



2025:DHC:4659



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

Reserved on: 24 July 2024
Pronounced on: 30 May 2025

+ ARB.P. 1264/2023

K C AGGARWALPetitioner

Through: Petitioner in person

versus

NATIONAL STOCK EXCHANGE OF INDIA LIMITED &
ANRRespondents

Through: Mr. Jayant Mehta, Sr. Adv.
with Mr. Akshay Bhatia, Ms. Ritu Anand,
Ms. Shivany Berry, Ms. Ayushi Kumar and
Mr. Jafar Alam, Advs.

Md. Zaryab Jamal Rizvi, Ms. Firdouse Qutb
Wani and Ms. Subia Naaz, Advs, for R2.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT
30.05.2025

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1. This is a petition under Section 11(6)¹ of Arbitration and Conciliation Act, 1996², for reference of the disputes between the

¹ 11. **Appointment of arbitrators-**

- (6) Where, under an appointment procedure agreed upon by the parties,—
- (a) a party fails to act as required under that procedure; or
 - (b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or
 - (c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,
- the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

² “the 1996 Act” hereinafter



2025:DHC:4659



parties to arbitration. Respondent 2, in this petition, is ICICI Securities Ltd³, who is a stock broker.

2. The disputes arose in the context of an arbitration agreement in the Account Opening Form⁴ executed between the petitioner and ICICISL. The AOF envisages resolution of the disputes by arbitration and the relevant clause in that regard reads thus:

“DISPUTE RESOLUTION

22. The stock broker shall provide the client with the relevant contact details of the concerned Exchanges and SEBI.

23. The stock broker shall co-operate in redressing grievances of the client in respect of all transactions routed through it and in removing objections for bad delivery of shares, rectification of bad delivery, etc.

24. The client and the stock broker shall refer and claims and/or disputes with respect to deposits, margin money, etc., to Arbitration as per the Rules, Byelaws and Regulations of the Exchanges where the trade is executed and circulars/notices issued thereunder as may be in force from time to time.

25. The stock broker shall ensure faster settlement of any Arbitration proceedings arising out of the transactions entered into between him *vis-a-vis* the client and he shall be liable to implement the Arbitration awards made in such proceedings.

26. The client/stock-broker understands that the instructions issued by an authorized representative for dispute resolution, if any, of the client/stock-broker shall be binding on the client/stock-broker in accordance with the letter authorizing the said representative to deal on behalf of the said client/stock-broker.”

3. The existence of the arbitration agreement between the petitioner and ICICISL is not disputed.

³ “ICICISL” hereinafter

⁴ “AOF” hereinafter



2025:DHC:4659



4. Pursuant to order dated 17 November 2021 of the learned Civil Judge in CS 677/2021⁵ by which the dispute was referred to arbitration, and the judgment dated 19 July 2023 in Civil Revision 23/2022⁶ passed by this Hon'ble Court, wherein the order dated 17 November 2021 was upheld, the petitioner has now approached this court for appointment of an arbitrator.

Facts

5. The petitioner is an individual investor at the National Stock Exchange⁷, Respondent 1 herein. The NSE operates under the regulatory framework of the Securities and Exchange Board of India⁸. ICICISL is a share broker company having membership with NSE. The petitioner executed the AOF with ICICISL and is maintaining a share trading and Demat account of shares with ICICISL.

6. The conflict arises in relation to a Futures contract or Stock futures executed on 4 February 2021 and 5 February 2021 by the petitioner in 32,500 shares of Indian Oil Corporation Limited at an average rate of ₹ 103.55 per share, which were squared off on 11 February 2021 at an average rate of ₹ 96.74 per share, owing to which the petitioner claims to have become entitled to an amount of ₹ 2,21,325. However, instead, the petitioner's account was debited by an

⁵ K.C. Aggarwal v National Stock Exchange of India Limited

⁶ Mr KC Aggarwal v National Stock Exchange of India Limited & Anr

⁷ "NSE" hereinafter

⁸ "SEBI" hereinafter



2025:DHC:4659



amount of ₹ 22,175. The petitioner is hence claiming an amount of ₹ 2,43,500/- on account of transactions in Stock Futures.

7. As this is a Section 11(6) petition, the specifics of the dispute need not detain us. The petitioner raised its grievance with ICICISL, to which ICICISL replied that the debit which took place was due to the Corporate Action Adjustment⁹ in compliance with letters/circulars issued by NSE as per authority derived from SEBI Master Circular dated 16 December 2016 read with circular dated 5 July 2018, which is reproduced in its entirety:

To
All Stock Exchanges

July 5, 2018

Dear Sir/Madam,

Sub: Review of Adjustment of corporate actions for Stock Options.

