

OCD 17

ORDER SHEET
AP-COM/506/2024
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

M/S KAMARHATTY COMPANY LTD
VS
M/S ORIENTAL INSURANCE COMPANY LTD

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 18th December, 2025.

Appearance:
Ms. Amrita Pandey, Adv.
Mr. Ashish Anand, Adv.
Mr. Ghanshyam Pandey, Adv.
Ms. Saheli Samanta, Adv.
. . .for the petitioner.

Mr. Abhimanyu Shandilya, Adv.
Mr. Gourab Das, Adv.
. . .for the respondent.

The Court:

1. The petitioner prays for appointment of an Arbitrator, to arbitrate the disputes between the parties which arose out an Insurance Policy. The petitioner runs a jute mill. The plant, machinery, building and raw materials of the said jute mill were insured under a Standard Fire and Special Perils Policy No. 311200/11/2019/379 (hereinafter referred to as the said policy) for the period between December 18, 2018 to December 17, 2019.

2. It is submitted that on account of two incidents of fire, severe loss and damage was suffered at the warehouse. The loss had been quantified in two separate claims. Rs.1,00,15,403/- pertains to the first claim. The second claim was Rs.1,69,82,803.80. According to the petitioner part payments were made against each of the claims.
3. It is alleged that, the respondent accepted its liability to pay part of the claim against the insurance policy, but part of the claim remained unpaid. A specific averment has been made to the effect that, the respondent had coerced the petitioner into accepting the partial payment. However, the petitioner contends to have opposed to such partial payment. Petitioner denied that the payments were made in full and final settlement of the claims. As of today, the total outstanding is more than Rs.1.26 crores in respect of both the claims. The petitioner submits that, once the liability to pay under the policy was accepted, the dispute with regard to the quantum should be referred to arbitration in terms of Clause 13 of the policy which is quoted below.
4. Clause 13 is quoted below:-

“13. If any dispute or difference shall arise (arise] as to the quantum to be paid under this policy (liability being otherwise admitted) such difference shall independently of all other questions be referred to the decision of 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.

It is hereby expressly stipulated and declared that it shall be condition precedent to any action or suit upon this policy that the award by such arbitrator/arbitrators of the amount of the loss or damage shall be first obtained."

5. The clause states that, in case of disputes arising out of the said policy, the same shall be referred to a single Arbitrator and if the parties cannot agree then the same shall be referred to three Arbitrators.
6. The petitioner invoked arbitration by a letter dated 3rd October, 2023. The respondent rejected the claims of the petitioner sometime in March, 2023.
7. Mr. Abhimanyu Shandilya, submits that the claim is time barred. The notice invoking Arbitration was issued three years after the payment had been made. He further submits that the payments were accepted in full and final settlement of the claim. A discharge voucher was accordingly signed.

8. In the affidavit in reply, the petitioner has annexed documents to show that the report of the surveyor, on the basis of which the payments were made by the insurance company, had been objected to from the very beginning and a dispute had been raised at the very initial stage with regard to the partial payment. The respondent had calculated the sum assured at a lower rate than what was claimed by the petitioner. Several documents have been annexed to the said affidavit in reply.
9. In view of the aforementioned facts and circumstances, this Court holds that, limitation is a mixed question, which makes the said issue a triable one. The said issue will be decided by the learned Arbitrator.
10. The issue of accord and satisfaction is also a triable dispute, which has to be decided by the learned Arbitrator.
11. Therefore, this court is of the view that, this application cannot be rejected even by applying the eye of the needle test. Accord and satisfaction of the claim as alleged by the respondent, is an arbitrable dispute, which fall strictly within the domain of the arbitrator.
12. In the decision of ***SBI General Insurance Co. Ltd. v. Krish Spg.***, reported in **(2024) 12 SCC 1**, the Hon'ble Apex Court held as follows:-

“118. 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”.

119. 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.

120. 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 does not 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 principle 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.

