

SUPREME COURT OF INDIA

United India Insurance Co.Ltd.

Vs.

Antique Art Exports Pvt. Ltd.

C.A.No.3284 of 2019

(A.M.Khanwilkar and Ajay Rastogi,JJ.,)

28.03.2019

JUDGMENT

Ajay Rastogi,J.,

SLP(C)No. 23956 of 2017

1. Leave granted.

2. These appeals have been filed by the Insurance Company assailing the order dated 30th May, 2017 passed by the High Court of Delhi appointing an Arbitrator in exercise of power under Section 11(6) of the Arbitration and Conciliation Act, 1996(hereinafter being referred to as “the Act”) to adjudicate the dispute between the parties.

3. The facts in brief manifest from the record and relevant for the present purpose are that the respondent claimant was running its factory situated at 78, Kilo Mile Stone, Karhans Village, Main GT Road, Samalakha, Panipat and purchased two Standard Fire and Special Perils Policies dated 29 th June, 2013 and 10th October, 2013. On 25th September, 2013 and thereafter on 25th October, 2013, a fire took place in the factory on account of a short circuit as claimed by the respondent claimant. The appellant Company on receipt of the information appointed M/s. Protocol Surveyors & Engineers Pvt. Ltd. as surveyors and also appointed their investigator to submit the fact finding report. After the report was submitted by the authorised surveyor, the appellant Company sent an e-mail to the respondent with an intimation that it has approved its claim for an amount of Rs. 2,81,44,413/- on account of fire dated 25th October, 2013 towards full and final settlement with complete details of the amount computed. The extract of the e-mail sent by the appellant Company to the respondent has been placed on record at Annexure P-2 in Civil Appeal arising out of SLP(C) No. 23956 of 2017 and is reproduced as under:-

“From: Jaiprakash1@uiic.co.in Sent: Thursday, May 05, 2016 1:23 PM To: Vimal Singh

CC: sangeetagupta@uiic.co.in; vijaysharma@uiic.co.in;

nareshchandolia@uiic .co. in Subject: Fire Claim dated 25.10.2013

Sir/Madam,

This is to inform you that the Competent Authority has approved your claim for an amount of Rs. 2,81,44,413/- (building Rs. 88,18,691 P & M Rs. 7,32,382 FFF Rs. 3,61,049 Finished Goods, Rs. 1,95,66,389 Fire Fighting Ex. Rs. 59,000 Cost of Debris Removal Rs. 88,187 Total Rs. 2,96,25,698)

Less Excess 5% Rs. 14,81,285 = Rs. 2,81,44,413) of loss dated 25.10.2013 (Claim No. 0407001113C101515001)

In order to release the payment we require following from your end.

1. Confirmation from the concerned bank “Indian Overseas Bank, Defence Colony Branch. Through mail that in which Account the payment has to be made through NEFT.
2. Deposit Re-instatement premium of Rs.19100/-
3. Fire Fighting expenses bills in original
4. Debris Removal bills in original.
5. Full and final settlement discharge voucher for Rs. 2,81,44,413/- duly endorsed by the bank also without any Subjectivity.

Please furnish.

Jaiprakash Divisional Manager

United India Insurance Company Limited 10203, IIIrd Floor, Jamuna House,
Padam Singh Road New Delhi-110005 Mobile : 9910791508 Phone : 28755967,
28755419 jaiprakash@uiic .co.in ”

4. On the same date, i.e. 5th May, 2016, 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. The extract of the e-mail and the discharge voucher sent by the respondent is reproduced hereunder:-

“ANTIQUE ART Exports Pvt. Ltd.

(A Govt. of India Recognized Export House)

PANIPAT OFFICE: 78 K.M. Stone, G.T. Road, karhans Village, Tehsil Samalkha,
Panipat-132103(INDIA)

T:0091-180-3003300 (100 Lines),

F: 0091-180-3003311

E:Info@antiqueartexports.com, :www.antiqueartexports.com

The Divisional Manager 05.05.2016

United India Insurance Co. Ltd. 10203, 3rd Floor, Jamuna House Padam Singh
Road Karol Bagh,
New Delhi.

