Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5733 OF 2008
(Arising out of SLP [C] No.12056 of 2007)

National Insurance Co. Ltd. … Appellant

Vs.

M/s. Boghara Polyfab Pvt. Ltd. … Respondents

J U D G M E N T

R.V.RAVEENDRAN, J.

Leave granted. Heard both counsel. The question involved in this appeal is whether a dispute raised by an insured, after giving a full and final discharge voucher to the insurer, can be referred to arbitration.

The brief facts :

2. The respondent (Insured) obtained a standard Fire and Special Perils (with a floater) Policy from the appellant ('Insurer') to cover its goods in its godowns situated at Surat for the period 4.8.2003 to 3.8.2004. The sum insured was Rs. Three crores, subsequently increased to Rs. Six crores. On 27.5.2004 the respondent requested the insurer to increase the sum insured by another Rs. six crores for a period of two months. Accordingly, the appellant issued an additional endorsement increasing the sum insured by another Rupees six crores, in all Rupees twelve crores. The respondent alleges that the additional endorsement cover issued by the appellant was for 69 days, that is from 27.5.2004 to 3.8.2004. The appellant alleges that the additional endorsement cover was for a period of 60 days from 27.5.2004 to 26.7.2004. (Note: The appellant claims that during subsequent investigations, it came to light that its AAO (Dilip Godbole) had delivered to the respondent, a computer generated Additional Endorsement (unauthorisedly altered by hand) showing the period of additional cover as 69 days up to 3.8.2004, and departmental proceedings have been initiated against the said officer).

3. On 5.8.2004, the respondent reported loss/damage to their stocks on account of heavy rains and flooding which took place on 2/3.8.2004 and made a claim in that behalf. The surveyor submitted a preliminary report dated 14.8.2004 followed by a final survey report dated 6.12.2004 according to which the net assessed loss (payable to respondent) was Rs.3,18,26,025/-. The said sum was arrived at on the basis that the sum insured was Rs.12 crores, the actual value of stocks in the godowns at risk was Rs.8,15,99,149/-, value of damaged goods was Rs.5,22,81,001/-, and the recoverable salvage value was Rs.1,87,79,922/-. The appellant informed the surveyor by letter dated 1.3.2005 that there was an error in the net assessed loss arrived at by the surveyor as it assumed the sum insured as Rs.12 crores up to 3.8.2004 whereas the sum insured was only Rs.6 crores after 26.7.2004 till 3.8.2004, and therefore instructed the surveyor to prepare the final report regarding net assessed loss by taking the sum insured as only Rupees six crores. The surveyor therefore gave an addendum to the final survey report on 22.3.2005 reassessing the net loss by taking the sum insured as only Rupees six crores. The value of goods at risk, the value of damaged goods and the value of recoverable salvage remained unaltered. By modifying the percentage

of insurance at 75.53%, the 'Net Assessed Loss' was re-worked as Rs.2,34,01,740/-. The respondent protested against the loss being assessed by taking the sum insured as only Rupees six crores. The claim and the dispute were pending consideration for a considerable time.

4. The respondent alleged that the appellant forced the respondent to accept a lower settlement; that the appellant informed the respondent that unless and until the respondent issued an undated 'Discharge voucher-in-advance' (in the prescribed form) acknowledging receipt of Rs.2,33,94,964/- in full and final settlement, no amount would be released towards the claim; that in that behalf, the appellant sent the format of the discharge voucher to be signed by respondent on 21.3.2006; that on account of the non-release of the claim, it was in a dire financial condition and it had no alternative but to yield to the coercion and pressure applied by the appellant; that therefore the respondent signed and gave the said discharge voucher, undated, as required by the insurer during the last week of March, 2006. The payment was released by the appellant only after receiving the said discharge-voucher. It is extracted below:

"NATIONAL INSURANCE COMPANY LTD.

REGD. OFFICE : 3, MIDDLETON STREET,
POST BOX NO.9229, KOLKATA 700071

FORM ACL – 10(1)
Loss Voucher Non Motor & PA

Received from National Insurance Company Limited through its policy issuing office (herein after called the Company) the sum of Rs.2,33,94,964.00 (Rupees two crore thirty three lakh ninety four thousand nine hundred sixty four only) in full and final settlement of all my/our claims in respect of the property lost or damaged due to others on or about 03/08/2004 under Policy No.250501/11/03/3100000145.

In consideration of such payment I/we hereby absolve the Company from all liability present or future arising directly or indirectly out of the said loss or damage under the said policy. Further I/We hereby assign to the company my/our rights to the affected property stolen which shall in the event of their recovery be the property of the company. I/We even agree that the sum insured under the said policy stand reduced by the amount paid under the next renewal."

