court in Ramjas Foundation v. Union of India, they deliberately refrained from mentioning details of the cases instituted by them in respect of the land situated at Sadhora Khurd and rejection of their claim for exemption under Clause (d) of the Notification dated 13-11-1959 by the High Court and this Court.

iii. **Bhaskar Laxman Jadhav & Ors** (supra)

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44. It is not for a litigant to decide what fact is material for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all the facts of a case and leave the decision-making to the court. True, there is a mention of the order dated 2-5-2003 in the order dated 24-7-2006 passed by the JCC, but that is not enough disclosure. The petitioners have not clearly disclosed the facts and circumstances in which the order dated 2-5-2003 was passed or that it has attained finality.

xxx. xxx. xxx. xxx xxx xxx xxx xxx xxx xxx x

47. A mere reference to the order dated 2-5-2003, en passant, in the order dated 24-7-2006 does not serve the requirement disclosure. It is not for the court to look into every word of the pleadings, documents and annexures to fish out a fact. It is for the litigant to come upfront and clean with all material facts and then, on the basis of the submissions made by the learned counsel, leave it to the court to determine whether or not a particular fact is relevant for arriving at a decision. Unfortunately, the petitioners have not done this and must suffer the consequence thereof.

xxx. xxx. xxx. xxx xxx xxx xxx xxx xxx xxx x

57. For the reasons mentioned above, we decline to grant special leave to appeal to the petitioners for suppression of a material fact and direct the Charity Commissioner to have a fresh look at the sale of the trust land, subject-matter of this petition, in accordance with the directions of the High Court. However, we leave it open to the Charity Commissioner to permit all the parties before it to submit fresh offers for the trust land and if deemed necessary, a fresh public notice for sale of the trust land may be issued. On the basis of the bid given by Respondent 1 as disclosed to us in Court, we make it clear that the price for the sale of the trust land shall not be less than Rs 3.87 crores.

iv. **Nagina Ramsagar Choube & Ors.** (supra)

53. Having considered the submissions, I am of the view that the present Suit has been filed by the Plaintiffs by grossly suppressing material and cogent facts including the fact of prior proceedings and litigation between the parties which have a material bearing on the maintainability of the present Suit.

57. It has been held by the Supreme Court in Ramjas Foundation (supra) which has also been relied upon by this Court in Shantappa (supra) that the principle that a person who does not come to Court with clean hands is not entitled to be heard on merits of his grievance and in any case, such person is not entitled to get any relief is applicable not only to the Petitions filed in Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others Courts and judicial forums. It has been held that the object underlying the principle is that every Court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect of truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have a bearing on adjudication of the issue(s) arising in the case.

58. In the present case, the Plaintiffs have grossly suppressed material facts by failing to disclose their prior litigation including their claim made therein on ownership on the basis of alleged 1969 Agreement knowing fully well that they

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cannot now take such stand in view of Plaintiff No.2 abandoning such stand in the Consent Terms / Decree. material facts by failing to disclose their prior litigation including their claim made therein on ownership on the basis of alleged 1969 Agreement knowing fully well that they cannot now take such stand in view of Plaintiff No.2 abandoning such stand in the Consent Terms / Decree.

59. In the Judgment relied upon by Mr. Seervai on behalf of Defendant Nos. 2 and 3 viz. K. Jayaram (supra), the Supreme Court has in unequivocal terms held that where a litigant had come with unclean hands and withheld some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the Court as well as with the opposite parties which cannot be countenanced. It is a duty of the litigant to disclose the details of all the legal proceedings and litigation either in the past or present concerning any part of the subject-matter of dispute which is within their knowledge. The Supreme Court has held that the Appellants therein have to be non-suited on the ground of suppression of material facts. This Judgment of the Supreme Court is applicable to the present case.

60. Here, the Plaintiffs have suppressed material facts which are relevant for deciding the questions involved in the Suit and by their withholding such vital or relevant material in order to gain advantage over the other side, the Plaintiffs are guilty of playing fraud with the Court as well as with the opposite parties which cannot be countenanced. Although Mr. Damle had contended that the Judgment of the Supreme Court in K. Jayaram (Supra) is inapplicable in the present case as that case concerned a Writ Petition and not a Suit, there is no merit in such contention. It has been held by the Supreme Court in Ramjas Foundation (supra) in Paragraph 21 as aforementioned that the principle that a person who does not come to Court with clean hands is not entitled to be heard on merits of the pleadings and the person is not entitled to any relief is applicable not only to the Petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in other Courts and judicial forums. Thus, the Plaintiffs were duty bound to disclose the material facts including the prior litigation instituted by them particularly since they had made contrary claims in those proceedings.

