



2025:DHC:11831-DB



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

% **Reserved on : 04th December 2025**
Pronounced on : 24th December 2025
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+ **RFA(OS)(COMM) 28/2025 & CM APPL. 58424/2025, CM APPL. 58425/2025, CM APPL. 58426/2025**

MMTC LIMITED

THROUGH ITS AUTHORIZED REPRESENTATIVE

MR. AJIT TOPPO,

DEPUTY GENERAL MANAGER

HAVING ITS REGISTERED OFFICE AT

CORE 1, SCOPE COMPLEX,

7, INSTITUTIONAL AREA,

LODHI ROAD,

NEW DELHI-110003.

.....Appellant

Through: Mr. Sanat Kumar, Sr. Adv. with Mr. Akhil Sachar, Ms. Sunanda Tulsyan, Mr. Sangram Singh & Ms. Kashish Maheshwari, Advs.

versus

1. ANGLO AMERICAN METALLURGICAL PTY LIMITED

HAVING ITS OFFICE AT

GROUND FLOOR, 201 CHARLOTTE STREET,

BRISBANE, QUEENSLAND-4000,

AUSTRALIA.

2. MR. RODNEY HAROLD ELLIOTT

GENERAL MANAGER MARKETING AND

TRANSPORTATION

ANGLO AMERICAN METALLURGICAL

COAL PTY LIMITED



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201 CHARLOTTE STREET, BRISBANE 4000
AUSTRALIA GPO BOX 1410
BRISBANE 4001 AUSTRALIA.

3. **MR. JOHN WILCOX**
MARKETING MANAGER
ANGLO AMERICAN METALLURGICAL
COAL PTY LIMITED
201 CHARLOTTE STREET, BRISBANE 4000
AUSTRALIA GPO BOX 1410
BRISBANE 4001 AUSTRALIA.
4. **MR. VED PRAKASH**
S/O SHRI PARAMA RAM
R/O BF-63, BF BLOCK,
JANAK PURI,
NEW DELHI-110058.
5. **MR. SURESH BABU**
S/O SHRI K.K. DAMODARAN
C/O MR. K.S. ANIL,
33/2682-B (GVERRA 67),
SHASTRI LANE, PONNURUNNI ROAD,
EAST PONNURUNNI, VYTILLA P.O.,
KOCHI-682019.
6. **MR. H.S. MANN**
S/O SHRI AJIT SINGH MANN
R/O F-108, SECTOR-58,
NOIDA-201301, U.P.
7. **MR. SANJIV BATRA**
S/O SHRI L.N. BATRA
R/O S-288, GREATER KAILASH-I,
NEW DELHI-110048.

.....Respondents

Through: Mr. Samar Kachwaha, Mr. Sumeet



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Kachwaha, Ms. Ankit Khushu, Ms. Akanksha Mohan & Mr. Pratyosh Khanna, Advs. for R-1.

CORAM:
HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This appeal assails judgment dated 29th July 2025 passed by the Single Judge of this Court in **CS(COMM) 959/2025**. By the said impugned judgment, the plaint filed by appellant/plaintiff was rejected by the Court, while exercising powers under *Order VII Rule 11* of the Code of Civil Procedure, 1908 (**'CPC'**).

Brief factual background

2. Appellant/plaintiff is a Public Sector Undertaking under the control of Ministry of Commerce and Industry, engaged in the business of export and import of mineral ores and essential metals.

3. Respondent no.1/defendant No.1 is an international supplier of coking coal.

4. On 07th March 2007, appellant/plaintiff entered into a Long-Term Agreement (**'LTA'**) with respondent no. 1/defendant no. 1 for supply of hard coking coal to be used by *Neelachal Ispat Nigam Limited* (**'NINL'**), in which appellant/plaintiff held 49.78% shares. LTA envisioned three one-year delivery periods starting on 01st July 2004 and ending on 30th June 2007. By



virtue of *Clause 1.3* of LTA, appellant/plaintiff had the option to extend the LTA for two more delivery periods through mutually executed addendum based on mutually agreed price and quantity.

5. On 28th June 2007, *Addendum No.1* was executed between the parties for the period 01st July 2007 to 30th June 2008, extending the arrangement to a fourth delivery period.

6. *Addendum No.2* was executed on 20th November 2008, extending the LTA to the fifth delivery period from 01st July 2008 to 30th June 2009. Under this *Addendum*, a fixed price of *US\$ 300* per Metric Tonne (*'MT'*) was stipulated for a contracted quantity of *466,000* MT. This addendum forms the crux of the dispute between the parties.

