

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

Present:

Hon'ble Justice Shampa Sarkar

EC-COM/9/2025
IA NO: GA-COM/1/2025

ALOK SARAF AND ORS.
VS
SHYAM SUNDAR NANGALIA AND ORS.

For the petitioners

*:- Mr. Jishnu Saha, Sr. Adv.
Mr. Debnath Ghosh, Sr. Adv.
Mr. Ishaan Saha, Adv.
Mr. Biswaroop Mukherjee, Adv.
Ms. Rishika Goyal, Adv.*

*For the respondents
nos. 1,2,3 and 6*

*:- Mr. Sabyasachi Chowdhury, Sr. Adv.
Mr. Rudraman Bhattacharya, Sr. Adv.
Ms. Amrita Panja Moulick, Adv.
Mr. Saptarshi Banerjee, Adv.
Ms. Shivangi Agarwal, Adv.*

Hearing concluded on :- 21.03.2025

Judgment on :- **20.05.2025**

Shampa Sarkar, J.:-

1. The petitioners have filed this application for execution of a memorandum of settlement dated September 10, 2024, as an award, following the mediation and conciliation commenced by the parties in terms of a mediation agreement dated August 2, 2023. The petitioners constitute the ASA Group, while the respondent numbers 1 to 7 constitute the EPI

Group. According to the petitioners, the respondent No. 8 was substantially owned and managed by the ASA Group. However, the control of the same, had shifted to the EPI Group before the commencement of the mediation and conciliation proceedings.

2. According to Mr. Jishnu Saha, learned senior advocate for the petitioner, the proceedings were in the nature of conciliation/mediation, and the same resulted in the signing of a settlement agreement by the parties. The mediator, also signed the same. The settlement had the force of an arbitral award and should be enforced by this Court as the executing Court.

3. The facts and background of the case as narrated by the petitioners were that money had been advanced and accommodation loans had been given by the EPI Group to the ASA Group. As the ASA Group failed to repay such sums within the agreed time frame, an agreement was entered into by and between the parties. Such agreement was recorded as minutes of a meeting between Alok Saraf (petitioner number 1), and Mr. Bijay Agarwal (Chief Executive Officer of the respondent number 3), which was held on 15th November, 2015.

4. The said agreement recorded certain terms and conditions which were required to be fulfilled by the parties. Following the said agreement, ASA Group transferred 40% shares of the respondent No. 8 company, to EPI Group, and allowed the EPI Group to appoint directors to the board of the respondent No. 8. That apart, the balance 60% shares held by the ASA Group in the respondent No. 8, were also pledged by it in favour of the EPI Group. On October 11, 2018, a new agreement was entered into between the EPI Group and the ASA Group.

5. The agreement also contained certain terms and conditions which were to be fulfilled by the parties. The petitioners alleged that after the execution of the agreement on October 11, 2018, EPI Group had become the majority shareholders of the respondent no. 8 company. It had three representatives in the Board and also joint signatories in the bank accounts of the same company. Ultimately, a new bank account was opened, for which the EPI Group was the sole signatory. Gradually, the effective control of the respondent no. 8 was made over to the EPI Group for the reason that, the ASA Group had failed to repay the loans and advances within the period stipulated. Under the circumstances, the loans and advances given to the ASA Group were required to be adjusted against the money that became due and payable by the EPI Group to ASA Group, inter alia, on account of the value of balance shares of the ASA Group. Although, control of the respondent No. 8 was made over to the EPI group, the outstanding loans of the ASA group were not adjusted, as per the agreement.

6. Thus, disputes arose between the parties. They were referred to arbitration. One Mr. Sanjay Kumar Seksaria was the arbitrator, who passed an award on 16th March 2021.

7. As the award was not acceptable to either of the groups, they proceeded to treat the same as null and void. Thereafter, the parties decided to make an attempt to resolve their disputes through conciliation/mediation, and an agreement was entered into on 2nd August 2023. The EPI Group was represented by Mr. Shyam Sundar Nangalia and Mr. Ramesh Agarwal, while the ASA group, including the Respondent No. 8, was represented by the petitioner No. 1. The said mediation agreement

referred to the prior agreements dated 15th November 2015 and 11th October 2018. It was recorded that the parties were unable to arrive at a settlement, some of the issues arising out of the two agreements, were decided to be referred to a named mediator.

