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

% *Date of Decision: 12th August, 2025*

\+ ARB.P. 596/2025

BAKHTAWAR AHMAD RATHER .....Petitioner

Through: Mr. H.L. Narula, Mr. Bhupesh Narula, Mrs. Rinku Narula, Mrs. Poonam Nagpal, Mr. Anugrah Ekka and Mr. Kanishk Taneja, Advocates.

versus

AIRPORT AUTHORITY OF INDIA .....Respondent

Through: Mr. Digvijay Rai, Standing Counsel with Mr. Archit Mishra, Advocate.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. This petition is filed on behalf of the Petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 (1996 Act) for appointment of sole Arbitrator to adjudicate the *inter se* disputes between the parties.

2. To the extent relevant, the case set out by the Petitioner is that Petitioner is a proprietor of M/s Bakhtawar Ahmad Rather, a firm registered with various Government Departments as Class-1 contractor firm and engaged in the business of construction works in India. Respondent invited tenders for work of *'Construction of 2 No's of Rotunda on Airside at CA, Srinagar'* through its Senior Manager, AAI, Srinagar. Petitioner submitted his bid after considering all factors including the fact that time was essence of the contract and the quoted rates were applicable only for the stipulated

period. Petitioner's bid was accepted and Letter of Acceptance was issued on 24.04.2017 requiring the Petitioner to deposit Performance Guarantee towards security @ 5% of the bid amount, followed by execution of a formal Agreement dated 01.05.2017. Stipulated dates of start and completion of work were 04.05.2017 and 03.11.2017, respectively.

3. It is averred by the Petitioner that at the time of issuing the Letter of Acceptance, Respondent had issued specific directions to contact the Manager (Engg.-Civil) for taking possession of the site for starting the work, which the Petitioner did, but only a small part of the site was handed over and that too was encumbered due to security reasons at the running Airport. Subsequently also Petitioner faced several hindrances and obstructions at the site such as non-availability of working drawings, lack of decisions etc. and despite the completion date being 03.11.2017, complete structural drawings were provided only on 30.11.2018 i.e. after a delay of 18 months in a contract of six months and complete site was made available only on 11.09.2018. Thus there were fundamental breaches of the contract by the Respondent.

4. It is averred in the petition that due to the breaches by the Respondent, the work spilled over extra time and Petitioner was compelled to maintain resources and work force at site, incurring unwarranted and uncontemplated expenses. While there was a continuous rise in prices of material and labour, which was unanticipated, there was no escalation clause under the contract and Petitioner was constrained to complete the contract at the quoted rates. Accordingly, Petitioner re-calculated the rates and made an offer to the Department on 06.12.2017 to close the contract and pay the final bill but to no avail. Instead of understanding the genuine

issues raised by the Petitioner, Respondent issued show cause notice dated 23.01.2018 under Clause 3 of the Agreement threatening to rescind the contract and forfeit the security money. Respondent also extended the contract and keeping its business interest in mind, Petitioner sent a letter on 10.12.2018 informing the Respondent that in case it desired to get further work executed, Petitioner shall charge 40% over the quoted rates and that if the said offer was not acceptable, the contract be closed. Petitioner also demanded legitimate payments that had been withheld under Clause 10C/10CA etc. with interest and damages. As per the Petitioner, this letter was in fact a notice under Sections 19, 55, 67 and 73 of the Indian Contract Act, 1872.

5. It is further averred that disputes having arisen between the parties, Petitioner sent a demand notice dated 10.12.2018, followed by letters dated 11.02.2019, 01.04.2019 and 05.04.2019 informing the Respondent of the hindrances at the site but no remedial action was taken. Legal notice was also sent on 26.02.2019. By e-mail dated 06.05.2019, Respondent provided revised structural drawings to the Petitioner, however, hindrances continued at the work site due to ongoing expansion of the terminal building. Instead of addressing the grievances raised by the Petitioner, Respondent sent a show cause notice on 11.04.2019, to which a reply was sent on 12.04.2019 refuting the allegations made in the show cause notice.

6. It is stated that vide letter dated 01.05.2019, Respondent constituted a Dispute Resolution Committee (DRC) for redressal of the disputes raised by the Petitioner. DRC meetings did not yield any result and Petitioner invoked the arbitration clause in the Agreement and sent a notice dated 21.09.2024, seeking appointment of an Arbitrator. Respondent rejected the

request for arbitration vide letter dated 24.12.2024 and Petitioner filed the present petition.

7. Learned counsel for the Petitioner submitted that the Agreement dated 01.05.2017 between the parties contains Disputes Settlement clause as per which parties agreed that all differences or disputes arising from the Agreement shall be decided by process of settlement and arbitration in accordance with Clause No. 25 of General Conditions of Contract ('GCC') and provisions of 1996 Act. Disputes having arisen between the parties and Respondent having failed to appoint the Arbitrator even after receipt of invocation notice, there is no impediment in the appointment of the Sole Arbitrator by this Court. It was urged that the existence of arbitration agreement is undisputed and this is the limited enquiry that a Referral Court can enter into in exercise of jurisdiction under Section 11(6) of 1996 Act.

8. Reply has been filed on behalf of the Respondent and relying on the same, learned counsel for the Respondent raised two objections to the maintainability of this petition. First objection was that the claims of the Petitioner are *ex-facie* time barred and cannot be referred to arbitration inasmuch as the cause of action, if any, arose in favour of the Petitioner in 2019, when it sought reference of the disputes to DRC for adjudication vide notice dated 26.02.2019. DRC was constituted by the Competent Authority of the Respondent vide letter dated 01.05.2019. Meeting of DRC was convened on 02.03.2020, wherein it was recorded that after receiving reply of the Respondent, Claimant wanted to file a rejoinder. However, there was no response from the Petitioner and no rejoinder was filed and thus no decision was taken by DRC under the impression that Petitioner had abandoned his claims. Moreover, Petitioner continued to execute the work

even thereafter and completed the same on 05.10.2020.

9. The second objection was that after the Petitioner completed the work on 05.10.2020, payment was released by the Respondent against the final bill on 12.11.2020 and Petitioner accepted the amount without any protest or demur. Having accepted the full and final payment, Petitioner has waived his right to raise any claim and cannot seek reference to arbitration for the said claims. This petition is only a tool to revive dead claims, post a complete accord and satisfaction and discharge of the Respondent from all its liabilities. Learned counsel placed heavy reliance on paragraph 40 of the judgment of Supreme Court in ***Aslam Ismail Khan Deshmukh v. ASAP Fluids Private Limited and Another, (2025) 1 SCC 502***, wherein the Supreme Court has referred to an earlier judgment of the Supreme Court in ***Arif Azim Company Limited v. Aptech Limited, (2024) 5 SCC 313***, holding that although limitation is an admissibility issue, yet it is the duty of the Courts to *prima facie* examine and reject non-arbitrable or dead claims, so as to protect the other party from being drawn into a time consuming and costly arbitration process.

10. Arguing in rejoinder, learned counsel for the Petitioner refuted that the claims of the Petitioner are time barred or that having accepted the payment under the final bill, Petitioner was precluded from taking recourse to arbitration on ground of *'accord and satisfaction'*. It was explained that there is no delay in filing the present petition as Petitioner had taken recourse to approaching the DRC, before resorting to the remedy of arbitration, in consonance with the dispute settlement clause and was awaiting its decision, which has not been rendered till date. Since no decision was forthcoming, Petitioner sent an invocation notice on

21.09.2024 and on failure of Respondent to act in terms thereof, present petition was filed. Without prejudice to these submissions, it was argued that even otherwise determination on both issues raised by the Respondent i.e., claims being time barred/dead wood and/or there being *'accord and satisfaction'* is within the domain and jurisdiction of the Arbitral Tribunal and cannot be raised before this Court to question the maintainability of this petition under Section 11(6) of 1996 Act.

11. Heard learned counsels for the parties and examined their rival submissions.

12. Broadly understood, Respondent has raised twofold objections opposing reference of disputes to arbitration: (a) claims of the Petitioner are *ex facie* time barred; and (b) there is *'accord and satisfaction'* of the claims since Petitioner accepted payment under the final bill and cannot now take recourse to arbitration.

13. In my considered view, both the objections raised by the Respondent only deserve to be rejected for the reasons that follow. Coming to the objection of the claims being *ex facie* time barred, the Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754,*** has held 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. Earlier in ***Arif Azim (supra)***, the Supreme Court had framed and decided two questions: (a) whether Limitation Act, 1963 ('1963 Act') is applicable to application for appointment of Arbitrator under Section 11(6) of 1996 Act; and (b) whether Court may decline to make

reference under Section 11 of 1996 Act, where claims are *ex facie* and hopelessly time barred. On the first question, the Supreme Court observed that 1963 Act was applicable to applications filed under Section 11(6) of 1996 Act and in fact it was the duty of referral Court to examine whether the application was time barred or not under Article 137 of 1963 Act i.e., three years from the date when the right to apply accrues. It was further held that limitation period for filing a petition under Section 11(6) can only commence once a valid notice invoking arbitration has been sent by the applicant to the other party and there has been a failure or refusal by the other party in compliance with the requirements of the notice. In ***Krish Spinning (supra)***, the Supreme Court held that as far as the first issue was concerned with regard to applicability of 1963 Act and the requirement of examining if the petition under Section 11 was within three years from the date when the right to apply accrues, the observations made in ***Arif Azim (supra)*** did not require any clarification and should be construed as explained.

