

**The matter is arbitrable if the so-called accord and satisfaction appears prima facie under economic duress, and the court can appoint arbitrator under section 11**

*Update by Editor*

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**Oriental Insurance Co. Ltd. and another v. Dicitex Furnishing Limited**

**Court:** Supreme Court of India | **Case Number:** Civil Appeal No. 8550 of 2019 (Arising Out of SLP(C) No. 34186 of 2015) | **Citation:** Not available currently | **Bench:** Arun Mishra & S Ravindra Bhat JJ | **Date:** 13 November 2019

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Dicitex applied to the High Court for the appointment of an arbitrator under the arbitration clause of the fire insurance policy it had taken from Oriental Insurance.<sup>1</sup> Oriental resisted the application arguing that there was no arbitrable dispute because Dicitex had signed a discharge voucher and accepted the amount offered, thus, signifying accord and satisfaction.

The High Court allowed Dicitex's application, and Oriental took the matter to the Supreme Court, which examined the facts of the case, the law on accord and satisfaction, and upheld the appointment. Its reasons were as follows: –

- (a) The Court's jurisdiction to examine whether a dispute is arbitrable, in the context of no-objection certificates or discharge vouchers, was examined in *National Insurance Co. Ltd. v. Boghara Polyfab Pvt. Ltd.*, (2009) 1 SCC 267 (2-judge bench) for the first time. No rule of universal application was indicated in *Boghara*.
- (b) Proposition (iii) of the conclusions recorded in *Boghara*<sup>2</sup> visualize duress or coercion on account of withholding of payments due. In more places than one, the court recognized that an aggrieved party could be the victim of economic coercion.
- (c) No doubt, subsequent judgments that followed it were in the context of the facts presented to the court.
- (d) *Union of India v. Master Construction Co.*, (2011) 12 SCC 349 (2-judge bench) put the matter in perspective when it held that if there is some merit in the allegation of fraud, coercion, duress or undue influence, it may be decided or left to be decided by the arbitral tribunal. But if such a plea lacks credibility, the matter must be set at rest then and there.
- (e) Though the pleadings in the application under Section 11(6) are weak, there is material to show Dicitex consistently articulated a grievance as to the involuntary nature of the discharge voucher. Pleading under Section 11 is not conclusive. At this stage, therefore, the court, which is required to ensure that an arbitrable dispute exists, has to be *prima facie* convinced about the genuineness or credibility of the plea of coercion. They must be finally decided in arbitration.

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<sup>1</sup> The application was made before the 2015 amendments to the ACA (which had come into effect from 23 October 2015). The High Court's order, under challenge, was made on 13 October 2015.

<sup>2</sup> The conclusions in *Boghara* set out the scenario where discharge is under economic duress, which the court held will not bar arbitration.