REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 8550 OF 2019

(ARISING OUT OF SLP (C) NO. 34186 OF 2015)

THE ORIENTAL INSURANCE CO. LTD.
& ANR. ...APPELLANTS

VERSUS

DICITEX FURNISHING LTD. ...RESPONDENT

J U D G M E N T

S. RAVINDRA BHAT, J.

1. Leave granted. With the consent of counsel, the appeal was heard finally. The Oriental Insurance Co. Ltd (hereafter "the insurer" or "the appellant") appeals the decision of a single judge of the Bombay High Court, who allowed the respondent's application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereafter "the Act") and appointed an

arbitrator. The insurer's objection about maintainability of the application on the ground that the respondent (hereafter "Dicitex") had signed the discharge voucher and accepted the amount offered, thus, signifying accord and satisfaction, which in turn meant that there was no arbitrable dispute, was rejected.

2. The relevant facts in this appeal are that on 17.09.2011, Dicitex obtained a Standard Fire and Special Peril Policy; it was issued by the appellant to cover the stocks of goods lying in its three separate godowns located at Thane, Maharashtra, by three separate endorsements. The total sum insured was @ ₹13 crores. Clause 13 of the terms and conditions of the said policy contained an arbitration clause. On 25.05.2012, a fire broke out at night on the ground floor of the building occupied by RFCL, which fire spread to the first floor of the building and completely engulfed all of the appellant's three godowns which had stored its goods. All the stocks in all the three godowns were completely destroyed. Dicitex informed the appellant on 26.05.2012, about the fire and the consequential loss. The appellant appointed M/s. C.P. Mehta & Co. as Surveyors and Assessors to survey the loss suffered by Dicitex and to report on the claim to be lodged upon

the insurer-appellant, by the said company. Dicitex lodged a total and final claim upon the appellant for a sum of ₹14,88,14,327/- comprising ₹13,52,85,752/- towards cost of the materials destroyed and ₹1,35,28,575/- as overheads. Dicitex claims also to have submitted comprehensive documentary evidence and detailed work sheets in support of the claim made to the insurer. On 14.08.2012, after visiting Dicitex's factory and the godowns, and after scrutinizing the materials submitted by it in support of its claim, the Surveyor appointed by the insurer filed a Final Survey Report recommending that the claim be settled for an amount of ₹12,93,26,704.98/- and that after deducting an amount of 5% towards compulsory deduction for excess, a net amount of ₹12,28,60,369/- be paid over to Dicitex. The latter alleged that a copy of this survey report was not supplied to it, by the insurer, or the surveyor.

3. On 20.09.2012, Dicitex addressed a letter to the appellant's chairman, informing him of the financial distress that it was facing, requesting for settlement of the claim on priority basis. Dicitex also informed him about a temporary loan obtained -to the tune of ₹10 crores- from Union Bank of India for 3 months at

a high rate of interest which was due for repayment in September 2012 and requested him that it would be a great financial help if its claim could be settled on priority basis which would mitigate their hardship. Again, on 25.10.2012, Dicitex informed the insurer that the sale value of the goods destroyed was above ₹19 crores and that it had not only lost its goods but also its profits. Dicitex informed that it had already submitted all the documentary evidence supporting the claim to the Surveyor, M/s. C.P. Mehta & Co., yet another letter was addressed to the appellant's chairman on 31.10.2012 placing on record that it had understood from the surveyor M/s. C.P. Mehta & Co. that the Head Office of the appellant asked for some more information in connection with the claim. Dicitex stated that compiling, organizing and sending various documents totalling around 35,000 in number, entailed voluminous work. It was stated that the surveyor had already gone through those documents and had picked up at random, sample of various concerned records. Dicitex stated that it was arranging to compile the documents and agreed to send them to the surveyor as soon as possible. In other letters (dated 10.01.2012, 28.01.2013), again requests were