14. However, on the second question with regard to the remit of a referral Court to examine if the claims were arbitrable or dead claims, the Supreme Court observed that paragraph 89 of the judgment in ***Arif Azim (supra)***, was based on earlier decisions, more particularly, in ***Vidya Drolia and Others v. Durga Trading Corporation, (2021) 2 SCC 1*** and ***NTPC Limited v. SPML Infra Limited, (2023) 9 SCC 385,*** and clarified that after the judgment 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***, the referral Court under Section 11(6) of 1996 Act should only examine whether the petition has

been filed within three years from the date the right to apply accrued and must not conduct an intricate enquiry into whether the claims are time barred. The question whether the claims are time barred must be left for determination by the Arbitrator as such an approach will give true meaning to the legislative intention underlying Section 11(6-A) of 1996 Act. Relevant paragraph from the judgment is as follows:-

> *"136. Thus, we clarify that while determining the issue of limitation in exercise of the powers under Section 11(6) of the 1996 Act, 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 [Arif Azim Co. Ltd. v. Aptech Ltd., (2024) 5 SCC 313 : (2024) 3 SCC (Civ) 358] . 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 Interplay between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re [Interplay between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066]."*

15. This position of law was reiterated by the Supreme Court in ***Aslam Ismail (supra)***. The decision arose out of two petitions filed under Section 11(6) of 1996 Act before the Supreme Court seeking appointment of an Arbitrator for adjudication of disputes in terms of Clause 13.10 of Shareholder's Agreement dated 25.07.2011 entered into between the Petitioner and the Respondents. Petitioner urged that there existed an arbitration clause in the agreement and the same was not disputed by the parties. Respondents raised two broad contentions, one on the merits of the dispute and second that the claims raised in the petitions were barred by

limitation. On the question whether reference was to be declined by examining whether the substantive claims of the Petitioner were *ex facie* and hopelessly time barred, the Supreme Court held as follows:-

> *"**33.** Having heard the learned counsel appearing for the parties and having gone through the materials on record, the short question that falls for our consideration is whether we should decline to make a reference under Section 11(6) of the 1996 Act, by examining whether the substantive claims of the petitioner are ex facie and hopelessly time-barred?*
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> ***34.** A three-Judge Bench of this Court in Vidya Drolia v. Durga Trading Corpn. [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] while dealing with the scope of powers of the referral Court under Sections 8 and 11, respectively, endorsed the prima facie test and opined that courts at the referral stage can interfere only in rare cases where it is manifest that the claims are ex facie time-barred and dead, or there is no subsisting dispute. Such a restricted and limited review was considered necessary to check and protect parties from being forced to arbitrate when the matter is demonstrably "non-arbitrable" and to cut off the deadwood.*
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> ***35.** The relevant observations in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] are reproduced hereinbelow : (Vidya Drolia case [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] , SCC pp. 119 & 121, paras 148 & 154)*
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> > *"148. Section 43(1) of the Arbitration Act states that the Limitation Act, 1963 shall apply to arbitrations as it applies to court proceedings. Sub-section (2) states that for the purposes of the Arbitration Act and the Limitation Act, arbitration shall be deemed to have commenced on the date referred to in Section 21. Limitation law is procedural and normally disputes, being factual, would be for the arbitrator to decide guided by the facts found and the law applicable. The court at the referral stage can interfere only when it is manifest that the claims are ex facie time-barred and dead, or there is no subsisting dispute. All other cases should be referred to the Arbitral Tribunal for decision on merits. Similar would be the position in case of disputed "no-claim certificate" or defence on the plea of novation and "accord and satisfaction". As observed in Premium Nafta Products Ltd. [Fili Shipping Co. Ltd. v. Premium Nafta Products Ltd., 2007 UKHL 40 : 2007 Bus LR 1719 (HL)] , it is not to be expected that commercial men while entering transactions inter se would knowingly create a system which would require that the court*

should first decide whether the contract should be rectified or avoided or rescinded, as the case may be, and then if the contract is held to be valid, it would require the arbitrator to resolve the issues that have arisen.

* * *

154. ... 154.4. Rarely as a demurrer the court may interfere at Section 8 or 11 stage when it is manifestly and ex facie certain that the arbitration agreement is non-existent, invalid or the disputes are non-arbitrable, though the nature and facet of non-arbitrability would, to some extent, determine the level and nature of judicial scrutiny. The restricted and limited review is to check and protect parties from being forced to arbitrate when the matter is demonstrably "non-arbitrable" and to cut off the deadwood. The court by default would refer the matter when contentions relating to non-arbitrability are plainly arguable; when consideration in summary proceedings would be insufficient and inconclusive; when facts are contested; when the party opposing arbitration adopts delaying tactics or impairs conduct of arbitration proceedings. This is not the stage for the court to enter into a mini trial or elaborate review so as to usurp the jurisdiction of the Arbitral Tribunal but to affirm and uphold integrity and efficacy of arbitration as an alternative dispute resolution mechanism."

(emphasis supplied)

36. *In BSNL v. Nortel Networks India (P) Ltd. [BSNL v. Nortel Networks India (P) Ltd., (2021) 5 SCC 738 : (2021) 3 SCC (Civ) 352], the notice invoking arbitration was issued 5½ years after the cause of action arose i.e. rejection of the claims of Nortel by BSNL and the claim was therefore held to be ex facie time-barred. This Court clarified that the period of limitation for filing a petition seeking appointment of an arbitrator(s) cannot be confused or conflated with the period of limitation applicable to substantive claims made in the underlying commercial contract.*

37. *By placing reliance on Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] it was held that, a referral Court exercising its jurisdiction under Section 11 may decline to make the reference in a very limited category of cases, where there is not even a vestige of doubt that the claim is ex facie time-barred. The relevant observations in BSNL v. Nortel Networks India [BSNL v. Nortel Networks India (P) Ltd., (2021) 5 SCC 738 : (2021) 3 SCC (Civ) 352] are reproduced hereinbelow : (Nortel Networks case [BSNL v. Nortel Networks India (P) Ltd., (2021) 5 SCC 738 : (2021) 3 SCC (Civ) 352] , SCC pp. 763 & 766, paras 44 & 47-49)*

"44. The issue of limitation which concerns the "admissibility" of the claim, must be decided by the Arbitral Tribunal either as a preliminary issue, or at the final stage after evidence is led by the parties.

* * *

47. It is only in the very limited category of cases, where there is not even a vestige of doubt that the claim is ex facie time-barred, or that the dispute is non-arbitrable, that the court may decline to make the reference. However, if there is even the slightest doubt, the rule is to refer the disputes to arbitration, otherwise it would encroach upon what is essentially a matter to be determined by the tribunal.

48. Applying the law to the facts of the present case, it is clear that this is a case where the claims are ex facie time-barred by over 5½ years, since Nortel did not take any action whatsoever after the rejection of its claim by BSNL on 4-8-2014. The notice of arbitration was invoked on 29-4-2020. There is not even an averment either in the notice of arbitration, or the petition filed under Section 11, or before this Court, of any intervening facts which may have occurred, which would extend the period of limitation falling within Sections 5 to 20 of the Limitation Act. Unless, there is a pleaded case specifically adverting to the applicable section, and how it extends the limitation from the date on which the cause of action originally arose, there can be no basis to save the time of limitation.

49. The present case is a case of deadwood/no subsisting dispute since the cause of action arose on 4-8-2014, when the claims made by Nortel were rejected by BSNL. The respondent has not stated any event which would extend the period of limitation, which commenced as per Article 55 of the Schedule of the Limitation Act (which provides the limitation for cases pertaining to breach of contract) immediately after the rejection of the final bill by making deductions."

(emphasis supplied)

38. *This very Bench in Arif Azim Co. Ltd. v. Aptech Ltd. [Arif Azim Co. Ltd. v. Aptech Ltd., (2024) 5 SCC 313 : (2024) 3 SCC (Civ) 358] was concerned with the following two issues while deciding an application for the appointment of an arbitrator under Section 11(6) of the 1996 Act, — first, whether the Limitation Act, 1963 is applicable to an application for appointment of arbitrator under Section 11(6) of the 1996 Act?; and second, whether the court may decline to make a reference under Section 11 of the 1996 Act, where the claims are ex facie and hopelessly time-barred.*

39. *On the first issue in Arif Azim [Arif Azim Co. Ltd. v. Aptech Ltd.,*

(2024) 5 SCC 313 : (2024) 3 SCC (Civ) 358] , it was observed that Section 11(6) of the 1996 Act, would be covered by Article 137 of the Limitation Act, 1963 which prescribes a limitation period of 3 years from the date when the right to apply accrues. The limitation period for filing an application seeking appointment of an arbitrator was held to commence only after a valid notice invoking arbitration had been issued by one of the parties to the other party and there had been either a failure or refusal on the part of the other party to comply with the requirements of the said notice.

40. *On the second issue in Arif Azim [Arif Azim Co. Ltd. v. Aptech Ltd., (2024) 5 SCC 313 : (2024) 3 SCC (Civ) 358] , which is identical to the issue raised in the present petitions, it was observed that, although, limitation is an admissibility issue, yet it is the duty of the courts to prima facie examine and reject non-arbitrable or dead claims, so as to protect the other party from being drawn into a time-consuming and costly arbitration process. The findings on both the issues were summarised as thus : (SCC p. 357, para 92)*

> *"92. Thus, from an exhaustive analysis of the position of law on the issues, we are of the view that while considering the issue of limitation in relation to a petition under Section 11(6) of the 1996 Act, the Courts should satisfy themselves on two aspects by employing a two-pronged test — first, whether the petition under Section 11(6) of the 1996 Act is barred by limitation; and secondly, whether the claims sought to be arbitrated are ex facie dead claims and are thus barred by limitation on the date of commencement of arbitration proceedings. If either of these issues are answered against the party seeking referral of disputes to arbitration, the Court may refuse to appoint an Arbitral Tribunal."*
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> *(emphasis supplied)*

41. *However, subsequently, very pertinent observations were made by a seven-Judge Bench of this Court in Interplay between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re [Interplay between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066] regarding the scope of judicial interference at the Section 11 stage with a view to give complete meaning to the legislative intention behind the insertion of Section 11(6-A) of the 1996 Act. This Court referred to the Statement of Objects and Reasons of the 2015 Amendment Act and opined that the same indicated that the referral Courts shall "examine the existence of a prima facie arbitration agreement and not other issues" at the stage of appointment of an arbitrator. These "other issues" would include the examination of any other issue which has the consequence of unnecessary judicial interference in the arbitral proceedings. The relevant observations are*

reproduced hereinbelow : (SCC pp. 103-104, paras 219-20)

> *"219. The Statement of Objects and Reasons of the 2015 Amendment Act are as follows:*
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> > *'**6. (iii)** an application for appointment of an arbitrator shall be disposed of by the High Court or Supreme Court, as the case may be, as expeditiously as possible and an endeavour should be made to dispose of the matter within a period of sixty days.*
> >
> > ***(iv)** to provide that while considering any application for appointment of arbitrator, the High Court or the Supreme Court shall examine the existence of a prima facie arbitration agreement and not other issues.'*
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> *220. 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 [**Ed.** : The words between two asterisks have been emphasised in original as well.] not other issues [**Ed.** : The words between two asterisks have been emphasised in original as well.] ". 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."*
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> *(emphasis supplied)*

***42.** In light of the aforesaid observations, the ratio of Arif Azim [Arif Azim Co. Ltd. v. Aptech Ltd., (2024) 5 SCC 313 : (2024) 3 SCC (Civ) 358] was reconsidered by this very Bench in SBI General Insurance Co. Ltd. v. Krish Spg. [SBI General Insurance Co. Ltd. v. Krish Spg., (2024) 12 SCC 1 : 2024 SCC OnLine SC 1754] The position of law was clarified as thus : (Krish Spg. case [SBI General Insurance Co. Ltd. v. Krish Spg., (2024) 12 SCC 1 : 2024 SCC OnLine SC 1754] , SCC paras 131-32 & 135-37)*

> *"131. On the first issue, it was observed by us that the Limitation Act, 1963 is applicable to the applications filed under Section 11(6) of the 1996 Act. Further, we also held that it is the duty of the referral Court to examine that the application under Section 11(6) of the 1996 Act is not barred by period of limitation as prescribed under Article 137 of the Limitation Act, 1963 i.e. 3 years from the date when the right to apply accrues in favour of the applicant. To determine as to when the right to apply would accrue, we had observed in para 57 of the said decision that : (Arif Azim case [Arif Azim Co. Ltd. v. Aptech Ltd., (2024) 5 SCC 313 : (2024) 3 SCC (Civ) 358] , SCC p. 340)*

> *'57. ... the limitation period for filing a petition under Section 11(6) of the 1996 Act can only commence once a valid notice invoking arbitration has been sent by the applicant to the other party, and there has been a failure or refusal on part of that other party in complying with the requirements mentioned in such notice.'*

132. Insofar as the first issue is concerned, we are of the opinion that the observations made by us in Arif Azim [Arif Azim Co. Ltd. v. Aptech Ltd., (2024) 5 SCC 313 : (2024) 3 SCC (Civ) 358] do not require any clarification and should be construed as explained therein.

