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

% *Date of Decision: 28th May, 2025*

\+ ARB.P. 297/2025

M/S GOYALA INFRA PROJECTS PVT LTD .....Petitioner

Through: Mr. Kushagra Bansal, Advocate.

versus

THE ENGINEER IN CHIEF MILITARY ENGINEERING SERVICE .....Respondent

Through: Mr. Bhagvan Swarup Shukla, CGSC along with Mr. Rishikesh Sharma, Mr. Sawan Kumar, Mr. Satyam Singh and Mr. Mukesh Pandey, Advocates.

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(6) of the Arbitration and Conciliation Act, 1996 ('1996 Act') for appointment of a Sole Arbitrator to adjudicate the disputes between the parties.

2. As set out in the petition, case of the Petitioner is that being a successful bidder of a Tender floated by the Respondent, work of special repair of Building Nos. 19 to 22 at S.P. Marg and 'A' Block at Sangli Apartment was awarded to the Petitioner and a Contract Agreement was executed on 31.03.2014. Respondent issued Work Order No. 01 on 12.04.2014 mentioning the details of the timelines for handing over the site. Petitioner mobilized its resources within the stipulated time. From time to

time, Petitioner raised issues of non-availability of the work front at the project site as also other hindrances, leading to delay in execution of the work. On 29.12.2014, Respondent granted extension of time till 31.01.2015 for completion of the work under Phase-1.

3. Petitioner avers that subsequently Respondent issued deviation orders leading to extension of time for completion of work for Phases-1, 2 and 3, however, the *inter se* disputes continued till 2021. On 04.04.2021, Respondent issued completion certificate in respect of the last phase i.e., Phase-3 and on 14.07.2021, Petitioner raised the final bill, out of which Respondent paid a meagre sum of Rs.8,20,385/- on 31.10.2022. Thereafter, Petitioner invoked Arbitration Clause 70 of the IAFW-2249 and sent a notice dated 04.11.2024 to the Respondent, pointing out that in terms of the judgment of the Supreme Court in ***Perkins Eastman Architects DPC and Another v. HSCC (India) Limited, (2020) 20 SCC 760***, a person having an interest in the dispute or in the outcome or the decision thereof, is ineligible to appoint an Arbitrator and therefore, Respondent could not appoint an Arbitrator under Clause 70 of IAFW-2249. Petitioner, therefore, requested the Respondent that Sole Arbitrator be appointed by mutual consent of the parties, but there was no response.

4. Reply has been filed on behalf of the Respondent. Placing reliance on the reply, Mr. Shukla, learned CGSC submits that the petition deserves to be dismissed at the outset, being not maintainable. It is urged that no dispute survives between the parties, which needs reference to arbitration, in light of the fact that a sum of Rs. 7,84,83,084.78/-, which was the amount due to the Petitioner has been paid and Petitioner has signed the bill without protest or demur and issued a 'No Claim Certificate' in this regard. Present petition is

merely an afterthought and raises claims which are time barred and non-arbitrable.

5. Mr. Shukla further argues that Petitioner wrongly blames the Respondent for delay in work. The site in question for the entire Phase-1 work was duly handed over to the Petitioner on 26.04.2014, to enable it to commence work as per the Contract. However, progress of work was slow from the beginning due to inadequate material, resources and labour deployed at the site. Numerous notices were served on the Petitioner but there was no improvement in the progress of work. Extension of time was also granted on several occasions so that Petitioner could mobilize its resources and manpower but the work was not completed on time. In fact, it is an admitted position that work was delayed due to ill health of the contractor, for which, from time to time medical certificates were sent by Petitioner to the Respondent. Delay by the Petitioner resulted in grave prejudice to the Respondent inasmuch as the buildings which were to be handed over for the purpose of residence of the Army personnel within one year, were actually handed over after seven years. Mr. Shukla relies on the following judgments in his favour:-

(i) ***Union of India and Others v. Bharat Enterprise, 2023 SCC OnLine SC 369***;

(ii) ***Union of India and Others v. Master Construction Company, (2011) 12 SCC 349***; and

(iii) ***Tirupati Constwell Private Limited v. Delhi States Employees Federation CGHS Ltd, ARB. P. 1029/2024, decided on 13.05.2025***.

