NIRKA

LAW ADVISORY

Arbitration Newsletter

June 2025

Arabian Exports Pvt. Ltd. v. National Insurance Co. Ltd., 2025 SCC OnLine SC 1034 - *Supreme Court allows arbitration despite discharge voucher signed under duress*

The Apex Court held that a Discharge voucher signed amid financial pressure does not extinguish arbitrable claims when coercion is credibly pleaded

This appeal involved an insurance dispute between Arabian Exports Pvt. Ltd., a meat processing and export company, and its insurer, National Insurance Co. Ltd. The Petitioner's plant in Taloja, Maharashtra, suffered extensive flood damage in July 2005. It held two insurance policies covering its infrastructure and stock, and promptly filed a claim. Despite full cooperation, the insurer took over three years to offer a settlement of ₹1.88 crores in December 2008.

Under financial distress, the Petitioner accepted the amount under protest, signing a discharge voucher while expressly reserving the right to pursue the remaining claim of ₹3.83 crores. It informed the insurer that acceptance was made under economic duress. When the Respondent failed to respond positively to the arbitration notice, the Petitioner filed an application under Section 11 of the Arbitration and Conciliation Act, 1996, before the Bombay High Court for appointment of an arbitrator in terms of the arbitration clause contained in the insurance policy. The High Court, however, dismissed the petition, holding that the claim was non-arbitrable since the parties had arrived at a full and final settlement, extinguishing the dispute.

On appeal, the Supreme Court was called upon to decide whether the arbitration clause in the policy survived despite the execution of the discharge voucher and whether credible allegations of duress and coercion justified the invocation of arbitration. The Court began its analysis by reaffirming the statutory framework introduced by the Arbitration and Conciliation (Amendment) Act, 2015, particularly Section 11(6A), which restricts the Court's role at the pre-reference stage to examining only the "existence of an arbitration agreement." The Bench emphasized that courts cannot examine whether the dispute is arbitrable or delve into contested questions of fact at the Section 11 stage unless the claim is ex facie non-arbitrable or barred.

In this context, the Court referred to its decision in *Vidya Drolia v. Durga Trading Corporation*, (2021) 2 SCC 1, where it held that courts should adopt a prima facie standard to screen frivolous and non-arbitrable disputes. If there is even a hint of a genuine dispute about whether the discharge was voluntary, the matter must be left to the arbitral tribunal to determine, in line with the

doctrine of kompetenz-kompetenz embodied in Section 16 of the Act.

Relying on the principle laid down in *National Insurance Co. Ltd. v. Boghara Polyfab Pvt. Ltd.*, (2009) 1 SCC 267, the Court reiterated that discharge vouchers or settlement receipts signed under coercion, undue influence, or economic pressure cannot be treated as valid waivers of legal rights. In *Boghara Polyfab*, it was held that the question of whether the discharge voucher was obtained voluntarily or under duress must be left to be decided by the arbitrator, and the court ought not to conduct a mini-trial at the Section 11 stage.

The Court further cited *Oriental Insurance Co. Ltd. v. Dicitex Furnishing Ltd.*, (2018) 18 SCC 357, where it held that even in cases of alleged full and final settlement, if there is credible material indicating that consent was not freely given, arbitration must be allowed. It also relied on *SBI General Insurance Co. Ltd. v. Krishak Bharati Cooperative Ltd.*, (2023) 6 SCC 789, where it was observed that a discharge voucher does not, in itself, nullify the arbitration clause, especially if the discharge was not voluntarily executed.

In the present case, the Court found that the Petitioner had made contemporaneous protests, including a formal letter sent immediately after signing the discharge voucher, stating that the acceptance was under duress and that arbitration would be pursued. It observed that the insurer failed to constitute an arbitral tribunal or adequately refute the allegations of coercion. Given the Petitioner's precarious financial position at the time, its claims of economic compulsion were not implausible. Moreover, the arbitration clause in the insurance contract was valid, and there was no dispute about its existence.

