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

Date of decision: 29.04.2026

\+ ARB.P. 102/2026

SUBHASH CHANDER .....Petitioner

Through: Ms. Rajasree Ajay, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY, THROUGH EXECUTIVE ENGINEER .....Respondent

Through: Mr. Sanjay Vashishtha, Mr. Siddharth Goswami, Mr. Krish Bhatia and Mr . Aditya Sachdeva, Advocates.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

% **JUDGEMENT (ORAL)**

1. The present Petition, under Section 11 of the **Arbitration and Conciliation Act, 1996**[1], seeks the appointment of a Sole Arbitrator for adjudication of the disputes as are stated to have arisen *inter se* the parties in terms of Clause 25 of the **Agreement dated 10.12.2022**[2], as executed between the parties. The said clause reads as under:

> **"CLAUSE 25**
> Settlement of Disputes & Arbitration
> 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

[1] The Act
[2] Agreement

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rising 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 be dealt with as mentioned hereinafter:

i) If the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record, or decision given in writing by the Engineer-in-Charge or if the Engineer-in-Charge considers any act or decision of the contractor on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable and is disputed, such party shall promptly within 15 days of the arising of the disputes request the EM or where there is no who shall refer the disputes to Dispute Redressal Committee (DRC) within 15 days along with a list of disputes with amounts claimed if any in respect of each such dispute. The Dispute Redressal Committee (DRC) shall give the opposing party two weeks for a written response, and, give its decision within a period of 60 days extendable by 30 days by consent of both the parties from the receipt of reference from EM. The constitution of Dispute Redressal Committee (DRC) shall be as indicated in Schedule 'F'. Provided that no party shall be represented before the Dispute Redressal Committee by an advocate/legal counsel etc.

If the Dispute Redressal Committee (DRC) fails to give its decision within the aforesaid period or any party is dissatisfied with the decision of Dispute Redressal Committee (DRC) or expiry of time limit given above, 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 EM/DDA, in charge of the work or for appointment of arbitrator on, prescribed proforma as per Appendix XV under intimation to the other party.

It is a term of contract that each party invoking arbitration must exhaust the aforesaid mechanism of settlement of claims/disputes prior to invoking arbitration.

The EM/DDA shall in such case appoint the sole arbitrator or one of the three arbitrators as the case may be within 30 days of receipt of such a request and refer such disputes to arbitration. Wherever the Arbitral Tribunal consists of three Arbitrators, the contractor shall appoint one arbitrator within 30 days of making request for arbitration or of receipt of request by Engineer-in-charge to EM/DDA for appointment of arbitrator, as the case may be, and

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two appointed arbitrators shall appoint the third arbitrator who shall act as the Presiding Arbitrator. In the event of:

a. A party fails to appoint the second Arbitrator, or
b. The two appointed Arbitrators fail to appoint the Presiding Arbitrator, then EM shall appoint the second or Presiding Arbitrator as the case may be.

ii) Disputes or difference shall be referred for adjudication through arbitration by a Tribunal having sole arbitrator where Tendered amount is Rs. 100 Crore or less. Where Tendered Value is more than Rs. 100 Crore, Tribunal shall consist of three Arbitrators as above. The requirements of the Arbitration and Conciliation Act, 1996 (26 of 1996) and any further statutory modifications or re-enactment thereof and the rules made thereunder and for the time being in force shall be applicable.

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed, if any, in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the decision of the DRC.

It is also a term of this contract that any member of the Arbitration Tribunal shall be a Graduate Engineer with experience in handling public works engineering contracts at a level not lower than Chief Engineer (Joint Secretary level of Government of India). This shall be treated as a mandatory qualification to be appointed as arbitrator.

Parties, before or at the time *of* appointment of Arbitral Tribunal, may agree in writing for fast track arbitration as per the Arbitration and Conciliation. Act, 1996 (26 of 1996) as amended in 2015. Subject to provision in the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015 whereby the counterclaims if any can be directly filed before the arbitrator without any requirement of reference by the appointing authority, 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 claims by any party exceeds Rs. 1,00,000/-, the arbitrator shall give reasons for the award.