* * *

135. Insofar as our observations on the second issue are concerned, we clarify that the same were made in light of the observations made by this Court in many of its previous decisions, more particularly in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] and NTPC v. SPML Infra Ltd. [NTPC v. SPML Infra Ltd., (2023) 9 SCC 385 : (2023) 4 SCC (Civ) 342] . However, in the case at hand, as is evident from the discussion in the preceding parts of this judgment, we have had the benefit of reconsidering certain aspects of the two decisions referred to above in the light of the pertinent observations made by a seven-Judge Bench of this Court in Interplay between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re [Interplay between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066] .

136. Thus, we clarify that while determining the issue of limitation in exercise of the powers under Section 11(6) of the 1996 Act, 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 [Arif Azim Co. Ltd. v. Aptech Ltd., (2024) 5 SCC 313 : (2024) 3 SCC (Civ) 358] . 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 Interplay between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re [Interplay between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066] .

137. The observations made by us in Arif Azim [Arif Azim Co. Ltd. v. Aptech Ltd., (2024) 5 SCC 313 : (2024) 3 SCC (Civ) 358] are accordingly clarified. We need not mention that the effect of the aforesaid clarification is only to streamline the position of law, so as to bring it in conformity with the evolving principles of modern-day arbitration, and further to avoid the possibility of any conflict between the two decisions that may arise in future. These clarifications shall not be construed as affecting the verdict given by us in the facts of Arif Azim [Arif Azim Co. Ltd. v. Aptech Ltd., (2024) 5 SCC 313 : (2024) 3 SCC (Civ) 358] , which shall be given full effect to notwithstanding the observations made herein."

(emphasis supplied)

43. *Therefore, while determining the issue of limitation in the exercise of powers under Section 11(6) of the 1996 Act, the referral Court must only conduct a limited enquiry for the purpose of examining whether the Section 11(6) application has been filed within the limitation period of three years or not. At this stage, it would not be proper for the referral Court to indulge in an intricate evidentiary enquiry into the question of whether the claims raised by the petitioner are time-barred. Such a determination must be left to the decision of the arbitrator.*

44. *After all, in a scenario where the referral Court is able to discern the frivolity in the litigation on the basis of bare minimum pleadings, it would be incorrect to assume or doubt that the Arbitral Tribunal would not be able to arrive at the same inference, especially when they are equipped with the power to undertake an extensive examination of the pleadings and evidence adduced before them.*

45. *As observed by us in Krish Spg. [SBI General Insurance Co. Ltd. v. Krish Spg., (2024) 12 SCC 1 : 2024 SCC OnLine SC 1754] , the power of the referral Court under Section 11 must essentially be seen in light of the fact that the parties do not have the right of appeal against any order passed by the referral Court under Section 11, be it for either appointing or refusing to appoint an arbitrator. Therefore, if the referral Court delves into the domain of the Arbitral Tribunal at the Section 11 stage and rejects the application of the claimant, we run a serious risk of leaving the claimant remediless for the adjudication of their claims.*

46. *Moreover, the courts are vested with the power of subsequent review in which the award passed by the arbitrator may be subjected to challenge by any party to the arbitration. Therefore, the courts may take a second look at the adjudication done by the Arbitral Tribunal at a later stage, if considered necessary and appropriate in the circumstances.*

47. *In view of the above discussion, we must restrict ourselves to examining whether the Section 11 petitions made before us are within*

limitation. The petitioner herein issued a notice invoking arbitration on 23-1-2017 and the same was delivered to both the respondents on 24-1-2017. However, the respondents failed to reply to the said notice within a period of 30 days i.e. within 23-2-2017. Therefore, the period of limitation of three years, for the purposes of a Section 11(6) petition, would begin to run from 23-2-2017 i.e. the date of failure or refusal by the other party to comply with the requirements mentioned in the notice invoking arbitration. The present petitions under Section 11(6) were filed on 9-4-2019. Even including the period during which the parties proceeded before the Bombay High Court which ultimately held that the applications before it were not maintainable i.e. 3-3-2017 to 22-2-2019, these petitions are well within the bounds of limitation.

48. *The primary issue that has been canvassed by the respondents is that the substantive claims of the petitioner are ex facie time-barred and therefore, incapable of being referred to arbitration. The respondents contend that, with respect to the issue relating to the 2,00,010 equity shares, the petitioner has sought enforcement of the letter dated 22-9-2011 but has however, served a notice invoking arbitration 6 years later on 23-1-2017. Further, with respect to the 4,00,000 equity shares, it was contended that the claim can only arise upon the date of resignation i.e. 18-7-2013 and the claim would, therefore, again be time-barred.*

49. *Conversely, the case of the petitioners is that the date of 15-10-2015 i.e. the date of the last legal notice sent by the respondents to the petitioner, can be considered as the date of cause of action for the purposes of limitation. In the alternative, they assert that there is no specific date or day on which it can be ascertained that the cause of action had arisen since there is a continuous breach of contract on the part of the respondents.*

50. *As evident from the aforesaid discussion and especially in light of the observations made in Krish Spg. [SBI General Insurance Co. Ltd. v. Krish Spg., (2024) 12 SCC 1 : 2024 SCC OnLine SC 1754] , this Court cannot conduct an intricate evidentiary enquiry into the question of when the cause of action can be said to have arisen between the parties and whether the claim raised by the petitioner is time-barred. This has to be strictly left for the determination by the Arbitral Tribunal. All other submissions made by the parties regarding the entitlement of the petitioner to 4,00,000 and 2,00,010 equity shares in Respondent 1 company are concerned with the merits of the dispute which squarely falls within the domain of the Arbitral Tribunal.*

51. *It is now well-settled law that, at the stage of Section 11 application, the referral Courts need only to examine whether the arbitration agreement exists — nothing more, nothing less. This approach upholds the intention of the parties, at the time of entering into the agreement, to refer*

> *all disputes arising between themselves to arbitration. However, some parties might take undue advantage of such a limited scope of judicial interference of the referral Courts and force other parties to the agreement into participating in a time-consuming and costly arbitration process. This is especially possible in instances, including but not limited to, where the claimant canvasses either ex facie time-barred claims or claims which have been discharged through "accord and satisfaction", or cases where the impleadment of a non-signatory to the arbitration agreement is sought, etc.*
>
> ***52.*** *In order to balance such a limited scope of judicial interference with the interests of the parties who might be constrained to participate in the arbitration proceedings, the Arbitral Tribunal may direct that the costs of the arbitration shall be borne by the party which the Tribunal ultimately finds to have abused the process of law and caused unnecessary harassment to the other party to the arbitration.*
>
> ***53.*** *The existence of the arbitration agreement as contained in Clause 13.10 of the shareholders' agreement is not disputed by either of the parties. The submissions as regards the claim of the petitioner being ex facie time-barred may be adjudicated upon by the Arbitral Tribunal as a preliminary issue."*

16. From a reading of the judgments aforementioned, it is clear as day that in a petition under Section 11(6), the referral Court will only conduct a limited enquiry for examining whether the petition is within limitation period of three years or not and the three years will commence when the right to apply accrues i.e., when invocation notice is sent by one party and there is failure to act by the other party after receiving the notice, as held in ***Arif Azim (supra)*** and reiterated in ***Krish Spinning (supra)***, apart from determining the existence of the arbitration agreement between the parties. Referral Court is not to enter into an intricate evidentiary enquiry into whether the claims raised by the Petitioner are time barred and this determination is to be left to the Arbitrator. Therefore, there is no merit in the objection of the Respondent that this Court should first adjudicate whether the claims of the Petitioner sought to be referred to arbitration are

time barred and on coming to a conclusion in favour of the Respondent, decline reference.

17. Coming to the second and only other objection of the Respondent that having accepted payment under the final bill, Petitioner is precluded from invoking arbitration, in my view, this objection also deserves outright rejection as the issue is no longer *res integra.* In this context, I may first allude to the judgment of the Supreme Court in ***Krish Spinning (supra)***. One of the issues that arose for consideration in the said case was whether a full and final settlement between the parties would operate as a bar to invoke arbitration. This was in context of a consent letter sent by the Respondent accepting a certain quantity of cotton bales as against an initial higher claim, followed by issuance of an advance discharge voucher accepting receipt of Rs. 84,19,579/- from the Appellant towards full and final settlement of the claims. The said amount was released by the Appellant and therefore the Appellant contended that it was not open to the Respondent to turn around and raise a dispute. The High Court held that the disputes were required to be referred to arbitration and adjudication of 'full and final settlement' and thus 'accord and satisfaction' was the domain of the Arbitrator. The Supreme Court held that dispute regarding *'accord and satisfaction'* does not pertain to existence of the arbitration agreement and can only be adjudicated by the Arbitral Tribunal as a preliminary issue. The three questions framed by the Supreme Court for determination in the said case are as follows:-

> *"**D. <u>ISSUES FOR DETERMINATION</u>***
>
> ***34.** Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following three questions fall for our consideration:—*

> ***i.*** *Whether the execution of a discharge voucher towards the full and final settlement between the parties would operate as a bar to invoke arbitration?*
>
> ***ii.*** *What is the scope and standard of judicial scrutiny that an application under Section 11(6) of the Act, 1996 can be subjected to when a plea of "accord and satisfaction" is taken by the defendant?*
>
> ***iii.*** *What is the effect of the decision of this Court in* ***In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1966 and the Indian Stamp Act 1899*** *on the scope of powers of the referral court under Section 11 of the Act, 1996?"*

18. After examining the rival contentions of the parties, the Supreme Court held that whether or not there is a discharge of the contract is a mixed question of law and fact and dispute in relation thereto is arbitrable as per mechanism provided under the arbitration agreement. Basis Section 16(1) of 1996 Act, which in turn is based on Article 16 of UNCITRAL Modern Law on International Commercial Arbitration, 1985 embodying the presumption of separability, the Supreme Court observed that arbitration agreement survives the principal contract in which it is contained. It was further observed that even where parties agree to discharge each other of any obligation under the contract, this does not *ipso facto* mean that the arbitration agreement has come to an end, unless parties so agree. Although ordinarily no arbitrable dispute may subsist after execution of full and final settlement, yet any dispute pertaining to the settlement itself, by necessary implication, being a dispute arising out of or in relation to or under the contract, will not be precluded from reference to arbitration. Relevant paragraphs from the judgment are as follows:-

> *"****a. Whether the arbitration agreement contained in a substantive contract survives even after the underlying contract is discharged by "accord and satisfaction"?***
>
> ***48.*** *Arbitration for the purpose of resolving any dispute pertaining to any*

claim which has been "fully and finally settled" between the parties can only be invoked if the arbitration agreement survives even after the discharge of the substantive contract.

