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

% ***Judgment reserved on: 22.01.2026***
Judgment pronounced on:17.02.2026

\+ ARB.P. 1125/2025 & I.A. 1796/2026 (Delay of 3 Days in filing the rejoinder)

VIJAY JAIN & ORS. .....Petitioners

Through: Mr. Jayant Mehta, Senior Advocate with Mr. Ashish Verma, Mr. Saksham Thareja, Mr. Akhil Ranganathan and Mr. Pallav Arora, Advocates.

versus

LAXMI FOILS PVT. LTD. .....Respondent

Through: Ms. Malvika Trivedi, Senior Advocate along with Mr. Sanyam Khetarpal and Ms. Lisa Sankrit, Advocates.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition, under Section 11(6) of the **Arbitration and Conciliation Act, 1996**[1], has been filed seeking the appointment of a sole Arbitrator for the purpose of adjudication of disputes stated

[1] Act

to have arisen between the parties in relation to the **Facilities Agreement dated 21.02.2022**[2].

2. As stated in the Petition, in or around March 2022, the Respondent Company was engaged in the business of manufacturing and trading aluminium hot rolled products, aluminium cold rolled products and aluminium sheets, foils, etc. under the shareholding of the Petitioners herein. It is further stated in the Petition that the Petitioners had, from time to time, granted credit facilities/unsecured loans for the purpose of the Respondent Company's capital expenditure and general corporate expenses.

3. Thereafter, it is stated in the Petition that one OFB Tech Pvt. Ltd. *vide* **Memorandum of Understanding dated 25.11.2021**[3] agreed to purchase 100% equity of the Respondent Company. The said MoU thereafter fructified into a **Tripartite Share Purchase Agreement dated 03.02.2022**[4]**,** which was entered into between the Petitioners, Respondent and one OMAT Business Pvt. Ltd., which is the fully-owned subsidiary of OFB Tech Pvt. Ltd.

4. Consequently, in order to discharge the liabilities of the Respondent Company under the credit facilities/unsecured loans granted by the Petitioners, OFB Tech Pvt. drafted and shared a Facilities Agreement *vide* email dated 07.02.2022.

5. It is further stated in the Petition that there were other lenders as well that had granted unsecured loans to the Respondent Company, and in view thereof, two Facilities Agreements were drafted by OFB Tech Pvt. Ltd., being "Project Laxmi-USL (Shareholders as Lenders)"

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[2] Agreement
[3] MoU
[4] Share purchase agreement

and "Project Laxmi-USL (Non-shareholders as Lenders)".

6. It is stated that the Facilities Agreement in the present case, being Project Laxmi-USL (Shareholders as Lenders), was duly executed by the Petitioners and delivered to the Respondent and to its parent company, OFB Tech Pvt. Ltd., on 21.02.2022.

7. It is stated in the Petition that the Agreement envisaged the Arbitration Clause being Clause 7.7, which reads as under:

> "**7.7 Arbitration**
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> 7.7.1. If any dispute arises amongst the Parties in relation to or in connection with this Agreement (including in respect of the validity, interpretation, implementation or alleged breach of any provision of this Agreement) (a "**Dispute**"), the Parties shall attempt to resolve such Dispute amicably through discussions amongst the senior executives of the Parties.
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> 7.7.2. Arbitration. In the case of failure by the Parties to resolve the Dispute in the manner set out in Clause 7.7.1 above within 30 (thirty) days from the date when the Dispute arise, the Dispute shall be finally settled by arbitration in accordance with the Arbitration and Conciliation Act, 1996. All arbitration proceedings shall be conducted in the English language. The seat and venue of arbitration will be Delhi.
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> 7.7.3. Each Party shall appoint 1 (one) arbitrator each, and the 3rd (third) arbitrator shall be appointed by the 2 (two) arbitrators so appointed (the "**Arbitration Tribunal**").
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> 7.7.4. Enforcement. The arbitral award(s) rendered by the Arbitration Tribunal shall be made in writing and shall be final and binding upon the Parties and shall set out the reasons for the Arbitration Tribunal's decision."