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124. In a case with similar facts but where an arbitration agreement is not in existence, the claimant would have the recourse to approach a civil court with its claims. Even in such proceedings before the civil court, it would be open to the defendant to put forward the defence of “accord and satisfaction” on the basis of the discharge voucher. Similarly, it would be open to the claimant to allege that the voucher had been obtained under fraud, coercion or undue influence. In such a scenario, the civil court would consider the evidence as to whether there was any fraud, undue influence or coercion. If the civil court finds that there was none, then it would reject the claims at the outset. However, if it finds that the allegations of fraud are true, then it would reject the discharge voucher and proceed to adjudicate the claims on merit.

125. Once an arbitration agreement exists between parties, then the option of approaching the civil court becomes unavailable to them. In such a scenario, if the parties seek to raise a dispute, they necessarily have to do so before the Arbitral Tribunal. The Arbitral Tribunal, in turn, can only be constituted as per the procedure agreed upon between the parties. However, if there is a failure of the agreed upon procedure, then the duty of appointing the Arbitral Tribunal falls upon the Referral Court under Section 11 of the 1996 Act. If the Referral Court, at this stage, goes beyond the scope of enquiry as provided under the section and examines the issue of “accord and satisfaction”, then it would amount to usurpation of the power which the parties had intended to be exercisable by the

Arbitral Tribunal alone and not by the national courts. Such a scenario would impeach arbitral autonomy and would not fit well with the scheme of the 1996 Act.”

13. In ***Shree Saibaba Plasto Products Pvt. Ltd. v. National Insurance Company Limited***, order dated 13.01.2025 in ***A.P. No. 119 of 2023***; this court held as follows :-

“Heard the parties. The petitioner relies on a prescribed form of a discharge voucher in the affidavit-in-reply, which provides that execution of the voucher would not foreclose the right of the policy holder to seek higher compensation before any judicial fora or any other fora established by law. Contents of such discharge voucher was communicated by the Insurance Regulatory Development Authority of India, to all CEOs of the General Insurance Company. According to the petitioner, the discharge voucher was executed under pressure. The petitioner relies on a decision of the Hon’ble Apex Court in the matter of SBI General Insurance Co. Ltd. vs. Krish Spinning, reported in 2024 SCC Online SC 1754, in support of the contention that the referral Court is only required to see whether there is an arbitration agreement under clause 13 of the Insurance Policy and whether the petitioner had raised any dispute by invoking the arbitration clause. According to the Apex Court, the issue of accord and satisfaction of the claim, should not be adjudicated by the referral court and the same should be left to the learned Arbitrator, for a decision. The referral Court should not go beyond the enquiry as to the existence of the arbitration agreement. The Hon’ble Apex Court in the said decision considered a matter arising out of similar facts and circumstances.

The relevant paragraphs of the decision of the Hon’ble Apex Court with regard to accord and satisfaction and whether the execution of discharge voucher amounts to discharge and satisfaction, are quoted below:

“**92.** The position that emerges from the aforesaid discussion of law on the subject as undertaken by us can be summarised as follows:-

- i. There were two conflicting views which occupied the field under the Arbitration Act, 1940. While the decisions in Damodar Valley (supra) and Amar Nath (supra) took the view that the disputes pertaining to "accord and satisfaction" should be left to the arbitrator to decide, the view taken in P.K. Ramaiah (supra) and Nathani Steels (supra) was that once a "full and final settlement" is entered into between the parties, no arbitrable disputes subsist and therefore reference to arbitration must not be allowed.