8. The mediation agreement required the parties to deposit shares, execute documents and deposit monies with the mediator in escrow, till such time a settlement agreement, referred to as mediated settlement agreement, was executed, in terms whereof, the deposited shares, executed documents and the deposited monies would be released and/or dealt with by the Mediator. The agreement expressly recorded that the “Mediated Settlement Agreement” would be final and binding on the parties, the parties would give effect to the agreement and would comply with the same expeditiously. The parties agreed not to initiate any legal proceeding in respect of the mediated settlement agreement, save for the enforcement of the same. Clause 7 of the mediation agreement recorded that even in the event of failure of mediation, the shares, executed documents and monies made over to the mediator in escrow, would continue to be held by him, for being dealt with in the manner provided in the mediation agreement. Clause 8 of the mediation agreement recorded that in the event of the mediation proceeding being closed or terminated, either party to the agreement may refer the disputes and differences being the subject matter of mediation to arbitration. In such a situation, the mediator would deal with the shares, executed documents and monies held by him in escrow, in the manner as would be directed by the Court or by a written order of the Arbitrator. Following the mediation agreement, the shares, executed documents and

monies were made over by the parties to the mediator, to be held by him in escrow.

9. According to Mr. Saha, the amended provisions of Section 61 of the 1996 Act, had not been notified, and as such, the provisions of the Mediation Act, 2023, would not be applicable, in their strict sense. The definition of mediation under the Mediation Act, 2023 (hereinafter referred to as the 2023 Act), included conciliation. Moreover, an execution case as per the provisions of the 2023 Act, could not be filed, as the provisions of Section 27 of the 2023 Act, had not been notified.

10. Mr. Saha submitted that Section 73 of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as the 1996 Act) would be applicable in this case. The parties signed the settlement agreement and the said settlement agreement became final and binding. The mediator also authenticated the same by affixing his signature. Section 74 of the 1996 Act, provided that the settlement agreement would have the same status and effect as an award, on the agreed terms.

11. According to Mr. Saha, Section 56 of the 2023 Act, provided that the Act would not apply to any mediation or conciliation which commenced prior to the coming into force of the said Act. In this case, the mediation agreement was executed on August 2, 2023, and the 2023 Act received the assent of the Parliament on September 14, 2023. Moreover, Sections 27 to 29 of the Act had not been notified, and as such, the question of execution of the settlement agreement under the provisions of the 2023 Act, would not arise. In effect, the mediation agreement was a conciliation agreement, and Part III of the 1996 Act would be applicable. Nomenclature of the agreement

would not make any difference at all. The contents of the agreement would be of vital significance. Moreover, when neither the provisions of the 2023 Act with regard to execution of mediation agreements, nor the amendment of 1996 Act, i.e. repeal of Sections 61 to 85 thereof, had been notified, the only other remedy available to the petitioners, would be to get the award executed by the executing court, under the provisions of Section 36 of the 1996 Act, as if, the memorandum of settlement dated September 10, 2024 was an award under the provisions of the 1996 Act.

12. 'Mediation' had been defined under Section 3(h) of the 2023 Act. The definition included any process, whether referred to by the expression mediation, field litigation mediation, online mediation, community mediation, conciliation, or an attempt of similar import, whereby the parties attempted to reach an amicable settlement of the dispute with the assistance of a third person named as a mediator. According to Mr. Saha, as the expression mediation and conciliation had been used interchangeably, and as there was no other provision for execution of a mediation agreement under the 2023 Act, the only manner in which the settlement agreement could be enforced was, under the 1996 Act. Section 74 thereof would be applicable.

13. Referring to the recitals of the agreement dated August 2, 2023, Mr. Saha submitted that the parties had assured the mediator that they would have full faith in him, and that the mediator would assist the parties in a neutral, independent, and impartial manner, in their attempt to reach an amicable settlement of the disputes and differences. The parties had entered into the agreement amicably, conclusively, and had finally resolved and

settled all remaining disputes, differences and claims between the EPI group and the ASA group. They had consented to appoint Mr. Rajeev Ginodia, learned Advocate, as the mediator. Clause 2 of the agreement provided that the parties would provide full cooperation to each other and to the mediator, by making available copies of all relevant documents, accounts, and information. Clause 6 provided that in the event the parties were successful in amicably reaching a mediated settlement agreement, with the assistance of the mediator, such settlement agreement would be final and binding on the parties, and the parties would give full effect to the same. The learned Advocate/mediator accepted his appointment by a letter dated 7th August 2023, which was issued in response to the joint request made by the parties. Section 62 of the 1996 Act thus, saved the proceedings from the applicability of the 2023 Act.

14. The settlement agreement bore the signatures of both the parties, and the respondents had signed the mediated settlement agreement. It was never the case of the respondents that they had signed the document under coercion or duress. Section 73(1) of the 1996 Act, could not be imported to nullify the said mediated settlement agreement. This was not a case, where the mediator had suo moto, on finding that there existed elements of settlement, had formulated the terms of the settlement and forwarded the same to the parties. The situation was quite the reverse. The parties themselves arrived at the decision that, they would get the unresolved disputes settled by a named mediator, and they would assist the mediator in drawing up the settlement agreement. Accordingly, the memorandum of settlement dated 10th September 2024, was drawn up by the parties. The

parties and the mediator signed the same. The rights and obligations of the parties had crystallized, with the signing of the settlement agreement.

