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Arbitrability of Post-Settlement Disputes: Emerging Indian Jurisprudence

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If arbitration is to be displaced, the settlement must say so in clear terms, identify the replacement forum, and address how disputes concerning performance, continuing obligations, and enforcement are to be resolved.

Introduction

Commercial disputes often do not stem solely from the original contract between parties. They frequently arise from later instruments signed to settle disputes, such as discharge vouchers, no-claim certificates, reconciliation statements, memoranda of understanding, consent terms, or consent awards. These documents are typically drafted to signify closure of pending disputes and minimise the risk of future claims. However, they also raise a common jurisdictional issue: When parties state that a settlement is "full and final", does the Arbitral Tribunal's jurisdiction cease to exist? If not, who determines the legal effect of that settlement at the outset?

For many years, Indian arbitration law proceeded on the premise that such

settlement-related instruments typically exhausted arbitral jurisdiction. At the referral stage under Sections 8 and 11, Arbitration and Conciliation Act, 1996 (Arbitration Act), respondents regularly invoked the factum of settlement of disputes as a threshold bar to conducting any further arbitration. Courts were invited to hold that accord and satisfaction had extinguished the dispute and, by extension, extinguished the arbitral mandate. In practice, this resulted in an expansive gatekeeping role at the appointment and referral stage, frequently requiring courts to sift through correspondence and evaluate the parties' conduct.

Recent Supreme Court judgments mark a departure from this approach. The Supreme Court has treated "full and final" settlement, discharge vouchers, no dues/ no-objection certificates, and other allied instruments not as automatic jurisdictional barricades, but as merits-based defences that shall ordinarily fall for determination before the Arbitral Tribunal. The referral court's enquiry has been narrowed to the prima facie existence of an arbitration agreement, with refusal confined to exceptional situations where the settlement-related defence is ex facie decisive and admits of no credible factual controversy.

The older approach: settlement as a jurisdictional barricade

For a considerable period, the Indian arbitration law jurisprudence treated settlement instruments as jurisdiction-ending events. Once parties signed a discharge voucher, issued a no-claim certificate, executed consent terms, or recorded full and final closure, referral courts were routinely invited to hold that no dispute survived for arbitration. In effect, the settlement was treated as converting an otherwise arbitrable dispute into a non-dispute for jurisdictional purposes.

This approach expanded the court's gatekeeping function at the referral stage. courts were drawn into deciding matters of arbitrability, often on contested material and without the benefit of full evidence. Two undesirable consequences followed. *Firstly*, the referral stage began to resemble a truncated merits hearing or mini-trial. *Secondly*, the approach systematically favoured the party resisting arbitration. This settlement-as-bar model sat uneasily with the Arbitration Act's design, particularly after the Arbitration and Conciliation (Amendment) Act, 2015 (2015 Amendment), which sought

to reduce judicial intervention and reinforce arbitral autonomy.

Supreme Court's recalibration

The Supreme Court's recent decisions seek to restore discipline at the referral stage by separating two questions that had become entangled in practice: whether parties have discharged substantive obligations by settlement, and whether the arbitral forum is competent to decide disputes about that alleged discharge. The Supreme Court's answer to the above issues is simple. Even when parties contend that the underlying contract has been discharged, the arbitration agreement may survive to govern disputes about the discharge. The survival of the arbitration agreement is a feature that arises out of the separability doctrine,[1] under which arbitration clauses are treated in law as distinct agreements in themselves, separate from the principal agreement in which they are featured.

The decision in *SBI General Insurance Co. Ltd.* v. *Krish Spg.*[2] crystallises this shift. In this case, the Supreme Court rejected the argument that discharge vouchers and an alleged "full and final" settlement automatically extinguished arbitral jurisdiction. The Supreme Court held that these matters were defences better left to the Arbitral Tribunal to examine and decide. The Supreme Court also clarified that where the proposed claimant alleges vitiating factors such as coercion, undue influence, misrepresentation, or economic compulsion, the settlement cannot be treated as dispositive at the threshold merely because it exists in documentary form. In such circumstances, the arbitration agreement remains operative. A second strand of the recalibration concerns the standard of scrutiny under Sections 8 and 11, Arbitration Act. The Supreme Court has repeatedly emphasised that referral proceedings are not designed to host a fact-finding enquiry into contested matters.[3] This narrow approach is particularly significant in contexts where bargaining power is asymmetric, and settlement-related documentation is often executed under commercial pressure.

In *Arabian Exports (P) Ltd.* v. *National Insurance Co. Ltd.*[4], the Supreme Court reaffirmed that discharge vouchers in insurance settlements cannot be treated as jurisdictional vetoes merely because they bear the language of full and final settlement. The operative question at the threshold is not whether the settlement will ultimately bind, but whether the proposed claimant's

challenge to it raises a live dispute that the Arbitral Tribunal is competent to decide.

