REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1659 OF 2018
(Arising out of Special Leave Petition (C) NO. 12939 OF 2015)

M/s ONGC Mangalore Petrochemicals Ltd. .... Appellant(s)

Versus

M/s ANS Constructions Ltd. & Anr. .... Respondent(s)

J U D G M E N T

R.K. Agrawal, J.

1) Leave granted.

2) This appeal is directed against the final judgment and order dated 12.01.2015 passed by the High Court of Karnataka at Bengaluru in C.M.P. No. 35 of 2014 whereby learned single Judge of the High Court allowed the petition filed by the respondent No. 1- Company for appointment of an arbitrator for resolution of the dispute between the appellant-Company and respondent No. 1-Company.

3) **Brief facts:**

(a) Respondent No. 1-the Contractee Company was awarded a Contract for "Site Grading, Construction of Roads, Water Drains and Compound Wall for Aromatic Complex at Mangalore" in Mangalore SEZ by the appellant-Contractor on 17.03.2008. The total contract value as per the Letter of Acceptance (LOA) was Rs. 163,25,68,576/- which was subsequently revised to Rs. 195,68,24,399.02/- vide letter dated 20.09.2010 and the completion period was also extended upto 30.11.2010.

(b) On 21.09.2012, the Contractee Company submitted a No Dues/No Claim Certificate certifying the payment of all the bills and in total settlement of all the claims whatsoever against the Contract. Thereafter, on 10.10.2012, the appellant herein-the Contractor Company made a payment of the final bill of Rs. 20.34 crores to the Contractee Company.

(c) Subsequently, on 24.10.2012, the Contractee Company withdrew letter dated 21.09.2012 for "No Dues/No Claim Certificate" stating that it was a pre-requisite condition for

release of their long due legitimate payment against the works executed under the Contract and the same was furnished by the Contractee Company under duress and coercion of the appellant-Contractor.

(d) The Contractee-Company, vide letter dated 12.01.2013 to the appellant-Contractor, submitted a claim of Rs. 96,88,48,642.00 for the losses incurred during execution of the contract at Mangalore. On 19.06.2013, the appellant-Contractor issued a Completion Certificate stating that the works awarded under the Contract have been executed and completed in all respects and no claim certificate has also been submitted by the Contractee-Company. After several communication in writing, the appellant-Contractor, vide letter dated 25.07.2013, denied the claim of the contractee-Company.

(e) Vide letter dated 14.09.2013, the contractee-Company sent a notice to the appellant-Contractor for resolving the dispute between the parties through Arbitration as envisaged under Article 9.0.2.0 to the Contract and appointed Mr. K. Mohandas, Former General Manager (Law)- SBI as its

Arbitrator. The appellant-Contractor, vide letter dated 18.10.2013 denied the request of the contractee-Company as not tenable in law.

(f) Being aggrieved by the decision of the appellant-Contractor in not referring the dispute to Arbitration, the contractee-Company preferred a C.M.P. No. 35 of 2014 before the High Court of Karnataka at Bangalore.

(g) Learned single Judge of the High Court, vide judgment and order dated 12.01.2015, allowed the petition filed by the contractee-Company.

(h) Being aggrieved by the order dated 12.01.2015, the appellant-Contactor has filed this appeal by way of special leave before this Court.

4) Heard Mr. P.S. Narasimha, learned senior counsel for the appellant-Company and Mr. P. Vinay Kumar for the Respondents.

Point for consideration:

5) The only point for consideration before this Court is whether the respondent-Contractee Company has made out a case for referring the dispute to Arbitration?

Rival Submissions:

6) Learned senior counsel for the Contractor-the appellant Company strenuously contended that the High Court erred in holding that the contractee-Company established a case to show that there was a genuine and serious dispute regarding the claim and that the claim that No Dues Certificate/No Claim Certificate was issued under duress/coercion is erroneous and unsustainable. Learned senior counsel further contended that there was no withholding of payment and the extension was granted subject to the contractee-Company's request and the contract does not provide for escalation of costs.

7) Learned senior counsel further contended that the delay in payment does not arise at all because as per Clause 6.4.0.0, there was no obligation cast upon the Contractor to pay the RA Bills in full but it was to be done merely on the assessment of the Engineer-in charge. The High Court erred in referring to few letters exchanged much prior to the Final Bill. In fact, the alleged claims were never brought up at the time of issuance

of Final Bill or No Dues Certificate on 21.09.2012 and now at this stage it is not open for the contractee-Company to raise the issue of losses incurred during the execution of the Contract.

