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

CNR No. DLHC010086252026

+ **ARB.P. 404/2026**

K R ANAND

.....Petitioner

Through: **Mr. Mukesh Kumar, Advocate.**

versus

PUBLIC WORK DEPARTMENT & ANR.

.....Respondents

Through: **Mr. Pramod Kumar, Advocate.**

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

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06.10.2026

I.A. 6276/2026 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. 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 a Sole Arbitrator.
4. Learned counsel appearing on behalf of Respondents submits that the reply has been filed which is lying under objections. Copy of the reply has been handed over in Court and with the consent of the parties, taken on record. Based on the reply, learned counsel for the Respondents submits that *albeit* the existence of the Arbitration Agreement is not denied but no reference can be made for arbitration in view of full and final settlement of all dues of the Petitioner.



5. In my view, there is no merit in this objection in light of the judgment of the Supreme Court in ***SBI General Insurance Company Limited v. Krish Spinning, 2024 SCC OnLine SC 1754***, laying down the law that the scope and jurisdiction of a referral court under section 11(6) of 1996 Act is confined to examination of the existence of the arbitration agreement and disputes with regard to accord and satisfaction or full and final settlement of dues fall outside this examination and are best left to be decided by the arbitral tribunal. Relevant passages are as follows:-

“110. The scope of examination under Section 11(6-A) is confined to the existence of an arbitration agreement on the basis of Section 7. The examination of validity of the arbitration agreement is also limited to the requirement of formal validity such as the requirement that the agreement should be in writing.

111. The use of the term ‘examination’ under Section 11(6-A) as distinguished from the use of the term ‘rule’ under Section 16 implies that the scope of enquiry under section 11(6-A) is limited to a prima facie scrutiny of the existence of the arbitration agreement, and does not include a contested or laborious enquiry, which is left for the arbitral tribunal to ‘rule’ under Section 16. The prima facie view on existence of the arbitration agreement taken by the referral court does not bind either the arbitral tribunal or the court enforcing the arbitral award.

112. The aforesaid approach serves a two-fold purpose - firstly, it allows the referral court to weed out non-existent arbitration agreements, and secondly, it protects the jurisdictional competence of the arbitral tribunal to rule on the issue of existence of the arbitration agreement in depth.

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

*“209. The above extract indicates that **the Supreme Court or High Court at the stage of the appointment of an arbitrator shall “examine the existence of a prima facie arbitration agreement and not other issues”**. These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings. Accordingly, the “other issues” also include examination and impounding of an unstamped instrument by the*



referral court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a timebound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators. [...]"

(Emphasis supplied)

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."



6. In *Arabian Exports Private Limited v. National Insurance Company Limited*, (2025) 10 SCC 388, the Supreme Court re-affirmed that any dispute of accord and satisfaction or full and final settlement will have to be left to the Arbitral Tribunal following the doctrine and principle of *Kompetenz-Kompetenz*. Relevant paragraphs of the judgment are as follows:-

“43. This Court in Dicitex Furnishing [Oriental Insurance Co. Ltd. v. Dicitex Furnishing Ltd., (2020) 4 SCC 621 : (2020) 3 SCC (Civ) 202] 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.

44. A three-Judge Bench of this Court in SBI General Insurance Co. Ltd. v. Krish Spg. [SBI General Insurance Co. Ltd. v. Krish Spg., (2024) 12 SCC 1 : (2025) 3 SCC (Civ) 567] 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 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 Contract Act, 1872.

45. 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: (Krish Spg. case [SBI General Insurance Co. Ltd. v. Krish Spg., (2024) 12 SCC 1 : (2025) 3 SCC (Civ) 567], SCC p. 31, paras 55-56)

“55. 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.



56. 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”.

(emphasis in original)

46. Again, in *Aslam Ismail Khan Deshmukh v. ASAP Fluids (P) Ltd.* [*Aslam Ismail Khan Deshmukh v. ASAP Fluids (P) Ltd.*, (2025) 1 SCC 502 : (2025) 1 SCC (Civ) 298], a three-Judge Bench of this Court reiterated the above proposition and held as under: (SCC p. 519, paras 51-52)

“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.”

47. 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 minimise judicial intervention which is an acknowledgment of the concept of party autonomy.

48. 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 as against the claim of Rs 5,71,69,554 the claim to arbitration is sustainable or not are clearly within the domain of the Arbitral Tribunal.”

7. In light of the settled law, there is no merit in the objection of the Respondents that no reference can be made to arbitration in light of the alleged full and final payment made to the petitioner, there being accord and satisfaction of the dues.

