

When Full and Final Settlement Bars Arbitration

In a recent judgment, the Supreme Court has upheld the sanctity of a full and final settlement by its judgment in *United India Insurance Co. Ltd. v Antique Art Exports Pvt Ltd.* The said Appeal was filed by the Insurance Company seeking to assail the appointment of Arbitrator by the High Court in exercise of its power Under Section 11(6) of the Arbitration and Conciliation Act, 1996 (the Act).

Brief Facts of the Case

- Respondent-claimant was running its factory and purchased two Standard Fire and Special Perils Policies.
- A fire took place in its factory due to a short circuit as alleged by the Respondent-Claimant. The Claimant duly intimated the Appellant Company and a surveyor was appointed thereafter. A report was submitted by the authorized surveyor. Subsequently, the Appellant Company sent an e-mail to the Respondent with intimation that it has approved a certain amount of the claim on account of fire, towards full and final settlement, with complete details of the computed amount.
- On the same date the Respondent sent a reply accepting the computation and provided the desired details with final discharge voucher and details of the bank account in which the payment was to be credited.
- After 11 weeks of the abovesaid full and final discharge/settlement, the Respondent claimed that it was coerced into signing on the dotted line of the settlement. Therefore, it rightly approached the High Court for appointment of an Arbitrator to adjudicate the subject dispute.

It was the case of the Appellant that

- Once the claimant received the settled compensation and subsequently issued a discharge voucher in full and final settlement of its claim, there was a discharge of the contract by accord and satisfaction. As a result, neither any contract nor any claim survived.
- Further, after 11 weeks of receipt of the settled amount, it was not open for the Respondent, to contend that the discharge was obtained under coercion and undue influence without furnishing any evidence in support thereof.
- Lastly, Sub-section (6A) of Section 11 of the Act has been introduced by Amendment Act, 2015 with a limited purpose for expediting the arbitral disputes in a time bound manner provided a prima facie arbitral claim/dispute subsists under the arbitral



Shambhu Sharan
Partner
E: shambhu@singhania.in



Ambika
Associate
E: ambika@singhania.in

agreement for adjudication by the Arbitrator. In the instant case, as there was no arbitral dispute subsisting after the claim was finally settled.

It was contended by the Respondent that

- The Respondent was not in a bargaining position and being in financial stress, had no option but to accept the claim on the dotted lines settled by the Appellant.
- Keeping in view the presence of an arbitration clause in the agreement, it was for the Arbitrator to examine whether the acceptance of the claim by the Respondent was voluntary or under undue influence or coercion

The High Court

- The Hon’ble High Court held that, once there is existence of an arbitration agreement and acceptance of the payment disbursed by the Appellant company, the question that whether it was under coercion or undue influence, is a matter to be examined by the Arbitrator and accordingly a sole arbitrator was appointed in the matter.

The Supreme Court

- The existence of an arbitration Clause in the contract of insurance was not disputed.
- The question which arose for consideration was, whether in the case at hand, the discharge upon acceptance of compensation and subsequent signing of discharge letter was voluntary or under coercion/undue influence. Also, whether the Respondent was justified in invoking Section 11(6) of the Act.
- The Hon’ble Court held that execution of full and final agreement and receipt of a discharge voucher in itself cannot be a bar to arbitration. It further relied upon it’s decision in in National Insurance Co. Limited v. Boghara Polyfab Private Limited [MANU/SC/4056/2008 : 2009(1) SCC 267] which lays down illustrations as to when claims are arbitrable and when they are not

Backdrop	Settlement	No Reference/ No Bar to Arbitration
Claim referred to conciliation/ Pre -litigation Lok Adalat	Terms of Settlement drawn and signed by both parties and attested by Conciliator/Members of Lok Adalat	No reference to Arbitration
Negotiations are held for settlement of disputed claims resulting in an agreement settling all the pending claims/disputes	Settlement made, amount agreed is paid and contractor issues a discharge voucher/ no claim certificate/ full and final receipt	No reference to Arbitration
Employer admits part of the claimed amount and expresses that it shall be released only once it is accepted by the contractor as the full and final payment	Subsequently the contractor who is hard pressed on funds signs the dotted line in order to get the amount released. Such a discharge is under economic duress on account of coercion employed by employer and does not amount to discharge of the contract by accord and satisfaction	No bar to Arbitration
An Insured makes a claim for loss suffered. Claim is neither admitted nor rejected. It is informed to the insured that unless the claimant gives a full and final voucher for a specified amount (less than the	The Claimant agrees and issues an undated discharge voucher in full and final settlement. Thereafter only the admitted amount is paid. The accord and satisfaction is not voluntary and is in duress,	No bar to Arbitration

claimed amount), the entire claim would be rejected.	compulsion and coercion.	
Claimant makes a claim which is disputed by the Respondent,. The claimant who is keen to have a settlement and avoid litigation, reduces the claim and requests for settlement.	Respondent agrees, settles claim and obtains a full and final discharge voucher. Here even if the claimant might have agreed for settlement due to financial compulsions, commercial pressure or economic duress, the decision was his free choice	No reference to Arbitration

- Mere allegation that the discharge voucher/no claim certificate has been obtained by fraud/coercion/undue influence by the other party is not sufficient for appointment of the arbitrator unless the party alleging the same is able to produce prima facie evidence to substantiate the allegation. The Court has the power to find out if prima facie the dispute is genuine and requires invocation of Sec. 11(6) of the Act.

In the instant case, the Apex Court reversed the decision of the High Court and held that prima facie no dispute subsisted after the discharge voucher was signed by the Respondent without any demur or protest. The Appellant after 11 weeks of the settlement of claim sent a letter on 27th July, 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, the Apex Court opined, 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.