15. Section 76(2) of the 1996 Act was independent of Section 76(1). Section 76(3) provided that when the parties signed the settlement agreement, the same became final and binding on the parties and the persons claiming under them. The clauses of the settlement agreement were referred to in support of the contention that the agreement was mutually and amicably arrived at, with the active involvement and assistance of the mediator. The parties had mutually, amicably, fully, conclusively and finally resolved and arrived at a full and final settlement of all their disputes, differences and claims, to their full satisfaction and such final settlement was being recorded by the parties voluntarily in the settlement agreement. The mediator authenticated the settlement agreement.

16. Mr. Saha further contented that, Clause 50 of the settlement agreement could not be read in isolation to the other clauses. A commercial document should be construed in such a manner that business efficacy is ensured. The document had to be interpreted harmoniously and as a whole. An independent clause, providing for reference of disputes arising out of the said agreement to arbitration, would not nullify the validity or the existence of the mediation agreement.

17. The parties considered the said settlement agreement to be fair, reasonable and in their best interest. Such fact was recorded under a separate clause. All claims, differences and disputes which had been resolved by the said agreement, had reached a finality and the said mediated terms would be binding, valid and enforceable as an award.

18. Reference was made to clauses 14, 47, 48, 49, 52, 53, 54, 55, 56 and 57, in support of the contention that those clauses which preceded and succeeded clause 50, would clearly indicate that the parties had agreed that all disputes and differences had been finally settled and the memorandum of settlement dated September 10, 2024, recorded such settlement. If disputes cropped up during enforcement of the terms and conditions of the memorandum of settlement, the same would be referred to arbitration. The validity of the terms and conditions of the settlement agreement, could not be reopened. The disputes which would arise even after the parties had given full meaning and effect to the settlement agreement, would be referred to arbitration.

19. According to Mr. Saha, after signing the agreement, the respondents could not just turn around and question the existence of the agreement on the frivolous ground that the same was signed under a misconception that further arguments and submissions would be permitted and opinions of the parties would be obtained. Moreover, the respondents did not make out a case of misrepresentations. The clauses which were not acceptable, were not pointed out. An omnibus allegation that they were under the impression that the settlement agreement was not final and further discussions would be held, could not nullify the binding effect of the agreement. The parties and the mediator had signed the same. The same was enforceable as an award

20. Mr. Sabyasachi Choudhury, learned Advocate for the respondents, supports the application seeking dismissal of the execution case on the grounds that the document dated September 10, 2024 could not be treated

as a mediated settlement agreement, as contemplated either in law or in the agreement of August 2, 2023. According to Mr. Chowdhury, the dispute had not been finally resolved. The document was neither an award nor a settlement agreement, and could not be enforced under Order 21 of the Code of Civil Procedure.

21. He further submitted that, as per the agreement dated August 2, 2023, if the parties were unable to arrive at a mediated settlement agreement with the assistance of the mediator within a maximum period of 180 days from the date of acceptance of appointment by the mediator, the mediator would close and / or terminate the mediation proceedings. The agreement further provided that, documents, money, etc., made over to the mediator in the escrow, would continue to be held and or retained by the mediator and dealt with in the manner provided thereunder. In the event the mediation proceeding was either closed or terminated, either party could refer the disputes or differences to arbitration, by a sole arbitrator under the provisions of the 1996 Act.

22. Mr. Choudhury contended that the Memorandum of Settlement was arrived at on September 10, 2024, much beyond the period prescribed under the agreement dated August 2, 2023. Reference was made to Section 73 of the 1996 Act, in support of the contention that the ingredients of a final settlement under the said Act were absent in this case. Reference was also made to the letter dated September 24, 2024, written by Mr. Ramesh Agarwal of EPI Group to the Advocate/Mediator, inter alia, contending that on September 10, 2024, a call was received at the office of Mr. Ramesh Agarwal from Mr. Sanjay Ginodia, requesting the representatives of the EPI

Group to visit the office of Mr. Ginodia and to sign a few documents. Based on such information, the members of the EPI Group visited the office of Mr. Ginodia when Mr. Sanjay Ginodia, handed over a bunch of papers for signing and they were signed in good faith with the assurance that they would be handed over to Mr. Ramesh Agarwal at the earliest possible date, after being countersigned. Mr. Rajeev Ginodia, the mediator, was informed that the EPI Group had not received copies of those documents and papers. Further reference was made to the letter dated October 1, 2024, again addressed to Mr. Rajeev Ginodia by the EPI Group.

23. Mr. Choudhury relied on the decision of *Mysore Cements Ltd. vs Svedala Barmac Ltd.* reported in **(2003) 10 SCC 375**.

24. Heard the rival contentions of the parties.

25. Section 19(1) of the Mediation Act, deals with the definition of a Mediation Settlement Agreement. Section 27 thereof deals with execution. These are the relevant provisions of the 2023 Act, but none of these sections have been notified.