8. It is further stated that upon the culmination of the Facilities Agreement, a total principal amount of Rs. 1,41,64,903/- came to be the amount repayable by the Respondent Company to the Petitioners.

9. Upon the failure of the Respondent Company to discharge its liability and repay the aforenoted amounts, the Petitioners issued legal

notices dated 20.07.2022 and 25.07.2022 demanding that the Respondent Company repay the credit facility amounts.

10. In reply, OMAT Business Pvt. Ltd. issued a legal notice to the Petitioners, which, as stated, sought to interlink the consideration to be paid under the Share Purchase Agreement and the demand raised by the Petitioners under the Facilities Agreements. It is also stated in the Petition that the demands, as raised by the Petitioners in terms of the Share Purchase Agreement, are already the subject matter of arbitration.

11. Further, the Petitioners preferred a Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, before the learned **National Company Law Tribunal**[5], which came to be dismissed *vide* Order dated 05.07.2023 on the ground of there being pre-existing disputes.

12. Thereafter, the Petitioners sent a notice invoking arbitration under Section 21 of the Act on 25.02.2025; however, despite receipt thereof, the Respondent failed to act in accordance with the agreed procedure for appointment of an arbitrator, thereby necessitating the present Petition before this Court.

SUBMISSIONS ON BEHALF OF THE PARTIES:

13. At the outset, learned Senior Counsel, Ms. Malvika Trivedi, appearing on behalf of the Respondent, would state that there exists no valid Arbitration Clause, which would satisfy the requirement of an arbitration agreement under Section 7 of the Act.

14. She would further submit that a bare perusal of the pages where

[5] NCLT

the signatures have been affixed would make it clear that it is essentially an agreement which was signed by one of the beneficiaries for and on behalf of Laxmi Foils Private Limited, and resultantly, the said Agreement is vitiated and invalid.

15. She would contend that, in fact, the said Agreement, and as is evidenced by the e-mail dated 07.02.2022, was only a draft and was not the final Agreement and had only been sent for the purpose of discussion and was never acted upon.

16. She would further rely upon the Order passed by the learned NCLT dated 05.07.2023 and, in particular, Paragraphs 11, 17 & 18 thereof, to contend that the learned NCLT has also given a finding that there was, in fact, no debt owed by the said Laxmi Foils Private Limited to the lenders from the promoter group. The relevant portion of the Order dated 05.07.2023 reads as under:

> "**11.**…..On bare perusal of the Agreement (ibid), it is observed that the said Facility Agreement is un-dated. Therefore, it cannot be determined when this Facility Agreement was indeed executed by and between the parties herein.
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> **17.** From the aforesaid facts, events, and analysis, we observe that the alleged debt claimed by the Applicants is doubtful since (a) the Facility Agreement relied upon by the Applicants in support of their debt is un-dated, (b) as per the Provisional Balance Sheet of the Respondent as of 04.03.2022 (which has been signed and authenticated by the Applicant No. 1 and 6 themselves), the unsecured loan owed to the Directors and Shareholders of the Respondent Company is shown as 'Nil', (c) the new management of the respondent has reportedly paid an amount of Rs.7,96,88,812/-out of the total consideration of Rs.10,62,51,750/- to the all the shareholders and the debt of the Respondent is discharged in terms of Clause 6.5 of the Share Purchase Agreement dated 03.02.2022, and (d) the Respondent had shown cogent reasons, by bringing on record the Section 8 Demand Notices issued to it as the reason for non-payment of the balance amount of

Rs.2,65,62,937/-.

> **18.** Thus, in our considered view, Applicants No. 1-10 have failed to prove the existence of any debt that is crystallized or exists beyond any doubt. As regards the alleged debt claimed on behalf of non-shareholders/Applicants No. 11 to 14, it is noticed that their default amount is less than the minimum threshold amount of Rs. 1 Crore prescribed under Section 4 of IBC 2016. Hence, we have no option but to reject the Application. The Application is accordingly dismissed."