49. *The arbitration agreement, by virtue of the presumption of separability, survives the principal contract in which it was contained. Section 16(1) of the Act, 1996 which is based on Article 16 of the UNCITRAL Model Law on International Commercial Arbitration, 1985 (hereinafter, "**Model Law**") embodies the presumption of separability. There are two aspects to the doctrine of separability as contained in the Act, 1996:—*

> ***i.*** *An arbitration clause forming part of a contract is treated as an agreement independent of the other terms of the contract.*
>
> ***ii.*** *A decision by the arbitral tribunal declaring the contract as null and void does not, ipso facto, make the arbitration clause invalid.*

50. *The doctrine of separability was not part of the legislative scheme under the Arbitration Act, 1940. However, with the enactment of the Act, 1996, the doctrine was expressly incorporated. This Court in National Agricultural Coop. Marketing Federation India Ltd. v. Gains Trading Ltd. reported in (2007) 5 SCC 692, while interpreting Section 16 of the Act, 1996, held that even if the underlying contract comes to an end, the arbitration agreement contained in such a contract survives for the purpose of resolution of disputes between the parties.*

51. *The fundamental premise governing the doctrine of separability is that the arbitration agreement is incorporated by the parties to a contract with the mutual intention to settle any disputes that may arise under or in respect of or with regard to the underlying substantive contract, and thus by its inherent nature is independent of the substantive contract.*

52. *In Heyman v. Darwins Ltd. reported in [1942] A.C. 356, it was held by the House of Lords that the repudiation or breach of a contract does not extinguish the arbitration agreement as it survives for the purpose of resolution of any outstanding claims arising out of the breach. It was observed thus:*

> *"I am, accordingly, of the opinion that what is commonly called repudiation or total breach of a contract, whether acquiesced in by the other party or not, does not abrogate the contract, though it may relieve the injured party of the duty of further fulfilling the obligations which he has by the contract undertaken to the repudiating party. The contract is not put out of existence, though all further performance of the obligations undertaken by each party in favour of the other may cease. <u>It survives for the purpose of measuring the claims arising out of the breach, and the arbitration clause survives for determining the mode of their settlement. The purposes of the contract have failed, but</u>*

the arbitration clause is not one of the purposes of the contract."

(Emphasis supplied)

53. *Thus, even if the contracting parties, in pursuance of a settlement, agree to discharge each other of any obligations arising under the contract, this does not ipso facto mean that the arbitration agreement too would come to an end, unless the parties expressly agree to do the same. The intention of the parties in discharging a contract by "accord and satisfaction" is to relieve each other of the existing or any new obligations under the contract. Such a discharge of obligations under the substantive contract cannot be construed to mean that the parties also intended to relieve each other of their obligation to settle any dispute pertaining to the original contract through arbitration.*

54. *Although ordinarily no arbitrable disputes may subsist after execution of a full and final settlement, yet any dispute pertaining to the full and final settlement itself, by necessary implication being a dispute arising out of or in relation to or under the substantive contract, would not be precluded from reference to arbitration as the arbitration agreement contained in the original contract continues to be in existence even after the parties have discharged the original contract by "accord and satisfaction".*

55. *The aforesaid position of law has also been consistently followed by this Court as evident from many decisions. In Boghara Polyfab (supra), while rejecting the contention that the mere act of signing a "full and final discharge voucher" would act as a bar to arbitration, this Court held as follows:*

> *"44. ... None of the three cases relied on by the appellant lay down a proposition that mere execution of a full and final settlement receipt or a discharge voucher is a bar to arbitration, even when the validity thereof is challenged by the claimant on the ground of fraud, coercion or undue influence. Nor do they lay down a proposition that even if the discharge of contract is not genuine or legal, the claims cannot be referred to arbitration. [...]"*

56. *Again, in R.L. Kalathia and Company v. State of Gujarat reported in (2011) 2 SCC 400, it was re-iterated that the mere issuance of the no-dues certificate would not operate as a bar against the raising of genuine claims even after the date of issuance of such certificate. The relevant observations are extracted hereinbelow:*

> *"13. From the above conclusions of this Court, the following principles emerge:*
>
> *(1) Merely because the contractor has issued "no-dues certificate", if there is an acceptable claim, the court cannot reject the same on the*

ground of issuance of "no-dues certificate".

(ii) Inasmuch as it is common that unless a discharge certificate is given in advance by the contractor, payment of bills are generally delayed, hence such a clause in the contract would not be an absolute bar to a contractor raising claims which are genuine at a later date even after submission of such "no-claim certificate".

(iii) Even after execution of full and final discharge voucher/receipt by one of the parties, if the said party is able to establish that he is entitled to further amount for which he is having adequate materials, he is not barred from claiming such amount merely because of acceptance of the final bill by mentioning "without prejudice" or by issuing "no-dues certificate".

(Emphasis supplied)

57. *The position that emerges from the aforesaid discussion is that there is no rule of an absolute kind which precludes arbitration in cases where a full and final settlement has been arrived at. In Boghara Polyfab (supra), discussing in the context of a case similar to the one at hand, wherein the discharge voucher was alleged to have been obtained on ground of coercion, it was observed that the discharge of a contract by full and final settlement by issuance of a discharge voucher or a no-dues certificate extends only to those vouchers or certificates which are validly and voluntarily executed. Thus, if the party said to have executed the discharge voucher or the no dues certificate alleges that the execution was on account of fraud, coercion or undue influence exercised by the other party and is able to establish such an allegation, then the discharge of the contract by virtue of issuance of such a discharge voucher or no dues certificate is rendered void and cannot be acted upon.*

58. *It was further held in Boghara Polyfab (supra) that the mere execution of a full and final settlement receipt or a discharge voucher would not by itself operate as a bar to arbitration when the validity of such a receipt or voucher is challenged by the claimant on the ground of fraud, coercion or undue influence. In other words, where the parties are not ad idem over accepting the execution of the no-claim certificate or the discharge voucher, such disputed discharge voucher may itself give rise to an arbitrable dispute.*

59. *Once the full and final settlement of the original contract itself becomes a matter of dispute and disagreement between the parties, then such a dispute can be categorised as one arising "in relation to" or "in connection with" or "upon" the original contract which can be referred to arbitration in accordance with the arbitration clause contained in the original contract, notwithstanding the plea that there was a full and final settlement between the parties."*

19. The second question that arose for consideration before the Supreme Court and which is directly concerns the present case, was on the scope of judicial scrutiny by a referral Court under Section 11(6) of 1996 Act with respect to plea of *'accord and satisfaction'*. After examining provisions of Section 11 of 1996 Act and referring to several judgments of the Supreme Court, including ***Vidya Drolia (supra)*** and ***SPML Ltd. (supra)*** as also the judgment of seven-Judge Bench of the Supreme Court in ***In Re: Interplay (supra)***, the Supreme Court held that scope of enquiry at the stage of appointment of Arbitrator is limited to scrutiny of existence of arbitration agreement and nothing else. It was held that dispute pertaining to *'accord and satisfaction'* is not one which attacks or questions existence of the arbitration agreement in any way and the arbitration agreement, being separate and independent from underlying substantive contract in which it is contained, continues to remain in existence even after the original contract stands discharged by *'accord and satisfaction'*. It was also observed that question of *'accord and satisfaction'* being a mixed question of law and fact comes within the exclusive jurisdiction of the Arbitral Tribunal, in the absence of any contrary agreement between the parties. The negative effect of competence-competence would require that matter falling within 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. Relevant passages from the judgment in ***Krish Spinning (supra)*** are as follows:-

> ***"73.*** *The net effect of the decisions in SBP & Co. (supra) and Boghara Polyfab (supra) was that the scope for interference available to the referral courts when acting under Section 11 of the Act, 1996 was substantially expanded. The referral courts were conferred with the discretion to conduct mini trials and indulge in the appreciation of*

evidence on the issues concerned with the subject matter of arbitration. The Law Commission of India in its 246th report took note of the issue of significant delays being caused to the arbitral process due to enlarged scope of judicial interference at the stage of appointment of arbitrator and suggested as follows:

> ***i. First**, that the power of appointment conferred upon the Chief Justice be devolved on to the Supreme Court and the High Court, as the case may be; and*
>
> ***ii. Secondly**, the power of appointment under Section 11 be clarified to be an administrative power and not a judicial one.*
>
> ***iii. Thirdly**, the scope of interference under Sections 8 and 11 respectively of the Act, 1996 be restricted only to those cases where the court finds that no arbitration agreement exists or is null and void.*

***74.** The Law Commission suggested the insertion of Section 11(6-A) in the Act, 1996. The aforesaid recommendations of the Commission were taken note of by the Parliament and accordingly the Act, 1996 was amended in 2015 to incorporate Section 11(6-A), which reads thus:*

> *"(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under subsection (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."*

***75.** Interestingly, Section 11(6-A) was omitted by the 2019 amendment to the Act, 1996 on the basis of a report of the High-Level Committee to Review the Institutionalisation of Arbitration Mechanism in India. However, in the absence of the omission being notified, Section 11(6-A) of the Act, 1996 continues to remain on the statute book and thus has to be given effect as such.*

***76.** The impact of the addition of Section 11(6-A) was elaborately discussed by this Court in Duro Felguera, S.A. v. Gangavaram Port Ltd. reported in (2017) 9 SCC 729 as follows:*

> *"48. […] From a reading of Section 11(6-A), the intention of the legislature is crystal clear i.e. the court should and need only look into one aspect—the existence of an arbitration agreement. What are the factors for deciding as to whether there is an arbitration agreement is the next question. The resolution to that is simple—it needs to be seen if the agreement contains a clause which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement.*
>
> *xxx xxx xxx*

59. The scope of the power under Section 11(6) of the 1996 Act was considerably wide in view of the decisions in SBP and Co. [(2005) 8 SCC 618] and Boghara Polyfab [(2009) 1 SCC 267]. This position continued till the amendment brought about in 2015. After the amendment, all that the courts need to see is whether an arbitration agreement exists—nothing more, nothing less. The legislative policy and purpose is essentially to minimise the Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11(6-A) ought to be respected."