Sd/-

5. Simultaneously, the respondent lodged a complaint dated 24.3.2006 with the Insurance Regulatory and Development Authority wherein, after setting out the facts, it alleged:

"We lodged a claim with our insurers immediately and pursued the matter with them. Even after the Surveyor Mr. Mehernosh Todiwala of M/s. Bhatawadekar & Co. had submitted his report on 22nd March, 2005, the insurers refused to settle our claim on various counts. We had various meetings at the Divisional, Regional and even the Head Office of the insurers, but to no avail.

In March, 2005, the insurer company forced us to accept a lower settlement and we were told that we would have to agree to a lower settlement to ensure expeditious settlement of the claim. Accordingly on and around the 15th of March, 2005 nearly 8 months after the loss we gave our forced consent to the lower

> settlement offered in the hope that the claim amount would be received immediately.
>
> Thereafter for the next 1 year, the insurers failed to settle our claim and made us run from pillar to post for the settlement.
>
> Finally on March 21st 2006 the insurers have sent us a voucher for the sum of Rs.2,33,94,94 which considering our dire financial condition, and the continuous failed promises from the insurers, we have had no choice but to accept.
>
> Sir, subsequent to the loss, since we could not pay our international suppliers on time they almost completely stopped all our shipments. This has resulted in tremendous financial loss to us. We have lost our long hard earned reputation in the market by becoming defaulters. The insurers have deliberately starved our unit of funds to ruin us financially.
>
> You will appreciate that we are now faced with a situation where we have no choice but to accept the payment being released to us unconditionally as the insurers have made it very clear that the payment will not be released if there is any conditional discharge of the vouchers. In order to safeguard our right to claim the difference amount and any other claims arising out of the financial losses incurred by us a direct result of the deliberate delay in settlement of our claim by the insurers, we make a humble request to the I.R.D.A. to take up the matter with the insurers to ensure that justice prevails and we are paid the entire compensation due to us."

6. The respondent also issued a legal notice dated 27.5.2006 wherein it was alleged that the amount due by the insurer was Rs.3,18,26,025/-, and that under duress and implicit coercion, it had accepted the payment of Rs.2,33,94,964/-, by signing and handing over a 'full and final discharge voucher'. By the said notice, the respondent demanded the difference amount with interest at the rate of 12% per annum from 6.12.2004 (date of final survey report) till the

date of payment. The respondent also informed the appellant that if payment was not so made within 15 days, the notice should be treated as notice invoking arbitration. The appellant by its reply dated 2.8.2006, rejected the said demand. The appellant contended that the respondent had unconditionally accepted the claim settlement amount fully and finally; that respondent had not registered any protest while accepting the claim cheque; that the amount payable was arrived at amicably after discussing all aspects of the claim with the insured and at no juncture any protest was expressed; and that therefore the question of invoking the provision for arbitration did not arise.

7. In view of appellant's refusal to agree for arbitration, the respondent filed an application under section 11 of the Arbitration & Conciliation Act, 1996 ('Act' for short) in the Bombay High Court. The said petition was resisted by the appellant by reiterating that the respondent had accepted the payment of Rs.233,94,964/- in full and final settlement and therefore, the respondent could not invoke the arbitration clause.

8. The learned Chief Justice of the Bombay High Court exercising power under section 11 of the Act, allowed the petition by order dated 19.4.2007. After considering the facts, he was of the view that there was a serious dispute between the parties as to whether 'discharge voucher' was given voluntarily or under pressure or coercion, and that required to be settled by the Arbitral Tribunal. He therefore appointed Sri Justice S.N.Variava as the sole arbitrator. The learned Chief Justice left open the question whether there was any coercion/undue influence in regard to issue of full and final settlement discharge voucher by the respondent, and permitted the parties to lead evidence before the arbitrator on that question. The said order is challenged by the insurer in this appeal by special leave.

