



2026:DHC:2134



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Delivered on: 11.03.2026

+ **ARB.P. 975/2025**

TATA CAPITAL LIMITED

.....Petitioner

Through: Mr. Varun Kumar and Ms. Ragini Kapoor, Advocates.

versus

M/S MANJU TRADERS & ANR.

.....Respondents

Through: Mr. Chinmaya K., Bhatt and Ms. Amrita Pandey, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J (OPEN COURT)

1. The present petition has been filed by the petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') for appointment of an Arbitrator to adjudicate the disputes between the parties under the Loan-cum-Guarantee Agreement dated 28.11.2023 (hereinafter 'the agreement'). Clause 12 of the agreement provides for arbitration by a Sole Arbitrator.
2. The disputes having arisen between the parties, the petitioner invoked the arbitration by giving a notice dated 19.05.2025.
3. The said notice was responded to by the respondents vide their reply dated 02.06.2025, wherein, the respondents took a stand that the Loan-cum-



Guarantee Agreement has not been physically signed by the respondents and they are not in receipt of the agreement. Thereafter, the respondents filed a Civil Suit before the Court of Additional Munsif, Jammu, which came to be registered on 28.07.2025, praying for a decree of declaration, thereby declaring the notice dated 19.05.2025 invoking of arbitration, as *null and void*.

4. However, prior to the filing of the said suit, petitioner had filed the present petition under Section 11 of the Act on 15.07.2025. Further, when the petitioner was served with summons in the aforesaid suit filed by the respondents in the Civil Court at Jammu, the petitioner also filed an application under Section 8 of the Act.

5. Mr. Chinmay K. Bhatt, learned counsel appearing on behalf of the respondents has opposed the present petition on the ground that an application under Section 8 of the Act has already been filed by the petitioner and the Civil Court is seized of the matter. Elaborating further, he submits that in case the present petition is entertained by this Court, there may be conflicting judgments.

6. Mr. Bhatt has placed reliance on the decision of a Coordinate Bench of this Court in *JSW MG Motor India Pvt. Ltd. v. M/s. Tristar Auto Agencies (Vizag) Pvt. Ltd.*¹ to contend that contradictory findings under Section 8 of the Act of 1996 as well as in the present petition ought to be avoided. He submits that in case the finding is returned in favour of the respondents herein by the civil court at Jammu on an application filed under Section 8 of the Act, the entire exercise of undertaking arbitration proceedings will be rendered infructuous.

¹ *Arb. Pet. 682/2025*; date of decision 18.11.2025



7. On the other hand, Mr. Varun Kumar, learned counsel appearing on behalf of the petitioner submits that the application of the petitioner under Section 8 as well as the present petition under Section 11 can continue simultaneously. He has invited attention of the Court to Section 8(3) of the Act. Further, to buttress his contention, Mr. Kumar has placed reliance on ***Vijay Kumar Sharma Alias Manju v. Raghunandan Sharma Alias Baburam and Ors., (2010) 2 SCC 486.***

8. Having heard the rival contentions of the parties, at the outset the provision of Section 8(3) may be adverted to. For ready reference, Section 8 of the Act is extracted herein below:

“8. Power to refer parties to arbitration where there is an arbitration agreement.—(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.”

(emphasis supplied)

9. A bare perusal of sub-section (3) of Section 8 of the Act makes it plain that an arbitration can be commenced or continued and an arbitral award made even if an application under section 8 of the Act is pending consideration in a suit before civil court. Reference in this regard may also be had to the decision of the Hon’ble Supreme Court in ***Vijay Kumar Sharma Alias Manju v. Raghunandan Sharma Alias Baburam and Ors.,***



(2010) 2 SCC 486, wherein it was laid down that neither the filing of any suit by any party to the arbitration agreement nor any application made by the other party under Section 8 of the Act, should obstruct or preclude a party from initiating any proceedings for appointment of an arbitrator or proceeding with the arbitration before the Arbitral Tribunal. The relevant extract from the decision reads thus:

“11.It is evident from sub-section (3) of Section 8 that the pendency of an application under Section 8 before any court will not come in the way of an arbitration being commenced or continued and an arbitral award being made. The obvious intention of this provision is that neither the filing of any suit by any party to the arbitration agreement nor any application being made by the other party under Section 8 to the court, should obstruct or preclude a party from initiating any proceedings for appointment of an arbitrator or proceeding with the arbitration before the Arbitral Tribunal.