17. Learned Senior Counsel for the Respondent would also submit that the present Petition, and disputes, if any, that they pertain to, could always be raised in the arbitration proceeding that is pending between the parties in respect of the Share Purchase Agreement.

18. Learned Senior Counsel for the Respondent would also rely upon the balance sheet, which is signed on 04.03.2022, to contend that, as on that date, there was absolutely no mention of the unsecured loans as sought to be raised by the Petitioners.

19. ***Per Contra,*** learned Senior Counsel appearing on behalf of the Petitioners would refer to the e-mail dated 07.02.2022 and the annexure thereof, which is titled as the "Facilities Agreement".

20. He would then contend that this annexure to the e-mail came to be signed by the parties therein, and the same contains an arbitration clause, which is Clause 7.7 of the said Agreement and resultantly, *prima-facie* there is an arbitration agreement that is in existence and in view of the judgement passed by the Hon'ble Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning***[6], this Court would have to necessarily refer the matter to arbitration.

21. Learned Senior Counsel for the Petitioners would also draw the

[6] (2024) 12 SCC 1

attention of this Court to the pages of the said Agreement wherein all the parties were listed in Schedule 1, where the lenders have signed, as also the relevant page where one Mr. Rajesh Jain has signed as Director of Laxmi Foils Private Limited.

ANALYSIS:

22. This Court has heard learned counsel for the parties at length and, with their able assistance, carefully perused the pleadings and the documents placed on record.

23. At the outset, 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 ***Krish Spg*** (*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***[7], 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***
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> **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.
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> **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 &***

[7] (2024) 6 SCC 1

***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.

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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."
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> ***(emphasis supplied)***

24. The decision in ***Krish Spg*** *(supra)* thus unequivocally reiterates that the Referral Court, while exercising jurisdiction under Section 11, 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.

25. 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.

26. Turning to the facts of the present case, learned Senior Counsel for the Respondent was repeatedly queried by this Court as to whether, on the date of execution of the alleged non-existent Agreement between the lenders or promoter groups and Mr. Rajesh Jain, purportedly acting on behalf of Laxmi Foils Private Limited, Mr. Jain was, in fact, a director of the said company.

27. As is evident from the pleadings and also from the reluctance on the part of the learned Senior Counsel for the Respondent to reply to the said query, it is apparent that, as on that date, Mr. Rajesh Jain was the director for Laxmi Foils Private Limited. In view thereof, this Court is of the opinion that it is established that *prima facie* there is an arbitration Agreement in existence.

28. Keeping in mind the judgment of the Hon'ble Supreme Court in ***Krish Spg*** *(supra)*, all other contentions raised by the Respondent can be raised before the learned Arbitral Tribunal and since at this stage, this Court's scrutiny is limited to examining the *prima facie* existence of an arbitration agreement there arises no occasion for this Court to dwell into any of the factual aspects that the learned Senior Counsel for the Respondent has sought to put across. All these issues are left open to be taken before the learned Arbitral Tribunal.

29. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the Agreement, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the parties.

30. It is stated that the disputed amount in the present case is approximately Rs. 1,41,64,903/-.

31. Accordingly, **Mr. <u>Harshit Agarwal, Advocate, (Mob. No.</u>**

9811026362), is appointed as a sole Arbitrator to adjudicate the disputes *inter se* the parties.

32. The learned sole 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 within a week of entering the reference.

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

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

35. All rights and contentions of the parties are kept open, to be decided by the learned sole Arbitrator on their merits, in accordance with law.

36. 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.

37. The Registry is directed to send a receipt of this order to the learned Arbitrator through all permissible modes, including through e-mail.

38. Accordingly, the present Petition, along with pending application(s), is disposed of in the aforesaid terms.

39. No order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.

FEBRUARY 17, 2026/tk/va