

A NEW INDIA ASSURANCE COMPANY LTD.
v.
GENUS POWER INFRASTRUCTURE LTD.
(Civil Appeal No. 10784 of 2014)

DECEMBER 04, 2014

B [ANIL R. DAVE AND UDAY UMESH LALIT, JJ.]

Arbitration and Conciliation Act, 1996 – s. 11 – Appointment of arbitrator – Insurance claim – Discharge of insurance contract and settlement of insurance claim – Insured subrogated all its rights in favour of insurer – Petition u/s. 11 by insured seeking appointment of arbitrator alleging that it had accepted the payment because of extreme financial difficulty, duress and coercion – High Court appointing sole arbitrator to adjudicate the dispute between the parties – Justification of – Held: Not justified – Discharge and signing of letter of subrogation was voluntary and free from any coercion or undue influence – Upon execution of the letter of subrogation, there was full and final settlement of the claim – Thus, no arbitrable dispute existed so as to exercise power u/s.11 of the Act.

Allowing the appeal, the Court

HELD: The plea raised by the respondent that the discharge and signing of letter of subrogation was due to fraud, coercion, duress or undue influence is bereft of any details and particulars, and cannot be anything but a bald assertion. There was no protest or demur raised around the time or soon after the letter of subrogation was signed. The financial condition of the respondent was not so precarious that it was left with no alternative but to accept the terms as suggested. The discharge and signing of letter of subrogation was voluntary and free from any coercion or undue influence. In the

circumstances, it is held that upon execution of the letter of subrogation, there was full and final settlement of the claim. Thus, no arbitrable dispute existed so as to exercise power under section 11 of the Arbitration and Conciliation Act, 1996. The High Court was not justified in exercising power under Section 11 of the Act. [Para 9] [369-C-G]

National Insurance Co. Ltd. vs. Boghara Polyfab (P) Ltd. 2008 (13) SCR 638:2009 (1) SCC 267; *Union of India vs. Master Construction Co.* 2011 (5) SCR 853: (2011) 12 SCC 349 – referred to.

Case Law Reference:

2008 (13) SCR 638 Referred to Para 5, 6

2011 (5) SCR 853 Referred to Para 7

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10784 of 2014.

From the Judgment & Order dated 30.05.2013 of the High Court of Delhi at Delhi n Arbitration Petition No. 212 of 2011.

Gaurab Banerji, Saurav Agrawal, Madhav Misra, Vyom Shah (for Devendra Sngh) for the Appellant.

Krishnan Venugopal, Abhinav Mukerji, Aman Gupta for the Respondent.

The Judgment of the Court was delivered by

UDAY U. LALIT, J. 1. Leave granted. This appeal challenges the order dated 30.05.2013 passed by the High Court of Delhi in Arbitration Petition No.212 of 2011 appointing an arbitrator to adjudicate the disputes between the present parties.

2. The respondent has a manufacturing unit for which it

A had purchased a Standard Fire and Special Perils Policy ('policy' for short) from the appellant on 17.04.2009, which policy was for a period of one year and the total sum assured was Rs.91 crores and 10 lacs only. On 29.10.2009 there was a fire explosion in the adjoining Indian Oil Corporation Terminal causing extensive damage to the manufacturing unit of the respondent. On being notified, the appellant appointed a category "A" Licensed Surveyor and Loss Assessor in compliance of Section 64 UM of the Insurance Act, 1938 to assess the damage. In the assessment of the respondent and as per the claim lodged by it, the loss caused to its plant and machinery, buildings fixtures and furnitures and stocks was to the tune of Rs.28.79 crores. It appears that the Surveyor submitted his final report on 27.07.2010 and assessed the loss at Rs.6,09,77,406/-. It is contended by the appellant but denied by the respondent that the final survey report was duly communicated to the respondent on 01.11.2010.

3. On 11.03.2011 the respondent signed a detailed letter of subrogation which was on a stamp paper, accepting Rs.5,96,08,179/- in full and final settlement of its claim under the policy and the relevant portion of said letter dated 11.03.2011 was to the following effect:

To,
New India Assurance Co. Ltd.
Regional Office
Nehru Place, Tonk Road,
Jaipur

Dear Sir,

That in consideration of claim amount of Rs.5,96,08,179 (Rupees Five Crores Nintey Six Lakhs Eight Thousand One Hundred Seventy Nine only) (herein after referred as "Claim amount") as full and final settlement amount of our claim No.330203/11/10/01/00100001 arising under policy No.330203/11/09/11/00000018 (herein after referred as "Policy") covering fire loss of my/our factory situated on Plot

No.SPL 3, Sitapura, - Industrial area Jaipur (herein after referred as "Factory Premises") due to fire that took place in IOC Terminal on 29-10-2009, we hereby subrogate our rights on behalf of M/S Genus Power Infrastructures Limited Jaipur (herein after referred as "Insured") in favour of New India Assurance Co. Ltd. (herein after referred as "Insurer") as under:-