made to the insurer to release the amounts. Apparently, the appellant appointed a Chartered Accountant (M/s Naveen Jhand & Associates) to carry out a resurvey of the claim made by it (Dicitex). The latter had already furnished 37,700 documents physically, which showed the exact quantity of furnishing fabrics in meters. Dicitex brought to the notice of the Chairman-cum-Managing Director that the new surveyors had asked for large number of documents again and such documents could not be supplied. On 09.02.2013, addressing the new surveyor M/s Naveen Jhand, Dicitex submitted 37,700 documents and submitted further documents to the said new surveyor. It submitted that since the previous 9 months, it had been providing different documents/information to different people and submitted whatever was requested by the new surveyor in broader form and requested them to submit their report at the earliest.

4. In accordance with the format sent by the insurer and after obtaining Dicitex's signature, a cheque for ₹3.5 crores was handed over to it. Dicitex signed the discharge voucher on 04.03.2013, when the insurer paid the said sum of ₹3.5 crores to

Dicitex as 'on account payment' in the matter of its claim. Union Bank of India endorsed the said discharge voucher. According to Dicitex, all data that was requisitioned by the new surveyor, was provided by it. Several meetings took place between the representatives of the new surveyor, the appellant and Dicitex. Dicitex, mentioned several letters to the appellant, and the surveyor, in 2013 regarding the release of the amounts. Dicitex had also stated that it felt strongly that the new surveyor was just not satisfied with whatever was provided by it though all the data it submitted had proved its genuine claim and the intention of the new surveyor was to somehow reduce the claim. In other letters (such as the one dated 21.02.2014), Dicitex informed the appellant that the surveyor was refusing to commit to any fixed date within which they would be submitting their report and also the appellant's officials had no answers to its questions with regard to when its claim would be settled. Dicitex requested the General Manager to set a deadline to settle their claim at the earliest. It wrote several letters to the appellant's officers about the huge financial losses suffered by it due to delay in settlement

of the claim. Dicitex informed the General Manager to settle the claim within 15 days.

5. On 27th May, 2014, Dicitex received an email from the appellant stating that a discharge voucher for the balance amount of the claim payable as described was being enclosed. It was requested to execute the voucher along with the bank's discharge on the space earmarked on the left side and send the scanned copy back. By the email dated 28.05.2014, Dicitex replied to the email of 27.05.2014 and referred to the discharge voucher sent by the appellant to it for signature. Dicitex placed on record that its total claim was approximately ₹15 crores and the surveyor had assessed the same at approximately ₹12.93 crores. Dicitex stated that the basis for arriving at the figure of ₹7.16 crores was not explained (by the appellant). It requested the Regional Manager of the appellant to provide the claim assessment working for their understanding to enable Dicitex to take up the matter with their Board of Directors for consideration. The appellant, by email dated 29.05.2014, alleged that M/s. C. P. Mehta & Co. had initially assessed the loss at ₹12,28,60,369/-. However, it had certain issues on the costing;

it, therefore, appointed M/s. Naveen Jhand and Associates to have another look at the costing aspect and reconfirm/verify the costing for loss assessment purpose. According to the said report submitted by M/s. Naveen Jhand and Associates, the assessment worked to ₹7,16,30,148/- and accordingly, the competent authority had granted the claim. The appellant enclosed the working of the claim and requested Dicitex to go through it and send an unconditional discharge voucher duly signed by it and the bankers. Dicitex, the insured did not do so and informed the appellant that it had noticed that what was given was just a statement of calculation, without explanation/basis, that adjustments had resultant deductions in Dicitex's claim by more than 50% as assessed by the surveyor appointed by the appellant. Dicitex stated that since the appellant had taken 2 years to offer the final settlement of the claim, it (Dicitex) was suffering from a huge financial constraint and had to pay bank interest and installments, salaries and wages, hence, it was left with no alternative but to accept the offer of the appellant reluctantly and was accordingly sending the voucher duly discharged by Dicitex and their bankers for doing the needful.

