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

% *Date of Decision: 10th September, 2025*

\+ ARB.P. 899/2025

PRAGATI POWER CORPORATION LTD. .....Petitioner

Through: Mr. Pradeep Dhingra, Mr. Varun Chandiok, Mr. Rahul Gaur, Ms. Snighda Lal, Mr. Nishant Kumar and Mr. Deepanshu Dhama, Advocates.

versus

THE ORIENTAL INSURANCE COMPANY LIMITED .....Respondent

Through: Mr. Abhishek Gola, Advocate.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This petition is filed on behalf of the Petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('1996 Act') seeking appointment of a Sole Arbitrator.

2. Disputes between the parties have their genesis in an accident which took place on 24.03.2015 and caused damage to the Generator Transformer of Gas Turbine Generator-3, which was insured with the Respondent vide Industrial All Risk ('IAR') policy for the period 07.02.2015 to 06.02.2016. As per the Petitioner, Respondent was duly informed of the accident vide e-mail dated 24.03.2015.

3. It is averred in the petition that another Gas Turbine GT-1 suffered a

major breakdown on 16.07.2015 and Respondent cleared the insurance claim for material damages. In this insurance, Petitioner had not taken business interruption loss claims policy. Fortunately, the transformer was saved and from this damaged unit the transformer was utilized, cutting down business losses. It is also stated that Petitioner's management made herculean efforts to shift Generator Transformer from GT-1 to GT-3 so as to minimize generation losses and on 23.11.2015, Petitioner lodged the Fire Loss of Profit ('FLOP') claim of Rs.25.94 crores. On 03.03.2021 Respondent repudiated the claim by assessing the loss within the deductible limit and issued "No Claim" letter without giving opportunity to the Petitioner under Section 45 of the Insurance Act, 1938 as also IRDAI Guidelines. Several representations to review the decision followed by legal notice dated 20.08.2024 to the Respondent were of no avail. It is stated that as per Clause 12 of the IAR policy, Petitioner nominated its nominee Arbitrator on 12.12.2024 but Respondent refused to accept the same or appoint its nominee Arbitrator, disputing the applicability of Clause 12.

4. Learned counsel for the Respondent opposes the petition on the ground that no reference can be made to arbitration under Clause 12 of IAR policy, which provides that only where liability is admitted by the company, any difference as to quantum payable to the insured under the policy, shall be referred to arbitration, meaning thereby that if the liability is disputed, the disputes are non-arbitrable and cannot be referred. In support of this plea, learned counsel relies on the judgments of the Supreme Court in ***United India Insurance Company Limited and Another v. Hyundai Engineering and Construction Co. Ltd. and Ors., (2018) 17 SCC 607; Oriental Insurance Co. Ltd. v. Narbheram Power and Steel Pvt. Ltd., (2018) 6 SCC***

534; and ***SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754.***

5. It is argued that in ***Krish Spinning (supra)***, the Supreme Court interpreting similar Clause 13 held that where the dispute is one of quantum and not of liability, it will fall within the ambit of the conditional arbitration clause. The present case is converse, where the liability is itself repudiated and hence Clause 12 will not be attracted. Similar view was taken by the Supreme Court earlier in ***Hyundai Engineering (supra)***, holding that arbitration clauses are kindled only where liability is admitted but where liability is repudiated, arbitration gets excluded. It was observed that arbitration clause has to be interpreted strictly. Clause 7 in the said case was *para materia* to Clause 13 considered by the Supreme Court in ***Narbheram (supra)*** and after examining the clause, it was held that the clause was a conditional expression of intent of the parties. Such an arbitration clause will get activated only if dispute is limited to quantum of amount to be paid under the policy. The liability should be unequivocally admitted by the insurer and this is the pre-condition and *sine quo non* for triggering the arbitration clause. To put it differently, an arbitration clause would enliven or invigorate only if the insurer admits or accepts its liability under or in respect of the concerned policy.