6. Learned counsel for the Petitioner *per contra* strenuously refutes the submissions made by Mr. Shukla. It is submitted that Petitioner is not

responsible for the delay in completion of the work, which is reflected from the communications exchanged between the parties at the relevant time. It is argued that Respondent is wrong in taking a stand that the entire outstanding payment has been made to the Petitioner since the total bill was for a sum of Rs.17,59,42,525/- as per the final invoice dated 14.07.2021, but only a sum of Rs.8,20,385/- has been paid and the balance is outstanding. Therefore, the dispute with respect to the outstanding payment survives and needs to be referred for arbitration. Insofar as the 'No Claim Certificate' is concerned, it is submitted that the certificate is a standard printed format signed in routine as a pre-condition for clearance of the bills and cannot amount to a full and final settlement of the amount payable to the Petitioner. Moreover, the 'No Claim Certificate' is in reference to bill dated 14.07.2021, which itself indicates that out of the outstanding amount, only a sum of Rs.8,20,385/- has been paid. In any event, this would be a matter for adjudication by the Arbitrator and cannot be decided by this Court in the present petition.

7. Heard learned counsels for the parties.

8. Broadly understood, the objections raised by the Respondent to the present petition are twofold: (a) delay in completion of the work is attributable to the Petitioner; and (b) Petitioner accepted and signed the final bill dated 14.07.2021 without any protest or dispute and issued 'No Claim Certificate' in this regard, which operates as a bar to invoke arbitration.

9. Insofar as the argument of the Respondent that the delay in completion of the work under Contract dated 31.03.2014 is attributable to the Petitioner and that no hindrances of any kind were caused by the Respondent is concerned, this is a dispute on merits of the claims raised by the Petitioner and can only be adjudicated by the Arbitrator. It is not in the

domain of a referral Court under Section 11 of 1996 Act to enter into merits of the rival claims. It is settled that the limited enquiry that a referral Court can enter into is with regard to the existence of the Arbitration Agreement and whether the petition under Section 11 of 1996 Act is barred by limitation.

10. Coming to the second objection of 'accord and satisfaction' and/or discharge of liabilities by reference to the 'No Claim Certificate' is concerned, this issue need not detain this Court as the same has been settled by the Supreme Court and in this context, I may allude to the judgment of the Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754,*** wherein it was held that dispute regarding 'accord and satisfaction' does not pertain to existence of the Arbitration Agreement and can only be adjudicated upon by the Arbitral Tribunal as a preliminary issue. The three questions arising for determination in the said case before the Supreme Court 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:—*
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> ***i.** Whether the execution of a discharge voucher towards the full and final settlement between the parties would operate as a bar to invoke arbitration?*
>
> ***ii.** What is the scope and standard of judicial scrutiny that an application under Section 11(6) of the Act, 1996 can be subjected to when a plea of "accord and satisfaction" is taken by the defendant?*
>
> ***iii.** What is the effect of the decision of this Court in **In Re : Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1966 and the Indian Stamp Act 1899** on the scope of powers of the referral court under Section 11 of the Act, 1996?"*

11. These questions arose in the context of consent letter by the

Respondent therein accepting a certain quantity of cotton bales as against the initial higher claim, followed by an advance discharge voucher accepting the receipt of Rs. 84,19,579/- from the Appellant, as full and final settlement towards the claim, subsequent to which the Appellant released the said amount. Case of the Appellant was that having signed the consent letter and the discharge voucher, it was not open to the Respondent to turn around and raise a dispute. The High Court held that the dispute was falling in the realm of adjudication and the same is the function to be discharged by an Arbitrator.

12. The Supreme Court held that whether or not there has been a discharge of the contract is a mixed question of law and fact and if any dispute arises as to whether the contract has been discharged, the same is arbitrable as per mechanism provided under the Arbitration Agreement. The Arbitration Agreement by virtue of presumption of separability survives the principal contract in which it is contained. This observation was basis Section 16(1) of 1996 Act which in turn is based on Article 16 of UNCETRAL Modern Law on International Commercial Arbitration, 1985, which embodies the presumption of separability and the judgment of the Supreme Court in ***National Agricultural Coop. Marketing Federation India Ltd. v. Gains Trading Ltd., (2007) 5 SCC 692***. It was further observed that even if the contracting parties, in pursuance of a settlement, agree to discharge each other of any obligation 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 so. The intention of the parties in discharging a contract by 'accord and satisfaction' is to relieve each other of the existing or new obligations under the contract, but this cannot be

construed to mean that parties also intended to relieve each other of their obligations to settle any dispute pertaining to the original contract through arbitration. Although, ordinarily no arbitrable dispute may subsist after execution of a full and final settlement, yet any dispute pertaining to the settlement itself, by necessary implication being a dispute arising out of or in relation to or under the contract, would not be precluded from reference to arbitration. Relevant paragraphs of judgment in ***Krish Spinning (supra)*** are as follows:-

