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

% ***Date of Decision: November 18th, 2026***

\# **CNR No. DLHC010371782026**

\+ **W.P.(C) 11570/2026**

M/S BABUBHAI NAROTTAMDAS AND CO .....Petitioner

Through: Mr. Gauhar Mirza, Mr. Amar Khanna, Ms. Charvi Virmani, Mr. Kaveesh Nair & Mr. Arnav Chopra, Advs.

versus

BHARAT HEAVY ELECTRICALS LIMITED .....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. *(Oral)*

1. By the present petition, the petitioner seeks issuance of a writ thereby declaring that the arbitral award dated 18.09.2019 (hereafter '**impugned award**') and the clarification order dated 23.12.2019 passed by the sole arbitrator are *void ab initio* and *non est*. Petitioner further prays that the respondent be restrained from enforcing the same.

2. Succinctly stated, the respondent had issued a Purchase Order dated 16.08.2006 to the petitioner for the supply, erection and commissioning of a Chlorination Plant at the 2*250 MW GHTPS Stage-II, Bhatinda. Thereafter, certain disputes ensued between the parties pursuant to which arbitration proceedings were initiated by the petitioner and the Sole Arbitrator was appointed by the Respondent on 19.08.2013 [**'First Arbitration'**]. In addition to the claim of the

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petitioner, the respondent also filed a counter claim before the learned Tribunal and sought a recovery of a sum of ₹95,00,000/- [being the amount withheld by one PSPCL due to failure of the petitioner in handing over the chlorination plant]. It is the case of the petitioner that during the pendency of the first arbitration, the respondent issued a letter terminating the purchase order dated 16.08.2006 and intimating the petitioner that the balance work of the chlorination plant would be carried out at the petitioner's risk and cost. Thereafter, the learned Tribunal in the First Arbitration rendered the award dated 04.07.2017 and disallowed the counter claim by the respondent. The said award rendered pursuant to the First Arbitration is stated to not have been challenged by either party and is stated to have attained finality.

3. Thereafter, the respondent got the balance work executed through PSPCL. Thereafter, the respondent invoked a fresh arbitration and allegedly appointed a Sole Arbitrator [**'Second Arbitration**']. It is the petitioner's case that the arbitration proceedings were proceeded *ex parte* and by the award dated 18.09.2019, the respondent's claim was allowed. Admittedly, the impugned award was not challenged under Section 34 of the Arbitration and Conciliation Act, 1996 ('**A&C Act**'). The respondent thereafter filed Commercial Execution Application (L) No. 10291/2021 before the Hon'ble Bombay High Court seeking execution of the impugned award. An Interim Application No. 2935/2021 in the said Execution Application was also preferred by the respondent.

4. The petitioner contends that the impugned award is *non est* and a judicial nullity inasmuch as the claim of the respondent had already

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been rejected in the First Arbitration and the claim of the respondent was barred by *res judicata*. The petitioner further contends that the sole arbitrator was unilaterally appointed and the impugned award was also passed *ex parte*.

5. On being pointedly asked, the learned counsel on behalf of the petitioner states that the petitioner learnt about the unilateral appointment of the arbitrator as well as the impugned award only during the course of the enforcement proceedings for which reason the remedy under Section 34 of the A&C Act could not be pursued. It has further been informed that the petitioner, in its reply to the interim application in the Commercial Execution Application (L) No. 10291/2021 before the Hon'ble Bombay High Court, has already contested the executability of the impugned award, however, the same has yet not been taken up. He consequently prays for a declaration that the impugned award is *void ab initio* and *non-est* since this Court exercises supervisory jurisdiction over an arbitration seated in Delhi.

6. Having taken note of the grievance of the petitioner, this Court is of the opinion that the stance taken by the petitioner cannot be countenanced.

7. The legal position in this regard is well settled. It has consistently been held that an objection founded upon the inherent lack of jurisdiction or the defence of invalidity of the award being *void ab initio* can be taken up and examined even by the executing court during the course of the execution proceedings [Ref. ***Matsya Fincap Pvt Ltd. vs. Govind Lal* : 2026:DHC:3759-DB**]. However, while the defence of invalidation can be raised even during the course of

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execution proceedings, the party does not acquire an independent right to institute separate proceedings seeking a declaration that the arbitral award is invalid. Any independent declaratory petition seeking relief, which, in substance, would have the effect of setting aside an arbitral award is outside the statutory framework of the A&C Act and cannot be countenanced [Ref. ***MMTC Limited vs. Anglo American Metallurgical Ptv Limited*** **: 2025:DHC:11831-DB**].

8. In the present case, the petitioner claims that it became aware of the unilateral appointment of arbitrator and the award being *non est* during the course of the enforcement proceedings. It is also the petitioner's case that it has contested the enforcement of the impugned award by its reply to the to the interim application in the Commercial Execution Application (L) No. 10291/2021 before the Hon'ble Bombay High Court, however, the same has not been taken up. In such circumstances, the petitioner is required to pursue the said defence in the execution proceedings. In the event that the executing court has not adjudicated upon the petitioner's objection, it is open to the petitioner to seek its determination. Further, in the event that the petitioner's objection is rejected, the petitioner may avail such appellate or other remedy as may be available in law. The petitioner is however not permitted, to maintain a writ petition on the ground that its objection has not been considered or accepted in the execution proceedings.

9. In view of the aforesaid, no ground to entertain the present petition is made out.

10. The present petition is accordingly dismissed.

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11. It is however clarified that this Court has not expressed any opinion on the merits of the case.

AMIT MAHAJAN, J

NOVEMBER 18, 2026
"SS"

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