6. It is also argued that Respondent repudiated Petitioner's claim by a Repudiation Letter dated 03.03.2021, declaring it as a "No Claim" case and this brought a closure to all the claims once and for all. There being *accord and satisfaction* of Petitioner's claim no reference can be made to arbitration and in this context reliance is placed on the judgment of the Supreme Court in ***Krish Spinning (supra)***, wherein the Supreme Court referred to the

judgment in ***Vidya Drolia and Others v. Durga Trading Corporation, (2021) 2 SCC 1*** and observed that although the Arbitral Tribunal is the preferred first authority to determine questions pertaining to non-arbitrability, yet referral Court may exercise its limited jurisdiction to refuse reference to arbitration in cases which are *ex facie* frivolous and where it is certain that disputes are non-arbitrable. Learned counsel highlighted the observations of the Supreme Court in ***Vidya Drolia (supra)***, where it was held that rarely as a demurer, the Court may interfere at Sections 8 or 11 stage, when it is manifestly and *ex facie* certain that arbitration agreement is non-existent and invalid or disputes are non-arbitrable, though the nature and facet of non-arbitrability would, to some extent, determine the level and nature of judicial scrutiny.

7. It is argued that in ***Krish Spinning (supra)***, the Supreme Court also observed that the decision in ***Vidya Drolia (supra)*** was applied in the context of *accord and satisfaction* in the case of ***Indian Oil Corporation Limited v. NCC Limited, (2023) 2 SCC 539*** and it was held that the referral Court may in a given case look into the aspect of *accord and satisfaction albeit* in debatable cases and disputable facts, determination should be left to the Arbitral Tribunal.

8. *Per contra* learned counsel for the Petitioner submits that the objections raised by the Respondent have no merit as these very objections have been considered and negated by Co-ordinate Benches of this Court in ***Payu Payments Private Limited v. New India Assurance Co. Ltd., 2024 SCC OnLine Del 6777***; ***Pragati Power Corporation Ltd. v. Oriental Insurance Company Limited, ARB. P. 608/2025*** decided on 05.08.2025 as also ***M/s Inox World Industries Private Limited v. IFFCO Tokio General***

Insurance Company Limited, 2025 SCC OnLine Del 2873. More importantly, the Supreme Court in ***Krish Spinning (supra),*** has held that the remit of a referral Court is to determine the existence of an arbitration agreement as also whether the petition filed under Section 11 of 1996 Act is barred by limitation. Therefore, the determination as to whether the disputes sought to be referred are arbitrable and/or the claims raised are barred by *accord and satisfaction* is to be left to the Arbitrator.

9. Heard learned counsels for the parties and examined their submissions.

10. The question that arises for consideration in the present petition is whether the claims raised by the Petitioner can be referred for arbitration in light of the objections of the Respondent that there is denial of liability to pay the claimed amounts as also *accord and satisfaction,* owing to repudiation of the claims. Before proceeding further, it would be relevant to refer to Clause 12 of IAR Policy, which is extracted hereunder, for ease of reference:-

> *"12. If any difference shall arise as to the quantum to be paid under this policy (liability being otherwise admitted) such difference shall independently of all other questions be referred to the decision of an arbitrator to be appointed in writing by the parties in difference, or if they cannot agree upon a single arbitrator, to the decision of two dis-interested persons as arbitrators of whom one shall be appointed in writing by each of the parties within two calendar months after having been required so to do in writing by the other party in accordance with the provision of the Arbitration Act, 1940, as amended from time to time and for the time being in force. In case either party shall refuse or fail to appoint arbitrator within two calendar months after receipt of notice in writing requiring an appointment, the other party shall be at liberty to appoint sole arbitrator and in case of disagreement between the arbitrators, the difference shall be referred to the decision of an umpire who shall have been appointed by them in writing before entering on the reference and who shall sit with the arbitrators and preside at their meetings. It is clearly agreed and understood that no difference or dispute shall be referable to arbitration*

as hereinbefore provided, if the Company has disputed or not accepted liability under or in respect of this policy. It is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon this policy that the award by such arbitrator, arbitrators or umpire of the amount of the loss or damage shall be first obtained."

11. Broadly understood, legal submission of the Petitioner is that in light of the judgment of the Supreme Court in ***Krish Spinning (supra)*** and judgments of this Court in ***Payu (supra); Pragati Power (supra);*** and ***M/s Inox (supra)***, it is the domain of the Arbitrator to decide whether the disputes are arbitrable and/or there is *accord and satisfaction.* Respondent, on the other hand, contends that clauses akin to Clause 12 in the instant case, have been construed in ***Hyundai Engineering (supra)***, ***Narbheram (supra)*** and ***Krish Spinning (supra)***, and it is judicially recognized that arbitration clause must be strictly construed and where the clause precludes arbitration because liability is denied by the insurance company, Courts must give effect to such a covenant and not refer the disputes for arbitration.