> *"**a. Whether the arbitration agreement contained in a substantive contract survives even after the underlying contract is discharged by "accord and satisfaction"?***
>
> ***48.*** *Arbitration for the purpose of resolving any dispute pertaining to any claim which has been "fully and finally settled" between the parties can only be invoked if the arbitration agreement survives even after the discharge of the substantive contract.*
>
> ***49.*** *The arbitration agreement, by virtue of the presumption of separability, survives the principal contract in which it was contained. Section 16(1) of the Act, 1996 which is based on Article 16 of the UNCITRAL Model Law on International Commercial Arbitration, 1985 (hereinafter, "**Model Law**") embodies the presumption of separability. There are two aspects to the doctrine of separability as contained in the Act, 1996:—*
>
> > *i. An arbitration clause forming part of a contract is treated as an agreement independent of the other terms of the contract.*
> >
> > *ii. A decision by the arbitral tribunal declaring the contract as null and void does not, ipso facto, make the arbitration clause invalid.*
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> ***50***. *The doctrine of separability was not part of the legislative scheme under the Arbitration Act, 1940. However, with the enactment of the Act, 1996, the doctrine was expressly incorporated. This Court in National Agricultural Coop. Marketing Federation India Ltd. v. Gains Trading Ltd. reported in (2007) 5 SCC 692, while interpreting Section 16 of the Act, 1996, held that even if the underlying contract comes to an end, the arbitration agreement contained in such a contract survives for the purpose of resolution of disputes between the parties.*
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> ***51***. *The fundamental premise governing the doctrine of separability is that the arbitration agreement is incorporated by the parties to a contract with*

the mutual intention to settle any disputes that may arise under or in respect of or with regard to the underlying substantive contract, and thus by its inherent nature is independent of the substantive contract.

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

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

(Emphasis supplied)

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

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

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

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

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

> *"13. From the above conclusions of this Court, the following principles emerge:*
>
> *(1) Merely because the contractor has issued "no-dues certificate", if there is an acceptable claim, the court cannot reject the same on the ground of issuance of "no-dues certificate".*
>
> *(ii) Inasmuch as it is common that unless a discharge certificate is given in advance by the contractor, payment of bills are generally delayed, hence such a clause in the contract would not be an absolute bar to a contractor raising claims which are genuine at a later date even after submission of such "no-claim certificate".*
>
> *(iii) Even after execution of full and final discharge voucher/receipt by one of the parties, if the said party is able to establish that he is entitled to further amount for which he is having adequate materials, he is not barred from claiming such amount merely because of acceptance of the final bill by mentioning "without prejudice" or by issuing "no-dues certificate".*
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> *(Emphasis supplied)*

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

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

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

13. The next question, as noted above, before the Supreme Court was on the scope and standard of judicial scrutiny by a Court under Section 11(6) of 1996 Act with respect to plea of 'accord and satisfaction'. The Supreme Court first referred to the earlier decisions of the Supreme Court in ***Damodar Valley Corporation v. K.K. Kar*, *(1974) 1 SCC 141,*** and ***Bharat Heavy Electricals Limited Ranipur v. Amar Nath Bhan Prakash, (1982) 1 SCC 625****,* wherein it was held that any dispute arising in relation to validity of the discharge by 'accord and satisfaction' would be covered by the arbitration agreement contained in the original contract and thus should be referred to the Arbitral Tribunal for determination. The Supreme Court thereafter observed that the position in law witnessed a change with the subsequent decisions of the Supreme Court in ***M/s P.K. Ramaiah and Company v. Chairman & Managing Director, National Thermal Power***

Corpn, 1994 Supp (3) SCC 126 and ***Nathani Steels Ltd. v. Associated Constructions, 1995 Supp (3) SCC 324***. In both these decisions, the judgment in ***Damodar Valley (supra)*** was distinguished on facts and it was held that once "full and final settlement" is arrived at, no arbitral dispute subsists and hence there can be no reference to arbitration. In ***SBP & Co. v. Patel Engineering Ltd. and Another, (2005) 8 SCC 618*** and ***National Insurance Company Limited v. Boghara Polyfab Private Limited, (2009) 1 SCC 267***, the scope of referral Courts under Section 11 was substantially expanded and as noted in ***Krish Spinning (supra)***, the referral Courts were conferred with a discretion to conduct mini trials and indulge in appreciation of evidence on the issues concerned with the subject matter of the arbitration.

