

Dispute Resolution Hotline

May 17, 2011

NO DISPUTE, SO NO ARBITRATION IN A DISCHARGED CONTRACT

INTRODUCTION:

The Supreme Court of India in the case of *Union of India and Others* (“Appellants”) -Vs- *M/s Master Construction Co.* (“Respondent”) (*Civil Appeal No.3541 of 2011*) reiterated that the courts will not ordinarily refer any subsequent claim or dispute to arbitration in respect to a contract which has been discharged by the contracting parties.

FACTS:

The Respondent was awarded a contract by the Appellants for the construction and erection of officer accommodation and other essential technical buildings at Bhatinda in the state of Punjab (“Contract”). The Contract *inter alia* provided that all disputes between the parties would be referred to arbitration in the manner as set out in the Contract.

The Respondent completed the work on August 31, 1998 whereupon the Appellant issued completion certificate dated September 9, 1999. The Respondent submitted no claim certificates to the Appellant dated April 3, 2000, April 28, 2000 and May 4, 2000 (together the “No Claim Certificate”) which was followed by a final bill. The final payments were released by the Appellants to the Respondent on June 19, 2000 and the bank guarantee for an amount of INR 21,00,000 was subsequently released on July 12, 2000.

On the same day as the release of bank guarantee, the Respondent wrote to the Appellants rescinding the previously submitted No Claim Certificates and lodging further claims. With respect to such further claims, the Chief Engineer, Bhatinda Zone, Bhatinda declined to entertain the further claims of the Respondent on the basis that payments for the final bill has been made received by the Respondent and therefore no claims remained under the Contract. Pursuant to this, the Respondent requested the Engineer-in-Chief, Army Headquarters, New Delhi to refer the disputes for resolution to an arbitrator to be appointed under the Contract. As there was no action on the part of the Appellants, the Respondents made an application under Section 11 of the Arbitration and Conciliation Act, 1996 (the “Act”) before the Civil Judge (Senior Division), Bhatinda which was post contest dismissed.

Thereafter, the Respondent challenged the order of the Civil Judge (Senior Division), Bhatinda vide a writ petition before the High Court of Punjab and Haryana which was dismissed. Upon such dismissal the Respondent proceeded to file a special leave petition before the Supreme Court. The Supreme Court disposed the petition and directed that the Respondent’s application under Section 11 be placed before the Chief Justice of the High Court which then set aside the previous orders and directed that all disputes be referred to arbitration and also appointed the sole arbitrator.

The Appellants aggrieved by such an order of the High Court filed an appeal in the Supreme Court challenging such order (“Impugned Order”).

ARGUMENTS BEFORE THE SUPREME COURT:

The Appellants in their submissions before the Supreme Court primarily raised the argument that no arbitrable dispute existed between the parties as full and final payments had been received by the Respondent voluntarily after submission of the No Claim Certificates and the final bill. The Respondent in its submissions whilst opposing the issued raised by the Appellants has contended the following:

- (i) that the No Claim Certificate was given under financial duress and coercion as the Appellants had arbitrarily withheld payments under the Contract; and
- (ii) the issue as to the whether such No Claims Certificates were provided voluntarily or not is to be decided by the arbitrator appointed by the Court.

JUDGMENT:

The Supreme Court stated that at the terms of the No Claims Certificates executed by the Respondent make it abundantly clear that upon receipt of payment by the Appellants, there would be a full and final settlement of the Respondent’s claims under the Contract. The Supreme Court further noted that the payment of the final bill dated June 19, 2000 was not disputed by the Respondent and even after the payments were made by the Appellants no disputes were raised. It should be noted that it was only after the release of the bank guarantee that the Respondent raised further claims.

The Supreme Court held there is no *prima facie* evidence to suggest that the No Claims Certificates were obtained by means of coercion as contended by the Respondent. Further, the Supreme Court opined that as the conduct of the Respondent clearly showed that the certificates were given voluntarily, the Contract stood discharged and therefore

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there could be no arbitrable dispute

Therefore, the Supreme Court set aside the Impugned Order directing appointing sole arbitrator under Section 11 of the Act.

ANALYSIS:

Whether Contracting Party is estopped from making any claims upon Discharge of Contract: One of the consequences of the discharge of a contract is that the said contract comes to an end and there remains neither the right to seek performance nor the obligation to perform. Whether or not a contract has been discharged may of course be a disputed matter and the same may be referred to arbitration. However where the parties confirm in writing that the contract has been discharged there can no doubt as to its survival. Moreover, where such a discharge involves an element of fraud, the discharge may be vitiated. In the instant case, the Respondent had clearly provided the No Claims Certificate. More importantly, the facts do not show any instance where, during the existence of the Contract or even during the final stages of the Contract, the Respondent had ever indicated that the Appellant had withheld payments or that he was under financial duress. As such, in the absence of any circumstance which may vitiate the discharge, there was no question of there being any arbitrable dispute.

Whether Arbitrator can decide a question of Fraud: There have been several instances where the Supreme Court has held that allegations of fraud give rise to serious triable issues which cannot be determined by an arbitral tribunal and should be determined by a civil court. In the instant case, this issue did not arise at all since the Supreme Court held that mere allegation that No Claims Certificate were obtained under financial duress and coercion, without there being anything more to suggest that, does not lead to an arbitrable dispute.

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