12. In my opinion, both the questions need not detain this Court as the law on both aspects is no longer *res integra*. In this context, I may refer to the judgment of this Court in ***M/s Inox World (supra)***, where relying on the Supreme Court judgments, Court observed that issues concerning arbitrability/non-arbitrability must be relegated to the Arbitrator. Relevant paragraphs are as follows:-

*"**6.** Elaborate legal submissions have been made by the respective counsel for the parties as regards the scope of the arbitration agreement in the present case, in particular, whether it is permissible to appoint an arbitrator even when the claims of the petitioner have been repudiated by the respondent. According to the learned Senior Counsel for the petitioner, the legal position that has emerged in the aftermath of Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In re and SBI General Insurance Co. Ltd. v. Krish Spinning, mandates that an Arbitral Tribunal be constituted and all other issue/s concerning arbitrability/scope of the arbitration agreement, be left*

to be considered by the Arbitral Tribunal. It is also contended that the judgment of the Supreme Court in Oriental Insurance Co. Ltd. v. Narbheram Power and Steel (P) Ltd. and United India Insurance Co. Ltd. v. Hyundai Engg. and Construction Co. Ltd. are not applicable to the present case, in view of the legal position that has emerged in the aftermath of Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 & Stamp Act, 1899, In re and also on account of the fact that the arbitration clauses that fell for consideration in those cases (unlike in the present case) contained words of negative import which expressly debarred/precluded arbitration in the event of the insurer not accepting its liability under the policy.

7. *Reliance has also been placed on behalf of the petitioner on Payu Payments (P) Ltd. v. New India Assurance Co. Ltd., which has expressly recognised that in terms of the contemporary legal position, it is impermissible at the stage of considering a petition under Section 11 of the A&C Act to enter the arena of arbitrability of disputes.*

8. *The petitioner has also relied on a recent judgment of the Supreme Court, Lombardi Engg. Ltd. v. Uttarakhand Jal Vidyut Nigam Ltd. wherein it has been held that any arbitrary preconditions to an arbitration agreement are to be examined on the touchstone of Article 14 of the Constitution of India and can be struck down if found to be arbitrary, unreasonable or violative of Constitutional principles.*

9. *On the other hand, learned counsel for the respondent has opposed the present petition inter alia contending as under:*

(i) Clauses akin to the arbitration clause in the present case have been construed by this Court in Vulcan Insurance Co. Ltd. v. Maharaj Singh; Oriental Insurance Co. Ltd. v. Narbheram Power and Steel (P) Ltd. and United India Insurance Co. Ltd. v. Hyundai Engg. and Construction Co. Ltd. It is contended that in the said cases it has been recognised that an arbitration clause is required to be strictly construed and where the clause precludes arbitration unless liability is admitted by the Insurance Company, the courts would give effect to such a covenant.

(ii) It is also contended that the judgment of the Supreme Court in Lombardi Engg. Ltd. v. Uttarakhand Jal Vidyut Nigam Ltd.[8] has no application to the facts of the present case inasmuch as there was no controversy in Lombardi Engg. Ltd. v. Uttarakhand Jal Vidyut Nigam Ltd. that the disputes between the parties were arbitrable; the controversy in Lombardi Engg. Ltd. v. Uttarakhand Jal Vidyut Nigam Ltd. was only with regard to the validity of a provision which provided for 7 per cent predeposit of the total claim amount as a precondition for invoking arbitration. It is contended that neither Lombardi Engg. Ltd. v. Uttarakhand Jal Vidyut Nigam Ltd. nor Central Organisation

for Railway Electrification v. ECI SPIC SMO MCML (JV) A Joint Venture Co. militates against the position that it is permissible to prescribe that recourse to arbitration can be taken only in the event of the Insurance Company admitting its liability, the arbitrable dispute being only as regards the quantum of amount to which the insured is entitled.

(iii) Learned counsel for the respondent has sought to distinguish the judgment of a coordinate Bench of this Court in Payu Payments (P) Ltd. v. New India Assurance Co. Ltd. by contending that in terms of Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In re and SBI General Insurance Co. Ltd. v. Krish Spinning, the examination as regards the prima facie existence of an arbitration agreement has to be in the context of Section 7 of the A&C Act. Thus, the examination for the purpose of the present proceeding should be to see if there is an arbitration agreement between the parties "pertaining to the disputes" between the parties.

