DISPUTE RAISED BY AN INSURER OVER FULL AND FINAL SETTLEMENT IS ARBITRABLE DESPITE PARTIES DISCHARGING CONTRACT

INTRODUCTION:

The Apex Court in its decision in ***Arabian Exports Private Limited vs. National Insurance Company Ltd.***[1]*,* has held that an arbitral tribunal is competent to rule on its own jurisdiction including on the issue of existence or validity of an arbitration agreement.

FACTS:

The Appellant by way of special leave, filed two appeals against the order dated 2nd December, 2011 passed by the Bombay High Court in Arbitration Applications Nos. 186-187 of 2011 ("**said applications**").

The Appellant is a company engaged in the business of exporting meat and meat products, operating from its factory at Taloja, Maharashtra ("**said factory**").

The Appellant bought two policies from the Respondent – a comprehensive Standard Fire and Special Perils policy towards insuring the meat processing and cold storage unit as also the building, plant and machinery, furniture, fixtures and fittings in the said factory ("**Policy No. 1**") and a Fire Declaration Policy insuring all its stock-in-trade and finished products stored in the cold storage facility at the said factory ("**Policy No. 2**"). Insurance premium was accordingly paid towards both policies.

On 26th July, 2005, the said factory was flooded and submerged under water for several hours due to rainfall. It was stated that the communication lines having broken down and there being no means of communication to and from the said factory, the incident went unnoticed till 28th July, 2005.

As a result, the Appellant suffered severe losses due to the damage caused to the said factory, including, the plant, machinery, furniture, fixtures and accessories as well as stock lying thereat.

On 29th July, 2005, the Appellant informed the Respondent of the damage suffered at the said factory and accordingly requested it to depute a surveyor to assess the damage – the Appellant claimed a sum of INR. 56,07,027/- under Policy No. 1 and INR. 5,15,62,527/- under Policy No. 2.

According to the report dated 29th November, 2005 of one Chempro Inspection Private Limited, being the surveyor appointed by the Respondent, acknowledged the losses suffered by the Appellant.

Thereafter, sometime in December, 2008, the Appellant was presented with an undated and standardized voucher/advance receipt for a sum of INR. 1,88,14,146/-.

It is the case of the Appellant that due to financial strain caused by the delay on the part of the Respondent to settle claims coupled with the pressure from bankers and creditors, it was

[1] Civil Appeal Nos. 6372-6373 of 2025

left with no other option but to sign and submit the said undated and standardized voucher/advance receipt for a sum of INR 1,88,14,146/- on 12th December, 2008 under the Policy No. 2 and that it received a cheque for the same from the Respondent.

On 24th December, 2008, the Appellant while reserving its right to invoke the identical arbitration clause 30 of the said insurance policies called upon the Respondent to settle and pay the balance amount of INR. 3,83,55,408/- being the difference between the claim lodged and the amount received from the Respondent.

Thereafter, the Appellant addressed a letter dated 17th April, 2009 to the Respondent invoking arbitration and nominating a sole arbitrator.

In reply thereto, the Respondent issued a letter dated 18th May, 2009 to the Appellant through its advocate denying its liability and refusing to accept arbitration and nominate an arbitrator – the Respondent also addressed a further letter on 12th October, 2009 stating that it was not agreeable to refer the matter to arbitration.

In the circumstances, the Appellant filed two applications under Section 11 of the Arbitration and Conciliation Act, 1996 ("**Act**") before the Bombay High Court for appointment of an arbitrator to arbitrate the claims in respect of the two said policies. The Bombay High Court observed that the amount paid by the Respondent was accepted by the Appellant in full and final settlement of claim without any demur and that the dispute was raised on 24th December, 2008 after encashing the cheque. In view of the acceptance of the amount in full and final settlement, the Bombay High Court held that no arbitrator could be appointed and both applications under Section 11 of the Act were dismissed ("**said applications**").

ISSUE FOR CONSIDERATION:

The main issue for consideration before the Apex Court was whether a dispute raised by an insured after giving a full and final discharge voucher to the insurer can be referred to arbitration.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

The Appellant submitted that the said applications were dismissed on the ground that discharge voucher signed by the Appellant in Respondent's favour constituted full accord and satisfaction having accepted the amount paid by the Respondent without demur.