61. In that view of the matter, I have no hesitation in nonsuiting the Plaintiffs on the ground of gross suppression of material"

v. **Shantappa vs. Anna** (supra)

58. Now the conduct of Plaintiff in not disclosing its replies filed before the Trademark Registry and effect of such non-disclosure on his entitlement for temporary injunction needs to be examined. Admittedly, Plaintiff did not disclose letters dated 5 February 2013 and 15 April 2016 along with the plaint. The same were brought on record by the Defendant The learned District Judge has treated such conduct of the Plaintiff as an attempt to play fraud upon the Court by declining discretionary relief of temporary injunction. Mr. Kamod has submitted that there is no willful suppression on the part of the Plaintiff as the documents relating to registration proceedings are under public domain and that in absence of any willful suppression, the judgment of the Division Bench of the Delhi High Court in S. K. Sachdeva would have no application. In support of this contention, Mr. Kamod has relied upon the judgment of Single Judge of Delhi High Court in Teleecare Network. However as observed above, the ratio of judgment in Teleecare Network has not been agreed by the Division Bench in Raman Kwatra. Even otherwise, in my view, reliance of the Plaintiff on the judgment of Teleecare Network would not absolve him of the

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consequences arising out of the stand taken by him before the Trademark Registry that there is no resemblance in the two Marks. There could be myriad reasons why Plaintiff believed at the relevant time that there is no resemblance in two marks. He may have believed that the words 'Idli' and 'Idli Gruha' are absent in the marks of the Defendant, who uses the mark 'ANNA'. He may have also believed that addition of words 'Idli' or 'Idli Gruha' to the word 'Anna' would distinguish his mark from that of the cited marks. He might have noticed operation of several eateries in the country using the name 'Anna'. He may have believed that the peculiar design or artwork adopted by him for marks , 'ANNA IDLI GRUHA' or would be sufficient for the customers to distinguish its eateries, goods and services. He may have considered the generality with which the word 'Anna' is widely used in the restaurants serving south Indian food. Whatever could be the reason why Plaintiff made representations twice before the trademark registry about non- resemblance between his and Defendant's marks, that stand would continue to haunt him in present proceedings. It was therefore necessary for Plaintiff to disclose the replies filed by him with the trademark registry in the Suit. Therefore, even though Plaintiff has successfully demonstrated prior use of his trademarks, since he himself has represented before the Trademark Registry that the two marks do not resemble each other, he cannot now be permitted to seek any restraint order against the Defendant in the form of temporary injunction. Though the documents relating to the registration process may be available in public domain, it was necessary for the Plaintiff to disclose the stand taken by him before the Trademark Registry in his plaint.

59. Temporary injunction is a discretionary relief. The learned District Judge, in the present case, has refused to grant temporary injunction in favour of the Plaintiff by considering his conduct in suppressing the replies filed before the Trademark Registry. Plaintiff has been registering various trademarks over the period of years. His last application in respect of the Mark being still pending. Despite facing objections from the Trademark Registry about registration of several trademarks with the name 'Anna', particularly that of Defendant, the Plaintiff has repeatedly represented before the Trademark Registry that his mark does not resemble with that of the Defendant though both the marks are in respect of the same Class of goods and services. The District Judge has rightly considered this conduct of the Plaintiff in not disclosing repeated stands taken before the Trademark Registry for refusing the discretionary relief of injunction. It was obligatory for Plaintiff to disclose all the relevant material in the Plaint. He could not have suppressed the contradictory stand taken in his replies dated 5 February 2013 and 15 April 2016 on a specious plea that the same is in public domain. In this regard, reliance of Mr. Soni on the judgment of the Apex Court in Bhaskar Laxman Jadhav (supra) appears to be apposite wherein it is held that it is not for a litigant to decide what is to be disclosed and what not.

vi. Oswal Fats and Oils Ltd. (supra)