Dicitex alleged that since the appellant did not relent, and insisted that any further payment would be made only if the discharge voucher was executed exactly at the time and in the form and manner as required by it as well as the letter dated 31.05.2014 was withdrawn. Dicitex stated that as it was in urgent need of funds to meet its mounting liabilities, it was coerced into withdrawing its earlier letter of 31.05.2014 and in executing the discharge voucher exactly as dictated by the respondents. By the letter dated 06.06.2014, addressed to the Regional Manager, Dicitex withdrew the letter dated 31.05.2014 submitted along with the discharge voucher for a full and final settlement of their claim. It requested the appellant to remit the claim amount immediately. The discharge voucher was on the letter head of the appellant, duly endorsed by Dicitex's bankers. In the discharge voucher, it was recorded that it accepted a sum of ₹3,66,30,148/- in full and final settlement of its claim. It was also recorded that Dicitex voluntarily gave discharge receipt in full and final settlement of their claim, present or future, arising directly/indirectly in respect of the said loss/accident and subrogated all their rights and remedies to appellant in respect of

the loss/damages. Further correspondence ensued whereby Dicitex informed the appellant that since there was a huge difference between the total amount claimed by it, and the final claim settlement amount by the appellant, the same was required to be discussed and resolved, failing which Dicitex would be required to invoke the arbitration, as per clause 13 of the terms and conditions attached to the policy. The appellant, by the letter dated 17.07.2014 addressed to Dicitex, informed that it was surprised by the proposal to invoke arbitration after the clean discharge voucher was signed for the sum of ₹7,16,30,148/- in full and final settlement of the said loss. The respondents denied that there existed any dispute of quantum in respect of the said claim and contended that the amount due to Dicitex arising out of indemnity, arising from the policy was duly verified and assessed based on the documents submitted by Dicitex. The appellant did not agree to Dicitex's request for any differential amount or request for proceeding for arbitration under the policy. On 24.07.2014, by a letter addressed to the appellant, Dicitex denied that the amount received by it was a clean discharge voucher in full and final settlement of their claim and reiterated

that it suffered a major loss of ₹14,16,94,329/-. The surveyor, M/s. C.P. Mehta & Co. had submitted their report assessing the loss at ₹12.93 crores. Dicitex also placed on record that as against approximately the claim of ₹ 14.70 crores, the appellant released only ₹3.50 crores on 04.03.2013 i.e. almost 10 months after the loss had occurred, and after a lapse of 27 months, the appellant made "a take it or leave it" offer of ₹7.16 crores towards full and final settlement of their claim, the discharge was accepted reluctantly by it. Dicitex alleged that upon meeting the appellant's officers, it was instructed to withdraw the letter of protest and accept the claim settlement unconditionally which was a proof of coercion.

6. The position taken by the appellant was that Dicitex was paid ₹7,16,30,148/- in a clean discharge and full and final settlement of their claim and there existed no dispute with regard to the quantum of claim and refused to appoint any arbitrator. In these circumstances, Dicitex approached the Bombay High Court under Section 11(6) of the Act, for appointment of an arbitrator. Dicitex relied on the assessment of M/s C.P. Mehta & Co., which had assessed the loss at ₹12.93 crores. It contended that the

appellant released only ₹ 3.50 crores on 4.03.2013 i.e. almost 10 months after the loss suffered by Dicitex due to fire, and only after a lapse of 27 months made "a take it or leave it" offer of ₹7.16 crores towards full and final settlement of their claim. Dicitex stated that it had taken a loan of a substantial amount and had to bear the extra burden of high interest and found itself defaulting on timely loan repayments. It was further submitted that Dicitex was unable to pay income tax on time, as a result of which, it had to pay a sum of ₹23.90 lacs in the year 2012-2013 and a sum of ₹11.10 lakhs in the year 2013-2014 towards interest for the delayed payments of income tax. It was also argued, on behalf of Dicitex, that it was subjected to economic duress and coercion which resulted in the signing of the discharge voucher, which could not preclude its invocation of the arbitration agreement.