7. Appellant/plaintiff alleges that price of *US\$ 300* per MT was arbitrarily and fraudulently determined through collusion between appellant/plaintiff's key managerial personnel, i.e. defendant Nos.4-7 and representatives of defendant No.1, i.e. defendant Nos.2-3, at a time when the global coal prices were significantly lower due to the 2008 global economic downturn.

8. Appellant/plaintiff contended that the said Addendum was obtained by fraudulent means and was opposed to public policy as the acts and omissions of the conspiring defendants amounted to commission of criminal offence under the Prevention of Corruption Act, 1988, and had resultantly caused a massive loss to the public exchequer.



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9. Due to dissonance between the parties, appellant/plaintiff could not make purchases and respondent no.1/defendant no.1 invoked arbitration clause contained in LTA and obtained an Arbitral Award dated 12th May 2014 against appellant/plaintiff for damages on account of alleged non-lifting of 4,54,034 MT of coking coal by appellant/plaintiff and respondent no.1/defendant no.1 was held to be entitled to recover damages to the tune of US\$ 78,720,414.92, along with pre-award interest @ 7.5% *p.a.* in the sum of US\$ 27,329,420.29, along with costs of US\$ 977,395, amounting to US\$ 107,027,230.21 (approximately Rs.716 Crores) and interest @ 15% *p.a.* on the principal sum from the date of the Award till payment.

10. Appellant/plaintiff filed objections under *Section 34* of the Arbitration and Conciliation Act, 1996 ('*A&C Act*'), which were dismissed by the Single Judge of this Court *vide* judgment dated 10th July 2015. Thereafter, appellant/plaintiff filed an appeal under *Section 37* of A&C Act bearing ***FAO(OS) 532/2015***, which was allowed by the Division Bench of this Court on 02nd March 2020, and the award dated 12th May 2014 was set aside.

11. In a challenge to the Supreme Court by respondent no. 1/defendant no. 1, the judgment of the Division Bench dated 02nd March 2020 was set aside by the Supreme Court on 17th December 2020, and the award of 12th May 2014 was reinstated.

12. Appellant/plaintiff filed a review petition of the Supreme Court's judgment, which was admitted on limited issue of interest and was disposed of by reducing the *pendente lite* and future interest to 6% *p.a.* However, the



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remaining findings were not disturbed. Appellant/plaintiff then filed an application seeking clarification, which was also disposed of *vide* order dated 19th April 2022.

13. Meanwhile, Chairman cum Managing Director (**'CMD'**) of the appellant/plaintiff issued a confidential note addressed to *Joint Secretary, FT(ST), Department of Commerce*, requesting CVO to seek Government of India's permission for enquiry into the matter and subsequently, on 25th March 2021, the said department gave permission to initiate enquiry and submitted a factual report on 27th September 2021. The matter was then examined, and decision was taken to refer the matter to the Central Bureau of Investigation (**'CBI'**) on 16th August 2022, and a complaint was registered on 02nd September 2022, followed by another complaint.

14. In the meantime, respondent no. 1/defendant no. 1 filed an Execution Petition bearing **OMP(ENF.)(COMM) 19/2018**, seeking enforcement of the Award. Appellant/plaintiff was made to deposit a sum of *Rs.1087,76,44,465.40/-*, apart from the original title deeds of 36 *immovable properties* vested or owned by appellant/plaintiff, totalling to a sum of *Rs. 1,275.51 Crores* with the Registry of this Court.

15. Appellant filed an application under *Order XXI Rule 29*, bearing **EA 3728/2022** in **OMP(ENF.)(COMM) 19/2018**, seeking stay on the operation of the Award dated 12th May 2014.

16. Appellant/plaintiff then filed objections under *Section 47* of CPC, stating that the Award was not executable, being vitiated by fraud, collusion



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and corruption.

17. In the meantime, while the matter was pending for determination of the *Section 47* objections in ***OMP(ENF.)(COMM) 19/2018***, appellant/plaintiff had filed the ***Civil Suit No.959/2024*** before this Court seeking a decree of declaration to declare *Addendum No.2* dated 20th November 2008, and the award of 12th May 2014 be *void ab initio* as they are vitiated by fraud and corruption.

18. The objections and application under *Order XXI Rule 29* were dismissed by the Single Judge of this Court *vide* judgment dated 09th May 2025. By the said order, the enforcement petition under *Section 36* of A&C Act was allowed, and the Court directed to release the money deposited by the appellant/plaintiff along with accrued interest.

