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

Date of decision: 10.04.2026

+ ARB.P. 1987/2025

TECHNOCRATS ADVISORY SERVICES PVT. LTD.

.....Petitioner

Through: Mr. Abhishek Shivpuri and Mr.
Rahul Bhatt, Advocates.

versus

MINISTRY OF ROAD, TRANSPORT AND HIGHWAYS &
ANR.Respondents

Through: Mr. Siddhartha Shankar Ray,
CGSC along with Ms. Sonali
Modi and Mr. Mukul Dev,
Advocates.

**CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

% **JUDGEMENT (ORAL)**

1. The present Petition has been filed under Section 11(6) of the **Arbitration and Conciliation Act, 1996¹**, seeking the appointment of an Arbitrator to adjudicate the disputes *inter se* the parties arising out of the **Contract dated 20.01.2017²** executed between the parties.

2. The Dispute Resolution Clause, being Clause 9.2 of the Special Conditions of Contract, reads as under:

“9.2 Disputes shall be settled by arbitration in accordance with the following provisions:

9.2.1 Selection of Arbitrators

Each dispute submitted by a Party to arbitration shall be

¹ Act

² Contract



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heard by a sole arbitrator or an arbitration panel composed of three arbitrators, in accordance with the following provisions:

- (a) Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to the President, Indian Roads Congress, New Delhi, for a list of not fewer than five nominees and, on receipt of such list, the Parties shall alternately strike names therefrom, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within sixty (60) days of the date of the list, the president, Indian Roads Congress, New Delhi, shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute.
- (b) Where the Parties do not agree that the dispute concerns a technical matter, the Client and the Consultants shall each appoint one arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the later of the two arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by Secretary, the Indian Council of Arbitration, New Delhi.
- (c) If, in a dispute subject to Clause SC 9.2.1 (b), one Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to the Secretary, Indian Council of Arbitration, New Delhi, to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute.

9.2.2 Rules of Procedure

Arbitration proceedings shall be conducted in accordance with procedures of the Arbitration & Conciliation Act, 1996, of India, unless the Consultant is a foreign national/firm, where arbitration proceedings shall be conducted in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in force on the date of this Contract.

9.2.3 Substitute Arbitrators

If for any reason an arbitrator is unable to perform his function, a substitute shall be appointed in the same manner as the original arbitrator.



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9.2.4 Qualifications of Arbitrators

The sole arbitrator or the third arbitrator appointed pursuant to paragraphs (a) through (c) of Clause 8.2.1 hereof shall be an internationally recognized legal or technical expert with extensive experience in relation to the matter in dispute.

9.2.5 Miscellaneous

In any arbitration proceeding hereunder:

- (a) Proceedings shall, unless otherwise agreed by the Parties, be held in DELHI
- (b) the English language shall be the official language for all purposes; and [Note: English language may be changed to any other Language, with the agreement of both the Parties.]
- (c) the decision of the sole arbitrator or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent-jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.
- (d) The maximum amount payable per Arbitrator in Arbitration clauses shall be as under:

| S.N. | Particulars | Maximum amount payable per Arbitrator/ per case |
|------|---|--|
| 1. | Arbitrator fee | Rs 8,000/- per day subject to a maximum of Rs 2 lacs or Rs 1.5 lacs (lump sum) subject to publishing the award within 12 months. |
| 2. | Reading Charges | Rs 6,000/- |
| 3. | Secretarial Assistance | Rs 5,000/- |
| 4. | Incidental charges (telephone, fax, postage etc) | Rs 6,000/- |
| 5. | Charges of publishing/ declaration of award | Maximum of Rs 10,000/- |
| 6. | Other expenses (actual against bills subject to the prescribed ceiling) | Maximum Coiling |
| | Travelling and Boarding | Economy class (by air), First class AC (by train) and AC Car (by road) |
| | Lodging and Boarding | a) Rs 10,000/- per day (in metro cities) b) Rs 5,000/- per day (in other cities) |



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| | | |
|----|---|--|
| | | c) Rs 2,000/- per day if any Arbitrator makes their own arrangement. |
| 7. | Local travel | Rs 10,000/- per day |
| 8. | Extra charges for days other than hearing/meeting days (maximum for 2 days) | Rs 2,500/- per day |

In exceptional cases, such as cases involving major legal implications/ wider ramifications/ higher financial stakes etc., a special fee structure could be fixed in consultation with the Contractor/ Supervision Consultants and with the specific approval of the CF(NH) and MORT&H before appointment of the Arbitrator.

