

August 2024



Supreme Court clarifies the scope of scrutiny under Section 11 of the Arbitration and Conciliation Act, 1996 in cases involving the “full and final settlement” of claims¹

Brief Facts

The Supreme Court (“**Court**”) heard petitions filed by SBI General Insurance Co. Ltd., the insurer, (“**Appellant**”) against orders of the High Court of Gujarat (“**High Court**”) dated 22 September 2023 and 1 December 2023 (“**Impugned Orders**”) appointing an arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996 (“**Act**”) in a dispute raised by the insured, (“**Respondent**”), regarding settlement of insurance claims.

The Respondent suffered losses from two fire incidents at its factory premises in 2018, which fell within the coverage period of the insurance policy between the parties (“**Insurance Policy**”). For the first fire incident, although the Respondent had made a claim for INR 17,619,967/-, it was alleged that the Appellant only paid part of the claimed sum, i.e., INR 8,419,579/- (after wrongful deductions made basis a report prepared by a surveyor appointed by the Appellant). Upon payment of this sum for the first fire incident, the Respondent signed a discharge voucher on 4 January 2019 accepting the amount provided by the Appellant as full and final settlement.

However, after over a year, on 2 March 2020, the Respondent invoked arbitration for the remaining claim amount for the first fire incident, subsequently filing a petition for appointment of an arbitrator under Section 11(6) of the Act before the High Court (“**Section 11 Petition**”).

The arbitration clause in the Insurance Policy was for disputes or differences that may “*arise as to the quantum to be paid under this Policy (liability being otherwise admitted)*”. The Respondent alleged that the discharge voucher was signed under financial duress, as the claim for the second fire incident had still been pending at the time the discharge voucher was signed (which would have potentially adversely affected its claims). It was thus asserted that the discharge voucher was signed under undue influence and without the Respondent’s free will.

The Appellant opposed the Respondent’s claim contending that: (a) the claim stood fully settled; and (b) no arbitrable dispute survived as the dispute was not one of quantum but one of liability. The Appellant further contended that the Respondent’s claim was “*stale*” and requested the High Court to look into the question of arbitrability of the dispute while deciding the Section 11 Petition.

Pursuant to the Section 11 Petition filed, the High Court *vide* the Impugned Orders held that the dispute was within the ambit of the arbitration clause in the Insurance Policy and that this adjudication was a function to be discharged by an arbitrator.

Issues

Issue (i): Whether the execution of a discharge voucher towards the “*full and final settlement*” of claims arising under a contract precludes any future arbitration for such settled claims?

Issue (ii): What is the scope and standard of judicial scrutiny that an application under Section 11(6) of the Act can be subjected to when a plea of “*accord and satisfaction*” is taken by the respondent?

In this Issue

Brief Facts

Issues

Judgment

Analysis





Issue (iii): What is the effect of the decision in *In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act 1966 and the Indian Stamp Act 1899*² on a referral court's scope of powers under Section 11 of the Act?

Judgment

The Court rejected the preliminary grounds taken by the Appellant and held that in the present case: (a) the quantum of liability was in dispute (since the amount claimed by the Respondent was at variance with the amount admitted by the Appellant) and the dispute fell within the ambit of the conditional arbitration clause in the Insurance Policy; and (b) the claim was not time barred as the notice invoking arbitration (dated 2 March 2020) and the Section 11 Petition (dated 25 October 2021) were within the limitation period, i.e., three years.

The Court further reiterated its observations in *M/s Arif Azim Co. Ltd. v. M/s Aptech Ltd.*,³ stating that the limitation period for filing a petition under Section 11(6) of the Act only starts after a valid notice invoking arbitration has been issued by the applicant and there has been a failure or refusal by the other party to comply with the requirements of such notice. The Court also clarified that at the stage of deciding an application for appointment of an arbitrator, the court must not engage in an "*intricate evidentiary enquiry*" into the question of whether the claims raised by the applicant were time barred and that this should be left to be determined in due course by the arbitrator.

Issue (i): Relying on the doctrine of separability, the Court held that the arbitration agreement, being separate from the main contract, remains valid for resolving any disputes related to the settlement. Even if the contracting parties agree to discharge each other of any obligations, this would not *ipso facto* mean that the arbitration agreement also comes to an end, unless the parties specifically agree to do this.

The Court also referred to *National Insurance Co. Ltd. v. Boghara Polyfab*,⁴ which had clarified that the mere act of signing a "*full and final discharge voucher*" would not act as a bar to arbitration. Such a bar would operate only in situations where such discharge vouchers are validly and voluntarily executed.

Thus, where a dispute exists as to validity / alleged coercion in signing a discharge voucher and the full and final settlement of the original contract itself becomes a matter of dispute between the parties, such a dispute can be categorised as one arising "*in relation to*" or "*in connection with*" or "*upon*" the original contract, creating an arbitrable dispute.

Issue (ii): The Court held that the issue of "*accord and satisfaction*" is a complex mixed question of law and fact that falls under the arbitral tribunal's exclusive jurisdiction. Referring to the views taken in *Mayavati Trading Pvt. Ltd. v. Pradyut Deb Burman*,⁵ the Court clarified that post the Arbitration and Conciliation (Amendment) Act, 2015, it was no more open to a referral court to examine the issue of "*accord and satisfaction*" since doing so would be encroaching on the arbitral tribunal's authority.

Issue (iii): In light of the observations made by the Court in *In Re: Interplay* (*supra*), the Court reinforced the principles of arbitral autonomy and *kompetenz-kompetenz*, which restrict judicial interference at the stage of appointing an arbitrator to merely determining the "*prima facie existence of the arbitration agreement*".