- ii. Under the Act, 1996, the power under Section 11 was characterised as an administrative one as acknowledged in the decision in *Konkan Railway (supra)* and this continued till the decision of a seven-Judge Bench in *SBP & Co. (supra)* overruled it and significantly expanded the scope of judicial interference under Sections 8 and 11 respectively of the Act, 1996. The decision in *Jayesh Engineering (supra)* adopted this approach in the context of "accord and satisfaction" cases and held that the issue whether the contract had been fully worked out and whether payments had been made in full and final settlement of the claims are issues which should be left for the arbitrator to adjudicate upon.
- iii. The decision in *SBP & Co. (supra)* was applied in *Boghara Polyfab (supra)* and it was held by this Court that the Chief Justice or his designate, in exercise of the powers available to them under Section 11 of the Act, 1996, can either look into the question of "accord and satisfaction" or leave it for the decision of the arbitrator. However, it also specified that in cases where 6 the Chief Justice was satisfied that there was indeed "accord and satisfaction", he could reject the application for appointment of arbitrator. The prima facie standard of scrutiny was also expounded, stating that the party seeking arbitration would have to prima facie establish that there was fraud or coercion involved in the signing of the discharge certificate. The position elaborated in *Boghara Polyfab (supra)* was adopted in number of a subsequent decisions, wherein it was held that a mere bald plea of fraud or coercion was not sufficient for a party to seek reference to arbitration and prima facie evidence for the same was required to be provided, even at the stage of the Section 11 petition.
- iv. The view taken by *SBP & Co. (supra)* and *Boghara Polyfab (supra)* was seen by the legislature as causing delays in the disposal of Section 11 petitions, and with a view to overcome the same, Section 11(6-A) was introduced in the Act, 1996 to limit the scope of enquiry under Section 11 only to the extent of determining the "existence" of an arbitration agreement. This intention was acknowledged and given effect to by this Court in the decision in *Duro Felguera (supra)* wherein it was held that the enquiry under Section 11 only entailed an examination whether an arbitration agreement existed between the parties or not and "nothing more or nothing less".
- v. Despite the introduction of Section 11(6-A) and the decision in *Duro Felguera (supra)*, there have been diverging views of this Court on whether the scope of referral court under Section 11 of the Act, 1996 includes the power to go into the question of

"accord and satisfaction". In *Antique Art (supra)* it was held that unless some prima facie proof of duress or coercion is adduced by the claimant, there could not be a referral of the disputes to arbitration. This view, however, was overruled in *Mayavati Trading (supra)* which reiterated the view taken in *Duro Felguera (supra)* and held that post the 2015 amendment to the Act, 1996, it was no more open to the Court while exercising its power under Section 11 of the Act, 1996 to go into the question of whether "accord and satisfaction" had taken place.

- vi. The decision in *Vidya Drolia (supra)* although adopted the view taken in *Mayavati Trading (supra)* yet it provided that in exceptional cases, where it was manifest that the claims were ex facie time barred and deadwood, the Court could interfere and refuse reference to arbitration. Recently, this view in the context of "accord and satisfaction" was adopted in *NTPC v. SPML (supra)* wherein the "eye of the needle" test was elaborated. It permits the referral court to reject arbitration in such exceptional cases where the plea of fraud or coercion appears to be ex-facie frivolous and devoid of merit.

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."

- 14. The Hon'ble Supreme Court in ***Krish Spinings (supra)*** further clarified that, the scope of enquiry at the stage of appointment of arbitrator was only with regard to existence of an arbitration clause.

Paragraphs 113 and 114 are quoted below:-

"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 herein below:

"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 time bound 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).”

15. ***Ajay Madhusudan Patel and Ors. v. Jyotrindra S. Patel and***

Ors., reported in **(2025) 2 SCC 147**, the Hon’ble Apex Court held as follows:-

76.5. In *Interplay*, *In re* [*Interplay Between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899*, *In re*, (2024) 6 SCC 1] the position taken in *Vidya Drolia* [*Vidya Drolia v. Durga Trading Corpn.*, (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] was clarified to state that the scope of examination under Section 11(6) should be confined to the “existence of the arbitration agreement” under Section 7 of the 1996 Act and the “validity of an arbitration agreement” must be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. Therefore, substantive objections pertaining to existence and validity on the basis of evidence must be left to the Arbitral Tribunal since it can “rule” on its own jurisdiction.

76.6. *Krish Spg.* [*SBI General Insurance Co. Ltd. v. Krish Spg.*, (2024) 12 SCC 1 : 2024 SCC OnLine SC 1754] cautioned that the courts delving into the domain of the Arbitral Tribunal at the Section 11 stage run the risk of leaving the claimant remediless if the Section 11 application is rejected. Further, it was stated that a detailed examination by the courts at the Section 11 stage would be counterproductive to the objective of expeditious disposal of Section 11 application and simplification of pleadings at that stage.