3. The material on record indicates that the statutory requirement under Section 21 of the Act for invocation of the aforesaid Arbitration clause stands duly complied with *vide* Legal Notice dated 20.03.2023 issued by the Petitioner.

4. Learned counsel for the Respondents submit that the Reply to the present Petition has been filed; however, the same has been returned under objections. A copy of the Reply has been handed over across the bar. The Registry is directed to take the said Reply on record.

5. Mr. Ray, learned CGSC, appearing on behalf of the Respondents, raises preliminary objections to the present Petition. He, at the outset, submits that though the clause provides for the venue of the arbitration to be at Delhi, the Contract, however, itself came to be entered into as between the parties in Bihar. Furthermore, the stamp paper that was purchased for the purpose of the Contract was also purchased in Bihar.

6. He submits that the scope of the work and the performance thereof is all in the State of Bihar, and no part of the cause arose in Delhi. He, therefore, submits that Bihar would have the jurisdiction



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over any proceedings relating to the arbitration and not Delhi.

7. Learned counsel appearing on behalf of the Respondents also raises an objection with respect to the limitation. He submits that the claims that have been raised herein are barred by limitation.

8. *Per contra*, learned counsel appearing on behalf of the Petitioner would submit that the Hon'ble Supreme Court in the Judgment of *BGS SGS Soma JV v. NHPC*³ has clearly held that if the arbitration agreement provides for a venue for arbitration and there is no contrary indicia in the Agreement, the venue is to be treated as the seat. He further submits that in light of the Hon'ble Supreme Court's Judgment in *SBI General Insurance Co. Ltd. v. Krish Spinning*⁴ the exception that was provided for in *Vidya Drolia & Ors. v. Durga Trading Corporation*⁵ with respect to the consideration of issues pertaining to limitation also no longer subsist and therefore, the present matter should be referred to an Arbitrator and the seat of the present proceeding should be held in Delhi.

9. This Court has heard the submissions of learned counsel appearing on behalf of the parties and with their able assistance had the benefit of going through the relevant clauses and the judgments.

10. This Court is of the opinion that the assertions made on behalf of learned counsel appearing on behalf of the Petitioner would have to be accepted since indeed the judgment of the Hon'ble Supreme Court in *BGS SGS Soma JV* (supra) holds that in the event that there is no contrary indicia in the agreement then the venue will have to be treated as the seat and therefore, the present petition is clearly

³ (2020) 4 SCC 234

⁴ (2024) 12 SCC 1

⁵ (2021) 2 SCC 1



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maintainable in Delhi. Relevant para of *BGS SGS Soma JV* (supra) is reproduced hereunder:

“61. It will thus be seen that wherever there is an express designation of a “venue”, and no designation of any alternative place as the “seat”, combined with a supranational body of rules governing the arbitration, and no other significant contrary indicia, the inexorable conclusion is that the stated venue is actually the juridical seat of the arbitral proceeding.”

11. Furthermore, as rightly contended by learned counsel appearing on behalf of the Petitioner in light of the judgment of the Hon’ble Supreme Court in *Krish Spinning* (supra), issues relating to limitation can be taken up and adjudicated upon by the learned Arbitrator.

12. The legal position governing the scope and standard of judicial scrutiny under Section 11(6) of the Act is no longer *res integra*. A three-Judge Bench of the Hon’ble Supreme Court in *Krish Spinning* (supra), after taking into consideration the authoritative pronouncement of the seven-Judge Bench in *Interplay Between Arbitration Agreements under Arbitration Act, 1996 & Stamp Act, 1899, In re*⁶, comprehensively delineated the contours of judicial intervention at the stage of Section 11 of the Act. The excerpt of *Krish Spg* (supra) reads as under:-

“(c) *Judicial interference under the 1996 Act*

110. The parties have been conferred with the power to decide and agree on the procedure to be adopted for appointing arbitrators. In cases where the agreed upon procedure fails, the courts have been vested with the power to appoint arbitrators upon the request of a party, to resolve the deadlock between the parties in appointing the arbitrators.