The effect of the decisions in *SBI General case*[5] and *Arabian Exports case*[6] is a reallocation of decision-making authority. The defence of settlement remains available, and in appropriate cases may prove decisive. What changes is the institutional sequence. The Arbitral Tribunal is increasingly treated as the first forum to evaluate whether settlement-related instruments are valid, comprehensive, and voluntary, while the referral court's role is limited to enabling the chosen process and intervening only where the bar to arbitration is unmistakable on the face of the record.

The hard case: Arbitration after settlement is recorded as a consent award

The harder case arises when settlement is not merely collateral to arbitration, but is absorbed into the arbitral process itself through a consent award. Under Section 30, Arbitration Act, Arbitral Tribunals are encouraged to permit a settlement and, where settlement is reached, to record it in the form of an arbitral award on agreed terms. A consent award has a stronger sense of finality; it functions as an "award" for enforcement purposes and usually signifies the conclusion of the matter.

In matters where arbitration is sought to be invoked after a consent award has been passed, respondents commonly invoke res judicata, functus officio, and "nothing survives" formulations to argue that a subsequent reference would be an impermissible attempt to relitigate what has already been conclusively resolved. At the appointment stage, these objections are often presented as jurisdictional, on the footing that once the Arbitral Tribunal has rendered a consent award, there can be no further arbitral jurisdiction between the parties in relation to the same commercial relationship.

In *Ashutosh Infra (P) Ltd.* v. *Pebble Downtown India (P) Ltd.*[7], before the Delhi High Court, the controversy centred on the terms of consent, which led to a consent award. In this case, the petitioner alleged that the respondent interfered with assigned entitlements. The respondent opposed further arbitral proceedings, arguing that the consent award served as a final resolution, and that res judicata and finality prevented any additional arbitration.

At the Section 11 stage, the referral Court in *Ashutosh Infra case*[8] declined to decide upon the respondent's objections. It held, in substance, that objections founded on res judicata, limitation, and the scope and reach of the consent award could not be conclusively adjudicated without substantive examination of the documentary record and factual context. Read alongside the Supreme Court's decisions on the narrow confines of examination at the referral stage, such as *Duro Felguera, SA* v. *Gangavaram Port Ltd.*[9] and *Vidya Drolia* v. *Durga Trading Corpn.*[10], *Ashutosh Infra case*[11] illustrates the same fundamental principle: Where the arbitration agreement exists and the objections are not ex facie decisive, such objections are ordinarily tested before the Arbitral Tribunal rather than enforced through preliminary judicial exclusion.

Emerging trends: India and the world

The Supreme Court's recalibration in *SBI General case*[12] and *Arabian Exports case*[13] has also been followed by High Courts in disputes where respondents attempt to resist an arbitral reference on the basis of a purported settlement. Government contracts provide the most frequent setting for this contest. No-claim certificates and "final bill" declarations are often executed as a condition for release of payments, security deposits, or completion certificates. High Courts have increasingly treated these instruments as weak indicators of voluntary and comprehensive accord, especially where contractors plead financial compulsion, delayed certification, or administrative pressure.

A similar dynamic appears in commercial disputes sought to be settled through memoranda of understanding and reconciliation statements. In *Juki India (P) Ltd.* v. *Capital Apparels Technology (P) Ltd.*[14], the respondent resisted arbitration by contending that a subsequent memorandum of understanding (MoU) acknowledging dues and prescribing a payment schedule constituted final settlement, leaving no arbitrable dispute. The Delhi High Court rejected the argument. It treated the MoU as part of the parties' underlying contract and held that disputes arising from non-performance of the MoU, or disputes about whether it operated as a discharge of obligations, were not to be conclusively decided at the Section 11 stage. The arbitration agreement, once shown to exist, was not displaced merely because the parties executed a subsequent settlement-like document.

The Indian shift towards Tribunal-first determination in settlement disputes mirrors a broader comparative trend. In leading arbitration jurisdictions, courts have been reluctant to treat settlement instruments as jurisdictional dead ends unless the parties have clearly and unequivocally displaced the arbitration mechanism. For instance, courts in Hong Kong have repeatedly applied this continuity presumption where a settlement agreement co-exists with an arbitration clause in the underlying contract.[15]

English law reflects a similar instinct, though it frequently frames the enquiry through orthodox contractual construction. In *Sonact Group Ltd.* v. *Premuda S.p.A.*[16], the High Court upheld arbitral jurisdiction where the parties had settled claims by correspondence that did not contain an express arbitration clause, and a dispute later arose because the settlement sum was not paid. The arbitration was commenced under the arbitration clause in the original contract, and the English High Court accepted the commercial logic that parties who have chosen arbitration for the principal relationship can be taken to intend that disputes connected with settlement of that relationship will ordinarily be resolved through the same mechanism, absent clear contrary language. The absence of an express arbitration clause in the settlement documentation was not treated as determinative.