8) Learned senior counsel finally contended that when both the parties to a contract confirm in writing that the contract has been fully and finally discharged by performance of all obligations and there are no outstanding claims or disputes, court will not refer the subsequent claim or dispute to arbitration. There was complete accord and satisfaction of the contract between the parties and nothing further was left to be done by either parties. The High Court was not right in allowing the petition filed by the contractee-Company and no case is made out for referring the dispute to Arbitration and also for the payment of the alleged amount to the contractee-Company.

9) *Per contra*, learned counsel for the contractee-Respondent No. 1 herein submitted that during the execution of Contract, the contractee Company raised Running Account Bills (RA Bills) to the Contractor-Company for the expenses incurred

towards carrying out the construction work but the same were cleared with inordinate delay and even the final bill to the tune of Rs. 20.34 crores was released by the appellant- Contractor only when the contractee Company furnished "No Dues/No Claim Certificate" dated 21.09.2012. Upon submitting the above Certificate, the appellant-Contractor issued a Completion Certificate approving the work carried out by the contractee under the Contract.

10) Learned counsel for the contractee-Company further submitted that since the appellant-Contractor was not clearing the legitimate and genuine dues payable under the RA Bills and was always at the mercy of the appellant-Contractor for the release of payment from the very beginning of the Contract, the last payment of Rs. 20.34 crores and the release of performance bank guarantee was deliberately withheld by the appellant-Contractor. The work got completed on 30.06.2011 and it was only after the submission of No-Dues Certificate on 21.09.2012, the final payment was released. Due to non-payment of RA Bills on time, the contractee-Company was under severe financial crunch and

could not have refused to issue the "No Dues Certificate" which was issued under duress and has no meaning in the eyes of law.

11) Learned counsel further submitted that it is *prima facie* evident that there is a genuine and serious dispute between the parties which requires the appointment of an Arbitrator under the clauses of the Contract to adjudicate upon the claims made by the contractee and it will cause grave injustice to the party if the claims are not adjudicated in terms of the Contract. Learned counsel further submitted that under these circumstances, the withdrawal of No Dues/No Claim Certificate, which was given under duress, is not an afterthought and in a number of decisions of this Court it has been held that if a party who has executed the discharge agreement or discharge voucher alleges that execution of such document was on account of fraud/coercion/undue influence practiced by the other party then such discharge of the contract by such agreement would be rendered void and cannot be acted upon.

12) Learned counsel further submitted that the contractee-Company could not continue with the work due to various reasons like pooja, shifting of idols, non-availability of free encumbrance of site, obstruction in the blasting work, stoppage of hard rock blasting, issues with respect to work to be given to local contractors, non-vacation of project displaced families, permission for forest clearance, permission for shifting of wooden logs etc. and the huge expenditure as disclosed in the claim was incurred by the contractee-Company due to the factors attributable to the appellant-Contractor.

13) Learned counsel finally contended that the "No Dues Certificate" was filed by the contractee-Company under duress owing to their huge payment pending towards the appellant-Contractor which was rightly withdrawn for the losses incurred due to the appellant-Contractor. Further, when there is an Arbitration clause in the agreement, the contractee Company has the right to invoke the same. The High Court was right in allowing the petition filed by the

contractee-Company and no interference is sought for by this Court in this regard.

Discussion:

14) The appellant Contractor-ONGC Mangalore Petrochemicals Ltd. invited tender for "Award of Work for Site Grading, Construction of Roads, Storm Water Drains & Compound Wall for Aromatic Complex at Mangalore". The bid document was issued by M/s Toyo Engineering India Limited (TEIL)-Respondent No. 2 herein on behalf of the OMPL (the contractor) being their Project Management Consultant. M/s ANS Constructions Limited-Respondent No. 1 herein submitted its bid on 15.11.2007. Respondent No. 1 herein was awarded the Contract vide Letter of Acceptance (LOA) dated 17.03.2008. The total Contract Value was estimated at Rs. 163,25,68,576/- which was later on revised to Rs. 195,68,24,399.02, pursuant thereto, the completion period was also extended upto 30.11.2010.