7. The appellant resisted the application, contending that Dicitex had not demonstrated whether the second discharge voucher signed by it was under economical or financial duress under the arbitration agreement. It was urged that since Dicitex had signed the discharge voucher and accepted the payment

made by the respondents unconditionally and confirmed that the said payment was received in full and final settlement of their claim, present or future, arising directly/indirectly in respect of the said loss/accident and subrogated all their rights and remedies to the appellant in respect of the loss/damages, there exists no dispute between the parties which can be referred to arbitration. It was argued that Dicitex having signed the discharge voucher for ₹7,16,30,148/- in full and final settlement due to alleged loss suffered by Dicitex, the arbitration application was not maintainable. It was submitted that the appellant had replied to the letter dated 21.06.2014 stating that Dicitex had withdrawn only discharge voucher dated 31.05.2014. The appellant also stated that in the arbitration agreement itself, Dicitex had to explain the exact correctness of the allegation of coercion and duress with details and particulars about signing the discharge voucher. It was further contended that though the payment was received by Dicitex on 09.06.2014, it raised protest only on 21.06.2014. Even in the letter dated 21st June 2014, Dicitex referred to the discharge voucher dated 31.05.2014 which was not admittedly acted upon by the insurer. Dicitex did not

resile from the discharge voucher dated 31.05.2014, and thus on that ground also, this arbitration application is not maintainable.

8. The appellant relied on some decisions of this court (*New Indian Assurance Co. Ltd v Genus Power Infrastructure Ltd.* (2015) 2 SCC 424. *National Insurance Co. Ltd v Boghara Polyfab Pvt Ltd* (2009) 1 SCC 267; *Union of India (UOI) and Ors. v Master Construction Co.* (2011) 12 SCC 349 etc.

9. In the impugned judgment, while allowing the application, the single judge analysed the decisions of this court, including *Boghara Polyfab* (supra). It was noted that a perusal of the correspondence *prima facie* indicated that the first surveyor appointed by the insurer had recommended the payment of more than ₹12 crores in favour of Dicitex. For some reasons, the appellant did not accept the said report submitted by their own surveyor and instead appointed M/s Naveen Jhand and Associates to re-compute the costings. It was also held that Dicitex had furnished more than 37,700 documents to the surveyor for their appraisal for submitting the report. Dicitex had placed on record from time to time, documents to show that it had taken loans from the banks who were pressurising it for

repayment of those loans and interest. The account of Dicitex with those banks had drawn the excess amount. The final amount was sanctioned by the respondents only after 27 months of the fire having taken place, which caused loss to Dicitex. Dicitex had produced about 11 letters addressed by the banks to Dicitex, calling upon Dicitex to regularize their bank accounts and showing the excess amount drawn by it in various accounts. Dicitex had also placed on record, the conduct of the second surveyor, who was, according to it, demanding several other documents which were unwarranted and/or already submitted by it. The learned judge noticed that *prima facie,* Dicitex was facing financial distress and economical duress and in view of its various urgent business liabilities, it apparently signed the said discharge voucher reluctantly. It is not in dispute that the appellant refused to accept such discharge voucher signed by Dicitex with letter of protest. Therefore, a few days later, a discharge voucher was signed by Dicitex. It was, however, Dicitex's case that the appellant had insisted upon it to sign a clean discharge voucher and to withdraw the letter of protest addressed by it, failing which, the insurer would not release the

amount, even that was reflected in the discharge voucher. Dicitex thereafter withdrew the letter dated 31.05.2014, and signed another discharge voucher. After signing another discharge voucher, Dicitex placed on record their objection that the same was signed due to pressure of the respondents.