111. Section 11 of the 1996 Act is provided to give effect to the mutual intention of the parties to settle their disputes by arbitration in situations where the parties fail to appoint an arbitrator(s). The

⁶ (2024) 6 SCC 1



parameters of judicial review laid down for Section 8 differ from those prescribed for Section 11. The view taken in **SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618** and affirmed in **Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1** that Sections 8 and 11, respectively, of the 1996 Act are complementary in nature was legislatively overruled by the introduction of Section 11(6-A) in 2015. Thus, although both these provisions intend to compel parties to abide by their mutual intention to arbitrate, yet the scope of powers conferred upon the courts under both the sections are different.

112. The difference between Sections 8 and 11, respectively, of the 1996 Act is also evident from the scope of these provisions. Some of these differences are:

112.1. While Section 8 empowers any “judicial authority” to refer the parties to arbitration, under Section 11, the power to refer has been exclusively conferred upon the High Court and the Supreme Court.

112.2. Under Section 37, an appeal lies against the refusal of the judicial authority to refer the parties to arbitration, whereas no such provision for appeal exists for a refusal under Section 11.

112.3. The standard of scrutiny provided under Section 8 is that of prima facie examination of the validity and existence of an arbitration agreement. Whereas, the standard of scrutiny under Section 11 is confined to the examination of the existence of the arbitration agreement.

112.4. During the pendency of an application under Section 8, arbitration may commence or continue and an award can be passed. On the other hand, under Section 11, once there is failure on the part of the parties in appointing the arbitrator as per the agreed procedure and an application is preferred, no arbitration proceedings can commence or continue.

113. The scope of examination under Section 11(6-A) is confined to the existence of an arbitration agreement on the basis of Section 7. The examination of validity of the arbitration agreement is also limited to the requirement of formal validity such as the requirement that the agreement should be in writing.

114. The use of the term “examination” under Section 11(6-A) as distinguished from the use of the term “rule” under Section 16 implies that the scope of enquiry under Section 11(6-A) is limited to a prima facie scrutiny of the existence of the arbitration agreement, and does not include a contested or laborious enquiry, which is left for the Arbitral Tribunal to “rule” under Section 16. The prima facie view on existence of the arbitration agreement taken by the Referral Court does not bind either the Arbitral Tribunal or the Court enforcing the arbitral award.

115. The aforesaid approach serves a twofold purpose — firstly, it allows the Referral Court to weed out non-existent arbitration



agreements, and secondly, it protects the jurisdictional competence of the Arbitral Tribunal to rule on the issue of existence of the arbitration agreement in depth.

117. In view of the observations made by this Court in *Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re, (2024) 6 SCC 1*, it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in *Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1* and adopted in *NTPC Ltd. v. SPML Infra Ltd., (2023) 9 SCC 385* that the jurisdiction of the Referral Court when dealing with the issue of “accord and satisfaction” under Section 11 extends to weeding out ex facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in *Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re, (2024) 6 SCC 1*.

119. The question of “accord and satisfaction”, being a mixed question of law and fact, comes within the exclusive jurisdiction of the Arbitral Tribunal, if not otherwise agreed upon between the parties. Thus, the negative effect of competence-competence would require that the matter falling within the exclusive domain of the Arbitral Tribunal, should not be looked into by the Referral Court, even for a prima facie determination, before the Arbitral Tribunal first has had the opportunity of looking into it.

120. By referring disputes to arbitration and appointing an arbitrator by exercise of the powers under Section 11, the Referral Court upholds and gives effect to the original understanding of the contracting parties that the specified disputes shall be resolved by arbitration. Mere appointment of the Arbitral Tribunal does not in any way mean that the Referral Court is diluting the sanctity of “accord and satisfaction” or is allowing the claimant to walk back on its contractual undertaking. On the contrary, it ensures that the principle of arbitral autonomy is upheld and the legislative intent of minimum judicial interference in arbitral proceedings is given full effect. Once the Arbitral Tribunal is constituted, it is always open for the defendant to raise the issue of “accord and satisfaction” before it, and only after such an objection is rejected by the Arbitral Tribunal, that the claims raised by the claimant can be adjudicated.

