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

***Reserved on: 10 March 2026***
***Pronounced on: 16 March 2026***

\+ FAO(OS) (COMM) 286/2022

SUPERMINT EXPORTS PVT LTD .....Appellant

Through: Mr. Sudhir Nandrajog, Sr. Adv. with Mr. Bhaskar Tiwari, Mr. Ramakant Shukla and Ms. Priscilla Kom, Advs.

versus

NEW INDIA ASSURANCE CO LTD. & ORS. .....Respondents

Through: Mr. Saurav Agrawal, Mr. Rajat Dasgupta, Ms. Sidhika Dwivedi, Ms. Anadi Mishra, Ms. Raadhika Chawla and Mr. Tushar Nair, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE C. HARI SHANKAR**
**HON'BLE MR. JUSTICE OM PRAKASH SHUKLA**

**JUDGMENT**

**% 16.03.2026**

**C. HARI SHANKAR, J.**

## A. Facts

**1.** The appellant manufactures and deals in mint and pine based essential oil. It was the beneficiary of an Insurance policy issued by the respondent New India Assurance Company Ltd., which has been impleaded at three addresses. The policy insured the appellant for a total sum of ₹ 32,25,00,000/- and covered fire and risks involving the

building, plants and machinery, stocks, furniture and fixtures and fittings of the appellant. The policy was to remain in force from 20 August 2012 to 19 August 2013.

**2.** On 13 February 2013, a fire broke out in the appellant's premises, resulting in loss of the building, plant and machinery and stocks.

**3.** The appellant lodged a claim with the respondent for ₹ 27,08,30,874.13.

**4.** The respondent appointed a spot surveyor who conducted an initial survey of the loss suffered by the appellant, followed by a final survey by M/s. J. Basheer and Associates. The Final Survey Report[1] assessed the loss suffered by the appellant to be ₹ 12,18,21,908. This amount was paid to the appellant.

**5.** Asserting its claim of ₹ 27,08,30,874.13, as originally claimed, the appellant sought arbitration of its entitlement for the balance amount invoking the arbitration clause contained in the insurance policy. A former Chief Justice of a High Court was appointed as the Arbitrator. The learned Arbitrator rendered his award on 28 December 2019.

**6.** Before the learned Arbitrator, in its statement of defence, the respondent disputed the appellant's entitlement on the ground, *inter alia*, that the appellant had executed two discharge vouchers dated 30

[1] 'FSR', hereinafter

March 2014 and 2 July 2014 in which the appellant had accepted an amount of ₹ 12,18,21,908/- towards full and final settlement of the claim due to it. Having thus executed and signed the said discharge vouchers, the respondent contended that the appellant was estopped from claiming any higher amount. The respondent further submitted that the discharge vouchers had been executed by the appellant voluntarily and without any pressure, coercion, undue influence or duress. The claim of the appellant, therefore, stood discharged by accord and satisfaction and was not therefore any more open to arbitration.

**7.** The appellant, before the learned Arbitrator, did not dispute the factum of execution of the afore-noted discharge vouchers dated 30 March 2014 and 2 July 2014. However, the appellant submitted that it had executed the discharge vouchers under compulsion, duress and financial distress as the respondent was not releasing the claim without the execution of the full and final discharge vouchers by the appellant. The appellant submitted that it was under tremendous pressure from creditors and that, consequent on the fire, there was severe depletion of its credit facilities resulting in considerable financial distress. It was also submitted that the appellant's bankers had downgraded its accounts and started charging heavy penal interests, seriously hampering the appellant's business operations and practically bringing its factory to the brink of closure. Under such straitened circumstances, it was submitted that the appellant had no option but to sign the discharge vouchers. They could not, therefore, be regarded as having been voluntarily executed.

## B. The Arbitral Award

**8.** The learned Arbitrator framed the following issues as arising for adjudication :

> "1. Whether the disputes forming the subject matter of the present arbitration are arbitrable and whether this tribunal has jurisdiction to adjudicate upon the said disputes in the light of the various factual and legal pleas raised by the respondent in its statement of defence as well in its Section 16 Application, that the claimant is guilty of violating certain policy conditions?
>
> 2. Depending upon the finding on issue No. 1, is the claimant entitled to its claim or any part thereof? And if so, whether with interest, and if yes at what rate and for what period?
>
> 3. Relief and costs"

**9.** The learned Arbitrator first took up the issue of whether the appellant's claim stood discharged by accord and satisfaction in view of the discharge vouchers executed by it. For this purpose, the learned Arbitrator first reproduced the said discharge vouchers as under:

> Discharge voucher dated 30-03-2014
>
> "I/we registered owner/authorized signatory of M/s. Supermint Exports private limited Rampur having held under bank interest with bank of Baroda, Rampur hereby consciously give our consent for the full and final settlement of the claim for the sum of Rs. 12, 19, 56, 766/which amount is to be paid by the New India Assurance Company limited in respect of full and final satisfaction and settlement of the above claim made by me/us for the losses/damages to the property/factory situated at 4$^{th}$ km….
> I/we agree that the sum is paid to me/us with a denial of any legal liability or otherwise too as a result of above accident/loss at present or in future on the part of the insurers and the New India Assurance Company Limited is absolutely and finally free and discharged from all or any other claims of every nature and kind whatsoever in my/our behalf arising or given rise out of the said

occurrence"

Discharge Voucher dated 02-07-2014

"I/we registered/authorised signatory of M/s. Supermint Exports Private Limited Rampur having held under bank interest with bank of Baroda, Rampur hereby consciously give our consent for the full and final settlement of the claim for the sum of Rs. 12, 18, 21, 908/after being deducted by you of Rs. 77249/in respect of reinstatement premium and applicable service tax of Rs. 8498 from the approved amount of Rs. 12,18,99,157/."

This net amount of Rs. 12,18,21,908/is to be paid by the New India Assurance Company Limited to our Financer Bank, ie, bank of Baroda, Rampur in our loan account No.05850500000781....."

I/we agree that the sum of Rs. 12,18,21,908/ is paid to me/us with a denial of any legal liability or otherwise too as a result of above loss at present or in future on the part of the insurers and the New India Assurance Co Ltd is absolutely and finally free and discharge from all or any other claims of every nature and kind whatsoever "

It was also noted that the first discharge voucher dated 30 March 2014 was signed by the appellant alone whereas the second discharge was signed by the appellant as well as by the Chief Manager of the Bank of Baroda[2].

**10.** In these circumstances, the learned Arbitrator identified the issue arising before him for consideration apropos the afore-noted discharge vouchers thus:

"The fact of the aforesaid discharge vouchers being signed and executed by the claimant not having been denied or disputed by the claimant and the only defence being put up that the claimant was compelled and constrained by respondent to execute these discharge vouchers on account of the claimant's economic/financial distress which have been elaborately explained in the statement of claim and elsewhere, this tribunal has now to consider whether the

[2] 'the Bank', hereinafter

execution of the aforesaid discharge vouchers was voluntary on the part of the claimant or whether it was involuntary. Undoubtedly if this tribunal comes to a conclusion that the aforesaid discharge vouchers had been executed by the claimant voluntarily, the necessary consequences will follow but if the tribunal comes to the conclusion that indeed the claimant was forced and compelled as well as constrained either by the circumstances attributable to the Respondent or by the respondent to execute the aforesaid discharge vouchers, the consequences would be different"

**11.** The findings of the learned Arbitrator on the afore-noted aspects were as under:

"First and foremost, I have no hesitation in holding, on an appreciation of the evidence on record and based upon the pleadings of the parties and various other documents filed by the parties before this tribunal that *there is no material on record at all to suggest, point out or establish that the respondent in any manner by any conscious act on its part either compelled the claimant to sign the discharge vouchers or created a situation where the claimant had no option but to sign these discharge vouchers.* Nothing has been pointed out to this tribunal by the claimant whereby this tribunal can take a view or form an opinion that the respondent had done any act of omission or commission resulting in the claimant being compelled or constrained to sign the discharge vouchers. This having been found by the tribunal thus that for the signing of the discharge vouchers by the claimant, as far as the respondent is concerned it did not do any act, consciously or otherwise, purposely or deliberately or otherwise, *the tribunal has now to look for the other important angle of whether the signing of the discharge vouchers by the claimant was a voluntary act on the part of the claimant and whether before or at the time of the signing of the discharge vouchers circumstances did exist which conclusively pointed out that the claimant had in fact either agreed for accepting the lower approved claim or that the claimant at no stage, at no point of time either disputed such lower amount of claim or represented or pleaded with the respondent that the claim amount being lower, the claimant should be paid higher claim amount.* A very important aspect emanating therefrom is whether at any point before signing the discharge vouchers, had the claimant reserved to itself the right to claim an enhanced compensation after receiving the amount covered by the discharge vouchers or the claimant represented to the respondent that it was receiving the amount in question without prejudice to its rights and contentions for any future action that the claimant may bring against the respondent for claiming the enhanced compensation

amount. Let us look at the facts.

*On 05/03/2014, the claimant wrote a letter to the surveyor in which it clearly conveyed to him that the assessed compensation of ₹ 10,05,68,218/- towards the loss on stock was acceptable to the claimant.* This was conveyed to the surveyor by the claimant through Mr Sanjay Chaturvedi, the general manager of the claimant. Mr Chaturvedi appeared as a witness also in this case and in the course of his cross-examination by the respondent he admitted to have written the aforesaid letter to the surveyor (refer question Nos. 8 and 9 in cross-examination). Interestingly, this letter was not filed by the claimant in these proceedings but was produced by the respondent. The respondent has rightly accused the claimant of suppressing this letter and thereby causing material concealment of a relevant fact before this tribunal.

