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

***Reserved on: 15th April, 2024.***
***Date of Decision: 24th April, 2024.***

\+ **CS(COMM) 534/2023 and I.A. 14600/2023, 25962/2023**

LARSEN AND TOUBRO LIMITED ..... Plaintiff
Through: Mr. Manu Seshadri, Mr. Aveak Ganguly & Mr. Sahil Manganani, Advs. (M: 9910372831)

versus

IREO VICTORY VALLEY PRIVATE LIMITED ..... Defendant
Through: Mr. Gagan Gandhi & Mr. Akshay Malik, Advocates (M: 09818085505).

**CORAM:**
**JUSTICE PRATHIBA M. SINGH**

**JUDGMENT**

**Prathiba M. Singh, J.**

1. This hearing has been done through hybrid mode.

***BRIEF FACTS***

2. This is a suit filed by the Plaintiff seeking compensation with respect to the Settlement Agreement dated 18th January, 2020. The Plaintiff *inter alia* also seeks a sum of Rs. 29,57,78,151/- and interest of 18% p.a. from the date the decretal sums are due.

3. In the present case the Plaintiff- M/s. Larsen and Toubro Ltd. is a public ltd. company, engaged in the business of domestic and global operations in technology, engineering, construction, manufacturing and financial services. The Defendant- M/s. Ireo Victory Valley Pvt. Ltd. on the other hand, is a company engaged in the business of developing group

housing by the name of "IREO Victory Valley".

4. The case of the Plaintiff is that the Plaintiff was awarded a contract for development of a housing society by the name "IREO Victory Valley". In respect of the said project, the Defendant awarded to the Plaintiff a contract for executing Civil, Structural and Internal Finishing works, together with External Development and Boundary wall works for a value of approximately Rs.3.03 crores vide letter of intent dated 11th February, 2011. The work order was also issued on 16th February, 2011. Subsequently, further work orders were issued for internal and external plumbing and firefighting on 10th October, 2011 for a value of approximately Rs. 35 Lakhs. The works were completed on 31st March, 2018. However, according to the Plaintiff, a substantial sum remained outstanding. It is averred that the Plaintiff thereafter vide a demand notice dated 11th January, 2019, asked the Defendant to pay the due amount of more than Rs. 107 crores. The parties then negotiated a settlement agreement on 18th January, 2020, as per which, the broad settlement which was agreed are as under:

i) That parties would foreclose the Contracts dated 16th February, 2011, 25th November, 2011 and underlying work orders dated 16th February, 2011 and 18th November, 2011;

ii) In terms of the due amount of Rs. 18,76,17,784/- the Defendant would hand over five flats in Ireo Victory Valley project to the Plaintiff for a value of approximately Rs.10.10 crores;

iii) Post-dated cheques for the value of remaining outstanding amount of approximately Rs.8.65 crores would be given within 30 days of the signing of settlement agreement.

5. It is stated that the Defendant was to allot the above stated five

completed flats within one month of the settlement *i.e.*, 17th February, 2020 and the remaining Rs. 8.65 crores within 30 days of signing the settlement. However, it is the case of the Plaintiff that the settlement terms were not honoured. Thereafter, on 13th June, 2021, the Plaintiff sent two demand notices regarding payment of unpaid operational debt amounting to Rs. 18.76 crores. The Defendant however repudiated the same vide a reply dated 28th June, 2022.

6. On 3rd August, 2022, the Plaintiff filed a petition under section 9 of Insolvency and Bankruptcy Code, 1908, for initiating Corporate Insolvency Resolution Proceedings against the Defendant, which is still pending. The Plaintiff further instituted a suit bearing number ***CS(Comm.) No. 151/2023*** titled ***Larsen and Tourbo Ltd. v. Ireo Victory Valley Pvt. Ltd.,*** which was withdrawn vide order dated 21st March, 2023, with liberty to file pre-institution mediation under section 12A of the Commercial Courts Act, 2015. The present suit seeking recovery and enforcement of settlement terms has been filed. The reliefs sought in the suit are:

***Prayer***

> *"It is therefore humbly prayed that this Hon'ble Court may be pleased to —*
> *(A) Declare that the Defendant is in breach of the Settlement Agreement dated 18.01.2020 and is liable to pay compensation to the Plaintiff of the undisputed outstanding dues recorded in the Settlement Agreement along with interest thereon;*
> *(B) Pass a judgement and decree in favour of the Plaintiff, and against the Defendant for a sum of INR 29,57,78,151/- (Rupees twenty-nine crore fifty-seven lakh seventy-eight thousand one hundred fifty-one only);*
> *(C) Pass a judgment and decree in favour of the Plaintiff and against the Defendant directing payment of interest*

*at 18 % p.a. from the date decretal sums became due, pendente lite and in future till date of payment;*
*(D) Pass such further or other orders as the Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice."*

7. The Plaintiff has also filed an application bearing no. ***I.A. 25962/2023*** under Order XIII A, CPC, 1908, seeking Summary Judgment.