121. Tests like the “eye of the needle” and “ex facie meritless”, although try to minimise the extent of judicial interference, yet they require the Referral Court to examine contested facts and appreciate prima facie evidence (however limited the scope of



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enquiry may be) and thus are not in conformity with the principles of modern arbitration which place arbitral autonomy and judicial non-interference on the highest pedestal.

122. Appointment of an Arbitral Tribunal at the stage of Section 11 petition also does not mean that the Referral Courts forego any scope of judicial review of the adjudication done by the Arbitral Tribunal. The 1996 Act clearly vests the national courts with the power of subsequent review by which the award passed by an arbitrator may be subjected to challenge by any of the parties to the arbitration.

126. The power available to the Referral Courts has to be construed in the light of the fact that no right to appeal is available against any order passed by the Referral Court under Section 11 for either appointing or refusing to appoint an arbitrator. Thus, by delving into the domain of the Arbitral Tribunal at the nascent stage of Section 11, the Referral Courts also run the risk of leaving the claimant in a situation wherein it does not have any forum to approach for the adjudication of its claims, if its Section 11 application is rejected.

127. Section 11 also envisages a time-bound and expeditious disposal of the application for appointment of arbitrator. One of the reasons for this is also the fact that unlike Section 8, once an application under Section 11 is filed, arbitration cannot commence until the Arbitral Tribunal is constituted by the Referral Court. This Court, on various occasions, has given directions to the High Courts for expeditious disposal of pending Section 11 applications. It has also directed the litigating parties to refrain from filing bulky pleadings in matters pertaining to Section 11. Seen thus, if the Referral Courts go into the details of issues pertaining to “accord and satisfaction” and the like, then it would become rather difficult to achieve the objective of expediency and simplification of pleadings.

128. We are also of the view that ex facie frivolity and dishonesty in litigation is an aspect which the Arbitral Tribunal is equally, if not more, capable to decide upon the appreciation of the evidence adduced by the parties. We say so because the Arbitral Tribunal has the benefit of going through all the relevant evidence and pleadings in much more detail than the Referral Court. If the Referral Court is able to see the frivolity in the litigation on the basis of bare minimum pleadings, then it would be incorrect to doubt that the Arbitral Tribunal would not be able to arrive at the same inference, most likely in the first few hearings itself, with the benefit of extensive pleadings and evidentiary material.”

(emphasis supplied)

13. The decision in *Krish Spinning* (supra) thus unequivocally



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reiterates that the Referral Court, while exercising jurisdiction under Section 11 of the Act, is required to confine itself to a *prima facie* examination of the existence of a valid Arbitration Agreement and nothing beyond. The Court's role is facilitative and procedural, *namely*, to give effect to the parties' agreed mechanism of dispute resolution, without embarking upon an adjudication of contentious factual or legal issues, which are reserved for the Arbitral Tribunal.

14. In view of the law as laid down by the Hon'ble Supreme Court in *Krish Spinning* (supra), the scope of this Court's jurisdiction under Section 11 of the Act is extremely circumscribed. All the contentions sought to be raised herein are matters that can appropriately be urged before the learned Arbitrator, who is legally empowered and competent to adjudicate upon the same.

15. In view thereof, this Court is of the view that the matter may be referred to arbitration by an Arbitrator for the purpose of the resolution of disputes between the parties.

16. Material on record indicates that the valuation of the subject matter of the disputes is stated to be approximately Rs. 2 crores.

17. Accordingly, this Court hereby requests **Mr. Shiv Ram, Advocate [Mobile No. 9818191670]**, to enter upon the reference and adjudicate the disputes *inter se* the parties.

18. The learned Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties the requisite disclosures as required under Section 12(2) of the Act.

19. The learned Arbitrator shall be entitled to a fee in accordance with the Fourth Schedule of the Act or as may otherwise be agreed to



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between the parties and the learned Arbitrator.

20. The parties shall share the learned Arbitrator's fee and arbitral costs equally.

21. All rights and contentions of the parties in relation to the claims/counter claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

22. Needless to state, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy.

23. Let the copy of the said order be sent to the learned Arbitrator through all permissible modes, including electronic mode as well.

24. Accordingly, the present Petition stands disposed of in the above-stated terms.

HARISH VAIDYANATHAN SHANKAR, J.
APRIL 10, 2026/tk/va