The rival contentions :

9. Learned counsel for the appellant contended that once the insurance claim was settled and the insured received payment and issued a full and final discharge voucher, there was discharge of the contract by accord and satisfaction. As a result, neither the contract nor any claim survived. It is submitted that when a discharge voucher

was issued by the respondent, acknowledging receipt of the amount paid by the appellant, in full and final settlement and confirming that there are no pending claims against the appellant, such discharge voucher should be accepted on its face value as a discharge of contract by full and final settlement. Consequently, it should entail *ipso jure*, rejection *in limine* of any subsequent claim or any request for reference of any dispute regarding any claim to arbitration. It was also contended that having received the payment under the said discharge voucher, the respondent cannot, while retaining and enjoying the benefit of the full and final payment, challenge the validity or correctness of the discharge voucher. The appellant contends that the subsequent claim of the respondent ought not to have been referred to arbitration. In support of its contentions, reliance was placed on three decisions of this Court in *State of Maharashtra v. Nav Bharat Builders* [1994 Supp (3) SCC 83], *M/s. P. K. Ramaiah & Co. v. Chairman & Managing Director, National Thermal Power Corpn*. [1994 Supp (3) SCC 126] and *Nathani Steels Ltd. v. Associated Constructions* [1995 Supp (3) SCC 324].

10. On the other hand the respondent contended that the scope of proceeding under section 11 of the Act was limited. It is submitted that once the petitioner establishes that the contract between the parties contains an arbitration agreement, and that the dispute raised is in respect of a claim arising out of such contract, the dispute has to be referred to arbitration; that any contention by the appellant that there is discharge of the contract by issue of full and final discharge voucher is a matter for the arbitral tribunal to examine and decide, and cannot be held out as a threshold bar to arbitration; and that the question whether there was accord and satisfaction, or whether there was discharge of a contract by performance, is itself a question that is clearly arbitrable. It is alternatively submitted that when the Chief Justice or his designate is required to consider whether the claimant has issued a full and final discharge voucher in settlement of all claims, any objection to the validity of such discharge voucher should also be considered. It is pointed out that where the discharge voucher is given under threat or coercion, resulting in economic duress and compulsion, such discharge voucher is not valid nor binding on the claimant, and the dispute relating to the claim survives for consideration and is arbitrable. According to

respondent, where the person on whom the claim is made, withholds the admitted amount to coerce and compel the claimant to accept a smaller payment in full and final settlement and give a discharge voucher, there is no accord and satisfaction in the eye of law; and the discharge voucher will not come in the way of a genuine and bona fide dispute being raised regarding the balance of the claim and seeking reference of such claim to arbitration. In support of the said contentions, reliance was placed on the decisions of this Court in *Damodar Valley Corporation v. K. K.Kar* [1974 (1) SCC 141], *M/s. Bharat Heavy Electricals Ltd., Ranipur v. M/s. Amar Nath Bhan Prakash* [1982 (1) SCC 625], *Union of India vs. L. K. Ahuja & Co.* [1988 (3) SCC 76], *Jayesh Engineering Works v. New India Assurance Co. Ltd*. [2000 (10) SCC 178], *Chairman & Managing Director, NTPC Ltd. v. Reshmi Constructions, Builders & Contractors* [2004 (2) SCC 663], and *Ambica Construction v. Union of India* [2006 (13) SCC 475].

11. In reply, the learned counsel for the appellant submitted that the decisions relied on by the respondent were all rendered by two-Judge Benches of this Court, whereas the decision in *Nathani Steels* relied on by the appellant, was rendered by a three-Judge Bench; and

therefore the principle laid down in *Nathani Steels* that there can be no reference to arbitration wherever there is a full and final settlement, resulting in the discharge of the contract, holds the field and will have to be followed in preference to the other decisions.

The questions for consideration :

12. In this case existence of an arbitration clause in the contract of insurance is not in dispute. It provides that "if any dispute or difference shall arise as to the quantum to be paid under this policy (liability being otherwise admitted) such difference shall, independently to all other questions be referred to the decision of a sole Arbitrator." The rival contentions give rise to the following question for our consideration :

In what circumstances, a court will refuse to refer a dispute relating to quantum to arbitration, when the contract specifically provides for reference of disputes and differences relating to the quantum to arbitration? In particular, what is the position when a respondent in an application under section 11 of the Act, resists reference to arbitration on the ground that petitioner has issued a full and final settlement discharge voucher and the petitioner contends that he was constrained to issue it due to coercion, undue influence and economic compulsion?

13. In *Union of India v. Kishorilal Gupta & Bros*. [1960 (1) SCR 493], this Court considered the question whether the arbitration clause in the contract will cease to have effect, when the contract stood discharged as a result of settlement. While answering the question in the affirmative, a three Judge Bench of this Court culled out the following general principles as to when arbitration agreements operate and when they do not operate:

(i) An arbitration clause is a collateral term of a contract distinguished from its substantive terms; but none the less it is an integral part of it.

(ii) Howsoever comprehensive the terms of an arbitration clause may be, the existence of the contract is a necessary condition for its operation; and the arbitration clause perishes with the contract.