19. It is quite intriguing and surprising that the lease agreement was not brought to the notice of the Additional Commissioner and the learned Single Judge of the High Court and neither of them was apprised of the fact that the appellant had taken 27.95 acres land on lease from the Government by unequivocally conceding that it had purchased excess land in violation of Section 154(1) of the Act and the same vested in the State Government. In the list of dates and the memo of special leave petition filed in this Court also there is no mention of lease agreement dated 15-10-1994. This shows that the appellant has not approached the Court with clean hands. The withholding of the lease agreement from the Additional Commissioner, the High Court and this Court appears to be a part of the strategy adopted by the appellant to keep the quasi-judicial and judicial forums including

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> this Court in dark about the nature of its possession over the excess land and make them believe that it has been subjected to unfair treatment. If the factum of execution of lease agreement and its contents were disclosed to the Additional Commissioner, he would have definitely incorporated the same in the order dated 30-5-2001. In that event, the High Court or for that reason this Court would have non-suited the appellant at the threshold. However, by concealing a material fact, the appellant succeeded in persuading the High Court and this Court to entertain adventurous litigation instituted by it and pass interim orders. If either of the Courts had been apprised of the fact that by virtue of lease deed dated 15-10-1994, the appellant has succeeded in securing temporary legitimacy for its possession over excess land, then there would have been no occasion for the High Court or this Court to entertain the writ petition or the special leave petition.'
>
> 20. It is settled law that a person who approaches the court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. In other words, he owes a duty to the court to bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person.

21. In view thereof, I am of the view that the submission of learned counsel on behalf of the Respondent that the Petitioner had approached learned Sole Arbitrator with unclean hands is an argument which deserves to be accepted. Further, it is seen that the issue regarding No-Claim Certificate was raised only after lapse of more than ten months and after having received full and final payment for the work executed by the Petitioner. In fact, the learned Sole Arbitrator has categorically held that the Petitioner issued a demand notice to the Respondent alleging that they were entitled to damages or compensation on account of alleged delay in payment of amounts under the Work Order after a long period and had not raised this dispute when they decided to issue the final bill or even to execute the No-Claim Certificate. The learned Sole Arbitrator has also returned a finding that the parties had in fact met and taken joint measurement of the work which was carried out and final payment was made upon making the final

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bill. The learned Sole Arbitrator has also come to the conclusion that the issue of coercion in executing the No-Claim Certificate was not raised by the Petitioner immediately on signing of the No-Claim Certificate and the same was raised belatedly after a period of almost nine months. In view thereof, it is my view that the learned Sole Arbitrator has come to a correct finding that the issue of No-Claim Certificate was an issue which was an afterthought, which has been sought to be canvassed by the Petitioner. These findings of the Learned Sole arbitrator have been reached at post adducing evidence and after examining the facts on record, which do not warrant interference under Section 34 of the Act.

22. I am also of the view that the learned Sole Arbitrator on appreciation of the evidence has rightly come to the conclusion that the Petitioner had accepted the No-Claim Certificate and signed it. The Respondent had accepted it and counter signed it, and by the Petitioner executing the No-Claim Certificate for the work done and the consequent release of the performance bank guarantee by the Respondent to the Petitioner, it would be free for the Respondent to get the work done by another contractor and the giving up of the right to terminate the contract to encash the performance bank guarantee and claim damages was good consideration for the Petitioner to receive what was due to them under the performance bank guarantee.

23. Further even on a plain reading of the impugned arbitral award, it is clear that the Petitioner had failed to show the form and manner in which the Respondent had allegedly exercised coercion. The Petitioner had in fact failed to lead any relevant evidence or prove that there was any alleged coercion and duress

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involved in the execution of the No-Claim Certificate. The learned Sole Arbitrator to my mind has in the absence of the Petitioner discharging their burden to prove that the No-Claim Certificate has been obtained from them under coercion or fraud has rightly come to the conclusion that the No-Claim Certificate was executed by the parties voluntarily.