1. SEBI, vide Circular No. SMDRP/DC/CIR-8/01 dated June 21, 2001, prescribed a framework for adjustment of corporate actions for stock option contracts. Further, SEBI, vide Circular No. SMDRP/DC/CIR-15/02 dated December 18, 2002, set out principles for adjustment in derivative contracts at the time of corporate actions.

2. SEBI has been receiving representations from various stakeholders requesting to review the dividend adjustment framework for stock options. The suggestions were examined and placed before the Secondary Market Advisory Committee (SMAC) for deliberations. Based on the recommendations of SMAC, it has been decided to review the mechanism of dividend adjustment for stock options.

3. The adjustment in strike price shall be carried out in the following cases of declaration of dividends:

- a. Dividends declared at and above 5% of the market value of the underlying stock; or
- b. All cases of dividends, where the listed entity has sought exemption from the timeline prescribed under the

⁹ CAA hereinafter



2025:DHC:4659



provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

4. All other conditions stated in Circular No. SMDRP/DC/CIR-8/01 dated June 21, 2001 and Circular No. SMDRP/DC/CIR-15/02 dated December 18, 2002 shall remain unchanged.

5. Stock Exchanges are advised to:

5.1. take necessary steps and put in place necessary systems for implementation of the above.

5.2. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision.

5.3. bring the provisions of this circular to the notice of the member brokers of the stock exchange and also to disseminate the same on the website.

6. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Yours faithfully,
Amit Tandon
Deputy General Manager
amitt@sebi.gov.in

8. Thereafter, the petitioner served a legal notice dated 27 February 2021 on ICICISL, and also filed a complaint dated 26 March 2021, on the web portal NICEPLUS of NSE.

9. No positive outcome being forthcoming from the legal notice, the petitioner filed CS 677/2021 against NSE and ICICISL before the learned Civil Judge for recovery of ₹ 2,43,500/- and sought a permanent injunction against the practice of CAA which, he claims, is illegal. In the said suit, ICICISL filed two applications, which is (i) an application under Section 8 of the 1996 Act, seeking reference of the disputes to arbitration and (ii) an application under Order VII Rule 11



2025:DHC:4659



of Code of Civil Procedure, 1908 contending that the suit of the petitioner is barred by the Securities and Exchange Board of India Act, 1992 and also by the arbitration clause in the contract between the petitioner and ICICISL.

10. *Vide* order dated 17 November 2021, the learned Civil Judge, without passing any order in the application under Order VII Rule 11, allowed the application filed by ICICISL under Section 8 of the 1996 Act, on the ground that, when an arbitration agreement is present, the court ought to refer the dispute to arbitration. The relevant para of the order is reproduced thus:

“The application filed before this court is duly accompanied with the account opening form which provides rights and obligations in Part-C and duly agreed upon by the plaintiff vide declaration in Part-A of the account opening form. It clearly stipulates the reference of dispute between the client and the stock broker to Arbitration. Further, Chapter-11 of the National Stock of India Byelaws provides for Arbitration between the trading members *inter se* and between trading members and constituents arising out of or in relation to dealings, contracts and transactions made subject to byelaws, rules and regulations of the Exchange. On perusal of the relief claimed by the plaintiff, it is seen that the plaintiff is seeking prayer 1, prayer 2 qua the defendant no.2 and on the said dispute the aforementioned reference to the Arbitration is mandatory. *The contention of the plaintiff that the present dispute is a tripartite dispute and not a bipartite dispute cannot be accepted since the prayer 1 and 2 are between the plaintiff and the defendant no.2.* Qua prayer 4 and 5 wherein the plaintiff is seeking the mandatory injunction qua defendant no.1 so as to quash, set aside, declare null and void and non-est in law the letters and circulars issued by the defendant no.1 and followed by the defendant no.2, this court is of the view that the averments in the plaint are silent as to these letters and circulars being non-est in law and same cannot be gone into by this Court in the absence of the pleadings only on the averments that they are illegal. *Thus, the dispute of the plaintiff is mainly with the defendant no.2 qua prayer 1 and 2 and over the same the mandate of Section 8 of the Arbitration & Conciliation Act, 1996 is mandatory and where there is an Arbitration Agreement, the courts ought to refer the dispute to*



2025:DHC:4659



Arbitration. Accordingly, the application under Section 8 read with Section 5 of the Arbitration & Conciliation Act, 1996 seeking reference of the matter to Arbitration is allowed and parties are referred to Arbitration. Application stands disposed off.”