(iii) A contract may be *non est* in the sense that it never came legally into existence or it was void *ab initio.* In that event, as the original contract has no legal existence, the arbitration clause also cannot operate, for along with the original contract, it is also void.

(iv) Though the contract was validly executed, the parties may put an end to it as if it had never existed and substitute a new contract for it, solely governing their rights and liabilities. In such an event, as the original contract is extinguished by the substituted one, the arbitration clause of the original contract perishes with it.

(v) Between the two extremes referred to in paras (c) and (d), are the cases where the contract may come to an end, on account of repudiation, frustration, breach etc. In these cases, it is the performance of the contract that has come to an end, but the contract is still in existence for certain limited purposes, in respect of disputes arising under it or in connection with it. When the contracts subsist

for certain purposes, the arbitration clauses in those contracts operate in respect of those purposes.

The principle stated in para (i) is now given statutory recognition in section 16(1)(a) of the Act. The principle in para (iii) has to be now read subject to section 16(1)(b) of the Act. The principles in paras (iv) and (v) are clear and continue to be applicable. The principle stated in para (ii) requires further elucidation with reference to contracts discharged by performance or accord and satisfaction.

14. The decision in *Kishorilal Gupta* was followed and reiterated in several decisions including *Naithani Jute Mills Ltd. vs. Khyaliram Jagannath* (AIR 1968 SC 522), *Damodar Valley Corporation vs. K. K. Kar* [1974 (1) SCC 141] and *Indian Drugs & Pharmaceuticals Ltd. vs. Indo Swiss Synthetic Gem Manufacturing Co. Ltd.* (1996 (1) SCC 54). In *Damodar Valley Corporation,* this Court observed :

> "A contract is the creature of an agreement between the parties and where the parties under the terms of the contract agree to incorporate an arbitration clause, that clause stands apart from the rights and obligations under that contract, as it has been incorporated with the object of providing a machinery for the settlement of disputes arising in relation to or in connection with that contract. The questions of unilateral repudiation of the rights and obligations under the contract or of a full and final settlement of the contract relate to the performance or discharge of the contract. Far from putting an end to the arbitration clause, they fall within the purview of it. A repudiation by one party alone does not

> terminate the contract. It takes two to end it, and hence it follows that as the contract subsists for the determination of the rights and obligations of the parties, the arbitration clause also survives. This is not a case where the plea is that the contract is void, illegal or fraudulent etc., in which case, the entire contract along with the arbitration clause is *non est*, or voidable. As the contract is an outcome of the agreement between the parties it is equally open to the parties thereto to agree to bring it to an end or to treat it us if it never existed. It may also be open to the parties to terminate the previous contract and substitute in its place a new contract or alter the original contract in such a way that it cannot subsist. In all these cases, since the entire contract is put an end to the arbitration clause, which is a part of it, also perishes along with it."

15. Section 16 of the Act bestows upon the arbitral tribunal, the competence to rule on its own jurisdiction. Sub-section (1) of the section reads thus :

> "16. Competence of arbitral tribunal to rule on its jurisdiction. – (1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose, -
>
> (a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and
>
> (b) a decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

In *SBP & Co. vs. Patel Engineering Ltd.* – 2005 (8) SCC 618, a seven Judge Bench of this Court considered the scope of section 11 of the Act and held that the scheme of section 11 of the Act required the Chief Justice or his designate to decide whether there is an arbitration

agreement in terms of Section 7 of the Act before exercising his power under Section 11(6) of the Act and its implications. It was of the view that sub-sections (4), (5) and (6) of section 11 of the new Act, combined the power vested in the court under sections 8 and 20 of the old Act (Arbitration Act, 1940). This Court held :