***SUBMISSIONS OF PARTIES***

8. On behalf of the Plaintiff, Mr. Manu Seshadri, ld. Counsel has made the following submissions:

i. The settlement is not even disputed by the Defendant, as is clear from various emails exchanged between the parties even subsequent to the Settlement Agreement. By way of illustration, emails dated 15th March, 2023 and 25th April, 2023 have been relied upon.

ii. That since the Settlement Agreement foreclosed both the contracts and the Defendant has actually acted upon the said settlement, the Arbitration Clause no longer survives. He relies upon the email dated 25th April, 2023 wherein the Defendant repeatedly mentioned final settlement, part payment of the settled amount and release of the apartments – which shows the admitted position that the Defendant has also taken the Settlement Agreement as final and binding.

iii. The settlement has been acted upon by the Defendant and bank guarantees have also been released. The apartments were to be handed over which is also admitted by the Defendant in the email dated 9th November, 2023 at page 48, 50 of the Applications.

9. On the other hand, ld. Counsel for the Defendant submits as under:

i. That unless and until either of the following three have happened *i.e.* novation, rescission, supersession, the original contract and the arbitration Clause would survive.

ii. If the settlement is within the contract itself and not outside of it in terms of ***Branch Manager Magma Leasing and Finance Limited and Anr. v. Potluri Madhavilata and Anr. (2009) 10 SCC 103*** the contract would not be rescinded and hence the Arbitration Clause would still be applicable.

*iii.* That the question is whether the contract itself is discharged or not. In the present case the settlement arose out of the contract and, therefore, if the settlement is not abided by, the parties would have to be referred to arbitration. Reliance is placed on ***Branch Manager Magma Leasing and Finance Limited and Anr. (supra), paras 10, 11 and 18.***

iv. In addition, reliance is placed upon ***Unique Decor (India) Private Limited v. Synchronized Supply Systems Limited, 2023 SCC OnLine Del 3289,*** wherein the ld. Division Bench has held that even if there is substantial dispute as to whether the original contract is superseded or not, parties ought to be referred to Arbitration.

## ***ANALYSIS & CONCLUSION***

10. The Settlement Agreement is sought to be enforced in the present suit. The said agreement has no arbitration clause. The main plank of the Defendant is that the suit is not maintainable and the matter ought to be referred to arbitration, in terms of the original contracts. However, the first and foremost feature is that there is no application under Section 8 of the

Arbitration and Conciliation Act, 1996, which has been filed by Defendant. The written statement has also not been filed and no reply in the application bearing no. ***I.A.25962/2023*** under Order XIIIA has been filed. Thus, there are no pleadings on behalf of the Defendant at all. The Court has to decide, therefore, on the basis of the documents and correspondence on record.

11. A perusal of the Settlement Agreement dated 18th January, 2020, would show that it is described as a settlement of various issues for the project and an understanding was mutually reached between the two parties. The said agreement raises various issues relating to the contract. As per the said settlement agreement under paragraphs A(i) and A(ii) as also B, it was agreed as under:-

A. i) **Status of Existing / Running bills (RA'S) approved for work done is as under:**

| Head | | Amount |
|---|---|---|
| 1. | RA 39 | Balance Rs. 5,11,764/- |
| 2. | RA 40 | Balance Rs. 10,11,350/- |
| 3. | RA 74 | Balance Rs. 11,30,243/- |
| 4. | RA 75 | Balance Rs. 52,46,609/- |
| 5. | RA 76 | Balance Rs. 2,91,22,149/- |
| 6. | RA 41(final) | Balance Rs. 35,60,347/- |
| 7. | RA 77(final) | Balance Rs. 2,58,81,393/- |
| 8. | Misc. Credits | Balance Rs. 5,28,944/- |
| 9. | MOU dt. 16.04.2018 | Balance Rs. 2,36,00,000/- |
| **Total including GST** | | **Rs. 9,05,92,799/-** |

ii) **There are certain amounts that are on Hold. These are:**

| Head | | Amount | Being Paid |
|---|---|---|---|
| 1. | Labour supply | 66,54,701/- | 20,00,000/- |
| 2. | Quality Plumbing | 35,00,000/- | 10,00,000/- |
| 3. | Electricity Supply | 25,59,665/- | 12,79,832/- |
| 4. | Plumbing Fixtures | 30,00,000/- | 10,00,000/- |
| 5. | Labour Supply | 1,38,683/- | 69,341/- |
| 6. | Tax Variation | 60,75,812/- | 60,75,812/- |
| **Total** | | **2,19,28,861/-** | **1,14,24,985/-** |

The aforesaid amounts are approved to be released.

