

UNION OF INDIA & ORS.

v.

M/S. MASTER CONSTRUCTION CO.

(Civil Appeal No. 3541 of 2011)

APRIL 25, 2011

[AFTAB ALAM AND R. M. LODHA, JJ.]

**ARBITRATION AND CONCILIATION ACT, 1996:**

*s. 11(6) – Application for appointment of arbitrator after submitting ‘no-claim certificate’ and receipt of payment of final bill – Arbitrator appointed – Held: 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 necessity to refer the dispute for arbitration at all – It may not be proper to burden a party, who contends that 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 claimant, as mere plea is not enough and the claimant must prima facie establish the same by placing material before the Chief Justice/ his designate – In the instant case, the conduct of contractor clearly shows that ‘no claim certificates’ were given by it voluntarily and it accepted the amount of the final bill voluntarily and the contract was discharged voluntarily – Order appointing the arbitrator u/s 11(6) cannot be sustained and is set aside.*

**The respondent-contractor completed the contract on 31.8.1998. The completion certificate was issued on 9.9.1999. Thereafter the contractor furnished ‘no claim certificates’ on 3-4-2000, 28-4-2000 and 4-5-2000, signed the final bill on 4-5-2000, and received payment under the**

- A final bill on 19.6.2000. However, immediately on release of the bank guarantee on 12.7.2000, the same day the contractor wrote to the appellant-employers withdrawing the 'no claim certificate' and also lodged certain claims. The Chief Engineer declined to entertain the claims. The contractor made an application u/s 11 of the Arbitration and Conciliation Act, 1996 before the Civil Judge (Senior Division). The application was dismissed. The contractor's writ petition was also dismissed by the High Court. The contractor's S.L.P was disposed of by the Supreme Court with the direction that the application be placed before the Chief Justice of the High Court. The Chief Justice decided the application u/s 11(6) holding that all disputes between the parties to the contract would be referred to the arbitration and appointed the arbitrator. Aggrieved, the employers filed the appeal.

In the instant appeal filed by the employers, the question for consideration before the Court was: whether after furnishing 'no-claim certificates' and the receipt of payment of final bill, as submitted by the contractor, any arbitrable dispute between the parties survived or the contract stood discharged.

Allowing the appeal, the Court

HELD: 1.1 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

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to be lacking in credibility, there may not be necessity to refer the dispute for arbitration at all. [para 24] [866-D-F]

*National Insurance Company Limited v. Boghara Polyfab Private Limited* 2008 (13) SCR 638 = (2009) 1 SCC 267; *The Union of India v. Kishorilal Gupta & Bros Limited* AIR (1959) SC 1362; *The Naihati Jute Mills Ltd. v. Khyaliram Jagannath* AIR (1968) SC 522; *Damodar Valley Corporation v. K.K. Kar* 1974 (2) SCR 240 = (1974) 1 SCC 141; *M/s. Bharat Heavy Electricals Limited, Ranipur v. M/s. Amar Nath Bhan Prakash* (1982) 1 SCC 625; *Union of India & Anr. v. M/s. L.K. Ahuja & Co.* 1988 (3) SCR 402 = (1988) 3 SCC 76; *State of Maharashtra v. Nav Bharat Builders* 1994 Supp (3) SCC 83; *M/s. P.K. Ramaiah & Company v. Chairman & Managing Director, National Thermal Power Corpn.* 1994 Supp (3) SCC 126; *Nathani Steels Ltd. v. Associated Constructions*, 1995 Supp (3) SCC 324; *Indian Drugs & Pharmaceuticals Ltd. v. Indo Swiss Synthetics Gem Mfg. Co. Ltd. & Ors.* 1995 (5) Suppl. SCR 189 = (1996) 1 SCC 54; *United India Insurance v. Ajmer Singh Cotton & General Mills & Ors.*, 1999 (1) Suppl. SCR 385 = (1999) 6 SCC 400; *Jayesh Engineering Works v. New India Assurance Co. Ltd.* (2000) 10 SCC 178; *SBP & Co. v. Patel Engineering Ltd. & Anr.* 2005 (4) Suppl. SCR 688 = (2005) 8 SCC 618; *National Insurance Co. Ltd. v. Nipha Exports (P) Ltd.* 2006 (6) Suppl. SCR 719 = (2006) 8 SCC 156; and *National Insurance Company Limited v. Sehtia Shoes* 2008 (3) SCR 451 = (2008) 5 SCC 400 – referred to