24. I am further of view that re-appreciation of evidence is not the mandate under Section 34 of the Act. However, on a perusal of the No-Claim Certificate, it is very clear that the Petitioner themselves have confirmed in the said Certificate that they have received full and final payment towards the work done by them against the Work Order and the subsequent amendments, if any, as per mutually agreed terms and conditions and further confirm that no balance amount was due and payable to them by the Respondent. The No-Claim Certificate also further states that the aforesaid had been given without any compulsion and the same was given voluntarily. It also further indemnified the Respondent from any further liabilities. The relevant No-Claim Certificate is reproduced below:

> "By this letter we hereby confirm that our Company Vishal Associates has successfully completed the work of concerned above mentioned work order to the satisfaction of HCC.
> We Vishal Associates confirm and certify that we have received the full and final payment towards the work done by us against work order cited above and its subsequent amendments if any as per mutually agreed terms and conditions and further confirm and undertake that no balance amount is due any payable to us by HCC under any account in respect of the work executed by us under the aforesaid Work Order. Notwithstanding any variations in quantities change in scope of work additions and deletions of work and/or completion time changes during the execution of the said works we hereby unconditionally and irrevocably certify that we have No Claim against HCC under any of the specific heads or sub-heads or towards any item of works executed by us in respect of the aforesaid Work Order and we further confirm and certify that this letter/certificate is given to HCC by us voluntarily and without any compulsion.
> We hereby indemnify HCC from any payments raised against HCC whether directly or indirectly in respect of the afore-stated Work Order either now or in future to us or to our lower tier sub-contractors and labour contractors or any

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> third party claiming on our behalf for any reason whatsoever. By this letter/certificate we unequivocally undertake that our firm shall only be directly responsible for any claims (monetary or otherwise) either raised by our workers/labour whether in our employment or not. The equipment, hirers, suppliers, bankers, financiers, labour officers, Provident Fund Authorities, Govt. regulatory authorities, Sales of Work Ordr referred above and shall also keep HCC fully indemnified in future against all such claims. We also confirm and declare that we have as on date No outstanding dues to any of our labour and the other resourse providers for the work completed by our firm under the aforesaid work order.
>
> (emphasis supplied)

25. I am therefore of the view that once the Petitioner had voluntarily submitted the No-Claim Certificate and had not led any evidence to show how coercion and/or fraud had been perpetrated, merely making an assertion without substantiating the same is what has been considered by the learned Sole Arbitrator to decide the issue. I am therefore of the view that the impugned arbitral award is a well-reasoned award which does not suffer from any patent illegality. The learned Sole Arbitrator being the master of facts and evidence has on appreciation of both the above, come to a plausible view, which to my mind cannot be interfered or substituted by another view by this Court, particularly in view of the limited scope of interference as mandated under Section 34 of the Act.

26. The reliance placed by learned counsel on behalf of the Petitioner on **Ssangyong** (supra), **Associate Builders** (supra) and **Recon India** (supra) would not warrant a discussion, inasmuch as, this Court has held that if there is no perversity in the findings as given by the learned Sole Arbitrator, the same could not be construed as a patent illegality on which the impugned arbitral award can be set aside. As held by **Ssangyong** (supra), patent illegality should be such which should appear on the face of the record, and which goes to the root of the matter but which does not amount to mere erroneous application of law. In facts of the present case,

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there is no perversity or patent illegality which can be shown in the facts of the present case and hence, the parameters of patent illegality as enunciated in **Ssangyong** (supra) would not apply to the facts of the present case. Further, the reliance on **Associate Builders** (supra) also would not be apposite, inasmuch as, in the present case, the learned Sole Arbitrator has not based its finding on no evidence at all or the learned Sole Arbitrator has ignored any vital evidence in arriving at its decision. In fact, in the present case, the learned Sole Arbitrator has led evidence to come to the conclusion that the No-Claim Certificate was a document which was not obtained by duress or coercion, and in fact, the issue of duress and coercion was suppressed before the learned Sole Arbitrator, however, the learned Sole Arbitrator has yet gone ahead and rendered a finding thereon which conclusively establishes that the claim of the Petitioner was a false claim and raised belatedly.