Kind Attn: Mr. Jaiprakash

Subject : Fire Claim dated 25.10.2013

Dear Sir,

We are in receipt of your email of today's date, wherein you have asked to furnish certain documents/information for doing the needful at your end. Accordingly, we are submitting herewith desired information/documents for your necessary action.

1. We have already requested our bank to confirm account details, in which payment has to be made through NEFT. Hopefully, you must have received the same directly from Bank on your email.
2. Regarding re-instatement premium of Rs.19100/-, we request you to deduct the same from claim payment.
3. Original Fire Fighting expenses bills are submitted herewith for doing the needful at your end.
4. Regarding Debris Removal Bills in original, we are enclosing herewith separate letter and contents of the same are self-explanatory. This payment is to be released at later date as per our letter.
5. Full and final settlement discharge voucher for Rs.2,81,44,413/- duly endorsed by the bank is attached for doing the needful at your end. While hoping that you will find above information/ documents in line of your requirement, we look forward to have the immediate transfer of payment of our claim to our bank.

A line of confirmation in this regard will be highly appreciated.

Thanking you
Yours faithfully,
For Antique Art Exports Pvt. Ltd.
Ashok Jain Chairman”

“ANTIQUE ART Exports Pvt. Ltd.
(A Govt. of India Recognized Export House)
PANIPAT OFFICE: 78 K.M. Stone, G.T. Road, karhans Village, Tehsil Samalkha,

Panipat-132103(INDIA)
T:0091-180-3003300 (100 Lines), F: 0091-180-3003311
E:Info@antiqueartexports.com, :www.antiqueartexports.com

We, Antique Art Exports Pvt. Ltd., 78 KM Stone, Karhans Village, Tehsil Samalkha, Panipat-132103, Haryana do hereby accept payment of Rs.2,81,44,413/- (Rupees Two Crore Eighty One Lacs Fourty Four Thousand and Four Hundred Thirteen only) as full and final settlement against our fire claim No.:0407001113 C101515001 of loss dated 25.10.2013 without any subjectivity.

For Antique Art Exports Pvt. Ltd.
Sd/- Ashok Jain Chairman”

5. Civil Appeal arising out of SLP(C) No. 23963 of 2017 deals with the fire taken place on 25th September, 2013. It is not disputed between the parties that the facts are similar except that the claim was settled for Rs. 2,20,36,840/-.

6. Indisputedly, both the claims were accepted by the respondent without any demur or protest, and after full and final settlement and discharge of claim in reference to both the claims of the incident dated 25th September, 2013 and 25th October, 2013, the respondent later through e-mail dt. 11th July, 2016 desired certain details and reports with a break up of computation including copy of the preliminary survey report etc. and there was no whisper that any coercion or undue influence, etc. was used by the appellant company. The e-mail was replied by the appellant on 20th July, 2016 giving all details as desired by the respondent. Thereafter on 27th July, 2016 for the first time nearly almost after 11 weeks of the receipt of claim and full and final discharge, respondent claimed that fraud, coercion and undue influence was exercised and he was forced to sign on the dotted lines without furnishing any prima facie evidence in support thereof. In furtherance, application came to be filed before the High Court on 11th January, 2017 under Section 11(6) of the Arbitration and Conciliation Act, 1996(hereinafter being referred to as “the Act”) inter alia that the insurer coerced and forced the respondent to sign on dotted lines on a pre-signed discharge voucher and claimed for appointment of an Arbitrator.

7. The appellant Insurance Company in their reply refuted such allegations and further stated that the respondent had signed a letter of subrogation in accepting the payment in full and final settlement of its claim. Discharge Voucher was sent without any demur or protest and nothing further survives and no arbitral dispute subsists for adjudication and so far as the allegation levelled that the insurer has coerced and put undue force upon the respondent to sign on dotted lines on a pre-signed standard discharged paper is concerned, there is no prima facie documentary evidence placed on record except the letter dated 27th July, 2016 which was sent for the first time after almost more than 11 weeks of the claim being settled and the application for appointment of Arbitrator is ill founded and deserves to be rejected.