It is also a term of the contract that if any fees are payable to the arbitrator, these shall be paid as per the Act.

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The place of arbitration shall be as mentioned In Schedule F. In case there is no mention of place of arbitration, the arbitral tribunal shall determine the place of arbitration.

The venue of the arbitration shall be such place as may be fixed by the Arbitral Tribunal in consultation with both the parties. Failing any such agreement, then the Arbitral Tribunal shall decide the venue.

It is also a term of the contract that the arbitrator shall be deemed to have entered on the reference on the date he issues the notice to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration in Delhi shall be such place as may be fixed by the arbitrator in his sole discretion. The cost of the reference and of the award 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.
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 and shall be as under:

Sum in Dispute (Rs.)	Model Fee (Rs.)
Up to Rs. 5,00,000/-	Rs. 45,000/-
Above Rs. 5,00,000/- & up to Rs. 20,00,000/-	Rs. 45000/- plus 3.5% of the claim amount over Rs. 5,00,000/-
Above Rs. 20,00,000/- & up to Rs. 1,00,00,000/-	Rs. 97,500/- plus 3% of the claim amount over Rs. 20,00,000/-
Above Rs. 1,00,00,000/- & up to Rs. 10,00,00,000/-	Rs. 3,37,000/- plus 1% of the claim amount over Rs. 1,00,00,000/
Above Rs. 10,00,00,000/- & up to Rs. 20,00,00,000/-	Rs. 12,37,000/- plus 0.75% of the claim amount over Rs. 10,00,00,000/-
Above Rs. 20,00,00,000/-	Rs. 19,87,000/- plus 0.50% of the claim amount above Rs. 20,00,00,000/- with a ceiling of Rs. 30,00,000/-

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2. Learned counsel appearing on behalf of the Petitioner submits that the statutory requirement of Notice under Section 21 of the Act, invoking the aforesaid arbitration clause, stands duly complied with

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by issuance of legal Notice dated 03.11.2025.

3. Learned counsel appearing on behalf of the Respondent submits that certain objections have been raised in the counter-affidavit; however, he fairly submits that the same may be urged before the learned Arbitrator, having regard to the limited scope of jurisdiction of this Court under Section 11 of the Act.

4. This Court is of the view that there exists no impediment to referring the disputes to arbitration. All objections as raised in the counter-affidavit are left open to be urged before the learned Arbitral Tribunal.

5. 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***[3], 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***[4], 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

[3] (2024) 12 SCC 1
[4] (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)

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

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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.

7. 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 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.

8. At this stage, since the parties are *ad idem* with respect to reference of the disputes to arbitration by a Sole Arbitrator, this Court finds it apposite to accede to the said request and refer the disputes *inter se* the parties for adjudication by arbitration.

9. It is noted that the arbitration clause provides for the qualifications of the Arbitrator. The relevant portion of the said clause reads as under:

> "It is also a term of this contract that any member of the Arbitration Tribunal shall be a Graduate Engineer with experience in handling public works engineering contracts at a level not lower than Chief Engineer (Joint Secretary level of Government of India). This shall be treated as a mandatory qualification to be appointed as arbitrator."

10. The valuation of the subject matter of the disputes is stated to be approximately 45 Lakhs.

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11. Accordingly, this Court hereby requests **Mr. Ganesh Chandra Kabi, Engineers (E-mail Id:- gckabi@gmail.com) & (Mobile No. 9830522004),** to enter upon the reference and adjudicate the disputes *inter se* the parties.

12. 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.

13. 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 Arbitrators.

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

15. 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.

16. Needless to state, nothing in this Order shall be construed as an expression of opinion of this Court on the merits of the controversy.

17. Let a copy of the said Order be sent to the learned Arbitrator through all permissible modes, including through electronic mode.

18. Accordingly, the present Petition, along with pending Application(s), if any, stands disposed of in the above-stated terms.

HARISH VAIDYANATHAN SHANKAR, J.

APRIL 29, 2026/JYH/kr

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