10. In view of the analysis made, the single judge allowed the application, observing as follows:

> *"57. On perusal of the large number of correspondence exchanged between Dicitex and the respondents which were not disputed by the respondents, in my prima facie view, it indicates that Dicitex was facing the financial constraint and economical and financial duress on the part of the respondents in not sanctioning and paying the final claim for 27 months from the date of fire. Dicitex having faced pressure from their bankers and suffering from other business liabilities including the demand of income tax department, Dicitex was under the economical and financial duress and the said discharge voucher thus, in my prima facie view, cannot be considered as an unconditional discharge voucher thereby Dicitex giving up their claim in future arising out of the said discharge voucher.*
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> *58. In my view, if Dicitex would not have signed such discharge voucher acknowledging the payment of the lesser amount than what was alleged to be due to Dicitex after 27 months of the loss suffered, the respondents would not have released even the said amount mentioned in the discharge voucher. In my view, if according to the*

respondents, Dicitex was not entitled to recover the amount as claimed by Dicitex, but the lesser amount, the respondents could have released the amount as payable according to the respondents, but could not have insisted for execution of a discharge voucher as a pre-condition before releasing such payment.

59. Learned counsel for the respondents could not refer to any provision in the insurance policy or any other provision of law in support of their claim that the respondents were entitled to insist for execution of such discharge voucher before releasing any payment in favour of Dicitex with a confirmation not to make any claim in future arising out of the said claim. The Supreme Court has already deprecated the practice followed by the government departments, statutory corporations and government companies for obtaining such undated discharge voucher as the condition for releasing lesser amount and has held that the said procedure is unfair, irregular and illegal. Though the Chief Justice or his designate is empowered to decide the issue as to whether the parties had concluded the contract by recording satisfaction of their mutual rights and obligations thereby receiving the final payment without objection based on the affidavits and the pleadings or can leave the said issue to be decided by the arbitral tribunal, in my view, it would be appropriate if the issue raised by the respondents that Dicitex had signed such discharge voucher unconditionally and the issue raised by Dicitex that the same was under duress and coercion is conclusively decided by the arbitral tribunal and if necessary, by leading oral evidence. The learned designate of the Chief Justice in case of M/s.Yasho Industries Pvt. Ltd. Vs. The New India Assurance Company Limited in

Arbitration Petition No.314 of 2014 decided on 24th June 2015 which is relied upon by one of the party has taken a similar view. Special Leave Petition against the said order is rejected.

60. In so far as the issue of arbitrability of the claim raised by the respondents on the ground that Dicitex proposed to make the claim amount higher than the insured sum is concerned, if any claim higher than the insured sum is made by Dicitex before the arbitral tribunal, the respondents can raise such issue of arbitrability and the same can be decided by the arbitral tribunal. The issue of arbitrability of claim on such ground cannot be decided in these proceedings.

61. Clause 13 of the arbitration agreement of the policy which provides that if any dispute or difference shall arise as to the quantum to be paid under the policy, such difference shall be referred to the decision of a sole arbitrator to be appointed in writing by the parties or if they cannot agree upon a single arbitrator within 30 days of any party invoking arbitration, the same shall be referred to a panel of three arbitrators. Since the respondents have refused to appoint any arbitrator out of the names suggested by Dicitex in their letter dated 14th July 2014 and had not suggested any other name, this application filed under Section 11 (6) of the Arbitration Act is maintainable. In my view, the arbitration agreement exists between the parties."

11. The appellant urges that the impugned judgment is erroneous. It is pointed out that the effect of the decisions in *Boghara Polyfab, Master Construction* and *Genus Power Infrastructure* (supra) and having regard to the facts

and circumstances of this case, there can be no question that any arbitrable dispute existed between the parties. Having accepted the proffered amounts, and having withdrawn the reservation and protest, Dicitex could not have argued that it was subjected to coercion or that the appellant forced it to sign the final discharge voucher. Emphasis is placed on Dicitex's letter dated 06.06.2014, whereby it withdrew the previous letter dated 31.05.2014, which had contained reservations about the amount offered in full settlement.