8. The High Court taking note of the rival contentions of the parties and of sub-section (6A) of Section 11 of the Act which has been introduced by virtue of Amendment Act,

2015 observed that once there is existence of arbitration agreement, acceptance of the payment disbursed by the appellant company, whether it was under coercion or undue influence, is a matter to be examined by the Arbitrator and accordingly proceeded to appoint the sole arbitrator to adjudicate the dispute between the parties.

9. Shri Vineet Malhotra, learned counsel for the appellant submits that once the claim was settled and the claimant received compensation and 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. It was also contended that having received the payment under the said discharge voucher without any demur or protest, it was not open for the respondent after 11 weeks of the receipt of the claim and full and final discharge, to raise a voice that the discharge was obtained under coercion and undue influence without furnishing any prima facie evidence in support thereof and placed reliance of the judgment of this Court in *New India Assurance Company Limited Vs. Genus Power Infrastructure Limited*¹ which according to him is almost on the same set of facts and circumstances.

10. Learned counsel for the appellant further submits that 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 there is a prima facie arbitral claim/dispute subsist under the arbitral agreement for adjudication by the Arbitrator. In the instant case, as there was no arbitral dispute subsisting after the claim being finally settled with consent of the parties with due accord and satisfaction, Section 11(6) was not available to be invoked by the respondent in raising a dispute after more than 11 weeks of the settlement of the claim to the satisfaction of the parties.

11. Per Contra, Shri Dhruv Mehta, learned senior counsel for the respondent submitted that he is not disputing as far as the settlement of the claims are concerned but his objection is that the respondent was not in a bargaining position and being in financial stress, he had no option but to accept the claim on the dotted lines settled by the appellant in an arbitrary manner leaving no choice and mere acceptance in the given circumstances will not take away the right of the respondent to establish that it was not voluntary but under undue influence and coercion and since there is a clause of arbitration in the agreement, it will be for the Arbitrator to examine as to whether the acceptance of the claim by the respondent has been voluntary or under undue influence or coercion and in the given circumstances, no error has been committed by appointing the Arbitrator under the impugned judgment.

12. The existence of an arbitration clause in the contract of insurance is not in dispute. The question does arise whether the discharge in the present case upon acceptance of the compensation and signing of the discharge letter was voluntary or under coercion or undue influence and the respondent was justified in invoking Section 11(6) of the Act. It is true that execution of full and final agreement, receipt or a discharge voucher in itself cannot be a bar to arbitration and it has been observed by this Court in *National Insurance Company Limited Vs. Boghara Polufab Private Limited*² at para 44 as under:-

“44. None of the three cases relied on by the appellant lay down a proposition that

mere execution of a full and final settlement receipt or a Discharge Voucher is a bar to arbitration, even when the validity thereof is challenged by the claimant on the ground of fraud, coercion or undue influence. Nor do they lay down a proposition that even if the discharge of contract is not genuine or legal, the claims cannot be referred to arbitration. In all the three cases, the Court examined the facts and satisfied itself that there was accord and satisfaction or complete discharge of the contract and that there was no evidence to support the allegation of coercion/undue influence.”

13. It further laid down the illustrations as to when claims are arbitrable and when they are not. This may be illustrative (not exhaustive) but beneficial for the authorities in taking a decision as to whether in a given situation where no claim/discharge voucher has been furnished what will be its legal effect and still there is any arbitral dispute subsists to be examined by the arbitrator in the given facts and circumstances and held in para 52 of National Insurance Co. Ltd. Vs. Boghara Polufab Private Limited (supra) as follows:-

“52. Some illustrations (not exhaustive) as to when claims are arbitrable and when they are not, when discharge of contract by accord and satisfaction are disputed, to round up the discussion on this subject are:

(i) A claim is referred to a conciliation or a pre-litigation Lok Adalat. The parties negotiate and arrive at a settlement. The terms of settlement are drawn up and signed by both the parties and attested by the conciliator or the members of the Lok Adalat. After settlement by way of accord and satisfaction, there can be no reference to arbitration.