*Chairman & M.D., NTPC Ltd. v. Reshmi Constructions, Builders and Contractors* 2004 (1) SCR 62 = (2004) 2 SCC 663 and *Ambica Construction v. Union of India* 2006 (9) Suppl. SCR 188 = (2006) 13 SCC 475 - cited

1.2 It cannot be overlooked that the cost of arbitration is quite huge. It may not be proper to burden a party, who contends that the dispute is not arbitrable on account of

A discharge of contract, with huge cost of arbitration merely because the 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 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 after-thought, make-believe or lacking in credibility, the matter must be set at rest then and there. [para 24] [866-G-H; 867-A-B]

D 1.3 In the instant case, the certificates furnished by the contractor 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 June 19, 2000 is not in dispute. After receipt of the payment on June 19, 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 July 12, 2000. It was then that on that day itself, the contractor lodged further claims. This appears to be a case falling in the category of exception noted in the case of Boghara Polyfab Private Limited, 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. [para 28-29] [868-A-D]

H 1.4 The conduct of the contractor clearly shows that 'no claim certificates' were given by it voluntarily; the

contractor accepted the amount voluntarily and the contract was discharged voluntarily. Thus, the order of the Chief Justice in the proceedings u/s.11(6) of the 1996 Act cannot be sustained and is set aside. [para 30 to 32] [868-E-H]

Case Law Reference:

2008 (13) SCR 638	referred to	para 16
2004 ( 1 ) SCR 62	cited	para 16
2006 ( 9 ) Suppl. SCR 188	cited	para 16
AIR (1959) SC 1362	referred to	para 19
1974 ( 2 ) SCR 240	referred to	para 19
(1982) 1 SCC 625	referred to	para 19
1988 ( 3 ) SCR 402	referred to	para 19
1994 Supp (3) SCC 83	referred to	para 19
1994 Supp (3) SCC 126	referred to	para 19
1995 Supp (3) SCC 324	referred to	para 19
1995 ( 5 ) Suppl. SCR 189	referred to	para 19
1999 ( 1 ) Suppl. SCR 385	referred to	para 19
(2000) 10 SCC 178	referred to	para 19
2005 ( 4 ) Suppl. SCR 688	referred to	para 19
2006 ( 6 ) Suppl. SCR 719	referred to	para 19
2008 ( 3 ) SCR 451	referred to	para 19

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3541 of 2011.

From the Judgment & Order dated 08.12.2006 of the High

A Court of Punjab and Haryana at Chandigarh in Arbitration Case No. 87 of 2006.

Brijender Chahar, Nishant Patel, C.S. Khan, Shamsuddin Khan (for D.S. Mahra) for the Appellants.

B Indu Malhotra, Jyoti Mendiratta, Purna Priyadarshini for the Respondents.

The Judgment of the Court was delivered by

C **R.M. LODHA, J. 1.** Leave granted.

D 2. This appeal, by special leave, arises from the order dated December 8, 2006 passed by the Chief Justice of the Punjab and Haryana High Court in the proceedings under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short, '1996 Act') whereby he held that all disputes between the parties to the contract have to be referred to the arbitration and appointed Mr. M.S. Liberahan, retired Chief Justice of Andhra Pradesh High Court, as sole arbitrator to decide the disputes between the parties.

E 3. The respondent — M/s. Master Construction Company (for short, 'the contractor') — was awarded a contract (CA No. CEBTZ—14/95-96) on September 17, 1995 by the first appellant—Union of India — for the work, 'provisions of OTM accommodation and certain essential technical buildings' to be erected and installed at Bhatinda. The first phase of the work was to be completed by July 20, 1996 and the second phase by January 20, 1997.

F 4. The agreement between the parties made IAFW—2249 G an integral part of the contract. Condition 70 thereof provided mode for resolution of disputes and differences between the parties through arbitration.

H 5. The work is said to have been completed by the contractor, albeit belatedly, on August 31, 1998. The completion

certificate was issued on September 9, 1999.

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6. The contractor furnished no-claim certificates on April 3, 2000, April 28, 2000 and May 4, 2000 and the final bill was signed on May 4, 2000.

7. The payment of final bill was released to the contractor on June 19, 2000. Thereafter, the bank guarantee amounting to Rs. 21,00,000/- was also released on July 12, 2000. Immediately after release of the bank guarantee, on that very day, i.e. July 12, 2000, the contractor wrote to the appellants withdrawing 'no-claim certificates'; it also lodged certain claims.

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8. The Chief Engineer, Bhatinda Zone, Bhatinda (Appellant No. 3 herein) vide his letter dated July 13, 2000 declined to entertain the claims of the contractor on the ground that the final bill has been accepted by the contractor after furnishing the 'no-claim certificates' and no claim under the contract remained.