(Emphasis supplied)

***77.** Despite the decision in Duro Felguera (supra), this Court in United India Insurance Co. Ltd. v. Antique Art Exports Pvt. Ltd. reported in (2019) 5 SCC 362, while dealing with the issue of "full and final settlement" in the context of appointment of an arbitrator, held that mere bald allegation by a party that the discharge voucher was obtained under coercion or undue influence would not entitle it to seek referral of the dispute to arbitration unless it is able to produce prima facie evidence of the same during the course of proceedings under Section 11(6) of the Act, 1996. Important paragraphs from the said decision are extracted hereinbelow:*

*"**15.** From the proposition which has been laid down by this Court, what reveals is that a mere plea of fraud, coercion or undue influence in itself is not enough and the party who alleged is under obligation to prima facie establish the same by placing satisfactory material on record before the Chief Justice or his Designate to exercise power under Section 11(6) of the Act, which has been considered by this Court in New India Assurance Co. Ltd. case […]*

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***17.** It is true that there cannot be a rule of its kind that mere allegation of discharge voucher or no claim certificate being obtained by fraud/coercion/undue influence practised by other party in itself is sufficient for appointment of the arbitrator unless the claimant who alleges that execution of the discharge agreement or no claim certificate was obtained on account of fraud/coercion/undue influence practised by the other party is able to produce prima facie evidence to substantiate the same, the correctness thereof may be open for the Chief Justice/his Designate to look into this aspect to find out at least prima facie whether the dispute is bona fide and genuine in taking a decision to invoke Section 11(6) of the Act.*

***18.** In the instant case, the facts are not in dispute that for the two incidents of fire on 25-9-2013 and 25-10-2013, the appellant Company based on the Surveyor's report sent emails on 5-5-2016*

and 24-6-2016 for settlement of the claims for both the fires dated 25-9-2013 and 25-10-2013 which was responded by the respondent through email on the same date itself providing all the necessary information to the regional office of the Company and also issued the discharge voucher in full and final settlement with accord and satisfaction. Thereafter, on 12-7-2016, the respondent desired certain information with details, that too was furnished and for the first time on 27-7-2016, it took a U-turn and raised a voice of undue influence/coercion being used by the appellant stating that it being in financial distress was left with no option than to proceed to sign on the dotted lines. As observed, the phrase in itself is not sufficient unless there is a prima facie evidence to establish the allegation of coercion/undue influence, which is completely missing in the instant case.

19. *In the given facts and circumstances, we are satisfied that the discharge and signing the letter of subrogation was not because of any undue influence or coercion as being claimed by the respondent and we find no difficulty to hold that upon execution of the letter of subrogation, the claim was settled with due accord and satisfaction leaving no arbitral dispute to be examined by an arbitrator to be appointed under Section 11(6) of the Act.*

20. *The submission of the learned counsel for the respondent that after insertion of sub-section (6-A) to Section 11 of the Amendment Act, 2015 the jurisdiction of this Court is denuded and the limited mandate of the Court is to examine the factum of existence of an arbitration and relied on the judgment in Duro Felguera, S.A. v. Gangavaram Port Ltd. [Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] The exposition in this decision is a general observation about the effect of the amended provisions which came to be examined under reference to six arbitrable agreements (five agreements for works and one corporate guarantee) and each agreement contains a provision for arbitration and there was serious dispute between the parties in reference to constitution of Arbitral Tribunal whether there has to be Arbitral Tribunal pertaining to each agreement. In the facts and circumstances, this Court took note of sub-section (6-A) introduced by the Amendment Act, 2015 to Section 11 of the Act and in that context observed that the preliminary disputes are to be examined by the arbitrator and are not for the Court to be examined within the limited scope available for appointment of arbitrator under Section 11(6) of the Act. Suffice it to say that appointment of an arbitrator is a judicial power and is not a mere administrative function leaving some degree of judicial intervention; when it comes to the question to examine the existence of a prima facie arbitration agreement, it is*

always necessary to ensure that the dispute resolution process does not become unnecessarily protracted.

21. *In the instant case, prima facie no dispute subsisted after the discharge voucher being signed by the respondent without any demur or protest and claim being finally settled with accord and satisfaction and after 11 weeks of the settlement of claim a letter was sent on 27-7-2016 for the first time raising a voice in the form of protest that the discharge voucher was signed under undue influence and coercion with no supportive prima facie evidence being placed on record in absence thereof, it must follow that the claim had been settled with accord and satisfaction leaving no arbitral dispute subsisting under the agreement to be referred to the arbitrator for adjudication.*

22. *In our considered view, the High Court has committed a manifest error in passing the impugned order and adopting a mechanical process in appointing the arbitrator without any supportive evidence on record to prima facie substantiate that an arbitral dispute subsisted under the agreement which needed to be referred to the arbitrator for adjudication."*

(Emphasis supplied)

xxx *xxx* *xxx*

79. *A three-Judge Bench of this Court in Mayavati Trading Private Limited v. Pradyut Deb Burman reported in (2019) 8 SCC 714 overruled the decision in Antique Art (supra) and clarified that the position of law existing prior to the 2015 amendment to the Act, 1996 under which referral courts had the power to examine the aspect of "accord and satisfaction" had come to be legislatively overruled by Section 11(6-A) of the Act, 1996. The Court, while affirming the reasoning given in Duro Felguera (supra), observed thus:*

"10. This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which would have included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in the aforesaid judgment [United India Insurance Co. Ltd. v. Antique Art Exports (P) Ltd., (2019) 5 SCC 362 : (2019) 2 SCC (Civ) 785], as Section 11(6-A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgment in Duro Felguera, SA [Duro Felguera, SA v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] — see paras 48 & 59

11. We, therefore, overrule the judgment in Antique Art Exports (P) Ltd. [United India Insurance Co. Ltd. v. Antique Art Exports (P)

Ltd., (2019) 5 SCC 362 : (2019) 2 SCC (Civ) 785] as not having laid down the correct law but dismiss this appeal for the reason given in para 3 above."

(Emphasis supplied)

80. *A two-Judge Bench of this Court in Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd. reported in (2020) 2 SCC 455 was called upon to determine the scope of judicial interference at the stage of Section 11(6) petition wherein the plea of claims being time barred was taken by the defendant. Referring to the principal of competence-competence enshrined in Section 16 of the Act, 1996 and the legislative intent behind the introduction of Section 11(6-A) to Act, 1996 by the 2015 amendment, this Court held that the issue of limitation being a mixed question of law and fact should be best left to the tribunal to decide. The referral court should restrict its examination to whether an arbitration agreement between the parties exists. The relevant observations are reproduced hereinbelow:*

"7.10. In view of the legislative mandate contained in Section 11(6-A), the Court is now required only to examine the existence of the arbitration agreement. All other preliminary or threshold issues are left to be decided by the arbitrator under Section 16, which enshrines the kompetenz-kompetenz principle.

7.11. The doctrine of "kompetenz-kompetenz", also referred to as "compétence-compétence", or "compétence de la recognized", implies that the Arbitral Tribunal is empowered and has the competence to rule on its own jurisdiction, including determining all jurisdictional issues, and the existence or validity of the arbitration agreement. This doctrine is intended to minimise judicial intervention, so that the arbitral process is not thwarted at the threshold, when a preliminary objection is raised by one of the parties. ***The doctrine of kompetenz-kompetenz is, however, subject to the exception i.e. when the arbitration agreement itself is impeached as being procured by fraud or deception****. This exception would also apply to cases where the parties in the process of negotiation, may have entered into a draft agreement as an antecedent step prior to executing the final contract. […]7.12. The legislative intent underlying the 1996 Act is party autonomy and minimal judicial intervention in the arbitral process. Under this regime, once the arbitrator is appointed, or the tribunal is constituted, all issues and objections are to be decided by the Arbitral Tribunal.*

7.13. In view of the provisions of Section 16, and the legislative policy to restrict judicial intervention at the pre-reference stage, the issue of limitation would require to be decided by the arbitrator. Sub-

section (1) of Section 16 provides that the Arbitral Tribunal may rule on its own jurisdiction, "including any objections" with respect to the existence or validity of the arbitration agreement. Section 16 is as an inclusive provision, which would comprehend all preliminary issues touching upon the jurisdiction of the Arbitral Tribunal. The issue of limitation is a jurisdictional issue, which would be required to be decided by the arbitrator under Section 16, and not the High Court at the pre-reference stage under Section 11 of the Act. Once the existence of the arbitration agreement is not disputed, all issues, including jurisdictional objections are to be decided by the arbitrator.

7.14. In the present case, the issue of limitation was raised by the respondent Company to oppose the appointment of the arbitrator under Section 11 before the High Court. Limitation is a mixed question of fact and law. In ITW Signode (India) Ltd. v. CCE [ITW Signode (India) Ltd. v. CCE, (2004) 3 SCC 48] a three-Judge Bench of this Court held that the question of limitation involves a question of jurisdiction. The findings on the issue of limitation would be a jurisdictional issue. Such a jurisdictional issue is to be determined having regard to the facts and the law. Reliance is also placed on the judgment of this Court in NTPC Ltd. v. Siemens Atkeingesellschaft [NTPC Ltd. v. Siemens Atkeingesellschaft, (2007) 4 SCC 451], wherein it was held that the Arbitral Tribunal would deal with limitation under Section 16 of the 1996 Act. If the tribunal finds that the claim is a dead one, or that the claim was barred by limitation, the adjudication of these issues would be on the merits of the claim. Under sub-section (5) of Section 16, the tribunal has the obligation to decide the plea; and if it rejects the plea, the arbitral proceedings would continue, and the tribunal would make the award. Under sub-section (6) a party aggrieved by such an arbitral award may challenge the award under Section 34. […]"

(Emphasis supplied)

81. *In Union of India v. Pradeep Vinod Construction Company reported in 2019 INSC 1241 this Court left the issue of "accord and satisfaction" to be decided by the arbitrator and held thus:*

"16. […] On behalf of the Respondent, it has been seriously disputed that issuance of "No Claim" certificate as to the supplementary agreement recording accord and satisfaction as on 06.05.2014 (CA No. 6400/2016) and issuance of "No Claim" certificate on 28.08.2014 (CA No. 6420/2016) that they were issued under compulsion and due to undue influence by the railway authorities. We are not inclined to go into the merits of the contention of the parties. It is for the arbitrator to consider the claim of the

Respondent(s) and the stand of the Appellant-railways. This contention raised by the parties are left open to be raised before the arbitrator."

82. *Thereafter, a three-Judge Bench of this Court in Vidya Drolia v. Durga Trading Corporation reported in (2021) 2 SCC 1 extensively dealt with the scope of powers of the referral court under Section 8 and 11 respectively of the Act, 1996. It held, inter alia, that Sections 8 and 11 of the Act, 1996 are complementary to each other and thus the aspect of 'existence' of the arbitration agreement, as specified under Section 11 should be seen along with its 'validity' as specified under Section 8. This Court also held that the exercise of power of prima facie judicial review to examine the existence of arbitration agreement also includes going into the validity of the arbitration agreement and this does not go against the principles of competence-competence and the presumption of separability. It further held that the prima facie review of the aspects related to nonarbitrability may also be undertaken. The relevant observations are extracted hereinbelow:*

"147.4. Most jurisdictions accept and require prima facie review by the court on non-arbitrability aspects at the referral stage.