After the final survey report was submitted by the surveyor, the claimant submitted a new bill for an amount of ₹ 13.78 lac and the respondent rather than getting this new bill processed, considered and examined by the surveyor itself increased the claim amount based on this new bill for an additional amount of ₹ 8.25 lac. *It is the admitted case of the claimant that it received a copy of the final survey report from the surveyor and despite being in possession of the copy of the final survey report in which the recommended claim amount was clearly mentioned, the claimant at no point of time either objected to this assessment on the part of the surveyor or represented to the respondent that the compensation amount being assessed was on the lower side and that it should be increased substantially or by any other extent.* A very important fact which conclusively would establish that the claimant at no point of time objected to the assessment being on the lower side or that it being deficient as compared to the actual claim of the claimant is this. *On 27/05/2014, after the claimant had signed the 1st discharge voucher but before it signed the 2nd discharge voucher, the claimant sent an email communication to the Chairman-cum-Managing Director (CMD) of the respondent company requesting only for early settlement of the claim and for arranging the payment of the claim amount very very expeditiously. It is noteworthy to mention that in this communication and in various other representations, the claimant had been repeatedly clamouring for the settlement of the claim case and for payment of the claim amount very very expeditiously because, according to the claimant, the claimant was in dire financial crisis and it was imperative that the claim amount be paid to the claimant immediately so as to enable it to tide over its financial difficulties. In this representation to the CMD of the respondent company which was sent more than 2 months after the claimant had in its possession the copy of the final survey report, the claimant did not*

*make any misgiving of the assessed claim amount being on the lower side or that the claimant was deprived of its legitimate dues linked with the loss caused.* An important as well as equally interesting aspect of the matter is that a meeting of the Board of Directors of the claimant company was held on 20/03/2014 in which the Board noticed that the respondent had proposed to pay only a sum of ₹ 12,19,56,766/- towards full and final settlement of the claimant's actual claim of ₹ 27,08,30,874.13. The claimant company recorded the minutes of the aforesaid Board meeting, the following portion whereof being important is reproduced herein below:

> "Keeping in view above crucial financial condition of the company, board of directors of the company is of the view that at present this amount should be taken from the insurance company and for this purpose it is decided to submit the consent cum legal discharged loss payment voucher for the time being and persue for the balance amount with the insurance company after receiving of Rs. 12, 19, 56, 766.00 and necessary action including legal assistants be taken and the following resolution was passed;
>
> "resolved that Mr Sanjay Gupta, one of the directors of the company be and is hereby authorised to issue the discharge voucher to the insurance company to avoid the distress proceedings. SEPL may take up the matter for recovery of balance claim amount with New India Assurance Company limited after receiving the amount".

All this happened in the internal meeting of the Board of Directors of the claimant company. *It is the undisputed case of the parties before this tribunal that at no point of time did the claimant ever inform the respondent that it was, being in any dire economic and financial distress as well as duress was accepting the aforesaid amount under compulsion,* keeping all its options open to take recourse to legal proceedings at a later point of time for the recovery of the balance claim amount. *This decision of the Board of Directors of the claimant company clearly manifests the fact that the claimant company despite its reservations about the approved claim amount being lower than its expectations as well as lower than what had been claimed, decided to accept this amount. This Board resolution also clearly indicates that the respondent had offered this amount to the claimant and the claimant decided to accept the said offer of the respondent. What however is strange as well as interesting is that the claimant did not convey any reservation about this amount being accepted by it subject to any conditions or even subject to the rights and contentions of the claimant with respect to the claimant subsequently raising the*

*dispute about the inadequacy of the claim amount, the same not being based on the loss suffered by the claimant.*

As has been mentioned hereinabove, the claimant signed two discharge vouchers. The 1st voucher was signed by the claimant alone but the 2nd voucher was signed by the claimant as well as the claimant's banker. The need of the claimant banker to sign the 2nd voucher arose because the claimant's banker had intimated to the respondent that as and when the claim is sanctioned and the claim amount was to be dispersed, the same should be remitted to the account of the bank and that it should not be paid to the claimant. It is in this background that the claimant's banker signed the 2nd voucher.

This is a peculiar case where an insured on the verge of receiving the claim had to sign two discharge vouchers. (In ordinary course, only one discharge voucher is required to be signed). And *there was a gap of more than 3 months between the date of the signing of the 1st voucher and the signing of the 2nd voucher. If indeed the claimant had any reservations about it receiving unduly lower amount of claim contrary to its expectations, even after signing the 1st voucher it had those 3 months in which it could rethink about the matter if indeed the respondent was creating a situation where it was compelling the claimant to accept the lower amount under economic or financial duress or hardship. The fact is that even after a gap of 3 months the claimant readily signed the 2nd discharge voucher and not only claimant signed it, the claimant's banker also signed the same and after signing the discharge voucher, the claimant received the amount. Even at this stage of receiving the amount the claimant could have placed on record its objection or its reservation about having to receive the amount either in protest or without prejudice to the rights of the claimant to be agitated in an action to be brought by the claimant in due course subsequently.*

*Whether the claimant was suffering financial hardship owing to the fire incident in its plant and based on such financial hardship whether the claimant was indeed under financial and economic duress either owing to the actions of its banker or its creditors or other persons, the fact remains that none of it was caused or occasioned by any action of the respondent.* Yes, one can say that perhaps respondent delayed in the processing and approval of the claim but this today also cannot squarely be put upon the respondent because the surveyor consumed longer time than was permissible in processing the claim and the surveyor also has justified longer time being taken by it on the ground that on a number of occasions the claimant had to furnish additional information and additional documents to the surveyor to complete

the survey and assessment. Taking a little longer time than usually prescribed in approving and sanctioning the claim or in actually dispersing the claim amount cannot be equated with the respondent being responsible for causing economic or financial duress to the claimant. *This is not a case of two contracting parties in a normal, bilateral contract where because of the actions of one contracting party, such as a construction contract or a contract for supply of goods or a contract for rendering services or a consultancy contract, the other contracting party is going through economic or financial distress because of the acts of omission or commission of the other contracting party, usually in a dominating position. In such situations the dominant contracting party, by its acts of omission or commission can be accused of creating a situation where the other contracting party comes to grief and suffers economic or financial duress and because of such duress, it, not being in any position of independence succumbs to the pressures of the dominating party and accepts a lower amount of compensation.* Compared to all this, *in a contract of insurance where the insurer has to indemnify the insured for the loss suffered by the insured, the insurer cannot be at all accused of creating a situation of the insured suffering financial or economic duress at the hands of the insurer unless there is evidence to the contrary.* In such a situation the insurer merely asking for the execution of a discharge voucher for the sake of its record, for audit purposes and in compliance with statutory regulations cannot be held guilty of causing financial distress to the insured or by its mere asking for the signing of the discharge voucher, it cannot be said to have constrained or compelled the insured in accepting the lower amount of compensation under duress. If the claimant considered that it was being compelled and constrained to execute the discharge voucher against its will and in a situation of involuntary nature, it was open to the claimant to refuse to do so and instead represent against the insistence of the respondent for the same before an appropriate forum and there were plenty of fora available to the claimant for ventilating its grievances in that regard."

(Emphasis supplied)

**12.** The learned Arbitrator, thereafter referred to the decision of the Supreme Court in ***National Insurance Co. Ltd. v Boghara Polyfab Pvt. Ltd.***[3] as well as two decisions of this Court and proceeded to conclude thus:

"In conclusion, I have no hesitation in holding that because of the signing of the discharge vouchers by the Claimant under the

[3] **(2009) 1 SCC 267**

circumstances mentioned herein above and the claimant having received the payment, also under the said circumstances, without any objection as well as without any prejudice to its rights or contentions, the claims preferred by the Claimant in the present arbitration are not maintainable and accordingly the disputes raised herein are also not arbitrable. Issue no 1 accordingly is decided in favour of the Respondent, leading to the passing of nil award by this Tribunal in this case, leaving the parties to bear their own costs. This award is passed at New Delhi on this the 28th day of December, 2019."

## C. The Impugned Judgment

**13.** Aggrieved by the aforesaid award, the appellant approached this Court by way of OMP (Comm) 356/2021.

**14.** By judgment dated 7 December 2021, a learned Single Judge of this Court has dismissed the OMP.

**15.** The findings of the learned Single Judge, to the extent, they are relevant for our purpose may be reproduced thus:

"19. A plain reading of the impugned award indicates that the Arbitral Tribunal had found that the Surveyor's assessment of loss was acceptable to the petitioner. The Tribunal noted that on 05.03.2014, the petitioner had sent a letter to the Surveyors confirming that the compensation of ₹10,05,68,214/- on account of loss of stocks was acceptable to it.

20. The Arbitral Tribunal found that the Final Survey Report had been furnished to the petitioner and it had, at no point of time, raised any objection with regard to the assessment of loss. The Tribunal noted that the petitioner had furnished two Discharge Vouchers. The first was issued on 30.03.2014 whereby it conveyed its acceptance to a sum of 12,19,56,766/- as full and final settlement of its claim. The petitioner had also executed another Discharge Voucher dated 02.07.2014, which had been counter signed by its Banker accepting the payment of ₹12,18,21,908/- as full and final settlement of its claims.

21. The said amount was disbursed to the petitioner. The same was in conformity with the loss assessed by the Surveyor. Considering that the petitioner had not contested the assessment and had further, signed the discharge voucher; the Arbitral Tribunal did not accept that the Discharge Voucher had been signed under coercion or economic duress. The conclusion of the Arbitral Tribunal is supported by the reasons as articulated in the impugned award. The question whether the petitioner had furnished the Discharge Vouchers under duress or coercion is a question of fact and the decision of the Arbitral Tribunal in this respect would not warrant any interference in these proceedings, unless the Court finds that the finding is wholly perverse and vitiates the award.

22. The Arbitral Tribunal's view in this case is a plausible view. It is certainly, a possible view. The same would warrant no interference in these proceedings. The decision in the case of ***M/s Shreedhar Milk Food Ltd. v. M/s United India Insurance Co. Ltd.***[4] and ***United India Insurance Co. Ltd. v. M/s Shreedhar Malik Foods Ltd***[5] are of little assistance to the petitioner. In that case, the Court found that the arbitral tribunal had not returned any finding that the discharge voucher was executed by the petitioner on its free will. The arbitral tribunal had also not returned any finding as to its effect on the claim of the petitioner.

23. In the present case, the Arbitral Tribunal has returned a definite finding that the petitioner had accepted the payments without any reservation. The Arbitral Tribunal has rejected the contention that the respondent had done anything to coerce the petitioner to execute the Discharge Vouchers.

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25. As stated above, in the present case, the view expressed by the Arbitral Tribunal is a plausible view and this Court is unable to accept that the impugned award warrants any interference in these proceedings."

**16.** The appellant is in appeal before us.

## D. Rival Submissions

[4] **2018 SCC OnLine Del 8714**
[5] **2019 SCC OnLine Del 10516**

**17.** We have heard Mr. Sudhir Nandrajog, learned Senior Counsel for the appellant and Mr. Saurav Agrawal, learned counsel for the respondents, at some length.

