

**IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE**

Present:-

Hon'ble Justice Shampa Sarkar.

AP-COM/190/2025

EC Wheels India Private Limited

vs.

Shriram General Insurance Company Limited

For the petitioner	: Mr. Anirudha Bhattacharya, Adv. Mr. Arnab Roy, Adv.
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For the respondents	: Mr. Rajesh Singh, Adv. Mr. Balarko Sen, Adv.
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Hearing concluded on	: 21.04.2025
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Judgment on	: 15.05.2025.
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Shampa Sarkar, J.

1. This is an application for appointment of an arbitrator. The Arbitration clause is contained in a Commercial Vehicles Package Policy. The policy was purchased by the petitioner from the respondent on February 24, 2023 in respect of a car bearing Registration No. WB07K1207, for the period between

February 24, 2023 and February 23, 2024. The petitioner is a company incorporated under The Companies Act, 1956 and is engaged in providing cab services to customers in Calcutta and adjoining districts through its Android and iOS mobile application. On October 28, 2023, the insured car met with an accident and was severely damaged. The driver was seriously injured. The driver was taken to R.G. Kar Medical College and Hospital for treatment. The petitioner lodged an FIR on October 28, 2023 before the Uttarpara Police Station and proceedings were initiated under the Indian Penal Code. The driver succumbed to the injuries and passed away on October, 29, 2023. The insurance cover was for Rs. 11,76,000/-. The damage was estimated by the service centre to the tune of Rs. 11,64,375/-. On October 29, 2023, the petitioner made a claim before the respondent under the insurance policy. By a letter dated December 19, 2023, the respondent negated the claim of the petitioner. On September 30, 2024, the petitioner issued a notice under section 21 of the Arbitration and Conciliation Act, 1996, invoking arbitration. The petitioner nominated a sole arbitrator. On October 1, 2024, the respondent received the aforementioned notice, but did not respond to the same. On March 3, 2025, this application was filed under section 11 (6) of the Arbitration and Conciliation Act, 1996 (In short 'the said Act') for appointment of an arbitrator.

2. Mr. Aniruddha Bhattacharya, learned Advocate for the petitioner submitted that clause 7 of the insurance policy contained the arbitration clause. Any dispute under the policy, should be referred to arbitration. According to Mr. Bhattacharya, repudiation of the claim of the petitioner was a

dispute with regard to quantum. Such repudiation and negation of the claim, should be referred to arbitration. The respondent had wrongly repudiated the claim. Refusal to cover the damage under the policy was without any legal basis. Whether such repudiation was justified under the terms and conditions of the said policy, was also a dispute, and as such, all issues between the parties arising out of the incident which took place on October 28, 2023 and consequent denial of the insurance coverage, should be referred to arbitration. The reason for repudiation of the claim of the petitioner as cited by the respondent was, intoxication of the driver of the vehicle. The decision was taken on the basis of an alleged injury report. It had been opined that there were indications that the driver had consumed alcohol, when the accident took place. According to Mr. Bhattacharya, the said injury report could not be taken as sacrosanct, until and unless evidence was led and the injury report was proved. An arbitrator was competent to decide such issues by appreciating evidence. The petitioner should also be given a chance to prove the contrary, i.e. the driver was not in a drunken condition and the damage sustained by the vehicle should be covered by the policy. Simpliciter refusal to honour the policy without any basis, could not be a reason to deny the reference. Arbitrability of the issues should be left to be decided by the learned arbitrator. Under section 16 of the said Act, the arbitrator could also rule on his own jurisdiction. Thus, the repudiation of the claim and the consequent reason that was assigned by the insurance company were objections as to arbitrability of the claim and an arbitrator was competent to decide the same.