8. Learned counsel appearing for the Petitioner submits that arbitration clause between the parties envisages appointment of an Arbitrator by the Respondents, which will be unilateral appointment and hence, impermissible being in the teeth of the judgments of the Supreme Court in ***TRF Limited v. Energo Engineering Projects Limited***, (2017) 8 SCC 377; ***Perkins Eastman Architects DPC and Another v. HSCC (India) Limited***, (2020) 20 SCC 760; and ***Central Organisation for Railway Electrification (CORE) v. ECI SPIC SMO MCML (JV) A Joint Venture Company***, 2024 SCC OnLine SC 3219 as also of this Court in ***Mahavir Prasad Gupta and Sons v. Government of NCT of Delhi***, ARB.P. 716/2026, decided on 11.08.2026.

9. There is merit in this submission in light of the cited judgements. Appointment of the Arbitrator by the Respondents will be a unilateral appointment and untenable in law. The law is well settled that party to the dispute cannot appoint an arbitrator without the consent of the other party and nor can an official/employee of the interested party function as an arbitrator. Recently, this Court in ***Mahavir Prasad Gupta (supra)***, relying on the judgement in ***Hindustan Construction Company Limited Through Its Authorised Signatory Yogesh Dalal v. Bihar Rajya Pul Nirman Nigam Limited and Others***, 2025 SCC OnLine SC 2578, held as follows:-



“7. The undisputed fact is that clause 25 of the GCC provides that in case of dispute between the parties the matter shall be referred for arbitration. The law is well settled that the official of a party to the dispute can neither be appointed as an arbitrator nor can appoint an arbitrator. The portion of Clause 25 of the GCC providing for appointment of the arbitrator by the respondent is void and does not dent the substantive agreement to arbitrate between the parties.

8. The Supreme Court in Hindustan Construction Company Ltd. (supra) dealt with an arbitration clause providing that no person other than a person appointed by the Managing Director or administrative head of the Nigam should act as arbitrator and if such appointment is not possible then the matter is not arbitrable. It was held that the exclusive power with the contractee to appoint arbitrator is unenforceable and should be severed but the agreement of arbitration survives. The portion of the clause that for any reason the arbitration by the arbitrator appointed by the contractee is not possible the matter shall not be referred to arbitration at all violates Section 18 of the Act. The relevant paragraphs of the judgment are reproduced below:

"61. Accordingly, the portion of Clause 25 that vests exclusive appointment power in one party and forecloses arbitration in default of such appointment must be severed as void and unenforceable. However, the substantive agreement to arbitrate survives by virtue of the doctrine of severability.

63. The present contract, being a public-private contract, must withstand not only conventional contractual scrutiny but also constitutional scrutiny. As held in CORE II, arbitral appointments in public contracts must satisfy the requirements of fairness, equality, and non-arbitrariness under Article 14.

64. The sub-clause in Clause 25 which provides that "if for any reason the matter shall not be referred to arbitration" is vague, uncertain, and arbitrary. The expression "for any reason" confers an unguided and absolute veto, particularly objectionable in a public contract. Such a clause fails the test of manifest arbitrariness and violates Section 18 of the Act, which mandates equal treatment of parties.

65. In light of the above discussion, the following propositions emerge:

- (i) The parties' conduct clearly demonstrates their intention to arbitrate, satisfying the requirement of Section 7(4)(c);*
- (ii) Clause 25, in its substantive form, constitutes a valid arbitration agreement;*
- (iii) The unilateral and exclusionary appointment mechanism is*



void and severable; and

(iv) This Court is empowered under Section 11(6) to cure the defect and appoint an independent arbitrator.

66. Accordingly, it is held that a valid and subsisting arbitration agreement exists between the parties. Clause 25, when read in its entirety and construed in accordance with the doctrine of severability, satisfies the statutory requirements of an arbitration clause under Section 7 of the Act. The contrary finding of the High Court is unsustainable in law and is liable to be set aside”

9. The contention of learned counsel for the respondent is that the notice under Section 21 of the Act is time barred lacks merit. The award was passed on 12.10.2020 and the matter remained in litigation till 02.02.2026. Within one month and ten days of the decision of the Supreme Court, notice under Section 21 of the Act was issued. The submission that no liberty was sought in the appeal under Section 37 of the Act for commencing a fresh round of arbitration is of no avail. The award was set aside for violation of Section 12(5) read with Seventh Schedule of the Act. The petitioner is therefore entitled to seek appointment of an arbitrator in accordance with law.”

10. Accordingly, this petition is allowed, appointing Justice (Retd.) Mukta Gupta, former Judge of this Court (Mobile No.9650788600) as Sole Arbitrator to adjudicate the disputes between the parties. Arbitral proceedings will be held under the aegis of Delhi International Arbitration Centre (‘DIAC’) and fee of the Arbitrator shall be fixed as per fee schedule under DIAC (Administrative Cost & Arbitrators’ Fees) Rules, 2018.

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

12. 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 respective parties are left open.

13. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

OCTOBER 6, 2026/AK