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

Date of Decision: 27.02.2026

\+ ARB.P. 1022/2025

M/S PAISALO DIGITAL LIMITED (FORMERLY KNOWN AS S. E. INVESTMENTS LIMITED) .....Petitioner

Through: Mr. Harshal Kumar, Advocate.

versus

M/S SUN CORP & ORS. .....Respondents

Through: Ms. Nidhi Mohan Parashar, Mr. Vikrant Kumar and Mr. Amar Bajpayee, Advocates.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

% **JUDGEMENT (ORAL)**

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition, filed under Section 11(6) of the **Arbitration and Conciliation Act, 1996**[1], seeks appointment of a Sole Arbitrator for the purpose of resolution of disputes that are stated to have arisen *inter se* the parties arising out of the Clause 20 as set out in **Hypothecation/Loan Agreement dated 02.03.2015**. The said clause reads as follows:

> "**20.** Any conflict, difference, controversies, or disputes arising between the parties, if not resolved mutually, shall be submitted/referred to the arbitration of the Sole Arbitrator. The notices like Demand Notice, Loan Recall - cum - Demand Notice and/or telephonic conversations/ mails shall be deemed to be sufficient proof for opportunity given to the Borrower and/ or Guarantor(s) for resolving the issues and efforts of Amicable

[1] Act

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Settlement made by the Company.
The Borrower and Guarantor (s) hereby agree and give their free consent to the Company i.e. SEIL to appoint *I* nominate any person/ professional as Sole Arbitrator without any prior consent or reference to them. Such rights of appointing an arbitrator are not questionable by the Borrower and /or the Guarantor (s). The notice for Appointment of Arbitrator and the Statement of Claims can be forwarded by the Company i.e. SEIL on the same day to the Arbitrator and the Borrower as well as the Guarantor(s) so as to facilitate early disposal of Arbitration proceedings.

The parties to this agreement agree for the following procedure regarding Arbitration Proceedings:-

a) The Statement of Claims will be forwarded by the Company i.e. SE IL along with all documents relied upon by the Company i.e. SEIL.

b) The Borrower and Guarantor (s) shall file their reply along with all the documents relied upon within 15 days of receiving of Statement of Claim or such other period as may specified by the Arbitrator.
c) The Company i.e. SEIL shall file rejoinder/ replication, if any, within 7 days or such other period as may be specified by the Arbitrator along with further documents. if required.

d) Sole Arbitrator will frame issues i.e. points of controversies between the parties.

e) Thereafter the Parties will file their Affidavit in Evidence in 7 Days along with further documents, if any.

f)Thereafter the parties will file their written submissions/arguments in 10 days.

g) If any party files any Application then the above proceedings will be followed without prejudice to their rights of that Application.

h) Hearing will be held on weekly basis or as the Sole Arbitrator think fit and proper.

i) The Arbitration Case would be decided on documentary evidence and Affidavits of parties and no verbal submissions shall be taken on record.

j) The Sole Arbitrator may decide the other procedural aspects and may change the above schedule if he/she thinks proper.

Any notice/ document pursuant hereto shall be deemed to be duly served if sent by Registered Post/ Speed Post at addresses as mentioned in this Agreement or to any changed address if such change has been notified by either party hereto and such notice

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shall be deemed to take effect on third working day following the date of posting thereof. The parties have agreed that documents and correspondence may be served by fax or email and it shall be considered sufficient proof of delivery of documents.

The Parties have also agreed that in case of multiple loan transactions in which all or any of the Borrower and Guarantor(s) are same or belong to same group or family then the Company i.e. SEIL at its sole discretion, may initiate single Arbitration Proceedings for multiple loan transactions and multiple or single statement of Claims may be filed by the Company i.e. SEIL.

The Arbitration shall be conducted in accordance with the provisions of Arbitration and Conciliation Act, 1996, Rules thereunder and any amendments thereto and the language of the Arbitration shall be English. The decision/ award of the Arbitrator shall be final/conclusive and binding on the parties. The parties have agreed that no reasons for the Award shall be stated by the Sole Arbitrator. The venue of Arbitration shall be at Delhi."

2. Learned counsel for the Petitioner submits that the Notice under Section 21 of the Act was sent on 06.05.2025.

3. Learned counsel appearing on behalf of the Respondents submits that there has been no valid invocation of the arbitration clause in accordance with Section 21 read with Section 11(4) of the Act. She further contends that the alleged earliar notice dated 09.09.2017 was issued only after the learned Arbitrator had entered upon the reference and, in any event, the receipt thereof is specifically denied by the Respondents.

4. Learned counsel further contends that the order dated 01.04.2025 does not confer any blanket permission upon the Petitioner to institute the present petition. It is submitted that since the cause of action had arisen as early as 25.02.2017, the notice dated 06.05.2025 issued under Section 21 of the Act, invoking arbitration, is *ex facie* barred by limitation. Consequently, it is urged that the present petition is liable to be dismissed as not maintainable.