3. Learned Advocate submitted that the Hon'ble Apex Court in the decision of the ***SBI General Insurance Co. Ltd. vs. Krish Spinning*** reported in **2024 SCC OnLine SC 1754** had categorically laid down that arbitral autonomy was paramount and the law mandated minimum judicial intervention. The principle of competence – competence, as contained under Section 16 of the said Act, vested the Arbitral Tribunal with the authority to rule on its own jurisdiction. When the parties had surrendered their right to have disputes arising out of the policy to be adjudicated by an arbitrator, the said clause should be honoured. The law provided that, at the stage of deciding an application under section 11 of the said Act, only a primary satisfaction with regard to the existence of an arbitration clause was sufficient. The right of the parties to resolve their disputes with one another, in a manner of their own choosing, was the basic principle governing the doctrine of competence – competence. When the arbitrator was given the power to decide on his own jurisdiction, the matter should be left to the learned arbitrator. The referral Court should not decide whether the dispute was arbitrable or not. It was urged that the decisions relied upon by the respondent were delivered prior to the decision of the Hon'ble Three Judges' Bench in ***SBI General Insurance Co. Ltd.*** (supra). It was thus prayed that this court should refer the dispute to arbitration, by leaving it open for the learned arbitrator, to decide all points, including the point of his jurisdiction and arbitrability of the issues.

4. Mr. Rajesh Singh, Learned Advocate for the respondent submitted that the arbitration clause had an inbuilt restriction. It provided that, only if the

claim was admitted by the insurance company, but the dispute was with regard to the quantum of coverage which the company would extend, the dispute could be referred to arbitration. When the claim was disallowed on the ground that the driver was intoxicated at the time of the accident and the policy would not cover the accident, the question of referring the dispute did not arise. Reliance was placed on the following decisions:-

- a. ***Oriental Insurance Company Limited vs. M/s. Narbheram Power and Steel Private Limited (2018) 6 SCC 534.***
- b. ***Jumbo Bags Limited vs. New India Assurance Company Limited 2016 SCC OnLine Madras 9141.***

5. The question is whether this court should refer the dispute to arbitration. The arbitration clause is quoted below :-

“7. If any dispute or difference shall arise as to the quantum to be paid under the policy (liability being otherwise admitted) such difference shall be independently of all other questions be referred to the decision of a sole arbitrator to be appointed in writing by the parties to or if they cannot agree upon a single arbitrator within 30 days of any party invoking arbitration the same shall be referred to a panel of three arbitrators, comprising of two arbitrators, one to be appointed by each of the parties to the dispute/difference and the third arbitrator to be appointed by such two arbitrators and arbitration shall be conducted under and in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

It is clearly agreed and understood that no difference or dispute shall be referable to Arbitration as hereinbefore provided, if the Company has disputed or not accepted liability under or in respect of this policy”

6. While repudiating the claim of the petitioner by a letter dated December 19, 2023, the insurance company stated as follows :-

“As per documentary evidence gathered by our independent investigator, it is understood that your driver had consumed alcohol at the material time of accident. This is in serious violation of Section 185 of the Motor Vehicles Act 1988 and falls under the exclusions of our policy terms and

conditions. The relevant policy exclusion is reproduced below for your ready reference :-

GENERAL EXCEPTIONS

(Applicable to all Section of the Policy)

The Company shall not be liable to make any payment in respect of :-...

(c) any accidental loss damage suffered whilst the insured or any person driving the vehicle with the knowledge and consent of the insured in under the influence of intoxicating liquor or drugs.

In the light of the above exclusion and breach of Sec. 185 of M.V. Act 1988, we express our inability to consider the claim”