- (1) That we the Insured hereby subrogate all the rights and remedies (to the extent provided by aforesaid contract of Insurance and under the General law and further any other Law enforceable consequence to the above loss) against the RIICO, Indian Oil Corporation, Govt. of Rajasthan, other insurance company or any other agency/authority of Govt. of Rajasthan, semi Govt. etc. whom so ever is liable in respect whereof in favour of the Insurer regarding Fire accident taken place on 29-10-2009 in IOC terminal in Sitapura Industrial Area, Jaipur and claim arises under "Policy" covering fire loss of Insured factory in "Factory Premises" in favour of the "Insurer".
- (2) That we the Insured further assign and transfer all rights to Insurer to recover the claim amount or any part thereof from RIICO, Indian Oil Corporation, Govt. of Rajasthan, other insurance company or any other agency/authority of Govt. of Rajasthan, semi Govt. etc. who so ever is liable.
- (3) That we the Insured further assign and transfer all rights to agitate the Claim before the RIICO, Indian Oil Corporation, Govt. of Rajasthan, other insurance company or any other agency/authority of Govt. of Rajasthan, semi Govt. etc. who so ever is liable to pay the compensation/claim. The Insurer will be entitled to file complaint/claim before any court of law, tribunal or any other adjudicatory authority and

A plead the same on behalf of ourselves and in getting success in adjudication therein will be entitled to retain the amount paid.....

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In witness whereof we get our hands on this Subrogation letter on the 11th day of March 2011.

For Genus Power Infrastructure Ltd.
C Authorized Signatory
Signature

D 4. After nearly three weeks i.e on 31.03.2011 the respondent issued a notice to the appellant stating that the discharge voucher was signed under extreme duress, coercion and undue influence exercised by the appellant who took undue advantage of the extreme financial difficulties of the respondent. The respondent further sought to appoint its nominee arbitrator. On 21.04.2011 the appellant replied that there was no arbitrable dispute which existed between the parties inasmuch as the respondent had voluntarily signed the letter of subrogation and had accepted payment in full and final settlement of its claim. In the meantime on 05.04.2011 the respondent had filed a petition under section 11 of the Arbitration and Conciliation Act, 1996 (The 'Act' for short) before the High Court of Delhi E alleging that it had accepted the payment as stated above because of extreme financial difficulty, duress and coercion. On F 10.05.2013 the High Court after recording rival submissions of the parties adjourned the matter which was then taken up on 30.05.2013 when the High Court observed;

G "Vide order dated 10th May, 2013, this Court has already observed that there is a valid arbitration agreement between the parties and there are disputes which are covered under the arbitration agreement. The H learned counsel for the respondent submits that the

disputes are not arbitrable. The respondent can raise this objection before the learned arbitrator.”

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In that view of the matter the High Court proceeded to appoint a sole arbitrator to adjudicate the disputes between the parties.

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5. The aforesaid order dated 30.05.2013 is the subject matter of challenge in the present appeal. Appearing for the appellant Mr. Gaurab Banerji, learned Senior Advocate submitted that the letter of subrogation was a detailed agreement which was finalized and signed after negotiations between the parties and in the presence of two witnesses. The amount agreed to was the amount recommended by the surveyor, reduced by the mandatory reinstatement premium payable under clause 15 of the policy and as such the settlement took place at the amount recommended by the surveyor. Placing reliance on the financial status of the respondent, it was submitted that its annual turnover is more than Rs.500 crores for last few years and it was quite improbable that such a company would feel financially constrained and stand coerced as alleged, in giving discharge on receipt of Rs.5.98 crores. Mr. Krishnan Venugopal, learned Senior Advocate appearing for the respondent submitted that knowing that the respondent was under tremendous pressure owing to the complete destruction of its manufacturing unit and not being in a position to negotiate, the appellant by using its dominant position had forced the respondent to sign the discharge voucher and accept the payment as stated above. In support, reliance was placed on the decision of this court in **National Insurance Co. Ltd. vs. Boghara Polyfab (P) Ltd¹** by Mr. Venugopal.

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6. The question that arises is whether the discharge in the present case upon acceptance of compensation and signing of subrogation letter was not voluntary and whether the claimant

1. 2009(1) SCC 267.

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A was subjected to compulsion or coercion and as such could validly invoke the jurisdiction under Section 11 of the Act. The law on the point is clear from following decisions of this court. In **National Insurance Co. Ltd. vs. Boghara Polyfab Pvt. Ltd.** in paras 26 and 51 it was stated as under:-

B “26. When we refer to a discharge of contract by an
C agreement signed by both the parties or by execution of
D a full and final discharge voucher/receipt by one of the
E parties, we refer to an agreement or discharge voucher
F which is validly and voluntarily executed. If the party which
G has executed the discharge agreement or discharge
H voucher, alleges that the execution of such discharge
agreement or voucher was on account of fraud/coercion/
undue influence practiced by the other party and is able
to establish the same, then obviously the discharge of the
contract by such agreement/voucher is rendered void and
cannot be acted upon. Consequently, any dispute raised
by such party would be arbitrable.

