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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 5th October, 2026*# **CNR No. DLHC010928462025**+ **ARB.P. 1965/2025****BALAJI MEDICAL AND DIAGNOSTIC RESEARCH
CENTRE** Petitioner

Through: Mr. Rohit Puri, Advocate.

versus

**EMPLOYEES STATE INSURANCE
CORPORATION** Respondent
Through: Mr. Madhu Sudan Bhayana,
Advocate.**CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This petition is filed on behalf of the Petitioner under Section 11(5) and (6) of the Arbitration and Conciliation Act, 1996 (1996 Act) seeking appointment of the Sole Arbitrator.
2. Case of the Petitioner as pleaded in the petition is that an Agreement was executed between the Respondent and the Petitioner on 27.03.2013 for availing super speciality treatment services/special diagnostic investigation facilities for ESI beneficiaries receiving medical care in various ESI run hospitals. Petitioner provided services on cashless basis to the beneficiaries referred by ESI network hospitals between 2013 to 2020 and submitted the bills to the Competent Authority from time to time. However, complete payments were not reimbursed to the Petitioner, compelling the Petitioner to



send notice invoking arbitration dated 26.03.2024 in terms of Clause 35 of the Agreement, proposing the name of an Arbitrator. Respondent sent reply dated 18.04.2024 denying that any bill was pending and thus, refusing to concur in the appointment of an Arbitrator.

3. Learned counsel for the Respondent denies the averments in the petition pertaining to the alleged outstanding bills of the Petitioner and without prejudice submits that the claims sought to be referred to arbitration are even otherwise time barred *albeit* existence of the Arbitration Agreement between the parties, envisaging reference of disputes arising out of the Agreement in question to arbitration, is not denied.

4. It is no longer *res integra* that scope of the jurisdiction of a Referral Court under Section 11(6) of 1996 Act is limited to examining the existence of an arbitration agreement and question whether the claims are *ex facie* time barred or deadwood is to left to be decided by Arbitral Tribunal and in this context, it will be profitable to refer to the judgment of the Supreme Court in ***SBI General Insurance Company Limited v. Krish Spinning, 2024 SCC OnLine SC 1754***. The three questions that arose for consideration before the Supreme Court in the said case were as follows:-

“D. ISSUES FOR DETERMINATION

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***



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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?”

5. On the scope of judicial interference under the 1996 Act, the Supreme Court, after referring to the decisions in ***Vidya Drolia and Others v. Durga Trading Corporation, (2021) 2 SCC 1*** and ***DLF Home Developers Limited v. Rajapura Homes Private Limited and Another, (2021) 16 SCC 743***, examined the effect of the decision of the Seven-Judge Bench of the Supreme Court in ***In Re: Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, 2023 SCC OnLine SC 1666*** and held that scope of examination under Section 11(6-A) is confined to existence of an Arbitration Agreement on the basis of Section 7 of 1996 Act and the use of the term ‘examination’ is different from the term ‘rule’ under Section 16 of 1996 Act and is limited to *prima facie* scrutiny of the existence of the Arbitration Agreement and does not include a contested or laborious enquiry, which is to be left to the Arbitral Tribunal under Section 16. This approach, according to the Supreme Court, serves two purposes: firstly, it allows the Referral Court to weed out non-existent Arbitration Agreements and secondly, it protects jurisdictional competence of the Arbitral Tribunal to rule on the issue in depth. Relevant passages are as follows:-

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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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).

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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.

119. Appointment of an arbitral tribunal at the stage of Section 11 petition also does not mean that the referral courts forego any scope of judicial review of the adjudication done by the arbitral tribunal. The Act, 1996 clearly vests the national courts with the power of subsequent review by which the award passed by an arbitrator may be subjected to challenge by any of the parties to the arbitration

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127. In *Arif Azim* (supra), while deciding an application for appointment of arbitrator under Section 11(6) of the Act, 1996, two issues had arisen for our consideration:

- i. Whether the Limitation Act, 1963 is applicable to an application for appointment of arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996? If yes, whether the petition filed by M/s. Arif Azim was barred by limitation?
- ii. Whether the court may decline to make a reference under Section 11 of Act, 1996 where the claims are ex-facie and hopelessly time-barred?



128. 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 Act, 1996. Further, we also held that it is the duty of the referral court to examine that the application under Section 11(6) of the Act, 1996 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 paragraph 56 of the said decision that “the limitation period for filing a petition under Section 11(6) of the Act, 1996 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.”

129. Insofar as the first issue is concerned, we are of the opinion that the observations made by us in Arif Azim (supra) do not require any clarification and should be construed as explained therein.

130. On the second issue it was observed by us in paragraph 67 that the referral courts, while exercising their powers under Section 11 of the Act, 1996, are under a duty 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.”

131. Our findings on both the aforesaid issues have been summarised in paragraph 89 of the said decision thus:-

“89. 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 Act, 1996, the courts should satisfy themselves on two aspects by employing a two-pronged test - first, whether the petition under Section 11(6) of the Act, 1996 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.”

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.”

6. In light of the aforesaid judgments, I am of view that there is no impediment in appointing the arbitrator since existence of the arbitration agreement is not in dispute. However, it is open to the Respondent to raise the objection of the claims of the Petitioner being allegedly *ex facie* time barred or deadwood before the Arbitrator.

7. Coming to the next issue as to whether Arbitrator can be appointed by the authority designated in the Arbitration Clause 35 i.e. Director (Medical), ESIC, this need not detain this Court. It is settled that an Arbitrator cannot be appointed by a person interested in the outcome of the dispute and this being unilateral appointment will be untenable in law in light of the judgements of the Supreme Court in ***Perkins Eastman Architects DPC and Another v. HSCC (India) Limited, (2020) 20 SCC 760; Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV) a Joint Venture Company, 2024 SCC OnLine SC 3219; Hindustan***



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Petroleum Corporation Limited v. BCL Secure Premises Private Limited, (2026) 3 SCC 711; and Bhadra International (India) Pvt. Ltd. and Others v. Airports Authority of India, 2026 SCC Online SC 7. Therefore, to this extent Clause 35 is void and unenforceable *albeit* this will not dent the substantive agreement to refer the disputes to arbitration. Therefore, the Arbitrator has to be appointed by the Court in exercise of jurisdiction under Section 11(6) of 1996 Act.

8. Accordingly, Ms. Sukriti Mago, Advocate (Mobile No. 9999413737) is appointed as Sole Arbitrator to adjudicate the disputes between the parties. Fee of the Arbitrator shall be fixed as per Fourth Schedule of 1996 Act, as agreed between the parties. The objection of the Respondent that the claims of the Petitioner are allegedly *ex facie* time barred or deadwood may be raised before the Arbitrator and as and when raised, they will be decided in accordance with law.

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

10. 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.

11. It is left open to the Respondent to prefer a counter claim, if any, before the learned Arbitrator.

12. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

OCTOBER 5, 2026/YA