26. The issue to be decided in this proceeding is whether the said Memorandum of Settlement dated September 10, 2024, can be enforced as a settlement agreement under the provisions of 1996 Act.

27. The fact that the parties had entered into an agreement for settlement of their differences by mediation, is not in dispute. The agreement for mediation is dated August 2, 2023. Clauses 1 and 2 thereof, are quoted below:-

“1. The parties hereto are entering into this Agreement to amicably, conclusively and finally resolve and settle all the remaining disputes, differences and claims between the EP. Group and the ASA Group in

relation to the said two documents and the transactions and steps taken by the parties and for such purpose hereby appoint Mr. Rajeev Ginodia, Advocate, 6, Church Lane, Kolkata - 700 001 as the Mediator.

2. The parties shall provide full co-operation to each other and the Mediator by making available copies of all relevant documents, accounts and information that may be required from time to time and meet the Mediator without delay for conveying their respective viewpoints and contentions regarding the said disputes. The Mediator shall be at liberty to meet the parties jointly and/or separately, at his discretion. The mediation shall be conducted in an informal manner on the basis of oral statements and documents, etc. that may be provided by the parties without there being any requirement of filing formal pleadings and without holding formal hearings. The Mediator shall not be required to issue formal Notices for meetings or to prepare or record Minutes of Meetings with the parties or either of them.”

28. It is evident that the parties had entered into the said agreement to amicably, conclusively and finally resolve and settle the dispute between the EPI group and the ASA group, prior to the notification of Section 56 of the 2023 Act. The parties agreed to appoint Mr. Rajeev Ginodia, learned Advocate, as the mediator. The parties agreed to provide full co-operation to each other and also to the mediator, by making available all copies of all relevant documents, accounts, information, etc. The mediation was to be conducted in an informal manner on the basis of oral statements and documents that would be provided by the parties, without any requirement for filing formal pleadings and without holding formal hearings. The mediator was neither required to issue formal notices for the meetings nor prepare or record minutes. The agreement further provided that neither party would initiate any arbitral or judicial proceeding or take any steps which could be prejudicial to the rights of the other party and or adversely affect the resolution of disputes in the manner contemplated under the said agreement. In case the parties were successful in amicably reaching a

Mediated Settlement Agreement', with the assistance of the mediator, such Mediated Settlement Agreement, would be final and binding and the parties would give effect to the same and comply with the same.

29. The parties also agreed not to take any legal steps with regard to the Mediated Settlement Agreement, save and except enforcement thereof.

Clauses 3 to 6 of the agreement dated August 2, 2023 are quoted below:-

“3. The EPI Group shall be represented jointly and/or severally by Shyam Sundar Nangalia and/or Ramesh Agarwal and the ASA Group shall be represented by Alok Saraf in the Mediation meetings / proceeding. They have due authority from the respective Groups to participate in the Mediation meetings / proceedings and to bind their respective constituents under the Mediated Settlement Agreement, if reached. The parties shall not be engaging Advocates to represent them in the Mediation meetings / proceedings.

4. Neither party shall initiate any arbitral or judicial proceeding or take any steps which may prejudice the rights of the other party or adversely affect resolution / settlement of the disputes as contemplated in this agreement, other than in the circumstances mentioned hereinafter.

5. The parties shall deposit shares, executed documents and money with the Mediator in escrow till such time as a Mediated Settlement Agreement is executed and the same shall be released and/or dealt with by the Mediator in terms thereof. The Mediated Settlement Agreement shall specifically provide for the same.

6. In the event the parties are successful in amicably reaching a Mediated Settlement Agreement with the assistance of the Mediator, such Mediated Settlement agreement shall be final and binding on the parties and the parties shall give effect to and comply with the same expeditiously. The parties undertake not to initiate any legal proceeding whatsoever in respect of the Mediated Settlement Agreement, save enforcement thereof.

30. The petitioners have filed this application for enforcement of the Memorandum of Settlement as an award under the provisions of the 1996 Act, on the ground that the provisions under the 2023 Act, dealing with enforcement of a Mediated Settlement Agreement had not been given effect to and similarly amendment of Section 61 of the 1996 Act, had not also been

given effective to. In terms of Section 74 read with Section 30 of the 1996 Act, the agreement should be executed by this court.

31. On the other hand, Mr. Choudhury has relied upon clauses 7 and 8 of the agreement in support of the contention that, if the dispute could not be resolved within 180 days from the execution of the agreement to mediation or the mediator was of the view that the dispute could not be resolved, the proceeding would terminate. Admittedly, the dispute could not be resolved within 180 days from execution of the agreement dated August 2, 2023, but the parties continued to informally try and settle the dispute between themselves. Such fact is available from a letter written by the EPI group. The Memorandum of Settlement mentions that the time limit envisaged in Clause 7 was extended beyond 120 days by the consent of the parties up to December 31, 2024. Thus, the contention of Mr. Chowdhury that the proceeding must be treated as terminated under clause 7 of the said Memorandum of Settlement is not correct and is not accepted by the court.