According to the Court, Section 11 of the Act aims to give effect to the parties' mutual intention to resolve disputes through arbitration when they fail to appoint arbitrators themselves. By referring disputes to arbitration and appointing an arbitrator under Section 11 of the Act, the referral court upholds the original agreement between the parties to arbitrate specific disputes.

The Court observed that although the broad-based attempt by courts was to minimise judicial interference, the "*eye of the needle*"⁶ test propounded in *Vidya Drolia & Ors. v. Durga Trading Corporation*⁷ and *NTPC Ltd. v. SPML Infra Ltd.*⁸ allowed the referral court to examine contested facts and appreciate *prima facie* evidence (however limited this scope of enquiry may be) to determine if claims were *ex-facie* frivolous / devoid of merit and non-arbitrable. Pertinently, the Court stated that it found it "*difficult to hold*" that these principles would continue to apply given the precedent in *In Re: Interplay* (*supra*).

In this Issue

Brief Facts

Issues

Judgment

Analysis



The Court clarified that a dispute pertaining to the “*accord and satisfaction*” of claims arising out of the underlying substantive contract was not one which attacked or questioned the existence of the (separate and independent) arbitration agreement. Consequently, the Court upheld the appointment of a former High Court judge as an arbitrator to resolve the dispute between the parties.

Analysis

The Court’s ruling clarifies that referral courts should restrict their adjudication to only determining the existence of an arbitration agreement, leaving substantive issues for the arbitral tribunal to decide. While reinforcing the foundational principles of arbitral autonomy and the legislative intent behind the Act, this endorsement furthers the minimisation of judicial intervention and promotes the swift, streamlined and effective resolution of disputes through arbitration.

In this Issue

Brief Facts

Issues

Judgment

Analysisw

Endnote

- 1 Authored by Ila Kapoor, Partner, and Kshipra Pyare and Devika Bansal, Associates; *SBI General Insurance Co. Ltd. v. Krish Spinning*, Civil Appeal No. 7821/2024, Supreme Court of India, 2024 SCC OnLine SC 1754, judgment dated 18 July 2024.
Coram: D.Y. Chandrachud, CJI, J.B. Pardiwala and Manoj Misra, JJ.
- 2 Curative Petition (C) No. 44 of 2023 in Review Petition (C) No. 704 of 2021 in Civil Appeal No. 1599 of 2020 with Arbitration Petition No. 25 of 2023.
- 3 2024 INSC 155.
- 4 (2009) 1 SCC 267.
- 5 (2019) 8 SCC 714.
- 6 The “*eye of the needle*” test outlines the referral court’s power of interference under Section 11 of the Act. It involves: (a) examining the validity and existence of the arbitration agreement, including the parties and privity of the applicant to the said agreement; and (b) generally leaving questions of non-arbitrability to the arbitral tribunal, rejecting only claims that are “*manifestly and ex-facie non-arbitrable*”.
- 7 (2021) 2 SCC 1.
- 8 (2023) 9 SCC 385.

PRACTICE AREA EXPERTS

Pallavi Shroff

Managing Partner and
National Practice Head Dispute Resolution
+91 98100 99911
E: pallavi.shroff@AMSShardul.com

Tejas Karia

Partner and Head, Arbitration Practice
sub-group
+91 98107 98570
E: tejas.karia@AMSShardul.com

Anirudh Das

Partner
+91 98100 98329
E: anirudh.das@AMSShardul.com

Aashish Gupta

Partner
+91 98189 19857
E: aashish.gupta@AMSShardul.com

Siddhartha Datta

Partner
+91 90070 68488
E: siddhartha.datta@AMSShardul.com

Ila Kapoor

Partner
+91 98717 92737
E: ila.kapoor@AMSShardul.com

Binsy Susan

Partner
+91 96500 80397
E: binsy.susan@AMSShardul.com

Smarika Singh

Partner
+91 97170 98075
E: smarika.singh@AMSShardul.com

Shruti Sabharwal

Partner
+91 98107 46183
E: shruti.sabharwal@AMSShardul.com

Karan Joseph

Partner
+91 98452 11270
E: karan.joseph@AMSShardul.com

Bikram Chaudhuri

Partner
+91 84339 48356
E: bikram.chaudhuri@AMSShardul.com

Shreya Gupta

Partner
+91 99305 43295
E: shreya.gupta@AMSShardul.com

Aditya Mukherjee

Partner
+91 98717 92744
E: aditya.mukherjee@AMSShardul.com

Suhani Dwivedi

Partner
+91 99039 08399
E: suhani.dwivedi@AMSShardul.com

Saifur Rahman Faridi

Partner
+91 70423 98852
E: saifur.faridi@AMSShardul.com

Akshay Sharma

Partner
+91 70423 98854
E: akshay.sharma@AMSShardul.com

Kanika Goenka

Partner
+91 98330 13343
E: kanika.goenka@AMSShardul.com

Shruti Khanijow

Partner
+91 87540 07143
E: shruti.khanijow@AMSShardul.com

Shreya Jain

Partner
+91 84520 04534
E: shreya.jain@AMSShardul.com

Niyati Gandhi

Partner
+91 84339 21585
E: niyati.gandhi@AMSShardul.com

Disclaimer

This is intended for general information purposes only. It is not a substitute for legal advice and is not the final opinion of the Firm. Readers should consult lawyers at the Firm for any specific legal or factual questions.