(ii) A claimant makes several claims. The admitted or undisputed claims are paid. Thereafter negotiations are held for settlement of the disputed claims resulting in an agreement in writing settling all the pending claims and disputes. On such settlement, the amount agreed is paid and the contractor also issues a discharge voucher/no-claim certificate/full and final receipt. After the contract is discharged by such accord and satisfaction, neither the contract nor any dispute survives for consideration. There cannot be any reference of any dispute to arbitration thereafter.

(iii) A contractor executes the work and claims payment of say rupees ten lakhs as due in terms of the contract. The employer admits the claim only for rupees six lakhs and informs the contractor either in writing or orally that unless the contractor gives a discharge voucher in the prescribed format acknowledging receipt of rupees six lakhs in full and final satisfaction of the contract, payment of the admitted amount will not be released. The contractor who is hard-pressed for funds and keen to get the admitted amount released, signs on the dotted line either in a printed form or otherwise, stating that the amount is received in full and final settlement. In such a case, the discharge is under economic duress on account of coercion employed by the employer. Obviously, the discharge voucher cannot be considered to be voluntary or as having resulted in discharge of the contract by accord and satisfaction. It will not be a bar to arbitration.

(iv) An insured makes a claim for loss suffered. The claim is neither admitted nor rejected. But the insured is informed during discussions that unless the claimant gives a full and final voucher for a specified amount (far lesser than the amount claimed by the insured), the entire claim will be rejected. Being in financial difficulties, the claimant agrees to the demand and issues an undated discharge voucher in full and final settlement. Only a few days thereafter, the admitted amount mentioned in the voucher is paid. The accord and satisfaction in such a case is not voluntary but under duress, compulsion and coercion. The coercion is subtle, but very much real. The “accord” is not by free consent. The arbitration agreement can thus be invoked to refer the disputes to arbitration.

(v) A claimant makes a claim for a huge sum, by way of damages. The respondent disputes the claim. The claimant who is keen to have a settlement and avoid litigation, voluntarily reduces the claim and requests for settlement. The respondent agrees and settles the claim and obtains a full and final discharge voucher. Here even if the claimant might have agreed for settlement due to financial compulsions and commercial pressure or economic duress, the decision was his free choice. There was no threat, coercion or compulsion by the respondent. Therefore, the accord and satisfaction is binding and valid and there cannot be any subsequent claim or reference to arbitration.”

14. It is true that there cannot be a rule of thumb and each case has to be looked into on its own facts and circumstances, taking note of the broad principles, it was observed by this Court in *Union of India and Others Vs. Master Construction Co*³. at para 18 as under:-

“18. In our opinion, there is no rule of the absolute kind. In a case where the claimant contends that a discharge voucher or no-claim certificate has been obtained by fraud, coercion, duress or undue influence and the other side contests the correctness thereof, the Chief Justice/his designate must look into this aspect to find out at least, prima facie, whether or not the dispute is bona fide and genuine. Where the dispute raised by the claimant with regard to validity of the discharge voucher or no-claim certificate or settlement agreement, prima facie, appears to be lacking in credibility, there may not be a necessity to refer the dispute for arbitration at all.”