147.5. Sections 8 and 11 of the Arbitration Act are complementary provisions as was held in Patel Engg. Ltd. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] The object and purpose behind the two provisions is identical to compel and force parties to abide by their contractual understanding. This being so, the two provisions should be read as laying down similar standard and not as laying down different and separate parameters. Section 11 does not prescribe any standard of judicial review by the court for determining whether an arbitration agreement is in existence. Section 8 states that the judicial review at the stage of reference is prima facie and not final. Prima facie standard equally applies when the power of judicial review is exercised by the court under Section 11 of the Arbitration Act. Therefore, we can read the mandate of valid arbitration agreement in Section 8 into mandate of Section 11, that is, "existence of an arbitration agreement".

147.6. Exercise of power of prima facie judicial review of existence as including validity is justified as a court is the first forum that examines and decides the request for the referral. Absolute "hands off" approach would be counterproductive and harm arbitration, as an alternative dispute resolution mechanism. Limited, yet effective intervention is acceptable as it does not obstruct but effectuates arbitration.

147.7. Exercise of the limited prima facie review does not in any way interfere with the principle of competence-competence and separation as to obstruct arbitration proceedings but ensures that vexatious and frivolous matters get over at the initial stage.

147.8. Exercise of prima facie power of judicial review as to the validity of the arbitration agreement would save costs and check harassment of objecting parties when there is clearly no justification and a good reason not to accept plea of nonarbitrability. […]

xxx xxx xxx

147.11. The interpretation appropriately balances the allocation of the decision-making authority between the court at the referral stage and the arbitrators' primary jurisdiction to decide disputes on merits. The court as the judicial forum of the first instance can exercise prima facie test jurisdiction to screen and knock down ex facie meritless, frivolous and dishonest litigation. Limited jurisdiction of the courts ensures expeditious, alacritous and efficient disposal when required at the referral stage."

(Emphasis supplied)

83. *This Court further held that the referral court, while exercising its powers under Sections 8 and 11 respectively of the Act, 1996 could exercise its powers to screen and knock down ex facie meritless, frivolous and dishonest litigation so as to ensure expeditious and efficient disposal at the referral stage.*

"148. Section 43(1) of the Arbitration Act states that the Limitation Act, 1963 shall apply to arbitrations as it applies to court proceedings. Sub-section (2) states that for the purposes of the Arbitration Act and Limitation Act, arbitration shall be deemed to have commenced on the date referred to in Section 21. Limitation law is procedural and normally disputes, being factual, would be for the arbitrator to decide guided by the facts found and the law applicable. The court at the referral stage can interfere only when it is manifest that the claims are ex facie time-barred and dead, or there is no subsisting dispute. All other cases should be referred to the Arbitral Tribunal for decision on merits. Similar would be the position in case of disputed "no-claim certificate" or defence on the plea of novation and "accord and satisfaction". As observed in Premium Nafta Products Ltd. [Fili Shipping Co. Ltd. v. Premium Nafta Products Ltd., 2007 UKHL 40 : [2007] Bus LR 1719 (HL)], it is not to be expected that commercial men while entering transactions inter se would knowingly create a system which would require that the court should first decide whether the contract should be rectified or avoided or rescinded, as the case may be, and then if the contract is

held to be valid, it would require the arbitrator to resolve the issues that have arisen."

(Emphasis supplied)

84. *Speaking in the specific context of "limitation" and "accord and satisfaction", this Court in Vidya Drolia (supra) held that the procedural and factual disputes, like the one in the present litigation, should be left for the arbitrator to decide, who in turn, would be guided by the facts as determined by him and the law applicable. However, while re-iterating the position established in Mayavati Trading (supra), i.e., the principal of minimal interference at the stage of Section 11(6) petitions by referral courts in light of the introduction of Section 11(6-A) to the Act, 1996, this Court in Vidya Drolia (supra) carved out an exceptional category of cases in which interference by the referral court was permissible thus:*

"154.1. Ratio of the decision in Patel Engg. Ltd. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] on the scope of judicial review by the court while deciding an application under Sections 8 or 11 of the Arbitration Act, post the amendments by Act 3 of 2016 (with retrospective effect from 23-10-2015) and even post the amendments vide Act 33 of 2019 (with effect from 9-8-2019), is no longer applicable.

154.2. Scope of judicial review and jurisdiction of the court under Sections 8 and 11 of the Arbitration Act is identical but extremely limited and restricted.

154.3. The general rule and principle, in view of the legislative mandate clear from Act 3 of 2016 and Act 33 of 2019, and the principle of severability and competence-competence, is that the Arbitral Tribunal is the preferred first authority to determine and decide all questions of nonarbitrability. The court has been conferred power of "second look" on aspects of non-arbitrability post the award in terms of sub-clauses (i), (ii) or (iv) of Section 34(2)(a) or sub-clause (i) of Section 34(2)(b) of the Arbitration Act.

154.4. Rarely as a demurrer the court may interfere at Section 8 or 11 stage when it is manifestly and ex facie certain that the arbitration agreement is non-existent, invalid or the disputes are non-arbitrable, though the nature and facet of non-arbitrability would, to some extent, determine the level and nature of judicial scrutiny. The restricted and limited review is to check and protect parties from being forced to arbitrate when the matter is demonstrably "nonarbitrable" and to cut off the deadwood. The court by default would refer the matter when contentions relating to nonarbitrability are plainly arguable; when consideration in summary proceedings would be insufficient and inconclusive; when facts are contested;

when the party opposing arbitration adopts delaying tactics or impairs conduct of arbitration proceedings. This is not the stage for the court to enter into a mini trial or elaborate review so as to usurp the jurisdiction of the Arbitral Tribunal but to affirm and uphold integrity and efficacy of arbitration as an alternative dispute resolution mechanism."

(Emphasis supplied)

85. *As is clear from the aforesaid extract, Vidya Drolia (supra) held that although the arbitral tribunal is the preferred first authority to determine the questions pertaining to non-arbitrability, yet the 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 the disputes are non-arbitrable.*

86. *The decision of this Court in Vidya Drolia (supra) was subsequently relied upon by a two-Judge Bench of this Court in DLF Home Developers Ltd. v. Rajapura Homes (P) Ltd. reported in (2021) 16 SCC 743 wherein it was held that the prima facie review as laid down in Vidya Drolia (supra), in exceptional cases, warrants interference by the court to protect the wastage of public money.*

"21. The jurisdiction of this Court under Section 11 is primarily to find out whether there exists a written agreement between the parties for resolution of disputes through arbitration and whether the aggrieved party has made out a prima facie arbitrable case. The limited jurisdiction, however, does not denude this Court of its judicial function to look beyond the bare existence of an arbitration clause to cut the deadwood. A three-Judge Bench in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1, paras 236, 237, 244.3, 244.4, 244.5, 244.5.1-244.5.3 : (2021) 1 SCC (Civ) 549], has eloquently clarified that this Court, with a view to prevent wastage of public and private resources, may conduct "prima facie review" at the stage of reference to weed out any frivolous or vexatious claims."

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88. *The decision in Vidya Drolia (supra) was applied in the context of "accord and satisfaction" by a two-Judge Bench of this Court in Indian Oil Corporation Limited v. NCC Limited reported in (2023) 2 SCC 539. It was held that although the referral court under Section 11 of the 1996 Act may look into the aspect of "accord and satisfaction", yet it is advisable that in debatable cases and disputable facts, more particularly in reasonably arguable cases, the determination of whether accord and satisfaction was actually present or not should be left to the arbitral tribunal. This Court also expressed disagreement with the High Court*

which had held that post the insertion of Section 11(6-A) to the Act, 1996, the scope of interference of the referral court in a Section 11 petition was limited to the aspect of examining the existence of a binding arbitration agreement qua the parties before it. Relevant extracts are reproduced hereinbelow:

> *"90. […] Therefore, even when it is observed and held that such an aspect with regard to "accord and satisfaction" of the claims may/can be considered by the Court at the stage of deciding Section 11 application, it is always advisable and appropriate that in cases of debatable and disputable facts, good reasonably arguable case, the same should be left to the Arbitral Tribunal. Similar view is expressed by this Court in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549].*
>
> *91. Therefore, in the facts and circumstances of the case, though it is specifically observed and held that aspects with regard to "accord and satisfaction" of the claims can be considered by the Court at the stage of deciding Section 11(6) application, in the facts and circumstances of the case, the High Court has not committed any error in observing that aspects with regard to "accord and satisfaction" of the claims or where there is a serious dispute will have to be left to the Arbitral Tribunal.*
>
> *92. However, at the same time, we do not agree with the conclusion arrived at by the High Court that after the insertion of sub-section (6-A) in Section 11 of the Arbitration Act, scope of inquiry by the Court in Section 11 petition is confined only to ascertain as to whether or not a binding arbitration agreement exists qua the parties before it, which is relatable to the disputes at hand.*
>
> *93. We are of the opinion that though the Arbitral Tribunal may have jurisdiction and authority to decide the disputes including the question of jurisdiction and non-arbitrability, the same can also be considered by the Court at the stage of deciding Section 11 application if the facts are very clear and glaring and in view of the specific clauses in the agreement binding between the parties, whether the dispute is non-arbitrable and/or it falls within the excepted clause. Even at the stage of deciding Section 11 application, the Court may prima facie consider even the aspect with regard to "accord and satisfaction" of the claims.*
>
> *94. Now, so far as the submission on behalf of the respective parties on the decision of the General Manager on notified claims in Civil Appeal No. 341 of 2022 arising out of SLP (C) No. 13161 of 2019 is concerned, the General Manager has decided/declared that the claims are not arbitrable since they had been settled and the arbitration agreement has been discharged under Clause 6.7.2.0 of*

GCC and no longer existed/subsisted. As observed hereinabove, the claims had been settled or not is a debatable and disputable question, which is to be left to be decided by the Arbitral Tribunal. Therefore, matters related to the notified claims in the facts and circumstances of the case also shall have to be left to be decided by the Arbitral Tribunal as in the fact situation the aspect of "accord and satisfaction" and "notified claims" both are interconnected and interlinked."