19. Appellant/plaintiff challenged the order of the Single Judge before the Supreme Court in ***Civil Appeal No.13321/2025***. By judgment dated 03rd November 2025, reported as 2025:INSC:1279 titled “***MMTC Limited v. Anglo American Metallurgical Coal Pvt. Ltd***”, the Supreme Court dismissed the appeal.

20. In the meantime, the issue of maintainability of ***CS(COMM) 959/2024*** had been heard by the Single Judge, rejecting the plaint on account of maintainability under *Order VII Rule 11* of CPC was passed by the impugned judgment.

21. Appellant/plaintiff had filed a ***Transfer Petition (Civil)***



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No.2592/2025, seeking transfer of the present appeal to the Hon'ble Supreme Court, but the same was dismissed *vide* order dated 18th September 2025.

Submissions by the Appellant

22. *Mr. Sanat Kumar*, Senior Counsel for appellant/plaintiff, sought to press their appeal under *Section 13(1A)* of the Commercial Courts Act, 2013 ('*CC Act*') read with *Section 96* of CPC, challenging the rejection of plaint under *Order VII Rule 11* of CPC by the Single Judge. The following arguments were advanced:

- (i) Rejection of plaint is a drastic power to terminate a civil action at the threshold. Averments made in the plaint were to be taken on a demurrer, and the merits of the case and the defence are irrelevant to decide the question for rejection.
- (ii) *Section 5* of A&C Act does not postulate that the relief of declaration sought by appellant/plaintiff to hold *Addendum No.2* as vitiated by fraud and corruption cannot be sought by way of a separate suit. Reliance was placed on the non-obstante clause of *Section 5*, which, as per appellant/plaintiff's counsel, does not prohibit the intervention by judicial authority *per se*, but only *qua* "*matters governed by this part*". Appellant/plaintiff sought to distinguish the judgment in *Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899*,



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In Re (2024) 6 SCC 1, on which the Single Judge relied upon, being pleaded by respondent no1/defendant no.1.

- (iii) Appellant/plaintiff's case that the Arbitral Award was vitiated by fraud and corruption, having massive implications on the public domain, as respondent nos. 4-7, being former employees, had colluded with officials of respondent no.1/defendant no.1 to cause huge loss of more than *Rs. 1,000 Crores* to the exchequer. This, according to appellant/plaintiff, is a serious issue which would have significant implications on public domain and should be relegated to the Civil Courts, and not being arbitrable. Reliance was placed on ***National Projects Construction Corporation v. Royal Construction Company*** 2017 SCC OnLine Del 10944, where this Court, while determining whether execution proceedings are governed by Part I of A&C Act, held otherwise, and therefore, *Section 5* was found inapplicable. It was further held that the suit for setting aside an arbitral award obtained by fraud is maintainable.
- (iv) He further canvassed that it was no longer *res integra* that a decree obtained by fraud can be set aside by filing a separate suit. Reliance was placed on ***Indian Bank v. Satyam Fibres (India) Pvt. Ltd.*** (1996) 5 SCC 550.
- (v) The Constitution Bench of the Supreme Court in ***Dhulabai v. State of Madhya Pradesh*** (1968) 3 SCR 662, held that the



exclusion of the jurisdiction of the civil court is not to be readily inferred. *Dhulabai (supra)* was relied upon in *M. Harisudan v. Karmegam* (2019) 10 SCC 94, wherein the Supreme Court, while upholding the jurisdiction of a Civil Court, observed that the key question is whether the statute/Act provides a final remedy of the kind a civil court would ordinarily grant. Only if such an adequate alternative remedy exists can it be inferred that the civil court's jurisdiction has been ousted.

- (vi) It was submitted that fraud was discovered only in the year 2022, and therefore, the cause of action to file the present suit arose only on 16th August 2022. Consequently, the Single Judge's finding that it was time-barred is not tenable. The Single Judge ought to have taken the specific case pleaded by appellant/plaintiff, as averred in the plaint, on a demurrer, accounting for the fact that the post discovery of the material on record, a decision was taken to refer the matter to the CBI *vide* memorandum dated 16th August 2022.
- (vii) He alleges that the Single Judge did not take into consideration *Section 17* of the Limitation Act, 1963, which provides that in a suit based on fraud, the limitation would not begin till appellant/plaintiff has discovered the fraud or the mistake with reasonable diligence.
- (viii) Institution of civil suit was a remedy independent of objections



filed under *Section 47* of CPC in the enforcement proceedings. Respondent no.1/defendant no.1, in its reply to *EA 3728/2022*, contended that the appropriate remedy for a party alleging that judgment was obtained by fraud is to file a separate suit. Respondent no.1/defendant no. 1 cannot now take a u-turn and approbate and reprobate, having taken a position.