> "It is necessary to define what exactly the Chief Justice, approached with an application under Section 11 of the Act, is to decide at that stage. Obviously, he has to decide his own jurisdiction in the sense, whether the party making the motion has approached the right High Court. *He has to decide whether there is an arbitration agreement, as defined in the Act and whether the person who has made the request before him, is a party to such an agreement. It is necessary to indicate that he can also decide the question whether the claim was a dead one; or a long barred claim that was sought to be resurrected and whether the parties have concluded the transaction by recording satisfaction of their mutual rights and obligations or by receiving the final payment without objection.* It may not be possible at that stage, to decide whether a live claim made, is one which comes within the purview of the arbitration clause. It will be appropriate to leave that question to be decided by the arbitral tribunal on taking evidence, along with the merits of the claims involved in the arbitration. The Chief Justice has to decide whether the applicant has satisfied the conditions for appointing an arbitrator under Section 11(6) of the Act. *For the purpose of taking a decision on these aspects, the Chief Justice can either proceed on the basis of affidavits and the documents produced or take such evidence or get such evidence recorded, as may be necessary.* We think that adoption of this procedure in the context of the Act would best serve the purpose sought to be achieved by the Act of expediting the process of arbitration, without too many approaches to the court at various stages of the proceedings before the Arbitral tribunal."
>
> "47.(iv) The Chief Justice or the designated judge will have the right to decide the preliminary aspects as indicated in the earlier part of this judgment. These will be, his own jurisdiction, to entertain the request, the existence of a valid arbitration agreement, the existence or otherwise of a live claim, the existence of the condition for the exercise of his power and on the qualifications of the arbitrator or arbitrators."

(emphasis supplied)

This Court also examined the 'competence' of the arbitral tribunal to rule upon its own jurisdiction and about the existence of the arbitration clause, *when* the Chief Justice or his designate had appointed the Arbitral Tribunal under section 11 of the Act, after deciding upon such jurisdictional issue. This Court held:

> "We are inclined to the view that the decision of the Chief Justice on the issue of jurisdiction and the existence of a valid arbitration agreement would be binding on the parties when the matter goes to the arbitral tribunal".
>
> "Section 16 is said to be the recognition of the principle of Kompetenz - Kompetenz. The fact that the arbitral tribunal has the competence to rule on its own jurisdiction and to define the contours of its jurisdiction, only means that when such issues arise before it, the Tribunal can and possibly, ought to decide them. This can happen when the parties have gone to the arbitral tribunal without recourse to Section 8 or 11 of the Act. But where the jurisdictional issues are decided under these Sections, before a reference is made, Section 16 cannot be held to empower the arbitral tribunal to ignore the decision given by the judicial authority or the Chief Justice before the reference to it was made. The competence to decide does not enable the arbitral tribunal to get over the finality conferred on an order passed prior to its entering upon the reference by the very statute that creates it. That is the position arising out of Section 11(7) of the Act read with Section 16 thereof. The finality given to the order of the Chief Justice on the matters within his competence under Section 11 of the Act, are incapable of being reopened before the arbitral tribunal."

16. It is thus clear that when a contract contains an arbitration clause and any dispute in respect of the said contract is referred to

arbitration *without the intervention of the court*, the Arbitral Tribunal can decide the following questions affecting its jurisdiction: (a) whether there is an arbitration agreement; (b) whether the arbitration agreement is valid; (c) whether the contract in which the arbitration clause is found is null and void and if so whether the invalidity extends to the Arbitration clause also. It follows therefore that if the respondent before the Arbitral Tribunal contends that the contract has been discharged by reason of the claimant accepting payment made by the respondent in full and final settlement, and if the claimant counters it by contending that the discharge voucher was extracted from him by practicing fraud, undue influence, or coercion, the arbitral tribunal will have to decide whether the discharge of contract was vitiated by any circumstance which rendered the discharge voidable at the instance of the claimant. If the arbitral tribunal comes to the conclusion that there was a valid discharge by voluntary execution of a discharge voucher, it will refuse to examine the claim on merits, and reject the claim as not maintainable. On the other hand, if the arbitral tribunal comes to the conclusion that such discharge of contract was vitiated by any circumstance which rendered it void, it will ignore the same and proceed to decide the claim on merits.

17. Where the intervention of the court is sought for appointment of an Arbitral Tribunal under section 11, the duty of the Chief Justice or his designate is defined in *SBP & Co*. This Court identified and segregated the preliminary issues that may arise for consideration in an application under section 11 of the Act into three categories, that is (i) issues which the Chief Justice or his Designate is bound to decide; (ii) issues which he can also decide, that is issues which he may choose to decide; and (iii) issues which should be left to the Arbitral Tribunal to decide.

17.1) The issues (first category) which Chief Justice/his designate will have to decide are:

(a) Whether the party making the application has approached the appropriate High Court.

(b) Whether there is an arbitration agreement and whether the party who has applied under section 11 of the Act, is a party to such an agreement.

17.2) The issues (second category) which the Chief Justice/his designate may choose to decide (or leave them to the decision of the arbitral tribunal) are:

(a) Whether the claim is a dead (long barred) claim or a live claim.

(b) Whether the parties have concluded the contract/ transaction by recording satisfaction of their mutual rights and obligation or by receiving the final payment without objection.