(Emphasis supplied)

89. *We find it difficult to agree with the dictum of law as laid in Indian Oil (supra). While the dictum in Vidya Drolia (supra) allows for interference by the referral court, it only allows so as an exception in cases where exfacie meritless claims are sought to be referred to arbitration. However, the view taken in Indian Oil (supra) takes a position which was taken by this Court in Boghara Polyfab (supra), wherein it was held that the issue of accord and satisfaction could either be decided by the referring authority or be left for the arbitrator to decide. This pre-2015 position, as was also pointed in Mayavati Trading (supra), was legislatively overruled by the 2015 amendment to the Act, 1996 and the introduction of Section 11(6-A). Thus, in our view, the intention of this Court in Vidya Drolia (supra) was not to hold that despite the 2015 amendment, the position regarding "accord and satisfaction" would continue to be one which was taken in Boghara Polyfab (supra). Vidya Drolia (supra) only went a step ahead from the position in Mayavati Trading (supra) to create an exception that although the rule is to refer all questions of "accord and satisfaction" to the arbitral tribunal, yet in exceptional cases and in the interest of expediency, ex facie meritless claims could be struck down.*

90. *In NTPC Ltd. v. SPML Infra Ltd. reported in (2023) 9 SCC 385, a two-Judge Bench of this Court was again faced with the issue of "accord and satisfaction" in the context of a Section 11 petition for appointment of arbitrator. Placing reliance on Vidya Drolia (supra), this Court gave the "Eye of the Needle" test to delineate the contours of the power of interference which the referral court may exercise under Section 11 of the Act, 1996. The first prong of the said test requires the court to examine the validity and existence of the arbitration agreement which includes an examination of the parties to the agreement and the privity of the applicant to the contract. The second prong of the test requires the court to, as a general rule, leave all questions of non-arbitrability to the arbitral tribunal and only as a demurrer reject the claims which are ex-facie and manifestly non-arbitrable. However, it was clarified that the standard of the aforesaid scrutiny is only prima facie, that is, unlike the pre-2015 position, the scrutiny does not entail elaborate appreciation of evidence and conduct of mini trials by the referral courts. The relevant*

observations made therein are reproduced hereinbelow:

> *"24. Following the general rule and the principle laid down in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549], this Court has consistently been holding that the Arbitral Tribunal is the preferred first authority to determine and decide all questions of non-arbitrability. In Pravin Electricals (P) Ltd. v. Galaxy Infra & Engg. (P) Ltd. [Pravin Electricals (P) Ltd. v. Galaxy Infra & Engg. (P) Ltd., (2021) 5 SCC 671, paras 29, 30 : (2021) 3 SCC (Civ) 307], Sanjiv Prakash v. Seema Kukreja [Sanjiv Prakash v. Seema Kukreja, (2021) 9 SCC 732 : (2021) 4 SCC (Civ) 597], and Indian Oil Corpn. Ltd. v. NCC Ltd. [Indian Oil Corpn. Ltd. v. NCC Ltd., (2023) 2 SCC 539 : (2023) 1 SCC (Civ) 88], the parties were referred to arbitration, as the prima facie review in each of these cases on the objection of non-arbitrability was found to be inconclusive. Following the exception to the general principle that the Court may not refer parties to arbitration when it is clear that the case is manifestly and ex facie nonarbitrable, in BSNL v. Nortel Networks (India) (P) Ltd. [BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738 : (2021) 3 SCC (Civ) 352] (hereinafter "Nortel Networks") and Secunderabad Cantonment Board v. B. Ramachandraiah & Sons [Secunderabad Cantonment Board v. B. Ramachandraiah & Sons, (2021) 5 SCC 705 : (2021) 3 SCC (Civ) 335], arbitration was refused as the claims of the parties were demonstrably time-barred.*
>
> ***Eye of the needle***
>
> *25. The abovereferred precedents crystallise the position of law that the pre-referral jurisdiction of the Courts under Section 11(6) of the Act is very narrow and inheres two inquiries. The primary inquiry is about the existence and the validity of an arbitration agreement, which also includes an inquiry as to the parties to the agreement and the applicant's privity to the said agreement. These are matters which require a thorough examination by the Referral Court. The secondary inquiry that may arise at the reference stage itself is with respect to the non-arbitrability of the dispute.*
>
> *26. As a general rule and a principle, the Arbitral Tribunal is the preferred first authority to determine and decide all questions of non-arbitrability. As an exception to the rule, and rarely as a demurrer, the Referral Court may reject claims which are manifestly and ex facie nonarbitrable [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1, para 154.4 : (2021) 1 SCC (Civ) 549] […]*
>
> *27. The standard of scrutiny to examine the non-arbitrability of a claim is only prima facie. Referral Courts must not undertake a full review of the contested facts; they must only be confined to a primary*

first review [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1, para 134 : (2021) 1 SCC (Civ) 549] and let facts speak for themselves. This also requires the Courts to examine whether the assertion on arbitrability is bona fide or not. [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] The prima facie scrutiny of the facts must lead to a clear conclusion that there is not even a vestige of doubt that the claim is non-arbitrable. [BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738, para 47 : (2021) 3 SCC (Civ) 352] On the other hand, even if there is the slightest doubt, the rule is to refer the dispute to arbitration [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1, para 154.4 : (2021) 1 SCC (Civ) 549].”

(Emphasis supplied)

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***93.** Thus, the position after the decisions in Mayavati Trading (supra) and Vidya Drolia (supra) is that ordinarily, the Court while acting in exercise of its powers under Section 11 of the Act, 1996, will only look into the existence of the arbitration agreement and would refuse arbitration only as a demurrer when the claims are ex-facie frivolous and non-arbitrable.*

iii. <u>What is the effect of the decision of this Court in In Re : Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1966 and the Indian Stamp Act 1899 on the scope of powers of the referral court under Section 11 of the Act, 1996</u>?

***94.** A seven-Judge Bench of this Court, in **In Re : Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1966 and the Indian Stamp Act, 1899** reported in **2023 INSC 1066**, speaking eruditely through one of us, Dr Dhananjaya Y. Chandrachud, Chief Justice of India, undertook a comprehensive analysis of Sections 8 and 11 respectively of the Act, 1996 and, inter alia, made poignant observations about the nature of the power vested in the Courts insofar as the aspect of appointment of arbitrator is concerned. Some of the relevant observations made by this Court in In Re : Interplay (supra) are extracted hereinbelow:*

“179. […] However, the effect of the principle of competence-competence is that the arbitral tribunal is vested with the power and authority to determine its enforceability. The question of enforceability survives, pending the curing of the defect which renders the instrument inadmissible. By appointing a tribunal or its members, this Court (or the High Courts, as the case may be) is merely giving effect to the principle enshrined in Section 16. <u>The appointment of an arbitral tribunal does not necessarily mean that</u>

the agreement in which the arbitration clause is contained as well as the arbitration agreement itself are enforceable. The arbitral tribunal will answer precisely these questions.

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*185. The corollary of the doctrine of competence-competence is that courts **may only examine whether an arbitration agreement exists** on the basis of the prima facie standard of review. The nature of objections to the jurisdiction of an arbitral tribunal on the basis that stamp-duty has not been paid or is inadequate is such as cannot be decided on a prima facie basis. Objections of this kind will require a detailed consideration of evidence and submissions and a finding as to the law as well as the facts. Obligating the court to decide issues of stamping at the Section 8 or Section 11 stage will defeat the legislative intent underlying the Arbitration Act.*

186. The purpose of vesting courts with certain powers under Sections 8 and 11 of the Arbitration Act is to facilitate and enable arbitration as well as to ensure that parties comply with arbitration agreements. The disputes which have arisen between them remain the domain of the arbitral tribunal (subject to the scope of its jurisdiction as defined by the arbitration clause). The exercise of the jurisdiction of the courts of the country over the substantive dispute between the parties is only possible at two stages:

a. If an application for interim measures is filed under Section 9 of the Arbitration Act; or

b. If the award is challenged under Section 34.

Issues which concern the payment of stamp-duty fall within the remit of the arbitral tribunal. The discussion in the preceding segments also make it evident that courts are not required to deal with the issue of stamping at the stage of granting interim measures under Section 9."

(Emphasis supplied)

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a. Arbitral Autonomy

***96.** The principle of judicial non-interference permeates the scheme of the Act, 1996. The principle of competence-competence as contained in Section 16 of the Act, 1996 indicates that the arbitral tribunal enjoys sufficient autonomy from the national courts. The underlying principle behind arbitral autonomy and judicial non-interference is that when parties mutually decide to settle their disputes through arbitration, they surrender their right to agitate the same before the national courts.*

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98. *What follows from the negative facet of arbitral autonomy when applied in the context of Section 16 is that the national courts are prohibited from interfering in matters pertaining to the jurisdiction of the arbitral tribunal, as exclusive jurisdiction on those aspects vests with the arbitral tribunal. The legislative mandate of prima facie determination at the stage of Sections 8 and 11 respectively ensures that the referral courts do not end up venturing into what is intended by the legislature to be the exclusive domain of the arbitral tribunal.*

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b. Negative Competence-Competence

101. *Section 16 of the Act, 1996 recognises the doctrine of competence-competence and empowers the arbitral tribunal to rule on its own jurisdiction. The policy consideration for the same is, firstly, to recognise the intention of the parties in choosing arbitration as the method for resolving the disputes arising out of the contract and secondly, to prevent the parties from initiating parallel proceedings before courts and delaying the arbitral process.*

102. *The negative aspect of competence-competence is aimed at restricting the interference of the courts at the referral stage by preventing the courts from examining the issues pertaining to the jurisdiction of the arbitral tribunal before the arbitral tribunal itself has had the opportunity to entertain them. The courts are allowed to review the decision of the arbitral tribunal at a later stage.*

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c. Judicial Interference under the Act, 1996

107. *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.*

108. *Section 11 of the Act, 1996 is provided to give effect to the mutual intention of the parties to settle their disputes by arbitration in situations where the parties fail to appoint an arbitrator(s). The parameters of judicial review laid down for Section 8 differ from those prescribed for Section 11. The view taken in SBP & Co. (supra) and affirmed in Vidya Drolia (supra) that Sections 8 and 11 respectively of the Act, 1996 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.

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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).*

115. *The dispute pertaining to the "accord and satisfaction" of claims is not one which attacks or questions the existence of the arbitration agreement in any way. As held by us in the preceding parts of this judgment, the arbitration agreement, being separate and independent from the underlying substantive contract in which it is contained, continues to remain in existence even after the original contract stands discharged by "accord and satisfaction".*

116. *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.*

117. *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 doesn't 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 principal 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.*

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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132. *Insofar as our observations on the second issue are concerned, we clarify that the same were made in light of the observations made by this Court in many of its previous decisions, more particularly in Vidya Drolia (supra) and NTPC v. SPML (supra). However, in the case at hand, as is evident from the discussion in the preceding parts of this judgment, we have had the benefit of reconsidering certain aspects of the two decisions referred to above in the light of the pertinent observations made by a seven-Judge Bench of this Court in In Re : Interplay (supra).*

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 (supra). 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).*

134. *The observations made by us in Arif Azim (supra) are accordingly clarified. We need not mention that the effect of the aforesaid clarification is only to streamline the position of law, so as to bring it in conformity with the evolving principles of modern-day arbitration, and further to avoid the possibility of any conflict between the two decisions that may arise in future. These clarifications shall not be construed as affecting the verdict given by us in the facts of Arif Azim (supra), which shall be given full effect to notwithstanding the observations made herein.*

F. CONCLUSION

135. *The existence of the arbitration agreement as contained in Clause 13 of the insurance policy is not disputed by the appellant. The dispute raised by the claimant being one of quantum and not of liability, prima facie, falls within the scope of the arbitration agreement. The dispute regarding "accord and satisfaction" as raised by the appellant does not pertain to the existence of the arbitration agreement, and can be adjudicated upon by the arbitral tribunal as a preliminary issue."*

20. This position of law was re-stated and affirmed by the Supreme Court in ***Arabian Exports Private Limited v. National Insurance Company Ltd., 2025 SCC OnLine SC 1034***. Relevant passages are as follows:-

