$~1

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

***Date of Decision : 21.04.2026***

\+ ARB.P. 927/2025, I.A. 15647/2025 (Delay of 2 days in Re-filing the petition), I.A. 9361/2026 (Seeking permission to place on record the additional documents), I.A. 9362/2026 (Seeking exemption from filing original and typed copy of documents) & I.A. 9363/2026 (Delay of 38 days in Re-filing the application)

TATA CAPITAL HOUSING FINANCE LIMITED ...Petitioner

Through: Mr. Armaan Roop Sharma and Ms. Shelly Khanna, Advocates.

versus

ANUJ GARG AND ORS. .....Respondents

Through: Mr. Nitesh Jain and Mr. Nishant Bhargava, Advocates for R-3.
Ms. Ritika Gaur, Advocate for R-4.

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

**%** **JUDGEMENT (ORAL)**

1. The present Petition has been filed under Section 11 of the **Arbitration and Conciliation Act, 1996**[1], seeking the appointment of a Sole Arbitrator from the panel of Arbitrators of **Delhi International Arbitration Centre**[2] to adjudicate the disputes *inter se* the parties in terms of Clause 12.11 of the **Home Loan Agreements dated**

[1] A&C Act
[2] DIAC

**27.02.2017**[3] executed between the parties.

2. The Dispute Resolution Clause, being Clause 12.11 of the Agreements, reads as under:

> **"12.11 Dispute Resolution**
>
> a) If any dispute, difference or claim arises between the parties hereto in connection with this Agreement or the Security hereof or the validity, interpretation, implementation or alleged breach of this Agreement or anything done or omitted to be done pursuant to this Agreement or otherwise in relation to the Security hereof, the parties shall attempt in the first instance to resolve the same through negotiation/ conciliation. If the dispute is not resolved through negotiation/ conciliation within thirty days after commencement of discussions or such longer period as the parties agree to in writing, then the same shall be settled by arbitration to be held at Chennai/Delhi/Mumbai in accordance with the Arbitration and Conciliation Act 1996, or any statutory amendments thereof and shall be referred to a person to be appointed by TCHFL. In the event of death, refusal, neglect, inability, or incapacity of the person so appointed to act as an Arbitrator, TCHFL may appoint a new arbitrator. The award of the arbitrator shall be final and binding on all parties concerned.
>
> b) Notwithstanding anything contained hereinabove, in the event due to any change in the legal status of TCHFL or due to any change or amendment in law or notification being issued by the Central Government or otherwise, TCHFL comes under the purview of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act") or the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (the "DRT Act"), which enables TCHFL to enforce the security under the SARFAESI Act or proceed to recover dues from the Borrower under the SARFAESI Act and/or the DRT Act, the arbitration provisions hereinbefore contained shall, at the option of TCHFL, cease to have any effect and if arbitration proceedings are commenced but no award is made, then at the option of TCHFL such proceedings shall stand terminated and the mandate of the arbitrator shall come to an end from the date when such law or its change/amendment or the notification, becomes effective or the date when TCHFL exercises its option of terminating the mandate of arbitrator, as the case may be. Provided that neither a change in the legal status of TCHFL nor a change/amendment in law or issuance of notification as referred

[3] Agreements

> to in this sub paragraph above, will result in invalidating an existing award passed by an Arbitrator pursuant to the provisions of this Agreement.
>
> c) The Borrower's liability hereunder shall not be affected, terminated or prejudiced by the death, insolvency or any incapacity of the Borrower, but such liability shall continue in full force and effect and shall be binding on the Borrower's successors as provided in the title and as the case may be."

3. Material on record indicates that the Petitioner herein invoked arbitration in terms of Section 21 of the A&C Act *vide* legal notice issued on 26.08.2024.

4. This Court takes note of the fact that the Respondents stand served and in fact Order dated 07.04.2026 records that the Respondent No. 1 had no objection to the disputes being referred to arbitration. The matter was listed today only to ascertain whether the learned counsel for the Respondent No. 1 would also be appearing for Respondent No. 2.

5. Further, it is also noted that Respondent No. 2 is stated to be the mother of Respondent No. 1 and both are stated to be residing in the same premises.

6. Learned counsel appearing on behalf of the Petitioner also draws the attention of this Court to the fact that the Respondent No. 2 had, in fact, refused to accept service.

7. Learned counsel appearing on behalf of Respondent Nos. 3 & 4 submit that in view of the fact that their company is currently undergoing CIRP and IRP simultaneously, they would require to be deleted from the array of parties since a moratorium is under process.

8. This Court is of the view that with respect to Respondent Nos. 3 & 4, the aspect of their impleadment as a party to the present

proceedings can be considered by the learned Sole Arbitrator and the same can be adjudicated upon. The said contention can be raised before the learned Arbitrator who may consider the same in accordance with law.

9. Further, this Court is of the considered view that with respect to Respondent Nos. 1 & 2, learned counsel appearing on behalf of the Respondent No. 1 had already accorded consent on his behalf and since none appears on behalf of Respondent Nos. 1 or 2 today, and considering that Respondent No. 2 is the mother of Respondent No. 1 and stays at the same premises, there arises no real requirement for keeping the matter pending before the Court.

10. At this juncture, it is apposite to note that the legal position governing the scope and standard of judicial scrutiny under Section 11(6) of the A&C 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 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.

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

**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.

**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 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)**

11. The decision in ***Krish Spinning*** (supra) thus unequivocally reiterates that the Referral Court, while exercising jurisdiction under Section 11 of the A&C 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 when it has failed, without embarking upon an adjudication of contentious factual or legal issues, which are reserved for the Arbitral Tribunal.

12. 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 A&C 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.

13. At this stage, having considered the submissions advanced, the material placed on record and the consent accorded by the parties, this Court is of the view that the disputes between the parties warrant reference to arbitration, and that it would be appropriate to appoint a Sole Arbitrator for adjudication of the disputes *inter se* the parties.

14. Material on record indicates that the valuation of the subject matter of the disputes is stated to be approximately Rs. 1,75,00,000/-.

15. Accordingly, this Court hereby requests **Mr. K.C. Mittal, Advocate (Mobile No. 9312287025),** to enter upon the reference and adjudicate the disputes *inter se* the parties.

16. The arbitration would take place under the *aegis* of the DIAC and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

17. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the Act within a week of entering the reference.

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

19. 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.

20. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy between the parties.

21. Let a copy of this Order be transmitted to the DIAC for necessary information and action.

22. Accordingly, the present Petition, along with pending Application(s), if any, stands disposed of.

**HARISH VAIDYANATHAN SHANKAR, J.**

**APRIL 21, 2026/tk/kr/sg**