*Total amount payable A (i) + A (ii) Rs.10,20,17,784/-.*
*B. As a special case and more for a long business relationship between L&T and IVVPL, additional amount of Rs. 8,56,00,000/- (including GST) is being determined / agreed upon to be paid towards L&T's Interim Claims I & II.*
**Total Amount Payable to L&T (A+B) = Rs. 18,76,17,784/- including GST"**

12. As per the above terms agreed, a sum of Rs.18,76,17,784/- was to be paid by the Defendant to the Plaintiff. The manner in which the same was to be paid was also agreed upon *i.e.* by allotment of completed apartments in the residential project "IREO Victory Valley" at Sector-67, Gurgaon. The apartments that were to be allotted are five in number and valued for a sum of Rs.10,10,38,408/-. The remaining amount was to be paid through account free cheques within 30 days of the signing of the agreement. These Clauses are also relevant and are set out below:-

"*It is agreed between L&T and IVVPL that the aforesaid amount shall be paid by IVVPL to L&T by way of:*
*"1. Allotment of completed apartments in the residential project, namely Ireo Victory Valley situated*

*at sector 67 in Gurgaon. The apartment being so allotted are being done to the tune of Rs.10,10,38,408/- and one at the most competitive price. The statement of apartment as under:-*

| Unit No. | Area (Sq. Ft.) | BSP (Per Sq. Ft.) (Rs.) | DC (Per Sq. Ft.) (Rs.) | RFMS (Per Sq. Ft.) (Rs.) | Club (Rs.) | Total Amount (Rs.) |
|---|---|---|---|---|---|---|
| OC-VV-C-25-04 | 2465 | 7200 | 635.12 | 100 | 6,00,000 | 2,01,60,071 |
| OC-VV-C-26-04 | 2465 | 7200 | 635.12 | 100 | 6,00,000 | 2,01,60,071 |
| OC-VV-C-24-04 | 2465 | 7200 | 635.12 | 100 | 6,00,000 | 2,01,60,071 |
| OC-VV-C-22-04 | 2465 | 7200 | 635.12 | 100 | 6,00,000 | 2,01,60,071 |
| OC-VV-A-22-02 | 2495 | 7200 | 635.12 | 100 | 6,00,000 | 2,03,98,124 |
| Total | | | | | | 10,10,38,408 |

*Note: Stamp duty & Registration charges are extra.*

- *That IVVPL shall procure required NOC's from the project lenders w.r.t. the aforesaid apartments,*
- *That IVVPL shall grant 1st transfer free of cost to L&T, so that it may be easier for it to sell the said apartment in the market and mobilize funds.*
- *Account sheets pertaining to the aforesaid apartments and Apartment Buyer Agreements shall be handed over by IVVPL to L&T within 30 days of signing of this settlement agreement.*
- *Copy of Board Resolution authorizing signing of their settlement is attached by IVVPL. Also, authorization letter signed from L&T in favour of Mr. Navneet Kaul is attached.*

  *Balance amount payable to L&T after allotment of apartments = Rs. 8,65,79,376/-*
  *(Rs. 18,76,17,784 - less Rs. 10,10,38,408/-)*
- *The Balance payment Rs. 8,65,79,376 shall be made by IVVPL to L&T through A/c payee post dated cheques which shall be issued to L&T within 30 days of signing of this agreement and also be noted that the dates of PDC's shall not exceed beyond 6 months from date of issue of PDC's.*
- *There are a number of vendors working under L&T who have reached out to IVVPL stating that theirs Final bill are remaining to be paid by L&T. L&T needs*

*to pay to these vendors on a priority so that they do not reach out to IVVPL as Developer of the Project and that L&T would back to back pay monies due to Vendors."*

13. In terms of paragraph C of the Settlement Agreement, the expired bank guarantees in original were returned by the Defendant.

14. Thereafter, the parties finally agreed as under:

> *"**D. Balance works to be done at Site:***
> *This Settlement Agreement shall also be termed as a foreclosure documents w.r.t. the works undertaken by L&T at the Project site. IVVPL, shall be at liberty to award the pending jobs/uncompleted/leftover jobs of L&T to whomsoever IVVPL may consider appropriate on the terms & condition deemed fit by IVVPL. L&T shall have no objections, whatsoever.*
> *E. Both the parties L&T and IVVPL hereby confirms, declared and undertake that this MOU and settlement arrived at herein is in complete satisfaction of its claims, demands etc. whatsoever under the Contracts and that of anyone claiming through or under L&T and IVVPL.*
> ***F. The above settlement is concluded and shall be treated as Full & Final Settlement without any pending claims/ Counter claims etc, with clear understanding of not raising any future claims/counter claims on any account whatsoever***."

15. The question that arises is *whether this Settlement Agreement supersedes the original contracts or not*. For the said purpose, it needs to be noted that the original contract was for executing civil, structural, internal finishing work together with the external development and boundary wall. The nature of the said contract was, therefore, one wherein the Plaintiff was to render services to the Defendant.

16. However, under the Settlement Agreement the complete nature of the settlement itself is different *i.e.* there is an acknowledgment of the amount payable, apartments to be given to the Plaintiff and the bank guarantees were to be released. The original bank guarantees have, in fact, been released. The Settlement Agreement records that this would be a foreclosure document and a full and final settlement and hence, no further work is to be executed by the Plaintiff in the said project. Under such circumstances, the question raised is whether the arbitration clause would survive.