7. It is true that the referral Court is only required to enquire whether there is an arbitration clause. Such is the settled principle of law. Here, the arbitration clause, as it stands, provides that in case of disputes or differences as to the quantum to be paid under the policy (liability being otherwise admitted) such difference shall be referred to the arbitration of a sole arbitrator, to be appointed by the parties and if the parties could not agree upon the learned arbitrator within 30 days of any party invoking the arbitration, the same shall be referred to a panel of three arbitrators. In my view, clause 7 clearly provides that only in case of a dispute or difference as to the quantum to be paid under the policy, upon the respondent / insurance company, accepting the liability to make such payment, the dispute as regards the quantum alone, shall be referred to arbitration. The first sub-paragraph under clause 7, puts a further negative covenant to the effect that the parties had agreed and understood that no difference or dispute could be referred to arbitration under the first paragraph, if the company had either disputed or not accepted the liability to make any payment under the policy. The letter written by the respondent, which has been quoted hereinabove, clearly

indicates that as the driver had consumed alcohol at the time of the accident, such act was a serious violation of section 185 of the Motor Vehicles Act, 1988 and fell within the general exceptions in respect of which the policy did not apply. The relevant exception clause was also narrated in the said letter. Thus, in a case where damage or loss was suffered by the insured car as the driver was under the influence of alcohol or drugs, the said policy would not cover such loss or accident. This Court agrees with Mr. Bhattacharya to the extent that the referral Court should not probe deeper into the dispute by conducting a mini trial, but should refer the dispute to arbitration, upon prima facie, satisfaction that there exists an arbitration clause. The arbitration clause however, is restrictive and has an inbuilt limitation. All disputes were not agreed to be referred to arbitration. The referral court must interpret such clause as it stands, i.e. with the restriction. The parties understood and agreed that only disputes with regard to the quantum of payment to be made by the insurance company, upon the company accepting the liability to make such payment, shall be referred to arbitration. In this case, the arbitration clause is qualified by the negative covenant. To put it differently, only when the liability to pay money to the insured is not disputed and the dispute is with regard to the quantum claimed by the insured, the resolution of such dispute must be through Arbitration. The negation of the entire claim was on the ground that the accident took place because the driver was intoxicated and the damage caused to the insured vehicle was on account of the driver being drunk. The policy did not cover such cases. Accident on account of intoxication

of the driver was one of the exceptions under the policy, which did not attach any liability to the insurance company. Thus, the company did not cover such loss or accident. The existence of the arbitration clause thus, in my view, is limited to the above extent. The contention of Mr. Bhattacharya that, unless it was proved by evidence that the driver was under the influence of alcohol, the claim could not be negated and such negation, based only on the injury report, was also a dispute which should be referred, is not a proper appreciation of the arbitration clause. The petitioner has other remedies before a civil court.

8. In ***Oriental Insurance Company Limited vs. M/s Narbheram Power and Steel Private Limited reported in (2018) 6 SCC 534*** a Three Judges' Bench of the Hon'ble Supreme Court, upon considering a similar issue, held that the clause clearly spelt out that a dispute could not be referred to arbitration if the company did not accept the liability to pay. Denial of liability by the insurer in toto, would not set in motion the arbitration clause. In order to ascertain the existence of an arbitration clause, what was required to be seen was whether the insurer either disputed or accepted its liability under the policy. In this case, the rejection of the claim of the petitioner clearly indicates that the respondent had not accepted the liability at all. It is well settled that, an arbitration clause has to be strictly construed. The clause must unequivocally express the intent of the parties. In this case, the arbitration clause postulates a situation of acceptance of liability. The clause stipulates under what circumstances, the dispute cannot be referred to arbitration. The intention of the parties or the express agreement between the parties in this

case, is demonstrably clear. Thus, the prayer for appointment of an arbitrator cannot be allowed.

9. The Hon'ble Apex Court in **Narbheram Power** (supra) held as follows :-

"23. It does not need special emphasis that an arbitration clause is required to be strictly construed. Any expression in the clause must unequivocally express the intent of arbitration. It can also lay the postulate in which situations the arbitration clause cannot be given effect to. If a clause stipulates that under certain circumstances there can be no arbitration, and they are demonstrably clear then the controversy pertaining to the appointment of arbitrator has to be put to rest.