- (ix) The dismissal of the appeal against on judgment dated 09th May 2025, passed in the *OMP(ENF.)(COMM) 19/2018*, by the Supreme Court through its judgment dated 03rd November 2025, does not preclude adjudication of the instant appeal.
- (x) Appellant cannot be non-suited without being afforded option of a full-fledged trial to prove the existence of fraud, which is not available in a proceeding under *Section 47* of CPC.
- (xi) An argument was made that the Supreme Court noted that this present appeal is pending against the dismissal judgment dated 29th July 2025 in *paragraph no. 96 & 97* of judgment dated 03rd November 2025, and therefore, indicating that the Supreme Court's dismissal of application filed under *Section 47* of CPC would have no bearing on the maintainability of the suit or its determination.

Submissions by Respondent no.1

23. *Mr. Samar Kachwaha*, counsel appearing for respondent



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no.1/defendant no.1, made the following submissions relying heavily on the findings by the Single Judge in the impugned judgment:

- (i) The Arbitral Award had withstood every challenge contemplated in law. Not only was *Section 34* petition dismissed, but after the award was set aside by the Division Bench of this Court while exercising its power under *Section 37* of the A&C Act, the said decision was again reversed by the Supreme Court *vide* judgment dated 17th December 2020. Furthermore, review petition against the said judgment was also dismissed *vide* orders dated 03rd February 2021 and 29th July 2021. The clarification application by appellant/plaintiff was also disposed of by the Supreme Court on 19th April 2022 on the issue of rate of interest. Thus, all remedies relating to the arbitral award stood exhausted.
- (ii) For the first time, appellant/plaintiff alleged fraud in the underlying transaction and filed its objections under *Section 47* of CPC on 10th January 2024 and just when the Executing Court was on the cusp of reserving judgment, appellant/plaintiff filed the underlying suit. Nevertheless, the objections were dismissed by judgment dated 09th May 2025, against which an SLP was filed, which was also dismissed by judgment dated 03rd November 2025.
- (iii) *Section 5* of A&C Act, by way of the non-obstante clause, bars



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any form of judicial intervention, except as expressly provided by the Act. *Section 34* of A&C Act provides an exclusive and exhaustive statutory mechanism and uses the word “only” twice, stating that a challenge to an arbitral award can only be made within *Section 34* and not in any manner, including by a civil suit. Reliance was placed on *Interplay (supra)*, *Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.* (2011) 8 SCC 333, *Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd.* (2022) 1 SCC 75, and *Empire Jute Co. Ltd. v. Jute Corpn. of India Ltd.* (2007) 14 SCC 680.

- (iv) Appellant/plaintiff’s cause of action in relation to the suit, in any event, stands merged into the award. There is no cause of action in relation to *Addendum No.2* that exists independent of or outside the scope of the Award. Reliance was placed on *Som Dev v. Rati Ram* (2006) 10 SCC 788.
- (v) The suit was additionally barred by principles of *Order II Rule 2* of CPC; therefore, principles of *res judicata/constructive res judicata* will apply. Appellant/plaintiff did not raise any allegation of fraud in relation to *Addendum No.2* in the arbitration or in the litigation that ensued for about a decade and, therefore, was barred by *Order II Rule 2* of CPC.
- (vi) The suit was also barred by limitation as it assails a transaction entered into in 2007-2008, and the suit was filed approximately



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16 years later. The plaint does not contain necessary pleadings to this effect, except only a plea that the entire senior management was complicit in the fraud, which the Supreme Court has assessed and found to be untenable.

Analysis

24. The challenge by appellant/plaintiff is to the judgment of the Single Judge dated 29th July 2025, dismissing the suit filed by plaintiff by exercising powers under *Order VII Rule 11* of CPC. This Court, having been invited to examine the said decision, is, at the very outset, of the considered opinion that the said judgment is sound in its reasoning and this appeal is absolutely untenable.

25. This Court fully resonates with certain observations of the Single Judge, *inter alia*, that “*filing of the present suit by the plaintiff herein is a classic case of abuse of process of law*” and “*...challenging an award, which has already been upheld by the Supreme Court, in the present suit is not only an abuse of the process of law but will be a travesty of justice if the said challenge is allowed by way of filing of the present suit and would render the 1996 Act nugatory, and undermine public confidence in Arbitration*”.

