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

% Date of Decision: 08.12.2023

\+ O.M.P. (COMM) 422/2023 & I.A. 19918/2023

(39) USHA BANSAL ..... Petitioner

Through: Mr. Rajshekhar Rao, Sr. Adv. alongwith Mr. Naveen Sharma and Ms. Vasudha Trivedi, Advs.

versus

M/S GENESIS FINANCE CO. LTD ..... Respondent

Through: Mr. Tishampati Sen, Mr. Shubhanshu Gupta and Ms. Shreni Taran, Advs.

\+ O.M.P. (COMM) 473/2023, I.A. 22958/2023 & I.A. 23051/2023

(40) SANJEEV BANSAL ..... Petitioner

Through: Mr. C. Mohan Rao, Sr. Adv. alongwith Mr. Bipreet Singh Soni, Mr. Lokesh Kumar Sharma and Ms. Vasudha Trivedi, Advs.

versus

M/S GENESIS FINANCE COMPANY LTD ..... Respondent

Through: Mr. Tishampati Sen, Mr. Shubhanshu Gupta and Ms. Shreni Taran, Advs.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (Oral)

1. The present petitions have been filed under Section 34 of the Arbitration and Conciliation act, 1996 (hereinafter referred to as "the A&C Act"), seeking to challenge the Settlement Agreement dated 14.03.2022, entered into in terms of Section 12A of the Commercial Courts Act, 2015.

2. Section 12A(5) of the Commercial Courts Act, provides as under:-

"12A. Pre-Institution Mediation and Settlement.-

(5) The settlement arrived at under this section shall have the same status and effect as if it is an arbitral award on agreed terms under sub-section (4) of section 30 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]"

3. The petitioner in O.M.P. (COMM) 473/2023 is the husband of the petitioner in O.M.P. (COMM) 422/2023. The Settlement Agreement dated 14.03.2022 reads as follows:-

" SAMADHAN

Dated: 14.03.2022

DELHI HIGH COURT MEDIATION AND CONCILIATION CENTRE DELHI HIGH COURT, SHER SHAH ROAD, NEW DELHI

AND

DELHI HIGH COURT LEGAL SERVICES COMMITTEE, DELHI HIGH COURT(PRE-LITIGATION MEDIATION INITIATED UNDER COMMERCIAL COURTS ACT)

SETTLEMENT AGREEMENT PIM NO. 13/2022

1. *Name of the Mediators/Conciliator: Mr. Dalip Mehra, Advocate.*
2. Name of the Applicant: M/s Genesis Finace Co. Ltd. through Mr. Vinod Tayal
3. Name of Opposite Party: Mrs. Usha Bansal and Mr. Sanjeev Bansal.
4. Date of Application for pre-institution mediation: 18.01.2022 addressed to Delhi High Court Legal Aid Services Committee and in turn referred to Delhi High Court Mediation and Conciliation Centre.
5. Venue of Mediation: Samadhan, Delhi High Court Mediation and Conciliation Centre, Delhi High Court, New Delhi.
6. Date(s) of Mediation: 10.02.2022, 22.02.2022, 28.02.2022, 09.03.2022 and 14.03.2022 through Video Conferencing.
7. Number of Sittings and Duration of Sittings: 5 Sittings one hour each.
8. Terms of the Settlement between:- Detailed Below.

BETWEEN

M/S GENESIS FINANCE CO. LTD. THROUGH ITS AUTHORIZED REPRESENTATIVE MR. VINOD TAYAL AUTHORIZED VIDE BOARD RESOLUTION DATED 14.02.2022, HAVING REGISTERED OFFICE AT 4, MMTC/STC MARKET, GEETANJALI, NEW DELHI-110017. THE COPY OF THE SAID BOARD RESOLUTION DATED 14.02.2022 IS ANNEXED HEREWITH AS ANNEXURE-A (HEREINAFTER REFERRED TO AS LENDER)

AND

(1) MRS. USHA BANSAL W/O MR. SANJEEV BANSAL THROUGH HER AUTHORIZED REPRESENTATIVE MR. SANJEEV BANSAL AND MR. SANJEEV BANSAL BOTH R/O F-9, GROUND FLOOR, GEETANJALI ENCLAVE, NEW DELHI-110017. THE AUTHORITY LETTER IS ANNEXED HEREWITH AS ANNEXURE-B (HEREINAFTER COLLECTIVELY REFERRED TO AS THE BORROWERS)

WHEREAS the Lender has granted loan facility to the borrowers which were repayable by the borrowers along with the interest calculated @ 24% p.a. as per terms and conditions mentioned in the loan agreement dated September 30th, 2015 (copy of the loan agreement enclosed herewith as Annexure-C).