14. After referring to the aforesaid judgments, the Supreme Court in ***Krish Spinning (supra)*** referred to the 246th Report of the Law Commission of India, whereafter 1996 Act was amended in 2015, to incorporate Section 11(6-A) which *albeit* was omitted by the 2019 Amendment, but in the absence of the omission being notified, continued in the statute book. Reference was also made to the judgment of the Supreme Court in ***Duro Felguera, S.A. v. Gangavaram Port Limited, (2017) 9 SCC 729***, wherein it was held: "*The scope of the power under Section 11(6) of 1996 Act was considerable wide in view of the decisions in SBP and Co [(2005) 8 SCC 618] and Boghara Polyfab [(2009) 1 SCC 267]. This position continued till the amendment brought about in 2015. After the amendment, all that the Courts need to see is whether an arbitration agreement exists – nothing more, nothing less. The legislative policy and purpose is essentially to minimise the Court's intervention at the stage of appointing the Arbitrator*

and this intention as incorporated in Section 11(6-A) ought to be respected.”

15. It was observed that despite the decision in ***Duro (supra)***, the Supreme Court in ***United India Insurance Company Limited v. Antique Art Exports Private Limited, (2019) 5 SCC 362***, held that mere bald allegation by a party that the discharge voucher was obtained under coercion or undue influence would not entitle it to seek reference of a dispute to arbitration unless it is able to produce *prima facie* evidence of the same during the course of proceedings under Section 11(6) of 1996 Act. It was further observed that in ***Mayavati Trading Private Limited v. Pradyut Deb Burman, (2019) 8 SCC 714***, a three-Judge Bench of the Supreme Court overruled the decision in ***Antique Art (supra)***, holding that the position of law that existed prior to the 2015 amendment to the 1996 Act, under which referral Courts had the power to examine the aspect of ‘accord and satisfaction’, had come to be legislatively overruled by Section 11(6-A).

16. Finally, 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,*** the Supreme Court 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.

17. In light of these observations in ***In Re: Interplay (supra)***, the Supreme Court held that dispute pertaining to 'accord and satisfaction' of the claims is not one which attacks or questions the existence of the Arbitration Agreement in any way and 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'. It was further held that '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. The negative effect of Kompetenz-Kompetenz would require that matters 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 Tribunal first has had the opportunity of looking into it. Relevant passages from the judgment in ***Krish Spinning (supra)*** are extracted hereunder, for the ease of reference:-

> *"**73.** The net effect of the decisions in SBP & Co. (supra) and Boghara Polyfab (supra) was that the scope for interference available to the referral courts when acting under Section 11 of the Act, 1996 was substantially expanded. The referral courts were conferred with the discretion to conduct mini trials and indulge in the appreciation of evidence on the issues concerned with the subject matter of arbitration. The Law Commission of India in its 246th report took note of the issue of significant delays being caused to the arbitral process due to enlarged*

scope of judicial interference at the stage of appointment of arbitrator and suggested as follows:

i. First*, that the power of appointment conferred upon the Chief Justice be devolved on to the Supreme Court and the High Court, as the case may be; and*

ii. Secondly*, the power of appointment under Section 11 be clarified to be an administrative power and not a judicial one.*

iii. Thirdly*, the scope of interference under Sections 8 and 11 respectively of the Act, 1996 be restricted only to those cases where the court finds that no arbitration agreement exists or is null and void.*

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

> *"(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under subsection (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement."*

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

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

> *"48. […] From a reading of Section 11(6-A), the intention of the legislature is crystal clear i.e. the court should and need only look into one aspect—the existence of an arbitration agreement. What are the factors for deciding as to whether there is an arbitration agreement is the next question. The resolution to that is simple—it needs to be seen if the agreement contains a clause which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement.*
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> *xxx xxx xxx*
>
> *59. The scope of the power under Section 11(6) of the 1996 Act was considerably wide in view of the decisions in SBP and Co. [(2005) 8 SCC 618] and Boghara Polyfab [(2009) 1 SCC 267].*

This position continued till the amendment brought about in 2015. After the amendment, all that the courts need to see is whether an arbitration agreement exists—nothing more, nothing less. The legislative policy and purpose is essentially to minimise the Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11(6-A) ought to be respected."