17. In ***Union of India v. Kishorilal Gupta and Bros. 1959 SCC OnLine SC 6***, a similar question arose as to the survival of an arbitration clause in a contract after the said contract is superseded by the execution of a Settlement Agreement. The Court in the said case observed that the arbitration clause perished with the original contract, and it is inconceivable that the parties intended its survival even after the contract was mutually rescinded and substituted by new agreement. The Court thereafter also laid down certain principles. The relevant portions of the said judgment are as under:

> *"**7.** If so, the next question is whether the arbitration clause of the original contracts survived after the execution of the settlement contract dated February 22, 1949. The learned counsel for the appellant contends that the forms of the arbitration clause are wide and comprehensive, and any dispute on the question whether the said contract was discharged by any of the ways known to law came within its fold.*
>
> ***8.** Uninfluenced by authorities or case-law, the logical outcome of the earlier discussion would be that the **arbitration clause perished with the original contract**. Whether the said clause was a substantive term or a*

*collateral one, it was nonetheless an integral part of the contract, which had no existence de hors the contract. It was intended to cover all the disputes arising under the conditions of, or in connection with, the contracts. Though the phraseology was of the widest amplitude,* ***it is inconceivable that the parties intended its survival even after the contract was mutually rescinded and substituted by a new agreement. The fact that the new contract not only did not provide for the survival of the arbitration clause but also the circumstance that it contained both substantive and procedural terms indicates that the parties gave up the terms of the old contracts, including the arbitration clause****. The case-law referred to by the learned counsel in this connection does not, in our view, lend support to his broad contention and indeed the principle on which the said decisions are based is a pointer to the contrary.*

*xxxx*

***10.*** *The following principles relevant to the present case emerge from the aforesaid discussion : (1) An arbitration clause is a collateral term of a contract as distinguished from its substantive terms; but nonetheless it is an integral part of it;* ***(2) however comprehensive the terms of an arbitration clause may be, the existence of the contract is a necessary condition for its operation; it perishes with the contract;*** *(3) the contract may be non est in the sense that it never came legally into existence or it was void ab initio****; (4) though the contract was validly executed, the parties may put an end to it as if it had never existed and substitute a new contract for it solely governing their rights and liabilities thereunder****; (5) in the former case, if the original contract has no legal existence, the arbitration clause also cannot operate, for along with the original contract, it is also void; in the latter case, as the original contract is extinguished by the substituted one,*

*the arbitration clause of the original contract perishes with it; and (6) between the two falls many categories of disputes in connection with a contract, such as the question of repudiation, frustration, breach etc. In those cases it is the performance of the contract that has come to an end, but the contract is still in existence for certain purposes in respect of disputes arising under it or in connection with it. As the contract subsists for certain purposes, the arbitration clause operates in respect of these purposes."*

18. In ***Damodar Valley Corporation v. K.K. Kar, (1974) 1 SCC 141*** the Court had expressed a similar opinion that upon a full and final settlement, the contract does not subsist which as a result perishes the arbitration clause as well. The same has been elucidated in the following manner:

*"7.* ***The contention that has been canvassed before us is that as there has been a full and final settlement under the contract, the rights and obligations under the contract do not subsist and consequently the arbitration clause also perishes along with the settlement. If so, the dispute whether there has or has not been a settlement cannot be the subject of an arbitration. There is, in our view, a basic fallacy underlying this submission****. A contract is the creature of an agreement between the parties and where the parties under the terms of the contract agree to incorporate an arbitration clause, that clause stands apart from the rights and obligations under that contract, as it has been incorporated with the object of providing a machinery for the settlement of disputes arising in relation to or in connection with that contract. The questions of unilateral repudiation of the rights and obligations under the contract or of a full and final settlement of the contract relate to the performance or discharge of the contract. Far from putting an end to the arbitration clause, they fall within*

*the purview of it. A repudiation by one party alone does not terminate the contract. It takes two to end it, and hence it follows that as the contract subsists for the determination of the rights and obligations of the parties, the arbitration clause also survives. This is not a case where the plea is that the contract is void, illegal or fraudulent etc. in which case, the entire contract along with the arbitration clause is non est, or voidable.* ***As the contract is an outcome of the agreement between the parties it is equally open to the parties thereto to agree to bring it to an end or to treat it as if it never existed. It may also be open to the parties to terminate the previous contract and substitute in its place a new contract or alter the original contract in such a way that it cannot subsist. In all these cases, since the entire contract is put an end to, the arbitration clause, which is a part of it, also perishes along with it****. Section 62 of the Contract Act incorporates this principle when it provides that if the parties to a contract agree to substitute a new contract or to rescind or alter it, the original contract need not be performed****. Where, therefore, the dispute between the parties is that the contract itself does not subsist either as a result of its being substituted by a new contract or by rescission or alteration, that dispute cannot be referred to the arbitration as the arbitration clause itself would perish if the averment is found to be valid. As the very jurisdiction of the arbitrator is dependent upon the existence of the arbitration clause under which he is appointed, the parties have no right to invoke a clause which perishes with the contract****.*

*8. In certain circumstances, it may be that there has been a termination of the contract unilaterally and as a consequence the parties may agree to rescind the contract. In such a situation the rescission would put an end to the performance of the contract in future, but it may remain alive for claiming damages either for*