AND WHEREAS to secure the loan facility, an equitable mortgage was created by the borrowers of their entire freehold built-up property bearing Municipal No.1722, 1723, 1724, 1725 admeasuring 66 sq. yd. situated at Dariba Kalan, Chandni Chowk, Delhi-110006, and the original title documents of the property were also deposited with the lender by the borrowers.

AND WHEREAS vide notice dated October 29th, 2021, the lender recalled the entire loan amount along with due interest from the borrowers whereby a total sum of Rs.14,23,35,065/- as of October 29th, 2021 was due and payable by the borrowers to the lender. The copy of the notice dated 29.10.2021 is annexed herewith as Annexure-D.

AND WHEREAS in response to the said legal notice, the borrowers sent a reply wherein some averments and allegations were made which are refuted and denied by the lender.

AND WHEREAS the borrowers also sent another notice dated November 26th, 2021wherein again similar averments and allegations were made which are refuted by the lender. The copy of the notice dated 26.11.2021 is annexed herewith as Annexure-E.

AND WHEREAS the borrowers confirm and acknowledge that as on December 28th, 2021 their total loan liability in Loan Account No.LNHOF00215160000500 due towards the lenders is Rs.14,76,05,315/- (Rupees Fourteen Crores Seventy-Six Lakhs Five Thousand Three Hundred and Fifteen).

AND WHEREAS the borrowers had offered to repay Rs. 7,00,00,000/ (Rupees Seven Crores Only) by February 28th, 2022 with interest @

24% per annum (reducing basis, monthly compounded) as per MoU dated December 28th, 2021, for release of their property which is mortgaged with the Lender situated at Dariba Kalan, Chandni Chowk, Delhi-110006. The lender had agreed to release the original title documents of the property of the Dariba Kalan upon the receipt of the total sum of INR7.00 crores by February 28th, 2022.

AND WHEREAS the Lender has filed an application dated 18.01.2022 in the prescribed format of Schedule I of the Commercial Courts (Pre-Institution Mediation & Settlement) Rules, 2018 as framed under the Commercial Courts Act, 2015 which was referred to the Delhi High Court Legal Services Authority to Delhi High Court Mediation and Conciliation Centre, Delhi High Court, New Delhi.

AND WHEREAS Mr. Dalip Mehra, Advocate was appointed as Mediator, the Parties agreed to their appointment as Mediator for facilitating amicable resolution of their disputes through the process of mediation.

AND WHEREAS various mediation sessions were held with the Parties and their respective counsels during the process of mediation, through video conferencing on 10.02.2022, 22.02.2022, 28.02.2022, 09.03.2022 and 14.03.2022 constructively participated in the process of mediation for an amicable resolution of their disputes and differences.

WHEREAS the borrowers had failed to pay the said amount of INR 7.00 crores (mentioned in Point No. 1) as per MOU dated December 28th, 2021.

The parties have agreed on the following terms:-

1. That the schedule to repay INR 7.00 crores along with interest @ 24% per annum (reducing basis, monthly compounded) is as below

a) INR 1cr each to be paid on or before the end of the months of March 2022, April 2022, May 2022, and June 2022 respectively

b) INR3 crores to be paid in the month of July 2022. Further, in addition to the above-mentioned amounts, the borrower will also pay any interest applicable as per 24% per annum (reducing, monthly compounded) based on the dates of repayment of the said amounts in the month of July 2022.

2. That both parties had also agreed that the balance principal amount outstanding along with interest up to March 1, 2022 shall be converted into a new term loan for a period of five years along with interest @ 15% p.a. (reducing basis, monthly compounded).

3. That the said loan restructuring agreement will now take effect from March 1st, 2022 and shall not stand revoked/cancelled due to non-repayment of the balance of INR 7 crores as per original MOU dated December 28th, 2021.

4. That the EMI agreed to for the balance outstanding amount, converted into a new term loan as per loan restructuring agreement dated

December 28th, 2021, shall be paid over and above the schedule of payments mentioned in point no. l, staring March 1st, 2022.

5. That the borrowers have agreed to unconditionally and completely withdraw their notices dated 26.11.2021 sent to the lender and have also withdrawn all the averments and allegations made therein.

6. That the borrowers agree to remain bound by this Amendments to the MOU, dated March 10, 2022 as well as the loan restructuring agreement dated December 28th, 2021, which shall now stand effective from March 1st, 2022 and shall not be revoked / cancelled.

7. That in case the borrowers fail to make the payment of the amount as per schedule agreed herein, including the schedule of payments mentioned in Point No. 1 and EMI repayment as per loan restructuring agreement, then the present Amendments to MOU shall stand revoked/cancelled, the property at the Dariba Kalan, Cbandni Chowk, Delhi shall remain mortgaged with the lender as a security, and the borrowers shall remain liable to pay the entire loan liability along with interest @ 24% p.a. (reducing basis, monthly compounded) to the lender on the same terms and conditions as detailed in loan agreement dated September 30th, 2015.