I. Submissions of Mr. Sudhir Nandrajog

**18.** Mr. Nandrajog submits that the learned Arbitrator proceeded on the basis of a fundamentally wrong test, which vitiates the award in its entirety. He submits that the very fact of the appellant being in financial distress at the time of executing the discharge vouchers would vitiate the vouchers in their entirety, and that the aspect of whether the distress was attributable to the respondent, or otherwise, is extraneous to the issue. The learned Arbitrator, according to Mr. Nandrajog, has seriously erred in proceeding on the premise that, if the financial distress faced by the appellant was not attributable to the respondent, the discharge vouchers would be binding on the appellant. Economic distress would, by itself, render the execution of the discharge vouchers involuntary, thereby rendering them inadmissible as the basis for rejecting the appellant's claim. In such a case, it could not be said that the appellant's claim stood discharged by accord and satisfaction. Mr. Nandrajog relies, in this context on paras 27 and 28 of the judgment of the Supreme Court in ***Chairman and MD, NTPC Limited v. Reshmi Constructions, Builders and Contractors***[6] and para 89 of the decision in ***Central Inland Water Transport Corporation Ltd v. Brojo Nath Ganguly***[7], both of which were approvingly cited and relied upon, by the Supreme Court, in ***Boghara***

[6] **(2004) 2 SCC 663**
[7] **(1986) 3 SCC 156**

***Polyfab.*** We reproduce the said paragraphs for ready reference thus:

Paras 27 and 28 from ***Reshmi Constructions***

"27. Even when rights and obligations of the parties are worked out, the contract does not come to an end inter alia for the purpose of determination of the disputes arising thereunder, and, thus, the arbitration agreement can be invoked. Although it may not be strictly in place but we cannot shut our eyes to the ground reality that in a case where a contractor has made huge investment, he cannot afford not to take from the employer the amount under the bills, for various reasons which may include discharge of his liability towards the banks, financial institutions and other persons. In such a situation, the public sector undertakings would have an upper hand. They would not ordinarily release the money unless a "No-Demand Certificate" is signed. Each case, therefore, is required to be considered on its own facts.

28. Further, *necessitas non habet legem* is an age-old maxim which means necessity knows no law. A person may sometimes have to succumb to the pressure of the other party to the bargain who is in a stronger position."

Para 89 of ***Central Inland Water Transport Corporation***

"89. Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of 19th century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong trample underfoot the rights of the weak? We have a Constitution for our country. Our judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in

> bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infrastructural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances."

**19.** Mr. Nandrajog submits that there was ample material on record to indicate that the appellant was in extreme financial distress at the time when it executed the discharge vouchers. He submits that the appellant was in considerable debt to the Bank, regarding which the Bank had also issued a letter dated 10 October 2013, from which Mr. Nandrajog drew our attention to the following paragraphs:

> "The review with restructuring of credit facilities as above has been considered on the following terms and conditions,
>
> > (1) WCTL (Limit Rs.13.66 crore) is repayable in one bullet installment with initial moratorium period *till realization of insurance claim or 11 months ie up to 31.08.2014, whichever is earlier.* Any payment received

from insurance company/Agency (ECGC & New India Insurance Company) against insurance claim should be adjusted towards WCTL after adjustment of FITL.

(2) FITL (Limit Rs.2.35 crore) is repayable in one bullet installment with initial moratorium period *till realization of insurance claim or 11 months ie up to 31.08.2014, whichever is earlier.* Any payment received from insurance company/Agency (ECGC & New India Insurance Company) against insurance claim shall first be adjusted towards FITL

(3) 100% interchangeability from FBP/FBD to CC cum PC and vice versa is allowed only up to liquidation of WCTL/FITL.. No interchangeability will be allowed after repayment of WCTL/FI/TL.

(4) The old limits of CC, PC limits and other limits and Sub limits (excluding Term Loan which is since liquidated) will be restored to the instinct extent after full repayment of FITL and WCTL. However prior permission from our Higher Authorities shall be required to be obtained for restoration of old limits after full and final payment of FITL and WCTL

Other Terms and conditions including securities charged/to be charged are detailed in Annexure-D with pages 36 to 46 enclosed herewith.

Please give your acceptance to the terms and conditions of the sanction by putting signatures on the second copy of this letter and arrange to execute the documents as required by the Bank."

(Emphasis supplied)

Mr. Nandrajog submits that; therefore, the appellant was under compulsion to repay the loan advanced by the Bank within a maximum period of 11 months. The appellant was, therefore, in no position to bargain, and had willy nilly to take whatever recompense the respondent was providing. An outstanding loan amount of approximately ₹ 21 crores to the bank was due from the appellant.

**20.** Mr. Nandrajog submits that the learned Arbitrator did not

consider any of these aspects, as he was proceeding on the mistaken premise that the appellant's claim stood discharged by accord and satisfaction, unless the financial distress of the appellant was attributable to the respondent. To emphasize this point, Mr. Nandrajog has drawn our attention to the following paragraphs from the award:

> "Whether the claimant was suffering financial hardship owing to the fire incident in its plant and based on such financial hardship whether the claimant was indeed under financial and economic duress either owing to the actions of its banker or its creditors or other persons, the fact remains that none of it was caused or occasioned by any action of the respondent. Yes, one can say that perhaps respondent delayed in the processing and approval of the claim but this today also cannot squarely be put upon the respondent because the surveyor consumed longer time than was permissible in processing the claim and the surveyor also has justified longer time being taken by it on the ground that on a number of occasions the claimant had to furnish additional information and additional documents to the surveyor to complete the survey and assessment. Taking a little longer time than usually prescribed in approving and sanctioning the claim or in actually dispersing the claim amount cannot be equated with the respondent being responsible for causing economic or financial duress to the claimant. This is not a case of two contracting parties in a normal, bilateral contract where because of the actions of one contracting party, such as a construction contract or a contract for supply of goods or a contract for rendering services or a consultancy contract, the other contracting party is going through economic or financial distress because of the acts of omission or commission of the other contracting party, usually in a dominating position. In such situations the dominant contracting party, by its acts of omission or commission can be accused of creating a situation where the other contracting party comes to grief and suffers economic or financial duress and because of such duress, it, not being in any position of independence succumbs to the pressures of the dominating party and accepts a lower amount of compensation. Compared to all this, in a contract of insurance where the insurer has to indemnify the insured for the loss suffered by the insured, the insurer cannot be at all accused of creating a situation of the insured suffering financial or economic duress at the hands of the insurer unless there is evidence to the contrary. In such a situation the insurer merely asking for the execution of a discharge voucher for the sake of its record, for audit purposes and in compliance with statutory regulations cannot be held guilty of causing financial

distress to the insured or by its mere asking for the signing of the discharge voucher, it cannot be said to have constrained or compelled the insured in accepting the lower amount of compensation under duress. If the claimant considered that it was being compelled and constrained to execute the discharge voucher against its will and in a situation of involuntary nature, it was open to the claimant to refuse to do so and instead represent against the insistence of the respondent for the same before an appropriate forum and there were plenty of fora available to the claimant for ventilating its grievances in that regard."

**21.** Mr. Nandrajog has also referred to the following internal e-mail, addressed by the respondent, a copy of which was marked to the appellant:

"From: HARIOM KUMAR GAMBHIR
Sent: 01 July 2014 17:24:16
To: CS DIMRI; JASWANT SAHNI (Deputy Manager)
Subject: UNCONDITIONAL DISCHARGE REGARDING FIRE CLAIM OF M/S SUPERMINT EXPORTS P LTD., RAMPUR

Dear Sir,

We have finally got prepared the wording of full and final the unconditional discharge for getting the signatures of insured as well as their banker on it.

Kindly peruse it and advise us to proceed further in the captioned claim.

With regards,

H.K. Gambhir

Divisional Manager
Moradabad DO-2 (340500)
09415443259"

Mr. Nandrajog submits that it is apparent from the above e-mail that the respondent was aware of the fact that the Bank was breathing down the appellant's neck and that it had, therefore, no bargaining

power.

**22.** None of these aspects, submits Mr. Nandrajog, has been discussed either by the learned Arbitrator or by the learned Single Judge. He submits that the arbitral award, as well as the impugned judgement of the learned Single Judge, stand vitiated thereby, and deserve to be set aside.

II. Submissions of Mr. Agrawal

**23.** Responding to the submissions of Mr. Nandrajog, Mr. Agrawal, appearing for the respondents, submits that the approach of the learned Arbitrator does not conflict in any way with the law enunciated in ***Boghara Polyfab.*** He has drawn our attention to paras 50 and 52 of ***Boghara Polyfab*** in that regard, which read as under:

> "50. Let us consider what a civil court would have done in a case where the defendant puts forth the defence of accord and satisfaction on the basis of a full and final discharge voucher issued by the plaintiff, and the plaintiff alleges that it was obtained by fraud/coercion/undue influence and therefore not valid. It would consider the evidence as to whether there was any fraud, coercion or undue influence. If it found that there was none, it will accept the voucher as being in discharge of the contract and reject the claim without examining the claim on merits. On the other hand, if it found that the discharge voucher had been obtained by fraud/undue influence/coercion, it will ignore the same, examine whether the plaintiff had made out the claim on merits and decide the matter accordingly. The position will be the same even when there is a provision for arbitration.
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> *****
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> 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."

**24.** The reliance, by Mr. Nandrajog, on the extracts from ***Reshmi Constructions*** and ***Central Inland Water Transport Corporation*** are, according to Mr. Agrawal, misguided and, in fact, the extract from ***Central Inland Water Transport Corporation*** militates against Mr. Nandrajog's submissions.

**25.** ***Reshmi Constructions***, submits Mr. Agrawal, was a case of a commercial contract where the Supreme Court observed that if huge investments were made by the contractor, he could not afford not to take the amount under the bills from the employer. The circumstances in which ***Reshmi Constructions*** was rendered, he submits, are completely opposed to those applying in the present case and, therefore, the decision in ***Reshmi Constructions*** can be of no assistance in the present matter.

**26.** Insofar as the passage from ***Central Inland Water Transport Corporation***, on which Mr. Nandrajog relies, is concerned, Mr.

Agrawal submits that the Supreme Court stated that the bargain between the parties could be treated as unfair and unreasonable only where a man has no choice or meaningful choice, but to give his assent to a contract or sign on a doted line. In the present case, Mr. Agrawal points out that the FSR was issued on 10 February 2014, the first Discharge Voucher was dated 30 March 2014 and the second Discharge Vouched was dated 2 July 2014, and the appellant did not, at any stage, dispute the correctness of the assessment of the appellant's loss by the surveyor. Moreover, he submits that ***Central Inland Water Transport Corporation*** clearly holds that the aforesaid exception from the principle of accord and satisfaction "may not apply where both parties are businessmen and the contract is a commercial transaction".

**27.** Rather, relying on para 50 of ***Boghara Polyfab,*** Mr. Agrawal submits that the Supreme Court drew an exception to the principle of discharge of accord and satisfaction only where there was "fraud/coercion/undue influence". He has referred us, in this context, to the definitions of "fraud", "undue influence" and "coercion" as contained Sections 17[8], 16[9] and 15[10] of the Indian Contract Act, 1872,

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[8] **17. "Fraud" defined**. – "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract—

(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent.