5. This Court has perused the various documents, as well as the

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Orders passed by this Court. Particular attention is drawn to the decision dated 04.04.2024, in ***FAO (COMM) 33/2024***, passed by the learned Division Bench of this Court. The relevant paragraphs are extracted hereinbelow:

> "**14.** At this stage, the learned counsel for appellant submits that since the impugned award has also been set aside on the ground that the learned Sole Arbitrator was unilaterally appointed, the restoration of the respondent's petition would be a useless formality. He states that the appellant would take steps for appointment of the Arbitral Tribunal in accordance with law.
> **15.** It is also relevant to note that during the course of the arguments, the learned counsel for the appellant made a suggestion that a sole arbitrator be appointed by the consent of both the parties. However, the learned counsel for the respondents states, on instructions, that the respondents are not agreeable to do so in these proceedings and the appellant may file an appropriate application under Section 11 of the A&C Act. She also states that in the meanwhile, the respondents would attempt to resolve the disputes with the appellant, amicably.
> **16.** In view of the above, we dispose of the present appeal by leaving it open for the appellant to take appropriate steps for appointment of an arbitrator in accordance with law."

6. Subsequent to the passing of the aforesaid decision, the Petitioner filed a Petition, being *ARB.P 1862/2024*, under Section 11(6) of the Act, without issuing a notice under Section 21 of the Act. The said petition came to be disposed of by a learned Co-Ordinate Bench of this Court by order dated 01.04.2025, which reads as follows:

> "**1.** This petition has been preferred on behalf of the Petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('1996 Act').
> **2.** As per the averments in the petition, this is a second round of litigation between the parties. In the first round of litigation, Petitioner had invoked the arbitration clause pertaining to loan account No. LD3764. As per the Petitioner, Respondent No. 1 had approached the Petitioner Company for availing loan and after executing the requisite documents, loan of Rs.2,50,00,000/- was extended to Respondent No. 1 vide hypothecation/loan Agreement dated 02.03.2015 and Respondents No. 2 to 4 stood as guarantors.

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However when Respondent No. 1 failed to pay the outstanding dues, Petitioner invoked the arbitration agreement and the arbitral proceedings commenced. Arbitral award dated 10.07.2019 was challenged by the Respondents in OMP (COMM) No. 124/2019 before the learned Trial Court and the petition was allowed vide order dated 08.01.2024 on ground of unilateral appointment of the Arbitrator. In an appeal filed by the Petitioner being FAO (COMM) 33/2024, Petitioner took an objection to the jurisdiction of the Trial Court to entertain the objections under Section 34 of the 1996 Act. Division Bench vide order dated 04.04.2024 agreed with the contention of the Petitioner. Since the Petitioner also pointed out that the award had been set aside on ground of unilateral appointment of arbitrator, the Court granted permission to the Petitioner to take steps for appointment of an Arbitral Tribunal in accordance with law. Pursuant to the liberty granted, Petitioner has filed the present petition.

3. From the chronology of dates and events narrated in the petition, it is clear that after the order of the Division Bench, Petitioner has not issued a notice to the Respondents invoking arbitration under Section 21 of the 1996 Act. Division Bench had granted liberty to take steps for appointment of the Arbitral Tribunal in accordance with law, which the Petitioner construes to be a liberty to file the present petition without issuing a notice of invocation, which is impermissible in light of the provisions of Section 11 of the 1996 Act. In light of this, this petition is disposed of granting liberty to the Petitioner to invoke the arbitration clause in accordance with Section 21 of the 1996 Act read with Section 11(4) and thereafter approach the Court for appointment of the Arbitrator in case of failure of the Respondents to so appoint."

7. A reading of paragraph 3 of the aforesaid order makes it evident that this Court had clarified that the judgment of the learned Division Bench did not permit the Petitioner to institute a petition under Section 11 of the Act, without first issuing a notice invoking arbitration under Section 21 of the Act. The order clearly contemplates that, upon the Petitioner taking the requisite steps for invocation of arbitration, it would be open to the Petitioner to take further steps for seeking the appointment of an Arbitrator in accordance with law.

8. The issue relating to whether there was a valid invocation in the first instance or not is clearly not something which was raised in either

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of the proceedings earlier. This is a fresh objection which has been raised in the present proceedings. *Prima facie*, it appears that the objection is merely an attempt to avoid adjudication of the disputes between the parties.

9. As a matter of fact, this aspect does not even appear to have been raised before the learned Arbitral Tribunal.

10. Furthermore, this Court is of the opinion that, in proceedings under Section 11 of the Act, the scope of examination being extremely limited, the Court is only required to appoint an Arbitrator for the purpose of adjudication of the disputes between the parties.

11. 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 11of 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

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

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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

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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

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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."

(emphasis supplied)

12. The decision in ***Krish Spinning*** (supra) thus unequivocally

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reiterates that the Referral Court, while exercising jurisdiction under Section 11of the Act, 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.

13. Material on record indicates that the valuation of the present dispute is stated to be approximately Rs. 2,50,00,000/-.

14. Accordingly, [redacted], **(Mobile No.** [redacted] **and e-mail :** [redacted]**)**, is appointed as the Arbitrator to adjudicate the disputes *inter se* the parties.

15. The learned 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.

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

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

18. 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.

19. 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.

20. Let the copy of the said order be sent to the learned Arbitrator

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through the electronic mode as well.

21. Accordingly, the present Petition stands disposed of in the above-stated terms.

HARISH VAIDYANATHAN SHANKAR, J.

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