8. That the present dispute falls with the commercial courts Act and parties have arrived at the settlement and given their consent that the same be considered as Arbitral Award in agreed terms under sub-section (4) of section 30 of the Arbitration and Conciliation Act, 1996 (26 of 1996) and section 12(a) clause (4) & (5) of The Commercial Courts Act 2015.

9. That the present settlement arrived between the parties without any force, coercion, and duress and has been signed by the parties to the agreement after understanding the contents of the same.

PARTIES SIGNATURES

M/s Genesis Finance Co. Ltd.
Through its Authorized Representative
Mr. Vinod Tayal
(Lender)

Mr. Sanjeev Bansal
(For self and on behalf of Mrs. Usha Bansal)
(Borrowers)

COUNSEL SIGNATURES

Mr. Manish Sharma, Enrl. No. D/2056/2010
Advocate for the Lender

(Dalip Mehra)
Mediator

"

4. It has been admitted by the petitioner in O.M.P. (COMM) 473/2023 *i.e.,* Mr. Sanjeev Bansal that he has duly signed on the aforesaid Settlement Agreement. The petitioner in O.M.P. (COMM) 422/2023 *i.e,* Usha Bansal has averred in her petition that she has neither signed on the Settlement Agreement nor was her husband authorised to sign on her behalf.

5. It is averred in both the petitions that the parties did not receive the copy of the Settlement Agreement and that they came to know of it only when they received a copy of the execution petition filed by the respondent. Thereafter, they are stated to have applied for a copy thereof from the Mediation Centre.

6. It is on this basis that the challenge is sought to be laid to the Settlement Agreement dated 14.03.2022, almost 21 months after the date of its execution.

7. It is broadly contended by the respective senior counsels for the petitioners in both the petitions as under :-

i. That the Delhi High Court Mediation Centre got the settlement Agreement dated 14.03.2022 signed from the parties under

"undue influence and coercion" by the respondent. It is averred in the O.M.P. (COMM) 473/2023 as under:-

> *"(XX) It is submitted that even despite the objections raised by the Petitioner, The Delhi High Court Mediation Centre got the Settlement Agreement dated 14.03.2022 signed from the Parties concerned under the undue influence and coercion by the Respondent. It will not be out of place to mention here that the Petitioner had till date did not receive his copy of the award passed by the mediator, which is a mandatory requirement as per section 31(5) of Arbitration and Conciliation act 1996. The only copy he has, is the one attached along with the Execution Petition filed by the Respondent against the Petitioner and the same is also an incomplete copy of the impugned settlement agreement. That the Petitioner, after knowledge of the same had applied for the award and received the copy on 03.10.23."*

ii. That the impugned Settlement Agreement has been obtained by fraud and under undue influence and coercion as it is evident from the fact that in communication dated 17.05.2021 addressed by the respondent to the petitioners, the total amount payable by the petitioners to the respondent was reflected to be Rs. 3,87,90,299/- as of 31.05.2021. The same document states that each day beyond this day, an additional interest of Rs.11955/- would be charged.

iii. It is submitted that the Settlement Agreement completely ignored the fact as to how the liability of Rs.3,87,90,299/- become Rs. 14,23,35,065/- (under the Settlement Agreement within a period of five months). It is averred in the O.M.P. (COMM) 473/2023 as under:-

> *"C.....*
> *(ii) Because Ld. Mediator while recording the impugned Settlement Agreement completely ignored the pre-payment notice dated 17.05.2021 issued by the Respondent, vide which*

the Respondent itself claimed the outstanding dues of Rs.3,87,90,299/- from the Petitioner and through notice dated 29.10.2021, the respondent claimed an outstanding of Rs.14,23,35,065/- from the Petitioner and his wife. It is enough to shook the conscience of the authority that within a period of 5 months the loan liability of Rs.3,87,99,299/- calculated to Rs.14,23,35,065/- despite the payment of Rs.1,15,00,000/- deposited by the Petitioner."

iv. It is also concluded that the interest rate prescribed in the Settlement Agreement is excessive.

v. It is further alleged that the learned mediator acted in an illegal and *mala fide* manner by merely recording the terms and condition sent by the respondent.

ANAYSIS AND FINDINGS

8. Two issues arise for consideration in the present petitions:-

a) Whether the present petitions have been filed within the period of limitation?

b) Whether the impugned settlement agreement warrants interference in exercise of the jurisdiction under Section 34 of the A&C Act, 1996?

9. In O.M.P. (COMM) 473/2023 filed by Mr. Sanjeev Bansal, it is admitted that Mr. Sanjeev Bansal duly signed the Settlement Agreement. In fact, without his signatures, the Settlement Agreement could not have come into existence. Unlike an arbitral award issued under Section 31 of the A&C Act, a Settlement Agreement in terms of Section 12A of the Commercial Courts Act comes into being only upon agreement of the parties when the terms thereof are reduced to writing and signed by the parties to the dispute and the mediator.