27. Further, I am also of the view that the reliance of learned counsel on behalf of the Petitioner on the case of **Mongia Realty** (supra) to contend that it is incumbent on a Court/Tribunal to render finding on all issues which are framed for adjudication would not be apposite to the facts of the present case, inasmuch as, in the present case, the learned Sole Arbitrator on issue number one by following the principles of **National Insurance Company limited Vs. M/s. Boghara Polyfab Pvt. Ltd.**[20] has come to the conclusion that the No-Claim Certificate was not obtained by fraud or coercion and once that being the case, adjudication on merits of the matter which were issue numbers 2, 3 and 4 would not be required. Further, it is a

[20] (2009) 1 SCC 267

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settled principle of law that in arbitral proceedings, the provisions of CPC are not to be strictly followed, and the learned Sole Arbitrator is free to choose the manner under which the arbitration proceedings can be conducted. In view thereof, the decision in **Mongia Realty** (supra) also would not be apposite to the facts of the present case.

28. The matter was kept for clarification under the caption "for directions" on 2nd November 2026, in view of the order passed by a co-ordinate bench of this Court dated 8th January 2024 wherein leave to amend the aforesaid petition was granted to raise the issue of limitation under Section 34(3) of the Act and to add additional grounds in respect thereof. When a query was specifically raised as to why the aforesaid issue has not been canvassed, learned counsel on behalf of the Petitioner submitted that he does not intend to press the aforesaid issue of limitation. In view thereof the decisions in **State of Maharashtra vs. Hindustan Construction Co. Ltd.**[21], and **Shri. Raghunath Khanjode vs. Harsiddh Corporation**[22] on which reliance has been sought to be placed upon by learned counsel on behalf of the Petitioner, are not required to be considered.

29. I am therefore of the view that the learned Sole Arbitrator has correctly taken the view that the No-Claim Certificate was a document which was accepted by the parties voluntarily and mutually, and that to my mind was the core issue on which the learned Sole Arbitrator has rendered a reasoned finding which requires no interference. I am further of the view that the learned Sole Arbitrator has correctly passed the award on issue number one as per the procedure agreed upon

[21] (2010) 4 SCC 518

[22] CARBP 94 of 2024 ord dated 19th November 2025

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by the parties considering the judgment of **Boghara** (supra), wherein it was held that the Court would first consider the evidence of coercion, and if none is found, then the claim could be rejected without examining the merits. In light of this, the learned Sole Arbitrator was therefore justified in not proceeding to consider issue nos. 2, 3 and 4. Considering that on issue no. 1, after leading evidence and after appreciation of facts, it was seen that the No-Claim Certificate was not obtained from the Petitioner by any coercion or duress, the Learned Sole arbitrator rightly did not render any findings on the merits of the matter. The relevant findings of **Boghara Polyfab Ltd** (supra) are reproduced below :

> "21. It is thus clear that when a contract contains an arbitration clause and any dispute in respect of the said contract is referred to arbitration without the intervention of the court, the Arbitral Tribunal can decide the following questions affecting its jurisdiction: (a) whether there is an arbitration agreement: (b) whether the arbitration agreement is valid: (c) ,whether the contract in which the arbitration clause is found is null and void, and if so, whether the invalidity extends to the arbitration clause also. It follows. therefore, that if the respondent before the Arbitral Tribunal contends that the contract has been discharged by reason of the claimant accepting payment counters it by contending that the discharge voucher was extracted from him by practising fraud, undue influence, coercion, the Arbitral Tribunal will have to decide whether the discharge of contract was vitiated by any circumstance which rendered the discharge voidable at the instance of the claimant. If the Arbitral Tribunal comes to the conclusion that there was a valid discharge by voluntary execution of a discharge voucher, it will refuse to examine the claim on merits, and reject the claim as not maintainable. On the other hand, if the Arbitral Tribunal comes to the conclusion that such discharge of contract was vitiated by any circumstance which rendered it void, it will ignore the same and proceed to decide the claim on merits."
>
> (emphasis supplied)

30. I am further in agreement with the reliance placed by learned counsel on behalf of the Respondent on the decision of M/s. **ONGC Mangalore Petrochemicals Vs. M/s. ANS Constructions Ltd.**[23], wherein it was held that once no coercion or duress has been conclusively proved or established by the Petitioner,

[23] (2018) 3 SCC 373

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and held by the Arbitral Tribunal, then the belated plea of coercion could not be taken up, insofar as, the execution of No-Claim Certificate was concerned. This in view of the fact as held by me above, that even at the time of filing the statement of claim or even during the reply to the counterclaim raised by the Respondent, the Petitioner had not raised the issue regarding coercion or duress in obtaining the No-Claim Certificate. The relevant paragraphs of **ONGC Mangalore** (supra), therefore need to be reproduced to highlight the above proposition