E 51. The Chief Justice/his designate exercising
F jurisdiction under Section 11 of the Act will consider
G whether there was really accord and satisfaction or
H discharge of contract by performance. If the answer is in
the affirmative, he will refuse to refer the dispute to
arbitration. On the other hand, if the Chief Justice/his
designate comes to the conclusion that the full and final
settlement receipt or discharge voucher was the result of
any fraud/coercion/undue influence, he will have to hold that
there was no discharge of the contract and consequently,
refer the dispute to arbitration. Alternatively, where the
Chief Justice/his designate is satisfied prima facie that the
discharge voucher was not issued voluntarily and the
claimant was under some compulsion or coercion, and that
the matter deserved detailed consideration, he may
instead of deciding the issue himself, refer the matter to

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the Arbitral Tribunal with a specific direction that the said question should be decided in the first instance.”

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7. In the decision rendered in **Union of India vs. Master Construction Co²**, this court observed 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.

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19. It cannot be overlooked that the cost of arbitration is quite huge—most of the time, it runs into six and seven figures. It may not be proper to burden a party, who contends that the dispute is not arbitrable on account of discharge of contract, with huge cost of arbitration merely because plea of fraud, coercion, duress or undue influence has been taken by the claimant. A bald plea of fraud, coercion, duress or undue influence is not enough and the party who sets up such a plea must prima facie establish the same by placing material before the Chief Justice/his designate. If the Chief Justice/his designate finds some merit in the allegation of fraud, coercion, duress or undue influence, he may decide the same or leave it to be decided by the Arbitral Tribunal. On the other hand, if such plea is found to be an afterthought, make-believe or lacking in credibility, the matter must be set at rest then and there.

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2. (2011) 12 SCC 349.

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A 22. The above certificates leave no manner of doubt
 that upon receipt of the payment, there has been full and
 final settlement of the contractor's claim under the contract.
 B That the payment of final bill was made to the contractor
 on 19-6-2000 is not in dispute. After receipt of the
 payment on 19-6-2000, no grievance was raised or lodged
 by the contractor immediately. The authority concerned,
 thereafter, released the bank guarantee in the sum of Rs
 21,00,000 on 12-7-2000. It was then that on that day itself,
 the contractor lodged further claims."

C 8. 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 prime facie establish the same by placing
 material before the Chief Justice/his designate. Viewed thus,
 the relevant averments in the petition filed by the respondent
 D need to be considered, which were to the following effect:-

 “(g) That the said surveyor, in connivance with the
 Respondent Company, in order to make the Respondent
 Company escape its full liability of compensating the
 E Petitioner of such huge loss, acted in a biased manner,
 adopted coercion undue influence and duress methods of
 assessing the loss and forced the Petitioner to sign certain
 documents including the Claim Form. The Respondent
 Company also denied the just claim of the Petitioner by
 their acts of omission and commission and by exercising
 F coercion and undue influence and made the Petitioner
 Company sign certain documents, including a pre-
 prepared discharge voucher for the said amount in
 advance, which the Petitioner Company were forced to do
 so in the period of extreme financial difficulty which
 G prevailed during the said period. As stated aforesaid, the
 Petitioner Company was forced to sign several documents
 including a letter accepting the loss amounting to
 Rs.6,09,55,406/- and settle the claim of Rs.5,96,08,179/-
 as against the actual loss amount of Rs.28,79,08,116/-
 H against the interest of the petitioner company. The said

letter and the aforesaid pre-prepared discharge voucher stated that the petitioner had accepted the claim amount in full and final settlement and thus, forced the petitioner company to unilateral acceptance the same. The petitioner company was forced to sign the said document under duress and coercion by the Respondent Company. The Respondent Company further threatened the petitioner Company to accept the said amount in full and final or the Respondent Company will not pay any amount toward the fire policy. It was under such compelling circumstances that the petitioner company was forced and under duress was made to sign the acceptance letter.”

9. In our considered view, the plea raised by the respondent is bereft of any details and particulars, and cannot be anything but a bald assertion. Given the fact that there was no protest or demur raised around the time or soon after the letter of subrogation was signed, that the notice dated 31.03.2011 itself was nearly after three weeks and that the financial condition of the respondent was not so precarious that it was left with no alternative but to accept the terms as suggested, we are of the firm view that the discharge in the present case and signing of letter of subrogation were not because of exercise of any undue influence. Such discharge and signing of letter of subrogation was voluntary and free from any coercion or undue influence. In the circumstances, we hold that upon execution of the letter of subrogation, there was full and final settlement of the claim. Since our answer to the question, whether there was really accord and satisfaction, is in the affirmative, 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.

10. In the circumstances, we allow the present appeal in the aforesaid terms and set aside the order of the High Court
No order as to costs.