*Explanation.* – Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

[9] **16. "Undue influence" defined**. –

(1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

and submits that the present case does not fall within any of these categories. Mr. Agrawal has also placed reliance on Illustrations (iii), (iv) and (v) provided by the Supreme Court itself in para 52 of ***Boghara Polyfab*** and submits that these illustrations clearly belie the case that Mr. Nandrajog seeks to set up.

**28.** According to Mr. Agrawal, some degree of misuse by the respondent is necessary before the appellant can escape the effect of discharge of his claim by accord and satisfaction. Else, submits Mr. Agrawal, parties would be able to voluntarily execute documents of discharge of their claims, and, thereafter, seek to resile from them and raise humongous claims far in excess of the amounts admitted. In the present case, he points out, the amount covered by the discharge voucher was the amount assessed as payable to the appellant by the surveyor. Mr. Agrawal submits that the integrity of the surveyor's report is not subject matter of challenge.

**29.** In these circumstances, Mr. Agrawal submits that the approach of the learned Arbitrator is entirely in accordance with law and,

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(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of Section 111 of the Indian Evidence Act, 1872 (I of 1872)

[10] **15. "Coercion" defined**. – "Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code (XLV of 1860), or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

*Explanation.* – It is immaterial whether the Indian Penal Code (XLV of 1860), is or is not in force in the place where the coercion is employed.

therefore, no case for interference with the award is made out.

III. Submission of Mr. Nandrajog in rejoinder

**30.** Arguing in rejoinder, Mr. Nandrajog seeks to submit, based on an endorsement made by the appellant on a letter dated 14 March 2014 from the appellant to the respondent, that no copy of the FSR had been provided to the appellant. Mr. Agrawal *per contra* points out that the concluding paragraph of the said letter itself states that the appellant had been provided a copy of the FSR.

## E. Analysis

I. Scope of interference under Section 34[11]

[11] **34. Application for setting aside arbitral award**. –
(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).
(2) An arbitral award may be set aside by the Court only if—
(a) the party making the application establishes on the basis of the record of the arbitral tribunal that –
(i) a party was under some incapacity; or
(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or
(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:
Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or
(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or
(b) the Court finds that—
(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or
(ii) the arbitral award is in conflict with the public policy of India.
*Explanation 1*. – For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

**31.** The scope of controversy, here, is very narrow, and, to adjudicate thereon, it is not necessary to enter, in detail, into the scope and ambit of Section 34 of the Act, the boundaries of which are by now well-recognized. The only issue in controversy is whether the appellant's claim stood discharged by accord and satisfaction, in view of the discharge vouchers executed by it. The learned Arbitrator has correctly observed that the plea of discharge of the claim by accord and satisfaction could be defeated only if it were shown that the appellant signed the discharge vouchers on account of fraud, coercion or undue influence, or if the appellant were under extreme financial distress. Mr. Nandrajog's fundamental submission is that the learned Arbitrator has erred, in law, in proceeding on the presumption that financial stringency, as the factor which compelled the appellant to sign the discharge vouchers, would be relevant only if the stringency was attributable to some act of the respondent, though he has also advanced a faint submission that the respondent was in fact coercing the appellant to sign the discharge vouchers.

**32.** Ordinarily, the arbitrator is the final arbiter of facts and law. Contentious legal issues should not form the basis for interference under Section 34, and the Court must defer to the arbitrator's

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(i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or
(ii) it is in contravention with the fundamental policy of Indian law; or
(iii) it is in conflict with the most basic notions of morality or justice.

*Explanation 2.* – For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2-A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

understanding of the law, even if understands it otherwise. The only relevant provision, in this regard, is Section 34(2-A), which, in essence, is invoked by Mr. Nandrajog. However, that provision, even while permitting interference with an arbitral award which is vitiated by "patent illegality", curtails the sweep of the dispensation by the proviso, which clarifies that an "erroneous application of the law" would not constitute "patent illegality". One may, therefore, understand Section 34(2-A) as permitting interference with an arbitral award only if

(i) there is illegality in the award,

(ii) the illegality is not merely an "erroneous *application* of the law" and

(iii) the illegality is patent.

**33.** Courts apply the law. The law is, therefore, distinct from its application. If, therefore, the arbitrator has *understood* the law correctly, but errs in *applying it to the facts before him*, that would *not* constitute a ground of challenge. However, if the arbitrator has misunderstood the law, in that he proceeds on a fundamentally incorrect legal principle, the award would be rendered vulnerable to interference.

**34.** ***OPG Power Generation (P) Ltd v. Enexio Power Cooling Solutions India Pvt Ltd***[12] considers practically the entire history of the law applicable to Section 34. A separate section of the judgment is devoted to the aspect of "patent illegality", as a factor which imperils an arbitral award, and we deem it appropriate to reproduce the section

[12] **(2025) 2 SCC 417**

in its entirety, thus:

> "***Patent illegality***
>
> 65. Sub-section (2-A) of Section 34 of the 1996 Act, which was inserted by the 2015 Amendment, provides that an arbitral award not arising out of international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is visited by patent illegality appearing on the face of the award. The proviso to sub-section (2-A) states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.
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> 66. In ***ONGC Ltd. v. Saw Pipes Ltd.***[13], while dealing with the phrase "public policy of India" as used in Section 34, this Court took the view that the concept of public policy connotes some matter which concerns public good and public interest. *If the award, on the face of it, patently violates statutory provisions, it cannot be said to be in public interest. Thus, an award could also be set aside if it is patently illegal. It was, however, clarified that illegality must go to the root of the matter and if the illegality is of trivial nature, it cannot be held that award is against public policy.*
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> 67. In ***Associate Builders v. DDA***[14], this Court held that an award would be patently illegal, if it is contrary to:
>
> (a) substantive provisions of law of India;
> (b) provisions of the 1996 Act; and
> (c) terms of the contract [See also three-Judge Bench decision of this Court in ***State of Chhattisgarh v. SAL Udyog (P) Ltd***[15]**.**
>
> The Court clarified that if an award is contrary to the substantive provisions of law of India, in effect, it is in contravention of Section 28(1)(a) of the 1996 Act. Similarly, violating terms of the contract, in effect, is in contravention of Section 28(3) of the 1996 Act.
>
> 68. In ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI***[16]**,** this Court specifically dealt with the 2015 Amendment which inserted sub-section (2-A) in Section 34 of the 1996 Act. It was held that "patent illegality appearing on the face of the award" refers to such illegality as goes to the root of matter, but which does not amount to mere erroneous application of law. It was also

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[13] **(2003) 5 SCC 705**
[14] **(2015) 3 SCC 49**
[15] **(2022) 2 SCC 275**
[16] **(2019) 15 SCC 131**

clarified that what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to "public policy" or "public interest", cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality. Further, it was observed, reappreciation of evidence is not permissible under this category of challenge to an arbitral award.

***Perversity as a ground of challenge***

69. Perversity as a ground for setting aside an arbitral award was recognised in ***ONGC Ltd. v. Western Geco International Ltd***[17]. Therein it was observed that an arbitral decision must not be perverse or so irrational that no reasonable person would have arrived at the same. It was observed that if an award is perverse, it would be against the public policy of India.

70. In ***Associate Builders*** certain tests were laid down to determine whether a decision of an Arbitral Tribunal could be considered perverse. In this context, it was observed that where:

(i) a finding is based on no evidence; or

(ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or

(iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.

However, by way of a note of caution, it was observed that when a court applies these tests it does not act as a court of appeal and, consequently, errors of fact cannot be corrected. Though, a possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It was also observed that an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on that score.

71. In ***Ssangyong***, which dealt with the legal position post the 2015 Amendment in Section 34 of the 1996 Act, it was observed that a decision which is perverse, while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. It was pointed out that an award based on no evidence, or which ignores vital evidence, would be perverse and thus patently illegal. It was also observed that a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is

[17] **(2014) 9 SCC 263**

not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.

72. The tests laid down in ***Associate Builders*** to determine perversity were followed in ***Ssangyong*** and later approved by a three-Judge Bench of this Court in ***Patel Engg. Ltd. v. North Eastern Electric Power Corpn. Ltd***[18].

73. In a recent three-Judge Bench decision of this Court in ***DMRC Ltd. v. Delhi Airport Metro Express (P) Ltd.***[19], the ground of patent illegality/perversity was delineated in the following terms :

> "39. In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view. A finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside under the head of "patent illegality". An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within its jurisdiction or violating a fundamental principle of natural justice."

***Scope of interference with an arbitral award***

74. The aforesaid judicial precedents make it clear that while exercising power under Section 34 of the 1996 Act the Court does not sit in appeal over the arbitral award. Interference with an arbitral award is only on limited grounds as set out in Section 34 of the 1996 Act. A possible view by the arbitrator on facts is to be respected as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It is only when an arbitral award could be categorised as perverse, that on an error of fact an arbitral award may be set aside. Further, a mere erroneous application of the law or wrong appreciation of evidence by itself is not a ground to set aside an award as is clear from the provisions of sub-section (2-A) of Section 34 of the 1996 Act.

75. In ***Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd***[20], a three-Judge Bench of this Court held that courts need to be

[18] **(2020) 7 SCC 167**
[19] **(2024) 6 SCC 357**
[20] **(2019) 20 SCC 1**

> cognizant of the fact that arbitral awards are not to be interfered with in a casual and cavalier manner, unless the court concludes that the perversity of the award goes to the root of the matter and there is no possibility of an alternative interpretation that may sustain the arbitral award. It was observed that jurisdiction under Section 34 cannot be equated with the normal appellate jurisdiction. Rather, the approach ought to be to respect the finality of the arbitral award as well as party's autonomy to get their dispute adjudicated by an alternative forum as provided under the law."

**35.** However, if the arbitrator has fundamentally erred in applying the law, as would amount to "patent illegality", the Court must step in. The line is thin, but Courts are expected to possess the intellectual wherewithal to discern it, and walk the right side.

II. Scope of interference under Section 37[21]

**36.** We, however, are not exercising Section 34 jurisdiction. A learned Single Judge has already travelled that path, and the appellant is in appeal against his decision.

**37.** Section 37 does not provide a second bite at the Section 34 cherry. In that sense, it cannot be analogized to an appeal under Section 96(1)[22] of the Code of Civil Procedure, 1908.

**38.** The scope of judicial review, under Section 37, is even more

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[21] **37. Appealable orders**. –
(1) Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—
(a) refusing to refer the parties to arbitration under Section 8;
(b) granting or refusing to grant any measure under Section 9;
(c) setting aside or refusing to set aside an arbitral award under Section 34.