12. Counsel for Dicitex urges that this court should not interfere with the impugned judgment. It was urged that the material in the form of the record, particularly the consistent trend of letters, prior to the letter of 06.06.2014 as well as the correspondence after that, clearly reveal that Dicitex was undergoing severe financial crisis and that the prolonged process of settlement claim constrained it to issue the said letter of 06.06.2014. However, the fact remained that at the relevant time, it faced a crisis of existence. Its acceptance was under financial compulsion which

amounted to economic coercion. Therefore, the learned single judge very properly analysed all these materials and held that *prima facie,* there was no full and final settlement or discharge.

Analysis & Conclusions

13. The main theme of the appellant's argument in this case is that Dicitex could not have invoked the arbitration clause, since it had fully and finally accepted the amount offered (i.e..) and withdrawn its protests and reservations, by the letter dated 06.06.2014. It cites the decisions in *Boghara Polyfab, Master Construction* and *Genus Power* (supra) in this regard.

14. The issue of the court's jurisdiction to examine whether a dispute is arbitrable, in the context of no objection certificates or discharge vouchers, was examined in *Boghara Polyfab* for the first time. This court in the context of an application under Section 11(6) dealt with the issue, holding that if there was accord and satisfaction due to a no dues certificate, a reference under Section 11 was not maintainable. It held, inter alia, that:

"51. 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.

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:

(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.

52. Let us now examine the receipt that has been taken in this case. It is undated and is in a pro forma furnished by the appellant containing irrelevant and inappropriate statements. It states: "I/we hereby assign to the company, my/our right to the affected property stolen which shall, in the event of their recovery, be the property of the company". The claim was not in regard to theft of any property nor was the claim being settled in respect of a theft claim. We are referring to this aspect only to show how claimants are required to sign on the dotted line, and how such vouchers are insisted and taken mechanically without application of mind."

15. In *Master Construction (supra)*, this Court held that:

"20. The Bench in Boghara Polyfab Private Limited in paragraphs 42 and 43, with reference to the cases cited before it, inter alia, noted that there were two categories of the cited cases; (one) 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 and, consequently, it was held that there could be no reference of any dispute to arbitration and (two) 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 printed format or otherwise) as a condition precedent for release of the admitted dues and thereby giving rise to an arbitrable dispute.

21. In Boghara Polyfab Private Limited, the consequences of discharge of the contract were also considered. In para 25 (page 284), it was explained that when a contract has been fully performed, then there is a discharge of the contract by performance and the contract comes to an end and in regard to such a discharged contract, nothing remains and there cannot be any dispute and, consequently, there cannot be reference to arbitration of any dispute arising from a discharged contract. It was held that the question whether the contract has been discharged by performance or not is a mixed question of fact and law, and if there is a dispute in regard to that question, such question is arbitrable. The Court, however, noted an exception to this proposition. The exception noticed is that where both the parties to a contract confirm in writing that the contract has been fully and finally discharged by performance of all obligations and there are no outstanding claims or disputes,

courts will not refer any subsequent claim or dispute to arbitration. Yet another exception noted therein is with regard to those cases where one of the parties to the contract issues a full and final discharge voucher (or no-dues certificate, as the case may be) confirming that he has received the payment in full and final satisfaction of all claims, and he has no outstanding claim. It was observed that issuance of full and final discharge voucher or no-dues certificate of that kind amounts to discharge of the contract by acceptance or performance and the party issuing the discharge voucher/certificate cannot thereafter make any fresh claim or revive any settled claim nor can it seek reference to arbitration in respect of any claim.

22. In paragraph 26 (pages 284-285), this Court in Boghara Polyfab Private Limited held that if a party which has executed the discharge agreement or discharge voucher, alleges that the execution of such document was on account of fraud/coercion/undue influence practiced by the other party, and if that party establishes the same, then such discharge voucher or agreement is rendered void and cannot be acted upon and consequently, any dispute raised by such party would be arbitrable.

