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

Date of decision: 25.03.2026

\+ ARB.P. 2125/2025

NUFLOWER FOODS AND NUTRITION PRIVATE LIMITED .....Petitioner

Through: Mr Anuj Berry, Mr. Sourabh Rath, Ms. Gauri Pasricha and Ms. Jayati Sinha, Advocates

versus

SONIC BIOCHEM EXTRACTIONS PVT LIMITED .....Respondent

Through: Ms. Preena Salgia Sethi, Advocate

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

% **JUDGEMENT (ORAL)**

I.A. 7990/2026 (Delay of 8 days in filing the reply)

1. The present application, under section 151 of the Civil Procedure, 1908, has been filed by the Respondent seeking the condonation of the delay of 08 days in filing the Reply to the present petition.

2. For the sufficient reasons stated in the application, the same is allowed. Let the Reply form part of the record.

3. The present application stands disposed of.

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4. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 ["**the Act**"], seeking the appointment of Sole Arbitrator to adjudicate the disputes between the parties in terms of Clause 16.4 of the Purchase Orders dated

18.08.2022 (bearing PO No. NFN/PO/22-23/0359-1), 30.08.2022 (bearing PO No. NFN/PO/22-23/0394) and 29.09.2022 (bearing PO No. NFN/PO/22- 23/0523) ["**POs**"].

5. The said POs contain an Arbitration Clause, being Article 16.4, which reads as under:

> **"16 Force Majeure**
> **xxxxx**
> **4. Arbitration** - Any dispute arising out of or in connection with this PO shall be settled by Arbitration in accordance with the Arbitration and Conciliation Act, 1996. The arbitration proceedings shall be conducted in English in New Delhi by the sole arbitrator appointed by the Buyer. The cost of arbitration shall be shared equally between the parties unless decided otherwise by the arbitrator."

6. The material on record indicates that the Petitioner herein invoked arbitration in terms of Section 21 of the Act *vide* legal notice dated 02.10.2025.

7. Ms. Preena Salgia Sethi, learned counsel for the Respondent enters appearance and raises an objection to the present Petition. She submits that, subsequent to the issuance of the POs, the goods were duly supplied, and such supplies were accompanied by certain tax invoices. It is her contention that the said tax invoices stipulate that any disputes arising therefrom would be subject to the jurisdiction of courts at Indore, Madhya Pradesh.

8. She further relies upon the Judgment dated 06.12.2022 passed by the High Court of Karnataka at Bengaluru in ***M/s CMS Computers Ltd v. M/s Info Technologies Pvt. Ltd***[1]**.,** particularly paragraphs 3, 4, and 5, which read as follows:

[1] Civil Revision Petition No. 320/2022

"**3.** The case of the petitioner is that as per the request of the petitioner, respondent has supplied the materials from Chennai to New Delhi and there was no transaction in Bangalore. It is further contended that the petitioner who is the defendant No. 1, is registered in Mumbai. It is also contended that as per the terms and conditions of the contract between the petitioner and respondent, in case of any dispute between them, the Courts in Mumbai alone has jurisdiction and that the trial Court erred in not appreciating the same. The attention of this Court is drawn towards towards the purchase order, which is filed along with the plaint. The purchase order is issued by the petitioner herein and in the said purchase order it is mentioned that the Courts in Mumbai shall have exclusive jurisdiction to decide any dispute between the parties. Further from the purchase order as well as the tax invoice filed along with the plaint, shows that the plaintiff is situated at Chennai and defendant No.1 is situated at Mumbai. However, the respondent submits that the purchase order is only an offer made by the petitioner and that was not the accepted in toto by the respondent and the respondent when supplied the goods to the petitioner issued the tax invoices which are also filed along with the plaint and it is subsequent to the purchase order issued by the petitioner and it clearly mentions that any dispute is subject to the jurisdiction of the Bangalore Courts. It is submitted that the same has been accepted by the petitioner and he has received the said goods and made the payments also in accordance with the said tax invoice issued by the respondent and what has been acted upon by the parties is as per the terms and conditions mentioned in the tax invoice and not the purchase order. For the said reason, the respondent prays that the Courts in Bangalore have territorial jurisdiction to deal with the case and justifies the order passed by the trial Court and prays for dismissal of the petition.

4. Admittedly, the petitioner has issued a purchase order requesting the respondent to supply certain commodities to it. The address in the said purchase order discloses that the petitioner is situated in Mumbai and respondent is situated at Chennai. The said purchase order also states that any dispute shall be subject to the Courts situated at Mumbai. However, reading of the plaint and the tax invoice produced along with the plaint discloses that the parties have not acted strictly in accordance with the purchase order and when the goods have been supplied, the tax invoice has been issued by the respondent herein, which alters some of the terms and conditions mentioned in the purchase order and one such condition is that the dispute being subject to the jurisdiction of Bangalore."

9. She further submits that a reading of the said paragraphs would

make it evident that, the subsequent issuance of tax invoices and which invoices confer jurisdiction upon a place other than the place mentioned in the prior document, i.e., the POs, would necessarily imply that it is the jurisdiction clause, which is set out in the subsequent documents, which would prevail.

10. This Court is of the view that the ratio of the judgment relied upon is to the effect that the subsequent invoice had materially altered some of terms and conditions of the POs as initially agreed between the parties. Furthermore, the High Court of Karnataka has also held that the purchase orders only constituted an offer and therefore, till such time the transaction was not effected, there was no acceptance, thereby leading to the conclusion that the invoices were the culmination of the agreement and represented the concluded Contract as agreed between the parties and in view of which, the jurisdiction clause as set out in the said invoices would be binding upon the parties. Since, in the present case, the facts are different insofar as there appears to be no material alteration or breach of the terms and conditions agreed between the parties and the tax invoice is only in furtherance of the carrying out of the terms and conditions of the POs, the jurisdiction clause contained in the POs would prevail.

11. In view of the aforesaid discussion, this Court is of the considered opinion that the jurisdiction clause contained in the POs shall prevail. Consequently, the objection raised by the Respondent with respect to territorial jurisdiction is liable to be rejected, and the jurisdiction of the arbitration shall be at New Delhi.

12. 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 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***[2], 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***[3], 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.
> **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.

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[2] (2024) 12 SCC 1
[3] (2024) 6 SCC 1

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.
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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)**

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

14. Material on record indicates that the valuation of the present dispute is stated to be approximately Rs. 70 Crores.

15. Learned counsel appearing for the Petitioner submits that the

matter may be referred to arbitration by Sole Arbitrator under the *aegis* of the Delhi International Arbitration Centre ["**DIAC**"].

16. Accordingly, this Court requests **Hon'ble Mr. Justice Madan B. Lokur, Former Judge of Hon'ble Supreme Court** [redacted] to enter into the reference and adjudicate the disputes as between the parties.

17. 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.

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

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

20. 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.

21. 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.

22. Accordingly, the present petition, along with all pending application(s), if any, is disposed of.

HARISH VAIDYANATHAN SHANKAR, J.

MARCH, 25, 2026/ rk/va