

IN THE HIGH COURT OF DELHI AT NEW DELHI

ARB.P. No. 536 of 2014

M/S. PRABHU DAYAL TRILOK CHAND Petitioner
Through: Mr. K.L. Nandwani, Advocate.

versus

THE ORIENTAL INSURANCE CO. LTD. Respondent
Through: Mr. Abhishek Kumar Gola, Advocate.

CORAM: JUSTICE S. MURALIDHAR

ORDER
6.01.2014

1. This petition under Section 11 of the Arbitration and Conciliation Act, 1996 ('Act') seeks appointment of an Arbitrator in respect of a claim made by the Petitioner, a partnership firm, under a Standard Fires and Special Perils Policy issued by the Respondent Oriental Insurance Company Limited ('OICL') for a sum of Rs.2.75 crores for the period 1st May 2013 to 30th April 2014.

2. There was a serious fire in the factory of the Petitioner at around 10.30 pm on 11th July 2013 causing damage to its property, plant and machinery and stocks. The Petitioner submitted a claim to OICL on 15th August 2013 for a loss aggregating to Rs.2,36,36,380. By a letter dated 28th March 2014, OICL informed the Petitioner that the claim of the Petitioner has been approved to the extent of Rs.1.54 crores. Along with the letter a blank discharge voucher was sent for signature by way

of acceptance of the said amount in full and final settlement of the Petitioner's claim. It was stated that if the discharge voucher was not signed, the amount would not be released. On 9th April 2014, the Petitioner sent an email conveying that the sum of Rs.1.54 crores was not acceptable. On 20th May 2014, another email was sent by the Petitioner reiterating the demand for the amount claimed. In response thereto on 22nd May 2014, OICL informed the Petitioner that it could not settle the claimed for a higher amount.

3. Even according to the Petitioner, its partner Mr. Bharat Bhushan did sign the discharge voucher on 22nd May 2014. A copy thereof has been placed on record. However, the case of the Petitioner is that Mr. Bhushan was compelled to sign the said voucher under coercion.

4. The admitted fact is that after the Petitioner sent OICL the signed voucher, which was countersigned also signed by the Petitioner's bank, the amount of Rs.1.54 crores was transferred electronically by OICL into the account of the Petitioner on 27th May 2014.

5. On 28th May 2014, the Petitioner sent an email to OICL attaching the copy of a detailed letter. The relevant portion of the said letter reads as under:

“Today, you have called me to settle my claim and

look into the details of my representation dated 9th April 2014 and 2nd May 2014. On your assurance the moment, I, Bharat Bhushan, Partner reached your DO office, at Shakti Nagar around 11 am, on 22nd May 2014, you fraudulently by exercising undue influence and stating that my rest of the claims can be settled in future, if I refused to take the payment now I won't be getting a single penny. In fact I have signed in protest. You have taken an undue advantage of my situation. I am already paying huge amount of interest upon the credit taken by us from ICICI Bank. My credit limit is Rs.2,70,00,000 and I have exhausted my credit limit.”

The above letter was addressed to the “The GM Tech (Fire)”, OICL.

6. In response to the arbitration notice sent by the Petitioner, OICL has relied upon the discharge voucher signed by the Petitioner to negate the plea for appointment of an Arbitrator. As a result the present petition has been filed by the Petitioner seeking the appointment of an Arbitrator.

7. Mr. Nandwani, learned counsel for the Petitioner, relied upon the decisions in *National Insurance Company Limited v. Sehtia Shoes (2008) 5 SCC 400*, *National Insurance Company Limited v. Boghara Polyfab Private Limited (2009) 1 SCC 267*, *Gayatri Project Ltd. v. Sai Krishna Construction 2013 (15) SCALE 143*, *Sara International*

Limited v. Rizhao Steel Holding Group Co. Ltd. 2013 (201) DLT 262

and a judgment of the National Consumer Disputes Redressal Commission, New Delhi dated 15th January 2002 in Revision Petition No. 532 of 1998. It is submitted that the question whether the Petitioner was subjected to undue coercion and compelled to sign the discharge voucher was itself an arbitrable dispute for which evidence had to be led. It is pointed out that the protest was lodged immediately after the transfer of the amount into the Petitioner's account.