17.3) The issues (third category) which the Chief Justice/his designate should leave exclusively to the arbitral tribunal are :

(i) Whether a claim made falls within the arbitration clause (as for example, a matter which is reserved for final decision of a departmental authority and excepted or excluded from arbitration).

(ii) Merits or any claim involved in the arbitration.

It is clear from the scheme of the Act as explained by this Court in *SBP & Co.*, that in regard to issues falling under the second category, if raised in any application under section 11 of the Act, the Chief Justice/his designate may decide them, if necessary by taking evidence. Alternatively, he may leave those issues open with a direction to the Arbitral Tribunal to decide the same. If the Chief Justice of his Designate chooses to examine the issue and decides it, the Arbitral Tribunal cannot re-examine the same issue. The Chief Justice/his designate will, in choosing whether he will decide such

issue or leave it to the Arbitral Tribunal, be guided by the object of the Act (that is expediting the arbitration process with minimum judicial intervention). Where allegations of forgery/fabrication are made in regard to the document recording discharge of contract by full and final settlement, it would be appropriate if the Chief Justice/his designate decides the issue.

18. What is however clear is when a respondent contends that the dispute is not arbitrable on account of discharge of the contract under a settlement agreement or discharge voucher or no-claim certificate, and the claimant contends that it was obtained by fraud, coercion or under influence, the issue will have to be decided either by the Chief Justice/his designate in the proceedings under section 11 of the Act or by the arbitral Tribunal as directed by the order under section 11 of the Act. A claim for arbitration cannot be rejected merely or solely on the ground that a settlement agreement or discharge voucher had been executed by the claimant, if its validity is disputed by the claimant.

19. We may next examine some related and incidental issues. Firstly, we may refer to the consequences of discharge of a contract.

When a contract has been fully performed, there is a discharge of the contract by performance, and the contract comes to an end. In regard to such a discharged contract, nothing remains - neither any right to seek performance nor any obligation to perform. In short, there cannot be any dispute. Consequently, there cannot obviously be reference to arbitration of any dispute arising from a discharged contract. 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, that is arbitrable. But there is an exception. Where both 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. Similarly, where one of the parties to the contract issues a full and final discharge voucher (or no due 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, that amounts to discharge of the contract by acceptance of performance and the party issuing the discharge voucher/certificate cannot thereafter make any fresh claim or revive any settled claim. Nor can

he seek reference to arbitration in respect of any claim. When we refer to a discharge of contract by an agreement signed by both parties or by execution of a full and final discharge voucher/receipt by one of the parties, we refer to an agreement or discharge voucher which is validly and voluntarily executed. If the party who has executed the discharge agreement or discharge voucher, alleges that the execution of such discharge agreement or voucher was on account of fraud/coercion/undue influence practiced by the other party and is able to establish the same, then obviously the discharge of the contract by such agreement/voucher is rendered void and cannot be acted upon. Consequently, any dispute raised by such party would be arbitrable.

20. While discharge of contract by performance refers to fulfillment of the contract by performance of all the obligations in terms of the original contract, discharge by 'accord and satisfaction' refers to the contract being discharged by reason of performance of certain substituted obligations. The agreement by which the original obligation is discharged is the *accord*, and the discharge of the substituted obligation is the *satisfaction.* A contract can be

discharged by the same process which created it, that is by mutual agreement. A contract may be discharged by the parties to the original contract either by entering into a new contract in substitution of the original contract; or by acceptance of performance of modified obligations in lieu of the obligations stipulated in the contract. The classic definition of the term 'accord and satisfaction' given by the Privy Council in *Payana Reena Saminathan vs. Pana Lana Palaniappa* – 41 IA 142 (reiterated in *Kishorilal Gupta*) is as under:

> "The 'receipt' given by the appellants and accepted by the respondent, and acted on by both parties proves conclusively that all the parties agreed to a settlement of all their existing disputes by the arrangement formulated in the 'receipt'. It is a clear example of what used to be well known as common law pleading as 'accord and satisfaction by a substituted agreement'. *No matter what were the respective rights of the parties inter se they are abandoned in consideration of the acceptance by all of a new agreement. The consequence is that when such an accord and satisfaction takes place the prior rights of the parties are extinguished. They have in fact been exchanged for the new rights; and the new agreement becomes a new departure, and the rights of all the parties are fully represented by it*."
>
> ***[Emphasis supplied]***

21. It is thus clear that the arbitration agreement contained in a contract cannot be invoked to seek reference of any dispute to arbitration, in the following circumstances, when the contract is discharged on account of performance, or accord and satisfaction, or

mutual agreement, and the same is reduced to writing (and signed by both parties or by the party seeking arbitration) :

(a) Where the obligations under a contract are fully performed and discharge of the contract by performance is acknowledged by a full and final discharge voucher/receipt. Nothing survives in regard to such discharged contract.