32. Mr. Choudhury's contention that parties were conscious that in case the mediation was not successful, the only other alternative left to the parties, would be to get their disputes resolved by arbitration and a sole arbitrator would finally adjudicate the dispute between the parties, has some merit. On such eventuality, the mediator would handover the documents and the money in the escrow either on the direction of the sole arbitrator or on the direction of a court. Clauses 7 to 13 of the said agreement are quoted below:-

“7. In the event the parties are unable to arrive at a Mediated Settlement Agreement with the assistance of the Mediator within a maximum period of 180 days from the date of acceptance of appointment by the Mediator to act as such and/or at any time prior thereto the Mediator is of the view that further efforts for settlement of the disputes are no longer justified, the Mediator shall close and/or terminate the Mediation proceedings. However, the shares, executed documents, money, etc. made over to the Mediator in escrow shall continue to be held and/or retained by the Mediator and dealt with in the manner provided hereinafter.

8. In the event the Mediation proceeding is closed and/or terminated as aforesaid, either party may refer the disputes and differences as stated herein, to arbitration by Sole Arbitrator under the provisions of the Arbitration and Conciliation Act, 1996, For such purpose, this clause shall be construed a binding and valid arbitration agreement between the parties.

9. Upon the said disputes and differences being referred to arbitration as aforesaid, the Mediator shall deal with the shares, executed documents, money, etc. made over to the Mediator in escrow in such manner as may be directed by an Order of the Hon'ble Court or a written Order of the Sole Arbitrator. The Mediator shall comply with such Order irrespective of pendency of any appeal and/or application seeking to stay operation of such Order.

10. The Mediator shall be entitled to assist the parties in resolving and settling their disputes and differences not necessarily on the basis of strict interpretation of the said two documents which were prepared informally, but on the basis of the spirit and understanding between the parties, acts and conduct of the parties as also good business practices and usage and above all on the basis of fairness and justice.

11. The parties shall accept the viewpoints of the Mediator on the various issues and shall implement the same fully and for such purpose take all steps, sign all papers and make all payments. However, in the event, the parties are unable to arrive at a Mediated Settlement Agreement, the Mediator shall not be entitled to impose his viewpoints or a settlement upon the parties.

12. The parties are aware that amicable resolution and/or settlement of the disputes and differences would involve payments of money, transfer of shares, transfer of certain lands and/or possession thereof and/or of constructed spaces, transfer of existing contracts, execution of deeds, agreements, etc. and the parties agree and undertake to do the same taking into consideration, the proposal, advise and viewpoints of the Mediator and to sign the Mediated Settlement Agreement that may be drawn up by the Mediator on the basis of the settlement that may be arrived at between the parties.

13. The parties declare confirm and undertake that upon reaching an amicable settlement with the assistance of the Mediator, they shall sign the Mediated Settlement Agreement as may be drawn up by the Mediator and shall take all steps and sign all papers and documents as may be required for full implementation of the Mediated Settlement Agreement without any reservation and/or objection and/or delay.”

33. The mediator was entitled to assist the parties in resolving and settling their disputes and differences in letter and spirit, as per their understanding. Documents were made over by the parties in good faith and by employing good business practices. Parties agreed to accept the views of the mediator on the issues which would come up in the process. The agreement required that the parties would take all steps, sign all papers and make all payments as required.

34. The parties also made a provision that if the mediation settlement failed or there were disputes arising from the agreement, the matter would be referred to arbitration. The objection of the respondents that the papers were signed in good faith and as good business practice, when they were supplied by the brother of the mediator as a step in furtherance of the mediation proceedings, with the understanding that the document was not final, cannot be completely ruled out and held to be baseless. The correspondence exchanged with the mediator, the contemporaneous documents and the attending circumstance do not attach any finality to the Memorandum of Settlement. Clause 12 provided that the parties were aware that an amicable settlement or settlement of disputes and differences would involve payment of money, transfer of land, transfer of possessions, transfer of contracts, transfer of spaces, execution of deeds, agreement etc., and the parties agreed to take into consideration the proposals, advices and

viewpoints of the mediator and then sign a mediated settlement agreement that may be drawn up by the mediator on the basis of the settlement that may be arrived at between the parties. According to Mr. Chowdhury, the Memorandum of Settlement could not be treated as the final mediated settlement agreement, inasmuch as, the said document was signed in good faith with the expectation that a final mediated settlement agreement would follow, upon the parties discussing the terms and conditions of the Memorandum of Settlement, with the mediator.

35. There are several clauses in the said Memorandum of Settlement which indicate that the parties had agreed to the settlement as they found the same to be fair, reasonable, and to the best of their respective interests. That the parties had entered into the Memorandum of Settlement amicably, consciously, and had finally resolved and settled all disputes. The clauses contain the agreed terms, the entitlement of each of the parties. The said mediated agreement was agreed to be treated as a joint instruction to the mediator, to take steps in terms of the settlement arrived at.