[22] **96. Appeal from original decree**. –
(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court.

circumscribed than Section 34. The Supreme Court has, in ***Somdatt Builders-NCC-NEC (JV) v. NHAI***[23], stated the law, apropos Section 37 and its scope, thus:

> "48. In ***Reliance Infrastructure Ltd. v. State of Goa***[24], this Court referring to one of its earlier decisions in ***UHL Power Co. Ltd. v. State of H.P.***[25], held that scope of interference under Section 37 is all the more circumscribed keeping in view the limited scope of interference with an arbitral award under Section 34 of the 1996 Act. As it is, the jurisdiction conferred on courts under Section 34 of the 1996 Act is fairly narrow. Therefore, when it comes to scope of an appeal under Section 37 of the 1996 Act, jurisdiction of the appellate court in examining an order passed under Section 34, either setting aside or refusing to set aside an arbitral award, is all the more circumscribed.
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> 49. Again in ***Larsen Air Conditioning & Refrigeration Co. v. Union of India***[26], this Court reiterated the position that Section 37 of the 1996 Act grants narrower scope to the appellate court to review the findings in an arbitral award if it has been upheld or substantially upheld under Section 34.
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> *****
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> 51. As already discussed above, the Arbitral Tribunal had interpreted Clause 51 in a reasonable manner based on the evidence on record. This interpretation was affirmed by the learned Single Judge exercising jurisdiction under Section 34 of the 1996 Act. Therefore, the Division Bench of the High Court was not at all justified in setting aside the arbitral award exercising extremely limited jurisdiction under Section 37 of the 1996 Act by merely using expressions like "opposed to the public policy of India", "patent illegality" and "shocking the conscience of the court"."

III. <u>Accord and satisfaction in the case of discharge voucher</u>

**39.** ***Boghara Polyfab***, which was cited by both sides, is regarded as an authority on the principle of discharge of a claim by accord and

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[23] **(2025) 6 SCC 757**
[24] **(2024) 1 SCC 479**
[25] **(2022) 4 SCC 116**
[26] **(2023) 15 SCC 472**

satisfaction especially in the case of discharge vouchers executed in the case of insurance contracts. The decision was rendered in the context of the power of the Chief Justice to appoint an arbitrator under Section 11 of the 1996 Act, in the light of the law as it then stood. The Supreme Court observed, in para 25 of the report, that, if the contract was fully performed, there was discharge of the contract by performance, and no dispute remained which could be referred to arbitration. The judgment proceeds, thereafter, to exposit the law in thorough detail, leaving no room for equivocation whatsoever. Without reproducing, *in extenso*, the relevant paragraphs from the report, we may cull out the principles that apply thus:

> (i) A contract is discharged by accord and satisfaction on performance of obligations which substitute the obligations originally envisaged under the contract. The substituted obligation is the "accord", and the performance of the obligation constitutes "satisfaction" thereof.[27]
>
> (ii) A discharge voucher executed by the claimant, acknowledging performance of the contract by performance of the reduced obligation would ordinarily constitute discharge of the contract by accord and satisfaction.
>
> (iii) However, if the discharge voucher is executed by practicing fraud or coercion or exerting undue influence on the claimant, no such discharge would result.[28] The Arbitral

[27] Refer para 28 of the report
[28] Refer paras 21, 24, 25, 26 of the report

Tribunal would, in such a case, proceed with the matter, ignoring the execution of the discharge voucher.[29]

**40.** The Supreme Court referred to a number of earlier decisions, to bring the point across. It is instructive, in the context of the dispute before us, to study the paragraphs from ***Boghara Polyfab*** which cite earlier authorities:

> "31. In ***P.K. Ramaiah***[30] the appellant contractor made certain claims in regard to a construction contract. The employer rejected the claims, as also the request for reference to arbitration. On an application by the contractor, under the Arbitration Act, 1940 for appointment of an arbitrator, the civil court appointed an arbitrator. The said order of appointment was challenged by the employer. The High Court found that the contractor had unconditionally acknowledged the final measurement and accepted the payment in full and final settlement of the contract on 19-5-1981; that thereafter he had made a fresh claim on 1-6-1981 which was rejected on 12-8-1981; and that the contractor did not take action and sought reference to arbitration only several years thereafter. The High Court therefore held that there was no subsisting contract to enable reference to arbitration and consequently, set aside the reference to arbitration. On appeal by the contractor, this Court held that in view of the finding recorded by the High Court that the contractor had accepted the measurements and payment and had unconditionally acknowledged full and final settlement and satisfaction by issuing a receipt in writing, no arbitrable dispute arose for being referred to arbitration. This Court further held that there was accord and satisfaction by final settlement of the claims and the subsequent allegation of coercion was an afterthought and only a ploy to get over the settlement of the dispute.
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> 32. In ***Nav Bharat Builders***[31] a dispute arose in regard to labour escalation charges. As the employer did not agree for escalation, the contractor made an application under Section 20 of the Arbitration Act, 1940 for filing the agreement and for reference of the dispute to arbitration. Pending the said application, the contractor made a representation to the employer for settlement of the claim. The Government constituted a committee to examine the labour escalation. The said committee suggested acceptance of the

[29] Refer para 21 of the report
[30] **P.K. Ramaiah & Co. v. NTPC, 1994 Supp (3) SCC 126**
[31] **State of Maharashtra v. Nav Bharat Builders, 1994 Supp (3) SCC 83**

claim subject to certain terms. The contractor by his letter dated 3-3-1989 agreed to receive the price escalation on account of the labour component, as worked out by the committee. Thereafter, the recommended amount was paid to the contractor, who accepted the payment and agreed to withdraw the application under Section 20 in regard to the claim for labour escalation. He subsequently contended that the said letter was obtained by coercion and he was not bound by it. The trial court and the High Court held that there was an arbitrable dispute which was challenged before this Court. It is in this background that this Court following ***P.K. Ramaiah*** held:

> "5. … the respondent contended that the appellant had accepted the principle on which the escalation charges are to be paid but in its working the amount was not calculated correctly and he expressly referred the same in his letter of acceptance and that, therefore, it is open to the respondent to contend before the arbitrator that in working the principle on which the amount offered by the Government the arbitrator has to decide as to what amount had been arrived at and if the working in principle is not acceptable any alternative principle would be applicable. If the arbitrator finds that the respondent is entitled to any claim, it is still an arbitrable dispute. We find no substance in the contention. *Whatever be the principle or method or manner of working it out, a particular figure was arrived at by the Government. The respondent was then asked to consider its willingness to accept the offer and having accepted the same and received the amount, it is no longer open to the respondent to dispute the claim on any count or ground. The dispute was concluded and the respondent fully and finally accepted the [settlement of the] claim and thereafter received the amount. Thus there is accord and satisfaction of the claim relating to labour escalation charges. Thereby there is no further arbitrable dispute in that behalf*."
>
> (emphasis supplied)

33. ***Nathani Steels***[32] related to a dispute on account of non-completion of the contract. The Court found that the said dispute was settled by and between the parties as per deed dated 20-12-1980 signed by both the parties. The deed referred to the prior discussions between the parties and recorded the amicable settlement of the disputes and differences between the parties in the presence of the architect on the terms and conditions set out in Clauses 1 to 8 thereof. In view of it, the Court rejected the contention of the contractor that the settlement was liable to be set

[32] **Nathani Steels Ltd v. Associated Constructions, 1995 Supp (3) SCC 324**

aside on the ground of mistake. A three-Judge Bench of this Court, after referring to the decisions in ***P.K. Ramaiah*** and ***Nav Bharat Builders***, held thus:

> "3. … 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."
>
> (emphasis supplied)

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40. In ***Reshmi Constructions*** the employer prepared a final bill and forwarded the same along with a "no-demand certificate" in printed format confirming that it had no claims. The contractor signed the no-demand certificate and submitted it. But on the same day, the contractor also wrote a letter to the employer stating that it had issued the said certificate in view of a threat that until the said document was executed, payment of the bill will not be released. In those circumstances, after considering ***P.K. Ramaiah*** and ***Nathani Steels***, this Court held:

> "26. … The conduct of the parties as evidenced in their letters, as noticed hereinbefore, clearly goes to show that not only the final bill submitted by the respondent was rejected but another final bill was prepared with a printed format that a 'No-Demand Certificate' has been executed as otherwise the final bill would not be paid. The respondent herein, as noticed hereinbefore, categorically stated in its letter dated 20-12-1990 as to under what circumstances they were compelled to sign the said printed letter. It appears from the appendix appended to the judgment of the learned trial Judge that the said letter was filed even before the trial court. It is, therefore, not a case whether the respondent's assertion of 'under influence or coercion' can be said to have been taken by way of an afterthought.

> 27. Even when rights and obligations of the parties are worked out, the contract does not come to an end inter alia for the purpose of determination of the disputes arising thereunder, and, thus, the arbitration agreement can be invoked. Although it may not be strictly in place but we cannot shut our eyes to the ground reality that in a case where a contractor has made huge investment, he cannot afford not to take from the employer the amount under the bills, for various reasons which may include discharge of his liability towards the banks, financial institutions and other persons. In such a situation, the public sector undertakings would have an upper hand. They would not ordinarily release the money unless a 'No-Demand Certificate' is signed. Each case, therefore, is required to be considered on its own facts.
>
> 28. Further, *necessitas non habet legem* is an age-old maxim which means necessity knows no law. A person may sometimes have to succumb to the pressure of the other party to the bargain who is in a stronger position.
>
> 29. We may, however, hasten to add that such a case has to be made out and proved before the arbitrator for obtaining an award."

This decision dealt with a case where there was some justification for the contention of the contractor that the "no-demand certificate" was not given voluntarily but under coercion, and on facts, this Court felt that the question was required to be examined.

41. In ***Ambica Construction***[33] [(2006) 13 SCC 475] this Court considered a clause in the contract which required the contractor to give a no-claim certificate in the form required by the Railways after the final measurement is taken and provided that the contractor shall be debarred from disputing the correctness of the items covered by "no-claim certificate" or demanding a reference to arbitration in respect thereof. There was some material to show that the certificate was given under coercion and duress. This Court following *Reshmi Constructions* [(2004) 2 SCC 663] observed that such a clause in contract would not be an absolute bar to a contractor raising claims which were genuine, even after submission of a no-claim certificate."

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[33] **Ambica Construction v. Union of India, (2006) 13 SCC 475**

47. In ***United India Insurance v. Ajmer Singh Cotton & General Mills***[34] this Court held:

> "4. … The mere execution of the discharge voucher would not always deprive the consumer from preferring claim with respect to the deficiency in service or consequential benefits arising out of the amount paid in default of the service rendered. Despite execution of the discharge voucher, the consumer may be in a position to satisfy the tribunal or the Commission under the Act that such discharge voucher or receipt had been obtained from him under the circumstances which can be termed as fraudulent or exercise of undue influence or by misrepresentation or the like. If in a given case the consumer satisfies the authority under the Act that the discharge voucher was obtained by fraud, misrepresentation, undue influence or the like, coercive bargaining compelled by circumstances, the authority before whom the complaint is made would be justified in granting appropriate relief. …
>
> 5. In the instant cases the discharge vouchers were admittedly executed voluntarily and the complainants had not alleged their execution under fraud, undue influence, misrepresentation or the like. In the absence of pleadings and evidence the State Commission was justified in dismissing their complaints."