8. In reply learned Mr. Abhishek Gola, learned counsel for OICL relied on the judgment dated 4th December 2014 of the Supreme Court in Civil Appeal No. 10784 of 2014 (***New India Assurance Company Ltd. v. Genus Power Infrastructure Ltd.***) It is submitted that a bald plea of fraud, duress or undue influence was not sufficient. The Petitioner had to place some *prima facie* material to substantiate the above plea. It is pointed out that there was absolutely no compulsion on the Petitioner to sign on the discharge voucher. It was signed without recording any protest whatsoever.

9. The above submissions have been considered. In ***National Insurance Company Limited v. Boghara Polyfab Private Limited*** (supra), the Supreme Court reviewed the entire case law till then on the circumstances under which it could be said that there was a full and

ARB.P. No. 536 of 2014

final settlement of claims. The legal position for the purposes of invoking the jurisdiction under Section 11 of the Act was explained as under:

“51. 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.”

10. Subsequently in *Union of India v. Master Construction Co. (2011) 12 SCC 349* it was reiterated in paras 18 and 19 as under:

“18. In our opinion, there is no rule of the absolute kind. In a case where the claimant contends that a discharge voucher or no-claim certificate has been obtained by fraud, coercion, duress or undue influence and the other

side contests the correctness thereof, the Chief Justice/his designate must look into this aspect to find out at least, prima facie, whether or not the dispute is bona fide and genuine. Where the dispute raised by the claimant with regard to validity of the discharge voucher or no-claim certificate or settlement agreement, prima facie, appears to be lacking in credibility, there may not be a necessity to refer the dispute for arbitration at all.

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

11. The other decisions relied upon by learned counsel for the parties, including those in *Gayatri Project Ltd.* and *New India Assurance*

Company Ltd. v. Genus Power Infrastructure Ltd. (supra) also reiterate the above legal position.

12. The question really, therefore, is whether on the facts and circumstances of the present case, the Petitioner has been able to satisfy the Court even prima facie that its partner was subjected to fraud, coercion, duress or undue influence by OICL into signing the discharge voucher accepting Rs. 1.54 crores in full and final settlement of the Petitioner's claim. In the present case it is seen that after having been told that the claim was settled only for Rs.1.54 crores, the Petitioner on 9th April 2014 lodged a protest with the OICL. This was reiterated by the Petitioner on 20th May 2014. It was thereafter on 22nd May 2014 that the partner of the Petitioner signed the discharge voucher. While signing the discharge voucher, the partner did not record any protest therein. The Petitioner waited for over five days for the amount of Rs. 1.54 crores to be transferred to its account and then sent an email on 28th May 2014 raising a protest.

13. In the considered view of the Court, a conscious decision was taken by the Petitioner on 22nd May 2014 to sign the discharge voucher and accept the amount of Rs.1.54 crores as full and final settlement of its claims. It appears to the Court that the plea set up by the Petitioner that it was subjected to "fraud, coercion, duress or undue influence" by OICL and compelled to sign the discharge voucher is indeed a bald

ARB.P. No. 536 of 2014 *Page 7 of 8*

one and not convincing. No materials have been placed by the Petitioner before the Court to persuade it even *prima facie* to hold that OICL practised fraud or subjected it to coercion, duress or undue influence in order to get the Petitioner to accept Rs.1.54 crores as final settlement of its claim. Consequently, the Court is not satisfied that there is an arbitrable dispute which requires to be referred to arbitration.

14. The petition is dismissed.

S. MURALIDHAR, J.

JANUARY 6, 2014
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