10. The petitioner *i.e.*. Mr. Sanjeev Bansal, having himself signed on the

Settlement Agreement, the attempt to take refuge behind non- supply of the copy thereof appears to lack credence.

11. The case set up by Mrs. Usha Bansal *i.e.*, the wife of Mr. Sanjeev Bansal and petitioner in O.M.P. (COMM) 422/2023 who disclaim the knowledge about the Settlement Agreement dated 14.03.2022 is even more curious. It is averred by her that she never received any intimation of the mediation proceedings; further, it is averred as under:-

> *"23. That Petitioner, as regular affair, had signed a document upon insistence from her husband. That on revelation of record, Petitioner also got to know that the said document dated 11.03.2022, authorizes her husband only to appear in a matter pertaining to Respondent. That the Said authority letter nowhere authorizes her husband to sign any MOU or the impugned settlement Agreement pursuant to the mediation, on behalf of the Petitioner. Copy of said authority letter dated 11.03.2022 is annexed here with and marked as Document-13."*

12. A perusal of the Settlement Agreement in O.M.P. (COMM) 422/2023, reveals that it encloses as Annexure B thereto a communication dated 14.03.2022 addressed from the email ID i.e. ushabansal64@gmail.com to dhcmcc@gmail.com with CC to bansals81@yahoo.in. The said communication reads as under:-

> *"Authorization Letter* *dhc mcc <dhcmm@gmail.com>*
> *Usha bansal <ushabansal64@gmail.com>*
> *To : dhcmcc@gmail.com*
> *Cc: Sanjeev bansal <bansals81@yahoo.in>* *Mon, Mar 14, 2022 at 12:00 PM*
>
> *AUTHORITY LETTER*
>
> *Dear Concerned*
>
> *I Usha Bansal authorize my husband Sh. Sanjeev Bansal, R/o F-9, geetanjali enclave, malaviya nagar, south delhi- 110017, to Act, sign, appear on my behalf for settlement with M/s. Genesis Finance Co. Ltd. and to appear before the Hon'ble Courts, Tribunals, agencies or sign Vakalatnama, file complaints, complaint case, Revision, suit, plaint, appeal, written statement, mediation pre institution mediation,*

applications, and execute all necessary documents etc. and to verify, withdraw, compromise, give statement, depose, sign MOU, sign settlement, engage counsel and to do all the needful to effectively contest the cases.
Kindly do the needful.

Thanking you
Usha Bansal
9810446457"

13. The said email encloses an authority letter which has admittedly been signed by Mrs. Usha Bansal which reads as under :-

AUTHORITY LETTER

THIS IS TO STATE THAT I HAVE AUTHORISED MY HUSBAND Mr SANJEEV BANSAL WHOSE SIGNATURES ARE VERIFIED BELOW TO APPEAR ON MY BEHALF REGARDING THE MATTER WITH GENESIS FINANCE CO LTD

Usha Bansal
USHA BANSAL

F-9 GEETANJALI ENCLAVE,

N DELHI 110017

11/03/2022

SANJEEV BANSAL

Usha Bansal

14. With regard to the aforesaid email dated 14.03.2022, it has been averred in para 25 in O.M.P. (COMM) 422/2023 filed by Mrs. Usha Bansal as under:-

"25. That record reveals that an authorization email dated 14.03.2022 sent through an id of Petitioner and the same email authorizes her husband to appear and sign the impugned settlement agreement on behalf of Petitioner. However, it is pertinent to mention here in that the said email id is used by Petitioner's husband and Petitioner had no knowledge about the same. The alleged authority dated 14.03.2023 through email has been strongly refuted, as the same was never sent by the Petitioner and was neither in her knowledge. Copy of Email dated 14.03.2022 is annexed here with and marked as Document-14."

15. As such, the petitioner has not denied that the email ID *i.e.*,

ushabansal64@gmail.com belongs to her, instead it has sought to be contended that the said email ID is used by her husband and that she had no knowledge of the same. At the same time, learned senior counsel for Mrs. Usha Bansal, on instructions, admits that the attachment contained alongwith the said email *i.e.*, the authority letter (as reproduced above) contains her signature.

16. What is most interesting is that the email dated 14.03.2022, addressed from the email ID of the petitioner has also been copied to bansals81@yahoo.in. The said email clearly records the authorisation of Mrs. Usha Bansal in favour of her husband to appear, to represent, to act and to sign on her behalf for the purpose of proposed settlement with the respondent.

17. In the memo of the parties of the present petition i.e. OMP (COMM) 422/2023, the email address of Mrs. Usha Bansal is mentioned to be bansals81@yahoo.in i.e. the same email address to which the above email sent from ushabansal64@gmail.com was copied.