76.7. *Cox & Kings [Cox & Kings Ltd. v. SAP India (P) Ltd., (2024) 4 SCC 1 : (2024) 2 SCC (Civ) 1 : (2024) 251 Comp Cas 680]* specifically dealt with the scope of inquiry under Section 11 when it comes to impleading the non-signatories in the arbitration proceedings. While saying that the referral court would be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory party is a veritable party to the arbitration agreement, it also said that in view of the complexity in such a determination, the Arbitral Tribunal would be the proper forum. It was further stated that the issue of determining parties to an arbitration agreement goes to the very root of the jurisdictional competence of the Arbitral Tribunal and can be decided under its jurisdiction under Section 16.”

16. In the decision of ***ASF Buildtech Private Limited v. Shapoorji Pallonji and Company Private Limited*** reported in **(2025) 9 SCC 76**, the Hon’ble Apex Court held as follows:-

“72. The next chapter in the saga of scope and ambit of Section 11 of the 1996 Act came in the form of the seven-Judge Bench decision of this Court in *Interplay Between Arbitration Agreements under Arbitration Act, 1996 & Stamp Act, 1899, In re [Interplay Between Arbitration Agreements under Arbitration Act, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1]* wherein one of us (J.B. Pardiwala, J.) as part of the Bench, undertook a comprehensive analysis of Section(s) 8 and 11, respectively, of the 1996 Act 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. It held that the Referral Court, be it the High Court or the Supreme Court under Section 11 of the 1996 Act **shall** examine only the existence of a prima facie arbitration agreement and not any other issues. The relevant observations read as under: (SCC pp. 96-97 & 104, paras 196-97 & 220)

“196. 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. Obliging the court to decide issues of stamping at the Section 8 or Section 11 stage will defeat the legislative intent underlying the Arbitration Act.

197. 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). ...

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 not other issues”. The 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 time-bound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators.”

(emphasis in original and supplied)

17. ***Hindustan Petroleum Corporation Limited v. BCL Secure***

Premises Pvt. Ltd. reported in **2025 SCC OnLine SC 2746**, the

Hon’ble Apex Court held as follows:-

“**27.** As was held in *In Re: Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 & Stamp Act, 1899*, since the scope of referral court has to be within the parameter of Section 11 (6-A), the exercise carried thereon is “examination of the existence of an arbitration agreement”. While “examination” does not contemplate a laborious or a contested inquiry there is an obligation in the referral court to “inspect and scrutinize” the dealings, if any, between the parties. Para 167 of *Interplay* (supra) reads as under:—

“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.*, (2005) 7 SCC 234]”

(Emphasis supplied)

28. This principle was reiterated lucidly in *SBI General Insurance Company Limited v. Krish Spinning*, wherein this Court (speaking through one of us, J.B. Pardiwala J.) observed as under:—

113. 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.

114. 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.

115. The aforesaid approach serves a twofold 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.”

(Emphasis supplied)

18. In this case, the arbitration clause is in place. The parties have exchanged elaborate correspondence on the claims which are outstanding. A notice invoking arbitration has been issued.
19. Under such circumstances, all the objections raised by Mr. Shandilya are left open to be raised before the learned Arbitrator.

20. The clause provides for a single Arbitrator and in case of failure of such mechanism the Clause further provides that the dispute shall be referred to three Arbitrators. Both the learned Advocates for the respective parties make a request that a sole Arbitrator may be appointed for adjudication of the dispute between the parties.
21. The application is disposed of by appointing Hon'ble Justice S.P. Talukdar, former Judge of the Calcutta High Court, as the Arbitrator, to arbitrate upon the disputes between the parties. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.
22. The learned Arbitrator shall fix his remuneration as per the Schedule of the Act.
23. The application is, accordingly, disposed of.

(SHAMPA SARKAR, J.)