12. Having regard to the specific provision in Section 8(3) providing that the pendency of an application under Section 8(1) will not come in the way of an arbitration being commenced or continued, we are of the view that an application under Section 11 or Section 15(2) of the Act, for appointment of an arbitrator, will not be barred by pendency of an application under Section 8 of the Act in any suit, nor will the designate of the Chief Justice be precluded from considering and disposing of an application under Section 11 or 15(2) of the Act.”

(emphasis supplied)

10. Having regard to the law expounded by the Hon'ble Supreme Court in *Vijay Kumar Sharma (supra)*, the pendency of an application under Section 8 of the Act in the civil court at Jammu will not come in the way of an arbitration being commenced, or continued and an arbitral award being made. Therefore, the present petition under Section 11 is not barred by the



pendency of said section 8 application.

11. Further, at the stage of proceedings under Section 11 of the Act, the Court only requires to satisfy itself, *prima facie*, as to the existence of arbitration agreement and all other questions are left to the determination of the learned Arbitrator. The material on record, particularly the Loan-Cum-Guarantee Agreement dated 28.11.2025, *prima facie*, demonstrates that arbitration agreement exists between the parties, which reads thus:

“If any dispute, difference or claim arises between any of the Obligors and the Lender in connection with the Facility or as to the interpretation, validity, implementation or effect of the Facility Documents or as to the rights and liabilities of the parties under these T&Cs or alleged breach of the Facility Documents or anything done or omitted to be done pursuant to the Facility Documents, the same shall be settled by arbitration by a sole arbitrator to be appointed as per the procedure below and to be held at such place as agreed by the Parties in Serial No. 17 of Annexure 1 hereto of the Agreement. The Party invoking the arbitration (“Claimant”) shall address a notice to the other Party (“Respondent”) suggesting the names of not more than three arbitrators, all of whom shall be either retired judges of the District Court, High Court or the Supreme Court or a lawyer having minimum 10 years’ relevant experience. The Respondent shall either:

(i) Confirm in writing acceptance of one amongst the proposed names as the sole arbitrator to the Claimant within a period of ten (10) days from the date of notice ('Notice Period') ; or

(ii) Convey objection, if any, in writing to the Claimant, against the proposed names of the sole arbitrator within the said Notice Period.

However, if the Claimant does not receive any response from the Respondent within the said Notice Period, the Claimant shall be entitled to nominate any one person from



amongst the proposed three names as the sole arbitrator and such arbitrator shall be deemed to be appointed by both the Parties.

In the event, the Respondent conveys its objection as per (ii) above then the sole arbitrator will be appointed by a Court having jurisdiction. The arbitration shall be conducted under the provisions of the Arbitration and Conciliation Act, 1996 together with its amendments, any statutory modifications or re-enactment thereof for the time being in force. The arbitration proceeding shall be conducted in English language. The award of the arbitrator shall be final and binding on all parties concerned. The cost of arbitration shall be borne by the Obligor/s”

12. Furthermore, the annexure to the said agreement provides place of arbitration and jurisdiction at Delhi. Mr. Bhatt has also not disputed the arbitration clause. However, his contention is that the agreement has not been signed physically. In this regard, suffice it to say that a bare perusal of the said agreement shows that the parties to the agreement have signed the agreement digitally.

13. Insofar as the decision in *JSW MG Motor (supra)* relied upon by the respondents is concerned, the same is clearly distinguishable on facts. In the said case, the arbitration was optional. Further, the civil court had already recorded a finding to the effect that the clause which was being referred to as an arbitration clause does not constitute an arbitration agreement, therefore, the Court had observed that the petition under section 11 of the Act is barred by *res judicata*, whereas in the case at hand, in the civil suit at Jammu, no such finding has been rendered till date by the civil court on the application filed by the petitioner under Section 8 of the Act.

14. In view of the above, there is no merit in the objections raised by the learned counsel for the respondents. The petition is thus, allowed.



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15. At this stage, Mr. Varun Kumar, learned counsel appearing on behalf of the petitioner submits that arbitrator to be appointed in terms of the arbitration clause must have experience of at least 10 years as an advocate.
16. Accordingly, dispute between the parties is referred to arbitration of Ms. Saumya Tandon, Advocate; Enrl. No. D/1418/2008 [Mob. 9810907029].
17. The arbitration will be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi – 110003 [“DIAC”]. With the consent of the parties, the fees of the learned arbitrator is fixed at Rs.3,00,000/-.
18. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act prior to entering upon the reference.
19. It is made clear that all rights and contentions of the parties are left open for adjudication by the learned Arbitrator.
20. Petition stands disposed of in the above terms.

VIKAS MAHAJAN, J

MARCH 11, 2026/jg