15) During the subsistence of the contract, the contractee-Company raised RA Bills for the expenses incurred

towards carrying out the construction work. It is evident on record that the contractee-Company made several requests to the appellant-Contractor to clear their legitimate and genuine dues payable under the Bills which was paid to them after inordinate delay. It is also the claim of the contractee-Company that the contractee was compelled to file No Dues Certificate/No Claim Certificate dated 21.09.2012 in order to get the release of the Final Bill under the Contract. On 10.10.2012, the contractor-Company made the payment of the final bill of Rs. 20.34 crores to the contractee-Company. After the release of the Final Bill, the contractee-Company withdrew the "No Dues/No Claim Certificate" stating that the letter dated 21.09.2012 was pre-requisite condition for release of their long due legitimate payment against the works executed under the Contract and the same was furnished under duress and coercion of the appellant-Contractor. Further, on 12.01.2013, the contractee-Company submitted a claim for Rs. 96,88,48,642.00 for the losses incurred during execution of the contract at Mangalore.

16) The appellant-Contractor, vide letter dated 25.07.2013, rejected the claim of the contractee-Company on the ground that the Contractee has submitted No Dues/No Claim Certificate and withdrawal of the same on the ground that it was obtained under duress and coercion is wrong, incorrect and not tenable in law. Being aggrieved by the rejection of their claim, the contractee-Company invoked the Arbitration clause under the Contract and appointed its Arbitrator. The appellant-Contractor, vide letter dated 18.10.2013, declined to nominate its Arbitrator. The contractee-Company filed a Civil Miscellaneous Petition under Section 11 of the Arbitration and Conciliation Act, 1996 (in short 'the Act') for the appointment of an Arbitrator in lieu of the nominee arbitrator of the appellant-Contractor so that the said arbitrator along with the nominee arbitrator already appointed by the contractee-Company agree upon the appointment of the third/presiding arbitrator for constitution of a three member Arbitral Tribunal as per the agreed terms of the Contract for adjudicating upon the dispute arising out of execution of the Contract.

17) Learned senior counsel for the appellant-Contractor, after taking us through the material on record, submitted that the contract has come to an end and the obligations therein have been discharged and there is no point of raising a belated claim in the form of losses incurred during the execution of the Contract that too after submitting the Final Bills as well as the No Dues Certificate. In support of his claim, learned senior counsel relied upon a decision of this Court in ***Union of India and Others*** vs. ***Master Construction Co.*** (2011) 12 SCC 349 wherein it was held 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.
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> **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."

18) Further, learned senior counsel relied upon a judgment of this Court in ***New India Assurance Co. Ltd.*** vs. ***Genus Power Infrastructure Ltd.*** (2015) 2 SCC 424 wherein this Court has held as under:-

7. The question that arises is whether the discharge in the present case upon acceptance of compensation and signing of subrogation letter was not voluntary and whether the claimant was subjected to compulsion or coercion and as such could validly invoke the jurisdiction under Section 11 of the Act. The law on the point is clear from following decisions of this Court. In *National Insurance Co. Ltd.* v. *Boghara Polyfab (P) Ltd* in paras 26 and 51 it was stated as under:

"*26.* When we refer to a discharge of contract by an agreement signed by both the 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 which 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 practised 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.

* * *

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."

8. In the decision rendered in *Union of India* v. *Master Construction Co* this Court observed 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.
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> *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.
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> * * *

22. The above certificates leave no manner of doubt that upon receipt of the payment, there has been full and final settlement of the contractor's claim under the contract. That the payment of final bill was made to the contractor on 19-6-2000 is not in dispute. After receipt of the payment on 19-6-2000, no grievance was raised or lodged by the contractor immediately. The authority concerned, thereafter, released the bank guarantee in the sum of Rs 21,00,000 on 12-7-2000. It was then that on that day itself, the contractor lodged further claims."