> 30) From the materials on record, we find that the contractee-Company had issued the "No Dues/No Claim Certificate" on 21.09.2012, it had received the full amount of the final bill being Rs. 20.34 crores on 10.10.2012 and after 12 days thereafter, i.e., only on 24.10.2012, the contractee-Company withdrew letter dated 21.09.2012 issuing "No Dues/No Claim Certificate". Apart from it, we also find that the Final Bill has been mutually signed by both the parties to the Contract accepting the quantum of work done, conducting final measurements as per the Contract, arriving at final value of work, the payments made and the final payment that was required to be made. The contractee-Company accepted the final payment in full and final satisfaction of all its claims. We are of the considered opinion that in the presents facts and circumstances, the raising of the Final Bill and mutual agreement of the parties in that regard, all claims, rights and obligation of the parties merge with the Final Bill and nothing further remains to be done. Further, the appellant-Contractor issued the Completion Certificate dated 19.06.2013 pursuant to which the appellant-Contractor has been discharged of all the liabilities. With regard to the issue that the "No-Dues Certificate" had been given under duress and coercion, we are of the opinion that there is nothing on record to prove that the said Certificate had been given under duress or coercion and as the Certificate itself provided a clearance of no dues, the contractee could not now turn around and say that any further payment was still due on account of the losses incurred during the execution of the Contract. The story about duress was an afterthought in the background that the losses incurred during the execution of the Contract were not visualised earlier by the contractee. As to financial duress or coercion, nothing of this kind is established prima facie. Mere allegation that no-claim certificates have been obtained under financial duress and coercion, without there being anything more to suggest that, does not lead to an arbitrable dispute. The conduct of the contractee clearly shows that "no-claim certificate" was given by it voluntarily; the contractee accepted the amount voluntarily and the contract was discharged voluntarily.
>
> Conclusion:
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> 31) Admittedly, No-Dues Certificate was submitted by the contractee-Company on 21.09.2012 and on their request Completion Certificate was issued by the appellant-contractor. The contractee, after a gap of one month, that is, on 24.10.2012, withdrew the No Dues Certificate on the grounds of coercion and duress and the claim for losses incurred during execution of the Contract site was made vide letter dated 12.01.2013, i.e., after a gap of 3 ½ (three and a half) months whereas the Final Bill was settled on 10.10.2012.

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> When the contractee accepted the final payment in full and final satisfaction of all its claims, there is no point in raising the claim for losses incurred during the execution of the Contract at a belated stage which creates an iota of doubt as to why such claim was not settled at the time of submitting Final Bills that too in the absence of exercising duress or coercion on the Contractee by the appellant-Contractor. In our considered view, the plea raised by the contractee-Company is bereft of any details and particulars, and cannot be anything but a bald assertion. In the circumstances, there was full and final settlement of the claim and there was really accord and satisfaction and in our view no arbitrable dispute existed so as to exercise power under Section 11 of the Act. The High Court was not, therefore, justified in exercising power under Section 11 of the Act.
>
> (emphasis supplied)

31. I am therefore of the view that once it has been held that the No-Claim Certificate was not obtained by coercion or duress, and the same was signed voluntarily, then the argument of learned counsel on behalf of the Respondent needs to be accepted, that once a person signs a document then the presumption is that he has read the document properly and understood it and only then affixed his signature thereon unless there is proof of coercion or duress. The reliance of learned senior counsel on behalf of the Respondent on the case of **M/s. Grasim Industries Ltd. Vs. M/s. Agarwal Steel**[24] is therefore apposite in the facts of the present case. In this case too, the Petitioner could not in any manner show that the No-Claim Certificate was obtained from them by coercion or duress which was rightly upheld by the learned Sole Arbitrator. Considering the aforesaid findings, the interference under Section 34 of the Act is not warranted. The relevant paragraphs of **Grasim Industries** (supra) are reproduced below:-

