

Discharge of Contract under Indian Contract Act, 1872

Introduction

A contract is said to be discharged when the object or obligations is fulfilled, the liability of either party under the contract comes to an end. In other words discharge of contract means “termination of the contractual relationship between the parties”. This is why the rights and duties in terms of contractual obligations were set up, when the parties originally entered into the contract. There are various modes of discharge of contract like either in positive way i.e., by performance or in negative way i.e. by breach.

Discharge of Contract

Discharge of contract refers to the way in which it comes to an end. The various modes of discharge of contract or the different ways are as follows:

Discharge by performance

When the respective parties of the contract perform their shares of the promises, it is said to be the contract is discharged. It is called as natural mode of discharge.

Performance may be:

1. ***Actual Performance:*** Under the contract, when all the parties to a contract do what they had agreed for, it is known as actual performance.
2. ***Attempted performance (tender or offer of performance):*** When the promisor attempts to perform his promise, the promisee refuses to accept the same, it is known as tender or attempted performance.

Discharge by agreement or consent

Section 62 of the Indian contract, 1872 provides that “if the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed” under the heading- Effect of novation, rescission and alteration of contract.

There are six types through which discharge of contract through agreement or consent could take place are mentioned below:

- *Novation*

When the parties to a contract agree to substitute the existing contract with a new contract, that is called novation. In the well known case of *Scarf v. Jardine*, the meaning and effect of novation are explained by Lord Selborne.

Hence novation is of two kinds, namely:

- A novation involving change of parties.
- A novation involving substitution of a new contract in place of the old.
- **Alteration:** - When one or more of the terms of the contract is/are altered by mutual consent of the parties to the contract, is called as alteration of a contract. In the case of *United India Insurance Co. Ltd v. M.K.J. Corporation*, it was held that even in good faith also in terms of the contract, no material alteration can be made by a party without the consent of the other.
- **Rescission:** - When all or some of the terms of the contract are canceled, that is known as rescission of a contract.
- **Remission:** - Section 63 of the Indian Contract Act, 1872 talks about the discharge of a contract by remission. It means the acceptance of lesser sum than what was due from the promisor or acceptance of a lesser fulfillment of the promise made.
- **Waiver:** - Under an agreement, when an individual surrendering a few or the majority of their legitimate rights, it is known as waiver. The Supreme Court has already laid down that waiver is the abandonment of a right which normally everybody is at liberty to waive.
- **Merger:** - When an inferior right accruing to a party under contract merges into a superior right accruing to the same party under a new contract.

Discharge by impossibility of performance

1. ***Initial Impossibility:*** As per section 56 of the Indian Contract Act, 1872 “An agreement to do impossible act is void ab-initio.” It means agreement which is obviously impossible cannot be binding[10].
2. ***Subsequent Impossibility:*** A contract sometimes becomes impossible or unlawful and as a result void when capable to be performed after formation.

Discharge by lapse of time

Specified period for performance of a contract prescribed by The Limitation Act, 1963. If the contract is not performed and no legal action is taken by the promisee within the period of limitation, the contract is discharged and he is deprived of his remedy at law.

Discharge by operation of law

A contract can be discharged by operation of law which includes insolvency or death, of the promisor and also merger, judgement of court.

Discharge by breach of a contract

Breach of contract means failure to perform contractual obligation by either of the parties without any lawful excuse, the contract discharged because it is a ground for discharge of a contract.

Hence breach is of two kinds, namely:

- ***Actual Breach:*** It refers to the failure to perform contractual obligation when performance is due and during the performance of the contract. In the case of an actual breach, the promisee retains his right of action for damages.
- ***Anticipatory Breach:*** It takes place before the date of actual performance. In anticipatory breach, the promisee cannot file a suit for damages and even it discharges the promisor also from performing his part of the contract. It may take place in two ways: Expressly by words and Implied by the conduct.

Compiled By: Dr. Sudhir Kumar

In the case of *Hochster v. De La Tour*, the respective parties made the contract in April, in which the defendant agreed that the claimant on a foreign tour should act as his courier, due to begin on 1st June but on 11th May, the defendant informed the claimant that his services would not be required. It was held that the claimant can sue for damages immediately and he did not have to wait for the performance date.

In *Bowdell v. Parsons*, it was held that if a man contracted to sell and deliver specific goods on a future day and before the day he sells and delivers them to another, he is immediately liable to an action at the suit of the person with whom he first contracted to sell and deliver.

Conclusion

It is concluded that Discharge of contract is referred when, there is a need to put an end to a contract like two parties Y and Z make a contract to build a fly-over in the city Varanasi. Where Y is the municipal authority of the city and Z is a construction company but due to some reasons the contract get discharged. Then in this case the both parties are free from the obligations of contract, i.e. the rights and obligations of the parties come to an end. Various modes or ways were also available for discharging a contract but the best way to discharge a contract is based on performance as in this way both the parties follow all the terms of contract and then go for its discharge and on the other hand discharge by breach is the most unpleasant way to release the parties from duties as it leads to damages too.