It was submitted further that 'accord and satisfaction' was not voluntary but under compulsion – the Appellant was under financial duress on account of huge loss caused by the rainwater and flooding and additionally, there was a long delay on part of the Respondent in processing the claim. That apart, the Appellant was pressurized by the banks and its creditors for repayment of credit. In the circumstances, the Appellant had no option but to sign the undated and standardized voucher / advance receipt for a wholly inadequate amount of INR. 1,88,14,146/- against the bona fide claim of INR. 5,71,69,554/-.

The Appellant invited the attention of the Court to the letter dated 24th December, 2008 addressed by it to the Respondent which *inter alia* stated that the fact that the voucher relating to payment of Appellant's claim under the Policy No. 2 refers to article/property as "stolen" clearly establishes the complete non application of mind. The letter also stated that the Appellant is

left with no other option but to sign and submit the undated and standardized voucher on 12th December, 2008 for the gross inadequate amount of INR. 1,88,14,146/- as a result of financial strain cast on the Appellant by virtue of the willful delay on Respondent's part in settlement of Appellant's claims coupled with the pressure exerted by bankers and creditors of the Appellant.

In furtherance thereto, the Appellant invited the attention of the Court to its decision in ***National Insurance Company Limited vs. Boghara Polyfab Private Limited***[2] submitting that the case of the Appellant is squarely covered by the said decision.

The Appellant also distinguished the decision in ***Nathani Steels Ltd. vs. Associated Constructions***[3] relied upon by the Respondent and submitted that in *Nathani Steels (supra),* there were negotiations between the parties culminating in a voluntarily negotiated settlement of all pending disputes – contract was thus discharged by 'accord and satisfaction'. The Appellant submitted that this is not so in the present case, submitting further that, the issue in question is covered by the decision of *Boghara Polyfab (supra).*

It was also submitted that the discharge voucher was in relation to only one policy i.e., Policy No. 1 and did not cover Policy No. 2. The Appellant also relied upon the Circular dated 24th September, 2015 issued by the Insurance Regulatory and Development Authority of India ("**IRDAI**") clarifying that execution of vouchers as full and final discharge did not foreclose the rights of the policy holders to seek higher compensation before any judicial fora or any other fora established by law – this been endorsed and reiterated *vide* subsequent circular dated 7th June, 2016 issued by IRDAI submitting that the learned Single Judge erred while rejecting the said applications and therefore the impugned is liable to be set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

The Respondent submitted that the present dispute is squarely covered by *Nathani Steels (supra)* in which the Apex Court held that once a dispute or difference between the parties arising out of a contract is amicably settled, unless such settlement is set aside in proper proceedings, it is not open to one of the parties to the settlement to further seek arbitration.

It was submitted further that *Nathani Steels (supra)* is a decision of a three Judge Bench whereas *Boghara Polyfab (supra)* is by a two Judge Bench. Therefore, the conflict between the said two judgments needs to be resolved by referring the matter to a larger Bench.

It was submitted further that in so far as the present case is concerned, there is no question of any fraud and that there was no pleading and argument as regards fraud and there is no pleading of duress or coercion. It was submitted that mere citation of the expression of fraud, duress or coercion will not make it a case of fraud, duress or coercion and that there have to be adequate pleadings. That apart, the Appellant has not produced any document to prima facie show that the Appellant was being pressurized by the Respondent to enter into a settlement.

In respect of the letter dated 24th December, 2018 of the Appellant, it was submitted that the said letter mentioned the policies but did not contain any statement that the settlement was only for one policy – the Respondent submitted that it processed the claim on the basis of the

[2] (2009) 1 SCC 267

[3] (1995) Supp (3) SCC 324

surveyor's report and that the figure of INR. 1.88 crores was not an imaginary or illusory figure but based on the assessment of the surveyor.

In the alternative, the Respondent submitted that if the Court is of the opinion that the Bombay High Court had not considered the aspect of duress and coercion, then the matter may be referred back to the Bombay High Court. Otherwise, no case for arbitration is made out and the appeals be dismissed.

JUDGMENT:

The Apex Court referred to its own decision in *Nathani Steels (supra)*, wherein a three-judge Bench opined that once the parties reach a settlement in respect of any dispute or difference arising under a contract and that dispute or difference is amicably settled by way of a final settlement by and between the parties, unless that settlement is set aside in proper proceedings, arbitration cannot be invoked.