18. As such, it is evident that the petitioner Mrs. Usha Bansal was very well aware of the ongoing mediation proceedings and that an email was duly sent to the Delhi High Court Mediation and Conciliation Centre intimating that Mr. Sanjeev Bansal was duly authorised to represent her in the mediation proceedings.

19. As such, the plea of Mrs. Usha Bansal seeking to completely deny any knowledge of the settlement proceedings cannot be accepted.

20. It also appears evident that the petitioners in these petitions have sought to play a subterfuge with a view to disown the Settlement Agreement dated 14.03.2022. No credence can be attached to the version given by them

in these petitions that they received the copy of the Settlement Agreement only recently.

21. Even assuming that the benefit of doubt is to be given to the petitioners as regards the issue of limitation, there is *ex-facie*, no merit whatsoever in the contention on behalf of the petitioners to the effect that the Settlement Agreement is vitiated by fraud or coercion etc. and/or that the mediator has been remiss in conducting the mediation proceedings.

22. Admittedly, prior to the Settlement Agreement dated 14.03.2022 being entered into, there were myriad dealing between the parties which are referred to in the Settlement Agreement itself. The petitioners in these petitions being the borrowers have availed loan facilities from the respondent as mentioned in a loan agreement duly executed between the parties. The contention that the Settlement Agreement dated 14.03.2022 is vitiated inasmuch as the same does not take note of the communication dated 17.05.2021 addressed by the respondent in which a lower amount is reflected to be the outstanding amount, has no bearing whatsoever on the validity of the Settlement Agreement nor can it lead to any inference of duress or coercion.

23. The Settlement Agreement itself takes note of certain notices having being exchanged between the parties prior to the execution of the Settlement Agreement, and goes on to expressly record as under:-

> *"AND WHEREAS the borrowers confirm and acknowledge that as on December 28th, 2021 their total loan liability in Loan Account No.LNHOF00215160000500 due towards the lenders is Rs.14,76,05,315/- (Rupess Fourteen Crores Seventy-Six Lakhs Five Thousand Three Hundred and Fifteen).*
>
> *AND WHEREAS the borrowers had offered to repay Rs. 7,00,00,000/- (Rupees Seven Crores Only) by February 28th, 2022 with interest @ 24%*

per annum (reducing basis, monthly compounded) as per MoU dated December 28th, 2021, for release of their property which is mortgaged with the Lender situated at Dariba Kalan, Chandni Chowk, Delhi-110006. The lender had agreed to release the original title documents of the property of the Dariba Kalan upon the receipt of the total sum of INR7.00 crores by February 28th, 2022."

24. The above is consistent with the "Loan Restructuring Agreement as per MoU Dated December 28, 2021".

25. Moreover, the aforesaid "Loan Restructuring Agreement as per MoU Dated December 28, 2021" has admittedly been signed by both Mr. Sanjay Bansal and Mrs. Usha Bansal and was executed much after the alleged communication/Notice dated 17.05.2021 (on which strong reliance is placed by the petitioners) was issued.

26. The Settlement Agreement, also specifically records as under :-

"8. That the present dispute falls with the commercial courts Act and parties have arrived at the settlement and given their consent that the same be considered as Arbitral Award in agreed terms under sub-section (4) of section 30 of the Arbitration and Conciliation Act, 1996 (26 of 1996) and section 12(a) clause (4) & (5) of The Commercial Courts Act 2015.

9. That the present settlement arrived between the parties without any force, coercion, and duress and has been signed by the parties to the agreement after understanding the contents of the same."

27. It is not the case of the petitioner *i.e.,* Mr. Sanjeev Bansal, that while signing the agreement, he did not understand the scope and import of the aforesaid provisions. Instead, from a bare perusal of the Settlement Agreement, it is evident that the same is a product of an agreement validly arrived at between the parties. It is beyond the scope of these proceedings to go behind the rationale or the justification as to the terms contained in the Settlement Agreement dated 14.03.2022. What is apparent is that the parties

have duly agreed upon the terms thereto, and a bare plea of fraud, coercion or duress cannot justify any challenge to the Settlement Agreement in proceedings under Section 34 of the A&C Act. The Supreme Court in ***Bishundeo Narain v. Seogeni Rai***, 1951 SCC 447, has held as under:

> *"22…Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and coercion."*

28. In ***A.C. Ananthaswamy v. Boraiah***, (2004) 8 SCC 588, it has been held as under:

> *"5… To prove fraud, it must be proved that representation made was false to the knowledge of the party making such representation or that the party could have no reasonable belief that it was true. The level of proof required in such cases is extremely higher. An ambiguous statement cannot per se make the representor guilty of fraud. To prove a case of fraud, it must be proved that the representation made was false to the knowledge of the party making such representation. [See Pollock & Mulla: Indian Contract & Specific Relief Acts (2001), 12th Edn., p. 489.]"*