36. Clauses had been also incorporated which provided that all the disputes which arose out of the agreements of 2015 and 2018 had been finally settled. That the parties had mutual interest in the mediated settlement agreement and had entered into the same after taking further advice. Parties also confirmed that they were not acting under misrepresentation, coercion, threat or under any influence. The said Memorandum of Settlement would operate as estoppel against the parties, from making further claims which were inconsistent to the conditions stated therein.

37. Clause 46 provided that, the parties undertook to fully implement the mediated settlement agreement in letter and spirit, and to sign, execute, and necessarily register all such documents, agreements, papers, writings, etc., that would be required for such purpose, from time to time. It was further agreed between the parties that they would abide by the viewpoints and suggestions of the mediator in respect of the steps to be taken and the documents to be executed. Clause 49 recorded that the purpose of the mediated settlement agreement was to bring an amicable settlement to the claims and disputes that may have arisen between the parties. The parties agreed not to institute legal proceedings or complaints of any kind against each other, pertaining to the subject matter of the claims and the disputes covered therein. The clauses are quoted below :-

“46.All accounting entries in the books of accounts of both Groups and their respective members relating to the amounts paid and/or interest accrued thereon shall be squared up by passing appropriate accounting entries. Save and except the amounts mentioned in this Mediated Settlement Agreement no other amount shall be payable by any Group or its members to the other Group irrespective of any entries in their respective Books of Accounts.

47. The parties agree and undertake to fully implement this Mediated Settlement Agreement in letter and in spirit and to sign, execute and if necessary. register all deeds, documents, agreements, papers, writings, etc. that may be required for such purpose from time to time. It has been agreed between the parties that they shall abide by the viewpoint and suggestions of the Mediator in respect of the steps to be taken and the documents to be executed.

48. All rights benefits and advantages and entitlements granted to any party under this Mediated Settlement Agreement shall be heritable and transferable and the transferees / successors-in-interest of each party shall be entitled to the same, unless otherwise specifically excluded herein.

49. The purpose of this Mediated Settlement Agreement is to bring an amicable settlement to the claims and disputes that have arisen between the parties. The parties have agreed not to institute any legal proceeding or complaint of any kind whatsoever against each other pertaining to the subject matter of the claims and disputes covered herein.”

38. The clauses which have been referred hereinabove from the Memorandum of Settlement indicate that the parties were reaching a finality with regard to the terms and condition and had put forward the decision arrived at by them. The terms and conditions were reduced into writing.

39. The respondents alleged that the agreement/document was signed in good faith and trust, but it was a shock and a surprise to receive the letter dated 24th September, 2024 via e-mail, containing a copy of the document which was described as a 'Memorandum of Settlement'.

40. It was alleged by the EPI group that, no consensus for settlement had been arrived at between the parties in the course of mediation. There still existed irreconcilable disputes and differences between the parties. The agreement had taken into account certain issues which were beyond the scope of reference. The agreement recorded final settlement of disputes, which were never agreed upon. The decisions were unilateral. The rights of the respondents had been prejudiced. No settlement, as referred to in the purported agreement, had ever been entered into between the parties. The same could not be treated as a Mediated Settlement Agreement as there were miscommunications and misunderstandings in the making and signing of the agreement. The said document was invalid and legally unenforceable. Allegations were also made in the said letter that the mediator was actually taking the side of the petitioners. Request was made to the mediator to record invalidity of the document, for the reasons discussed in the said letter. The mediator was requested to record invalidity of the agreement.

41. Suggestion was made by the existing mediator, that the parties must appoint an alternate mediator or an arbitrator and the documents and the money lying in the escrow would be released by Mr. Ginodia, upon receiving joint instructions from the parties, with the name of the newly appointed mediator. Mr. Ginodia mentioned that the prayer for recording invalidity of the Memorandum of Settlement dated September 10, 2024 was unsustainable, as the same would fall within the domain of a court or a tribunal. The request of Mr. Alok Saraf for release of the escrow funds as per the terms of Memorandum of Settlement dated September 10, 2024, was not allowed by the mediator, in view of the disputes raised by Mr. Agarwal after signing of the Memorandum of Settlement dated September 10, 2024.

42. The mediator recorded that he had tried to discharge his responsibilities to the best of his ability and his fees had remained unpaid. Both the groups were directed to ensure payment of the fees prior to handing over of the escrow documents and the escrow amount. Reliance was also placed on the provisions of section 73(1), 72 and 74 of the 1996 Act, in support of the contention that the agreement could never be treated as a conciliation agreement by the parties, as contemplated under the 1996 Act. The document could not be treated as an award as envisaged under section 74 of the 1996 Act.