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9. The contractor vide its letter dated September 10, 2000 requested the Engineer-in-Chief, Army Headquarters, Kashmir House, New Delhi (Appellant No. 2 herein) to refer the disputes between the parties for resolution to the arbitrator. The contractor stated in that letter that if the arbitrator was not appointed within 30 days from the date of request, it may be constrained to seek the remedy as may be available under the law.

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10. As no arbitrator was appointed by the appellants despite the request made in the letter dated September 10, 2000, the contractor made an application under Section 11 of the 1996 Act before the Civil Judge, (Senior Division), Bhatinda on January 10, 2001. The application, after contest, was dismissed by the Civil Judge, Senior Division, Bhatinda on January 6, 2003.

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11. Being not satisfied with the order dated January 6,

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A 2003, the contractor challenged that order by filing a writ petition before the High Court of Punjab and Haryana.

12. The Division Bench of the High Court heard the parties and by its order dated May 20, 2004 dismissed the contractor's writ petition.

13. The contractor challenged the High Court's order by filing a special leave petition before this Court. This Court disposed of the special leave petition on January 3, 2006 by directing that the application filed by the contractor under Section 11 of the 1996 Act shall be placed before the Chief Justice of the Punjab and Haryana High Court, for appropriate order thereon. This Court, consequently, set aside the orders of the High Court and the lower court.

D 14. It was then that the Chief Justice of the Punjab and Haryana High Court decided the application filed by the contractor under Section 11(6) of the 1996 Act and passed the order impugned in the present appeal.

E 15. Mr. Brijender Chahar, learned senior counsel for the appellants made two-fold submission : (i) that no arbitrable dispute existed between the parties as full and final payment has been received by the contractor voluntarily after submission of 'no-claim certificates' and the final bill, and (ii) that, in any case, the Chief Justice in exercise of his power under Section F 11(6) ought to have given due regard to the arbitration clause and appointed the arbitrator in terms thereof.

G 16. Ms. Indu Malhotra, learned senior counsel for the contractor, on the other hand, vehemently contended that the whole case of the contractor from the very beginning had been that 'no-claim certificates' were given by the contractor under the financial duress and coercion as the appellants had arbitrarily withheld the payment. She would submit that the issue whether 'no-claim certificates' were given voluntarily or under H financial duress, is an issue which must be decided by the



arbitrator alone and it is for this reason that the Chief Justice, in the proceedings under Section 11(6), has referred the disputes between the parties to the arbitrator. In this regard, she heavily relied upon a recent decision of this Court in the case of *National Insurance Company Limited v. Boghara Polyfab Private Limited*<sup>1</sup>. She also referred to two earlier decisions of this Court, namely, *Chairman & M.D., NTPC Ltd. v. Reshmi Constructions, Builders and Contractors*<sup>2</sup> and *Ambica Construction v. Union of India*<sup>3</sup>.

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17. That IAFW—2249 was made an integral part of the contract between the parties and condition 70 thereof provided for mode of resolution of disputes and differences between the parties through arbitration is not in dispute. Condition 70 (arbitration clause) reads as under :

"70. Arbitration-All disputes, between the parties to the Contract (other than those for which the decision of the C.W.E. or any other person is by the Contract expressed to be final and binding) shall, after written notice by either party to the Contract to the other of them, be referred to the sole arbitration of an Engineer Officer to be appointed by the authority mentioned in the tender documents.

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Unless both parties agree in writing such reference shall not take place until after the completion or alleged completion of the works or termination or determination of the contract under Condition Nos. 55, 56 and 57 hereof.

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Provided that in the event of abandonment of the works or cancellation of the Contract under Condition Nos. 52,53 or 54 hereof, such reference shall not take place until alternative arrangements have been finalized by the Government to get the works completed by or through any other Contractor or Contractors or Agency or Agencies.

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1. (2009) 1 SCC 267.  
2. (2004) 2 SCC 663.  
3. (2006) 13 SCC 475.