*previous breaches or for the breach which constituted the termination.*

*9.* ***We have adverted to these several aspects merely to show that contracts being consensual, the question whether the arbitration clause survives or perishes would depend upon the nature of the controversy and its effect upon the existence or survival of the contract itself. In other words, where the binding nature of the contract is not disputed, but a difference has arisen between the parties thereto as to whether there has been a breach by one side or the other or whether one or both the parties have been discharged from further performance such differences are "upon", "in relation to" or "in connection with the contract.*** *That a contract has come to an end by frustration does not put an end to the contract for all purposes, because there may be rights and obligations which had arisen earlier when it had not come to an end, as it is only the future performance of the contract that has come to an end. It is, therefore, clear that a dispute as to the binding nature of the contract cannot be determined by resort to arbitration, because as we have stated earlier, the arbitration clause itself stands or falls according to the determination of the question in dispute. ……"*

19. In ***Damodar Valley (supra)*** the entire law on the subject was discussed and it was categorically held that if there has been termination of a contract unilaterally, the claim of damages can be made under the Arbitration Clause. The Court has also observed that the question whether Arbitration Clause survives or perishes, would depend upon the nature of the controversy and its effect. If the parties are in *lis* in respect of breach of the contracts and whether future performance has been discharged or not, it may be an arbitral dispute. However, the observation in para 9 of the above

decision would be relevant that the Arbitration Clause would itself fall if the contact has come to an end and has been so agreed by virtue of a settlement.

20. In ***Nathani Steels Ltd. v. Associated Constructions, 1995 Supp (3) SCC 324***, the Court observed that once the disputes are amicably settled by way of final settlement between the parties, one party cannot invoke the arbitration clause - if the same is allowed the sanctity of the settlement agreement will be lost. The relevant portion of the decision is extracted below:

> **"3.** *The appellant has invited our attention to two decisions of this Court. The first dated 1-10-1993 in P.K. Ramaiah and Co. v. Chairman & Managing Director, National Thermal Power Corpn. [1994 Supp (3) SCC 126] and second, dated 4-2-1994 in State of Maharashtra v. Nav Bharat Builders [1994 Supp (3) SCC 83] . In the first mentioned case the parties had resolved their disputes and differences by a settlement pursuant whereto the payment was agreed and accepted in full and final settlement of the contract. Thereafter, brushing aside that settlement the Arbitration clause was sought to be invoked and this Court held that under the said clause certain matters mentioned therein could be settled through Arbitration but once those were settled amicably by and between the parties and there was full and final payment as per the settlement, there existed no arbitrable dispute whatsoever and, therefore, it was not open to invoke the Arbitration clause. In the second mentioned case the respondent-Contractor acknowledged the receipt of the amount paid to him and stated that there was unconditional withdrawal of his claim in the suit in respect of the labour escalation. There was, thus, full and final settlement of the claim and it was contended that no arbitrable dispute survived in relation thereto. Other claims, if any, and which were not settled by and*

*between the parties could be raised and it would be open to consider whether the arbitrable dispute arose under the contract necessitating reference to arbitration. Dealing with this question also this Court after referring to the decision in P.K. Ramaiah case [1994 Supp (3) SCC 126] concluded that in relation to the claim under the head 'labour escalation' there did not remain any arbitrable dispute which could be referred to arbitration. It would thus be seen that once there is a full and final settlement in respect of any particular dispute or difference in relation to a matter covered under the Arbitration clause in the contract and that dispute or difference is finally settled by and between the parties, such a dispute or difference does not remain to be an arbitrable dispute and the Arbitration clause cannot be invoked even though for certain other matters, the contract may be in subsistence. Learned counsel for the respondent, however, placed great emphasis on an earlier decision of this Court in Damodar Valley Corpn. v. K.K. Kar [(1974) 1 SCC 141] and in particular to the observations made in paras 11 to 13 of the judgment. It may, at the outset, be pointed out that a similar argument was advanced based on the observations made in this decision, in Ramaiah case [1994 Supp (3) SCC 126] also (vide para 7) but the same was rejected holding that on the facts since the respondent did not give any receipt accepting the settlement of the claim, the payment made by the other side was only unilateral and hence the dispute subsisted and the Arbitration clause in the contract could be invoked. Therefore, that decision can be distinguished on facts. Even otherwise we feel that once the parties have arrived at a settlement in respect of any dispute or difference arising under a contract and that dispute or the difference is amicably settled by way of a final settlement by and between the parties, unless that settlement is set aside in proper*

> *proceedings, it cannot lie in the mouth of one of the parties to the settlement to spurn it on the ground that it was a mistake and proceed to invoke the Arbitration clause.* ***If this is permitted the sanctity of contract, the settlement also being a contract, would be wholly lost and it would be open to one party to take the benefit under the settlement and then to question the same on the ground of mistake without having the settlement set aside. In the circumstances, we think that in the instant case since the dispute or difference was finally settled and payments were made as per the settlement, it was not open to the respondent unilaterally to treat the settlement as non est and proceed to invoke the Arbitration clause. We are, therefore, of the opinion that the High Court was wrong in the view that it took.***"