(iv) The respondent also relies upon an English judgment rendered by the Kings Bench Division, Commercial Court in DC Bars Ltd. v. QIC Europe (Comm) wherein the said Court has upheld the restrictive applications of an identically worded arbitration clause and has held that the same can be invoked only where the disputes involve assessment of quantum and not where the issue of liability is also in dispute.

Reasons and conclusion

10. *In the opinion of this Court, the present case is clearly covered by the decision of a coordinate Bench of this Court in Payu Payments (P) Ltd. v. New India Assurance Co. Ltd. In that case, the court dealt with a similar opposition to the Section 11 petition, based on the judgments of the Supreme Court in Oriental Insurance Co. Ltd. v. Narbheram Power and Steel (P) Ltd. and United India Insurance Co. Ltd. v. Hyundai Engg. and Construction Co. Ltd. By taking note of the position of law, as explicitly set out in SBI General Insurance Co. Ltd. v. Krish Spinning, it was specifically observed as under: (Payu Payments (P) Ltd. case, SCC OnLine Del paras 27, 30, 31, 33, 39-42 and 44)*

27. I am unable to agree with the submissions of Dr George. For the first instance, the paragraps from the judgment in SBI General Insurance Co. Ltd. case, on which Dr George placed reliance, do not clearly say that, where the claim of the claimant in the arbitral proceedings relates to the respondent's liability to pay insurance, the referral court cannot refer the disputes to arbitration.

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30. ***There is nothing in the decision in*** *SBI General Insurance Co. Ltd. case* ***which holds that, where the claim of the insured party also relates to the liability of the Insurance Company, the dispute would not be arbitrable because of the exclusionary covenant in the insurance clause****.*

31. ***That apart, the argument of Dr George, at the highest, is a challenge to the arbitrability of the dispute. The Supreme Court, in*** *SBI General Insurance Co. Ltd. case,* ***has clearly held, inter alia in para 120 of the decision, that any question of arbitrability or non-arbitrability of the dispute has to be relegated to the Arbitral Tribunal. It is not possible, therefore, for this Court after*** *SBI General Insurance Co. Ltd. case,* ***to accept Dr George's contention, as doing so would amount to this Court returning a finding that the dispute is not arbitrable as the respondent has repudiated the petitioner's claim, which it cannot do, under Section 11(6)****.*

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33. ***Apropos the decisions in*** *Oriental Insurance Co. Ltd. case* ***and*** *United India Insurance Co. Ltd. case,* ***these are both decisions which were rendered at a time when*** *SBI General Insurance Co. Ltd. case* ***had yet to be pronounced. They pertain to an era in which the scope of examination by a Section 11 court was radically different from the scope as it exists now.***

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39. Both these decisions, therefore, were rendered at a time when the High Court, exercising jurisdiction under Section 11 of the 1996 Act, could enter into the arena of arbitrability of the dispute. That, indeed, was the law as it prevailed in several decisions prior to SBI General Insurance Co. Ltd. case, including, notably, Vidya Drolia v. Durga Trading Corpn.

40. ***The decision in*** *SBI General Insurance Co. Ltd. case,* ***however, has resulted in a paradigm shift in the scope of examination by a Section 11 court. As of today, a Section 11 court cannot examine the aspect of arbitrability of the dispute.***

41. ***If this Court were to accept the submissions of Dr George and hold that the dispute that the petitioner seeks to be referred to arbitration cannot be referred because of the repudiation of the petitioner's claim by the respondent, it would amount to a finding that the petitioner's claims have, by reasons of their repudiation by the respondent, been rendered non-arbitrable. Such a finding would amount to this Court pronouncing on the arbitrability of the dispute while acting as a referral court. That this Court cannot do, in view of the law laid down in*** *SBI General Insurance Co. Ltd.*

case, ***particularly para 120 thereof.***

42. It may be noted that the Supreme Court has, in para 114 of the report in SBI General Insurance Co. Ltd. case, left no scope for doubt on this aspect at all, by observing that "the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of arbitration agreement and nothing else".

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44. I am not, therefore, inclined to accord, to the decision in SBI General Insurance Co. Ltd. case, any interpretation which would dilute the intent of the said decision, which is to minimise the scope of examination at a Section 11 stage and to relegate as many issues in controversy as possible to the Arbitral Tribunal for decision.