29. A Division Bench of this Court in ***Dipak Arora v. Vijay Bhushan Arora***, 2016 SCC OnLine Del 4401, has held as under:

> *"15. In the written statement filed the appellants have pleaded that their signatures were obtained on the MOU by fraud and misrepresentation. What was the fraud and what was the misrepresentation has not been pleaded. It is not enough to simply plead fraud or misrepresentation. Unless particulars thereof are disclosed in the pleadings, the plea has to be ignored…"*

30. In ***Karan Madaan v. Nageshwar Pandey***, 2014 SCC OnLine Del 1277, affirmed by a Division Bench of this Court in ***Nageshwar Pandey v. Karan Madaan***, 2016 SCC OnLine Del 816, it has been held as under:

> *"31. The defence/case set up by learned counsel for the defendant in his arguments is of 'fraud', on the premise, that the plaintiffs are seeking to exploit the instrument of sale, contrary to the understanding of the parties that the sale deed was only to be used as a security for repayment of loan, interest and other charges. Pertinently, the written statement or the counter claim do not whisper about a "fraud", though the defendant repeatedly states that the plaintiffs are greedy, have turned dishonest, and are of a criminal mind. A mere mention of "fraud" in a pleading is not sufficient. A party pleading fraud is obliged, under Order VI Rule 4 CPC, to give particulars of the pleaded fraud-with dates and items, in the pleading. The pleadings of the defendant, in the written statement/counter claim do not even make out a case of fraud. In any event, the fraud, intimidation, illegality, etc referred to in proviso 1 to Section 92 relates to the execution of the instrument/document. It is not the defendant's case that when he executed the sale deed, he did not know that it is a sale deed that he was executing. It is not the defendant's case that he is unlettered or illiterate or that he did not read, or could not read the instrument in question. He does not claim that the sale deed was executed in an intoxicated or unsound state, or under duress or coercion exercised by the plaintiffs, or anyone else. The defendant knew the fact that he was executing an instrument of sale. When he has executed the sale deed in question, it is not open to the defendant to claim that the instrument of sale is hit by fraud, because, according to the defendant, the intention or understanding of the parties was to create a security in favour of the plaintiffs for the alleged loan granted to the defendant. The spirit and purpose of enacting Section 91 and 92 of the Indian Evidence Act, 1872 is to render the written contract, grant or other disposition the sole repository of the terms contained therein. If the intention of the parties was, as is claimed by the defendant, then that intention/objective/purpose should have been so spelled out in the instrument. Unfortunately for the defendant, that is not the case."*

31. Further, in ***Double Dot Finance Ltd. v. Goyal MG Gases Ltd***., ILR (2005) 1 Del 161, affirmed by a Division Bench of this Court in ***Goyal MG Gases Ltd. v. Double Dot Finance*** **Ltd**., (2009) 111 DRJ 217 (DB), it has been held as under:

> *"9. Coming to the question as to what is "coercion" or "duress" in commercial contracts, we may refer to the case of Privy Council case "Pao On v. Lau Yiu." reported in 1979 (3) of England Reporter Page-65. Economic duress in commercial context was dealt with by their Lordships and it was held that in contractual relations, a mere financial*

pressure is not enough. It was also held that the question as to whether at the time the person making a contract allegedly under coercion had or not any alternative course open to him which could be an adequate legal remedy and whether after entering into the contract, he took steps or not to avoid it are matters which are relevant for determining as to whether he acted voluntarily or not. It was also held that the compulsion has to be of a nature which deprives a party of his freedom of exercising free will leaving no alternative course open to him. Therefore, the 'coercion' or 'duress' required for vitiating 'free consent' has to be of the category under which the person under 'duress' is left with no other option but to give consent and is unable to take an independent decision, which is in his interest. Bargaining and thereafter accepting an offer by give and take to solve one's financial difficulties cannot be treated as 'coercion' or 'duress' for the reason that in trade and commerce everyday such situations arise and decisions are taken by parties some of which they might not have taken but for their immediate financial requirements and economic emergencies.

xxx xxx xxx

11. In certain cases, the plea of entering into 'settlement' under coercion, mistake, duress or misrepresentation may, however, be examined and accepted even if the facts and circumstances establish that the party repudiating the agreement was under pressure of the other party at the time of entering into settlement and had without delay taken steps to disclaim the accord and satisfaction. Mere financial exigency or economic expediency cannot constitute 'pressure'.

