**WHETHER THE FULL AND FINAL SETTLEMENT OF A CLAIM ACTS AS A DEFENCE AGAINST ARBITRATION PROCEEDINGS?**

**NEELKANTH VYAS[[1]](#footnote-1)**

**S. SRIRAM[[2]](#footnote-2)**

1. **Introduction?**

An arbitration award is the sum decided upon by the arbitrator. One party may be required to pay the other party money as part of this award. It can also be a non-monetary reward, such ending a particular corporate practise or introducing an incentive for employment. Arbitral awards, or simply awards, are the judgements of arbitral tribunals in both domestic and international arbitrations.

The Arbitration and Conciliation Act of India, Part I, governs domestic awards whereas Part II governs overseas awards. An award made in accordance with Sections 2 to 43 of the Act is referred to as a domestic award.

1. **Essentials**

The following key components must be present in an arbitral award for it to be considered valid:

1. A written award must be given.
2. All of the arbitral tribunal's members must sign the award.
3. The award must include the justification for its decision.
4. The award should include the arbitration's date and location.

A temporary, interlocutory, or partial arbitral award is included in the definition of an arbitral award, which is any arbitral tribunal's conclusion regarding the nature of the case that was presented to it. Any time throughout the arbitral procedures, the arbitral tribunal may issue an interim arbitral award on any matter for which it will issue a final arbitral award. The interim award may be used in the same manner as the arbitration's final award. Within 30 days of receiving the arbitral award, a party may request the arbitral tribunal to make an extra arbitral award in respect of the claims raised in the arbitration procedures but left out of the award, unless the parties agree differently.

1. **Whether the full and final settlement of a claim acts as a defence against arbitration proceedings?**

**No,** the full and final settlement of a claim cannot act as a defence against arbitration proceedings.[[3]](#footnote-3)

The Supreme Court in a recent Judgment has approved the grace of a full and final settlement by the judgment by referring **United India Insurance Co. Ltd. v Antique Art Exports Pvt Ltd, Civil Appeal No. 3284/2019[[4]](#footnote-4)**Insurance Company filed an appeal searching to set the appointment of the Arbitrator by High Court to exercise their power Under Section 11(6) of the Arbitration and Conciliation Act, 1996.

1. **Facts of the case:**

The Respondent was a factory owner and purchased two Standard Fire and Special Perils Policies.

A Short circuit caused a fire in the factory as claimed by the Respondent. The Claimant informed the company and appointed a surveyor. An email was sent by the Appellant Company to Respondent stating that a certain amount will be paid to which Respondent assented and provided details of the bank account for the payment transaction.

The Respondent claimed that it was coerced into signing on the dotted line of the settlement after 77 days of settlement and approached High Court to appoint an Arbitrator

The Appellant stated that once the amount of compensation has been received by the respondent in full and final settlement of the claim, the contract gets discharged and neither any contract nor any claim can survive.

Section 11(6A) of the Act has been amended which states that a limited purpose for expediting the arbitral disputes in a time-bound manner provided a prima facie arbitral claim/dispute subsists under the arbitral agreement for adjudication by the Arbitrator. In the instant case, there was no arbitral dispute subsisting after the claim was finally settled.

Respondent stated that respondent was not in a position to make any demands because of financial issues and had to accept the claim and Respondent also stated that the examination examine whether the acceptance of the claim by the Respondent was voluntary or under undue influence or coercion should be done by the Arbitrator.

 The Hon'ble High Court stated that, if there exists an arbitration agreement and affirmation of the payment has been made by the Appellant Company, the question that whether it was under coercion or undue influence, is a matter which Arbitrator will examine.

The Hon'ble Supreme Court stated that the performance of the full and final agreement and the acknowledgement of the discharge voucher in itself can never bar the arbitration. The Supreme Court take on the reliance of its judgment in the case of **National Insurance Co. Limited v. Boghara Polyfab Private Limited, [MANU/SC/4056/2008: 2009(1) SCC 267][[5]](#footnote-5)** provides illustrations as to when claims are arbitrable and when they are not.

1. **Judgment:**

The Apex Court by reversing the decision of the High Court stated that prima facie no dispute exists after the respondent signs the discharge voucher without any objection. The Appellant after 77 days after the settlement of the claim raised their voice for the first time by sending the letter dated 27th July 2016, in the form of protest and stating that the discharge voucher was signed under undue influence and coercion with no proper prima facie evidence which in the absence supports respondents and no such evidence have been placed on record.

In the absence thereof, the Apex Court suggested that it must follow that the claim had been settled with accord and satisfaction leaving no arbitral dispute subsisting under the agreement to be referred to the Arbitrator for adjudication.

1. **Conclusion:**

The cases do not define what could be the prima facie evidence but on a plain reading of facts of a case it can be fairly determined if the instance of fraud/coercion/undue influence is present or not. This judgment in **United India Insurance Company Limited v. Antique Art Exports Private Limited**, relies heavily on the law settled by the precedents and the Supreme Court has made it clear that mere existence of an arbitration agreement does not mean that an arbitrator is to be appointed in event of a dispute, instead the Judges need to satisfy themselves first that a prima facie case based upon the credibility of such allegations exists and then appoint an arbitrator.

1. **References**
2. https://www.mondaq.com/india/trials-amp-appeals-amp-compensation/810812/when-full-and-final-settlement-bars-arbitration
3. United India Insurance Co. Ltd. v Antique Art Exports Pvt Ltd, Civil Appeal No. 3284/2019
4. 2009 (1) SCC 267
1. LL.B (3 years), Lords Universal College of Law, Mumbai [↑](#footnote-ref-1)
2. LL.B (3 years), B.M.S. College of Law, Bangalore [↑](#footnote-ref-2)
3. https://www.mondaq.com/india/trials-amp-appeals-amp-compensation/810812/when-full-and-final-settlement-bars-arbitration [↑](#footnote-ref-3)
4. United India Insurance Co. Ltd. v Antique Art Exports Pvt Ltd, Civil Appeal No. 3284/2019 [↑](#footnote-ref-4)
5. National Insurance Co. Limited v. Boghara Polyfab Private Limited, 2009 (1) SCC 267 [↑](#footnote-ref-5)