(emphasise supplied)

11. *The above observations squarely apply to the objections raised by the respondent in the present case as well. As noted, Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In re and SBI General Insurance Co. Ltd. v. Krish Spinning have resulted in a paradigm shift in the scope of examination in proceedings under Section 11 of the A&C Act. It is now impermissible for a Section 11 court to dwell on the issues of "arbitrability" or the scope of the arbitration agreement.*

12. *Issues concerning arbitrability/non-arbitrability are required to be relegated to the Arbitral Tribunal. In SBI General Insurance Co. Ltd. v. Krish Spinning, the Supreme Court specifically took note of the fact that the position of law, as set out in Vidya Drolia v. Durga Trading Corpn.; NTPC Ltd. v. SPML Infra Ltd. (and other line of judgments) in terms of which it was permissible for a Section 11 court to weed out "ex facie non arbitration disputes" would not continue to hold good in view of the decision by a seven Judge Bench of the Supreme Court in Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In re. It was specifically observed as under:*

114. In view of the observations made by this Court in Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In re, 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 case and adopted in NTPC Ltd. v. SPML Infra Ltd. 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 Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In re.

13. *It was also observed as under:*

> *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.*

14. *It is also relevant that arbitration clauses that fell for consideration for the Supreme Court in Oriental Insurance Co. Ltd. v. Narbheram Power and Steel (P) Ltd. and United India Insurance Co. Ltd. v. Hyundai Engg. and Construction Co. Ltd. contained the following words of negative import: (Oriental Insurance Co. Ltd. case SCC p. 540 para 7)*

> *"It is clearly agreed and understood that no difference or dispute shall be referable to arbitration and hereinabove provided, if the Company has disputed or not accepted liability under or in respect of this policy."*

15. *It is notable that such words of negative import are not to be found in the present arbitration agreement. Whether or not the same has any bearing on the scope of the arbitration agreement would require an interpretative exercise. Necessarily, such exercise is best left to be done by a duly constituted Arbitral Tribunal."*

13. Court also delved into the issue of the arbitration agreement being strictly construed and the impact of a condition in the agreement that insurance company must admit its liability under the policy before the insured can take recourse to the arbitration clause and held that the contention that an arbitration agreement is required to be strictly construed to preclude even appointment of an Arbitrator cannot be accepted. Even the

question whether or not arbitration is precluded will hinge on interpretation of the arbitration agreement which must necessarily be done by the Arbitrator. All attendant factual aspects including validity/invalidity of 'repudiation' on the part of the insurance company and/or any other aspect having a bearing on the issue of arbitrability will also be the remit of an Arbitrator. Relevant passages from the judgment are as follows:-

> *"**16.** Learned counsel for the petitioner has also sought to assail the precondition in the present arbitration agreement viz. that the Insurance Company must admit its liability under the policy before the insured can take recourse to the arbitration clause. It is further contended that the arbitration agreement cannot be construed/applied in a manner so as to permit the respondent to avoid arbitration on the basis of a self-serving, untenable repudiation.*
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> ***17.** The petitioner relies upon Lombardi Engg. Ltd. v. Uttarakhand Jal Vidyut Nigam Ltd. to contend that the arbitration clause in the policy be construed in a manner so that the right of the petitioner to seek arbitration, is not defeated on account of any arbitrary action of the respondent. For this purpose, reliance is sought to be placed on the following observations in Lombardi Engg. Ltd. v. Uttarakhand Jal Vidyut Nigam Ltd.: (SCC p. 391, para 83)*
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> > *83. The concept of "party autonomy" as pressed into service by the respondent cannot be stretched to an extent where it violates the fundamental rights under the Constitution. For an arbitration clause to be legally binding it has to be in consonance with the "operation of law" which includes the Grundnorm i.e. the Constitution. It is the rule of law which is supreme and forms parts of the basic structure. The argument canvassed on behalf of the respondent that the petitioner having consented to the pre-deposit clause at the time of execution of the agreement, cannot turn around and tell the court in a Section 11(6) petition that the same is arbitrary and falling foul of Article 14 of the Constitution is without any merit.*
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> ***18.** Whether or not arbitration is precluded in the present case or whether the claims sought to be raised by the petitioner are liable to be resolved through arbitration in view of the aforesaid submissions of the petitioner, will hinge on the interpretation of the arbitration agreement. The same shall necessarily be done by a duly constituted Arbitral Tribunal. All attendant factual aspects, including the issue as to validity/invalidity of the "repudiation" on the part of the Insurance Company and/or any other aspect which has a bearing on the issue of arbitrability, will also*

necessarily be considered by a duly constituted Arbitral Tribunal.