12. The legal position that emerges, therefore, is that the Arbitrator has jurisdiction to adjudicate a dispute in regard to the existence of 'full and final settlement'. In case the plea of 'full and final settlement' between the parties is accepted by the Arbitrator, no Award can be passed in favour of a claimant but in case this plea is rejected, the Arbitrator would be well within his rights to pass an Award in respect of the claims filed before him. The Arbitrator can go into the question as to whether the 'accord and satisfaction' recorded between the parties was voluntary or not inasmuch as 'free consent' remains the foundation of all agreements including the agreement in regard to the settlement of disputes between the parties. However, the plea of coercion, undue influence or duress raised by a party to challenge the 'accord and satisfaction' cannot be accepted lightly merely upon word of mouth. The facts and circumstances, material on record and conduct of the parties at the time of signing the settlement agreement and soon thereafter have to be looked into. It need not be stated that the burden to establish this plea remains on the party which raises it.

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*14. If such pleas are sustained, the sanctity and purpose of 'amicable settlements' between the parties would stand totally eroded. Amicable resolution of disputes and negotiated settlements is 'public policy of India'. Section 89 of the Code of Civil Procedure, Arbitration and Conciliation Act, 1996 as well as Legal Services Authorities Act, 1995 call upon the Courts to encourage settlement of legal disputes through negotiations between the parties**. If amicable settlements are discarded and rejected on flimsy pleas, the parties would be wary of entering into negotiated settlements and making payments thereunder as a shrewed party after entering into a negotiated settlement, may pocket the amount received under it and thereafter challenge the settlement and re-agitate the dispute causing immeasurable loss and harassment to the party making payment thereunder. This tendency has to be checked and such litigants discouraged by the Courts**. It would be in consonance with public policy of India. The Arbitrator, therefore, had acted against public policy of India by accepting the plea as raised by the respondent No. 1 and thereafter, passing an Award. The view taken by the Arbitrator was absolutely capricious, unfair and unreasonable and as such, the impugned Award dated 29.11.2002 passed by him is liable to be set aside."*

32. In ***Unikol Bottlers vs Dhillon Kool Drinks*** (1994) 28 DRJ 482, four factors have been laid down to ascertain whether any duress or coercion has been played upon any party in a commercial contract. It was, *inter-alia,* held as under:

"32. …While dealing with the question of duress/coercion and unequal bargaining power one is really concerned with the question of free will, i.e. did the parties enter into the agreement with a free will? It is the plaintiff who has raised the question of its will being dominated by the defendants and, therefore, not being a free agent. Therefore, the plaintiff is on test. It has to be ascertained whether the plaintiff exercised a free will or not while entering into the Supplemental Agreement. For this purpose there are several factors which need to be looked into. They are -
1. Did the plaintiff protest before or soon after the agreement?
2. Did the plaintiff take any steps to avoid the contract?
3. Did the plaintiff have an alternative course of action or remedy? If so, did the plaintiff pursue or attempt to pursue the same?
4. Did the plaintiff convey benefit of independent advice?

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37. The Contracts are meant to be performed and not to be avoided. Justice requires that men who have negotiated at arm's length, be held to

their bargains unless it can be shown that their consent was vitiated by fraud, mistake or duress. The real test is to first establish that the means pursued were illegitimate in the sense of amounting to or threatening a crime, tort or a breach of contract (though possible not plausible breach of contract will suffice). Secondly, one must establish that the illegitimate means were a reason, though not necessarily the pre-dominate reason for the victim's submission…."

33. In ***Sara International Limited v. Rizhao Steel Holding Group Company Limited,*** (2013) 201 DLT 262, it has been held as under:

19. To explain the concept of economic duress, Mr. Vasisht has painstakingly taken this Court through Treatise, Chitty on Contracts, (Thirtieth Edition) Volume - I, Chapter 7. The relevant extracts of Chitty on Contracts (supra) referred by Mr. Vasisht are as under : -

a. 7-008 "Legitimacy of the pressure or threat. Once it is accepted that the basis of duress does not depend upon the absence of consent, but on the combination of pressure and absence of practical choice, it follows that two questions become all-important. The first is whether the pressure or the threat is legitimate; the second, its effect on the victim. Clearly, not all pressure is illegitimate, nor even are all threats illegitimate. In ordinary commercial activity, pressure and even threats are both commonplace and often perfectly proper…".

b. 7-012 "…It has been said that a threat to destroy or damage property may amount to duress. It is now accepted that the same is true of a true of a threat to seize or detain goods wrongfully…".

c. 7-024 "Causation in general. In all cases of duress it is necessary that the victim's agreement was caused by the duress. However, it appears that the nature of the causation required differs according the nature of the duress".

d. 7-026 "Causation in duress to goods….It seems likely that the victim must show that, "but for" the threat, he would not have entered the contract. We will see that if has been said that this is the appropriate test of causation in economic duress and given the similarity of duress of goods and economic duress, the same test of causation seems appropriate".

d. 7-027 "Adopting a "but for" test would place cases of economic duress on par with cases of negligent or non negligent misrepresentation. This seems appropriate".