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- A Provided always that commencement or continuance of any arbitration proceeding hereunder or otherwise shall not in any manner militate against the Government's right of recovery from the contractor as provided in Condition 67 hereof.
- B If the Arbitrator so appointed resigns his appointment or vacates his office or is unable or unwilling to act due to any reason whatsoever, the authority appointing him may appoint a new Arbitrator to act in his place.
- C The arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties, asking them to submit to him their statement of the case and pleadings in defence.
- D The Arbitrator may proceed with the arbitration, ex parte, if either party, in spite of a notice from the Arbitrator fails to take part in the proceedings.
- E The Arbitrator may, from time to time with the consent of the parties, enlarge, the time upto but not exceeding one year from the date of his entering on the reference, for making and publishing the award.
- F The Arbitrator shall give his award within a period of six months from the date of his entering on the reference or within the extended time as the case may be on all matters, referred to him and shall indicate his findings, along with sums awarded, separately on each individual item of dispute.
- G The venue of Arbitrator shall be such place or places as may be fixed by the Arbitrator in his sole discretion.
- The award of the Arbitrator shall be final and binding on both parties to the contract.
- H If the value of the claims or counter claims in an arbitration

referred exceeds Rs. 1 lakh the arbitrator shall give reasons for the award". A

18. The controversy presented before us does not concern the existence of arbitration agreement but it relates to whether after furnishing 'no-claim certificates' and the receipt of payment of final bill, as submitted by the contractor, any arbitrable dispute between the parties survived or the contract stood discharged. Before we turn to the factual aspect, it is appropriate to carefully consider the decision of this Court in *Boghara Polyfab Private Limited*<sup>1</sup> at some length as the learned senior counsel for the contractor placed heavy reliance on it. B C

19. In *Boghara Polyfab Private Limited*<sup>1</sup>, this Court surveyed a large number of earlier decisions of this Court, namely, *The Union of India v. Kishorilal Gupta & Bros*<sup>4</sup>, *The Naihati Jute Mills Ltd. v. Khyaliram Jagannath*<sup>5</sup>, *Damodar Valley Corporation v. K.K. Kar*<sup>6</sup>, *M/s. Bharat Heavy Electricals Limited, Ranipur v. M/s. Amar Nath Bhan Prakash*<sup>7</sup>, *Union of India & Anr. v. M/s. L.K. Ahuja & Co.*<sup>8</sup>, *State of Maharashtra v. Nav Bharat Builders*<sup>9</sup>, *M/s. P.K. Ramaiah & Company v. Chairman & Managing Director, National Thermal Power Corpn.*<sup>10</sup>, *Nathani Steels Ltd. v. Associated Constructions*<sup>11</sup>, *Indian Drugs & Pharmaceuticals Ltd. v. Indo Swiss Synthetics Gem Mfg. Co. Ltd. & Ors.*<sup>12</sup>, *United India Insurance v. Ajmer Singh Cotton & General Mills & Ors.*<sup>13</sup>, *Jayesh Engineering* D E F

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4. AIR (1959) SC 1362.

5. AIR (1968) SC 522.

6. (1974) 1 SCC 141.

7. (1982) 1 SCC 625.

8. (1988) 3 SCC 76. G

9. 1994 Supp (3) 83.

10. 1994 Supp (3) SCC 126.

11. 1995 Supp (3) SCC 324.

12. (1996) 1 SCC 54.

13. (1999) 6 SCC 400. H

A *Works v. New India Assurance Co. Ltd.*<sup>14</sup>, *SBP & Co. v. Patel Engineering Ltd. & Anr.*<sup>15</sup>, *National Insurance Co. Ltd. v. Nipha Exports (P) Ltd.*<sup>16</sup> and *National Insurance Company Limited v. Sehtia Shoes*<sup>17</sup>. With regard to the jurisdiction of the Chief Justice/his designate in the proceedings under Section 11 of the 1996 Act, this Court culled out the legal position in paragraph 51 (page 294) of the report as follows :

C “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.”

F 20. The Bench in *Boghara Polyfab Private Limited*<sup>1</sup> in paragraphs 42 and 43 (page 291), with reference to the cases cited before it, inter alia, noted that there were two categories of the cited cases; (one) where the Court after considering the facts found that there was a full and final settlement resulting in accord and satisfaction, and there was no substance in the allegations of coercion/undue influence and, consequently, it

14. (2005) 10 SCC 178.

15. (2005) 8 SCC 618.

16. (2006) 8 SCC 156.

H 17. (2008) 5 SCC 400.

was held that there could be no reference of any dispute to arbitration and (two) where the court found some substance in the contention of the claimants that 'no dues/claim certificates' or 'full and final settlement discharge vouchers' were insisted and taken (either in printed format or otherwise) as a condition precedent for release of the admitted dues and thereby giving rise to an arbitrable dispute.