26. As noted in the factual background above, appellant/plaintiff and respondent no.1/defendant no.1 took the dispute arising out of LTA to arbitration. The disputes between the parties in the assessment by the Arbitral Tribunal included *Addendum No.1* and *Addendum No.2* to the LTA, the latter being the focus of subsequent proceedings. Arbitral Award was



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rendered in favour of respondent no.1/defendant no.1, against which appellant/plaintiff filed objections under *Section 34* of the A&C Act.

27. These objections were dismissed by a Single Judge of this Court, against which an appeal under *Section 37* of the A&C Act was allowed by the Division Bench. However, the Supreme Court set aside the judgment of the Division Bench on 17th December 2020, and the Arbitral Award dated 12th May 2014 was reinstated.

28. Subsequently, a Review Petition was filed by appellant/plaintiff, which prompted the Supreme Court to address a limited issue of payable interest, but the rest of the findings of the arbitral award were not displaced, and the matter stood disposed of *vide* order dated 19th April 2022. Consequently, the dispute between the parties stood concluded and crystallized with an imprimatur to the arbitral award by the Supreme Court. There could have been no further challenge to the said Arbitral Award.

29. The matter ought to have rested here. However, in execution proceedings initiated by respondent no.1/defendant no.1 seeking enforcement of the award, appellant sought stay on the operation of the award, agitating a new issue of alleged fraud having been discovered in the execution of *Addendum No.2* to the LTA.

30. Meanwhile, appellant also filed objections under *Section 47* of CPC, alleging that the award was vitiated by fraud, collusion, and corruption. These objections were dismissed by the Single Judge, and the enforcement petition was allowed, directing release of the money deposited by the



appellant/plaintiff along with accrued interest to respondent no.1/defendant no.1. The challenge to the same before the Supreme Court also resulted in detailed judgment dated 3rd November 2025.

31. In the *interregnum*, since the suit had already been filed while the enforcement proceedings were pending, it resulted in dismissal by the impugned judgment, which is the subject matter of the present appeal.

32. It is indeed surprising that the appellant/plaintiff still wishes to engage in sabre-rattling with respondents, despite its challenges having been rejected up to the level of the Supreme Court, not only to the arbitral award but also to the enforcement proceedings.

33. What is determinative and significant for the purposes of the appellant/plaintiff's challenge before the Supreme Court is that the Supreme Court in Judgment dated 3rd November 2025, which came to be passed while these appellate proceedings were pending, deals with the plea of fraud by appellant/plaintiff in a detailed manner. Since the issue of fraud was raised by appellant/plaintiff in the enforcement proceedings through the application under *Order XXI Rule 29* and under *Section 47* of CPC, both of which were dismissed by the Single Judge of this Court, the Supreme Court had the occasion to examine/traverse through the issues raised by appellant/plaintiff.

Supreme Court's Judgment

34. It would be useful to refer to the Supreme Court's opinion and observations in the said judgment, with some elaboration.



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34.1 Appellant/plaintiff essentially contended that its own officials, in collusion and conspiracy with respondent no.1/defendant no.1, contracted the price of coal for the fifth delivery period at US\$300 per MT, which was three times higher than the prevailing price of US\$96.40 per MT during the fourth delivery period. This collusion, conspiracy and fraud, according to appellant/plaintiff, could not have been discovered previously when the arbitration proceedings were going on, and came to light only when there was a change in the leadership of the appellant/plaintiff, triggering the appellant/plaintiff to file their objections in the enforcement proceedings.

34.2 There is a clear reference in *paragraph 9* of the Supreme Court's judgment to the civil suit filed by the appellant/plaintiff, being dismissed as not maintainable by the impugned judgment and this appeal being pending.

34.3 The Supreme Court notes the Single Judge's observation on merits, while dismissing the objections under *Section 47* of CPC, that only a preliminary inquiry had been registered and there was no finding of fraud, cheating and collusion against the officers of the appellant/plaintiff. Yet, considerable arguments were raised before the Supreme Court relating to the maintainability of *Section 47* of CPC objections once the award had already achieved finality. Appellant/plaintiff's counsel pressed the principle that fraud voids all judicial acts and affects all proceedings. The Supreme Court observed as under:

“33. It is important to recollect here that we are at a stage where the award has attained finality in view of the dismissal of the appeal by this Court in proceedings arising under Section 34 of the A&C



Act. The initiation of the dispute was on 04.03.2010 and the judgment of this Court was delivered on 17.12.2020.”