23. In paragraph 24 (page 284) in Boghara Polyfab Private Limited, this Court held that a claim for arbitration cannot be rejected merely or solely on the ground that a settlement agreement or discharge voucher has been executed by the claimant. The Court stated that such dispute will have to be decided by the Chief Justice/his designate in the proceedings under Section 11 of the 1996 Act or by the Arbitral Tribunal.

24. In our opinion, there is no rule of the absolute kind. In a case where the claimant contends that

a discharge voucher or no-claim certificate has been obtained by fraud, coercion, duress or undue influence and the other side contests the correctness thereof, the Chief Justice/his designate must look into this aspect to find out at least, prima facie, whether or not the dispute is bona fide and genuine. Where the dispute raised by the claimant with regard to validity of the discharge voucher or no-claim certificate or settlement agreement, prima facie, appears to be lacking in credibility, there may not be necessity to refer the dispute for arbitration at all. It cannot be overlooked that the cost of arbitration is quite huge - most of the time, it runs in 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 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 after-thought, make-believe or lacking in credibility, the matter must be set at rest then and there."

16. In *Genus Power* (supra), the relevant observations of this court are as follows:

"8. It is therefore clear that a bald plea of fraud, coercion, duress or undue influence is not enough and the party who sets up a plea, must prime facie establish the same by placing material

before the Chief Justice/his designate. Viewed thus, the relevant averments in the petition filed by the Respondent need to be considered, which were to the following effect:

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(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 the same. The Petitioner company was forced to sign the said document under duress and coercion by the Respondent Company. The Respondent Company further threatened the Petitioner Company to accept the said amount in full and final or the Respondent Company will not pay any

amount toward the fire policy. It was under such compelling circumstances that the Petitioner company was forced and under duress was made to sign the acceptance letter.

9. In our considered view, the plea raised by the Respondent is bereft of any details and particulars, and cannot be anything but a bald assertion. Given the fact that there was no protest or demur raised around the time or soon after the letter of subrogation was signed, that the notice dated 31.03.2011 itself was nearly after three weeks and that the financial condition of the Respondent was not so precarious that it was left with no alternative but to accept the terms as suggested, we are of the firm view that the discharge in the present case and signing of letter of subrogation were not because of exercise of any undue influence. Such discharge and signing of letter of subrogation was voluntary and free from any coercion or undue influence. In the circumstances, we hold that upon execution of the letter of subrogation, there was full and final settlement of the claim. Since our answer to the question, whether there was really accord and satisfaction, is in the affirmative, in our view no arbitrable dispute existed so as to exercise power Under Section 11 of the Act. The High Court was not therefore justified in exercising power Under Section 11 of the Act."

17. In *Velugubanti Hari Babu v. Parvathini Narasimha Rao & Anr. (2016) 14 SCC 126*, the line of judgments in *Boghara Polyfab (supra)* was followed. Later, in *ONGC Mangalore*

Petrochemicals Ltd. v ANS Constructions Ltd. and Anr. (2018) 3 SCC 373, the court held as follows:

> *"24. From the materials on record, we find that the contractee- Company had issued the "No Dues/No Claim Certificate" on 21.09.2012, it had received the full amount of the final bill being Rs. 20.34 crores on 10.10.2012 and after 12 days thereafter, i.e., only on 24.10.2012, the contractee-Company withdrew letter dated 21.09.2012 issuing "No Dues/No Claim Certificate". Apart from it, we also find that the Final Bill has been mutually signed by both the parties to the Contract accepting the quantum of work done, conducting final measurements as per the Contract, arriving at final value of work, the payments made and the final payment that was required to be made. The contractee-Company accepted the final payment in full and final satisfaction of all its claims. We are of the considered opinion that in the presents facts and circumstances, the raising of the Final Bill and mutual agreement of the parties in that regard, all claims, rights and obligation of the parties merge with the Final Bill and nothing further remains to be done. Further, the Appellant-Contractor issued the Completion Certificate dated 19.06.2013 pursuant to which the Appellant-Contractor has been discharged of all the liabilities. With regard to the issue that the "No-Dues Certificate" had been given under duress and coercion, we are of the opinion that there is nothing on record to prove that the said Certificate had been given under duress or coercion and as the Certificate itself provided a clearance of no dues, the contractee could not now turn around and say that any further payment was still due on account of the losses incurred during the execution of the*