15. From the proposition which has been laid down by this Court, what reveals is that a mere plea of fraud, coercion or undue influence in itself is not enough and the party who alleged is under obligation to prima facie establish the same by placing satisfactory material on record before the Chief Justice or his Designate to exercise power under Section 11(6) of the Act, which has been considered by this Court in *New India Assurance Companu Ltd. case* (supra) as follows:-

“9. It is therefore clear that a bald plea of fraud, coercion, duress or undue influence is not enough and the party who sets up a plea, must prima facie establish the same by placing material before the Chief Justice/his designate ”

16. In the instant case averment was made for the first time after 11 weeks of the settlement of claim & release of discharge voucher in the petition filed by the respondent seeking appointment of Arbitrator of undue influence/coercion being used by the appellant in signing the papers on dotted lines is reproduced as under:-

“xiii. It is stated that the Respondent occupying a bargaining position as an Insurer coerced and forced the Petitioner to sign on dotted lines on a Pre-signed Standard Discharge Voucher. The petitioner facing severe financial distress gave in to the pressure tactics of the Respondent and was made to sign a purported Discharge Voucher dated 24.06.2016 for an amount of Rs. 2,20,36,840/- (Rupees Two Crore Twenty Lakhs Thirty Six Thousand, Eight Hundred Forty Only) as against the Claim of Rs. 5,12,49,241/- (Rupees Five Crore Twelve Lakhs Forty Nine Thousand Two Hundred Forty One Only) as a pre-condition for release of money.

xvii. It is stated that Petitioner vide its Letter dated 27.07.2016 rescinded the purported Discharge Voucher as illegal and void as it was forced on coerced into signing the same in the face of extreme financial duress. The petitioner vide the said letter dated 27.07.2016 called upon the Respondent to pay the balance amount of Rs. 2,92,12,401/- (Rupees Two Crore Ninety Two Lakhs Twelve Thousand Four Hundred and One Only) on account of loss suffered by the petitioner as result of fire. The petitioner also claimed an interest @ 18% per annum from the date of incident as well as on the paid amount till date of payment i.e. up to 06.07.2016.”

17. It is true that there cannot be a rule of its kind that mere allegation of discharge voucher or no claim certificate being obtained by fraud/coercion/undue influence practised by other party in itself is sufficient for appointment of the arbitrator unless the claimant who alleges that execution of the discharge agreement or no claim certificate was obtained on account of fraud/coercion/undue influence practised by the other party is able to produce prima facie evidence to substantiate the same, the correctness thereof may be open for the Chief Justice/his Designate to look into this aspect to find out at least prima facie whether the dispute is bonafide and genuine in taking a decision to invoke Section 11(6) of the Act.

18. In the instant case, the facts are not in dispute that for the two incidents of fire on 25th September, 2013 and 25th October, 2013, the appellant Company based on the Surveyor's report sent e-mails on 5th May, 2016 & 24th June, 2016 for settlement of the claims for both the fires dated 25th September, 2013 and 25th October, 2013 which was responded by the respondent through e-mail on the same date itself providing all the necessary information to the Regional Office of the Company and also issued the discharge voucher in full & final settlement with accord and satisfaction. Thereafter, on 12th July, 2016, the respondent desired certain information with details that too was furnished and for the first time on 27th July, 2016, it took a U- turn and raised a voice of undue influence/coercion being used by the appellant stating that being in financial distress left with no option than to proceed to sign on the dotted lines. As observed, the phrase in itself is not sufficient unless there is a prima facie evidence to establish the allegation of coercion/undue influence, which is completely missing in the instant case.

19. In the given facts and circumstances, we are satisfied that the discharge and signing the letter of subrogation was not because of any undue influence or coercion as being claimed by the respondent and we find no difficulty to hold that upon execution of the letter of subrogation, the claim was settled with due accord and satisfaction leaving no arbitral dispute to be examined by an Arbitrator to be appointed under Section 11(6) of the Act.

20. The submission of the learned counsel for the respondent that after insertion of sub-section (6A) to Section 11 of 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. Vs. Gangavaram Port Limited*⁴. 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 (6A) introduced by 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 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, 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.

23. Consequently, the appeals are allowed and the order passed by the High Court is accordingly set aside. No costs.

24. Pending application(s), if any, also stand disposed of.

Judgment Referred.

¹(2015) 2 SCC 0424

²(2009) 1 SCC 0267

³(2011) 12 SCC 0349

⁴(2017) 9 SCC 0729