24. In the instant case, Clause 13 categorically lays the postulate that if the insurer has disputed or not accepted the liability, no difference or dispute shall be referred to arbitration. The thrust of the matter is whether the insurer has disputed or not accepted the liability under or in respect of the policy. The rejection of the claim of the respondent made vide letter dated 26-12-2014 ascribes the following reasons:

- "1. Alleged loss of imported coal is clearly an inventory shortage.
2. There was no actual loss of stock in process.
3. The damage to the sponge iron is due to inherent vice.
4. The loss towards building/sheds, etc. are exaggerated to cover insured maintenance.
5. As there is no material damage thus business interruption loss does not get triggered."

25. The aforesaid communication, submits the learned Senior Counsel for the respondent, does not amount to denial of liability under or in respect of the policy. On a reading of the communication, we think, the disputation squarely comes within Part II of Clause 13. The said part of the clause clearly spells out that the parties have agreed and understood that no differences and disputes shall be referable to arbitration if the company has disputed or not accepted the liability. The communication ascribes reasons for not accepting the claim at all. It is nothing else but denial of liability by the insurer in toto. It is not a disputation pertaining to quantum. In the present case, we are not concerned with regard to whether the policy was void or not as the same was not raised by the insurer. The insurance company has, on facts, repudiated the claim by denying to accept the liability on the basis of the aforesaid reasons. No inference can be drawn that there is some kind of dispute with regard to quantification. It is a denial to indemnify the loss as claimed by the respondent. Such a situation, according to us, falls on all fours within the concept of denial of disputes and non-acceptance of liability. It is not one of the arbitration clauses which can be interpreted in a way that denial of a claim would itself amount to dispute and, therefore, it has to be referred to arbitration. The parties are bound by the terms and conditions agreed under the policy

and the arbitration clause contained in it. It is not a case where mere allegation of fraud is leaned upon to avoid the arbitration. It is not a situation where a stand is taken that certain claims pertain to excepted matters and are, hence, not arbitrable. The language used in the second part is absolutely categorical and unequivocal inasmuch as it stipulates that it is clearly agreed and understood that no difference or disputes shall be referable to arbitration if the company has disputed or not accepted the liability. The High Court has fallen into grave error by expressing the opinion that there is incongruity between Part II and Part III. The said analysis runs counter to the principles laid down in the three-Judge Bench decision in *Vulcan Insurance Co. Ltd.* [*Vulcan Insurance Co. Ltd. v. Maharaj Singh*, (1976) 1 SCC 943] Therefore, the only remedy which the respondent can take recourse to is to institute a civil suit for mitigation of the grievances. If a civil suit is filed within two months hence, the benefit of Section 14 of the Limitation Act, 1963 will enure to its benefit.”

10. Unless the liability is unequivocally admitted by the insurer, the arbitration clause will not be triggered. Admission of liability by the insurer is a condition precedent and sine qua non for invigorating the arbitration clause. In

Vulcan Insurance Co. Ltd. vs. Maharaj Singh reported in **(1976) 1 SCC 943**, the Hon’ble Apex Court answered the same issue :-

“10. The correspondence between the parties makes it clear that at one time the surveyors had assessed the damages at Rs 4620 in their letter dated April 26, 1963. But the said assessment was, in express terms, without commitment of any liability on the part of the insurance company. The company, however, completely repudiated the liability under clause 13.

11. Although the surveyors in their letter dated April 26, 1963 had raised a dispute as to the amount of any loss or damage alleged to have been suffered by Respondent 1, the appellant at no point of time raised any such dispute. The appellant company in its letter dated July 5 and 29, 1963 repudiated the claim altogether. Under clause 13 the company was not required to mention any reason of rejection of the claim nor did it mention any. But the repudiation of the claim could not amount to the raising of a dispute as to the amount of any loss or damage alleged to have been suffered by Respondent 1. If the rejection of the claim made by the insured be on the ground that he had suffered no loss as a result of the fire or the amount of loss was not to the extent claimed by him, then and then only, a difference could have arisen as to the amount of any loss or damage within the meaning of clause 18. In this case, however, the company repudiated its liability to pay any amount of loss or damage as claimed by Respondent 1. In other words, the

dispute raised by the company appertained to its liability to pay any amount of damage whatsoever. In our opinion, therefore, the dispute raised by the appellant company was not covered by the arbitration clause.