The Court concluded that the issue of whether the discharge voucher was executed under duress involved disputed questions of fact that could not be determined summarily. It emphasized that arbitration remains a preferred mode of dispute resolution, and procedural objections cannot be used to defeat its object. The existence of the arbitration clause, coupled with the factual matrix suggesting involuntary settlement, mandated that the arbitral tribunal, and not the court, decide on the legitimacy of the claims.

Accordingly, the Supreme Court set aside the judgment of the Bombay High Court and appointed a former Judge of the Bombay High Court as the sole arbitrator to adjudicate the dispute. The insurer was directed to cooperate in the proceedings, and the tribunal was requested to complete the arbitration within six months.

This decision is a reaffirmation of the Court's pro-arbitration stance and a reminder that settlement under duress cannot bar access to arbitral remedies. It also underscores the post-2015 legislative shift towards minimal judicial interference at the referral stage and reinforces the sanctity of arbitration agreements even in the face of contested discharges.

Section 11(6A) of the Arbitration and Conciliation Act, 1996, introduced by the 2015 Amendment**,** limits judicial scrutiny at the appointment stage to the mere existence of an arbitration agreement. This provision embodies the principle of kompetenz-kompetenz and aims to reduce judicial interference by deferring complex questions such as coercion, fraud, or the voluntariness of settlement to the arbitral tribunal itself. The courts, therefore, adopt a prima facie review, referring disputes to arbitration unless the agreement is ex facie invalid or non-existent.

Bank of India v. Sri Nangli Rice Mills Pvt. Ltd., 2025 SCC OnLine SC 1229 – *Supreme Court Rules on SARFAESI Arbitration Jurisdiction Between Banks*

The SC adjudicated upon a dispute over competing security interests between two banks, highlights limitations of SARFAESI's Section 17 in inter-bank matters, and clarifies the role of Section 11.

This appeal stemmed from a dispute between two nationalized banks—Bank of India (appellant) and Punjab National Bank (respondent)—over enforcement rights under the SARFAESI Act concerning the same stock of rice and paddy pledged by a common borrower, M/s Sri Nangli Rice Mills Pvt. Ltd. The borrower had secured loans separately from both banks, pledging the same goods as security without Bank of India's prior consent, despite explicit restrictions in its 2006 loan agreement. When the borrower defaulted in 2015, Bank of India discovered the dual encumbrance and approached the District Magistrate under Section 14 of the SARFAESI Act. The Magistrate partly restrained Bank of India, prompting it to file a writ petition which was dismissed, directing the bank to the DRT. While the DRT initially ruled in Bank of India's favour, the DRAT set aside this decision, stating inter-bank disputes were outside Section 17's scope. On remand, the DRT and later the High Court upheld that such disputes required resolution through arbitration under Section 11.

The appellant contended before the Supreme Court that Section 11 of the SARFAESI Act does not apply to the enforcement of security interests under Chapter III, but only to disputes arising in the context of securitisation or asset

reconstruction under Chapter II. They also argued that no arbitration agreement existed between the two banks, making the invocation of Section 11 inappropriate. Bank of India emphasized that its hypothecation preceded the pledge to PNB, making its claim superior, and that DRT was competent to determine inter-bank disputes related to enforcement of security.

In contrast, the respondent bank defended the High Court's view, stating that Section 11 of the SARFAESI Act covered disputes related to "non-payment of any amount due", which was broad enough to include recovery and enforcement actions. They also highlighted that Section 31(b) of the SARFAESI Act excludes pledged movable goods from its purview, and hence disputes involving such securities fell outside the jurisdiction of DRT under Section 17.

The Supreme Court's analysis focused on the scope and application of Section 11. The Court reiterated that the term "dispute" in Section 11 includes conflicts involving securitisation, reconstruction, or recovery of dues between entities such as banks, financial institutions, ARCs, or qualified institutional buyers. However, crucially, the Bench clarified that Section 11 does not require a prior written arbitration agreement; the statutory scheme itself allows for such disputes to be referred to arbitration.