(b) Where the parties to the contract, by mutual agreement, accept performance of altered, modified and substituted obligations and confirm in writing the discharge of contract by performance of the altered, modified or substituted obligations.

(c) Where the parties to a contract, by mutual agreement, absolve each other from performance of their respective obligations (either on account of frustration or otherwise) and consequently cancel the agreement and confirm that there is no outstanding claims or disputes.

22. We may next consider whether the decisions relied on by the appellant and the decisions relied on by the respondent express divergent views, as contended by the learned counsel for the appellant. We will first consider the three cases relied on by the appellant.

22.1) In *P.K. Ramaiah*, 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.

22.2) In *Nav Bharat Builders*, 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 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 this Court following *P. K. Ramaiah* held :

> “………..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]***

22.3) *Nathani Steels* 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 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 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 :

> "….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 amicable 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]***

22.4) What requires to be noticed is that in *Nav Bharat Builders and Nathani Steels*, this court on examination of facts, was satisfied that there were negotiations and voluntary settlement of all pending disputes, and the contract was discharged by accord and satisfaction. In *P. K. Ramaiah*, the Court was satisfied that there was a voluntary acceptance of the measurements and full and final payment of the amount found due, resulting in discharge of the contract, leaving no outstanding claim or pending dispute. In those circumstances, this Court held that after such voluntary accord and satisfaction or discharge of the contract, there could be no arbitrable disputes.

23. We may next refer to the decisions relied on by the respondent:

23.1) In *Damodar Valley Corporation,* the question that arose for consideration of this Court was as follows:

> "where one of the parties refers a dispute or disputes to arbitration and the other party takes a plea that there was a final settlement of all claims, is the Court, on an application under Sections 9(b) and 33 of the Act, entitled to enquire into the truth and validity of the averment as to whether there was or was not a final settlement on the ground that if that was proved it would bar a reference to the arbitration inasmuch as the arbitration clause itself would perish."

In that case the question arose with reference to a claim by the supplier. The purchaser required the supplier to furnish a full and final receipt. But the supplier did not give such a receipt. Even though there was no discharge voucher, the purchaser contended that the payments made by it were in full and final settlement of the bills. This Court rejected that contention and held that the question whether there has been a settlement of all the claims arising in connection with the contract also postulates the existence of the contract which would mean that the arbitration clause operates. This Court held that the question whether there has been a full and final settlement of a claim under the contract is itself a dispute arising 'upon' or 'in

relation to' or 'in connection with' the contract; and where there is an arbitration clause in a contract, notwithstanding the plea that there was a full and final settlement between the parties, that dispute can be referred to arbitration. It was also observed that mere claim of accord and satisfaction may not put an end to the arbitration clause. It is significant that neither *P.K. Ramaiah* nor *Nathani Steels* disagreed with the decision in *Damodar Valley Corporation* but only distinguished it on the ground that there was no full and final discharge voucher showing accord and satisfaction in that case.

23.2) In *Bharat Heavy Electricals Ltd*., this Court observed that the question whether there was discharge of the contract by accord and satisfaction or not, is a dispute arising out of the contract, which requires to be referred to arbitration. It was held that the Arbitrator shall first determine whether there was accord and satisfaction between parties and/or whether the contract was discharged; that if the decision was in favour of the employer, the Arbitrator will not proceed further in the matter but dismiss the claim of the contractor; and that if he finds that the contract was not discharged by accord and satisfaction or otherwise, he should proceed to determine the claim of

the contractor on merits. In this case also, there was no acknowledgment of full and final settlement not any discharge voucher.

23.3) In *Union of India vs. L.K. Ahuja & Co*. – 1988 (3) SCC 76, this Court observed :

> "In order to be entitled to ask for a reference under section 20 of the Act, there must be an entitlement to money and a difference or dispute in respect of the same. It is true that on completion of the work, right to get payment would normally arise and it is also true that on settlement of the final bill, the right to get further payment gets weakened but the claim subsists and whether it does subsist, is a matter which is arbitrable."