e. 7-031 "Reasonable alternative. It is certainly relevant whether or not the victim had a reasonable alternative. The victim's lack of choice was emphasised by Lord Scarman in the Pao On and Universe Sentinel cases and has clearly been an important factor in those cases in which relief has been given…"

f. 7-034 "Protest. In the Pao On case it was said that it was relevant

whether or not the victim protested. This again seems to be a question of evidence as whether or not the threat had a coercive effect. It has been accepted for many years that when a payment is made in order to avoid the wrongful seizure of goods, protest "affords some evidence…that the payment was not voluntarily made", but that the fact that the payment was made without protest does not necessarily mean that the payment was voluntary".

g. 7-035 "Independent advice. Likewise in the Pao On case it was said that it is relevant whether or not the victim had independent advice. The relevance of this is perhaps less obvious : access to legal advice, for example, will not increase the range of options available to the victim, and lack of advice therefore cannot be an absolute requirement. However, whether or not the victim appreciated that he had an alternative remedy and what the practical implications of following it would be are relevant to the question of causation".

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22. After hearing learned counsel for the plaintiff and the amicus curiae, this Court is of the opinion that the necessary ingredients to successfully avoid a contract on the ground of economic duress claim are : -

(a) Pressure which is illegitimate;

(b) Its effect on the victim i.e. that the pressure must be a significant cause inducing the Claimant to enter into the contract;

(c) Lack of reasonable alternative i.e. that the practical effect of the pressure was that there is compulsion on, or a lack of practical choice for, the victim.

23. A Court while deciding an issue of economic duress has also to keep in mind whether there was protest by the victim before or soon after the impugned contract and whether the victim had benefit of independent advice.

24. It is pertinent to mention that in DSND Subsea Ltd. v. Petroleum Geo Services ASA 2000 WL 1741490, the Court observed that "Illegitimate pressure must be distinguished from the rough and tumble of the pressures of normal commercial bargaining."

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26. Lord Scarman in Pao On (supra), itself observed, "Duress, whatever from it takes, is a coercion of the will so as to vitiate consent……in a contractual situation commercial pressure is not enough. There must be present some fact 'which could in law be regarded as a coercion of his will so as to vitiate his consent.'……..In determining whether there was a coercion of will such that there was no true consent, it is material to

inquire whether the person alleged to have been coerced did or did not protest; whether, at the time he was allegedly coerced into making the contract, he did or did not have an alternative course open to him such as an adequate legal remedy; whether he was independently advised; and whether after entering the contract he took steps to avoid it. All these matters are relevant in determining whether he acted voluntarily or not."

34. In the present case, the petitioners never made any protest before or soon after execution of the Settlement Agreement. In fact, as noticed hereinabove, the Settlement Agreement dated 14.03.2022 was preceded by a "Loan Restructuring Agreement as per MoU Dated December 28, 2021". They voluntarily participated in the mediation. If there was no consensus ad idem between the parties in the mediation proceedings, the petitioners could have resorted to an alternative course of action and defended their stand on merits in the commercial suit that would have been eventually instituted by the respondent. They did not do so. They rather executed the Settlement Agreement dated 14.03.2022. The lack of credible evidence supporting the plea of fraud, coercion or duress, in the present case, affirms the binding nature of the Settlement Agreement. Further, an objective reading of the Settlement Agreement reveals the parties' free consent and mutual intention to establish a final and binding contract.

35. The imputation sought to be cast at the manner in which mediation proceedings were conducted, is also quite unfortunate. In the process, the petitioners have also resorted to taking inconsistent pleas. During the course of arguments, it was sought to be urged that the signatures of the petitioners were not obtained in the presence of the mediator whereas, in the petition filed by Mr Sanjeev Bansal *i.e.*, OMP (COMM) 473/2023, it has been pleaded as under:-

"(XX) ..... The Delhi High Court Mediation Centre got the

Settlement Agreement dated 14.03.2022 signed from the parties concerned under the undue influence and coercion by the respondent."

36. The attempt on the part of the petitioners to cast aspersions on the mediation process cannot be countenanced. As observed in ***Goyal MG Gases*** (supra), "*if amicable settlements are discarded and rejected on flimsy pleas, the parties would be wary of entering into negotiated settlements and making payments thereunder as a shrewd party after entering into a negotiated settlement, may pocket the amount received under it and thereafter challenge the settlement and re-agitate the dispute causing immeasurable loss and harassment to the party making payment thereunder. This tendency has to be checked and such litigants discouraged by the Courts"*

37. On a query of the Court as to whether any payment at all has been made by petitioners to the respondent after the execution of the Settlement Agreement dated 14.03.2022, the answer is in the negative. In these circumstances, it is quite paradoxical that it is the petitioners who are alleging fraud against the respondent.

38. In the circumstances, no merit is found in both the petitions and the same are, accordingly, dismissed.

39. The pending applications also stand disposed of.

SACHIN DATTA, J

DECEMBER 8, 2023/r,hg