

# Dispute Resolution Hotline

June 13, 2012

## EVIDENCE OF NEGOTIATION PRIOR TO SETTLEMENT VITIATES PLEA OF DURESS

### BACKGROUND

The Division Bench of the Hon'ble Delhi High Court in the case of Mecon Ltd. vs Pioneer Fabricators Pvt.

Limited<sup>1</sup> has held that settlement negotiations which lead to a no-claim letter would be sufficient evidence to show that the no-claim letter was executed without any undue influence.

### FACTS OF THE CASE

Mecon Ltd. ("Appellant") invited offers as per tender documents to construct five retail outlets for Indian Oil Corporation. The bid submitted by Pioneer Fabricators Pvt. Limited ("Respondent") being the lowest was accepted and a contract styled as "Letter of Award" was entered into between the parties wherein the obligations of the parties were crystalized. The Letter of Award inter-alia provided that:

1. bid quoted by the Appellant pertained only to the items / works which were specifically quantified in detail and
2. in respect of any extra item / work which may be required to be executed, the parties would mutually determine the price to be paid in respect of such extra item / work
3. the work on each site would have to be completed within 80 days of the site being handed over to the Respondent.

During execution of works on the site, the Appellant required the Respondent to execute 31 extra items of work and there were discussions between the parties with respect to the price to be paid in respect of the extra items of work as well as the actual work to be carried out at the sites (taking into account the work in respect of the extra work items).

The Respondent submitted a final bill and as per which it raised a demand, pertaining to extra items of work, in sum of Rs. 1,05,05,374/- and Rs. 1,92,81,990.62/- for the works executed which were specifically quantified in detail in the Letter of Award. The Appellant verified this bill and there being certain discrepancies, reduced it to Rs. 2,88,74,334/- representing the total value of the work done. After adjusting running payments made to the Respondent pursuant to interim bills raised, finalized the amount payable to the Respondent was determined by the Appellant to be Rs. 57,41,541/-.

The Respondent thereafter on February 14, 2003, sent a No-Claim Certificate in writing to Mecon as under:

"This is with reference of above mentioned work order number. We hereby certify that we have no further claim (except release of LD Charges etc.) than those given in the final bill which includes the work done bill and release of retention money etc. We shall accept this payment as full and final settlement of our claims and we shall not resort to the provisions of Indian Arbitration Act 1940 thereafter. "

Vide a subsequent letter dated March 5, 2003, the Respondent invoked the arbitration clause in the Letter of Award and for the first time contended that the No-Claim Certificate was issued under protest. However, in the said letter also, the Respondent did not take a stand that it was constrained to issue the No-Claim Certificate under duress.

The Arbitrator, on the issue whether the Accord (No-Claim Certificate) was made under undue influence of the Appellant gave the following observation:

"It also cannot be denied that the respondent (The Appellant herein) has been withholding a large sum due to the claimant (The Respondent herein) from payment and must have exercised undue influence on the claimant to agree to the respondents terms howsoever unfair."

The Arbitrator further recorded that the No-Claim Certificate issued by the Respondent was under protest and reserving its rights to other payments.

### ISSUE

Whether the No-Claim Certificate issued after due deliberations could be voided by a party claiming duress and undue influence?

### JUDGMENT AND RATIONALE

Whilst passing the judgment, the Division Bench of the Delhi High Court followed the ratio laid down in Chairman & MD NTPC Ltd. vs. M/s. Reshmi Constructions, Builder & Contractors<sup>2</sup> wherein the Hon'ble Supreme Court had held that where there is evidence of the parties negotiating prior to a settlement taking place resulting in a full and final discharge voucher / receipt being executed, later-on the party executing the receipt cannot turn around and reprobate to claim that the settlement was not voluntary.

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The Hon'ble Court held that the fact that parties were in discussions on the issue of payment for the extra work items undertaken by the Appellant and the exact work to be executed where-after the Respondent submitted its final bill followed by the No-Claim Certificate would be "clear cut evidence" to show that there was an accord on all disputes between the parties which was arrived at after protracted correspondence and claims in respect of the disputes settled in the accord could not have been raised and the accord reopened.

## CONCLUSION

For coming to a conclusion that the accord was indeed negotiated, the Hon'ble Court took note of the protracted correspondences held between the parties before which the No-Claim Certificate was issued by the Respondent to the Petitioner. The Court further highlighted that the observation made by the arbitral tribunal was cryptic and presumptive in as much as it had not discussed evidence on the accord i.e. the negotiations between the parties.

It may be noted here that the reasoning behind the observation made by the Arbitrator that the No-Claim Certificate must have been procured by exercising undue influence is that the Appellant was withholding payment of large amount due to the Respondent. Therefore, the Principle enshrined in the present case is that if a party has negotiated an accord or settlement, it cannot later claim that it executed the said accord under undue influence or under duress and by implication the stronger bargaining position of other party would have no relevance.

– Moazzam Khan & Vyapak Desai

You can direct your queries or comments to the authors

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<sup>1</sup> FAO(OS) 89/2008 [Delhi High Court]

<sup>2</sup> JT 2004 (1) SC 1

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