(emphasis added)

34.4 The Supreme Court then addressed various arguments raised on merits essential for adjudication of objection under *Section 47* of CPC, including breach of fiduciary duty. After assessing the facts in some detail, related to the allegation of fraud, which forms part of the discussion in *paragraph nos. 34-93* of the judgment, the Supreme Court synopsisized the facts in *paragraph 94* and then concluded as under:

“95. In the light of the above analysis, we are not able to conclude, on the material furnished before us, that the Senior Managerial personnel involved at the helm in MMTC during the relevant period acted in a manner as no reasonable personnel/director in the circumstances would have acted. We are also not able to conclude on the material furnished that the decisions taken were not within the range of reasonableness or that the course adopted by them was not one, a reasonably competent personnel/director would adopt. Applying the business judgment rule, the course adopted by them cannot be said to be one to which a court of law would not defer to. The appellants have not been able to even prima facie demonstrate that circumstances exist to conclude that the personnel of MMTC did not act in the best interest of the company.

96. The appeal challenges, in the prayer clause, the judgment dismissing the objections in OMP (ENF.) (COMM.) 19 of 2018. Though in the prayer clause, there is no challenge to dismissal of the application



under Order XXI Rule 29 filed in EX/application (OS) 1806 of 2024, in Para 1 of the civil appeal the appellants have indicated that they are aggrieved by the said order also. Order XXI Rule 29 provides for stay of execution pending suit between decree holder and judgment debtor. We were, however, told that the suit filed itself now stands rejected under Order VII Rule 11 but a regular first appeal in RFA-28 of 2025 has been filed. Hence, an occasion for considering an Order XXI Rule 29 Application does not arise.

97. We are dealing with an objection filed under Section 47 claiming that the award as upheld by this Court is inexecutable. As held by this Court in Electrosteel (Supra) the jurisdiction lies in a narrow compass. It is the mandate of this Court that the object of Section 47 is to prevent unwarranted litigation and dispose of all objections as expeditiously as possible. This Court has warned that there is a steady rise of proceedings akin to a retrial which causes failure of realization of the fruits of a decree, unless prima facie grounds are made out entertaining objections under Section 47 would be an abuse of process.

100. In view of what is stated hereinabove, we find no merit in the objections filed by MMTC under Section 47 of the CPC. There are no good grounds to entertain the same. The appeal is dismissed. No order as to costs.

(emphasis added)

35. This Court now stands informed of the detailed assessment by the Supreme Court and the issues at play. These aspects are clear and evident from the Supreme Court's judgment – *first*, that the award attained finality; *second*, that it cannot be said that acts of the then management were not in



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the best interests of appellant/plaintiff; and *third*, that retrial through parallel proceedings are abuse of process. Therefore, in deference, this Court need not enter into another exercise of determining whether there was fraud and/or whether the suit could be maintained to set aside an award that had gained finality. Notwithstanding, it is duty of this Court to assess the appeal on its own merits and examine the decision of the Single Judge in this regard.

Impugned Judgment

36. The Single Judge examined the issue through the prism of *Order VII Rule 11* of CPC, in particular *Order VII Rule 11 (a) & (d)* of CPC, i.e. the plaint not disclosing a cause of action and the suit appearing from the statement in the plaint to be barred by any law. The Court relied upon ***Dahiben v. Arvindhbai Kalyanji Bhanusali*** (2020) 7 SCC 366, wherein the Supreme Court had conclusively laid down the scope of exercise of power under *Order VII Rule 11* of CPC and held that not only the plaint has to be seen in its entirety, but the Court is duty-bound to foreclose sham litigation.

37. The other principle relied upon was that the plaint cannot be rejected partially. The argument raised by appellant/plaintiff was that even if *prayers (b) and (c)* of the plaint would be considered to be barred by *Section 5* of A&C Act, *prayers (a), (d) and (e)* would remain valid, and therefore, the plaint could not be rejected on the principle that rejection cannot be in a piecemeal manner.

38. Upon examination of *Section 5* of the A&C Act, the Single Judge correctly noted that the provision commenced with the non-obstante clause



and relied upon the decision in *Interplay (supra)*.

39. The purpose of *Section 5* of A&C Act, in its complete impact and effect, would preclude intervention by any judicial authority except as what is provided in A&C Act. The Single Judge rightly noted that the A&C Act was a self-contained code, which provided a complete framework for arbitration, thereby excluding the applicability of general law. Only such provisions of general procedural or substantive law as are expressly permitted by the A&C Act can be imported.

40. It was an admitted position that the arbitral award had attained finality up to the Supreme Court, including in enforcement proceedings. However, *prayers (b) and (c)* of the plaint in the suit sought declaration that the said award was obtained by fraud on the basis that *Addendum no.2* was *void ab initio*, and that it ought to be set aside, notwithstanding imprimatur of the Supreme Court on the award. There was therefore was no question of granting the said relief.

