

## Discharge of Contract by Accord & Satisfaction: A Bar to Invoke Arbitration?

The Honible Supreme Court of India, while dealing with an appeal arising out of an order passed by the Honible Gujarat High Court (îGHCî) thereby appointing a sole arbitrator despite the fact that the Respondent therein (Appellant before Supreme Court) opposed the appointment of arbitrator on the ground that the main contract stood discharged by îaccord and satisfactionî so did the arbitration clause therein, took cognizance of all its earlier judgements passed under 1940 Act as well as under the 1996 Act (both prior to, and post, amendment of the Act on 23.10.2015) and held that whether there has been a discharge of contract or not, is a mixed question of law and fact and if the dispute arises as to whether the contract has been discharged or not, such a dispute is arbitrable as per the mechanism prescribed under the arbitration agreement contained in the underlying contract .

### **Factual Matrix of the Case:**

The dispute between the Appellant and Respondent before the Honible Supreme Court arose out of insurance policy taken by the Respondent to cover the risk by fire at its factory premises. During the period of insurance, two incidents of fire occurred at the premises of the Respondent and case before the apex court was concerning the first incident where a claim of Rs.1,76,19,967/- of the Respondent was settled by the insurance company i.e. the Appellant for an amount of Rs 84,19,579. Respondent issued a consent letter dated 24.12.2018 accepting the assessment of loss by the surveyor and also signed and advance discharge voucher dated 04.01.2019. Accordingly, the insurance company paid the amount to the Respondent. On a later date (after receipt of full and final settlement amount even against second incident of fire), the Respondent demanded the balance amount of the claim in respect of the first incident and due to refusal by the Appellant, arbitration clause was invoked by the Respondent on 16.03.2020 and thereafter approached GHC by filing a petition under Section 11(6) of the



**Vikas Goel**  
Senior Partner  
E: [vikas@singhania.in](mailto:vikas@singhania.in)

Arbitration and Conciliation Act, 1996 (the Act) for appointment of Sole Arbitrator. The Appellant/insurance company opposed the petition on the ground that Respondent having signed the consent letter dated 24.12.2018 while accepting the amount of Rs. 84,19,579/- towards claim against the first incident of fire, cannot turn around and raise the dispute. The GHC, following the judgment of the Apex Court held that the dispute in question was falling in the realm of adjudication and the said function was to be discharged by the arbitrator. Accordingly, the sole arbitrator was appointed.

### **Matter before the Hon'ble Supreme Court**

Before the Hon'ble Supreme Court, the Appellant raised several contentions with main emphasis on the fact that the full and final settlement having been arrived at between the parties by execution of discharge voucher, the same would operate as a bar to invoke arbitration. On the other hand, the Respondent submitted that execution of discharge voucher was on account of acute economic distress due to pendency of huge amount of claim with the appellant (nearly around Rs. 8 crore cumulatively towards claim of two fire incidents). It was also pleaded that the Respondent was also under pressure from other financial institutions from whom loan had been availed. Based on the respective contentions of the parties, the Hon'ble Court framed following three issues:

- Whether the execution of a discharge voucher towards the full and final settlement between the parties would operate as a bar to invoke arbitration?
- What is the scope and standard of judicial scrutiny that an application under Section 11(6) of the Act, 1996 can be subjected to when a plea of 'accord and satisfaction' is taken by the defendant?
- What is the effect of the decision of this Court in In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899 on the scope of powers of the referral court under Section 11 of the Act, 1996?

Referring to the doctrine of severability of the Arbitration Act, the apex court held that by its inherent nature the arbitration agreement is independent of the substantive contract. It was further held that even if the contracting parties, in pursuance of a settlement, agree to discharge each other of any obligations arising under the contract, the same would not ipso facto mean that the arbitration agreement too would come to an end, unless the parties expressly provide so. The intention of the parties in discharging a contract by 'accord and satisfaction' is to relieve each other of the existing or any new obligations

under the contract but the same cannot be construed to mean that the parties also intended to relieve each other of their obligation to settle any dispute pertaining to the original through arbitration.

The court further held that no arbitrable disputes may subsist after execution of a full and final settlement, yet any dispute pertaining to the full and final settlement itself, by necessary implication being a dispute arising out of or in relation to or under the substantive contract, would be referred to arbitration which continues to be in existence even after the parties have discharged the original contract by accord and satisfaction.

As regards, the scope and standard of judicial scrutiny to be undertaken in an application under Section 11(6) of the Act when plead of accord and satisfaction is raised, the apex court once again considered all precedent on the subject and summarized the position of law in para 92 of the judgment.

The Supreme Court concluded that the court while acting in exercising of power under Section 11(6) of the Act will look into the existence of arbitration agreement and would refuse to refer the parties to arbitration only when claims are ex facie frivolous and/or non-arbitrable. The court therefore affirmed the position as laid down in the case of *Mayawati Trading vs. Pradyut Deb Burman and Vidya Drolia & Ors v. Durga Trading Corporation* where it was held that while exercising power under Section 11 of the Act, court will not go into the question of whether accord and satisfaction has taken place. It was held that dispute pertaining to accord and satisfaction of the claim is not one which attacks or questions the existence of the arbitration agreement in any way. The arbitration agreement being separate and independent from the underlying substantive contract continues to remain in existence even after the original contract stands discharged. It was further held that accord and satisfaction being mixed question of law and fact, comes within the exclusive jurisdiction of the arbitral tribunal, if not otherwise agreed upon between the parties.

The Apex Court further held that while deciding an application under Section 11 of the Act, the referral court should only consider whether the application under Section 11 of the Act has been made within limitation. The court should not get into an intricate evidentiary enquiry as to whether the claims are time barred and that issue should be left to be determined by the arbitrator. With the aforesaid finding, the court upheld the decision of GHC and affirmed the appointment of arbitrator by GHC.

© 2024 All rights reserved. This article is for information purposes only. No part of the article may be reproduced or copied in any form or by any means [graphic, electronic or mechanical, including photocopying, recording, taping or information retrieval systems] or reproduced on any disc, tape, perforated media or other information storage device, etc., without the explicit written permission of Singhania & Partners LLP, Solicitors & Advocates ("The Firm").

**Disclaimer:** Though every effort has been made to avoid errors or omissions in this article, errors might creep in. Any mistake, error or discrepancy noted by the readers may be brought to the notice of the firm along with evidence of it being incorrect. All such errors shall be corrected at the earliest. It is notified that neither the firm nor any person related with the firm in any manner

shall be responsible for any damage or loss of action to anyone, of any kind, in any manner, therefrom