19. *This Court also finds it untenable to accept the contention of the respondent that an arbitration agreement is required to be "strictly construed" so as to preclude even appointment of an arbitrator. While observations to this effect may have been made in some earlier judgments, the contemporary view that has emerged is that where two interpretations are possible, the court must favour the one that gives effect to the agreement to arbitrate.*

20. *It has been observed by the Supreme Court in Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., as under: (SCC p. 692, para 96)*

> *"96. Examined from the point of view of the legislative object and the intent of the framers of the statute i.e. the necessity to encourage arbitration, the court is required to exercise its jurisdiction in a pending action, to hold the parties to the arbitration clause and not to permit them to avoid their bargain of arbitration by bringing civil action involving multifarious causes of action, parties and prayers."*

21. *In MTNL v. Canara Bank, it was observed as under: (SCC p. 776, para 9.5)*

> *9.5. A commercial document has to be interpreted in such a manner so as to give effect to the agreement, rather than to invalidate it. An "arbitration agreement" is a commercial document inter partes and must be interpreted so as to give effect to the intention of the parties, rather than to invalidate it on technicalities.*
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> *xxx xxx xxx*

26. *It is again emphasised that in terms of the settled law, the scope of examination in the present proceedings is confined to ascertaining prima facie, the existence of an arbitration agreement. All other issues, including the objections raised by the respondent, are required to be dealt with by a duly constituted Arbitral Tribunal."*

14. As can be seen in ***M/s Inox World (supra)***, the Court relied on the judgement in ***Payu Payments (supra),*** where the Respondent argued that the arbitration clause would not apply since Respondent had repudiated Petitioner's claim and relied on the judgments, which are relied upon by the Respondent in the instant case. Disagreeing with the Respondent, Court permitted the parties to appoint their nominee Arbitrators, who would then

proceed to appoint the Presiding Arbitrator, holding that there was nothing in the decision in ***Krish Spinning (supra)***, which holds that where the claim of the insured party also relates to the liability of the insurance company, the dispute would not be arbitrable because of the exclusionary covenant in the insurance clause. It was observed that in ***Krish Spinning (supra)***, Supreme Court has clearly held, *inter alia* that any question of arbitrability or non-arbitrability of the dispute has to be relegated to the arbitral tribunal and holding otherwise would amount to this Court returning a finding that the dispute is not arbitrable as the Respondent has repudiated Petitioner's claim, which it cannot do under Section 11(6).

15. Significantly, Court distinguished the judgements relied upon the Respondent herein and held that apropos the decisions in ***Narbheram (supra)*** and ***Hyundai Engineering (supra)*** are both decisions which were rendered at a time when ***Krish Spinning (supra)*** had yet to be pronounced. They pertain to an era in which the scope of examination by a Section 11 Court was radically different from the scope as it exists now. In both these decisions, the High Court proceeded to refer the dispute to arbitration. In ***Narbheram (supra)***, a specific plea was raised before the High Court that, as the Insurance Company had repudiated claimant's claim, the High Court could not have appointed an arbitrator. The High Court, nonetheless, went ahead to do so. The Supreme Court found that the High Court could not have referred the dispute to arbitration in view the wording of the clause in that case. However, the decision in ***Krish Spinning (supra)***, has resulted in a paradigm shift in the scope of examination by a Section 11 Court and as of today, a Section 11 Court cannot examine the aspect of arbitrability of the dispute. Court highlighted that the Supreme Court has in para 114 of the

report in ***Krish Spinning (supra)***, left no scope for doubt on this aspect at all, by observing that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of arbitration agreement, and nothing else.