12. As per clause 13 on rejection of the claim by the company an action or suit, meaning thereby a legal proceeding which almost invariably in India will be in the nature of a suit, has got to be commenced within three months from the date of such rejection; otherwise, all benefits under the policy stand forfeited. The rejection of the claim may be for the reasons indicated in the first part of clause 13, such as, false declaration, fraud or wilful neglect of the claimant or on any other ground disclosed or undisclosed. But as soon as there is a rejection of the claim and not the raising of a dispute as to the amount of any loss or damage, the only remedy open to the claimant is to commence a legal proceeding, namely, a suit, for establishment of the company's liability. It may well be that after the liability of the company is established in such a suit, for determination of the quantum of the loss or damage reference to arbitration will have to be resorted to in accordance with clause 18. But the arbitration clause, restricted as it is by the use of the words "if any difference arises as to the amount of any loss or damage", cannot take within its sweep a dispute as to the liability of the company when it refuses to pay any damage at all.

13. Mr S.N. Andley, learned Counsel for Respondent 1 submitted that in view of the last part of clause 18 which makes the award of an arbitration a condition precedent to any right of action or suit, it should be held that even when there is a repudiation of liability, the matter has to go to the arbitration first. In support of such a submission, learned Counsel placed reliance upon certain decisions of the courts in India as also in England. We shall presently show that on the facts and in the circumstances of this case, none of them is of help to Respondent 1.

14. A clause like the last part of clause 18 making the award a condition precedent to any right of action or suit first came up for consideration in the case of *Scott v. Avery* [(1856) 25 LJ Ex 308 : 5 HLC 811 : 4 WR 746] and since then such clauses are commonly called *Scott v. Avery* clauses. Generally it has been found that if the arbitration clause is couched in a comprehensive language taking within its ambit any kind of dispute arising under the policy, then obtaining of an award by arbitration is a condition precedent to the starting of any other legal proceeding. A clause like *Scott v. Avery* has repeatedly been held to be a valid one.

*"Even a clause of this type, however, is not absolute in effect: where the court orders that the arbitration agreement cease to have effect in relation to a particular dispute, it has a discretion to order further that the *Scott v. Avery* clause cease to have effect too. (Vide pp. 57, 58 of Russel on Arbitration, Eighteenth Edn.)."*

The said statement of the law, however has been made with reference to Section 25(4) of the English Arbitration Act, 1950. The corresponding provision in our Act is contained in Section 36. But that apart, when an arbitration clause is not operative on the dispute raised, as in this case, then it is wholly unreasonable, almost impossible, to hold that still the parties have to obtain an award before starting any legal proceeding. What dispute will be referred to arbitration? The dispute raised is not within the purview of arbitration. Reading clauses 13 and 18 together it must be held that on the rejection or repudiation of the claim by the insurer, the insured is under an obligation to start a legal proceeding within three months of such rejection, and hence obtaining of an award in such a case cannot be a condition precedent. It is not possible to go to arbitration for determination of the said dispute. Clauses similar to the ones contained in clauses 13 and 18 in this case were the subject-matter of consideration before the House of Lords in the case of Jureidini v. National British and Irish Millers Insurance Company, Limited [1915 AC 499 : 84 LJ KB 640 : 31 TLR 132] . The claim made by the insured was rejected by the insurer as being fraudulent. When the former brought an action the latter resisted it on Scott v. Avery clause. The House gave a unanimous opinion that the repudiation of the claim on a ground going to the root of the contract precluded the company from pleading the arbitration clause as a bar to an action to enforce the claim. The matter put in that form in some of the speeches of the Law Lords does not seem to have received full approval of the House in later decisions including the one in Heyman v. Darwins Ltd. [(1942) 1 All ER 337 : 1942 AC 356] as it would appear from the speech of Lord Macmillan at p. 346. But the real ratio of the decision which remains unshaken even till today is to be found in the speech of Lord Parmoor at p. 508 when His Lordship said that since no difference had arisen which could be covered by arbitration clause 17 and the company had raised an issue on which if it had succeeded, the insured would have lost all benefit under the policy, the arbitration clause had no application.

