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

Date of Decision : 22.04.2026

\+ ARB.P. 1358/2025

M/S RUDRA INTERIORS PVT.LTD. .....Petitioner

Through: Mr. Bipin Kr. Prabhat, Mr. Ashok Kr. Verma, Mr. Kislaya Prabhat and Ms. Rinku Kumari, Advocates.

versus

HINDUSTAN PREFAB LIMITED & ANR.

.....Respondents

Through: Ms. Pratima N. Lakra, CGSC with Mr. Shailendra Kumar Mishra and Ms. Upanita Soumyadarshni, Advocates.
Mr. Varun Nischal and Ms. Urvi Johri Advs. for R-1 & 2 along with Mr. Mukesh, Legal in-charge HPL

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

% **JUDGEMENT (ORAL)**

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition has been filed by **M/S Rudra Interiors Pvt. Ltd.**[1] under Section 11 of the **Arbitration and Conciliation Act, 1996**[2], seeking the appointment of a Sole Arbitrator to adjudicate upon the disputes *inter se* the parties.

[1] Petitioner
[2] A&C Act

2. At the outset, it is noted that *vide* Order dated 09.12.2025, **National Disaster Response Force**[3] was impleaded as Respondent No. 2 to the present Petition.

3. Learned CGSC, Ms. Pratima N. Lakra, appearing for Respondent No. 2 submits that she has no objection to the disputes being referred to arbitration.

4. Learned counsel for **Hindustan Prefab Limited**[4] however, objects to the present Petition on the ground that the **Agreement dated 19.08.2020**[5], as entered into between the parties, prescribes a specific procedure, particularly articulated under Clause 26 of the **Special Conditions of Contract**[6] therein, non-compliance with which would disentitle reference of disputes to arbitration.

5. Learned counsels appearing on behalf of the Parties are *ad idem* that the Petitioner had initially approached the Project-In-charge of Respondent No.1 and communicated his grievances to him *vide* letter dated 21.11.2024, however the same came to be rejected by virtue of communication dated 19.12.2024.

6. Subsequent thereto, the Petitioner *vide* communication dated 21.12.2024 appealed against the abovesaid rejection by the Project-In-charge to the **CMD/ Chief Engineer of Respondent No.1**[7], who replied to the said communication on 01.01.2025 by contending as follows:

> "In this connection, I would like to draw your attention which respect to agreed clause no. 26 of SCC and Clause no.25 of GCC. As per clause, <u>you have filed an appeal before CMD/Chief Engineer against project in charge, HPL letter dated 21.11.2024. In</u>

[3] NDRF/Respondent No.2
[4] Respondent No.1
[5] Agreement
[6] SCC
[7] CMD

> this regard, it is informed you that, appeal is without any cogent reason/ground dissatisfaction to the decisions of Project in charge in respect of your claims.
> In view of above, your letter dated 21.12.2024, cannot be considered as appeal. Since no justification/reason has been given by you (M/s, Rudra Interiors Pvt. Ltd.), hence it may be appropriate for M/s Rudra Interiors Pvt. Ltd. to file a fresh appeal with all particulars in respect of each claim before the CMD for reconsideration"
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> ***(emphasis supplied)***

7. As is apparent from the aforesaid Reply, Respondent No.1 took the stand that the communication dated 21.12.2024, by the Petitioner to the CMD, cannot be construed as an appeal, inasmuch as it does not set out any elaborate reasons or grounds for preferring the same.

8. It is further noted that Respondent No.1 persisted with the abovesaid stand in subsequent communications and further indicated to the Petitioner that a fresh appeal was required to be filed.

9. It is noted that, in pursuance of the foregoing, the Petitioner addressed a further communication dated 14.02.2025 to the CMD seeking an opportunity to meet and explain the various issues and grievances; however, Respondent No.1, *vide* letter dated 12.03.2026, maintained its stand that the earlier communication did not constitute an appeal and that a fresh appeal was required to be filed.

10. In view of the above-said, the Petitioner, being left with no alternative, issued a **Notice dated 10.04.2025** [8] as per Section 21 of the A&C Act, invoking arbitration.