(Emphasis supplied)

11. Aggrieved thereby, the petitioner filed CRP 23/2022 before this Court, seeking setting aside of the order dated 17 November 2021 passed by the learned Civil Judge and starting of the trial afresh as per law.

12. The learned Single Judge, *vide* order dated 19 July 2023, held that, since the AOF contained an arbitration clause, refusing to refer the matter to arbitration would result in “irreparable harm” and would be a “failure of justice”. It was noticed that the AOF stipulated that any dispute between the “client and stock broker” should be referred to arbitration. Chapter 11 of the NSE byelaws provides for arbitration between trading members and constituents deriving from or relating to dealings, contracts and transactions made subject to the bye laws, rules and regulation of the SEBI. The relevant paras of the byelaws may be reproduced thus:

“Reference to Arbitration

(1) All claims, differences or disputes between the Trading Members inter se and between Trading Members and Constituents arising out of or in relation to dealings, contracts and transactions made subject to the Bye-Laws, Rules and Regulations of the Exchange or with reference to anything incidental thereto or in pursuance thereof or relating to their validity, construction, interpretation, fulfilment or the rights, obligations and liabilities of the parties thereto and including any question of whether such dealings, transactions and contracts have been entered into shall be submitted to arbitration in accordance with the provisions of these Byelaws and Regulations. The Exchange shall be entitled to



2025:DHC:4659



facilitate arbitration for such disputes and parties as mentioned in the provisions of Byelaw 1, including the arbitration reference filed by Trading Member against the directions or order of the Grievance Redressal Committee (GRC). by adopting such procedures as may be prescribed by it under this Chapter.

(IA) All claims, differences or disputes between the Trading Members and authorised persons and between authorised persons and Clients of authorised persons arising out of or in relation to dealings, contracts and transactions made subject to the Byelaws, Rules and Regulations of the Exchange or with reference to anything incidental thereto or in pursuance thereof or relating to their validity, construction, interpretation, fulfilment or the rights, obligations and liabilities of the parties thereto and including any question of whether such dealings, transactions and contracts have been entered into shall be submitted to arbitration in accordance with the provisions of these Byelaws and Regulations;

Provided in disputes between authorised persons and clients of authorised persons, the Trading Member should be added as a necessary party.

(IB) All claims, differences or disputes between the Trading Members inter se. Trading Members and Constituents, whether or not registered as Participants, Constituents inter se, whether or not registered as Participants, arising out of or in relation to dealings, contracts and transactions executed or reported on the Wholesale Debt Market Trading Segment of the Exchange and made subject to the Byelaws, Rules and Regulations of the Exchange or with reference to anything incidental thereto or in pursuance thereof or relating to their validity, construction, interpretation, fulfillment or the rights, obligations and liabilities of the parties thereto and including any question of whether such dealings, transactions and contracts have been entered into shall be submitted to arbitration in accordance with the provisions of these Byelaws and Regulations. Provided this Byelaw shall not in any way affect the jurisdiction of the Exchange on the Trading Member, through whom such a Participant has dealt with or traded, in regard thereto and such Trading Member shall continue to remain responsible, accountable and liable to the Exchange in this behalf.

(IC) All claims, differences or disputes arising between an Issuer and a Constituent in respect of such matters as may be specifically provided from time to time in the Listing Agreement as entered into by an Issuer with the Exchange shall be submitted to arbitration in accordance with the provisions of these Byelaws and Regulations.



For the purpose of these Byelaws and Regulations, the term 'Issuer' shall have the same meaning as defined in these Byelaws and the term 'Constituent' shall mean the investor who has bought or sold, on the Exchange, the securities of the Issuer in respect of which the claim, differences or dispute has arisen.

(1D) The Exchange shall be entitled to facilitate arbitration for such disputes and parties other than those mentioned in the provisions of Byelaws 1, (IA), (IB), and (IC) of this Chapter by adopting such procedures as may be prescribed by it under this Chapter.”