Implications for drafting and dispute strategy

From a drafting perspective, the first task is to decide whether the parties intend to preserve arbitration for future disputes connected with the settlement, or to displace it in favour of another forum. If arbitration is to be preserved, the settlement instrument should contain an arbitration clause of its own, or an express incorporation or cross-reference to the arbitration agreement in the underlying contract, so that jurisdictional disputes are minimised.

If arbitration is to be displaced, the settlement must say so in clear terms, identify the replacement forum, and address how disputes concerning performance, continuing obligations, and enforcement are to be resolved. Where the documentation is equivocal, courts are increasingly likely to treat post-settlement disputes as arbitrable, as illustrated by *SBI General*[17].

This shift also has immediate strategic consequences. A respondent resisting reference can no longer rely on settlement terms and must show an objection that is ex facie decisive. Conversely, a claimant should plead with

particularity the basis on which the settlement is said to be invalid, vitiated, or breached, and tie that challenge to a live dispute falling within the arbitration agreement.

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1. The principle was expounded in the judgment of *Heyman* v. *Darwins Ltd.*, 1942 AC 356 and subsequently has been affirmed in several international and Indian cases including *Bremer Vulkan Schiffbau und Maschinenfabrik* v. *South India Shipping Corpn. Ltd.*, 1981 AC 909 : (1979) 3 WLR 471, *Harbour Assurance* v. *Kansa General International Insurance*, (1993) 1 LR 455; *Lesotho Highlands Development Authority* v. *Impregilo SpA*, [2005] 3 WLR 129 : 2005 UKHL 43; *Fili Shipping Co. Ltd.* v. *Premium Nafta Products Ltd.*, [2007] Bus LR 1719 : 2007 UKHL 40; and *Firm Ashok Traders* v. *Gurumukh Das Saluja*, (2004) 3 SCC 155; *National Agricultural Coop. Mktg. Federation India Ltd.* v. *Gains Trading Ltd.*, (2007) 5 SCC 692; and *India Household and Healthcare Ltd.* v. *LG Household and Healthcare Ltd.*, (2007) 5 SCC 510 : (2007) 136 Comp Cas 621.
2. (2024) 12 SCC 1 : (2025) 3 SCC (Civ) 567.
3. *Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899*, *In re*, (2024) 6 SCC 1; *SBI General Insurance Co. Ltd.* v. *Krish Spg.*, (2024) 12 SCC 1 : (2025) 3 SCC (Civ) 567.
4. (2025) 10 SCC 388 : 2025 SCC OnLine SC 1034.
5. *SBI General Insurance Co. Ltd.* v. *Krish Spg.*, (2024) 12 SCC 1 : (2025) 3 SCC (Civ) 567.
6. *Arabian Exports (P) Ltd.* v. *National Insurance Co. Ltd.*, (2025) 10 SCC 388 : 2025 SCC OnLine SC 1034.
7. 2025 SCC OnLine Del 8864.
8. *Ashutosh Infra (P) Ltd.* v. *Pebble Downtown India (P) Ltd.*, 2025 SCC OnLine Del 8864.
9. (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764.
10. (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549.

11. *Ashutosh Infra (P) Ltd.* v. *Pebble Downtown India (P) Ltd.*, 2025 SCC OnLine Del 8864.
12. *SBI General Insurance Co. Ltd.* v. *Krish Spg.*, (2024) 12 SCC 1 : (2025) 3 SCC (Civ) 567.
13. *Arabian Exports (P) Ltd.* v. *National Insurance Co. Ltd.*, (2025) 10 SCC 388 : 2025 SCC OnLine SC 1034.
14. *Juki India (P) Ltd.* v. *Capital Apparels Technology (P) Ltd.*, 2022 SCC OnLine Del 5350.
15. *Gurkhas Construction Ltd.* v. *Craft Façade Tech (Hong Kong) Co. Ltd.*, (2021) HKDC 1166.
16. *Sonact Group Ltd.* v. *Premuda S.p.A.*, (2018) EWHC 3820 (Comm): 2018 SCC OnLine EWHC 7.
17. *SBI General Insurance Co. Ltd. v. Krish Spg.*(2024) 12 SCC 1, (2024) 12 SCC 1 : (2025) 3 SCC (Civ) 567.