(Emphasis supplied)

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

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

xxx xxx xxx

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

18. In the instant case, the facts are not in dispute that for the two incidents of fire on 25-9-2013 and 25-10-2013, the appellant Company based on the Surveyor's report sent emails on 5-5-2016 *and 24-6-2016 for settlement of the claims for both the fires dated 25-9-2013 and 25-10-2013 which was responded by the respondent through email on the same date itself providing all the necessary information to the regional office of the Company and also issued the discharge voucher in full and final settlement with accord and satisfaction. Thereafter, on 12-7-2016, the respondent desired certain information with details, that too was furnished and for the first time on 27-7-2016, it took a U-turn and raised a voice of undue influence/coercion being used by the appellant stating that it being in financial distress was left with no option than to proceed to sign on the dotted lines. As observed, the phrase in itself is not sufficient unless there is a prima facie evidence to establish the allegation of coercion/undue influence, which is completely missing in the instant case.*

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

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

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

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

(Emphasis supplied)

***78**. It is pertinent to observe that in Antique Art (supra) the Court placed reliance on the decisions in Master Construction (supra) and New India Assurance (supra). Both these decisions were delivered before the insertion of Section 11(6-A) by the 2015 amendment to the Act, 1996. Thus, this Court in Antique Art (supra) failed to take into account the legislative intent behind the introduction of Section 11(6-A), which was also succinctly explained in Duro Felguera (supra).*

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

"10. This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which would have included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in the aforesaid judgment [United India Insurance Co. Ltd. v. Antique

Art Exports (P) Ltd., (2019) 5 SCC 362 : (2019) 2 SCC (Civ) 785], as Section 11(6-A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgment in Duro Felguera, SA [Duro Felguera, SA v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] — see paras 48 & 59

11. We, therefore, overrule the judgment in Antique Art Exports (P) Ltd. [United India Insurance Co. Ltd. v. Antique Art Exports (P) Ltd., (2019) 5 SCC 362 : (2019) 2 SCC (Civ) 785] as not having laid down the correct law but dismiss this appeal for the reason given in para 3 above."

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

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

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

7.12. The legislative intent underlying the 1996 Act is party

<u>autonomy and minimal judicial intervention in the arbitral process. Under this regime, once the arbitrator is appointed, or the tribunal is constituted, all issues and objections are to be decided by the Arbitral Tribunal</u>.

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

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

(Emphasis supplied)

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

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

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***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 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 a number of 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 Mayawati Trading (supra) yet it provided that in exceptional cases, where it was manifest that the claims were exfacie 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.*

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

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

> *"179. […] However, the effect of the principle of competence-competence is that the arbitral tribunal is vested with the power and authority to determine its enforceability. The question of enforceability survives, pending the curing of the defect which renders the instrument inadmissible. By appointing a tribunal or its members, this Court (or the High Courts, as the case may be) is merely giving effect to the principle enshrined in Section 16. The appointment of an arbitral tribunal does not necessarily mean that the agreement in which the arbitration clause is contained as well as the arbitration agreement itself are enforceable. The arbitral tribunal will answer precisely these questions.*
>
> *xxx xxx xxx*
>
> *185. The corollary of the doctrine of competence-competence is that courts may only examine whether an arbitration agreement exists on the basis of the prima facie standard of review. The nature of objections to the jurisdiction of an arbitral tribunal on the basis that stamp-duty has not been paid or is inadequate is such as cannot be decided on a prima facie basis. Objections of this kind will require a detailed consideration of evidence and submissions and a finding as to the law as well as the facts. Obligating the court to decide issues of stamping at the Section 8 or Section 11 stage will defeat the legislative intent underlying the Arbitration Act.*

186. <u>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</u>). The exercise of the jurisdiction of the courts of the country over the substantive dispute between the parties is only possible at two stages:

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

b. If the award is challenged under Section 34.