13. The Learned Single Judge upheld the decision of the trial court in the following terms:

“55. On bare perusal of the reliefs sought by the petitioner before the learned Trial Court, *it is ex facie apparent that the petitioner's primary concern is against respondent no. 2.* The reference to arbitration is mandatory for adjudication of the dispute in the present petition. *The petitioner's contention that the current dispute is a tripartite dispute and not a bipartite dispute is not sustainable.*

56. The petitioner has not been able to make out his case as to how his grievances could be resolved *qua* respondent no. 1. Section 8 the Act, 1996 requires that the dispute be referred to arbitration if an arbitration agreement exists. Accordingly, the application under Section 8 the Act, 1996 seeking arbitration has been allowed, and the parties are referred to arbitration.

57. The petitioner's grievances are arising out of the AOF and the respondent no. 2 is a party to it. It is necessary to state that the reference to arbitration is legally justifiable in the light of the facts and statements. The learned Trial Court has acted in accordance with its jurisdiction under the law.

CONCLUSION

58. Therefore, this Court is of the view that the learned Trial Court has not committed any error of law that can be the subject matter to be exercised by this Court exercising its revisional powers under Section 115 of the CPC. Section 8 of the Act, 1996 refers to a clause that limits Court's interference in the arbitration procedure. This Court has serious objections to the extent of interference on the grounds of the arbitrability of the subject



2025:DHC:4659



matter, and the competence of the arbitral tribunal to deal with it. Section 8 of the Act, 1996 continues to serve as a hope for arbitration, forming the basis for mandating the parties to follow the model of arbitration where an arbitration agreement exists.

59. Further, with regards to the maintainability of the revision petition, the learned Trial Court has rightly determined that its jurisdiction to hear the suit does not exist due to the presence of an arbitration clause. After relying upon the aforementioned judgments, it is concluded that the observations made therein apply to the facts of the case in hand.

60. Therefore, it is held that the learned Trial Court did not have the jurisdiction to hear a dispute after an application for arbitration under Section 8 of the Act, 1996 was filed. As a result, the learned Trial Court has correctly allowed the said application under Section 8 of the Act, 1996. In such a case, refusing to refer the matter to arbitration would be a failure of justice, causing irreparable harm to the parties and violating the settled principles of law.

61. This Court is of the view that no case of revision as defined under Section 115 of CPC has been made out by the petitioner as no such cause exists wherein the learned Trial Court has failed to exercise its jurisdiction as per law. The learned Trial Court has neither acted illegally in the exercise of its jurisdiction nor has there been any material irregularity. Accordingly, the issue framed above has been decided.

62. In view of the above discussion of facts and law, this Court finds no infirmity in the impugned Order dated 17th November 2021 in Civil Suit bearing No. CSCJ/677/2021 passed by the learned Senior Civil Judge, Patiala House Court, New Delhi.”

(Emphasis supplied)

14. This order has never been challenged and has therefore become final. Subsequently, on 17 September 2023, a formal notice under Section 21 of the 1996 Act was issued by the petitioner to NSE and ICICISL. ICICISL sent a reply by email dated 9 October 2023 in which it contended that the arbitration be held with Respondent 2 only



2025:DHC:4659



through the Online Dispute Resolution¹⁰ mechanism run by NSE. The letter dated 10 October 2023 by NSE solidifies the above stance and refers to a Circular dated 31 July 2023 which states that the petitioner is required to use the ODR mechanism of NSE for his disputes with ICICISL. It also stated that the arbitration agreement and the dispute is only with ICICISL and hence NSE cannot be made a party. The relevant portions of the e-mails are extracted as under:-

Email dated 17 September 2023

“From:
K.C. Aggarwal
C-118 East of Kailash,
New Delhi – 110065

To,

1. The National Stock Exchange of India Limited,
Delhi Regional Office at
Jeevan Vihar Building, 4th Floor, Road Area-3, Sansad
marg, Janpath, Connaught Place, New Delhi-01
Email: nseiscdel@nse.co.in secretarialdepat@nse.co.in
Through Ms. Shivani Khandekar and Mr. Ishan Bisht
Advocate
Shivani Khandekar <Shivani.Khandekar@trilegal.com>,
Ishan Bisht <Ishan.Bisht@trilegal.com>

2. ICICI Securities Limited,
12th Floor, Narain Manzil 23, Barakhamba Road, New
Delhi-01
Email: complianceofficer@icicisecurities.com
rajunanwani@icicisecurities.com
Through Mr. Zaryab J Rizvi Advocate
advocatezaryab@gmail.com

Subject: Appointment of Arbitrator cum Notice under
Section 21 of Arbitration and Conciliation Act 1996

Mme/Sir,

¹⁰ “ODR” hereinafter



2025:DHC:4659



This has a reference my grievance as per Civil Suit No. 677/2021 wherein order dated 17.11.2021 has been passed by Ld. Court of Civil Judge at Patiala House Courts New Delhi referring the matter to arbitration and the same has been upheld by Order dated 19.07.2023 passed in Civil Revision Petition No. 23 of 2022 by hon'ble High Court of Delhi.

