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

Date of decision:16.02.2026

\+ ARB.P. 45/2026

AKASH ARORA .....Petitioner

Through: Mr. Ashok Kumar Singh, Ms. Aanchal Bindal & Mr. Deepak Kumar, Advocates.

versus

KAMLESH DEVI SHARMA .....Respondent

Through: Mr. Rajesh Ranjan, Advocate.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

% JUDGEMENT (ORAL)

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition, filed under Section 11(5) of the **Arbitration and Conciliation Act, 1996**[1], seeks appointment of an Arbitrator for the purpose of resolution of disputes that are stated to have arisen *inter se* the parties arising out of the **Agreement dated 15.05.2012**, which was renewed every year on 17.05.2013, 20.05.2014 and 01.06.2015, and which was valid till 31.05.2016, after which the said Agreement was not renewed between the parties.

2. The present Petition has come to be filed as a result of the Petitioner withdrawing the **Civil Suit being CS (COMM.) 286/2022 titled *"Grand Chemical Works v. P.R. Enterprises"***[2] *vide* Order

[1] Act
[2] Civil Suit

dated 06.09.2025, passed by the **learned District Judge (Commercial Court) – 05, West District, Tis Hazari Courts, Delhi**[3]. The said Civil suit was filed by the Petitioner for the recovery of Rs. 5,02,937/- (Rupees Five Lakh Two Thousand Nine thirty seven only) along with *pendente lite* and future interest @ 24% p.a.

3. The recovery of the said amount is contended to be the subject matter in respect of which disputes have arisen and as a result thereof, the present Petition has been preferred.

4. Admittedly, the Respondent chose to raise a jurisdictional objection as to the maintainability of the said Civil Suit before the learned Commercial Court and to this effect, filed an application under Order VII Rule 11 of the Civil Procedure Code, 1908, for rejection of the plaint on the ground that an arbitration clause exists in the Agreement as between the parties and as a result thereof, a Civil suit was not maintainable.

5. In addition thereto, the Respondent herein had preferred an Application under Section 8 of the Act before the learned Commercial Court, contending that in view of the arbitration clause , the parties be referred to arbitration.

6. All the above stated Applications also came to be disposed of as a result of the suit itself being withdrawn by the Petitioner.

7. At the outset, learned counsel appearing on behalf of the Respondent submits that the present Petition is not maintainable, inasmuch as the Petitioner had earlier instituted a Civil Suit before the learned Commercial Court in disregard of the express arbitration clause in the Agreement. It is further contended that such conduct, in

[3] Commercial Court

effect, amounts to approbation and reprobation, as the Petitioner, having elected to pursue a Civil Suit despite the existence the arbitration clause and now, seeks to press into service the very same arbitration clause for the purpose of seeking relief in the present Petition.

8. Learned counsel for the Respondent further submits that the present Petition is not maintainable on the ground of being barred by limitation, since at the time of withdrawing of the suit no liberty was granted by the learned Commercial Court to prefer the present Petition and over three months and thirty days have elapsed since the cause of action arose.

9. Learned counsel for the Respondent, in support of the same, submits that the disputes between the parties arose as early as in the year 2021, and the Civil Suit came to be withdrawn only on 06.02.2025 and the present Petition has been preferred thereafter, therefore, the present Petition is clearly barred by limitation.

10. Learned counsel for the Respondent submits that the parties had earlier submitted themselves to Arbitration which commenced upon the reference of the disputes under the same Agreement by virtue of an Order dated 21.08.2023, passed by a Co-ordinate Bench of this Court. He submits that the disputes as raised therein have been adjudicated upon and a Petition under Section 34 of the Act, being OMP (COMM) 385/2025, in respect of the Arbitral Award dated 19.07.2025 passed therein, is pending before this Court.

11. Learned counsel for the Respondent further submits that the Petitioner, having not chosen to raise a counterclaim to the said Arbitral proceedings, cannot, by way of a fresh referral to arbitration,

seek to have the disputes adjudicated upon.

12. Heard the learned counsel appearing on behalf of both parties at length.

13. Before adverting to the rival submissions, it is apposite to note that 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 ***SBI General Insurance Co. Ltd. v. Krish Spinning***[4], 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***[5], comprehensively delineated the contours of judicial intervention at the stage of Section 11of 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 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.