The above principle was followed and reiterated in ***National Insurance Co. Ltd. v. Nipha Exports (P) Ltd.***[35] and ***National Insurance Co. Ltd. v. Sehtia Shoes***[36].

48. It will also not be out of place to refer to what this Court had said in ***Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly*** in a different context (not intended to apply to commercial transactions):

> "89. … This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualise the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply

[34] **(1999) 6 SCC 400**
[35] **(2006) 8 SCC 156**
[36] **(2008) 5 SCC 400**

where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which it can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. *It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept* a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infrastructural organisations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances."

(emphasis supplied)

**41.** Apropos the judgements to which it had earlier referred, the Supreme Court observed thus:

"42. We thus find that the cases referred to fall under two categories. The cases relied on by the appellant are of one category *where the Court after considering the facts, found that there was a full and final settlement resulting in accord and satisfaction, and there was no substance in the allegations of coercion/undue influence. Consequently, this Court held that there could be no reference of any dispute to arbitration.* The decisions in ***Nav Bharat*** and ***Nathani Steels*** are cases falling under this category where there were bilateral negotiated settlements of pending disputes, such settlements having been reduced to writing either in the presence of witnesses or otherwise. ***P.K. Ramaiah*** is a case where the contract was performed and there was a full and final

settlement and satisfaction resulting in discharge of the contract. It also falls under this category.

43. The cases relied on by the respondent fall under a different category where the Court found some substance in the contention of the claimants that "no-dues/claim certificates", or "full and final settlement discharge vouchers" *were insisted and taken (either in a printed format or otherwise)* as a condition precedent for release of the admitted dues. Alternatively, they were cases where full and final discharge was alleged, but there were no documents confirming such discharge. Consequently, this Court held that the disputes were arbitrable.

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45. It is true that in ***Nathani Steels*** there is an observation that "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". But that was an observation made with reference to a plea of "mistake" *and not with reference to allegation of fraud, undue influence or coercion*. It is also true that the observations in ***Damodar Valley Corpn.***[37] and ***Jayesh Engg. Works***[38] that whether contract has been fully worked out and whether payment has been made in full and final settlement are questions to be considered by the arbitrator when there is a dispute regarding the same, even if there is a full and final settlement discharge voucher, seem to reflect a view at the other end of the spectrum. Though it is possible to read them harmoniously, such an exercise may not be necessary. All those decisions were rendered in the context of the provisions of the Arbitration Act, 1940. The perspective of the new Act is different from the old Act. The issue is not covered by the decision in ***SBP & Co.***

46. In several insurance claim cases arising under the Consumer Protection Act, 1986, this Court has held that if a complainant claimant satisfies the consumer forum that discharge vouchers were *obtained by fraud, coercion, undue influence, etc.*, they should be ignored, but if they were found to be voluntary, the claimant will be bound by it resulting in rejection of complaint.

**42.** Apropos the practice of obtaining undated receipts in advance of payments, or discharge vouchers, the Supreme Court also entered

[37] **Damodar Valley Corpn v. K.K. Kar, (1974) 1 SCC 141**
[38] **Jayesn Engg Works v. New India Assurance Co Ltd, (2000) 10 SCC 178**

certain general observations in ***Boghara Polyfab***, which are significant in the context of the present dispute:

> "49. Obtaining of undated receipts-in-advance in regard to regular/routine payments by government departments and corporate sector is an accepted practice which has come to stay due to administrative exigencies and accounting necessities. The reason for insisting upon undated voucher/receipt is that as on the date of execution of such voucher/receipt, payment is not made. The payment is made only on a future date long after obtaining the receipt. If the date of execution of the receipt is mentioned in the receipt and the payment is released long thereafter, the receipt acknowledging the amount as having been received on a much earlier date will be absurd and meaningless. Therefore, undated receipts are taken so that it can be used in respect of subsequent payments by incorporating the appropriate date. But many a time, matters are dealt with so casually that the date is not filled even when payment is made. Be that as it may. But what is of some concern *is the routine insistence* by some government departments, statutory corporations and government companies for issue of undated "no-dues certificates" or "full and final settlements vouchers" acknowledging receipt of a sum which is smaller than the claim in full and final settlement of all claims, *as a condition precedent for releasing even the admitted dues. Such a procedure requiring the claimant to issue an undated receipt (acknowledging receipt of a sum smaller than his claim) in full and final settlement, as a condition for releasing an admitted lesser amount, is unfair, irregular and illegal and requires to be deprecated.*"
>
> (Emphasis supplied)

**43.** It is clear, therefore, that the Supreme Court, in no uncertain terms, deprecated, in ***Boghara Polyfab***, the practice of *insisting* on receipts in advance, or discharge vouchers, *even before releasing the admitted dues*.

**44.** The boundaries of Section 11(6), vis-à-vis Section 11(6A), of the 1996 Act were radically redrawn by the decision in ***SBI General***

***Insurance Co. Ltd v. Krish Spinning***[39], which also notices ***Boghara Polyfab***, albeit in the context of the extent to which the dispute would be arbitrable if the underlying contract stood discharged by accord and satisfaction. Nonetheless, in para 95.3 of the report, the Supreme Court observes that "the party seeking arbitration would have to prima facie establish that there was fraud or coercion involved in the signing of the discharge certificate". The emphasis is, therefore, again on "fraud" and "coercion".

**45.** Between ***Boghara Polyfab*** and ***SBI General Insurance***, however, came the decision in ***Union of India v. Master Construction Co.***[40], ***New India Assurance Co. Ltd v. Genus Power Infrastructure Ltd***[41] and ***Oriental Insurance Co. Ltd v. Dicitex Furnishing Ltd***[42].

**46.** ***Master Construction Co.*** did not deal with an insurance claim, or a discharge voucher. Master Construction Co.[43] was awarded a Government contract, for erection of buildings. The work was completed, and completion certificate was issued. MCC furnished no claim certificates and signed the final bill. The final bill was paid. Thereafter, MCC withdrew its no claim certificates and lodged claims with the Government. On the ground that no claim certificates had been issued by it, MCC's claims were declined by the Chief Engineer. MCC sought reference of the dispute to arbitration. As the Chief Engineer did not appoint any arbitrator, MCC approached the learned Civil Judge under Section 11 of the 1996 Act. The Civil Judge

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[39] **(2024) 12 SCC 1**
[40] **(2011) 12 SCC 349**
[41] **(2015) 2 SCC 424**
[42] **(2020) 4 SCC 621**
[43] "MCC" hereinafter

dismissed the application. MCC approached the High Court by way of a writ petition. The High Court dismissed the writ petition. MCC appealed to the Supreme Court. The Supreme Court disposed of the Special Leave Petition of MCC by directing that the Section 11 application of MCC be placed before the Chief Justice of the High Court for appropriate orders. The Chief Justice referred all disputes between the parties to arbitration, and appointed an arbitrator to arbitrate thereon. The Union of India[44] appealed to the Supreme Court.

**47.** Before the Supreme Court, the UOI contended that, as the claims of MCC stood discharged by accord and satisfaction, nothing survived for adjudication in arbitral proceedings. MCC contended, *per contra*, that it had always been its case that the no claim certificates were given under financial duress and coercion as the Government had arbitrarily withheld payment. This issue, contended MCC, had necessarily to be resolved in arbitration.

**48.** The Supreme Court identified the issue arising for construction, in para 10 of the report, as "whether after furnishing of 'no claim certificates' and the receipt of payment of final bill, as submitted by the contractor, any arbitrable dispute between the parties survived or the contract stood discharged". After referring to ***Boghara Polyfab***, the Supreme Court held thus:

> "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*

[44] "UOI" hereinafter

*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.

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."

(Emphasis supplied)

**49.** Thereafter, the Supreme Court proceeded to apply the principles enunciated by it to the facts, thus:

"20. In light of the above legal position, we now turn to the facts of the present case. At the time of receiving payment on account of the final bill, the contractor executed the certificate in the following terms:

> "(a) I/we hereby certify that I/we have performed the work under the condition of Contract Agreement No. CEBTZ-14/95-96, for which payment is claimed and that *I/we have no further claims under CA No. CEBTZ-14/95-96*.
>
> (b) Received rupees two lakh fifteen thousand one hundred seventy-eight only. *This payment is in full and final settlement of all money dues under CA No. CEBTZ-*

*14/95-96 and I have no further claims in respect of CA No. CEBTZ-14/95-96.*"

(emphasis supplied by us)

21. The contractor also appended the following certificate:
"It is certified that I have prepared this final bill for claiming entire payment due to me from this contract agreement. The final bill includes all claims raised by me from time to time irrespective of the fact whether they are admitted/accepted by the Department or not. I now categorically certify that I have no more claim in respect of this contract beyond those already included in this final bill by me and the amount so claimed by me shall be in full and final satisfaction of all my claims under this contract agreement. I shall however, receive my right to raise claim to the extent disallowed to me from this final bill."

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.* 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.

23. The present, in our opinion, appears to be a case falling in the category of exception noted in ***Boghara Polyfab (P) Ltd.*** *As to financial duress or coercion, nothing of this kind is established prima facie. Mere allegation that no-claim certificates have been obtained under financial duress and coercion, without there being anything more to suggest that, does not lead to an arbitrable dispute. The conduct of the contractor clearly shows that "no-claim certificates" were given by it voluntarily; the contractor accepted the amount voluntarily and the contract was discharged voluntarily.*

24. We are, thus, unable to sustain the order of the Chief Justice in the proceedings under Section 11(6) of the 1996 Act. In view of our finding above, it is not necessary to consider the alternative submission made by the Senior Counsel for the appellants that the Chief Justice in exercise of his power under Section 11(6) ought to have appointed the arbitrator in terms of the arbitration clause and the appointment of Mr M.S. Liberahan, retired Chief Justice of the Andhra Pradesh High Court, was not in accord with the arbitration agreement."

**50.** ***Master Construction***, therefore, was a case in which the Supreme Court held the contract in fact to have been discharged by accord and satisfaction, as *there was, even prima facie, no evidence of any fraud or coercion*. The emphasis, here, is again on "fraud, coercion and undue influence", additionally holding that the onus to establish the existence of these elements is on the claimant who so asserts, after having issued a no claim certificate.