21. In *Boghara Polyfab Private Limited*<sup>1</sup>, the consequences of discharge of the contract were also considered. In para 25 (page 284), it was explained that when a contract has been fully performed, then there is a discharge of the contract by performance and the contract comes to an end and in regard to such a discharged contract, nothing remains and there cannot be any dispute and, consequently, there cannot be reference to arbitration of any dispute arising from a discharged contract. It was held that the question whether the contract has been discharged by performance or not is a mixed question of fact and law, and if there is a dispute in regard to that question, such question is arbitrable. The Court, however, noted an exception to this proposition. The exception noticed is that where 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, courts will not refer any subsequent claim or dispute to arbitration. Yet another exception noted therein is with regard to those cases where one of the parties to the contract issues a full and final discharge voucher (or no-dues certificate, as the case may be) confirming that he has received the payment in full and final satisfaction of all claims, and he has no outstanding claim. It was observed that issuance of full and final discharge voucher or no-dues certificate of that kind amounts to discharge of the contract by acceptance or performance and the party issuing the discharge voucher/certificate cannot thereafter make any fresh claim or revive any settled claim nor can it seek reference to arbitration in respect of any claim.

A        22. In paragraph 26 (pages 284-285), this Court in  
Boghara Polyfab Private Limited<sup>1</sup> held that if a party which has  
executed the discharge agreement or discharge voucher,  
alleges that the execution of such document was on account  
of fraud/coercion/undue influence practised by the other party,  
B and if that party establishes the same, then such discharge  
voucher or agreement is rendered void and cannot be acted  
upon and consequently, any dispute raised by such party would  
be arbitrable.

C        23. In paragraph 24 (page 284) in Boghara Polyfab Private  
Limited<sup>1</sup>, this Court held that a claim for arbitration cannot be  
rejected merely or solely on the ground that a settlement  
agreement or discharge voucher has been executed by the  
claimant. The Court stated that such dispute will have to be  
decided by the Chief Justice/his designate in the proceedings  
D under Section 11 of the 1996 Act or by the Arbitral Tribunal.

E        24. 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,  
F appears to be lacking in credibility, there may not be necessity  
to refer the dispute for arbitration at all. It cannot be overlooked  
that the cost of arbitration is quite huge – most of the time, it  
runs in six and seven figures. It may not be proper to burden a  
party, who contends that the dispute is not arbitrable on account  
G 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 plea must prima facie establish the same by placing  
H 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 after-thought, make-believe or lacking in credibility, the matter must be set at rest then and there.

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25. In light of the above legal position, we now turn to the facts of the present case.

26. At the time of receiving payment on account of final bill, the contractor executed the certificate in the following terms

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"a) I/we hereby certify that I/we have performed the work under the condition of the contract agreement No. CEBTZ-14/95-96, for which payment is claimed and that I/we have no further claims under CA No. CEBTZ-14/95-96.

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b) Received rupees two lakhs fifteen thousand one hundred seventy eight only. *This payment is in full and final settlement of all money dues under CA No. CEBTZ-14/95-96 and I have no further claims in respect of the CA No. CEBTZ-14/95-96.*"

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(emphasis supplied by us)

27. The contractor also appended the following certificate:

"It is certified that I have prepared this final bill for claiming entire payment due to me from this contract agreement. The final bill includes all claims raised by me from time to time irrespective of the fact whether they are admitted/accepted by the department or not. I now categorically certify that I have no more claim in respect of this contract beyond those already included in this final bill by me and the amount so claimed by me shall be in full and final satisfaction of all my claims under this contract agreement. I shall however, receive my right to raise claim to the extent disallowed to me from this final bill."

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A 28. 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 June 19, 2000 is not in dispute. After receipt of the payment on June 19, 2000, no grievance was raised or lodged by the contractor immediately. The concerned authority, thereafter, released the bank guarantee in the sum of Rs. 21,00,000/- on July 12, 2000. It was then that on that day itself, the contractor lodged further claims.

C 29. The present, in our opinion, appears to be a case falling in the category of exception noted in the case of Boghara Polyfab Private Limited (Para 25, page 284). 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.

E 30. The conduct of the contractor clearly shows that 'no claim certificates' were given by it voluntarily; the contractor accepted the amount voluntarily and the contract was discharged voluntarily.

F 31. We are, thus, unable to sustain the order of the Chief Justice in the proceedings under Section 11(6) of the 1996 Act. In view of our finding above, it is not necessary to consider the alternative submission made by the senior counsel for the appellants that the Chief Justice in exercise of his power under Section 11(6) ought to have appointed the arbitrator in terms of the arbitration clause and the appointment of Mr. M.S. Liberahan, retired Chief Justice of Andhra Pradesh High Court, was not in accord with the arbitration agreement.

G 32. The appeal is, accordingly, allowed. The impugned order dated December 8, 2006 passed by the Chief Justice of the High Court of Punjab and Haryana is set aside. The parties shall bear their own costs.

H R.P.

Appeal allowed.