9. It is therefore clear that a bald plea of fraud, coercion, duress or undue influence is not enough and the party who sets up a plea, must prima facie establish the same by placing material before the Chief Justice/his designate. Viewed thus, the relevant averments in the petition filed by the respondent need to be considered, which were to the following effect:

"(*g*) That the said surveyor, in connivance with the respondent Company, in order to make the respondent Company escape its full liability of compensating the petitioner of such huge loss, acted in a biased manner, adopted coercion, undue influence and duress methods of assessing the loss and forced the petitioner to sign certain documents including the claim form. The respondent Company also denied the just claim of the petitioner by their acts of omission and commission and by exercising coercion and undue influence and made the petitioner Company sign certain documents, including a pre-prepared discharge voucher for the said amount in advance, which the petitioner Company were forced to do so in the period of extreme financial difficulty which prevailed during the said period. As stated aforesaid, the petitioner Company was forced to sign several documents including a letter accepting the loss amounting to Rs 6,09,55,406 and settle the claim of Rs 5,96,08,179 as against the actual loss amount of Rs 28,79,08,116 against the interest of the petitioner Company. The said letter and the aforesaid pre-prepared discharge voucher stated that the petitioner had accepted the claim amount in full and final settlement and thus, forced the petitioner Company to unilateral acceptance of the same. The petitioner Company was forced to sign the said document under duress and coercion by the respondent Company. The respondent

> Company further threatened the petitioner Company to accept the said amount in full and final or the respondent Company will not pay any amount towards the fire policy. It was under such compelling circumstances that the petitioner Company was forced and under duress was made to sign the acceptance letter."
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> **10.** In our considered view, the plea raised by the respondent is bereft of any details and particulars, and cannot be anything but a bald assertion. Given the fact that there was no protest or demur raised around the time or soon after the letter of subrogation was signed, that the notice dated 31-3-2011 itself was nearly after three weeks and that the financial condition of the respondent was not so precarious that it was left with no alternative but to accept the terms as suggested, we are of the firm view that the discharge in the present case and signing of letter of subrogation were not because of exercise of any undue influence. Such discharge and signing of letter of subrogation was voluntary and free from any coercion or undue influence. In the circumstances, we hold that upon execution of the letter of subrogation, there was full and final settlement of the claim. Since our answer to the question, whether there was really accord and satisfaction, is in the affirmative, in our view no arbitrable dispute existed so as to exercise power under Section 11 of the Act. The High Court was not therefore justified in exercising power under Section 11 of the Act."

19) When we refer to discharge of a contract by an agreement signed by both the 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 which 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 practised 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. But in case the party is not able to establish such a claim or appears to be lacking in credibility, then it is not open to the courts to refer the dispute to arbitration at all.

20) In support of the claim of duress and coercion while issuing the said Certificate, learned counsel for the contractee-Company has taken us through a decision of this Court in ***National Insurance Company Limited*** vs. ***Boghara Polyfab Private Limited*** (2009) 1 SCC 267 wherein it was held as under:-

> **"24.** 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 undue 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.
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> **50.** Let us consider what a civil court would have done in a case where the defendant puts forth the defence of accord and satisfaction on the basis of a full and final discharge voucher

issued by the plaintiff, and the plaintiff alleges that it was obtained by fraud/coercion/undue influence and therefore not valid. It would consider the evidence as to whether there was any fraud, coercion or undue influence. If it found that there was none, it will accept the voucher as being in discharge of the contract and reject the claim without examining the claim on merits. On the other hand, if it found that the discharge voucher had been obtained by fraud/undue influence/coercion, it will ignore the same, examine whether the plaintiff had made out the claim on merits and decide the matter accordingly. The position will be the same even when there is a provision for arbitration.

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.

52. Some illustrations (not exhaustive) as to when claims are arbitrable and when they are not, when discharge of contract by accord and satisfaction are disputed, to round up the discussion on this subject are:

(*i*) A claim is referred to a conciliation or a pre-litigation Lok Adalat. The parties negotiate and arrive at a settlement. The terms of settlement are drawn up and signed by both the parties and attested by the conciliator or the members of the Lok Adalat. After settlement by way of accord and satisfaction, there can be no reference to arbitration.

(*ii*) A claimant makes several claims. The admitted or undisputed claims are paid. Thereafter negotiations are held for settlement of the disputed claims resulting in an agreement in writing settling all the pending claims and disputes. On such settlement, the amount agreed is paid and the contractor also issues a discharge voucher/no-claim

certificate/full and final receipt. After the contract is discharged by such accord and satisfaction, neither the contract nor any dispute survives for consideration. There cannot be any reference of any dispute to arbitration thereafter.