**51.** ***Genus Power Infrastructure*** is a case directly dealing with an insurance policy. Genus Power Infrastructure[45] purchased an insurance policy from New India Assurance Co. Ltd. A fire explosion took place at the premises next to GPI's, resulting in extensive damage to GPI's goods. GPI sought to avail the policy. A surveyor, appointed by the Insurance Company, assessed the loss at ₹ 60977406/-. The FSR was communicated to GPI on 1 November 2010. GPI signed and subscribed to a discharge voucher dated 11 March 2011, agreeing to the aforesaid amount of ₹ 60977406/- as full and final settlement of its claim.

**52.** Three weeks thereafter, GPI sought to repudiate the discharge voucher by way of a notice to the Insurance Company, in which it was alleged that the discharge voucher was signed under duress, coercion and undue influence exercised by the Insurance Company, who took advantage of the extreme financial distress of GPI. The notice also sought to appoint an arbitrator in order to arbitrate on the issue. The Insurance Company responded that there was no arbitrable dispute, in view of the discharge voucher executed by the respondent.

[45] "GPI" hereinafter

**53.** GPI moved the High Court under Section 11, seeking appointment of an arbitrator. The High Court proceeded to appoint an arbitrator, with liberty to the parties to raise the issue of arbitrability of the dispute before the arbitrator. The Insurance Company appealed to the Supreme Court.

**54.** The Supreme Court recorded the rival submissions of learned Senior Counsel appearing for the parties thus:

> "6. Appearing for the appellant Mr Gourab Banerji, learned Senior Advocate submitted that the letter of subrogation was a detailed agreement which was finalised 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 ₹ 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 ₹ 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. v. Boghara Polyfab (P) Ltd.*** by Mr Venugopal."

**55.** The Supreme Court observed that, in these circumstances, the question that arose before it was "whether the discharge in the present case upon acceptance of compensation and signing of subrogation letter was not voluntary and whether the claimant was subjected to compulsion or coercion and as such could validly invoke the

jurisdiction under Section 11 of the Act." Following this, the Supreme Court, after reproducing the relevant paragraphs from ***Boghara Polyfab*** and ***Master Construction***, held, in para 9 of the report, that it was "therefore clear that a bald plea *of fraud, coercion, duress or undue influence* (was) not enough and the party who set up a plea, must *prima facie* establish the same by placing material before the Chief Justice/his designate."

**56.** Applying the law to the facts before it, the Supreme Court held:

> "9. …Viewed thus, the relevant averments in the petition filed by the respondent 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 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 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 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 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 of 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 towards 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."
>
> 10. 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 31-3-2011 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."
>
> (Emphasis supplied)

**57.** ***Dicitex Furnishing***, too, was concerned with a challenge to an order passed under Section 11(6) of the 1996 Act, seeking appointment of an arbitrator in the case of a dispute relating to fire insurance. Dicitex obtained a Fire and Special Peril Policy from the Oriental Insurance Co. Ltd[46]. A fire broke out in its building. All Dicitex's stocks were destroyed. Dicitex approached OICL with a claim of ₹ 14,88,14,327/-. OICL appointed a surveyor, who assessed the loss suffered by Dicitex at ₹ 12,28,60,369/- in its FSR. Dicitex claimed not to have received the FSR. A resurvey of the loss suffered by Dicitex was undertaken by OICL on Dicitex's insistence.

[46] "OICL" hereinafter

**58.** OICL obtained the signature of Dicitex on a format and, in accordance therewith, issued a cheque for ₹ 3.5 crores to Dicitex. Dicitex accepted the amount as "on account payment" against its claim, and signed a discharge voucher. The Bank also endorsed the discharge voucher.

**59.** On 27 May 2014, OICL wrote to Dicitex, enclosing a discharge voucher for the balance amount payable. In the said discharge voucher, the total claim payable to Dicitex was stated to be ₹ 7.16 Crores. Dicitex responded on 28 May 2014 questioning the correctness of the assessed claim of ₹ 7.16 Crores, pointing out that it had initially claimed ₹ 15 Crores and that the surveyor had assessed the claim at ₹ 12.93 Crores. OICL replied stating that as certain errors were perceived in the FSR of the earlier surveyor, the claim of Dicitex had been resurveyed and found to be ₹ 7,16,30,148/- which had been granted by OICL. Dicitex was, therefore, directed to send back the duly signed unconditional discharge voucher.

**60.** According to Dicitex, OICL refused to release any further payment unless the unconditional discharge voucher was signed and sent back by Dicitex. As it was in urgent need of funds, Dicitex withdrew its earlier communication questioning the correctness of the figure of ₹7,16,30,148/- and sent back the signed discharge voucher for the said amount, stating that the payment amounted to full and final settlement of Dicitex's claim.

**61.** Thereafter, Dicitex raised a claim for the balance amount payable to it as per its estimate. It also sought reference to the dispute

to arbitration. OICL, in its response, stated that there was no referable dispute as Dicitex had signed an unconditional discharge voucher expressing satisfaction with the payment of the balance amount in terms thereof. Dicitex, in its response, denied that the claims stood satisfied by the discharge voucher and sought to point out that against the assessed claim of ₹12.93 Crores by the earlier surveyor, only ₹3.5 Crores had been released by OICL, almost 10 months after the fire. The Dicitex was, therefore, in its financially straitened circumstances, constrained to sign on the discharge voucher.

**62.** As matters had reached an impasse, Dicitex approached the High Court of Bombay under Section 11(6) of the 1996 Act, seeking appointment of an Arbitrator.

**63.** By order dated 13 October 2015, a learned Single Judge of the High Court of Bombay allowed Dicitex's application under Section 11(6), stating that an arbitral issue had arisen for consideration, in view of Dicitex's contention that the discharge voucher had been signed under financial duress and coercion.

**64.** OICL appealed to the Supreme Court.

**65.** The Supreme Court identified the issue before it as 'whether an arbitrable dispute had arisen between Dicitex and OICL in the circumstances of the case. After noticing the decisions in ***Boghara Polyfab***, ***Master Construction*** and ***Genus Power Infrastructure*** as well as certain other decisions which followed ***Boghara Polyfab***, the Supreme Court observed as under:

"22. It is clear that in ***Boghara Polyfab***, no rule of universal application was indicated. No doubt, subsequent judgments which followed it, were in the context of the facts as were presented to the court. Proposition (iii) of the conclusions recorded in ***Boghara Polyfab*** visualise duress or coercion on account of withholding of payments due. The court — in more places than one, recognised that an aggrieved party can be the victim of economic coercion which results in its signing a document which discharges the other party of its obligations…"

**66.** Applying the law to the facts before it, the Supreme Court observed and held as under:

"23. A close look at the facts in the present case would show that though the pleadings in the initial application under Section 11(6) are weak, nevertheless, the materials on the record, in the form of copies of the inter se correspondence of the parties — which span over 2 years, clearly show that Dicitex kept repeatedly stating that it was facing financial crisis; it referred to credits obtained for its business and the urgency to pay back the bank. It is a matter of record that the surveyor's report, dated 14-8-2014, recommended payment of Rs 12,93,26,704.98 to Dicitex. Equally, it is a matter of record that the appellant referred the matter to a chartered accountant's firm, to verify certain inventory and sales figures. It went by the report of the latter, who stated that the estimate of loss could not be more than Rs 7,16,30,148. This is what was offered to Dicitex, by May 2014. Dicitex's application under Section 11(6) is replete with references to the number of letters written to the appellant, seeking release of amounts; it also averred to inability to pay its income tax dues, the pressure from bankers (in support of which, copies of letters of bankers were produced along with the application).

24. The averments by Dicitex, regarding the circumstances which led it to execute the no-objection discharge voucher, are reproduced below:

> "31. The respondents did not pay anything to the petitioner after the submission of its letter, dated 31-5-2014 and therefore several telephonic calls were made on behalf of the petitioner, to the respondent's Regional Office at Mumbai in an effort to persuade the respondents to increase the settlement amount so as to include the differential amount of about Rs 7 crores. The petitioner also specifically requested the respondents not to, in any event,

insist on the execution of the discharge voucher strictly as prescribed as a condition precedent for the payment of any part of the balance amount of claim.

32. Since, on the one hand, the respondents did not show any inclination to relent on any count and instead continued to insist that any further payment would be made to the petitioner if and only if the discharge voucher was executed exactly at the time and in the form and manner as required by the respondents as well as the letter dated 31-5-2014 withdrawn and, on the other hand, the petitioner was in urgent need of funds to meet its mounting liabilities the petitioner was forced to withdraw its earlier letter dated 31-5-2014 and coerced into executing the discharge voucher exactly as dictated by the respondents. Accordingly, the petitioner wrote a letter dated 6-6-2014 to Respondent 2 stating therein that it was withdrawing its letter dated 31-5-2014 and also enclosing the duly executed discharge Voucher. The petitioner also requested that the claim amount be paid over to it, immediately."

25. The averments in the application, later are that the appellant paid the amount. Dicitex, nevertheless later, by three letters questioned the basis of reduction of the amount of claim. It later alleged that it wrote a letter "dated 14-7-2014 to the respondents stating therein, inter alia, that since they were forced to accept the offered amount and that since there was a dispute on the quantum of claim settlement paid to the petitioner, the petitioner was invoking arbitration proceedings under Clause 13 of the said Policy to recover the differential amount."

26. An overall reading of Dicitex's application [under Section 11(6)] clearly shows that its grievance with respect to the involuntary nature of the discharge voucher was articulated. It cannot be disputed that several letters — spanning over two years—stating that it was facing financial crisis on account of the delay in settling the claim, were addressed to the appellant. This Court is conscious of the fact that an application under Section 11(6) is in the form of a pleading which merely seeks an order of the court, for appointment of an arbitrator. It cannot be conclusive of the pleas or contentions that the claimant or the party concerned can take in the arbitral proceedings. At this stage, therefore, the court which is required to ensure that an arbitrable dispute exists, has to be prima facie convinced about the genuineness or credibility of the plea of coercion; it cannot be too particular about the nature of the plea, which necessarily has to be made and established in the substantive (read : arbitration) proceeding. If the court were to take a contrary approach and minutely examine the plea and judge its credibility or reasonableness, there would be a

> danger of its denying a forum to the applicant altogether, because rejection of the application would render the finding (about the finality of the discharge and its effect as satisfaction) final, thus, precluding the applicant of its right event to approach a civil court. There are decisions of this Court (***Associated Construction v. Pawanhans Helicopters Ltd.***[47]) and ***Boghara Polyfab*** which upheld the concept of economic duress. Having regard to the facts and circumstances, this Court is of the opinion that the reasoning in the impugned judgment cannot be faulted."