Contract. The story about duress was an afterthought in the background that the losses incurred during the execution of the Contract were not visualised earlier by the contractee. 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 contractee clearly shows that "no-claim certificate" was given by it voluntarily; the contractee accepted the amount voluntarily and the contract was discharged voluntarily.

Conclusion:

25. Admittedly, No-Dues Certificate was submitted by the contractee-Company on 21.09.2012 and on their request Completion Certificate was issued by the Appellant-Contractor. The contractee, after a gap of one month, that is, on 24.10.2012, withdrew the No Dues Certificate on the grounds of coercion and duress and the claim for losses incurred during execution of the Contract site was made vide letter dated 12.01.2013, i.e., after a gap of 3 1/2 (three and a half) months whereas the Final Bill was settled on 10.10.2012. When the contractee accepted the final payment in full and final satisfaction of all its claims, there is no point in raising the claim for losses incurred during the execution of the Contract at a belated stage which creates an iota of doubt as to why such claim was not settled at the time of submitting Final Bills that too in the absence of exercising duress or coercion on the Contractee by the Appellant-Contractor. In our considered view, the plea raised by the contractee-Company is bereft of any details and particulars, and cannot be anything but a bald assertion. In the circumstances, there was

> *full and final settlement of the claim and there was really accord and satisfaction and 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."*

18. It is clear that in *Boghara Polyfab* (supra), 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* (supra) visualize duress or coercion on account of withholding of payments due. The court – in more places than one, recognized 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. *Master Construction* (supra) placed the matter in perspective, when the court enunciated the principle in the following terms:

> *"In our opinion, there is no rule of the absolute kind. In a case where the claimant contends that a discharge voucher or no-claim certificate has been obtained by fraud, coercion, duress or undue influence and the other side contests the correctness thereof, the Chief Justice/his designate must look into this aspect to find out at least, prima facie, whether or not the dispute is*

> *bona fide and genuine. Where the dispute raised by the claimant with regard to validity of the discharge voucher or no-claim certificate or settlement agreement, prima facie, appears to be lacking in credibility, there may not be necessity to refer the dispute for arbitration at all."*

Likewise, in *Genus Power* (supra), the court cautioned that a *"bald plea"* of coercion, without any supporting material is insufficient for a court to hold that the accord/satisfaction or no dues certificate was involuntarily given.

19. 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 14.08.2014, recommended payment of ₹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 ₹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).

20. 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 31st May, 2014 and the submission of its letter, dated 31st May, 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 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 31st May, 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 31st May, 2014 and coerced into executing the Discharge Voucher exactly as dictated by the Respondents. Accordingly, the Petitioner wrote a letter dated 6th June, 2014 to the Respondent No. 2 stating therein that it was withdrawing its letter dated 31st May, 2-14 and also enclosing the duly executed discharge Voucher. The Petitioner also requested that the claim amount be paid over to it, immediately."

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 14th July, 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."

21. 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 concerned party 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.* (2008) 16 SCC 128 and *Boghara Polyfab* (supra) 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.

22. In view of the foregoing discussion, the appeal is held to be unmerited; it is dismissed, without order as to costs.

.....J.
[ARUN MISHRA]

.....J.
[S. RAVINDRA BHAT]

New Delhi,
November 13, 2019.