(*iii*) A contractor executes the work and claims payment of say rupees ten lakhs as due in terms of the contract. The employer admits the claim only for rupees six lakhs and informs the contractor either in writing or orally that unless the contractor gives a discharge voucher in the prescribed format acknowledging receipt of rupees six lakhs in full and final satisfaction of the contract, payment of the admitted amount will not be released. The contractor who is hard-pressed for funds and keen to get the admitted amount released, signs on the dotted line either in a printed form or otherwise, stating that the amount is received in full and final settlement. In such a case, the discharge is under economic duress on account of coercion employed by the employer. Obviously, the discharge voucher cannot be considered to be voluntary or as having resulted in discharge of the contract by accord and satisfaction. It will not be a bar to arbitration.

(*iv*) An insured makes a claim for loss suffered. The claim is neither admitted nor rejected. But the insured is informed during discussions that unless the claimant gives a full and final voucher for a specified amount (far lesser than the amount claimed by the insured), the entire claim will be rejected. Being in financial difficulties, the claimant agrees to the demand and issues an undated discharge voucher in full and final settlement. Only a few days thereafter, the admitted amount mentioned in the voucher is paid. The accord and satisfaction in such a case is not voluntary but under duress, compulsion and coercion. The coercion is subtle, but very much real. The "accord" is not by free consent. The arbitration agreement can thus be invoked to refer the disputes to arbitration.

(*v*) A claimant makes a claim for a huge sum, by way of damages. The respondent disputes the claim. The claimant who is keen to have a settlement and avoid litigation, voluntarily reduces the claim and requests for settlement. The respondent agrees and settles the claim and obtains a full and final discharge voucher. Here even if the claimant might have agreed for settlement due to financial compulsions and commercial pressure or economic duress, the decision was his free choice. There was no threat,

coercion or compulsion by the respondent. Therefore, the accord and satisfaction is binding and valid and there cannot be any subsequent claim or reference to arbitration."

21) Learned counsel further relied upon a decision of this Court in ***R.L. Kalathia & Co.*** vs. ***State of Gujarat*** (2011) 2 SCC 400 wherein it was held as under:-

"10. Before going into the factual matrix on this aspect, it is useful to refer the decisions of this Court relied on by Mr Altaf Ahmed. In *NTPC Ltd.* v. *Reshmi Constructions, Builders & Contractors*[1] which relates to termination of a contract, one of the questions that arose for consideration was:

"(*i*) Whether after the contract comes to an end by completion of the contract work and acceptance of the final bill in full and final satisfaction and after issuing a 'no-demand certificate' by the contractor, can any party to the contract raise any dispute for reference to arbitration?"

While answering the said issue this Court held:

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

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

22) In the case at hand, the High Court allowed the appeal filed by the contractee on the assertion that the No Dues Certificate was given on account of coercion/undue influence practiced by the appellant-Contractor. The contractee, while basing its claim, relied upon the letters issued to the appellant-Contractor for releasing the payment of RA Bills. Whether there has been duress and coercion exerted against the contractee-Company by the appellant-Contractor has to be examined keeping in mind the background in which the said letters have been exchanged between the parties. Learned counsel for the contractee-Company categorically submitted the relevant dates for our perusal to show that RA Bills were raised on various dates for making payments to suppliers and others but were advertently delayed causing grave financial crisis to the contractee-Company to carry out the works and losses on account of delay in settling the claims of the contractee-Company periodically. However, it is contended from the side of the appellant-Contractor that the High Court was not right in considering it a genuine and serious dispute regarding the claim made and the conduct of the parties as

reflected in the correspondence exchanged between the parties disclosing that the contractee-Company encountered several financial constraints.

23) Pursuant to taking a false claim of duress and coercion while filing the No Dues Certificate, the contractee-Company, vide letter dated 12.01.2013 to the appellant-Contractor, submitted a claim for Rs. 96,88,48,642.00 for the losses incurred during execution of the contract at Mangalore. It has been claimed that the contractee-Company could not continue with the work due to various reasons like pooja, shifting of Idols, non-availability of free encumbrance of site, obstruction in the blasting work, stoppage of hard rock blasting, issues with respect to work to be given to local contractors, non-vacation of project displaced families, permission for forest clearance, permission for shifting of wooden logs etc. and the huge expenditure as disclosed in the claim was incurred by the contractee-Company due to the factors attributable to the appellant-Contractor. Clause 6.6.0 of the General Conditions of Contract deals with "Claims by the Contractor" (contractee in the case at hand). Clause 6.6.1.0.