Rejecting the appellant's narrow interpretation of Section 11, the Court clarified that inter-se disputes between banks regarding priority of claims or conflicting rights over common securities fall squarely within the ambit of Section 11. Further, since the borrower was not a party to this particular dispute, and given that the SARFAESI remedies available under Sections 13 and 17 were not applicable as no recovery measures were initiated by PNB against the borrower, the DRT lacked jurisdiction to decide the case.

The Bench referred to earlier decisions including *Oriental Bank of Commerce v. Canara Bank*, 2011 SCC OnLine DRAT 8, to affirm that DRT proceedings under Section 17 are intended for borrower-initiated challenges to recovery measures. It also distinguished the Federal Bank Ltd. v. LIC Housing Finance Ltd., 2010 SCC OnLine DRAT 138 ruling cited by the appellant, noting that the current case did not involve a borrower invoking arbitration, but a dispute between two secured creditors.

Ultimately, the Court upheld the High Court's decision and confirmed that Bank of India must pursue arbitration as the appropriate remedy under Section 11 of the SARFAESI Act. It concluded that DRT and DRAT had rightly declined jurisdiction in a matter that clearly fell within the exclusive scope of inter-creditor

disputes contemplated under the arbitration provision of the SARFAESI Act.

In summary, this judgment reinforces the interpretive scope of Section 11 SARFAESI and confirms that arbitration, even without a separate arbitration agreement, is the appropriate recourse for financial institutions embroiled in disputes over the same security. It emphasizes that DRT's jurisdiction under Section 17 is limited and does not extend to disputes among banks in such circumstances. The ruling is a clarion call for financial entities to exercise caution in overlapping claims and underscores the need for rigorous due diligence before creating second charges on assets.

Section 11 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 creates a statutory mechanism for resolving inter se disputes between banks, financial institutions, asset reconstruction companies, and qualified buyers through arbitration or conciliation, even in the absence of a written arbitration agreement. The provision employs a legal fiction, treating the parties "as if" they had consented in writing, thereby invoking the Arbitration and Conciliation Act, 1996 by default. This ensures that disputes over securitisation, asset reconstruction, or non-payment of dues among specified entities do not stall the recovery process under SARFAESI, upholding its core objective of speedy enforcement of security interests .

BVEPL Bhartia (JV) v. State of West Bengal and Others, AP-COM/991/2024 – Calcutta High Court Declines Reference to Arbitration Despite Dispute Resolution Clause

The High Court held that ambiguous phrasing and deletion of arbitration sub-clauses rendered the Arbitration clause non-binding under Section 7 of the Arbitration and Conciliation Act, 1996

The petitioner, a joint venture comprising Bharat Vanijya Eastern Pvt. Ltd. and Bharat Infra Projects Ltd., was awarded a contract by the West Bengal Highway Development Corporation Ltd. (WBHDCL) in 2019 for the widening and strengthening of the Bongaon–Chakdaha Road to a four-lane configuration. The project was governed by an Engineering, Procurement, and Construction (EPC) Agreement dated December 2, 2019. The petitioner alleged that it completed all possible work by April 2022, well before the scheduled date, but delays in handing over certain land parcels and subsequent withdrawal of unfinished work by WBHDCL caused significant losses, for which compensation was sought.

The petitioner submitted that WBHDCL failed to settle disputes or initiate meaningful conciliation despite numerous communications, leading to invocation of the arbitration clause under Article 26.3 of the EPC agreement. The petitioner contended that the dispute resolution framework prescribed a three-stage process: first, attempts at amicable settlement; second, conciliation through a designated conciliator; and finally, arbitration upon failure of the previous two mechanisms. When WBHDCL failed to constitute the Dispute Resolution Committee (DRC) or appoint a conciliator, the petitioner invoked arbitration and approached the Court under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of an arbitrator.