11. However, Respondent No. 1, in its reply dated 03.05.2025 to the said Notice, stated that the claims of the Petitioner were unmerited and unwarranted, reiterating the Petitioner's non-compliance with the procedure stipulated under Clause 26 of the SCC, and further asserting

[8] Notice

that the letter dated 21.12.2024 could not be treated as an appeal having no grounds articulated therein.

12. Thereafter, the Petitioner addressed a further communication dated 18.06.2025 seeking constitution of a **Dispute Redressal Committee**[9], being the appellate forum to consider the issues arising from the decision rendered by the CMD, in pursuance of Respondent No.1's communication dated 03.05.2025, whereby the allegations of the Petitioner were denied and it was asserted that, in terms of the Agreement as between the parties, a DRC was required to be constituted and approached for redressal of grievances prior to preferring an appeal before the CMD.

13. Respondent No. 1, *vide* reply dated 08.07.2025, responded to the Petitioner's communication dated 18.05.2025, reiterating its earlier stand.

14. During the course of arguments before this Court, learned counsel appearing for Respondent No. 1 asserted a similar line of submissions. Learned counsel for the Respondent No. 1 further asserts that appeal to the DRC is mandated by the Arbitration Clause and the Petitioner does not dispute the same, but has raised an objection to the constitution of the DRC and, therefore, the present Petition is not entertainable.

15. In the aforesaid factual background and in light of the assertions advanced by the parties, the present petition came to be filed before this Court.

ANALYSIS AND DECISION:

16. This Court has heard the learned counsels appearing on behalf

[9] DRC

of the Parties and, with their able assistance, perused the material placed on record.

17. At the outset, this Court deems it appropriate to reproduce the Dispute Resolution Clause being Clause 26, which reads as under:

> "**26. Settlement of Disputes and Arbitration :**
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> Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings, and instructions here-in before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall he dealt with as mentioned hereinafter.
>
> i) If the contractor considers any work demanded of him to he outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-Charge on any matter in connection with or arising out of the contract or carrying out of the work, to be acceptable, he shall promptly within 15 days request the Project-In-Charge., HPL give his written instructions or decisions within a period of one month from the receipt of the contractor's letter.
>
> If the Project In-Charge., HPL fails to give his instructions or decision in writing within the aforesaid period or if the contractors is dissatisfied with the instructions or decision of the Project In-Charge, HPL, the contractor may, within 15 days of the receipt of Project In-Charge HPL decision, appeal to the CMD, HPL who shall afford an opportunity to the contractor to be heard, if the latter so desires, and to offer evidence in support of his appeal. The CMD, HPL shall give his decision within 30 days of receipt of contractor's appeal. If the contractor is dissatisfied with this decision of the CMD, HPL, the contractor may within 30 days from the receipt of the CMD,HPL decision, appeal before the Dispute Resressal Committee(DRC) along with a list of disputes with amounts claimed in respect of each such dispute and giving reference to the rejection of his disputes by the CMD, HPL. The Dispute Redressal Committee (DRC) shall give his decision within a period of 90 days from the receipt of Contractor's appeal. The constitution of Dispute Redressal Committee (DRC) shall

be as indicated in Schedule 'F' and as may be extended from time to time by HPL. If the Dispute Redressal Committee (DRC) fails to give his decision within the aforesaid period or any party is dissatisfied with the decision of Dispute receipt of the decision of Dispute Redressal Committee (DRC), then either party may within a period of 30 days from the receipt of the decision of Dispute Redressal Committee (DRC) give notice to the CMD,HPL, in the prescribed format attached with SCC as Annexure-X HPL for appointment of arbitrator failing which the said decision shall be final binding and conclusive and not referable to adjudication by the arbitrator.

ii) Except where the decision has become final, binding and conclusive in terms of Sub Para(i) above disputes or difference shall be referred for adjudication through arbitration by a sole arbitrator appointed by the CMD,HPL on behalf of NDRF and with the consent of NDRF. If the arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever, another sole arbitrator shall be appointed in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the rejection by the CMD, HPL of the appeal.

It is also a term of this contract that no person other than a person appointed by such CMD, HPL on behalf NDRF & with the consent of NDRF, as aforesaid should act as arbitrator and if for any reason that is not possible, the matter shall not be referred to arbitration at all.