Accordingly, it is hereby requested to kindly convey your consent for getting an Arbitrator appointed by Delhi International Arbitration Centre at Delhi High Court on the basis of mutual consent of all parties. Please note that:-

1. That I hereby give consent for appointment of any retired District Judge or Additional District Judge empanelled with DIAC.
2. This may be treated as a notice under section 21 of Arbitration and Conciliation Act 1996 and in case no consent or response is received within three weeks of emailing of this request, I would be at liberty to take recourse to legal remedies available presuming that you are not cooperating in appointment of arbitrator.

KC Aggarwal”

Email dated 9 October 2023

“Dear Mr. Aggarwal,

We acknowledge the receipt of your trailing email dated 17/09/2023, seeking consent for getting an Arbitrator appointed by the Delhi International Arbitration Centre at Delhi High Court (DIAC). Vide your trailing email, it has been implied that as per orders of the Ld. Courts, the dispute, upon fresh mutual consent of the parties, can be referred for to the DIAC or any other similar centre for Arbitration.

We have carefully reviewed the orders mentioned in your email i.e., the order dated 17/11/2021 passed by the Ld. Court of Civil Judge at Patiala House Courts, New Delhi in Civil Suit bearing No. 677/2021, and the order dated 19/07/2023 passed in Civil Revision Petition No. 23 of 2022 by the Hon'ble High Court of Delhi, as also the relevant pleadings of the cases.

Based on our analysis of the court orders, pleadings of the parties and the relevant clauses of the agreement in question, it is clear that the Hon'ble courts have indeed allowed the application of ICICI Securities Limited (I-Sec) stating that the dispute between the parties should be referred to arbitration, as per the clause



2025:DHC:4659



stipulated in the agreement. It is made clear that no such question of fresh consent, as sought by you, was required by any of the orders and the Arbitration has to be conducted, as per the already agreed terms and Conditions.

Furthermore, it is explicitly mentioned in the agreement that any arbitration proceedings are to be conducted as per the rules, Byelaws, Regulations, and circulars issued thereunder from time to time by SEBI and the National Stock Exchange of India Limited (NSE) and not the DIAC or any other similar Arbitration Centre. This specific clause in the agreement binds both parties to resolve disputes only through the agreed arbitration mechanism and no alteration in the same can be done.

We appreciate your willingness to cooperate in the appointment of an arbitrator. However, considering the clear and unambiguous terms of the agreement, the appropriate forum for arbitration in this case is the Dispute Redressal mechanism, as per the agreement's provisions.

In light of the above, we suggest that you should withdraw your request for arbitration under DIAC and proceed with the arbitration process as specified in the agreement, which designates NSE as the arbitral forum. This would align with the Hon'ble court's orders and the contractual obligations of all parties involved.

We remain open to moving forward with the arbitration process in accordance with the agreement.

Regards
Pooja Kulkarni”

Rival Contentions

Petitioner's Submissions

15. The petitioner contends that the respondents are not wanting the dispute to be solved but are only allowing a limited resolution by limiting the arbitration to the disputes with ICICISL. Additionally, the respondents are also forcing the petitioner to arbitrate under the aegis of NSE's ODR portal by appointing an arbitrator from the panel of



2025:DHC:4659



NSE despite the mandatory prohibition under Section 12(5)¹¹ read with the 7th Schedule to the 1996 Act.

16. The petitioner relies on the judgment of the Supreme Court in *Vidya Drolia v Durga Trading Corporation*¹² which says that a Section 11 Court is not totally divested of the powers to go into the question of arbitrability. He also submits that the bifurcation of the dispute into the main dispute and the other dispute, between NSE and ICICISL, is not permissible as per the law laid down in *Vidya Drolia*. The learned Single judge has also not gone into the merits as to what is the main and the subsidiary dispute.

17. The petitioner contends that the Circular issued by SEBI dated 31 July 2023 which mandates arbitration through the ODR mechanism of NSE, does not cover the disputes with a stock exchange, as stock exchanges are not listed in Schedule B to the circular.