21. In cases where the original agreement is superseded/novated by a subsequent agreement by mutual agreement, the arbitration clause of the original agreement does not survive. The same was clearly held in ***Young Achievers v. IMS Learning Resources Pvt. Ltd., (2013) 10 SCC 535,*** in the following terms:

> *"**7.** The exit paper would clearly indicate that it is a mutually agreed document containing comprehensive terms and conditions which admittedly does not contain an arbitration clause. We are of the view that the High Court is right in taking the view that the case on hand, is not a case involving assertion by the respondent of accord a satisfaction in respect of the earlier contracts dated 1-4-2007 and 1-4-2010. If that be so, it could have referred to the arbitrator in terms of those two agreements going by the dictum in Union of India v. Kishorilal Gupta and Bros. [AIR 1959 SC 1362] This Court in Kishorilal Gupta case [AIR 1959 SC 1362] examined the question whether an*

*arbitration clause can be invoked in the case of a dispute under a superseded contract.* ***The principle laid down is that if the contract is superseded by another, the arbitration clause, being a component part of the earlier contract, falls with it. But where the dispute is whether such contract is void ab intio, the arbitration clause cannot operate on those disputes, for its operative force depends upon the existence of the contract and its validity.*** *The various other observations were made by this Court in the abovementioned judgment in respect of "settlement of disputes arising under the original contract, including the dispute as to the breach of the contract and its consequences." The principle laid down by the House of Lords in Heyman v. Darwins Ltd. [1942 AC 356 : (1942) 1 All ER 337 (HL)] was also relied on by this Court for its conclusion. The collective bargaining principle laid down by the US Supreme Court in Nolde Bros. case [51 L Ed 2d 300 : 430 US 243 (1977)] would not apply to the facts of the present case.*

***8.*** *We may indicate that so far as the present case is concerned****, parties have entered into a fresh contract contained in the exit paper which does not even indicate any disputes arising under the original contract or about the settlement thereof, it is nothing but a pure and simple novation of the original contract by mutual consent.*** *Above being the factual and legal position, we find no error in the view taken by the High Court. The appeal, therefore, lacks merit and stands dismissed, with no order as to costs."*

22. The Court in ***ONGC Mangalore Petrochemicals Ltd. v. ANS Constructions Ltd. and Anr., (2018) 3 SCC 373*** held that upon a full and final settlement of claims, no arbitrable disputes exist. The relevant portion is set as under:

> *"**31.** Admittedly, no-dues certificate was submitted by the contractee company on 21-9-2012 and on their request completion certificate was issued by the appellant contractor. The contractee, after a gap of one month, that is, on 24-10-2012, withdrew the no-dues certificate on the grounds of coercion and duress and the claim for losses incurred during execution of the contract site was made vide letter dated 12-1-2013 i.e. after a gap of 3½ (three-and-a-half) months whereas the final bill was settled on 10-10-2012. When the contractee accepted the final payment in full and final satisfaction of all its claims, there is no point in raising the claim for losses incurred during the execution of the contract at a belated stage which creates an iota of doubt as to why such claim was not settled at the time of submitting final bills that too in the absence of exercising duress or coercion on the contractee by the appellant contractor.* ***In our considered view, the plea raised by the contractee company is bereft of any details and particulars, and cannot be anything but a bald assertion. In the circumstances, there was full and final settlement of the claim and there was really accord and satisfaction and in our view no arbitrable dispute existed so as to exercise power under Section 11 of the Act.*** *The High Court was not, therefore, justified in exercising power under Section 11 of the Act."*

23. In ***United India Insurance Co. Ltd. v. Antique Art Exports Ltd., (2019) 5 SCC 362***, the Court observed that a mechanical process cannot be adopted without there being any supporting evidence of an arbitral dispute, when the same has been settled with accord and satisfaction. The relevant portions of the said judgment is set out below:

> *"**20.** The submission of the learned counsel for the respondent that after insertion of sub-section (6-A) to Section 11 of the Amendment Act, 2015 the jurisdiction*

*of this Court is denuded and the limited mandate of the Court is to examine the factum of existence of an arbitration and relied on the judgment in Duro Felguera, S.A. v. Gangavaram Port Ltd. [Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] The exposition in this decision is a general observation about the effect of the amended provisions which came to be examined under reference to six arbitrable agreements (five agreements for works and one corporate guarantee) and each agreement contains a provision for arbitration and there was serious dispute between the parties in reference to constitution of Arbitral Tribunal whether there has to be Arbitral Tribunal pertaining to each agreement. In the facts and circumstances, this Court took note of sub-section (6-A) introduced by the Amendment Act, 2015 to Section 11 of the Act and in that context observed that the preliminary disputes are to be examined by the arbitrator and are not for the Court to be examined within the limited scope available for appointment of arbitrator under Section 11(6) of the Act. Suffice it to say that appointment of an arbitrator is a judicial power and is not a mere administrative function leaving some degree of judicial intervention;* ***when it comes to the question to examine the existence of a prima facie arbitration agreement, it is always necessary to ensure that the dispute resolution process does not become unnecessarily protracted.***

