

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **OMP No. 438/2002**

20th January, 2010

SARVESH CHOPRA

...Petitioner

Through: Mr. Kirti Uppal and Mr. Sanjeet
Singh, Advocates.

VERSUS

M/S IRCON INTERNATIONAL LTD. & ANR.

...RespondentS

Through: None

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

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JUDGMENT (ORAL)

VALMIKI J.MEHTA, J

1. The petitioner by means of this objection petition under Section 34 of the Arbitration and Conciliation Act, 1996 challenges the Award dated 29.10.2002 passed by the sole Arbitrator. The only issue which is decided by the Arbitrator is that there has been accord and satisfaction and consequently there does not arise any issue to be determined in Arbitration. This issue was decided as a preliminary issue without going into any other aspect of the matter.

2. Whether or not there is accord and satisfaction is surely a question of fact. There may or may not be accord and satisfaction, depending on the facts of each case. The Supreme Court recently in the judgment reported as *National Insurance Company Ltd. Vs. Bogara Polyfab 2009 (1) SCC 267* has considered the issue of existence of live claims or whether there is accord and satisfaction, in detail, and has given the following examples to determine whether or not there are live claims which are to be referred to the Arbitration.

Para 52 of the judgment Bogara Polyfab case (supra) reads as under:-

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 ²⁹⁶for 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.

3. In the facts of the present case it will have to be seen as to whether there is accord and satisfaction. One thing is however clear that no evidence was led by the parties on this issue, and therefore, it is not an Award passed after considering the issue after evidence had been led as to whether or not there is accord and satisfaction or that there was any undue coercion and pressure for the present petitioner to agree to the payment as received by it under the so called accord and satisfaction.

4. Before going further, certain important facts as found in the Award, are required to be taken note of at this stage and the same are as under:-

(i) The total contract was of Rs. 80 lacs and the payment under the contract under accord and satisfaction is of Rs.20 lacs.

- (ii) Even this payment of Rs.20 lacs was made after holding back the same for two and a half years.
- (iii) The payment which was made to the petitioner, was on the basis of the recommendations of a Committee of which the petitioner was not a part.
- (iv) The protest to the accord and satisfaction has though not been made within a few days, but definitely around a month or so, and the reason for this slight delay is that a part of the period was absorbed on account of the time taken in clearing of the cheques.

Keeping in view the aforesaid facts in view, of the issue of economic duress to the petitioner, the facts of the present case has to be examined.

5. In my opinion, in view of the facts narrated above, the present case falls within illustration (iv) of para 52 of the **Bogara Polyfab's** case (supra). This is all the more so because this issue of accord and satisfaction has been decided as a preliminary issue without evidence being called for from either of the parties. No doubt the provisions of Civil Procedure Code, 1908 and the Evidence Act, 1872 do not apply *stricto sensu* to Arbitrations, however, the basic principle of law that a disputed question of fact requires evidence, surely has to be applied, because this is not a technical principle but is a principle of substantial justice between the parties.

6. In view of the above, the impugned Award dated 29.10.2002 is set aside and the matter is remitted back to the Arbitrator to decide afresh the issue of accord and satisfaction after allowing both the parties to lead evidence to substantiate this plea. I may clarify that either this may be decided as a preliminary issue, or if the Arbitrator thinks fit in the facts and circumstances of the case that since evidence is required and it is better that evidence is led on all the issues and this issue is not treated as preliminary issue, such a course of action will also be open to the Arbitrator.

7. With the aforesaid observations, the objection petition is allowed and the petition disposed of and the Arbitrator is directed to pass a fresh Award in accordance with law.

VALMIKI J.MEHTA, J

January 20, 2010

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