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

(Emphasis supplied)

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***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).*

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.*

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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."*

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F. <u>CONCLUSION</u>

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

18. This judgment will be incomplete without referring to the recent judgment of the Supreme Court in ***Arabian Exports Private Limited v. National Insurance Company Ltd., 2025 SCC OnLine SC 1034***. It was once again reiterated that doctrine of Kompetenz-Kompetenz is now formally embedded in the arbitration jurisprudence in India, which minimizes judicial intervention and its acknowledgment of the concept of party autonomy. It was held that the question whether the party was compelled to sign the standardized voucher/advance receipt forwarded to it by the other party and whether notwithstanding the receipt of the amount under the discharge voucher, as against the claim for a higher amount, are questions within the domain of the Arbitral Tribunal.

19. It is thus clear from the conspectus of the aforesaid judgments that the dispute being raised by the Petitioner, being one relating to the quantum of the amount payable under the Contract in question, is referrable to arbitration. Respondent's objection that no dispute is referrable to arbitration in light of the 'No Claim Certificate', only deserves to be overruled as

adjudication of the issue of discharge by 'accord and satisfaction' is within the domain of the Arbitrator and does not touch upon the question of the existence of the Arbitration Agreement, which is the limited enquiry that can be made by this Court in the present petition under Section 11 of 1996 Act.

20. The judgments referred to and relied upon by the Respondent do not enure to its advantage. In ***Bharat Enterprise (supra)***, the Respondent's/ Contractor's final bill was accompanied by a 'No Claim Certificate', which remained unpaid for a period of one year, within which it sent a list of additional claims and in the same letter claimed that final bill should be considered under protest. Respondent also signed an affidavit later, withdrawing the said letter along with an undertaking. Appellants thereafter made some payments and not satisfied, Respondent invoked the arbitration clause and filed a petition under Section 11(6) of 1996 Act, which was allowed and a Sole Arbitrator was appointed. Appellants filed an application under Section 16 of 1996 Act for dismissal of the claims referring to Clauses 65 and 65A of the Contract, which was dismissed by the Arbitrator and finally an award was passed. The award was assailed by the Appellants under Section 34 of 1996 Act. The petition was allowed by the District Judge, but the High Court reversed the order.

21. As can be seen from the judgment, the only controversy before the Supreme Court was whether the impugned order was sustainable in light of the contractual Clauses 65 and 65A. In this context, the Supreme Court held that the clauses relied upon by the Appellants were clear and unambiguous and interdicted submission of new claims, after submission of the final bill and provided that if any claims were left after the final bill, the same shall stand waived. It was held that clauses were binding not only on the parties

but also on the Arbitrator and no Arbitrator could go outside the terms of the contract between the parties and the impugned award will be without jurisdiction. The facts of the present case are completely different and even the controversy does not relate to the final bill being against any contractual clause. Be it noted that the judgment was not concerned with a petition under Section 11(6) of 1996 Act and the jurisdiction of a referral Court.

22. The judgment in ***Master Construction Company (supra)***, was delivered prior to 2015 Amendment and in light of the judgments in ***In Re: Interplay (supra)*** and ***Krish Spinning (supra)***, would not aid the Respondent. In ***Tirupati (supra)***, Coordinate Bench of this Court was examining the question whether a referral Court could adjudicate on the claims being deadwood or time barred under Section 11 of 1996 Act in light of ***Krish Spinning (supra)***, which is not the issue before this Court.

23. In light of the judgments in ***In Re: Interplay (supra)*** and ***Krish Spinning (supra)***, the issue of the claims of the Petitioner being allegedly discharged by 'accord and satisfaction' will have to be left to be adjudicated upon by the Arbitral Tribunal.

24. For all the aforesaid reasons, this petition is allowed and Mr. Justice Talwant Singh, former Judge of this Court (Mobile No.9910384653), is appointed as the Sole Arbitrator to adjudicate the disputes between the parties. Arbitral proceedings will be held under the aegis of Delhi International Arbitration Centre ('DIAC') and as per its Rules. Fee of the Arbitrator shall be as per fee schedule of DIAC (Administrative Cost & Arbitrators' Fees) Rules 2018.

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

26. 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. It will be open to the Respondent to raise the issue of 'accord and satisfaction' on account of the Petitioner having furnished a 'No Claim Certificate', before the learned Arbitrator.

27. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

MAY 28, 2025/RW