> "In our opinion, when a person signs a document, there is a presumption, unless there is proof of force or fraud, that he has read the document properly and understood it and only then he has affixed his signatures thereon, otherwise no signature on a document can ever be accepted. In particular, businessmen, being careful people (since their money is involved) would have ordinarily read and understood a document before signing it. Hence the presumption would be even stronger in their case. There is no allegation of force or fraud in this case. Hence it is difficult to accept the contention of the

[24] (2010) 1 SCC 83

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> respondent while admitting that the document Ex.D-8 bears his signatures that it was signed under some mistake. We cannot agree with the view of the High Court on this question. On this ground alone, we allow this appeal, set aside the impugned judgment of the High Court and remand the matter to the High Court for expeditious disposal in accordance with law."
>
> (emphasis supplied)

32. I am in agreement with the contention advanced by the learned senior counsel appearing on behalf of the Respondent, relying upon **Master Construction Company Vs. Union of India & Ors.**[25], that a plea of coercion must be raised promptly and substantiated by cogent evidence. In the facts of the present case, the plea of coercion was raised only after an unexplained delay of nine months. Such belated assertion, particularly in the absence of contemporaneous protest or supporting evidence, lends credence to the Respondent's contention that the plea is an afterthought and ought not to be accepted merely on the basis of a bald allegation. The relevant paragraphs of the aforesaid decision are reproduced below:-

> 18. In our opinion, there is no rule of the absolute kind. In a case where the claimant contends that a discharge voucher or no-claim certificate has been obtained by fraud, coercion, duress or undue influence and the other h side contests the correctness thereof, the Chief Justice/his designate must look into this aspect to find out at least, prima facie, whether or not the dispute is bona fide and genuine, Where the dispute raised by the claimant with regard to validity of the discharge voucher or no-claim certificate or settlement agreement, prima facie, appears to be lacking in credibility, there may not be a necessity to refer the dispute for arbitration at all.
> 19. It cannot be overlooked that the cost of arbitration is quite huge most of the time, it runs into six and seven figures. It may not be proper to burden a party, who contends that the dispute is not arbitrable on account of discharge of contract, with huge cost of arbitration merely because plea of fraud, coercion, duress or undue influence has been taken by the claimant. A bald plea of fraud, coercion, duress or undue influence is not enough and the party who sets up such a plea must prima facie establish the same by placing material before the Chief Justice/his designate. If the Chief Justice/his designate finds some merit in the allegation of fraud, coercion, duress or undue influence, he may decide the same or leave it to be decided by the Arbitral Tribunal. On the other hand, if such plea is found to be an afterthought, make-believe or lacking in credibility, the matter must be set at rest then and there.
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> xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx

[25] (2011) 12 SCC 357

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> 23. The present, in our opinion, appears to be a case falling in the category of exception noted in Boghara Polyfab (P) Ltd.2 (p. 284, para 25). As to financial duress or coercion, nothing of this kind is established prima a facie. Mere allegation that no-claim certificates have been obtained under financial duress and coercion, without there being anything more to suggest that, does not lead to an arbitrable dispute. The conduct of the contractor clearly shows that "no-claim certificates" were given by it voluntarily; the contractor accepted the amount voluntarily and the contract was discharged voluntarily.
>
> (emphasis supplied)

33. Learned senior counsel for the Respondent submitted that a plea of coercion or economic duress challenging a full and final settlement could not be sustained where the protest had been raised belatedly. In the present case, the Petitioner had accepted the settlement and raised its protest for the first time on 7th May 2012. He therefore submitted that the belated nature of the protest was a relevant consideration. In the facts of the present case, the reliance placed by learned senior counsel on behalf of the Respondent on **New India Assurance Company Limited Vs. Genus Power Infrastructure Limited**[26], would also be apposite to the facts of the present case, inasmuch as, it is after signing the No-Claim Certificate that the Petitioner has asserted that the No-Claim Certificate was taken under coercion and duress and has only made a bald assertion in respect thereof without substantiating its claim. The relevant paragraphs of the aforesaid decision are reproduced below:-

> 9. It is therefore clear that a bald plea of fraud, coercion, duress or undue influence is not enough and the party who sets up a plea, must prime facie establish the same by placing material before the Chief Justice/his designate. Viewed thus, the relevant averments in the petition filed by the respondent need to be considered, which were to the following effect:-
>
> > "(g) That the said surveyor, in connivance with the Respondent Company, in order to make the Respondent Company escape its full liability of compensating the Petitioner of such huge loss, acted in a biased manner, adopted coercion undue influence and duress methods of assessing the loss and forced the Petitioner to sign certain documents including the Claim Form. The Respondent Company also denied the just claim of the Petitioner