18. It is further submitted that the contention of the NSE that it is not a party to AOF and that the agreement is bipartite is not acceptable. Since the dispute is tripartite, the bipartite AOF is not applicable as per over riding provisions of NSE Byelaws, specifically the exclusion clause.

¹¹**12.** **Grounds for challenge -**

(5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:

Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing.

¹² (2021) 2 SCC 1



2025:DHC:4659



19. He also submits that when NSE itself is a party, it cannot be facilitating the arbitration with itself. He submits that NSE is a party to the dispute and it is irrelevant whether NSE is a party to arbitration.

20. The petitioner further points out that the respondents have not explicitly objected to the appointment of the proposed arbitrator O.P. Gupta and neither have they proposed any alternative arbitrator.

Respondents' Submissions

21. The NSE submits that the presence of an arbitration agreement between the parties for adjudication of disputes is a necessary pre-requisite under Section 11 of the 1996 Act, which has not been met. The arbitration agreement is between the petitioner and ICICISL, to which the NSE is not a party. Therefore, the contention of the petitioner that it is a tripartite dispute necessarily has to fail.

22. The judgments of the Supreme Court in *NTPC Limited v SPML Infra Limited*¹³ and *Duro Felguera S.A. v Gangavaram Port Limited*¹⁴ are relied upon, in which the court held that the jurisdiction of the Court under Section 11(6) of the 1996 Act is limited to examining whether there is the existence of an arbitration agreement.

23. Further, as per Section 23L of the SCRA, a person aggrieved by NSE's decisions has to file an appeal before the Securities Appellate Tribunal. Also, Section 22E of the SCRA bars civil courts from

¹³ (2023) 9 SCC 385

¹⁴ (2017) 9 SCC 729



2025:DHC:4659



having jurisdiction.

24. The petitioner has contended that the NSE is blowing hot and cold after getting the matter referred to arbitration and then submitting that it is not a party to the arbitration agreement. This contention is misconceived. The AOF is an agreement between the ICICISL and the petitioner and hence the agreement is itself bipartite in nature and not tripartite as contended by the petitioner.

25. Further, as per the power granted by Section 9 of the SCRA, NSE has the power to make byelaws to regulate contracts. Clause 1 of Chapter 11 of the Byelaws provides that all claims, differences etc. would be resolved through arbitration, the relevant parts of which are reproduced *supra*. Additionally, Clause 18 excludes NSE as a party to arbitration. A combined reading of the above would lead to a conclusion that the arbitration proceedings ought to be conducted between the parties to the arbitration agreement, not including NSE as a party.

26. NSE submits that the ODR of NSE is a highly unbiased mechanism. When the client pursues online arbitration, the ODR institution appoints a sole independent and neutral arbitrator as per Clause 21 of the SEBI circular. NSE is not involved in the process of appointment of arbitrator.

27. The correct procedure to be followed by the petitioner would have been to approach the Tribunal first but the petitioner went ahead with filing of a suit in the Civil Court and added NSE as a party to



2025:DHC:4659



circumvent the arbitration agreement. The petitioner also cannot re-agitate the issue of this being a tripartite dispute as it is already settled by the Trial Court and the High Court, that it is a bipartite issue.

Observations and Conclusion

28. Following the judgment of the Supreme Court in *SBI General Insurance Co Ltd v Krish Spinning*¹⁵, it is well settled that a Court exercising jurisdiction under Section 11(6) of the 1996 Act has to limit its consideration, especially in view of Section 11(6-A)¹⁶ to the aspect of whether there is an arbitration agreement in existence between the parties. If such an arbitration agreement exists and, in accordance with the protocol envisaged by such agreement, a party seeks reference of the disputes to arbitration in accordance with Section 11(6), the Court has no option but to refer the dispute.

29. The Court is not entitled to examine any other aspect. All other aspects including the issue of arbitrability of the dispute, limitation, the existence or otherwise of fraud or *mala fides* and every other aspect of the matter must be left to the wisdom of the Arbitral Tribunal under Section 16 of the 1996 Act. We may refer, with advantage, to the following paragraphs from *SBI General Insurance*, which sets out this legal position:

“110. *The scope of examination under Section 11(6-A) is confined*

¹⁵ 2024 SCC OnLine SC 1754

¹⁶ (6-A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.



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.

111. 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.