15. In **General Assurance Society Limited vs. Chandumull Jain and Anr.** reported in **(1966) 3 SCR 500**, it was held that, while interpreting the documents relating to a contract of insurance, the duty of the Court would be to interpret the words in which the contract was expressed by the parties and it was not for the Court to make a new contract, however reasonable, if the parties had not made the same themselves.

16. Principles of equity cannot be employed for the purpose of interpretation of a contract. Purposive interpretation cannot be given to the terms of the contract. The contention of Mr. Bhattacharya that, negation of a claim was also a dispute with regard to quantum payable, cannot be read into the terms and conditions of the contract on the ground of equity, fairness or justice. The clause has to be read as it has been framed, agreed and understood by the parties. There is no dispute or difference which can be referred to arbitration, inasmuch as, quantum of loss or damage has neither been assessed nor admitted by company. The insurer repudiated the claim and denied the liability to pay under the policy. That is the end of the matter.

17. In ***Oriental Insurance Co. Ltd. vs. Sony Cheriyan*** reported in **(1999) 6 SCC 451**, it was held by the Hon'ble Apex Court that, the insurance policy between the insurer and the insured, was a contract. The insurer undertook to compensate the loss suffered by the insured on account of risk covered by the insurance policy. The terms of the agreement were construed strictly to determine the extent of the liability of the insurer. The insured could not claim anything more than what was covered by the insurance policy.

18. That being so, the insured also was to act strictly in accordance with the limitations of the policy. Under such circumstances, clause 7 of the subject policy should be interpreted strictly in accordance with the restrictions as follows i.e.:-

“(a)(liability being otherwise admitted)....

(b) It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as herein before provided that if the Company had disputed or not accepted liability under or in respect of the Policy”

19. The Court is not expected to have an extra-liberal and a justice oriented approach, by re-writing the contract or by substituting the terms which were not intended by the parties. This is a commercial document. The decision of **SBI General Insurance** (supra) is not applicable in the facts of this case, inasmuch as, the said decision was based on the issue as to whether execution of a discharge voucher towards full and final settlement of the claim under an insurance policy, would operate as a bar to the invocation of the arbitration clause. The scope and standard of judicial scrutiny in an application under section 11(6) of the said Act was decided in such context. Where the plea of accord and satisfaction was taken by the insurance company, upon execution of a no-claim and/or discharge voucher by the insured, the Apex Court held that, the arbitration clause formed part of the contract and ought to be treated as an agreement independent of the other terms of the contract. Issuance of discharge voucher upon final settlement, etc., were covered by the terms and conditions of the contract, but the arbitration clause was independent of such terms. That, the Doctrine of Separability was expressly incorporated in the said Act.

20. It was held that, even if the underlying contract came to an end, the arbitration agreement contained in such contract for resolution of disputes between the parties by arbitration, remained. Upon such interpretation of the law, the Hon'ble Apex Court concluded that, only because the insured had signed the discharge voucher, the same could not be construed as accord and satisfaction, especially when it was alleged by the insured that, the discharge

voucher was executed under coercion, misrepresentation and undue influence. Such matters touched the question of arbitrability and the arbitrator was competent to decide the same.

21. According to the Hon'ble Apex Court, such action would have to be proved by evidence and as such the arbitrator, being the first authority to determine and decide all questions including questions of non-arbitrability, should be given the autonomy to decide the matter with regard to accord and satisfaction, upon full and final settlement of the claim of the insured. However, the Hon'ble Apex Court made an exception to the rule i.e. as a demurrer, the referral Court could reject the claim which was manifestly and expressly non-arbitrable.