In view of *Nathani Steels (supra),* the Court observed that unless the settlement is set aside in proper proceedings, it would not open to one of the parties to the settlement to invoke arbitration; however, this view was taken in the context of an amicable settlement arrived at between the parties in the presence of a third party and reduced to writing. The Court held that the crucial expression is 'amicable settlement'.

The Court held further that the above was explained by it in *Bhoghara Polyfab (supra)*. The Court observed a two-Judge Bench noted that in the case of *Nathani Steels (supra),* the Apex Court on examination of the facts of the case was satisfied that there were negotiations leading to voluntary settlement between the parties in all pending disputes. Thus, the contract discharged by 'accord and satisfaction'.

The Court held that the claims fall under two categories – in the first category, there would be cases where there is bilateral negotiated settlement of pending disputes, such settlement having been reduced to writing either in the presence of witnesses or otherwise; *Nathani Steels (supra)* falls in this category. In the second category of cases, there would be 'no dues/claims certificate' or 'full and final settlement discharge vouchers' insisted upon and taken, either in a printed format or otherwise, as a condition precedent for release of the admitted dues.

The Court held that in the latter group of cases, the disputes are arbitrable.

The Court also held that mere execution of a full and final settlement receipt or a discharge voucher cannot be a bar to arbitration even when validity thereof is challenged by the claimant on the ground of fraud, coercion or undue influence.

The Court observed that the Bench in *Bhoghara Polyfabs (supra)* further distinguished *Nathani Steels (supra)* by clarifying that observations that unless the settlement is set aside in proper proceedings, arbitration cannot be invoked by a party to the settlement was with reference to a plea of 'mistake' taken by the claimant and not with reference to allegations of fraud, undue influence or coercion – it was also observed that the decision in *Nathani Steels (supra)* was rendered in the context of the provision of the Arbitration Act, 1940 and that the perspective of the 1996 Act is different.

The Court placed reliance upon its decision in ***Duro Felguera, S.A. vs. Gangavaram Port***

Ltd.[4] wherein it was held that the courts should look into only one aspect: existence of an arbitration agreement and nothing more, nothing less to minimize the court's intervention at the stage of appointing the arbitrator. Reliance was also placed upon another decision in ***Aslam Ismail Khan Deshmukh vs. Asap Fluids Pvt. Ltd.***[5] wherein a three-Judge Bench had reiterated the above proposition holding *inter alia* that at the stage of Section 11 application, the courts need to only examine the existence of the arbitration agreement and nothing more, nothing less.

The Apex Court relying upon its another decision in ***Oriental Insurance Company Ltd. vs. Dicitex Furnishing Ltd.***[6] observed that it has been upheld that at the stage of Section 11 (6) of the Act, the court is required to ensure that an arbitrable dispute exists – it 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 naturally has to be made and established in the arbitral proceedings. The Apex Court observed that if the courts were to take a contrary approach, there would be the danger of denying a forum to the claimant altogether and that the concept of economic duress has been upheld by it and that notwithstanding signing of discharge voucher and accepting the amount offered, the dispute is still arbitrable – the Court also observed that pleading in the Section 11 application cannot be conclusive whether there is fraud, coercion or undue influence.

The Court observed further that as held in its decision in ***SBI General Insurance Co. Ltd. vs. Krish Spinning***[7] even if the contracting parties in pursuance to a settlement agree to discharge each other of any obligations arising under the contract, it does not *ipso facto* mean that the arbitration agreement too would come to an end, unless expressly agreed by the parties.

The Apex Court held that the doctrine of *Kompetenz-Kompetenz* is firmly embedded in the arbitration jurisprudence in India and is based on the principle that an arbitral tribunal is competent to rule on its own jurisdiction including on the issue of existence or validity of an arbitration agreement.

Apex Court was of the view that the question whether the Appellant was compelled to sign the standardized voucher/advance receipt forwarded to it by the Respondent and notwithstanding receipt of INR 1,88,14,146/- as against the claim of INR. 5,71,69,554/- whether the claim to arbitration is sustainable or not are clearly within the domain of the arbitral tribunal.

In view of the aforesaid, the impugned order was set aside and both appeals were allowed.

[4] (2017) 9 SCC 729
[5] (2025) 1 SCC 502
[6] (2020) 4 SCC 621
[7] 2024 SCC OnLine SC 1754