The Respondents opposed the application, arguing that Clause 26.3 did not amount to a binding arbitration agreement under Section 7. They emphasized that the contract expressly required resolution via conciliation prior to arbitration and that key sub-clauses of the arbitration provision had been deleted prior to execution of the agreement. Further, they argued that the use of the term "may" in Clause 26.2 indicated a discretionary, not obligatory, reference to arbitration.

The Court began by analysing the parties' conduct and the language of Article 26 of the agreement. While Clause 26.1 used mandatory language—"shall" attempt to resolve disputes amicably—Clause 26.2 provided that parties "may" engage a conciliator, and Clause 26.3 stipulated that unresolved disputes "shall be finally settled by a Dispute Resolution Committee." Importantly, prior to execution of the EPC agreement, the original provisions that explicitly provided for arbitration had been consciously deleted by the Board of WBHDCL due to policy considerations against arbitration for government contracts. The Court also observed that Clause 26.4 made provision for disputes to be resolved by statutory authorities, tribunals, or commissions if constituted, further detracting from any binding arbitration arrangement.

Relying on well-established precedent including *Wellington Associates Ltd. v. Kirit Mehta*, (2000) 4 SCC 272, *Jagdish Chander v. Ramesh Chander*, (2007) 5 SCC 719, and *Visa International Ltd. v. Continental Resources (USA) Ltd.*, (2009) 2 SCC 55, the Court reiterated that use of words like "may" in a dispute resolution clause signals optionality, requiring fresh consent at the time of reference. An arbitration clause, to be enforceable, must reflect a firm and unequivocal intention to submit disputes to arbitration without requiring future agreement.

The petitioner's contention that failure of the DRC process and non-appointment of a

conciliator amounted to a breakdown of the dispute resolution process, and that the clause should therefore be enforced in favour of arbitration, was found to be insufficient. The Court noted that the petitioner's own letters sought the respondent's "consent" to initiate arbitration, demonstrating that the petitioner itself viewed the clause as optional and requiring mutual agreement. The Court emphasized that while a common-sense, commercial interpretation of arbitration clauses is encouraged—as recognised in *Enercon (India) Ltd. v. Enercon GmbH*, (2014) 5 SCC 1—this flexibility does not extend to rewriting the contract to impose arbitration where the agreement is merely precatory or conditional.

The Bench held that the deletion of key arbitration-related sub-clauses, combined with the overall scheme of Article 26 which included fallback to a DRC and statutory mechanisms, militated against the inference of a binding arbitration clause. The use of the heading "Arbitration" in Clause 26.3 was held to be immaterial, especially given the explicit clarification under Clause 1.2(i)(d) of the agreement that headings and sub-headings were only for convenience and not to be relied on for interpretation.

In conclusion, the Court found that Article 26 of the EPC Agreement did not constitute a valid arbitration agreement under Section 7 of the Arbitration and Conciliation Act, 1996. The clause was discretionary, not obligatory, and the petitioner's application for appointment of an arbitrator was accordingly dismissed as not maintainable. The judgment reinforces the principle that mere reference to arbitration or use of the word "arbitration" in a contract heading is insufficient, there must be clear, unambiguous, and binding intent to refer disputes to arbitration.

Under Indian arbitration jurisprudence, the use of the term "may" in a dispute resolution clause, particularly when referring to arbitration, does not denote a binding commitment to arbitrate but merely an option contingent on future consent. The Supreme Court in *Wellington Associates Ltd. v. Kirit Mehta*, (2000) 4 SCC 272, clarified that such language suggests a potential agreement to arbitrate in the future, rather than an existing arbitration agreement under Section 7 of the Arbitration and Conciliation Act, 1996. Conversely, the use of the term "shall" indicates mandatory reference and reflects the parties' definite intent to arbitrate disputes. Courts strictly interpret these terms when assessing the validity of an arbitration clause.

South Delhi Municipal Corporation v. SMS Limited, 2025 SCC OnLine SC 1138 - *Supreme*

Court rules Article 20 in MCD Concession Agreements is not an arbitration clause

The Court denounces ambiguity in dispute resolution clauses, holding that mere finality or binding language does not create a valid arbitration agreement under Section 7 of the Arbitration Act.