22. Relevant portions of **SBI General Insurance** (supra) are quoted below :-

"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."

23. Thus, the position was explained by the Hon'ble Apex Court as follows :-

"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 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)."

24. The other decision relied upon by Mr. Bhattacharya i.e. ***Payu Payments Private Limited vs. New India Assurance Co. Ltd.*** reported in **2024 SCC OnLine Del 6777** also does not apply to the facts of this case. In the matter before the learned Delhi High Court, two composite policies were the subject matter, i.e. Policy Numbers 33 and 34. Policy Number 34 did not have any restriction. Thus, the Delhi High Court was of the view that when the insurer

had dealt with the policies in a composite manner, in the usual course of business, but relied on one policy to negate the claim, that would be non-compliance of the terms and conditions of the arbitration clause. The clause may be invoked, leaving the issue of non-arbitrability of the dispute on the ground of negation of the claim of by the insurer, to be decided by the learned arbitrator.

25. A discussion on the definition of an arbitration agreement is necessary in this regard. Section 7(1) of the said Act states as follows :-

“7. Arbitration agreement.—(1) In this Part, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.”

Here, the parties agreed that certain disputes which would arise out of the insurance policy would be referred to arbitration, but not all disputes. Only disputes with regard to the quantum of coverage determined to be payable by the Insurance Company upon acceptance of liability, would be referred. Thus a dispute could not be referred if the Insurance company had rejected the claim in toto.

26. In the decision of ***Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re*** reported in ***(2024) 6 SCC 1***, the Hon’ble Apex Court at paragraphs 16 and 17 discussed the scope of interference by a referral court and held that the referral court was entitled to cause a prima facie, examination with regard to existence of an arbitration clause. The expression ‘examination’ was explained in this context to mean an enquiry in respect of the dealings between the parties

which led to the incorporation of the arbitration clause. Thus, this Court can examine the existence of an arbitration clause in order to arrive at a finding as to whether there is an existing clause which permits all disputes to be referred to the arbitration. The dealings between the parties and understanding of the parties as to what would be referred to arbitration is explicitly provided in the clause and there is no confusion or doubt that unless the dispute is on the quantum claimed and the quantum agreed to be payable by the Insurance company, the dispute cannot be referred. The relevant paragraphs of ***Interplay*** (supra) are as follows :-

“166. The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. In jurisdictions such as India, which accept the doctrine of competence-competence, only prima facie proof of the existence of an arbitration agreement must be adduced before the Referral Court. The Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the Arbitral Tribunal. This position of law can also be gauged from the plain language of the statute.

167. Section 11(6-A) uses the expression “examination of the existence of an arbitration agreement”. The purport of using the word “examination” connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. Moreover, the expression “examination” does not connote or imply a laborious or contested inquiry. [P. Ramanatha Aiyar, The Law Lexicon (2nd Edn., 1997) 666.] On the other hand, Section 16 provides that the Arbitral Tribunal can “rule” on its jurisdiction, including the existence and validity of an arbitration agreement. A “ruling” connotes adjudication of disputes after admitting evidence from the parties. Therefore, it is evident that the Referral Court is only required to examine the existence of arbitration agreements, whereas the Arbitral Tribunal ought to rule on its jurisdiction, including the issues pertaining to the existence and validity of an arbitration agreement. A similar view was adopted by this Court in Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd. [Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd., (2005) 7 SCC 234]”

27. Thus, this court is of the view that the parties agreed to refer to arbitration only disputes over quantum of the money payable by the insurance company under the policy.

28. In view of the above discussions, this application is dismissed.

29. The dispute raised by the petitioner may be raised before the appropriate forum.

30. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfillment of usual formalities.

(Shampa Sarkar, J.)