



2026:DHC:49



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of decision: 19.01.2026**

+ ARB.P. 964/2025

KONE ELEVATOR INDIA PVT. LTD. ....Petitioner

Through: Mr. Kunal Kher and Mr. Manuj  
Gautam, Advocates.

versus

V3S INFRATECH LIMITED ....Respondent

Through: Mr. Sudhir Nandrajog, Senior  
Advocate with Mr. Praveen  
Kumar Singh, Mr. Sujit Kumar  
Singh, Md. Ziauddin Ahmad,  
Mr. Abhishek Mehra and Ms.  
Ankita Singh, Advocates.**CORAM:  
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN  
SHANKAR**% **JUDGEMENT (ORAL)**

1. The present petition, under Section 11(6) of the Arbitration and Conciliation Act, 1996 ["Act"], seeks the appointment of an Arbitrator on the basis of an Agreement bearing reference No. KEI/0050/0001488193 dated 13.02.2012 ["Agreement"] and the alleged Arbitration Clause, *namely*, Clause A-5 of the said Agreement, which reads as under:

"A-5) Arbitration

In the event of difference or dispute arising out of, under or in connection with this agreement, over the rights of obligation of parties hereto, the dispute or difference shall be referred to the Arbitration of a Sole Arbitrator to be appointed by KONE Elevator India Private Limited. The Venue of the Arbitration (*sic*) shall be at Delhi shall have the jurisdiction in relation to the Arbitration and the Provisions of the Arbitration and Conciliation Act, 1996 shall be applicable to such Arbitration."



2026:DHC:49



2. However, as is manifest from the record and as is also admitted by the learned counsel for the Petitioner that, the parties thereafter entered into another Agreement in form of a work order dated 15.02.2012 [**“Work Order”**], and on which basis they have agreed to govern the relationship between the parties.

3. Learned counsel for the Petitioner submits that the terms of the Agreement dated 13.02.2012, would have to be read along with Clauses 17 and 25 of the Work Order [*Annexure P-1 of the Petition*] which, though dated 12.02.2012, is admittedly dated 15.02.2012. The relevant clause of the said Work Order is herein under:

“17. It is agreed that in case of any dispute, discussion or any matter relating to the Project, the sub-contractor shall ensure that the work on the project does not suffer in any manner, and the item of dispute shall be resolved by the two parties separately in an amicable manner. For any kind of dispute, shall be dealt with arbitration clause of India, which shall be held at New Delhi.

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25. Your Final Agreement KEI/0050/0001488193 Final Agreement dated 13.02.2012 (containing nineteen pages) is also forms part of the material which should be matched with our T&C.”

4. **Per contra**, learned counsel for the Respondent submits that as on the instant date there is no Agreement dated 13.02.2012 since the same was only an offer inviting tender and not an Agreement. Further, the Work Order which is wrongly dated 12.02.2012 and which is actually dated 15.02.2012, is the actual agreement between the parties. It is therefore submitted by the learned counsel for the Respondent that the relevant Arbitration Clause is Clause 17 of the Work Order and not Clause A-5 of the Agreement dated 13.02.2012 since the same was merely an offer.

5. This Court has heard the parties and perused the record carefully.



2026:DHC:49



6. This Court is of the opinion that it is indeed a valid objection of the Respondent, that the Agreement referred to and the Arbitration Clause relied upon by the Petitioner in the present petition is clearly incorrect and as a result thereof the present petition is liable to be dismissed.

7. Learned counsel for the Petitioner also submits that this is a case of novation of Agreement and therefore will be governed by paragraph no. 85 of the judgment of the Hon'ble Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning***<sup>1</sup>. The relevant paragraph of the Judgement is reproduced hereinbelow for reference:

“85. This Court further held that the Referral Court, while exercising its powers under Sections 8 and 11, respectively, of the 1996 Act could exercise its powers to screen and knock down ex facie meritless, frivolous and dishonest litigation so as to ensure expeditious and efficient disposal at the referral stage: (*Vidya Drolia case* [***Vidya Drolia v. Durga Trading Corpn.***, (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] , SCC p. 119, para 148)

“148. Section 43(1) of the Arbitration Act states that the Limitation Act, 1963 shall apply to arbitrations as it applies to court proceedings. Sub-section (2) states that for the purposes of the Arbitration Act and the Limitation Act, arbitration shall be deemed to have commenced on the date referred to in Section 21. *Limitation law is procedural and normally disputes, being factual, would be for the arbitrator to decide guided by the facts found and the law applicable. The court at the referral stage can interfere only when it is manifest that the claims are ex facie time-barred and dead, or there is no subsisting dispute. All other cases should be referred to the Arbitral Tribunal for decision on merits. Similar would be the position in case of disputed “no-claim certificate” or defence on the plea of novation and “accord and satisfaction”.* As observed in *Premium Nafta Products* [*Fili Shipping Co. Ltd. v. Premium Nafta Products Ltd.*, 2007 Bus LR 1719 : 2007 UKHL 40 (HL)] , *it is not to be expected that commercial men while entering transactions inter se would knowingly create a system which would require that the court should first decide whether the contract should*

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<sup>1</sup> (2024) 12 SCC 1.



2026:DHC:49



*be rectified or avoided or rescinded, as the case may be, and then if the contract is held to be valid, it would require the arbitrator to resolve the issues that have arisen.””*

8. Learned counsel for the Petitioner, by this contention, seeks to refute the contention of the Respondent and the understanding, as between the parties, that the so-called “Final Agreement” dated 13.02.2012 was only a quotation, subsequent to which the parties also entered into negotiations, and therefore, the same could not have amounted to be an expression of the final terms and conditions as between the parties.

9. This Court is of the view and as is manifest from the record, the wrongly dated communication i.e., the Work Order, is the final Agreement and is enforceable between the parties.

10. In view of the same, the argument that the Work Order would constitute a novation of the earlier Agreement as between the parties holds no water and is thereby rejected.

11. Resultantly, this Court is of the opinion that the Petitioner in the present Petition has not invoked the Arbitration Clause in terms of the only effective Agreement i.e., the Work Order dated 15.12.2012 (wrongly dated 12.12.2012) and as a consequence thereof, the present petition is misconceived, and accordingly, stands dismissed.

12. The present petition, along with pending application(s), if any, is disposed of in above-mentioned terms.

**HARISH VAIDYANATHAN SHANKAR, J.**  
**JANUARY 19, 2026/nd/kr/dj**