There was no full and final discharge or accord and satisfaction in that case. In *Jayesh Engineering Works,* There was an acknowledgment by the contractor that he had received the amount in full and final settlement and he has no further claim. This Court following *L. K. Ahuja* held that whether the contract has been fully worked out and whether the payments have been made in full and final settlement are questions to be considered by the arbitrator when there is a dispute regarding the validity of such acknowledgement and that the arbitrator will consider whether any amount is due to be paid and how far the claim made by the contractor is tenable. *Jayesh*

Engineering Works did not refer to *Kishorilal Gupta, Nav Bharat Builders, P.K. Ramaiah* or *Nathani Steels*..

23.4) 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 investments, 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 required to be examined.

23.5) In *Ambica Constructions* (supra) this Court considered a clause in the contract which required the contractor to give a no claim certificate in the form required by 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, 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.

24. We thus find that the cases referred 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. 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 due/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. None of the three cases relied on by the appellant lay down a proposition that mere execution of a full and final settlement receipt or a discharge voucher is a bar to arbitration, even when the validity thereof is challenged by the claimant on the ground of fraud, coercion or undue influence. Nor do they lay down a proposition that even if the discharge of contract is not genuine or legal, the claims cannot be referred to arbitration. In all the three cases, the court examined the facts and satisfied itself that there was accord and satisfaction or complete discharge of the contract and that there was no evidence to support the allegation of coercion/undue influence. 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 Corporation* and *Jayesh Engineering Works*, 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*.

25. In several insurance claim cases arising under 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. In *United India Insurance Co. Ltd., vs. Ajmer Singh Cotton & General Mills* – 1999 (6) SCC 400, this Court held :

> "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.
>
> 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. vs. Nipha Exports (P) Ltd.* – 2006 (8) SCC 156 and *National Insurance Co. Ltd., vs. Sehtia Shoes* – 2008 (5) SCC 400. It will also not be out of place to refer to what this Court had said in *Central Inland Water Transport Corporation Ltd. vs. Brojo Nath Ganguly* – 1986 (3) SCC 156 in a different context (not intended to apply to commercial transactions) :

> "(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 infra-structural 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."
>
> *[emphasis supplied]*

26. 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 due certificates' or a '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.

27. 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 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 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. The Chief Justice/his designate exercising jurisdiction under section 11 of the Act will consider whether there was really accord and satisfaction or discharge of contract by performance. If the answer is in the affirmative, he will refuse to refer the dispute to arbitration. On the other hand, if the Chief Justice/his designate comes to the conclusion that the full and final settlement receipt or discharge voucher was the result of any fraud/coercion/undue influence, he will have to hold that there was no discharge of the contract and consequently refer the dispute to arbitration. Alternatively, where the Chief Justice/his designate is satisfied prima facie that the discharge voucher was not issued

voluntarily and the claimant was under some compulsion or coercion, and that the matter deserved detailed consideration, he may instead of deciding the issue himself, refer the matter to the arbitral tribunal with a specific direction that the said question should be decided in the first instance.

28. 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.

29. 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.

30. The discharge voucher form was handed over to the respondent on 21.3.2006. It was signed and delivered to the appellant immediately thereafter acknowledging that a sum of Rs.2,33,94,964/- had been received from the insurer (appellant) in full and final settlement, and that in consideration of such payment, the respondent absolved the appellant from all liabilities, present and future, arising directly or indirectly, out of said loss or damage under the policy. Admittedly, on the date when such discharge voucher was signed and given by the respondent, the payment of Rs.233,94,964/- had not been made. It was made *after* receiving the voucher. Therefore, at the time of signing the voucher by the respondent and at the time of delivery of voucher by the respondent to the appellant, the contents of the voucher that the said amount had been received, that such amount had been received in full and final settlement of all claims, and that in consideration of such payment, the company was absolved from any further liability, are all false and not supported by consideration.

31. In this case the High Court examined the issue and found that prima facie there was no accord and satisfaction or discharge of the contract. It held that the appellant is still entitled to raise this issue before an arbitrator and the arbitrator has to decide it. On the facts and circumstances and the settled position of law referred by us above, we are also prima facie of the view that there is no accord and satisfaction in this case and the dispute is arbitrable. But it is still open to the appellant to lead evidence before the arbitrator, to establish that there is a valid and binding discharge of the contract by way of accord and satisfaction.

32. We therefore find no reason to interfere with the order of the High court. The appeal is accordingly dismissed. We make it clear nothing stated by the High Court or by us shall be construed as expression of any final opinion on the issue whether there was accord and satisfaction nor as expression of any views on merits of any claim or contentions of the parties.

…………………………..J.
(R V Raveendran)

New Delhi; ………………………..J.
September 18, 2008. (Lokeshwar Singh Panta)