112. The aforesaid approach serves a two-fold 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.

113. Referring to the Statement of Objects and Reasons of the Arbitration and Conciliation (Amendment) Act, 2015, it was observed in *In Re : Interplay*¹⁷ that the High Court and the Supreme Court at the stage of appointment of arbitrator shall examine the existence of a *prima facie* arbitration agreement and not any other issues. The relevant observations are extracted hereinbelow:

“209. The above extract indicates that **the Supreme Court or High Court at the stage of the appointment of an arbitrator shall “examine the existence of a *prima facie* arbitration agreement and not other issues”.** **These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings.** Accordingly, the “other issues” also include examination and impounding of an unstamped instrument by the referral court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a timebound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators. [...]”

(Emphasis supplied)

¹⁷ *In Re. Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act 1899*, (2024) 6 SCC 1



114. In view of the observations made by this Court in *In Re. Interplay* (supra), 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* and adopted in *NTPC v SPML* 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 *In Re: Interplay* (supra).

118. 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.

119. 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 Act, 1996 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.

120. The principle of subsequent judicial review has been enshrined in the US doctrine of “Second Look”. In a leading U.S. Supreme Court judgment of *PacifiCare Health Systems, Inc. v Book*¹⁸, it was held that the question of non-arbitrability should be considered in the first instance by the arbitral tribunal. The Court observed that, “*since we do not know how the arbitrator will construe the remedial limitations, the question ... whether they render the parties' agreements unenforceable is better left for initial arbitral consideration*”. This doctrine has also been affirmed by judgments of the U.S. lower courts in cases of *Dillon v BMO Harris Bank, NA*¹⁹ and *Escobar v Celebration Cruise Operator, Inc.*²⁰ wherein it was reasoned that the issues of U.S. statutory law and arbitrability should be submitted first to arbitration, with the possibility of subsequent judicial review in

¹⁸ 538, U.S. 401 (U.S. S. Ct. 2003)

¹⁹ 856 F.3d 330, 333 (4th Cir. 2017)

²⁰ 805 F.3d 1279, 1288-89 (11th Cir. 2015)



2025:DHC:4659



recognition and enforcement proceedings.

122. Once an arbitration agreement exists between parties, then the option of approaching the civil court becomes unavailable to them. In such a scenario, if the parties seek to raise a dispute, they necessarily have to do so before the arbitral tribunal. The arbitral tribunal, in turn, can only be constituted as per the procedure agreed upon between the parties. However, if there is a failure of the agreed upon procedure, then the duty of appointing the arbitral tribunal falls upon the referral court under Section 11 of the Act, 1996. If the referral court, at this stage, goes beyond the scope of enquiry as provided under the section and examines the issue of “accord and satisfaction”, then it would amount to usurpation of the power which the parties had intended to be exercisable by the arbitral tribunal alone and not by the national courts. Such a scenario would impeach arbitral autonomy and would not fit well with the scheme of the Act, 1996.

123. 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.

124. 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.

125. *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*



2025:DHC:4659



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.

133. *Thus, we clarify that while determining the issue of limitation in exercise of the powers under Section 11(6) of the Act, 1996, the referral court should limit its enquiry to examining whether Section 11(6) application has been filed within the period of limitation of three years or not.* The date of commencement of limitation period for this purpose shall have to be construed as per the decision in *Arif Azim*²¹. As a natural corollary, it is further clarified that the referral courts, at the stage of deciding an application for appointment of arbitrator, must not conduct an intricate evidentiary enquiry into the question whether the claims raised by the applicant are time barred and should leave that question for determination by the arbitrator. Such an approach gives true meaning to the legislative intention underlying Section 11(6-A) of the Act, and also to the view taken in *In Re: Interplay (supra)*]

(Emphasis supplied)

30. Para 114 of *SBI General Insurance*, by use of the expression “and nothing else”, proscribes the Court in express terms from examining any aspect other than the existence of an arbitration agreement between the parties. Of course, the Court would also have to be satisfied that the petitioner before it, has approached the Court in accordance with the protocol envisaged in the arbitration agreement to the extent that, if any pre-arbitral exercise is required to be undertaken, that has been undertaken. Also, the Court would have to be satisfied that there is a failure on the part of the opposite party to act in terms of the arbitration agreement, as envisaged by Section 11(6) of the 1996 Act, thereby entitling the petitioner to approach the

²¹ *Arif Azim Co. Ltd v Aptech Ltd*, (2024) 5 SCC 313



2025:DHC:4659



High Court.

31. The only other aspect which the Court would have to bear in mind as per the *SBI General Insurance* is whether the Section 11(6) petition has been filed within three years of the Section 21 notice.