[4] (2024) 12 SCC 1
[5] (2024) 6 SCC 1

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.

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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.**

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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 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.

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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)

14. The decision in ***Krish Spinning*** *(supra)* thus unequivocally reiterates that the Referral Court, while exercising jurisdiction under Section 11of the Act, is required to confine itself to a *prima facie* examination of the existence of an 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 when it has failed, without embarking upon an adjudication of contentious

factual or legal issues, which are reserved for the Arbitral Tribunal.

15. The Apex Court has further clarified that tests such as "*ex facie meritless*" or "*eye of the needle*", which necessitate an evaluation of contested facts or a preliminary appreciation of evidence, are inconsistent with the modern arbitration framework that accords primacy to arbitral autonomy and restricts judicial interference. Accordingly, while the Referral Court must ensure that a valid arbitration agreement *prima facie* exists, all substantive objections, including those relating to accord and satisfaction, limitation, or other jurisdictional issues, are to be raised before and decided by the Arbitral Tribunal in the first instance, subject thereafter to statutory remedies available under the Act.

16. Now, turning to the contentions as raised by the Respondent, as regards the contention that the Petitioner is barred by the principles of approbation and reprobation, this Court is of the view that the present Petition is not barred by principles of approbation and reprobation, since at the stage of Section 11 of the Act, such a ground does not fall for consideration by the Court.

17. Additionally, this Court is of the view that the Respondent itself had filed an Application under Order VII Rule 11 of the CPC and Section 8 of the Act, and it expressly sought that the matters be referred to Arbitration. The withdrawal of the suit and preferring the present Petition, in the Court's opinion is, therefore, maintainable.

18. With respect to the aspect of whether there was any liberty granted or not, the learned Commercial Court has recorded in clear terms "*The plaintiff shall be at liberty to pursue the available remedy as per law".* Therefore, the contention of the respondent insofar as

liberty to file the present petition is concerned does not inspire the confidence of this Court. The present petition has been filed pursuant to the liberty so granted and this Court is of the opinion that it is maintainable as per law.

19. Further, as regards to the contention whether the present Petition is barred by limitation, this Court is of the view that since, as discussed herein above, the scope of enquiry in a Petition under Section 11 of the Act is extremely constricted and whether or not the claims themselves are barred by limitation is a mixed question of law and facts that the learned Arbitrator can take a decision on. Prima facie, in view of the fact that Petitioner had earlier chosen to suit and thereafter withdrew the same, he is entitled to the benefit of Section 14 of the Limitation Act.

20. It is trite law that a counterclaim is in the nature of a separate suit altogether and since the present Petition is preferred for the purpose of seeking reliefs which would essentially have been in the nature of counter claim in the first Arbitration, the Petitioner is neither stopped nor precluded nor barred from filing the present petition.

21. The material on record indicates that the parties entered into an Agreement dated 15.05.2012 and Clause 12 of the Agreement envisages the Arbitration Clause. The same is reproduced herein under for ready reference:

> "12. Any and all disputes, controversies, differences, termination arising between the parties hereto out of or in relation to this agreement or any breach thereof shall be finally settled by arbitrator appointed by each party."

22. In view of the fact that disputes have arisen *inter se* the parties and there being an arbitration clause stipulated in the Agreement, there

is no impediment in appointing the sole Arbitrator.

23. Material on record further indicates that the valuation of the present dispute is stated to be approximately Rs. 5 lakhs.

24. Accordingly, **Mr. Shyam Sharma, Advocate (Mobile No. 9810153965)**, is appointed as the Arbitrator to adjudicate the disputes *inter se* the parties.

25. 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.

26. The learned Arbitrator shall be entitled to fee in accordance with the Fourth Schedule of the Act or as may otherwise be agreed to between the parties and the learned Arbitrator.

27. The parties shall share the learned Arbitrator's fee and arbitral cost, equally.

28. 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.

29. Needless to state, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy. All rights and contentions of the parties in this regard are reserved.

30. Let the copy of the said order be sent to the learned Arbitrator through the electronic mode as well.

31. Accordingly, the present Petition along with pending application(s), if any, stands disposed of in the above-stated terms.

HARISH VAIDYANATHAN SHANKAR, J.

FEBRUARY 16, 2026/tk/va/dj