43. However, the document also had a dispute resolution clause, which stated that disputes with regard to the agreement itself, including validity and existence thereof, apart from the construction or interpretation of the terms and condition thereon would be resolved amicably, failing which the matter would be referred to mediation and in the event the mediator failed to

resolve the dispute, the same would be referred to arbitration. The specific contention of the respondents were that they had signed the document and reduced the same into writing with the impression that the same would be forwarded to the mediator for further deliberation, before the same was authenticated. They were taken aback when the mediator sent a copy thereof, by authenticating the same with a forwarding letter that the said document was the Mediated Settlement Agreement.

44. Clause 50, which, provides for resolution of disputes, which is quoted below:-

“50. Dispute Resolution:

a) In the event there are any disputes and/or differences between the parties hereto regarding this Agreement including any question regarding its existence, validity or construction or interpretation of any of the terms and conditions herein contained or touching these presents and/or the termination of this Agreement or determination of any liability, obligation and/or any claim hereunder shall be first attempted to be resolved by the parties amicably by discussions and negotiations between the parties who shall make efforts to resolve the matter amicably within a period of 30 days from the date of commencement of such disputes and/or differences.

b) In the event the parties are unable to amicably resolve the disputes and/or differences within 30 days as aforesaid, then the disputes and/or differences shall be referred forthwith to Mr. Rajeev Ginodia Advocate, 6, Church Lane, Kolkata - 700 001 as the Mediator. The Mediator shall use all reasonable endeavours including by engaging in discussions and negotiations to settle the disputes and differences within 60 days from the date of receipt of the request for mediation by any party.

c) In the event, the Mediator cannot resolve the disputes and differences to the mutual satisfaction of the parties within the period of 60 days as aforesaid, then the disputes and differences shall be referred to arbitration by a Sole Arbitrator to be appointed by the parties by mutual consent. In the event the parties are unable to mutually agree upon the Sole Arbitrator within a period of 30 days from the date of receipt of the request for arbitration by any party, then the parties shall be entitled to make application to the Hon'ble High Court at Calcutta for appointment of the Sole Arbitrator in accordance with law. Such reference shall be deemed to be a reference within the meaning of the Arbitration and Conciliation Act, 1996 as

amended from time to time or any statutory modification or enactment for the time being in force.

d) The parties agree and declare that:

(i) The Arbitration shall be conducted in English in Kolkata. The Arbitral Tribunal shall be entitled to lay down its own procedure.

(ii) The Arbitral Tribunal will be at liberty to give interim orders and/or directions and/or awards. It is made clear that the Interim Orders and/or Interim Award and/or Final Award shall contain reasons for the same.

(il) The Awards) passed by the Arbitral Tribunal shall be final and binding on all the parties. The parties agree to abide by all the directions of the Arbitration Tribunal.”

45. Thus, any dispute between the parties with regard to the agreement in question, including its existence, validity, or construction or interpretation of the terms and conditions contained therein, were to be settled amicably at first. In case of failure of amicable settlement, the disputes were be referred to Mr. Rajeev Ginodia, the a mediator. The mediator was to make all reasonable endeavours, including engaging in discussions and negotiations, to settle the disputes and differences within 60 days from the receipt of the request for mediation by any party, and thereafter, in the event the mediator could not easily resolve the disputes and differences to the satisfaction of the parties within 60 days, then the dispute would be referred to arbitration by a sole arbitrator.

46. In my view, the documents annexed clearly indicate that the EPI group referred the dispute to the mediator by challenging the existence of the said document. The said EPI group was of the firm opinion that signing of the documents which were handed over by Mr. Sanjay Ginodia, brother of the mediator, were not in full and final settlement of the dispute, but were signed in furtherance of the discussions and deliberations held in the proceedings. There is nothing on record to show that the mediator had

signed the document in the presence of the parties or that the respondent had knowledge of such signing. Clause 12 of the agreement of August 2, 2023 contemplated execution and signing of agreement etc. The objections were referred to Mr. Ginodia and Mr. Ginodia as a mediator had informed the parties that he was not in a position to settle the said dispute in view of the nature of allegations and he refused to continue to act as a mediator and asked the parties to appoint another mediator or an arbitrator as they deemed fit and proper.

47. Under such circumstances, such stand of the mediator clearly indicates that the Memorandum of Settlement cannot be treated as a settlement agreement as contemplated under Section 74 of the 1996 Act. Under the 1996 Act, a final settlement agreement can be treated as an award and enforced as an award, if the same is arrived at, upon compliance of the following statutory provisions. Section 72, 73, 74 and 30 of the 1996 Act are quoted below:-

“30. Settlement.—(1) It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement. (2) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. (3) An arbitral award on agreed terms shall be made in accordance with section 31 and shall state that it is an arbitral award. (4) An arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the substance of the dispute

73. Settlement agreement.—(1) When it appears to the conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms

of a possible settlement in the light of such observations. (2) If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the conciliator may draw up, or assist the parties in drawing up, the settlement agreement. (3) When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively. (4) The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties.

74. Status and effect of settlement agreement.—The settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under section 30.”