32. In the present case, in fact, no occasion actually arises for this Court to enter into any of the disputed issues between the parties, in view of the judgment dated 19 July 2023 of the Co-ordinate Bench of this Court in CRP 23/2022. By the said judgment, the learned Single Judge upheld the order dated 17 November 2021 of the learned Civil Judge in CS 677/2021. By operation of the order passed by the Coordinate Bench, the arbitration would, therefore, at least for the present, have to be between the petitioner and ICICISL. The learned Civil Judge specifically refused to include NSE as a party in the arbitration and that refusal has been affirmed and approved by the learned Single Judge of this Court in his judgment dated 19 July 2023 in CRP 23/2022.

33. The only other issue that remains for consideration is whether the arbitration has to be in accordance with the ODR mechanism of NSE. Clause 24 of the agreement between the petitioner and the ICICISL envisages reference of the disputes through ODR mechanism of NSE.

34. In the present case, the learned Civil Judge by order dated 17 November 2021 allowed the Section 8 petition of ICICISL and directed that the disputes be referred to arbitration. This order stands



2025:DHC:4659



upheld by the learned Single Judge of this Court by judgment dated 19 July 2023 in CRP 23/2022. Pursuant thereto, the petitioner addressed a Section 21 notice to the respondent on 17 September 2023. In the said notice, however, the petitioner also included NSE as party. ICICISL responded to the notice within a period of 30 days on 9 October 2023, stating that the disputes could be referred to the arbitration under the ODR mechanism of NSE. In actual fact, once the petitioner had issued a Section 21 notice to ICICISL on 17 September 2023 and, within 30 days on 9 October 2023, ICICISL had responded, there was really no occasion for the petitioner to approach this Court under Section 11(6). There was no failure on the part of the ICICISL to respond to the Section 21 notice of the petitioner, as would justify recourse to Section 11(6).

35. The petitioner, however, seeks to include NSE in the arbitration. That is clearly not permissible in view of the order dated 17 November 2021 of the learned Civil Judge, as affirmed by the learned Single Judge of this Court by judgment dated 19 July 2023 in CRP 23/2022 which, as we have already noted, has become final *inter partes*.

36. This would, however, not preclude the inclusion of NSE as a party to the proceedings at a subsequent stage, should the necessity arise to do so. The Supreme Court has held, in in *Cox and Kings Ltd v Sap India Pvt Ltd*²² and *ASF Buildtech Pvt Ltd v Shapoorji Pallonji & Co. Pvt Ltd*²³ that Section 16 of the 1996 Act empowers the Arbitral

²² (2024) 4 SCC 1

²³ 2025 SCC OnLine SC 1016



2025:DHC:4659



Tribunal to add or delete parties. As such, that power with the Arbitral Tribunal shall continue to remain vested.

37. As ICICISL responded to the Section 21 notice issued by the petitioner within 30 days, there was no failure on ICICISL's part to abide by the arbitral protocol envisaged by the contract between the petitioner and ICICISL. The arbitration has, therefore, to be in terms of the said protocol, which requires the arbitration to be as per the rules, bye laws and regulations of the NSE.

38. The petitioner's contention that adherence to Clause 24 of the Agreement between the petitioner and ICICISL may violate Section 11(5) of the 1996 Act and the judgments of the Supreme Court in that regard, which do not permit arbitration by an Arbitrator appointed by one of the parties to the dispute, would not arise as NSE is not a party to the dispute. However, as the Court has granted liberty for NSE to be subsequently added as a party to the arbitration, should the need arise, it would be in the interests of justice that the arbitration is not conducted by the Arbitrator appointed by the NSE.

39. Accordingly, this petition is disposed of in the following terms:

- (i) The dispute is referred to the DIAC to appoint an Arbitrator to arbitrate on the disputes between the parties.
- (ii) For the present, the arbitration shall be between the petitioner and ICICISL.
- (iii) The arbitration shall be in accordance with Clause 24 of



2025:DHC:4659



the agreement between the petitioner and the ICICISL. In other words, it shall be as per the Rules, Byelaws and Regulations of the NSE.

(iv) The Arbitrator would be entitled to fees as per the Rules, Regulations and Byelaws of the NSE. In case the Rules, Regulations and Byelaws of the NSE do not contemplate any specific schedule of fees, the fees of the arbitrator would be as per the Schedule of fees maintained by the DIAC.

40. The petition is disposed of, accordingly.

C. HARI SHANKAR, J.

May 30, 2025

[Click here to check corrigendum, if](#)