[26] (2015) 2 SCC 424

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> by their acts of omission and commission and by exercising coercion and undue influence and made the Petitioner Company sign certain documents, including a pre-prepared discharge voucher for the said amount in advance, which the Petitioner Company were forced to do so in the period of extreme financial difficulty which prevailed during the said period. As stated aforesaid, the Petitioner Company was forced to sign several documents including a letter accepting the loss amounting to Rs.6,09,55,406/- and settle the claim of Rs.5,96,08,179/- as against the actual loss amount of Rs.28,79,08,116/- against the interest of the petitioner company. The said letter and the aforesaid pre-prepared discharge voucher stated that the petitioner had accepted the claim amount in full and final settlement and thus, forced the petitioner company to unilateral acceptance the same. The petitioner company was forced to sign the said document under duress and coercion by the Respondent Company. The Respondent Company further threatened the petitioner Company to accept the said amount in full and final or the Respondent Company will not pay any amount toward the fire policy. It was under such compelling circumstances that the petitioner company was forced and under duress was made to sign the acceptance letter."
>
> 10. In our considered view, the plea raised by the respondent is bereft of any details and particulars, and cannot be anything but a bald assertion. Given the fact that there was no protest or demur raised around the time or soon after the letter of subrogation was signed, that the notice dated 31.03.2011 itself was nearly after three weeks and that the financial condition of the respondent was not so precarious that it was left with no alternative but to accept the terms as suggested, we are of the firm view that the discharge in the present case and signing of letter of subrogation were not because of exercise of any undue influence. Such discharge and signing of letter of subrogation was voluntary and free from any coercion or undue influence. In the circumstances, we hold that upon execution of the letter of subrogation, there was full and final settlement of the claim. Since our answer to the question, whether there was really accord and satisfaction, is in the affirmative, in our view no arbitrable dispute existed so as to exercise power under section 11 of the Act. The High Court was not therefore justified in exercising power under Section 11 of the Act.
>
> (emphasis supplied)

34. In the facts of the present case, since the learned Sole Arbitrator has after following the correct procedure as mandated under **Boghara** (supra), decided issue no. 1 on appreciation of facts and evidence, to my mind, the same does not require interference under Section 34 of the Act, as it does not show any perversity which goes to the root of the matter, and considering that there is no perversity or any unreasonable finding which has been rendered by the learned Sole Arbitrator, the

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interference under Section 34 of the Act is not warranted. I am further of the view that, the view reached by the learned Sole Arbitrator is a plausible view and a possible view which cannot be interfered with. Considering the judgments of **Dyna Technologies** (supra) and **Rishabh Kumar** (supra) wherein it has been held that the Arbitral Tribunal is the ultimate master of the quality and quantity of evidence, therefore I am of the view that the impugned arbitral award requires no interference. In view thereof, the aforesaid petition deserves to be dismissed.

35. I am of the view that the submissions made by learned senior counsel on behalf the Respondent that there was suppression of facts, which was ground enough by itself for the learned Sole Arbitrator to dismiss the claim of the Petitioner, does not require consideration, inasmuch as, the learned Sole Arbitrator has in any event rendered a finding on the issue of the No-Claim Certificate not being obtained by coercion and duress. Once that being the position the issue of suppression of the No-Claim Certificate would be rendered academic as a finding on it has been given by learned Sole Arbitrator.

36. Considering the aforesaid clear position of facts and the detailed findings in the impugned arbitral award on the basis of appreciation of facts and documentary evidence, on which a possible view has been arrived at by the learned Sole Arbitrator, I am not satisfied that a case has been made out for interference with the impugned arbitral award. Therefore, the petition is dismissed without any interference. Interim Application(s), if any, shall also be disposed of accordingly. Any amount deposited in Court shall be released within the expiry of **one month** from the date on which this judgment is uploaded on this Court's website. The

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petition is disposed of in the aforesaid terms. No costs.

(AARTI SATHE, J.)

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