The case stems from a series of disputes involving the Municipal Corporation(s) of Delhi and three different private contractors—SMS Limited, DSC Limited, and Consolidated Construction Consortium Limited, arising from various Concession Agreements executed for the development of multilevel parking and commercial complexes in Delhi. Each of these agreements contained a dispute resolution clause labeled "Article 20", the interpretation of which lay at the heart of the conflict. The private contractors contended that the clause amounted to an arbitration agreement, while the Corporations maintained that it only provided for mediation or an internal decision-making mechanism.

In SMS Limited's case, the project was halted following a status quo order due to objections from the Defence Colony Welfare Association, leading SMS to terminate the contract and request compensation. It initially recognized that no arbitration clause existed but later reversed its stance, invoking Article 20 as an arbitration clause. The High Court accepted this interpretation and referred the matter to arbitration. In the case of DSC Limited, the dispute involved the MCD's failure to deliver an encumbrance-free site. DSC treated Article 20 as an arbitration clause, but the High Court disagreed, ruling that it provided only for mediation. CCC Limited's case followed a similar trajectory to SMS's, with the High Court again interpreting Article 20 as an arbitration clause.

The core legal question before the Supreme Court was whether Article 20 in these agreements satisfied the requirements of an arbitration agreement under Section 7 of the Arbitration and Conciliation Act, 1996. The Court reaffirmed the legal principles governing the formation of arbitration agreements, noting that such an agreement must

(i) reflect a clear and unambiguous intention to arbitrate,

(ii) contemplate a binding adjudicatory process, and

(iii) comply with fundamental arbitral norms such as party autonomy and neutrality.

Applying these principles, the Court held that Article 20 failed on all fronts. It emphasized that the heading of the clause itself referred to

"Mediation by Commissioner", not arbitration, and the absence of any mention of "arbitration", "arbitrator", or the "Arbitration Act" in the clause further negated any intent to arbitrate. Additionally, the clause provided that the Commissioner or an officer appointed solely by MCD would make the decision, leaving no room for party autonomy or the impartiality required in arbitration.

The Court underscored that even clauses providing for decisions labeled as "final and binding" do not automatically meet the standards of arbitration if the underlying process lacks neutrality, adjudicatory structure, or compliance with arbitral procedures. It distinguished the process under Article 20 as more akin to an administrative review or fact-finding mechanism rather than arbitration.

In a strongly worded epilogue, the Court criticized the legal fraternity for the continued use of ambiguously drafted dispute resolution clauses. It warned that this "criminal wastage of judicial time" would soon warrant personal liability for those responsible. Courts, it said, should reject such clauses at the threshold and exercise suo motu powers where necessary to preserve the integrity of arbitration.

Ultimately, the Court set aside the High Court's orders in SMS and CCC's cases and affirmed the High Court's judgment in DSC's case, which had refused to treat Article 20 as an arbitration agreement. It concluded that Article 20 does not constitute a valid arbitration clause under Indian law, reiterating that clarity, precision, and adherence to statutory norms are indispensable to invoke the arbitral process.

This judgment not only settles the legal status of Article 20 in these specific agreements but also issues a cautionary note to drafters of commercial contracts across sectors: ambiguity in dispute resolution clauses may no longer be tolerated by Indian courts.

For an agreement to qualify as an arbitration agreement under Section 7 of the Arbitration and Conciliation Act, 1996, it must reflect not only an intention to resolve disputes through arbitration but also ensure procedural safeguards like party autonomy and impartial adjudication. The appointment of a decision-maker unilaterally by one party, especially an internal officer lacking neutrality, violates the principle of party equality and fails the neutrality test outlined in the IBA Guidelines and judicial precedent. Indian courts have consistently held that such arrangements cannot be equated with arbitration, even if the decision is labeled "final and binding."

www.nirkalawadvisory.com
business.operations@nirkalawadvisory.com