16. In ***Pragati Power (supra),*** Court was dealing with same Clause 12 of IAR policy in a petition filed under Section 11(6) of the 1996 Act, where Respondent took a preliminary objection as to the arbitrability of the claims raised by the Petitioner on the ground that Respondent had denied its liability *qua* the claims through various communications and therefore, the claims being limited to the quantum of the amount payable could not be referred to arbitration. This objection was not accepted by the Court observing that scope of interference in a petition under Section 11(6) of the 1996 Act has been crystalized by the Supreme Court in ***Krish Spinning (supra),*** which has resulted in a significant shift in the landscape and a referral Court now has minimal interference. Relevant paragraphs of the judgment are as follows:-

> *"8. The scope of interference of a Court exercising its power under Section 11 of the Arbitration and Conciliation Act, 1996, has now been crystallized by the Apex Court in the judgment of SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754, which has resulted in a significant shift in landscape. In doing so, the Apex Court has rendered the following observations, which reads as under:-*
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> > *"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 (supra) and adopted in NTPC v. SPML (supra) 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).*

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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.

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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 it Section 11 application is rejected.

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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 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."

9. This Court also takes note of the judgments rendered by the Coordinate Benches in Payu Payments (supra) & Inox World Industries (supra), whereby the decision of the Apex Court in Krish Spinning (supra) has been graciously upheld and minimal interference has been made in adjudicating upon petitions filed under Section 11 of the Arbitration and Conciliation Act, 1996. Both these decisions squarely cover most of the contentions raised by the learned Senior Counsel for the Respondent in the present petition.

10. Yet, in order to duly pay heed to the arguments raised by the parties, this Court shall now examine the rival contentions of the parties in light of the array of case laws laying down the law on Section 11 of the Arbitration and Conciliation Act, 1996.

> *11. At the very outset, this Court notes that there exists a valid arbitration agreement under Clause 12 of the IAR Policy between the parties to the present petition. This has not been disputed by the learned Senior Counsel for the Respondent. Further, this dispute regarding arbitrability in no way alters the existence of the arbitration agreement, and as such, can be better adjudicated upon by the arbitral tribunal as a preliminary issue. Resultantly, in terms of Krish Spinning (supra), this sole observation that there exists an arbitration agreement is sufficient for this Court to appoint an Arbitrator to adjudicate upon the inter se disputes between the parties to the present Petition.*
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> *12. Though it has already been observed by the Coordinate Benches of this Court in Payu Payments (supra) & Inox World Industries (supra), this Court still deems it appropriate to observe that the decisions of the Apex Court in Hindustan Engineering (supra) and Narbheram Power (supra) no longer hold good on the law of scope of examination by a Section 11 Court. These decisions of the Apex Court were rendered prior in time to the Judgment of Krish Spinning (supra) and as such, the scope of a Section 11 Court is drastically different at present.*
>
> *13. Since it is well-settled that referral courts should normally follow the policy of „when in doubt, refer" and in view of the fact that disputes have certainly arisen between the parties, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the parties.*
>
> *14. It is made clear that the observations made in this Order are squarely limited to the appointment of an Arbitrator. Needless to say, it is open for the Respondent to urge its contention inter alia regarding the arbitrability of disputes before the Arbitrator."*

17. In light of these judgments, Respondent cannot be heard to say that this Court should determine whether the disputes raised by the Petitioner are arbitrable or that there is *accord and satisfaction* and hence the claims cannot be referred for arbitration. In ***Krish Spinning (supra)***, the Supreme Court re-considered the scope of Section 11(6) of the 1996 Act and clarified that exercise of power under Section 11(6) of the 1996 Act would be limited to examining the existence of arbitration agreement and whether the petition is barred by limitation. This clarification was based on the decision of the seven-Judge Bench of the Supreme Court in ***Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act,***

1899, In Re, (2024) 6 SCC 1. It was also observed that the dispute regarding *accord and satisfaction* does not pertain to existence of the arbitration agreement and can be adjudicated by the Arbitrator as a preliminary issue. Hence, the preliminary objections of the Respondent are rejected, being bereft of merit.

18. Accordingly, Ms. Justice Shalinder Kaur, former Judge of this Court (Mobile No. 9910384702) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties. Arbitral proceedings will be held under the aegis of Delhi International Arbitration Centre ('DIAC'). Fee of the Arbitrator shall be fixed as per fee schedule under DIAC (Administrative Cost & Arbitrators' Fees) Rules 2018.

19. Learned Arbitrator shall give disclosure under Section 12 of the 1996 Act before entering upon reference.

20. It is made clear that this Court has not expressed any opinion on the merits of the case and all rights and contentions of the parties are left open. It is left open to the Respondent to raise the questions of arbitrability of the disputes as also alleged *accord and satisfaction* of the claims before the learned Arbitrator.

21. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

SEPTEMBER 10, 2025
Ch