It is also a term of this contract that if the contractor does not make any demand for appointment of arbitrator in respect of any claims in writing a aforesaid within 120 days of receiving the intimation from the Engineer-in-charge that the final bill is ready for payment, the claim of the contractor shall be deemed to have been waived and absolutely barred and the Government shall be discharged and release of all liabilities under the contract in respect of these claims.

The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act. 1996 (26 of 1966) or any statutory modifications or re-enactment thereof

and the rules made there under and for the time being in force shall apply to the arbitration proceeding under this clause. (including the

> fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any by whom and in what manner, such costs or any part thereof shall be paid and fix or settle the amount of costs to be so paid.
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> It is also a term of this contract that the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claim by any party exceeds Rs. 1,00,000/- the arbitrator shall give reasons for the award.
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> It is also a term of the contract that if any fees are payable to the arbitrator, these shall be paid equally by both the parties.
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> It is also a term of the contract the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be New Delhi. The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties."

18. After the perusal of the afore-mentioned Clause, this Court expresses and records its dissatisfaction with the interpretation as sought to be placed by Respondent No. 1 on Clause 26 of the Agreement, by reading into it a requirement of furnishing detailed reasons and grounds at the stage of preferring an appeal against the decision of the Project-In-Charge.

19. It is unclear as to how Respondent No.1 has sought to read such a requirement into the Clause, and the entire course of subsequent correspondence, emanating from this inflexible stand, appears to be erroneous.

20. With respect to the contention that resort to an Appeal before the DRC is a mandatory requirement, this Court notes that a plain reading of the said Clause does not support the construction sought to be placed by Respondent No. 1. The Clause provides that an appeal to

the CMD from the decision of the Project-In-Charge "***may***" be preferred. Therefore, the interpretation sought to be advanced by Respondent No. 1 does not appear to be borne out from the Agreement. The relevant portion of the said Clause reads as follows:

> "……if the contractors is dissatisfied with the instructions or decision of the Project In-Charge, HPL, the contractor may, within 15 days of the receipt of Project In-Charge HPL decision, appeal to the CMD……"

21. The use of the expression "***may***", in the clause, indicates that recourse to the DRC is not mandatory; however, Respondent No.1 has maintained an obdurate stand by insisting upon requirements relating to details, particulars and reasons, as also other conditions not borne out from the Agreement, thereby constraining the Petitioner, who, being left with no alternative, has approached this Court under Section 11 of the A&C Act for appointment of an Arbitrator. In view of the same, the contention with respect to the Petitioner's alleged admission that an appeal was to be made to the DRC and the same not having been done, vitiates the present proceedings, is rendered academic.

22. This Court is of the considered view that the conduct of Respondent No.1 reflects a failure to adhere to the terms of the Agreement, of which it is itself the author, and constitutes an attempt to ascribe an interpretation that is manifestly onerous and contrary to the express terms.

23. Considering the foregoing, this Court is of the view that the objections, as raised by Respondent No. 1, are unmerited and, the disputes would require to be referred to arbitration.

24. 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***[10], 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***[11], comprehensively delineated the contours of judicial intervention at the stage of Section 11 of the A&C Act. The excerpt of ***Krish Spg*** (*supra*) reads as follows:

> "***(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.
> **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

[10] (2024) 12 SCC 1
[11] (2024) 6 SCC 1

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.
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> **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*)**

25. 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.

26. It is further noted that the Agreement, as between the parties, provides for a unilateral appointment of the Arbitrator by Respondent No.1; however, the same is impermissible in the view of the settled principles of law as held by the Hon'ble Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.***[12].

[12] 2019 SCC OnLine SC 1517

27. The material placed on record indicates that the valuation of the subject matter of the disputes is approximately Rs. 3.5 crore.

28. In view of the abovesaid, this Court deems it appropriate to appoint **Mr. V. K. Jain, (Retd.) (Former Judge of Delhi High Court), (**[redacted]**)** as the Sole arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

29. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the A&C Act within a period of one (01) week of entering the reference.

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

31. 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.

32. 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.

33. Accordingly, the present Petition, along with all pending Application(s), if any, is disposed of.

HARISH VAIDYANATHAN SHANKAR, J

APRIL 22, 2026/JYH/kr/sg