41. Even otherwise, the issue of fraud, even if examined from the lens of *A. Ayyasamy v. A. Paramasivam* (2016) 10 SCC 386; *Rashid Raza v. Sadaf Akhtar* (2019) 8 SCC 710; and *Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd.* (2021) 4 SCC 713, would not come to the assistance of appellant/plaintiff. These decisions relate to the scope of the Arbitral Tribunal's jurisdiction to consider allegations of fraud, bifurcated into two categories, i.e. where the plea of fraud permeates the entire contract and the agreement of arbitration, and where allegations of fraud touch upon



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internal affairs of the parties *inter se*, having no implication in the public domain.

42. The Single Judge rightly noted that the main agreement/LTA containing the arbitration clause was admitted and, therefore, no dispute could arise as to arbitrability. The dispute which was being raised by appellant/plaintiff regarding the alleged fraud in execution of *Addendum no.2*, arising from alleged collusion between officials of the appellant/plaintiff and respondent no.1/defendant no.1. The said allegations of fraud are in any case *inter se* between parties, even as alleged by appellant/plaintiff, and there was no reason as to why the said allegations were not raised earlier as a part of pleadings any time since *Addendum no.2* was executed on 20th November 2008 till the arbitral award was confirmed by the Supreme Court's decision on 17th December 2020.

43. A public enterprise, if at all, discovers that there was some mischief in execution of its contracts, at a delayed stage, is always at liberty to proceed against its officials and recover any loss from them. However, a settled adjudication under an admitted contract cannot be upset merely on allegation being raised *post facto*. Any such challenge has no legal foothold under the A&C Act, particularly *Section 5*. Additionally, *Section 9* of Code of Civil Procedure bars trial of any suit which is expressly or impliedly barred by any law. The Single Judge has rightly distinguished judgments on which reliance was placed by appellant/plaintiff in *paragraphs 84, 85 and 86* of the impugned judgment.



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44. If appellant/plaintiff's contentions were to be accepted, *Section 5* of the A&C Act would be rendered nugatory and otiose, as any party could easily raise, rightly or wrongly, a *post facto* allegation of fraud and reagitate the issue through a separate suit seeking a remedy consequence of which would be setting aside of the award.

45. Moreover, *Addendum no.2* was very much part of the dispute submitted to arbitration. Principle of autonomy of parties posits that parties who have agreed to arbitrate their disputes ought to be beholden to the resolution process of arbitration and surrender right to litigate before civil courts, as is held by the Supreme Court in *Interplay (supra)*. Allowing appellant/plaintiff's plea would result in driving a 'coach and horses' through arbitral jurisprudence.

46. Reliance of appellant/plaintiff on *Indian Bank (supra)* would even otherwise not help the appellant/plaintiff, considering there was no allegation of fraud on the court but merely an allegation of collusion between some officers of the parties, as yet unproven.

47. Decisions in *Dahiben v. Arvinbhai Kalyanji Bhanusali (supra)* were prior to the decision in *Interplay (supra)* and, therefore, may not be relevant. *Interplay (supra)* is a decision by the Constitution Bench of this Court which conclusively held that provisions of other statutes cannot interfere with the working of the A&C Act, unless specified otherwise and that the A&C Act was a self-contained code which also specifically includes provision for challenge to the arbitral award, as well as execution of such



awards, and *Section 5* of the A&C Act must take precedence over any other law for the time being in force. Relevant paragraphs of *Interplay (supra)*, noting the above observations are extracted as under:

“82. Section 5 begins with the expression “notwithstanding anything contained in any other law for the time being in force.” The non obstante clause is Parliament's addition to Article 5 of the Model Law. It is of a wide amplitude and sets forth the legislative intent of limiting judicial intervention during the arbitral process. In the context of Section 5, this means that the provisions contained in Part I of the Arbitration Act ought to be given full effect and operation irrespective of any other law for the time being in force. It is now an established proposition of law that the legislature uses non obstante clauses to remove all obstructions which might arise out of the provisions of any other law, which stand in the way of the operation of the legislation which incorporates the non obstante clause.

84. Although a non obstante clause must be allowed to operate with full vigour, its effect is limited to the extent intended by the legislature. In ICICI Bank Ltd. v. Sidco Leathers Ltd. (2006) 10 SCC 452 a two-Judge Bench of this Court held that a non obstante clause must be interpreted by confining it to the legislative policy. Thus, even if a non obstante clause has wide amplitude, the extent of its impact has to be measured in view of the legislative intention and legislative policy. In view of this settled legal position, the issue that arises for our consideration is the scope of the non obstante clause contained in Section 5 of the Arbitration Act.