***21.*** *In the instant case, prima facie no dispute subsisted after the discharge voucher being signed by the respondent without any demur or protest and claim being finally settled with accord and satisfaction and after 11 weeks of the settlement of claim a letter was sent on 27-7-2016 for the first time raising a voice in the form of protest that the discharge voucher was signed under undue influence and coercion with no supportive prima facie evidence being placed on*

> *record in absence thereof**, it must follow that the claim had been settled with accord and satisfaction leaving no arbitral dispute subsisting under the agreement to be referred to the arbitrator for adjudication**.*
>
> ***22.** In our considered view, the High Court has committed a manifest error in passing the impugned order and adopting a mechanical process in appointing the arbitrator without any supportive evidence on record to prima facie substantiate that an arbitral dispute subsisted under the agreement which needed to be referred to the arbitrator for adjudication."*

24. ***A perusal of the above judgments would show that the settled legal position is that if a mutual settlement supersedes the original contract, the original arbitration clause would not survive. If there is unilateral repudiation, then the arbitration clause may survive depending on the facts.*** In the present case there is no arbitrable dispute left between the parties as the Settlement Agreement states that the agreement is in complete satisfaction of claims and demands under the Contract. The said clause of the Settlement reads as under:

> *"F. The above settlement is concluded and shall be treated as Full & Final Settlement without any pending claims/ Counter claims etc. with clear understanding of not raising any future claims/ counter claims on any account whatsoever."*

25. Therefore, if all the claims are dealt with, and settled no issues under the original contracts are left to be adjudicated upon in arbitration. The Settlement Agreement is binding between the parties and the Defendant has in fact acted upon the settlement, by referring to the settlement as a final

settlement in repeated correspondence and returning the original expired Bank Guarantees as per clause 'C' of the Settlement Agreement.

26. In fact, as per the Settlement Agreement the Defendant reserved rights to get any unfinished work done by a third party and not by L&T. This itself shows that the original service contract was completely replaced and superseded by the final settlement, which was entered into between the parties.

27. Clauses D, E and F of the Settlement Agreement makes it abundantly clear that this is a foreclosure, a full and final settlement irrespective of whatever claims were raised by L&T under the original agreement. The Defendant, in its emails dated 25th April, 2023, recognizes that the Settlement Agreement is a final settlement. In the subject matter of the said email, there is no reference to the original project. One apartment was released in terms of the said email implementing the settlement. The Defendant acknowledges that the due amount shall be paid as per the settlement by allotment of the following flats:

| IREO VICTORY VALLEY UNITS | | | | | | |
|---|---|---|---|---|---|---|
| S. No. | Unit/ Apartment No. | Area (in Sq. fts) | Market rates | Market Total cost | IREO offer Rate to L&T per Sq. Ft. (in Rupees) | IREO offer Total Cost for L&T (in Rupees) |
| 1. | OC-VV-A-05-03 | 3138 | 12,700 | 3,98,52,600 | 10,250 | 3,21,64,500 |
| 2. | 0C- V V-B-05-03 | 3138 | 12,700 | 3,98,52,600 | 10,250 | 3,21,64,500 |
| 3. | 0C-VV-D-05-03 | 3386 | 12,700 | 4,30,02,200 | 10,250 | 3,47,06,500 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 4. | OC -VV-C-35-01 | 1472 | 13,500 | 1,98,72,000 | 1 1,500 | 1,69,28,000 |
| 5. | OC-VV-SHOP-00-18 | 384 | 50,000 | 1,91,00,000 | 40,000 | 1,53,60,000 |
| 6. | OC-VV-SHOP-00-1 9 | 400 | 50,000 | 2,00,00,000 | 40,000 | 1,60,00,000 |
| | TOTAL | | | 18,17,79,400 | | 14,73,23,500 |

28. Further, the remaining amount of Rs.4.18 crores was also to be cleared as per the following schedule:

| IREO GURGAON HILLS UNIT | | | | | | |
|---|---|---|---|---|---|---|
| S. No. | Unit/ Apartment No. | Area (in Sq. fts) | Market rates | Market Total cost | IREO offer Rate to L&T per Sq. Ft. (in Rupees) | IREO offer Total Cost for L&T(in Rupees) |
| 1. | 0C-VV-A-05-03 | 4786 | 11,500 | 5,50,39,000 | 9,750 | 4,66,03,500 |
| | Gross Total | | | 23,68,18,400 | | 19,39,87,000 |

29. Again, various correspondences have been entered into the parties and it is repeatedly acknowledged by the Defendant that the settlement is to be given effect to. The various deposits, which were to be made to give effect to the settlement, are contained in the email dated 8th November, 2023. Relevant portion of the said email reads as under:

> *"Subject:* ***Final Settlement of issues of IREO Victory Valley Pvt. Ltd. and Gurgaon Hills unit in terms of Settlement Agreement dated 18.01.2020 for withdrawal of IBC Petition***

> *XXX*
> *The full and final settlement amount agreed between IREO and L&T Construction is INR 18 crore, the balance amount shall be paid by you to IREO at the time of handing over of all the above units. The said units of IREO Victory Valley shall be handed over within 4 months from execution of settlement agreement. In case of IREO Gurgaon Hills, we shall handover the same for fit-out within 4 months from execution of settlement agreement.* "

30. The above Settlement Agreement and the email shows that the Defendant had understood the same to be in complete supersession of the earlier contract. The terminology used by the Defendant '***Final Settlement of issues***' leave no manner of doubt as to the nature of the Agreement. The arbitration clause is not mentioned even once in the said email correspondence.