> *"**22.** Thereafter, appellant filed applications under Section 11 of the Arbitration and Conciliation Act, 1996 (briefly, 'the 1996 Act' hereinafter) before the High Court of Judicature at Bombay for appointment of an arbitrator to arbitrate the claims of the appellant. Thus two arbitration applications were filed in respect of the two policies which were registered as arbitration application Nos. 186 of 2011 and 187 of 2011.*
>
> ***23.** Learned Single Judge of the High Court of Judicature at Bombay (briefly, 'the High Court' hereinafter) observed that the amount paid by the respondent was accepted by the appellant in full and final settlement of the claim. It was accepted without any demur and after encashing the cheque, the dispute was raised on 24.12.2008. Therefore, vide the impugned order dated 02.12.2011, learned Single Judge held that no arbitrator could be appointed in view of acceptance of the amount in full and final settlement. Both the arbitration applications were accordingly dismissed.*
>
> ***24.** Mr. Kavin Gulati, learned senior counsel for the appellant has drawn our attention to the relevant facts and submits that learned Single Judge had rejected the applications under Section 11 of the 1996 Act on the ground that the discharge voucher signed by the appellant in favour of the respondent constituted full accord and satisfaction having accepted the amount paid by the respondent without demur.*
>
> *xxx xxx xxx*
>
> ***34.** This decision was explained by this Court in Boghara Polyfab (supra). A two-Judge Bench of this Court noted that in Nathani Steels (supra) this Court on examination of the facts of that case was satisfied that there were negotiations leading to voluntary settlement between the parties in all pending disputes. Thus the contract was discharged by 'accord and satisfaction'. The Bench categorized such claims under two categories. In the first category there would be cases where there is bilateral negotiated settlement of pending disputes, such settlement having been reduced to writing either in the presence of witnesses or otherwise. Nathani Steels (supra) falls in this category. In the second category of cases, there would be 'no dues/claims certificate' or 'full and final settlement discharge vouchers' insisted upon and taken, either in a printed format or otherwise, as a condition precedent for release of the admitted dues. In the*

latter group of cases, the disputes are arbitrable. Mere execution of a full and final settlement receipt or a discharge voucher cannot be a bar to arbitration even when validity thereof is challenged by the claimant on the ground of fraud, coercion or undue influence. The Bench further distinguished Nathani Steels (supra) by clarifying that the observations made that unless the settlement is set aside in proper proceedings, it would not be open to a party to the settlement to invoke arbitration was with reference to a plea of 'mistake' taken by the claimant and not with reference to allegations of fraud, undue influence or coercion. Further, the said decision was rendered in the context of the provisions of the Arbitration Act, 1940. The perspective of the 1996 Act is different from the Arbitration Act, 1940.

35. *In Duro Felguera, S.A. v. Gangavaram Port Ltd.[3], a two-Judge Bench of this Court examined Section 11(6) of the 1996 Act as well as Section 11(6A) inserted in the 1996 Act by way of the Arbitration and Conciliation (Amendment) Act, 2015 and concluded that courts should look into only one aspect : existence of an arbitration agreement. Already the width of jurisdiction under Section 11(6) of the 1996 Act was considerably wide following judicial dicta but post the aforesaid amendment, all that the courts need to see is whether an arbitration agreement exists - nothing more, nothing less. The legislative policy and purpose is essentially to minimize the court's intervention at the stage of appointing the arbitrator.*

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37. *In Oriental Insurance Company Ltd. v. Dicitex Furnishing Ltd.[5], a two-Judge Bench of this Court considered the objection of the insurer about maintainability of the application under Section 11(6) of the 1996 Act in which the High Court had appointed an arbitrator. The objection was that the claimant had signed the discharge voucher and had accepted the amount offered, thus signifying 'accord and satisfaction' which in turn meant that there was no arbitrable dispute. This Court rejected the objection of the insurer and held thus:*

> *26. An overall reading of Dicitex's application [under Section 11(6)] clearly shows that its grievance with respect to the involuntary nature of the discharge voucher was articulated. It cannot be disputed that several letters — spanning over two years—stating that it was facing financial crisis on account of the delay in settling the claim, were addressed to the appellant. This Court is conscious of the fact that an application under Section 11(6) is in the form of a pleading which merely seeks an order of the court, for appointment of an arbitrator. It cannot be conclusive of the pleas or contentions that the claimant or the party concerned can take in the arbitral proceedings. At this stage, therefore, the court which is required to ensure that an arbitrable dispute exists, has to be prima facie convinced about the genuineness*

or credibility of the plea of coercion; it cannot be too particular about the nature of the plea, which necessarily has to be made and established in the substantive (read : arbitration) proceeding. If the court were to take a contrary approach and minutely examine the plea and judge its credibility or reasonableness, there would be a danger of its denying a forum to the applicant altogether, because rejection of the application would render the finding (about the finality of the discharge and its effect as satisfaction) final, thus, precluding the applicant of its right even to approach a civil court. There are decisions of this Court (Associated Construction v. Pawanhans Helicopters Ltd. and Boghara Polyfab) which upheld the concept of economic duress. Having regard to the facts and circumstances, this Court is of the opinion that the reasoning in the impugned judgment cannot be faulted.

37.1. *Thus, this Court held that at the stage of Section 11(6) of the 1996 Act, court is required to ensure that an arbitrable dispute exist; it has to be prima facie convinced about the genuineness or credibility of the plea of coercion; it cannot be too particular about the nature of the plea which naturally has to be made and established in the arbitral proceeding. If the courts were to take a contrary approach, there would be the danger of denying a forum to the claimant altogether. This Court upheld the concept of economic duress and held that notwithstanding signing of discharge voucher and accepting the amount offered, the dispute is still arbitrable. Pleading in a Section 11(6) application cannot be conclusive whether there is fraud, coercion or undue influence or otherwise.*

38. *A three-Judge Bench of this Court in SBI General Insurance Co. Ltd. v. Krish Spinning[6] held that even if the contracting parties in pursuance to a settlement agree to discharge each other of any obligations arising under the contract it is does not ipso facto mean that the arbitration agreement too would come to an end, unless the parties expressly agree to do the same. The Bench also explained the concept of 'accord and satisfaction' under Section 63 of the Indian Contract Act, 1872. Any dispute pertaining to the full and final settlement itself by necessary implication being a dispute arising out of or in relation to or under the substantive contract would not be precluded from reference to arbitration as the arbitration agreement contained in the original contract continues to be in existence even after the parties have discharged the original contract by 'accord and satisfaction'. This Court held thus:*

53. Thus, even if the contracting parties, in pursuance of a settlement, agree to discharge each other of any obligations arising under the contract, this does not ipso facto mean that the arbitration agreement too would come to an end, unless the parties expressly agree to do the same. The intention of the parties in discharging a contract by "accord and satisfaction" is to relieve each other of the existing or

any new obligations under the contract. Such a discharge of obligations under the substantive contract cannot be construed to mean that the parties also intended to relieve each other of their obligation to settle any dispute pertaining to the original contract through arbitration.

54. Although ordinarily no arbitrable disputes may subsist after execution of a full and final settlement, yet any dispute pertaining to the full and final settlement itself, by necessary implication being a dispute arising out of or in relation to or under the substantive contract, would not be precluded from reference to arbitration as the arbitration agreement contained in the original contract continues to be in existence even after the parties have discharged the original contract by "accord and satisfaction".

39. *Again, in the case of Aslam Ismail Khan Deshmukh v. Asap Fluids Pvt. Ltd., a three-Judge Bench of this Court reiterated the above proposition and held as under:*

51. It is now well-settled law that, at the stage of Section 11 application, the referral courts need only to examine whether the arbitration agreement exists - nothing more, nothing less. This approach upholds the intention of the parties, at the time of entering into the agreement, to refer all disputes arising between themselves to arbitration. However, some parties might take undue advantage of such a limited scope of judicial interference of the referral courts and force other parties to the agreement into participating in a time-consuming and costly arbitration process. This is especially possible in instances, including but not limited to, where the claimant canvasses either ex facie time-barred claims or claims which have been discharged through "accord and satisfaction", or cases where the impleadment of a non-signatory to the arbitration agreement is sought, etc.

52. In order to balance such a limited scope of judicial interference with the interests of the parties who might be constrained to participate in the arbitration proceedings, the arbitral tribunal may direct that the costs of the arbitration shall be borne by the party which the tribunal ultimately finds to have abused the process of law and caused unnecessary harassment to the other party to the arbitration

40. *Thus, the doctrine of Kompetenz-Kompetenz is now firmly embedded in the arbitration jurisprudence in India. This doctrine is based on the principle that an arbitral tribunal is competent to rule on its own jurisdiction including on the issue of existence or validity of an arbitration agreement. The object is to minimize judicial intervention which is an acknowledgment of the concept of party autonomy.*

> ***41.*** *In view of the clear legal proposition, we have no hesitation in holding that the High Court was wrong in rejecting the Section 11(6) applications of the appellant. The question as to whether the appellant was compelled to sign the standardized voucher/advance receipt forwarded to it by the respondent out of economic duress and whether notwithstanding receipt of Rs. 1,88,14,146.00 as against the claim of Rs. 5,71,69,554.00 the claim to arbitration is sustainable or not are clearly within the domain of the arbitral tribunal."*

21. Petitioner has raised disputes of non-payment and/or deficient payments etc. relating to the agreement in question and has flagged several issues relating to overstay at the site due to hindrances by the Respondent, delay in providing drawings etc. which *albeit* are refuted by the Respondent. In view of the dispute raised by the Petitioner *qua* the alleged full and final settlement, following the judgements aforementioned and the doctrine of Kompetenz-Kompetenz, this Court has no hesitation in holding that issue of accord and satisfaction will have to be left for determination by the Arbitrator and is beyond the remit of this Court in the present petition. The judgment of the Supreme Court in ***Aslam Ismail (supra)*** relied upon by the Respondent in fact inures to the benefit of the Petitioner. Reliance on paragraph 40 of the judgement is misplaced as these observations of the Supreme Court in ***Arif Azim (supra)*** have been subsequently clarified in ***Krish Spinning (supra).*** The second objection of the Respondent is also without merit.

22. For all the aforesaid reasons, the preliminary objections raised by the Respondent are rejected. Agreement between the parties executed on 01.05.2017 envisages reference of disputes arising out of the agreement to arbitration in consonance with Clause 25 of GCC and further provides that Delhi Courts alone shall have exclusive jurisdiction. It is undisputed that an

arbitration agreement exists between the parties and it is equally undisputed that Petitioner had sent an invocation notice to the Respondent, upon receipt of which Respondent failed to appoint the Arbitrator.

23. Accordingly, this petition is allowed and Mr. Amrit Pal Singh Gambhir, Advocate (Mobile No. 9810082347) is appointed as 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.

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

25. 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 will be open to the Respondent to raise the issues of claims of the Petitioner being allegedly time barred or discharged by *'accord and satisfaction'* before the learned Arbitrator.

26. Petition stands disposed of.

JYOTI SINGH, J

AUGUST 12, 2025/*Shivam/S.Sharma*