**67.** An analysis of the afore-noted case law indicates that in almost every case, the test that has been applied by the Supreme Court is whether the discharge voucher was vitiated by fraud, coercion or undue influence. Where there was no sustainable material to indicate the existence of these elements, the Supreme Court has upheld the decision not to refer the dispute to arbitration[48]. We have neither been shown nor have we come across, any decision in which absent at least any insistence by the insurer, an unconditional discharge voucher has been held not to discharge the claim by accord and satisfaction merely on the ground that the insurer was in financially distressed circumstances.

**68.** We have also to bear in mind the fact that all the above decisions have been rendered under Section 11(6) of the 1996 Act. The ambit of a Court jurisdiction under Section 34 is much more circumscribed and limited than the jurisdiction which it could exercise under Section 11 (as the law stood at that time). While examining whether an arbitrable dispute arose under Section 11(6), the Court had

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[47] **(2008) 16 SCC 128**

[48] It may be noted that these decisions were rendered prior to the judgment in **SBI General Insurance**, which restricted the scope of examination under Section 11(6) to the aspect of existence of an arbitration agreement between the parties and the filing of the Section 11 application within three years of initiation of arbitration under Section 21 of the 1996 Act. The aspect of arbitrability of the dispute is, therefore, now no man's land for the Section 11 Court.

only to arrive at a *prima facie* conclusion that an issue worthy of arbitration existed. Thereafter, the merits of the controversy, which would include the merits of the plea that the claim stood discharged by accord and satisfaction, was left for the arbitrator to decide.

**69.** As against that, we are concerned with a case in which the arbitrator has already traversed that route and has arrived at a finding on merits on the aspect of discharge of the claim by accord and satisfaction. Moreover, that decision has also suffered scrutiny by a learned Single Judge under Section 34 of the 1996 Act. We are exercising Section 37 jurisdiction. The scope of our enquiry is, therefore, far more circumscribed than was the scope of enquiry available with the Courts in the decisions cited above under Section 11(6).

IV. Applying the law

**70.** Within the aforesaid parameters, we are of the opinion that no case for interference with the arbitral award or with the impugned judgment of the learned Single Judge can be said to exist.

**71.** The fact that the appellant had executed the Discharge Vouchers dated 30 March 2014 and 2 July 2014 is not in dispute. The fact that, as many as four months prior to the execution of the first Discharge Voucher, the FSR already worked out the loss suffered by the appellant at ₹ 12,11,31,758/-, is not in dispute. Mr. Nandrajog's contention that no copy of the FSR was provided to the appellant is obviously not acceptable as the letter dated 27 March 2014 clearly

states that the appellant had obtained a copy of the FSR. As such, there is substance in the finding of the learned arbitrator that, if the appellant had any misgivings regarding the working out of its claims of FSR, it had more than ample time to object. We may, in this context, reproduce the following observations of the learned Arbitrator:

> "If the claimant considered that it was being compelled and constrained to execute the discharge voucher against its will and in a situation of involuntary nature, it was open to the claimant to refuse to do so and instead represent against the insistence of the respondent for the same before an appropriate forum and there were plenty of fora available to the claimant for ventilating its grievances in that regard."

**72.** *Apropos* ***Boghara Polyfab,*** we find the submissions of Mr. Agrawal worthy of acceptance. ***Central Inland Water Transport Corporation,*** on which Mr. Nandrajog places reliance, itself states that the principles contained in the paragraph cited from the said decision may not apply in the case of commercial contracts executed between businessmen.

**73.** Even otherwise, a holistic reading of the decision in ***Boghara Polyfab*** makes it clear that the Supreme Court carved out an exception to the principle of discharge of claim by accord and satisfaction only where there was an element of fraud/coercion/undue influence.

**74.** The illustrations contained in para 52 of ***Boghara Polyfab*** make this clear. Illustrations (iii) and (iv), in which the Supreme Court has held the principle of discharge of the claim by accord and satisfaction not to apply are cases in which there was compulsion and duress

exercised by the employer/insurer. In Illustration (iii), the Supreme Court has clearly stated that the employer specifically stated that unless the discharge voucher was executed in the terms desired by the employer, payment *of the admitted amount* would not be released. This, according to the Supreme Court, clearly exhibited coercion on the part of the employer.

**75.** Similarly, Illustration (iv) refers to a case in which the claim was neither admitted nor rejected. In the present case, there was an admission of the claim of the appellant, but to the extent assessed by the surveyor of ₹ 12,11,31,758/-. Moreover, Illustration (iv) also goes on to envisage specific communication by the insurer to the claimant that, if the claimant did not give a full and final discharge voucher, his entire claim would be rejected. Again, it is in these circumstances that the Supreme Court has held there was duress, compulsion and coercion on the part of the insurer.

**76.** As opposed to this, in Illustration (v), the Supreme Court has observed that, even if the claimant was under financial compulsion and commercial pressure or economic duress, he would not be entitled to escape the application of the principle of accord and satisfaction if the discharge voucher was executed without any compulsion on the part of the respondent. In such a case, the decision to issue the discharge voucher would be treated as one exercised by the claimant by his own free choice and absent any threat, coercion or compulsion by the respondent. The claimant would, therefore, be bound by the principles of accord and satisfaction.

**77.** We do not find that the decisions which followed ***Boghara Polyfab*** departed from this legal position. All decisions are *ad idem* on the point that mere assertion of financial stringency cannot suffice to escape the effect of an unconditional no claim certificate or discharge voucher. The party seeking to do so has to establish that he had *no option* but to sign on the dotted line, such a case in which the opposite party completely refused to release *any payment* till he did so. The use of the word "admitted amount" in example (iii) in para 52 of ***Boghara Polyfab*** is obviously deliberate. It is only where the opposite party refuses even to release *the admitted amount*, unless the claimant subscribes to the unconditional discharge voucher, that financial duress or compulsion can be pleaded.

**78.** In the present case, the respondent never demurred from releasing the claim of the appellant, as assessed by the surveyor, till the appellant signed the discharge vouchers. We find no reasonable explanation, therefore, for the appellant having remained silent from February 2014 to August 2014, and having signed two discharge vouchers without so much as a whisper of protest.

**79.** We have already reproduced the relevant paragraphs, from the arbitral award, in para 11 *supra*. The learned arbitrator has, on the aspect of discharge of the appellant's claim by accord and satisfaction, observed that

> (i) there was nothing to suggest that the respondent either compelled the appellant to sign the discharge vouchers, or created a situation in which the appellant was compelled to do

so,

(ii) despite the FSR having been issued on 10 February 2014, after which the appellant signed two discharge vouchers dated 30 March 2014 and 2 July 2014, not disputing, at any stage, the computation, in the FSR, of the claim due and payable to it,

(iii) on 5 March 2014, the appellant had written to the surveyor, accepting his assessment of the claim payable to the appellant as ₹ 10,05,68,218,

(iv) even thereafter, on the appellant claiming an additional amount of ₹ 13.78 lakhs, the surveyor re-assessed the payable amount of the said claim for ₹ 8.25 lakhs,

(v) at no point of time before signing the discharge vouchers did the appellant ever question the correctness of the FSR, despite a copy having been provided to it,

(vi) even in its communication dated 27 May 2014, between the signing of the first and second discharge vouchers, the appellant did not question the computation of its claim as contained in the FSR and the discharge voucher, and merely sought early payment of the said amount, and

(vii) at no point of time did the appellant write to the respondent stating that it was in dire financial distress, or that it was accepting the amount as per the FSR under duress or compulsion.

If, in such circumstances, the learned arbitrator found the claim of the appellant to be unsustainable on the ground of discharge by accord and satisfaction, we find no infirmity, therein, as would justify interference under Section 34, much less Section 37, of the 1996 Act.

The Court cannot, under either of the said provisions, re-examine the material on record and determine for itself whether it would have arrived at a conclusion different from that at which the arbitrator arrived.

**80.** Besides, as Mr. Agrawal correctly points out, the Supreme Court has, in para 89 of ***Central Inland Water Transport Corporation***, doubted the applicability of the principle that a party to a contract can avoid accord and satisfaction by pleading fraud, duress or coercion, where the contract is a commercial contract between businessmen. That the insurance contract executed between the appellant and the respondent qualifies this description can hardly be doubted. Even if the use of the word "may", by the Supreme Court, indicates that this principle may not be watertight, it is clear that, in commercial contracts, any attempt to escape the effect of an unconditional no claim certificate, or discharge voucher, by the signatory thereto, would be an arduous task.

**81.** We agree with Mr. Agrawal that, if a signatory to an unconditional discharge voucher, affirming full and final settlement of a claim, can escape the effect of the voucher by merely pleading financial stringency, absent any material evidencing fraud, coercion, or duress or compulsion caused by the opposite party, it would reduce such vouchers to meaningless scraps of paper. The judgments of the Supreme Court, cited *supra*, indicate that the signatory to an unconditional discharge voucher has, in order to avoid accord and satisfaction, to explain the circumstances which prevented him from protesting when he had time to do so, as well as establish some degree

of complicity, on the part of the insurer/opposite party in placing him under compulsion to sign the voucher.

**82.** Clearly, no such circumstance, as could indicate, even *prima facie*, that the respondent had practiced fraud, coercion or undue influence, on the appellant, can be said to exist in the present case. Nor has Mr. Nandrajog attempted, fairly, to pigeonhole the case of his client into any of these categories. We are entirely in agreement with the learned arbitrator in his findings on that score.

**83.** The e-mail dated 1 July 2014, on which Mr. Nandrajog relies, and which stands extracted in para 21 *supra*, clearly does not even remotely indicate the existence of any of these aspects. It merely records the fact that the wording of the discharge voucher had been finalized. We fail to understand what capital the appellant can seek to draw therefrom.

**84.** It has to be borne in mind that the decision to sign an unconditional no claim discharge voucher is ultimately of the signatory. The mere fact that the signatory may feel financial pressure, and therefore decide to sign the discharge voucher, would not *ipso facto* render the voucher unenforceable on the ground of fraud, coercion, undue influence, or even compulsion. Absent any contribution to the financial distress, even remote, by the opposite party, the compulsion and duress, if any, arises out of the claimant's own subjective decision, and the claimant cannot be permitted to take advantage thereof, to the prejudice of the opposite party. The principle of accord and satisfaction, which is a hallowed principle of contract

jurisprudence, cannot be consigned to oblivion.

## F. Conclusion

**85.** We are, therefore, of the view that no case existed for the learned Single Judge to interfere with the arbitral award. The impugned judgment, in refusing to do so, therefore, suffers from no error of fact or law as would call for interference under Section 37 of the 1996 Act.

**86.** The appeal is, accordingly, dismissed with no orders as to costs.

**C. HARI SHANKAR, J.**

**OM PRAKASH SHUKLA, J.**

**MARCH 16, 2026**
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