92. The Arbitration Act is a self-contained code inter alia with respect to matters dealing with appointment of arbitrators, commencement of arbitration, making of an award and challenges to the arbitral award, as well as execution of such awards. When a self-contained code sets out a procedure, the applicability of a general legal procedure would be impliedly excluded. Being a self-contained and exhaustive code on arbitration law, the Arbitration Act carries the imperative that what is permissible under the law ought to be performed only in the manner indicated, and not otherwise. Accordingly, matters governed by the Arbitration Act such as the arbitration agreement, appointment of arbitrators and competence of the Arbitral Tribunal to rule on its jurisdiction have to be assessed in the manner specified under the law. The corollary is that it is not permissible to do what is not mentioned under the Arbitration Act. Therefore, provisions of other statutes cannot interfere with the working of the Arbitration Act, unless specified otherwise.

183. The Arbitration Act is a special law in the context of this case because it governs the law on arbitration, including arbitration agreements — Section 2(1)(b) and Section 7 of this statute define an arbitration agreement. In contrast, the Stamp Act defines “instruments” as a whole and the Contract Act defines “agreements”.

184. It is not only the definition of “arbitration agreement” but also the other provisions of the Arbitration Act and the purpose for which it was enacted that makes it a special law. As observed by this Court in Bhaven Construction, “the Arbitration Act is a code in itself.” It provides for a detailed mechanism by which arbitration may be conducted,



with a view to ensuring its success as a speedy and efficacious alternative to the Courts. The Statements of Objects and Reasons of the Arbitration Act records that the main objective of this law was to comprehensively cover international and commercial arbitration and conciliation as also domestic arbitration and conciliation.”

(emphasis added)

48. In *Empire Jute Co. Ltd.* (*supra*), while dealing with the powers of the writ court to embark upon a question of construction of an agreement which was subject to an arbitration where the Supreme Court clearly stated that the Division Bench of the High Court should not have proceeded to determine any part of the dispute, particularly in view of *Section 5* of the A&C Act, which takes away the jurisdiction of the civil courts and must be given effect to. Relevant paragraphs of *Empire Jute Co. Ltd.* (*supra*) are extracted as under:

“18. The power of judicial review vested in the superior courts undoubtedly has wide amplitude but the same should not be exercised when there exists an arbitration clause. The Division Bench of the High Court took recourse to the arbitration agreement in regard to one part of the dispute but proceeded to determine the other part itself. It could have refused to exercise its jurisdiction leaving the parties to avail their own remedies under the agreement but if it was of the opinion that the dispute between the parties being covered by the arbitration clause should be referred to arbitration, it should not have proceeded to determine a part of the dispute itself.



23. In terms of the 1940 Act, even a civil suit could have been entertained subject of course to exercise of the court's jurisdiction under Section 21 thereof. Section 5 of the 1996 Act takes away the jurisdiction of the court. There cannot be any doubt whatsoever that the provision of the 1996 Act must be given effect to."

(emphasis added)

49. Respondent no.1/defendant no.1's contention that any challenge would be barred by *Order II Rule 2* of CPC and by principles of *res judicata/constructive res judicata* has merit.

50. The attempt being made by appellant/plaintiff to set aside an award passed on merits of the matter, which has also been confirmed by the Supreme Court, including dismissing the review application and thereafter confirming the enforcement proceedings and dismissing the objections under *Section 47* of CPC based on the very same allegations of fraud which were sought to be alleged in the suit, cannot but result in dismissal of the present appeal.

51. The Court is also reiterating the observations made by the Supreme Court in the judgment passed on 03rd November 2025 referred to above in ***Civil Appeal No.13321/2025*** (2025:INSC:1279), that retrials should not be sought, even by public sector enterprises, based on decisions taken in the past years being viewed with suspicion, with the benefit of hindsight.

52. The responsibility for loss caused to the public exchequer, if any, presented as an overarching argument by the Senior Counsel for the



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appellant/plaintiff, has to rest with the organization itself, which should have better oversight of its own officers and the approvals which they provide in contracts of multiple crores.

53. Accordingly, the appeal stands dismissed.

54. Pending applications, if any, are rendered infructuous.

55. Judgment be uploaded on the website of this Court.

**ANISH DAYAL
(JUDGE)**

**NITIN WASUDEO SAMBRE
(JUDGE)**

DECEMBER 24, 2025/mk/bp