31. Moreover, effort ought to be made to not unnecessarily linger or protract dispute resolution processes, as alternate dispute resolution mechanisms were brought in to resolve disputes at a faster pace and not to re-open settled disputes. In addition, the Court found it curious that the Defendant insists on going to arbitration while not denying the existence of the Settlement Agreement. Arbitration proceedings are meant to expedite the adjudication of disputes and cannot be used as a straw to delay the adjudication and escape liabilities and obligations under a duly executed Settlement Agreement.

32. In ***B.L. Kashyap And Sons Ltd. v. Mist Avenue Private Ltd., 2023:DHC:3996***, the Court laid down the principles as to cases in which

the arbitration clause can be invoked from the original contract. The said principles are as under:

> *"23. For the purposes of the present case, the following principles emerge from these authorities:*
> *a. An arbitration clause contained in an agreement which is void ab initio cannot be enforced as the contract itself never legally came into existence.*
> *b.* ***A validly executed contract can also be extinguished by a subsequent agreement between the parties.***
> *c. If the original contract remains in existence, for the purposes of disputes in connection with issues of repudiation, frustration, breach, etc., the arbitration clause contained therein continues to operate for those purposes.*
> *d. Where the new contract constitutes a wholesale novation of the original contract, the arbitration clause would also stand extinguished by virtue of the new agreement.*
> *24.* ***An application of these principles requires an interpretation of the subsequent agreement between the parties- in this case, the MoU- to determine whether the arbitration clause in the original agreement remains enforceable****."*

33. The above stated judgment holds that in cases where there is a subsequent Settlement Agreement, a valid contract can be extinguished. The Settlement Agreement in the present case is the subsequent agreement, whose interpretation would show that the arbitration clause in the original agreement would not be enforceable as this is a full and final settlement with respect to the contract and will be treated as a foreclosed document. The text of the Settlement Agreement is clear to the effect that this is a final settlement and MoU, with respect to the disputes and claims that arose

between the parties in consideration to the contract and that there are no pending claims, neither any future claims were permitted to be raised.

34. In the present case, the decision of ***Branch Manager, Magma Leasing and Finance Ltd. and Anr. v. Potluri Madhavilata and Anr., (2009) 10 SCC 103*** would not be applicable as the question that was raised therein was in respect of a hire-purchase agreement where the recovery of possession of the vehicle was sought. Certain claims of the finance company, arising out of the hire purchase agreement, continued to remain, which the Supreme Court referred finally to arbitration. The decision in ***Unique Decor (India) Pvt. Ltd. v. Synchronized Supply Systems Ltd., (2023) 3 HCC (Del) 456*** also was a case where there was a question as to whether the contract was novated/superseded or not.

35. Currently, there are no claims raised by the Plaintiff, which arise out of the original contract at all. The only claims are in terms of the Settlement Agreement, which the Defendant has acknowledged, implemented and not refuted. In the present case, there is no doubt left in view of the clauses in the Settlement Agreement and the emails that the original contract stood superseded in terms of the Settlement Agreement. The foreclosure itself is evidence of that fact.

36. No defence has been filed by the Defendant and no reply to the Summary Judgment application has been filed. The Defendant has had adequate opportunity to defend itself. However, the Defendant has chosen not to do so. Copy of the Written statement, which is stated to have been filed in January but is not on record, has been handed across to the Court. The same has been perused. Even in the written statement, clearly there is no substantial defence by the Defendant.

37. Under such circumstances, there is no real prospect for the Defendant to succeed or successfully defend the claims of the Plaintiff. In the absence of any defence, the suit deserves to be decreed. A decree is, accordingly, granted in terms of the Settlement Agreement dated 18th January 2020. Settlement Agreement shall form part of the decree. In respect of unpaid sums, simple interest @ 8% per annum is granted in favour of the Plaintiff.

38. On the payment of costs of Rs.25,000/- as per previous order, ld. Counsel for the Defendant assures the Court that the same would be paid within two days to ld. Counsel for the Plaintiff. The details of the bank account shall be furnished to ld. Counsel for the Defendant.

39. The suit, along with all pending applications, is disposed of. Decree sheet be drawn. Settlement Agreement dated 18th January, 2020 shall form part of the decree.

**PRATHIBA M. SINGH**
**JUDGE**

**APRIL 24, 2024/***dk/mr/ks*