48. Under the 1996 Act, a settlement agreement can be arrived at after the parties discuss their issues and reduce the decisions arrived at into writing. The agreement signed by the parties shall then be authenticated by the arbitrator or mediator. Under the above provisions, the arbitrator or the mediator can also forward the terms and conditions and invite the parties to deliberate upon the same. If the parties agree, then they can reduce the same into writing. Upon such signing, the said document shall be treated as an award and shall attain finality. Here, the documents were allegedly handed over to the respondents by the brother of the mediator, upon signing the same, the document was handed back to the mediator. A question has been raised on the validity of the settlement. Mr. Chowdhury relied upon another letter dated October 5, 2024, written by the mediator, inter alia, asking that the parties to release the mediator from all responsibilities under the agreement for mediation dated August 2, 2023 and the Memorandum of Settlement dated September 10, 2024. The relevant paragraphs of the letter dated October 5, 2024 are quoted below:-

“4. In view of the false and utterly distasteful allegations made by Mr. Agarwal, I do not wish to do anything further or be involved in the matter in any manner. I accordingly request all of you to relieve me of

any further responsibility under the Agreement for Mediation dated 2nd August, 2023 and the Memorandum of Settlement dated 10* September, 2024, in terms whereof I am holding the escrow documents and the escrow amount. I accordingly request the parties to take immediate steps in accordance with the aforesaid agreements to appoint an alternate Mediator or an Arbitrator and/or take appropriate legal steps in that regard so that I may be relieved of all further responsibilities.

5. Upon the parties giving me their joint instructions in writing naming the new Mediator and/or an Arbitrator, and/or upon receipt of an order / direction of an appropriate Court or Tribunal, I shall hand over /transfer the escrow documents and the escrow amounts lying with me to the person mentioned by the parties or directed by the Court or Tribunal (as the case may be). Please take immediate steps for the aforesaid purpose as I have no interest whatsoever to hold such securities and amounts.

6. Mr. Agarwal's request for recording invalidity of the Memorandum of Settlement dated 10 September, 2024 or restoring the position of the parties is untenable, as the same fall within the domains of Courts and/o- Tribunals. Mr. Alok Saraf s demand for release i the escrow funds in reliance of the terms of the Memorandum of Settlement dated 10th September, 2024 also cannot be carried out by me, in view of the disputes raised by Mr. Agarwal subsequent to signing the Memorandum of Settlement dated 10% September, 2024

As stated above, I can only release the escrow documents and the escrow amounts on joint Written instructions of the parties to a new Mediator and/or an Arbitrator or on directions being obtained from an appropriate Court or Tribunal in that regard.”

49. The terms of the Settlement Agreement should have demonstrated a successful resolution of the disputes between the parties on the terms and conditions voluntarily arrived at and without any further need for resolution of disputes. The dispute resolution clause takes away the colour of finality from the said document. The way the dispute resolution clause has been framed, it does not indicate that reference to arbitration can be made only if in the future, disputes arise while implementing the terms of settlement. Even assuming that a settlement agreement can contain a clause to refer future disputes arising during enforceability of the said agreement to arbitration, but in this case the objections on the basis of which the

mediator asked the parties to either appoint a mediator or an arbitrator, indicate that such disputes should be resolved as per section 50 of the 1996 Act. Even the mediator was of the opinion that the matters should be referred to another mediator or arbitrator. There are allegations with regard to the validity of the agreement and impartiality of the mediator. The arbitration clause has to be strictly construed.

50. The parties had agreed that in case of disputes arising out of the agreement, including its validity, existence, construction and interpretation of the terms and conditions of the agreement, the same would be resolved amicably, failing which the dispute would be referred to the mediator, and if mediation failed the dispute would be referred to arbitration. Clause 50 becomes a binding dispute resolution clause. It is an agreement within the settlement agreement, independent of the other terms of the agreement. As such, the said Memorandum of Settlement cannot be enforced as an award. Disputes were raised shortly after the agreement was signed. The petitioners are signatories to the agreement which contains clause 50. The respondents allege that the agreement was signed upon being misled into thinking that further discussed would follow. The agreed terms would be further discussed. The mediator was alleged to be partial. The mediator also did not treat the document with the finality it deserved.

51. The mediator's view was that the parties should avail of the dispute resolution clause, as the respondent questioned the impartiality of the mediator and the very existence of the Memorandum of Settlement. Thus, under such circumstances, the agreement cannot be enforced by this court under section 36 of the Arbitration and Conciliation Act, which makes the

provisions of Order 21 of the Code of Civil Procedure applicable. It is not available from the said Memorandum of Settlement that, the Dispute Resolution clause was restricted to disputes which may arise during implementation or enforcement of the terms of the Memorandum of Settlement.

52. Under such circumstances, the application is dismissed and the connected GA is allowed.

53. There shall be no order as to costs.

(Shampa Sarkar, J.)