of the Contract states that in case of a claim of extra compensation or remuneration, the Contractee shall give notice in writing of its claim within 10 days from the date of issue of orders or instructions related to any works for which the Contractee claims such additional payment. The notice shall give full particulars of the nature of such claim, grounds on which it is based and the amount claimed. Unless and until notice is given, the Contractor shall not be liable to pay extra compensation to the Contractee. Clause 6.6.3.0 states that any claim of the Contractee in accordance with Clause 6.6.1.0 shall be separately included in the Final Bill prepared by it in the form of Statement of Claims, giving particulars of the nature of claims, ground on which it is based and the amount claimed and shall be supported by a copy of the notice and the Contractor shall not be liable in respect of any notified claim not specifically reflected in the Final Bill in accordance with the provisions of Clause 6.6.3.0 which shall be deemed to have been waived by the Contractee.

24) From the materials on record, we find that the contractee-Company had issued the “No Dues/No Claim

Certificate" on 21.09.2012, it had received the full amount of the final bill being Rs. 20.34 crores on 10.10.2012 and after 12 days thereafter, i.e., only on 24.10.2012, the contractee-Company withdrew letter dated 21.09.2012 issuing "No Dues/No Claim Certificate". Apart from it, we also find that the Final Bill has been mutually signed by both the parties to the Contract accepting the quantum of work done, conducting final measurements as per the Contract, arriving at final value of work, the payments made and the final payment that was required to be made. The contractee-Company accepted the final payment in full and final satisfaction of all its claims. We are of the considered opinion that in the presents facts and circumstances, the raising of the Final Bill and mutual agreement of the parties in that regard, all claims, rights and obligation of the parties merge with the Final Bill and nothing further remains to be done. Further, the appellant-Contractor issued the Completion Certificate dated 19.06.2013 pursuant to which the appellant-Contractor has been discharged of all the liabilities. With regard to the issue that the "No-Dues Certificate" had

been given under duress and coercion, we are of the opinion that there is nothing on record to prove that the said Certificate had been given under duress or coercion and as the Certificate itself provided a clearance of no dues, the contractee could not now turn around and say that any further payment was still due on account of the losses incurred during the execution of the Contract. The story about duress was an afterthought in the background that the losses incurred during the execution of the Contract were not visualised earlier by the contractee. As to financial duress or coercion, nothing of this kind is established *prima facie*. Mere allegation that no-claim certificates have been obtained under financial duress and coercion, without there being anything more to suggest that, does not lead to an arbitrable dispute. The conduct of the contractee clearly shows that "no-claim certificate" was given by it voluntarily; the contractee accepted the amount voluntarily and the contract was discharged voluntarily.

Conclusion:

25) Admittedly, No-Dues Certificate was submitted by the contractee-Company on 21.09.2012 and on their request Completion Certificate was issued by the appellant-Contractor. The contractee, after a gap of one month, that is, on 24.10.2012, withdrew the No Dues Certificate on the grounds of coercion and duress and the claim for losses incurred during execution of the Contract site was made vide letter dated 12.01.2013, i.e., after a gap of 3 ½ (three and a half) months whereas the Final Bill was settled on 10.10.2012. When the contractee accepted the final payment in full and final satisfaction of all its claims, there is no point in raising the claim for losses incurred during the execution of the Contract at a belated stage which creates an iota of doubt as to why such claim was not settled at the time of submitting Final Bills that too in the absence of exercising duress or coercion on the Contractee by the appellant-Contractor. In our considered view, the plea raised by the contractee-Company is bereft of any details and particulars, and cannot be anything but a bald assertion. In the circumstances, there was full and final settlement of the claim

and there was really accord and satisfaction and in our view no arbitrable dispute existed so as to exercise power under Section 11 of the Act. The High Court was not, therefore, justified in exercising power under Section 11 of the Act.

26) In view of the foregoing discussion, we set aside the judgment and order dated 12.01.2015 passed by the High Court. The appeal is allowed.

.....J.
(R.K. AGRAWAL)

.....J.
(AMITAVA ROY)

NEW DELHI;
FEBRUARY 7, 2018.